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 11 DEPARTMENT, DEPUTY ENG,
 12 DEPUTY ANDERSON AND DEPUTY
 13 ROGERS

14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 (SAN JOSE)

12	NICK MASTERS,)	No. 08-02473 PVT
13	Plaintiff,)	STIPULATION AND REQUEST FOR ORDER MODIFYING CASE MANAGEMENT ORDER; DECLARATION OF DAVID M. ROLLO
14	v.)	
15	COUNTY OF SANTA CLARA, et al.,)	
16	Defendants.)	

17
 18 COME NOW THE PARTIES who have stipulated to the following request for an Order
 19 modifying the Case Management schedule and order as follows:

20	CURRENT SCHEDULE/ORDER	PROPOSED NEW SCHEDULE/ORDER
21	Expert Discovery Cutoff.....August 13, 2010	New Fact Discovery Cutoff Regarding Plaintiff's Damages
22	Final Pretrial Conference.....August 24, 2010	Claims ONLY.....December 17, 2010
23	Jury Trial.....September 20, 2010	Expert Discovery Cutoff.....February 18, 2011
24		Final Pretrial Conference.....March 8, 2011
25		Jury Trial.....March 28, 2011

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1 This Stipulation and proposed Order is accompanied by the Declaration of David M.
2 Rollo attached hereto.

3 **IT IS SO STIPULATED.**

4 Dated: July 20, 2010 By: /S/
5 B. ROBERT ALLARD, Esq.
6 Attorney for Plaintiff

7 I hereby attest that I have on file the holograph signature for the signature indicated by a
8 “conformed” signature (/S/) within this e-filed document.

9 Dated: July 20, 2010 Respectfully submitted,
10 MIGUEL MÁRQUEZ
11 County Counsel
12 By: /S/
13 DAVID M. ROLLO
14 Deputy County Counsel
Attorneys for Defendants

15 **ORDER**

16 The Court has considered the Stipulation to modify the case schedule and Case
17 Management Order. The Court makes the following Order pursuant to the Stipulation and
18 modifies the Case Management Order as follows:

- 19 Fact Discovery Cutoff-Regarding Plaintiff’s Damages ONLY..... December 17, 2010
- 20 Expert Discovery Cutoff. February 18, 2011
- 21 Final Pretrial Conference..... March 8, 2011
- 22 Jury Trial. March 28, 2011

23 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

24
25 Date: July 21, 2010 
26 MAGISTRATE PATRICIA V. TRUMBULL
27 United States District Court Judge
28

1 DECLARATION OF DAVID M. ROLLO IN SUPPORT OF
2 STIPULATION AND REQUEST FOR ORDER

3 I, David M. Rollo, declare as follows;

4 1. I am employed as a Deputy County Counsel for the County of Santa Clara and am
5 duly licensed to practice law before this Court and all California courts. I am attorney of record
6 for the defendants herein.

7 2. This request for an order modifying the case schedule and Case Management Order
8 is jointly made pursuant to stipulation and is the result of counsel for both parties having met
9 and conferred regarding the existing case schedule, unanticipated discovery issues, and
10 calendaring conflicts with other matters set for trial.

11 3. The defendants appeared in this matter by way of their answer on June 20, 2008.
12 The original Case Management Order set a fact discovery cutoff date of May 15, 2009 and an
13 expert discovery cutoff date of July 24, 2009. The initial trial date was set for December 7,
14 2009. In the first quarter of 2009, counsel for defendants was tied up with a case set for trial
15 in the Colorado District Court in April, and thereafter encountered some health problems that
16 resulted in several inpatient procedures and treatment. These issues impacted the completion of
17 discovery and the Court granted a request to move the fact and expert discovery cutoff dates on
18 May 18, 2009. In the meantime, the parties completed an ENE on May 5, 2009.

19 4. Following the ENE, it became apparent that plaintiff's medical condition and
20 damages claims had changed significantly from what had been discovered and disclosed up to
21 that time. At the same time, defense counsel's availability continued to be impacted by some
22 ongoing health issues, and the concurrent fact discovery cutoff date in another Northern
23 District matter *Watson v. County of Santa Clara* (N.D. Cal. No. C06-4029 RMW). Counsel
24 for defendants herein is the lead trial counsel for the County in the *Watson* case which at that
25 time was the subject of a one hundred page complaint and had involved over 50 depositions.
26 Counsel for plaintiff had multiple trials set in the months following the ENE and likewise
27 had limited availability. In light of these considerations, the Court granted a request to modify
28 the Case Management Order and moved the fact discovery cutoff date to October 2, 2009 and

1 the expert discovery cutoff date to November 20, 2009. A new trial date of March 29, 2010
2 was also set by the Court.

3 5. Plaintiff underwent a defense medical exam in September, 2009 and the fact
4 discovery cutoff date of October 2, 2009 passed with the exception that plaintiff's deposition
5 was completed by stipulation on December 2, 2009. No further disclosures regarding any
6 further surgeries or treatment on the part of the plaintiff were made until recently as part of
7 the meet and confer process before trial. In December 2009, I was advised by my cardiologist
8 that a surgical procedure for my ongoing heart arrhythmia condition was recommended, and this
9 procedure was scheduled for and took place in February, 2010. This resulted in my becoming
10 unavailable for most of March and April, 2010. Also, the *Watson* case was set for trial on May
11 10, 2010 and was expected to take up to three months for trial. Plaintiff's counsel had
12 scheduling conflicts for most of June and July 2010. The parties requested a further
13 modification of the Case Management Order in light of these facts which the Court granted on
14 December 31, 2010. The expert discovery cutoff date was moved to July 16, 2010, and the
15 current Pretrial conference date of August 24 and trial date of September 20, 2010 was set.

16 6. On May 20, 2010 Judge Whyte issued an Order on multiple motions for summary
17 judgment in the *Watson* case which had been heard in December, 2009 and subsequently issued
18 a Case Management Order setting the remainder of that case for trial on November 1, 2010.
19 Pursuant to the scheduling order in that case, experts are to be disclosed on August 6,
20 with expert discovery closing on September 17. The last day to meet and confer and
21 lodge/file all pretrial motions/documents is September 29. This schedule directly conflicts with
22 the current trial date of September 20 in the *Masters* case and I am trial counsel for both cases
23 for the County.

24 7. Counsel for both parties in *Masters* began the meet and confer process regarding
25 pretrial preparation. I was advised by Mr. Allard that he had trial and discovery conflicts
26 impacting his availability in this case in September. More importantly, I was informed that Mr.
27 Masters had undergone surgery following the close of discovery in October, 2009 and the
28 completion of his deposition in December, and that his current condition is dramatically

1 different than that testified to at his second day of deposition in December, 2009. Mr. Masters
2 continues to have residual medical complications and unexpected treatments that have not been
3 subject to discovery by defendants or evaluation by defendants experts. I am informed that
4 plaintiff's damages claims are considerably different than what has been presented in discovery,
5 so different in fact that I believe that an Order re-opening fact discovery for the limited purpose
6 of investigating those claims is necessary in order for defendants to fairly evaluate and defend
7 this case. Counsel for plaintiff has agreed to re-opening discovery for this limited purpose.

8 8. In light of the changed circumstances, and the fact that the earlier ENE essentially
9 dealt with a different case, the parties have agreed to pursue mediation in the interim period
10 between now and the dates set forth for the pretrial conference and trial in this stipulation and
11 proposed Order. The parties are meeting and conferring regarding the selection of a mediator
12 and the scheduling of a mediation in the fall.

13 I declare under penalty of perjury that the foregoing is true and correct and would so
14 testify. I executed this Declaration on July 20, 2010 at San Jose, California.

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16 /S/

DAVID M. ROLLO

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