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13	Trader Joe's Company UNITED STATES DISTRICT COURT			
14				
15	NORTHERN DISTRICT OF CALIFORNIA			
16	SAN FRANCISCO DIVISION			
17	AMX CITEON of al	Cose No. 12 CV	N 1222 MC	
18	AMY GITSON et al.,	Case No. 13-CV-1333 VC JOINT STATUS UPDATE RE: SCHEDULING OF MANDATORY		
19	Plaintiffs,			
20			SETTLEMENT CONFERENCE AND <del>[PROPOSED</del> ] ORDER	
21	TRADER JOE'S COMPANY,	Judge:	Hon. Joseph C. Spero	
22	Defendant.	TAC Filed:	April 3, 2014	
23		Trial Date:	March 23, 2015	
24				
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27				
28			JOINT STATUS UPDATE RE: SCHEDULING OF SETTLEMENT CONFERENCE; 13-CV-1333 VC	

1 In accordance with this Court's order entered on September 3, 2014, and attached as 2 Exhibit 1, Plaintiffs Amy Gitson and Deborah Ross and Defendant Trader Joe's Company 3 (collectively, the "Parties"), respectfully submit this joint status update regarding the scheduling 4 of the mandatory settlement conference in this matter. On November 13, 2014, Judge Chhabria 5 continued the current stay of this lawsuit at least until the next case management conference 6 scheduled for March 24, 2015. Accordingly, the Parties believe they are not in the position to 7 engage in meaningful settlement discussions and propose that they provide a further status update 8 on the scheduling of the mandatory settlement conference after the March 24, 2015 case 9 management conference.

10 This matter was previously scheduled for a settlement conference on May 5, 2014. On 11 April 28, 2014, the Parties submitted a joint stipulation requesting that this Court vacate that 12 settlement conference. At that time, Trader Joe's had two motions pending—a motion to dismiss 13 Plaintiffs' Third Amended Complaint (Dkt. No. 82) and a motion to certify for interlocutory 14 appeal (Dkt. No. 74). A central issue raised by both motions was whether Plaintiffs have standing 15 to assert claims as to approximately 177 products they did not purchase. The Parties requested a 16 continuance of the settlement conference, because they did not believe they were in the position 17 to engage in meaningful settlement discussions until this issue was resolved. On April 28, 2014, 18 this Court vacated the May 5, 2014 settlement conference and continued it until a date 19 approximately 60 days after the entry of an order on Trader Joe's motion to dismiss, or 60 days 20 after entry of an order on Trader Joe's motion to certify for interlocutory appeal, whichever came 21 later.

On August 8, 2014, Judge Chhabria entered a single order on both motions. (Dkt. No.
101.) Judge Chhabria denied the motion for interlocutory appeal. (*Id.* at 2-3.) As to Trader Joe's
motion to dismiss, he stayed the entire case on primary jurisdiction grounds (*id.* at 3-4), and
denied the remainder of Trader Joe's motion to dismiss without prejudice to re-filing once the
stay is lifted (*id.* at 4). Judge Chhabria also set a case management conference for November 4,

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2014,<sup>1</sup> at which conference he would revisit the propriety of maintaining the stay. (*Id.*) And so, although Judge Chhabria rules on both motions, the pleadings in this matter remained unsettled.

Therefore, the Parties requested that this Court enter an order directing the Parties to submit a joint status update to this Court after the case management conference in November, wherein they would report on (1) the status of the stay; (2) if the stay is lifted, whether Trader Joe's intends to re-file its motion to dismiss the Third Amended Complaint and, if so, by which date the Parties anticipate the motion will be resolved; and (3) if the stay is lifted and Trader Joe's refiles its motion to dismiss the Third Amended Complaint, the date by which the Parties will jointly contact Judge Spero's chambers to select a settlement conference date.

10 On November 13, 2014, Judge Chhabria took the November case management conference 11 off calendar and continued it to March 24, 2015, and did not lift the stay. In short, the Parties are 12 in no different position than when they last submitted an update to this Court. Therefore, the 13 Parties propose, that within ten days of the next case management conference in this matter, 14 which is presently scheduled for March 24, 2015, they will jointly submit a status update wherein 15 they will report on (1) the status of the stay; (2) if the stay is lifted, whether Trader Joe's intends 16 to re-file its motion to dismiss the third amended complaint and, if so, by which date the Parties 17 anticipate the motion will be resolved; and (3) if the stay is lifted and Trader Joe's refiles its 18 motion to dismiss the Third Amended Complaint, the date by which the Parties will jointly 19 contact Judge Spero's chambers to select a settlement conference date.

Dated: November 14, 2014

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## O'MELVENY & MYERS LLP

By: s/ Kate Ides Kate Ides Attorneys for Defendant Trader Joe's Company

 <sup>1</sup> Judge Chhabria subsequently continued the case management conference scheduled for November 4, 2014, to November 13, 2014.
 JOINT STATUS UPE

1	Dated: November 14, 2014		
2	CLIFFORD LAW OFFICES, P.C.		
3	By: <u>s/ Colin H. Dunn</u> Colin H. Dunn		
4	Attorneys for Plaintiffs Amy Gitson and Deborah Ross		
5			
6	[PROPOSED] ORDER		
7	Having reviewed the Parties' joint status update regarding the scheduling of the		
8	mandatory settlement conference in this matter, it is hereby ordered that within 10 days of the		
9	next case management conference, which is currently scheduled for March 24, 2015, the Parties		
10	will jointly submit a status update to this Court wherein they will report on (1) the status of the		
11	stay; (2) if the stay is lifted, whether Trader Joe's intends to re-file its motion to dismiss the third		
12	amended complaint and, if so, by which date the Parties anticipate the motion will be resolved;		
13	and (3) if the stay is lifted and Trader Joe's refiles its motion to dismiss the Third Amended		
14	Complaint, the date by which the Parties will jointly contact Judge Spero's chambers to select a		
15	settlement conference date.		
16	O STALL		
17	IT IS SO ORDERED.		
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19	Dated: 11/17/14		
20	Dated:		
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28	- 3 - JOINT STATUS UPDATE RE: SCHEDULING OF SETTLEMENT CONFERENCE; 13-CV-1333 VC		