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18 IN THE UNITED STATES DISTRICT COURT  
 19 FOR THE EASTERN DISTRICT OF CALIFORNIA

20 **OLEGS KOZACENKO,**  
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 22 Plaintiff,  
 23  
 24 v.  
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 26 **California Highway Patrol Officer**  
**ANDREW P. MURRILL (Badge #19671);**  
**California Highway Patrol Officer J.**  
**SHERMAN (Badge #11614); California**  
**Highway Patrol Sergeant KEVIN PIERCE;**  
**California Highway Patrol Lieutenant**  
**JOHN ARRABIT; California Patrol**  
**Assistant Chief KENNETH HILL; and**  
**California Highway Patrol Commander**  
**Chief STEPHEN LERWILL,**  
 27  
 28 Defendants.

2:12-CV-2196 MCE DAD  
**STIPULATION AND ORDER**  
**MODIFYING PRETRIAL SCHEDULING**  
**ORDER AND REQUEST FOR STAY**  
**PENDING MEDIATION**  
 Hon. Morrison C. England, Jr.

1 THE PARTIES, by and through their respective attorneys of record, and having agreed to  
2 and scheduled a mediation in this matter, hereby stipulate to and respectfully ask that the Court  
3 modify its Amended Pretrial Scheduling Order of November 18, 2014, and stay the case pending  
4 mediation, as follows:

- 5 • That the Court set a status conference for approximately two weeks after the mediation,  
6 set for July 13, 2015, as suits the Court's calendar.
- 7 • That formal discovery, except for the previously ordered physical and mental  
8 examinations of plaintiff by Drs. McNiel, Keram, and Atkin, be stayed and the relevant  
9 cut-off vacated, to be reset at the post-mediation status conference, if necessary, but  
10 without prohibiting to such voluntary discovery as the parties may wish to conduct and  
11 provide.
- 12 • That pursuant to Local Rule 303(b), the parties respectfully request that any requests for  
13 reconsideration and/or objections to the rulings on the motions to compel issued by the  
14 Hon. Drozd on March 16, 2015 (Doc. No. 81) be extended for filing to July 31, 2015.
- 15 • That the non-expert discovery cut-off currently set for May 8, 2015, be vacated pending  
16 the post-mediation status conference, to be reset at the post-mediation status conference, if  
17 necessary.
- 18 • That the expert witness disclosure cutoff currently set for June 8, 2015, be vacated  
19 pending the post-mediation status conference, to be reset at the post-mediation status  
20 conference, if necessary.

21 The remainder of the current schedule is consistent with the requested amendments. Trial  
22 is set for February 8, 2016.

## 23 ARGUMENT

### 24 A. LEGAL STANDARD.

25 "A schedule may be modified only for good cause and with the judge's consent." Fed. R.  
26 Civ. P. 16(b). A formal motion is not necessary. Adv. Comm. Notes to 1983 Amendment to Fed.  
27 R. Civ. P. 16(b). Good cause requires a showing of due diligence. *Johnson v. Mammoth*  
28 *Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). A lesser showing of good cause is sufficient

1 to modify the initial scheduling order entered early in the action than the showing required for a  
2 final pretrial conference order. Notes of Advisory Committee on Rule 16, 97 F.R.D. 165, 208.

3 **B. GOOD CAUSE EXISTS TO MODIFY THE SCHEDULING ORDER TO ALLOW FOR**  
4 **MEDIATION AND POTENTIAL RESOLUTION**

5 The parties seek these modifications because, with the participation of plaintiff's new  
6 counsel, they have determined that there is an opportunity to settle the case. There have been no  
7 meaningful settlement discussions to date. Significant discovery has been conducted, including  
8 the depositions of the officers directly involved in the incident, of the plaintiff, and of the  
9 supervising officers at CHP. Absent resolution additional discovery will be necessary, including  
10 requesting leave to lift the ten deposition cap so that plaintiff can depose the numerous additional  
11 percipient witnesses to the incident and its aftermath. The parties have agreed to mediate, upon a  
12 mediator, and upon a mediation date. The mediation is set for July 13, 2015, because the parties  
13 and mediator are available and because a date after July 1, 2015, begins the California Highway  
14 Patrol's fiscal year and provides the best opportunity for a settlement of this case.

15 Moreover, the parties are about to incur substantial additional costs of concluding discovery  
16 in this case, and of engaging and preparing experts for deposition and trial. The parties believe  
17 that avoiding those costs until after mediation increases the chances of a settlement.

18 Notably, the proposed changes to the schedule leave the trial date and non-discovery pre-  
19 trial dates intact.

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**IT IS SO STIPULATED.**

Dated: March 24, 2015

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Attorney General of California

/s/ Alberto L. González  
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Officer J. Sherman; California Highway Patrol  
Sergeant Kevin Pierce; California Highway Patrol  
Lieutenant John Arrabit; California Patrol Assistant  
Chief Kenneth Hill; and California Highway Patrol  
Commander Chief Stephen Lerwill*

Dated: March 24, 2015

GALLO LLP

By: /s/ Ray E. Gallo  
RAY E. GALLO  
*Attorney for Plaintiffs*

Dated: March 24, 2015


LAW OFFICES OF DAVID W. WIECHERT

By: /s/ David W. Wiechert  
DAVID W. WIECHERT  
*Attorney for Plaintiffs*

**ORDER**

**IT IS SO ORDERED.**

**Dated: March 25, 2015**

  
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MORRISON C. ENGLAND, JR., CHIEF JUDGE  
UNITED STATES DISTRICT COURT