

1 BENJAMIN B. WAGNER
 United States Attorney
 2 JASON EHRLINSPIEL
 Assistant U.S. Attorney
 3 501 I Street, Suite 10-100
 4 Sacramento, California 95814
 Direct: (916) 554-2743
 5 Facsimile: (916) 554-2900

6 Attorneys for the United States of America,
 7 United States Postal Service

8
 9 **IN THE UNITED STATES DISTRICT COURT**
 10 **IN AND FOR THE EASTERN DISTRICT OF CALIFORNIA**

11	TROY GABRIELSON, et al.,)	CASE NO. 2:09-CV-00538-FCD-KJM
)	
12	Plaintiffs,)	STIPULATION AND ORDER TO
)	MODIFY PRETRIAL SCHEDULING
13	vs.)	ORDER AND RESET SETTLEMENT
)	CONFERENCE
14	UNITED STATES POSTAL SERVICE,)	
	et al.,)	
15)	
	Defendants.)	
16	_____)	

17
 18 COMES NOW THE PARTIES by and through their respective attorneys and subject to
 19 the approval of this Court, hereby agree to and respectfully request the below modifications
 20 and/or amendments to this Court’s September 30, 2010 Amended Status (Pretrial Scheduling)
 21 Order. Docket Entry (“DE”) 25. The undersigned have all agreed to propose these joint
 22 requests.

23 The parties contend there is good cause for this request for the following reasons:
 24 1) As previously set forth in the parties September 29, 2010 proposed stipulation and order,
 25 DE 24, Plaintiff Troy Gabrielson underwent additional medical testing and procedures in
 26 connection injuries he related to the subject matter of this litigation.
 27 2) In connection with those alleged injuries, Plaintiff Gabrielson underwent surgery by Dr.
 28 Philip Orisek on or about November 24, 2010.

- 1 3) The discovery period in this matter ended on December 31, 2010. DE 25.
- 2 4) On December 30, 2010, Plaintiff Gabrielson deposited supplemental discovery responses
3 and documents into the mail for service upon all parties. However, said supplemental
4 discovery was not delivered to the parties due to the failure to attach sufficient postage to
5 the envelopes. Upon learning of the delivery failure on January 5, 2011, Plaintiff
6 Gabrielson personally served supplemental discovery responses and documents. The
7 documents and claims disclosed by Plaintiff Gabrielson on January 5, 2011 establish a
8 completely different and much more complex scenario than what was previously known
9 by the United States. For instance, Plaintiff Gabrielson's discovery responses and
10 document production indicated total medical expenses of approximately \$30,000.00.
11 The January 5, 2011 production revealed medical expenses of approximately
12 \$220,000.00. Since the new information was received outside of the discovery period,
13 the United States cannot investigate the medical expenses or Plaintiff's new injury
14 claims and explore the necessity for additional experts. The United States is therefore
15 severely prejudiced by the late disclosure and inability to conduct discovery. In fairness
16 to Plaintiff, the vast majority of the expenses and treatment were rendered in mid-
17 November. Accordingly, the parties submit that a continuance of all dates is appropriate.
- 18 5) The parties submit that this request is made for good cause and not for delay.
19 The proposed modifications to the scheduling order are as follows:
- 20 ● That the discovery cut-off date set for December 31, 2010, be moved to June 1,
21 2011.
 - 22 ● That the deadline for expert disclosure set for February 14, 2011, be moved to
23 July 1, 2011.
 - 24 ● That the deadline for supplemental expert disclosure set for February 2, 2011, be
25 moved to August 1, 2011.
 - 26 ● That the deadline for completion of all expert discovery set for March 7, 2011 be
27 moved to October 15, 2011.
 - 28 ● That the pretrial conference be moved from April 8, 2011 to a date determined by

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

the Court.

- That the trial be moved from June 7, 2011 to December 2011.
- That the settlement conference before the Honorable Kendall J. Newman set for February 4, 2011 be moved to date agreed upon by the parties after the discovery deadline.

MORENO & RIVERA

/s/ Jonathan B. Paul

DATED: January 26, 2011

JONATHAN B. PAUL
Attorney for Plaintiff Troy Gabrielson

BARR & MUDFORD, LLP

/s/ John D. Barr

DATED: January 26, 2011

JOHN D. BARR
Attorney for Plaintiff Allan T. Bowen

UNITED STATES ATTORNEY'S OFFICE

/s/ Jason Ehrlinspiel

DATED: January 26, 2011

JASON EHRLINSPIEL
Assistant U.S. Attorney
Attorney for Defendant United States
Postal Service

ORDER

The Court MODIFIES the Pretrial Scheduling Order as follows:

- Discovery cut-off date is extended June 1, 2011.
- Expert Disclosures deadline is extended to July 1, 2011.
- Supplemental Expert Disclosures are due by August 1, 2011.
- Expert Discovery shall be completed by October 15, 2011.
- The Final Pretrial Conference is RESET for **January 13, 2012 at 1:30 p.m.** The parties shall file their Joint Pretrial Statement on or before January 6, 2012.

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

- The Bench Trial is RESET for **March 20, 2012 at 9:00 a.m.** in Courtroom #2.
- The Settlement Conference before the Honorable Kendall J. Newman set for **February 4, 2011 is VACATED** and shall be reset to date agreed upon by the parties after the discovery deadline.

IT IS SO ORDERED.

DATED: January 27, 2011



FRANK C. DAMRELL, JR.
UNITED STATES DISTRICT JUDGE