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7 Attorneys for Defendants JONATHAN MORGAN and
 TRUMAN COLE

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN FRANCISCO DIVISION

11 In re FIRST VIRTUAL COMMUNICATIONS,
 12 INC. SECURITIES LITIGATION.

Master File No. C-04-3585 MJJ

13 This Document Relates To:
 14 ALL ACTIONS.

15 **STIPULATION AND ~~PROPOSED~~
 ORDER REOPENING AND
 VACATING MARCH 7, 2007 ORDER
 OF CONDITIONAL DISMISSAL**

16 **JURY TRIAL DEMANDED**

17 CLASS ACTION

STIPULATION

1
2 Lead Plaintiff Garry Crabtree, individually, and on behalf of a class of purchasers of the
3 common stock of First Virtual Communications, Inc. from March 29, 2004 to August 23, 2004,
4 inclusive (the “Class”), and Defendants Jonathan Morgan and Truman Cole (“Defendants”)
5 (collectively the “Parties”) respectfully submit this Stipulation and [Proposed] Order Reopening
6 and Vacating the Court’s March 7, 2007 Order of Conditional Dismissal (the “Order of
7 Dismissal”). In support hereof, counsel for the Parties state as follows:

8 1. This litigation was commenced as a class action pursuant to Rule 23 of the Federal
9 Rules of Civil Procedure (“Rule 23”). Plaintiff’s Consolidated Amended Class Action Complaint
10 (the “Complaint”) alleges, inter alia, that Defendants are liable to the Class for violations of
11 Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78j(b) and 78t(a)
12 (the “Securities Exchange Act”).

13 2. The Private Securities Litigation Reform Act of 1995, 15 U.S.C. §§ 78u-4 *et seq.*
14 (the “PSLRA”), provides certain standards and procedures concerning the prosecution and
15 settlement of claims asserted under the Securities Exchange Act.

16 3. Pursuant to both Rule 23 (e) and various provisions of the PSLRA, Securities
17 Exchange Act claims asserted pursuant to Rule 23 cannot be settled and dismissed until, *inter alia*,
18 notice of any proposed settlement is provided to the proposed class, and a finding is reached by the
19 Court after a hearing that the settlement is fair, reasonable and adequate to the Class.

20 4. On February 28, 2007, the Parties reached an agreement in principle to settle and
21 compromise the claims of the Class in this litigation after participating in a mediation facilitated by
22 the Honorable Daniel Weinstein (Ret.) (the “Agreement in Principle”). Since reaching the
23 Agreement in Principle, counsel for the Parties have been preparing a Stipulation of Settlement to
24 formally document the Agreement in Principle.

25 5. On March 5, 2007, as a result of reaching the Agreement in Principle, counsel for
26 the Parties submitted a “Stipulation and [Proposed] Order Re: Hearing on Defendants’ Motion to
27 Dismiss” (the “Stipulation”). In the Stipulation, counsel for the Parties (1) represented that they
28 were documenting the Agreement in Principle in a Stipulation of Settlement (the “Settlement

1 Stipulation”), which they planned to submit to the Court for an Order which, *inter alia*, (i) will
2 preliminarily approve the fairness and reasonableness of the Settlement, (ii) will schedule a hearing
3 date for the Court to finally approve the fairness and reasonableness of the Settlement to a
4 settlement class (the “Final Hearing”), and (iii) will provide notice to a settlement class of the
5 Settlement and the Final Hearing, and (2) requested that the hearing on Defendants’ pending
6 motion to dismiss (then) scheduled for March 13, 2007 be taken off calendar so that counsel for the
7 Parties could complete the documentation of the Settlement Stipulation.

8 6. On March 7, 2007, the Court, *sua sponte*, entered the Order of Dismissal which,
9 *inter alia*, dismissed the litigation. By its terms, the Order of Dismissal is contrary to Rule 23 and
10 the PLSRA because, *inter alia*, it purports to dismiss this class action litigation and the claims of
11 the Class without (i) permitting notice to the Class, as required by Rule 23(e)(1)(B) and (ii)
12 conducting a hearing to determine whether the proposed settlement is fair, reasonable, and
13 adequate, as required by Rule 23(e)(1)(C).

14 7. Accordingly, counsel for the Parties respectfully request that the Court sign the
15 [Proposed] Order and Reopen the Order of Dismissal so that counsel for the Parties may effectuate
16 the settlement in this litigation in accordance with the requirements of Rule 23 and the PSLRA.

17 IT IS SO STIPULATED.

18 Dated: March 12, 2007 BRAMSON, PLUTZIK, MAHLER & BIRKHAEUSER, LLP

19
20 /s/ Alan R. Plutzik
Alan R. Plutzik

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/s/ Richard H. Zelichov
Richard H. Zelichov

Attorneys for Defendants JONATHAN MORGAN and
TRUMAN COLE

ORDER

Pursuant to Stipulation of the Parties, the Court's March 7, 2007 Order, dismissing this
action, is hereby REOPENED AND VACATED.

DATED: 3/13/2007



Hon Martin J. Jenkins
United States District Judge

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Attestation Pursuant To General Order 45

I, Alan R. Plutzik, attest that concurrence in the filing of this document has been obtained from the other signatory. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 12th day of March, 2007 at Walnut Creek, California.

_____/s/ Alan R. Plutzik_____/