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11 **Attorneys for Plaintiffs**

12 **UNITED STATES DISTRICT COURT**
13 **EASTERN DISTRICT OF CALIFORNIA**

14 No. 2:09-CV -00590-DAD

15 **GRETCHEN STITES-CUNNINGHAM,**
16 Individually and as Guardian Ad Litem for
17 **ASHLEY STITES, a minor,**

18 **Plaintiff,**

19 **STIPULATION TO AMEND COMPLAINT**
20 **PURSUANT TO FRCP 15(a)(2);**
21 **PROPOSED ORDER**

22 **v.**

23 **AQUA LEISURE INDUSTRIES, INC.,**
24 **WAL-MART STORES, INC., THE UNITED**
25 **STATES OF AMERICA and DOES 1**
26 **through 50,**

27 **Defendants.**

28 **AQUA LEISURE INDUSTRIES, INC.,**
29 **WAL-MART STORES, INC.,**

30 **Cross-Complainants,**

31 **v.**

32 **UNITED STATES DEPARTMENT OF**
33 **THE INTERIOR; UNITED STATES**
34 **DEPARTMENT OF AGRICULTURE, and**
35 **ROES I-X, inclusive,**

36 **Cross-Defendants**

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2 **I. STATEMENT BY PLAINTIFFS**

3 Plaintiffs GRETCHEN STITES-CUNNINGHAM, individually and as Guardian ad
4 Litem for ASHLEY STITES, filed a State law form complaint in the Superior Court of
5 the State of California, in and for the County of Shasta, alleging causes of action for
6 general negligence and products liability against Defendants Aqua Leisure, Industries,
7 Inc., and Wal-Mart Stores, Inc., after Plaintiff sustained serious personal injuries while
8 riding down a snow covered hill at a popular recreation area on a snow tube
9 manufactured by Defendant Aqua Leisure and sold by Defendant Wal-Mart Stores.
10 Defendants subsequently sued the United States of America as a Third Party
11 Defendant and the case was removed to Federal Court.
12

13 Plaintiffs contend that they previously filed a Federal Tort Claim against the
14 United States Department of Agriculture premised upon the maintenance of a
15 dangerous and concealed condition upon their property, which condition allegedly
16 caused or substantially contributed to Plaintiff's injuries. Plaintiffs claim that the
17 requisite period of time has passed and their Federal Tort Claim is now deemed
18 rejected by the United States, thereby permitting Plaintiffs to proceed with their suit
19 against the United States.
20

21 Plaintiffs have requested, pursuant to Federal Rules of Civil Procedure, Rule
22 15(a)(2), that the parties permit Plaintiffs to file the [Proposed] Amended Complaint
23 attached hereto as Exhibit A. In requesting this, Plaintiffs agree, acknowledge and
24 understand that Defendants deny the allegations made against them in the attached
25 amended complaint and that Defendants reserve all rights, defenses, objections,
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1 challenges and the like that may be raised or otherwise directed toward said amended
2 complaint.

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2 **II. STIPULATION**

3 Accordingly, pursuant to Federal Rule of Civil Procedure 15(a)(2), Plaintiffs,
4 GRETCHEN STITES-CUNNINGHAM, individually and as Guardian ad Litem for
5 ASHLEY STITES, Defendants AQUA LEISURE INDUSTRIES, INC., WAL-MART
6 STORES, INC., and THE UNITED STATES OF AMERICA hereby agree, pursuant to
7 all conditions set forth herein, to permit Plaintiffs to file the [Proposed] Amended
8 Complaint submitted herewith as Exhibit A. The parties further agree, acknowledge
9 and understand that in so stipulating Defendants reserve all rights, defenses, and
10 objections that may be raised or otherwise directed toward said amended complaint.
11 Plaintiffs further agree, acknowledge, and understand that they will not use this
12 stipulation for any purpose in this litigation other than to seek this Court's approval for
13 filing of the [Proposed] Amended Complaint, Exhibit A.
14
15

16 **IT IS SO STIPULATED:**

17 DATED: April 10, 2009

LEWIS BRISBOIS BISGAARD & SMITH LLC

18 By: /S/ BRUCE L. SHAFFER

19 Attorneys for Defendants
20 AQUA LEISURE INDUSTRIES, INC.
and WAL-MART STORES, INC.

21 DATED: April 10, 2009

U.S. ATTORNEY'S OFFICE

22 By: /S/ KELLI L. TAYLOR

23 Attorneys for Third Party Defendant
24 UNITED STATES OF AMERICA

25 DATED: April 10, 2009

HALKIDES, MORGAN & KELLEY

26 BY: /S/ G. DENNIS HALKIDES

27 G. DENNIS HALKIDES
28 Attorney for Plaintiffs

ORDER

Good Cause Appearing and Pursuant to the parties' stipulation under Federal Rules of Civil Procedure, Rule 15(a)(2), this Court hereby grants Plaintiffs permission to file the [Proposed] Amended Complaint, attached hereto as Exhibit A, subject to the parties' express conditions set forth in the stipulation including that it is without prejudice or effect to all rights and privileges Defendants have to raise defenses, objections, challenges, etc. in response thereto.

IT IS SO ORDERED:

DATED: April 10, 2009



LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT