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 Sheriff Steve Freitas in his personal capacity

9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA

11 RAFAEL MATEOS-SANDOVAL and  
 SIMEON AVENDANO RUIZ, individually  
 12 and as class representatives,

Case No. CV-11-05817 TEH

13 Plaintiffs,

14 v.

15 COUNTY OF SONOMA, SONOMA  
 COUNTY SHERIFF'S DEPARTMENT,  
 16 STEVE FREITAS, CITY OF SANTA ROSA,  
 SANTA ROSA POLICE DEPARTMENT,  
 17 TOM SCHWEDHELM, and DOES 1 through  
 20, individually and in their official capacities,

18 Defendants.

**JOINT STIPULATION TO (1) DISMISS  
 BANE ACT CLAIMS AGAINST PERSONAL-  
 CAPACITY DEFENDANTS, (2) ESTABLISH  
 BRIEFING SCHEDULE ON MOTION TO  
 DISMISS, AND (3) RESCHEDULE CASE  
 MANAGEMENT CONFERENCE;  
 [PROPOSED] ORDER**

**IT IS SO ORDERED AS MODIFIED**

21 TO THE HON. THELTON E. HENDERSON, UNITED STATES DISTRICT JUDGE:

22 This Joint Stipulation to (1) Dismiss Bane Act Claims Against Personal-Capacity  
 23 Defendants, (2) Establish Briefing Schedule on Motion to Dismiss, and (3) Reschedule Case  
 24 Management Conference, is submitted by the following parties in this action: Plaintiffs Rafael  
 25 Mateos-Sandoval and Simeon Avendano Ruiz (collectively, "Plaintiffs"); Defendant Sonoma  
 26 County Sheriff Steve Freitas sued in his personal capacity only ("Sheriff Freitas"); and Defendants  
 27 the City of Santa Rosa, Santa Rosa Police Department, and Santa Rosa Police Chief Tom

1 Schwedhelm (collectively, “City Defendants”). Defendants the County of Sonoma, Sonoma  
2 County Sheriff’s Office, and Sonoma County Sheriff Steve Freitas sued in his official capacity are  
3 not parties to this stipulation, as this action is currently stayed as to all claims against them based on  
4 their pending appeal. (See e.g., Order entered April 10, 2013, Dkt. No. 92.)

5 The parties to this Stipulation request the Court to enter an order as follows: (1) approving  
6 Plaintiffs’ dismissal of all claims made under California’s Bane Act, California Civil Code § 52.1,  
7 against the individual defendants sued in their personal capacities; (2) setting a briefing and hearing  
8 schedule for Sheriff Freitas’ motion to dismiss; and (3) rescheduling the case management  
9 conference, which is currently set to be held on August 26, 2013, to enable it to be held concurrently  
10 with the hearing on the motion to dismiss. The parties submit that good cause supports their  
11 requests, as set forth below.

12 **RECITALS**

13 A. Plaintiffs filed their Second Amended Class Action Complaint for Damages (the  
14 “SAC”) in this action on August 7, 2013 (Dkt. No. 105). Plaintiffs have re-alleged several claims in  
15 their SAC that the Court dismissed without prejudice in its Order Granting in Part and Denying in  
16 Part Motions to Dismiss First Amended Complaint (Dkt. No. 104), including but not limited to: (1) a  
17 claim under California Civil Code § 52.1 (the “Bane Act”) against Sheriff Freitas in his personal  
18 capacity in Count 1; and (2) a claim against Sheriff Freitas in his personal capacity for due process  
19 violations made under 42 U.S.C. § 1983 in Count 4.

20 B. Upon further consideration and pursuant to a discussion of counsel, Plaintiffs have  
21 agreed to dismiss their Bane Act claim made against Sheriff Freitas in his personal capacity  
22 contained in Count 1 of the SAC, and their Bane Act claim made against Defendant Santa Rosa  
23 Police Chief Tom Schwedhelm (“Chief Schwedhelm”) in his personal capacity contained in Count 2  
24 of the SAC. Upon such dismissal, no Bane Act claims will remain in the SAC against these two  
25 individual defendants to the extent sued in their personal capacities; Bane Act claims shall remain in  
26 the SAC only as to the entity defendants.

27 C. Sheriff Freitas has indicated his intent to file a motion to dismiss with respect to the

1 due process claim brought under 42 U.S.C. § 1983 made against him in his personal capacity in  
2 Count 4. The parties have agreed to a briefing and hearing schedule to address that motion.

3 D. In addition, to conserve the resources of the Court and the parties, the parties request  
4 that the further case management conference, currently scheduled to be held on August 26, 2013, be  
5 rescheduled to enable it to be held concurrently with the hearing on the motion to dismiss. The  
6 parties also request the ability to appear at the hearing and case management conference via  
7 telephone.

8 WHEREFORE, the parties to this stipulation hereby agree and request entry of an order as  
9 follows:

10 **STIPULATION**

11 1. Plaintiffs hereby dismiss from this action with prejudice their claims made under  
12 California's Bane Act, California Civil Code § 52.1, against Sheriff Freitas in his personal capacity  
13 contained in Count 1 of the SAC, and against Chief Schwedhelm in his personal capacity contained  
14 in Count 2 of the SAC.

15 2. The parties request the Court to extend the time in which Sheriff Freitas in his  
16 personal capacity may respond to the SAC, and to set the briefing and hearing schedule on his  
17 motion to dismiss the 42 U.S.C. § 1983 due process claim contained in Count 4 of the SAC as  
18 follows:

19 Motion to Dismiss due: August 30, 2013  
20 Opposition to Motion to Dismiss due: September 26, 2013  
21 Reply re Motion to Dismiss due: October 7, 2013  
22 Motion to Dismiss hearing date (proposed): October 21, 2013, at 10:00 a.m.

23 3. In addition, the parties request the Court to reschedule the further case management  
24 conference, currently set to be held on August 26, 2013, so that it may be held concurrently with the  
25 hearing on the motion to dismiss on October 21, 2013, or such later date as is convenient for the  
26 Court.



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~~PROPOSED~~ ORDER

Pursuant to and in accordance with the foregoing Stipulation, and with good cause appearing,  
IT IS HEREBY ORDERED as follows:

1. The claims made under California’s Bane Act, California Civil Code § 52.1, against Sheriff Freitas in his personal capacity contained in Count 1 of the SAC, and against Chief Schwedhelm in his personal capacity contained in Count 2 of the SAC, are hereby dismissed from this case with prejudice.

2. The time in which Sheriff Freitas in his personal capacity may respond to the SAC shall be extended, and the briefing and hearing schedule on his motion to dismiss the 42 U.S.C. § 1983 due process claim contained in Count 4 of the SAC shall be as follows:

- Motion to Dismiss filed: August 30, 2013
- Opposition to Motion to Dismiss due: September 26, 2013
- Reply re Motion to Dismiss due: October 7, 2013
- Motion to Dismiss hearing date: October 21, 2013, at 10:00 a.m.

3. The further case management conference, currently set to be held on August 26, 2013, shall be rescheduled to October 21, 2013, at 10:00 a.m., so that it may be held concurrently with the hearing on Sheriff Freitas’ motion to dismiss. A joint case management statement shall be filed 7 days prior.

~~4. Counsel for the parties may appear at the hearing on the motion to dismiss and the case management conference via telephone, pursuant to instructions to be provided by the Court.~~

IT IS SO ORDERED.

Date: \_\_ 08/20/2013

