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Attorneys for Defendant TOYAMA PARTNERS, LLC; and Defendants and Counterclaimants PETER PAU d/b/a SAND HILL PROPERTY COMPANY, a sole proprietorship; PETER PAU, in his individual capacity and as partner of SAND HILL PROPERTY MANAGEMENT COMPANY; SUSANNA PAU, in her capacity as partner of SAND HILL PROPERTY MANAGEMENT COMPANY; SAND HILL PROPERTY MANAGEMENT COMPANY, and CAPELLA-MOWRY, LLC.

12 UNITED STATES DISTRICT COURT  
 13 NORTHERN DISTRICT OF CALIFORNIA

14 DOLLAR TREE STORES, INC.,

15 Plaintiff,

16 v.

17 TOYAMA PARTNERS, LLC; PETER PAU  
 d/b/a SAND HILL PROPERTY COMPANY,  
 18 a sole proprietorship; PETER PAU, in his  
 individual capacity and as partner of SAND  
 HILL PROPERTY MANAGEMENT  
 19 COMPANY; SUSANNA PAU, in her  
 capacity as partner of SAND HILL  
 20 PROPERTY MANAGEMENT COMPANY;  
 SAND HILL PROPERTY MANAGEMENT  
 21 COMPANY, and CAPELLA-MOWRY,  
 LLC,

22 Defendants.

**STIPULATION GRANTING LEAVE TO  
 FILE FIRST AMENDED  
 CONSOLIDATED COMPLAINT, TO  
 AMEND PRETRIAL PREPARATION  
 ORDER DATES RELATING TO  
 EXPERT DISCLOSURES AND  
 DISPOSITIVE MOTIONS, AND TO  
 CONDUCT DEPOSITION OF FACT  
 WITNESS AFTER CLOSE OF NON-  
 EXPERT DISCOVERY**

Judge: Honorable Susan Illston

Case No. CV-10-0325 SI

Complaint filed: January 22, 2010  
 Trial Date: January 17, 2012

27 STIPULATION GRANTING LEAVE TO FILE FIRST AMENDED  
 CONSOLIDATED COMPLAINT, TO AMEND PRETRIAL  
 PREPARATION ORDER DATES RELATING TO EXPERT  
 28 DISCLOSURES AND DISPOSITIVE MOTIONS, AND TO  
 CONDUCT DEPOSITION OF FACT WITNESS AFTER CLOSE OF  
 NON-EXPERT DISCOVERY

CASE NO: CV-10-0325 SI

1 Plaintiff Dollar Tree Stores, Inc. (“Dollar Tree”) and Defendants Toyama Partners, LLC  
2 (“Toyama”), Peter Pau individually and d/b/a Sand Hill Property Company (“Pau”), Susanna Pau  
3 (“Ms. Pau”), Sand Hill Property Management Company (“SH Management”), and Capella-  
4 Mowry, LLC (“Capella”) (collectively, “Defendants” and, with Dollar Tree, the “Parties”), by  
5 their undersigned counsel, file the following Stipulation Granting Leave to File First Amended  
6 Consolidated Complaint, to Amend Pretrial Preparation Order Dates Relating to Expert  
7 Disclosures and Dispositive Motions, and to Conduct Deposition of Fact Witness After Close of  
8 Non-Expert Discovery, stating as follows:

9 1. On September 21, 2011, Defendants served responses to Dollar Tree’s requests for  
10 admissions and interrogatories. The responses disclosed for the first time that Toyama and  
11 Capella executed a Second Amendment to the Sale Agreement for the Mowry Crossing Shopping  
12 Center, which bears a date of February 15, 2011, on April 21, 2011.

13 2. Dollar Tree desires to amend its Consolidated Complaint (Doc. No. 281) to  
14 include this fact and assert an alternative fraudulent conveyance theory based thereon.

15 3. Although Defendants dispute the relevance and significance of the facts stated in  
16 paragraph 1 and also dispute the merits of the proposed amendment to the Consolidated  
17 Complaint, pursuant to Federal Rule of Civil Procedure 15(a)(2), Defendants have consented to  
18 Dollar Tree filing a First Amended Consolidated Complaint, as set forth above, to permit the  
19 parties to reach the merits of this dispute more quickly and efficiently.

20 4. In light of the amendment to Dollar Tree’s Consolidated Complaint, the Parties  
21 have further agreed to a partial modification of the deadlines set forth in Third Pretrial  
22 Preparation Order (Doc. No. 280) and Order granting Stipulation to Amend Pretrial Preparation  
23 Order Dates Relating to Expert Witnesses (Doc. No. 315), as follows:

24 DESIGNATION OF EXPERTS: deft: November 4, 2011;

25 REBUTTAL: pltf: November 18, 2011. Parties **SHALL** conform to Rule  
26 26(a)(2).

1 EXPERT DISCOVERY CUTOFF is November 30, 2011.

2 DISPOSITIVE MOTIONS **SHALL** be filed by November 4, 2011;

3 Opp. Due November 16, 2011; Reply Due November 23, 2011;

4 5. The relief sought in the Stipulation will not delay the trial of this matter as those  
5 dates are not changed by this Stipulation:

6 HEARING ON DISPOSITIVE MOTIONS: No later than December <sup>16</sup>~~4~~, 2011, at 9:00 a.m.

7 FURTHER CASE MANAGEMENT CONFERENCE: December <sup>16</sup>~~4~~, 2011, at 3:00 p.m.

8 PRETRIAL CONFERENCE DATE: ~~December 20, 2011,~~ <sup>1/24/12</sup> at 3:30 p.m.

9 JURY TRIAL DATE: ~~January 17, 2012,~~ <sup>2/6</sup> at 8:30 a.m.

10 6. Due to the scope of the issues and evidence to be addressed, the Parties further  
11 stipulate to a 35-page limit for all dispositive motions and responses thereto and request that the  
12 Court grant leave accordingly.

13 7. The Parties also seek an extension of the fact discovery period for the limited  
14 purpose of deposing Richard Daniel (“Mr. Daniel”), a former Comerica loan officer.

15 8. Mr. Daniel was subpoenaed to appear during the discovery period on September  
16 20, 2011, but went to the wrong location because his counsel did not provide him with an  
17 amended subpoena. Since that time, Mr. Daniel has actively evaded both Parties’ attempts to  
18 serve amended subpoenas.

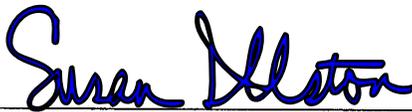
19 9. Dollar Tree filed a Motion on October 14, 2011 (Doc. No. 324), which Defendants  
20 joined separately (Doc. No. 326), requesting that the Court (i) authorize alternate service of a  
21 subpoena upon Mr. Daniel, and (ii) extend the fact discovery period for the limited purpose of  
22 deposing Mr. Daniel. The Parties propose to depose Mr. Daniel on the first date that Mr. Daniel  
23 and counsel are mutually available.

24 10. At a hearing on October 19, 2011, Judge Vadas stated that he is willing to grant  
25 the requested relief concerning Mr. Daniel, provided that Judge Illston approves the limited  
26 extension of the fact discovery period. Accordingly, the Parties request such approval herein.

1 For the foregoing reasons, the Parties respectfully request that the Court enter this  
2 Stipulation (i) granting leave for Dollar Tree to file a First Amended Consolidated Complaint; (ii)  
3 amending the Pretrial Preparation Order dates for expert disclosures and dispositive motions as  
4 set forth above; (iii) granting the Parties leave to file briefs not exceeding 35 pages in support of  
5 and in opposition to dispositive motions; and (iv) granting the Parties leave to depose third-party  
6 witness Richard Daniel outside of the period for non-expert discovery.

7 Dated: October 21, 2011	8 /s/ 9 Jay D. Marinstein (Admitted <i>Pro Hac Vice</i> ) 10 FOX ROTHSCHILD LLP 11 Attorney for Plaintiff 12 Dollar Tree Stores, Inc.
12 Dated: October 21, 2011	13 /s/ 14 Peter M. Rehon 15 REHON & ROBERTS 16 Attorneys for Defendant TOYAMA PARTNERS, LLC; and 17 Defendants and Counterclaimants PETER PAU d/b/a SAND HILL 18 PROPERTY COMPANY, a sole proprietorship; PETER PAU, in 19 his individual capacity and as partner of SAND HILL PROPERTY 20 MANAGEMENT COMPANY; SUSANNA PAU, in her capacity as 21 partner of SAND HILL PROPERTY MANAGEMENT 22 COMPANY; SAND HILL PROPERTY MANAGEMENT 23 COMPANY, and CAPELLA-MOWRY, LLC.

20 PURSUANT TO STIPULATION, IT IS SO ORDERED:

21 

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

25 10/25/11