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Attorneys for Defendants CITY OF SUNNYVALE,  
CHIEF DON JOHNSON, OFFICER STEVEN ROCHEVILLE,  
LIEUTENANT TRACY HERN, OFFICER SCOTT CORTESE,  
And CAPTAIN KELLY FITZGERALD

UNITED STATE DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

RUSSELL COLE and STEPHANIE OBERG,

Plaintiffs,

vs.

SUNNYVALE, CHIEF DON JOHNSON,  
OFFICER STEVEN ROCHEVILLE,  
LIEUTENANT TRACY HERN, OFFICER  
SCOTT CORTESE, and CAPTAIN KELLY  
FITZGERALD,

Defendants.

Case No.: C08-05017 RMW

**STIPULATION FOR AND [] ORDER OF  
VACATURE OF CERTAIN PARTS OF THE  
COURT'S ORDER RE: CROSS MOTIONS  
FOR SUMMARY JUDGMENT  
[Docket No. 137]**

The parties acting by and through their respective attorneys filed Cross Motions for Summary Judgment [Dockets Numbers 111, 119] in the above captioned matter. Following briefing of the Cross Motions and Oral Argument the Court issued its *Order Re: Cross Motions for Summary Judgment* [Docket Number 137 dated September 14, 2011]. Following the filing of that Order the defendants filed an Appeal to the United States Court of Appeal for the Ninth Circuit [Court of Appeals Docket No. 11-17459]. On Appeal the matter was ordered to Mediation with Circuit Mediator Lisa Jaye. Thanks to the guidance of Mediator Lisa Jaye the parties have reached a global settlement of the entire matter that will result in a dismissal with prejudice of the entire Action including the Appeal (The Settlement.) As part of the Settlement the parties herein Stipulate for an Order to vacate part of the Court's *Order Re: Cross Motions for Summary Judgment* [Docket Number 137 dated September 14, 2011]. See Exhibit A to this Stipulation: "Letter from Circuit

Mediator Lisa Jaye to the Court recommending that the Court Order the Stipulation of the Parties re:  
Vacature of Part of the Order dated September 14, 2011 - Docket Number 137.

As part of the Settlement in the Interest of Justice the parties seek vacature of the Court's liability findings against two of the individual defendants officers based on a second search of the plaintiffs' residence for a firearm and the Court's denial of qualified immunity to the same two individual defendant officers for that second search.

IT IS HEREBY STIPULATED by and between the parties, plaintiffs Russell Cole and Stephanie Oberg and Defendant City of Sunnyvale, Don Johnson, Kelly Fitzgerald, Tracy Hern, Steven Rocheville, Scott Cortese and the Sunnyvale Police Department (collectively, the “City”), and all Does 1-50 and all Released Persons through their designated counsel for an Order of Vacature of the following parts of the *Order Re: Cross Motions for Summary Judgment* [Docket Number 137 dated September 14, 2011]: Sections II. B.4; F; H and I and Sections III. A. 2, 3, 7, 9 and B.1 which discuss, refer or relate to the two individual officers actions in conducting a second search of plaintiffs' residence for a firearm and their request for qualified immunity for said second search. Each side to bear their own fees and costs. So Stipulated:

Dated: April 10, 2012

BERTRAND, FOX &amp; ELLIOT

By: \_\_\_\_\_ /s/  
Gregory M. Fox  
Attorneys for Defendants City of Sunnyvale,  
Chief Don Johnson, Officer Steven Rocheville,  
Lieutenant Tracy Hern, Officer Scott Cortese, and  
Captain Kelly Fitzgerald

Dated: April 10, 2012

KALLIS & ASSOCIATES P.C.

By: \_\_\_\_\_/s/  
Jeffrey Kallis  
Attorneys for Plaintiffs  
Russell Cole and Stephanie Oberg

1  
2 Dated: April 10, 2012

BUSTAMANTE O'HARA & GAGLIASSO

3  
4 By: \_\_\_\_\_/s/  
5 Andrew Stearns  
6 Steven Berki  
7 Attorneys for Plaintiffs  
8 Russell Cole and Stephanie Oberg

9 ATTORNEY ATTESTATION

10 I hereby attest that I have on file all holograph signatures for any signatures indicated by a  
11 "conformed" signature (/s/) within this E-filed document.

12 Dated: April 10, 2012

\_\_\_\_\_/s/  
GREGORY M. FOX

14 ORDER

15 Good Cause Appearing based on the Stipulation of the Parties and Circuit Mediator's Letter re  
16 Settlement of the Case, it is hereby Ordered that with regards to the Court's *Order Re: Cross Motions*  
17 *for Summary Judgment* [Docket Number 137 dated September 14, 2011]: that the following Sections  
18 of that Order are hereby vacated: Sections II. B.4; F; H and I and Sections III. A. 2, 3, 7, 9 and B.1.

19 This order is not an expression by the court as to the correctness of is previous ruling.

20 Each side to bear their own fees and costs

21  
22  
23 Dated: April 30, 2012

  
UNITED STATES DISTRICT JUDGE