

1 overtime wages to various current and former employees. On March 16, 2007,
2 the plaintiffs filed consent to join forms for 55 opt-in plaintiffs (doc. #21). On
3 August 35, 2007, the Court entered an order (doc. #35), based on the parties'
4 stipulation, that set forth the opt-in procedure for "any potential Plaintiff who
5 wishes to join this lawsuit," which included a stipulated format for the consent to
6 join forms.

7 The defendants now argue that the stipulated order meant that each of
8 those 55 persons who previously signed consent to join forms had to sign the two
9 Court-approved consent forms in order to be considered an opt-in plaintiff, and
10 that since none of those 55 persons did so prior to the conclusion of the opt-in
11 period, their previous consent forms should be stricken and they should not be
12 considered to be opt-in plaintiffs.³ Under the defendants' view, the only proper
13 plaintiffs to this action are the remaining named plaintiffs and the three opt-in
14 plaintiffs who timely and properly filed the Court-approved consent to join forms.
15 The plaintiffs argue that it was their understanding that the stipulation, drafted by
16 the defendants' counsel, was meant to apply only to persons who opted-in after
17 the entry of the Court's order and was not meant to apply to the 55 persons who
18 had already opted-in.

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21 The defendants also argue that six of the 55 opt-in plaintiffs, *i.e.* Juan
22 Campa R., Manuel Campa R., Cesar Perez T., Juan Manuel Ramirez, Emigdio A.
23 Perez Torres, and Martin Tovar, should be stricken on the separate ground that
24 their consent to join forms refer to claims against non-party Bean Drywall, Inc.
25 Since the plaintiffs concede that the consent forms for these six opt-in plaintiffs
26 were filed in error in this action, the Court will strike them and dismiss those
persons as opt-in plaintiffs. The Court wishes to note, however, that it finds it to
be inexplicable why the parties' counsel could not have informally resolved such
an obvious error simply by communicating with each other and stipulating to the
withdrawal of those persons from this action.

1 The Court agrees with the plaintiffs as it was not the Court's intention that
2 its August 2nd order should apply to anyone who had opted-in prior to the
3 issuance of the order. That order, by its terms, applied only to those current and
4 former employees who wished to join this action. Under the FLSA, an employee
5 becomes a party plaintiff to a collective action once he gives his consent in writing
6 to becoming a party and that consent is filed with the court in which the action is
7 brought. 29 U.S.C. § 216(b). Since the consent to join forms of the 55 persons
8 at issue were filed on March 16, 2007, those persons became opt-in plaintiffs as
9 of that date, and, as such, they were no longer "potential" plaintiffs covered by the
10 Court's August 2nd order.⁴

11 The defendants also argue that six of the 55 prior opt-in consents are
12 invalid because the signatories are allegedly Spanish-speaking individuals who
13 did not understand the English language forms they signed.⁵ The Court declines
14 at this time to dismiss any of these individuals from this action due to the
15 incompleteness of the record. If any of these individuals believe that they were
16 duped into signing the consent to join forms, they may either voluntarily withdraw
17 their consents, or the defendants may attempt through an appropriate evidentiary
18 process to show that these individuals did not in fact knowingly seek to join this
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21 As the defendants recognize, the FLSA does not prohibit employees
22 from signing consent to join forms prior to the entry of a court order facilitating
23 notice of the collective action. See e.g., Wertheim v. State of Arizona, 1993 WL
24 603552 (D.Ariz. Sept. 30, 1993) (Court rejected employer's argument that the
25 FLSA forbids the filing of consent to join forms prior to the court authorizing
26 notice.)

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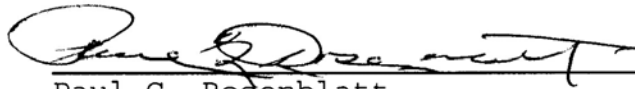
25 These individuals are Efrain A. Lopez, Ramon Velasquez, Arriosto
26 Burguett, Ricardo Leyva, Jose Arradondo, and Arturo Rangel.

1 action as opt-in plaintiffs.⁶

2 Therefore,

3 IT IS ORDERED that the defendants' Motion to Strike Consent to Join
4 Forms Filed March 16, 2007 and Clarify the Number of Joined Plaintiffs (doc.
5 #54) is granted in part and denied in part. The motion is granted to the extent
6 that the consent to join forms of opt-in plaintiffs Juan Campa R., Manuel Campa
7 R., Cesar Perez T., Juan Manuel Ramirez, Emigdio A. Perez Torres, and Martin
8 Tovar (Exhibits J, K, PP, QQ, AAA, and BBB, respectively, to doc. #21-2) are
9 stricken from the record and that these persons are dismissed as opt-in plaintiffs
10 in this action, and the motion is denied in all other respects.

11 DATED this 7th day of October, 2008.

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14 Paul G. Rosenblatt
15 United States District Judge
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25 The defendants' additional argument that Trinidad Carlos Hernandez
26 should be dismissed as an opt-in plaintiff was mooted by the stipulated dismissal
of Mr. Hernandez on June 30, 2008 (doc. #93).