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8 Attorneys for
 9 Plaintiff OS ENTERPRISE, LLC

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 11 **UNITED STATES DISTRICT COURT**
 12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

13 OS ENTERPRISE, LLC, a California
 14 limited liability company,
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 16 Plaintiff,
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 18 vs.
 19 FAIRLINE DEVELOPMENT CANADA
 20 (1992) LTD., a Canada Corporation, and
 21 TAWA SUPERMARKET, INC. dba 99
 22 Ranch Market,
 23
 24 Defendants.

Case No.: C 11-04375 SBA
**AMENDED STIPULATION AND
 ORDER TO CONTINUE TRIAL DATE
 AND ASSOCIATED DISCOVERY
 DEADLINES AND CUT-OFFS**

25 Pursuant to Rule 16(e) of the Federal Rules of Civil Procedure ("FRCP"), IT IS HEREBY
 26 ORDERED AS FOLLOWS:

27 **A. DEADLINE FOR JOINDER OF PARTIES/AMENDING THE PLEADINGS**

28 The deadline for the joinder of other parties and to amend the pleadings is *12/18/12*

B. DISCOVERY CUT-OFF

All discovery, except for expert discovery, shall be completed and all depositions
 taken on or before *5/27/13*. The parties are responsible for scheduling discovery so that motions
 to resolve discovery disputes can be heard before the above discovery cut-off.

1 **C. EXPERT DESIGNATION AND DISCOVERY**

2 Plaintiff shall designate any experts by **6/28/13**; defendant by **6/28/13**; rebuttal
3 disclosure by **7/12/13**. Any expert not so named may be disallowed as a witness. No expert will
4 be permitted to testify to any opinion, or basis or support for an opinion, that has not been
5 disclosed in response to an appropriate question or interrogatory from the opposing party. Expert
6 discovery shall be completed by **8/09/13**.

7 **D. MOTION CUT-OFF**

8 All motions including dispositive motions shall be heard on or before **6/28/13**, at 1:00
9 p.m.. The parties must meet and confer *prior* to filing any motion. The movant shall certify to
10 the Court in its moving papers that it has complied with this requirement. Should the parties fail
11 to meet and confer, the Court may decline to entertain the motion.

12 **THIS COURT DOES NOT RESERVE MOTION HEARING DATES.** The parties
13 are advised to check Judge Armstrong's calendar at www.cand.uscourts.gov, under Scheduling
14 Information to determine the next available hearing date, particularly in the case of a dispositive
15 motion. The parties are advised *not* to wait until 35 days prior to the law and motion cut-off date
16 to file and serve their motion. As the Court's law and motion calendar tends to fill quickly, there
17 is **no** guarantee that a hearing date within the law and motion cut-off date will be available. You
18 **MUST** submit a hard copy of all motion papers filed in E-FILED cases in order to be placed on
19 calendar.

20 All noticed motions (other than motions for summary judgment) and any opposition
21 thereto, shall not exceed **fifteen (15) pages** in length, exclusive of the table of contents, table of
22 authorities, exhibits and declarations, if required. Reply briefs may not exceed **ten (10) pages** in
23 length. Motions for summary judgment are subject to the page limits set forth in Civil Local
24 Rule 7.

25 All parties are required to meet and confer before filing any motion or any non-stipulated
26 request with this court, and to certify that they have complied with this requirement.

1 The failure of the opposing party to file a memorandum of points and authorities in
2 opposition to any motion shall constitute a consent to the granting of the motion.

3 Parties are limited to filing one motion for summary judgment. Any party wishing to
4 exceed this limit must request leave of Court. The parties are not required to file statements of
5 undisputed facts in connection with a motion for summary judgment. However, if the parties
6 desire to file a statement of undisputed facts, only one joint statement of undisputed facts signed
7 by all parties shall be filed. All separate statements will be stricken. If the parties are unable to
8 agree that a fact is undisputed, they should assume that fact is in dispute.

9 Note that pursuant to Civil L.R. 7-1(b), the Court may, in its discretion, adjudicate
10 motions *without* oral argument.

11 **E. MANDATORY SETTLEMENT CONFERENCES**

12 All parties are ordered to participate in a mandatory settlement conference during the
13 following time period: *BETWEEN 1/28/13-3/15/13 BEFORE A MAGISTRATE JUDGE.*

14 **F. PRETRIAL CONFERENCE**

15 All Counsel who will try the case shall appear for a pretrial conference in Courtroom 1 on
16 *09/09/2013*, at 1:00 p.m. All Counsel shall be fully prepared to discuss all aspects of the trial.
17 Failure to file the requisite pretrial documents in advance of the pretrial conference may result in
18 vacation of the pretrial conference and/or the imposition of sanctions. ***ALL PARTIES WITH***
19 ***SETTLEMENT AUTHORITY ARE REQUIRED TO ATTEND THE PRETRIAL***
20 ***CONFERENCE.***

21 **G. PRETRIAL PREPARATION DUE**

22 1. Not less than *thirty-five(35) calendar days* prior to the pretrial conference,
23 Counsel shall meet and confer in good faith in advance of complying with the following pretrial
24 requirements in order to clarify and narrow the issues for trial, arrive at stipulations of facts,
25 simplify and shorten the presentation of proof at trial, and explore possible settlement. In
26 addition, Counsel shall meet and confer regarding anticipated motions in limine, objections to
27 evidence, jury instructions, and any other matter which may require resolution by the Court.

1 2. The following matters shall be accomplished no later than *twenty-eight*
2 (*28*) *calendar days* prior to the pretrial conference:

3 a. **Joint Pretrial Statement**

4 Counsel are required to file a pretrial conference statement containing the
5 following information:

6 (1) **The Action.**

7 **(A) Substance of the Action.** A brief description of the substance
8 of claims and defenses which remain to be decided

9 **(B) Relief Prayed.** A detailed statement of all the relief claimed,
10 particularly itemizing all elements of damages claimed as well as witnesses, documents or other
11 evidentiary material to be presented concerning the amount of those damages.

12 (2) **The Factual Basis of the Action**

13 **(A) Undisputed Facts.** A plain and concise statement of all
14 relevant facts not reasonably disputable, as well as which facts parties will stipulate for
15 incorporation into the trial record without the necessity of supporting testimony or exhibits.

16 **(B) Disputed Factual Issues.** A plain and concise statement of all
17 disputed factual issues which remain to be decided.

18 **(C) Agreed Statement.** A statement assessing whether all or part
19 of the action may be presented upon an agreed statement of facts.

20 **(D) Stipulations.** A statement of stipulations requested or
21 proposed for pretrial or trial purposes.

22 (3) **Disputed Legal Issues**

23 **(A) Points of Law.** Without extended legal argument, a concise
24 statement of each disputed point of law concerning liability or relief, citing supporting statutes
25 and decisions. Unless otherwise ordered, parties should cite to briefs served and lodged setting
26 forth briefly the nature of each party's contentions concerning each disputed point of law,
27 including procedural and evidentiary issues.

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f. Jury Instructions

The parties shall file a joint set of proposed jury instructions as to those instructions on which the parties have reached agreement. As to any disputed instructions, each party shall separately submit its "proposed" instruction(s) supported by a memorandum setting forth the authority for its use. Responses or objections to any "proposed" jury instruction shall be filed no later than the date of the pretrial conference. All instructions shall be written in plain English which is comprehensible to jurors, concise and free of argument, and shall be organized in a logical fashion so as to aid jury comprehension, and are also to be provided on a CD in word format. The Court's practice is to utilize, whenever possible, instruction's found in the Ninth Circuit Manual of Model Jury Instructions.

g. Jury Voir Dire and Verdict Forms

Each party shall submit proposed questions for jury voir dire and a proposed form of verdict.

h. Exhibits

Each party shall provide every other party one set of all exhibits, charts, schedules, summaries and diagrams and other similar documentary materials to be used at the trial together with a complete list of all such exhibits. The Court requires one original version of exhibits (as described above) for the Clerk and two copies (one for the Bench and one for the witness stand). All such versions of the exhibits, including the originals, should be indexed into a binder for easy and quick reference by all parties. The first page of each binder should have a copy of the exhibit list appropriately completed with each exhibit description and its designated number. Plaintiffs shall refer to their exhibits numerically and Defendants shall label theirs alphabetically. Exhibit labels and exhibit lists are available at the Courts website.(www.cand.uscourts.gov) Exhibits should be brought to Court on the first day of trial.

3. The following matters shall be accomplished no later than *twenty-one* (21) *calendar days* prior to the pretrial conference: **Motions in Limine and Objections to Evidence due: 08/19/2013** Each party anticipating making motion(s) in limine and/or objection(s) to any

1 testimony or exhibits expected to be offered shall file and serve a statement briefly identifying
2 each item objected to and the grounds for the objection.

3 4. Responses to motions in limine or objections to evidence shall be filed and
4 served no less than *fourteen (14) calendar days* prior to the pretrial conference due: **8/26/13**.

5 5. Replies to motions in limine or objections to evidence shall be filed and
6 served no less than *seven (7) calendar days* prior to the pretrial conference due: **9/2/13**.

7 All motions in limine shall be set forth in a single memorandum, not to exceed ten (10) pages in
8 length. Responses to the motions in limine shall be set forth in a single memorandum, not to
9 exceed ten (10) pages in length. Reply briefs shall not exceed six(6) pages. Any request to
10 exceed the page limit must be submitted prior to the deadline for these briefs and must be
11 supported by a showing of good cause, along with a certification that the applicant has met and
12 conferred with the opposing party.

13 **H. TRIAL DATE**

14 Trial before the **JURY** will begin on **9/23/13**, at 8:30 a.m., for an estimated **5** trial
15 days, or as soon thereafter as the Court may designate. The parties are advised that they must be
16 prepared to go to trial on a trailing basis. The trial will take place in Courtroom 1 of the United
17 States Courthouse, 1301 Clay Street, 4th Floor, Oakland, California, 94612. The Court's trial
18 hours are from 8:30 a.m. to 2:00 p.m., with two fifteen-minute breaks, on Monday, Wednesday,
19 Thursday and Friday. ***On the first day of trial all parties are required to have someone in***
20 ***Court with full Settlement Authority.***

21 **I. TRANSCRIPTS**

22 If transcripts will be requested during or immediately after the trial, arrangements
23 must be made with the Court Reporter Coordinator (Telephone No. 510-637-3534) at least one
24 week prior to the commencement of trial.

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J. STATUS AND DISCOVERY CONFERENCES

Any party desiring to confer with the Court may, upon notice to all other parties, arrange a conference through the courtroom deputy (Telephone No. 510-637-3541). Conferences may be conducted telephonically, upon request (preferably in writing).

K. SANCTIONS

Failure to comply with this order may result in the imposition of sanctions pursuant to FRCP 16(f).

Date: October __, 2012

PATTON MARTIN & SULLIVAN LLP

By: _____
Kevin Martin
Attorneys for Plaintiff OS Enterprise, LLC

Date: October __, 2012

PEARSON & PEARSON, APC

By: _____
Matthew D. Pearson
Attorneys for Defendant Fairline
Development Canada (1992) LTD.

1 IT IS SO ORDERED. 11/13/12

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By: *Sandra B. Armstrong*

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United States District Court

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