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17 YADIRA, et. al.;
 18 Plaintiffs,
 19 v.
 20 JESUS FERNANDEZ dba MARIA'S
 21 NIGHTCLUB; TONY'S POOL HALL
 22 AND FLAMINGO NIGHTCLUB; DOES 1-
 23 10;
 24 Defendants,

CASE NUMBER: C 08 05721 RMW
 RELATED CASE: C 08 05722 RMW
 JOINT STIPULATION AND
 ORDER TO RESET
 DISCOVERY AND TRIAL DATE IN
 BOTH MATTERS; *and*
 [PROPOSED] ORDER THEREON

25 This case, Yadira v. Fernandez, C 08 05721 RMW, was filed at the same time as the
 26 related matter, Mondragon v. Fernandez, C 08 05722 RMW. Both cases involve the same
 27 Defendants, contain the same allegations and are based on largely the same facts. Parties in both
 28

1 cases are represented by the same counsel. However, the issues in the case diverge in that in the
2 instant action the Plaintiffs are hourly employees, and in the other related matter, the Plaintiffs
3 are alleged salaried employees.

4 Initially, the related matter, Mondragon v. Fernandez, C 08 05722 RMW was before the
5 Hon. James Ware, but was reassigned to the Hon. Ronald Whyte so that both cases could be
6 before the same judge. The parties have attended case management conferences in both matters,
7 have conducted an ENE session in the Mondragon matter, have conducted a deposition in the
8 Yadira matter. The deposition of Yadira precipitated a push by both parties to participate in a
9 private mediation of both matters. However, shortly after agreeing to participate in said
10 mediation, Defendant changed his mind and withdrew from the mediation.
11
12

13 Further, Plaintiff has conducted a substantial amount of written discovery. The first set of
14 written discovery propounded by Plaintiff was met entirely with objection. This precipitated a
15 filing of a motion to compel on 11/18/2009. The hearing on that motion was continued until
16 3/16/2010 because of efforts by the parties to resolve the dispute amicably, which included the
17 voluminous production and review of documents. However, while the requests for production
18 were ultimately addressed, issues remained with respect to the requested interrogatories and
19 requests for admission. Therefore, the court granted the motion to compel on 3/12/2010 (without
20 hearing) and ordered further responses by 3/26/2010. Defendant did not make any amended
21 responses until weeks beyond this deadline on 4/12/2010. Plaintiff contends that these late
22 responses remain entirely inadequate and remain subject to dispute.
23
24

25 As a result of this motion to compel, Plaintiff filed a motion for sanctions which was
26 denied after hearing on 5/18/2010. Immediately following the 5/18/2010 hearing on Plaintiff's
27 motion for sanctions Defense counsel announced his intent to seek withdrawal from
28

1 representation. Plaintiff did not object to this withdrawal. Despite no objection by Plaintiff to the
2 withdrawal and substitution of new counsel, Defendant did not file his motion until a month later
3 on 6/13/2010, and did not follow with proposed order until 6/25/2010. As a result, the
4 substitution of counsel did not occur until 6/29/2010, nearly two months after counsel announced
5 his intent to withdraw.

6
7 The delay injected by this change of counsel has cost the parties valuable time to
8 continue efforts to resolve this matter and to conduct discovery. Importantly, with respect to
9 discovery already outstanding, Plaintiffs have been unable to conduct any meaningful meet and
10 confer efforts.

11
12 However, Parties have no had a chance to restart the process with Defendant's new
13 counsel. New counsel has been very responsive and is currently working on getting up to speed
14 with the current status of discovery. Plaintiff's counsel has sent to new counsel all relevant
15 documents, requests, responses and moving papers. Counsel is review these so that parties may
16 pick up discovery where they left off. In order to allow counsel sufficient time to prepare to
17 effectively participate in discovery efforts without prejudicing either parties' plans for further
18 discovery, parties are in agreement that modifications should be made to the case management
19 scheduling order. Furthermore, Counsel for Plaintiffs has just concluded a trial in the San
20 Francisco Division of the Norther District Court and has two other matters which will likely go
21 to trial in November and December of 2010.

22
23 Therefore, the parties hereby stipulate to the following proposed discovery dates and
24 deadlines (applicable to both actions 08-5721 and 08-5722, except for proposed trial dates):

25
26 **DISCOVERY**

- 27
28 1. The parties agree to the following discovery plan:

- 1 a. Fact discovery cutoff: January 31, 2011;
- 2 i. Any and all written discovery will be propounded so that a response
- 3 will be received prior to the discovery cutoff date.
- 4 b. Designation of expert witnesses: January 15, 2011;
- 5 c. Rebuttal expert witnesses: Feb 1, 2011;
- 6 d. Expert depositions completed: Feb 15, 2011;
- 7

8 **DISPOSITIVE MOTIONS**

- 9 2. The parties request a dispositive motions hearing date of: February 25, 2011;
- 10

11 **TRIAL SCHEDULE**

- 12 3. For action number C08-5722, Mondragon v. Fernandez, the parties request the
- 13 following:

- 14 a. The parties request a trial date as follows: April 11, 2011, Pre-trial conference
- 15 on March 24, 2011;
- 16 b. The parties expect that the trial will last for the following number of days:
- 17 five court days.
- 18

- 19 4. For action number C08-5721, Yadira v. Fernandez, the parties request the
- 20 following:

- 21 a. The parties request a trial date as follows: May 2, 2011, Pre-trial
- 22 conference on April 21, 2011;
- 23

24 **SIGNATURE AND CERTIFICATION BY COUNSEL**

25 Dated: Aug 20, 2010

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