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11 Attorneys for Plaintiff
12 KENNETH CARRETHERS

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15
16 KENNETH CARRETHERS,) Case No. CV 09 1101 EMC
17 Plaintiff,)
18 vs.) STIPULATION TO ENLARGE TIME FOR
19 BAY AREA RAPID TRANSIT DISTRICT, J.) THE HEARING, OPPOSITION AND REPLY
MEHSERLE, F. GUANZON, K. SMITH, D.) RE: PLAINTIFF'S MOTION FOR NEW TRIAL
HORNER, R. HANEY and DOES 1-25, inclusive,) AND MOTION FOR TAXATION OF COSTS
20) ORDER
21 Defendants.)
22

23 Pursuant to Civil L.R. 6-2, defendants BAY AREA RAPID TRANSIT DISTRICT, J.
24 MEHSERLE, F. GUANZON, K. SMITH, D. HORNER and R. HANEY (collectively "Defendants"),
25 and plaintiff KENNETH CARRETHERS ("Plaintiff"), by and through their respective counsel, hereby
26 stipulate as follows and respectfully request that the Court enter an order pursuant to their stipulation:

27 1. That the hearing of Plaintiff's Motion for New Trial (Doc. No. 117) and of Plaintiff's
Motion for Taxation of Costs (Doc. No. 118), currently scheduled for February 17, 2012, at 1:30 p.m.,

1 be continued to March 16, 2012, at 1:30 p.m., or as soon thereafter as may be heard by the Court, in
2 Courtroom 5 of the above-entitled Court;

3 2. That the deadline for Defendants' oppositions to Plaintiff's Motion for New Trial and
4 Motion for Taxation of Costs, currently scheduled as January 23, 2012, be continued to February 24,
5 2012;

6 3. That the deadline for Plaintiff's replies to Defendants' oppositions, currently scheduled
7 as January 30, 2012, be continued to March 2, 2012.

8 The reasons for the requested enlargement of time are set forth in the Declaration of Dirk D.
9 Larsen below.

10 IT IS SO STIPULATED.

12 Dated: January 18, 2012.

13 LOW, BALL & LYNCH

15 By s/ Dirk D. Larsen
16 DALE L. ALLEN, JR.
DIRK D. LARSEN
KEVIN P. ALLEN
17 Attorneys for Defendants
BAY AREA RAPID TRANSIT DISTRICT,
18 J. MEHSERLE, F. GUANZON, K. SMITH,
D. HORNER and R. HANEY

20 Dated: January 18, 2012.

21 DOLAN LAW FIRM

23 By s/ Anne Casey Costin
24 CHRIS B. DOLAN
ANNE CASEY COSTIN
25 Attorneys for Plaintiff
KENNETH CARRETHERS

26 ///

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DECLARATION OF DIRK D. LARSEN IN SUPPORT OF STIPULATION

I, DIRK D. LARSEN, declare as follows:

1. I have personal knowledge of the following facts, and could and would testify competently thereto.

2. I am an attorney at law duly licensed to practice before all courts of the State of California and the U.S. District Court for the Northern District of California, and am employed as an associate with the law firm of Low, Ball & Lynch, attorneys of record herein for defendants BAY AREA RAPID TRANSIT DISTRICT, J. MEHSERLE, F. GUANZON, K. SMITH, D. HORNER and R. HANEY.

3. I have reviewed Plaintiff's Motion for New Trial (Doc. 117), filed in this matter on January 9, 2012. According to my review, Plaintiff seeks a new trial of his claim for excessive force in violation of the Fourth Amendment, brought pursuant to 42 U.S.C. § 1983, based on the theory that the clear weight of the evidence at trial showed that the defendant officers "hog-tied" Plaintiff and that a "hog-tie" constitutes excessive force.

4. I attended the trial of this matter from November 21 through December 1, 2012, and took notes of the proceedings. According to my recollection and notes, the following witnesses gave testimony regarding (1) what constitutes a “hog-tie;” (2) permissible and impermissible forms of restraining suspects under various circumstances; and/or (3) the manner in which Plaintiff was restrained: Chief Gary Gee, Heath Cunningham, Lila Dinkins, Officer Frederick Guanzon, Officer Douglas Horner, Johannes Mehserle, Officer Robert Haney, Lt. Roger Clark, Plaintiff, Lt. Keith Smith and Sgt. Eugene Wong.

5. Defendants' opposition to Plaintiff's Motion for New Trial is currently due on January 23, 2012, pursuant to the Court's notice of January 11, 2012. On January 10, 2012, I contacted the court reporter for the trial proceedings, Belle Ball, to inquire about obtaining transcripts of the witnesses' testimony. As of that time, my office had already obtained the transcript of Chief Gee's testimony, and on January 10, Ms. Ball forwarded to my office the other transcripts that had already been prepared: those for the testimony of Mr. Cunningham and Ms. Dinkins. Ms. Ball informed me that she had just begun a four-month antitrust trial and thus estimated a 30-60-day turnaround for the

1 remaining transcripts. On January 13, 2012, Ms. Ball informed me that she could provide the
2 remaining transcripts within 14 days of receipt of payment for rush processing, and within 30 days for
3 normal processing.

4 6. I have met and conferred with Anne Costin of the Dolan Law Firm, attorneys for
5 Plaintiff, regarding stipulating to certain aspects of the defendant officers' testimony for purposes of
6 Plaintiff's motion in order to minimize the number of trial transcripts necessary. However, beyond any
7 such stipulation, Defendants still require the complete transcripts for Lt. Clark, Sgt. Wong and
8 Plaintiff, as well as any defendant-officer transcripts that may be necessary, in order to adequately
9 prepare an opposition to Plaintiff's motion. Because that motion is based on assertions regarding the
10 clear weight of the evidence, and because those witnesses provided evidence regarding appropriate
11 forms of restraint and the manner of Plaintiff's restraint, Defendants require the transcripts in order to
12 submit to the Court the entirety of the relevant evidence in their opposition. Defendants would be
13 severely prejudiced if the dates of the opposition and hearing were not continued, as they would be
14 unable to present relevant evidence in opposition to Plaintiff's motion so as to allow the Court to make
15 an informed ruling.

16 7. On January 9, 2012, Plaintiff also filed a Motion for Taxation of Costs (Doc. No. 118),
17 following Defendants' Bill of Costs filed on December 28, 2011 (Doc. No. 116). The opposition, reply
18 and hearing dates for the Motion for Taxation of Costs are the same as those for the Motion for New
19 Trial. Continuing those dates in accordance with the requested continuance of the dates for the Motion
20 for New Trial would promote the interests of efficiency and economy for the Court and the parties.

21 8. Pursuant to Civil L.R. 6-2(a)(2), the following time modifications have previously been
22 made in this case: on October 8, 2009, a case management conference was continued from November
23 16, 2009, to January 11, 2010, pursuant to the clerk's notice (Doc. No. 19); on November 18, 2009, the
24 Court entered a stipulated order amending pretrial deadlines (Doc. No. 23); on November 23, 2009, the
25 previously set trial dates were vacated and a case management conference was set for March 22, 2010,
26 pursuant to Court order (Doc. No. 24); on November 9, 2010, Defendants continued the hearing of
27 their motion for partial summary judgment from December 13, 2010, to January 24, 2011, pursuant to
28 instruction from the Court (Doc. No. 38); on July 1, 2011, the Court entered a Case Management

1 Scheduling Order setting trial and pretrial dates.

2 9. Pursuant to Civil L.R. 6-2(a)(3), I am unaware of any other hearings or proceedings that
3 would be affected by the enlargement of time requested in the above stipulation.

4 I swear under penalty of perjury under the laws of the State of California that the foregoing is
5 true and correct to the best of my personal knowledge.

6
7 Executed this 18th day of January, 2012, in San Francisco, California.

8
9 s/ Dirk D. Larsen
10 DIRK D. LARSEN

11 **[PROPOSED] ORDER**

12 Pursuant to the stipulation of the parties herein, it is HEREBY ORDERED:

13 1. That the hearing of Plaintiff's Motion for New Trial (Doc. No. 117) and of Plaintiff's
14 Motion for Taxation of Costs (Doc. No. 118), currently scheduled for February 17, 2012, at 1:30 p.m.,
15 is continued to March 16, 2012, at 1:30 p.m., in Courtroom 5 of the above-entitled Court;

16 2. That the deadline for Defendants' oppositions to Plaintiff's Motion for New Trial and
17 Motion for Taxation of Costs, currently scheduled as January 23, 2012, is continued to February 24,
18 2012;

19 3. That the deadline for Plaintiff's replies to Defendants' oppositions, currently scheduled
20 as January 30, 2012, is continued to March 2, 2012.

21 IT IS SO ORDERED.

22
23 Dated: 1/20/12

