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32 **Attorneys for Defendant Lee F. Gaines, II**

33 **IN THE UNITED STATES DISTRICT COURT**
 34 **EASTERN DISTRICT OF CALIFORNIA**
 35 **(Fresno Division)**

36	JANE DOE,)	NO. 1:12-CV-01255-LJO-GSA
37)	
38	Plaintiff,)	STIPULATION AND ORDER TO STAY
39)	CIVIL ACTION PENDING
40	vs.)	RESOLUTION OF CRIMINAL
41)	PROCEEDINGS AND ORDER FOR
42	LEE F. GAINES, II, MODESTO POLICE)	STATUS REPORTS
43	DEPARTMENT AND CITY OF MODESTO and)	
44	DOES 1 through 20, inclusive,)	
45)	
46	Defendants.)	
47)	

48 **STIPULATION AND ORDER TO STAY CIVIL ACTION PENDING RESOLUTION OF CRIMINAL PROCEEDINGS**

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The parties, by and through their respective counsel of record, hereby stipulate that this action be stayed pending resolution of criminal proceedings against defendant Lee F. Gaines, II, and request that the court order the case stayed on the basis of the following circumstances:

1. On August 1, 2012, plaintiff filed a complaint against the City of Modesto, the Modesto Police Department and Police Officer Lee F. Gaines, II, alleging that on January 5, 2012, Officer Gaines unlawfully entered her residence, handcuffed her and sexually assaulted her.

2. On September 17, 2012, plaintiff filed a first amended complaint alleging the same set of facts and setting forth both state and federal claims against Officer Gaines as well as a *Monell* claim against the City of Modesto and Modesto Police Department.

3. On March 15, 2012, Gaines was indicted in the Superior Court of California, County of Stanislaus on charges related to the alleged sexual battery of plaintiff. The criminal proceedings are in progress and ongoing. The allegations in the criminal indictment arise from and are virtually identical to the allegations in plaintiff's civil complaint filed herein. A trial date in the criminal case is likely to be set in the spring of 2013.

4. On October 9, 2012, Gaines filed a Motion to Stay Civil Action Pending Resolution of Criminal Proceedings (docket document 10), seeking a stay of the civil proceedings given that the parallel criminal proceeding clearly implicates Gaines Fifth Amendment rights. In addition, both Gaines and the Modesto public entity defendants would be deprived of their opportunity to offer a meaningful defense in the civil case should this matter go forward and Gaines continue to preserve his right against self incrimination.

5. In light of the ongoing criminal proceedings, and the fact that the criminal indictment arises out of the identical facts upon which plaintiff bases her civil action, the parties, by and through their respective counsel, stipulate that the civil proceedings herein be stayed pending the resolution of the criminal proceedings against Gaines. The parties stipulate that the hearing on Gaines' Motion to Stay, presently set for hearing on December 7, 2012 at 9:30 a.m. in Courtroom 10 before Magistrate Judge Gary S. Austin be vacated.

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4 notify the court when the criminal proceedings have been resolved and the court will at that time
5 reschedule the initial scheduling conference as soon as practicable based upon the court's calendar.

6 **In addition, this Court ORDERS the parties, no later than April 18, 2013 and every 90 days**
7 **thereafter, to file joint status reports to address the need to continue stay of this action.**

8 IT IS SO ORDERED.

9 **Dated: November 7, 2012**

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE

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