

JAMES M. FINBERG (SBN 114850)  
 EVE H. CERVANTEZ (SBN 164709)  
 CONNIE K. CHAN (SBN 284230)  
 ALTSHULER BERZON LLP  
 177 Post Street, Suite 300  
 San Francisco, CA 94108  
 Telephone: (415) 421-7151  
 Facsimile: (415) 362-8064  
 Email: jfinberg@altshulerberzon.com  
 Email: ecervantez@altshulerberzon.com  
 Email: cchan@altshulerberzon.com

ROBERT S. NELSON (SBN 220984)  
 NELSON LAW GROUP  
 26 West Portal Avenue, Suite 1  
 San Francisco, CA 94127  
 (415) 702-9869 (phone)  
 (415) 592-8671 (fax)  
 Email: rnelson@nelsonlawgroup.net

Attorneys for Plaintiffs NICK CANCELLA,  
 GREG JEWELL, DAVID BEAUSOLEIL,  
 PATRICK SWEENEY, LUCIO FLORES,  
 THOMAS JENNISON, MICHAEL  
 EMANUEL, ROBERT BIRCH, KENNETH  
 FORBES, BRIAN O'NEIL, and  
 FREDERICK SIMON,  
 and all others similarly situated  
 [additional counsel on signature page]

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

NICK CANCELLA, GREG JEWELL, DAVID  
 BEAUSOLEIL, PATRICK SWEENEY,  
 LUCIO FLORES, THOMAS JENNISON,  
 MICHAEL EMANUEL, ROBERT BIRCH,  
 KENNETH FORBES, BRIAN O'NEIL, and  
 FREDERICK SIMON, on behalf of  
 themselves and all others similarly situated,

Plaintiffs,

v.

ECOLAB, INC., a corporation,

Defendant.

Case No. CV 12-03001 CRB

**STIPULATION AND [PROPOSED]  
 ORDER REGARDING FLSA  
 COLLECTIVE ACTION OPT-INS**

Date: n/a

Time: n/a

Ctrm.: 6

Judge: Hon. Charles R. Breyer

**Complaint Filed: June 11, 2012**

**Trial Date: Not Set**

CHAMBER'S COPY

RECEIVED APR 02 2014

1 STEVEN G. ZIEFF (SBN: 84222)  
DAVID A. LOWE (SBN: 178811)  
2 JOHN T. MULLAN (SBN: 221149)  
CHAYA M. MANDELBAUM (SBN 239084)  
3 RUDY, EXELROD, ZIEFF & LOWE, L.L.P.  
351 California Street, Suite 700  
4 San Francisco, CA 94104  
Telephone: (415) 434-9800  
5 Facsimile: (415) 434-0513  
Email: sgz@rezlaw.com  
6 Email: dal@rezlaw.com  
Email: jtm@rezlaw.com

7  
TODD F. JACKSON (SBN 202598)  
8 DARIN D. RANAHAN (SBN 273532)  
LEWIS, FEINBERG, LEE, RENAHER  
9 & JACKSON, P.C.  
476 9th Street  
10 Oakland, CA 94607  
Telephone: (510) 839-6824  
11 Facsimile: (510) 839-7839  
Email: tjackson@lewisfeinberg.com

12  
MICHAEL J.D. SWEENEY (admitted pro hac vice)  
13 GETMAN & SWEENEY, PLLC  
9 Paradies Lane  
14 New Paltz, NY 12561  
Telephone: (845) 255-9370  
15 Facsimile: (845) 255-8649  
Email: msweeney@getmansweeney.com

16  
JUSTIN M. SWARTZ\*  
17 MOLLY BROOKS\*  
OUTTEN & GOLDEN LLP  
18 3 Park Avenue, 29th Floor  
New York, NY 10016  
19 Telephone: (212) 245-1000  
Facsimile: (646) 509-2057  
20 Email: jms@outtengolden.com  
Email: mb@outtengolden.com

21  
Attorneys for Plaintiffs NICK CANCELLA,  
22 DAVID BEAUSOLEIL, PATRICK  
SWEENEY, THOMAS JENNISON,  
23 MICHAEL EMANUEL, ROBERT BIRCH,  
KENNETH FORBES, BRIAN O'NEIL,  
24 FREDERICK SIMON, and all others similarly  
situated

25  
26 *\*Pro Hac Vice Application Forthcoming*  
27  
28

1 Plaintiffs NICK CANCELLA, GREG JEWELL; DAVE BEAUSOLEIL; and PATRICK  
2 SWEENEY ("Plaintiffs") and Defendant ECOLAB INC. ("Ecolab" or "Defendant"), herein  
3 referred to collectively as the "Parties," hereby stipulate, by and through their respective  
4 attorneys of record, as follows:

5 WHEREAS, on August 2, 2013, the Court granted Plaintiffs' Motion for Conditional  
6 Collective Action Certification, *Hoffmann-La Roche* Notice, and Equitable Tolling (Dkt. No.  
7 66), granting all putative FLSA Collective Action Members 90 days from the date of the mailing  
8 of the Court-approved *Hoffmann-La Roche* Notice to mail their executed Consent to Join forms  
9 to Plaintiffs' counsel, and extending equitable tolling for all putative FLSA Collective Action  
10 Members to the conclusion of those 90 days (Dkt. No. 85);

11 WHEREAS, pursuant to the Court's August 2 order, Plaintiffs retained a third-party  
12 Notice Administrator to be responsible for mailing the *Hoffmann-La Roche* Notice to and  
13 receiving executed Consent to Join forms from putative FLSA Collective Action Members  
14 identified by Ecolab;

15 WHEREAS, pursuant to the Court's August 2 order, Ecolab provided Plaintiffs with  
16 contact information for 1,921 putative FLSA Collective Action Members on August 12, 2013;

17 WHEREAS, on August 27, 2013, the Notice Administrator mailed a copy of the Court-  
18 approved *Hoffmann-La Roche* Notice and a blank Consent to Join form to each of the 1,921  
19 individuals identified by Ecolab, and for those individuals, the opt-in deadline was November 25,  
20 2013 by fax or mail postmarked that date, and the filing deadline was December 25, 2013;

21 WHEREAS, on September 17, 2013, Ecolab provided Plaintiffs with contact information  
22 for an additional 39 putative FLSA Collective Action Members not previously identified;

23 WHEREAS, on September 19, 2013, the Notice Administrator mailed a copy of the  
24 Court-approved *Hoffmann-La Roche* Notice and a blank Consent to Join form to each of the 39  
25 individuals identified by Ecolab on September 17, and for those individuals, the opt-in deadline  
26 was December 18, 2013 by fax or mail postmarked that date, and the filing deadline was January  
27 17, 2014;

1 WHEREAS, Anthony Dixon submitted his signed consent form by fax on November 26,  
2 2013, and his form was filed with the Court on November 27, 2013 (*see* Dkt. No. 100);

3 WHEREAS, Thurman Brown submitted his signed consent form dated November 20,  
4 2013 by fax on December 3, 2013, and his form was filed with the Court on December 6, 2013  
5 (*see* Dkt. No. 101);

6 WHEREAS, Damien Darnell Sears Sr. submitted his signed consent form dated August  
7 30, 2013 by mail, which was not received by the Notice Administrator until December 9, 2013  
8 with no legible postmark, and his form was filed with the Court on December 9, 2013 (*see* Dkt.  
9 No. 102);

10 WHEREAS, Billy Medina Jr. moved and therefore did not receive the mailing from the  
11 Notice Administrator because the address Ecolab had provided was outdated, and submitted his  
12 signed consent form to Plaintiffs' counsel on December 12, 2013 upon learning about the lawsuit  
13 from others; and his consent form was filed with the Court on December 13, 2013 (*see* Dkt. No.  
14 103);

15 WHEREAS, Edward Spieler submitted his signed consent form dated November 1, 2013  
16 by mail, which was not received by the Notice Administrator until January 16, 2014 with no  
17 legible postmark, and his form was filed with the Court on January 16, 2014 (*see* Dkt. No. 105);

18 WHEREAS, Robert Liguori submitted his signed consent form to Plaintiffs' counsel on  
19 February 10, 2014, and his form was filed with the Court on February 11, 2014 (*see* Dkt. No.  
20 110); and

21 WHEREAS, Bryon Johnson never received his notice in the mail and only recently  
22 learned of the lawsuit from other Service Specialists, and promptly upon learning of the suit  
23 submitted his signed consent form to Plaintiffs' counsel on February 28, 2014, and his form was  
24 filed with the Court that same day (*see* Dkt. No. 115);

25  
26 The Parties hereby stipulate as follows:

27 1. The consent to join forms of Anthony Dixon, Thurman Brown, Damian Darnell  
28 Sears Sr., Billy Medina Jr., Edward Spieler, Robert Liguori, and Bryon Johnson already filed

1 with the Court shall be deemed valid, and they shall be permitted to join this FLSA Collective  
2 Action, but their FLSA claims shall not be equitably tolled beyond November 25, 2013.

3 2. Absent permission of the Court, no other putative FLSA Collective Action  
4 Member who did not timely submit a signed consent to join form shall be permitted to join this  
5 action.

6  
7 Dated: March 31, 2014

/s/ Eve H. Cervantez

JAMES M. FINBERG  
EVE H. CERVANTEZ  
CONNIE K. CHAN  
ALTSHULER BERZON LLP  
Attorneys for Plaintiffs

8  
9  
10  
11 Dated: March 31, 2014

/s/ Jody Landry

JODY A. LANDRY  
LINDSEY M. STEVENS  
LITTLER MENDELSON, P.C.  
Attorneys for Defendant

**PROPOSED ORDER**

Pursuant to the Parties' foregoing stipulation:

1. The consent to join forms of Anthony Dixon, Thurman Brown, Damian Darnell Sears Sr., Billy Medina Jr., Edward Spieler, Robert Liguori, and Bryon Johnson already filed with the Court shall be deemed valid, and they shall be permitted to join this FLSA Collective Action, but their FLSA claims shall not be equitably tolled beyond November 25, 2013.

2. Absent permission of the Court, no other putative FLSA Collective Action Member who did not timely submit a signed consent to join form shall be permitted to join this action.

**IT IS SO ORDERED.**

Dated: 4/3/14

  
\_\_\_\_\_  
HON. CHARLES R. BREYER  
UNITED STATES DISTRICT JUDGE