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22 Attorneys for Plaintiff  
 23 CATHERINE WILKIE

24 UNITED STATES DISTRICT COURT  
 25 EASTERN DISTRICT OF CALIFORNIA

26 CATHERINE WILKIE, individually and  
 27 on behalf of all other similarly situated,

28 Plaintiff,

v.

GENTIVA HEALTH SERVICES, INC.,

Defendant.

Case No. 2:10-CV-01451-FCD-GGH

**STIPULATION AND ORDER TO EXTEND  
 PRE-CERTIFICATION FACT AND  
 EXPERT DISCOVERY CUT-OFFS AND  
 BRIEFING SCHEDULE ON PLAINTIFF'S  
 MOTION FOR CLASS CERTIFICATION**

Action Filed: June 11, 2010

Trial Date: April 10, 2012

1 **STIPULATION**

2 WHEREAS the matter of *Lisa Rindfleisch, Tiffany Melendez, Michelle Gentile,*  
3 *Laurie Baker and Christina Nelmes, on behalf of themselves and other similarly situated v. Gentiva*  
4 *Health Services, Inc.*, Civil Action No. 1:10-CV-03288-JEC (“*Rindfleisch*”) is currently pending in  
5 the United States District Court for the Northern District of Georgia, and has been assigned the  
6 Honorable Julie E. Carnes for all purposes, having been transferred to the Northern District of  
7 Georgia from the United States District Court for the Eastern District of New York by Order dated  
8 October 13, 2010;

9 WHEREAS the Fair Labor Standards Act (“FLSA”) collective action claims and  
10 members of the putative FLSA collection action classes in the above-captioned action and in  
11 *Rindfleisch* overlap in certain respects;

12 WHEREAS on July 23, 2010, Defendant filed a motion to transfer the above-  
13 captioned action to the district in which *Rindfleisch* is pending, and in opposition to Defendant’s  
14 motion to transfer, Plaintiff stated that it is willing and able to coordinate discovery with Defendant’s  
15 counsel and counsel for the *Rindfleisch* plaintiffs to the extent that the subjects of discovery overlap;

16 WHEREAS this Court denied Defendant’s motion to transfer on September 16, 2010;

17 WHEREAS the Judicial Panel on Multi-District Litigation has endorsed coordination  
18 of discovery in recent cases involving mixed FLSA and state law claims (see, e.g., *In re: Rite Aid,*  
19 *655 F.Supp.2d 1376, 1377 (J.P.M.L. 2009), In re CVS Caremark Corp. Wage and Hour Employment*  
20 *Practices Litigation, 684 F.Supp.2d 1377, 1379 (J.P.M.L. 2010));*

21 WHEREAS counsel for the parties in the above-captioned action and in *Rindfleisch*  
22 have agreed that it is in the interests of efficiency and economy to attempt to coordinate discovery  
23 between the two actions;

24 WHEREAS Plaintiff has noticed the FRCP 30(b)(6) deposition of Defendant on 12  
25 topics for December 14, 2010, and several subjects of that deposition overlap with subjects at issue  
26 in *Rindfleisch*;

1 WHEREAS counsel for Plaintiffs in *Rindfleisch* has expressed an inability to  
2 participate in Defendant's Rule 30(b)(6) deposition on December 14, 2010, and have represented  
3 that the earliest they can do so is in the latter part of January 2011;

4 WHEREAS the pre-certification fact discovery cut-off in this action is currently  
5 December 17, 2010, and the pre-certification expert discovery cut-off is February 24, 2011, as  
6 extended by Court's Order of November 4, 2010;

7 WHEREAS the Status (Pretrial Scheduling Order) issued September 17, 2010, sets  
8 the briefing and hearing schedule on Plaintiff's Motion for Class Certification as follows: Plaintiff's  
9 moving papers filed by February 25, 2011, Defendant's opposition filed by March 11, 2011,  
10 Plaintiff's reply filed by March 18, 2011, and the hearing on the motion heard on March 25, 2011, at  
11 10:00 a.m.; and

12 WHEREAS, the parties cannot adhere to these deadlines and coordinate discovery  
13 with the *Rindfleisch* action, as Plaintiffs' counsel in *Rindfleisch* has represented that they are unable  
14 to participate in Defendant's Rule 30(b)(6) deposition prior to the latter part of January 2011:

15 THEREFORE, IT IS HEREBY STIPULATED AND AGREED that the Court's  
16 Status (Pretrial Scheduling) Order, filed September 17, 2010, as modified by Court's order on  
17 November 4, 2010, be modified with the Court's consent as follows, *with respect to the following*  
18 certification deadlines, only:

19 1. The time to complete **non-expert, pre-certification discovery** shall be  
20 extended from December 17, 2010, to **February 17, 2011**.

21 2. In exchange for Plaintiff's agreement to coordinate discovery with  
22 *Rindfleisch*, Defendant stipulates that the statute of limitations on Plaintiff's First Claim for Relief  
23 for violation of the FLSA will be tolled for the period from December 17, 2010, through and  
24 including February 17, 2011, only.

25 3. The **pre-certification expert disclosure schedule** shall be modified as  
26 follows:

27 a. The time for each party to designate in writing, file with the court, and  
28 serve upon all other parties the name, address, and area of expertise of each expert proposed,

1 accompanied by a written report prepared and signed by the expert, shall be extended from January  
2 15, 2011, to **March 15, 2011**.

3 b. The time for pre-certification rebuttal expert disclosures and written  
4 reports shall be extended from February 5, 2011, to **April 5, 2011**.

5 c. The time to complete pre-certification expert discovery shall be  
6 extended from February 24, 2011, to **April 22, 2011**.

7 4. The class motion schedule shall be modified as follows:

8 a. Plaintiff's Motion for Class Certification shall be filed by **May 4,**  
9 **2011**.

10 b. Defendant's opposition shall be filed by **May 18, 2011**.

11 c. Plaintiff's reply shall be filed by **May 25, 2011**.

12 d. The hearing on the motion shall be heard on **May 27, 2011, at 10:00**  
13 **a.m.**, or such subsequent date as the Court may set.

14 5. All other dates specified in the Status (Pretrial Scheduling) Order, as modified  
15 by the Court's order of November 4, 2010, shall remain unchanged.

16 IT IS SO STIPULATED.

17 Dated: December 9, 2010

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19  
20 /s/ Michael E. Brewer

21 Michael E. Brewer

22 Anne-Marie Waggoner

23 LITTLER MENDELSON

24 A Professional Corporation

25 Attorneys for Defendant

26 GENTIVA HEALTH SERVICES, INC.

1 Dated: December 9, 2010

3 /s/ Fran L. Rudich

Seth Lesser

Fran L. Rudich

Michael Palitz

KLAFTER OLSEN & LESSER LLP

Attorneys for Plaintiff

CATHERINE WILKIE

8 **ORDER**

9 Based on the foregoing Stipulation of counsel for the parties, and good cause  
10 appearing, it is hereby ordered that the Court's Status (Pretrial Scheduling) Order, filed September  
11 17, 2010, as modified by the Court's Order of November 4, 2010, is further modified as follows,  
12 with respect to the following certification deadlines, only:

13 1. The time to complete **non-expert, pre-certification discovery** is extended  
14 from December 17, 2010, to **February 17, 2011**.

15 2. The statute of limitations on Plaintiff's First Claim for Relief for violation of  
16 the FLSA shall be tolled for the period from December 17, 2010, through and including February 17,  
17 2011, only.

18 3. The **pre-certification expert disclosure schedule** is modified as follows:

19 a. The time for each party to designate in writing, file with the court, and  
20 serve upon all other parties the name, address, and area of expertise of each expert proposed,  
21 accompanied by a written report prepared and signed by the expert, is extended from January 15,  
22 2011, to **March 15, 2011**.

23 b. The time for pre-certification rebuttal expert disclosures and written  
24 reports is extended from February 5, 2011, to **April 5, 2011**.

25 c. The time to complete pre-certification expert discovery is extended  
26 from February 24, 2011, to **April 22, 2011**.

27 4. The class motion schedule is modified as follows:  
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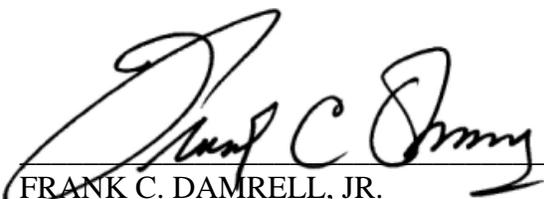
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- a. Plaintiff's Motion for Class Certification shall be filed by **April 29, 2011.**
- b. Defendant's opposition shall be filed by **May 13, 2011.**
- c. Plaintiff's reply shall be filed by **May 20, 2011.**
- d. The hearing on the motion shall be heard on **May 27, 2011, at 10:00 a.m.**

5. All other dates specified in the Status (Pretrial Scheduling) Order, as modified by the Court's Order of November 4, 2010, remain unchanged.

IT IS SO ORDERED.

Dated: December 9, 2010

  
FRANK C. DAMRELL, JR.  
UNITED STATES DISTRICT JUDGE