

1 BLUM | COLLINS LLP  
 2 Steven A. Blum (Bar No. 133208)  
 3 Craig M. Collins (Bar No. 151582)  
 4 Douglas L. Thorpe (Bar No. 43749)  
 5 707 Wilshire Blvd., 48th Floor  
 6 Los Angeles, California 90017  
 Telephone: 213.572.0400  
 Facsimile: 213.572.0401  
 blum@blumcollins.com; collins@blumcollins.com;  
 dthorpe@thorpelink.com

7 Attorneys for Plaintiffs

8 LATHAM & WATKINS LLP  
 9 Wayne S. Flick (Bar No. 149525)  
 10 Kimberly A. Posin (Bar No. 223091)  
 11 David B. Hazlehurst (Bar No. 261043)  
 12 355 South Grand Avenue  
 13 Los Angeles, California 90071-1560  
 Telephone: 213.485.1234  
 Facsimile: 213.891.8763  
 wayne.s.flick@lw.com; kim.posin@lw.com;  
 david.hazlehurst@lw.com

14 Attorneys for Defendant Thelen LLP

15 **UNITED STATES DISTRICT COURT**  
 16 **NORTHERN DISTRICT OF CALIFORNIA**

17 ADAM BERGMAN, et al.,

18 Plaintiffs,

19 vs.

20 THELEN LLP, a California limited  
21 liability partnership, and DOES 1-500,

22 Defendants.  
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Case No. CV-08-5322-EDL

**JOINT STIPULATION AND [PROPOSED]  
 ORDER TO ALLOW:**

- **DISMISSAL WITHOUT PREJUDICE OF PLAINTIFF KAREN OLSEN'S CLAIMS;**
- **FILING OF THIRD AMENDED COMPLAINT ADDING PLAINTIFF RAYMOND R. PLANTE, AND**
- **AMENDING CLASS CERTIFICATION ORDER SO THAT PLANTE WILL SERVE AS CLASS REPRESENTATIVE IN LIEU OF OLSEN**

Honorable Elizabeth D. Laporte

1 Subject to the approval of the Court, the parties, through their respective counsel of  
2 record, stipulate and agree as follows:

3 **I. INTRODUCTION**

4 This case arises out of the closure of Defendant's offices on November 30, 2008. On  
5 October 30, 2008, Defendant announced that it was dissolving its partnership and that most of its  
6 employees would be terminated effective November 30, 2008. Plaintiffs and the existing Class  
7 members were Defendant's employees who were terminated upon the cessation of Defendant's  
8 operations on or after October 30, 2008.

9 Through this action, Plaintiffs, on behalf of themselves and the existing Class members  
10 seek recovery of alleged damages by reason of Defendant's alleged failure to provide the  
11 notification required by the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §  
12 2101 *et seq.* (the "Federal WARN Act") and the California Relocations, Terminations and Mass  
13 Layoffs Act, Cal. Labor Code § 1400 *et seq.* (the "California WARN Act"). Plaintiffs, on behalf  
14 of themselves and the existing Class members, also seek payment for accrued but unused  
15 vacation time allegedly due and owing at the time their employment with Defendant was  
16 terminated. Plaintiff Yeakle, on behalf of himself and other similarly situated class members  
17 who were employed in Defendant's California offices, also seeks waiting time damages pursuant  
18 to Cal. Labor Code § 203.

19 On March 31, 2009, the Court issued an Order certifying classes and subclasses,  
20 including subclasses for the Defendant's New York, California and Connecticut employees, and  
21 appointing Plaintiffs' counsel as class counsel.

22 On June 26, 2009, the Court granted the parties stipulation and allowed Plaintiffs to file a  
23 Second Amended Complaint ("SAC") that added an additional subclass of Defendant's former  
24 District of Columbia employees, and made other changes in the SAC to modify claims asserted  
25 and to correct typographical mistakes. The Court also on June 26, 2009 expanded its March 31,  
26 2009 Order certifying the class and subclasses to certify a subclass of Defendant's District of  
27 Columbia employees for unpaid vacation time (the "District of Columbia Vacation Subclass").  
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1 The Court appointed Plaintiff Karen Olsen as class representative for the District of Columbia  
2 Vacation Subclass.

3 Now, the parties stipulate to allow Plaintiff Karen Olsen to dismiss all of her claims in  
4 this action without prejudice, and be replaced instead by new Plaintiff Raymond R. Plante who  
5 also worked in Defendant's District of Columbia office. Thus, by this stipulation, the parties ask  
6 the Court to:

- 7 • order that Plaintiff Karen Olsen has voluntarily dismissed all of her claims against  
8 all defendants without prejudice;
- 9 • allow the filing of Plaintiffs' Third Amended Complaint which adds allegations by  
10 Plaintiff Raymond R. Plante; and
- 11 • amend the class certification order to appoint Raymond R. Plante, in lieu of  
12 Ms. Olsen, as a class representative for the District of Columbia Vacation  
13 Subclass.

14 **II. BACKGROUND: FIRST COURT ORDER RE CLASSES AND SUBCLASSES**

15 On March 31, 2009, the Court granted certification of the following classes and  
16 subclasses:

17 A. **Federal WARN Class:**

18 All persons employed at any of Defendant's facilities in New York, California or  
19 Connecticut that employed at least 50 people who are "affected employees" within the meaning  
20 of 29 U.S.C. § 2101(a)(5) and who (1) were involuntarily terminated without cause on their part  
21 from a facility at which Defendant ordered a mass layoff or plant closing (as those terms are  
22 defined in the Federal WARN Act) on or about November 30, 2008; or (2) were involuntarily  
23 terminated without cause on their part as the reasonably foreseeable consequence of a mass  
24 layoff or plant closing (as those terms are defined in the Federal WARN Act) ordered by  
25 Defendant on or about November 30, 2008. Excluded from this Class are all individuals who, 60  
26 or more days prior to their date of termination, received notice that their employment would  
27 terminate.

28 B. **California WARN Class:**

1 All employees who worked at one of Defendant's covered establishments (as that term is  
2 defined in California Labor Code section 1400) in California and who were involuntarily  
3 terminated without cause on their part pursuant to a mass layoff, relocation, or termination (as  
4 those terms are defined in California Labor Code Section 1400) ordered by Defendant on or  
5 about November 30, 2008. Excluded from this Class are all individuals who, 60 or more days  
6 prior to their date of termination, received notice that their employment would terminate.

7 **C. New York Vacation Subclass:**

8 All former employees of Defendant in the State of New York whose employment with  
9 Defendant ended on or after October 30, 2008 and who had accrued but unused vacation time at  
10 the time of their termination for which Defendant did not fully compensate such employees.

11 **D. California Vacation Subclass:**

12 All former employees of Defendant in the State of California whose employment with  
13 Defendant ended on or after October 30, 2008 and who had accrued but unused vacation at the  
14 time of termination for which Defendant did not fully compensate such employees.

15 **E. Connecticut Vacation Subclass:**

16 All former employees of Defendant in the State of Connecticut whose employment with  
17 Defendant ended on or after October 30, 2008 and who had accrued but unused vacation time at  
18 the time of their termination for which Defendant did not fully compensate such employees.

19 **III. BACKGROUND: SECOND COURT ORDER ADDING SUBCLASS**

20 On June 26, 2009, the Court granted certification of the following District of Columbia  
21 Vacation Subclass:

22 **A. District of Columbia Vacation Subclass:**

23 All former employees of Defendants in the District of Columbia whose employment with  
24 Defendants ended on or after October 30, 2008, through the trial of this case, and who had  
25 accrued but unused vacation time at the time of termination for which Defendant did not fully  
26 compensate such employees.

1 The Court on June 26, 2009 also appointed Individual Plaintiff Karen Olsen as an  
2 additional class representative (along with existing class representatives Adam Bergman,  
3 Kendrick Patterson, Michael Attianese, Andrea Levy, and Daryl Yeakle) for both the class and  
4 the District of Columbia Vacation Subclass.

5 **IV. THE PROPOSED NEW PLAINTIFF SATISFIES RULE 23(a)**

6 **A. Typicality (Rule 23(a)(3))**

7 The Plaintiff Raymond R. Plante who is to be added to the Third Amended Complaint (in  
8 lieu of Ms. Olsen) is an adequate class representative. Mr. Plante resides in Washington, D.C.  
9 He was employed as a librarian by Defendants until November 30, 2008. He is a member of the  
10 District of Columbia Vacation Subclass. He is better suited to be a class representative because  
11 he was terminated on November 30, 2008, which makes his claims more typical of the other  
12 class members' claims.

13 The individual Plaintiff Raymond R. Plante's claims are typical of those of the other  
14 members of the District of Columbia Vacation Subclass. The individual Plaintiff Raymond R.  
15 Plante, as proposed class representative, alleges that he suffered the same alleged injury as the  
16 other members of the District of Columbia Vacation Subclass. Individual Plaintiff Raymond R.  
17 Plante alleges that he and the other members of the District of Columbia Vacation Subclass were  
18 Defendant's employees and were terminated by Defendant on or after October 30, 2008.  
19 Individual Plaintiff Raymond R. Plante alleges that he and the other members of the proposed  
20 vacation subclass did not receive payments for accrued but unused vacation pay on the day they  
21 were terminated by Defendant. Based on these allegations, individual Plaintiff Raymond R.  
22 Plante's claims are identical to those of the other members of the District of Columbia Vacation  
23 Subclass. Their claims arise from the same course of alleged conduct and are based on the same  
24 legal theories.

25 **V. THE PROPOSED THIRD AMENDED COMPLAINT IS APPROPRIATE**

26 Plaintiffs seek to file a Third Amended Complaint which makes no changes from the  
27 existing Second Amended Complaint other than to assert allegations by newly added Plaintiff  
28 Raymond R. Plante and to remove any reference to Plaintiff Karen Olsen, whose claims are

1 being dismissed. Defendant has reviewed Plaintiffs' Third Amended Complaint, and consents to  
2 Plaintiffs' filing of their Third Amended Complaint without the need for a motion seeking leave  
3 of the Court.

4 The parties stipulate pursuant to Federal Rule of Civil Procedure 15(a)(2) that Plaintiffs  
5 may file a Third Amended Complaint, a copy of which is attached hereto as Exhibit A.

6 The Defendant waives service of the Third Amended Complaint and agrees that service  
7 of the Third Amended Complaint is deemed completed as of the date of entry of the [proposed]  
8 Order.

9 The parties further stipulate that Defendant shall be permitted to file an Answer to the  
10 Third Amended Complaint at any time not later than 21 days from the date of entry of the  
11 [proposed] Order.

12 By entering into this Stipulation, Defendant does not admit any allegations contained in  
13 the Third Amended Complaint and that, by stipulating to the filing of, and waiving service of,  
14 the Third Amended Complaint, Defendant does not intend to waive any claim, allegation or  
15 defense it might otherwise assert in defense of this action.

## 16 **VI. CONCLUSION**

17 The Court previously concluded that this action meets all of the prerequisites for  
18 certification as a class action. Common issues of fact and law predominate over individual  
19 issues and, given the size of the classes, a class action is a superior method of adjudicating this  
20 controversy. A class action will also avoid inconsistent adjudication of the claims of the various  
21 proposed class members.

22 The only change being effected by this stipulation is that Plaintiff Karen Olsen will be  
23 replaced by newly added Plaintiff Raymond R. Plante. The parties stipulate that Mr. Plante may  
24 be certified as the class representative of the District of Columbia Vacation Subclass.

## 25 **VII. DEFENDANT'S RESERVATION OF RIGHTS**

26 Defendant stipulates to the foregoing exclusively for the purpose of advancing this  
27 litigation beyond the class certification stage. This Stipulation shall not be read as an admission  
28 of liability in any manner whatsoever. Furthermore, this Stipulation shall not be read as a waiver

1 of any factual allegations, defenses (affirmative or otherwise), legal claims or any other  
2 argument or allegation that Defendant may otherwise lawfully advance during the course of this  
3 action.

4  
5 Dated: July 8, 2009

BLUM | COLLINS LLP  
Steven A. Blum  
Craig M. Collins  
Douglas L. Thorpe

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8 By /s/Steven A. Blum  
Steven A. Blum  
9 Attorneys for Plaintiffs

10 Dated: July 8, 2009

LATHAM & WATKINS LLP  
Wayne S. Flick  
Kimberly A. Posin  
David B. Hazlehurst

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14 By /s/David B. Hazlehurst  
David B. Hazlehurst  
15 Attorneys for Defendant Thelen LLP

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1            **[PROPOSED] ORDER DISMISSING PLAINTIFF KAREN OLSEN'S CLAIMS,**  
2            **SUBSTITUTING RAYMOND R. PLANTE AS CLASS REPRESENTATIVE, AND**  
3            **ALLOWING PLAINTIFFS LEAVE TO FILE A THIRD AMENDED COMPLAINT**

4            Based on the foregoing stipulation, the Court finds as follows:

5            1.        The individual Plaintiff Raymond R. Plante's claims are typical of those of the  
6 other members of the proposed District of Columbia Vacation Subclass. His claims arise from  
7 the same course of conduct by Defendant and are based on the same legal theories. (Fed. R. Civ.  
8 P. 23(a)(3)).

9            2.        The individual Plaintiff Raymond R. Plante will fairly and adequately protect the  
10 interests of the proposed District of Columbia Vacation Subclass. He has no known conflicts  
11 with any members of the proposed District of Columbia Vacation Subclass. (Fed. R. Civ. P.  
12 23(a)(4)).

13            **THEREFORE, IT IS HEREBY ORDERED:**

14            1.        Individual Plaintiff Karen Olsen's claims are hereby dismissed voluntarily without  
15 prejudice.

16            2.        Plaintiffs may file their Third Amended Complaint.

17            3.        Service of the Third Amended Complaint is deemed completed as of the date of  
18 entry of this Order.

19            4.        Defendant shall be permitted to file an Answer to the Third Amended Complaint  
20 at any time within 21 days from the date of entry of this Order. The entry of this Order means  
21 that the Defendant is not required to file a response to the Second Amended Complaint.

22            5.        The Stipulation shall not constitute an admission by Defendant as to any of the  
23 any allegations contained in the Third Amended Complaint, nor by waiving service of the Third  
24 Amended Complaint shall Defendant waive any claim, allegation or defense it might otherwise  
25 assert in defense of this action.

26            6.        The Individual Plaintiff Raymond R. Plante is hereby appointed as an additional  
27 class representative (along with existing class representatives Adam Bergman, Kendrick  
28



1 Patterson, Michael Attianese, Andrea Levy, and Daryl Yeakle) for both the class and the District  
2 of Columbia Vacation Subclass.

3 7. In all other respects, the Court's March 31, 2009 Order and June 26, 2009 Orders  
4 remain in effect.

5 8. This Stipulation shall not be read as an admission of liability on the part of  
6 Defendant Thelen LLP in any manner whatsoever, nor shall this Stipulation shall be read as a  
7 waiver of any factual allegations, defenses (affirmative or otherwise), legal claims or any other  
8 argument or allegation that Defendant may otherwise lawfully advance during the course of this  
9 action.

10 Dated: July 10, 2009



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EXHIBIT A

THIRD AMENDED COMPLAINT