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THE HONORABLE ROBERT J. BRYAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL OLSON, an unmarried man,

Plaintiff,

v.

CITY OF BAINBRIDGE ISLAND, a
Washington Municipal Corporation,

Defendant.

Case No. 3:08-cv-05513-RJB

**STIPULATED MOTION AND ORDER
TO CONTINUE TRIAL DATE,
AMEND CASE SCHEDULE AND
DISMISS INDIVIDUAL
DEFENDANTS AND CERTAIN
CLAIMS WITHOUT PREJUDICE
PURSUANT TO FRCP 41(a)**

STIPULATED MOTION

The parties jointly stipulate and move this Court for an order granting an approximate 90-day continuance of the trial date and related, unexpired case schedule deadlines, except as otherwise provide below for the limited purpose of identifying and deposing additional expert witnesses, if any. Pursuant to Federal Civil Rule 41(a), the parties further stipulate to the dismissal, without prejudice, of individual defendants Molly Johnson, Lynn Nordby, Tom Bonsell, Randy Witt, Melva Hill, and Josh Machen (collectively, "Individual Defendants") and for the dismissal without prejudice of Plaintiff's claims based on alleged violations of the First Amendment to the U.S. Constitution and for an unlawful "takings" of private property in violation of the U.S. Constitution. Such dismissal shall be without costs or fees to any party.

The 90-day continuance of the trial date and related case schedule deadlines is

1 necessary because Plaintiff only recently (August 31, 2009) retained the law firm of
2 Schwabe, Williamson & Wyatt to represent him in this case. Previously, Plaintiff was
3 represented by attorney Jane Ryan Koler, who withdrew on or about July 28, 2009. Plaintiff
4 has proceeded *pro se* since that time. On September 9, 2009, Schwabe, Williamson & Wyatt
5 appeared as counsel for Plaintiff. Plaintiff's new counsel received a courtesy copy of the
6 pleadings to-date from Defendants' counsel. After making repeated requests over the span of
7 weeks for files, records and other materials from Plaintiff's former counsel, Jane Koler, Ms.
8 Koler finally provided those other files, records, pleadings and materials from attorney Koler
9 on September 25, 2009. Plaintiff's counsel will not be able to review the recently-transferred
10 files before the expiration of one or more deadlines on the current case schedule.

11 The majority of written discovery and document production has already taken place,
12 and counsel for both parties does not anticipate the need for much additional discovery.
13 Consistent with their ethical duties, Plaintiff's new counsel needs the opportunity to review
14 the files, records, pleadings and materials before proceeding with this case beyond this
15 stipulation. Also, the parties have not yet engaged in mediation as required by Federal Civil
16 Rule 39.1. Continuing the trial and related, unexpired case schedule deadlines for 90 days
17 will allow Plaintiff's new counsel to adequately review and digest the issues involved in this
18 litigation as well as review the discovery and documents produced to date. It will also allow
19 the parties to timely conduct whatever additional discovery they deems necessary.

20 The parties thus propose the following revised case schedule:

21 **September 30, 2010 Disclosure of additional expert testimony by Plaintiff under FRCP**
22 **26(a)(2). Any report prepared by any additional expert witness**
23 **disclosed by Plaintiff shall be provided to Defendant on or before**
24 **October 14, 2010. Any rebuttal expert by Defendant shall be**
25 **identified by October 30, 2010, and any report prepared in**
26 **rebuttal shall be provided to Plaintiff by November 16, 2010.**
Depositions of additional experts shall be completed by November
30, 2010.

October 9, 2010 Deadline to FILE all motions related to discovery

- 1 **November 6, 2010** **Discovery of lay witnesses COMPLETED (additional expert**
2 **witness discovery shall be completed by the dates set forth above)**
- 3 **November 20, 2010** **Deadline to FILE all dispositive motions**
- 4 **January 11, 2010** **Deadline to HOLD settlement conference per CR 39.1(c)(2)**
- 5 **January 23, 2010** **Deadline to FILE letter of compliance as to CR 39.1**
- 6 **February 1, 2010** **Deadline to HOLD mediation per CR 39.1(c)(3)**
- 7 **February 1, 2010** **Deadline to FILE motions in limine (motions to be NOTED on the**
8 **motion calendar no later than the second Friday thereafter)**
- 9 **February 8, 2010** **Agreed pretrial order LODGED with the court**
- 10 **February 26, 2010** **Pretrial conference will be HELD at 8:30 a.m. (Counsel shall**
11 **report to Courtroom A)**
- 11 **February 26, 2010** **Trial briefs, proposed voir dire and jury instructions due**
- 12 **March 8, 2010*** **6-day jury trial set for 9:30 a.m.**

13 Dated this 29th day of September, 2009.

14 SCHWABE, WILLIAMSON & WYATT, P.C.

15 By: /s/ Aaron M. Laing
16 Aaron M. Laing, WSBA #34453
17 1420 Fifth Avenue, Suite 3010
18 Seattle, WA 98101
19 Telephone: (206) 622-1711
20 Facsimile: (206) 292-0460
21 Email: alaing@schwabe.com
22 *Attorneys for Plaintiff*

23 KEATING, BUCKLIN & MCCORMACK,
24 INC., P.S.

25 By: /s/ Michael C. Walter
26 Michael C. Walter, WSBA #15044
800 Fifth Avenue, Suite 4141
Seattle, WA 98104
Telephone: (206) 623-8861
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Email: mwalter@kbmlawyers.com
Attorneys for Defendant

26 **The stipulated date requested was not available.*

1 **ORDER**

2 Based upon the foregoing Stipulated Motion and being otherwise fully advised of the
3 premises, IT IS HEREBY ORDERED that:

- 4 1. The current trial date of November 30, 2009 is hereby stricken; the trial shall be
5 continued, and the new trial date shall be March 8, 2010;
- 6 2. the unexpired case schedule deadlines, except as provided above for additional
7 expert witness testimony, shall be amended and continued as set forth in the
8 foregoing Stipulated Motion;
- 9 3. pursuant to Federal Civil Rule 41(a), all claims against the Individual Defendants
10 Molly Johnson, Lynn Nordby, Tom Bonsell, Randy Witt, Melva Hill, and Josh
11 Machen, whether in their personal or official capacity, are hereby dismissed in
12 their entirety without prejudice and without costs or fees to any party; and
- 13 4. pursuant to Federal Civil Rule 41(a), Plaintiff's claims based on alleged violations
14 of the First Amendment to the U.S. Constitution and for an unlawful "taking" of
15 private property in violation of the U.S. Constitution are hereby dismissed in their
16 entirety without prejudice and without costs or fees to any party.

17 DATED this 30th day of September, 2009.

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21 ROBERT J. BRYAN
22 United States District Judge

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 29th day of October, 2009, I caused to be served the
3 foregoing *Stipulated Motion and Order to Continue Trial Date, Amend Case Schedule and*
4 *Dismiss Individual Defendants and Certain Claims Without Prejudice Pursuant to FRCP*
5 *41(a)* on the following parties via United States District Court – Western District of
6 Washington’s Electronic Case Filing System (“ECF”) at the following address:

7 Michael C. Walter, WSBA #15044
8 KEATING BUCKLIN &
9 McCORMACK, INC., P.C.
800 Fifth Avenue, Suite 4141
Seattle, WA 98104
Telephone: 206.623.8861
10 E-Mail: mwalter@kbmlawyers.com

11
12 by:

- 13 U.S. Postal Service, ordinary first class mail
- 14 U.S. Postal Service, certified or registered mail,
return receipt requested
- 15 hand delivery
- 16 facsimile
- electronic service
- other (specify) _____

17
18 /s/ Aaron M. Laing
19 Aaron M. Laing, WSBA #34453
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