1 2 3 4 5 6 7 8 9	QUINN EMANUEL URQUHART & SULLIVAN, LLP Harold A. Barza (Bar No. 80888) halbarza@quinnemanuel.com Christopher A. Mathews (Bar No. 144021) chrismathews@quinnemanuel.com Scott A. Florance (Bar No. 227512) scottflorance@quinnemanuel.com 865 S. Figueroa Street Los Angeles, CA 90017 Telephone: (213) 443-3000 Facsimile: (213) 443-3100 Attorneys for Plaintiffs MEKIKI CO., LTD. and MEKIKI CREATES CO., LTD. COOLEY LLP HEIDI L. KEEFE (178960) (hkeefe@cooley.com) MARK R. WEINSTEIN (193043) (mweinstein@cooley.com)		
11	 REUBEN H. CHEN (228725) (rchen@cooley.com) ADAM M. PIVOVAR (246507) (apivovar@cooley.com) 3175 Hanover Street Palo Alto, CA 94304 Telephone: (650) 843-5000 		
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14	Attorneys for Defendant FACEBOOK, INC.		
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16	UNITED STATES DISTRICT COURT		
17	NORTHERN DISTRICT OF CALIFORNIA		
18	SAN JOSE DIVISION		
19			
20	MEKIKI CO., LTD and MEKIKI CREATES CO., LTD.,	Case No. 5:10-cv-2721-LHK (HRL)	
21	Plaintiffs and		
22	Counter-Defendants,	STIPULATION OF DISMISSAL WITHOUT PREJUDICE, AND	
23	V.	TOLLING AGREEMENT [AND PROPOSED ORDER]	
24	FACEBOOK, INC.,		
25	Defendant and Counterclaimant.		
26			
27			
28		STIPULATION OF DISMISSAL WITHOUT PREJUDICE 1. AND TOLLING AGREEMENT CASE No. 5:10-cv-2721-LHK (HRL)	

1 WHEREAS Plaintiffs Mekiki Co., Ltd. and Mekiki Creates Co., Ltd. (collectively 2 "Mekiki") filed the above-captioned action on October 7, 2009 (the "Original Action Filing 3 Date"); WHEREAS on February 7, 2011, Defendant Facebook, Inc. ("Facebook") filed Requests 4 5 for Inter Partes Reexamination with respect to U.S. Patent Nos. 6,879,985, 7,493,342, and 6 7,496,603 (the "Patents-in-Suit") with the U.S. Patent and Trademark Office ("PTO"), Control 7 Nos. 95/001,538, 95/001,539, and 95/001,537 (the "Reexamination Proceedings"); 8 WHEREAS on February 8, 2011, Facebook filed a Motion to Stay this action, and on 9 March 14, 2011, Mekiki filed a statement of non-opposition agreeing that a stay pending the 10 Reexamination Proceedings is appropriate and will preserve both the parties' and the Court's 11 resources; 12 WHEREAS the PTO granted the Reexamination requests on April 8, 2011; and 13 WHEREAS this Court's order of March 21, 2011 (Doc. No. 71) directed the parties to 14 submit a stipulation of dismissal without prejudice, including a tolling agreement to preserve 15 Mekiki's rights with respect to damages and Facebook's rights with respect to any counterclaims; 16 THEREFORE, Mekiki and Facebook hereby, and respectfully, request that the Court 17 order, as follows: 18 1. This action is hereby dismissed in its entirety, without prejudice, pursuant to Fed. 19 R. Civ. P. 41(a)(2), as of the entry date of this Stipulation and Order; 20 2. In the event of any subsequent legal action between the parties with respect to one 21 or more of the Patents-in-Suit (the "Subsequent Action"): 22 The Subsequent Action shall be filed in the U.S. District Court for the (a) 23 Northern District of California and assigned to this Court. 24 (b) Provided that the Subsequent Action is filed no later than one (1) year after 25 the issuance of a Reexamination Certificate upon the termination of any of 26 the Reexamination Proceedings: 27 Neither Facebook nor Mekiki shall assert the statute of limitations, (i) 28 laches, estoppel or any other defense based upon the passage of STIPULATION OF DISMISSAL WITHOUT PREJUDICE 2. AND TOLLING AGREEMENT

CASE NO. 5:10-CV-2721-LHK (HRL)

1	time	e between the Original Action Filing Date and the filing date of	
2	the	Subsequent Action;	
3	(ii) Fac	ebook's defenses and/or counterclaims shall be tolled during the	
4	peri	od between the Original Action Filing Date and the filing date	
5	of th	ne Subsequent Action; and	
6	(iii) Mel	Mekiki's claim for damages based on alleged infringement of one	
7	or r	nore of the Patents-in-Suit shall be treated, for purposes of the	
8	stati	ute of limitations provided by 35 U.S.C. § 286, as if such	
9	Sub	sequent Action was filed on the Original Action Filing Date.	
10	(c) Subject to the limitations of Paragraph 2(b)(i), nothing in this Stipulation		
11	and Order shall preclude Facebook from raising any additional defenses		
12	and counterclaims, if any, it may have in any Subsequent Action		
13	(including, without limitation, defenses and counterclaims that may arise as		
14	a result of the Reexamination Proceedings).		
15	QUINN EMANUEL URQUHAR	T & COOLEY LLP	
16	SULLIVAN LLP		
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18	By: <u>/s/ Christopher A. Mathews</u> Christopher A. Mathews	By: <u>/s/ Reuben H. Chen</u> Reuben H. Chen	
19	Attorneys for Plaintiffs MEKIKI CO., LTD AND M	Attorneys for DefendantEKIKIFACEBOOK, INC.	
20	CREATES CO., LTD.		
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22	IT IS SO ORDERED. The Clerk shall close the file.		
23		By: Honoroble Lucy H. Koh	
24	Date: May 12, 2011	Honor Die Lucy H. Koh United States District Judge	
25		United States District Judge	
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28		STIPULATION OF DISMISSAL WITHOUT PREJUDICE	
		3. AND TOLLING AGREEMENT CASE NO. 5:10-CV-2721-LHK (HRL)	
1	II. Contraction of the second s		