1 2 3 4	GEOFFREY V. WHITE (SBN. 068012) LAW OFFICE OF GEOFFREY V. WHITE 351 California St., Suite 1500 San Francisco, California 94104 Telephone: (415) 362-5658 Facsimile: (415) 362-4115 Email: gvwhite@sprynet.com		
5	Attorneys for Plaintiff		
6	CARRIE JOHNS		
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9	UNITED STATES DISTRICT COURT		
10	NORTHERN DISTRICT OF CALIFORNIA		
10	SAN FRANCISCO DIVISION		
11	CARRIE JOHNS,	Case No. C 12-02456 WHA	
12	Plaintiff,	STIPULATION AND [PROPOSED]	
13	v.)	ORDER DISMISSING PLAINTIFF'S COMPLAINT WITHOUT PREJUDICE	
14	WALTER NG, individually and as Plan		
15	fiduciary; BARNEY NG , individually and as) Plan fiduciary; KELLY NG , individually and)		
10	as Plan fiduciary; BRUCE HORWITZ, M.D. ,) individually and as Plan fiduciary; BAR-K ,)		
17	INC., a California corporation; LEND, INC., a) California Corporation; and BAR-K 401K)		
18 19	PLAN.		
	Defendants.		
20	CULID		
21	<u>STIPULATION</u>		
22	WHEREAS, Plaintiff and Defendants have attempted to resolve the issues in the above-		
23	captioned matter in Mediation sessions on November 30, 2012 and May 9, 2013; and		
24	WHEREAS, the parties, through their undersigned counsel, have reached an agreement to		
25	bifurcate the ERISA and State Law claims in the Complaint; and		
26	WHEREAS, the parties have agreed that it is extremely difficult, if not impossible to		
27	proceed with the litigation of the ERISA claims ()		
28	Complaint because of pending parallel Federal government investigations; and		
	STIPULATION AND PROPOSED ORDER FOR DISMISSA Case No. C 12-02456 WHA	L WITHOUT PREJUDICE 1	
		Dockets.Justia.	

1	WHEREAS, the parties have agreed to dismiss said ERISA claims in the Complaint		
2	without prejudice, subject to a separate tolling agreement for a certain time period during the		
3	pendency of said Federal government investigations; and		
4	WHEREAS, the parties have agreed that this Court should exercise its discretion under		
5	28 U.S.C. Section 1367(c) to also dismiss without prejudice the State law claims in the		
6	Complaint (Fourth and Fifth Claims), so that Plaintiff may re-file her State law claims in State		
7	Court, subject to the tolling provisions of 28 U.S.C. Section 1367(d).		
8	WHEREAS, by agreeing to this Stipulation and permitting the dismissal of the State law		
9	claims subject to the tolling provisions of 28 U.S.C. Section 1367(d), Defendants are not		
10	intending to revive any claims already barred by any applicable statute of limitations at the time		
11	this action was filed.		
12	NOW THEREFORE, the parties, through their undersigned counsel, hereby stipulate as		
13	follows:		
14	1. The Complaint in the above-captioned matter shall be dismissed without prejudice.		
15	2. Plaintiff may file her State Law claims in State Court, subject to the tolling provisions		
16	in 28 U.S.C. Section 1367(d). As provided in 28 U.S.C. Section 1367(d), the statute		
17	of limitations on Plaintiff's State law claims shall be tolled for an additional 30 days		
18	following the entry of this Stipulation and Order, unless State law provides for a		
19	longer tolling period. Nothing in this Stipulation and Order is intended to revive any		
20	claims that are otherwise already barred by any applicable statute of limitations.		
21	IT IS SO STIPULATED.		
22			
23	DATED: May 21, 2013 LAW OFFICE OF GEOFFREY V. WHITE		
24	$\mathbf{B}\mathbf{v}$ /s/		
25	By/s/ Geoffrey V. White Attorney for Plaintiff		
26	CARRIE JOHNS		
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28			
	STIPULATION AND PROPOSED ORDER FOR DISMISSAL WITHOUT PREJUDICE Case No. C 12-02456 WHA 2		

1	DATED: May 21, 2013	COOKE, KOBRICK & WU LLP	
2		By _/s/ (as authorized on May 21, 2013)	
3		Christopher C. Cooke Attorneys for Defendants	
4		BAR-K, INC., BAR-K 401K PLAN, LEND, INC. AND KELLY NG	
6			
7	DATED: May 21, 2013	LAW OFFICE OF ERIK A. HUMBER	
8		By_/s/ (as authorized on May 20, 2013)	
		Erik A. Humber Attorney for Defendant BARNEY NG	
9 10		AXCEL LAW PARTNERS LLP	
11		By <u>/s/ (as authorized on May 20, 2013)</u>	
12		Craig C. Daniel Attorneys for Defendant	
13		BRUCE HORWITZ M.D.	
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17	[PRC)POSED] ORDER	
18	Pursuant to the parties' Stipulation, IT IS SO ORDERED.		
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20	June 10, 2013.	U=Ahr	
21		Honorable William H. Alsup United States District Judge	
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	STIPULATION AND PROPOSED ORDER FOR D Case No. C 12-02456 WHA	ISMISSAL WITHOUT PREJUDICE 3	