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26 UNITED STATES DISTRICT COURT

27 NORTHERN DISTRICT OF CALIFORNIA

28 NEO4J, INC., a Delaware corporation,
19 NEO4J SWEDEN, AB, a Swedish
20 corporation,

21 Plaintiffs,

22 v.

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

26 Defendants.

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

27 **STIPULATION AND [PROPOSED]
28 ORDER DISMISSING DEFENDANTS'
FIRST CAUSE OF ACTION FOR
INTENTIONAL INTERFERENCE WITH
PROSPECTIVE ECONOMIC
ADVANTAGE WITH PREJUDICE**

AS MODIFIED

Date: April 27, 2023
Time: 9:00 a.m.
Dept.: Courtroom 4, 5th Floor

Judge: Hon. Edward J. Davila

Trial Date: November 14, 2023

26 AND RELATED COUNTERCLAIMS.

27
28 4860-2119-5603.1

29 STIPULATION AND [PROPOSED] ORDER DISMISSING DEFENDANTS' FIRST CAUSE OF ACTION FOR INTENTIONAL
30 INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE WITH PREJUDICE; CASE NO. 5:18-CV-07182-EJD

STIPULATION

2 This Stipulation is made between Plaintiffs and Counter-Defendants Neo4j, Inc. and Neo4j
3 Sweden AB (collectively “Plaintiffs”) and Defendants and Counterclaimants PureThink LLC, iGov
4 Inc. and John Mark Suhy (collectively, “Defendants”). Plaintiffs and Defendants (collectively, the
5 “Parties”) through their respective counsel HEREBY STIPULATE to a resolution of Plaintiffs’
6 Motion to Dismiss Defendants’ First Cause of Action in Their Third Amended Counterclaim
7 (“Motion to Dismiss”) as follows:

8 WHEREAS, on September 3, 2021, Plaintiffs filed a motion for judgment on the pleadings
9 seeking to dismiss a number of counterclaims asserted in Defendants' Second Amended
10 Counterclaim and Answer to Third Amended Complaint ("Plaintiffs' Motion"). *See* Dkt. No. 132.

11 WHEREAS, on January 6, 2023, the Court granted, in part, Plaintiffs' Motion. In doing so,
12 the Court dismissed Defendants' First Cause of Action for Intentional Interference with Prospective
13 Economic Advantage, but also granted them leave to amend that claim. *See* Dkt. No. 168.

14 WHEREAS, on January 27, 2023, Defendants filed their Third Amended Counterclaim
15 (“TACC”) wherein they re-asserted their First Cause of Action for Intentional Interference with
16 Prospective Economic Advantage. *See* Dkt. No. 171.

17 WHEREAS, on February 9, 2023, Plaintiffs filed a motion to dismiss Defendants' First
18 Cause of Action for Intentional Interference with Prospective Economic Advantage asserted in the
19 TACC ("Motion to Dismiss"). *See* Dkt. No. 172.

20 WHEREAS, Defendants' opposition to the Motion to Dismiss is currently due on March 2,
21 2023 and the hearing is set for April 27, 2023. *See* Dkt. No. 174.

22 WHEREAS, rather than oppose Plaintiffs' motion, Defendants offered to dismiss their First
23 Cause of Action for Intentional Interference with Prospective Economic Advantage with prejudice.

24 WHEREAS, Fed. R. Civ. P. 41 only permits the complete dismissal of a complaint or
25 counterclaim, and does not permit the dismissal of only certain claims “from a multi-claim
26 complaint.” *Ethridge v. Harbor House Restaurant*, 861 F.2d 1389, 1392 (9th Cir. 1988). Instead,
27 where a party seeks to dismiss certain claims, the proper procedure is to amend the complaint
28 pursuant to Fed. R. Civ. P. 15(a) and/or stipulate that certain claims will not be pursued or will be

1 dismissed. *See Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 688 (9th Cir. 2005)
 2 (“Federal Rule of Civil Procedure 15(a) is the appropriate mechanism ‘[w]here a plaintiff desires
 3 to eliminate an issue, or one or more but less than all of several claims, but without dismissing as
 4 to any of the defendants’”) (internal citations omitted).

5 ACCORDINGLY, IT IS HEREBY STIPULATED THAT:

6 1. Defendants’ First Cause of Action for Intentional Interference with Prospective
 7 Economic Advantage is HEREBY DISMISSED WITH PREJUDICE.

8 2. Plaintiffs shall be considered the prevailing party with respect to that claim.

9 3. Defendants shall have until March 17, 2023 to file an amended counterclaim
 10 omitting their First Cause of Action for Intentional Interference with Prospective Economic
 11 Advantage and the allegations supporting that cause of action.

12 4. Defendants shall not be permitted to add any additional counterclaims or
 13 allegations to their further amended counterclaim as the Court previously granted leave to amend
 14 only with respect to the First Cause of Action and the time for the parties to amend their
 15 respective pleadings has lapsed.

16 5. Upon the filing of Defendants’ amended counterclaim omitting their First Cause of
 17 Action for Intentional Interference with Prospective Economic Advantage, Plaintiffs’ pending
 18 Motion to Dismiss shall be taken off calendar.

19 6. Plaintiffs shall have twenty-one (21) days from the date Defendants file their
 20 further amended counterclaim to file a response thereto.

21 Dated: March 1, 2023

HOPKINS & CARLEY
 22 A Law Corporation

23 By: /s/ Jeffrey M. Ratinoff

24 John V. Picone III
 Jeffrey M. Ratinoff
 25 Attorneys for Plaintiffs and
 Counter-Defendants
 NEO4J, INC. and NEO4J SWEDEN AB

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27 ///

28

1 Dated: March 1, 2023

2 */s/ Adron W. Beene*

3 Adron W. Beene
4 Adron G. Beene
5 Attorneys for Defendants and Counter-
6 Claimants
7 PURETHINK LLC, IGOV INC., and
8 JOHN MARK SUHY

9
10 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

11 Plaintiffs' motion to dismiss at ECF No. 172 is terminated as moot. The motion hearing set for
12 April 27, 2023 is vacated.

13 Dated: March 2, 2023

14 
15 EDWARD J. DAVILA
16 United States District Court Judge