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**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SPH America LLC,
Plaintiff,

v.

ZTE CORPORATION and ZTE (USA) INC.,
Defendants

Case No. 3:13-cv-02326-CAB-NLS

Judge: Cathy Ann Bencivengo

Joint Motion for Dismissal Without Prejudice
of Defendant ZTE Corporation

**JOINT MOTION FOR DISMISSAL WITHOUT PREJUDICE OF DEFENDANT ZTE
CORPORATION**

Pursuant to Fed. R. Civ. P. 41(a)(2), Defendant ZTE Corporation (“ZTE Corp”) and its subsidiary which is also named as a defendant in this action, ZTE (USA) Inc., (collectively, “the ZTE Defendants”), and SPH America (“SPH”) jointly move to dismiss SPH’s complaint against ZTE Corp against SPH without prejudice to reinstate and with no award of fees or costs, based on the following:

1. The ZTE Defendants represent that ZTE Corp does not make, use, sell, or offer to sell, or contribute to or induce the infringement of any person or entity in the United States, with respect to the products and patents identified in SPH’s complaint. ZTE (USA) Inc. is the

importer of the products identified in SPH's complaint and remains a named defendant in this action. Further, the ZTE Defendants represent that ZTE Corp does not import any products into the United States, including but not limited to the products identified in SPH's complaint. To the extent it is determined that ZTE Corp has made, used, sold, offered for sale, imported into the United States, or contributed to or induced the infringement of any person or entity in the United States with respect to products that are now or may in the future be accused of infringement in this action, any such acts will be treated for all purposes of this litigation as if they had been conducted by ZTE (USA) Inc. The ZTE Defendants also represent that ZTE (USA) Inc. has sufficient assets to satisfy any judgment based on the foregoing. SPH's communications with ZTE Corp regarding any of the patents-in-suit will be treated for purposes of this litigation as also with ZTE (USA) Inc., and ZTE (USA) Inc. can rely on or take any positions and actions that had been or could have been taken by ZTE Corp, except with respect to the personal and subject matter jurisdiction of this Court.

2. For the purposes of discovery in this matter, upon entry of an order of dismissal of ZTE Corp without prejudice, information and documents in the possession, custody, or control of ZTE Corp shall be deemed in the possession, custody, or control of ZTE (USA) Inc., but only to the extent they may be relevant to this litigation, SPH issues a request for them to ZTE (USA) Inc., and they are not otherwise available from ZTE (USA) Inc. SPH on the one hand, and ZTE Corp and ZTE (USA) Inc. on the other hand, agree to meet and confer in good faith to resolve any objections consistent with the above agreement, including without limitation objections to the nature or scope of any requests for documents, information, testimony, or any other discoverable matter.

3. SPH on the one hand, and the ZTE Defendants on the other hand, agree that any

depositions of the officers or employees of ZTE Corp who are residing outside the United States, including personal and corporate depositions pursuant to Federal Rules of Civil Procedure 30(b)(1) or 30(b)(6), respectively, will occur at a location mutually agreed to by the parties, or, if the parties cannot reach agreement, such depositions will occur at ZTE Corp's request in Hong Kong. The ZTE Defendants agree that SPH shall not be restricted to the use of U.S. consular premises or consular officers for certification unless required by law of the country in which the deposition is to take place. The parties to this Stipulation further agree to waive any objection to a stenographer, provided the stenographer is authorized either under the law of the country in which the deposition is taken or is a notary public in one of the states, territories, or District of Columbia, of the United States. The parties agree to negotiate in good faith over the specific location and timing for any such deposition.

4. The parties further agree that each party will bear its own costs of suit in connection with the requested dismissal, and request that the Court dismiss the action without prejudice pursuant to Fed. R. Civ. P. 41(a)(2). ZTE Corp agrees that it will not assert that this dismissal precludes or otherwise bars any possible future suit by SPH against ZTE Corp, including a suit involving any of the same patents or claims underlying the instant action.

Respectfully submitted,

Dated: January 7, 2014

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Attorney for Defendants
ZTE (USA) Inc. and ZTE Corporation

IT IS SO ORDERED this _____ day of _____, 2014.

Hon. Cathy Ann Bencivengo
United States District Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of January, 2014, a copy of the foregoing Motion was filed electronically with the Court using the CM/ECF system and served on all counsel of record.

/s/ Brian D. Ledahl
Brian D. Ledahl