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Attorneys for *Plaintiffs*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HAROLD SMALLEY, et al.,

 Plaintiffs,
 v.
 HOME DEPOT U.S.A., INC.,

 Defendant.

Case No. 11-cv-02951-JCS

**STIPULATION AND ~~PROPOSED~~
 ORDER ALLOWING PLAINTIFFS TO
 FILE AN AMENDED COMPLAINT**

Honorable Joseph C. Spero

WHEREAS, on June 15, 2011, plaintiffs filed this action against defendant Home Depot, U.S.A., Inc. alleging claims for overtime under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. (Count I) and under state overtime laws of Alaska (Count II), California (Count III), Montana (Count IV), Nevada (Count V), and Oregon (Count VI).

WHEREAS, Home Depot's response to plaintiffs' complaint is due on December 5, 2011.

WHEREAS, the parties have conferred and agree that certain plaintiffs' claim or claims are time-barred.

WHEREAS the parties further agree that plaintiffs should amend their complaint to limit the

1 various causes of action to those specific plaintiffs whose claims are not barred by the applicable
2 statute of limitations and remove from the complaint plaintiffs whom the parties have agreed to dismiss
3 from this action.

4 IT IS HEREBY STIPULATED by and between the parties through their designated counsel
5 that plaintiffs may file the attached amended complaint pursuant to Fed. R. Civ. P. 15(a)(2), and that
6 pursuant to Fed. R. Civ. P. 15(a)(3), defendant's response shall be due 14 days from the date of the
7 filing of plaintiffs' amended complaint.

8 IT IS SO STIPULATED.

9 Dated: December 2, 2011

WEXLER WALLACE LLP

10
11 By: /s/ Caitlin Duffy
Caitlin Duffy

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20 Attorneys for *Plaintiffs*

21
22 Dated: December 2, 2011

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23 By: /s/ Donna M. Mezas
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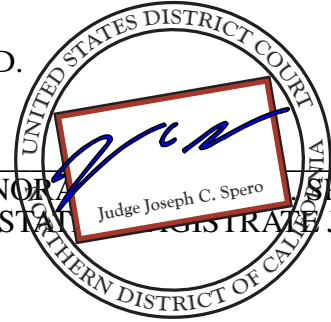
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ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: 12/5/11

THE HONORABLE JUDGE JOSEPH C. SPERO
UNITED STATES DISTRICT JUDGE



1 **PROOF OF SERVICE**

2 I, Caitlin Duffy, am employed in the County of New York, State of New York. I am over the
3 age of 18 and not a party to the within action; my business address is: 32 East 57th Street, 12th Floor,
New York, New York 10022. On December 2, 2011, I served the foregoing document(s) described as:

4 **STIPULATION AND [PROPOSED] ORDER ALLOWING PLAINTIFFS TO FILE AN**
5 **AMENDED COMPLAINT AND EXHIBIT THERETO**

6 on the interested party(ies) below, using the following means:

7 SEE ATTACHED SERVICE LIST

8 ☐ BY UNITED STATES MAIL I enclosed the documents in a sealed envelope or package addressed
9 to the respective address(es) of the party(ies) stated above and placed the envelope(s) for collection and
10 mailing, following our ordinary business practices. I am readily familiar with the firm's practice of
collection and processing correspondence for mailing. On the same day that correspondence is placed
11 for collection and mailing, it is deposited in the ordinary course of business with the United States
Postal Service, in a sealed envelope with postage fully prepaid at Sacramento, California.

12 ☐ BY OVERNIGHT DELIVERY I enclosed the document(s) in an envelope or package provided by
13 an overnight delivery carrier and addressed to the respective address(es) of the party(ies) stated above.
I placed the envelope or package for collection and overnight delivery at an office or a regularly
utilized drop box of the overnight delivery carrier.

14 ☐ BY FAX Based on an agreement of the parties to accept service by fax transmission, I faxed the
15 documents to the respective fax number(s) of the party(ies) as stated above. No error was reported by
the fax machine that I used. A copy of the record of the fax transmission(s), which I printed out, is
16 attached.

17 ☒ BY ELECTRONIC MAIL OR ELECTRONIC TRANSMISSION. Based on a court order or an
18 agreement of the parties to accept service by e-mail or electronic transmission, I caused the
document(s) to be sent to the respective e-mail address(es) of the party(ies) as stated above. I did not
19 receive, within a reasonable time after the transmission, any electronic message or other indication that
the transmission was unsuccessful.

20 ☒ (STATE) I declare under penalty of perjury under the laws of the State of New York that the
foregoing is true and correct.

21 ☐ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at
22 whose direction the service was made.

23 Executed on December 2, 2011 at New York, New York

24 /s/ Caitlin Duffy
25 Caitlin Duffy

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