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13
 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.**

05-04641 MMC

19 Plaintiffs,

**STIPULATION AND ~~PROPOSED~~
 ORDER CONTINUING CASE
 MANAGEMENT CONFERENCE**

20 v.

21
 22 **M. E. COURTNIER, J. WHITE, ET AL.**

CMC Date: August 12, 2011

Time: 10:30 a.m.

Courtroom: 7, 19th Floor

23 Defendants.
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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 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*, 599 F.3d 1022, 2010 WL 3896202 (9th
14 Cir. 2010) (NO. 08-35526) that the Circuit Court was granting a rehearing *en banc*, a possibility
15 that 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.

21 In light of the foregoing, both sides respectfully request that the Case Management
22 Conference currently set for August 12, 2011 be continued for approximately 120 days to allow
23 the Ninth Circuit to issue its *en banc* ruling in *Brooks* and allow the parties to continue their
24 informal settlement discussions.

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LAW OFFICES OF JOHN L. BURRIS

August 5, 2011

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

August 5, 2011

Kamala D. Harris,
Attorney General of the State of California

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


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~~Proposed~~ ORDER

Good cause appearing, it is hereby ordered that the Case Management Conference currently set for August 12, 2011 is continued to December 9, 2011 at 10:30 a.m. in Courtroom 7, 19th Floor, for Further Status Conference.

IT IS SO ORDERED.

Dated: August 5, 2011


MAXINE M. CHESNEY
United States District Judge