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11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA

13 JONATHAN GREGORY,
 14 Plaintiff,

15 v.

16 RESORT FITNESS, LLC, and DOES 1 through
 17 20, inclusive,
 18 Defendants.

) Case Number: 3:12-CV-00204-EMC

) **STIPULATION AND PROPOSED**
) **ORDER TO DISMISS THE FIRST AND**
) **SECOND COUNTERCLAIMS FOR**
) **VIOLATION OF THE COMPUTER**
) **FRAUD AND ABUSE ACT**

) Complaint filed: December 7, 2011
) Judge: Hon. Edward M. Chen
) Trial Date: None Set

21 RESORT FITNESS, LLC,
 22 Cross-Plaintiff,
 23 v.
 24 JONATHAN GREGORY,
 25 Cross-Defendant.

1 The parties, by and through undersigned counsel, jointly stipulate as follows:
2 WHEREAS, Plaintiff filed his complaint in the Superior Court of California, San Mateo on
3 December 7, 2011, case number CIV510224 (the "Action");

4 WHEREAS, on January 12, 2012, Defendant filed its Notice of Removal of the Action to
5 this Court;

6 WHEREAS, on January 19, 2012, Defendant filed counterclaims against Plaintiff,
7 including a First Cause of Action for Violation of Computer Fraud and Abuse Act, 18 U.S.C.
8 Section 1030(a)(4) and Second Cause of Action for Violation of Computer Fraud and Abuse Act,
9 18 U.S.C. Section 1030(a)(2)(C) (together referred to as "Defendant's CFAA Counterclaims");

10 WHEREAS, Defendant relied, in part, on the legal authority contained in *U.S. v. Nosal*,
11 642 F.3d 781 (9th Cir. 2011) in support of Defendants' CFAA Counterclaims;

12 WHEREAS, the Ninth Circuit recently reconsidered its holding following a rehearing *en*
13 *banc* in *U.S. v. Nosal*, 676 F.3d 854 (9th Cir. 2012);

14 WHEREAS, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), based on these
15 developments and until further guidance is received from the Ninth Circuit or U.S. Supreme Court
16 regarding the Computer Fraud and Abuse Act, the parties, through their respective undersigned
17 counsel of record, hereby agree to dismiss without prejudice Defendant's CFAA Counterclaims;

18 IT IS SO STIPULATED, AGREED, AND RESPECTFULLY REQUESTED.

19 Dated: June 8, 2012

Respectfully submitted,
Law Offices of Jacob Harker

20
21 By  _____

22 JACOB HARKER

23 Dated: May 23, 2012

Respectfully submitted,
Valdez Noor Todd & Doyle LLP

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25 By /s/Amy Todd-Gher

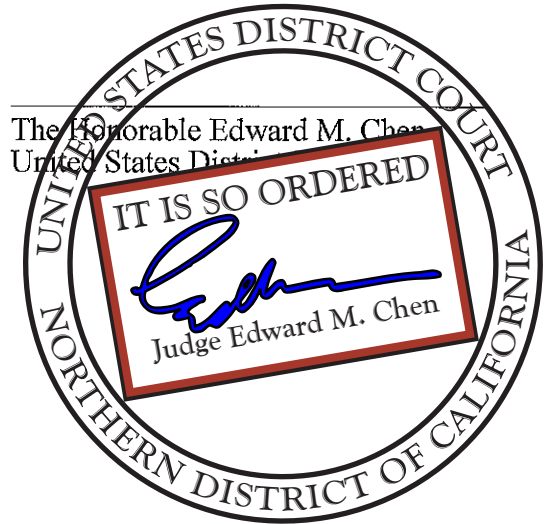
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ORDER

Based on the stipulation of the parties and for good cause appearing, IT IS HEREBY ORDERED that Defendant's First Cause of Action for Violation of Computer Fraud and Abuse Act, 18 U.S.C. Section 1030(a)(4) and Second Cause of Action for Violation of Computer Fraud and Abuse Act, 18 U.S.C. Section 1030(a)(2)(C), are dismissed, without prejudice.

Dated: June 19, 2012



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By /s/ Amy Todd-Gher
AMY TODD-GHER