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11 Attorneys for Defendants, County of Fresno,
12 Garrett Majors, John Robinson, and Nathaniel Wilkinson

13 **UNITED STATES DISTRICT COURT**
14 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

15 RICHARD CHARLES BERNIER, III;) CASE NO. 1:18-cv-01131-JLT-SKO
16 NADEZHDA USTINENKOV,)
17 Plaintiffs,) **STIPULATION TO COUNTINUE**
18 vs.) **INITIAL SCHEDULING CONFERENCE;**
19) **ORDER**
20 FRESNO POLICE OFFICER ANTHONY)
21 RODRIGUEZ; FRESNO POLICE OFFICER) Date: October 4, 2022
22 KEVIN JONES; FRESNO COUNTY) Time: 9:45 a.m.
23 SHERIFF’S DEPUTY GARRETT MAJORS;) Ctrm: 7 (6th Floor)
24 FRESNO COUNTY SHERIFF’S DEPUTY) The Honorable Sheila K. Oberto
25 JOHN ROBINSON; FRESNO COUNTY) (Doc. 90)
26 SHERIFF’S DEPUTY NATHANIEL)
27 WILKINSON; UNKNOWN FRESNO)
28 COUNTY SHERIFF’S DEPARTMENT) Complaint Filed: August 20, 2018
DEPUTIES; UNKNOWN FRESNO POLICE) Trial Date: TBD
OFFICERS; THE CITY OF FRESNO,)
CALIFORNIA; THE COUNTY OF FRESNO,)
CALIFORNIA,)
Defendants.)

29 IT IS HEREBY STIPULATED AND AGREED by and between the attorneys of records
30 for plaintiffs Richard Charles Bernier, III (“Bernier”) and Nadezhda Ustinenkov (“Ustinenkov”)
31 (collectively “Plaintiffs”) and defendants¹ County of Fresno (“County”), Fresno County

32 ¹ On May 14, 2019, Plaintiffs and Defendants California Highway Patrol Officers Michael
33 Walker, Pablo Lopez, Corde Spencer, and William Avila filed a Stipulation dismissing those
34 defendants with prejudice. (Doc. No. 36). The Court terminated Defendants California

1 Sheriff's Deputies Garrett Majors ("Deputy Majors"), John Robinson ("Deputy Robinson"), and
2 Nathaniel Wilkinson ("Deputy Wilkinson") (collectively "County Defendants"); and City of
3 Fresno ("City"), Fresno Police Officers Anthony Rodriguez ("Officer Rodriguez") and Kevin
4 Jones ("Officer Jones") (collectively "City Defendants") as follows:

5 Bernier was arraigned on November 27, 2018 in Fresno County Superior Court (*The*
6 *People of the State of California vs. Richard Charles Bernier*, Fresno County Superior Court
7 Case Number F1890078) on criminal charges, which arose from his arrest as alleged in the
8 Fourth Amended Complaint and make up the basis for this action. Bernier has had pre-
9 preliminary hearings scheduled and re-scheduled since that time for various reasons, with the
10 latest pre-preliminary hearing held on August 16, 2022, setting the preliminary hearing for
11 October 25, 2022. Still no trial date has been set in the case yet.

12 On March 14, 2019, the Court ordered the case stayed as to federal and state law claims
13 premised upon excessive force or retaliatory prosecution, with the exception that Plaintiffs may
14 amend those claims to add new defendants. *See* Doc. No. 30. The Court also ordered that the
15 case may proceed as to the other allegations of retaliation (failure to provide medical care and/or
16 inappropriate jail housing.) *Id.* This ruling was modified on April 15, 2019 after a motion for
17 reconsideration as follows:

18 Plaintiffs are entitled to discover information sufficient to permit them to
19 amend their complaint to name as defendants FPD officers at the scene of
20 Plaintiffs' arrest. At a bare minimum, Plaintiffs are entitled to conduct civil
21 discovery to determine the identity of any and all FPD officers who were
22 present during the incident. Beyond that, Defendants have an election to
23 make. They may decline to reveal information beyond that related to the
24 presence of FPD officers at the scene. If they do so, the Court will construe
25 that election as a waiver of any motion to dismiss claims brought by Plaintiffs
26 against those officers on the ground of failure to state a claim. Alternatively,
27 Defendants shall respond to narrowly tailored discovery designed to reveal
28 the role(s) any FPD officers played at the scene of the arrest.

25 *See* Doc. No. 35, p. 4:10-18.

26 Plaintiffs filed a Second Amended Complaint on November 6, 2019. Doc. No. 42.

28 Highway Patrol Officers Michael Walker, Pablo Lopez, Corde Spencer, and William Avila on
May 15, 2019. (Doc. No. 37).

1 County filed a motion to strike the SAC or in the alternative motion to dismiss and motion to
2 strike portions of the SAC on November 20, 2019. Doc. No. 45. The remaining defendants
3 filed answers. Doc. Nos. 58-59. The court granted in part and denied in part County's motion
4 to strike and dismiss, granting Plaintiffs leave to amend as to Plaintiffs' *Monell* claim. Doc. No.
5 63.

6 Plaintiffs filed a Third Amended Complaint ("TAC") on August 1, 2020 (Doc. No. 64)
7 and a Notice of Errata Re: Third Amended Complaint for Damages and Injunctive Relief on
8 August 12, 2020 (Doc. No. 65). On August 14, 2020, City Defendants filed a motion to dismiss
9 and motion for more definite statement (Doc. No. 66) and County Defendants filed a motion to
10 dismiss (Doc. No. 67). Both of the motions were granted with leave to amend on January 24,
11 2022.

12 Plaintiffs filed a Fourth Amended Complaint on February 24, 2022. Doc. No. 80. On
13 March 10, 2022, City Defendants filed a motion to dismiss portions of the Fourth Amended
14 Complaint (Doc. No. 81) and County Defendants filed a motion to dismiss and motion to strike
15 portions of the Fourth Amended Complaint (Doc. Nos. 82). Both motions have been fully
16 briefed and are still awaiting a ruling.

17 Considering the partial stay in place during the pendency of Bernier's parallel criminal
18 case, which does not have a trial date yet, and the still pending motions to dismiss and motion
19 strike portions of the Fourth Amended Complaint, the parties would like to have the status of
20 the pleadings settled in advance of the Initial Scheduling Conference so that all defendants have
21 an opportunity to file an Answer and so the parties can better evaluate potential discovery issues
22 and better determine a proper discovery and trial schedule.

23 Accordingly, the parties believe that there is good cause for the Court to approve the
24 following stipulations:

25 1. The October 4, 2022 Initial Scheduling Conference be vacated, and a Status
26 Conference be scheduled on April 18, 2023, or as soon thereafter as the Court and parties are
27 available, to evaluate the appropriateness of setting a Scheduling Conference depending on the
28 status of the underlying criminal case.

1 2. A Joint Status Conference Statement will be electronically filed by the parties 7
2 days prior to the Status Conference date, and will be emailed in Word format to
3 skoorders@caed.uscourts.gov.

4 Dated: September 15, 2022

WEAKLEY & ARENDT
A Professional Corporation

6 By: /s/ Brande L. Gustafson

7 James D. Weakley
8 Brande L. Gustafson
9 Attorneys for Defendants
County of Fresno, Garrett Majors, John Robinson,
and Nathaniel Wilkinson

10 Dated: September 15, 2022

11 By: WHITNEY, THOMPSON & JEFFCOACH LLP
/s/ Mandy L. Jeffcoach (As authorized on 9/15/22)

12 Mandy L. Jeffcoach
13 Jessica L. Thomason
14 Attorneys for Defendants
Fresno Police Officer Anthony Rodriguez, Fresno
Police Officer Kevin Jones, and The City of
Fresno, erroneously sued as The City of Fresno,
California

15 Dated: September 15, 2022

16 By: LAW OFFICE OF KEVIN G. LITTLE
/s/ Kevin G. Little (As authorized on 9/15/22)

17 Kevin G. Little
18 Attorneys for Plaintiffs
Richard Charles Bernier, III and Nadezhda
Ustinenkov

19 **ORDER**

20 Pursuant to the parties' above stipulation (Doc. 90), the Scheduling Conference
21 currently set for October 4, 2022, is **CONTINUED to April 27, 2023, at 9:30 a.m.** before
22 Magistrate Judge Sheila K. Oberto. The parties SHALL file a Joint Status Conference
23 Statement by no later than April 20, 2023.

24 IT IS SO ORDERED.

26 Dated: September 16, 2022

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE