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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

11 Claire Barbis, by and through her guardian ad
 12 litem Heidi Barbis,
 13 Plaintiff,
 14 v.
 15 Benjamin Rodriguez,
 16 Defendant.

Case No. 1:11-cv-00622-SKO

**STIPULATION AND ORDER TO ALLOW
 TRIAL TESTIMONY OF PERCIPIENT
 WITNESSES BY VIDEO RECORDED
 DEPOSITION**

Trial Date: September 13, 2016
 Courtroom: 7
 Judge: The Hon. Sheila K. Oberto

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 19 All parties, through their respective counsel of record, hereby stipulate, and request this
 20 court to order than non-parties California Department of Insurance (“DOI”) Detective Dennis
 21 Pensinger and former California Employment Development Department (“EDD”) Investigator
 22 Debra Misquez be allowed to testify at trial by video-recorded deposition for the following
 23 reasons:

- 24 1. Trial in this matter is scheduled to begin on September 13, 2015, and is expected to
 25 last from 7-12 court days.
- 26 2. DOI Detective Dennis Pensinger is a percipient witness to some of the events of the
 27 incident which is the subject of this lawsuit. Specifically, he was present at the search of 2536 W.
 28 Stuart Avenue, Fresno, California, 93711, pursuant to the disputed search warrant in this matter.

1 3. Defendant intends to call Det. Pensinger as a witness to provide percipient witness
2 testimony during the trial of this matter.

3 4. Det. Pensinger has advised that he is retiring, effective early August 2016 and that
4 he will be unavailable for trial as he plans to move out of state. He has advised that he is available
5 for a video recorded deposition before August 18, 2016.

6 5. The parties have agreed to conduct a video recorded deposition of Det. Pensinger's
7 trial testimony before August 18, 2016, at a mutually agreeable date and location in Fresno,
8 California. Defendant will subpoena Det. Pensinger to appear and will notice the deposition
9 pursuant to this stipulation. Defendant will also obtain a court reporter and videographer for the
10 proceeding and will provide Plaintiff with copies of the written transcript and of the video
11 recording of the deposition for use at trial at Defendant's expense.

12 6. Defendant intends to call Ms. Misquez, who provided information to Det.
13 Rodriguez which he used in preparing the disputed search warrant, as a witness to provide
14 percipient witness testimony during the trial of this matter. She is listed on Plaintiff's trial witness
15 list.

16 7. Ms. Misquez has retired from EDD and has advised that she will be unavailable for
17 trial as she is traveling out of the country on September 21, 2016.

18 8. The parties have agreed to conduct a video recorded deposition of Ms. Misquez's
19 trial testimony on or before September 2, 2016, at a mutually agreeable date and location in
20 Sacramento, California. Defendant will subpoena Ms. Misquez to appear and will notice the
21 deposition pursuant to this stipulation. Defendant will also obtain a court reporter and
22 videographer for the proceeding and will provide Plaintiff with copies of the written transcript and
23 of the video recording of the deposition for use at trial at Defendant's expense.

24 9. The parties further agree that Det. Pensinger's and Ms. Misquez's video recorded
25 testimony at the depositions will be admissible at trial as an exception to the hearsay rule pursuant
26 to Fed. R. Evid. 804(b)(1) when offered by any party. All other objections are expressly reserved.
27 Form objections normally required to be interposed during a deposition or waived must be
28 interposed during these depositions or waived.

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SO STIPULATED

Dated: July 19, 2016

Respectfully submitted,
Kamala D. Harris
Attorney General of California
Peter A. Meshot
Supervising Deputy Attorney General
/s/ Stephen C. Pass
Deputy Attorney General
Attorneys for Defendant Benjamin Rodriguez

Dated: July 19, 2016

THORNTON LAW GROUP
By: */s/ Douglas V. Thornton*
Attorneys for Plaintiffs Zone Sports Center, LLC, and Claire Barbis

ORDER

Pursuant to the parties' stipulation, the parties may take the video recorded depositions of non-party witnesses Detective Dennis Pensinger and former California EDD Investigator Debra Misqueu before trial in order to obtain their trial testimony due to their unavailability for trial. Defendant will subpoena both witnesses for deposition at a time mutually agreeable to the parties. Defendant will obtain court reporters and videographers for the proceedings and will provide Plaintiff with copies of the written transcripts and of the video recording of the deposition at Defendant's expense. Det. Pensinger's and Ms. Misqueu's testimony at the depositions will be admissible at trial as an exception to the hearsay rule pursuant to Fed. R. Evid. 804(b)(1) when offered by any party. All other objections are reserved. Form objections normally required to be interposed during a deposition or waived must be interposed during these depositions or waived.

IT IS SO ORDERED.

Dated: August 1, 2016

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE