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 CITY OF FREMONT and CRAIG STECKLER  
 10

11 UNITED STATES DISTRICT COURT  
 12  
 13 NORTHERN DISTRICT OF CALIFORNIA

14 NICHOLAS JACKALONE and LUCIA  
 JACKALONE,

15 Plaintiffs,

16 vs.

17 CITY OF FREMONT, a municipal corporation;  
 18 CRAIG STECKLER in his official capacity as  
 Chief of Police for the City of Fremont; NICK  
 19 MAURER, individually and in his official  
 capacity as a Police Officer for the City of  
 20 Fremont; DOES 1-25, inclusive,

21 Defendants.

Case No.: C09-02956 MHP

**STIPULATION AND ~~PROPOSED~~  
 ORDER TO EXTEND DEADLINE FOR  
 COMPLETION OF EARLY NEUTRAL  
 EVALUATION AND TO SET DISPOSTIVE  
 MOTION HEARING DATE**

22  
 23 The Parties, by and through their respective counsel, hereby stipulate and respectfully request  
 24 the Court extend the deadline by which the parties must participate in and complete Early Neutral  
 25 Evaluation and complete briefing and a hearing on a motion for summary judgment.

26 Good cause for this extension is based on the following. Both plaintiffs and a BART station  
 27 agent have been deposed about the incident involving off duty defendant former police officer  
 28 MAURER. Based on that testimony the defendant CITY and Chief of Police believe that there is no

1 liability under federal law for these defendants and the plaintiffs respectfully disagree. Because the  
2 witnesses testimony is undisputed both parties now believe the City and Chief of Police should  
3 proceed to file and serve a Motion for Summary Judgment based on the undisputed witness testimony  
4 and applicable law on municipal liability. The Court's decision on the MSJ may resolve the liability  
5 of the City and Chief. If the motion is denied for some reason it may frame the issue(s) that would  
6 result in an Early Neutral Evaluation session that will be more beneficial to the parties. To that end,  
7 the parties respectively request that the Court set a dispositive motion hearing date wherein this issue  
8 may be resolved, with the City and Chief's motion for summary judgment to be filed Monday, July  
9 19, 2010, plaintiffs' opposition brief to be filed Monday, August 16, 2010. The City and Chief's  
10 reply brief to be filed Monday August 30, 2010. The hearing on the MSJ to be heard Monday  
11 September 13, 2010 and the time for completion of the ENE to be 30 days after the Court issues its  
12 ruling on the MSJ.

13 The parties intend, with the court's continued permission, to conduct limited discovery  
14 focused upon the municipal defendant's degree of liability, if any. The parties anticipate engaging in  
15 some written discovery and plaintiffs intend to depose no more than two of the BART Police Officers  
16 that responded to the scene of the incident. Of course, plaintiff would preferably like to depose  
17 defendant Maurer, however, defendant Maurer has not appeared in the case, despite being personally  
18 served with the summons and complaint on March 19, 2010. Plaintiffs intend to petition the court for  
19 entry of a default judgment against defendant Maurer.

20 In light of the foregoing, the parties respectfully request that the Court continue the deadline  
21 by which the parties must complete ENE to October 30, 2010, or 30 days after the filing of the  
22 Court's ruling on the MSJ, and set a dispositive motion hearing date for Monday September 13, 2010.

23  
24 Respectfully submitted,

25  
26 \_\_\_\_\_  
/s/

27 Dated: June 2, 2010

Adante D. Pointer  
Attorney for Plaintiffs

1 Dated: June 2, 2010

BERTRAND, FOX & ELLIOT

3 By: \_\_\_\_\_ /s/

4 Gregory M. Fox  
5 Attorney for Defendants  
6 CITY OF FREMONT and  
7 CHIEF STECKLER

8 ORDER

9 GOOD CAUSE APPEARING, the Court hereby orders that the deadline by which the parties  
10 must complete Early Neutral Evaluation be continued to October 30, 2010, or 30 days after the Court  
11 rules on the City's Motion for Summary Judgment, whichever date occurs later. The Court further  
12 orders that a dispositive motion hearing date be set for Monday, September 13, 2010, with any and  
13 all briefing to comply with the applicable Federal Rules of Civil Procedure and the Local Rules and  
14 as set forth above by stipulation of the parties with regard to the filing of the motion, opposition and  
15 reply briefing.

16 Dated: June 4, 2010

