

FILED

UNITED STATES COURT OF APPEALS

MAY 07 2013

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

HOWARD DAVID PROVINE,
individually and on behalf of other persons
similarly situated,

Plaintiff - Respondent,

v.

OFFICE DEPOT, INC.,

Defendant - Petitioner.

No. 12-80218

D.C. No. 3:11-cv-00903-SI
Northern District of California,
San Francisco

ORDER

Pursuant to the stipulation of the parties, this petition is dismissed without prejudice to reinstatement in the event the district court declines to approve respondent's motions for preliminary or final approval of the class action settlement or upon any appeal of the final approval order.

Petitioner may file a motion to reinstate the petition with this court within 28 days of an order by the district court denying a motion to approve the parties' settlement or upon an appeal of the settlement order.

In the absence of a timely motion for reinstatement, each party shall bear its own fees and costs on appeal.

KN/MOATT

This order served on the district court shall act as and for the mandate of this court.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Kamon Naddaf
Deputy Clerk