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11 Attorneys for Plaintiffs  
 12 WILBERT ESSEX

13 UNITED STATES DISTRICT COURT  
 14 NORTHERN DISTRICT OF CALIFORNIA

16 WILBERT ESSEX,  
 17 Plaintiffs,  
 18 vs.  
 19 CITY OF BERKELEY, RICKY DAVIS,  
 20 Defendants.

NO. C08-04898 MMC MHP

**STIPULATION AND PROPOSED  
 ORDER TO CONTINUE THE INITIAL  
 CASE MANAGEMENT CONFERENCE**

**DATE: February 2, 2009  
 TIME: 4:00 p.m.  
 CTRM: 15, 18<sup>th</sup> Floor  
 San Francisco**

24 IT IS HEREBY STIPULATED by and between the parties to continue the  
 25 presently scheduled Initial Case Management Conference date from February 2, 2009, to a new  
 26 date and time that is convenient to the Court and the parties with the exception of February 13  
 27 through 20 as the attorneys have other conflicts during this period. The parties understand that  
 28 the following dates are available which work within the parties' respective calendars: February

1 23, and March 2, 9, 16 and 23. The parties are willing to participate in a telephone conference  
2 with the Court, as necessary, to select new dates and times.

3 The parties are submitting this request in the above entitled case and all other related  
4 cases. There is good cause for the stipulation to extend time as follows:

- 5 • Unavailability of Lead Trial Counsel: The primary purpose of this request is the  
6 unavailability of lead trial counsel for the plaintiffs. In particular, plaintiffs' lead trial  
7 counsel, David M. Poore, has been scheduled for a significant discovery and status  
8 hearing in the nationwide class action entitled *Stalnakar v. Allstate Insurance Company,*  
9 *et. al.* Case No. 04 CV 2628 which is pending before the District Court, El Paso County,  
10 State of Colorado, located in Colorado Springs, Colorado. Given this conflict, it would  
11 be impossible for plaintiffs' lead trial counsel to attend both hearings as plaintiffs'  
12 counsel is required to travel to Colorado Springs. The parties stipulate and agree that  
13 this trial conflict constitutes good cause to continue this matter.
- 14 • No Prior Trial Continuance Requests: The parties have not made any prior requests for a  
15 continuance of the Initial Case Management Conference in this matter.
- 16 • Judicial Economy and No Prejudice: The parties are not making this request for any  
17 improper purpose, including undue delay. Instead, the parties agree that judicial  
18 economy will be served if this request is granted. In particular, it is crucial that  
19 plaintiffs' lead trial counsel attend and participate in the Initial Case Management  
20 Conference. Moreover, neither party would suffer any prejudice if the trial date was  
21 continued; instead, the parties have stipulated to this request.

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SO STIPULATED.

Respectfully submitted:

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

Dated: January 26, 2009.

By: \_\_\_\_\_ /s/

MARK J. ZEMBSCH, Deputy City Attorney  
Attorneys for City of Berkeley and Ricky Davis

Respectfully submitted:

KAHN BROWN & POORE LLP

Dated: January 26, 2009.

By: \_\_\_\_\_ /s/

DAVID M. POORE  
Attorney for Wilbert Essex

**ORDER**

THE COURT HEREBY ORDERS AS FOLLOWS:

The parties' request to continue the Initial Case Management Conference is hereby GRANTED. The presently set Case Management Conference on February 2, 2009, is hereby VACATED. The parties are ordered to appear at an Initial Case Management Conference on March 23, 2009, at 4:00 a.m./p.m. to set a trial date and new deadlines.

IT IS SO ORDERED.

