

Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PATTY THOMAS, JENNIFER DOWLING,
KELLY DYE, JR., ROBERT GIBSON,
LAURA WISBY, DAVID RINK, JUDY
BRASHEAR, DAVID MASTENBROOK,
ARMOND MCWELL, SOLIMAN SAYEDI,
and BRUCE JOHNSON, individually and on
behalf of all other similarly situated persons,

Plaintiffs,

v.

KELLOGG COMPANY and KELLOGG
SALES COMPANY,

Defendants.

CASE NO.: 3:13-cv-05136-RBL

**STIPULATED MOTION AND
PROPOSED ORDER TO STAY THE
CASE FOR THE PARTIES TO
PARTICIPATE IN A MEDIATION**

Plaintiffs and Defendants Kellogg Company and Kellogg Sales Company (Defendants are collectively referred to as “Kellogg”) file this Stipulated Motion, asking the Court to enter an order, vacating the current case deadlines, including Plaintiffs’ deadline to oppose Defendants’ Motion to Compel Discovery Responses and Dismiss Unresponsive Plaintiffs (Doc. 318), and trial date in order for the Parties to conduct a mediation for settlement purposes. If the case is not resolved, and no later than October 30, 2015, the parties will present a proposed schedule for resuming the

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1 litigation promptly after it becomes clear settlement is unlikely. The parties also respectfully suggest
2 the Court set the matter for a status update and filing of a joint statement without appearance by
3 November 6, 2015.

4 The parties aver that good cause exists for the relief sought in this Stipulated Motion. First,
5 the Parties currently anticipate conducting the mediation in mid-October in New York City. The
6 parties have tentatively agreed upon a mediator and are currently in the process of exchanging
7 relevant information and data pertaining to damages.

8 Second, over the past two and one-half years, the Parties have engaged in extensive
9 discovery and have a thorough understanding of the contested facts and their respective litigation
10 risks. The Parties served numerous discovery requests, including documents demands, requests to
11 admit, and interrogatories, deposed 32 witnesses, including the Named Plaintiffs, produced hundreds
12 of thousands of bates stamped documents, hundreds opt-in Plaintiffs responded to Kellogg's
13 interrogatory and document demands, and Kellogg produced many documents in electronic format,
14 including wage and sales data (consisting of hundreds of thousands (or more) rows of data in
15 spreadsheet form), emails, itineraries, organizational charts, and videos . In addition, the Parties
16 continue to analyze the growing body of case law on the FLSA's outside sales exemption, which is
17 the central dispute in this case. As a result, the Parties believe they have sufficient discovery and an
18 understanding of the law to evaluate the chances of success on all or part of Plaintiffs' claims and
19 Kellogg's defenses in order to demonstrate the fairness of any settlement reached to the Court.

20 Third, the Parties believe that it is more cost effective, productive and efficient to stay the
21 case instead of continuing to litigate during the period needed to prepare for mediation. The Local
22 Civil Rules require "all counsel, as officers of the court, to work toward the prompt completion of
23 each case and to minimize the costs of discovery." Introduction, Civil Rules. If the case is not
24 stayed, the Parties estimate that they will accrue over \$1,000,000 in legal fees and costs in order to

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1 complete discovery and prepare their motions. This work will consist of over 29 additional
 2 depositions, including 9 depositions of Kellogg's witnesses during the week of September 14, any
 3 other depositions Plaintiffs' notice, and Kellogg's depositions of 20 opt-ins. The Parties and their
 4 counsel will need to travel around the country for these depositions. In addition, the Parties expect to
 5 file additional discovery motions to address disputed discovery issues and numerous motions after
 6 discovery ends. Those post-discovery motions, along with supporting or opposing briefs, include the
 7 Parties' dueling motions for summary judgment on the outside sales exemption, Plaintiffs' motion
 8 for Rule 23 class certification under the various state laws, and Kellogg's FLSA decertification
 9 motion. Thus, there will be a significant litigation cost savings if the Parties are able to successfully
 10 settle the case and allowing space for that to occur will also achieve some significant conservation of
 11 the Court's resources.

12 **CONCLUSION**

13 For all of the forgoing reasons, the Court should grant the parties' Stipulated Motion, and
 14 vacate the current case deadlines and trial date. If the case is not resolved, the parties will present a
 15 proposed schedule for resuming the litigation promptly after it becomes clear settlement is unlikely.
 16 The parties also respectfully suggest the Court set the matter for a status update and filing of a joint
 17 statement without appearance by November 6, 2015.

18
 19
 20 Dated: August 26, 2015

GETMAN & SWEENEY, PLLC

/s/ Matt Dunn

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Dated: August 26, 2015

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IT IS SO ORDERED.

DATED: _____, 2015

Ronald B. Leighton
United States District Judge

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 26, 2015, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by ECF System.

/s/ Matt Dunn _____
Matt Dunn

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