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10 Attorneys for Plaintiffs Betty Lou Heston, individually,
and Robert H. Heston, individually and
11 as the personal representatives of Robert C. Heston, deceased

12
13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15
16 BETTY LOU HESTON and ROBERT
17 H. HESTON, individually, and MISTY
KASTNER, as the personal
18 representative of ROBERT C.
HESTON, deceased,

19 Plaintiffs,

20 v.

21 CITY OF SALINAS, SALINAS
22 POLICE DEPARTMENT, MICHAEL
DOMINICI, JAMES GODWIN, LEK
23 LIVINGSTON, JUAN RUIZ and
TASER INTERNATIONAL, INC.,

24 Defendants.

Case No. C 05-03658 JW (RS)

**DECLARATION OF JOHN
BURTON RE PEER-REVIEWED
MEDICAL LITERATURE
BEARING ON MOTIONS IN
LIMINE**

Pretrial Conference:

Date: April 29, 2008
Time: 1:00 p.m.
Courtroom: 8

Trial:

Date: May 13, 2008
Time: 9:00 a.m.
Courtroom: 8

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28 John Burton declares under penalty of perjury as follows:

1 1. I am an attorney licensed to practice law in the State of California, and am
2 co-counsel with Peter Williamson for plaintiffs. I am submitting this declaration in
3 relation to the pending motions in limine.

4 2. The key causation issue in this case is the role of metabolic acidosis in the
5 decedent's February 19, 2005 cardiac arrest, and the role of the TASER ECD in
6 causing that metabolic acidosis. The link between cardiac arrests suffered by agitated
7 people during police restraint procedures and metabolic acidosis was reported in 1999
8 by Hicks, et al., *Metabolic Acidosis in Restraint-Associated Cardiac Arrest: a Case*
9 *Series*. Exhibit A. This study did not involve ECD's, but outlined the basic principle.

10 3. The logical link between ECD-induced muscle contractions and severe
11 metabolic acidosis was documented in 2005 by Jauchem, et al., *Acidosis, Lactate,*
12 *Electrolytes, Muscle Enzymes, and Other Factors in the Blood of Sus Scrofa Following*
13 *Repeated TASER Applications*. Exhibit B. It is important to note that this swine study
14 was sponsored by the United States Air Force, and is one of the few recent peer-
15 reviewed and published studies on ECD's not sponsored by TASER International.

16 4. Just last October, a group of doctors in Illinois in another independent
17 study conducted similar research. Dennis, et al., *Acute Effects of TASER X26*
18 *Discharges in a Swine Model*. Exhibit C. In this last study, repeated ECD cycles
19 comparable to those administered to Mr. Heston induced cardiac arrest in two pigs.

20 5. These three studies demonstrate that plaintiffs' theory of causation,
21 proffered through their cardiology expert Mark Myers, M.D., is well supported by peer-
22 reviewed scientific literature and passes the *Daubert* threshold.

23 I declare under penalty of perjury under the laws of the United States and the
24 State of California that the foregoing is true and correct and is within my personal
25 knowledge unless the context indicates otherwise. Executed on this 31st day of March,
26 2008, at Pasadena, California.

27 /s/

John Burton

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DECLARATION OF JOHN BURTON RE PEER-REVIEWED MEDICAL LITERATURE

- N.D. Cal. Case No. C 05-03658 JW (RS)