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8 Attorneys for Defendant
AMAZON PRESERVATION PARTNERS, INC.
9 d/b/a ZOLA ACAI

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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION
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15 MARY SWEARINGEN and ROBERT FIGY,
16 individually and on behalf of all others similarly
situated,

17 Plaintiffs,

18 v.

19 AMAZON PRESERVATION PARTNERS, INC.
20 d/b/a ZOLA ACAI

21 Defendant.

Case No. CV13-4402-WHO

**JOINT STIPULATION AND
ORDER EXTENDING STAY**

Judge: Hon. William H. Orrick
Action Filed: September 23, 2013

1 Pursuant to Local Rule 7-12, Plaintiffs Mary Swearingen and Robert Figy (“Plaintiffs”)
2 and Defendant Amazon Preservation Partners, Inc. d/b/a Zola Acai (“Zola”) (collectively “the
3 Parties”), by and through their respective counsel of record, agree and stipulate as follows:

4 WHEREAS per the minutes from the proceedings on July 20, 2016, the Court ordered the
5 parties to meet and confer and file a Joint Status Statement proposing a course of action with
6 respect to this stay within two weeks of a decision in one of the following Ninth Circuit appeals:

7 *Jones v. ConAgra Foods, Inc.*, No. 14-16327 (9th Cir. filed July 14, 2014),

8 *Brazil v. Dole Packaged Foods, LLC*, No. 14-17480 (9th Cir. filed Dec. 14, 2014), or *Kosta v.*

9 *Del Monte Foods, Inc.*, No. 15-16974 (9th Cir. filed Oct. 2, 2015) (Dkt. No. 76);

10 WHEREAS on September 6, 2017, the Ninth Circuit granted the parties’ stipulation to
11 dismiss the *Kosta* appeal;

12 WHEREAS the Parties previously notified the Court that the Ninth Circuit had issued a
13 memorandum disposition in *Brazil* (Dkt. No. 87), and that the *Jones* appeal had been voluntarily
14 dismissed (Dkt. No. 88);

15 WHEREAS the Parties accordingly agree that the three appeals which formed the basis
16 for the Court’s partial continuation of the stay in this matter no longer provide grounds for staying
17 this case;

18 WHEREAS the Parties nonetheless agree that the stay should be continued pending the
19 outcome of the following matters: (i) the Supreme Court’s decision on the petition for writ of
20 certiorari in *ConAgra v. Briseno*, No. 16-221, which addresses the circuit split as to whether
21 ascertainability is a separate class certification requirement; and (ii) the appeals in *Victor v.*
22 *Bigelow, Inc.*, No. 16-16639, *Khasin v. Bigelow, Inc.*, No. 16-16641, and *Lanovaz v. Twinings*
23 *North America, Inc.*, No. 16-16628, which address injunctive standing requirements;

24 WHEREAS both the *Briseno* petition and the *Bigelow* and *Twinings* appeals will provide
25 guidance on important class certification and summary standards judgment that this Court must
26 face in addressing Plaintiffs’ intended motions, and thus the same reasons that justified
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1 continuing the stay pending *Jones, Brazil, and Kosta* justify continuing the stay pending these
2 cases as well;

3 WHEREAS the *Briseno* petition is set for conference in September 2015, and the *Bigelow*
4 and *Twinings* appeals are being considered for the November and December Ninth Circuit oral
5 argument calendars, respectively;

6 WHEREAS the parties accordingly anticipate receiving the benefit of a decision in these
7 matters in the next few months, and thus believe the continued stay will be limited in nature;

8 WHEREAS the Parties stipulate that, within fourteen days of a decision on the *Briseno*
9 petition, or a decision in the *Bigelow* or *Twinings* appeals, the Parties will file a Joint Status
10 Statement indicating the Parties' positions with respect to the status of the stay;

11 WHEREAS the Parties request the extension of this stay for the purposes of judicial
12 economy to save both the Court's and the Parties' time and resources by avoiding potentially
13 unnecessary briefing on class certification and summary judgment, and do not request the
14 extension for any improper purpose;

15 IT IS HEREBY STIPULATED that, subject to this Court's approval, the stay in this case
16 is continued until a decision from the Supreme Court on the petition for a writ of certiorari in
17 *Briseno*—or a decision from the Ninth Circuit on the *Bigelow* or *Twinings* appeals—and that the
18 Parties will file a notice within fourteen days of a decision in any of these cases indicating their
19 position on the status of the stay.

20 IT IS SO STIPULATED.
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1 Dated: September 19, 2017

WILLIAM L. STERN
CLAUDIA M. VETESI
ALEXANDRA E. LAKS
LUCIA X. ROIBAL
MORRISON & FOERSTER LLP

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By: /s/ William L. Stern
WILLIAM L. STERN

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Attorneys for Defendant
AMAZON PRESERVATION
PARTNERS, INC. d/b/a ZOLA ACAI

8

9 Dated: September 19, 2017

STERLING STARNs
DON BARRETT, P.A.

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By: /s/ Sterling Starns
STERLING STARNs

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Attorneys for Plaintiffs
MARY SWEARINGEN and
ROBERT FIGY

15

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Dated: September 19, 2017

PIERCE GORE
PRATT & ASSOCIATES

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By: /s/ Pierce Gore
PIERCE GORE

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Attorneys for Plaintiffs
MARY SWEARINGEN and
ROBERT FIGY

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ECF ATTESTATION

I, William L. Stern, am the ECF User whose ID and password are being used to file the foregoing **JOINT STIPULATION AND [PROPOSED] ORDER EXTENDING STAY**. I hereby attest that Sterling Starns and Pierce Gore have concurred in this filing.

Dated: September 19, 2017

By: /s/ William L. Stern
William L. Stern

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: September 20, 2017



WILLIAM H. ORRICK
United States District Judge