

1 FEDERICO CASTELAN SAYRE, ESQ., SBN 067420
sayreesq@sayrelevitt.com
2 TYLER RICHARD DOWDALL, ESQ., SBN 258950
tdowdall@sayrelevitt.com
3 **SAYRE & LEVITT, LLP**
900 N. BROADWAY, 4th FLOOR
4 SANTA ANA, CALIFORNIA 92701-3452
Phone (714) 550-9117
5 Facsimile (714) 550-9125

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7 Attorneys for Plaintiffs:

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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

11 LATOYA MCKENZIE, et al.
12 Plaintiffs

13 v.

14 KERN COUNTY, et al
15 Defendants.

) **CASE NUMBER:**

) **09-CV-01658-AWI-DLB**

) Assigned to Magistrate Judge
Dennis L. Beck

) **STIPULATION TO CONTINUE
DISCOVERY AND ALL
SUBSEQUENT DATES BY ONE
MONTH and ORDER THEREON**

) Pre-Trial Conference: Nov. 18, 2011
Trial: January 31, 2012

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17 _____
18 -
19 **COME NOW**, the Parties herein, by and through their respective counsel of
20 record, Tyler R. Dowdall, Esq. of SAYRE & LEVITT, LLP for Plaintiffs LaToya
21 McKenzie, Brenda McKenzie, Chastity McKenzie, Rory McKenzie, Jr., Zilah
22 Peeples, Amiya McKenzie, Zikirah Harris, Jamarri Joiner and the Estate of Rory
23 McKenzie (hereinafter collectively “Plaintiffs”); Andrew C. Thomson, Deputy,
24 Office of Kern County Counsel, for Defendants County of Kern, Kern County
25 Sheriff’s Office, Otis Whinery, Douglas Jauch, Edward Tucker and Patrick Neal
26 (hereinafter collectively “Kern Defendants”); and Mildred K. O’Linn, Esq. of
27 Manning & Kass, Ellrod, Ramirez, Trester, counsel for Defendant TASER

1 International, Inc. with the authority of their respective clients, hereby stipulate as
2 follows:

3
4 **GOOD CAUSE STATEMENT**

5 1. The parties have repeatedly met and conferred regarding various
6 issues and potential conflicts regarding discovery in this matter in an effort to
7 informally resolve these matters.

8 2. Former Kern County Coroner's Forensic Pathologist Dr. Joseph
9 Pestaner currently resides in the State of Maryland and works in Washington, D.C.
10 Dr. Pestaner conducted an autopsy of Plaintiffs' decedent, Rory McKenzie, on July
11 3, 2009. In light of the fact that medical issues related to causation are key issues
12 in this action, and in light of the state of the testimony from other percipient
13 witnesses related to these issues, Dr. Pestaner's testimony is highly material to this
14 case.

15 3. Plaintiffs have been informed that Dr. Pestaner has been subpoenaed
16 to testify in a Federal action in the final week of June 2011. Plaintiffs are serving a
17 deposition subpoena on Dr. Pestaner with a deposition date of July 1, 2011,
18 however, Plaintiffs report that because Dr. Pestaner is expected to be testifying in a
19 federal trial, plaintiffs anticipate Dr. Pestaner will be unavailable to testify July 1,
20 2011.

21 4. Plaintiffs have been informed that Dr. Pestaner has advised he has
22 more flexibility in July 2011. In particular, Dr. Pestaner reports to plaintiffs that
23 the week of July 11, 2011 is presently open for deposition.

24 5. In order to accommodate the schedule of Dr. Pestaner, the parties
25 agree that an additional one (1) month of fact discovery is appropriate for the
26 completion of discovery. However, Defendant TASER will only stipulate to a
27 continuance of discovery deadlines if all case management deadlines -- including
28

1 expert disclosures, dispositive motions, and trial -- are also continued by an
2 equivalent amount of time.

3 6. Based upon the foregoing, good cause exists for a one (1) month
4 continuance of the discovery cut-off and all subsequent dates, including the trial
5 date.

6 7. The parties propose a new trial date in May 2012.

7 8. The parties respectfully request the Court's consideration of this
8 request.

9 9. Defendant TASER maintains that, in light of the complex and highly
10 technical causation and medical/scientific facts at issue in Plaintiffs' product
11 liability claims, a staggered discovery-disclosure and related motion case
12 management schedule, comparable to the case management schedule adopted by
13 the Court on May 4, 2010 (Dkt. Doc. 68), and on January 21, 2011 (Dkt. Doc. 80)
14 is essential to prevent undue prejudice to defendant TASER. TASER hereby
15 incorporates by reference here all of its arguments on this issue as stated in the
16 Joint Case Management Statement. (See Dkt. Doc. 66 at 8:1-10:20).

17 10. Additionally, the Deposition of LaToya McKenzie was scheduled for
18 June 7, 2011, but Ms. McKenzie failed to attend. The Parties have been attempting
19 to informally resolve the associated discovery issues and have proposed to
20 reschedule the deposition of Ms. McKenzie for June 30, 2011, but the date has yet
21 to be confirmed by Plaintiffs' counsel.

22
23 **STIPULATION FOR CONTINUANCE AND MODIFICATION**

24 11. TASER's stipulation to any modification of the Court's operative case
25 management scheduling order (Dkt. Doc. 68, 73, 80) is conditional upon such
26 modification continuing all case management dates and deadlines, including all
27 pretrial discovery-disclosure and motion deadlines, in such a manner that the case
28

1 management schedule is modified to emulate the sequence and timing of pretrial
2 discovery-disclosure and motion deadlines, and their relationship to the trial date,
3 as is embodied in the current operative case management schedule. TASER does
4 not stipulate to any continuance of any deadlines that does not emulate the current
5 sequence and timing of discovery, disclosures, motions and trial.

6 12. In light of the foregoing, the Parties hereby stipulate that Good Cause
7 exists, and the parties respectfully request the Court, to modify the operative case
8 management scheduling order(s) (Dkt. Doc. 68, 73, 80) as follows:

9 **DISCOVERY DEADLINES:**

	<u>CURRENT DATES:</u>	<u>PROPOSED DATES:</u>
10 Initial Disclosures:	Completed	No modification
11 Non-expert Discovery		
12 cut-off:	July 1, 2011	August 1, 2011
13 Expert Discovery		
14 cut-off:	September 16, 2011	October 17, 2011

15 **Expert Disclosures**

16 Plaintiffs' Disclosure:	July 8, 2011	August 8, 2011
17 Defendants' Disclosure:	July 18, 2011	August 18, 2011
18 Supplemental Disclosure:	August 2, 2011	September 2, 2011

19 **Non-Dispositive Motion Deadlines:**

20 Filing:	September 21, 2011	October 21, 2011
21 Hearing:	October 21, 2011	November 21, 2011

22 **Dispositive Motion Deadlines:**

23 Filing:	October 17, 2011	November 17, 2011
24 Hearing:	December 9, 2011	January 9, 2012

1 **ORDER**

2 Pursuant to the aforementioned Stipulation of the Parties, and Good Cause
3 appearing therefore, the aforementioned stipulated proposed dates and deadlines
4 are hereby adopted and the case management schedule for the above entitled
5 matter is hereby modified accordingly.

6
7 IT IS SO ORDERED.

8 Dated: June 23, 2011

9 /s/ Dennis L. Beck
10 UNITED STATES MAGISTRATE JUDGE