

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

IDALIA J. MORGUTIA-JOHNSON,
Plaintiff,

Case No. 1:14-CV-00127 LJO-SKO
[Hon. Lawrence J. O'Neill, D. Judge;
Hon. Sheila K. Oberto, M. Judge]

V.

12 CITY OF FRESNO, CHIEF JERRY
13 DYER, SERGEANT LARRY
14 HUSTEDDE, OFFICER JEFFREY
15 KAISER, and DOES 1 to 10,
Defendants.

**STIPULATION OF THE PARTIES
AND JOINT REQUEST FOR
ORDER CONTINUING AND
RESETTING CASE
MANAGEMENT DATES AND
DEADLINES, INCLUDING TRIAL;
ORDER**

Complaint Filed: 01/28/2014
Trial Date: 06/09/2015

TO THE HONORABLE COURT:

19 By and through their counsel of record in this action, plaintiff IDALIA J.
20 MORGUTIA-JOHNSON and defendants CITY OF FRESNO, CHIEF JERRY
21 DYER, SERGEANT LARRY HUSTEDDE, AND OFFICER JEFFREY KAISER
22 (“Defendants”) – the parties – by and through their respective attorneys of record,
23 hereby stipulate for the purpose of jointly requesting that the honorable Court enter
24 an Order continuing, resetting, and modifying the pending case management dates
25 and deadlines in this matter, including the current trial date (and pursuant to Federal
26 Rules of Civil Procedure 16, 26, and 40, as well as, to the extent applicable, United
27 States District Court, Eastern District of California Local Rule 143, 144, 240, and
28 281-285) as follows:

GOOD CAUSE STATEMENT

2 1. As a result of an unexpected further continuance of trial of another
3 matter involving the same attorneys (Ms. O'Linn, Mr. Sain, and Mr. Gonzalez) who
4 are representing the parties in this case, and in light of an unanticipated substitution
5 issue for plaintiff that delayed prosecution of the litigation, the parties have been
6 unable to complete discovery in this case and will not be able to do so under the
7 operative case management deadlines. As a result of the parties' inability to
8 complete discovery under the current deadlines, the parties will be unable to
9 complete dispositive motions and trial under the operative schedule. Accordingly,
10 the parties are jointly requesting the brief continuances stated herein below. This is
11 the first request by any party for any continuance of any deadlines in this action.

12 2. To elaborate, this is a civil rights case involving allegations of
13 unreasonable search and seizure, excessive use of force, municipality liability,
14 supervisorial liability and malicious prosecution.

15 3. The parties have timely exchanged initial disclosures. In July 2014,
16 Defendants served written discovery requests. After requests for extensions of time,
17 in October 2014, plaintiff has served responses to such requests, including
18 production of certain documents such as medical records. Plaintiff has not yet
19 noticed or taken any depositions to date. Plaintiff has not yet served Defendants
20 with any discovery requests. In October 2014, Defendants have noticed the
21 depositions of plaintiff and a non-party witness for dates in November 2014.
22 However, both plaintiff's counsel and Defendants' counsel have a trial that was
23 initially set for November 11, 2014 that has been continued to December 2, 2014.
24 As a result, due the need to prepare for such trial, and to try such case before the
25 jury, counsel for the parties do not anticipate that the noticed depositions can be
26 taken before the currently operative non-expert discovery cut-off of December 19,
27 2014.

28 || 4. Additionally, discovery in this action has been delayed due to the issue

1 of the potential substitution and withdrawal of plaintiff's counsel. Essentially,
2 beginning about mid-August 2014, plaintiffs' counsel of record in this action
3 advised defense counsel that they had been informed that their client was retaining
4 substitute counsel for this matter and that plaintiffs' counsel of record were thus
5 preparing to file a motion to withdraw. This resulted in a de facto pause in the
6 litigation while Defendants awaited the promised motion for withdrawal by
7 plaintiff's counsel of record. However, in October 2014, plaintiff's counsel of record
8 then advised Defendants' counsel of record that plaintiff had changed her mind and
9 no longer planned to retain substitute counsel – and thus that plaintiff's counsel of
10 record would not be filing the anticipated withdrawal motion.

11 5. The parties have also met and conferred regarding an issue of plaintiff's
12 juvenile court records that have been requested by Defendants in preparation of this
13 trial. Plaintiff's counsel objected to Defendants initial request and stipulation for the
14 court records and therefore, Defendants filed the appropriate moving papers with the
15 Fresno County Superior Court – Juvenile Division, on October 14, 2014, requesting
16 the release of the records in order to obtain information relevant to the pending
17 claims against Defendants in this matter. However, Defendants contend that
18 plaintiff's objection has delayed production of records that are necessary to pertinent
19 discovery regarding plaintiff's incident claims, particularly her malicious
20 prosecution claims. At present, Defendants are awaiting the Fresno Superior Court's
21 findings on the release of juvenile records requested. Although plaintiff's counsel
22 and Defendants' counsel have further conferred on a stipulation as to the release of
23 the juvenile records as to solely the: (1) transcripts; and (2) charging documents, of
24 plaintiff's juvenile court file that are relevant to the incident at issue in this matter –
25 such a stipulation has not yet been reached, and such is unlikely to be reached in
26 time to permit Defendants to conduct discovery related to such juvenile records
27 before the current operative discovery cut-off.

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1 6. In light of the above-mentioned issues, the parties hereby stipulate that
2 there is Good Cause here for, and in good faith jointly request that, the Court
3 continue all of the operative case management deadlines in this matter by about 60-
4 90 days in a manner comparable to the specific requests herein after.

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1 **STIPULATION FOR CONTINUANCE & SCHEDULING MODIFICATION.**

2 7. Accordingly, in light of the foregoing Good Cause, the parties hereby
3 stipulate to and jointly request that the Court issue an Order modifying the operative
4 scheduling order(s) in this case, and the related case management dates and
5 deadlines, along the following lines and/or in a manner comparable to the following
6 proposed amended schedule:

<u>Case Management Event:</u>	<u>Prior-Operative Date-Deadline:</u>	<u>NEW Date-Deadline:</u>
Non-Expert Discovery Deadline	December 19, 2014	March 6, 2015
Expert Disclosures	January 16, 2015	April 3, 2015
Rebuttal-Supplemental Expert Disclosures	January 30, 2015	April 17, 2015
Expert Discovery Deadline	February 20, 2015	May 8, 2015
Non-Dispositive Motion Filing Deadline	February 20, 2015	May 8, 2015
Dispositive Motion (MSJ) Filing Deadline	February 27, 2015	May 15, 2015
Non-Dispositive Motion Hearing Deadline	March 25, 2015	June 10, 2015
Dispositive Motion (MSJ) Hearing Deadline	April 2, 2015	June 18, 2015
Settlement Conference	April 13, 2015, 10:30 a.m., Ctrm 9	June 29, 2015, 10:30 a.m., Ctrm 9
Final Pre-Trial Conference	May 7, 2015, 8:15 a.m., Ctrm 4	July 23, 2015, 8:15 a.m., Ctrm 4
TRIAL	June 9, 2015, 8:30 a.m., Ctrm 4 (7-10 trial days)	August 24, 2015, 8:30 a.m., Ctrm 4 (7-10 trial days)

23 8. Nothing in this Stipulation or any associated Order shall be construed
24 as vacating, rescinding, amending, or modifying (in whole or in part) the Court's
25 operative protective order re confidential documents [Dkt. Doc. 16].

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1 9. This Stipulation may be signed in counterpart and a facsimile or
2 electronic signature shall be as valid as an original signature.

IT IS SO STIPULATED.

4 | Dated: November 4, 2014

**MANNING & KASS
ELLROD, RAMIREZ, TRESTER, LLP**

By: /s/ Courtney R. Arbucci
Mildred K. O'Linn, Esq.
Tony M. Sain, Esq.
Courtney R. Arbucci, Esq.
Attorneys for Defendants,
CITY OF FRESNO, CHIEF JERRY DYER,
SERGEANT LARRY HUSTEDDE, AND
OFFICER JEFFREY KAISER

12 | Dated: November 4, 2014

**LAW OFFICES OF VICKI SARMIENTO
AND JORGE GONZALEZ**

By: /s/ Vicki Sarmiento
Vicki Sarmiento, Esq.
Jorge Gonzalez, Esq.
Attorneys for Plaintiff,
IDALIA J. MORGUTIA-JOHNSON

ORDER FOR MODIFICATION OF SCHEDULING ORDER

The parties do not provide good cause for a wholesale modification to the scheduling order, particularly the trial date.¹ A modification to the deadlines that can be adjusted without affecting the trial date will be permitted.

IT IS HEREBY ORDERED that:

1. The Court hereby orders that the Court's scheduling orders of May 12, 2014 is hereby **modified as follows:**

<u>Case Management Event:</u>	<u>Prior-Operative Date-Deadline:</u>	<u>NEW Date-Deadline:</u>
Non-Expert Discovery Deadline	December 19, 2014	January 5, 2015
Expert Disclosures	January 16, 2015	February 4, 2015
Rebuttal-Supplemental Expert Disclosures	January 30, 2015	February 18, 2015
Expert Discovery Deadline	February 20, 2015	March 11, 2015
Non-Dispositive Motion Filing Deadline	February 20, 2015	March 11, 2015
Dispositive Motion (MSJ) Filing Deadline	February 27, 2015	March 18, 2015
Non-Dispositive Motion Hearing Deadline	March 25, 2015	April 8, 2015
Dispositive Motion (MSJ) Hearing Deadline	April 2, 2015	April 15, 2015
Settlement Conference	April 13, 2015, 10:30 a.m., Ctrm 9	No Modification
Final Pre-Trial Conference	May 7, 2015, 8:15 a.m., Ctrm 4	May 13, 2015, 8:15 a.m., Ctrm 4
TRIAL	June 9, 2015, 8:30 a.m., Ctrm 4 (7-10 trial days)	No Modification

2. Nothing in this Order shall be construed as vacating, rescinding,

¹ The Magistrate Judges of this Court have less congested dockets than the District Judges and are far more able to accommodate modifications to trial dates where such changes are warranted by good cause.

1 amending, or modifying (in whole or in part) the Court's operative protective order
2 re confidential documents [Dkt. Doc. 27].

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4 IT IS SO ORDERED.

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Dated: November 6, 2014

/s/ Sheila K. Oberto

UNITED STATES MAGISTRATE JUDGE

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