

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

**STEVEN HARBEN, Derivatively on Behalf  
of Nominal Defendant DILLARD'S INC.**

**PLAINTIFF**

v.

**CASE NO. 4:09cv00395 BSM**

**WILLIAM DILLARD II, JAMES I.  
FREEMAN, ALEX DILLARD, MIKE  
DILLARD, DRUE MATHENY, JAMES  
A. HASLAM III, PETER R. JOHNSON,  
ROBERT C. CONNOR, R. BRAD  
MARTIN, FRANK R. MORI, WARREN  
A. STEPHENS, and NICK WHITE**

**DEFENDANTS**

**DILLARD'S INC.**

**NOMINAL DEFENDANT**

**STIPULATION TO SET A BRIEFING SCHEDULE ON DEFENDANTS'  
OPENING SUPPLEMENTAL BRIEF IN SUPPORT OF DEFENDANTS'  
MOTION TO DISMISS THE COMPLAINT**

WHEREAS, on May 27, 2009, plaintiff Steven Harben ("plaintiff") filed his verified shareholder derivative complaint ("complaint") in the above-captioned action ("action");

WHEREAS, on August 18, 2009, defendants filed their motion to stay these proceedings in favor of parallel state court action or, in the alternative, dismiss the complaint ("motion");

WHEREAS, the motion seeks dismissal of the action on the bases of (i) plaintiff's failure to make a demand upon the Dillard's Board of Directors ("Board"), and (ii) the complaint's failure to state a claim upon which relief may be granted;

WHEREAS, on October 9, 2009, plaintiff filed his opposition to the motion;

WHEREAS, on November 2, 2009, defendants filed their reply brief to plaintiff's opposition to the motion;

WHEREAS, on February 19, 2010, defendants filed their opening supplemental brief in support of defendants' motion to dismiss ("supplemental brief") addressing an order and final judgment entered on February 18, 2010 by the Honorable Chris Piazza, Circuit Judge in the Circuit Court of Pulaski County, Arkansas, dismissing a derivative complaint substantially similar to plaintiff's on the ground that pre-suit demand on the Board was not excused;

WHEREAS, the supplemental brief seeks dismissal of the action on the additional basis of issue preclusion, which was not raised in the motion because it did not arise until February 18, 2010;

WHEREAS, while plaintiff believes that the supplemental brief is both procedurally and substantively improper as it was submitted without leave of the court and raises issues that had not previously been addressed in the motion and defendants believe that the supplemental brief is proper since it addresses new facts that did not exist at the time the motion was filed, in the interest of judicial efficiency, the parties have agreed to the following schedule for briefing the question of issue preclusion raised in the supplemental brief; and

WHEREAS, the agreed-upon briefing schedule is not for the purpose of delay and will not prejudice any party.

NOW, THEREFORE, the undersigned parties hereby STIPULATE AND AGREE, subject to the court's approval, as follows:

1. Plaintiff will file and serve a response to defendants' supplemental brief on or before April 2, 2010;
2. Defendants will file and serve a reply, if any, to plaintiff's response on or before April 23, 2010.

Dated: March 4, 2010

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**ORDER**

PURSUANT TO THE STIPULATION, IT IS SO ORDERED THIS 22nd day of  
March, 2010.

  
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UNITED STATES DISTRICT JUDGE