

1 G. CHARLES NIERLICH, SBN 196611
 gnierlich@gibsondunn.com
 2 GIBSON, DUNN & CRUTCHER LLP
 555 Mission Street, Suite 3000
 3 San Francisco, CA 94105-2933
 Telephone: 415.393.8200
 4 Facsimile: 415.393.8306

5 JULIAN W. POON, SBN 219843
 jpoon@gibsondunn.com
 6 BLAINE H. EVANSON, SBN 254338
 bevanson@gibsondunn.com
 7 STEPHANIE M. MATTHEWS, SBN 274812
 smatthews@gibsondunn.com
 8 GIBSON, DUNN & CRUTCHER LLP
 333 South Grand Avenue
 9 Los Angeles, CA 90071-3197
 Telephone: 213.229.7000
 10 Facsimile: 213.229.7520

11 Attorneys for Defendant
 WAL-MART STORES, INC.

12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14 SAN FRANCISCO DIVISION

15 DONALD C. BRYAN, VIRGIL
 16 CALDWELL, CARROLL HAMPTON, and
 17 ROBERT RODRIGUEZ, individually and on
 behalf of all others similarly situated,

18 Plaintiffs,

19 v.

20 WAL-MART STORES, INC., a Delaware
 corporation d/b/a WAL-MART
 21 TRANSPORTATION LLC, JEFFREY
 HAMMOND, and DOE ONE through and
 22 including DOE FIFTY,

23 Defendants.

CASE NO. 3:08-cv-05221-SI

**SECOND STIPULATION AND [PROPOSED]
 ORDER TO POSTPONE SETTING THE
 INITIAL CASE MANAGEMENT
 CONFERENCE, PROVIDE FOR FURTHER
 AMENDMENT OF COMPLAINT, AND
 EXTEND TIME TO RESPOND**

1 WHEREAS, on February 19, 2009, the Court ordered this action stayed until the Supreme
2 Court's decision in *Brinker Restaurant Corporation v. Superior Court*, Case No. S166350, became
3 final;

4 WHEREAS, on February 26, 2009, the Court vacated the Case Management Conference
5 previously scheduled for April 3, 2009;

6 WHEREAS, on May 15, 2012, the parties filed the Notice of California Supreme Court's
7 Decision in *Brinker Restaurant Corporation v. Superior Court* (S166350);

8 WHEREAS, on May 18, 2012, the Court scheduled the initial Case Management Conference
9 to occur on June 15, 2012;

10 WHEREAS, on May 18, 2012, the parties filed a Stipulation (Docket No. 42, "May 18th
11 Stipulation") setting the current deadline to respond to the First Amended Complaint ("FAC") for
12 July 19, 2012 and requested that the CMC be postponed until a date after July 19, 2012;

13 WHEREAS, the parties met and conferred on May 18, 2012 and are in the process of
14 continuing to meet and confer about a further amendment of the FAC in light of intervening case law
15 and legal developments during the stay and are in the process of continuing to meet and confer about
16 a possible Motion to Dismiss any further amended version of the complaint;

17 WHEREAS, the parties recognize that they will be able to develop a discovery plan and
18 proceed with this action more efficiently once any pleadings have been settled;

19 WHEREAS, the parties have agreed that Plaintiffs' counsel will send Defendant's counsel a
20 proposed Second Amended Complaint ("SAC") by 5:00 p.m. on Monday, June 25, 2012, to be
21 reviewed by Defendant's counsel on an informal basis;

22 WHEREAS, this stipulation and the corresponding postponed date to respond to Plaintiffs'
23 FAC or any further amended complaint and the corresponding proposed date for the Court to set the
24 initial Case Management Conference will not alter any other deadlines presently on calendar in this
25 matter;

26 WHEREAS, the parties intend that if this stipulation is filed and the request herein is granted,
27 this stipulation and proposed order will supersede the May 18th Stipulation;

28 NOW, THEREFORE, THE PARTIES JOINTLY STIPULATE that:

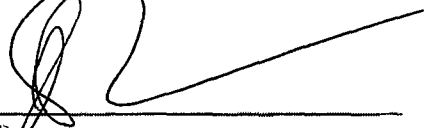
- 1 1. Plaintiffs shall file their request for leave to file the SAC (along with the proposed
2 SAC) by Monday, July 9, 2012 and, provided this stipulation is approved by the
3 Court, the parties agree in principle to stipulate to the terms of any reasonable request
4 for leave to file the SAC;
- 5 2. The time to respond to the SAC is hereby extended until Friday, August 31, 2012;
6 AND THE PARTIES JOINTLY STIPULATE AND REQUEST that the Court set the
7 following schedule:
- 8 1. If a motion to dismiss and/or other motion directed to the pleadings is filed, any
9 Opposition thereto shall be filed by Monday, September 24, 2012, and any Reply
10 thereto shall be filed by Tuesday, October 9, 2012, and the hearing shall be set for the
11 first available date after Tuesday, October 23, 2012;
- 12 2. The initial Case Management Conference shall be set for a date of the Court's
13 choosing no earlier than sixty (60) days after the hearing on the Motion to Dismiss the
14 SAC or, if an Answer to the SAC is filed instead, then no earlier than thirty (30) days
15 after the Answer is filed.

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Dated: May 22, 2012

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP



/s/
Julian W. Poon
Attorney for Defendant
WAL-MART STORES, INC.

Dated: May 22, 2012

WAGNER & JONES



/s/
Daniel M. Kopfman
Attorney for Plaintiffs

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 Dated: May 22, 2012

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4 By: 

5 Honorable Susan Illston

6 United States District Judge

7 The initial case management conference is continued to July 20, 2012, at 2:30
8 p.m.

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