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 8 TIMOTHY J. ZUNIGA

9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA
 11

12 LONG HAUL, INC., and EAST BAY
 PRISONER SUPPORT,

13 Plaintiff,

14 v.
 15

16 VICTORIA HARRISON; KAREN
 ALBERTS; WILLIAM KASISKE; WADE
 MACADAM; TIMOTHY J. ZUNIGA; et
 17 al.,

18 Defendants.
 19

Case No. 3:09-cv-0168 JSW

**STIPULATION AND ~~PROPOSED~~
 ORDER RE: DISMISSAL OF FIRST
 AMENDMENT CLAIMS AGAINST
 UNIVERSITY DEFENDANTS**

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 21 **RECITALS**

22 A. Plaintiffs Long Haul, Inc. ("Long Haul") and East Bay Prisoner Support
 23 have brought the above-captioned action alleging various claims arising out of, inter alia,
 24 the execution of a search warrant at the Long Haul premises on August 27, 2008.

25 B. In Count I of Plaintiffs' First Amended Complaint, Plaintiffs alleged a First
 26 Amendment violation against the University Defendants and the Federal Defendants.

27 C. The Federal Defendants moved to dismiss this First Amendment claim
 28 against them.

1 D. In its Order dated November 30, 2009, the Court granted the Federal
2 Defendants' motion to dismiss the First Amendment claims, with leave to amend. The
3 Court stated that Plaintiffs had failed to alleged that the purpose of Defendants' conduct
4 was retaliatory or aimed to chill Plaintiffs' First Amendment activities. The Court
5 provided Plaintiffs leave to amend to plead the requisite facts to show that Defendants
6 acted with the impermissible motive of retaliating against Plaintiffs or curbing their First
7 Amendment activities. (Order of November 30, 2009, Dkt. 69, at 11).

8 E. Counsel for Plaintiffs and for the University Defendants have met and
9 conferred regarding the Court's November 30, 2009 Order and the First Amendment
10 claims asserted in the First Amended Complaint against the University Defendants.
11 Plaintiffs' counsel has indicated that Plaintiffs do not intend to file a Second Amended
12 Complaint.

13 F. In the interests of judicial economy and to avoid further motion practice on
14 this issue, counsel for Plaintiffs and the University Defendants have agreed to a
15 stipulation whereby Plaintiffs will not object to the Court entering an order dismissing the
16 First Amendment claims against the University Defendants, on the same grounds that it
17 has previously ordered dismissal of that claim against the Federal Defendants.

18 G. In agreeing to this stipulation, Plaintiffs expressly reserve any and all rights
19 to appeal the Court's dismissal of their First Amendment claims against the University
20 Defendants. Plaintiffs agree to this stipulation in order to move the litigation forward and
21 in the interests of judicial economy, but do not intend for this stipulation to act as a
22 waiver of any right to appeal this issue. The University Defendants agree and
23 acknowledge that they shall not assert any such waiver arising out of this stipulation and
24 order dismissing said First Amendment claims.

25 STIPULATION

26 The parties, through their attorneys of record, hereby stipulate as follows:

27 1. Plaintiffs and the University Defendants acknowledge and agree that the
28 Court's rationale in dismissing the First Amendment claims alleged by the Federal

1 Defendants in the First Amended Complaint applies with equal force to the First
2 Amendment claims alleged by the University Defendants.

3 2. Plaintiffs do not object to an order dismissing the First Amendment claims
4 asserted against the University Defendants in the First Amended Complaint on the same
5 basis as the Court's November 30, 2009 Order dismissing the First Amendment claims
6 against the Federal Defendants. Each party shall bear their own respective fees and
7 costs.

8 3. Plaintiffs expressly reserve their right to appeal the Court's dismissal of
9 their First Amendment claims against the University Defendants. The University
10 Defendants agree and acknowledge that they shall not assert any such waiver arising
11 out of this stipulation and order dismissing said First Amendment claims.

12
13 Dated: December 17, 2009

14 /s/ William J. Carroll

/s/ Jennifer S. Granick

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26 **GENERAL ORDER NO. 45(X) CERTIFICATION**

27 I attest that I have obtained the concurrence of Jennifer S. Granick in the filing of
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1 this document.

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/s/ William J. Carroll
William J. Carroll

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ORDER

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For the reasons set forth in the Order dated November 30, 2009, the Court hereby dismisses Plaintiffs' First Amendment claims against the University Defendants. The factual allegations asserted in support of the First Amendment claims against the University Defendants are, like those alleged against the Federal Defendants, insufficient to support a claim under the First Amendment. Accordingly, the Court finds that Plaintiffs have not alleged sufficient facts in their First Amended Complaint to state a claim under the First Amendment against the University Defendants.

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

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Dated: December 22, 2009

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Hon. Jeffrey S. White
United States District Judge

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