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 other similarly situated employees
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7 **UNITED STATES DISTRICT COURT**
 8 **NORTHERN DISTRICT OF CALIFORNIA**
 9 **SAN JOSE DISTRICT**

10 CASEY L. MCINTOSH and SONIA
 HURTADO on behalf of themselves and all
 11 other similarly situated employees,

Case No.: C 09-05657 RS

STIPULATION FOR DISMISSAL

12 Plaintiffs,

13 v.

14 AMN CORPORATION, a California
 15 Corporation, doing business as KID'S
 KORNER; MICHAEL AHI; KAMIL NAVAI;
 16 MACK MOSHEN; and NAZY MOSHEN and
 DOES 1 through 100, Inclusive

17 Defendants.

18
 19 **AND RELATED CROSS ACTIONS**

20 Plaintiffs CASEY MCINTOSH and SONIA HURTADO (collectively "Plaintiffs"), on one
 21 hand, and defendants AMN CORPORATION dba KIDS KORNER, MICHAEL AHI, KAMIL
 22 NAVAL, MACK MOSHEN and NAZY MOSHEN (collectively "Defendants"), on the other hand,
 23 by and through their respective counsel, stipulate to the following:

24 1. The complaint in this action alleges both individual claims and class claims and
 25 was originally filed by plaintiff CASEY MCINTOSH in the Superior Court of California in and
 26 for the County of Santa Clara on August 14, 2009, with AMN CORPORATION as the sole named
 27 defendant. On October 14, 2009, defendant AMN CORPORATION filed a general denial to the
 28 complaint in state court and a cross-complaint against CASEY MCINTOSH and LAUREN

1 PETERSON. On November 5, 2009, CASEY MCINTOSH filed a First Amended Complaint in
2 state court, adding a federal claim under the Fair Labor Standards Act and naming MICHAEL
3 AHI, KAMIL NAVAL, MACK MOSHEN and NAZY MOSHEN as additional defendants. On
4 December 2, 2009, Defendants removed this action to the United States District Court for the
5 Northern District of California. Plaintiff MCINTOSH further amended her complaint on March
6 17, 2010, to add SONIA HURTADO as plaintiff, both in her individual capacity and as class
7 representative.

8 2. The following classes and subclasses are identified in Plaintiffs' complaint:

9 a. Plaintiff Class: this class is defined as all persons who at any time from four
10 years from the commencement of this action through the date of trial were employed by
11 Defendants in California as employees not exempt from the meal period, rest period,
12 overtime and related provisions of the California Labor Code and the IWC Wage Orders.

13 b. Wage Sub-Class: this sub-class is defined as all members of the Plaintiff
14 Class who were not fully paid all wages while employment by Defendants.

15 c. Meal and Rest Period Sub-Class: this sub-class is defined as all members of
16 the Plaintiff Class who were not provided lawful meal and rest periods as required by
17 applicable IWC Wage Orders.

18 3. The Second Amended Class Action Complaint alleges the following claims:

19 a. First Cause of Action

20 i. Count 1 - Meal Period Violations Under IWC Wage Orders

21 (a) On Behalf of: (1) Plaintiffs individually, (2) members of the
22 Plaintiff Class and (3) members of the Meal & Rest Period
23 Sub-Class.

24 (b) Against: AMN CORPORATION.

25 ii. Count 2 - Meal Period Violations Under §226.7

26 (a) On Behalf of: (1) Plaintiffs individually, (2) members of the
27 Plaintiff Class and (3) members of the Meal & Rest Period Sub-
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Class.

(b) Against: AMN CORPORATION.

iii. Count 3 - Rest Period Violations Under IWC Wage Orders

(a) On Behalf of: (1) Plaintiffs individually, (2) members of the Plaintiff Class and (3) members of the Meal & Rest Period Sub-Class.

(b) Against: AMN CORPORATION.

iv. Count 4 - Rest Period Violations Under Labor Code §226.7

(a) On Behalf of: (1) Plaintiffs individually, (2) members of the Plaintiff Class and (3) members of the Meal & Rest Period Sub-Class.

(b) Against: AMN CORPORATION.

v. Count 5 – Compensation for Working Through Meal Periods

(a) On Behalf of: (1) Plaintiffs individually, (2) members of the Plaintiff Class and (3) members of the Meal & Rest Period Sub-Class.

(b) Against: AMN CORPORATION.

vi. Count 6 – Compensation for Unpaid Wages

(a) On Behalf of: (1) Plaintiffs individually, (2) members of the Plaintiff Class and (3) members of the Meal & Rest Period Sub-Class.

(b) Against: AMN CORPORATION.

b. Second Cause of Action - Failure to Pay All Wages Earned [Labor Code §§ 1194 and 1198]

1. On Behalf of: (1) Plaintiffs individually and (2) members of the Plaintiff Class.

2. Against: AMN CORPORATION.

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- c. Third Cause of Action - Failure to Comply With Wage Statement Requirements Under Lab Code §§226(e), 1174, and 1175
 - 1. On Behalf of: (1) Plaintiffs individually and (2) members of the Plaintiff Class.
 - 2. Against: AMN CORPORATION.
- d. Fourth Cause of Action - Unfair Competition Act
 - 1. On Behalf of: (1) Plaintiffs individually and (2) members of the Plaintiff Class.
 - 2. Against: AMN CORPORATION.
- e. Fifth Cause of Action Unfair Business Practices
 - 1. On Behalf of: (1) Plaintiffs individually and (2) members of the Plaintiff Class.
 - 2. Against: AMN CORPORATION.
- f. Sixth Cause of Action - Overtime Violation Under 29 U.S.C. §§ 206, 207, and 216(b)
 - 1. On Behalf of: (1) Plaintiffs individually and (2) members of the Plaintiff Class.
 - 2. Against: AMN CORPORATION.
- g. Seventh Cause of Action - Slander Per Se
 - 1. On Behalf of: (1) Plaintiff CASEY MCINTOSH.
 - 2. Against: Defendants MACK MOSHEN and NAZY MOSHEN.

4. As a result of formal and informal discovery, Plaintiffs have received information indicating that their claims were representative of claims that might be held by fewer than 10 employees. As a consequence, the parties believe that class certification would be denied for the class claims of the plaintiffs.

5. Neither the plaintiffs nor their counsel have spoken with any potential class members to advise them about the pendency of this action, and they have learned of no

1 information indicating that any potential class members have delayed pursuing any claims they
2 might have in reliance on this lawsuit. Therefore, if the class claims were dismissed without
3 prejudice, the parties believe that all potential class members would be in the same position as if
4 this lawsuit were never filed.

5 6. On June 9, 2010, the parties participated in mediation, with J. Rosen Sanford
6 serving as mediator. The parties successfully concluded a settlement of the plaintiffs' individual
7 claims on the following terms:

8 a. All of the terms of the settlement are conditioned on the court dismissing all
9 of the class claims in this action without prejudice;

10 b. Defendants shall pay the total sum of \$50,000.00 to Casey McIntosh and
11 Sonia Hurtado in full satisfaction of all of the individual claims, which amount shall be inclusive
12 of all attorneys fees and costs, in the form of a check payable to said plaintiffs and their attorney
13 Fitzpatrick, Spini & Swanston;

14 c. Defendants shall also pay \$600.00 to the mediator on behalf of said
15 plaintiffs;

16 d. Defendants AMN shall dismiss its cross-complaint in this action with
17 prejudice as to Casey McIntosh and without prejudice as to Lauren Peterson.

18 e. Plaintiffs shall seek and obtain a dismissal of the individual claims with
19 prejudice.

20 f. The parties shall jointly seek and obtain the dismissal of all class claims in
21 this action without prejudice.

22 g. The named plaintiffs, on one hand, and the defendants, on the other,
23 mutually release and waive all claims relating to the subject matter of the claims pleaded or
24 raised in this action and those that could have been pleaded or raised in this action, each waiving
25 the protections of California Civil Code section 1542.

26 h. Except for the disclosures made in this stipulation and order, the parties
27 each agree to keep the terms of this settlement confidential.
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1 7. Considering the parties' belief that this matter is not appropriate for class
2 certification and the lack of any reason to believe that potential class members would be
3 prejudiced if the representative claims in this lawsuit were dismissed, the parties request that the
4 court dismiss all of the class claims in this action without prejudice. As Rule 23(e) of the Federal
5 Rules of Civil Procedure require court approval only for settlement of claims on behalf of certified
6 classes, the parties contend that the court is authorized to dismiss the class claims in this action
7 without prejudice without conducting a fairness hearing under Rule 23 of the Federal Rules of
8 Civil Procedure. Therefore, the parties request that the court order the following dismissals of
9 claims alleged in the Second Amended Class Action Complaint:

10 a. First Cause of Action, counts 1 through 6, without prejudice as to
11 members of the Plaintiff Class and members of the Meal & Rest Period Sub-Class;

12 b. Second Cause of Action without prejudice as to members of the
13 Plaintiff Class and members of the Wage Sub-Class;

14 c. Third Cause of Action without prejudice as to members of the
15 Plaintiff Class, the Meal & Rest Period Sub-Class and the Wage Sub-Class;

16 d. Fourth Cause of Action without prejudice as to members of the
17 Plaintiff Class, Meal & Rest Period Sub-Class and the Wage Sub-Class;

18 e. Fourth Cause of Action without prejudice as to members of the
19 Plaintiff Class, Meal & Rest Period Sub-Class and the Wage Sub-Class;

20 f. Fifth Cause of Action without prejudice as to members of the
21 Plaintiff Class, Meal & Rest Period Sub-Class and the Wage Sub-Class;

22 g. Sixth Cause of Action without prejudice as to members of the
23 Plaintiff Class, Meal & Rest Period Sub-Class and the Wage Sub-Class;

24 h. All claims of Plaintiffs CASEY MCINTOSH and SONIA
25 HURTADO in their individual capacities only, with prejudice.

26 8. The parties request that the court dismiss the cross-complaint filed by AMN
27 CORPORATION with prejudice as to CASEY MCINTOSH.
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1 9. The parties request that the court dismiss the cross-complaint filed by AMN
2 CORPORATION without prejudice as to LAUREN PETERSON.

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4 Dated: March ___, 2010

MILLER, MORTON, CAILLAT & NEVIS, LLP

5
6 By: _____/S/

DAVID I. KORNBLUH

7 Attorneys for Defendant and Cross-Complainant

8 AMN CORPORATION; and Defendants

MICHAEL AHI; KAMIL NAVAL; MACK

9 MOSHEN; and NAZY MOSHEN

10 Dated: March ___, 2010

FITZPATRICK, SPINI & SWANSTON

11
12 By: _____/S/

CHARLES SWANSTON

13 Attorneys for Plaintiff and Cross-Defendant

14 CASEY L. MCINTOSH

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16 ORDER

17 Good cause appearing therefor, the Court hereby orders dismissals of claims alleged in the
18 Second Amended Class Action Complaint as follows:

19 1. First Cause of Action, counts 1 through 6, without prejudice as to members
20 of the Plaintiff Class and members of the Meal & Rest Period Sub-Class;

21 2. Second Cause of Action without prejudice as to members of the Plaintiff
22 Class and members of the Wage Sub-Class;

23 3. Third Cause of Action without prejudice as to members of the Plaintiff
24 Class, the Meal & Rest Period Sub-Class and the Wage Sub-Class;

25 4. Fourth Cause of Action without prejudice as to members of the Plaintiff
26 Class, Meal & Rest Period Sub-Class and the Wage Sub-Class;

27 5. Fourth Cause of Action without prejudice as to members of the Plaintiff
28 Class, Meal & Rest Period Sub-Class and the Wage Sub-Class;

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6. Fifth Cause of Action without prejudice as to members of the Plaintiff Class, Meal & Rest Period Sub-Class and the Wage Sub-Class;

7. Sixth Cause of Action without prejudice as to members of the Plaintiff Class, Meal & Rest Period Sub-Class and the Wage Sub-Class;

8. All claims of Plaintiffs CASEY MCINTOSH and SONIA HURTADO in their individual capacities only, with prejudice.

All claims in the Second Amended Complaint having been dismissed, the court hereby dismisses the Second Amended Complaint. The court further dismisses the cross-complaint filed by AMN CORPORATION with prejudice as to CASEY MCINTOSH and without prejudice as to LAUREN PETERSON.

Dated: 6/29/10



HONORABLE RICHARD SEEBORG
UNITED STATES DISTRICT COURT JUDGE