

Oct-27-2006 10:13 From-

T-021 P.002/004 F-004

1 THE IMPACT FUND
Brad Seligman (SBN: 83838)
2 Jocelyn D. Larkin (SBN: 110817)
125 University Avenue
3 Berkeley, CA 94710
Telephone: (510) 845-3473
4 Facsimile: (510) 845-3654

SEYFARTH SHAW LLP
Kenwood C. Youmans (SBN: 68258)
David D. Kaduc (SBN: 113578)
2029 Century Park East, Suite 3300
Los Angeles, California 90067-3063
Telephone: (310) 277-7200
Facsimile: (310) 201-5219

5 LIEFF, CABRASER, HEIMANN
& DERNSTEIN, LLP
6 James M. Finberg (SBN: 114850)
Bill Lann Lee (SBN: 108452)
7 Embarcadero Center West
275 Battery Street, 30th Floor
8 San Francisco, CA 94111-3339
Telephone: (415) 956-1000
9 Facsimile: (415) 956-1008

SEYFARTH SHAW LLP
Gerald T. Maatman, Jr. (Admitted Pro Hac Vice)
55 East Monroe Street, Suite 4200
Chicago, Illinois 60603-5803
SEYFARTH SHAW LLP
Thomas J. Wybenga (Admitted Pro Hac Vice)
999 Lake Drive
Issaquah, Washington 98027
Telephone: (425) 313-6794
Facsimile: (425) 313-6922

10 DAVIS, COWELL & BOWE, LLP
Steve Sternerman (SBN: 067690)
11 Elizabeth A. Lawrence (SBN: 111781)
595 Market Street, #1400
12 San Francisco, CA 94105
Telephone: (415) 597-7200
13 Facsimile: (415) 597-7201

Attorneys for Defendant
Costco Wholesale Corporation

14 Attorneys for Plaintiffs
Shirley "Rae" Ellis, et al.

E-filing

FILED

OCT 31 2006

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 (SAN FRANCISCO DIVISION)

18 SHIRLEY "RAE" ELLIS, LEAH HORSTMAN)
19 and ELAINE SASAKI, on behalf of themselves)
and all others similarly situated,)

Case No. C04 3341 MIIP

Assigned to: Hon. Marilyn Hall Patel

20 Plaintiffs,)

STIPULATION AND [PROPOSED]
ORDER REGARDING PLAINTIFFS'
MOTION TO STRIKE
DECLARATIONS SUBMITTED BY
COSTCO

21 v.)

22 COSTCO WHOLESALE CORPORATION,)

23 Defendant.)
24
25
26
27

28 STIP, [PROPOSED] ORDER RE MOTION TO STRIKE DECLARATIONS
CASE NO. 04-3341 MHP

1 In opposition to plaintiffs' motion for class certification, Costco has submitted declarations
2 from individuals who are members of the class plaintiffs seek to have certified. Plaintiffs have
3 moved to strike these declarations and Costco has filed a motion requesting clarification of the
4 Court's order issued after a telephonic conference call held on October 10, 2006 and a further
5 conference call with the Court's clerk held on October 12, 2006.

6 The parties hereby stipulate as follows:

7 1. Language in putative class member declarations (including the heading "NO
8 GENDER DISCRIMINATION") stating the conclusion that the declarant or anyone else has
9 never experienced or observed gender discrimination or that Costco has never discriminated
10 against women or words to this effect is withdrawn and will not be considered by the Court.

11 2. Language in putative class member declarations that plaintiffs do not represent
12 the declarant's interests or that she does not wish to be represented by plaintiffs or their counsel
13 or words to that effect is withdrawn and will not be considered by the Court.

14 3. The remainder of the declarations may be cited for Rule 23 purposes only, and
15 neither side waives the right to argue the weight to be given to said declarations. In particular,
16 the declarations may not be used to impeach the testimony of any class member or to limit her
17 remedies or representation in this case.

18 4. A notice of this stipulation and order shall promptly be mailed to each affected
19 declarant once the Court approves it.

20 5. Plaintiffs withdraw their motion to strike and Costco withdraws its motion to
21 clarify.

22 6. The Court's minute order of October 10, 2006 is vacated as moot. Costco shall
23 not be required to produce any declarant for examination at the class certification hearing. The
24
25
26

27 -2-

28 STIP, [PROPOSED] ORDER RE MOTION TO STRIKE DECLARATIONS
CASE NO. 04-3341 MHP

Oct-27-2006 10:13 From-

T-021 P.004/004 F-004

1 hearings on plaintiffs' motion for class certification and Costco's motions to strike plaintiffs'
2 expert declarations shall be held on November 7, 2006 at 9:00 a.m.


3 7. This stipulation is the product of negotiation. No adverse inference may be drawn
4 from the withdrawal of the parties' motions or this stipulation.

5 8. The declaration of Joni Hammer may be filed nunc pro tunc to September 29,
6 2006, subject to the provisions of this stipulation and order.

8 IT IS SO STIPULATED.


9 DATED: October 27, 2006

THE IMPACT FUND

11 By 
12 Brad Seligman
13 Attorneys for Plaintiffs

14 DATED: October 27, 2006

SEYFARTH SHAW LLP


15 By 
16 David D. Kadue
17 Attorneys for Defendant

18 ORDER

19
20 GOOD CAUSE APPEARING, it is hereby ORDERED that the Parties shall comply with
21 the provisions of the above Stipulation regarding the compromise on Plaintiffs' motion to strike
22 declarations. *except that after the hearing the court may request*
testimony if it finds it necessary. The court further

23 IT IS SO ORDERED. *Understands that as a result of this*

24 DATED: October 31, 2006

25 
Hon. Martin Hall Patel
UNITED STATES DISTRICT JUDGE

26 *Stipulation so Rule 30(b) witness will be*
deposed with respect to preparation of a matter
related to the defendant's declarations in opposition
to this motion, except as may be ordered by
27 *Recmt.*
28 ~~STIP, [PROPOSED] ORDER RE MOTION TO STRIKE DECLARATIONS~~

CASE NO. 04-3341 MHP

LAI 6605137.1