1	Ronnie Fischer <i>Pro Hac Vice</i>	Brian E. Mitchell (SBN 190095)
2	Marcy Railsback 9720 Wilshire Boulevard, Suite 200	Marcel F. De Armas (SBN 289282) Mitchell + Company
3	Beverly Hills, CA 90212	4 Embarcadero Center, Suite 1400
4	Telephone: (310) 276-4000 Ronnie@fischeresq.com	San Francisco, CA 94111 Telephone: (415) 766-3515
5	Marcy@bovinorailsback.com	Facsimile: (415) 402-0058 Email: brian.mitchell@mcolawoffices.com
6	Attorneys for Plaintiff JERALD A. BOVINO	mdearmas@mcolawoffices.com
7		Attorneys for Defendant INCASE DESIGNS, CORP
8		
9	IN THE UNITED STATES DISTRICT COURT	
10	FOR THE NORTHERN DISTRICT OF CALIFORNIA	
11	SAN FRANCISCO	
12	JERALD A. BOVINO,	Case No.: 3:14-cv-02105-VC
13	Plaintiff,	STIPULATION AND (PROPOSED) ORDER WITHDRAWING MOTION TO
14	VS.	DISMISS
15	INCASE DESIGNS, CORP,	
16	Defendant.	
17		
18		
19		
20		
22		
23		
24		
25		
26		
27		
28		STIP & PROPOSED ORDER WITHDRAWING MOTION
20		STIP. & PROPOSED ORDER WITHDRAWING MOTION CASE NO.: 3:14-cv-02105-VC

STIPULATION

WHEREAS currently pending before the court is a Motion to Dismiss Plaintiff's Claims of Indirect and Willful Infringement in the First Amended Complaint that has been filed by Defendant Incase Designs Corp ("Incase");

WHEREAS Plaintiff Jerald A. Bovino ("Bovino") has recently offered to amend his First Amended Complaint;

WHEREAS the parties desire to narrow the issues in dispute, and eliminate the need for the court to rule on a motion to dismiss a complaint that the Bovino has agreed to amend;

NOW, THEREFORE, in consideration of the agreements set forth below, the parties hereby stipulate as follows:

- 1. The parties agree, pursuant to F.R.C.P. 15a)(2), that Bovino may amend his pleading and file a Second Amended Complaint no later than September 30, 2014;
 - 2. The Second Amended Complaint will not contain any of the following:
 - a. A claim of liability for direct infringement;
 - b. A claim of liability for willful Infringement;
 - c. A request for an injunction;
 - d. A claim of liability for indirect infringement prior to the filing of suit; and
 - e. A request for damages for any activity occurring prior to the filing of suit.
- 3. The Second Amended Complaint will be limited to asserting indirect liability based on post-suit conduct alone. This is not an admission that Incase believes any post-suit conduct exists that supports an indirect liability claim.
- 4. In light of the above, Incase agrees to withdraw its pending Motion to Dismiss Plaintiff's Claims of Indirect and Willful Infringement in the First Amended Complaint, and the parties jointly request that the court take the motion to dismiss hearing off calendar. Incase reserves the right to move to dismiss again pursuant to FRCP 12(b)(6) if it believes that the Second Amended Complaint still fails to give fair notice of the plaintiff's claim and the grounds upon which it rests, or to state a claim for relief that follows plausibly from the facts alleged.

1	5. Lastly, Bovino agrees that he will provide Incase with a copy of the defendant's		
2	Invalidity Contentions and supporting prior art that will be served in the $\it Jerald.~A.~Bovino~v.$		
3	Levenger Company case, within seven busines	Levenger Company case, within seven business day of receipt.	
4	Datada Assaust 27, 2014		
5	5	By: /s/ Ronnie Fischer Ronnie Fischer	
6	6		
7	7	Attorney for Plaintiff Jerald A. Bovino	
8	8 Dated: August 27, 2014	Mitchell + Company	
9		By: /s/ Brian E. Mitchell Brian E. Mitchell	
10	0	Attorney for Defendant Incase Designs, Corp.	
11	1		
12	2		
13	3		
14	4		
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27		CTID & PROPOSED ORDER WITHOUT STATES	
28	28	STIP. & PROPOSED ORDER WITHDRAWING MOTION CASE No.: 3:14-cv-02105-VC	

PROPOSED ORDER AS MODIFIED: a case management conference is scheduled for October 7, 2014, at 10:00 a.m.

Pursuant to stipulation, IT IS SO ORDERED.

A joint cmc statement is due September 30, 2014.

Dated: August 27 , 2014

