

1 Michael G. Woods, #58683  
2 Deborah A. Byron, #105327  
3 McCormick, Barstow, Sheppard,  
4 Wayte & Carruth LLP  
5 5 River Park Place East  
6 Fresno, California 93720-1501  
7 Telephone: (559) 433-1300  
8 Facsimile: (559) 433-2300

9 Attorneys for Defendants COUNTY OF  
10 TULARE, JULIA LANGLEY, CAROL  
11 HELDING and JOHN ROZUM

12 UNITED STATES DISTRICT COURT

13 EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

14 PAMELA J. FOX, ON BEHALF OF  
15 HERSELF AND AS NEXT FRIEND TO  
16 C.M.R., A MINOR,

17 Plaintiffs,

18 v.

19 COUNTY OF TULARE, LETICIA  
20 CASTENEDA, ERICA SOTO, RON  
21 CASTENEDA, JULIA LANGLEY, CAROL  
22 HELDING, JOHN ROZUM, STEVEN D.  
23 ROGERS, and DOES 1-100,

24 Defendant.

Case No. 1:11-CV-00520 AWI SMS

**EX PARTE APPLICATION FOR ORDER  
EXTENDING DEADLINE FOR FILING  
DISPOSITIVE MOTIONS; AND POINTS  
AND AUTHORITIES AND ORDER  
THEREON**

**[NO HEARING REQUIRED]**

25 **EX PARTE APPLICATION**

26 Defendants COUNTY OF TULARE, JULIA LANGLEY, CAROL HELDING and JOHN  
27 ROZUM hereby apply to this Court, for an order extending the deadline for filing dispositive  
28 motions on the grounds that good cause exists for extending the time within which Defendants  
may move for summary judgment due to Plaintiffs' pending Motion to File Second Amended  
Complaint.

**I.**

**BACKGROUND STATEMENT**

Plaintiff PAMELA FOX, on behalf of herself and minor CMR, filed Complaint for  
Damages against COUNTY OF TULARE ("COUNTY"), and County Social Workers and Deputy

1 County Counsel on March 24, 2011. Plaintiffs filed First Amended Complaint for Damages on  
2 November 15, 2011. Plaintiffs now seek to file Second Amended Complaint for damages adding a  
3 new party, Defendant John Lee, based on conduct occurring in his capacity as a Detective for the  
4 Tulare County Sheriff's Department. Neither the original Complaint nor the First Amended  
5 Complaint included charging allegations against Detective Lee, or any other officer, based on law  
6 enforcement activities, other than claims that Defendant Ron Casteneda, a former officer with the  
7 Sheriff's Department, conspired to deprive Plaintiff of the custody of her daughter. The theory  
8 against Detective Lee appears to be that he was negligent in failing to follow basic investigative  
9 procedures. See Declaration of Deborah A. Byron ("DAB"), ¶ 3. Because the proposed Second  
10 Amended Complaint adds a new Defendant under a new theory of liability, Defendants will  
11 vigorously oppose Plaintiffs' request for leave to amend.

12       The Amended Scheduling Conference Order signed by the Honorable Sandra M. Snyder on  
13 February 15, 2013, establishes October 7, 2013 as the deadline for filing non-dispositive motions.  
14 Plaintiffs filed their motion to amend and supporting documents between the hours of 9:54 p.m.  
15 and 11:06 p.m. on October 7, 2013. The statement of counsel re meet and confer efforts was filed  
16 on October 8, 2013, after the filing deadline.

17       This Court's Amended Scheduling Conference order establishes October 28, 2013, as the  
18 deadline for filing dispositive motions. Defendants intend to file a motion for summary judgment  
19 and/or a partial summary judgment in this case.

20       Plaintiffs' Motion to File Second Amended Complaint is set for hearing on November 20,  
21 2013. Opposition to the motion is due on November 6, 2013. Therefore, Defendants will be  
22 required to move for summary judgment prior to filing opposition to Plaintiffs' motion to amend  
23 and prior to this Court's ruling on Plaintiffs' motion. The pleadings provide the framework for a  
24 motion for summary judgment under Fed. R. Civ. P. 56. Until the pleadings are finalized, it  
25 cannot be determined what particular facts are "material" for purposes of the motion. See Fed. R.  
26 Civ. P. 56(a). Defendants will be prejudiced in attempting to identify the facts and issues  
27 necessary for resolution by summary judgment, if the pleadings and the parties are uncertain.  
28 Consequently, Defendants seek ex parte relief to file motion for summary judgment after this  
Court has ruled on Plaintiffs' motion for leave to amend.

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**II.**

**LAW AND ARGUMENT**

**A. A Request For Extension Of Time To Plead May Be Made By Ex Parte Application.**

A schedule may be modified for good cause and with the Judge’s consent. Fed. R. Civ. P. 16(b)(4). An ex parte application is recognized as an appropriate procedure for seeking an extension of time to file a pleading. See *Gallo Winery v. Andina Licores S.A.*, 2006 U.S. Dist. Lexis 20113, \*1-2 (E.D. Cal. 2006); *Hall v. Placer County Sheriff’s Department*, 2013 U.S. Dist. Lexis 114348, \*1 (E.D. Cal. 2013); *Stewart v. Wachowski*, 2005 U.S. Dist. Lexis 46704, \*33 (C.D. Cal. 2005).

An ex parte motion is proper where the court does not typically need an adversary presentation from the other side in order to make its ruling. See, *In Re Intermagnetics America, Inc.* (C.D. Cal. 1989) 101 B.R. 191, 193. Here Plaintiffs do not oppose the motion. See DAB Dec. ¶ 8. Legitimate ex parte applications are appropriate where there is some genuine urgency to the matter. *Ibid.*

As set forth in the Declaration of Deborah A. Byron filed herewith, Defendants cannot adequately move for summary judgment and/or partial summary judgment at a time when the pleadings are in flux. Plaintiffs’ proposed addition of a new party and new facts to support liability against a detective for negligent investigation of child pornography charges goes well beyond the extant pleadings. Until this Court has ruled on Plaintiffs’ motion to amend, the facts and issues as framed by the pleadings will be uncertain. Extending the period for filing Defendants’ dispositive motion would not prejudice Plaintiffs. Requiring Defendants to file for summary judgment before the opposition to Plaintiffs’ motion is due, would be prejudicial, wasteful of resources, mooted by a ruling in Plaintiffs’ favor on Motion to File Second Amended Complaint, and would essentially create an undue burden on the Court and counsel in connection with summary resolution of this matter.

**B. Good Cause Exists For Extending The Deadline For Dispositive Motions.**

The moving party should be allowed relief by ex parte motion because Defendants will be irreparably prejudiced if this matter were determined according to regular noticed motion procedures. See *Mission Power Engineering Co. v. Continental Cas. Co.* (C.D. Cal. 1995) 883

1 F.Supp. 488, 492. Defendants could not have a motion to modify the scheduling conference order  
2 heard before November 6, 2013, even if such a motion was prepared for filing immediately. Most  
3 certainly, the matter could not be heard before the deadline for filing motion for summary  
4 judgment. Moreover, the order sought by Defendants is more-or-less a routine matter, in that  
5 rescheduling motion deadlines is a matter of procedure rather than substance.

6 The time period for filing dispositive motions has not yet expired. The Court as well as the  
7 parties will benefit from an orderly progression from finalizing of the pleadings to moving for  
8 summary judgment. Just as Defendants will be prejudiced by complying with the October 28,  
9 2013 filing deadline, given that the pleadings and parties will be uncertain at that time, the Court  
10 cannot reasonably determine whether or not there are triable issues of material fact when the facts  
11 are uncertain. Moreover, it is prejudicial to Defendants to be in the position of opposing a motion  
12 to file an amended complaint while at the same time being required to prepare a substantial motion  
13 under Fed. R. Civ. P. 56.

14 “Good cause” exists for extending the deadline for filing dispositive motions. Given the  
15 approaching deadline for filing motion for summary judgment, it is necessary that Defendants  
16 move ex parte to extend the pleading deadline.

17 **III.**

18 **CONCLUSION**

19 Trial in this matter is set for March 25, 2014. Allowing Defendants thirty (30) days within  
20 which to file a motion for summary judgment following this Court’s ruling on the Motion to file a  
21 Second Amended Complaint will not prejudice Plaintiffs or unduly disturb the Court’s scheduling  
22 order. It is simply not possible for Defendants to frame a motion for summary judgment at a time  
23 when the pleadings are not final. Plaintiffs do not oppose this Ex Parte Application.

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1 For all the reasons set forth above, this Court is respectfully requested to grant Defendants'  
2 Ex Parte Application to extend the deadline for filing dispositive motions from October 28, 2013  
3 to thirty (30) days following this Court's ruling on Plaintiffs' Motion to File Second Amended  
4 Complaint.

5 Dated: October 8, 2013

McCORMICK, BARSTOW, SHEPPARD,  
WAYTE & CARRUTH LLP

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7  
8 By: /s/ Deborah A. Byron  
Michael G. Woods  
Deborah A. Byron  
9 Attorneys for Defendants COUNTY OF  
10 TULARE, JULIA LANGLEY, CAROL  
11 HELDING and JOHN ROZUM  
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13 **ORDER GRANTING EX PARTE APPLICATION**

14 Defendants having shown good cause for the extension of time to file dispositive motions,  
15 and there being no opposition by Plaintiffs, this Court grants Defendants' Ex Parte Application and  
16 orders the Scheduling Conference Order modified to establish a deadline for filing motion for  
17 summary judgment and/or partial summary judgment not later than thirty (30) days following this  
18 Court's ruling on Plaintiffs' Motion to File Second Amended Complaint.

19 IT IS SO ORDERED.

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22 IT IS SO ORDERED.

23 Dated: October 9, 2013

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE