

1 MICHELLE B. HEVERLY, Bar No. 178660  
2 KARIN M. COGBILL, Bar No. 244606  
3 KYLE K. MATARRESE, Bar No. 271689  
4 SOPHIA BEHNIA, Bar No. 289318  
5 LITTLER MENDELSON, P.C.  
6 650 California Street, 20th Floor  
7 San Francisco, CA 94108-2693  
8 Telephone: (415) 433-1940  
9 Facsimile: (415) 399-8490  
10 Email: mheverly@littler.com  
11 kcogbill@littler.com  
12 kmatarrrese@littler.com  
13 sbehnia@littler.com

14 ROBERT W. PRITCHARD, PA Bar No.  
15 76979 (*pro hac vice*)  
16 LITTLER MENDELSON, P.C.  
17 625 Liberty Avenue, 26th Floor  
18 Pittsburgh, PA 15222  
19 Telephone: (412) 201-7600  
20 Facsimile: (412) 456-2377  
21 Email: rpritchard@littler.com

Attorneys for Defendants

22 WEATHERFORD U.S. and  
23 WEATHERFORD ARTIFICIAL LIFT  
24 SYSTEMS, LLC.

HERNALDO J. BALODANO, Bar No. 222286  
hjb@bbemploymentlaw.com  
ERICA FLORES BALODANO, Bar No. 222331  
efb@bbemploymentlaw.com  
BALODANO & BALODANO LLP  
1411 Marsh Street, Suite 102  
San Luis Obispo, CA 93401  
Telephone: 805.322.3412  
Fax No.: 805.322.3413

Co-Counsel for Plaintiff  
STEPHANIE VEGA

PAUL K. HAINES, Bar No. 248226  
phaines@bollow.com  
FLETCHER W. SCHMIDT, Bar No. 286462  
fschmidt@bollow.com  
BOREN, OSHER & LUFTMAN LLP  
222 N. Sepulveda Blvd., Suite 2222  
El Segundo, CA 90245  
Telephone: 323.937.9900  
Fax No.: 323.937-9910

Co-Counsel for Plaintiff  
STEPHANIE VEGA

15 UNITED STATES DISTRICT COURT  
16 EASTERN DISTRICT OF CALIFORNIA

18 STEPHANIE A. VEGA, as an individual,  
19 and on behalf of all others similarly  
20 situated,

Plaintiff,

v.

22 WEATHERFORD U.S., LIMITED  
23 PARTNERSHIP, a Louisiana limited  
24 partnership; WEATHERFORD  
25 ARTIFICIAL LIFT SYSTEMS, LLC, a  
26 Delaware limited liability company; and  
27 DOES 3 through 10,

Defendants.

Case No. 14-1790 JLT

**STIPULATION WITHDRAWING  
MOTION TO DISMISS, DISMISSING  
SECOND CAUSE OF ACTION AS TO  
ROUNDING, DIMISSING THIRD CAUSE  
OF ACTION, AND GRANTING MOTION  
FOR CONDITIONAL CERTIFICATION;  
[PROPOSED] ORDER**

(Docs. 31, 33, 37)

1 Plaintiff STEPHANIE VEGA (“Plaintiff”) and Defendants WEATHERFORD U.S. AND  
2 WEATHERFORD ARTIFICIAL LIFT SYSTEMS, LLC (collectively “Defendants”) (collectively,  
3 “the Parties”), by and through their respective counsel, stipulate and agree to the following:

4 WHEREAS, Plaintiff filed her First Amended Complaint (“FAC”) on March 17, 2015 (Dkt.  
5 26);

6 WHEREAS, Plaintiff filed a Motion for Conditional Certification on April 3, 2015 (Dkt. 31);

7 WHEREAS, Defendants filed a Motion to Dismiss Plaintiff’s FAC on April 14, 2015 (Dkt.  
8 33);

9 WHEREAS, the Parties have met and conferred regarding Defendants’ Motion to Dismiss  
10 and Plaintiff’s Motion for Conditional Certification;

11 WHEREAS, on April 14, 2015, Defendants provided Plaintiff with evidence that her time  
12 records were not rounded, but made no representations as to the other non-exempt employees of the  
13 putative minimum wage and overtime classes;

14 WHEREAS, Plaintiff has agreed to withdraw and to not pursue her “rounding” claim as  
15 alleged in the FAC. Specifically, Plaintiff agrees, through this Stipulation and Order, to dismiss her  
16 Third Claim for Minimum Wage violations under California state law (FAC ¶¶ 42-46), as that claim  
17 is based solely on a rounding theory of liability. The Stipulated Dismissal is with prejudice as to  
18 Plaintiff and without prejudice as to any other putative class member. With respect to Plaintiff’s  
19 First Claim for Failure To Pay Overtime Wages, Plaintiff agrees, through this Stipulation and Order,  
20 to dismiss any claim founded on a rounding theory of liability (FAC ¶¶15, 30 at 14:3-7). The  
21 Stipulated Dismissal is with prejudice as to Plaintiff and without prejudice as to any other putative  
22 class member. Further, with respect to Plaintiff’s Second Claim for FLSA violations, Plaintiff  
23 agrees, through this Stipulation and Order, to dismiss any portion of that claim founded on a  
24 rounding theory of liability (FAC ¶¶15, 38). The Stipulated Dismissal is with prejudice as to  
25 Plaintiff and without prejudice as to any other putative class member.

26 WHEREAS, Plaintiff confirms that her only remaining FLSA claim in this action is her  
27 claim that Defendants underpaid overtime wages by miscalculating the regular rate of pay by failing  
28

1 to incorporate Wellness Bonuses in the regular rate for purposes of calculating overtime under the  
2 FLSA (FAC ¶¶ 13-14, 34-41).

3 WHEREAS, in light of the foregoing Stipulated Dismissals, the Parties agree that  
4 Defendants' pending Motion to Dismiss the "rounding" claims on the grounds that they were not  
5 adequately pled is rendered moot and is hereby withdrawn.

6 WHEREAS, the Parties hereby stipulate to Conditional Certification under the FLSA, 29  
7 U.S.C. § 216(b), on the terms set forth in this stipulation. While Defendants do not concede that  
8 Plaintiff and the members of the putative collective action are "similarly situated" pursuant to 29  
9 U.S.C. § 216(b) or that the case is properly certified for trial or other dispositive purposes, the  
10 Parties have agreed to "first step" conditional certification of current or former non-exempt  
11 employees of Defendants throughout the United States who received Wellness Bonus(es) at any time  
12 on or after March 31, 2012 and who also earned overtime compensation during the year  
13 corresponding to the Wellness Bonus(es). Such eligible individuals ("potential opt-in plaintiffs")  
14 shall be given notice of this action and an opportunity to file written consents to join this action as  
15 party plaintiffs in accordance with the provisions of 29 U.S.C. § 216(b) as follows:

16 1. Within ten (10) business days following the Court's approval of this Stipulation and  
17 Order, Defendants will provide to the claims administrator to be designated by the Parties, an Excel  
18 spreadsheet listing the names and last known mailing addresses of potential opt-in plaintiffs.

19 2. Within ten (10) days following the claims administrator's receipt of the list, the  
20 claims administrator shall mail the notice and consent form (in the forms attached hereto as Exhibits  
21 A and Exhibit B respectively). The notice and consent form shall be mailed by First Class U.S.  
22 Mail.

23 3. If notice is returned as undeliverable as to a potential opt-in plaintiff, the following  
24 procedure, which will provide sufficient time for such individual to meet the deadline for filing  
25 written consents to join this litigation set forth in Paragraph 9, shall be followed to permit one re-  
26 mailing to such individual whose notices were returned as undeliverable:

27 a. Within five (5) business days of receipt by the claims administrator of  
28

1 information that a notice mailed to a potential opt-in plaintiff was returned as  
2 undeliverable, the claims administrator shall conduct a search of the National Change  
3 of Address database and shall re-mail the returned notice to the new address (if  
4 located), provided that such re-mailing can take place prior to the deadline for filing  
5 written consents to join this litigation as set forth in Paragraph 6. The individual will  
6 then be given until the deadline set forth in Paragraph 6, to file a written consent to  
7 join the litigation.

8 b. The deadline for filing written consents to join this litigation set forth in  
9 Paragraph 6 shall only be extended by written agreement of Plaintiff and Defendants  
10 or by Court order for good cause shown.

11 4. Thirty (30) days after the claims administrator mails the notice and consent form, the  
12 claims administrator shall mail a reminder postcard (in the form attached hereto as Exhibit C), to  
13 those individuals who have not yet returned a notice and consent form to the claims administrator.  
14 No reminder postcard shall be mailed to those individuals who have already submitted a consent  
15 form or have expressed the affirmative intent to opt-out of the class.

16 5. Although the Parties have agreed to a three-year notice period, Defendant is not  
17 agreeing to a three-year statute of limitations on any Plaintiff or "opt in" Plaintiff's claim. *See* 29  
18 U.S.C. § 255(a). Defendants reserve all rights with respect to the Statute of Limitations (29 U.S.C. §  
19 255(a)).

20 6. The deadline for potential opt-in plaintiffs to return to the claims administrator  
21 written consents to join this litigation shall be seventy-five (75) days from the date on which the  
22 notice and consent form are mailed as set forth in paragraph 2 above. In the event that a notice and  
23 consent form are re-mailed pursuant to the procedures as set forth in paragraph 3 above, the  
24 individual shall have forty-five (45) days from the date of re-mailing or to the original consent  
25 deadline (seventy-five days from the original mailing), whichever is later, to consent to join the  
26 action.

27 7. Within five (5) business days of the closure of the claims period, the claims  
28

1 administrator shall provide to both parties a list of those individuals who have submitted a timely  
2 and valid consent to join the lawsuit, along with the complete contact information for those  
3 individuals including, to the extent available, telephone numbers, email addresses, and home  
4 addresses.

5 NOW THEREFORE, THE PARTIES, THROUGH THEIR RESPECTIVE COUNSEL OF  
6 RECORD, HEREBY STIPULATE AND AGREE AS FOLLOWS:

7 a. That Plaintiff hereby withdraws and will not pursue her “rounding” claim as alleged  
8 in the FAC;

9 b. Plaintiff hereby dismisses her Third Claim for Minimum Wage violations under  
10 California state law (FAC ¶¶ 42-46), as that claim is based solely on a rounding theory of liability.  
11 The Stipulated Dismissal is with prejudice as to Plaintiff and without prejudice as to any other  
12 putative class member.

13 c. With respect to Plaintiff’s First Claim for Failure To Pay Overtime Wages, Plaintiff  
14 hereby dismisses any portion of that claim founded on a rounding theory of liability (FAC ¶¶15, 30  
15 at 14:3-7). The Stipulated Dismissal is with prejudice as to Plaintiff and without prejudice as to any  
16 other putative class member.

17 d. With respect to Plaintiff’s Second Claim for FLSA violations, Plaintiff hereby  
18 dismisses any portion of that claim founded on a rounding theory of liability (FAC ¶¶15, 38). The  
19 Stipulated Dismissal is with prejudice as to Plaintiff and without prejudice as to any other putative  
20 class member.

21 e. Plaintiff hereby confirms that her only remaining FLSA claim in this action is her  
22 claim that Defendants underpaid overtime wages by miscalculating the regular rate of pay by failing  
23 to incorporate Wellness Bonuses in the regular rate for purposes of calculating overtime under the  
24 FLSA (FAC ¶¶ 13-14, 34-41).

25 f. That in light of the foregoing Stipulated Dismissals, the Parties agree that  
26 Defendants’ pending Motion to Dismiss the “rounding” claims on the grounds that they were not  
27 adequately pled is rendered moot and is hereby withdrawn; and  
28

1 g. That Plaintiff's Motion for Conditional Certification is GRANTED in part and the  
2 parties stipulate to conditional certification of the following class:

3 All current and former non-exempt hourly employees of Weatherford U.S. Partnership and  
4 Weatherford Artificial Lift Systems LLC, throughout the United States who received  
5 wellness bonuses and earned overtime wages during the corresponding year during which  
6 these wellness bonuses were earned, but were not included in the regular rate of pay for  
7 overtime purposes, from March 31, 2012 to the present.

8 The parties respectfully request that the Court approve the parties' stipulation regarding  
9 Plaintiff's Motion for Conditional Certification (Dkt. 31) and the foregoing notice and consent  
10 procedures.

11 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

12  
13 DATED: April 30, 2015

\_\_\_\_\_  
Attorneys for Plaintiff

14  
15 DATED: April 30, 2015

\_\_\_\_\_  
*/s/ Sophia Behnia*  
Attorneys for Defendant

16  
17 **ORDER**

18 Based upon the stipulation of the parties, the Court **ORDERS**:

19 1. The stipulation to grant conditional class certification, as set forth above, is

20 **GRANTED**;

21 2. The notice, consent form and reminder notice, attached to the stipulation<sup>1</sup> (Doc. 37)  
22 as Exhibits A, B and C, are **APPROVED**;

23 3. The motion to dismiss (Doc. 33) is **WITHDRAWN**;

24 ///

25 ///

26 ///

27 \_\_\_\_\_  
28 <sup>1</sup> The exhibits were not attached to the proposed order. However, the Court has reviewed the documents filed with the stipulation.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

4. The motion to certify class (Doc. 31) is terminated.

IT IS SO ORDERED.

Dated: May 1, 2015

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE