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12 TASER INTERNATIONAL, INC.

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA

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

19 Plaintiffs,

20 vs.

21 CITY OF SALINAS and SALINAS POLICE  
22 DEPARTMENT, SALINAS POLICE CHIEF  
23 DANIEL ORTEGA, TASER  
24 INTERNATIONAL, INC., and DOES 1 to  
25 10,

26 Defendants.

Case No.: C 05-03658 JW

[James Ware, United States  
District Judge]

**DEFENDANT TASER  
INTERNATIONAL, INC.'S  
PRETRIAL CONFERENCE  
STATEMENT REGARDING  
THE USE OF EXPERTS**

Date: June 25, 2007  
Time: 10:00 a.m.  
Ctrm: 4

27 Defendant, TASER INTERNATIONAL, INC. ("TASER") submits the following  
28 Pretrial Conference Statement Regarding the Use of Experts.

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1 **1. THERE IS GOOD CAUSE FOR TASER TO CALL ITS DESIGNATED**  
2 **EXPERT WITNESSES AT TRIAL.**

3 There is good cause for TASER to call the following expert witnesses at trial,  
4 each of whom will be providing testimony on distinct subject matters.

5 1. Jeffrey D. Ho, M.D., F.A.C.E.P., is an Electronic Control Device (“ECD”)   
6 researcher, sworn police officer, SWAT doctor, and emergency physician at a trauma   
7 1 medical center who is uniquely qualified to testify in this matter. He will provide   
8 expert testimony regarding: the actions by the emergency medical practitioners;   
9 generally accepted treatment for a person experiencing excited delirium; and the   
10 significance of their actions in determining the cause of Mr. Heston's death. Dr. Ho also   
11 will be testifying on his research on ECDs and effects of ECDs on the human body. Dr.   
12 Ho's research includes ECD effects on respiration, acidosis, blood chemistry, etc., and   
13 the effects of ECDs regarding extended duration discharges, ECD use on exhausted   
14 individuals, ECD use on members of the mentally impaired community, retrospective   
15 analysis of excited delirium deaths, and analysis of ECD field use reports, etc.

16 2. Vincent J. M. DiMaio, M.D., is an anatomical, clinical and forensic   
17 pathologist, and the leading international book author on the subject of excited delirium,   
18 who will testify regarding the historical aspects, causes, symptoms and effects of excited   
19 delirium syndrome. Dr. DiMaio is considered the authority in this area and is uniquely   
20 qualified to address this mechanism of death as it relates to the facts of this incident.

21 3. Mark W. Kroll, Ph.D., F.A.C.C., is a biomedical engineer and scientist,   
22 who will testify about the general principles of electricity, general electrical principles   
23 of ECDs, and effects of electricity on the human body. Dr. Kroll is accepted as an   
24 international authority on the effects of electrical shocks on the human body and has   
25 lectured in over twenty countries worldwide. Also, Dr. Kroll will testify regarding   
26 interactions of electrical shocks on the human body. Dr. Kroll has done extensive work   
27 with electrical medical devices and the corresponding effects of those devices as   
28 compared and contrasted with ECDs on the human body. In addition he is uniquely

1 qualified to testify in this area of expertise because of the numerous (over 240) patents  
2 he holds on various aspects of electrical medical devices.

3 4. John G. Peters, Jr., M.B.A., Ph.D., C.L.S., a former law enforcement officer,  
4 has experience as a law enforcement use of force expert. He is a former statistics  
5 professor, a law enforcement sudden death specialist, and serves as a law enforcement  
6 training specialist. Dr. Peters will provide expert testimony relative to the actions taken  
7 by the law enforcement officers in this incident and factors affecting their actions, as  
8 well as law enforcement training on sudden death. Dr. Peters will also testify regarding  
9 law enforcement use of force devices and techniques, as well as warnings regarding  
10 same from a practitioner's perspective. Dr. Peters will also testify regarding specific  
11 principles of the scientific method, reliability, and certainty, as well as logical analysis  
12 and fallacies.

13 5. Patrick (Rick) W. Smith is the CEO and Co-Founder of TASER, who will  
14 testify regarding the history, research, testing, development, characteristics and basic  
15 operational principles of TASER devices. Mr. Smith, as the patent holder for the  
16 ADVANCED TASER M26 and the author of the majority of the training manuals for  
17 the device, is uniquely qualified to testify on these subjects.

18 6. Michael A. Evans, Ph. D., is a scientist and former tenured professor of  
19 Toxicology and Director of a Graduate Program in Toxicology who will testify  
20 regarding the nature, characteristics, and acute and chronic effects of methamphetamine  
21 and effects of the methamphetamines in Mr. Heston's body, and the effects of chronic  
22 and acute methamphetamine abuse.

23 7. Adam K. Aleksander, Ph.D., P.E., CSP, is a mechanical, industrial, human  
24 factors and safety engineering specialist, who will testify regarding his inspection and  
25 testing of five ADVANCED TASER M26 ECDs at the Salinas California Police  
26 Department.

27 8. Richard F. Clark, M.D., FACEP, FACMT, is a practicing emergency  
28 physician and toxicologist, who will testify respecting the effects of Mr. Heston's

1 acute-on-chronic drug abuse and excited delirium state from the perspective of an  
2 emergency physician emphasizing in toxicology.

3 9. Raymond E. Ideker, Ph.D., M.D. is a physiologist, specializing in anatomic  
4 pathology and biomedical engineering, who will testify regarding Mr. Heston's cardiac  
5 condition and the effects of other factors on a person with Mr. Heston's cardiac  
6 condition. Dr. Ideker is the world's preeminent expert on ventricular fibrillation (VF),  
7 and Plaintiff's Expert Mark Myers has raised VF as one of his seven (7) theories of  
8 TASER ECD injury causation. Additionally, Medical Examiner Terri Haddix has also  
9 opined that the final TASER M26 probe deployment directly caused cardiac arrhythmia.

10 10. Mark R. Lehto, PH.D., is an engineer and warnings expert, specializing in  
11 industrial and operations engineering, who will testify regarding warnings and  
12 instructions provided by TASER.

13 11. Richard M Lucerie, M.D., is a cardiac electrophysiologist (cardiac EP),  
14 specializing in the field of arrhythmias of the heart and electrical cardiac devices, who  
15 will testify regarding the allegations of TASER devices in affecting cardiac function.  
16 Also, Dr. Lucerie is a cardiac EP specialist and he is the only cardiac EP defendants  
17 have in this case. Dr. Lucerie is required to address cardiac EP Myers' theories of  
18 vasovagal and general experience and expertise as a cardiac EP.

19 12. Dorin Panescu, Ph.D., is a scientist and electrical engineer, who will testify  
20 regarding electrical current flows in the human body with regard to electrical currents  
21 generated by TASER devices. Dr. Panescu has done extensive finite element modeling  
22 research with regard to TASER devices. He is accepted as the international expert on  
23 how and where electrical current flows through the human body and this is critical  
24 because there have been allegations in this case that the flow of electrical current,  
25 specifically from Mr. Heston's back, through Mr. Heston's body, could have affected Mr.  
26 Heston's heart and breathing.

27 13. Charles B. Wetli, M.D., is the seminal researcher and author regarding  
28 modern day chronic stimulant induced excited delirium, and is a pathologist and former

1 medical examiner who will testify regarding Mr. Heston's cause of death.

2 14. Deborah C. Mash, Ph.D., is the world's leading stimulant abuse sudden  
3 death neuropharmacologist, who will testify regarding her neurochemical pathology  
4 analysis performed on Mr. Heston, at the request of Dr. Haddix, and the  
5 neuropathological analyses of Mr. Heston's chronic stimulant abuse and cause of death.  
6 Dr. Mash will also testify as to the chronic and acute effects of illegal stimulants on the  
7 neurochemistry and neuropathology of the brain.

8 15. Michael Alan Graham, M.D., is a professor of pathology and the former  
9 President and Chairman of the Board of Directors of the National Association of  
10 Medical Examiners (NAME) (the nation's leading professional organizations for medical  
11 examiners). Dr. Graham will testify regarding NAME and general medical examiner and  
12 pathological acceptance of sudden death, chronic drug induced sudden death, excited  
13 delirium, etc. and Mr. Heston's cause of death.

14 The above experts are each uniquely qualified to address specific areas of concern  
15 and are necessary to disprove negatives proffered by plaintiffs' experts, even though  
16 plaintiffs' experts' opinions are not based on scientifically reliable information to a  
17 reasonable degree of medical or scientific certainty.

18 Plaintiffs have designated the following experts: Nathan Lavid, Werner U. Spitz,  
19 Mark R. Myers, Ernest Burwell, Roger A. Clark, and Terri Haddix. TASER's experts  
20 are necessary in order to challenge the variety of ever-changing theories proffered by  
21 plaintiffs' experts.

22 Plaintiffs' expert, Mark R. Myers, offers the following theories of causation  
23 which will and must be challenged by TASER's experts:

- 24 1. Direct electrical induction of fibrillation (Dr. Haddix's theory as well);
- 25 2. ECD caused respiratory arrest leading to acidosis and then fibrillation (Dr.  
26 Spitz's theory as well);
- 27 3. ECD caused respiratory arrest leading to acidosis and then asystole (Dr.  
28 Spitz's theory as well);

- 1 4. ECD pain caused a vasovagal reaction leading to asystole;
- 2 5. Rhabdomyolysis;
- 3 6. Deductive, since Mr. Heston's death was temporal to the TASER device
- 4 deployments, then his death must have been caused or contributed to by the
- 5 TASER device.

6 Plaintiffs' expert, Werner U. Spitz, offers the following theories of causation  
7 which will and must be challenged by TASER's experts:

8 7. Mr. Heston still would have felt the pain from the TASER ECDs -  
9 regardless of the methamphetamine, i.e., Dr. Spitz does not agree with the pain numbing  
10 effects of methamphetamine.

11 Additional theories offered by Drs. Myers and Spitz are:

12 8. Excited delirium is not recognized by the general medical community;

13 9. Excited delirium is a coverup for death by police interaction (Spitz);

14 10. Excited delirium did not cause plaintiff's death,.

15 11. Mr. Heston did not have a lethal dose of methamphetamine and thus the  
16 methamphetamine did not kill him;

17 12. Mr. Heston did not die from methamphetamine;

18 13. Chronic stimulant abuse did not cause Mr. Heston's death;

19 14. Dr. Ho's human respiration research does not apply to the Heston case  
20 because of insufficient discharge duration and lack of simultaneous discharges;

21 15. The key study on acidosis caused by TASER ECDs is the James Jauchem's  
22 porcine study.

23 Plaintiffs' medical experts offer the following theories of causation which will  
24 and must be challenged by TASER's experts:

25 16. Dr. Haddix: The last TASER probe deployment to Mr. Heston's back  
26 directly caused a fatal cardiac arrhythmia.

27 17. Dr. Hain: The pain (sympathetic or catecholamine response) from the  
28 TASER ECD discharges added to Mr. Heston's stress and therefore was contributory to



1 Mr. Heston's death.

2 18. Dr. Steven Karch: TASER ECD contributed to Mr. Heston's death by  
3 rhabdomyolysis.

4 19. Dr. Spitz: Respiratory compromise or arrest was caused by the ECD  
5 applications.

6 20. Dr. Spitz: ECD caused respiratory arrest causing acidosis leading to death.

7 21. Dr. Spitz: ECD caused skeletal muscle contraction metabolic acidosis  
8 leading to or contributing to death. Excited delirium and excited delirium syndrome are  
9 not generally recognized. Excited delirium is a cover up for death by police (and  
10 TASER ECD). Mr. Heston did not have a lethal dose of methamphetamine. Mr.  
11 Heston's chronic stimulant abuse did not cause his death.

12 In order to challenge all of the above theories put forth by plaintiffs' experts,  
13 TASER will need its experts to testify to the additional following subjects:

14 1. Dr. Aleksander on the testing of the ECDs in question.

15 2. Dr. Peters on scientific method, reliability, certainty, statistics, use of  
16 force, and law enforcement industry force device and techniques warnings.

17 3. Dr. Lehto on generally accepted industry warnings.

18 4. Rick Smith on general principles of TASER ECDs.

19 5. Dorin Panescu on the flow of ECD current through the body.

20 6. Dr. Kroll on general effects of electricity and possible multiple  
21 simultaneous TASER deployments.

22 7. Dr. Mash on neurochemistry and neuropharmacology.

23 TASER's experts are necessary because TASER is being put in the position of  
24 having to disprove all of the negative theories of causation offered by plaintiffs' experts  
25 even though none of them is based on scientifically reliable information to a reasonable  
26 degree of medical or scientific certainty.

27 In addition, plaintiffs have alleged meritless causes of action which TASER is  
28 forced to defend against, either by trial or summary judgment, which will require the use

1 of TASER's experts. For example, plaintiffs allege in their seventh state claim for  
2 products liability that TASER placed the TASER ECD on the market knowing that the  
3 ECD was defective and could not be used safely for the purposes for which it was  
4 intended and failed to warn customers or the public. (FAC, ¶ 47.) TASER must rebut  
5 this meritless allegation with expert testimony. TASER must also present evidence thru  
6 the use of its experts to prove the affirmative defense of risk/cost benefit. Additionally,  
7 given the fact that plaintiffs' theories keep fluctuating as the case progresses and  
8 depositions unfold, requiring TASER to limit experts would cripple TASER's ability  
9 to respond to plaintiffs' ever-changing and broad ranging theories.

10 Furthermore, plaintiffs are not prejudiced by the number of experts designated.  
11 The Court ordered that TASER pay travel expenses and pay for the actual depositions  
12 themselves. TASER has done and continues to do so in compliance with the Court's  
13 order. TASER, on the other hand, will be greatly prejudiced if it cannot present its  
14 expert testimony at trial.

15 This is an "expert driven" case regarding a myriad of scientific specialties,  
16 essential technologies, and scientific and technological areas fraught with numerous  
17 basics and specifics prone to misunderstandings and misinformation which are  
18 supported by wide ranging and voluminous research in the medical, scientific and  
19 electrical engineering fields. TASER offers complicated products to its consumers  
20 which provide tremendous benefits to the community. Each wrongful death lawsuit  
21 could have a dramatic and profound effect on the company's viability and on law  
22 enforcement officers globally who may have the products taken away from them —  
23 products proven to save the lives of both officers and suspects.

24 With respect to the various expert opinions to be offered in this matter, TASER  
25 intends to file *Daubert* motions to address the qualifications, scientific validity,  
26 reliability, and degree of certainty of the opinions to be offered by plaintiff's experts,  
27 Myers, Spitz, Haddix, Hain, and Karch. The bases for the *Daubert* motions are that the  
28 experts' curriculum vitae, and the opinions expressed in both their deposition testimony

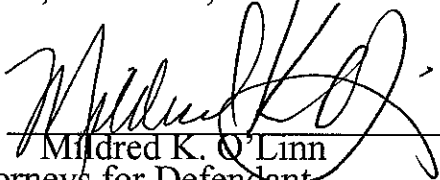


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and Rule 26 expert reports do not satisfy the requisite standards that must be met before such expert opinions may be presented to a trier of fact.

Dated: June 15, 2007

MANNING & MARDER  
KASS, ELLROD, RAMIREZ LLP

By:   
Mildred K. O'Linn  
Attorneys for Defendant  
TASER INTERNATIONAL, INC.

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 801 South Figueroa Street, 15th Floor, Los Angeles, California 90017.

On June 15, 2007, I served the document described as **DEFENDANT TASER INTERNATIONAL, INC.'S PRETRIAL CONFERENCE STATEMENT REGARDING THE USE OF EXPERTS** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED

**(BY MAIL)** I caused such envelope to be deposited in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

I placed such envelope with postage thereon prepaid in the United States mail at Los Angeles, California.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

**(BY OVERNIGHT COURIER):** I placed the above-referenced document(s) in an envelope for collection and delivery on this date in accordance with standard United Parcel Services overnight delivery procedures.

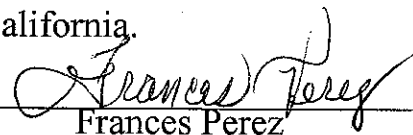
**(BY FACSIMILE)** I telecopied such document to the offices of the addressee at the following fax number: 626-449-4417; 818-344-4899; 831-661-4804; and 831-758-7257

**(BY PERSONAL SERVICE)** I delivered such envelope by hand to the offices of the addressee.

**(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

**(FEDERAL)** I declare under penalty of perjury under the laws of the United States of America, that the above is true and correct.

Executed on June 15, 2007, at Los Angeles, California.

  
\_\_\_\_\_  
Frances Perez

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