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11 Attorneys for Plaintiff Michael Desrys

12 UNITED STATES DISTRICT COURT
 13 EASTERN DISTRICT OF CALIFORNIA
 14 SACRAMENTO DIVISION

15)	
16)	Case No. 11-CV-01626-LKK-DAD
17)	<u>CLASS ACTION</u>
18)	STIPULATION AND
19)	ORDER RE: FILING OF SECOND
20)	AMENDED COMPLAINT;
21)	WITHDRAWAL OF MOTION TO
22)	DISMISS
23)	

15 MICHAEL DESRYS, as an Individual and on)
 16 Behalf of All Others Similarly Situated,)
 17 Plaintiff,)
 18 vs.)
 19 MEDCO HEALTH SOLUTIONS, INC., a)
 20 Delaware corporation, FEDERICO)
 21 BUENROSTRO, Individually, KURATO)
 SHIMADA, Individually, CHARLES VALDES,)
 22 Individually, and DOES 1-100, Inclusive,)
 23 Defendants.)

24 WHEREAS, Plaintiffs bring this class action, and Defendant MEDCO HEALTH
 25 SOLUTIONS, INC. ("MEDCO") has removed it to this Court pursuant to the Class Action
 26 Fairness Act of 2005;

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1 WHEREAS, MEDCO has filed a Motion to Dismiss, and that motion has been noticed for
2 hearing on August 1, 2011;

3 WHEREAS, Plaintiffs wish to amend their complaint to focus on claims alleging violations
4 of California Business & Professions Code § 17200, *et seq.*;

5 WHEREAS, in light of Plaintiffs' stated intention to amend their complaint, MEDCO
6 wishes to withdraw without prejudice its Motion to Dismiss;

7 WHEREAS, MEDCO and Defendant CHARLES VALDES ("VALDES") stipulate to
8 Plaintiffs' filing of a Second Amended Complaint, provided Defendants expressly reserve the right
9 to challenge the Second Amended Complaint and allegations therein on any and all grounds, and
10 do not waive any arguments or defenses;

11 WHEREAS, Plaintiffs and MEDCO and VALDES agree that Plaintiffs' deadline to file a
12 Second Amended Complaint shall be twenty (20) days after the filing of this Stipulation;

13 WHEREAS, Plaintiffs and MEDCO and VALDES agree that Defendants' deadline to
14 answer or otherwise respond to the Second Amended Complaint shall be thirty (30) days from the
15 filing of the Second Amended Complaint, unless subsequently stipulated otherwise;

16 WHEREAS, through this Stipulation, Plaintiffs and MEDCO and VALDES do not concede
17 any procedural or substantive rights;

18 WHEREAS, Defendants FEDERICO BUENROSTRO and KURATO SHIMADA have not
19 yet answered Plaintiffs' First Amended Complaint;

20 NOW, THEREFORE, Plaintiffs and MEDCO through their counsel of record, and
21 VALDES stipulate to the following and respectfully request an order to this effect:

22 IT IS HEREBY STIPULATED that (a) Plaintiffs may file a Second Amended Complaint
23 within twenty (20) days of the filing of this Stipulation; (b) MEDCO's pending Motion to Dismiss
24 shall be deemed withdrawn without prejudice; and (c) Defendants shall answer or otherwise
25 respond to the Second Amended Complaint within thirty (30) days of the filing of the Second
26 Amended Complaint.

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1 Dated: July 18, 2011

HACKARD LAW, a PLC

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3 By: /s/ Michael D. Lane
4 Michael A. Hackard, Esq.
5 Michael D. Lane
6 Archie C. Lamb, Jr., Esq.
7 Attorneys for Plaintiff, Michael Desrys

8 Dated: July 18, 2011

WILKE, FLEURY, HOFFELT, GOULD & BIRNEY, LLP

9 By: /s/ Thomas G. Redmon
10 Thomas G. Redmon
11 Attorney for Defendant
12 MEDCO HEALTH SOLUTIONS, INC.


13 Dated: July 15, 2011

CHARLES VALDES, In Pro Per

14 By: /s/ Charles Valdes
15 Charles Valdes

16 **PURSUANT TO STIPULATION, IT IS SO ORDERED** that (a) Plaintiffs may file (through the
17 Court's e-filing system) a Second Amended Complaint within twenty (20) days of the filing of this
18 Stipulation; (b) MEDCO's pending Motion to Dismiss shall be deemed withdrawn without
19 prejudice and the hearing on August 1, 2011 is vacated; and (c) Defendants shall answer or
20 otherwise respond to the Second Amended Complaint within thirty (30) days of the filing of the
21 Second Amended Complaint.

22 Dated: July 20, 2011

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25 LAWRENCE K. KARLTON
26 SENIOR JUDGE
27 UNITED STATES DISTRICT COURT

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PROOF OF SERVICE

I, Michael Lane, declare:

I am a citizen of the United States, employed in the City of Mather, and the County of Sacramento. I am over the age of 18 years and not a party to the above-entitled action. My business address is 10630 Mather Boulevard, Mather, CA 95655. On July 18, 2011, I served a copy of the within document(s):

1. STIPULATION AND [PROPOSED] ORDER RE: FILING OF SECOND AMENDED COMPLAINT; WITHDRAWAL OF MOTION TO DISMISS

by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

X by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California addressed as set forth below.

by placing the document(s) listed above in a sealed _____ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a _____ agent for delivery.

by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

Charles Valdes
4830 Kipling Drive
Carmichael, CA 95608

Kurato Shimada
8880 Wine Valley Circle
San Jose, CA 95135

Federico Buenrostro
6120 Wycliffe Way
Sacramento, CA 95831

William E. Barnes
Law Offices of William E. Barnes
2020 L Street, Suite 330
Sacramento, CA 95811-4219

Williams & Connolly LLP
Enu Mainigi
725 Twelfth Street, N.W.
Washington, DC 20005

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2 I am readily familiar with the firm's practice of collection and processing correspondence for
3 mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day
4 with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of
5 the party served, service is presumed invalid if postal cancellation date or postage meter date is more
6 than one day after date of deposit for mailing in affidavit.

7 I declare that I am employed in the office of a member of the bar of this court at whose
8 direction the service was made.

9 Executed on July 18, 2011, at Sacramento, California.

10 _____
11 Michael D. Lane

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