

1 **RALPH B. WEGIS, SBN 67966**
 2 **LAW OFFICES OF RALPH B. WEGIS**
 3 **1930 TRUXTUN AVENUE**
 4 **BAKERSFIELD, CALIFORNIA 93301**
 5 **TELEPHONE: (661) 635-2100**
 6 **FAX: (661) 635-2107**
 7 **rwegis@ralphwegis.com**

8 **Attorneys for Plaintiff,**
 9 **WESTON ANTHONY SMITH**

10 **MARGO A. RAISON, COUNTY COUNSEL**
 11 **By: MARSHALL S. FONTES, DEPUTY (SBN 139567)**
 12 **Kern County Administrative Center**
 13 **1115 Truxtun Avenue, Fourth Floor**
 14 **Bakersfield, CA 93301**
 15 **Telephone 661-868-3800**
 16 **Fax 661-868-3805**

17 **Attorneys for Defendants, COUNTY OF KERN**
 18 **and DONNY YOUNGBLOOD**

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

WESTON ANTHONY SMITH,)	CASE NO: 1:15-cv-01749-MCE-JLT
)	
Plaintiff,)	STIPULATION AND ORDER TO
)	CONTINUE DATE FOR INITIAL
vs.)	DISCLOSURE OF EXPERT WITNESSES TO
)	MAY 3, 2019 AND THE DATE FOR
COUNTY OF KERN, a public entity,)	SUPPLEMENTAL EXPERT DISCLOSURE
DONNY YOUNGBLOOD, an individual)	TO MAY 23, 2019; DECLARATION OF
)	MARSHALL S. FONTES IN SUPPORT
Defendants.)	THEREOF
)	

21 Plaintiff, Weston Anthony Smith, and Defendants, County of Kern and Donny
 22 Youngblood, have met and conferred through their respective attorneys of record, and hereby
 23 make this joint stipulated request of the Court that the current case schedule be amended to
 24 continue the date for the initial disclosure of expert witnesses to May 3, 2019, from the presently
 25 scheduled date of April 3, 2019, and the disclosure of supplemental expert witnesses to May 23,

1 2019, from the presently scheduled date of April 10, 2019, as set forth below. ALL OTHER
2 SCHEDULED DATES WOULD REMAIN INTACT AND UNCHANGED.

3 **WHEREAS:** This request for a continuance is based upon an unexpected crisis involving
4 the Defendants' neuro-psychological expert, Dr. Charles Hinkin, which prevents the Defendants
5 from meeting the current expert designation dates in this matter; as set forth in the supporting
6 declaration; and

7 **WHEREAS:** the Court's initial scheduling order of February 29, 2016, provided that
8 "All counsel are to designate in writing, file with the Court, and serve upon all other parties the
9 name, address, and area of expertise of each expert that they propose to tender at trial ... The
10 designation shall be accompanied by a written report prepared and signed by the witness. The
11 report shall comply with Fed. R. Civ. P. 26(a)(2)(B)"; and

12 **WHEREAS:** On or about November 5, 2018, the Court ordered that "All counsel are to
13 designate in writing, file with the Court, and serve upon all other parties the name, address, and
14 area of expertise of each expert they propose to tender at trial not later than Thursday, March 21,
15 2019"; and that "Given the number of extensions in this matter that have already been granted,
16 the parties are admonished that no further requests for extensions in this matter will be
17 considered"; and

18 **WHEREAS:** Based on the language of the Court's November 5, 2018, Order, the
19 parties are uncertain as to whether they are required to submit the written report required by Fed.
20 R. Civ. P. 26(a)(2)(B), or instead to file with the Court, and serve upon all other parties the name,
21 address, and area of expertise of each expert they propose to tender at trial; and

22 **WHEREAS:** The parties previously informed this Court by a Stipulation dated March
23 12, 2019 (Doc. No. 54) that the Defendants' retained neuro-psychologist would not be able to
24 provide the written report required by Fed. R. Civ. P. 26(a)(2)(B) by March 21, 2019, in that due
25 to scheduling difficulties the neuro-psychological examination of the Plaintiff could not occur
26 until March 21, 2019. This Court signed a stipulated Order on March 14, 2019 (Doc. No. 55)
27 which continued the initial disclosure of experts from March 21, 2019 to April 3, 2019; and

28 ///

1 **WHEREAS:** The Defendants’ neuro-psychological expert Dr. Hinkin performed the
2 neuro-psychological exam of the Plaintiff as scheduled on March 21, 2019. However, at that
3 time the Defendants’ counsel learned that Dr. Hinkin’s mother had passed away the week prior,
4 and that due to this Dr. Hinkin would not be able to complete his written report based on the
5 exam by the deadline of April 3, 2019; and

6 **WHEREAS:** The Court’s Order of February 29, 2016, provided that “[a]ll experts
7 designated are to be fully prepared at the time of designation to render an informed opinion, and
8 give their bases for their opinion, so that they will be able to give full and complete testimony at
9 any deposition taken by the opposing party. Experts will not be permitted to testify at the trial as
10 to any information gathered or evaluated, or opinion formed, after deposition taken subsequent to
11 designation”; and

12 **WHEREAS:** Out of an abundance of caution, and in the interests of justice, the parties
13 do not wish to prejudice their rights or disobey the Court by submitting only the “name, address,
14 and area of expertise of each expert they propose to tender at trial” as set forth in the Court’s
15 November 5, 2018, Order, if the Court intended that “[t]he designation shall be accompanied by
16 a written report prepared and signed by the witness. The report shall comply with Fed. R. Civ. P.
17 26(a)(2)(B)” as set forth in the Court’s initial scheduling order of February 29, 2016; and

18 **WHEREAS:** Counsel have met and conferred and agree to continue the dates for expert
19 disclosure by 30 days by continuing the date for initial disclosure of expert witnesses from April
20 3, 2019 to May 3, 2019 and the date for supplemental expert disclosure from April 10, 2019 to
21 May 23, 2019, leaving all other dates unchanged and intact;

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

25 ///

26 ///

27 ///

28 ///

1 That the initial disclosure of expert witnesses shall be served and filed on May 3, 2019.
2 Supplemental expert disclosure shall be served and filed on May 23, 2019.

3 DATED: March 28, 2019 LAW OFFICES OF RALPH B. WEGIS

4
5 /s/ Ralph B. Wegis
6 RALPH B. WEGIS
7 Attorneys for Plaintiff,
8 WESTON ANTHONY SMITH

9 DATED: March 28, 2019 MARGO A. RAISON, COUNTY COUNSEL

10 /s/ Marshall S. Fontes
11 MARSHALL S. FONTES,
12 Attorneys for Defendants, COUNTY OF KERN,
13 and DONNY YOUNGBLOOD

14 **ORDER**

15 For GOOD CAUSE shown, and based upon the mutual Stipulation of all parties to this
16 action, the Court hereby orders that:

17 That the initial disclosure of expert witnesses shall be served and filed on May 3, 2019.
18 Supplemental expert disclosure shall be due 20 days from May 3, 2019, by May 23, 2019.

19 IT IS SO ORDERED.

20 Dated: April 5, 2019

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22 
23 MORRISON C. ENGLAND, JR.
24 UNITED STATES DISTRICT JUDGE

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8 **Attorneys for Defendants, COUNTY OF KERN**
9 **and DONNY YOUNGBLOOD**

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

12 WESTON ANTHONY SMITH,)

13 Plaintiff,)

14 vs.)

15 COUNTY OF KERN, a public entity,)
16 DONNY YOUNGBLOOD, an individual)

17 Defendants.)

CASE NO: 1:15-CV-01749-MCE-JLT

**DECLARATION OF MARSHALL S.
FONTES IN SUPPORT OF STIPULATION
FOR CONTINUANCE OF EXPERT
DESIGNATION DATES**

18 I, MARSHALL S. FONTES, declare as follows:

19 1. I am an attorney at law duly licensed to practice before all of the state and federal
20 courts located within the State of California. In the above captioned litigation, I represent
21 Defendants, County of Kern and Sheriff Youngblood.

22 2. I am a deputy County Counsel in the Office of County Counsel for the County of
23 Kern. At all relevant times, I have been the sole attorney within our office that is assigned to
24 handle the defense of this litigation. As such, I am thoroughly familiar with the facts and issues
25 in this matter and, if called upon as a witness, I could and would competently testify to each of
26 the matters set forth herein.

27 3. After the completion of Plaintiff's deposition on January 9, 2019, the defense
28 determined that a neuro-psychologist would be needed to examine the plaintiff and evaluate the

1 injury claims being made. The defense then hired Charles Hinkin Ph.D. in this regard.

2 4. Efforts were made to schedule the independent medical examination in late
3 January and early February, but the parties were unable to coordinate an agreeable date during
4 this time frame due to the calendar conflicts and the limited availability of Dr. Hinkin and the
5 Plaintiff.

6 5. Dr. Hinkin was unexpectedly taken out of state for approximately 3 weeks from
7 mid-February to early March. The examination of the Plaintiff was scheduled for March 21,
8 2019, which was the earliest date that all parties were available.

9 6. The parties stipulated to continue the initial expert designation date in this matter
10 from March 21, 2019 to April 3, 2019, in order to allow Dr. Hinkin time to complete his report
11 following his exam of the Plaintiff on March 21, 2019.

12 7. The examination of the Plaintiff took place as scheduled on March 21, 2019.
13 However, at that time, Dr. Hinkin informed defense counsel that his mother had passed away
14 the previous week, and that due to this he would be unable to complete his expert report by
15 April 3, 2019.

16 8. Defense counsel has met and conferred with Plaintiffs' counsel and all counsel
17 agree that good cause exists to continue the expert designation deadlines in this matter by 30
18 days.

19 9. Based upon the foregoing, it is respectfully submitted that good cause exists to
20 move the expert designation date from April 3, 2019 to May 3, 2019 and the supplemental
21 designation from April 10, 2019 to May 23, 2019. No party would be prejudiced by this
22 extension, and all other scheduling dates would remain intact and unchanged.

23 I declare under the penalty of perjury under the laws of the United States of America and
24 the State of California that the foregoing is true and correct.

25 Executed this 28th day of March, 2019, in Bakersfield, California.

26 /s/ Marshall S. Fontes
27 Marshall S. Fontes, Deputy
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