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8 LINDSAY DOZIER and L. LEIBEE

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

11 HAROLD WALKER,) CASE NO. 1:09-CV-01667-OWW-SKO
12 Plaintiff,)
13 vs.) **DEFENDANTS' EX PARTE APPLICATION**
14 CITY OF FRESNO, ET AL.,) **FOR ORDER MODIFYING SCHEDULING**
15) **ORDER; DECLARATION OF MICHELLE**
16 Defendants.) **E. SASSANO IN SUPPORT THEREOF AND**
17) **ORDER**
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Complaint Filed: 09/21/09
Trial Date: TBA

19 Defendants A. ALVAREZ, CHRISTOPHER ARANAS, PHILLIP CORONA, LINDSAY
20 DOZIER and L. LEIBEE, hereby submit the following ex parte application for an order modifying the
21 Discovery Order/Scheduling Order, document number 41.

22 On February 28, 2011, Defendants served Plaintiff with discovery requests. Responses were
23 due on April 18, 2011. Unfortunately, no responses were received. A meet and confer letter was sent
24 requesting that Plaintiff provide responses by May 9, 2011. On May 13, 2011, only responses to special
25 interrogatories were provided.

26 On May 24, 2011, Defendants filed a motion to compel responses to the remaining outstanding
27 discovery requests. As of today's date, Defendant Aranas has not received responses to the request for
28 production of documents. On June 23, 2011, the Court issued an order granting, in part, Defendants'

Ex Parte Application for Order Modifying
Scheduling Order; Declaration of Michelle Sassano
in Support Thereof and Order

1 motion to compel. The Court ordered Plaintiff to serve a response to Defendant Aranas' Request for
2 Production of Documents within thirty -three (33) days of the order. In light of the fact that Plaintiff has
3 not provided responses to the request for production of documents and provided late responses to all other
4 discovery requests, Defendants request modification of the operative scheduling order as follows:

<u>Description</u>	<u>Current Date</u>	<u>New Date</u>
Discovery Cut-Off	June 24, 2011	August 12, 2011

7 All other dates will remain as previously ordered.

8 Respectfully submitted,

9 DATED: June 23, 2011

10 WEAKLEY & ARENDT, LLP

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13 By: /s/ Michelle E. Sassano
14 James J. Arendt
Michelle E. Sassano
Attorney for Defendants

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16 **DECLARATION OF MICHELLE E. SASSANO**

17 I, Michelle E. Sassano, declare as follows:

18 1. I am an attorney at law, duly licensed to practice law before all the courts in the State of
19 California and the United States District Court for the Eastern District of California. I am an associate
20 with the law firm of Weakley & Arendt, the attorneys of record for A. ALVAREZ, CHRISTOPHER
21 ARANAS, PHILLIP CORONA, LINDSAY DOZIER and L. LEIBEE. As such, I have personal
22 knowledge of the matters set forth herein, except those matters stated on information and belief, and
23 would so testify.

24 2. This declaration is made in support of Defendants' ex parte application for an order
25 modifying the Discovery Order/Scheduling Order, document number 41.

26 3. Good cause exists for this request due to the fact that Plaintiff has not provided responses
27 to the request for production of documents that was served on February 28, 2011 and provided late
28 responses to all other discovery requests. The discovery cut-off in this case is June 24, 2011.

1 4. On June 23, 2011, the Court granted Defendants' motion to compel, in part, and ordered
2 Plaintiff to provide a response to the request for production of documents within thirty-three (33) days.
3 Defendants will not receive responses until after the discovery cut-off. Further, Plaintiff provided late
4 responses to all other discovery requests. Defendants are required to provide Plaintiff with forty-five (45)
5 days to respond to any discovery propounded. Therefore, the late service of responses to special
6 interrogatories prevented Defendants from providing any follow up discovery requests. Further,
7 Defendants have not had the opportunity to take Plaintiff's deposition due to Plaintiff failing to provide
8 timely discovery responses.

9 5. On June 17, 2011, I prepared a correspondence to Plaintiff requesting that he stipulate
10 to an extension of the discovery cut-off. I enclosed a proposed stipulation modifying the scheduling
11 order. The correspondence explained that the extension was necessary in order to complete all necessary
12 discovery. Unfortunately, at the time, we did not have a phone number to contact Plaintiff and were
13 unable to meet and confer by phone.

14 6. On June 22, 2011, Plaintiff contacted me by phone. We discussed the stipulation and the
15 need for the extension of the discovery cut-off. It was my understanding that he was going to sign the
16 stipulation and drop it off at my office the same day. However, as of today, we have not received the
17 signed stipulation. The discovery cut-off is June 24, 2011. Therefore, this ex parte application is
18 necessary.

19 7. Defendants believe the proposed dates will provide adequate time for Defendants to
20 complete any necessary discovery. This request is made in good faith and with no improper purpose.

21 I declare under penalty of perjury that the foregoing is true and correct, to the best of my
22 knowledge, and that his declaration was executed on June 23, 2011, at Fresno, California.

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/s/ Michelle E. Sassano
Michelle E. Sassano

1 **ORDER**

2 Defendants filed an ex-parte application on June 23, 2011, seeking an order modifying the
3 Discovery Order/Scheduling Order. The ex-parte application was served on Plaintiff by mail on June 23,
4 2011. (Doc. 52.)

5 In light of Plaintiff's pro se status, the Court did not immediately act on Defendants' request in
6 order to provide Plaintiff with an opportunity to receive and review Defendants' request for a schedule
7 modification and to file any additional statement or opposition that Plaintiff deemed necessary. Plaintiff
8 did not file any opposition to Defendants' request for a schedule modification.

9 Accordingly, the Court GRANTS Defendants' request for a schedule modification. However,
10 because the modified discovery deadline overlaps with the dispositive motion filing deadline, this
11 deadline will also be extended. No trial date has been set in this case.

12 The current scheduling order is modified as follows:

<u>Description</u>	<u>Current Date</u>	<u>New Date</u>
Discovery Cut-Off	June 24, 2011	August 12, 2011
Dispositive Motion Deadline	August 19, 2011	September 30, 2011

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17 IT IS SO ORDERED.

18 **Dated: July 6, 2011**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE