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15 ATTORNEYS FOR PLAINTIFF

16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA

18 JUVENAL ROBLES and ABEL FIGUEROA,
 19 individually and on behalf of a class of
 20 similarly situated individuals,

21 Plaintiffs,

22 v.

23 LUCKY BRAND DUNGAREES, INC., a
 24 Delaware corporation, KIRSHENBAUM
 25 BOND SENEAL & PARTNERS LLC f/k/a
 26 KIRSHENBAUM BOND & PARTNERS
 27 LLC, a Delaware limited liability company,
 28 d/b/a Lime Public Relations + Promotion, and
 KIRSHENBAUM BOND & PARTNERS
 WEST LLC, a Delaware limited liability
 company,

Defendants.

Case No. 10-cv-04846 MMC

**STIPULATION AND ~~PROPOSED~~
 ORDER STAYING LITIGATION
 PENDING CLASS ACTION
 SETTLEMENT; DIRECTIONS TO
 PARTIES**

The Honorable Maxine M. Chesney

1 KIRSHENBAUM BOND SENECA &
2 PARTNERS LLC f/k/a KIRSHENBAUM
3 BOND & PARTNERS LLC, a Delaware
4 limited liability company, d/b/a Lime Public
5 Relations + Promotion, and KIRSHENBAUM
6 BOND & PARTNERS WEST LLC, a
7 Delaware limited liability company,

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9 Third-Party Plaintiffs.

10 v.

11 MERKLE INC., a Maryland Corporation,

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13 Third-Party Defendant and
14 Fourth-Party Plaintiff.

15 v.

16 RGAR HOLDINGS, LLC, a Florida limited
17 liability company, formerly known as TAKE 5
18 SOLUTIONS, LLC., a Florida limited liability
19 company, RICHARD GLUCK,
20 ALEXANDER RADETICH, JOHN DOE I,
21 and JOHN DOE II,

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23 Fourth-Party Defendants.
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1 Plaintiffs Juvenal Robles and Abel Figueroa (together, “Plaintiffs”), Defendant Lucky Brand
2 Dungarees, Inc. (“Lucky”), Defendants Kirshenbaum Bond Senecal& Partners LLC, f/k/a
3 Kirshenbaum Bond & Partners LLC, d/b/a Lime Public Relations + Promotion and Kirshenbaum
4 Bond & Partners West LLC (together, “Lime”), and Third-Party Defendant Merkle Inc. (“Merkle”),
5 (collectively, the “Parties”), by and through their counsel, stipulate as follows:

6 1. Plaintiff Robles filed his Class Action Complaint on October 26, 2010, alleging
7 Defendant Lucky violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, by sending an
8 allegedly unsolicited text message to Plaintiff’s cellular telephone in the summer of 2008. (Dkt. 1.)

9 2. Lucky answered the Complaint, asserting, among other things, various defenses that
10 included issues involving consent, authorization, and other elements of Plaintiff’s statutory claim.
11 (Dkt. 15.)

12 3. On January 21, 2011, Judge Fogel held an initial case scheduling conference and
13 ordered the Parties to participate in a settlement conference before Magistrate Judge Lloyd and to
14 return and report on the result of that conference. (Dkt. 18.)

15 4. Plaintiff Robles and Defendant Lucky participated in a settlement conference before
16 Judge Lloyd on April 29, 2011. Lime, Merkle and RGAR Holdings, LLC (“RGAR”), who were all
17 third-parties at the time, also participated in the settlement conference. At the settlement conference,
18 Plaintiff Robles, Defendant Lucky, and the third-parties candidly discussed their various respective
19 positions about the litigation and settlement. During these discussions, it was determined that
20 limited focused discovery or information was required to continue productive discussions toward
21 resolution. Upon the recommendation of Judge Lloyd, Plaintiff Robles, Defendant Lucky, the third-
22 parties, and insurers agreed to return for a further settlement conference. (*See* Dkt. 32.)

23 5. Prior to the further settlement conference, Plaintiff Robles filed an Amended
24 Complaint. (Dkt. 39.) The Amended Complaint alleges a single claim for violation of the TCPA,
25 under the same general allegations stated in the original Complaint, on behalf of both
26 Plaintiff Robles and Plaintiff Figueroa. The Amended Complaint also adds Lime as a named
27 defendant.

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1 6. Lime and Lucky answered the Amended Complaint. (Dkts. 45, 48.) Lime also filed
2 a Third-Party Complaint against Merkle. (Dkt. 44). Merkle answered the Third-Party Complaint
3 and filed a Fourth-Party Complaint againstRGAR. (Dkts. 64, 66.)

4 7. The Parties participated in a further settlement conference before Judge Lloyd on
5 September 21, 2011. The Parties were able to advance their settlement discussion during the second
6 settlement conference, but did not reach a final agreement. The Parties agreed to continue those
7 discussions in the context of a full-day mediation and, in the interim, to limit activity in the case to
8 only discovery necessary to complete mediation. The Parties thereafter scheduled a full-day
9 mediation before the Honorable Nicholas H. Politan (Ret.) in West Palm Beach, Florida and set the
10 mediation for December 8, 2011.

11 8. On January 26, 2012, the Parties attended a formal mediation with Judge Politan
12 where the terms of a global settlement were negotiated. After a full-day mediation, the Parties
13 made further progress with the assistance of Judge Politan and at the end of the mediation session
14 Judge Politan presented a mediator's proposal, of which the Parties were to report their acceptance
15 or rejection by February 29, 2012. During the pendency of this mediator's proposal response
16 period, Judge Politan unexpectedly passed away. However, not all of the Parties ultimately
17 accepted Judge Politan's proposal.

18 9. On March 23, 2012, counsel for the Parties attended the Joint Case Management
19 Conference scheduled by the Court. During the CMC, the Parties informed the Court that
20 settlement negotiations were ongoing and that the Parties were considering returning to mediation
21 with the Honorable Eugene Lynch (Ret.). Although the Parties agreed to continue settlement
22 discussions, the Court also entered a scheduling Order setting June 4, 2012 as the deadline to amend
23 all pleadings as well as several class certification discovery deadlines beginning in July 2012. (*See*
24 *Dkt. 83.*)

25 10. During subsequent discussions leading up to the scheduling of the mediation with
26 Judge Lynch, the Parties were able to reach an agreement as to all material terms of a class action
27 settlement of this matter.

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1 Dated: May 25, 2012

2 LATHAM & WATKINS LLP

3 By /s/ Peter Winik

4 PETER WINIK
5 MATTHEW RAWLINSON
6 SARAH GRAGERT
7 Attorneys for
8 Third-Party Defendant MERKLE, INC.
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ORDER

Having considered the Parties' Stipulation and good cause appearing, this litigation, including amended pleading deadlines, motion deadlines, and all discovery obligations, shall be stayed for a period of forty-five (45) days from the date of this Order.

The parties are directed to file, no later than July 13, 2012, a Joint Status Report, said deadline to stand vacated without further order of the Court in the event plaintiffs have filed, on or before July 13, 2012, a motion for preliminary approval of the settlement.

IT IS SO ORDERED.

Dated: May 30, 2012


The Honorable Maxine M. Chesney
United States District Judge