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6 Attorneys for Defendants  
 7 CITY OF SAN PABLO; JOSEPH AITA;FRANK  
 PERINO;MARK GALIOS

8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA

11 DELORES STRINGER, individually and  
 12 as personal representative of the Estate of  
 decedent MELVIN HARDNETT; M.H., a  
 13 minor, by and through her Guardian Ad  
 Litem, Bonita Frazier; N.H., a minor, by  
 14 and through her Guardian Ad Litem,  
 Latonya Gray; and ME.H., a minor, by and  
 through her Guardian Ad Litem,  
 15 DELORES STRINGER,

16 Plaintiffs,

17 vs.

18 CITY OF SAN PABLO, a municipal  
 19 corporation; JOSEPH AITA, in his capacity  
 as Chief of Police for the CITY OF SAN  
 20 PABLO; FRANK PERINO, individually,  
 and in his capacity as a police officer for  
 the CITY OF SAN PABLO; MARK  
 21 GALIOS, individually and in his capacity  
 as a police officer for the CITY OF SAN  
 22 PABLO; and, San Pablo police officers  
 DOES 1-25, inclusive,

23 Defendants.  
 24

Case No. C07-3544 MEJ

**STIPULATION AND ~~PROPOSED~~  
 ORDER CONTINUING CASE  
 MANAGEMENT ORDER DEADLINES  
 WITH SUBPOENAED WITNESS  
 DEPOSITION PROTOCOL**

Trial Date: June 8, 2009

Judge: Hon. Maria-Elena James

25 IT IS HEREBY STIPULATED between the parties as follows:

- 26 1. In discovery, various witnesses, totaling 17 to date, have been identified by Plaintiffs as  
 27 having specific knowledge regarding the facts and circumstances of the shooting incident  
 28 and death of Decedent directly at issue in this matter.

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- 1 2. Defendants personally served 12 of the 17 witnesses identified by Plaintiffs with deposition  
2 subpoenas in June of 2008 for depositions to occur in July of 2008.
- 3 3. Of the 12 witnesses identified by Plaintiffs, and served with the subpoenas, only 1 witness  
4 appeared for deposition and one deposition was taken off calendar. As for the other 10  
5 witnesses, none of them contacted Defendants' counsel or Plaintiffs' counsel regarding any  
6 scheduling conflicts or other issues preventing them from appearing for the deposition.  
7 Thereafter, the parties made a record of the failure of these witnesses to appear for their  
8 deposition. These 10 witnesses include Darlene Banks, Johnny Grinner, Jr., Lena  
9 McClinton, Deontae Pride, Ray Robinson, Anna Ross, Fernando Tamaya, Louis Tamaya,  
10 Eduardo Vasquez and Martha Brooks. Ms. Josephine Fowler's deposition was taken off  
11 calendar due to her ill health. Since his date of deposition, Mr. Robinson has been in touch  
12 with Plaintiffs' counsel and has specifically requested that his deposition be rescheduled to a  
13 location close to his work site in Oakland.
- 14 4. There may also be additional witnesses who the parties attempt to subpoena who should be  
15 considered via this same protocol proposed below in case they fail to appear for deposition.
- 16 5. Now, the parties have a problem in trying to complete fact discovery by the current set  
17 deadline of September 12<sup>th</sup> due to this unforeseen circumstance and the large number of  
18 witnesses who have failed to abide by properly served deposition subpoenas. Obviously, the  
19 majority of fact discovery has not been able to be completed due to this mass failure of these  
20 witnesses to appear for deposition.
- 21 6. Counsel on both sides of this matter have met and conferred extensively, personally on  
22 several occasions, as well as via numerous telephone conversations, to come up with a plan  
23 on how the parties and the Court can perhaps deal with this major discovery set back,  
24 without impacting the current trial date of June 8, 2009.
- 25 7. The parties' plan consists of essentially having the Plaintiffs re-serve these witnesses for  
26 depositions at locations closer to the witnesses respective homes which would perhaps make  
27 it easier and more likely that the witnesses appear for deposition.
- 28 8. Should those witnesses fail to appear for deposition once again, the parties will be seeking to

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- 1 inform the Court via letter about such failure to appear and will be requesting sanctions per  
 2 the Court's discretion, to include, but not be limited to, the issuance of monetary sanctions  
 3 against the witness, exclusion of the witness from testifying at trial, issuance of a bench  
 4 warrant by the Court to command the witness' appearance for deposition, or any other such  
 5 order as the Court deems just and proper, a protocol of which is requested below.
- 6 9. Obviously, due to the fact discovery set back stated above, this will also impact the parties  
 7 expert disclosures and expert discovery.
- 8 10. Due to this significant discovery set back, the parties are seeking to continue some of the  
 9 dates included in the Court's original Case Management Order of October 16, 2007  
 10 (Document 14) and subsequently modified by the Court's Stipulation and Order Continuing  
 11 Trial Date and Pre-Trial Dates of March 7, 2008 (Document 22).
- 12 11. The parties have only once previously continued the dates included in the Court's original  
 13 Case Management Order of October 16, 2007 (Document 14), which included the trial and  
 14 pre-trial dates. This present request will not affect the current trial and pre-trial dates in this  
 15 matter. It should also be noted that it is unlikely that any party will be filing any dispositive  
 16 motions in this matter due to the likely factual discrepancies.
- 17 12. Good cause is present to extend the currently set deadlines as follows:

<u>Deadline Description</u>	<u>Current Date</u>	<u>Proposed Modified Date</u>
Close of Non-Expert Discovery	9-12-08	12-19-08
Expert Disclosure	10-3-08	1-7-08
Rebuttal Expert Disclosure	10-17-08	1-21-08
Close of Expert Discovery	12-5-08	2-26-09
Last Day to Hear Dispositive Motions	2-26-09	4-16-09
Pretrial Conference	5-7-09	No change.
Final Pretrial Conference	6-4-09	No change.
Trial Date	6-8-09	No change.

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1 13. In addition to the proposed schedule above, the parties seek Court assistance in a protocol  
2 whereby the parties can informally obtain relief and/or remedies should any of the remaining  
3 11 witnesses fail to appear for their depositions again.

4 14. In that vein, the parties agree that should those witnesses fail to appear once again for  
5 deposition, the parties should jointly e-file a letter brief stating the relevant facts and  
6 circumstances as well as any request for relief from the Court with a proposed order. Such  
7 relief may take the form of monetary sanctions against the witness, exclusion of the witness  
8 from testifying at trial, issuance of a bench warrant by the Court to command their  
9 appearance for deposition, or any other such order as the Court deems proper. If the parties  
10 disagree as to the relief, the parties can set forth such disagreement in the letter to the Court  
11 and the Court can issue an order per the showing of the parties.

12 **IT IS SO STIPULATED.**

13  
14 Respectfully submitted,

15  
16 Dated: September 3, 2008

LAW OFFICES OF JOHN L. BURRIS

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19 By: 

John L. Burris, Esq. / Ben Nisenbaum, Esq.,  
Attorneys for Plaintiffs

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22 Dated: September 3, 2008

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23  
24  
25 By: 

James V. Fitzgerald, III  
Noah G. Blechman  
Attorneys for Defendants  
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**ORDER**

The parties have demonstrated good cause to modify the Court’s original Case Management Order of October 16, 2007 (Document 14), subsequently modified by the Court’s Stipulation and Order Continuing Trial Date and Pre-Trial Dates of March 7, 2008 (Document 22), as follows:

<u>Deadline Description</u>	<u>New Dates</u>
Close of Non-Expert Discovery	12-19-08
Expert Disclosure	1-7-08
Rebuttal Expert Disclosure	1-21-08
Close of Expert Discovery	2-26-09
Last Day to Hear Dispositive Motions	4-16-09
Pretrial Conference	5-7-09 (No change).
Final Pretrial Conference	6-4-09 (No change).
Trial Date	6-8-09 (No change).

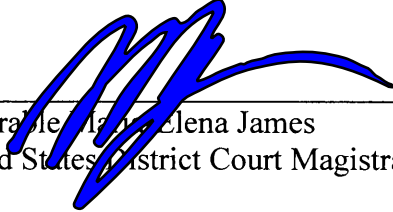
In addition to the new schedule above, the following protocol is hereby ordered should any of the remaining 10 witnesses fail to appear for their depositions again. If that should occur, the parties should jointly e-file a letter brief stating the relevant facts and circumstances of such non-appearance, as well as any proposed request for relief from the Court with a proposed order. Such relief may take the form of seeking monetary sanctions against the witness, exclusion of the witness from testifying at trial, issuance of a bench warrant by the Court to command the witness’ appearance for deposition in the face of contempt charges, or any other such order as the Court deems proper. Any such letter shall be no more than five pages.

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1 If the parties disagree as to the relief, the parties can set forth such disagreement in the  
2 letter to the Court. This order includes Ms. Josephine Fowler and any subsequently served  
3 witnesses.

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5 **IT IS SO ORDERED.**

6  
7 Dated: September 4, 2008

8 By:   
9 Honorable Judge Elena James  
10 United States District Court Magistrate Judge

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