

1 *Counsel of Record listed on following page*

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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

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LAURENCE E. STEVENSON, an individual; on behalf of himself and all others similarly situated current and former employees,

Case No. 2:11-CV-01433-KJM -CKD

11

**STIPULATION TO STRIKE ATTORNEYS' FEES RELATED TO LABOR CODE SECTION 227.6 CLAIM; ORDER**

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Plaintiff,

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v.

COMPLAINT FILED: April 22, 2011

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TRIAL DATE: No date set.

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DOLLAR TREE STORES, INC., a Virginia corporation; and DOES 1 through 50, Inclusive,

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Defendants.

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Attorneys for Plaintiff  
Laurence E. Stevenson

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2 **TO THE HONORABLE COURT AND THE CLERK OF THE COURT:**

3 Plaintiff Laurence Stevenson (“Plaintiff”) and Defendant Dollar Tree Stores, Inc.  
4 (“Defendant”), by and through their respective counsel of record, hereby stipulate and request that  
5 the Court enter an Order as follows:

6 **WHEREAS** on or about April 22, 2011, Plaintiff filed a Complaint in the  
7 Sacramento County Superior Court, Case No. 34-2011-00101994 (“State Action”);

8 **WHEREAS** on or about May 26, 2011, Defendant removed the State Action to this  
9 Court. After denying Plaintiff’s motion to remand, this Court retained jurisdiction over the Action;

10 **WHEREAS** the First Cause of Action in the Complaint purports to seek remedies for  
11 Defendant’s alleged failure “to provide Plaintiff and members of the proposed class with proper off-  
12 duty meal periods or otherwise compensate them for missed meal periods,” in violation of, *inter alia*,  
13 Labor Code sections 226.7 and 512 [Complaint ¶¶ 24-28], and in particular, alleges in that  
14 “[p]ursuant to IWC Wage Order Seven (8 CCR § 11070), as well as California Labor Code §§ 200,  
15 203, 226.7, 512, 1194, and 1198, Plaintiff and class members are thus entitled to recover ...  
16 attorneys’ fees, and costs of suit.” *See* Complaint ¶ 18;

17 **WHEREAS** Defendant’s Answer to Plaintiff’s Complaint also contains a demand for  
18 attorney’s fees, which states in relevant part “that judgment be entered in its favor and it be awarded  
19 its costs, including attorneys' fees and such further relief as this Court deems just and appropriate.”  
20 *See Answer to Complaint*, at 5:13-15 (emphasis added); and,

21 **WHEREAS** during the pendency of this Action, on or about April 30, 2012, the  
22 California Supreme Court issued an opinion concluding that “neither section 1194 nor section 218.5  
23 authorizes an award of attorney's fees ... on a section 226.7 claim” for breaks. *See Kirby v. Immoos*  
24 *Fire Protection, Inc.*, 53 Cal. 4th 1244, 1248 (2012).

25 In light of the foregoing, **IT IS HEREBY STIPULATED** by and between Plaintiff  
26 and Defendant, through their respective counsel of record, as follows:

27 1. That reference to “Labor Code § 1194” and “attorneys’ fees and costs of suit”  
28 are hereby stricken from Paragraph 28 of the Complaint as follows:

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Pursuant to IWC Wage Order Seven (8 CCR § 11070), as well as California Labor Code §§ 200, 203, 226.7, 512, ~~1194~~, and 1198, Plaintiff and class members are thus entitled to recover the unpaid balance of meal period pay owed by Defendant, plus interest, and waiting time penalties, ~~attorneys' fees, and costs of suit.~~

2. That Defendant is not entitled to recover attorney's fees in defense of Plaintiff's claims under California Labor Code sections 218.5 or 1194;

3. Notwithstanding the foregoing, the Parties reserve the right to seek attorneys' fees under other applicable claims or statutes plead in the Complaint, and to oppose such requests. Further, the parties' stipulation does not prevent the Parties from raising and opposing other arguments regarding the impact of *Kirby* on other claims, defenses and/or remedies sought by the Parties.

4. Both parties reserve their right to re-raise the issues addressed in this Stipulation in the event future legal developments so warrant.

**IT IS SO STIPULATED.**

Dated: July 24, 2012

Respectfully submitted,

/s/Constance E. Norton  
MAUREEN E. MCCLAIN  
CONSTANCE E. NORTON  
AIMEE E. AXELROD  
LITTLER MENDELSON, P.C.  
A Professional Corporation  
  
Attorneys for Defendant  
DOLLAR TREE STORES, INC.

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Dated: July 24, 2012

Respectfully submitted,

*/s/ Alfredo Torrijos*  
\_\_\_\_\_  
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MATT C. BAILEY  
POLLARD BAILEY

MIKE ARIAS  
ALFREDO TORRIJOS  
ARIAS, OZZELLO & GIGNAC, LLP

Attorneys for Plaintiff  
LAURENCE E. STEVENSON

**THE FILER OF THE DOCUMENT ATTESTS THAT THE CONTENT OF THIS DOCUMENT IS ACCEPTABLE TO ALL PERSONS REQUIRED TO SIGN THIS DOCUMENT.**

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**ORDER**

**FOR GOOD CAUSE SHOWN**, the Stipulation to Strike Attorneys’ Fees Related To Labor Code Section 226.7 Claim, jointly filed by Plaintiff Laurence Stevenson (“Stevenson”) and Defendant Dollar Tree Stores, Inc. (“Defendant”) is hereby **GRANTED** as follows:

1. That reference to “Labor Code § 1194” and “attorneys’ fees and costs of suit” are hereby stricken from Paragraph 28 of the Complaint as follows:

Pursuant to IWC Wage Order Seven (8 CCR § 11070), as well as California Labor Code §§ 200, 203, 226.7, 512, ~~1194~~, and 1198, Plaintiff and class members are thus entitled to recover the unpaid balance of meal period pay owed by Defendant, plus interest, and waiting time penalties, ~~attorneys’ fees, and costs of suit.~~

2. That Defendant is not entitled to recover attorney’s fees in defense of Plaintiff’s claims under California Labor Code sections 218.5 or 1194;

3. Notwithstanding the foregoing, the Parties reserve the right to seek attorneys’ fees under other applicable claims or statutes plead in the Complaint, and to oppose such requests. Further, the parties’ stipulation does not prevent the Parties from raising and opposing other arguments regarding the impact of *Kirby* on other claims, defenses and/or remedies sought by the Parties.

4. Both parties reserve their right to re-raise the issues addressed in this Stipulation in the event future legal developments so warrant.

**PURSUANT TO STIPULATION, IT IS SO ORDERED.**

DATED: July 26, 2012.

  
UNITED STATES DISTRICT JUDGE