

STIPULATED REQUEST

Plaintiffs Jose Fernando Ramirez, Evarado Montejano and Sergio Jacobo, through their attorneys of record, and Defendant Milgard Manufacturing, Inc., through its attorneys of record, hereby submit the following stipulation in regards to the parties' previous request to file motions for partial summary judgment.

At the last Case Management Conference, the parties discussed the notion of filing motions for summary judgment regarding certain issues in this case. The primary issues in this case concern Defendant's obligations with regard to rest and meal periods. Although there are other issues in the case, the rest and meal period obligations under California law are a key focus and constitute a large portion of the potential damages in the case under Plaintiffs' theories. However, on July 22, 2008, the California Court of Appeal issued its decision in *Brinker Restaurant Corp. v. Superior Court of San Diego County*, 165 Cal. App. 25 (2008). On August 28, 2008, a petition for review by the California Supreme Court was filed by the plaintiffs in that case. The Supreme Court generally has 60 days, or until October 27, 2008, to consider this petition. Cal. R. Ct. 8.512. The Supreme Court has discretion to extend this period by 30 days to November 26, 2008. *Id*.

The parties have earnestly pursued the summary judgment path as a means of pursing judicial efficiency, but believe that there can be no meaningful summary judgment proposal until the California Supreme Court decides whether to grant review of the *Brinker* decision. Plaintiffs believe that review of *Brinker* is likely as the Supreme Court has already accepted review in the case, prior to the Appellate Court's request to revise its decision. Defendant does not support Plaintiffs' analysis, particularly because Defendant believes that the Court did not previously accept review on the merits, but instead only accepted review at the request of the Court of Appeal to transfer the case back, and because Defendant believes that *Brinker* is consistent with other authorities on these issues. Regardless, if the California Supreme Court accepts review of *Brinker*, it is likely that the parties will attempt to resolve this case by mediation or make other procedural requests and summary judgment proceedings may not be required. If the California Supreme Court does not accept review of *Brinker*, Plaintiffs will request

1	leave to amend their Complaint. In either case, summary judgment on these issues would not be
2	efficient at this time.
3	The parties further request that the Court schedule a case management conference for a date
4	after November 26, 2008 to consider how this case should proceed.
5	IT IS SO STIPULATED:
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7	Dated: September 11, 2008 LAW OFFICES OF MALLISON & MARTINEZ
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10	By: <u>/s/ Stan Mallison</u> Stan S. Mallison
11	Attorneys for Plaintiffs
12	Dated: September 11, 2008 LITTLER MENDELSON, PC
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15	By: <u>/s/ Stephen Tedesco</u> Stephen C. Tedesco
16	Stephen C. Tedesco Attorneys for Defendants
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18	[] ORDER
19	IT IS SO ORDERED:
20	The parties having so stipulated and good cause appearing, the deadline to submit issues for
21	summary judgment or summary adjudication is hereby vacated without prejudice. A further case
22	management conference will be held on February 27, 2009. at 10:30 a.m. Parties shall file a revised Case Management Statement by 2/20/09.
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24	Dated: 1/21/09 Konald M. Whyte Honorable Ronald M. Whyte
25	Dated: Honorable Ronald M. Whyte
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	Stipulation and Order – Case No. C07-02408 RMW (ECF)