

John V. Picone III, Bar No. 187226
 jpicone@hopkinscarley.com
 Jeffrey M. Ratinoff, Bar No. 197241
 jratinoff@hopkinscarley.com
 HOPKINS & CARLEY
 A Law Corporation
 The Letitia Building
 70 South First Street
 San Jose, CA 95113-2406
mailing address:
 P.O. Box 1469
 San Jose, CA 95109-1469
 Telephone: (408) 286-9800
 Facsimile: (408) 998-4790

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

Adron W. Beene, Bar No. 129040
 adron@adronlaw.com
 Adron G. Beene SB# 298088
 adronjr@adronlaw.com
 Attorney at Law
 7960 Soquel Drive Suite #296
 Aptos, CA 95003
 Tel: (408) 392-9233

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

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

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

Defendants.

AND RELATED COUNTERCLAIMS.

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

**STIPULATION AND ~~PROPOSED~~
 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

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”). Plaintiffs and Defendants (collectively, the “Parties”) through their respective counsel HEREBY STIPULATE to a resolution of Plaintiffs’ Motion to Dismiss Defendants’ First Cause of Action in Their Third Amended Counterclaim (“Motion to Dismiss”) as follows:

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

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

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

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

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

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

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 dismiss certain claims, the proper procedure is to amend the complaint 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

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 A Law Corporation

By: /s/ Jeffrey M. Ratinoff

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

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1 Dated: March 1, 2023

/s/ Adron W. Beene

Adron W. Beene

Adron G. Beene

Attorneys for Defendants and Counter-
Claimants

PURETHINK LLC, IGOV INC., and
JOHN MARK SUHY

6 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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

9 Dated: March 2, 2023



EDWARD J. DAVILA

United States District Court Judge