

1 H. TIM HOFFMAN, (State Bar No. 49141)
 ROSS L. LIBENSON, (State Bar No. 181912)
 2 HOFFMAN LIBENSON SAUNDERS & BARBA
 180 Grand Avenue, Suite 1550
 3 Oakland, CA 94612
 Telephone: (510) 763-5700
 4 Facsimile: (510) 835-1311

5 *Counsel for Plaintiffs*

6 GREGORY W. KNOPP (SBN 237615)
 CHRISTOPHER PETERSEN (SBN 260631)
 7 AKIN GUMP STRAUSS HAUER & FELD LLP
 2029 Century Park East, Suite 2400
 8 Los Angeles, CA 90067-3012
 Telephone: 310-229-1000
 9 Facsimile: 310-229-1001

10 Attorneys for Defendants

11 UNITED STATES DISTRICT COURT
 12
 13 NORTHERN DISTRICT OF CALIFORNIA

14 STEPHEN MORRIS and KELLY
 McDANIEL, on behalf of themselves and all
 others similarly situated,

15 Plaintiffs,

16 v.

17 ERNST & YOUNG, LLP, and ERNST &
 18 YOUNG U.S., LLP,

19 Defendants.

Case No. 12-cv-04964-RMW (HRL)

[Assigned for all purposes to Judge Ronald M. Whyte]

**SECOND STIPULATION AND
 [PROPOSED] ORDER TO EXCEED
 APPLICABLE PAGE LIMIT FOR
 MOTION TO DISMISS, OR IN THE
 ALTERNATIVE, STAY PROCEEDINGS
 AND COMPEL ARBITRATION
 BRIEFING**

Date: February 15, 2013

Time: 9:00 a.m.

Ctrm: 6

1 putative class members, or at least to those, like Mr. Morris, who specifically identified his
2 personal dispute with Defendant and was subjected to discovery, apparently is an issue of
3 first impression;

- 4 3. Third, the cost of proceeding in individual arbitration proceedings under the arbitration
5 agreements at issue here have been found to be so high that individual arbitration would not
6 allow the participants to “effectively vindicate their statutory rights.” See *Sutherland I*
7 and *Sutherland II*. Where arbitration must be conducted on an individual basis, but class
8 proceedings in Court would allow those statutory rights to be vindicated. See also, *Italian*
9 *Colors Rest. v. Am. Express Travel Related Servs. Co. (In re Am. Express Merchs. Litig.)*,
10 667 F.3d 204 (2d Cir. 2012)(“*Amex III*”), *Nat’l Supermarkets Assoc. v. Am. Express Travel*
11 *Related Servs. Co. (In re Am. Express Merchants’ Litig.)*, 634 F.3d 187, 2011 U.S. App.
12 LEXIS 4507 (2d Cir., 2011)(“*Amex II*”), and *In re Am. Express Merchs. Litig.*, 554 F.3d 300
13 (2d Cir. 2009)(“*Amex I*”)(collectively hereinafter the “*Amex Trilogy*”); *Coneff v. AT&T*
14 *Corp.*, 673 F.3d 1155, 1159 (9th Cir. Wash. 2012);
- 15 4. Fourth, Plaintiffs maintain the findings in *Sutherland II* could be collateral estoppel;
- 16 5. Fifth, Plaintiffs maintain the National Labor Relations Board holding in *D.R. Horton, Inc. v.*
17 *Cuda*, NLRB Case No. 12-CA-25764, 357 NLRB No. 184, (Jan. 3, 2012) that a
18 class/collective action waiver imposed in an agreement required as a condition of
19 employment to be a violation of Section 7 of the National Labor Relations Act and a
20 violation of the *Norris LaGuardia Act* deserves deference. Accordingly, Plaintiffs need to
21 address those issues; and
- 22 6. Sixth, the Plaintiffs will seek to address the issue of waiver not only as a choice of law issue
23 as touched upon in *Ho v. Ernst & Young, LLP*, 2011 U.S. Dist. LEXIS 106658 (N.D. Cal.
24 Sept. 20, 2011), but also the separate issue of waiver by moving to compel arbitration only
25 after seeking to transfer this matter from a sister court and then seeking to relate the matter
26 to other cases.

1 WHEREAS, Defendants do not oppose Plaintiffs' request for additional pages, but seek an
2 equal extension for the reply in the event the Court grants Plaintiffs' request.

3 THEREFORE IT IS HEREBY STIPULATED by and between the parties hereto through their
4 respective undersigned counsel that:

5 1. Plaintiffs shall have up to thirty-five (35) pages for their Memorandum of Points and
6 Authorities In Opposition to Defendant's Motion To Dismiss, Or In the Alternative, Stay Proceedings
7 and Compel Arbitration; and

8 2. Defendants shall have up to twenty-five (25) pages for their Memorandum of Points and
9 Authorities In Reply to Plaintiffs' To Memorandum of Points and Authorities In Opposition to
10 Defendant's Motion To Dismiss, Or In the Alternative, Stay Proceedings and Compel Arbitration.

11 Dated: January 24, 2013

/s Ross L. Libenson

Ross L. Libenson
HOFFMAN LIBENSON SAUNDERS & BARBA
Attorney for Plaintiffs

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13
14 Dated: January 24, 2013

/s Gregory W. Knopp

GREGORY W. KNOPP
AKIN GUMP STRAUSS HAUER &
FELD LLP
Attorney for Defendant

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18 *(This stipulation has been approved by Gregory W. Knopp)*

19 Because the court has agreed to extend the filing deadline for the opposition papers to Monday,
20 January 28, the court likewise extends the filing deadline for the reply papers to Monday, February 4.
21

22 **ORDER**

23 PURSUANT TO STIPULATION IT IS SO ORDERED.

24
25 Dated: January 25, 2013



United States District Judge