JOHN L. BURRIS, Esq./ State Bar #69888
BENJAMIN NISENBAUM, Esq./State Bar #222173
LAW OFFICES OF JOHN L. BURRIS
Airport Corporate Centre
7677 Oakport Street, Suite 1120
Oakland, California 94621
Telephone: (510) 839-5200 Facsimile: (510) 839-3882

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

KATHLEEN ESPINOSA, individually and as personal representative of the Estate of decedent ASA SULLIVAN; A.S., by and through his Guardian ad Litem, NICOLE GUERRA;

Plaintiffs,

vs.

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation; HEATHER FONG, in her capacity as Chief of Police for the CITY AND COUNTY OF SAN FRANCISCO; JOHN KEESOR, individually, and in his capacity as a police officer for the CITY AND COUNTY OF SAN FRANCISCO; MICHELLE ALVIS, individually and in her capacity as a police officer for the CITY AND COUNTY OF SAN FRANCISCO; PAUL MORGADO, individually and in his capacity as a police officer for the CITY AND COUNTY OF SAN FRANCISCO; and, San Francisco police officers DOES 1-25, inclusive,

Defendants.
/

Case No. C 06 04686 JSW

NOTICE AND ADMINISTRATIVE MOTION TO VACATE PRE-TRIAL CONFERENCE AND TRIAL DATES AND ~~(PROPOSED)~~ ORDER

[STIPULATED]

No hearing date pursuant to Civil L.R. 7-11

Honorable Jeffrey S. White

NOTICE

NOTICE TO ALL COUNSEL OF RECORD IN THE PRESENT CASE:

This Motion for Administrative Relief is brought by Plaintiffs ESPINOSA, et al. and stipulated to by Defendants CITY AND COUNTY OF SAN FRANCISCO, et al, pursuant to Civil

Local Rules 7-11. No hearing date is scheduled, pursuant to Civ. L. R. 7-11.

Because the defendant police officers have filed an interlocutory appeal of the Court's August 5, 2008 order denying their claim of qualified immunity, the Court should vacate the Pre-Trial Conference, Pre-trial schedule, and Trial date in this matter. This request and administrative motion is based on the divestment of the Court's jurisdiction of this action upon the filing of appeal with the Ninth Circuit Court of Appeals, which imposes an automatic stay on the District Court action. *U.S. v. Clairborne,* 727 F.2d 842, 850 (9th Cir. 1984); *Chumain v. Wright* 960 F.2d 104, 105 n. 1 (9th Cir. 1992)

MEMORANDUM OF POINTS AND AUTHORITIES

On August 5, 2008, the Court issued its Order Re Parties' Cross-Motions for Summary Judgment, which denied Plaintiffs' Motion for Summary Judgment and granted in part and denied in part Defendants' Motion for Summary Judgment. Defendants' Motion for Summary Judgment with respect to qualified immunity was specifically denied by the Court. On August 15, 2008, Defendants filed a notice of appeal of this Court's Order Re Parties' Cross-Motions for Summary Judgment with the Ninth Circuit Court of Appeal. (Exh. A.) Defendants' appeal includes notice of appellate review of the Court's Order regarding qualified immunity. The Ninth Circuit Court of Appeals Time Schedule Order was then filed with this Court on August 25, 2008.

Currently, the Pre-Trial Conference date in this Court remains set for October 6, 2008, there are several deadlines for pretrial submissions, and the trial in this Court is set for October 27, 2008.

A district court's denial of a summary judgment motion on the qualified immunity defense is appealable under certain circumstances notwithstanding the absence of a final judgment. *Cunningham v. City of Wenatchee*, 345 F.3d 802, 807-08 (9th Cir. 2003). The filing of an appeal of a ruling denying qualified immunity imposes an automatic stay that divests the district court of jurisdiction to proceed with trial. *Chumain v. Wright*, 960 F.2d 104, 105 (9th Cir. 1992). The thirty day time for filing a notice of appeal begins to run upon the entry of the order denying the qualified immunity defense. *Fairly v. Fermaint*, 482 F.3d 897, 901 (7th Cir. 2007). Defendants filed a timely notice of appeal.

For the foregoing reasons, the Court should vacate all pending dates in this action, and await the outcome of Defendants' appeal to the Ninth Circuit Court of Appeals. Defendants stipulate to the requested relief.

Respectfully submitted,

Dated: September 12, 2008

The Law Offices of John L. Burris

/s/ _____
Ben Nisenbaum
Attorney for Plaintiffs

STIPULATED:

Dated: September 15, 2008

DENNIS J. HERRERA
City Attorney
JOANNE HOEPER
Chief Trial Attorney
BLAKE P. LOEBS
Deputy City Attorney
PETER J. KEITH
Deputy City Attorney

By: /s/_____
PETER J. KEITH
Attorneys for Defendants
CITY AND COUNTY OF SAN FRANCISCO, et al.

~~(proposed)~~ ORDER

Defendant officers' filing of an interlocutory appeal of the Court's August 5, 2008 Order denying their claim of qualified immunity imposes an automatic stay. Accordingly, the Court hereby vacates all pending dates in the above-noted action, including the pre-trial deadlines, the Pre-Trial Conference in this matter set for October 6, 2008, and the Trial Date of October 27, 2008.

Dated: September 17, 2008

_____
UNITED STATES DISTRICT COURT JUDGE
Honorable Jeffrey S. White