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14 *Attorneys for Plaintiffs, ROBERT WESTFALL, DAVID E. ANDERSON, LYNN BOBBY, and*
 15 *DAVID ELLINGER*

16 UNITED STATES DISTRICT COURT
 17 EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION

19 ROBERT WESTFALL, DAVID E.
 ANDERSON, LYNN BOBBY, and
 20 DAVID ELLINGER,

21 Plaintiffs,

22 v.

23 BALL METAL BEVERAGE
 CONTAINER CORP.,

24 Defendant.

Case No: 2:16-cv-02632-KJM-GGH

**JOINT STIPULATION REGARDING
 CLASS DISCOVERY AND TRIAL PLAN;
 ORDER**

1 Plaintiffs ROBERT WESTFALL, DAVID E. ANDERSON, LYNN BOBBY, DAVID
2 ELLINGER (hereinafter, “Plaintiffs”), and Defendant BALL METAL BEVERAGE
3 CONTAINER CORP. (hereinafter, “Defendant”) (hereinafter, collectively, the “Parties”),
4 hereby stipulate as follows:

5 WHEREAS, on August 20, 2018 the Court ordered the Parties to submit a briefing
6 schedule on Defendant’s “Motion to Compel Plaintiff to Submit a Trial Plan and for Relief
7 from 10-Deposition Limit” (ECF No. [76]) (hereinafter, the “Motion”) within fourteen (14)
8 days;

9 WHEREAS, on August 21, 2018 the Parties, though counsel, met and conferred by
10 telephone regarding a trial plan, and further discovery including class member depositions;

11 WHEREAS, Plaintiffs have agreed that a trial plan pursuant to *Duran v. U.S. Bank*, 59
12 Cal.4th 1 (2014) of some kind may be called for in this action, but it is premature to decide if
13 required, or to agree to its terms at this time;

14 WHEREAS, the Parties agree that additional discovery, including class member
15 depositions, is warranted but the exact scope and nature of such discovery depends to some
16 degree on the Court’s resolution of Plaintiffs’ pending Motion for Reconsideration (ECF No.
17 [59]);

18 NOW THEREFORE, the Parties stipulate as follows:

- 19 • It is not necessary to proceed with the Motion at this time (subject to Defendant’s
20 ability to re-submit such a motion in the future if necessary);
- 21 • Within fourteen (14) days of the Court’s ruling on the Motion for Reconsideration,
22 Defendant will provide Plaintiffs with a proposed class discovery plan, to include
23 proposals regarding the number, length, and anticipated topics of class member
24 depositions;
- 25 • Within fourteen (14) days of receiving Defendant’s plan, Plaintiffs will give a written
26 response indicating whether they agree to the plan or whether, if they dispute any
27 aspect of it, and the factual basis for any such dispute;
- 28 • As necessary, the Parties will obtain input from experts qualified in relevant subject

- 1 matters (such as statistics) in developing their discovery plan proposals;
- 2 • Following Plaintiffs’ response, the Parties will further confer, if needed, and within
 - 3 fourteen (14) days of such response will file a joint report to the Court regarding the
 - 4 aspects of a discovery plan that are agreed-upon, as well as a description of any
 - 5 disputes that the Parties desire to submit to the Court for resolution;
 - 6 • As part of the Parties’ joint submission, they will propose a schedule for completing
 - 7 such discovery, including any modifications to the present pre-trial schedule that may
 - 8 be needed;
 - 9 • During the course of such additional discovery, the Parties will confer regarding a
 - 10 reasonable time for Plaintiffs to provide a “trial plan” if one is agreed as being needed,
 - 11 and whether any motions are required in such regard; and

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- 1 • The Parties’ proposals regarding such discovery plans will be for purposes of *discovery*
2 *only*, and shall be without prejudice as to the Parties’ ability to seek appropriate relief
3 from the Court to modify such plans, to seek additional discovery, to seek protective
4 orders, for Plaintiffs to take the position that no “trial plan” is needed, for Defendant to
5 seek to compel a “trial plan”, for Defendant to dispute the validity or adequacy of any
6 “trial plan” (or lack thereof) under applicable law and/or for Defendant to take the
7 position that any certified class in this action should be modified or de-certified, or for
8 the Parties to seek any other appropriate relief.

9 Dated: August 22, 2018

FISHER & PHILLIPS LLP

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By: /s/ Christopher M. Ahearn

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JOHN K. SKOUSEN

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CHRISTOPHER M. AHEARN

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JOHN T. LAI

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KATHERINE P. SANDBERG

16

Attorneys for Defendant

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BALL METAL BEVERAGE CONTAINER
CORP.

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Dated: August 22, 2018

EASON & TAMBORNINI, ALC

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By: /s/ Matthew R. Eason (as authorized on
August 22, 2018)

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MATTHEW R. EASON

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ERIN M. SCHARG

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Attorneys for Plaintiffs ROBERT

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WESTFALL, DAVID E. ANDERSON,

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LYNN BOBBY, and DAVID ELLINGER

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1 **ORDER**

2 Pursuant to the foregoing stipulation and joint report, and good cause appearing
3 therefor, IT IS ORDERED that:

- 4 • Defendant’s Motion (ECF No. [76]) is deemed withdrawn, without prejudice for
5 Defendant to seek similar or related relief in the future;
- 6 • Within fourteen (14) days of the Court’s ruling on Plaintiffs’ pending Motion for
7 Reconsideration (ECF No. [59], Defendant shall provide Plaintiffs with a proposed
8 class discovery plan, to include proposals regarding the number, length, and
9 anticipated topics of class member depositions;
- 10 • Within fourteen (14) days of receiving Defendant’s plan, Plaintiffs shall give a written
11 response indicating whether they agree to the plan or whether, if they dispute any
12 aspect of it, and the factual basis for any such dispute;
- 13 • As necessary, the Parties shall obtain input from experts qualified in relevant subject
14 matters (such as statistics) in developing their discovery plan proposals;
- 15 • Following Plaintiffs’ response, the Parties shall further confer, if needed, and within
16 fourteen (14) days of such response shall file a joint report to the Court regarding the
17 aspects of a discovery plan that are agreed-upon, as well as a description of any
18 disputes that the Parties desire to submit to the Court for resolution;
- 19 • As part of the Parties’ joint submission, they shall propose a schedule for completing
20 such discovery, including any modifications to the present pre-trial schedule that may
21 be needed;
- 22 • During the course of such additional discovery, the Parties shall confer regarding a
23 reasonable time for Plaintiffs to provide a “trial plan” if one is agreed as being needed,
24 and whether any motions are required in such regard; and
- 25 • The Parties’ proposals regarding such discovery plans will be for purposes of *discovery*
26 *only*, and shall be without prejudice as to the Parties’ ability to seek appropriate relief
27 from the Court to modify such plans, to seek additional discovery, to seek protective
28 orders, for Plaintiffs to take the position that no “trial plan” is needed, for Defendant to

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seek to compel a “trial plan”, for Defendant to dispute the validity or adequacy of any “trial plan” (or lack thereof) under applicable law and/or for Defendant to take the position that any certified class in this action should be modified or de-certified, or for the Parties to seek any other appropriate relief.

DATED: January 14, 2019.


UNITED STATES DISTRICT JUDGE