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9 IN THE UNITED STATES DISTRICT COURT  
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 11 OAKLAND DIVISION

12 **VAN A. PENA,**

13 Plaintiff,

14 v.

15 **JUDITH BJORNDAL,**

16 Defendant.

Case No. C 00-04009 CW

STIPULATION AND ORDER EXTENDING  
 THE TIME FOR PLAINTIFF TO FILE A  
 MOTION FOR ATTORNEY'S FEES AND  
 COSTS

Date: February 12, 14

Courtroom: 2

Judge The Honorable Claudia Wilken

Trial Date November 4, 2013

Action Filed: October 31, 2001

17 NOW COME THE PARTIES, BY AND THROUGH THEIR RESPECTIVE  
 18 ATTORNEYS OF RECORD AND STIPULATE AS FOLLOWS:

19 Whereas:

20 1. Plaintiff's motion for fees and costs would ordinarily be due Wednesday, February  
 21 12, 2014 (i.e. fourteen days after entry of judgment);

22 2. Defendant Bjorndal intends to file post-trial motions for a motion for a judgment  
 23 as a matter of law pursuant to Rule 50 of the Federal Rules of Civil Procedure and a new trial  
 24 pursuant to Rule 59 of the Federal Rules of Civil Procedure;

25 3. The time for filing a motion for fees and costs is tolled pending the outcome of  
 26 post-trial motions under Rule 50 or Rule 59. *Bailey v. County of Riverside* (9<sup>th</sup> Cir. 2005) 414

1 F.3d 1023, 1025; *Alvarado v. Federal Exp. Corp.*, 2008 WL 2340211, (N.D.Cal. Jun 05, 2008)  
2 (NO. C 04-0098 SI, C 04-0099 SI); *Berry v. Hawii Exp. Service, Inc.*, 2007 WL 689474,  
3 (D.Hawai'i Mar 02, 2007) (NO. 03-00385 SOMLEK);

4 4. Counsel for the parties have met and conferred and agreed to explore a resolution  
5 of this matter, once Defendant has filed her post-trial motions, in an attempt to resolve all issues,  
6 including, what if any attorneys' fees and costs to which Plaintiff may be entitled in light of the  
7 jury verdict and any ruling by this Court's on post-trial motions and the possibility of an appeal of  
8 the jury verdict in this case;

9 5. Allowing the parties to explore settlement prospects once all post-trial motions that  
10 may be filed by Defendant are matter of record may avoid an unnecessary expenditure of time  
11 and resources by the Court and the parties.

12 6. This is the first and only request to extend the time to file Plaintiff's motion for  
13 fees and costs.

14 Therefore, the parties have agreed to request that the Court extend the time for Plaintiff to  
15 file his motion for attorneys' fees and cost until fourteen (14) days after this Court rules on any  
16 and all post-trial motions that Defendant may choose to file.

17 SO STIPULATED.

18  
19 Dated: February 12, 14

On behalf of Plaintiff Van A. Pena,

20  
21 /s/  
22 LAWRENCE J. KING  
*Attorney for Plaintiff*

23  
24 Dated: February 12, 14

On behalf of Defendant Judith Bjorndal,

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26 /s/  
27 TERRY SENNE, DEPUTY ATTORNEY GENERAL  
*Attorney for Defendant*


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ORDER

Having reviewed and considered the parties' stipulation and finding good cause therefore, the Court hereby orders that the time for Plaintiff to file his motion for fees and costs is extended until thirty (30) days after this Court issues her ruling on and all post-trial motions.

IT IS SO ORDERED.

Dated: February 12, 2014

  
\_\_\_\_\_  
The Honorable Claudia Wilken  
Chief Judge for the Northern District of California