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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

11 CHEN MING,  
12 Plaintiff,  
13 v.  
14 CITY AND COUNTY OF SAN  
FRANCISCO, SEAN FROST, and DOES 1-  
15 25, inclusive.  
16 Defendants.

Case No. 3:09-cv-01830-CRB

**STIPULATION AND PROPOSED  
ORDER TO ALLOW PLAINTIFF TO  
AMEND HIS COMPLAINT SO THE  
CASE MAY BE REMANDED TO STATE  
COURT**

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17 **INTRODUCTION**

18 Plaintiff Ming Chen respectfully requests this Court recognize that he does not  
19 intend to pursue his federal remedies in his pending lawsuit against the City & County of  
20 San Francisco, Sean Frost, and Does 1-25. Defendants removed the state-filed case to  
21 federal court based on an offending phrase plaintiff seeks to amend from his complaint  
22 alleging state claims for battery and a statutory violation under Cal. Civ. Code Section  
23 51.7. The plaintiff seeks to amend the phrase as follows: "Plaintiff suffered general  
24 damages including pain and suffering and loss of his rights guaranteed by the ~~United~~  
25 ~~States Constitution~~ **laws of the State of California** due to the defendants' acts and  
26 omissions. . . " The parties now present the below stipulation seeking leave to amend and  
27 a request to remand this case back to state court.  
28

**RECITALS**

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2           1.       On February 9, 2009, plaintiff Chen Ming filed his complaint alleging a violation  
3 of 42 U.S.C. Section 1983, Battery, and a violation of Cal. Civ. Code Section 51.7 against the  
4 City & County of San Francisco, Sean Frost, and Does 1-25 in federal court and was assigned  
5 case number C 09-00590 SBA.

6           2.       Plaintiff dismissed his federal lawsuit without prejudice on February 23, 2009.

7           3.       Plaintiff filed a complaint on February 17, 2009 against the same parties alleging  
8 battery and a violation of Cal. Civ. Code Section 51.7 in San Francisco Superior Court, and was  
9 assigned case no. CGC-09-485027. In the complaint, the plaintiff inadvertently did not omit the  
10 “United States Constitution” from his damages section, and, now seeks to amend as follows:  
11 “Plaintiff suffered general damages including pain and suffering and loss of his rights guaranteed  
12 by the ~~United States Constitution~~ laws of the State of California due to the defendants’ acts and  
13 omissions. . . “

14           4.       Defendants removed this case to federal court on April 27, 2009 based on the  
15 offending phrase.

16           5.       The parties stipulate that “rights guaranteed by the United States Constitution” be  
17 stricken from the complaint and be replaced by “rights guaranteed by the laws of the State of  
18 California.”

19           6.       Plaintiff hereby abandons and dismisses any and all claims under federal law  
20 including without limitation any federal statute or the United States Constitution.

21           7.       The parties further stipulate that because plaintiff is not seeking a claim against  
22 these defendants based on federal law, so they respectfully request that this Court remand this  
23 case to state court for all further proceedings.

24 DATED: June 29, 2009

**CITY & COUNTY OF SF**

25 By: \_\_\_\_\_/s/  
26 Scott Wiener  
27 Attorney for Defendants  
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DATED: June 29, 2009

Respectfully submitted,

**SCOTT LAW FIRM**

By: s/ Lizabeth N. de Vries  
LIZABETH N. DE VRIES  
Attorney for Plaintiff

**ORDER**

Based on the stipulation of the parties, and good cause appearing therefor;

**IT IS HEREBY ORDERED** as follows:

1. The phrase in the complaint “his rights guaranteed by the United States Constitution” is stricken and replaced with “his rights guaranteed by the laws of the State of California.”
2. To the extent that the complaint states a cause of action under federal law, any such federal claim is hereby dismissed.
3. Because there is no federal claim in this case, the case is hereby remanded to the Superior Court of California for the County of San Francisco.

**IT IS SO ORDERED.**

DATED: July 01, 2009

