

1 SCHIFF HARDIN LLP  
William J. Carroll (CSB #118106)  
2 wcarroll@schiffhardin.com  
Larry B. Garrett (CSB #225192)  
3 lgarrett@schiffhardin.com  
One Market, Spear Street Tower  
4 Thirty-Second Floor  
San Francisco, CA 94105  
5 Telephone: (415) 901-8700  
Facsimile: (415) 901-8701

6 Attorneys for Defendants  
7 VICTORIA HARRISON, KAREN ALBERTS,  
WILLIAM KASISKE, WADE MACADAM,  
8 TIMOTHY J. ZUNIGA

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

12 LONG HAUL, INC., and EAST BAY  
PRISONER SUPPORT,

13 Plaintiff,

14 v.

15 VICTORIA HARRISON; KAREN  
16 ALBERTS; WILLIAM KASISKE; WADE  
MACADAM; TIMOTHY J. ZUNIGA; et  
17 al.,

18 Defendants.

Case No. 3:09-cv-0168 JSW

**STIPULATION AND ~~PROPOSED~~  
ORDER RE: DISMISSAL OF FIRST  
AMENDMENT CLAIMS AGAINST  
UNIVERSITY DEFENDANTS**

19  
20  
21 **RECITALS**

22 A. Plaintiffs Long Haul, Inc. ("Long Haul") and East Bay Prisoner Support  
23 have brought the above-captioned action alleging various claims arising out of, inter alia,  
24 the execution of a search warrant at the Long Haul premises on August 27, 2008.

25 B. In Count I of Plaintiffs' First Amended Complaint, Plaintiffs alleged a First  
26 Amendment violation against the University Defendants and the Federal Defendants.

27 C. The Federal Defendants moved to dismiss this First Amendment claim  
28 against them.

1 D. In its Order dated November 30, 2009, the Court granted the Federal  
2 Defendants' motion to dismiss the First Amendment claims, with leave to amend. The  
3 Court stated that Plaintiffs had failed to alleged that the purpose of Defendants' conduct  
4 was retaliatory or aimed to chill Plaintiffs' First Amendment activities. The Court  
5 provided Plaintiffs leave to amend to plead the requisite facts to show that Defendants  
6 acted with the impermissible motive of retaliating against Plaintiffs or curbing their First  
7 Amendment activities. (Order of November 30, 2009, Dkt. 69, at 11).

8 E. Counsel for Plaintiffs and for the University Defendants have met and  
9 conferred regarding the Court's November 30, 2009 Order and the First Amendment  
10 claims asserted in the First Amended Complaint against the University Defendants.  
11 Plaintiffs' counsel has indicated that Plaintiffs do not intend to file a Second Amended  
12 Complaint.

13 F. In the interests of judicial economy and to avoid further motion practice on  
14 this issue, counsel for Plaintiffs and the University Defendants have agreed to a  
15 stipulation whereby Plaintiffs will not object to the Court entering an order dismissing the  
16 First Amendment claims against the University Defendants, on the same grounds that it  
17 has previously ordered dismissal of that claim against the Federal Defendants.

18 G. In agreeing to this stipulation, Plaintiffs expressly reserve any and all rights  
19 to appeal the Court's dismissal of their First Amendment claims against the University  
20 Defendants. Plaintiffs agree to this stipulation in order to move the litigation forward and  
21 in the interests of judicial economy, but do not intend for this stipulation to act as a  
22 waiver of any right to appeal this issue. The University Defendants agree and  
23 acknowledge that they shall not assert any such waiver arising out of this stipulation and  
24 order dismissing said First Amendment claims.

### 25 STIPULATION

26 The parties, through their attorneys of record, hereby stipulate as follows:

27 1. Plaintiffs and the University Defendants acknowledge and agree that the  
28 Court's rationale in dismissing the First Amendment claims alleged by the Federal

1 Defendants in the First Amended Complaint applies with equal force to the First  
2 Amendment claims alleged by the University Defendants.

3 2. Plaintiffs do not object to an order dismissing the First Amendment claims  
4 asserted against the University Defendants in the First Amended Complaint on the same  
5 basis as the Court's November 30, 2009 Order dismissing the First Amendment claims  
6 against the Federal Defendants. Each party shall bear their own respective fees and  
7 costs.

8 3. Plaintiffs expressly reserve their right to appeal the Court's dismissal of  
9 their First Amendment claims against the University Defendants. The University  
10 Defendants agree and acknowledge that they shall not assert any such waiver arising  
11 out of this stipulation and order dismissing said First Amendment claims.

12  
13 Dated: December 17, 2009

14 /s/ William J. Carroll

/s/ Jennifer S. Granick

15 SCHIFF HARDIN LLP  
16 WILLIAM J. CARROLL (CSB #118106)  
wcarroll@schiffhardin.com  
17 LARRY B. GARRETT (CSB #225192)  
lgarrett@schiffhardin.com  
18 One Market, Spear Street Tower  
Thirty-Second Floor  
San Francisco, CA 94105  
19 Telephone: (415) 901-8700  
Facsimile: (415) 901-8701

ELECTRONIC FRONTIER FOUNDATION  
JENNIFER S. GRANICK (CSB #168423)  
454 Shotwell Street  
San Francisco, CA 94110  
Telephone: (415) 436-9333 x134  
Facsimile: (415) 436-9993  
COUNSEL FOR PLAINTIFFS

20  
21 COUNSEL FOR DEFENDANTS  
VICTORIA HARRISON, KAREN  
22 ALBERTS, WILLIAM KASISKE, WADE  
MACADAM, TIMOTHY J. ZUNIGA

23  
24  
25  
26 **GENERAL ORDER NO. 45(X) CERTIFICATION**

27 I attest that I have obtained the concurrence of Jennifer S. Granick in the filing of  
28

1 this document.

2

3

/s/ William J. Carroll  
William J. Carroll

4

5

**ORDER**

6

7

8

9

10

11

12

For the reasons set forth in the Order dated November 30, 2009, the Court hereby dismisses Plaintiffs' First Amendment claims against the University Defendants. The factual allegations asserted in support of the First Amendment claims against the University Defendants are, like those alleged against the Federal Defendants, insufficient to support a claim under the First Amendment. Accordingly, the Court finds that Plaintiffs have not alleged sufficient facts in their First Amended Complaint to state a claim under the First Amendment against the University Defendants.

13

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

14

Dated: December 22, 2009

15

  
Hon. Jeffrey S. White  
United States District Judge

16

17

SF19524877.1

18

19

20

21

22

23

24

25

26

27

28