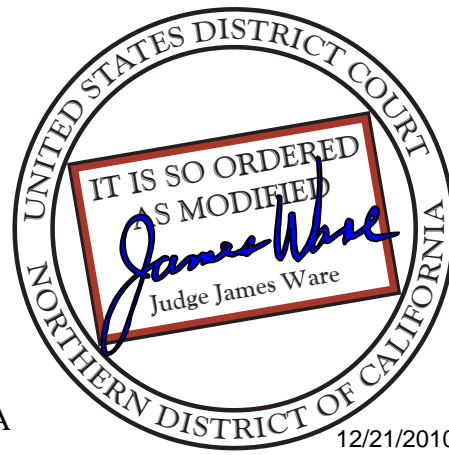


1 Gregory M. Fox, State Bar No. 070876
 2 Arlene C. Helfrich, State Bar No. 096461
 3 BERTRAND, FOX & ELLIOT
 4 The Waterfront Building
 2749 Hyde Street
 5 San Francisco, California 94109
 Telephone: (415) 353-0999
 Facsimile: (415) 353-0990

6 Attorneys for Defendants CITY OF SUNNYVALE, DEVON KLEIN,
 7 CARL RUSHMEYER and KELLY FITZGERALD



8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

10
 11 BRUCE MILLAR, PATRICIA MILLAR, and)
 DAVID MILLAR,)
 12)
 Plaintiffs,)
 13 vs.)
 14 CITY OF SUNNYVALE, DEVON KLEIN,)
 CARL RUSHMEYER, KELLY FITZGERALD,)
 15 and DOES 1 to 20,)
 16 Defendants.)

Case No.: CV10-0827 JW

**STIPULATION AND [PROPOSED] ORDER
 TO VACATE DISCOVERY SCHEDULE,
 CONTINUE HEARING DATE OF
 DEFENDANTS' MOTION TO DISMISS
 AND REQUEST FOR CMC DATE
 FOLLOWING RULING ON MOTION TO
 DISMISS**

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 18
 19
 20 The parties, through undersigned counsel, stipulate as follows, and request that the Court
 21 enter its Order implementing this stipulation.

- 22 1. The Court's June 3, 2010 Scheduling Order sets the Close of All Discovery as March 7, 2011.
 23 The Order requires disclosure of experts 63 days before close of discovery, or, on January 3,
 24 2011.
 25 2. The Court granted defendants' motion to dismiss with leave to amend on June 22, 2010, and,
 26 pursuant to stipulation, plaintiffs had until September 30, 2010 to file amend their complaint, and
 27 defendants had twenty days thereafter to file their response.
 28 3. Plaintiffs filed their First Amended Complaint on September 30, 2010. Defendants filed

1 their second Motion to Dismiss in response, scheduling the hearing date for the earliest available
2 date at that time, which was February 14, 2011. Thus, this second Motion to Dismiss is still
3 pending.

4 4. At this point there is no operative complaint, which compromises the parties' ability to
5 pursue focused discovery or retain appropriate expert assistance. The parties believe that setting
6 the discovery schedule prior to the confirmation of an operative complaint is premature and
7 therefore stipulate that the current dates set for expert disclosure and close of all discovery as set
8 forth in the June 3, 2010 Scheduling Order be vacated.

9 5. Plaintiffs have requested that the defendants' Motion to Dismiss be continued to the next
10 available date in April, 2011, and defendants have no objection to this request. Plaintiffs have
11 requested that further efforts at mediation be pursued and Defendants have not yet had a chance
12 to respond to said request due to their lead counsel's heavy trial schedule and other matters.

13 6. The parties request that a Case Management Conference be scheduled to follow the date
14 which the Court sets as the date for defendants' Answer, if and when the Court so orders, at
15 which time, the discovery schedule can be reconsidered.

16
17 Dated: December 16, 2010

LAW OFFICES OF NICHOLAS DAMER

18
19 By: _____ /s/
20 Nicholas Damer
21 Attorney for Plaintiffs

22 Dated: December 16, 2010

BERTRAND, FOX & ELLIOT

23
24 By: _____ /s/
25 Gregory M. Fox
26 Arlene C. Helfrich
27 Attorney for Defendants
28 CITY OF SUNNYVALE, DEVON KLEIN,
CAROL RUSHMEYER and KELLY
FITZGERALD

