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12 Attorneys for Defendants  
 13 SELECT COMFORT RETAIL CORPORATION,  
 BED BATH & BEYOND, INC.,  
 14 and THE SLEEP TRAIN, INC.

15 UNITED STATES DISTRICT COURT  
 16 NORTHERN DISTRICT OF CALIFORNIA  
 17 SAN JOSE DIVISION

18 \_\_\_\_\_ )  
 MOLLY STEARNS, individually and on )  
 19 behalf of all those similarly situated, )  
 20 Plaintiffs, )  
 21 vs. )  
 22 SELECT COMFORT RETAIL )  
 CORPORATION, a Minnesota Corporation; )  
 23 BED BATH & BEYOND INC., a New York )  
 Corporation; THE SLEEP TRAIN, INC., a )  
 24 California Corporation, and DOES 1 through )  
 50,000, inclusive, )  
 25 )  
 Defendants. )  
 26 \_\_\_\_\_ )

Case No. C 08 02746 JF PVT  
**STIPULATION AND ~~PROPOSED~~  
 ORDER TO CONTINUE TIME FOR  
 RESPONDING TO THIRD  
 AMENDED COMPLAINT AND TO  
 SET HEARING ON RULE 12  
 MOTION AND RULE 15 MOTION  
 FOR APRIL 30, 2010**

**Local Rule 6-1**

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1           WHEREAS, by Order dated December 4, 2009, the Court granted Defendants’  
2 Motion To Dismiss And Strike The Second Amended Complaint with leave to amend  
3 certain claims, excluding claims based upon alleged personal injuries;

4           WHEREAS, the Court advised that Plaintiffs may seek leave of Court to plead  
5 claims based upon personal injuries;

6           WHEREAS, Plaintiffs filed and served a Third Amended Complaint on January 4,  
7 2010. Defendants Select Comfort Retail Corporation, Bed Bath & Beyond, Inc., and The  
8 Sleep Train, Inc. currently must respond to the Third Amended Complaint, whether by  
9 answer or motion, on January 19, 2010;

10           WHEREAS, Defendants intend to file a motion under Rule 12 of the Federal Rules  
11 of Civil Procedure in response to Plaintiffs’ Third Amended Complaint;

12           WHEREAS, Plaintiffs intend to file a motion under Rule 15 of the Federal Rules of  
13 Civil Procedure for leave to amend the Third Amended Complaint to add claims based  
14 upon alleged personal injuries;

15           WHEREAS, the parties believe that allowing these motions to be heard by the Court  
16 simultaneously will preserve the parties’ and the Court’s resources by allowing the Court to  
17 consider the viability of all remaining claims and potential claims at the same time and  
18 reduce the possibility of consecutive motions further extending the pleading stage of this  
19 litigation;

20           WHEREAS, the parties agree to extend Defendants’ time to respond to the Third  
21 Amended Complaint;

22           WHEREAS, the parties have secured a hearing date on the motions and have agreed  
23 to a briefing schedule.

24           NOW THEREFORE, the parties hereby agree and stipulate that Defendants’ time to  
25 respond to the Third Amended Complaint is continued until March 12, 2010.

26           The parties agree that Defendants’ Rule 12 motion and Plaintiffs’ Rule 15 motion  
27 will be heard on April 30, 2010. Said date was reserved with the Clerk prior to the filing of  
28 this stipulation.

1 The parties further agree to the following briefing schedule: The parties' respective  
2 motions, including points and authorities, shall be served and filed on or before March 12,  
3 2010. The parties' respective oppositions shall be served and filed on or before April 2,  
4 1010. The parties' respective replies shall be served and filed on or before April 16, 1010.  
5 The briefing schedule is in accordance with Local Rule 7.

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7 Dated: January 15, 2010

PILLSBURY WINTHROP SHAW PITTMAN LLP

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By /s/ Dianne L. Sweeney

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Dianne L. Sweeney  
Attorneys for Defendants  
SELECT COMFORT RETAIL CORPORATION,  
BED BATH & BEYOND INC., and THE SLEEP  
TRAIN, INC.

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14 Dated: January 15, 2010

OPPENHEIMER WOLFF & DONNELLY LLP

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By /s/ Heidi A.O. Fisher

Andrew S. Hansen  
Heidi A.O. Fisher  
Attorneys for Defendants  
SELECT COMFORT RETAIL CORPORATION,  
BED BATH & BEYOND INC., and THE SLEEP  
TRAIN, INC.

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21 Dated: January 15, 2010

BUSTAMANTE, O'HARA & GALIASSO

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By /s/ Andrew V. Stearns

Andrew V. Stearns  
Attorneys for Plaintiffs  
MOLLY STEARNS, RUTH ROSE, DENNIS  
FULLER, BONNIE FULLER, DAN  
SCHLESINGER, KAREN WILLIAMS, AND  
BRIAN WILLIAMS

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**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 Plaintiffs MOLLY STEARNS, RUTH ROSE, DENNIS FULLER, BONNIE FULLER, DAN SCHLESINGER, KAREN WILLIAMS, and BRIAN WILLIAMS and co-counsel for Defendants SELECT COMFORT RETAIL CORPORATION, BED BATH & BEYOND INC., and THE SLEEP TRAIN, INC.

By  /s/ Dianne L. Sweeney  
Dianne L. Sweeney

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**[PROPOSED] ORDER**

The Court, having considered the parties' Stipulation and finding good cause therefore, hereby orders:

1. That Defendants' time to respond to the Third Amended Complaint is continued until March 12, 2010;

2. That Defendants' Rule 12 motion and Plaintiffs' Rule 15 motion will be heard on April 30, 2010 at 9:00 a.m. Said date was reserved with the Clerk prior to the filing of this stipulation;

3. That the parties shall comply with the following schedule relating to the parties' respective motions:

- a. The parties' respective motions, including points and authorities, shall be served and filed on or before March 12, 2010.
- b. The parties' respective opposition briefs shall be served and filed on or before April 2, 1010.
- c. The parties' respective reply briefs shall be served and filed on or before April 16, 1010.

IT IS SO ORDERED.

Dated: 1/9/2010

By:   
United States District Court Judge