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12 IN THE UNITED STATES DISTRICT COURT
 13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 14 SAN FRANCISCO DIVISION

17 **SEAN FRANCIS McCLOSKEY, ET AL.**

18 Plaintiffs,

19 v.

20 **M. E. COURTNIER, J. WHITE, ET AL.**

21 Defendants.

05-04641 MMC

**ADMINISTRATIVE MOTION AND
 STIPULATION FOR ORDER
 MODIFYING CASE MANAGEMENT
 SCHEDULE AND SETTING FURTHER
 CASE MANAGEMENT CONFERENCE;
 [Proposed] ORDER**

Trial Date: April 18, 2011
 Time: 9:00 a.m.
 Judge: The Hon. Maxine M. Chesney
 Courtroom: 7, 19th Floor Trial Date
 Action Filed: November 10, 2005

25 IT IS HEREBY STIPULATED by and between the parties to this action, by and through
 26 their respective counsel of record, and pursuant to all applicable statutes and rules, including but
 27 not limited to Federal Rules of Civil Procedure 16, 26, and 40, as follows:
 28

1 Plaintiffs' causes of action arise out of a traffic stop wherein plaintiffs allege that two CHP
2 officers, defendants Courtnier and White (hereinafter collectively "defendants"), violated their
3 federal and state civil rights by unlawfully using an excessive amount of force against them.

4 The parties have participated in two settlement conferences before Magistrate Judge
5 Larson. A third settlement conference is scheduled for November 20, 2010.
6

7 This matter had been continued in anticipation of the filing of a defendants' summary
8 judgment motion predicated on a recent Ninth Circuit decision that analyzes extensively the
9 amount of force used in traffic stops. The defendants believed (and do believe) that that case is
10 factually and legally on point. Pursuant to an earlier stipulation of the parties, the matter was
11 continued to allow defendants to bring a dispositive motion based on the then-new Ninth Circuit
12 opinion.
13

14 As defendants were about to file the summary judgment motion, the Ninth Circuit Court of
15 Appeals announced in *Brooks v. City of Seattle*, __ F.3d __, 2010 WL 3896202 (9th Cir. Sep 30,
16 2010) (NO. 08-35526) that the Circuit Court was granting a rehearing *en Banc*, a possibility that
17 this Court had explored briefly with counsel at the status conference. The grant of rehearing,
18 although thought unlikely by many observers, means that the three-judge opinion cannot now be
19 cited as precedent by or to any court of the Ninth Circuit.
20

21 Defendants believe that the *en Banc* opinion may be dispositive; both sides believe that the
22 *en Banc* decision will provide important guidance to the parties as they contemplate settlement
23 and to the Court if the matter proceeds to summary judgment or trial. Both sides therefore
24 respectfully request that this matter be continued for a further status conference in approximately

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26 ///

27 ///

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1 90 days to set a time for summary judgment and a time for a further settlement conference when
2 the *en Banc* decision has been issued by the Ninth Circuit.

3 Dated: October 15, 2010

Respectfully submitted,

4 **EDMUND G. BROWN JR.,**
5 Attorney General of the State of California

6 By: /s/ Tom Blake
7 TOM BLAKE
8 *Attorneys for Defendants California*
9 *Highway Patrol*
10 *Officers Mike Courtnier and Jon White*

LAW OFFICES OF JOHN L. BURRIS

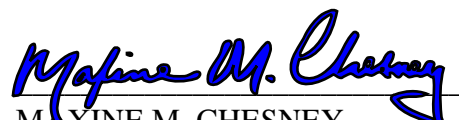
11 By: /s/ Adante Pointer
12 ADANTE D. POINTER
13 *Attorneys for Plaintiffs Sean Francis*
14 *McCloskey, Laila D.M.*

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16 A Case Management Conference is hereby set for January 14, 2011, at 10:30 a.m. The parties
17 shall file a Joint Case Management Statement on or before January 7, 2011.

18 PURSUANT TO STIPULATION, IT IS SO ORDERED.

19 Dated: December 8, 2010

20 
21 MAXINE M. CHESNEY
22 United States District Judge