

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

HOWARD DAVID PROVINE, etc.,

No. C 11-903 SI

Plaintiffs,

**ORDER DIRECTING FURTHER
BRIEFING REGARDING DE MINIMIS
DEFENSE**

v.

OFFICE DEPOT INC.,

Defendant.


Citing 29 C.F.R. § 548.3(e), defendant asserts that even if Bravo Awards are non-discretionary, the awards were nevertheless properly excluded from plaintiff’s regular rate of pay because the total amount at issue is less than fifty cents. Plaintiff contends that 29 C.F.R. § 548.3(e) is inapplicable to plaintiff’s claims because, *inter alia*, that regulation only applies to piece rate workers. 29 C.F.R. § 548.1 states that Section 548.3 only applies to the calculation of overtime pay “in accordance with Section 7(g)(3) of the Fair Labor Standards Act.” Section 7(g) of the FLSA is titled “Employment at Piece Rates.” 29 U.S.C. § 207(g)(3).

Accordingly, contrary to the arguments in defendant’s reply, it appears from the plain language of the statute and the regulations that 29 C.F.R. § 548.3(e) is inapplicable to this case. The Court finds that further briefing on the *de minimis* defense would be of assistance in resolving defendant’s motion for summary judgment. The Court directs defendant to file a supplemental brief of no more than 5 pages

1 by **May 2, 2012**, and plaintiff may file a supplemental response of no more than 5 pages by **May 9,**
2 **2012**. The Court will take the matter under submission at that time.

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4 **IT IS SO ORDERED.**

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6 Dated: April 25, 2012



SUSAN ILLSTON
UNITED STATES DISTRICT JUDGE