

1 **Marc J. Victor, SBN 016064**
2 **Jody L. Broaddus, SN 020122**
3 ATTORNEYS FOR FREEDOM
4 3185 South Price Road
5 Chandler, Arizona 85248
6 Phone: (480) 755-7110
7 Fax: (480) 857-0150
8 Marc@AttorneyForFreedom.com
9 Jody@AttorneyForFreedom.com
10 *Attorneys for Plaintiffs*

11
12 **IN THE UNITED STATES DISTRICT COURT**
13
14 **IN AND FOR THE DISTRICT OF ARIZONA**

15 Johnny Wheatcroft and Anya Chapman, as
16 husband and wife, and on behalf of minors J.
17 W. and B. W.,

Case No.: 2:18-cv-02347-SMB

18 Plaintiffs,

**PLAINTIFF’S MOTION TO AMEND
THE CASE MANAGEMENT ORDER
(First Request)**

19 v.

20 City of Glendale, a municipal entity; Matt
21 Schneider, in his official and individual
22 capacities; Mark Lindsey, in his official and
23 individual capacities; and Michael Fernandez,
24 in his official and individual capacities;

25 Defendants.

26 Plaintiffs respectfully move this Court for an Order to amend the Scheduling Order [Doc. 24] to extend the deadline for Plaintiffs’ disclosure of expert witnesses and opinions from September 30, 2019 to December 30, 2019. Plaintiffs have been diligent in trying to engage in discovery in this matter and this request is not to delay prosecution of this matter. Plaintiffs have experienced on-going issues with deposing the Defendants and Defendant City of Glendale’s agents, which significantly impedes Plaintiffs’ experts from formulating complete opinions.¹ This

¹ Given the on-going issues concerning discovery, Plaintiffs informed Defendants of the necessity of setting a conference with the Court regarding discovery, but no response has been received to date.

1 is Plaintiffs’ first request to extend this deadline.

2 **A. General Case Background.**

3 This civil rights action involves extreme and excessive force employed by Defendants
4 Schneider, Lindsey, and Fernandez, which included, among other things, pulling down Plaintiff
5 Johnny Wheatcroft’s shorts to tase him in the testicles and perineum.

6 On July 26, 2017, Plaintiffs went to a motel in Glendale, Arizona, to reserve a room to
7 enjoy some family time together. Immediately after arriving at the motel and before exiting their
8 vehicle, Plaintiffs were accosted by Defendant City of Glendale police officers Schneider and
9 Lindsey. Defendant Schneider claimed the driver, a non-party, failed to use his turn signal.
10 However, videos confirm Defendant Schneider could not have seen any such violation, as he was
11 located on the opposite side of a building when the purported violation occurred.

12 Plaintiff Johnny Wheatcroft was a front seat passenger in the vehicle, he had committed no
13 crime, and there was no basis to suspect him of any illegal activity. Nonetheless, Defendant
14 Schneider began an unlawful attack against Plaintiff Johnny Wheatcroft because he questioned
15 Schneider’s request for his identification, as a mere passenger is not legally required to provide
16 identification in such situation.

17 Defendants unlawfully assaulted Plaintiff Johnny Wheatcroft by repeatedly tasing his
18 chest, back, and testicles while he was restrained. The body-worn camera footage confirms that
19 Plaintiff Johnny Wheatcroft was wrapped in his seatbelt and/or handcuffs while he was assaulted
20 by the officers. Defendant Schneider’s conduct was so egregious that he even pulled down
21 Plaintiff Wheatcroft’s shorts to directly tase his testicles and perineum while Plaintiff Wheatcroft
22 was handcuffed and prone on the ground. The horrifying events all transpired in front of Plaintiff
23 Johnny Wheatcroft’s wife and children, who were obviously terrified, screaming, and traumatized
24 by the officers’ atrocious conduct. To add insult to injury, Plaintiff Johnny Wheatcroft was
25 wrongfully arrested and charged with resisting arrest and aggravated assault. He spent months in
26

1 jail before those charges were dismissed due to the lack of any basis to support the charges.

2 **B. Basis for Plaintiff's Request to Extend the Deadline for Plaintiff's Expert Disclosures.**

3 Pursuant to the Case Management Report, Plaintiffs' expert disclosures are currently due
4 by September 30, 2019. In general, expert witnesses provide independent opinions based on,
5 among other things, their expertise, training, and review of evidence relating to the particular
6 situation. The deposition testimony will assist the experts in formulating opinions and the basis
7 for such opinions. Indeed, under Fed. R. Civ. P. 26(a)(2)(b), the written report of an expert must
8 contain:

- 9 (i) **a complete statement of all opinions the witness will express and the**
10 **basis and reasons for them;**
11 (ii) **the facts or data considered by the witness in forming them;**
12 (iii) any exhibits that will be used to summarize or support them;
13 (iv) the witness's qualifications, including a list of all publications authored in
14 the previous 10 years;
15 (v) a list of all other cases in which, during the previous 4 years, the witness
16 testified as an expert at trial or by deposition; and
17 (vi) a statement of the compensation to be paid for the study and testimony in the
18 case.

19 As demonstrated below, since February of 2019, Plaintiffs have been attempting to depose
20 Defendants Schneider, Lindsey, and Fernandez, as well as several of Defendant Glendale's agents
21 who Plaintiffs believe have relevant information relating to the claims asserted in this lawsuit.
22 However, to date and despite diligent efforts, Plaintiffs have only been allowed to depose
23 Defendants Lindsey and Fernandez. Defendant Schneider was one of the primary actors involved
24 in the events at issue in this lawsuit, and Plaintiffs believe his testimony will assist their expert
25 witnesses in formulating their opinions in this matter. In addition, Plaintiffs believe the
26 depositions of the other officers and agents of Defendant City of Glendale will also assist the
experts in formulating their opinions as to the claims against the City of Glendale with regard to
municipality liability.

After the depositions are taken, the court reporter will need to transcribe them before we
are able to provide copies to the expert witnesses for their review and analysis. In general, it takes

1 two to four weeks to receive transcripts from a court reporter. Given the depositions will not
2 occur before September due to opposing counsel's unavailability, Plaintiffs respectfully request
3 the deadline for Plaintiffs' disclosure of experts and their opinions be continued to December 30,
4 2019, which will provide time to take the depositions, obtain copies of the transcripts to provide
5 to the experts, and provide time for the experts to formulate their opinions and generate their
6 reports.

7 **C. Background Regarding Plaintiffs' Attempts to Schedule Depositions.**

8 Beginning February 25, 2019, Plaintiff began requesting available dates to depose
9 Defendants Schneider ("Schneider", Lindsey ("Lindsey"), and Fernandez ("Fernandez"), as well
10 as Sgt. Don LaBrant ("LaBrant"), who is Defendant Schneider's supervisor at Defendant City of
11 Glendale. *See* Exhibit A, email dated February 25, 2019. After no response was received,
12 Plaintiffs issued Notices of Deposition for Defendants Schneider, Lindsey, and Fernandez setting
13 the depositions for April 12, 15, and 18, respectively. *See* Exhibit B, email dated March 8, 2019,
14 along with the attached Notices of Deposition. Thereafter, defense counsel's office advised he
15 was not available on those dates but would provide dates by March 11, 2019. *See* Exhibit C, email
16 dated March 8, 2019.

17 On March 14, April 1, May 8, and May 9, Plaintiffs again requested dates for depositions.
18 *See* Exhibits D, E, and F, emails dated March 14, April 1, and May 8, and Exhibit G, letter dated
19 May 9, 2019. By May 16, 2019, no available deposition dates were provided, and Plaintiffs issued
20 Notices of Depositions of Schneider, Fernandez, Lindsey, and LaBrant, which were to take place
21 on June 5, June 14, June 20, and June 26. *See* Exhibit H, email dated May 16, 2019, along with
22 attachments thereto.

23 Later that day on May 16, 2019, Defendants requested the dates be amended to June 5 for
24 Lindsey, June 17 for Schneider, and June 18, for Fernandez, and Defendants also were going to
25 obtain an available date for LaBrant. *See* Exhibit I, email dated May 16, 2019. On May 23, 2019,
26

1 Plaintiffs again requested deposition dates for LaBrant and also Sgt. Moody, who is another
2 Glendale employee. *See* Exhibit J, email dated May 23, 2019.

3 Pursuant to Defendants' request, the dates for the depositions of Schneider, Lindsey, and
4 Fernandez were rescheduled again before Plaintiffs took the depositions of Fernandez and
5 Lindsey, which took place on June 3 and June 5. However, Defendants cancelled Schneider's
6 deposition just two days before the deposition that was to take place on June 20 and Defendants
7 relayed to Plaintiffs they would provide a new date for his deposition.

8 On July 10, 2019, Plaintiffs followed up to obtain a date for Schneider's deposition, as well
9 as dates for Sgt. Moody, Officer Lacey Tolbert, Lt. Earl Montgomery, Asst. Police Chief Chris
10 Briggs, Asst. Police Chief, Rich LeVander, Police Commissioner Brandon Blanco, and Police
11 Chief Rick St. John. *See* Exhibit K, email dated July 10, 2019. In response, defense counsel's
12 office sent an email stating defense counsel was not available for depositions until September. *See*
13 Exhibit L, email dated July 12, 2019.

14 On July 12, 2019, Plaintiffs again followed up regarding deposition dates and pointed out
15 the issues with trying to schedule depositions since February of 2019, as well as pointing out the
16 necessity of setting a conference with the Court regarding the issues regarding discovery. *See*
17 Exhibit M, email dated July 12, 2019. After no response was provided, and given defense
18 counsel's unavailability until September, Plaintiffs unilaterally set the depositions of Schneider,
19 LaBrant, Moody, Tolbert, Montgomery, Briggs, LeVander, and St. John in September.

20 Plaintiffs have attempted to accommodate the Defendants in scheduling the depositions in
21 an attempt to avoid and resolve any discovery dispute. However, this has detrimentally impacted
22 Plaintiffs' ability to prosecute this matter in compliance with the current Case Management Order.

23 CONCLUSION

24 For the reasons set forth herein, Plaintiffs respectfully request the Case Management Order
25 [Doc. 24] be amended to extend the deadline for Plaintiff's disclosure of expert witnesses and
26

1 opinions from September 30, 2019 to December 30, 2019.

2 RESPECTFULLY SUBMITTED this 24th day of July, 2019.

3 ATTORNEYS FOR FREEDOM

4
5 By: /s/ Jody L. Broaddus
6 Jody L. Broaddus, Esq.
7 Marc J. Victor, Esq.
8 *Attorneys for Plaintiffs*

9 **CERTIFICATE OF SERVICE**

10 I hereby certify that on this 24th day of July, 2019, I electronically transmitted the
11 foregoing to the Clerk’s office using the CM/ECF system for filing and transmittal of a Notice of
12 Electronic filing to the following registrants, and a copy was also sent by first class mail to:

13 Joseph J. Popolizio
14 Justin M. Ackerman
15 JONES, SKELTON & HOCHULI, P.L.C.
16 40 North Central Avenue, Suite 2700
17 Phoenix, Arizona 85004

18 By: /s/ Alexandria Thompson

19
20
21
22
23
24
25
26