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23 UNITED STATES DISTRICT COURT  
 24 NORTHERN DISTRICT OF CALIFORNIA

26 EVELYN ROSA and ROBERT ROSA, ) Case No.: C 05-03577 JF/HRL  
 individually and as the personal )  
 27 representatives of MICHAEL ROBERT ) [Hon. Judge Jeremy Fogel,  
 ROSA, deceased, ) United States District Judge]  
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Plaintiffs,

vs.

CITY OF SEASIDE and SEASIDE POLICE DEPARTMENT, CITY OF DEL REY OAKS AND DEL REY OAKS POLICE DEPARTMENT, MONTEREY PENINSULA AIRPORT DISTRICT AND MONTEREY PENINSULA AIRPORT POLICE DEPARTMENT, CITY OF MONTEREY AND MONTEREY POLICE DEPARTMENT, COUNTY OF MONTEREY AND MONTEREY COUNTY SHERIFF'S DEPARTMENT, DEL REY OAKS POLICE CHIEF RON LANGFORD, MONTEREY POLICE CHIEF CARLO CUDIO, MONTEREY SHERIFF MIKE KANALAKIS AND SEASIDE POLICE CHIEF ANTHONY SELLECITO, SEASIDE POLICE OFFICERS MATTHEW DOZA, NICK BORGES, AND CHARLTON, DEL REY OAKS POLICE OFFICER RUSSELL VANZANTEN, AIRPORT POLICE DEPARTMENT OFFICER JEFF POWELL, MONTEREY POLICE OFFICER KATIE REYES, MONTEREY COUNTY SHERIFF'S DEPUTIES JOE PALAZZOLO AND IRONS, TASER INTERNATIONAL, INC., and DOES 1 TO 10,

Defendants.

**STIPULATION OF THE PARTIES TO A CONTINUANCE OF THE TRIAL DATE AND RELATED MODIFICATION OF THE COURT'S SCHEDULING ORDER; ~~PROPOSED~~ ORDER**

**TO THE HONORABLE COURT:**

IT IS HEREBY STIPULATED by and between the parties to the above entitled action, by and through their respective attorneys of record, and pursuant to United States District Court, Northern District of California Local Rules 7-12 and 40-1, as follows:

1. The Court, in its scheduling order of April 3, 2009, set the following dates and deadlines that are relevant to this Stipulation:

Expert Designation and Reports due: June 12, 2009;

Expert Counter-Designation deadline: June 22, 2009;

Expert Discovery Cut-Off date: July 17, 2009;

Dispositive Motion Filing Cut-Off date: August 17, 2009;

1 Dispositive Motion Hearing Cut-Off date: September 4, 2009;

2 Pre-Trial Conference date: September 8, 2009;

3 Trial date: September 11, 2009.

4 **GOOD CAUSE STATEMENT.**

5 2. As the Court is aware, plaintiffs assert products liability claims against  
6 defendant TASER International, Inc. (“TASER”) regarding decedent. Expert  
7 opinion regarding substantial factor causation of death is therefore a critical  
8 component of this case.

9 3. Due to a number of circumstances, including the unavailability and/or  
10 scheduling conflicts of various experts whose expertise in the issues relevant to this  
11 case is unique, several expert depositions that are important to this case can not be  
12 completed before the Expert Discovery Cut-Off (“EDCO”) date of July 17, 2009.

13 4. Specifically, the complete scope of both parties’ expert designations was  
14 not known or knowable until after the Expert Counter-Designation deadline of June  
15 22, 2009.

16 5. Thereafter, beginning on or about June 25, 2009, and continuing to the  
17 date of this Stipulation, counsel for the parties have met and conferred about the  
18 availability of each party’s experts for deposition.

19 6. As a result of those conferences of counsel, the following expert  
20 depositions have been scheduled in this case:

- 21 a. Plaintiffs’ deposition of defense expert Raymond Fish, Ph.D., M.D.,  
22 FACEP, has been set for July 9, 2009 – Dr. Fish’s testimony is expected  
23 to go to the central issue of medical cause of death, particularly as it  
24 regards various studies involving electronic control devices (“ECD”);
- 25 b. Plaintiffs’ deposition of defense expert Gary Vilke, M.D., FACEP,  
26 FAAEM, has been set for July 13, 2009 – Dr. Vilke’s testimony is  
27 expected to go to the issues of the effects of ECD on human cardio-  
28 physiology;

- 1 c. Plaintiffs' deposition of defense expert Charles Welti, M.D., has been  
2 set for July 15, 2009 – Dr. Welti's testimony is expected to go to the  
3 central issue of medical cause of death, particularly as it regards excited  
4 delirium;
- 5 d. Defendant's deposition of plaintiffs' expert Wm. F. Kitzes, J.D., has  
6 been set for July 20, 2009 – Mr. Kitzes' testimony is expected to go to  
7 the issue of ECD safety, training, and product warnings;
- 8 e. Plaintiffs' deposition of defense expert Steven B. Karch, M.D., FFFLM,  
9 has been set for July 27, 2009 – Dr. Karch's testimony is expected to go  
10 to the central issue of medical cause of death, particularly as it regards  
11 decedent's pathology and methamphetamine use;
- 12 f. Plaintiffs' deposition of defense expert Jeffrey Ho, M.D., has not yet  
13 been set, though he has indicated that he is available for deposition  
14 during July 29, 2009 – Dr. Ho's testimony is expected to go to the  
15 central issue of the medical effects of electrical output from an ECD on  
16 humans;
- 17 g. Defendant's deposition of plaintiffs' expert Nathan Lavid, M.D., has  
18 been set for August 11, 2009 – Dr. Lavid's testimony is expected to go  
19 to the issue of the effects of methamphetamine addiction on decedent  
20 prior to death;
- 21 h. Plaintiffs' deposition of defense expert Richard Guilbault has been set  
22 for August 13, 2009 – Mr. Smith is expected to testify on the issue of  
23 the design, testing, training offerings, and safety warnings provided by  
24 TASER, particularly as it regards the state-of-the-art;
- 25 i. Plaintiffs' deposition of defense expert Patrick "Rick" Smith, CEO of  
26 TASER, has been set for August 14, 2009 – Mr. Smith is expected to  
27 testify on the issue of the design, testing, training offerings, and safety  
28 warnings provided by TASER;

- 1 j. Defendant's deposition of plaintiffs' expert Donna Gallik, M.D., has  
2 been set for August 18, 2009 – Dr. Gallik's testimony is expected to go  
3 to the issue of medical cause of death, particularly as it relates to  
4 acidosis;
- 5 k. Defendant's deposition of plaintiffs' expert Robert Johnson, forensic  
6 economist, has been set for August 26, 2009 – Mr. Johnson's testimony  
7 is expected to go to the issue of plaintiffs' damages;
- 8 l. Defendant's deposition of plaintiffs' expert Barry Gustin, M.D., M.P.H.,  
9 has been set for August 25, 2009 – Dr. Gustin's testimony is expected to  
10 go to the issue of medical cause of death;
- 11 m. Additionally, plaintiffs have indicated their intent to depose the  
12 following defense experts for whom deposition dates have yet to be  
13 calendared: Deborah Mash, Ph.D., who is expected to testify on the  
14 issue of cause of death as it relates to excited delirium.

15 7. Each of the aforementioned experts has unique expertise for which there  
16 is no practicable substitute at this point in time.

17 8. During the conferences of counsel regarding the availability of each  
18 party's experts for deposition, several insurmountable scheduling conflicts arose that  
19 caused several of these expert depositions to be possible only *after* the current EDCO  
20 date, and – in at least three cases – even beyond the Dispositive Motion Filing Cut-  
21 Off (“MFCO”) date.

22 9. With expert depositions calendared for dates *after* the MFCO date, it  
23 will be impossible for expert discovery to be completed before dispositive motions –  
24 *e.g.*, motions for summary judgment/adjudication (“MSJs”) and *Daubert* motions –  
25 must be filed. Furthermore, under the present circumstances, expert discovery would  
26 be completed barely two weeks before trial on this matter is set to begin, making pre-  
27 trial motions and other pre-trial filings problematic at least and impossible at worst.

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**ORDER**

PURSUANT TO STIPULATION, IT IS SO ORDERED AS FOLLOWS:

The Expert Discovery Cut-Off date: is reset to August 31, 2009 (*discovery must be completed, not merely noticed or served, by this date*);

Dispositive Motion Filing Cut-Off date: is reset to September 25, 2009;

Dispositive Motion Hearing Cut-Off date: is reset to November 9, 2009;

Pre-Trial Conference date: is reset to November 30, 2009;

Trial date: December 4, 2009.

IT IS SO ORDERED.

DATED: 7/16, 2009

  
**UNITED STATES DISTRICT JUDGE**