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6  
7 UNITED STATES DISTRICT COURT

## 8 NORTHERN DISTRICT OF CALIFORNIA

9  
10 SCOTT WITTHOFF, an individual on behalf of himself,  
11 the general public and those similarly situated,

12 Plaintiff,

13 v.

14 HONEST TEA, INC.; AND DOES 1 THROUGH 50,

15 Defendants

CASE NO. CV-10-05442 (SBA)

JOINT STIPULATION AND  
ORDER (1) FOR LEAVE TO  
FILE FIRST AMENDED COM-  
PLAINT, (2) EXTENDING TIME  
TO MOVE TO STRIKE DEFEN-  
DANT'S AFFIRMATIVE DE-  
FENSES, AND (3) REMANDING  
CASE TO STATE COURT16 This stipulation is between Plaintiff SCOTT WITTHOFF ("Plaintiff") and Defendant  
17 HONEST TEA, INC. ("Defendant"). The parties have agreed as follows:

18 WHEREAS,

19 On October 29, 2010, Plaintiff filed a class action complaint in San Francisco Superior  
20 Court;21 On December 1, 2010, Defendant removed Plaintiff's class action complaint to this Court  
22 (Dkt.# 1);23 On December 8, 2010, Defendant filed an answer to Plaintiff's complaint including forty-  
24 one (41) affirmative defenses (Dkt. #5);25 On December 14, 2010, Plaintiff filed a declination to proceed before a U.S. Magistrate  
26 Judge (Dkt.# 6);

27 On December 16, 2010, Plaintiff's case was reassigned to this Court (Dkt.# 8);

28 On December 22, 2010, this Court scheduled a case management conference for April 13,

1 2010 (Dkt.# 9);

2 In its notice of removal, Defendant argued that this Court has jurisdiction under the Class  
3 Action Fairness Act because the parties are diverse and there is more than \$5 million in contro-  
4 versy;

5 Plaintiff disagreed and the parties met-and-conferred. Plaintiff also informed Defendant  
6 of his belief that many of the affirmative defenses were not properly pled;

7 Plaintiff served Defendant with a copy of the proposed First Amended Complaint attached  
8 hereto as Exhibit A, which ends the proposed class period at August 15, 2010;

9 Plaintiff filed a motion to strike Defendant's affirmative defenses (Dkt. #10); and

10 Plaintiff filed a motion to remand (Dkt.# 12), which Defendant does not oppose.

11 NOW THEREFORE, THE PARTIES STIPULATE AND AGREE TO THE FOLLOW-  
12 ING:

13 (1) Plaintiff stipulates that, he does not and will not seek on behalf of himself and all  
14 members of each putative class he seeks or will seek to represent, in the aggregate,  
15 an amount in excess of \$4,999,999 in restitution, damages, attorneys' fees and  
16 costs;

17 (2) Upon entry of an order approving this stipulation, the First Amended Complaint  
18 attached hereto as Exhibit A shall be deemed filed.

19 (3) Defendant does, and will, not oppose Plaintiff's motion to remand.

20 (4) Upon entry of an order approving this stipulation, Plaintiff's Motion to Strike  
21 Affirmative Defenses pleaded in Defendant's Answer shall be rendered moot, and  
22 shall be deemed withdrawn;

23 (5) Defendants shall respond to the First Amended Complaint within the period  
24 provided by law. A general denial shall not be permitted.

25 (6) Plaintiff shall be permitted to demur to, or move to strike, any affirmative defenses  
26 pled in Defendant's answer to the First Amended Complaint within the period  
27 provided by law.

28 Dated: January 11, 2011

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**GUTRIDE SAFIER LLP**

/s/ Seth A. Safier

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Seth Safier, Esq.,  
Attorney for Plaintiff

**GOODWIN PROCTER LLP**

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Forrest A. Hainline III  
Attorneys for Defendants

**SO ORDERED.**

Dated: 1/10/11

\_\_\_\_\_  
*Sandra B. Armstrong*

Hon. Sandra B. Armstrong  
United States District Court for the Northern District  
of California

1 **PROOF OF SERVICE**

2 I, Seth A. Safier, declare:

3 My business address is 835 Douglass Street, San Francisco, California. I am employed in  
4 the County of San Francisco, where this mailing occurs. I am over the age of 18 years and not a  
party to the within cause.

5 On January 3, 2011, I served the following documents:

6 ON THE FOLLOWING PERSON(S) IN THIS ACTION BY PLACING A TRUE COPY THE-  
7 REOF AS FOLLOWS:

8 Forrest Hainline, Esq.  
9 Goodwin Procter LLP  
10 Counselors at Law  
11 Three Embarcadero Center, 24th Floor  
12 San Francisco, CA 94111  
13 fhainline@ goodwinprocter.com

14 [x] BY ELECTRONIC MAIL. I caused said documents to be transmitted by  
15 electronic mail to the email address indicated after the address(es) via ECF.

16 I declare under penalty of perjury under the laws of the State of California that the fore-  
17 going is true and correct and that this document was executed on January 3, 2011, at  
18 San Francisco, California.

19 /s/Seth A. Safier

20 \_\_\_\_\_  
21 Seth A. Safier, Esq.  
22 835 Douglass Street  
23 San Francisco, California 94114

24 Attorneys for Plaintiff  
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