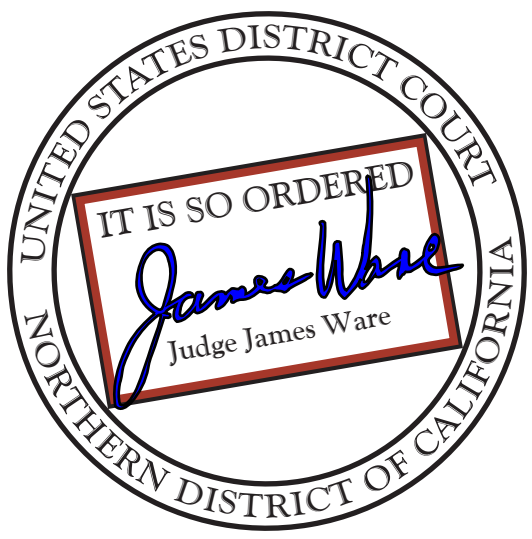


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11 Attorney for Defendant and Cross-Complainant  
 12 THE GARLAND COMPANY



13 IN THE UNITED STATES DISTRICT COURT  
 14 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 15  
 16 SAN JOSE DIVISION

17 JEREMY JAMES EHART, KRISTY EHART, )  
 18 and STEVEN RYAN McCLANAHAN, )  
 19 Plaintiffs, )

20 vs. )

21 GHILLIE SUITS.COM INC.; TODD )  
 22 MUIRHEAD; NEW YORK FIRE-SHIELD )  
 23 INCORPORATED; WACKENHUT )  
 24 SERVICES, INCORPORATED; THE )  
 25 WACKENHUT CORPORATION; and DOES )  
 26 1 through 50, inclusive, )  
 27 Defendants. )

27 AND RELATED CROSS-CLAIMS )

28 Come now, (1) Plaintiffs Jeremy James Ehart, Kristy Ehart, and Steven Ryan

Case No. 5:06 CV-6507-JW  
 STIPULATION AND [PROPOSED]  
 ORDER AMENDING SCHEDULING  
 ORDER  
 The Honorable James Ware

1 McClanahan; (2) Defendant Ghillie Suits.Com, Inc.; (3) Defendant Todd Muirhead; (4)  
2 Defendant New York Fire-Shield Incorporated; (5) Defendant Wackenhut Services,  
3 Incorporated; (6) Defendant The Garland Company; and, (7) Defendant Gary Crossland; and file  
4 this Stipulation requesting the Court to enter an Amended Scheduling Order in this case and as  
5 grounds therefor, would show the Court as follows:  
6

7 1. On March 4, 2008, an Order to Amend the Scheduling was entered in this case,  
8 which included the following:

9 <b>Deadline to Disclose Expert Witnesses and 10 serve resumes and reports</b> 11 <i>(63 days before the close of discovery)</i>	<b>October 13, 2008</b>
12 <b>Last Date for Hearing Dispositive Motions</b> 13 <i>(60 days before Preliminary Pretrial 14 Conference)</i>	<b>February 16, 2009 at 9 a.m.</b>
15 <b>Close of All Discovery</b>	<b>December 15, 2008</b>
16 <b>Preliminary Pretrial Conference at 11 a.m.</b>	<b>November 10, 2008</b>
17 <b>Preliminary Pretrial Conference Statements</b> 18 <i>(Due 10 days before conference)</i>	<b>October 31, 2008</b>

19  
20 **IT IS SO ORDERED This is the final Amendment of the Court's Scheduling Order.**  
21 **No further extension will be permitted.**

22 2. Subsequent to the date of the prior Scheduling Order dated March 4, 2008,  
23 Plaintiffs filed their First Amended Complaint (on or about March 5, 2008). Moreover, various  
24 Defendants filed Answers and Cross-Claims. Defendant and Cross-Complainant Gary Crossland  
25 ("Crossland") and Defendant and Cross-Complainant The Garland Company were thereafter  
26 served as DOE Defendants on or about March 12, 2008. Crossland is the President of the  
27 corporation known as The Garland Company. Crossland filed an Answer and Cross-Claim on or  
28

1 about May 5, 2008, by and through his counsel, Lori B. Feldman. The Garland Company filed  
2 an Answer and Cross-Claim on or about May 5, 2008, through its counsel, Shireen B. Rogers.

3  
4 3. Crossland's counsel and The Garland Company's counsel have only been in this  
5 case since May 2008, a period of some three (3) months. However, this action has been in  
6 progress for almost two (2) years – since on or about October 18, 2006. The issues of this case  
7 are complicated and are made more so by the production of thousands of pages of documents  
8 relating to the operation taking place at the time of the accident. Because the case involves two  
9 Marines who were engaged in a military exercise equipped with machine guns and wearing  
10 ghillie suits which had been treated with a fire retardant product, Plaintiffs' counsel has not only  
11 sued those allegedly involved in the manufacture, distribution, re-packaging, and application of  
12 the fire retardant product, but he has sued the supplier of the weapons used during the military  
13 operation and has stated causes of action against all Defendants for strict liability, failure to  
14 warn, and negligence relating both to the fire retardant product, and to the M-60 machine guns  
15 used during the military exercise, as well as the appropriateness of using the ghillie suits in  
16 conjunction with the M-60s.  
17

18  
19 4. Discovery has been in process during the pendency of this action and prior to  
20 Crossland's and The Garland Company's involvement in this action. Numerous depositions  
21 were taken in 2007, before Defendants Crossland and The Garland Company were served,  
22 including the principal of New York Fire-Shield, Inc., the principal of Ghillie Suits.com, the  
23 principal of Complete Seal, Kathleen Verdi, and Joe Anderson.  
24

25 5. Moreover, there is substantial further discovery being conducted presently and  
26 that remains to be completed. Two depositions in Albuquerque, New Mexico, took place on  
27 September 2 and 3, 2008, a deposition is set in Virginia on September 11, 2008, four depositions  
28

1 in Albuquerque are set from September 22-25, 2008, two depositions are set in Albuquerque on  
2 October 15 and 16, 2008, and three more depositions are set in Albuquerque on October 27, 28  
3 and 29, 2008. The deposition of Robert Little in Charlotte, NC, has been set, but was continued.  
4 The deposition of Captain Thomas Seiverts was taken in July 2008. Counsel for Crossland and  
5 counsel for The Garland Company have recently started appearing telephonically for some of  
6 these depositions, and transcripts will be ordered and have to be reviewed in those where they  
7 have been unable to appear, or which were conducted prior to counsels' involvement in this case.  
8

9           6.       In addition, thousands of pages of documents have been produced by the parties  
10 in this case, including, but not limited to, documents from the Department of Energy, numerous  
11 DVDs re M-60 Investigation, Joint Testing Exercise—Pacific Patriot Accident, Firearm Tests,  
12 SWRI Department of Fire Technology, documents from New York Fire-Shield, Inc., and  
13 documents from Wackenhut Services, Inc. Additional documents have probably been produced,  
14 of which counsel for Crossland and The Garland Company must still gather and review.  
15  
16

17           7.       Crossland's counsel and The Garland's counsel have spent the last several weeks  
18 gathering documents and consulting with their client in Texas in order to respond to 41 special  
19 interrogatories and 58 document requests. Moreover, because of the extensive discovery that has  
20 been propounded to Crossland and The Garland Company, and the numerous depositions that  
21 have been scheduled in this case, Crossland and The Garland Company have yet been unable to  
22 propound discovery to the other parties in this litigation. Furthermore, counsel for Crossland and  
23 The Garland Company are still investigating the chain of distribution of the product at issue.  
24 Counsel anticipate filing a motion for summary judgment in this action, but have not had  
25 sufficient time to gather the necessary evidence in support of such a motion.  
26  
27

28           8.       The new parties to this case, specifically Gary Crossland and The Garland

1 Company, are seeking the extensions, and Plaintiffs are not opposed to the request. In addition,  
2 Defendant Wackenhut Services, Incorporated recently identified the remaining ghillie suits and  
3 fire retardant spray, which were ordered for the Joint Testing Exercise (JTX). Plaintiffs have  
4 sent a Touhy request to the Department of Energy in order to obtain the physical evidence, and  
5 are awaiting its response. Additional time is required for the evidence to be received, examined  
6 and analyzed by the parties and their experts.  
7

8 9. In addition, some of the defendants are engaged in insurance coverage disputes  
9 relevant to this action. For example, New York Fire Shield, Inc. has a declaratory relief action  
10 pending in New York State regarding coverage for the defense and indemnity of this lawsuit,  
11 which has not yet resolved. A delay in the deadlines will allow more time for the insurance  
12 coverage disputes to resolve, which is in all parties' interests.  
13

14 10. This Stipulation is entered into pursuant to FRCP, Rule 16, which provides that a  
15 Scheduling Order may be amended for good cause and with the Court's permission. See also,  
16 *Victor Company of Japan, Ltd. v. Quanta Computer, Inc.*, Slip Copy, 2007 WL 806491  
17 (N.D.Cal. 2007), at \*1. Good cause has been shown. Further, the amendment of the Scheduling  
18 Order dated March 4, 2008, is not sought for the purpose of delay but so that justice may be  
19 served. All parties unanimously agree that a reasonable extension, at a minimum of six (6)  
20 months, is necessary for all parties to complete discovery, retain their experts, prepare their  
21 dispositive motions, and prepare for trial.  
22

23 11. Based on the foregoing, all parties jointly move the Court to extend the current  
24 deadlines set out in the Scheduling Order of March 4, 2008.  
25

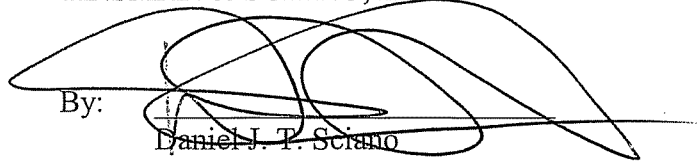
26 Respectfully submitted,

27 TINSMAN & SCIANO, INC.  
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Respectfully submitted,

TINSMAN & SCIANO, INC.

  
By: Daniel J. T. Sciano

Dated: 9/8/2008

And

NEEDHAM, DAVIS, KEPNER & YOUNG, LLP

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Craig Needham

Attorneys for Plaintiffs JEREMY JAMES EHART,  
KRISTY EHART and STEVEN RYAN  
McCLANAHAN

MANNING & MARDER, KASS, ELLROD,  
RAMIREZ LLP

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Mike Smith

Attorneys for Defendants WACKENHUT  
SERVICES, INCORPORATED

SELMAN-BREITMAN LLP

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Paul Stephan

Danielle K. Lewis

Attorneys for Defendants GHILLIE SUITS.COM,  
INC. and TODD MUIRHEAD

Dated: \_\_\_\_\_

MUSICK, PEELER & GARRETT LLP

By: \_\_\_\_\_

Shireen B. Rogers

Attorneys for Defendant THE GARLAND  
COMPANY

1 Respectfully submitted,

2 TINSMAN & SCIANO, INC.

3  
4 Dated: \_\_\_\_\_

5 By: \_\_\_\_\_  
6 Daniel J. T. Sciano

7 And

8 NEEDHAM, DAVIS, KEPNER & YOUNG, LLP

9 Dated: 9/8/08

10 By:  \_\_\_\_\_  
11 Craig Needham

12 Attorneys for Plaintiffs JEREMY JAMES EHART,  
13 KRISTY EHART and STEVEN RYAN  
14 McCLANAHAN

15 MANNING & MARDER, KASS, ELLROD,  
16 RAMIREZ LLP

17 Dated: \_\_\_\_\_

18 By: \_\_\_\_\_  
19 Mike Smith

20 Attorneys for Defendants WACKENHUT  
21 SERVICES, INCORPORATED

22 SELMAN-BREITMAN LLP

23 Dated: \_\_\_\_\_

24 By: \_\_\_\_\_  
25 Paul Stephan

26 Danielle K. Lewis  
27 Attorneys for Defendants GHILLIE SUITS.COM,  
28 INC. and TODD MUIRHEAD

MUSICK, PEELER & GARRETT LLP

By: \_\_\_\_\_  
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Attorneys for Defendant THE GARLAND  
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Dated: \_\_\_\_\_

By: \_\_\_\_\_  
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Attorneys for Plaintiffs JEREMY JAMES EHART,  
KRISTY EHART and STEVEN RYAN  
McCLANAHAN

MANNING & MARDER, KASS, ELLROD,  
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Dated: 7/8/08

By: \_\_\_\_\_  
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Dated: \_\_\_\_\_

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INC. and TODD MUIRHEAD  
ARCHER NORRIS

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Sharon C. Collier  
Attorneys for Defendant NEW YORK FIRE-  
SHIELD, INC.



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And  
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Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Craig Needham  
Attorneys for Plaintiffs JEREMY JAMES EHART,  
KRISTY EHART and STEVEN RYAN  
McCLANAHAN


MANNING & MARDER, KASS, ELLROD,  
RAMIREZ LLP

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Mike Smith  
Attorneys for Defendants WACKENHUT  
SERVICES, INCORPORATED

SELMAN-BREITMAN LLP

Dated: 9/5/08

By:   
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Danielle K. Lewis  
Attorneys for Defendants GHILLIE SUITS.COM,  
INC. and TODD MUIRHEAD

Dated: \_\_\_\_\_

MUSICK, PEELER & GARRETT LLP

By: \_\_\_\_\_  
Shireen B. Rogers  
Attorneys for Defendant THE GARLAND  
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And  
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Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Craig Needham  
Attorneys for Plaintiffs JEREMY JAMES EHART,  
KRISTY EHART and STEVEN RYAN  
McCLANAHAN

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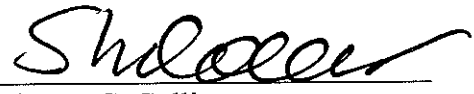
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SELMAN-BREITMAN LLP

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Paul Stephan  
Danielle K. Lewis  
Attorneys for Defendants GHILLIE SUITS.COM,  
INC. and TODD MUIRHEAD  
ARCHER NORRIS

Dated: 9/8/08

By:   
Sharon C. Collier  
Attorneys for Defendant NEW YORK FIRE-  
SHIELD, INC.

1 Respectfully submitted,  
2 TINSMAN & SCIANO, INC.

3  
4 Dated: \_\_\_\_\_

5 By: \_\_\_\_\_  
6 Daniel J. T. Sciano

7 And  
8 NEEDHAM, DAVIS, KEPNER & YOUNG, LLP

9 Dated: \_\_\_\_\_

10 By: \_\_\_\_\_  
11 Craig Needham  
12 Attorneys for Plaintiffs JEREMY JAMES EHART,  
13 KRISTY EHART and STEVEN RYAN  
14 McCLANAHAN

15 MANNING & MARDER, KASS, ELLROD,  
16 RAMIREZ LLP

17 Dated: \_\_\_\_\_

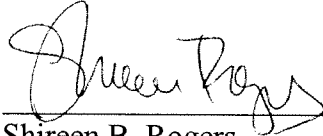
18 By: \_\_\_\_\_  
19 Mike Smith  
20 Attorneys for Defendants WACKENHUT  
21 SERVICES, INCORPORATED

22 SELMAN-BREITMAN LLP

23 Dated: \_\_\_\_\_

24 By: \_\_\_\_\_  
25 Paul Stephan  
26 Danielle K. Lewis  
27 Attorneys for Defendants GHILLIE SUITS.COM,  
28 INC. and TODD MUIRHEAD

Dated: \_\_\_\_\_

MUSICK, PEELER & GARRETT LLP  
By:   
Shireen B. Rogers  
Attorneys for Defendant THE GARLAND  
COMPANY

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Attorneys for Defendant THE GARLAND  
COMPANY

Dated: \_\_\_\_\_

LAW OFFICES OF LORI B. FELDMAN

/s/ *Lori B. Feldman*

By: \_\_\_\_\_

Lori B. Feldman

Attorneys for Defendant GARY CROSSLAND

1  
2 *James Ware*  
**PROPOSED ORDER**

3 For good cause shown, the Court GRANTS the parties' request for a modification to the March 4,  
4 2008 Scheduling Order as follows:

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<b>Deadline to Disclose Expert Witnesses and serve resumes and reports</b> <i>(63 days before the close of discovery)</i>	April 13, 2009
<b>Last Date for Hearing Dispositive Motions</b> <i>(60 days before Preliminary Pretrial Conference)</i>	August 17, 2009
<b>Close of All Discovery</b>	June 15, 2009
<b>Preliminary Pretrial Conference at 11 a.m.</b>	May 11, 2009
<b>Preliminary Pretrial Conference Statements</b> <i>(Due 10 days before conference)</i>	May 1, 2009

15 IT IS SO ORDERED. **In light of the age of the case, this is the parties' final continuance of**  
16 **the case schedule.**

17 Dated: September 24, 2008

*James Ware*  
\_\_\_\_\_  
THE HONORABLE JAMES WARE