

1 GREGORY J. BROD, CSB 184456
2 MARKUS WILLOUGHBY, CSB 197478
3 WILLOUGHBY BROD, LLP
4 96 Jessie Street
5 San Francisco, California 94105
6 Telephone (415) 397-1130
7 Facsimile (415) 397-2121

8 Attorneys for Plaintiffs
9 DANA SMITHEE, E.M.,
10 a minor by and through guardian
11 ad litem JENNIFER MONTES

12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA

14 DANA SMITHEE, "E.M.", a minor, by and
15 through her guardian ad litem, JENNIFER
16 MONTES,

17 Plaintiffs,

18 vs.

19 RHONDA LITT-STONER, PRATAP
20 NARAYN, M.D., JENNIFER SEYMOUR,
21 KELLY NESSON, PhD, KARIN CELOSSE,
22 and DOES 1 through 200,

23 Defendants.
24
25

) Case No. 1:19-cv-0004 LJO JLT

)
) **AMENDED STIPULATION AND**
) **PROPOSED ORDER GRANTING IN**
) **PART STIPULATION TO ALLOW THE**
) **FILING OF A SECOND AMENDED**
) **COMPLAINT**
) (Doc. 24)

1 Pursuant to stipulation between the parties, this Court’s April 23, 2019 order (Document
2 16), allowed Plaintiffs DANA SMITHEE, “E.M.”, a minor, by and through her guardian ad
3 litem, JENNIFER MONTES, to file a First Amended Complaint within 10 days of the Court’s
4 order, which plaintiffs have now done.

5 As a professional courtesy, Defendant’s counsel produced over 1300 pages of Mr.
6 AYERS’ medical records to Plaintiffs’ counsel on or about May 1, 2019. Having reviewed that
7 material, Plaintiffs now wish to amend their complaint a second time to add new state-law
8 claims against Defendants PRATAP NARAYN, M.D., JENNIFER SEYMOUR, KELLY
9 NESSON, PhD, and KARIN CELOSSE.
10

11 Initially, upon discovering the identities of the aforementioned defendants, plaintiffs
12 chose to submit a notice of claim, pursuant to California Govt. Code § 910, et seq., which
13 plaintiffs are now certain was entirely unnecessary, as Cal. Govt. Code § 910(e) requires a claim
14 to include the names of the public employee or employees causing the injury damage or loss, *if*
15 *known* (emphasis added). Defendant has not seen Plaintiffs’ proposed second amended
16 complaint, and takes no position as to whether it is sufficiently supported by the previously-
17 filed Government claim. Defendant does not waive any defense under the California
18 Government Claims Act, including the sufficiency or timeliness of any claim. Defendant agrees
19 that allowing the amendment at this early stage of the case will promote efficiency.
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21 Therefore, defendants and plaintiffs, by and through their respective attorneys, jointly
22 stipulate to allow plaintiffs to now file their Second Amended Complaint. The parties further
23 stipulate that Defendants shall be entitled to respond to the Second Amended Complaint within
24 forty-five (45) days upon being served with the Second Amended Complaint. The parties
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1 further stipulate that the scheduling conference in this matter, currently set for July 18, 2019, be
2 continued to August 15, 2019.

3
4 IT IS SO STIPULATED.

5
6 Dated: May 22, 2019

WILLOUGHBY BROD, LLP

7
8 By: /s/ Gregory J. Brod
9 GREGORY J. BROD

10 *Attorneys for Plaintiffs*
11 *DANA SMITHEE, E.M.,*
12 *a minor by and through guardian*
13 *ad litem JENNIFER MONTES*

14 Dated: May 22, 2019

XAVIER BECERRA
Attorney General of California
JON S. ALLIN
Supervising Deputy Attorney General

17 By: /s/ Jeremy Duggan (auth. on 5/22/19)
18 JEREMY DUGGAN
19 Deputy Attorney General
20 *Attorneys for Defendant*
21 *R. Litt-Stoner*

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[Proposed] ORDER

Based upon the stipulation of the parties, the Court **ORDERS**:

1. The plaintiff SHALL file any amended complaint no later than May 30, 2019¹;
2. The defendants SHALL file a responsive pleading within 21 days of the filing of the second amended complaint.

IT IS SO ORDERED.

Dated: May 23, 2019

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

¹ The parties offer no explanation for the delays in filing the complaint and the response. This case was filed nearly six months ago, and it has not progressed. This matter SHALL proceed more efficiently in the future and any requests to delay this process SHALL be supported by good cause.