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 13 CITY AND COUNTY OF SAN FRANCISCO

14 UNITED STATES DISTRICT COURT  
 15 NORTHERN DISTRICT OF CALIFORNIA

16 CITY AND COUNTY OF SAN  
 17 FRANCISCO,

18 Plaintiff,

19 vs.

20 DONALD J. TRUMP, President of the United  
 States, UNITED STATES OF AMERICA,  
 21 ELAINE DUKE, Acting Secretary of United  
 States Department of Homeland Security,  
 22 JEFFERSON B. SESSIONS III, Attorney  
 General of the United States, DOES 1-100,

23 Defendants.  
 24

Case No. 3:17-cv-00485-WHO

**STIPULATION AND [PROPOSED] ORDER  
 FOR VOLUNTARY DISMISSAL OF COUNT  
 ONE OF SAN FRANCISCO'S SECOND  
 AMENDED COMPLAINT WITHOUT  
 PREJUDICE**

Date Filed: January 31, 2017

Trial Date: April 23, 2018

1 WHEREAS, Plaintiff CITY AND COUNTY OF SAN FRANCISCO (“Plaintiff” or “San  
2 Francisco”) filed a complaint in this action on January 31, 2017, and filed a Second Amended  
3 Complaint on May 23, 2017;

4 WHEREAS, the Court entered an Order on Plaintiff’s Motion for Summary Judgment  
5 (“Order”) on November 20, 2017, finding that Plaintiff is entitled to summary judgment on Counts  
6 Two and Three of its Second Amended Complaint concerning Section 9(a) of Executive Order 13768  
7 (Dkt. No. 200);<sup>1</sup> and

8 WHEREAS, the Order declined to resolve San Francisco’s claim in Count One regarding 8  
9 U.S.C. § 1373, finding that this claim is “better addressed at the time I consider upcoming motions in  
10 related litigation. *City and County of San Francisco v. Sessions*, No. 17-cv-4642-WHO; *California v.*  
11 *Sessions*, No. 17-cv-4701-WHO (‘the related litigation’); and

12 WHEREAS, the parties agree that San Francisco’s claim for declaratory relief regarding 8  
13 U.S.C. § 1373 shall be raised through an Amended Complaint that San Francisco will file in the case  
14 of *City and County of San Francisco v. Sessions*, No. 17-cv-4642-WHO; and

15 WHEREAS, dismissal of Count One without prejudice will enable this Court to enter final  
16 judgment in the instant case;

17 NOW THEREFORE, the parties hereby stipulate and agree as follows, and respectfully request  
18 that the Court so order:

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25 <sup>1</sup> In its Order, the Court misidentified Counts One and Two in San Francisco’s Second  
26 Amended Complaint as relating to 8 U.S.C. § 1373. (Dkt. No. 200 at 2, fn. 1 & 27.) Only Count One  
27 in San Francisco’s Second Amended Complaint relates to Section 1373, while Counts Two and Three  
28 relate to the Executive Order. (Dkt. No. 105.) The analysis in the Order makes clear that the Court is  
granting summary judgment on Counts Two and Three, leaving only Count One to be resolved in the  
future.

1 Count One of Plaintiff's Second Amended Complaint in this action is hereby dismissed without  
2 prejudice.

3  
4 Dated: November 29, 2017

Dated: November 29, 2017

5 CHAD A. READLER  
Acting Assistant Attorney General

DENNIS J. HERRERA  
City Attorney

6 By: /s/ W. Scott Simpson  
7 W. SCOTT SIMPSON (Va. Bar #27487)  
Senior Trial Counsel

By: /s/ Aileen M. McGrath  
AILEEN M. McGRATH  
Deputy City Attorney

8 Attorneys for Defendants

Attorneys for Plaintiff  
CITY AND COUNTY OF SAN FRANCISCO

9 DONALD J. TRUMP, President of the United  
10 States; ELAINE DUKE, Acting Secretary of  
United States Department of Homeland Security;  
11 JEFFERSON B. SESSIONS III, Attorney General  
of the United States; and UNITED STATES OF  
AMERICA

12 Attorneys, Department of Justice  
Civil Division, Room 7210  
13 Federal Programs Branch  
Post Office Box 883  
14 Washington, DC 20044  
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15 Facsimile: (202) 616-8470  
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16  
17 **FILER'S ATTESTATION**

18  
19 I, Aileen McGrath, am the ECF user whose identification and password are being used to file  
20 this STIPULATION AND [PROPOSED] ORDER FOR VOLUNTARY DISMISSAL OF COUNT  
21 ONE OF PLAINTIFF'S SECOND AMENDED COMPLAINT WITHOUT PREJUDICE. Pursuant to  
22 Civil Local Rule 5-1(i)(3), I hereby attest that the other above-named signatories concur in this filing.

**ORDER**

Based on the written stipulation of the parties and good cause appearing therefor, IT IS HEREBY ORDERED that Count One of Plaintiff City and County of San Francisco’s Second Amended Complaint against DONALD J. TRUMP, President of the United States, UNITED STATES OF AMERICA, ELAINE DUKE, Acting Secretary of United States Department of Homeland Security, JEFFERSON B. SESSIONS III, Attorney General of the United States, is dismissed without prejudice.

Dated: \_\_\_\_\_, 2017

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Hon. William H. Orrick  
United States District Judge

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