

1 REID, AXELROD
2 Donald S. Honigman, SB# 106914
3 315 Montgomery Street, Suite 800
4 San Francisco, CA 94104
5 Phone: (415) 451-3300
6 Fax: (415) 451-3307

7 Attorneys for Defendant
8 TRUCKEE TAHOE AIRPORT DISTRICT,
9 a public entity

10 **UNITED STATES DISTRICT COURT**
11 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

12 AUDREY McKENZIE,

CASE NO.: 2:14-cv-00480-JAM-DAD

13 Plaintiff,

14 **JOINT REQUEST FOR MODIFICATION**
15 **OF SCHEDULING ORDER DEADLINES**
16 **AND ORDER**

17 vs.

18 TRUCKEE TAHOE AIRPORT DISTRICT, a
19 public entity, and DOES 1-20, inclusive,

Hon. John A. Mendez, United States District
Judge

20 Defendants.

21 _____
22 COMES NOW the undersigned parties, by and through their respective undersigned
23 counsel of record, to respectfully request that the Court modify the deadlines in its June 20, 2014
24 Pre-trial Scheduling Order. The parties request that all dates, including the February 1, 2016,
25 Trial, be continued at least 120 days to allow adequate time for discovery.

26 Federal Rules of Civil Procedure, Rule 16(b)(4) provides that "a schedule may be
27 modified only for good cause and with the judge's consent". Good cause for the modification
28 exists here because despite the diligence of the parties the current schedule cannot reasonably be
met. More specifically, the parties are unable to complete all necessary discovery by the June
19, 2015 deadline for expert witness disclosures and the August 28, 2015, deadline for
completion of all discovery.

1 To date, discovery has been delayed due to the inability of Defendant to obtain
2 Plaintiff's extensive medical records from Plaintiff's out of state medical care providers,
3 including the Department of Veterans Affairs (VA Sierra Nevada Health Care System) in Reno,
4 Nevada. Defendant is informed that the Veteran's Administration will not release Plaintiff's
5 medical records without Plaintiff's authorization. Thus, Defendant immediately requested that
6 Plaintiff provide the required signed Authorization.

7 The parties have met and conferred and Plaintiff has now agreed to immediately provide
8 Defendant with her signed Authorizations for the release of her medical records. In addition, in
9 order to facilitate the production of Plaintiff's medical records, and address any of the medical
10 care providers HIPAA concerns, the parties recently submitted a Proposed Protective Order to
11 the Court which the Court entered.

12 With an Authorization from Plaintiff, and a Protective Order in place, Defendant should
13 be able to obtain Plaintiff's medical records from the Veteran's Administration. However, based
14 upon past experience, the Veterans Administration is likely to be very slow in producing
15 Plaintiff's medical records. Only upon receipt of Plaintiff's medical records will the parties will
16 be able to proceed with their remaining required discovery, including plaintiff's deposition and
17 expert discovery. Plaintiff's counsel reports plaintiff is still treating. Additional good cause
18 exists to modify the scheduling order because, as discussed below, Plaintiff intends to request
19 leave of Court to name an additional Defendant.

20 **A. Plaintiff Alleges Continuing Medical Treatment for her Alleged Injuries:**

21 Plaintiff Audrey McKenzie alleges the following: Plaintiff was a spectator at an air show
22 at the Truckee Tahoe Airport. She was in the spectator area near where aircraft were on static
23 display. She took a step backward and fell over a block used to keep the planes in place that had
24 been left in the spectator area. She struck her head, suffered a concussion, post-concussion
25 syndrome, right temporal lobe damage. Her injuries forced her to drop out of the final semester
26 of her master's program and her treatment is continuing.

27 **B. The Court's June 20, 2014 Pre-trial Scheduling Order:**

1 On June 20, 2014 the Court issued its STATUS (Pre-trial Scheduling) ORDER. After
2 review of the parties' Joint Status Report, the Court scheduled the following:

3 June 19, 2015. Expert Witness Disclosures.

4 June 26, 2015. Supplemental Expert Witness Disclosures.

5 August 28, 2015. All Discovery completed.

6 October 7, 2015. All dispositive motions filed;

7 November 4, 2015, at 9:30 a.m. Hearing on dispositive motions.

8 December 18, 2015, at 10:00 a.m. Final Pre-Trial Conference

9 February 1, 2016, at 9:00 a.m. Jury Trial (5-7 days).

10
11 **C. The Parties Request Additional Time to Conduct Discovery:**

12 Defendant TRUCKEE TAHOE AIRPORT DISTRICT has made diligent efforts to
13 determine the nature, extent and cause of plaintiff's alleged injuries and damages. However, to
14 date, Defendant has been unable to obtain Plaintiff's medical records from Plaintiff's out of state
15 medical care providers, including the Department of Veterans Affairs (VA Sierra Nevada Health
16 Care System) in Reno, Nevada, without Plaintiff's signed authorization.

17 The parties have met and conferred and Plaintiff has now agreed to immediately provide
18 Defendant with her signed Authorizations for the release of her medical records. In addition, in
19 order to facilitate the production of Plaintiff's medical records, and address any of the medical
20 care provider's HIPAA concerns, the parties recently submitted a Proposed Protective Order to
21 the Court.

22 With an Authorization from Plaintiff, and a Protective Order in place, Defendant should
23 be able to obtain Plaintiff's medical records from the Veteran's Administration. However, based
24 upon past experience, the Veterans Administration is likely to be very slow in producing
25 Plaintiff's medical records. Only upon receipt of Plaintiff's medical records will the parties will
26 be able to proceed with their remaining required discovery, including the deposition of Plaintiff
27 Audrey McKenzie, as well as the depositions of Plaintiff's fiancé and son who were allegedly
28 present at the time of the incident, and expert discovery.

1 Plaintiff's counsel represents that Plaintiff is continuing to receive medical treatment for
2 her alleged injuries. Thus, no party will be prejudiced by a modification of the pretrial
3 scheduling order. In fact, greater time is needed to allow the parties to properly assess Plaintiff's
4 alleged damages, her current medical condition, and her prognosis.

5
6 **D. Plaintiff Requests Additional Time to Investigate a Potential Defendant:**

7 Plaintiff is currently considering whether to seek leave of Court to amend the First
8 Amended Complaint to name the Experimental Aircraft Association Chapter 1073 as a
9 Defendant. Plaintiff believes that the Experimental Aircraft Association may have been involved
10 in the incident. Modification of the Pretrial Scheduling Order would provide Plaintiff with
11 additional time to investigate the involvement, if any, of the Experimental Aircraft Association.
12 This would enable Plaintiff to determine whether or not the Association should be named as a
13 defendant in this action.

14
15 **E. Conclusion:**

16 Based on the above, the parties respectfully request that the Court modify the deadlines in
17 its June 20, 2014 Pre-trial Scheduling Order. The parties request that all dates, including the
18 February 1, 2016, Trial, be continued at least 120 days to allow adequate time for discovery.

19
20
21 DATED: April 7, 2015

CASEY, GERRY, SCHENK,
FRANCAVILLA, BLATT & PENFIELD, LLP

22
23 /s/ Scott C. Cummins

24
25 DATED: April 7, 2015

REID, AXELROD

26
27 /s/ Donald S. Honigman
28

1 **[PROPOSED] ORDER MODIFYING SCHEDULING ORDER DEADLINES**

2
3 For good cause the Court’s June 20, 2014 STATUS (Pre-trial Scheduling) ORDER is
4 modified as follows:

5
6 Expert Witness Disclosures on 10/23/2015.

7
8 Supplemental Expert Witness Disclosures on 10/30/2015.

9
10 All Discovery completed by 12/31/2015.

11
12 All dispositive motions filed by 2/10/2016.

13
14 Hearing on dispositive motions on 3/9/2016 at 9:30 a.m.

15
16 Joint pretrial statement due on or before 4/15/2016.

17
18 Final Pre-Trial Conference on 4/22/2016 at 11:00 a.m.

19
20 Jury Trial (5-7 days) on 6/6/2016 at 9:00 a.m.

21
22 IT IS SO ORDERED.

23
24 Dated: 4/7/2015

25 /s/ John A. Mendez _____
26 United States District Court Judge