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17 UNITED STATES DISTRICT COURT
18 EASTERN DISTRICT OF CALIFORNIA

19
20 JAMES GRIPENSTRAW, an
individual, on behalf of himself and
21 on behalf of all persons similarly
situated,

22 Plaintiff,

23 v.

24 BLAZIN' WINGS, INC., d/b/a
25 BLAZIN' WINGS, a Minnesota
Corporation; and Does 1 through 50,

26 Defendant.
27
28

Case No. 1:12-CV-00233-AWI-SMS

**STIPULATION REGARDING
CASE MEDIATION**

**ORDER STAYING ACTION
THROUGH 12/31/12**

**ORDER CONTINUING
TELEPHONIC SCHEDULING
CONFERENCE**

1 Plaintiff JAMES GRIPENSTRAW (“Plaintiff”) and Defendant BLAZIN’
2 WINGS, INC. (“Defendant”) (Plaintiff and Defendant collectively “Parties” or
3 “Party” in the singular), by and through their respective counsel, hereby submit this
4 Stipulation Regarding Materials and Information Provided for Purposes of Mediation.
5 The Parties respectfully request the Court to enter an Order approving their Stipulation
6 on the following grounds:

7 Whereas, the Parties have met and conferred and agreed on a private
8 mediator, Mark Rudy and

9 Whereas, the parties have scheduled a mediation session on December 6,
10 2012;

11 **IT IS SO STIPULATED AND AGREED AS FOLLOWS:**

12 **1. Purposes**

13 The purposes of this Stipulation are:

14 **A.** To protect the interests of all Parties during the pendency of
15 negotiations and mediation concerning disputes relative to Plaintiff’s claims, asserted
16 individually, representatively, and on behalf of a putative class, in the above captioned
17 action (“Litigation”); and

18 **B.** To facilitate the resolution of the Litigation through good
19 faith negotiations concerning the disputed claims with the express objective of seeking
20 a final settlement.

21 **2. No Admission Of Liability.**

22 The Parties expressly recognize and agree that entering into this
23 Stipulation and undertaking discussions and mediation does not in any way constitute
24 an admission of liability or any wrongdoing by any Party, and that all discussions and
25 negotiations pursuant to this Stipulation will constitute conduct and statements made
26 in an effort to compromise claims within the meaning of the Federal Rules of
27 Evidence, Rule 408, and/or any similar state rule of evidence, and shall be
28 inadmissible.

1 **3. Confidentiality Of Information To Be Exchanged**

2 When used in this Stipulation, the words “documents” and “information”
3 shall have the broadest meanings possible and shall include, without limitation, all
4 originals written, recorded or graphic matters and all copies thereof, as well as all
5 electronic data, and all statements whether oral or written.

6 The Parties acknowledge that the following information shall be
7 available for use during the mediation process:

8 **A.** During the mediation process, the Parties may exchange
9 information in a variety of forms, including but not limited to: (1) verbal, written and
10 electronic communications; (2) production of documents; (3) interviews and/or
11 depositions; (4) production of electronic databases; and (5) offers, promises, conduct
12 and statements. Any exchange of information between the Parties during the
13 mediation process, in any form, shall be subject to the terms of this Stipulation.

14 **B.** The Parties agree that the entire mediation process,
15 including any information or documents not otherwise discoverable and exchanged
16 between the Parties and/or the mediator for the mediation (“Mediation Materials”),
17 constitutes settlement discussions and shall remain confidential. All Mediation
18 Materials are privileged, exchanged for purposes of settlement and compromise only,
19 provided without prejudice to any Party’s legal and/or factual position, and are
20 inadmissible for any purpose in this or any other legal proceeding, including but not
21 limited to impeachment, under Rule 408 of the Federal Rules of Evidence and/or any
22 applicable federal or state statute, rule or common law provisions. The Parties
23 specifically agree not to offer or reference Mediation Materials for any purpose
24 whatsoever, including, but not limited to, proving bias or prejudice of a witness,
25 negating a contention of undue delay, or for purposes of any investigation or the
26 prosecution of any case. All tangible Mediation Materials shall be marked
27 “Confidential: Exchanged for Settlement Purposes Only.”

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1 **C.** Mediation Materials will not be disclosed to any third parties
2 except as required by a court of competent jurisdiction or other legal process, provided
3 that such information may be disclosed to the Parties and their representatives, and
4 their counsel of record (including the lawyers, legal assistants, consulting and/or
5 testifying experts, other third parties, and secretarial and clerical personnel who are
6 employed by the Parties or by counsel’s law firms and who are engaged in assisting
7 them in this litigation in this action), all of whom shall be advised of and shall agree in
8 advance of receiving any such Mediation Materials to be personally bound by this
9 Stipulation. To the extent the Parties retain any experts or consultants who participate
10 in mediation or whose work product is disclosed in mediation, their identity and work
11 product will constitute Mediation Materials, and each such expert or consultant will be
12 advised of any provisions of this Stipulation and will agree to maintain the
13 confidentiality of any such information. Notes and any other materials generated
14 during the mediation by the mediator, the Parties, their experts, or otherwise created in
15 connection with the mediation also shall be deemed Mediation Materials and shall not
16 be subpoenaed by any Party or subject to discovery by the Parties. Mediation
17 Materials shall be stored and maintained in such a manner that only the individuals
18 identified above who are permitted to review the information may have access to it.

19 **D.** The Parties may not, in the course of litigation (including
20 discovery), make any reference to the exchange of Mediation Materials or the
21 Mediation Materials themselves. All statements by the Parties, their counsel, or the
22 Mediator relating to the mediation, and any documents created exclusively for or
23 during these proceedings, are inadmissible and not discoverable for any purpose, in
24 any pending or subsequent judicial, quasi-judicial, arbitration, or any other
25 proceeding, except to enforce the terms of any written settlement agreement signed by
26 the Parties or their counsel or to request the stay or provide routine status updates or
27 mediation results to the Court.

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1 **4. Return Of Mediation Materials**

2 **A.** At the completion of mediation, whether successful or
3 unsuccessful, the Parties agree that all tangible Mediation Materials (documents,
4 electronic data of any kind and all other tangible things), together with any copies
5 made of same, will promptly be returned to counsel for the producing Party, although
6 the Parties may jointly agree in writing to extend the deadline for return during the
7 course of any continued settlement discussions up to and including any order granting
8 final approval to a class settlement.

9 **B.** This Stipulation shall not prejudice the ability of any Party
10 to later seek any Mediation Materials through the normal course of discovery.
11 Further, the Parties to this Stipulation reserve the right to make all appropriate
12 objections to discovery requests that seek Mediation Materials including the right to
13 seek a protective order to prevent or limit their disclosure.

14 **C.** The Court's Order on this Stipulation shall survive the final
15 determination of this action and shall remain in full force and effect after conclusion
16 of all proceedings herein to provide the Court with ancillary jurisdiction to enforce its
17 terms.

18 **D.** The recipients of Mediation Materials have the
19 responsibility, through counsel, to advise each other of any losses or compromises of
20 the confidentiality of information or documents governed by this Stipulation. Each
21 designating Party has the responsibility of notifying the other Party if any Mediation
22 Materials are subsequently no longer maintained in a confidential manner or they are
23 disclosed or used in a manner which no longer preserves their confidentiality, or if the
24 designating Party no longer considers the materials to be confidential. Nothing herein
25 shall be construed to limit in any way the Parties' use or disclosure of their own
26 lawfully and properly obtained documents, materials, or information designated as
27 Mediation Materials.

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1 **5. Continuing Stay Of Action And Continuance Of Case**
2 **Management Conference**

3 **A.** This entire action is presently stayed through August 23,
4 2012. In order to focus their efforts upon mediation and possible early case
5 resolution, the Parties wish to extend the stay through December 31, 2012.

6 **B.** In addition, and also in an effort to focus upon mediation
7 and potential case settlement, the Parties wish to continue the due date for the Joint
8 Status Conference Report (presently due August 15, 2012) and the date of the next
9 case status conference (presently set for August 22, 2012). The Parties wish to
10 continue both of the foregoing dates to times convenient with the Court that are at
11 least a month after a lifting of the continued last day of the stay.

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13 Dated: August 15, 2012

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15 By: /s/ Aparajit Bhowmik
16 APARAJIT BHOWMIK
17 BLUMENTHAL, NORDREHAUG
18 & BHOWMIK
19 Attorneys for Plaintiff
20 JAMES GRIPENSTRAW

21
22 Dated: August 15, 2012

23
24 By: /s/ Matthew E. Farmer
25 MATTHEW E. FARMER
26 LITTLER MENDELSON, P.C.
27 Attorneys for Defendant
28 BLAZIN' WINGS, INC.

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ORDER

Based on the foregoing stipulation of the Parties, IT IS HEREBY ORDERED as follows:

1. Mediation and settlement discussions between the Parties shall proceed upon the terms and conditions outlined above.

2. The entire action is STAYED to and through December 31, 2012.

3. The Telephonic Scheduling Conference is CONTINUED from August 22, 2012 at 10:00 a.m. before Judge Snyder (Doc. 7) to January 30, 2013 at 10:00 a.m. before Judge Snyder, via a single conference call to chambers at (559) 499-5690, to be initiated by Plaintiff's counsel.

4. If the case is resolved prior to thereto, a *Stipulation & Proposed Order for Dismissal* shall be e-filed and e-mailed to awiorders@caed.uscourts.gov for consideration and/or approval. Otherwise, an Amended Joint Scheduling Report (Doc. 6) shall be e-filed by January 23, 2013.

IT IS SO ORDERED.

Dated: August 17, 2012

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE