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 DEPARTMENT OF PUBLIC SAFETY

7
 8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

11 PEDRO DECTOR AND FLORIBERTO PEREZ
 OJEDA and all others similarly situated,,

12 Plaintiffs,

13 v.

14 CITY OF ROHNERT PARK, ROHNERT
 15 PARK DEPARTMENT OF PUBLIC SAFETY
 and DOES 1-5, inclusive,

16 Defendants.

CASE NO.: C 13-0104 RS

**STIPULATION FOR DISMISSAL OF
 FIRST CLAIM FOR RELIEF IN FIRST
 AMENDED COMPLAINT AND
 AGREEMENT WITH RESPECT TO
 CONTROLLING FACTS FOR PURPOSES
 OF MOTION TO DISMISS; EXTENSION
 OF TIME TO FILE MOTION TO
 DISMISS; ~~PROPOSED~~ ORDER RE SAME;
 [Proposed] ORDER DISMISSING FIRST
 CLAIM OF RELIEF IN FIRST AMENDED
 COMPLAINT**

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 21 TO THIS HONORABLE COURT:

22 The parties, by and through their respective counsel, and after careful negotiations regarding
 23 the factual and legal bases of plaintiffs' First Amended Complaint and defendants' expected Motion
 24 to Dismiss, hereby agree and stipulate as follows:

25 1. Plaintiffs filed an Amended Complaint in response to defendants' prior Motion to
 26 Dismiss. In accordance with the amended complaint, the hearing on defendants' Motion to Dismiss
 27 was taken off calendar. Since that time, the parties have met and conferred with respect to the legal
 28 and factual bases of plaintiffs' First Amended Complaint. The parties agree and acknowledge that

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1 defendants shall file a renewed Motion to Dismiss challenging the legal bases of plaintiffs' First
2 Amended Complaint. As a result of their discussions, the parties hereby agree that the Court's
3 review of the factual and legal issues raised by plaintiffs' complaint shall be in accordance with this
4 stipulation.

5 2. Defense counsel has provided plaintiffs' counsel with a police report and other
6 official documents related to the impoundment of plaintiffs' vehicles. Based on the facts contained
7 in those documents, some of which materially differ from those stated in the First Amended
8 Complaint, plaintiffs have elected not to proceed on the First Cause of Action for Relief for
9 Violation of the Fourth Amendment. The parties agree that the Court shall immediately dismiss
10 with prejudice the First Claim for Relief for Violation of the Fourth Amendment. Defendants shall
11 be entitled to rely upon this Stipulation and shall not be required to raise any argument or establish
12 any burden of proof with respect to the Fourth Amendment claims in any Motion to Dismiss or
13 subsequent proceedings. In accordance with this Stipulation, subparagraphs (3) and (4) of
14 paragraph 39, and paragraphs 55-58, pertaining to the Fourth Amendment claims, shall be
15 immediately stricken and shall not be considered by the Court in review of any Motion or in
16 subsequent proceedings, and plaintiffs shall not include any similar factual allegations or claims in
17 any subsequent amended complaint should leave to amend later be granted.

18 3. Any information contained in any official reports which defendants submit with the
19 Motion to Dismiss, such as police or impound reports, filed in accordance with this Stipulation shall
20 be taken as true for purposes of review of that motion and shall control over any conflicting facts
21 alleged in the First Amended Complaint. Any documents that do not constitute an official report
22 may not be submitted with the Motion to Dismiss unless plaintiffs' counsel agrees beforehand that
23 the documents are sufficiently reliable for purposes of adjudicating the legal issues raised by the
24 First Amended Complaint. Any such agreement shall be noted in the Motion to Dismiss with
25 reference to the documents submitted by defendants in accordance with the agreement.

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1 4. The parties agree and stipulate that the above negotiations and agreements have
 2 substantially impacted the facts and legal issues presented by the First Amended Complaint and
 3 the time allotted for defendants to prepare their Motion to Dismiss. Accordingly, the parties agree
 4 that the time to respond to plaintiffs' First Amended Complaint shall be extended, and that
 5 defendants shall file a Motion to Dismiss on or before May 3, 2013. This extension of time for
 6 defendants to respond does not alter the date of any event or deadline already fixed by this Court.
 7 This extension of time shall be without prejudice to the parties' respective rights to request
 8 additional extensions of time or a continuance of the hearing date on the Motion to Dismiss in
 9 accordance with law on good cause shown.

10 IT IS SO STIPULATED.

13 DATED: April 26, 2013

15 By /s/ Mark T. Clausen
 16 MARK T. CLAUSEN
 17 Attorneys for Plaintiffs
 PEDRO DECTOR and FLORIBERTO PEREZ
 18 OJEDA

19 DATED: April 26, 2013

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21 By /s/ Robert W. Henkels
 22 ROBERT W. HENKELS
 23 Attorneys for Defendants
 24 CITY OF ROHNERT PARK and ROHNERT
 PARK DEPARTMENT OF PUBLIC SAFETY

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1 **ORDER**

2 After review of the parties' Stipulation, and good cause appearing, the Court hereby orders
3 as follows: The First Claim for Relief of plaintiffs' First Amended Complaint alleging an unlawful
4 seizure in violation of the Fourth Amendment is hereby DISMISSED with prejudice. As the parties
5 already contemplate a motion to dismiss challenging the legal bases of plaintiffs' remaining claims
6 for relief, plaintiffs are not at this time required to prepare or file an amended complaint consistent
7 with this Order. Defendants shall be entitled to file official reports with their Motion that are
8 consistent with the parties' stipulation and the facts therein shall control over allegations in the First
9 Amended Complaint for purposes of their Motion to Dismiss.

10 **IT IS SO ORDERED.**

11 Dated: 4/26/13

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13 United States District Court Judge

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