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23 UNITED STATES DISTRICT COURT
24 EASTERN DISTRICT OF CALIFORNIA – FRESNO

25 THE ESTATE OF CECIL ELKINS, JR., et
26 al.

27 Plaintiffs,

28 vs.

29 CALIFORNIA HIGHWAY PATROL, et al.
30 Defendants.

Case No.: 1:13-cv-01483-AWI-
SAB

ORDER ON STIPULATION FOR
LEAVE TO FILE FOURTH
AMENDED COMPLAINT AND TO
CONTINUE SCHEDULING
CONFERENCE

1 TO THE HONORABLE COURT:

2 This stipulation is entered into by and between the plaintiffs and defendant
3 Hipolito Pelayo, by and through their respective counsel.

4 In an effort to alleviate the unnecessary expenditure of attorney and court resources,
5 the parties through their respective counsel hereby stipulate as follows:

6 **WHEREAS** On December 11, 2014, the Court issued an order in this
7 action setting it for a Scheduling Conference on May 12, 2015 (ECF No. 60);

8 **WHEREAS** Plaintiffs THE ESTATE OF CECIL ELKINS, et al. filed their
9 Third Amended Complaint on or about March 27, 2015 (ECF No. 66.);

10 **WHEREAS** Defendant filed a Motion to Dismiss Plaintiffs' Third
11 Amended Complaint on or about April 9, 2015, setting that matter for hearing on
12 May 13, 2015 (ECF No. 67);

13 **WHEREAS** counsel have met and conferred and agreed that the
14 proposed Fourth Amended Complaint cures any deficiencies alleged in Defendant's
15 Motion to Dismiss Plaintiffs' Third Amended Complaint;

16 **WHEREAS** a copy of Plaintiffs' proposed Fourth Amended Complaint is
17 attached hereto as Exhibit "A;"

18 **WHEREAS** even if the Motion to Dismiss is resolved by the parties, the
19 parties agree additional time will be needed, for defendant to file an answer, and for
20 the parties to negotiate a Joint Scheduling Report;

21 **WHEREAS** on April 23, 2015, counsel for defendant, Deputy Attorney
22 General Neli Palma, was put on a jury for a trial that will continue until May 22, 2015
23 (Department 19 of Sacramento Superior Court), and Supervising Deputy Attorney
24 General Peter Meshot, also counsel for defendant, is scheduled to commence trial
25 in Department 10 of Riverside Superior Court on May 13, 2015 (*State of California v.*
Underwriters, et al.);

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IT IS HEREBY STIPULATED, by and between counsel that:

1. Defendant HIPOLITO PELAYO'S Motion to Dismiss Plaintiffs' Third Amended Complaint currently scheduled for May 13, 2015 at 10:00 a.m. in Courtroom 9 of the United States District Court before the Honorable United States Magistrate Judge Stanley A. Boone be taken off calendar.
2. Plaintiffs The Estate of Cecil Elkins, Jr., et al. be granted leave to file their Fourth Amended Complaint, a copy of which is attached hereto as Exhibit "A."
3. Defendant's responsive pleading shall be due twenty-eight (28) days after the Fourth Amended Complaint is filed.
4. The parties request that the Court vacate the date of the May 12, 2015 Scheduling Conference and set the matter for a Scheduling Conference during the week of June 22, 2015, as suits the Court's calendar.

Dated: April 28, 2015

LAW OFFICE OF MICHAEL J. CURLS

/s/ Nichelle D. Jones
NICHELLE D. JONES, Attorney for
Plaintiffs

Dated: April 28, 2015

KAMALA D. HARRIS
Attorney General of California
PETER A. MESHOT
Supervising Deputy Attorney General

/s/ Neli N. Palma
NELI N. PALMA, Attorney for
Defendant HIPOLITO PELAYO

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ORDER

Pursuant to the stipulation of the parties, IT IS HEREBY ORDERED that:

1. Defendant PELAYO’S motion to dismiss Plaintiffs’ third amended complaint is denied as moot, and the hearing currently scheduled for May 13, 2015 at 10:00 a.m. in Courtroom 9 is vacated;
2. Plaintiffs are granted leave to file a fourth amended complaint;
3. The Clerk’s Office is directed to file Plaintiffs’ fourth amended complaint, attached as Exhibit A to the stipulation (ECF No. 70-1);
4. Defendants’ responsive pleading shall be filed within twenty-eight (28) days from the date of service of this order;
5. The May 12, 2015 scheduling conference is continued to June 15, 2015 at 9:00 a.m. in Courtroom 9 before the undersigned; and
6. The parties shall file a joint scheduling report at least one week prior to the scheduling conference.

IT IS SO ORDERED.

Dated: **April 28, 2015**


UNITED STATES MAGISTRATE JUDGE