

1 Gregory M. Fox, State Bar No. 070876  
 Dana L. Soong, State Bar No. 168160  
 2 BERTRAND, FOX & ELLIOT  
 The Waterfront Building  
 3 2749 Hyde Street  
 San Francisco, California 94109  
 4 Telephone: (415) 353-0999  
 Facsimile: (415) 353-0990  
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6 Attorneys for Defendants CITY OF SUNNYVALE,  
 CHIEF DON JOHNSON, OFFICER STEVEN ROCHEVILLE,  
 7 LIEUTENANT TRACY HERN, OFFICER SCOTT CORTESE,  
 And CAPTAIN KELLY FITZGERALD

8 UNITED STATE DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA

10  
 11 RUSSELL COLE and STEPHANIE OBERG,

Case No.: C08-05017 RMW

12 Plaintiffs,

13 vs.

**STIPULATION AND [] ORDER  
 CONTINUING CASE MANAGEMENT  
 CONFERENCE**

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

16 Defendants.  
 17

18 The parties, acting by and through their respective legal counsel, herein stipulate for an Order  
 19 continuing the initial Case Management Conference presently set for Friday, December 11, 2009 to  
 20 Friday, March 5, 2010 at 10:30 a.m. in Courtroom 6, 4<sup>th</sup> Floor of the U.S. District Courthouse  
 21 located at 280 S. 1<sup>st</sup> St., Rm. 2112, San Jose, California. Good cause exists to move the Case  
 22 Management Conference for the following reasons.

23 The initial Case Management Conference was held on Friday July 17, 2009 and the Court  
 24 ordered the parties to attend a settlement conference prior to the further case management conference.  
 25 The case was referred to Magistrate Judge Richard Seeborg for a settlement conference. The first  
 26 mutually convenient date for all parties and Judge Seeborg was December 1, 2009. On November  
 27 23, 2009 the parties were notified by Judge Seeborg that the settlement conference would have to be  
 28 continued and the next available date now scheduled for the settlement conference is Friday, January

1 29, 2010.

2 Following the initial Case Management Conference the defendants filed their Motion to  
3 Dismiss the Third Amended Complaint and the hearing and oral argument on that motion was held  
4 on November 6, 2009, at which time the Court took the motion under submission to consider further  
5 the tentative ruling on the First Amendment issue. To date there has been no order and thus there is  
6 no answer on file, so the case is not yet at-issue.

7 The parties stipulate and respectfully suggest that the Court continue the Case Management  
8 Conference to March 5, 2010, to allow completion of the January 29, 2010 settlement conference  
9 and time for the Court to rule on the Motion to Dismiss the Third Amended Complaint so the case  
10 may be at issue. A joint Case Management Statement to be filed on or before February 26, 2010.

11 So Stipulated:

12 Dated: December 4, 2009

BERTRAND, FOX & ELLIOT

13  
14 By: \_\_\_\_\_ /s/

15 gregory M. Fox  
16 Dana Soong  
17 Attorneys for Defendants City of Sunnyvale,  
18 Chief Don Johnson, Officer Steven Rocheville,  
19 Lieutenant Tracy Hern, Officer Scott Cortese, and  
20 Captain Kelly Fitzgerald

21 Dated: December 4, 2009

KALLIS & ASSOCIATES P.C.

22 By: \_\_\_\_\_ /s/

23 Jeffrey Kallis  
24 Attorneys for Plaintiffs  
25 Russell Cole and Stephanie Oberg

26 Dated: December 4, 2009

BUSTAMANTE O'HARA & GAGLIASSO

27 By: \_\_\_\_\_ /s/

28 Andrew V. Stearns  
Ignacio G. Camarena II  
Steven M. Berki  
Attorneys for Plaintiffs  
Russell Cole and Stephanie Oberg

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ATTORNEY ATTESTATION

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

Dated: December 4, 2009

\_\_\_\_\_/s/\_\_\_\_\_  
Gregory M. Fox

ORDER

The Case Management Conference in the above entitled case shall be continued from December 11, 2009 to March 5, 2010. Counsel shall submit an updated joint statement one week prior.

IT IS SO ORDERED.

Dated: 12/9/09

  
\_\_\_\_\_  
UNITED STATES DISTRICT COURT JUDGE