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8 UNITED STATES DISTRICT COURT
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10
 11 HARD DRIVE PRODUCTIONS, LLC

Case No. C-11-02333(JCS)

12 Plaintiff,

13 v.

**JOINT STIPULATION AND
 [PROPOSED] ORDER
 WITHDRAWING ANSWER (ECF #25)
 AND MOTION TO DISMISS (ECF
 #26)**

14 A. LOPEZ, DOE DEFENDANT #1
 15 ASSOCIATED WITH IP ADDRESS
 16 108.0.16.220

17 Defendants.

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 19 **RECITALS**

20 **WHEREAS**, the original Complaint in the above-captioned case was filed on May
 21 11, 2011 against 87 anonymous “Doe” Defendants identified only by IP address; and

22 **WHEREAS**, on May 13, 2011, Plaintiff filed an Ex Parte Application seeking
 23 limited expedited discovery from relevant Internet Service Providers (ISPs), including the
 24 name, address, phone number, MAC address and other information associated with the 87
 25 IP addresses identified in the Complaint; and

26 **WHEREAS**, on August 25, 2011, this court denied Plaintiff’s Ex Parte Application
 27 seeking limited expedited discovery from the ISPs except as to IP Address #1, the account
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1 associated with Alejandra Lopez, and

2 **WHEREAS**, on October 14, 2011, this court issued an Order Severing and
3 Dismissing Doe Defendants 2-87; and

4 **WHEREAS**, on December 7, 2011, Plaintiff moved this court to continue the
5 Initial Case Management Conference in order to contact the account-holder associated
6 with IP Address , Alejandra Lopez, and

7 **WHEREAS**, on December 9, 2011, this court granted Plaintiff's motion to
8 Continue the Initial Case Management Conference to January 13, 2011, and

9 **WHEREAS**, in response to the communications from Plaintiff that were
10 authorized by this court, on January 9, 2012, Alejandra Lopez, filed an Answer to the
11 Complaint (ECF #25) and a Motion to Dismiss (ECF # 26) based on the mistaken belief
12 that she was a party to the above-captioned lawsuit; and

13 **WHEREAS**, Ms. Lopez has not been served with a Summons and Complaint in
14 accordance with Rule 4; and

15 **WHEREAS**, Plaintiff maintains that they have not identified the actual Doe
16 Defendant in this matter; and

17 **WHEREAS**, Plaintiff further maintains that Ms. Lopez is not presently a defendant
18 in this action, and

19 **WHEREAS**, Plaintiff maintains that they will properly effectuate service under
20 Rule 4 following the identification of the Doe Defendant,

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24 [intentionally left blank]

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1 **STIPULATION**

2 **NOW THEREFORE**, the Parties hereby jointly stipulate and request an Order as follows:

3 (1) Ms. Lopez' Answer (ECF #25) and Motion to Dismiss (ECF #26) are hereby
4 withdrawn without prejudice to re-filing under the terms described below.

5 (2) Plaintiff shall commence any future lawsuit against Ms. Lopez individually
6 by filing and serving an Amended Complaint naming Ms. Lopez individually, in her
7 personal capacity, in accordance with Rule 4 of the Federal Rules of Civil Procedure.

8 (3) Ms. Lopez hereby reserves any and all objections, counter-claims, and
9 affirmative defenses that it may have against Plaintiff, whether or not any of these claims
10 and/or defenses were raised in Ms. Lopez' initial pro se Answer or Motion to Dismiss.
11 This reservation includes, but is not limited to, a reservation of the rights: (a) to move to
12 dismiss the Complaint for failure to state a claim, (b) to move to strike the complaint or
13 any portion thereof; (c) to move for a more definite statement; or (d) to move to dismiss
14 for lack of personal jurisdiction or improper venue, or (e) to raise any other claim, defense,
15 or file any other motion that would ordinarily be proper for a Defendant that has been
16 properly served with a Summons and Complaint.

17 (4) Any future Answer or Responsive Motions from Ms. Lopez shall be due 21
18 days after proper service of an Amended Complaint on Ms. Lopez, as described in
19 Paragraph 2.

20 (5) In the event that this Court has not decided on the present request before
21 January 31, 2011, Plaintiff and Ms. Lopez agree that the current January 31, 2012 deadline
22 for her to file an Amended Answer as a matter of right under Rule 15 is hereby waived,
23 and Ms. Lopez will have an unlimited time, within reason, to file such in the future.
24 Additionally, Ms. Lopez' right to make certain challenges to jurisdiction and venue are
25 likewise extended.

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27 [intentionally left blank]

1 (6) Ms. Lopez explicitly reserves the right to challenge, modify, or quash the deposition
2 authorized by this court's Order dated January 13, 2012, or otherwise seek a protective
3 order granting relief therefrom.

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5 **IT IS SO STIPULATED**

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7 Dated: January 24, 2012

NICHOLAS RANALLO, ATTORNEY AT LAW

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_____/s/Nicholas Ranallo_____

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Nicholas R. Ranallo (#275016)

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Attorney for Alejandra Lopez, Account Holder

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Associated with IP Address 108.0.16.220

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15 Dated: January 24, 2012

PRENDA LAW INC.

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_____/s/Brett Gibbs_____

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Brett L. Gibbs, Attorney for Plaintiff Hard Drive

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Productions, LLC.

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1 **[PROPOSED] ORDER**

2 PURSUANT TO THE ABOVE JOINT STIPULATION, AND GOOD CAUSE
3 APPEARING THEREFOR, IT IS HEREBY ORDERED THAT:

4 (1) Ms. Lopez' Answer (ECF #25) and Motion to Dismiss (ECF #26) are hereby
5 withdrawn without prejudice to re-filing under the terms described below.

6 (2) Plaintiff shall commence any future lawsuit against Ms. Lopez individually
7 by filing and serving an Amended Complaint naming Ms. Lopez individually, in her
8 personal capacity, in accordance with Rule 4 of the Federal Rules of Civil Procedure.

9 (3) Ms. Lopez hereby reserves any and all objections, counter-claims, and
10 affirmative defenses that it may have against Plaintiff, whether or not any of these claims
11 and/or defenses were raised in Ms. Lopez' initial pro se Answer or Motion to Dismiss.
12 This reservation includes, but is not limited to, a reservation of the rights: (a) to move to
13 dismiss the Complaint for failure to state a claim, (b) to move to strike the complaint or
14 any portion thereof; (c) to move for a more definite statement; or (d) to move to dismiss
15 for lack of personal jurisdiction or improper venue, or (e) to raise any other claim, defense,
16 or file any other motion that would ordinarily be proper for a Defendant that has been
17 properly served with a Summons and Complaint.

18 (4) Any future Answer or Responsive Motion(s) from Ms. Lopez shall be due 21
19 days after proper service of an Amended Complaint on Ms. Lopez, as described in
20 Paragraph 2.

21 (5) In the event that this Court has not decided on the present request before
22 January 31, 2011, Plaintiff and Ms. Lopez agree that the current January 31, 2012 deadline
23 for her to file an Amended Answer as a matter of right under Rule 15 is hereby waived,
24 and Ms. Lopez will have an unlimited time, within reason, to file such in the future.
25 Additionally, Ms. Lopez' right to make certain challenges to jurisdiction and venue are
26 likewise extended.

1 (6) Ms. Lopez explicitly reserves the right to challenge, modify, or quash the deposition
2 authorized by this court's Order dated January 13, 2012, or otherwise seek a protective
3 order granting relief therefrom.
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13 Dated: January 25, 2012

**The Honorable Joseph C. Spero
Magistrate Judge for the Northern
District of California**

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ATTESTATION OF CONCURRENCE

Pursuant to General Order No. 45 (X), Nicholas Ranallo, the filer of the foregoing Stipulation and Proposed Order Withdrawing Answer and Motion to Dismiss hereby attests that the following additional signatories have concurred in its filing.

Brett L. Gibbs
Prenda Law Inc.
38 Miller Avenue, #263
Mill Valley, CA 94941

January 25, 2012

_____/s/Nicholas Ranallo_____
Nicholas Ranallo, Attorney at Law
Attorney for Account-Holder A. Lopez
371 Dogwood Way
Boulder Creek, CA 95006