

1 James N. Fincher, SBN 196837  
Merced County Counsel  
2 Roger S. Matzkind, SBN 77331  
Chief Civil Litigator  
3 James E. Stone, SBN 197803  
4 Deputy County Counsel  
2222 M Street, Room 309  
5 Merced, CA 95340  
6 Tel: (209) 385-7564  
7 Fax: (209) 726-1337

8 Attorney for Defendants County of Merced and Vern Warnke

9 In the United States District Court

10 For the Eastern District of California, Fresno Division

11 Jaime Vega Damien and Alicia Reyes  
12 Barajas, Successors in interest to  
13 Alejandro Alex Vega, deceased,

14 Plaintiffs,

15 v.

16 City of Merced, et al.,

17 Defendants.  
18

Case No. 1:16-cv-01869-AWI-MSJ

**Stipulation and [Proposed] Order to File  
and Serve Second Amended Complaint  
and Time to Respond**

19  
20 WHEREAS, on October 7, 2016, Plaintiffs filed a complaint in the  
21 Superior Court of California, County of Merced, Case number 16CV-03050.

22 WHEREAS, on October 28, 2016, Plaintiffs filed a first amended  
23 complaint in the Superior Court of California, County of Merced.

24 WHEREAS, Plaintiffs did not serve defendants with the first amended  
25 complaint that was filed in the Superior Court of California, County of Merced  
26 on October 28, 2016.  
27  
28

1           WHEREAS, on November 7, 2016, Plaintiffs filed an ex parte  
2 application to amend the first amended complaint in the Superior Court of  
3 California, County of Merced.

4           WHEREAS, Defendants were not notified of the ex parte application to  
5 amend the first amended complaint.

6           WHEREAS, on November 14, 2016, the Court granted Plaintiffs' ex  
7 parte application to amend the first amended complaint.

8           WHEREAS, Defendants were not served with the order granting the ex  
9 parte application to amend the first amended complaint.

10           WHEREAS, on November 29, 2016, Plaintiffs served defendants with  
11 the original complaint that was filed on October 7, 2016.

12           WHEREAS, on December 7, 2016, Plaintiffs filed a second amended  
13 complaint in the Superior Court of California, County of Merced. A copy of the  
14 second amended complaint is attached hereto as Exhibit A.

15           WHEREAS, a new defendant, Damian Alex Vega, was properly named  
16 in this suit via the second amended complaint, filed on December 7, 2016, in  
17 the Superior Court of California, County of Merced.

18           WHEREAS, Plaintiffs did not serve defendants County of Merced and  
19 Vern Warnke with the second amended complaint that was filed in the  
20 Superior Court of California, County of Merced on December 7, 2016.

21           WHEREAS, on December 13, 2016, Defendant, City of Merced, filed a  
22 notice of removal to the United States District Court, Eastern District Of  
23 California—Fresno Division.

24           WHEREAS, on December 29, 2016, Defendants, County of Merced and  
25 Sheriff of the County of Merced, Vern Warnke, in his capacity of Sheriff of the  
26 County of Merced, filed a joinder in notice of removal to the United States  
27 District Court, Eastern District of California—Fresno Division. Not all  
28

1 Defendants have filed a joinder in notice of removal to the United States  
2 District Court, Eastern District of California—Fresno Division.

3 The parties, by and through their attorneys of record, hereby stipulate  
4 and agree that the second amended complaint will be deemed served upon the  
5 filing of this stipulation, and that Defendants City of Merced, Norm Andrade,  
6 County of Merced and Vern Warnke will have twenty one (21) days from the  
7 date of the order on the stipulation to respond to the second amended  
8 complaint.

9 Law Office of Javier Guerrero, Jr.

10  
11 Dated: January 4, 2017

By: /s/ Javier Guerrero, Jr. (as authorized)  
Javier Guerrero, Jr.  
Attorney for Plaintiffs

12  
13  
14  
15 Longyear, O’Dea & Lavra, LLP

16  
17 Dated: January 4, 2017

By: /s/ Van Longyear (as authorized)  
VAN LONGYEAR  
PETER C. ZILAFF  
NICOLE M. CAHILL  
Attorney for Defendant,  
CITY OF MERCED

18  
19  
20  
21  
22 Dated: January 4, 2017

James N. Fincher  
Merced County Counsel

23  
24  
25 By: /s/ James E. Stone  
James E. Stone, Deputy County  
26 Counsel, Attorney for Defendants,  
27 County of Merced and Sheriff Vern  
Warnke

28 [Order on following page]

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

**ORDER**

Upon stipulation of the parties, it is ordered that:

1. The Second Amended Complaint is deemed served;
2. Defendants City of Merced, Norm Andrade, County of Merced and Vern Warnke have twenty one (21) days from the date of this order to respond to the second amended complaint; and
3. The active complaint in this matter shall be Plaintiffs' Second Amended Complaint, which is Document No. 6-1 in the Court's Docket.

IT IS SO ORDERED.

Dated: January 5, 2017

  
\_\_\_\_\_  
SENIOR DISTRICT JUDGE