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 8 *Delaney, Cynthia Hockless, Suzanne*  
 9 *Jenike, and Megan Cortez*

JS-6

10 **UNITED STATES DISTRICT COURT**  
 11 **CENTRAL DISTRICT OF CALIFORNIA**

12 JEFFREY GROSS,  
 13 Plaintiff,  
 14 vs.  
 15 ORANGE COUNTY EMPLOYEES  
 RETIREMENT SYSTEM (OCERS), a  
 16 public agency; COUNTY OF  
 ORANGE, a governmental entity;  
 17 STEVE DELANEY, an individual;  
 18 CYNTHIA HOCKLESS, an individual;  
 SUSAN JENIKE, an individual;  
 19 MEGAN CORTEZ, an individual; and  
 Does 1 through 20 inclusive,  
 20 Defendant.

Case No.: 8:17-cv-02020-JVS-DFM

**STIPULATION AND ORDER RE:  
 SCREENING OF ATTORNEYS,  
 REMAND TO STATE COURT AND  
 LEAVE TO AMEND**

28 U.S.C. § 1441(a)  
 (FEDERAL QUESTION AND  
 SUPPLEMENTAL JURISDICTION)

23 This Stipulation and Agreement (“Stipulation”) is entered into between and  
 24 amongst the parties in the matter of *Jeffrey Gross v. Orange County Employees*  
 25 *Retirement System (“OCERS”), et al.*, in the United States District Court for the  
 26 Central District of California, Case No. 8:17-cv-02020-JVS (DFMx), removed  
 27 from the Orange County Superior Court (“Superior Court”), Case No. 30-2017-  
 28 00944959-CU-WT-CJC (collectively, this “Matter”).

1 **RECITALS**

2 1. Plaintiff Jeffrey Gross (“Plaintiff”) filed the Complaint in this Matter  
3 in the Superior Court on September 20, 2107.

4 2. Defendant OCERS, and Defendants Steve Delaney, Suzanne Jenike,  
5 Cynthia Hockless, and Megan Cortez (collectively, the “Individual Defendants”),  
6 filed a Notice of Removal to the United States District Court for the Central  
7 District of California on November 17, 2017. Defendant County of Orange filed  
8 a Joinder in the Notice of Removal on November 20, 2017.

9 3. A dispute has arisen between Plaintiff and OCERS with respect to  
10 whether OCERS’ in-house attorneys have a potential conflict of interest in the  
11 Matter; and Plaintiff has contemplated filing a motion to disqualify counsel for  
12 Defendants. Plaintiff has also contemplated filing a motion to remand this matter  
13 to the state court, and OCERS and the Individual Defendants have contemplated  
14 filing a motion for Judgment on the Pleadings pursuant to Federal Rule of Civil  
15 Procedure 12(c).

16 4. On November 28, the parties held an extensive conference of the  
17 parties under Local Civil Rule 7-3 to discuss these three contemplated motions;

18 5. The parties wish to resolve these disputes by entering into this  
19 Stipulation as set forth below.

20  
21 **NOW, THEREFORE THE PARTIES STIPULATE AS FOLLOWS:**

22 1. Plaintiff will not seek to disqualify the in-house attorneys in the  
23 Legal Department of OCERS in this Matter;

24 2. Plaintiff waives any and all actual or potential conflicts of interest  
25 with respect to the in-house attorneys in the Legal Department of OCERS based  
26 on the facts alleged in or related to this Matter;

27 3. Plaintiff agrees not to bring any claims against OCERS attorney  
28 Dawn Matsuo (Matsuo) that relate to the allegations in this Matter;

1           4.     OCERS agrees that it will “screen” Matsuo from any involvement in  
2 the legal representation of OCERS in this Matter. Subject to the provisions of  
3 Paragraph 5, below, this screening shall include the following:

- 4           a. Matsuo will not appear in her capacity as an OCERS attorney on  
5           behalf of OCERS in this Matter before any court, in any deposition,  
6           at any settlement conference, or any other similar proceeding or  
7           occasion;
- 8           b. Matsuo will not perform any legal or factual research related to this  
9           Matter, nor prepare any document (including pleadings, motions, or  
10           correspondence) in this Matter;
- 11          c. No member of the OCERS Legal Department, and no attorney on  
12           behalf of OCERS, shall, directly or indirectly, discuss the legal  
13           strategy, legal theories, legal claims, or legal issues of this Matter  
14           with Matsuo;
- 15          d. Matsuo will not provide legal advice to OCERS related to this  
16           Matter, including to the other members of the OCERS Legal  
17           Department, to the management of OCERS, or the OCERS Board of  
18           Retirement, and Matsuo shall not be included in any closed session  
19           of the OCERS Board of Retirement (or any committee thereof) for  
20           the purposes of offering legal counsel in this Matter pursuant to the  
21           Brown Act, Cal. Gov’t Code § 54956.9.

22          5.     The parties contemplate that Matsuo may be a percipient witness in  
23 this Matter. Consistent with OCERS’ policies and practices, as an employee of  
24 OCERS, Matsuo may be required to cooperate with OCERS’ investigation of the  
25 facts of this Matter and to produce material for discovery. Additionally, Matsuo  
26 may be called to testify at a deposition, trial, or other hearing in this Matter.  
27 Notwithstanding the screening procedures set forth in paragraph 4, attorneys in  
28 the OCERS Legal Department may interview Matsuo to obtain the facts of this

1 Matter, require that she provide records responsive to discovery requests in this  
2 Matter, and otherwise provide information to attorneys in the OCERS Legal  
3 Department in the fashion that any employee of OCERS would be required to do  
4 in the normal course of business. Additionally, if Matsuo is called to testify in  
5 this Matter, OCERS may offer to represent her for the purposes of the litigation,  
6 either through in-house counsel or the OCERS Legal Department.

7 6. Matsuo will have the right to retain separate counsel in this Matter,  
8 including in any interview with OCERS attorneys and during any deposition or  
9 other testimony that she may give.

10 7. OCERS agrees that it will not take any adverse employment action  
11 with respect to Matsuo as a result of any interview, testimony, or information that  
12 she provides related to this Matter.

13 8. OCERS shall notify Matsuo of this Stipulation and her rights under it.  
14 Matsuo shall have no obligations arising under this Stipulation but shall be an  
15 intended third party beneficiary of this Stipulation.

16 9. Nothing in this Stipulation affects the attorney-client relationship  
17 and privilege that exists between OCERS and its attorneys, or between Matsuo  
18 and the OCERS attorneys if she chooses to accept any offer for OCERS to  
19 represent her.

20 10. Pursuant to Federal Rule of Civil Procedure 41(a)(2), Plaintiff agrees  
21 to dismiss WITH PREJUDICE the Fourth Cause Of Action (Violation of First  
22 Amendment Rights of Protected Free Speech—Retaliation), the Fifth Cause of  
23 Action (Violation of Fifth Amendment Rights), and the Individual Defendants  
24 from any claim that relates to the allegations in this Matter;

25 11. The parties agree that the Matter shall be remanded to the Superior  
26 Court.

27 12. Plaintiff shall have leave to amend the Complaint, following remand  
28 to the Superior Court.



1 **Attestation for Electronic Filing**

2 All other signatories listed, and on whose behalf the filing is submitted, concur in  
3 the filing's content and have authorized the filing.

4  
5 Dated: December 12, 2017

6 \_\_\_\_\_ /s/  
7 Lee K. Fink  
8 Attorney for Defendants Orange County  
9 Employees Retirement System (OCERS);  
10 Steve Delaney; Suzanne Jenike; Cynthia  
11 Hockless; Megan Cortez  
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