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10 Attorneys for Plaintiff
 11 CARLOS BATRES

12 **UNITED STATES DISTRICT COURT**
 13 **NORTHERN DISTRICT OF CALIFORNIA**

14 CARLOS BATRES,

15 Plaintiff,

16 v.

17 CNH AMERICA LLC; and Does 1 to 20,
 18 inclusive,

19 Defendants.

Case No.: 3:15-cv-01051-MMC

**STIPULATION TO ALLOW CERTAIN
 DISCOVERY AFTER DISCOVERY-CUT-
 OFF**

Complaint Filed: February 11, 2015

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 21 TO THE COURT, TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

22 This Stipulation is submitted pursuant to Local Rule 6-2 and the Court’s Standing Order,
 23 and is entered into by and between Plaintiff Carlos Batres (“Plaintiff”) and Defendant CNH
 24 Industrial America LLC (“Defendant”) for the purposes of efficiently managing this litigation. No
 25 prior continuances or extension of the discovery cut-off date has been requested.

26 1. The original complaint in this action was filed on February 11, 2015 in Alameda
 27 County Superior Court.

1 2. Defendant thereafter removed this action to the Northern District based on grounds
2 of diversity jurisdiction. (Docket No. 1 (“Dkt No. 1”).)

3 3. On or about May 22, 2015, the parties conducted their Rule 26(f) conference.

4 4. The Court and parties held an initial CMC on June 12, 2015. At the conference, the
5 Court issued its scheduling order, imposing an accelerated discovery schedule with a discovery
6 cut-off date of September 28, 2015. (Dkt. No. 17.) The order reflected the parties’ willingness to
7 engage one another in a settlement conference before Magistrate Jacqueline Scott Corley in late
8 August 2015, which has since been moved by stipulation of the parties and request of this Court to
9 September 30, 2015.

10 5. On August 10, 2015, Plaintiff issued a PMK Notice of Deposition to Defendant
11 CNH identifying eight categories for a company-designated PMK to testify to. Defendant
12 promptly informed Plaintiff that three separate individuals would be identified as PMKs, two of
13 which would require out-of-state travel for depositions in Wisconsin and Oregon, which
14 depositions occurred on September 11 and 14, 2015, respectively.

15 6. One PMK, Jan Breitzman, was set to be deposed on September 16, 2015 in San
16 Francisco, California.

17 7. Plaintiff Carlos Batres was deposed on September 17, 2015.

18 8. Due to Plaintiff’s counsel’s schedule, Plaintiff was unable to go forward with the
19 deposition of Jan Breitzman as originally planned on September 16, 2015. Moreover, the parties
20 were unable to schedule a mutually-agreeable alternate date prior to the September 28, 2015
21 discovery cut-off. Mr. Breitzman is a CNH employee and a critical witness who had interactions
22 with Plaintiff concerning his workplace injury and his modified duty as a result.

23 9. The parties thereafter compared their respective schedules and arrived at a mutually
24 agreeable date of October 12, 2015 on which Mr. Breitzman’s deposition can go forward –
25 contingent on the Court’s approval of this one deposition being conducted after the cut-off.

26 10. On June 30, 2015, Defendant served requests for production of documents.
27 Document Request No. 4 sought all documents “reflecting any employment benefits Plaintiff has
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1 received for any employment, including self-employment, at any time since October 1, 2013,
2 including but not limited to summary plan descriptions of any such benefits.”

3 11. After Defendant granted Plaintiff’s request for an extension of time to respond,
4 Plaintiff responded to the document requests stating he would produce responsive documents.
5 However, Plaintiff’s counsel asserted by letter dated September 15, 2015, that Plaintiff does not
6 have any documents responsive to Document Request No. 4.

7 12. Because this information is critical to Defendant’s ability to calculate damages for
8 trial purposes, Defendant needs to subpoena Plaintiff’s current employer, Guittard Chocolate
9 Company in Burlingame, California, to obtain this employment benefits information. Defendant
10 plans to subpoena the information prior to the discovery cut-off, but the information would not be
11 due to be disclosed from Guittard until after close of discovery.

12 13. This Stipulation is not offered for any dilatory or improper purpose, but rather
13 solely to effectively manage the scheduling of case events, and to ensure the most efficient use of
14 resources by the Court, the parties, and their counsel.

15 WHEREFORE, subject to the Court’s approval, Plaintiff and Defendant, desiring to
16 efficiently manage this action, hereby stipulate and request a variance to the discovery cut-off date
17 as follows:

18 1. The deposition of PMK Jan Breitzman shall occur on October 12, 2015, at 10:00
19 a.m. at the San Leandro Distribution Center, 1919 Williams Street, San Leandro, California,
20 94577;

21 2. Defendant may obtain employment benefits information from Plaintiff’s current
22 employer after the discovery cut-off date.

23

24 DATED: September 18, 2015

LAW OFFICE OF KENNETH C. ABSALOM

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By: /s/ George R. Nemiroff

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George R. Nemiroff
Attorneys for Plaintiff
Carlos Batres

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DATED: September 18, 2015

WILEY PRICE AND RADULOVICH LLP

By: /s/ Joan Pugh Newman
Joan Pugh Newman
Attorneys for Defendant
CNH America, LLC

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ECF CERTIFICATION

Pursuant to Local Rule 5-1(i)(3), the filing attorney attests that he has obtained concurrence regarding the filing of this document from the signatories to the document.

Dated: September 18, 2015

By: /s/ George R. Nemiroff
George R. Nemiroff
Attorneys for Plaintiff
Carlos Batres

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~~{Proposed}~~ ORDER


Pursuant to the Stipulation of counsel and for good cause shown, IT IS HEREBY ORDERED that:

1. The deposition of PMK Jan Brietzman shall occur on October 12, 2015, at 10:00 a.m. at the San Leandro Distribution Center, 1919 Williams Street, San Leandro, California, 94577;

2. Defendant may obtain employment benefits information from Plaintiff's current employer after the discovery cut-off date.

IT IS SO ORDERED.

Dated: September 25, 2015


HON. MAXINE CHESNEY
UNITED STATES DISTRICT JUDGE