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10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA  
 12 (San Jose Division)

13 JULIAN VASQUEZ-BERNABE,  
 14 Plaintiff,  
 15 vs.  
 16 COUNTY OF SANTA CLARA, et al.  
 17 Defendants.

Case No. 16-CV-03218-EJD (NC)

\*\*AMENDED\*\*

STIPULATION AND ~~PROPOSED~~ ORDER  
 TO MOFIDY TRIAL/DISCOVERY DATES,  
 AND/OR SET EXPEDITED CMC TO  
 ADDRESS RELATED ISSUES WITH THE  
 COURT

18 This matter was first set for trial (April 2017) and trial related discovery, pre-trial, and  
 19 other dates, by a Case Management Order issued September 30, 2016 (Dkt. 22). Subsequently,  
 20 the dates were reset pursuant to a Joint Trial Setting Conference Statement filed by the parties  
 21 on April 17, 2017 (Dkt. 38 – Order on same Pre-Trial Order Dkt. 46), to a trial date in March  
 22 2018; the related dates were modified as well. The parties come now and stipulate to modify  
 23 the trial and discovery related dates one last time, and/or, request an expedited Case  
 24 Management Conference to address these issues with the Court if the recitals in this Stipulation  
 25 do not suffice to obtain the Court’s signature on the Proposed Order.  
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27 The parties are cognizant of the Court’s statement in the Pre-Trial Order that it would be  
 28 a “final” case schedule, but approach the Court now relying on the additional comment that the

1 schedule could be amended with a “presentation of good cause necessitating such an  
2 amendment.” The parties believe such good cause exists and submit the following in support  
3 of that position.

4 **REASONS FOR REQUEST**

5 First, the Court is asked to understand that until the recent mini-explosion of litigation  
6 emanating from events and circumstances in the local Santa Clara County Main Jail that  
7 commenced with the death of inmate Michael Tyree on August 28, 2015, there was not a  
8 significant amount of litigation regarding excessive force claims in the local jails. Plaintiff’s  
9 counsel certainly acknowledges that they did not (and likely to some significant degree still do  
10 not) have great familiarity with the countless documents and the numerous acronyms for  
11 documents, for procedures, for floor assignments, for internal jail administration. Much has  
12 been learned in this process. Suffice it to say, the operations of a jail engender a lexicon all its  
13 own, and only known well by correctional officers and inmates, not by attorneys, defense or  
14 plaintiff.

15 While County Counsel as an *office* has dealt with these cases in the past, they too are  
16 simply not wholly familiar with this lexicon, or the processes in the jail, and documentation  
17 policies/record keeping/storage, and this has led to a number of times where Plaintiff knowing  
18 exactly what to even ask for in a Request for Production of Documents, AND/OR County  
19 Counsel knowing what would fulfill such requests, has been problematic. All Counsel are  
20 sparing the details of how this led to a couple of instances of talking past each other, but it has  
21 been a practical problem at times. On the bright side, all are now very well versed on these  
22 topics and words.

23 The case, as the Court is aware from the complaint, has *Monell* claims which Plaintiff  
24 feels are extremely important and legitimate, both to the case, and to the goals and purposes of  
25 42 U.S.C. § 1983 litigation; remedying problems of a constitutional violation level magnitude.  
26 The pursuit of these *Monell* claims has indeed made for a much larger discovery process, for as  
27 the Court is no doubt aware, proof of *Monell* claims can be difficult and require the collection  
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1 of large amounts of data and documentation to convince either judge, jury, or both, of their  
2 validity and constitutional deficiency. Indeed, the discussion regarding “grievance forms” to  
3 follow shortly is related in significant part to the *Monell* claims.

4 In this case there has already been a significant discovery dispute about “classification  
5 codes,” that has been resolved for the time being by Judge Nathanael Cousins. There also  
6 exists contemporaneously, a discovery dispute related to a deposition witness who was given  
7 instructions not to answer, that has not yet been fully presented to Judge Cousins due to  
8 waiting on a transcript of that deposition (Captain Hoyt). Disputes are of course a normal part  
9 of litigation, but the parties do want the Court to know that counsel for Plaintiff and  
10 Defendants have spent several hours meeting and conferring on discovery, particularly paper  
11 discovery, to get past the issues of nomenclature, and to provide good faith compliance with  
12 discovery requests. There may be some arguments on either side about the issues of good  
13 faith, but the parties do not deem them relevant or necessary to the request made of this Court  
14 at this time to extend the trial and reset the associated discovery dates.

15 The parties’ Counsel are working together, and in fact, there exists an outstanding  
16 demand for settlement and the parties are attending a settlement conference on October 10,  
17 2017, with Magistrate Judge Maria-Elena James. (Dkt. 47) In the spirit of cooperation,  
18 agreements have been made to allow the limited retaking of a couple of depositions if the  
19 matter does not settle at that time or prior, which retaking was precipitated by the delayed  
20 production of documents for the previously stated reason that Counsel (specifically County  
21 Counsel and Plaintiff’s counsel) literally had conversations in which both thought they were  
22 talking about the same thing, only to find out upon production of documents, they were not!  
23 This is offered only to assuage the Court that no one is sitting on their hands and not trying to  
24 resolve issues.

25 Currently, as a result of the good faith meeting and conferring, there is an outstanding  
26 production of jail “grievance forms” which is the form inmates use to submit complaints in  
27 writing, including potentially their claims of abuse by correctional officers, denial of their  
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1 medical needs, or any other manner and sort of issues about which an inmate may have a  
2 grievance. The request is for all from 2013 forward, and this is the issue that has manifested.

3 County Counsel has already requested the jail provide all of their grievances for the time  
4 period. The jail has just this very week provided approximately 17,000 such grievance forms,  
5 though so far only 7,000 have made it to the desk of County Counsel, who now rightfully  
6 wishes to review them before sending them on to counsel for Plaintiff.

7 The very practical problem for the County, and thus for Plaintiff, is that the grievance  
8 forms are not automated / electronic in any fashion of the words. They are the historically  
9 coined “carbon copies,” where there are three pages that are to reflect by pressure what was  
10 written on the top page in triplicate. They are not kept in computers, they are not typed, they  
11 are not scanned, and it is yet to be seen what form they will be in once they arrive for the  
12 review that must be done of them before any cogent information or possible patterns, practices,  
13 etc, can be extracted from them. Additionally, once Plaintiff is able to review the grievance  
14 forms, it is guaranteed that there will be further investigation, not the least of which includes  
15 tracking down current and former detainees who made the allegations.

16 The next paragraph is entirely Plaintiff’s statements alone regarding good cause.  
17 Another significant issue that has developed is that Plaintiff learned from other sources of  
18 numerous text messaging that went on in the case of the guards involved in the death of inmate  
19 Michael Tyree. These text strings were obtained by search warrants granted in the criminal  
20 matter, but County Counsel has informed Plaintiff’s counsel the full body of text messages  
21 received pursuant to the warrant remain under seal in the State Court proceeding. However,  
22 Plaintiff is informed and believes the Defendant County is in possession of the full production  
23 of text messages pursuant to the warrant, as the County’s Sheriff’s Dept. was the law  
24 enforcement agency that obtained and executed the Warrant. County Counsel has recently  
25 provided Plaintiff’s counsel with the identifying search warrant numbers and Plaintiff now  
26 needs to undertake further discovery – which will almost certainly involve law and motion  
27 discovery litigation – in order to obtain these messages. Plaintiff’s counsel is informed and  
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1 believe from other sources that there are a huge number of texts not yet publicly “available,”  
2 between one of the defendants in the Tyree case (Matthew Farris) and numerous other  
3 correctional officers in which issues of excessive force are discussed, separate and apart from  
4 what was introduced in the Tyree trial. The scope and extent of the text messages Plaintiff has  
5 not yet seen, could readily lead to the discovery of admissible evidence on the issues of  
6 “custom and practice” for Plaintiff’s *Monell* claims, and could actually include texts with  
7 named Defendants in this very case. This is another reason for the desire to allow for more  
8 time and further discovery in this matter.

9 **CONCLUSION / REQUESTED ORDERS**

10 For all of the foregoing reasons, the parties are collectively requesting, through Counsel,  
11 to move the trial in this matter to an October 2018 trial date from its currently scheduled March  
12 20, 2018 start. Given that the Court starts trials on Tuesdays, the parties would ask that the  
13 matter of trial be continued to Tuesday, October 23<sup>rd</sup>, 2018, and all related  
14 disclosure/discovery/pre-trial dates be moved to reflect the same time frames vis-à-vis the trial  
15 date, as reflected in Docket 46 (Pre-Trial Order). However, for reasons relevant to one  
16 attorney’s planned vacation, the Pre-Trial Conference, the Final Pre-Trial Conference  
17 Statement, were moved up one week. A proposed schedule with a trial date of October 23<sup>rd</sup>,  
18 2018 is contained in the proposed order set forth below.

19 In the alternative, if the Court would like further information, or has questions of any or  
20 all Counsel, the parties’ Counsel would request the Court set an expedited Case Management  
21 Conference by phone or otherwise to discuss these issues.

22 **STIPULATION**

23 The parties hereto, by and through Counsel, do hereby stipulate to and jointly request  
24 modification of the trial date and associated dates as aforesaid and request the Court order  
25 same.

26 I hereby attest that I have on file all holographic signatures corresponding to any  
27 signatures indicated by a conformed signature /S/ within this e-filed document.  
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POWELL & ASSOCIATES

Dated: August 31, 2017

By:                   /s/                    
ROBERT R. POWELL  
Attorneys for Plaintiff  
JULIAN VASQUEZ-BERNABE

JAMES R. WILLIAMS  
County Counsel

Dated: August 31, 2017

By:                   /s/                    
MELISSA R. KINIYALOCTS  
Deputy County Counsel  
Attorneys for Defendants  
COUNTY OF SANTA CLARA and  
SERGEANT ANDREW AGUILAR

DAVIS & YOUNG

Dated: August 31, 2017

By:                   /s/                    
STEVEN B. DIPPELL  
Attorneys for Defendant  
CORRECTIONAL DEPUTY  
EDDIE BARRERA

McDOWALL COTTER, APC

Dated: August 31, 2017

By:                   /s/                    
DAVID S. ROSENBAUM  
Attorneys for Defendant  
CORRECTIONAL DEPUTY  
EMMANUEL THOMAS

~~PROPOSED~~ ORDER

- 1.) All currently scheduled trial, discovery, and pre-trial dates are hereby vacated.
- 2.) The trial date for this matter shall now be calendared for October 23<sup>rd</sup>, 2018, and all of the following dates shall apply, and all terms of the existing Pre-Trial Order (Dkt. 46) not otherwise modified by the change in these dates shall remain in full force and effect:

EVENT	NEW DATE
Fact Discovery Cutoff	March 2, 2018
Designation of Opening Experts with Reports	March 9, 2018
Designation of Rebuttal Experts with Reports	March 30, 2018
Expert Discovery Cutoff	April 6, 2018
Deadline for Filing Dispositive Motions	April 19, 2018
Hearing on Dispositive Motions	9:00 a.m. on June 7, 2018
Final Pretrial Conference	11:00 a.m. on September 27, 2018
Joint Final Pretrial Conference Statement, Motions <i>in Limine</i> , and Exchange of Exhibits	September 13, 2018
Voir Dire Questions, Proposed Jury Instructions, and Proposed Jury Verdict Forms	September 17, 2018
Jury Selection	9:00 a.m. on October 23, 2018
Jury Trial	October 23, 24, 26, 30, 31, and November 2, 2018
Jury Deliberations	October 31 and November 2, 2018

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

Dated: September 5, 2017



EDWARD J. DAVILA  
United States District Judge