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10 Attorneys for Defendant  
 11 WAL-MART STORES, INC.

12 UNITED STATES DISTRICT COURT  
 13 FOR THE NORTHERN DISTRICT OF CALIFORNIA

15 DONALD C. BRYAN, VIRGIL CALDWELL,  
 16 CARROLL HAMPTON, and ROBERT  
 17 RODRIGUEZ,

18 Plaintiffs,

19 v.

20 WAL-MART STORES, INC., a Delaware  
 21 Corporation dba WAL-MART  
 TRANSPORTATION LLC, JEFFREY  
 HAMMOND and DOES 1-50, inclusive,

22 Defendants.

CASE NO. CV-08-05221 SI

**STIPULATED REQUEST TO STAY THIS  
 CASE IN ITS ENTIRETY PENDING A  
 FINAL DECISION BY THE CALIFORNIA  
 SUPREME COURT IN *BRINKER  
 RESTAURANT V. SUPERIOR COURT*  
 (S166350) AND CONTINUE INITIAL  
 CASE MANAGEMENT CONFERENCE**

1 WHEREAS on October 22, 2008, the California Supreme Court granted review in *Brinker*  
2 *Restaurant Corp. v. Superior Court*, Case No. S166350, 85 Cal. Rptr. 3d 688 (“*Brinker*”). That case  
3 is currently being briefed before the California Supreme Court;

4 WHEREAS the California Supreme Court’s decision in *Brinker* will likely address the nature of  
5 California employers’ obligation to “provide” meal and rest breaks to their employees—specifically,  
6 whether employers must ensure that breaks are actually taken or whether employers satisfy their  
7 obligation by making the breaks available;

8 WHEREAS the parties agree that the decision in *Brinker* will likely directly impact the claims  
9 and defenses concerning meal- and rest-period premium payments;

10 WHEREAS the parties agree that considerations of fairness, efficiency, and sound judicial  
11 administration therefore militate strongly in favor of staying these proceedings until the California  
12 Supreme Court’s decision in *Brinker* becomes final;

13 WHEREAS the parties agree that the initial case management conference and early case  
14 management deadlines (including but not limited to the deadline to serve initial disclosures) are  
15 premature at this time, given that the parties agree to stay these proceedings until the California  
16 Supreme Court’s decision in *Brinker* becomes final;

17  
18 NOW, THEREFORE, the parties hereby stipulate and agree, pursuant to Local Rule 6-2, and ask  
19 the Court to enter an order as follows:

- 20 1. This case is hereby stayed in its entirety as to all parties until the California Supreme Court  
21 issues its decision in *Brinker* and that decision becomes final. The stay will become effective  
22 after the Court has issued its order on Plaintiffs’ pending Motion to Remand this case,  
23 regardless of the Court’s decision on that Motion;
- 24 2. The initial case management conference will be continued until a date to be set by the Court  
25 after the expiration of the stay;
- 26 3. All deadlines based on the date of the initial case management conference (including but not  
27 limited to the deadline to serve initial disclosures) shall be continued until such dates as  
28 calculated by reference to the continued initial case management conference;

- 1 4. The parties' rights and obligations as of the date of this order are hereby preserved and left  
 2 intact until this stay is lifted in the event that further proceedings in this Court may prove  
 3 necessary. Neither party is under any obligation to take any action with respect to this case  
 4 (including any obligation to move, plead or otherwise respond to the operative complaint)  
 5 until such time as this stay is lifted and any deadline to take any action, including bringing  
 6 this matter to trial, shall be tolled during the period of this stay (without prejudice to  
 7 arguments concerning any deadlines that may exist at the time the stay is entered);
- 8 5. The parties shall promptly notify the Court following the date the California Supreme Court's  
 9 judgment in *Brinker* becomes final, at which time, the Court may schedule further  
 10 proceedings, as appropriate. The parties agree that, in the event this case is remanded to state  
 11 court, the parties will also seek an appropriate stay in state court.

12  
13  
14 DATED: February 19, 2009

GIBSON, DUNN & CRUTCHER LLP

15  
16 By: /s/ G. Charles Nierlich  
G. Charles Nierlich

17  
18 Attorneys for Defendant WAL-MART STORES, INC.

19 DATED: February 19, 2009

WAGNER & JONES

20  
21 By: /s/ Andrew B. Jones  
Andrew B. Jones

22  
23 Attorneys for Plaintiffs

**ATTESTATION PURSUANT TO GENERAL ORDER NO. 45**

Pursuant to General Order No. 45 of the Northern District of California, I attest that concurrence in the filing of the document has been obtained from each of the other signatories to this document.

By: /s/ Rebecca Justice Lazarus  
Rebecca Justice Lazarus

Attorneys for Defendant WAL-MART STORES, INC.

**DECLARATION OF SERVICE**

I, Robin McBain, declare as follows:

I am employed in the County of San Francisco, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 555 Mission St., Ste. 3000, San Francisco, California 94105, in said County and State. On February 19, 2009, I served the within:

**STIPULATED REQUEST TO STAY THIS CASE IN ITS ENTIRETY PENDING A FINAL DECISION BY THE CALIFORNIA SUPREME COURT IN *BRINKER RESTAURANT V. SUPERIOR COURT (S166350)* AND CONTINUE INITIAL CASE MANAGEMENT CONFERENCE**

to all named counsel of record as follows:



**BY ECF (ELECTRONIC CASE FILING):** I e-filed the above-detailed documents utilizing the United States District Court, Northern District of California's mandated ECF (Electronic Case Filing) service on February 19, 2009. Counsel of record are required by the Court to be registered e-filers, and as such are automatically e-served with a copy of the documents upon confirmation of e-filing.

I certify under penalty of perjury that the foregoing is true and correct, that the foregoing document(s) were printed on recycled paper, and that this Certificate of Service was executed by me on February 19, 2009, at San Francisco, California.

By \_\_\_\_\_ /s/Robin McBain  
Robin McBain

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