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 11 DEPARTMENT"] and all 32 individual officers

12 **UNITED STATES DISTRICT COURT**
 13 **EASTERN DISTRICT OF CALIFORNIA**

14 STEPHANIE KOUSSAYA,)	Case No.: 2:16-cv-01972-TLN-EFB
)	
15 Plaintiff,)	STIPULATION AND ORDER OF
)	VOLUNTARY REMAND
16 vs.)	
)	
17 CITY OF STOCKTON; et al.,)	
)	
18 Defendants.)	

19
 20 1. Defendants (including CITY OF STOCKTON and all named individual officers)
 21 and Plaintiff, STEPHANIE KOUSAYA, hereby agree and stipulate that the Motion to Remand
 22 be withdrawn, and the case be remanded back to the Superior Court of San Joaquin County.

23 2. The parties, through their respective counsel, agree that there is a legal basis for
 24 remand as follows:

25 On March 29, 2016, Plaintiff Stephanie Koussaya and Defendant City of Stockton
 26 entered into a Stipulation in a bankruptcy proceeding then pending in the United States
 27 Bankruptcy Court, Eastern District of California, Sacramento Division, entitled *In re: City of*
 28 *Stockton*, Case No. 12-32118. That Stipulation was approved by the Bankruptcy Court. In the

1 Stipulation the parties agreed that Koussaya would file the present action in the San Joaquin
2 County Superior Court, “to litigate all causes of action against the City, among other parties”
3 arising from the injuries suffered by Koussaya as a result of the hostage situation at issue in this
4 action. In the Bankruptcy Court Stipulation the parties further agreed that “the legal and factual
5 merits of the Claims shall be determined by the Superior Court, and that the Superior Court has
6 jurisdiction to determine the validity and amount of the Claims.”

7 An action can only be removed from state court to federal court if all the defendants
8 who have been served join in and consent to the removal. 29 U.S.C. §1446(b)(2)(A); *Chicago,*
9 *R.I. & P. Ry. Co. v. Martin*, 178 U.S. 245, 247-248 (1900); *Destfino v. Reiswig*, 630 F.3d 952,
10 956 (9th Cir. 2011). A defendant who is party to a forum selection agreement specifying that the
11 action will be heard in a state court has waived the right to remove. *Pelleport Investors, Inc. v.*
12 *Budco Quality Theatres, Inc.*, 741 F.2d 273, 281 (9th Cir. 1984); *Robeson v. Twin Rivers Unified*
13 *School Dist.*, 2014 WL 1392922, p. 1 (E.D.Cal. 2014). That party has also waived the right to
14 join in or consent to another party’s removal, thereby barring removal of the action by any
15 defendant. *Medtronic, Inc. v. Endologix, Inc.*, 530 F.Supp.2d 1054, 1058 (D.Minn.
16 2008); *Cattlemen’s Choice Loomix, LLC v. Heim*, 2011 WL 1884720, p. 3 (D.Colo. 2011).

17 The parties agree that Defendant City of Stockton is bound by the Bankruptcy Court
18 Stipulation to litigate this action in the San Joaquin County Superior Court, and thereby waived
19 the right to consent to removal of the action to this Court. The parties further agree that, because
20 Defendant City of Stockton could not consent to removal, the Defendant police officers are
21 barred from removing the action to this Court, and the action must therefore be remanded to the
22 San Joaquin County Superior Court.

23 3. It is further agreed that the City of Stockton and individual defendants will file a
24 response to the Complaint within 10 days of the notice of the remand order being filed with the
25 superior court.

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4. Each party is to bear its own fees and costs.

Dated: September 27, 2016

PIERING LAW FIRM

/s/ Robert A. Piering (as authorized on 9/27/16)

By: _____
ROBERT A. PIERING
Attorneys for Plaintiff STEPHANIE
KOUSSAYA

Date: September 27, 2016

ANGELO, KILDAY & KILDUFF, LLP

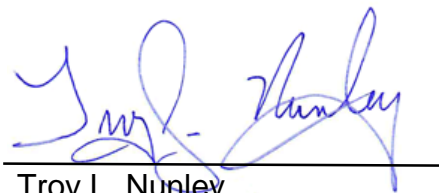
/s/ Bruce A. Kilday

By: _____
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JOHN A. WHITESIDES
Attorneys for Defendants
CITY OF STOCKTON [also sued as
"STOCKTON POLICE
DEPARTMENT"] and all 32 individual
officers

ORDER

IT IS SO ORDERED.

Dated: September 28, 2016



Troy L. Nunley
United States District Judge