

1 Dennis F. Moss (SBN 77512)
 Ari E. Moss (SBN 238579)
 2 **MOSS BOLLINGER LLP**
 15300 Ventura Blvd., Suite 207
 3 Sherman Oaks, California 91403
 Telephone: (310) 982-2984
 4 Facsimile: (310) 861-0389
 dennis@mossbollinger.com
 5 ari@mossbollinger.com

6 Attorneys for Plaintiffs
 ISIDRO PEREZ and ISMAEL LEON
 7 SANCHEZ

SEYFARTH SHAW LLP
 Kristina M. Launey (SBN 221335)
 klauney@seyfarth.com
 Julie G. Yap (SBN 243450)
 jyap@seyfarth.com
 Michael W. Kopp (SBN 206385)
 mkopp@seyfarth.com
 400 Capitol Mall, Suite 2350
 Sacramento, CA 95814-4428
 Telephone: (916) 448-0159
 Facsimile: (916) 558-4839

SEYFARTH SHAW LLP
 Duwayne A. Carr (SBN 299136)
 dacarr@seyfarth.com
 333 S. Hope Street, Suite 3900
 Los Angeles, California 90071
 Telephone: (213) 270-9600
 Facsimile: (213) 270-9601

Attorneys for Defendants
 WINCO FOODS, LLC, a Delaware limited
 liability company, and WINCO HOLDINGS,
 NC., an Idaho corporation

14 UNITED STATES DISTRICT COURT
 15 EASTERN DISTRICT OF CALIFORNIA

16 ISIDRO PEREZ, individually and on behalf of
 all others similarly situated,

17 Plaintiffs,

19 v.

20 WINCO FOODS, LLC, a Delaware limited
 21 liability company, WINCO HOLDINGS, INC.,
 22 an Idaho corporation, and DOES 1-100,

23 Defendant.

CASE NO: 1-17-cv-01279-DAD-SKO

**STIPULATION AND ORDER FOR
 PLAINTIFF TO FILE A SECOND
 AMENDED COMPLAINT**

(Doc. 8)

Action Filed: August 10, 2017
 Date of Removal: September 25, 2017

1 **STIPULATION**

2 Plaintiffs Isidro Perez (“Perez”) and Ismael Leon Sanchez (“Sanchez”) (collectively
3 “Plaintiffs”), and Defendants WinCo Foods, LLC, and WinCo Holdings, Inc. (collectively,
4 “Defendants”), by and through their respective undersigned counsel, hereby stipulate, agree, and
5 jointly request that the Court issue an order as follows:

6 WHEREAS, Plaintiff Perez filed this putative class action in California Superior Court for
7 the County of Stanislaus on August 10, 2017;

8 WHEREAS, Plaintiff filed a First Amended Complaint to add Sanchez as a Plaintiff and to
9 add a claim for unpaid vacation pay on September 22, 2017;

10 WHEREAS, Defendants filed a Notice of Removal to federal court on September 25, 2017;

11 WHEREAS, counsel for Defendants advised Plaintiffs’ counsel of a prior class action
12 settlement in *Brummell v. WinCo Foods, LLC*, Stanislaus County Superior Court Case No.
13 2010497, that resulted in a settlement that released the claims alleged in this case for the period
14 ending on May 18, 2015;

15 WHEREAS, counsel for Defendants advised Plaintiffs’ counsel that Plaintiff Perez
16 participated in the *Brummell* settlement and that his employment by Defendant terminated before
17 the end of the *Brummell* class period, effectively precluding his individual claims in this case;

18 WHEREAS, counsel for Defendants advised Plaintiffs’ counsel that Plaintiff Sanchez’s
19 employment was covered by a collective bargaining agreement (“CBA”) and provided a copy of
20 the relevant portions of the CBA showing that Plaintiff Sanchez was precluded from receiving
21 accrued but unused vacation pay upon his termination, and that any claim by him for unpaid
22 vacation pay had to have been grieved through the CBA’s grievance and arbitration procedures,
23 effectively precluding his and similar situated employee’s claims for unpaid vacation pay;

24 WHEREAS, Plaintiff Perez and his counsel hereby agree to amend the complaint to
25 voluntarily dismiss Perez’s individual claims;

26 WHEREAS, Plaintiff Sanchez and his counsel hereby agree to amend the complaint to
27 dismiss his individual claim for unpaid vacation pay with prejudice and the putative class claims
28 for vacation pay without prejudice;

1 WHEREAS, Plaintiff Sanchez and his counsel have agreed to amend the complaint to limit
2 the class period for his claims for unpaid minimum wages, rest break violations and unreimbursed
3 business expenses for which he seeks to represent a class of similarly situated current and former
4 employees of Defendant to the period after the end of the *Brummell* class period, May 19, 2015
5 through the present;

6 WHEREAS, under Federal Rule of Civil Procedure 41(a)(1), Plaintiffs are entitled to
7 voluntarily dismiss their claims subject to the provisions of Rule 23(e) and any statute of the
8 United States, without order of the court at any time before service by the adverse party of an
9 answer or of a motion for summary judgment; or all parties may so stipulate;

10 WHEREAS, no defendant has answered or otherwise responded to Plaintiffs' complaint
11 and no defendant has filed a motion for summary judgment;

12 WHEREAS, this case involves putative class claims;

13 WHEREAS, the putative class has not been certified and Plaintiffs have not filed a motion
14 for class certification;

15 WHEREAS, Federal Rules of Civil Procedure, Rule 23(e) does not preclude the dismissal
16 of Plaintiff Perez, the dismissal of Plaintiffs' claim for unpaid vacation pay on behalf of the
17 putative class, or the proposed amendment to the complaint to limit the liability period of the
18 remaining claims;

19 WHEREAS, no prejudice to absent putative class members will result from dismissal of
20 this action, because a class has not been certified and the dismissal will not affect their rights;

21 WHEREAS, none of the absent putative class members would be bound because the
22 dismissal of the unpaid vacation pay claim is without prejudice; and

23 WHEREAS, no notice need be sent to absent putative class members, because a class has
24 not been certified, the case is in its infancy, the case has not been widely publicized and no absent
25 putative class member will be bound by the voluntary dismissal of Plaintiffs' claims.

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1 **THE PARTIES HEREBY STIPULATE AND AGREE THAT:**

2 1. Plaintiff Sanchez shall file, within 10 days of entry of the Order granting this
3 Stipulation, the Second Amended Complaint, attached hereto as Exhibit A;

4 2. Defendant may file a responsive pleading or answer within the time permitted under
5 the Rules.

6 IT IS SO STIPULATED AND AGREED.

7
8 Dated: October 20, 2017

SEYFARTH SHAW, LLP

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10 By: /s/ Julie G. Yap
11 Julie G. Yap
12 Counsel for Defendants
13 WINCO FOODS, LLC
14 and WINCO HOLDINGS, INC.

15 Dated: October 20, 2017

MOSS BOLLINGER, LLP

16
17 By: /s/ Jeremy F. Bollinger
18 (as authorized on October 20, 2017)
19 Jeremy F. Bollinger
20 Counsel for Plaintiffs
21 ISIDRO PEREZ and ISMAEL LEON SANCHEZ

22
23 **ORDER**

24 Based on the parties' above-stipulation (Doc. 8) and good cause appearing, IT IS HEREBY
25 ORDERED that Plaintiff shall file his Second Amended Complaint, a copy of which was filed with the
26 Court (*see* Doc. 9), within 10 calendar days of the date this Order is filed. Defendant may file a
27 responsive pleading or answer within the time permitted under the Rules.
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IT IS SO ORDERED.

Dated: October 23, 2017

/s/ Sheila K. Overt
UNITED STATES MAGISTRATE JUDGE