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16 Attorneys for Plaintiff
 17 KIMBERLY ROBERTS



18 UNITED STATES DISTRICT COURT
 19 NORTHERN DISTRICT OF CALIFORNIA

20 KIMBERLY ROBERTS, individually and
 21 on behalf of other individuals similarly
 22 situated,

23 Plaintiffs,

24 v.

25 TJ MAXX OF CA, LLC, a Delaware
 limited liability company; MARSHALLS
 26 OF CA, LLC, d Delaware limited liability
 company; HOMEGOODS, INC., a
 27 Delaware corporation; and DOES 1-10,
 inclusive,

28 Defendants.

Case No. 3:13-cv-04731-MEJ

STIPULATION RE CONSOLIDATION

Complaint Filed: October 10, 2013
 Amended Complaint Filed: April 2, 2014

CASE NO. 3:13-cv-04731-MEJ

STIPULATION RE CONSOLIDATION

1 **STIPULATION**

2 This Stipulation is entered into by and between Defendants TJ Maxx of CA, LLC, Marshalls
3 of CA, LLC and HomeGoods, Inc. (“Defendants”), through their counsel of record Littler
4 Mendelson, P.C., Plaintiff Kimberly Roberts, through her counsel of record Marlin & Saltzman, LLP
5 and Carneisha Forney (Plaintiff in the action *Forney v. The TJX Companies, Inc., et. al.*) through her
6 counsel of record The Aegis Law Firm, The Cooper Law Firm and The Carter Law Firm
7 (collectively “the Parties”).

8 This Stipulation is based on the following:

9 1. On October 10, 2013, Plaintiff Roberts filed the initiating complaint in this
10 action.

11 2. On February 14, 2014, Carneisha Forney, a former TJ Maxx store employee,
12 filed a class action complaint in Orange County Superior Court titled *Forney v. The TJX Companies,*
13 *Inc., TJ Maxx of CA, LLC, Marshalls of CA, LLC, HomeGoods, Inc.* (Case No. 30-20-14-00705828-
14 CU-OE-CXC (“the *Forney* action”).

15 3. On May 8, 2014 defendants in the *Roberts* action filed a Notice of Pendency
16 of Other Action to notify the Court that the *Forney* action involved a material part of the same
17 subject matter and substantially all of the same parties. Like the *Roberts* action, the *Forney* action
18 seeks to certify a class on behalf of all current and former non-exempt employees who worked in
19 California TJ Maxx, Marshalls and HomeGoods stores.

20 4. Both the *Forney* and *Roberts* actions allege that California TJ Maxx,
21 Marshalls and HomeGoods store employees are owed regular wages and overtime wages due to
22 Defendants’ practice of conducting off the clock bag checks before permitting employees to leave
23 the store at their meal breaks, rest breaks and at the end of each shift. Both actions also assert causes
24 of action for inaccurate wage statements, unfair business practices, failure to pay all wages due upon
25 separation and seek to recover penalties pursuant to Labor Code section 2698 et seq. *Forney* also
26 expressly pleads the following additional cause of action: failure to provide meal and rest breaks.
27 *Forney* also seeks to certify a subclass of key carrier employees who were allegedly not
28 compensated for all hours worked due to a Company policy that requires two employees to be

1 present when opening a store.

2 5. On August 29, 2014, defendants in the *Forney* action filed a Motion to Stay
3 *Forney* in light of the pendency of multiple overlapping class actions, including the *Roberts* action.
4 The hearing took place on October 20, 2014. The Superior Court denied the Motion to Stay and
5 ordered the Parties to meet and confer regarding potential consolidation of the *Forney* action with
6 the *Roberts* action.

7 6. Given the overlap in claims and parties as well as the desire to avoid
8 conflicting results on issues common to both actions, the Parties have agreed to consolidation of the
9 *Roberts* and *Forney* actions in the Northern District. The Parties have agreed that the consolidation
10 is contingent on the subsequent dismissal of the *Forney* action without prejudice. Accordingly,
11 following the Court's order granting Plaintiff Kimberly Roberts leave to file the Second Amended
12 Consolidated Complaint, counsel for Plaintiff Kimberly Roberts will file the Second Amended
13 Consolidated Complaint in the *Roberts* action and simultaneously, counsel for Plaintiff Carneisha
14 Forney will submit a Request for Dismissal to the Superior Court along with the required supporting
15 declaration in accordance with California Rule of Court 3.770, seeking (1) an order approving the
16 dismissal of the *Forney* action without prejudice; and (2) an order pursuant to California Rule of
17 Court 3.770 that the dismissal of the lawsuit does not require notice to putative class members, if
18 necessary. The Parties have agreed to cooperate in order to achieve dismissal of the *Forney* action.

19 7. In order to achieve the agreed-upon consolidation, the Parties wish to file a
20 Second Amended Consolidated Complaint in the *Roberts* action. The proposed Second Amended
21 Consolidated Complaint ("SAC") is attached hereto as **Exhibit A**. The SAC reflects the following
22 changes:

23 a. Plaintiffs Carneisha Forney and Laurie Mullen are to be added as
24 named plaintiffs and class representatives in the *Roberts* action.

25 b. The Aegis Law Firm, PC, The Cooper Law Firm, P.C. and The Carter
26 Law Firm are to be added to the list of class counsel in the *Roberts* action.

27 c. The *Roberts* action will no longer include a cause of action for
28 violations of the Fair Labor Standards Act (*i.e.* the Parties seek to dismiss the First Cause of Action

1 in the *Roberts* First Amended Complaint). Accordingly, the *Roberts* action will no longer seek
2 certification of a nationwide class of employees.

3 d. The *Roberts* action will include the following causes of action and the
4 additional subclass: failure to provide meal breaks, failure to provide rest breaks and key carrier
5 subclass (*see* Second and Third Causes of Action in SAC).

6 8. It is Defendants' position that as to California TJ Maxx employees, the statute
7 of limitations should run from the date of the filing of the *Forney* action. As to California
8 HomeGoods employees, the statute of limitations should run from the filing of the SAC (*i.e.* the date
9 a HomeGoods employee is added as a plaintiff/class representative). Accordingly, the Parties have
10 agreed that the statute of limitations issue as to TJ Maxx and HomeGoods employees is disputed.
11 This issue is to be resolved through litigation and further discovery.

12 THEREFORE, the parties to this Stipulation hereby stipulate and request as follows:

13 1. The Court grant Plaintiff Kimberly Roberts leave to file the Second Amended
14 Consolidated Complaint attached hereto as **Exhibit A**.

15 2. The Court permit the Parties to resolve the disputed statute of limitations
16 issue as to TJ Maxx employees and HomeGoods employees through litigation and further discovery.

17
18 **IT IS SO STIPULATED.**

19
20 Dated: February 24, 2015

21 /s/ Emily E. O'Connor
22 JOSHUA J. CLIFFE
23 JULIE DUNNE
24 EMILY E. O'CONNOR
25 LITTLER MENDELSON, P.C.
26 Attorneys for Defendants
27 TJ MAXX OF CA, LLC, MARSHALLS OF
28 CA, LLC, HOMEGOODS, INC.

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Dated: February 24, 2015

/s/ Kiley L. Grombacher
MARCUS J. BRADLEY
KILEY L. GROMBACHER
MARLIN & SALTZMAN, LLP
Attorneys for Plaintiff
KIMBERLY ROBERTS

Dated: February 24, 2015

/s/ Scott B. Cooper
SAMUEL A. WONG
AEGIS LAW FIRM, PC
SCOTT B. COOPER
THE COOPER LAW FIRM, P.C.
ROGER R. CARTER
THE CARTER LAW FIRM
Attorneys for Plaintiff in *Forney v. The TJX Companies, Inc., et al.*, Orange County
Superior Court Case No. 30-20-14-00705828-
CU-OE-CXC

SIGNATURE ATTESTATION

In accordance with Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this document has been obtained from the signatories on this e-filed document.

DATED: February 24, 2015

/s/ Emily E. O'Connor
EMILY E. O'CONNOR

The parties' stipulation is GRANTED. Plaintiffs shall efile the Second Amended Complaint as a separate docket entry.

IT IS SO ORDERED.

Dated: February 26, 2015



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