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 14 IN THE UNITED STATES DISTRICT COURT
 15 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 16 SAN FRANCISCO DIVISION

17
 18 **SEAN FRANCIS McCLOSKEY, ET AL.**
 Plaintiffs,
 19
 20 v.
 21 **M. E. COURTNIER, J. WHITE, ET AL.**
 Defendants.

Case No.: 05-04641 MMC

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

23 Trial Date: April 18, 2011
 Time: 9:00 a.m.
 Judge: The Hon. Maxine M. Chesney
 24 Courtroom: 7, 19th Floor

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

28 Plaintiffs' causes of action arise out of a traffic stop wherein plaintiffs allege that two CHP

1 officers, defendants Courtnier and White (hereinafter collectively “defendants”), violated their
2 federal and state civil rights by unlawfully using an excessive amount of force against them.

3
4 The parties have participated in two settlement conferences before Magistrate Judge
5 Larson.

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

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

18 Defendants believe that the *en Banc* opinion may be dispositive; both sides believe that the
19 *en Banc* decision will provide important guidance to the parties as they contemplate settlement
20 and to the Court if the matter proceeds to summary judgment or trial. Th *en Banc* hearing was
21 recently held on December 10, 2010.

22 In light of the foregoing, both sides respectfully request that the March 29, 2011 Pre-
23 Trial Conference and April 11, 2011 Jury Trial dates in this matter be vacated and that the Case
24 Management Conference currently set for January 14, 2011 be continued for approximately 90
25 days to allow the Ninth Circuit to issue its *en Banc* ruling in *Brooks*.

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LAW OFFICES OF JOHN L. BURRIS

By: /s/ Adante Pointer
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*Attorneys for Plaintiffs Sean Francis
McCloskey, Laiala McCloskey and D.M.*


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

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

1 ~~Proposed~~ ORDER

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3 IT IS HEREBY ORDERED that the March 29, 2011 Pre-Trial Conference and April 11,
4 2011 Jury Trial dates in this matter be vacated and that the Case Management Conference
5 currently set for January 14, 2011 be continued to April 15, 2011 at 10:30 a.m.

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7 Dated: January 4, 2011

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9 MAXINE M. CHESNEY
10 United States District Judge
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