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 9 Robert Carl Patrick Keane and Chieko Strange

10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA

12 ROBERT CARL PATRICK KEANE,
 individually; and CHIEKO STRANGE,
 13 individually,

14 Plaintiffs,

15 vs.

16 SETH M. MCMULLEN, PAUL ACCORNERO
 and JOHN SILVA,

17 Defendants.

No.: CV-07-4894 SBA (JL)

**~~PROPOSED~~ ORDER REGARDING
 DISCOVERY REQUESTS**

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19
 20 **I.**

21 The parties have stipulated to the following facts:

22 Plaintiffs Robert Carl Patrick Keane and his girlfriend Chieko Strange filed this civil rights
 23 action alleging defendants never should have suspected Keane was involved in trafficking illegal
 24 narcotics. The crux of Plaintiffs’ claim is that defendants should not have (1) applied for warrants to
 25 arrest Keane and to search his home (the “investigation-related claim”) and (2) should not have used
 26 excessive force when executing the arrest and search warrants (the “excessive force claim”). Among
 27 the defendants sued in this case are U.S. Drug Enforcement Agency (“DEA”) Special Agent
 28 McMullen and DEA Task for Officer John Silva (“Federal Defendants”).

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1 In their effort to obtain evidence relevant to their claims against the Federal Defendants, on
2 May 28, 2008, plaintiffs served on defendant McMullen a request to produce various documents,
3 including documents that are official records of the U.S. Drug Enforcement Agency. Similarly, on
4 July 22, 2008, plaintiffs served on the DEA a subpoena requesting production of numerous agency
5 records.

6 Each federal agency has regulations that govern how and under what circumstances a federal
7 employee will be allowed to testify, or to produce documents, in state or federal court when the
8 United States is not a party to the lawsuit. These regulations are authorized by the “housekeeping”
9 statute at 5 U.S.C. § 301, and are known as *Touhy* regulations because of the Supreme Court
10 decision that upheld their validity. *United States ex rel. Touhy v. Ragen*, 340 U.S. 462, 468 (1951).
11 The Department of Justice(DOJ) *Touhy* regulations – 28 C.F.R. §§ 16.21-16.26 – govern the
12 production of documents by DEA employees. Because the United States is not a party, the
13 subpoenas directed to McMullen and the DOJ both need to go through the same procedures.

14 Both McMullen and plaintiffs have complied with 28 C.F.R. §§ 16.21-16.26. To date, the
15 DEA has provided no official response to the plaintiffs’ requests for documents.

16 **II.**

17 The Court hereby Orders as follows:

18 Plaintiff forthwith shall serve a copy of this Order along with a copy of the subpoena and
19 discovery requests at issue on the DEA. On or before ~~November 3, 2008~~ November 14, 2008, the DEA shall provide to
20 the parties a statement that it has complied with 28 C.F.R. § 16.22. If the parties fail to receive
21 notice of the DEA’s compliance with the regulations, the parties shall inform the Court for further
22 action.

23 IT IS SO ORDERED.

24 Dated: November 4, 2008

25 
26 _____
27 Hon. James Larson
28 United States Magistrate Judge