

1 JAY EDELSON (Admitted *Pro Hac Vice*)
 jedelson@edelson.com
 2 RAFEY S. BALABANIAN (Admitted *Pro Hac Vice*)
 rbalabanian@edelson.com
 3 BENJAMIN H. RICHMAN (Admitted *Pro Hac Vice*)
 brichman@edelson.com
 4 CHANDLER R. GIVENS (Admitted *Pro Hac Vice*)
 cgivens@edelson.com
 5 EDELSON MCGUIRE LLC
 350 North LaSalle Street, Suite 1300
 6 Chicago, Illinois 60654
 Telephone: (312) 589-6370
 7 Facsimile: (312) 589-6378

8 *Attorneys for Plaintiff and the Putative Class*

9
 10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**
 12 **SAN FRANCISCO DIVISION**

13 BENSON WORLEY, individually and on
 behalf of all others similarly situated,

14 *Plaintiff,*

15 v.

16 AVANQUEST NORTH AMERICA, INC., a
 California corporation,

17 *Defendant.*

Case No. 3:12-cv-04391-SI

**STIPULATION AND
 [PROPOSED] ORDER**

Date: February 22, 2013
 Time: 2:30 p.m.
 Judge: Honorable Susan Illston
 Courtroom: Rm. 10 (19th Floor)

19
 20 Plaintiff Benson Worley and Defendant Avanquest North America, Inc. (“Avanquest”)
 21 (collectively, the “Parties”), by and through their undersigned counsel, hereby stipulate and agree,
 22 subject to Court approval, (i) to continue the deadline for Plaintiff to file an amended pleading, (ii)
 23 that Plaintiff may name Mr. Johnny Boyd as an additional party-plaintiff, (iii) to continue the case
 24 management conference currently set for February 22nd, and (iv) to set a briefing schedule on
 25 Avanquest’s anticipated challenge to Plaintiff’s amended pleading. In support of the instant
 26 stipulation, the Parties state as follows:
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 28

1 WHEREAS, on August 21, 2012, Plaintiff Worley filed his putative class action complaint
2 asserting claims against Avanquest related to its alleged deceptive design and marketing of certain
3 of its utility software products—namely, System Suite PC Tune-Up & Repair (which Worley
4 alleges he purchased) and Fix-it Utilities, (Dkt. 1);

5 WHEREAS, Avanquest later filed its motion to dismiss the complaint (Dkt. 32), which the
6 Court granted, in part, and denied, in part. In its Order, the Court also set February 15th as the
7 deadline for Plaintiff to file an amended pleading (if any), (Dkt. 48);

8 WHEREAS, shortly thereafter, the Parties held a meet and confer pursuant to Federal Rule
9 26(f) and discussed various issues related to scheduling, discovery, and the substance of Plaintiff
10 Worley’s remaining claims, including as they relate to the Fix-It Utilities software;

11 WHEREAS, following the Parties’ 26(f) conference and having reviewed the Court’s
12 Order on Avanquest’s motion to dismiss, Plaintiff has determined that it is necessary to name as an
13 additional-party plaintiff Mr. Johnny Boyd, who alleges that he purchased Avanquest’s Fix-It
14 Utilities software;

15 WHEREAS, the Parties have conferred regarding Plaintiff’s intention to name Mr. Boyd as
16 a party-plaintiff, and Avanquest has no objection. However, as a result of Plaintiff’s need to further
17 revise his pleadings to add Mr. Boyd, the Parties have also agreed that Plaintiff’s deadline to file
18 an amended pleading should be continued one week, from February 15th to February 22nd;

19 WHEREAS, the Parties have further conferred and agreed that to accommodate the time
20 necessary for them to prepare, and the Court to consider, briefing on Avanquest’s anticipated
21 pleading challenge, the case management conference currently scheduled for February 22 should
22 be continued until after a hearing on the challenge and that a briefing schedule should be set as
23 follows:

24 **Deadline to File Pleading Challenge:** March 8, 2013

25 **Deadline to File Opposition to**
26 **Pleading Challenge:** March 22, 2013

1 **Deadline to File Reply in Support of**
2 **Pleading Challenge:**

April 2, 2013

3 **Hearing on Pleading Challenge:**

April 19, 2013 (or such other date and time as
the Court is available)

4 **Deadline to Submit Joint Case**
5 **Management Statement:**

May 3, 2013 (or two (2) weeks following such
other date as the Court may set for the hearing
on Avanquest's pleading challenge)

6 **Case Management Conference and**
7 **Deadline to Exchange Initial**
8 **Disclosures:**

May 10, 2013 (or three (3) weeks following
such other date as the Court may set for the
hearing on Avanquest's pleading challenge)

9 WHEREAS, good cause exists to enter the instant stipulation and the Parties do not seek
10 the relief contemplated herein for any improper purpose. The parties have not previously requested
11 a modification of these dates and deadlines.

12 **NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED** as follows:

- 13 1. Plaintiff shall name Mr. Johnny Boyd as an additional party-plaintiff in his
14 anticipated amended pleading and do so no later than February 22, 2013.
- 15 2. Defendant shall file its challenge to Plaintiff's amended pleading no later than
16 March 8, 2013; Plaintiff shall file his opposition to the pleading challenge no later than March 22,
17 2013; and, Defendant shall file its reply in support of the pleading challenge no later than April 2,
18 2013.
- 19 3. The hearing on Defendant's pleading challenge shall be set for April 19, 2013 at
20 9:00 a.m.
- 21 4. The case management conference currently set for February 22, 2013 shall be
22 continued to May 10, 2013 at 2:30 p.m., and the Parties shall submit a joint case management
23 statement seven days prior to the conference, on May 3, 2013.
- 24 5. The Parties shall serve their respective initial disclosures no later than May 10,
25 2013.

26 **IT IS SO STIPULATED.**

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BENSON WORLEY, individually and on behalf of
all others similarly situated,

Dated: February 13, 2013

By: /s/ Benjamin H. Richman
One of Plaintiff's Attorneys

JAY EDELSON (Admitted *Pro Hac Vice*)
jedelson@edelson.com
RAFEY S. BALABANIAN (Admitted *Pro Hac Vice*)
rbalabanian@edelson.com
BENJAMIN H. RICHMAN (Admitted *Pro Hac Vice*)
brichman@edelson.com
ARI J. SCHARG (Admitted *Pro Hac Vice*)
ascharg@edelson.com
CHANDLER R. GIVENS (Admitted *Pro Hac Vice*)
cgivens@edelson.com
EDELSON MCGUIRE LLC
350 North LaSalle Street, Suite 1300
Chicago, Illinois 60654
Telephone: (312) 589-6370
Facsimile: (312) 589-6378

SEAN P. REIS (SBN 184044)
sreis@edelson.com
EDELSON MCGUIRE, LLP
30021 Tomas Street, Suite 300
Rancho Santa Margarita, California 92688
Telephone: (949) 459-2124
Facsimile: (949) 459-2123

AVANQUEST NORTH AMERICA, INC.,

Dated: February 13, 2013

By: /s/ Carter Ott
CARTER OTT

LUANNE SACKS (SBN 120811)
luanne.sacks@dlapiper.com
CARTER W. OTT (SBN 221660)
carter.ott@dlapiper.com
ALEC CIERNY (SBN 275230)
alec.cierny@dlapiper.com
DLA PIPER LLP (US)
555 Mission Street, Suite 2400
San Francisco, California 94105
Telephone: (415) 836-2500
Facsimile: (415) 836-2501

I, Benjamin H. Richman, am the ECF user whose identification and password are being
used to file the foregoing Stipulation And [Proposed] Order. I hereby attest that the above-
referenced signatory to this stipulation has concurred in this filing

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ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.



ENTERED: 2/14/13

HONORABLE SUSAN ILLSTON
UNITED STATES DISTRICT JUDGE