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5 Stewart C. Altemus (State Bar #98746)
 6 Attorney for Plaintiff LONNELL SMITH

7 UNITED STATES DISTRICT COURT
 8 NORTHERN DISTRICT OF CALIFORNIA

9 LONNELL SMITH,

10 Plaintiff,

Case No. 3:09-cv-01057-PJH

11 vs.

**STIPULATION AND ~~PROPOSED~~
 ORDER TO DISMISS THE
 COMPLAINT AND TOLL THE
 STATUTE OF LIMITATIONS**

12 DATEX-OHMEDA, INC., et al

13 Defendants.

14 _____ /
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 16
 17 Plaintiff, LONNELL SMITH, (“Plaintiff”) and Defendants, DATEX-OHMEDA, INC.
 18 (“Datex-Ohmeda”) (erroneously sued as GE Healthcare, Inc.) and ABBOTT LABORATORIES
 19 (“Abbott”) by and through their respective counsel of record, hereby stipulate:

20 1. Dismissal of the Complaint against Datex-Ohmeda, Inc. and Abbott without prejudice.

21 Plaintiff will file a formal dismissal without prejudice of her pending Complaint against
 22 Datex-Ohmeda and Abbott within twenty (20) days following entry of the Court’s order
 23 implementing this stipulation.

24 2. Agreement for Future Re-service of the Complaint.

25 If Plaintiff subsequently elects to pursue her Complaint against Datex-Ohmeda and/or Abbott
 26 she must do so within sixty (60) calendar days following a settlement of, or final judgment in,
 27 *Lonnell Smith v. St. Joseph Hospital, et al*, Case No. DR080194, Humboldt County, or the dismissal
 28 shall be deemed to be with prejudice. The parties further stipulate that, in defending any such action,

1 neither Datex-Ohmeda nor Abbott will assert any statute of limitations defense that did not exist as
2 of the original date of the service of the above-entitled Complaint.

3 SO STIPULATED.

4 Dated: June 9, 2009.

ALTEMUS & WAGNER
Stewart C. Altemus
1255 Sacramento Street
Redding CA 96001

7 By: /s/ Stewart C. Altemus
Attorneys for Plaintiff, Lonnell Smith

8 Dated: June 9, 2009.

9 GLYNN & FINLEY, LLP
Clement L. Glynn
One Walnut Creek Center
100 Pringle Avenue, Suite 500
Walnut Creek, CA 94596

12 By: /s/ Clement L. Glynn
Attorneys for Defendant
Datex-Ohmeda (erroneously sued
as GE Healthcare, Inc.)

14 Dated: June 9, 2009.

GORDON & REES, LLP
Brian J. Mooney
275 Battery Street, Suite 200
San Francisco, CA

17 By: /s/ Brian J. Mooney
Attorneys for Defendant
Abbott Laboratories

19 ATTESTATION

20 I, Stewart C. Altemus, hereby attest that, pursuant to General Order 45, Section XB,
21 concurrence in the filing of this document has been obtained from each of the other signatories
herein.

22 Dated: June 9, 2009.

ALTEMUS & WAGNER

23 By: /s/ Stewart C. Altemus
Attorney for Plaintiff, Lonnell Smith

24 ~~PROPOSED~~ ORDER

26 IT IS SO ORDERED.

27 Dated: 06/11/09.

28 The Honorable Phyllis J. Hamilton
United States District Court

