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15 Attorneys for Plaintiff
 C.F.C., a minor, by and through
 16 Christine F., his parent and guardian

17 **UNITED STATES DISTRICT COURT**
 18 **NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION**
 19

20 C.F.C., minor, by and through CHRISTINE F., his
 parent and guardian, on behalf of himself and all
 21 others similarly situated,

22 Plaintiff,

23 vs.

24 POWER BALANCE LLC, a Delaware Limited
 Liability Company,

25 Defendant.

Case No. 11-cv-0487-EMC

CLASS ACTION

**SECOND JOINT STIPULATION TO
EXTEND TIME ; ORDER**

26 Complaint Filed: February, 1 2011
 27 Trial Date: None set

1 **SECOND JOINT STIPULATION TO EXTEND DEADLINE TO ANSWER OR RESPOND**

2 C.F.C., minor, by and through Christine F., his parent and guardian, (“Plaintiff”) and Power
3 Balance LLC (“Defendant”) stipulate as follows:
4

5 **WHEREAS**, there are presently approximately twenty-one (21) separate actions pending in
6 federal district courts in California, and elsewhere, raising similar claims regarding the marketing and
7 sale of Power Balance products (“Power Balance Actions”).
8

9 **WHEREAS**, on February 24, 2011 (Doc. No. 6), the parties previously agreed to stipulate to
10 extend Defendant’s deadline to respond to the Complaint by motion or otherwise until fourteen (14)
11 days after the Judicial Panel on Multidistrict Litigation’s (“JPML”) ruling on the motions to transfer
12 and consolidate filed before the JPML.
13

14 **WHEREAS**, on March 25, 2011, plaintiff Andre Batungbacal filed a Motion for Preliminary
15 Approval of the nationwide class settlement reached between the plaintiff and Power Balance in the
16 putative class action *Batungbacal v. Power Balance LLC*, No. SACV11-00018 (C.D. Cal. 2011)
17 (“*Batungbacal* Action”). The *Batungbacal* Action is the first-filed of the Power Balance Actions and
18 is pending before Judge Cormac J. Carney in the Central District of California.
19

20 **WHEREAS**, the hearing on the Motion for Preliminary Approval is set currently for hearing
21 on April 25, 2011 before Judge Carney.
22

23 **WHEREAS**, on April 8, 2011, the JPML issued a ruling denying the pending motions to
24 transfer in part because of the pending settlement in the *Batungbacal* Action. In so doing, the JPML
25 wrote that “[i]f Judge Carney preliminarily approves the settlement, these cases are likely on the path
26 to resolution” and “[c]entralization at this time could delay the *Batungbacal* proceedings as well as
27 entail additional expenses for the litigants and the courts to establish an MDL proceeding with little
28 benefit.” A copy of the JPML’s April 8 ruling is attached to this stipulation.

1
2 **WHEREAS**, the allegations and claims made in the *Batungbacal* Action are similar to certain
3 allegations in this action and it is Defendant's position that, if final approval of the settlement in the
4 *Batungbacal* Action is granted, it will release and have preclusive effect over the putative class'
5 allegations and claims in this action.
6

7 **WHEREAS**, pursuant to the parties' stipulation, Plaintiff has been granted leave to intervene
8 in the *Batungbacal* Action in order to be heard regarding the proposed settlement.
9

10 **WHEREAS**, Defendant has not yet filed a responsive pleading, but in consideration of the
11 foregoing and in the interest of judicial economy and the convenience of the parties, Plaintiff and
12 Defendant have agreed to extend Defendant's deadline to file a response to the Complaint in this
13 action, by answer or motion, until fifteen (15) court days after the Court's ruling on the motion for
14 preliminary approval in the *Batungbacal* Action.
15

16 Accordingly, it is hereby stipulated and agreed that Defendant shall have until fifteen (15)
17 court days after the Court's ruling on the motion for preliminary approval in the *Batungbacal* Action
18 to file an answer or respond to the Complaint in this action by motion or otherwise. This stipulation is
19 made without prejudice to seek further additional time or other relief if necessary.
20

21 Dated: April 18, 2011

EAGAN AVENATTI, LLP

22
23
24 IT IS SO ORDERED:

By: /s/ Michael J. Avenatti
Michael J. Avenatti
Attorneys for Defendants

25
26 _____
Edward M. Chen
U.S. Magistrate

LEXINGTON LAW GROUP

 /s/ Mark Todzo
Mark Todzo
Attorneys for Plaintiff

