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 8 UNITED STATES DISTRICT COURT
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 10 OAKLAND DIVISION

11 CASE NO: CV 11-02817 JSW

12 JOE HAND PROMOTIONS, INC.,

13 Plaintiff,

14 vs.

15 ALI KERACHI and MOHAMMAD
 16 KERACHI, INDIVIDUALLY and d/b/a
 17 ROUND TABLE PIZZA,

18 Defendants.

**STIPULATION TO FILE AMENDED
 ANSWER AND WITHDRAW MOTION
 TO STRIKE;
 [PROPOSED] ORDER**

19
 20 **STIPULATION TO FILE AMENDED ANSWER AND WITHDRAW
 MOTION TO STRIKE**

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 22 1. Plaintiff filed the Complaint in this matter on June 9, 2011. Defendants' Answer
 23 was filed on August 29, 2011.

24 2. Defendants' Answer included five affirmative defenses. Plaintiff filed a motion to
 25 strike the affirmative defenses, which is currently scheduled to be heard on October 28, 2011 at
 26 1:30 p.m.

27 3. The Complaint alleges that Defendants received and displayed a pay per view
 28 television event on June 12, 2010 in a Round Table Restaurant without obtaining the necessary
 license from Plaintiff. Based on that allegation, the Complaint includes causes of action under 47

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1 U.S.C. §§ 605 and 553, California Business and Professions Code § 17200, *et seq.*, and for
2 conversion.

3 4. Defendants’ Answer denied the Complaint’s essential allegations, and plead the
4 following affirmative defenses: statute of limitations, other parties’ fault, laches, failure to
5 mitigate, and failure to give notice and opportunity to cure.

6 5. Plaintiff’s motion to strike asserts that Defendants’ five affirmative defenses are
7 subject to being stricken as “immaterial” or “impertinent matter” under FRCP Rule 12(f).

8 Specifically, Plaintiff asserts as to each affirmative defense as follows:

- 9 a. Statute of limitations – the shortest statutory period applicable to the claims in the
10 Complaint is one year. The Complaint was filed within one year of the broadcast
11 of the pay per view event, thus under the set of facts alleged in the Complaint,
12 there is no defense available based on any statute of limitations;
- 13 b. Fault of Others – Plaintiff asserts that alleging the claimed damage to be the fault
14 of others merely negates the element of causation, and thus is not an “affirmative
15 defense.”
- 16 c. Laches – Plaintiff asserts that laches is a defense only to claims in equity (thus only
17 potentially applicable to the California State law claim), that the statute of
18 limitations on that claim is four years, and that there is a strong presumption that
19 laches will not apply where a claim was brought within the analogous limitation
20 period.
- 21 d. Failure to Mitigate – Plaintiff asserts that failure to mitigate is inapplicable to
22 claims brought for statutory damages.
- 23 e. Failure to Give Notice of Violation or Opportunity to Cure – Plaintiff asserts that
24 there is no requirement that a defendant be provided with notice before being sued
25 under 47 USC §§ 605 or 553.

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1 6. The parties have agreed, rather than require further argument and a hearing on the
2 matter, that Defendants will withdraw their affirmative defenses for the reasons set out above, and
3 file an Amended Answer (proposed Amended Answer attached as Exhibit A).

4 7. The parties therefore agree, and request the Court's approval, that Defendants'
5 affirmative defenses are withdrawn, that Plaintiff's Motion to Strike is withdrawn, and that
6 Defendants' Amended Answer (in the form attached as Exhibit A to this Stipulation) will be filed
7 within five days of the date of the Court's Order.
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STIPULATION

The parties, through their respective counsel, hereby stipulate that, subject to Court approval and for the reasons set out in Paragraph 5 above, Defendants’ affirmative defenses are withdrawn, that Plaintiff’s Motion to Strike is withdrawn, and that Defendants’ Amended Answer will be filed within five days of the date of the Court’s Order.

Dated: September 28, 2011

Law Office of Bruce Napell

By: _____ /s/ _____

Bruce Napell
584 Woodbine Drive
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707-291-2245
Attorney for Defendants

Dated: September 28, 2011

Law Office of Thomas P. Riley, P.C.

By: _____ /s/ _____

Thomas P. Riley
First Library Square
1114 Fremont Avenue
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Attorney for Plaintiff

Dated: September 30, 2011 PURSUANT TO STIPULATION, IT IS SO ORDERED.



JUDGE
United States District Court
Northern District of California

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