

1 KAREN ASPLUND VELEZ, ESQ. (SBN 142287)
 MARK P. VELEZ, ESQ. (SBN 163484)
 2 KELLEN CROWE, ESQ. (SBN 289820)
THE VELEZ LAW FIRM
 3 6940 Destiny Drive
 Rocklin, California 95677
 4 Telephone: (916) 774-2720
 Facsimile: (916) 774-2730

5 Attorneys for Plaintiffs DARWIN CROSBY, ET AL

6 ROBERT L. ZALETEL, ESQ. (SBN 96262)
 7 ANGELA J. RAFOTH, ESQ. (SBN 241966)
LITTLER MENDELSON, P.C.
 8 650 California Street, 20th Floor
 San Francisco, California 94108
 9 Telephone: (415) 433-1940
 Facsimile: (415) 399-8490

10 TARUN MEHTA, ESQ. (SBN 262886)
 11 **LITTLER MENDELSON, P.C.**
 Treat Towers
 12 1255 Treat Boulevard
 Walnut Creek, California 94597
 13 Telephone: (925) 932-2468
 Facsimile: (925) 946-9809

14 Attorneys for Defendant SAVE MART SUPERMARKETS

15
 16 **UNITED STATES DISTRICT COURT**
 17 **EASTERN DISTRICT OF CALIFORNIA**
 18

19 DARWIN CROSBY, BENJAMIN STRONG, and
 MARKEITH JONES, on behalf of themselves and all
 20 others similarly situated,
 21 Plaintiffs,
 v.
 22 SAVE MART SUPERMARKETS, INC., a California
 23 corporation and DOES 1 through 50,
 24 Defendants.

Case No.: 2:15-cv-00321-GEB-KJN

STIPULATION AND ORDER
GRANTING PLAINTIFF CROSBY LEAVE TO
AMEND RESPONSES TO REQUEST FOR
ADMISSION

[Fed. R. Civ. P. 36(b)]

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 28 **STIPULATION AND [PROPOSED] ORDER GRANTING PLAINTIFF CROSBY LEAVE TO AMEND**
RESPONSES TO REQUEST FOR ADMISSION

1 TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

2 WHEREAS, on December 5, 2014, Defendant SAVE MART SUPERMARKETS ("Defendant") served
3 Plaintiff Darwin Crosby with Request for Admission, Set One.

4 WHEREAS, on January 19, 2015, Plaintiff Crosby served his verified response.

5 WHEREAS, on February 9, 2015, Defendant removed the case to this Court asserting federal question
6 subject matter jurisdiction based on Plaintiff Crosby's admissions that he was pursuing a claim under the federal
7 Family and Medical Leave Act ("FMLA"), 29 U.S.C. § 2601 et seq.

8 WHEREAS, on February 10, 2015, Plaintiffs' counsel met and conferred with Defendant's counsel and
9 asserted that Plaintiff Crosby's response to Defendant's Request for Admission, Set One was erroneous.

10 WHEREAS, on February 16, 2015, Plaintiff Crosby submitted a proposed amended response to
11 Defendant's Request for Admission, Set One, a copy of which is attached as Exhibit A. The proposed amendment
12 changed Plaintiff Crosby's response to admit that he did not claim any violations of the FMLA.

13 WHEREAS Plaintiff Crosby's proposed amended response to Request for Admission, Set One, would
14 remove Plaintiff Crosby's only claim brought under federal law from the case.

15 WHEREAS, the Parties stipulate to an order allowing the amendments of Plaintiff Crosby's admissions
16 attached as Exhibit A pursuant to Federal Rule of Civil Procedure 36, subdivision (b).

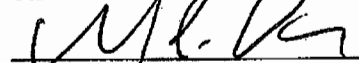
17 WHEREAS, the Parties disagree as to whether the Court should exercise its discretion to retain
18 jurisdiction over this case. Plaintiffs assert the case should be remanded, and Defendant asserts the Court should
19 retain jurisdiction. *Nishimoto v. Federman-Bachrach & Associates*, 903 F.2d 709, 715 (9th Cir. 1990).

20 WHEREAS, this stipulation and proposed order is without prejudice to either Parties' position with
21 respect to Plaintiffs' anticipated remand motion to be filed if the Court grants the order requested.

22 So stipulated:

23 Dated: February 26

24 THE VELEZ LAW FIRM



25 By: Mark P. Velez, Esq.

26 Kellen Crowe, Esq.

27 Attorneys for Plaintiffs

28 DARWIN CROSBY, ET AL


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STIPULATION AND [PROPOSED] ORDER GRANTING PLAINTIFF CROSBY LEAVE TO AMEND
RESPONSES TO REQUEST FOR ADMISSION

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Dated: February 26, 2015

LITTLER MENDELSON, P.C.

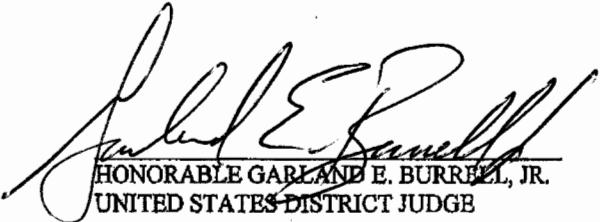


Robert L. Zaletel, Esq.
Angela Rafoth, Esq.
Tarun Mehta, Esq.
Attorneys for Defendant
SAVE MART SUPERMARKETS

[PROPOSED] ORDER

Pursuant to the stipulation of the Parties, Plaintiff DARWIN CROSBY is hereby granted leave to amend his response to Defendant SAVE MART SUPERMARKETS' Request for Admission, Set One as set forth in Exhibit A to this stipulation and proposed order.

Dated: March 17, 2015


HONORABLE GARLAND E. BURRELL, JR.
UNITED STATES DISTRICT JUDGE

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Exhibit A

1 KAREN ASPLUND VELEZ, ESQ. (SBN 142287)
2 MARK P. VELEZ, ESQ. (SBN 163484)
3 KELLEN CROWE, ESQ. (SBN 289820)
4 THE VELEZ LAW FIRM
5 6940 Destiny Drive
6 Rocklin, California 95677
7 Telephone: (916) 774-2720
8 Facsimile: (916) 774-2730
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10 Attorneys for Plaintiff DARWIN CROSBY, ET AL.

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER**

DARWIN CROSBY, BENJAMIN STRONG,
MARKETH JONES, on behalf of themselves
and all others similarly situated,

Plaintiffs,

vs.

SAVE MART SUPERMARKETS, INC., a
California corporation, and DOES 1 through 50,
inclusive,

Defendants.

CASE NO. SCV-0034862

PLAINTIFF'S AMENDED OBJECTIONS
AND RESPONSES TO DEFENDANT
SAVE MART SUPERMARKETS'
REQUEST FOR ADMISSIONS, SET ONE
TO PLAINTIFF DARWIN CROSBY

PROPOUNDING PARTY: Defendant SAVE MART SUPERMARKETS, INC.
RESPONDING PARTY: Plaintiff DARWIN CROSBY
SET NO. ONE (1)

Pursuant to Code of Civil Procedure Section 2033.210 *et. seq.*, Plaintiff DARWIN
CROSBY hereby amends his responses to Defendant SAVE MART SUPERMARKETS'
Requests for Admission Set One, as follows:

Responding party has not completed investigation of the facts relating to the case, has not
completed discovery in this action and has not completed preparation for trial. The following
responses by objection are given without prejudice to responding party's right to produce any
evidence of any subsequently discovered facts.

1 **REQUEST FOR ADMISSION NO. 1:**

2 Plaintiff Darwin Crosby is not pursuing a claim under the Family and Medical Leave Act
3 of 1993, 29 U.S.C. section 2601 *et. seq.* in this lawsuit.

4 **RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

5 Plaintiff objects to this request on the grounds that it seeks counsel's legal reasoning,
6 theory, or statutory basis supporting a factual contention. (Sav-On-Drugs, Inc. v. Superior Court
7 (1975) 15 Cal.3d 1.) Plaintiff further objects on the ground the request seeks counsel's work
8 product through counsel's thought processes. (Rumac, Inc. v. Bottomley (1983) 143 Cal.App.3d
9 810; see also Burke v. Superior Court (1969) 71 Cal.2d 276.) Further, Plaintiff does not waive
10 his right to amend his complaint prior to or during trial under Code of Civil Procedure sections
11 473(a)(1) and 576. Subject to, and without waiving, said objections, Plaintiff responds as
12 follows:

13 Denied.

14 **AMENDED RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

15 Admit.

16 **REQUEST FOR ADMISSION NO. 2:**

17 Plaintiff Darwin Crosby is not pursuing a claim under the California Family Rights Act,
18 Government Code section 12945.1 *et seq.*, in this lawsuit.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

20 Plaintiff objects to this request on the grounds that it seeks counsel's legal reasoning,
21 theory, or statutory basis supporting a factual contention. (Sav-On-Drugs, Inc. v. Superior Court
22 (1975) 15 Cal.3d 1.) Plaintiff further objects on the ground the request seeks counsel's work
23 product through counsel's thought processes. (Rumac, Inc. v. Bottomley (1983) 143 Cal.App.3d
24 810; see also Burke v. Superior Court (1969) 71 Cal.2d 276.) Further, Plaintiff does not waive
25 his right to amend his complaint prior to or during trial under Code of Civil Procedure sections
26 473(a)(1) and 576. Subject to, and without waiving, said objections, Plaintiff responds as
27 follows:

28 Denied.

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Dated: February 13, 2015

THE VELEZ LAW FIRM

Mark P. Velez for Mark Velez
By: Mark P. Velez, Esq.
Attorneys for Plaintiff CROSBY, ET AL.

THE VELEZ
LAW FIRM
Attorneys at Law
6940 Destiny Drive
Rocklin, CA 95677

Plaintiff's Amended Objections and Responses to Defendant SAVE MART SUPERMARKETS'
Request for Admissions, Set One to Plaintiff DARWIN CROSBY