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 9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 11 SAN JOSE DIVISION

13 **DANIEL AGER, Individually and as**
Successor in Interest to the Estate of Alan
 14 **Ager, KATHRYN AGER and ELIZABETH**
AGER,

15 Plaintiffs,

16 v.

17
 18 **ANTHONY HEDGPETH, et al.,**

19 Defendants.

C 11-6642 EJD

**STIPULATION AND [PROPOSED]
 ORDER MODIFYING BRIEFING
 SCHEDULE AND HEARING ON
 DEFENDANTS' MOTION TO DISMISS
 AND TO CONTINUE INITIAL CASE
 MANAGEMENT CONFERENCE**

Judge: The Honorable Edward J. Davila
 Action Filed: December 23, 2011

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 21 Pursuant to Local Rules 6-2(a) and 7-12 of the Northern District's Civil Local Rules,
 22 Plaintiffs Daniel Ager, individually and as successor in interest to the Estate of Alan Ager,
 23 Kathryn Ager, and Elizabeth Ager (Plaintiffs) and Defendants Hedgpeth, Hedrick, and Spencer
 24 (Defendants), through their attorneys, respectfully stipulate, subject to the Court's consideration
 25 and approval, as follows:

26 1. On April 11, 2012, Defendants filed a motion to dismiss Plaintiffs' complaint under
 27 Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. (Docket Nos. 17-19.) The
 28 motion is noticed to be heard at 9:00 a.m. on September 14, 2012. (Docket No. 17.)

1 2. In connection with Defendants' motion, and in accordance with Local Rule 7-3, the
2 Notice of Electronic Filing generated automatically by the Court's ECF system provides that
3 Plaintiffs' opposition to the motion is due April 25, 2012 and that Defendants' reply brief is due
4 May 2, 2012. (*Id.*)

5 3. An initial case management conference is scheduled to take place in this matter at
6 10:00 a.m. on June 8, 2012. (Docket No. 15.)

7 4. On April 11, 2012, counsel for Plaintiffs and Defendants met and conferred regarding
8 a proposed extension to the current briefing schedule and to advance the hearing on Defendants'
9 motion to dismiss. Counsel identified the following issues to support a modification to the
10 current schedule. *First*, Plaintiffs' counsel begins a two-week trial on April 16, 2012 that will
11 prevent him from opposing Defendants' motion to dismiss by the current April 25 deadline.
12 *Second*, counsel agree that, given the threshold nature of the issues raised by Defendants' motion,
13 the litigation of this matter would benefit substantially from a hearing and ruling on Defendants'
14 motion well in advance of the currently noticed September 14 hearing date.

15 5. To address these issues, counsel agreed and propose to modify the briefing and
16 hearing schedule on Defendants' motion as follows:

- 17 Plaintiffs' opposition due: May 18, 2012
- 18 Defendants' reply due: June 1, 2012
- 19 Hearing on Defendants' motion: June 15, 2012 at 10:00 a.m.

20 6. Moreover, to preserve the resources of the Court and the parties, counsel agreed and
21 propose that the initial case management conference be continued one week from June 8, 2012 to
22 June 15, 2012 at 10:00 a.m., which would coordinate the conference with the proposed modified
23 hearing date on Defendants' motion to dismiss.

24 7. This agreed-upon extension of the briefing schedule and modification to the hearing
25 date on Defendants' motion, as well as the date of the initial case management conference, is not
26 submitted for purpose of delay. It instead attempts to provide a reasonable accommodation of the
27 deadlines impacted by Plaintiffs' counsel's trial schedule as well as to focus any further litigation
28 of this matter, in light of the issues raised by Defendants' motion to dismiss. For example, the

1 motion challenges whether Plaintiffs have standing to pursue certain claims on behalf of their
2 deceased father and separately challenges whether Plaintiffs have pleaded sufficient facts to state
3 various claims for relief.


4 8. The proposed changes to the current schedule further promote judicial efficiency and
5 economy as it will provide both parties with a more complete and fair opportunity to establish a
6 record that sufficiently addresses the various issues raised by Defendants' motion. Moreover, the
7 proposed changes will coordinate the hearing on Defendants' motion with counsels' appearance
8 for the initial case management conference and thereby avoid multiple appearances. In this
9 connection, the parties agree that the proposed changes to the current schedule will not cause
10 prejudice to either party.

11 **IT IS SO STIPULATED.**

12 Dated: April 17, 2012

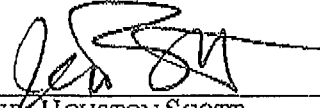
Respectfully Submitted,

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18 Dated: April 13, 2012

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[PROPOSED] ORDER

The court advances the hearing on Defendant's Motion to Dismiss (Docket Item No. 17) to **July 6, 2012, at 9:00 a.m.** The Case Management Conference is continued to **July 6, 2012, at 10:00 a.m.** The parties shall file a Joint Case Management Conference Statement on or before June 29, 2012. The briefing schedule is modified as stipulated.

IT IS SO ORDERED.

Dated: April 18, 2012



The Honorable Edward J. Davila
United States District Court Judge