

1 McCormick, Barstow, Sheppard,
2 Wayte & Carruth LLP
3 Deborah A. Byron, #105327
4 7647 North Fresno Street
5 Fresno, California 93720
6 Telephone: (559) 433-1300
7 Facsimile: (559) 433-2300

8 Attorneys for County of Calaveras, erroneously
9 sued herein as Calaveras County Sheriff and
10 Calaveras County Jail and John P. Bailey

11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF CALIFORNIA,
13 SACRAMENTO DIVISION

14 COLEMAN PAYNE, an individual,
15 Plaintiff,

16 v.

17 STATE OF CALIFORNIA, a government
18 entity and state in the United States;
19 DEPARTMENT OF STATE HOSPITALS, a
20 government agency form unknown;
21 METROPOLITAN STATE HOSPITAL, an
22 entity form unknown; COUNTY OF
23 CALAVERAS, a government entity in the
24 State of California; CALAVERAS COUNTY
25 SHERIFF, a governmental agency of unknown
26 form; CALAVERAS COUNTY JAIL, an
27 entity form unknown; JOHN P. BAILEY, an
28 individual; JOY LYNCH, an individual;
CALIFORNIA FORENSIC MEDICAL
GROUP, a business entity of unknown form
located in the State of California; DOES 2
through 50 inclusive,

Defendants.

Case No. 1:17-cv-00906-DAD-MJS

**STIPULATION AND ORDER TO STRIKE
JOHN P. BAILEY AS A DEFENDANT IN
COUNT SEVEN OF FIRST AMENDED
COMPLAINT**

The Hon. Michael J. Seng

IT IS HEREBY STIPULATED by and between Plaintiff Coleman Payne and Defendants County of Calaveras and John P. Bailey in the above-captioned case, through their respective counsel of record, as follows:

The purpose of this Stipulation is to allow Plaintiff Coleman Payne to strike the name

1 "John P. Bailey" from Count Seven of First Amended Complaint for Damages for Intentional
2 Infliction of Emotional Distress.

3 The basis for this Stipulation is that this Court, in ruling on the State Defendants' Motion
4 to Dismiss, did not permit Plaintiff leave to amend Count Seven of the First Amended Complaint
5 to add John P. Bailey as a defendant charged with intentional infliction of emotional distress.

6 Therefore, the parties request that Count Seven of the First Amended Complaint for
7 Damages will be stricken as follows: John P. Bailey, an individual, will be removed as a party
8 against whom Plaintiff seeks to recover damages for intentional infliction of emotional distress,
9 and his name shall be stricken at page 16, line 10, of First Amended Complaint. All requested
10 changes in this stipulation apply to Count Seven only.

11 The parties respectfully request that this Court order: 1) the striking of "John P. Bailey"
12 from Count Seven of First Amended Complaint; 2) that Plaintiff be precluded from seeking
13 damages for intentional infliction of emotional distress under Count Seven of Plaintiff's First
14 Amended Complaint as to Defendant John P. Bailey only; 3) that Defendants County of Calaveras
15 and John P. Bailey may respond to Count Seven of First Amended Complaint as if "John P.
16 Bailey" was stricken from the pleading at page 16, line 10.

17 Dated: March 22, 2018

McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

19 By: _____ /s/ Deborah A. Byron
20 Deborah A. Byron
21 Attorneys for County of Calveras, erroneously sued
22 herein as Calaveras County Sheriff and Calaveras
23 County Jail and John P. Bailey

24 Dated: March 22, 2018

SLATER LAW, APC

25 By: _____ /s/ Theodore Slater
26 Theodore Slater
27 Attorneys for Coleman Payne

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ORDER

The Court, having reviewed and found acceptable the substance of the Stipulation of the parties but, being unwilling to have piecemeal pleadings on file, and finding good cause, hereby orders the following:

1. That "John P. Bailey" be dismissed as a named defendant in Count Seven of Plaintiff's First Amended Complaint;

2. That Plaintiff is precluded from seeking damages for intentional infliction of emotional distress against Defendant John P. Bailey in Plaintiff's First Amended Complaint or any amendment thereof;

3. That Plaintiff may, and shall within fourteen days of the date of this Order, file a Second Amended Complaint in all respects identical to the First Amended Complaint except that John P. Bailey shall not appear as a defendant in Count Seven of the Second Amended Complaint.

IT IS SO ORDERED.

Dated: March 26, 2018

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE