

1 THOMAS E. MULVIHILL, ESQ. (SBN 129906)
JILL P. SAZAMA (SBN 214215)
2 MITOSHI H. FUJIO-WHITE (SBN 252839)
Tmulvihill@bjg.com; Jsazama@bjg.com;
3 Mfujio-white@bjg.com
BOORNAZIAN, JENSEN & GARTHE
4 A Professional Corporation
555 12th Street, Suite 1800
5 Oakland, California 94607
Telephone: (510) 834-4350
6 Facsimile: (510) 839-1897

7 Attorneys for Defendant
Downtown Realty Company, Inc.

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 GEOFFREY PETE,

12 Plaintiff,

13 v.

14 CITY OF OAKLAND, KYLE THOMAS,
15 MIKE MORSE, DAVID KOZICKI,
PEDRO ESPINOZA, DOWNTOWN
16 REALTY COMPANY, INC. AND DOES
3 - 100,

17 Defendants.

CASE NO. 3:09-CV-06097-WHA

~~PROPOSED~~
**ORDER REGARDING DEFENDANT
DOWNTOWN REALTY COMPANY,
INC.'S REQUEST TO WITHDRAW ITS
MOTION TO DISMISS PURSUANT TO
RULE 12(b)(5) IN LIGHT OF WAIVER OF
SERVICE OF SUMMONS AND
VACATING HEARING**

Complaint Filed: December 31, 2009

19 Before the Court is defendant DOWNTOWN REALTY COMPANY, INC.'s request to
20 withdraw its Motion to Dismiss pursuant to Rule 12(b)(5) in light of waiver of service of
21 summons. On May 26, 2010, plaintiff GEOFFREY PETE ("Plaintiff") filed a First Amended
22 Complaint, adding DOWNTOWN REALTY COMPANY, INC. ("Defendant" or "DRC") as a
23 Defendant in the instant matter. On June 8, 2010, Plaintiff filed a First Amended (Corrected)
24 Complaint, and the day after, on June 9, 2010, Plaintiff filed a Stipulation and [Proposed] Order
25 Allowing Filing of First Amended Complaint. The Order was granted on June 14, 2010. On
26 July 8, 2010, DRC filed a motion to dismiss the First Amended (Corrected) Complaint for
27 improper service.

28 On July 13, 2010, Defendant executed a Waiver of the Service of Process, allowing DRC

1 thirty-three (33) days from the date of acknowledgment of the Waiver for DRC to file and serve a
2 motion under Fed. Rule Civ. Proc. 12 or alternatively an Answer, which was subsequently
3 acknowledged by Plaintiff on July 15, 2010.

4 In consideration of the foregoing, and good cause appearing therefor, the Court hereby
5 orders as follows:

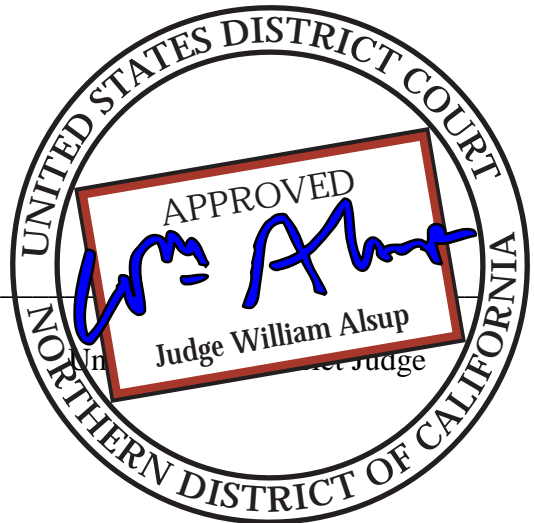
6 (1) Defendant's withdrawal of its motion to dismiss the First Amended (Corrected)
7 Complaint is accepted without prejudice to its ability to file a motion and assert any new or
8 additional arguments that may lie with respect to the First Amended (Corrected) Complaint.

9 (2) The hearing on the motion is **VACATED**.

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11
12 IT IS SO ORDERED.

13
14 DATED: July 20 _____, 2010

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16 By: _____



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