

1 Robert M. Gagliasso, Esq. SBN 162082  
 2 Andrew V. Stearns, Esq. SBN 164849  
 3 Steven M. Berki, Esq. SBN 245426  
 4 **BUSTAMANTE, O'HARA & GAGLIASSO**  
 5 River Park Tower  
 6 333 W. San Carlos St., 8<sup>th</sup> Floor  
 7 San Jose, California 95110  
 8 Telephone: (408) 977-1911  
 9 rgagliasso@boglawyers.com  
 10 astearns@boglawyers.com  
 11 sberki@boglawyers.com

\*\*E-Filed 3/18/2011\*\*

7 Attorneys for Plaintiffs  
 8 MOLLY STEARNS, RUTH ROSE,  
 9 DENNIS FULLER, BONNIE FULLER,  
 10 DAN SCHLESINGER, KAREN WILLIAMS  
 11 and BRYAN WILLIAMS

11 UNITED STATES DISTRICT COURT  
 12 NORTHERN DISTRICT OF CALIFORNIA  
 13 SAN JOSE DIVISION

\*\*\*

15 MOLLY STEARNS, RUTH ROSE, DENNIS  
 16 FULLER, BONNIE FULLER, DAN  
 17 SCHLESINGER, KAREN WILLIAMS, AND  
 18 BRYAN WILLIAMS  
 19 Plaintiffs,

19 vs.

20 SELECT COMFORT RETAIL  
 21 CORPORATION, a Minnesota Corporation;  
 22 BED BATH & BEYOND, INC., a New York  
 23 Corporation; THE SLEEP TRAIN, INC., a  
 24 California Corporation, and DOES 1  
 through 50,000, inclusive,  
 Defendants.

) Case No. C08 02746 JF PVT  
 )  
 ) **STIPULATION TO ATTEND MEDIATION**  
 ) **AND FOR STAY OF ALL DEADLINES**  
 ) **AND FILING REQUIREMENTS PENDING**  
 ) **RESOLUTION OF MEDIATION SESSION;**  
 ) **AND [PROPOSED] ORDER**

) *Local Rule 6-1*

) **Complaint Filed: April 25, 2008**

25 IT IS HEREBY STIPULATED AND AGREED BY ALL PARTIES AND THEIR COUNSEL OF

26 RECORD:

27 //

28

1           WHEREAS, by Order dated February 2, 2011 the Court granted the Parties' Stipulation  
2 to Continue Time For: (1) Filing of Plaintiffs' Fifth Amended Complaint; and (2) Responding to  
3 Plaintiffs' Fifth Amended Complaint. [ECF Docket No. 97, 99, 101].

4           WHEREAS, the Parties have actively engaged in settlement negotiations and have  
5 provided proposed offers of settlement with respect to all issues, but have not yet come to an  
6 agreement and intend on pursuing settlement negotiations through mediation with a  
7 mutually agreed upon mediator.

8           WHEREAS, Plaintiffs intend to file and serve the Fifth Amended Complaint by March  
9 17, 2011 in conformance with the Court's Order. [ECF Docket No. 97, 99, 101].

10           WHEREAS, the Parties agree that substantive review and evaluation of documents  
11 exchanged during the course of settlement negotiation and additional formal discussions by  
12 way of a mutually agreed upon mediator would aid potential resolution of this litigation.

13           WHEREAS, the parties believe that instituting a stay as to all current filing deadlines  
14 associated with this matter will preserve the parties' and Court's resources and benefit  
15 settlement negotiations by allowing for a mediation session without the impending filing  
16 deadline as an impediment to further settlement discussions.

17           WHEREAS, the parties agree to stay all deadlines currently imposed by prior  
18 Stipulations and Amendments thereto.

19           WHEREAS, the parties agree to confirm selection of a mediator within twenty-five (25)  
20 days of the execution of this Stipulation.

21           WHEREAS, the parties agree to hold a mediation session within seventy-five (75) days  
22 of the execution of this Stipulation

23           WHEREAS, in the event the parties are unsuccessful in coming to a resolution at the  
24 conclusion of the mediation session, plaintiffs shall file the Fifth Amended Complaint within  
25 fourteen (14) days of said mediation session.

26           Further, it is agreed to by the parties that defendants shall have forty-five (45) days  
27 from the date of plaintiffs' filing the Fifth Amended Complaint to respond pursuant to the  
28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**GENERAL ORDER 45(X)(B) STATEMENT**

Pursuant to General Order No. 45(X)(b), I hereby attest that concurrence in the filing of this document has been obtained from counsel for Defendants SELECT COMFORT RETAIL CORPORATION, BED BATH & BEYOND INC., and THE SLEEP TRAIN, INC, and that I have retained in my possession all signatures of counsel subject to this stipulation.

By \_\_\_\_\_/S/\_\_\_\_\_  
Andrew V. Stearns

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**[PROPOSED] ORDER**

The Court, having considered the parties' Stipulation, the documents and records on file with the Court, and finding good cause therefore, hereby orders:

The parties are to select a mediator within twenty-five (25) days of execution of the Stipulation.

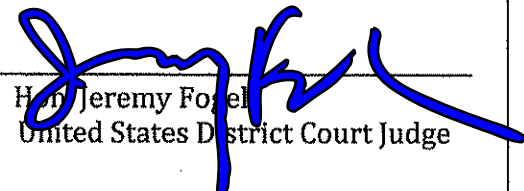
The parties are to schedule a mediation session with the agreed upon mediator within seventy-five (75) days of execution of the Stipulation.

Upon completion of the mediation session and should no agreement be reached, plaintiffs will have fourteen (14) days to file their Fifth Amended Complaint.

Defendants will then have forty-five (45) days to file a response to plaintiffs' complaint in conformance with the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

Dated: 3/18/2011

By:   
Hon. Jeremy Fogel  
United States District Court Judge