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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

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Garduno's of Arizona, LLC, an Arizona  
limited liability company,

No. CV08-1090-PHX-DGC

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Plaintiff/Counterdefendant,

**ORDER**

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vs.

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Tortilla, Inc., a New Mexico corporation  
doing business as Garduno's of Mexico,

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Defendant/Counterclaimant.

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Defendant/Counterclaimant Tortilla, Inc. has filed a motion to reopen this case. Dkt. #71. The case was closed and dismissed with prejudice, pursuant to the Court's explicit warning to the parties, when the parties failed to file a stipulated settlement dismissal within 30 days of the Court's order. See Dkt. #70. The Court entered the warning order only after the parties advised that a settlement was imminent and a stipulation likely would be filed within 30 days. Dkt. #69. When a settlement was not reached, Tortilla – which stood to lose the most if the case was dismissed as promised – should have notified the Court of the lack of a settlement. Counsel for Tortilla should not have let the court-imposed deadline pass without comment.

The Court concludes, however, that permitting the dismissal with prejudice to stand would unfairly penalize Tortilla for the inattentiveness of its counsel. The Court accordingly will vacate the administrative termination of this case. Within 20 days of the date of this order, the parties shall either file a stipulated dismissal of this case or will contact the Court

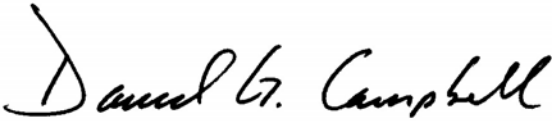
1 to schedule a telephone conference call to re-establish the schedule in this litigation. If the  
2 deadline passes without one of these two actions occurring, the Court will again dismiss the  
3 case with prejudice, but with no further intent to reconsider its decision.

4 **IT IS ORDERED:**

- 5 1. Tortilla's motion to reopen the case (Dkt. #71) is **granted**. The Clerk is  
6 directed to reopen this case.
- 7 2. Within 20 days of the date of this order, the parties shall either file a stipulated  
8 dismissal of this case or will contact the Court to schedule a telephone  
9 conference call to re-establish the schedule in this litigation.

10 Dated this 28th day of April, 2009.

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David G. Campbell  
United States District Judge