

FILED

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CLERK U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

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18 DOLLAR TREE STORES, INC.

19 Plaintiff,

20 v.

21 TOYAMA PARTNERS, LLC and
COMERICA BANK,

22 Defendants.

Case No. CV-10-0325 SI

**STIPULATION TO EXTEND
DEADLINE FOR MEDIATION;
~~PROPOSED~~ ORDER**

Courtroom: 10
Judge: Honorable Susan Illston

Complaint filed: January 22, 2010
Trial Date: October 17, 2011

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26 Plaintiff Dollar Tree Stores, Inc. ("Dollar Tree") and Defendant Toyama Partners, LLC
27 ("Toyama") (collectively, the "Parties"), by their undersigned counsel, and pursuant to ADR
28 Local Rule 6-5(a), hereby submit for this Court's approval the following Stipulation to Extend

1 Deadline for Mediation:

2 1. In its First Amended and Verified Complaint, Dollar Tree asserted various claims
3 against Toyama and Comerica Bank relating to Dollar Tree's lease of certain premises at the
4 Mowry Crossing Shopping Center in Newark, California.

5 2. Pursuant to ADR Local Rule 2-3, this case was referred to mediation by an Order
6 of Court dated April 24, 2010, following a stipulation of the Parties ("ADR Order"). (Dkt. No.
7 53). The ADR Order required the parties to engage in mediation within ninety (90) days after all
8 defendants answer Dollar Tree's Complaint. Thereafter, Reginald D. Steer, Esq. was appointed
9 as mediator.

10 3. On December 1, 2010, Comerica's motion to dismiss was granted. At that time,
11 because Toyama, the remaining defendant in this case, had filed its answer to the complaint, the
12 90 days for engaging in mediation commenced and the deadline for conducting became March 1,
13 2011.

14 4. However, for various reasons, the parties have not been able to schedule a
15 mediation and will not be able to schedule a mediation within the time currently required under
16 the ADR Order. While Mr. Steer was available to conduct a mediation when first appointed and
17 while he communicated diligently with the parties regarding the status of the pleadings, at the
18 time Comerica's Motion to Dismiss was granted, he was unavailable during the month of January
19 2011 to conduct a mediation. As a result, Mr. Steer requested the assistance of this Court, and,
20 on January 6, 2011 and January 13, 2011, Mr. Howard A. Herman, ADR Program Director, held
21 telephone conferences with the Parties to discuss the status of the parties' settlement discussions,
22 the schedules of the parties, and the potential need to appoint another mediator in the case to meet
23 the March 1, 2011 deadline. Based on these discussions, Mr. Herman postponed further
24 discussion regarding mediation until a conference initially scheduled for February 8, 2011 but
25 later rescheduled to March 1, 2011.

26 5. The Parties believe that mediation continues to be the appropriate form of ADR
27 for this case. They also believe that the mediation should be conducted prior to April 29, 2011
28 They have been advised that Mr. Steer will continue to be unavailable through May 2011 and that

1 he has submitted to ADR Case Administrator Alice Fiel an email of recusal based on scheduling
2 conflicts with a request for appointment of a new mediator.

3 6. The Parties therefore stipulate to an extension of the deadline for mediation from
4 March 1, 2011 to April 29, 2011.

5 WHEREFORE, the Parties respectfully request that the Court approve this Stipulation and
6 extend the time for the parties to engage in mediation from March 1, 2011 to April 29, 2011.

7 Dated: February 24, 2011

FOX ROTHSCHILD LLP

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/s/ Jay D. Marinstein

JAY D. MARINSTEIN

Attorneys for Plaintiff

DOLLAR TREE STORES, INC.

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Dated: February 24, 2011

REHON & ROBERTS

/s/ Lisa C. Roberts

LISA C. ROBERTS

Attorneys for Defendant

TOYAMA PARTNERS, LLC

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ORDER

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For good cause, this Court hereby approves the foregoing Stipulation and orders that the
20 Order of Court dated April 24, 2010 (Dkt. No. 53) is hereby amended to extend the time for the
21 Parties to engage in mediation from March 1, 2011 to April 29, 2011.

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Dated: February __, 2011

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The Honorable Susan Illston
U.S. District Court Judge
Northern District of California

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Dated: Feb. 24, 2011

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