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 8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**

10 JOSEPH ALEJANDRO ORTEGA,)
)
 11 Plaintiff,)
)
 12 vs.)
)
 13 KURT RODENSPIEL, *et al*,)
)
 14 Defendants.)
)
 15 _____)

No. CV 10-3239 EMC

**STIPULATION FOR ORDER
 RESETTING INITIAL CASE
 MANAGEMENT CONFERENCE,
 ADR AND OTHER DEADLINES**
(Proposed)

Current Hg./CMC Date: 1/26/2011
 Pretrial/Trial Dates: Not Set
 CTRM: C, Hon. Edward M. Chen

16 **STIPULATION**

17 The parties hereby represent to the Court and stipulate as follows:

- 18 1. On July 23, 2010, plaintiff filed his Complaint herein for damages resulting from
 19 violation of plaintiff's civil rights under 42 U.S.C. § 1983, coupled with tort causes of action under
 20 California law for negligence, assault and battery, negligent training and supervision, negligent
 21 infliction of emotional distress and for civil rights violations under California Civil Code section
 22 52.1. The defendants are the San Mateo Police Department, the City of San Mateo and San
 23 Mateo Police Department Officer Kurt Rodenspiel. (Hereafter all dates are in 2010.)
- 24 2. All defendants accepted service and on August 18, they filed an Answer.
- 25 3. The Court's Order Setting Initial Case Management Conference and ADR Deadlines
 26 issued July 23, setting October 13 for the meet and confer re initial disclosures, early settlement,
 27 ADR process selection and a discovery plan, to file the ADR Certification and either file a
 28 Stipulation to ADR process or a Notice for an ADR Phone Conference; October 27 as the last day

1 for the FRCP Rule 26(f) Report, to complete the initial disclosures and file a Case Management
2 Statement; and, November 3, for the Initial Case Management Conference.

3 4. Arising from the incident which is the basis for this civil action, Plaintiff was charged
4 with felony offenses against two San Mateo Police Officers for assault with a deadly weapon under
5 California Penal Code section 245 in the San Mateo County Superior Court, in action titled *People*
6 *v. Joseph Alejandro Ortega*, No. SC071032.

7 5. On September 15, pursuant to Stipulation and request by the parties that all dates be
8 postponed to occur following the final resolution of the criminal case, this Court ordered the
9 parties to file a joint CMC statement by December 15 and reset the CMC for December 22. On
10 November 24, 2010, pursuant to a similar stipulation, this Court reset the CMC for January 26,
11 2011, with CMC Statement by January 19, 2011.

12 6. The trial in the criminal case commenced on December 6, 2010, and on December 16,
13 2010, the jury convicted Plaintiff of assault under California Penal Code section 245(a)(1).
14 Sentencing is scheduled for February 4, 2011, at which time Plaintiff will be moving for a new trial.

15 7. Therefore, proceeding with the instant case before the criminal case is concluded, either
16 with a denial of a motion for new trial and sentencing, or especially with the grant of a new trial,
17 the dates for filing the joint CMC statement and the CMC court hearing as presently set still are
18 not feasible, and the parties request that the Rule 26 initial disclosures be due no later than 30 days
19 after the final resolution of the criminal case, that the CMC hearing be set on March 7, 2011, and
20 the joint statement be filed one week before on February 28, 2011.

21 8. Both counsel continue to believe that the outcome of the criminal case will have a
22 significant bearing on how this civil action proceeds, liability, discovery, ADR, and other pertinent
23 aspects of pretrial proceedings and preparation for trial. Both counsel believe that it is premature
24 to address the matters required by this Court's September 15 Order until the criminal case is
25 resolved, and also believe that discovery should proceed pursuant to the California Penal Code
26 criminal statutes instead of this civil action in order to avoid conflicts.

27 9. Plaintiff's counsel will immediately notify the Court and defense counsel as to the status
28 of the criminal case after the hearing on February 4, 2011.

1 DATED: January 5, 2011

/s/ Geoffrey Rotwein
GEOFFREY ROTWEIN
Attorney for Plaintiff
JOSEPH ALEJANDRO ORTEGA

/s/ Jeffrey M. Vucinich
JEFFREY M. VUCINICH
Attorney for Defendants
KURT RODENSPIEL, CITY OF
SAN MATEO, SAN MATEO POLICE DEPARTMENT

8 **ORDER**

9 Pursuant to the above Stipulation by and between the parties, and good appearing therefor:

10 IT IS HEREBY ORDERED that the various present case management, ADR and
11 discovery deadlines and dates set by this Court in its Orders dated July 23, September 15 and
12 November 24, 2010, continue to be stayed until conclusion of the criminal case in the San Mateo
13 County Superior Court, in action titled *People v. Joseph Alejandro Ortega*, No. SC071032.
14 Plaintiff's counsel is ordered to advise this Court and defense counsel when the criminal case
15 resolves, and that the Case Management Conference is continued to March 7, 2011, at 1:30 p.m.,
16 and a joint CMC statement is due February 28, 2011. The parties are further ordered to comply
17 with the initial disclosure requirements under Rule 26 no later than 30 days following the final
18 resolution of the criminal case.

19 DATED: January 7, 2011

