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22 UNITED STATES DISTRICT COURT
 23 NORTHERN DISTRICT OF CALIFORNIA

24 MICHAEL BAIRD,
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 26 Plaintiff,
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 28 v.
 29 OFFICE DEPOT,
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 31 Defendant.

Case No. 3:12-CV-06316-EMC

**STIPULATED REQUEST FOR
 DISMISSAL OF AFFIRMATIVE
 DEFENSES WITHOUT PREJUDICE; AND
 [PROPOSED] ORDER**

WHEREAS, in light of the Court’s Order Granting in Part and Denying in Part Plaintiff’s Motion for Partial Summary Judgment, Defendant has reanalyzed the remaining affirmative defenses and determined that it should voluntarily dismiss without prejudice the Tenth, Eighteenth, Nineteenth, Twentieth, Fortieth, Forty-First, and Forty-Third Affirmative Defenses as they “are, in effect, denials of liability” with respect to elements on which Plaintiff has the burden of proof, and

WHEREAS, the Parties have met and conferred regarding Defendant’s Fifth and Sixth

(NO. 3:12-CV-06316-EMC)

STIPULATED REQUEST FOR DISMISSAL OF
 AFFIRMATIVE DEFENSES WITHOUT
 PREJUDICE; [PROPOSED] ORDER

1 Affirmative Defenses and Defendant has agreed to dismiss those defenses without prejudice,

2 THEREFORE, IT IS HEREBY STIPULATED by and between the undersigned parties,
3 through their counsel of record:

4 1. That Defendant's Fifth, Sixth, Tenth, Eighteenth, Nineteenth, Twentieth, Fortieth,
5 Forty-First, and Forty-Third Affirmative Defenses be dismissed without prejudice;

6 2. That such dismissals shall not bar Defendant from arguing at trial that Plaintiff cannot
7 establish the essential elements of his claims based on the same underlying facts Defendant
8 previously offered in support of the dismissed affirmative defenses.

9 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

10
11 DATED: March 20, 2014

/S/ Philip A. Simpkins

MICHAEL E. BREWER
PHILIP A. SIMPKINS
LITTLER MENDELSON, P.C.
Attorneys for Defendant, OFFICE DEPOT, INC.

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15 DATED: March 20, 2014

/S/ Richard M. Rogers

RICHARD M. ROGERS
LAW OFFICE OF RICHARD M. ROGERS
Attorney for Plaintiff, MICHAEL BAIRD

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19 I, the filer of this document, attest that all other signatories listed, and on whose behalf the
20 filing is submitted, concur in the filing's content and have authorized the filing.

21
22 DATED: March 20, 2014

/S/ Philip A. Simpkins

MICHAEL E. BREWER
PHILIP A. SIMPKINS
LITTLER MENDELSON, P.C.
Attorneys for Defendant, OFFICE DEPOT, INC.

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[PROPOSED] ORDER

1. Defendant’s Fifth, Sixth, Tenth, Eighteenth, Nineteenth, Twentieth, Fortieth, Forty-First, and Forty-Third Affirmative Defenses shall be dismissed without prejudice;

2. Such dismissals shall not bar Defendant from arguing at trial that Plaintiff cannot establish the essential elements of his claims based on the same underlying facts Defendant previously offered in support of the dismissed affirmative defenses.

IT IS SO ORDERED.

Dated: 3/21, 2014

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