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 15 **UNITED STATES DISTRICT COURT**
 16 **EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION**

17 Nathaniel Smith,
 18 Plaintiff,
 vs.

) Case No.: 2:15-cv-00363-KJM-AC
)
) [Assigned to the Honorable Kimberly J.
) Mueller-Courtroom 3]

19 City of Stockton: Officer Patrick Mayer,
 Officer Robin Harrison, and Officer Michael
 20 Perez, in their individual capacities; and chief
 of Police Eric Jones, in his official and
 21 individual capacities,

) **JOINT STIPULATION & ORDER TO**
) **DISMISS PLAINTIFF'S SECOND CLAIM**
) **FOR RELIEF AND DISMISS CHIEF OF**
) **POLICE ERIC JONES IN HIS OFFICIAL**
) **CAPACITY**

22 Defendants.

) Complaint filed: February 12, 2015
) Discovery Cut-Off: May 26, 2017
) Motion Cut-Off: July 14, 2017
) Trial Date: TBC

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 JOINT STIPULATION TO DISMISS PLAINTIFF'S SECOND CLAIM FOR RELIEF AND DISMISS CHIEF OF POLICE
 ERIC JONES IN HIS OFFICIAL CAPACITY; ORDER



1 Plaintiff NATHANIEL SMITH and Defendants CITY OF STOCKTON, OFFICER
2 ROBIN HARRISON, OFFICER PATRICK MAYER, OFFICER MICHAEL PEREZ, and
3 CHIEF OF POLICE ERIC JONES (also hereinafter collectively referred to as “Defendants”), by
4 and through their undersigned counsel of record, and subject to the approval of the Court, hereby
5 stipulate as follows:

6 Defendants are presently planning on submitting a motion for summary judgment, or in
7 the alternative, summary adjudication as to Plaintiff’s claims in this action. Pursuant to Judge
8 Mueller’s standing civil order, the parties met and conferred regarding Defendants’ intended
9 motion as required. The parties hereby agree to the following two items:

10 1) Plaintiff’s second claim for relief, for intentionally and/or recklessly provoking a
11 confrontation, against Officers Mayer and Perez (premised on 42 U.S.C. § 1983, the
12 4th and 14th Amendments), is no longer a viable claim for relief in light of the recent
13 United States Supreme Court decision in *County of Los Angeles, California, et al. v.*
14 *Mendez, et al.*, 518 U.S. _____ (2017), 2017 U.S. LEXIS 3396 (May 30, 2017).
15 Accordingly, Plaintiff hereby agrees to dismiss his second claim for relief with
16 prejudice.
17

18 2) Plaintiff has named both the City of Stockton and Chief of Police Eric Jones in his
19 official capacity as Defendants in this suit. Plaintiff’s counsel agrees, pursuant to
20 controlling case law, that both cannot be named as Defendants in this action, and
21 hereby agrees to dismiss Chief Jones, in his official capacity only, from the action
22 with prejudice. (Chief Jones is also named in his individual capacity as a Defendant,
23 and Plaintiff’s claims against Chief Jones in his individual capacity will be addressed
24 in Defendants’ motion.)
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Dated: June 12, 2017

Respectfully Submitted,
HADSELL STORMER & RENICK LLP

By: /s/ - Lori Rifki
Lori Rifkin
Attorney for Plaintiff

Dated: June 12, 2017

HERUM\CRABTREE\SUNTAG
By: /s/ - Joshua J. Stevens
Joshua J. Stevens
Attorney for All Defendants

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ORDER

The Court, having considered the parties' stipulation, and good cause appearing, the Joint Stipulation to Dismiss Plaintiff's Second Claim for Relief and Dismiss Chief of Police Eric Jones in his official capacity as a Defendant is GRANTED and all parties shall comply with its provisions.

IT IS SO ORDERED.

DATED: June 21, 2017.


UNITED STATES DISTRICT JUDGE