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17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN FRANCISCO**
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21 OPEN SOURCE SECURITY, INC., and
BRADLEY SPENGLER,

22 Plaintiffs,
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24 v.

25 BRUCE PERENS, and Does 1-50,

26 Defendants.
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Case No. 3:17-cv-04002-LB

STIPULATION RE FEES AND COSTS

1 Plaintiffs Open Source Security, Inc. and Bradley Spengler (hereinafter, “Plaintiffs”), and
2 Defendant Bruce Perens (hereinafter, “Defendant”), by and through their counsel of record,
3 hereby stipulate as follows:

4 WHEREAS, on July 17, 2017, Plaintiff Open Source Security, Inc. commenced this action
5 and thereafter moved to join the company’s CEO, Bradley Spengler, to the case (Dkts. 1, 19);

6 WHEREAS, on October 2, 2017, Plaintiffs filed their First Amended Complaint, asserting
7 claims of defamation per se, defamation per quod, false light, and intentional interference with
8 prospective economic advantage (Dkt. 18);

9 WHEREAS, on October 31, 2017, Defendant filed a motion to dismiss and a special
10 motion to strike the First Amended Complaint pursuant to the California Anti-SLAPP statute
11 (Dkt. 30);

12 WHEREAS, on December 21, 2017, the Court dismissed each of Plaintiffs’ claims and
13 held that Defendant’s statements “were made in a public forum and concern issues of public
14 interest, and the plaintiffs have not shown a probability of prevailing on their claims” (Dkt. 53);

15 WHEREAS, on February 5, 2018, Plaintiffs filed a Notice of Appeal to the Ninth Circuit
16 Court of Appeals of the Court’s dismissal order (Dkt. 59);

17 WHEREAS, on June 9, 2018, after reviewing all of the evidence before it, the
18 Court awarded Defendant \$259,900.50 in fees and \$2,403.12 in costs related to the litigation in
19 the district court (Dkt. 95);

20 WHEREAS, on June 11, 2018, Plaintiffs filed a Notice of Appeal of the Court’s attorneys’
21 fees award (Dkt. 96);

22 WHEREAS, on June 22, 2018, Plaintiffs filed a \$300,000 supersedeas bond, underwritten
23 by Great American Insurance Company (Bond No. 2160532), and an unopposed motion to stay
24 execution of the judgment pending appeal (Dkt. 100);

25 WHEREAS, on June 24, 2018, the Court granted Plaintiffs’ motion for a stay of execution
26 of the judgment and approved Plaintiffs’ \$300,000 bond (Dkt. 101);

27 WHEREAS, on February 6, 2020, following Plaintiffs’ appeal of both the merits of the
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1 Court's dismissal order and the award of attorneys' fees, the Ninth Circuit Court of Appeals
2 affirmed the Court's dismissal order and the attorneys' fee award (Dkt. 105);

3 WHEREAS, on appeal, Mr. Perens was represented by Electronic Frontier Foundation
4 ("EFF") and O'Melveny & Myers LLP ("O'Melveny") on the merits portion of the appeal, and
5 by O'Melveny on the fees portion;

6 WHEREAS, Defendant's attorneys' fees and costs incurred in responding to Plaintiffs'
7 appeals exceed the amount remaining in bond, and the parties wish to avoid any further litigation
8 and controversy regarding the additional amounts of Defendant's attorneys' fees and costs
9 incurred;

10 NOW, THEREFORE, the parties stipulate:

11 1. Great American Insurance Company shall issue a payment under Bond No.
12 2160532 for its penal sum, \$300,000.00 (three hundred thousand dollars and zero cents), to cover
13 Defendant's attorneys' fees and costs.

14 2. Of that \$300,000.00:

- 15 • \$262,303.62 shall be paid to O'Melveny pursuant to the Court's June 9, 2018
16 award of attorneys' fees and costs related to litigation in the district court;
- 17 • \$2,210.36 shall be paid to O'Melveny to cover its costs related to Plaintiffs'
18 appeal of the dismissal of this action and appeal of the attorneys' fees award;
- 19 • \$1,011.67 shall be paid to the EFF to cover its costs related to Plaintiffs'
20 appeal of the dismissal of this action; and
- 21 • \$34,474.35 shall be paid to the EFF to cover a portion of its attorneys' fees
22 related to Plaintiffs' appeal of the dismissal of this action.

23 3. Great American Insurance Company will make all reasonable efforts to complete
24 payment within twenty (20) days of the Effective Date of this stipulation. Payment of this money
25 will be made via check after receipt of necessary information from Defendant's counsel.

26 4. Plaintiffs will reasonably cooperate with Defendant to ensure the funds are
27 released by Great American Insurance Company to Defendant's counsel in a timely manner.
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5. Provided that Plaintiffs reasonably cooperate in good faith with Defendant and Great American Insurance Company, taking all reasonable steps in Plaintiffs' control to ensure that the funds are released from Great American Insurance Company in a timely manner, Defendant agrees to forgo additional attorneys' fees related to the appeals to which he would be entitled.

6. Upon issuance of that payment, Bond No. 2160532 is discharged, and Great American Insurance Company and Plaintiffs are released from any further obligations thereunder.

7. The Parties agree that this Court has jurisdiction for purposes of enforcing this Stipulation.

IT IS SO STIPULATED.

Dated: March 24, 2020

MELODY DRUMMOND HANSEN
HEATHER J. MEEKER
KAITLYN A. GOSEWEHR
O'MELVENY & MYERS LLP

By: /s/ Melody Drummond Hansen
Melody Drummond Hansen

Attorneys for Defendant
Bruce Perens

Dated: March 24, 2020

JAMIE WILLIAMS
AARON MACKAY
ELECTRONIC FRONTIER FOUNDATION

By: /s/ Jamie Williams
Jamie Williams

Attorneys for Defendant
Bruce Perens

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Dated: March 24, 2020

ROHIT CHHABRA
CHHABRA LAW FIRM, PC

By: /s/ Rohit Chhabra
Rohit Chhabra

Attorneys for Plaintiffs
Open Source Security, Inc. and
Bradley Spengler

* Pursuant to Local Civil Rule 5-1(i)(3), I, Jamie Williams, attest that I obtained the concurrence of Rohit Chhabra and Melody Drummond Hansen, in the filing of this document.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: March 26, 2020

By: /s/ Jamie Williams
Jamie Williams

~~**PROPOSED**~~ **ORDER**

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: March 27, 2020



HONORABLE LAUREL BEELER
United States Magistrate Judge