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10 Attorneys for defendant HOME DEPOT
 11 U.S.A., INC.

12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA

14 JOHN UTNE, on behalf of himself,
 15 all others similarly situated, and the
 16 general public,

17 Plaintiff,

18 vs.

19 HOME DEPOT U.S.A., INC., a
 20 Delaware corporation; and DOES 1-
 21 50, inclusive,

22 Defendants.

Case No. 3:16-CV-01854-RS

[Assigned to Hon. Richard Seeborg]

**STIPULATION AND ~~[PROPOSED]~~
 ORDER GRANTING LEAVE TO
 FILE THIRD AMENDED
 COMPLAINT AND RESETTNG
 SUMMARY JUDGMENT AND
 CLASS CERTIFICATION
 DEADLINES**

Date Action Filed: March 8, 2016

1 **STIPULATION**

2 Plaintiff John Utne and defendant Home Depot U.S.A., Inc. (“Home Depot”),
3 through their respective counsel of record, stipulate as follows:

- 4 1. In its July 7, 2017 Order, DE 36, the Court set the following deadlines:
5 a. August 21, 2017 – Deadline for plaintiff to file motion for class
6 certification;
7 b. October 5, 2017 – Deadline for Home Depot to file opposition to
8 motion for class certification;
9 c. November 3, 2017 – Deadline for plaintiff to file reply to Home
10 Depot’s opposition to plaintiff’s class certification motion; and
11 d. December 7, 2017 at 1:30 p.m. or as soon thereafter as the Court is
12 available – Hearing on plaintiff’s motion for class certification.

13 2. On August 9, 2017, Home Depot filed a Motion for Partial Summary
14 Judgment on plaintiff’s rounding claim and related derivative claims.

15 3. On August 16, 2017, plaintiff filed a Motion for Leave to File a Third
16 Amended Complaint and Modification of Briefing Schedule.

17 4. On August 16, 2017 the court entered an Order vacating all existing motion
18 deadlines and directing the parties to meet and confer regarding plaintiff’s motion for
19 leave to file a third amended complaint and the existing motion and briefing schedules.

- 20 5. The parties have met and conferred and agreed on the following:
21 a. Home Depot stipulates to plaintiff’s filing of the Third Amended
22 Complaint attached as Exhibit 4 to H. Scott Leviant’s declaration in
23 support of plaintiff’s motion for leave to amend, DE 50-1. The
24 parties agree that the Third Amended Complaint will be deemed filed
25 on August 29, 2017.
26 b. Home Depot’s Motion for Partial Summary Judgment, DE 39, is
27 withdrawn without prejudice. Home Depot may re-file the motion,
28 or file a new summary judgment motion, after the Third Amended

1 Complaint is filed. Home Depot expects to file such motion no later
2 than October 31, 2017. The briefing schedule and hearing on Home
3 Depot's summary judgment motion will be set in accordance with
4 Northern District Local Rules 7-1 through 7-3 based on the date
5 Home Depot's motion is filed.

6 c. Briefing deadlines for plaintiff's motion for class certification will be
7 as follows:

- 8 • Plaintiff's class certification motion to be filed by November 14,
9 2017;
- 10 • Defendant's opposition to be filed January 9, 2018;
- 11 • Plaintiff's reply to be filed February 8, 2018;
- 12 • The hearing on the motion to be scheduled February 22, 2018,
13 1:30 p.m., or such other date that the Court is available.

14
15
16 Dated: August 28, 2017

AKIN GUMP STRAUSS HAUER & FELD

17
18 By: /s/ Donna M. Mezas

19 Donna M. Mezas
20 Attorneys for defendant Home Depot U.S.A., Inc.

21 Dated: August 28, 2017

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22
23 By: /s/ H. Scott Leviant

24 H. Scott Leviant
25 Attorneys for plaintiff John Utne

26 Pursuant to Civil Local Rule 5-1(i)(3), the filer attests that concurrence in the
27 filing of this document has been obtained from each of the above signatories.
28

1 ~~PROPOSED~~ ORDER

2 GOOD CAUSE APPEARING, IT IS HEREBY ORDERED as follows:

3 1. The Court grants plaintiff leave to file the Third Amended Complaint
4 attached as Exhibit 4 to H. Scott Leviant's declaration in support of plaintiff's motion
5 for leave to amend, DE 50-1. The Third Amended Complaint will be deemed filed on
6 August 29, 2017.


7 2. Home Depot's Motion for Partial Summary Judgment, DE 39, is withdrawn
8 without prejudice. Home Depot may re-file the motion, or file an expanded summary
9 judgment motion based on the claims in the Third Amended Complaint. The briefing
10 schedule and hearing on Home Depot's summary judgment motion will be set in
11 accordance with Northern District Local Rules 7-1 through 7-3.

12 3. The briefing deadlines for plaintiff's motion for class certification will be
13 as follows:

- 14 a. Plaintiff's class certification motion to be filed by November 14,
15 2017;
- 16 b. Defendant's opposition to be filed January 9, 2018;
- 17 c. Plaintiff's reply to be filed February 8, 2018;
- 18 d. The hearing on the motion to be scheduled February 22, 2018, 1:30
19 p.m., or such other date that the Court is available.

20
21 IT IS SO ORDERED.

22
23 Dated: 8/28, 2017

24 
25 _____
26 Honorable Richard Seeborg
27 United States District Judge
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