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Broadcasting Corporation

18 **IN THE UNITED STATES DISTRICT COURT**

19 **NORTHERN DISTRICT OF CALIFORNIA**

20 MOHAMMAD KAZEMI, individually and on)
21 behalf of a class of similarly situated individuals,)

22 Plaintiff,)

23 v.)

24 PAYLESS SHOESOURCE, INC., a Missouri)
25 corporation, COLLECTIVE BRANDS, INC.,)
26 a Delaware corporation, and VOICE-MAIL)
27 BROADCASTING CORPORATION d/b/a)
28 VOICE & MOBILE BROADCAST)
CORPORATION a/k/a VMBC,)

Defendants.)

Case No. 09-cv-5142 MHP

CLASS ACTION

**STIPULATION TO
CONTINUE FILING DATE
FOR PLAINTIFF'S MOTION
FOR CLASS
CERTIFICATION PENDING
MEDIATION; ~~(PROPOSED)~~
ORDER**

STIP. TO CONTINUE FILING DATE OF PLAINTIFF'S MOTION FOR CLASS CERT.

1 Plaintiff Mohammad Kazemi ("Plaintiff") and Defendants Payless Shoesource, Inc.
2 ("Payless"), Collective Brands, Inc., and Voice-mail Broadcasting Corporation ("VMBC")
3 (collectively "Defendants"), by and through their respective counsel, hereby enter into the
4 following Stipulation seeking a continuance of the filing date for Plaintiffs' motion for class
5 certification pending the parties' mediation of Plaintiff's claims. This Stipulation is made
6 and entered into by the parties based on the following facts:

7 On March 12, 2010, this Court entered an Order denying Defendants' motion to
8 dismiss Plaintiff's complaint. Since that date, Plaintiff has diligently sought class
9 certification related discovery from Defendants, including the issuance of requests for
10 production of documents to each of the Defendants and issuance of 30(b)(6) deposition
11 notices to defendants Payless and VMBC.

12 In mid July, while the parties were engaged in the process of class certification
13 related discovery, the parties began discussing the possibility of mediation and settlement of
14 this litigation. In accordance with their discussions and to further the process, defendant
15 Payless retained the counsel of Venable LLP to aid in the settlement process and to act as
16 settlement counsel for it, separate and apart from their litigation counsel.

17 In light of reaching an agreement to pursue mediation of Plaintiff's claims, the parties
18 agreed to temporarily halt formal class certification related discovery and devote their
19 energies and resources toward settlement. Class certification related discovery has not yet
20 been completed; depositions pursuant to Plaintiff's 30(b)(6) notices have been continued per
21 agreement of the parties to focus on mediation instead." Nevertheless, the parties have
22 continued to work together to conduct an informal exchange of information necessary to
23 adequately mediate Plaintiff's claims.

24 Following due diligence work by both sides on potential mediators and checking on
25 the availability of potential mediators, the parties have agreed to mediate the matter before
26 the Honorable Nicholas Politan (ret.). The schedule (which is necessitated by the schedules

27 STIP. TO CONTINUE FILING DATE OF PLAINTIFF'S MOTION FOR CLASS CERT.

28 Case No. 09-cv-5142 MHP

1 of the mediator, settlement counsel and General Counsel of Payless) calls for the parties to
2 exchange two rounds of mediation submissions in October and to have the mediation occur
3 in New York City on November 16, 2010.

4 Plaintiff's motion for class certification is currently scheduled to be filed by
5 September 13, 2010. In light of the pending mediation, the parties believe it makes sense to
6 defer the discovery and briefing of class certification pending the mediation. If the mediation
7 is successful, the case will likely be resolved by the time class certification briefing would
8 have been completed under the prior schedule. If mediation is not successful, then the parties
9 would suggest a resumption of discovery and the filing of plaintiff's class certification motion
10 by January 14, 2011, defendants to respond by February 14, 2011, and plaintiff's reply by
11 March 14, 2011.

12 This is the parties' first request for a continuance in this case and no trial date has yet
13 been set that will be impacted by the parties' request.

14 Accordingly, the undersigned parties **HEREBY STIPULATE AND AGREE** as
15 follows:

16 1. Plaintiffs' motion for class certification shall be filed no later than January 14,
17 2011.

18 2. Defendants shall have thirty (30) days from the filing date of Plaintiff's
19 motion for class certification to file any opposition.

20 3. Plaintiff shall have thirty (30) days from the filing of Defendants' opposition
21 to file his reply.

22 4. The thirty-day periods in paragraphs 2 and 3 above set for responses shall be
23 subject to the right of any party to seek deposition testimony of any declarant offered in
24 support of or opposition to class certification. The parties agree to submit a revised briefing
25 schedule should such additional deposition(s) be necessary in order to complete such
26 deposition(s) and the transcripts available for the filing of such briefs."

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STIP. TO CONTINUE FILING DATE OF PLAINTIFF'S MOTION FOR CLASS CERT.

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IT IS SO STIPULATED.

Dated: September 1, 2010

Respectfully submitted,

KELLER GROVER, LLP

By: /s/ Carey G. Been

Carey G. Been

Attorneys for Plaintiff
and the Putative Class and Sub-Class

**LEWIS BRISBOIS BISGAARD
SMITH LLP**

By: /s/ Pamela Ferguson

Pamela Ferguson

Attorney for Defendants
Payless Shoesource, Inc. and Collective
Brands, Inc.

COPILEVITZ AND CANTER, LLC

By: /s/ William E. Raney

William E. Raney

Attorney for Defendants
Voice-Mail Broadcasting Corporation
d/b/a Voice & Mobile Broadcast
Corporation a/k/a VMBC

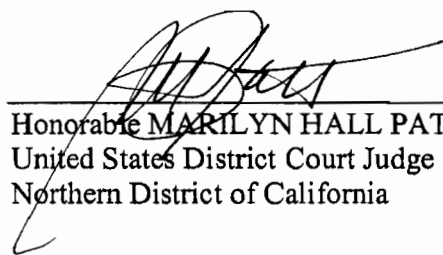
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~~Proposed~~ ORDER

GOOD CAUSE HAVING BEEN SHOWN, the filing date for Plaintiff's motion for class certification shall be re-set from September 13, 2010 to January 14, 2011. Defendants shall have thirty (30) days from the filing date of Plaintiff's motion for class certification to file any opposition and Plaintiff shall have thirty (30) days from the filing date of the opposition to file a reply.

IT IS SO ORDERED.

Dated: 9/2/10



Honorable MARILYN HALL PATEL
United States District Court Judge
Northern District of California

1 **FEDERAL COURT PROOF OF SERVICE**

2 *Kazemi v. Payless, et al.*

3 USDC Case No. CV09-5142 MHP

4 STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

5 At the time of service, I was over 18 years of age and not a party to the action. My business address is One Sansome Street, Suite 1400, San Francisco, California 94104. I am employed in the office of a member of the bar of this Court at whose direction the service was made.

6 On September 1, 2010, I served the following document(s): **STIPULATION TO**
7 **CONTINUE FILING DATE FOR PLAINTIFF'S MOTION FOR CLASS CERTIFICATION**
8 **PENDING MEDIATION; (PROPOSED) ORDER**


9 I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

10 <u>Attorneys for Plaintiff</u> 11 Jeffrey F. Keller, Esq. 12 Keller Grover, LLP 13 425 Second Street, Suite 500 14 San Francisco, CA 94107 15 Phone: 415/543-1305 16 Fax: 415/543-7861 17 jfkeller@kellergrover.com 18 --- and --- 19 John G. Jacobs, Esq. (<i>pro hac vice</i>) 20 Bryan G. Kolton, Esq. (<i>pro hac vice</i>) 21 The Jacobs Law Firm, CHTD. 22 122 South Michigan Avenue, Suite 1850 23 Chicago, IL 60603 24 Phone: 312/427-4000 25 Fax: 312/427-1850 26 jgjacobs@thejacobsfirm.com 27 bgkolton@thejacobsfirm.com	28 <u>Co-Counsel for Defendants, Payless, etc.</u> William E. Raney, Esq. (<i>pro hac vice</i>) Copilevitz and Canter, LLC 310 W. 20th Street, Suite 300 Kansas City, MO 64108 Phone: 816/277-0856 Fax: 816/472-5000 braney@cckc-law.com
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The documents were served by the following means:

- 20 (BY ELECTRONIC TRANSMISSION) Attorneys, as shown above, were served with
21 the document on the Court's ECF electronic filing system via electronic notice of this
22 filing.
- 23 (BY REGULAR U.S. MAIL) I enclosed the documents in a sealed envelope or package
24 addressed to the persons at the addresses listed above and I deposited the sealed envelope or
25 package with the U.S. Postal Service, with the postage fully prepaid.

26 I declare under penalty of perjury under the laws of the State of California that the above is
27 true and correct. Executed on September 1, 2010, at San Francisco, California.

28 
Arleigh Koulax