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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

15
16 OPEN SOURCE SECURITY, INC., and
BRADLEY SPENGLER,

17 Plaintiffs,

18 v.

19 BRUCE PERENS, and Does 1-50,

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

**DEFENDANT'S NOTICE OF
WITHDRAWAL OF MOTION TO
DISMISS AND SPECIAL MOTION TO
STRIKE AS MOOT PURSUANT TO
CIVIL L.R. 7-7**

NOTICE OF WITHDRAWAL OF MOTIONS AS MOOT

PLEASE TAKE NOTICE THAT Defendant Bruce Perens hereby withdraws as moot his Motion to Dismiss with Prejudice Pursuant to Fed. R. Civ. P. 12(b)(6) and Special Motion to Strike Pursuant to the California Anti-SLAPP Statute, Code of Civil Procedure Section 425.16, filed on September 18, 2017 in the above-captioned action and set for hearing on October 26, 2017 at 9:30 a.m.

Mr. Perens files this notice solely because Mr. Perens understands that under caselaw, Mr. Perens's motions are considered procedurally mooted by Plaintiffs' October 2, 2017 filing of a First Amended Complaint, which supersedes the original complaint that is the subject of Mr. Perens's motions. However, Mr. Perens maintains that the original complaint fails to state a claim and improperly seeks to impose liability based on conduct protected by the California anti-SLAPP statute, and that the First Amended Complaint likewise fails to state a claim and improperly seeks to impose liability based on conduct protected by the California anti-SLAPP statute. Mr. Perens therefore will again move to dismiss Plaintiffs' claims and to strike them under the anti-SLAPP statute. Should the Court grant Mr. Perens's special motion to strike, Mr. Perens intends to seek all attorneys' fees recoverable under the anti-SLAPP statute and otherwise, including all fees incurred preparing his original motions, as part of the calculation of the mandatory attorneys' fees award guaranteed to Mr. Perens by the anti-SLAPP statute. *See Mireskandari v. Daily Mail & Gen. Tr. PLC*, No. CV 12-02943 MMM (FFMx), 2014 WL 12586434, at *9 (C.D. Cal. Nov. 7, 2014), *aff'd sub nom. Mireskandari v. Assoc'd Newspapers, Ltd.*, 665 F. App'x 570 (9th Cir. 2016); *Graham-Sult v. Clainos*, 756 F.3d 724, 752 (9th Cir. 2014).

1 Dated: October 10, 2017

2 MELODY DRUMMOND HANSEN
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6 By: /s/ Melody Drummond Hansen
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