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UNITED STATES DISTRICT COURT

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FOR THE CENTRAL DISTRICT OF CALIFORNIA

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MICHAEL ZELENY, an individual;

) CASE NO. CV11-02565 GAF(VBKX)

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Plaintiff,

) **ORDER GRANTING STIPULATION**

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vs.

) **FOR DISMISSAL OF ACTION**

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DAVID AMIR MAKOV, an individual; and DOES
1-50, inclusive,

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Defendants.

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1 The Court having considered the parties' Stipulation For Dismissal Of Action Without
2 Prejudice, and good cause having been shown, ORDERS that this action is DISMISSED WITHOUT
3 PREJUDICE.

4 The Court further ORDERS that:

5 1. Zeleny may refile this action, but only in California state court, and only if he does so
6 within forty-five (45) days from the date this action is dismissed pursuant to this Stipulation.

7 Thereafter, Zeleny shall be barred from refileing this action (or any action or claim against Makov
8 relating to the allegations in this action) in any court. If Zeleny does refile this action in California
9 state court within the time permitted under this paragraph, he stipulates that he will not claim
10 damages (including any costs, fees, interest, penalties, punitive damages, or any form of damage or
11 compensation whatsoever) in excess of \$75,000, and he will assert only the single claim for relief,
12 for intentional infliction of emotional distress, that currently remains in the instant action. Makov
13 will not challenge the sufficiency of the pleading, provided that it is substantively the same as the
14 Complaint in the instant action. Makov authorizes Kirkland & Ellis LLP, to accept service of
15 process for a re-filed California state court action on Makov's behalf, which may be effected by
16 email (.pdf format) to Andrew Genser of Kirkland & Ellis LLP, to be deemed personal service on
17 the date emailed if served before 5 p.m. EST, or on the following court day if served later in the day.

18 2. All applicable statutes of limitation related to a re-filed action described above shall
19 be deemed to be tolled from March 28, 2011, until forty-five days from the date this action is
20 dismissed pursuant to this Stipulation. If (and only if) Zeleny does re-file this action in California
21 state court within forty-five (45) days from the date this action is dismissed by this Court, the state
22 court complaint shall be deemed for purposes of time-related defenses, including without limitation
23 statutes of limitation, statutes of repose, and laches, to have been filed on March 28, 2011.

24 3. Neither party shall be deemed a prevailing party in this action. Each party shall bear
25 his fees and costs incurred in this action.

1 4. This Court shall retain jurisdiction over this matter to the extent necessary to enforce
2 the terms of the Stipulation, even after dismissal of this action pursuant to the Stipulation.
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4 IT IS SO ORDERED.

5 DATED: March 14, 2013

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9 Honorable Gary A. Feess
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