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 3 CLAPP, MORONEY, BELLAGAMBA,
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 5 A PROFESSIONAL CORPORATION
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9 Attorneys for Defendants
 10 KURT RODENSPIEL; SAN MATEO POLICE DEPARTMENT; and
 11 CITY OF SAN MATEO

12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA

14 JOSEPH ALEJANDRO ORTEGA,

15 Plaintiff,

16 v.

17 KURT RODENSPIEL; SAN MATEO
 18 POLICE DEPARTMENT; and CITY OF
 19 SAN MATEO, CALIFORNIA,

20 Defendants.

CASE NO.: CV10-03239 EMC

**STIPULATION AND ~~proposed~~ ORDER
 TO CONTINUE TRIAL AND MODIFY
 THE DISPOSITIVE MOTION HEARING
 DATE AND BRIEFING SCHEDULE**

AMENDED ORDER

21 The parties to this action (plaintiff Joseph Alejandro Ortega and defendants Kurt Rodenspiel,
 22 San Mateo Police Department, and City of San Mateo) by and through their attorneys of record, hereby
 23 stipulate to jointly request that the Court continue the trial date in this matter and to modify the
 24 dispositive motion schedule. The parties agree to the continuance because plaintiff's criminal appeal
 25 is still pending. The matter was submitted to the Appellate Court in January 2012 and plaintiff is still
 26 awaiting a decision. Defendant's Motion for Summary Judgment is based in part on Heck v.
 27 Humphrey, 512 U.S. 477, 487-488, 114 S.Ct. 2364, 129 L. Ed. 2d 383 (1994), which necessarily relies
 28 on the finality of plaintiff's conviction in the criminal matter. The motion cannot be heard based on
 the Heck decision until the criminal conviction stands.

Currently, the trial in this matter is set for June 11, 2012. The parties stipulate to move the

STIPULATION AND ~~proposed~~ ORDER TO MODIFY THE
 DISPOSITIVE MOTION HEARING DATE AND BRIEFING
 SCHEDULE; CASE NO. C10-03239 EMC

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 MSJ Hearing.wpd

1 new trial date to September 4, 2012, at 8:30am, and pre-trial conference on August 21, 2012 at
2 2:30pm.

3 The parties also jointly request that the Court modify the motion for summary judgment
4 briefing schedule as follows:

- 5 1. Opening and moving papers - Filed by April 15, 2012
- 6 2. Opposition papers - Filed by May 29, 2012
- 7 3. Reply papers - June 4, 2012
- 8 4. Hearing date -June 15, 2012, at 1:30 p.m.

9 IT IS SO STIPULATED BY THE PARTIES TO THIS ACTION.

10
11 DATED: March 26, 2012

LAW OFFICES OF GEOFFREY ROTWEIN

12
13 By: /S/
14 _____
15 GEOFFREY ROTWEIN
16 Attorney for Plaintiff
17 JOSEPH ALEJANDRO ORTEGA

18
19 DATED: March 26, 2012

CLAPP, MORONEY, BELLAGAMBA,
VUCINICH, BEEMAN and SCHELEY

20 By: /S/
21 _____
22 PATRICK R. CO
23 Attorneys for Defendants
24 KURT RODENSPIEL, SAN MATEO POLICE
25 DEPARTMENT, and CITY OF SAN MATEO

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ORDER

PURSUANT TO THE STIPULATION AND GOOD CAUSE APPEARING HEREIN, IT IS ORDERED THAT:

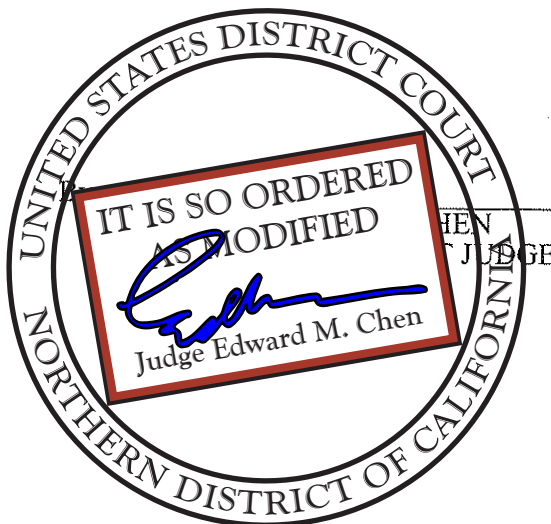
The trial date is hereby continued from June 11, 2012 to September 4, 2012 at 8:30am. The pre-trial conference shall be on August 21, 2012 at 2:30pm.

The briefing schedule for dispositive motions, including any summary judgment motions shall be modified in the following manner:

- 1. Opening and moving papers - Filed by April 15, 2012
- 2. Opposition papers - Filed by May 29, 2012
- 3. Reply papers - ~~June 4, 2012~~ June 1, 2012
- 4. Hearing date - June 15, 2012, at 1:30 p.m.

IT IS SO ORDERED.

Dated: 3/26/12



3 **PROOF OF SERVICE - Civil**
4 [Code of Civ. Proc. §§ 1011, 1013, 1031a, 2015.5]

5 **METHOD OF SERVICE:**

- 6 By Personal Service By Mail By Overnight Delivery
7 By Messenger Service By Facsimile By E-Mail/Electronic Transmission

- 8 1. I am a citizen of the United States and am employed in the County of San Mateo, State of
9 California. I am over the age of 18 years and not a party to the within action.
10 2. My place of employment is 1111 Bayhill Drive, Suite 300, San Bruno, CA 94066.
11 3. On the date set forth below, I caused to be served a true and correct copy of the document
12 described as:

13 **STIPULATION AND [proposed] ORDER TO CONTINUE TRIAL AND MODIFY THE**
14 **DISPOSITIVE MOTION HEARING DATE AND BRIEFING SCHEDULE**

- 15 4. I served the document on the persons below, as follows:

16 Geoffrey Rotwein, Esq. (SB# 58176) 17 Law Offices of Geoffrey Rotwein 18 400 Montgomery Street, 2nd Floor 19 San Francisco, CA 94104 20 Tel: (415) 397-0860 21 Fax: (415) 397-0862 22 email: geoffrotwein@sbcglobal.net 23 <u>Attorneys for Plaintiff JOSEPH</u> 24 <u>ALEJANDRO ORTEGA</u>	
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- 25 5. The document was served by the following means (specify):

- 26 a. **BY PERSONAL SERVICE.** I personally delivered the documents to the
27 persons at the addresses listed in item 4. (1) For a party represented by an
28 attorney, delivery was made to the attorney or at the attorney's office by
leaving the documents in an envelope or package clearly labeled to identify
the attorney being served with a receptionist or an individual in charge of the
office. (2) For a party, delivery was made to the party or by leaving the
documents at the party's residence with some person not less than 18 years of
age between the hours of eight in the morning and six in the evening.
- b. **BY UNITED STATES MAIL.** I enclosed the documents in a sealed envelope
or package addressed to the persons at the addresses in item 4 and (specify
one):
- (1) deposited the sealed envelope with the United States Postal Services,
with the postage fully prepaid.

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(2) placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am resident or employed in the County where the mailing occurred. The envelope or package was placed in the mail at San Bruno, California, County of San Mateo.

c. **BY OVERNIGHT DELIVERY.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 4. I place the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

d. **BY MESSENGER SERVICE.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 4 and providing them to a professional messenger service for service.

e. **BY FAX TRANSMISSION.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 4. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

f. **BY E-MAIL OR ELECTRONIC TRANSMISSION.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the email addresses listed in item 4. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

(State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(Federal) I declare that I am employed in the offices of a member of the bar of this court at whose direction this service was made. I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 26, 2012, at San Bruno, California.



Rosa Uribe

Proof of Service - Civil
[Code of Civ.Proc. §§ 1011, 1013, 1013a, 2015.5]