

1 **WHEREAS:** This request for a continuance is based upon a series of medical crises
2 involving family members of both defense counsel, and plaintiff's counsel, which have occurred
3 since the Court's last modification of the schedule on July 3, 2018, and which has caused a delay
4 in the scheduling of discovery.

5 **WHEREAS:** MARSHALL S. FONTES, represents he is a deputy County Counsel in
6 the Office of County Counsel for the County of Kern and at all relevant times has been the sole
7 attorney within our office that is assigned to handle the defense of this litigation.

8 **WHEREAS:** Defense Counsel's wife became suddenly ill and was rushed to the
9 hospital by ambulance on the afternoon of July 13, 2018. She was admitted to the hospital for
10 approximately 5 days and then required home care after discharge on July 18, 2018. After her
11 discharge, defense counsel was taken out of the office for an additional two weeks to assist his
12 wife in her recovery. It was anticipated that her health would improve quickly, but unfortunately
13 that was not the case. After discharge from the hospital, she remained severely anemic, and
14 suffered from dizziness, fatigue, weakness and lethargy. She required assistance with normal
15 daily activities and was unable to drive. Defense Counsel was required to tend to his wife, and
16 take her to appointments for medical visits, diagnostic testing, lab work, and blood/iron
17 infusions, until approximately August 1, 2018.

18 **WHEREAS:** Upon Defense Counsel's return to his office, a request was made to
19 plaintiff's counsel, for available dates for the depositions of plaintiff and his family members.
20 However, before said depositions could be scheduled, plaintiff's counsel's mother passed away
21 out of state, and caused him to be out of the office for approximately two weeks. Upon his
22 return, the parties were looking to set the depositions in early October of 2018.

23 **WHEREAS:** On September 25, 2018, defense counsel was called away from his office
24 due to his mother's emergency admission to a local hospital. Counsel's mother remained in the
25 in the intensive care unit at the Bakersfield Heart Hospital, on a ventilator and unconscious for
26 approximately two weeks. Her condition suddenly improved, with her gaining consciousness on
27 Friday October 12, 2018, and being extubated on Monday October 15, 2018. She remained
28 hospitalized until being discharged to a skilled nursing facility on Friday, October 19, 2018. As

1 her only next of kin, and needed for providing medical consents, defense counsel remained at her
2 bedside with the exception of a few hours for sleep each night during this admission. During the
3 hospitalization, and since her discharge to a skilled nursing facility, she has been required to
4 undergo dialysis. Due to a clogged dialysis catheter, she was transferred back to the hospital on
5 Saturday, October 20, 2018 for its replacement. On Sunday, October 21, 2019, she was again
6 discharged to the skilled nursing facility. Outpatient dialysis was attempted on October 23,
7 2018, and the catheter clogged again. She underwent another replacement of the catheter on
8 October 24, 2018, with dialysis to subsequently occur three times per week. As a result of this
9 ongoing medical crisis, defense counsel has been out of the office for the majority of the last
10 month and the anticipated depositions of plaintiff and his family have not been able to be
11 completed.

12 **WHEREAS:** Counsel have met and conferred about the completion of outstanding
13 discovery in this case, it is believed that discovery cannot realistically be completed without a
14 ninety day continuance.

15 **WHEREAS:** The parties have been diligently attempting to complete all necessary
16 discovery to the extent possible. This discovery has included the performance of an inspection
17 of the Lerdo Pre-trial Facility without photography, the exchange of a written discovery and
18 production of thousands of pages of records relating to issues of both liability and damages, the
19 subpoenaing of third party records regarding plaintiff's medical treatment and billings, and the
20 completion of the depositions of witnesses that were on duty at the time of incident and/or were
21 involved in its investigation, including Deputies A. Gonzalez, Rivero, Dobbs and Harbour, as
22 well as the depositions of several persons most knowledgeable from the County on a variety of
23 topics including: (1) the Prison Realignment Act ("AB 109"), (2) inmate classification, (3) the
24 presence of gangs in the facility, (4) the supervision of inmates and (5) training received by
25 detention deputies on AB 109 and gang culture.

26 **WHEREAS:** There still remains a significant amount of discovery to be completed,
27 including potential depositions of other persons most qualified on topics relating to the layout of
28 the Lerdo barracks, the intake process of plaintiff at Lerdo, the depositions of plaintiff, his family

1 members and treating medical providers, and a possible defense medical examination of
2 plaintiff.

3 **WHEREAS:** The parties have been respectful of the medical crises suffered by each
4 attorney and have delayed discovery out of this respect. Nevertheless, the outstanding discovery
5 is critical and all counsel respectfully request that they are not penalized for compassionately
6 addressing an opposing counsel's family health concerns.

7 **WHEREAS:** In light of the above described circumstances (as further set forth in the
8 declaration of FONTES below), the existing deadlines are very problematic and would be
9 prejudicial to the parties. The interests of justice would be served by a brief extension of time
10 allowing both sides to complete discovery. Accordingly, it is respectfully submitted that good
11 cause exists for the continuance of the discovery cut off dates in this matter.

12 **WHEREAS:** To avoid prejudice to all parties, the parties, therefore, stipulate that a
13 continuance of the current scheduled dates in this case is necessary to allow sufficient time to
14 accommodate the litigants' schedules and allow for the completion of discovery, and request the
15 schedule in this case be amended to reflect the following requested dates:

16 NOW THEREFORE, IT IS STIPULATED BY AND BETWEEN THE PARTIES,
17 THROUGH THEIR RESPECTIVE COUNSEL THAT GOOD CAUSE EXISTS TO
18 CONTINUE ALL DATES AS FOLLOWS:

19 That the dates set forth in the Court's order on July 3, 2018 (Doc. No. 50) shall be
20 continued approximately 90 days allowing both sides to properly complete discovery in the
21 litigation.

22 All discovery, with the exception of expert discovery, shall be completed by **Monday,**
23 **January 28, 2019];**

24 All counsel are to designate in writing, file with the Court, and serve upon all other
25 parties the name, address, and area of expertise of each expert they propose to tender at trial not
26 later than **Thursday, March 21, 2019;**

27 The last day to hear dispositive motions shall be **Thursday, April 18, 2019.**
28

1 DATED: October 26, 2018

LAW OFFICES OF RALPH B. WEGIS

2 /s/ Ralph B. Wegis

3 RALPH B. WEGIS

4 Attorneys for Plaintiff,

WESTON ANTHONY SMITH

5
6 DATED: October 26, 2018

MARK L. NATIONS, COUNTY COUNSEL

7 /s/ Marshall S. Fontes

8 MARSHALL S. FONTES,

9 Attorneys for Defendants, COUNTY OF KERN,

and DONNY YOUNGBLOOD

10
11 **ORDER**

12
13 For GOOD CAUSE shown, and based upon the mutual Stipulation of all parties to this
14 action, the Court hereby continues the following dates:

15 All discovery, with the exception of expert discovery, shall be completed by **Monday,**
16 **January 28, 2019;**

17 All counsel are to designate in writing, file with the Court, and serve upon all other
18 parties the name, address, and area of expertise of each expert they propose to tender at trial not
19 later than **Thursday, March 21, 2019;**

20 The last day to hear dispositive motions shall be **Thursday, April 18, 2019.**

21 **Given the number of extensions in this matter that have already been granted, the**
22 **parties are admonished that no further requests for extensions in this matter will be**
23 **considered.**

24 IT IS SO ORDERED.

25 DATED: November 5, 2018

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27 
28 MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE