

KAMALA D. HARRIS  
 Attorney General of California  
 TOM BLAKE  
 Deputy Attorney General  
 State Bar No. 51885  
 455 Golden Gate Avenue, Suite 11000  
 San Francisco, CA 94102-7004  
 Telephone: (415) 703-5506  
 Fax: (415) 703-5480  
 E-mail: Tom.Blake@doj.ca.gov  
*Attorneys for Defendants California Highway Patrol  
 Officers Mike Courtnier and Jon White*

JOHN L. BURRIS, SBN 69888  
 ADANTE D. POINTER, SBN 236229  
*LAW OFFICES OF JOHN L. BURRIS*  
 7677 Oakport Street, Suite 1120  
 Oakland, California 94621  
 Telephone: (510) 839-5200  
 Facsimile: (510) 839-3882  
*Attorneys for Plaintiffs Sean Francis McCloskey,  
 Laiala McCloskey and D.M*

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

**SEAN FRANCIS McCLOSKEY, ET AL.**

05-04641 MMC

Plaintiffs,

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

**v.**

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

Defendants.

CMC Date: April 15, 2011  
 Time: 10:30 a.m.  
 Courtroom: 7, 19<sup>th</sup> Floor

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

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 further settlement conference is anticipated but not presently calendared.

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 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. As of the writing of this stipulation, the  
18 Ninth Circuit has not issued its *en banc* decision in *Brooks*, *supra*.

19 Defendants believe that the *en banc* opinion may be dispositive; both sides believe that the  
20 *en banc* decision will provide important guidance to the parties as they contemplate settlement  
21 and to the Court if the matter proceeds to summary judgment or trial. Both sides therefore  
22 respectfully request that this matter be continued for a further status conference. Due to  
23 calendaring considerations in the offices of both counsel, including vacation plans of trial  
24 counsel, both sides respectfully request that the further status conference be set for a date  
25 convenient to the Court in approximately 120 days to allow time for hearing of the summary  
26 judgment and for a further settlement conference after the Court of Appeals issues its *en banc*  
27 decision.

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2 Dated: April 11, 2011  
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4 LAW OFFICES OF JOHN L. BURRIS

5 **By: /s/ Adante Pointer**  
6 ADANTE D. POINTER  
7 *Attorneys for Plaintiffs Sean Francis*  
8 *McCloskey, Laiala McCloskey and D.M.*  
9

10 KAMALA D. HARRIS  
11 Attorney General of the State of California  
12

13 **By: /s/ Tom Blake**  
14 TOM BLAKE  
15 *Attorneys for Defendants California Highway*  
16 *Patrol Officers Mike Courtmier and Jon White*  
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**~~Proposed~~ ORDER**

Good cause appearing, it is hereby ordered that the Case Management Conference presently set for April 15, 2011 at 10:30 a.m. be continued to August 12, 2011 at 10:30 a.m. in Courtroom 7, 19th Floor, for Further Status Conference.

**IT IS SO ORDERED.**

April 12, 2011  
Date

  
HONORABLE MAXINE M. CHESNEY  
United States District Judge