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United States Attorney
2 JOANN M. SWANSON (CSBN 88143)
Chief, Civil Division
3 TRACIE L. BROWN (CSBN 184339)
Assistant United States Attorney
4 450 Golden Gate Avenue, Box 36055
San Francisco, California 94102
5 Telephone: 415.436.6917
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6 Attorneys for Defendants

RECEIVED

04 NOV -3 PM 3: 39

RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9 SAN FRANCISCO DIVISION

FILED
2004 NOV -4 PM 12: 14
RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA

10
11 ROBERT-JOHN:FOTI; JOE NEUFELD,)
KEN AUGUSTINE)

12 Plaintiffs,

13 v.

14 OFFICER McHUGH and other unknown)
15 number of unnamed officers of the U.S.)
Marshals Service and the Federal Protective)
16 Service; U.S. MARSHALS SERVICE;)
FEDERAL PROTECTIVE SERVICE,)

17 Defendants.
18

No. C 04-2567 PJH

**DEFENDANTS' CASE MANAGEMENT
STATEMENT AND ~~PROPOSED~~
ORDER**

Date: November 10, 2004
Time: 9:00 a.m.
Place: Courtroom 3, 17th Floor

The Honorable Phyllis J. Hamilton

19 Defendants hereby submit this Case Management Statement and Proposed Order and
20 request the Court to adopt it as the Case Management Order in this case.¹
21

22
23 ¹ On October 27, 2004, the undersigned counsel sent Plaintiffs a draft Joint Case
24 Management Conference Statement, pursuant to the Court's October 22, 2004 Order requiring
25 the parties to files a Joint Statement. Although Plaintiffs initially agreed to the draft, they
26 subsequently rescinded their agreement. The undersigned counsel therefore requested that
27 Plaintiffs provide suggested changes to the draft Joint Statement, and informed Plaintiffs (via
Plaintiff Ken Augustine) that if the parties could not agree on a Joint Statement by 3:00 p.m. on
November 3, Defendants would file their own Statement. As of this writing (3:20 p.m. on
November 3), the undersigned counsel has not yet heard from Plaintiffs as to any suggested
changes and therefore submits this Case Management Conference Statement on behalf of

DESCRIPTION OF THE CASE

1. A brief description of the events underlying the action:

This case arises out of Plaintiffs' attempt to enter the Federal Building located at 450 Golden Gate Avenue, San Francisco, California, without presenting identification. Asserting violations of the First, Fourth, Fifth and Thirteenth Amendments, Plaintiffs bring *Bivens* claims against individual Defendant Officer McHugh (of the Federal Protective Service) and unnamed officers of the U.S. Marshals Service, as well as claims for injunctive relief against the agencies. Plaintiffs also assert state-law tort claims such as assault, battery, false arrest/imprisonment, and kidnaping.

Defendants have filed a motion to dismiss, which will be heard concurrently with the Case Management Conference.

2. The principal factual and legal issues which the parties dispute:

- a. Whether Plaintiffs can assert *Bivens* claims against Officer McHugh and the U.S. Marshals Service officers (*i.e.*, whether there was clearly established law demonstrating that their alleged conduct was unconstitutional);
- b. Whether Plaintiffs' state-law tort claims should be dismissed for failure to comply with the procedural requirements of the Federal Tort Claims Act;
- c. Whether there has been a waiver of sovereign immunity for Plaintiffs' claims for injunctive relief against the U.S. Marshals Service and the Federal Protective Service;
- d. Assuming there is a waiver of sovereign immunity, whether Plaintiffs can state claims that Defendants violated their constitutional rights.

3. The other factual issues [*e.g.*, *service of process, personal jurisdiction, subject matter jurisdiction or venue*] which remain unresolved for the reason stated below and how the parties propose to resolve those issues: None.

4. The parties which have not been served and the reasons: The "unnamed officers" of the U.S. Marshals Service have not been identified and served.

1 **the intended time frame for such joinder: None.**

2 **6. The following parties consent to the assignment of this case to a United States**
3 **Magistrate for trial: Defendant does not so consent.**

4 **ALTERNATIVE DISPUTE RESOLUTION**

5 **7. Defendants' position is that the Court should order a settlement conference with a**
6 **Magistrate Judge after dispositive motions are heard.**

7 **RULE 26 DISCLOSURES**

8 **8. Defendants suggest that the parties exchange Initial Disclosures one week after**
9 **the Court rules on all motions to dismiss or motions for judgment on the pleadings.**

10 **DISCOVERY**

11 **9. Discovery plan: Defendants request that each side be limited to 6 depositions**
12 **(including any experts), 10 interrogatories, 10 requests for production and 10 requests for**
13 **admission. Defendant further requests that unless the parties subsequently stipulate otherwise,**
14 **discovery should commence only after the Court rules on all motions to dismiss or motions for**
15 **judgment on the pleadings.**

16 **TRIAL SCHEDULE**

17 **10. Defendants propose a schedule as follows, or as may be convenient for the**
18 **Court:**

19	Trial:	October 4, 2005
20	Pretrial conference:	September 22, 2005
21	Dispositive motion filing deadline:	June 15, 2005
22	Dispositive motion hearing deadline:	July 20, 2005
23	Fact discovery cutoff:	June 3, 2005
24	Expert discovery cutoff:	September 9, 2005
25	Expert designations and reports:	August 12, 2005
26	Rebuttal expert designation and reports:	August 26, 2005

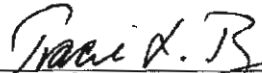
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11. Defendants expect that the trial will last for the following number of days:

Approximately 3 days.

DATED: November 3, 2004

KEVIN V. RYAN
United States Attorney


TRACIE L. BROWN
Assistant United States Attorney
Attorneys for Defendant

[PROPOSED] CASE MANAGEMENT ORDER

Defendants' Case Management Statement, including the proposed Trial Schedule and discovery limits, is hereby adopted as the Case Management Order for this case. The parties are ordered to comply with this Order. In addition, the Court specifically orders as follows:

- 1.
- 2.
- 3.
- 4.

Dated: November __, 2004

The Honorable Phyllis J. Hamilton
United States District Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she is causing a copy of the following:

DEFENDANT'S CASE MANAGEMENT STATEMENT AND [PROPOSED] ORDER

Robert-John:Foti Neufeld, Ken Augustine v. Office McHugh, et al.
C 04-2567 PJH

to be served this date upon the party in this action by placing a true copy thereof in a sealed envelope, and served as follows:

- FIRST CLASS MAIL** by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.
- CERTIFIED MAIL (#)** by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.
- PERSONAL SERVICE (BY MESSENGER)**
- FEDERAL EXPRESS via Priority Overnight**
- FACSIMILE (FAX)** Telephone No.: See Below

to the party(ies) addressed as follows:

Robert-John Foti
Sovereign State Parties
General Delivery
Woodacre, CA 94973

Joseph Leonard Neufeld
General Delivery
Mission Rafael Station
San Rafael, CA 94915-9999

Kenneth Augustine
53 Mark Drive
San Rafael, CA 94903

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on November 3, 2004 at San Francisco, California.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION



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DATED: November 3, 2004

KEVIN V. RYAN
United States Attorney


TRACIE L. BROWN
Assistant United States Attorney
Attorneys for Defendant

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The Honorable Phyllis J. Hamilton
United States District Judge

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5 **Robert-John:Foti Neufeld, Ken Augustine v. Office McHugh, et al.**
6 **C 04-2567 PJH**

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- 12 **FEDERAL EXPRESS via Priority Overnight**
- 13 **FACSIMILE (FAX)** Telephone No.: See Below

14 to the party(ies) addressed as follows:

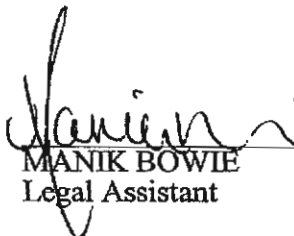
15 Robert-John Foti
16 Sovereign State Parties
17 General Delivery
Woodacre, CA 94973

18 Joseph Leonard Neufeld
19 General Delivery
Mission Rafael Station
San Rafael, CA 94915-9999

20 Kenneth Augustine
21 53 Mark Drive
22 San Rafael, CA 94903

23 I declare under penalty of perjury under the laws of the United States that the foregoing is true
24 and correct.

25 Executed on November 3, 2004 at San Francisco, California.

26
27
28 
MANIK BOWIE
Legal Assistant