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13 AÉROPOSTALE WEST, INC. and AÉROPOSTALE, INC.

14 (continued on next page)

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN FRANCISCO DIVISION

18 PORTIA DANIELS, on behalf of  
19 herself and all others similarly situated,

20 Plaintiff,

21 vs.

22 AÉROPOSTALE WEST, INC., a  
23 Delaware corporation,  
24 AÉROPOSTALE, INC., a Delaware  
25 corporation, and DOES 1 through 10,  
26 inclusive,

27 Defendants.

CASE NO. 3:12-cv-05755-WHA (JSC)

COLLECTIVE ACTION

JOINT STIPULATION  
RESPONDING TO ORDER TO  
SHOW CAUSE

Hon. Judge William H. Alsup

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15 Attorneys for Plaintiff Portia Daniels,  
16 on behalf of herself and all others similarly  
17 situated

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1 JOINT STIPULATION

2 Pursuant to Northern District of California Local Rule 7-12, Plaintiff Portia  
3 Daniels, on behalf of herself and all others similarly situated (“Plaintiff”), on the one  
4 hand, and defendants Aéropostale West, Inc. and Aéropostale, Inc. (together,  
5 “Defendants”), on the other hand, (collectively, the “Parties”) by and through their  
6 counsel of record, jointly respond to the May 29, 2014 Order Denying Motion for  
7 Preliminary Approval of FLSA Collective-Action Settlement and Order to Show  
8 Cause and hereby stipulate to the following:

9 This action involves a single discrete claim under the Fair Labor Standards Act  
10 (“FLSA”) that Defendants failed to factor non-discretionary bonuses that were earned  
11 by non-exempt employees into the regular rate of pay that was used to calculate  
12 overtime compensation. Defendants have consistently maintained that it, at all times,  
13 has been their policy and practice to factor non-discretionary bonuses into the regular  
14 rate of pay for purposes of paying overtime to their non-exempt employees and that  
15 any failure to do so was isolated, inadvertent, and the product of human error.

16 On April 24, 2013, this Court granted Plaintiff’s Motion for Order Granting  
17 Conditional Certification of FLSA Collective Action and for Order Regarding Mailing  
18 of Opt-In Notice to FLSA Collective Action Members (the “Motion for Conditional  
19 Certification”).

20 Pursuant to this Court’s mandate, the Parties did not discuss settlement until the  
21 February 12, 2014 Settlement Conference before United States Magistrate Judge  
22 Jacqueline Scott Corley. Through this process, the Parties agreed that it would make  
23 the class whole by Defendants paying the opt-ins the full amount of any overtime that  
24 was inadvertently not paid. The Parties agreed that the overtime adjustment on any  
25 non-discretionary bonus would be calculated based upon the formula set forth in the  
26 FLSA.

27 Specifically, the parties agreed that from November 9, 2009 to the date of  
28 preliminary approval of this settlement, for each instance in which Representative

1 Plaintiff or a Settlement Collective Action Member: (i) received a sales, shrink,  
2 contest, retention, referral, Puerto Rico Christmas Bonus, or gross up payment  
3 (“applicable code” payment), (ii) worked overtime in the period in which the  
4 applicable code payment was earned, and (iii) did not receive an accurate overtime  
5 adjustment for the applicable code payment, he/she shall receive an accurate overtime  
6 adjustment (the sum of all settlement award payments represents the “True Up  
7 Amount”).

8 Defendants validated its internal calculation with expert analysis and provided  
9 it to Plaintiff’s counsel to confirm the accuracy of the numbers. Based upon expert  
10 analysis and confirmation by the Parties, the Parties currently believe the True Up  
11 Amount to be approximately \$8,645.61.

12 Defendants maintain that because the policy is to pay overtime on non-  
13 discretionary bonuses in accordance with the FLSA, the majority of the opt-ins had  
14 already been fully paid all earned overtime on non-discretionary bonuses and/or had  
15 not worked any overtime during the applicable period when the non-discretionary  
16 bonus was earned. Further, because Defendants had already paid all opt-ins all  
17 straight overtime, and the overtime adjustment on non-discretionary bonuses can be  
18 minimal, a large portion of the remaining class members were owed less than \$25.00.  
19 Plaintiff does not disagree with the calculation of the True Up Amount.

20 Given the Court’s concerns regarding the class certification and the fairness of  
21 the settlement to the opt-ins, the parties will stipulate that this Court’s April 24, 2013  
22 Order Granting Conditional Certification shall be vacated and this action shall be  
23 decertified. This action will proceed as to plaintiff Portia Daniels’s claim only.

24 Defendants will further agree to issue a payment to each collective action  
25 member (excluding Portia Daniels) who did not receive full payment for the overtime  
26 adjustment on any non-discretionary bonus earned during the collective action period  
27 equal to the current settlement award payment without seeking a release from them.  
28

1 Defendants will issue such payment within 30 days of this Court decertifying the  
2 matter.

3 Plaintiff's counsel agrees that it will notify all opt ins by letter of the  
4 decertification and the specific reasons therefor (costs to be borne by Plaintiff's  
5 counsel).

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7 STIPULATED AND AGREED TO:

8

9 DATED: June 10, 2014

KATTEN MUCHIN ROSENMAN LLP  
Stacey McKee Knight  
Rachel C. Schumacher  
Robert J. Dwyer

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13 By: /s/ Stacey McKee Knight  
14 Stacey McKee Knight  
15 Attorneys for Defendants AÉROPOSTALE  
16 WEST, INC. and AÉROPOSTALE, INC.

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17 DATED: June 10, 2014

LAW OFFICE OF JOSEPH R. BECERRA  
Joseph R. Becerra

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21 By: /s/ Joseph R. Becerra  
22 Joseph R. Becerra  
23 Attorneys for Plaintiff PORTIA DANIELS and  
24 those who opted in

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28 DATED: June 10, 2014

GLEASON & FAVAROTE LLP  
Torey Joseph Favarote

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33 By: /s/ Torey Joseph Favarote  
34 Torey Joseph Favarote  
35 Attorneys for Plaintiff PORTIA DANIELS, and  
36 those who opted in

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PROOF OF SERVICE

I, Torey Joseph Favarote, declare:

I am and was at the time of the service mentioned in this declaration, employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the within action. My business address is Gleason & Favarote, LLP, 835 Wilshire Blvd., Suite 200, Los Angeles, CA 90017.

On June 10, 2014, I served a copy(ies) of the following document(s):

**JOINT STIPULATION RESPONDING TO ORDER TO SHOW CAUSE**  
on the parties to this action by placing them in a sealed envelope(s) addressed as follows:

Attorney	Party(ies) Served	Method of Service
Stacey McKee Knight Rachel C. Schumacher KATTEN MUCHIN ROSENMAN LLP 2029 Century Park East, Ste. 2600 Los Angeles, CA 90067-3012 Fax: (310) 788-4471	Counsel for Defendant	CM/ECF

- [BY MAIL] I placed the sealed envelope(s) for collection and mailing by following the ordinary business practice of Gleason & Favarote, LLP, Los Angeles, California. I am readily familiar with Gleason & Favarote, LLP's practice for collecting and processing of correspondence for mailing with the United States Postal Service, said practice being that, in the ordinary course of business, correspondence with postage fully prepaid is deposited with the United States Postal Service the same day as it is placed for collection.
- [BY HAND] I directed the sealed envelope(s) to the party(ies) so designated on the service list to be delivered by courier this date.
- [BY CM/ECF SYSTEM] I caused the above-referenced document(s) to be sent by electronic transmittal to the Clerk's Office using the CM/ECF System for filing which generated a Notice of Electronic Filing to the CM/ECF registrants in this case.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that this declaration was executed on June 10, 2014, at Los Angeles, California.

/s/ Torey Joseph Favarote  
Torey Joseph Favarote