

1 (COUNSEL LISTED ON THE FOLLOWING PAGE)

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION**

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12 JOSEPH TERRAS, and BOBBY
13 TYLER, as individual California
14 residents, on behalf of themselves and
all others similarly situated,

15 Plaintiffs,

16 vs.

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18 TRINITY RIVER LUMBER
19 COMPANY, a California corporation;
and DOES 1 through 100, inclusive,

20 Defendant.

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Case No.: 2:14-cv-02277-MCE-CMK

**JOINT STIPULATION AND ORDER
FOR PLAINTIFFS TO FILE THEIR
SECOND AMENDED COMPLAINT**

**[Fed. R. Civ. P. 15; E.D. Cal. Local R.
137, 143 and 220]**

Hon. Morrison C. England, Jr.

Date Filed: September 30, 2014

Trial Date: NONE SET

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21 *Attorneys for Defendant*

22 *Trinity River Lumber Company*

1 WHEREAS, on September 30, 2014, Plaintiffs JOSEPH TERRAS, and
2 BOBBY TYLER (collectively “Plaintiffs”), as individual California residents, on
3 behalf of themselves and all others similarly situated, filed a Complaint asserting a
4 hybrid putative class and collective action against Defendant TRINITY RIVER
5 LUMBER COMPANY (“Defendant”), a California corporation.

6 WHEREAS, on December 15, 2014, Defendant filed its Motion to Dismiss,
7 For A More Definite Statement and to Strike the Complaint.

8 WHEREAS, on February 5, 2015, Plaintiffs and Defendant (the “Parties”)
9 filed A Stipulation and Order for Plaintiffs To File Their First Amended
10 Complaint.

11 WHEREAS, on February 11, 2015, Plaintiffs filed their First Amended
12 Complaint.

13 WHEREAS, on February 23, 2015, Defendant filed its Motion to Dismiss,
14 For A More Definite Statement and to Strike the First Amended Complaint.

15 WHEREAS, on March 16, 2015 Plaintiffs files a Second Amended
16 Complaint without leave of court instead of opposing Defendant’s Motion to
17 Dismiss the First Amended Complaint.

18 WHEREAS, on March 27, 2015 the Court issued a minute order striking
19 Plaintiffs’ Second Amended Complaint. Plaintiffs’ First Amended Complaint is
20 currently the operative complaint.

21 WHEREAS, although the Parties have been working together in a good faith
22 attempt to resolve the issues raised by Defendant’s Motions and Plaintiffs have
23 prepared a draft of their Second Amended Complaint, Defendant contends that the
24 Second Amended Complaint still has many of the fatal deficiencies raised in its
25 Motion to Dismiss the First Amended Complaint, including the failure to allege
26 facts required for Plaintiffs’ claims and allegations. The Parties are still working
27 towards resolving those disputed issues prior to the filing of the Second Amended
28 Complaint.

1 WHEREAS, the Parties agree that the Second Amended Complaint will be
2 promptly filed, and that Defendant shall have the right to file a response to the
3 Second Amended Complaint to raise any deficiencies it claims may still exist as to
4 the Second Amended Complaint and any subsequent amended pleading.

5 THEREFORE, pursuant to the Federal Rules of Civil Procedure Rule 15 and
6 Civil Local Rules 220, 143 and 137, Plaintiffs and Defendant, through their
7 undersigned counsel, hereby stipulate and agree to the following:

8 1. Plaintiffs shall promptly file their Second Amended Complaint The
9 Second Amended Complaint to be filed is attached hereto as Exhibit A; and

10 2. Defendant agrees to withdraw its Motion to Dismiss, for a More
11 Definite Statement and to Strike Plaintiffs' First Amended Complaint, provided
12 that Plaintiffs promptly file their Second Amended Complaint. Defendant retains
13 the right to file a response, including another appropriate motion, to the Second
14 Amended Complaint. Defendant shall have 14 days after service of the Second
15 Amended Complaint to file its response and/or another motion thereto.

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1 AGREED TO BY:

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3 DATED: May 19, 2015 JOSE GARAY, APLC

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5 By: _____/s/_____
6 JOSE GARAY, Attorney for Plaintiffs JOSEPH
7 TERRAS and BOBBY TYLER

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9 DATED: May 15, 2015 GURNEE MASON & FORESTIERE LLP

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11 By: _____/s/_____
12 Steven H. Gurnee
13 Nicholas P. Forestiere
14 Attorneys for Defendant
15 Trinity River Lumber Company

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1 **ORDER**

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3 In accordance with the foregoing stipulation, and good cause appearing,

4 Plaintiffs have leave to promptly file a Second Amended Complaint. Upon the

5 filing of the Second Amended Complaint, Defendant’s Motion to Dismiss, Motion

6 for a More Definite Statement and Motion to Strike Plaintiffs’ First Amended

7 Complaint (ECF No. 23) is dropped without prejudice to Defendant’s filing such a

8 motion to the Second Amended Complaint. Defendants shall have 14 days after

9 being served with the Second Amended Complaint to file its response to the

10 Second Amended Complaint.


11 Given this stipulation and order, the order to show cause hearing scheduled

12 for May 28, 2015 by Minute Order issued May 6, 2015 (ECF No. 26) is hereby

13 vacated.

14 IT IS SO ORDERED.

15 Dated: May 26, 2015

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18 MORRISON C. ENGLAND, JR., CHIEF JUDGE

19 UNITED STATES DISTRICT COURT

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