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18 Attorneys for Defendant
 19 NEOPETS, INC.

20 **UNITED STATES DISTRICT COURT**
 21 **CENTRAL DISTRICT OF CALIFORNIA**

23 KYLE JOHNSON, individually and on
 behalf of all others similarly situated,

24 Plaintiff,

25 v.

26 NEOPETS, INC., a Delaware corporation;
 27 and DOES 1-10, inclusive,

28 Defendants.

Case No. 2:15-cv-08395-DMG-PLA

**JOINT STIPULATION FOR
 DISMISSAL OF ENTIRE ACTION
 WITHOUT PREJUDICE
 PURSUANT TO FEDERAL RULE
 OF CIVIL PROCEDURE
 41(a)(1)(A)(ii)**

1 Plaintiff Kyle Johnson (“Plaintiff”) and Defendant NeoPets, Inc.
2 (“Defendant”), by and through their respective counsel, hereby stipulate and agree
3 as follows:

4 WHEREAS, on October 27, 2015, Plaintiff filed the instant action (Dkt. 1);

5 WHEREAS, on October 28, 2015, Plaintiff served Defendant’s agent for
6 service of process (Dkt. 10);

7 WHEREAS, on December 9, 2015, Plaintiff requested the Clerk enter
8 default of Defendant based on Defendant’s failure to appear or otherwise timely
9 respond to the Complaint (Dkt. 11);

10 WHEREAS, the Clerk entered Defendant’s default on December 14, 2015
11 (Dkt. 12);

12 WHEREAS, on January 14, 2016, Plaintiff filed a motion for class
13 certification (Dkt. 15);

14 WHEREAS, Defendant had not appeared in this action on or before its
15 deadline of January 29, 2016 to file its opposition to Plaintiff’s motion for class
16 certification and as such, on February 5, 2016, Plaintiff filed a notice of non-
17 opposition thereto (Dkt. 17);

18 WHEREAS, on February 23, 2016, the Court granted Plaintiff’s unopposed
19 motion to certify the following class: “All persons in California that, within the
20 applicable statute of limitations period, purchased any product or service in
21 response to an offer constituting an “Automatic Renewal” as defined by [California
22 Business & Professions Code] § 17601(a) from NeoPets, Inc., its predecessors, or
23 its affiliates.” (Dkt. 19);

24 WHEREAS, Defendant did not receive, and has not at any time received,
25 copies of the summons or complaint from its agent for service of process, and has
26 no record of what its agent for service of process did with the summons or
27 complaint upon their receipt (Dkt. 24 at Czulewicz Decl., ¶ 5);

28 ///

1 WHEREAS, Defendant first became aware of Plaintiff’s lawsuit on January
2 14, 2016, when it received a Fed-Ex package from its agent for service of process
3 containing Plaintiff’s Application for Relief from the Default Judgment Deadline
4 (Dkt. 24 at Tersol-Wiseman Decl., ¶ 3, Ex. A);

5 WHEREAS, on March 8, 2016, Defendant filed a Motion to Dismiss for
6 Lack of Subject Matter Jurisdiction or, in the Alternative, Set Aside Entry of
7 Default (the “Motion to Dismiss”), which is currently pending before the Court;

8 WHEREAS, the Parties met and conferred in good faith on Defendant’s
9 Motion to Dismiss and Defendant’s contention that this Court lacks subject matter
10 jurisdiction under the Class Action Fairness Act of 2005 (28 U.S.C. § 1332(d));

11 WHEREAS, Plaintiff agrees with Defendant that this Court lacks subject
12 matter jurisdiction over this action;

13 **NOW THEREFORE**, the Parties stipulate and agree that, because the
14 Court lacks subject matter jurisdiction over this action, (1) the class certified by
15 this Court on February 23, 2016 (Dkt. 19) should be decertified *without prejudice*;
16 and (2) Plaintiff’s entire action should be dismissed *without prejudice*.

17 **IT IS SO STIPULATED.**

18 DATED: April 15, 2016

NEWPORT TRIAL GROUP

19 By: /s/ Victoria C. Knowles
20 Victoria C. Knowles
21 Attorneys for Plaintiff
KYLE JOHSON

22 DATED: April 15, 2016

SEYFARTH SHAW LLP

23 By /s/ Aaron Belzer
24 Jay W. Connolly
25 Aaron Belzer
Attorneys for Defendant
NEOPETS, INC.

26 *I, Victoria C. Knowles, hereby certify that the content of this document is*
27 *acceptable to all persons required to sign this document and that I obtained the*
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1 *authorizations necessary for the electronic signatures of all parties for this*
2 *document.*

/s/ Victoria C. Knowles
Victoria C. Knowles

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CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2016, I electronically filed the foregoing JOINT STIPULATION FOR DISMISSAL OF ENTIRE ACTION WITHOUT PREJUDICE PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 41(a)(1)(A)(ii) with the Clerk of the Court using the CM/ECF system which will send notification of such filing via electronic mail to all counsel of record.

/s/ Victoria C. Knowles
Victoria C. Knowles

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 Plaintiff,

25 v.

26 NEOPETS, INC., a Delaware corporation;
 27 and DOES 1-10, inclusive,
 Defendants.

Case No. 2:15-cv-08395-DMG-PLA

**[PROPOSED] ORDER OF
 DISMISSAL WITHOUT PREJUDICE
 PURSUANT TO FEDERAL RULE OF
 CIVIL PROCEDURE 41(a)(1)(A)(ii)**

1 The Court, having considered the Joint Stipulation for Dismissal of Entire Action
2 Without Prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) jointly
3 filed by the Parties herein, orders that the class certified on February 23, 2016 (Dkt. 19)
4 shall be decertified *without prejudice*, and this action is dismissed *without prejudice*.
5 Each party shall bear his or its own costs and attorneys' fees.

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7 Dated: _____

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9 _____
10 The Honorable Dolly M. Gee
11 United States District Court Judge
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CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2016, I electronically filed the foregoing **[PROPOSED] ORDER OF DISMISSAL WITHOUT PREJUDICE PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 41(a)(1)(A)(ii)** with the Clerk of the Court using the CM/ECF system which will send notification of such filing via electronic mail to all counsel of record.

/s/ Victoria C. Knowles
Victoria C. Knowles