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

11 ROSLYN G. McCOY,  
 12 Plaintiff,  
 13 v.  
 14 DEPARTMENT OF THE ARMY CORPS-  
 ARMY CORPS OF ENGINEERS and the  
 15 HONORABLE JOHN M. McHUGH,  
 SECRETARY OF THE ARMY,  
 16 collectively,  
 17 Defendants.  
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CASE NO. 2:09-CV-01973 LKK-CMK  
**STIPULATION TO PERMIT PLAINTIFF  
 TO FILE AN AMENDED COMPLAINT AND  
 REQUEST TO MODIFY PRE-TRIAL  
 SCHEDULE; ORDER THERETO**  
 [Fed.R.Civ.P.16]

19  
 20 Plaintiff Roslyn McCoy, and Defendant John M. McHugh, Secretary of the Army (“Secretary”),  
 21 through their respective counsel, hereby respectfully submit the following stipulation to permit Plaintiff  
 22 to file an amended complaint and request to modify the pretrial schedule.

23 **I. RECITALS**

24 1. On July 17, 2009, Roslyn McCoy, proceeding in *propria persona*, filed this action  
 25 asserting claims against the Secretary and the Army Corps of Engineers under “Title VII of the Civil  
 26 Rights Act of 1964 for employment discrimination, Title VII of the Civil Rights Act of 1964, as  
 27 amended, to implement the equal employment provisions of the Americans with Disabilities Act, the  
 28 Age Discrimination Employment Act (“ADEA”) and the Rehabilitation Act of 1973.” The Secretary

1 answered on November 10, 2009 and the Corps moved to dismiss for lack of jurisdiction.

2           2.       On December 17, 2009, the parties appeared before this Court for a Status (Pre-Trial  
3 Scheduling) Conference. On January 28, 2010, the Court issues its pretrial scheduling order that  
4 dismissed the Corps as a party and set following schedule:

5           Deadline for initial disclosure of experts:	June 7, 2010
6           Close of discovery:	August 9, 2010
7           Deadline for pretrial motions to be heard:	October 11, 2010
8           Pretrial conference:	February 7, 2011
9           Trial:	April 5, 2011

10           3.       Thereafter, on February 3, 2010, the Secretary served written discovery on Plaintiff, who  
11 was still proceeding *pro per*. The Secretary granted Plaintiff an extension to respond to this discovery.

12           4.       On March 17, 2010, John Ota, substituted as counsel for Plaintiff. The Secretary granted  
13 Plaintiff another extension to respond to discovery based on Mr. Ota's substitution as counsel.

14           5.       In April 2010, Plaintiff, through counsel, served responses to the Secretary's written  
15 discovery. Thereafter, in April and May 2010, the parties met and conferred with respect to Plaintiff's  
16 responses, including on the issue of the scope of Plaintiff's claims against Secretary. During the course  
17 of the meet and confer process, Plaintiff raised the issue of amending her complaint in light of the fact  
18 that she was proceeding *pro per* when she filed the original complaint and now has retained counsel.

19           6.       Given that Plaintiff was proceeding *pro per* when she filed her initial complaint, and  
20 given her intervening retention of counsel, the parties agree that it is interest of judicial economy to  
21 permit Plaintiff to file an amended complaint at this stage of the litigation to assert claims under the  
22 Rehabilitation Act as opposed to Title VII.

23           7.       The parties further agree that any amendment is with the express understanding that the  
24 Secretary retains the right to file any appropriate responsive pleading to the amended complaint,  
25 including moving to dismiss for lack of subject matter jurisdiction any claims that are based on conduct  
26 that is beyond the scope of Plaintiff's administrative complaint.

27           8.       Permitting Plaintiff to amend her complaint may alter the scope of discovery.  
28 Accordingly, the parties agree that it is in the interest of judicial economy to extend the deadlines for

1 expert discovery, the close of discovery, and the deadline for pretrial motions.

2 9. The parties do not wish to change the pretrial conference date or the trial date.

3 **STIPULATION AND REQUEST**

4 Based on the foregoing, the parties hereby stipulate and request the following:

5 1. Plaintiff shall be permitted to file an amended complaint within ten (10) days of entry of  
6 an order by the Court adopting the stipulation.

7 2. The Secretary shall have twenty (20) days to file a responsive pleading.

8 3. The Secretary expressly reserves the right to file any appropriate responsive pleading  
9 permitted under Federal Rule of Civil Procedure 12, and in no way waives any defense, claims, or  
10 argument to the allegations stated in any amended complaint.

11 4. The following pretrial deadlines shall be extended to the following dates:

12 Initial expert disclosures: September 1, 2010

13 Close of discovery: November 1, 2010

14 Deadline to for dispositive motions  
15 to be heard: December 31, 2010

16 5. All other dates shall remain as set by the Court's January 28, 2010 Scheduling Order.

17 IT IS SO STIPULATED.

18 BENJAMIN B. WAGNER  
United States Attorney

19 Date: June 4, 2010

20 /s/ Todd A. Pickles  
By: TODD A. PICKLES  
Assistant United States Attorney

21 Attorneys for Secretary of the Army

22  
23 Date: June 4, 2010

24 /s/ John Ota  
By: JOHN OTA

25 Attorney for Plaintiff  
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1 **ORDER**

2 This matter came before the Court on the parties' Stipulation To Permit Plaintiff To File An  
3 Amended Complaint And Request To Modify The Pretrial Schedule. For the reasons stated in the  
4 Stipulation and for good cause showing under Rule 16 of the Federal Rules of Civil Procedure, the  
5 Court ADOPTS the Stipulation and GRANTS the relief requested therein.

6 Accordingly, IT IS HEREBY ORDERED THAT:

7 1. Plaintiff is granted leave to file an amended complaint and the Secretary may file any  
8 appropriate responsive pleadings thereto, all in accordance with the times set forth in the Stipulation. .

9 2. The Court's January 28, 2010 Scheduling Order is modified to extend the deadlines for  
10 initial disclosure of expert witnesses; close of discovery; and deadline for hearings on pretrial motions,  
11 to the dates set forth in the stipulation.

12 3. All remaining dates and deadlines as set by the Court's January 28, 2010 Scheduling  
13 Order remain as set and are otherwise unaffected by this Order.

14 IT IS SO ORDERED.

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16 DATED: June 7, 2010

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18 **CRAIG M. KELLISON**  
19 UNITED STATES MAGISTRATE JUDGE  
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