

1 WHEREAS:

- 2
- 3 1. Sh. W., brother of decedent S.W., presented an application for leave to present late
- 4 claim under Cal. Gov. Code § 911.4 to the defendant Tehachapi Unified School
- 5 District, with a proof of service dated September 16, 2011, together with a proposed
- 6 claim for damages seeking recovery for events on and after September 19, 2010.
- 7
- 8 2. The parties have agreed that Sh. W. is not seeking recovery in this action for any
- 9 events that occurred before September 19, 2010.
- 10
- 11 3. In the application Sh. W. represents, and presents evidence, that he was born on
- 12 February 21, 1999, indicating that he is a minor.
- 13
- 14 4. Under Cal Gov. Code §§ 911.6(b)(2) and 946.6(c)(2), and *Hernandez v. County of*
- 15 *Los Angeles*, 42 Cal.3d 1020, 232 Cal.Rptr. 519 (1986), a claimant against a public
- 16 entity who was a minor throughout the six-month claim-presentation period, and
- 17 who presents an application for leave to present late claim within one year of the
- 18 accrual of the minor's cause of action, is entitled to leave to present a late claim.
- 19
- 20 5. Based on the evidence in his application, Sh. W. is entitled to leave to present a late
- 21 claim as to damages claimed for events on or after September 19, 2010. And:
- 22
- 23 6. The interests of the parties and courts are best served by trying the damages claims
- 24 of both Sh. W. and plaintiff Wendy Walsh in the same action;
- 25

26 IT IS THEREFORE STIPULATED THAT:

- 27
- 28 7. Based on the application for leave to present late claim presented within a year of

1 the accrual of his cause of action, and his minority throughout the six-month period
2 to present a claim, the California Government Claims Act does not prevent Sh. W.
3 from pursuing a cause of action against defendants Tehachapi Unified School
4 District, Susan Ortega, and Paul Kaminski, despite his failure to present a claim for
5 damages to the defendant District within six months after accrual. Sh. W. need not
6 obtain an order of relief under Cal. Gov. Code § 946.6(c) to pursue this cause of
7 action against these defendants.

8
9 8. On or by May 31, 2012, Wendy Walsh and prospective plaintiff Sh. W. may amend
10 Wendy Walsh's First Amended Complaint in this action by filing a Second
11 Amended Complaint to add Sh. W. as a plaintiff to the Negligent Infliction of
12 Emotional Distress cause of action only, and only in regard to events on or after
13 September 19, 2010.

14
15 9. The parties agree to request the Court to extend the deadline set forth in Paragraph
16 III of the December 22, 2011 Scheduling Order in this case for filing of requested
17 pleading amendments, either through a stipulation or motion to amend, from
18 February 24, 2012 to permit the filing of the Second Amended Complaint described
19 in paragraph 8 above on or by May 31, 2012, and to permit defendants to file a
20 response to that Second Amended Complaint within 20 days of the date the Second
21 Amended Complaint is filed.

22
23 10. On or by April 20, 2012, the counsel for plaintiff Wendy Walsh and prospective
24 plaintiff Sh. W. shall take the hearing on Sh. W.'s Cal. Gov. Code § 946.6 petition
25 (currently set for May 1, 2012 in Department 14 of the Kern County Superior
26 Court, Case No. S-1500-MS-376) off calendar.

27
28

1 11. By entering into this stipulation, defendants Tehachapi Unified School District,
2 Susan Ortega, and Paul Kaminski do not waive any procedural or substantive
3 claims or defenses in this action, except as expressly set forth above.
4

5
6 DATED: April 16, 2012 POLLAK, VIDA & FISHER

7
8 By: _____/s/_____
9 Daniel P. Barer
10 Attorneys for Defendant Tehachapi
11 Unified School District

12 DATED: April 16, 2012 ROBINSON & KELLAR

13
14 By: _____/s/_____
15 Michael C. Kellar
16 Attorneys for Defendants Tehachapi
17 Unified School District, Dr. Richard Swanson,
18 Susan Ortega, and Paul Kaminski

19 DATED: April 16, 2012 RODRIGUEZ & ASSOCIATES

20
21 By: _____/s/_____
22 John A. Kawai
23 Attorneys for plaintiff Wendy Walsh and Prospective
24 Plaintiff Sh. W.

25 **ORDER**

26 Based on the above stipulation, IT IS ORDERED that:

- 27 1. No later than May 31, 2012, Wendy Walsh and prospective plaintiff Sh. W. may
28 amend Wendy Walsh's First Amended Complaint in this action by filing a Second

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Amended Complaint to add Sh. W. as a plaintiff to the Negligent Infliction of Emotional Distress cause of action only, and only in regard to events on or after September 19, 2010;

2. Defendants SHALL file a responsive pleading within 20 days of the filing of the Second Amended Complaint.

IT IS SO ORDERED.

Dated: April 18, 2012

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE