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 6 WILBERT ESSEX; LADANIEL KEY; JIMMY SMITH;
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 PONDER; EDDIE PUCOATS; TAY WOODS;
 JOHN SMITH and LIONEL BRACKINS, JR.

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13 Attorneys for Defendants
 14 CITY OF BERKELEY; RICKY DAVIS;
 15 ROGELIO MARQUINA and JOSEPH AYANKOYA

16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA

19 LADANIEL KEY; JIMMY SMITH;
 20 JOHNNY TOLLIVER, LOUIS JERNIGAN;
 MELVIN PONDER; EDDIE PERCOATS;
 TAY WOODS,

21 Plaintiff,

22 v.

23 CITY OF BERKELEY; RICKY DAVIS;
 24 ROGELIO MARQUINA; JOSEPH
 ANACOYA; TOM FARRELL; and DOES 1
 25 through 50, inclusive,

26 Defendants.

Case No. C08-04896 MHP
 Case No. C08-04897 MHP
 Case No. C08-04898 MHP

**STIPULATION AND [PROPOSED] ORDER
 TO EXTEND TIME TO COMPLETE
 DEPOSITION DISCOVERY AND
 MEDIATION/SETTLEMENT
 CONFERENCE DEADLINE**

Trial Date: None set

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 STIPULATION AND [PROPOSED] ORDER TO EXTEND TIME TO COMPLETE
 DEPOSITION DISCOVERY

1 AND RELATED ACTIONS.
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4 Plaintiffs WILBERT ESSEX; LADANIEL KEY; JIMMY SMITH; JOHNNY
5 TOLLIVER, LOUIS JERNIGAN; MELVIN PONDER; EDDIE PERCOATS; TAY WOODS;
6 JOHN SMITH and LIONEL BRAKINS, JR. ("Plaintiffs") and Defendants CITY OF
7 BERKELEY; RICKY DAVIS; ROGELIO MARQUINA; JOSEPH ANACOYA; ("Defendants")
8 (collectively "the parties") hereby stipulate and agree to extend the time for the parties to
9 complete deposition discovery for a period of 30 days, to and including October 30, 2009.

10 This Stipulation is made pursuant to Rule 6-1(b) of the United States District Court for the
11 Northern District of California.

12 There is good cause for the stipulation to extend time as follows:

- 13 • Recent Unavailability of Plaintiffs' Lead Trial Counsel: The primary purpose of
14 this request is due to the recent and unexpected unavailability of lead trial counsel for the
15 plaintiff, which has impacted the deposition discovery. In particular, plaintiff's lead trial
16 counsel, David M. Poore, has since May 2009 become unavailable due to the recent and
17 unanticipated hospitalization of his father. Specifically, on May 22, 2009, David Poore's
18 father was taken by ambulance to Sutter Medical Center located in Roseville, California.
19 He is 65 years old and has been diagnosed with Stage IV esophageal cancer. At the time
20 that he was transported by ambulance, he was non-responsive and not breathing. The
21 paramedics were able to revive him, and, it was determined in the emergency room that
22 he had suffered significant internal bleeding and other complications from the cancer
23 condition. He was transferred to a specialized intensive care unit for oncology patients,
24 and, as a result of the continued bleeding, was transferred to the trauma ICU for
25 immediate surgery. He remained at the hospital for approximately one week, and was
26 discharged to home with oxygen while he waited for follow-up surgery. His prognosis
27 was disclosed as poor, and the surgeons wanted to schedule further surgery to biopsy and
28 remove tumors that re-developed near the esophagus area. He required constant care and

1 assistance at home, and, aside from Mr. Poore's elderly stepmother, Mr. Poore was the
2 only living relative to provide assistance for him. Mr. Poore was compelled to take
3 immediate family medical leave. Mr. Poore went on family medical leave for a period of
4 approximately 30 days, and only returned to the office on a few occasions during the
5 month of June. Mr. Poore has had to take subsequent intermittent leave due to his
6 father's continued deteriorating medical condition, including as recently as within the
7 past two weeks.

8 Defendants' noticed Plaintiffs' depositions to begin in late July and August. However,
9 due to Mr. Poore's unavailability, most of the Plaintiffs' depositions were rescheduled to
10 September and early October. The parties stipulate and agree that this trial conflict
11 constitutes good cause to continue this matter. Mr. Poore has brought in another attorney,
12 Doug Watts, to assist him on his cases during this difficult period of time. As a result,
13 Mr. Poore has been unable to prepare for and take the final depositions that were
14 scheduled (or needed to be scheduled). The parties stipulate and agree that the
15 unavailability of plaintiff's lead trial counsel constitutes good cause to continue this
16 matter.

17 • Current Deposition Schedule:

18 These three cases, which have been consolidated for all purposes, including trial and
19 discovery, involve ten plaintiffs – all former and/or current employees of the City of
20 Berkeley. Defendants' have completed the depositions of three of the plaintiffs (Melvin
21 Ponder, Tay Woods and Eddie Percoats), and a fourth plaintiff's (Jimmy Smith)
22 deposition was begun but not completed due to Plaintiffs' counsel's late arrival. The
23 parties have stipulated to make Plaintiff Jimmy Smith available to complete his
24 deposition.

25 The depositions of the individual defendants and defendant City of Berkeley's
26 30(b)(6) depositions have yet to be scheduled due to the unavailability of plaintiffs' lead
27 trial counsel in this matter. The parties have currently agreed upon the following schedule
28 for the depositions of the remaining plaintiffs.

1 Plaintiff LaDaniel Key – 9/21/09, 9:30 a.m.;

2 Plaintiff John Tolliver – 9/23/09, 9:30 a.m.;

3 Plaintiff Wilbert Essex – 9/29/09, 9:30 a.m.;

4 Plaintiff Louis Jernigan – 9/24/09 9:30 a.m.;

5 Plaintiff John Smith - 10/5/09, 9:30 a.m.;

6 Plaintiff Lionel Brackins 10/7/09 and 10/8/09, 10:00 a.m.

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- 8 • There is not a current Trial date scheduled.

9 There is further good cause to grant this stipulated request to continue the deadline to
10 complete deposition discovery on the grounds that there is not currently a trial date set, or
11 any other discovery deadlines at this time. The only currently set deadline is a deadline
12 for a mediation/settlement conference before Magistrate Judge Chen by October 30,
13 2009. The parties need to complete their respective depositions prior to the
14 mediation/settlement conference. . Therefore, the parties respectfully request the
15 mediation/scettlement conference deadline of October 30, 2009 be extended for a period of
16 30 days as well, or to November 30, 2009.

17 The parties have not made any prior requests for a continuance in this matter.

18 The parties are not making this request for any improper purpose, including undue delay.
19 Instead, the parties agree that judicial economy will be served if this request is granted. In
20 particular, allowing additional time will limit unnecessary motion practice for discovery disputes
21 that can be informally resolved through the meet and confer process; provide the parties with
22 additional time to carefully prepare the case for trial and reach necessary stipulations regarding
23 documents and potentially expected testimony. Moreover, neither party would suffer any
24 prejudice if the fact discovery cutoff was continued and expert designation extended; instead, the
25 parties have stipulated to this request.

26 SO STIPULATED.

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ZACH COWAN, Acting City Attorney
SARAH REYNOSO, Acting Assistant City
Attorney
MARK J. ZEMBSCH, Deputy City Attorney
KRISTY van HERICK, Deputy City Attorney

Dated: September 19, 2009

By: Sarah Reynoso

SARAH REYNOSO, Acting Assistant City
Attorney
Attorneys for City of Berkeley; Ricky Davis;
Rogelio Marquina and Joseph Ayankoya

Respectfully submitted:

KAHN BROWN & POORE LLP

Dated: September 17, 2009

By: [Signature]
David M. Poore, Esq.

PROPOSED ORDER

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THE COURT HEREBY ORDERS AS FOLLOWS:

The parties' request to extend fact discovery is GRANTED. The new deadline to complete all deposition discovery is October 30, 2009.

The parties request to continue the mediation deadline, to coincide with the new deposition discovery deadline and, is GRANTED. The new deadline to complete mediation in this matter is November 30, 2009.

SO ORDERED.

DATED: 9/23/2009 _____

