

1 John V. Picone III, Bar No. 187226  
2 [jpicon@hopkinscarley.com](mailto:jpicon@hopkinscarley.com)  
3 Jeffrey M. Ratinoff, Bar No. 197241  
4 [jratinoff@hopkinscarley.com](mailto:jratinoff@hopkinscarley.com)  
5 HOPKINS & CARLEY  
6 A Law Corporation  
7 The Letitia Building  
8 70 South First Street  
9 San Jose, CA 95113-2406

**mailing address:**  
1 P.O. Box 1469  
2 San Jose, CA 95109-1469  
3 Telephone: (408) 286-9800  
4 Facsimile: (408) 998-4790

5  
6 Attorneys for Plaintiffs and Counter-Defendants  
7 NEO4J, INC. and NEO4J SWEDEN AB

8  
9  
10 Adron W. Beene, Bar No. 129040  
11 [adron@adronlaw.com](mailto:adron@adronlaw.com)  
12 Adron G. Beene Bar No. 298088  
13 [adronjr@adronlaw.com](mailto:adronjr@adronlaw.com)  
14 Attorney at Law  
15 1754 Technology Drive, Suite 228  
16 San Jose, CA 95110  
17 Tel: (408) 392-9233  
18 Fax: (866) 329-0453

19 Attorneys for Defendants and Counterclaimants  
20 PURETHINK LLC, IGOV INC., and JOHN  
21 MARK SUHY

22  
23  
24  
25  
26  
27  
28  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

NEO4J, INC., a Delaware corporation,  
NEO4J SWEDEN, AB,

CASE NO. 5:18-cv-07182-EJD

**STIPULATION AND ~~PROPOSED~~  
ORDER RE DISMISSAL OF CLAIMS**

Plaintiffs,

v.

PURETHINK LLC, a Delaware limited  
liability company, IGOV INC., a Virginia  
corporation, and JOHN MARK SUHY, an  
individual,

Defendants.

AND RELATED COUNTERCLAIMS.

## **STIPULATION**

This Stipulation is made between Plaintiffs and Counter-Defendants Neo4j, Inc. and Neo4j Sweden AB (collectively “Plaintiffs”) and Defendants and Counterclaimants PureThink LLC, iGov Inc. and John Mark Suhy (collectively, “Defendants”) through their respective attorneys:

WHEREAS, on July 29, 2021, the parties met and conferred over the Phase 2 schedule. The parties also discussed potentially narrowing the scope of their claims to streamline discovery in Phase 2. Such discussions have continued after Plaintiffs sent Defendants a substantive letter detailing what Plaintiffs believed to be legal defects in certain claims asserted in Defendants' Second Amended Counterclaim (Dkt. No. 72) and affirmative defenses asserted in Defendants' Answer to Plaintiffs' Third Amended Complaint (Dkt. No. 91).

WHEREAS, Fed. R. Civ. P. 41 only permits the complete dismissal of a complaint or counterclaim, and does not permit the dismissal of only certain claims “from a multi-claim complaint.” *Ethridge v. Harbor House Restaurant*, 861 F.2d 1389, 1392 (9th Cir. 1988). Instead, where a party seeks to drop certain claims, the proper procedure is to either amend the complaint pursuant to Fed. R. Civ. P. 15(a) or that certain claims will not be pursued or will be dismissed. *See Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 688 (9th Cir. 2005) (“Federal Rule of Civil Procedure 15(a) is the appropriate mechanism ‘[w]here a plaintiff desires to eliminate an issue, or one or more but less than all of several claims, but without dismissing as to any of the defendants’” (internal citations omitted)).

WHEREAS, Defendants have agreed to no longer pursue and to dismiss their (a) Second Cause of Action for Intentional Interference with Contract (Dkt. No. 72, ¶¶ 35-43), and (b) Twelfth Cause of Action for Unfair Business Practices (Dkt. No. 72, ¶¶ 99-128).

WHEREAS, Defendants acknowledge that Plaintiffs will be filing a motion for judgment on the pleadings on the remaining counterclaims that Defendants were unwilling to dismiss. As a result, within twenty-one (21) days after the Court issues an order on that motion, Defendants will amend their counterclaims in accordance with this stipulation and in a manner consistent with the Court's rulings in that order.

1           WHEREAS, Defendants have appealed the Court's Preliminary Junction, which is based  
 2 in part on the Court's determination that the Neo4j Sweden Software License did not permit  
 3 Defendants to remove the Commons Clause from that License. *See* Dkt. No. 118 at 6:18-26,  
 4 24:7-25:19. As such, should the Court of Appeal affirm that ruling, Defendants agree that they  
 5 will no longer pursue and take all necessary steps to dismiss their Seventh Cause of Action for  
 6 Declaratory Relief, which seeks a determination as to whether Neo4j Sweden AB's inclusion of  
 7 Common Clause in the Neo4j Sweden Software License violated its terms (Dkt. No. 72, ¶¶ 62-  
 8 69), and similarly pled Fifth, Sixth and Thirteenth Affirmative Defenses (Dkt. No. 91 at 19:9-  
 9 20:9, 22:22-24:5).

10           WHEREAS, Plaintiffs have agreed to no longer pursue and to dismiss their Sixth Cause of  
 11 Action for Invasion of Privacy (Cal. Penal Code §§ 632, 637.2). Dkt. No. 90, ¶¶ 148-156. Since  
 12 Plaintiffs' motion for judgment on the pleadings will also seek the dismissal of certain affirmative  
 13 defenses, Plaintiffs will seek leave to file an amended complaint that omits their Sixth Cause of  
 14 Action within twenty-one (21) days after the Court issues an order on that motion, and  
 15 Defendants will file an answer thereto that is consistent with the Court's ruling on that motion,  
 16 and will not assert new or different affirmative defenses.

17           IT IS HEREBY STIPULATED THAT:

18           1.       Defendants will no longer pursue and agree to dismiss their Second Cause of  
 19 Action for Intentional Interference with Contract (Dkt. No. 72, ¶¶ 35-43), and Twelfth Cause of  
 20 Action for Unfair Business Practices (Dkt. No. 72, ¶¶ 99-128) asserted in their Second Amended  
 21 Counterclaim.

22           2.       Defendants will amend their Second Amended Counterclaim to omit their Second  
 23 Cause of Action for Intentional Interference with Contract, and Twelfth Cause of Action for  
 24 Unfair Business Practices (Dkt. No. 72, ¶¶ 99-128), and in a manner consistent with the Court's  
 25 ruling on Plaintiffs' Motion for a Judgment on the Pleadings within twenty-one (21) days after the  
 26 Court issues an order ruling on that motion.

27           3.       Plaintiffs will no longer pursue and agree to dismiss their Sixth Cause of Action  
 28 for Invasion of Privacy (Cal. Penal Code §§ 632, 637.2). Dkt. No. 90, ¶¶ 148-156. Plaintiffs will

1 seek leave to file an amended complaint that omits their Sixth Cause of Action within twenty-one  
2 (21) days after the Court issues an order on that motion.

3       4. Defendants will file an answer to Plaintiffs' further amended complaint that is  
4 consistent with this stipulation and the Court's ruling on Plaintiffs' Motion for a Judgment on the  
5 Pleadings, and will not assert any new or different affirmative defenses.

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

7       Dated: September 2, 2021

HOPKINS & CARLEY  
A Law Corporation

9       By: /s/ Jeffrey M. Ratinoff

10       John V. Picone III  
11       Jeffrey M. Ratinoff  
12       Attorneys for Plaintiffs and  
13       Counter-Defendants  
14       NEO4J, INC. and NEO4J SWEDEN AB

15       Dated: September 2, 2021

16       /s/ Adron W. Beene

17       Adron W. Beene  
18       Adron G. Beene  
19       Attorneys for Defendants and Counter-  
20       Claimants  
21       PURETHINK LLC, IGOV INC., and  
22       JOHN MARK SUHY

23       **IT IS SO ORDERED.**

24       Dated: September 3, 2021



EDWARD J. DAVILA  
United States District Court Judge