

EXHIBIT A

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9

10 UNITED STATES DISTRICT COURT
11
12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

13 JOHN AMBROSINO, ET AL.

14 Plaintiffs,

15 v.

16 HOME DEPOT U.S.A., INC.,

17 Defendant.
18
19
20

Case No. 13:11-cv-01319-L-MDD

DECLARATION OF LEE SQUITIERI
IN SUPPORT OF JOINT MOTION
FOR APPROVAL OF SETTLEMENT
AND DISMISSAL

21 LEE SQUITIERI, pursuant to 28 U.S.C. § 1746, declares:

22 1. My name is Lee Squitieri. I am a partner with the law firm of Squitieri &
23 Fearon, LLP, and am the counsel for plaintiffs in this matter. I make this declaration in
24 support of the parties' Joint Motion to Approve Settlement and Dismissal of Claims.
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1 BACKGROUND

2 2. This action was regionally filed by 109 plaintiffs. Ninety-five plaintiffs
3 voluntarily dismissed their claim, and only 14 plaintiffs remain and are subject to the
4 settlement.
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6 3. In September 2013, the parties participated in a full-day mediation with
7 Mark S. Rudy, an experienced mediator with significant experience mediating wage and
8 hour actions. See Exhibit 1 (Mark Rudy's Resume). The parties made substantial
9 progress. The parties reached an agreement in principal to settle plaintiffs' claims on
10 December 16, 2013.
11

12 4. The settlement is based on an aggregate settlement agreement¹ reached
13 with Home Depot to settle the claims of the 41 plaintiffs that remained in the multi-
14 district litigation that included, this action, as well as *Smalley et al. v. Home Depot,*
15 *U.S.A., Inc.*, 3:11-cv-02951-JCS (N.D. Cal. Mar. 17, 2014) (approving settlement in
16 parallel matter that included a 33.3% attorneys' fees award and *pro rata* allocation of
17 expenses); *Johnson et al. v. Home Depot, U.S.A., Inc.*, 3:11-cv-03561-PGS-TJB (D.N.J.
18 Mar. 3, 2014) (same); *Love v. Home Depot, U.S.A., Inc.*, 4:11-cv-00485-JMM (E.D.Ark.
19 Mar. 5, 2014) (same). Subject to the Court's approval, the parties agreed to resolve the
20 claims of the 14 plaintiffs in this action, for a total of \$376,941.72, inclusive of
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25 ¹ Since *Smalley* and *Love* are subject to confidentiality provisions which were approved
26 by those courts, I have not included the total aggregate settlement dollar amount here.

1 attorney's fees and costs. Attached hereto as Exhibit 2 is a true and correct copy of the
2 revised settlement agreement executed by plaintiffs in this action.
3

4 5. This settlement is the culmination of litigation that began in 2004 when my
5 firm brought a collective action against Home Depot, in the district court of New Jersey
6 stylized *Aquilino v. Home Depot, U.S.A., Inc.*, 04-cv-4100, alleging that the company
7 misclassified its merchandising assistant store managers and specialty assistant store
8 managers as exempt from overtime in violation of the Fair Labor Standards Act, 29
9 U.S.C. 216(b). Through our efforts, the district court in *Aquilino* conditionally certified
10 a national class and permitted us to send notice to the potential opt-in members.² The
11 plaintiffs in this action subsequently opted in to that litigation.
12
13

14 6. Between 2004 and 2011, the parties engaged in significant discovery,
15 which included dozens of depositions of opt-in plaintiffs (including plaintiffs Ashworth
16 and Mills), depositions of Home Depot corporate officers, as well as the exchange of
17 thousands of pages of documents.
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20 7. In 2011, Home Depot moved to decertify the collective action and, while
21 plaintiffs' counsel's strenuously opposed decertification, the district court granted the
22 motion and dismissed without prejudice the plaintiffs who had opted-in to *Aquilino*.
23

24 _____
25 ² Plaintiffs were also able to obtain a tolling order from the District Court which tolled
26 the statutory time period for 308 days while it decided plaintiffs' counsel's motion for
conditional certification.

1 have filed such motions against many of the plaintiffs here, potentially resulting in the
2 dismissal of plaintiffs' claims.

3
4 11. In reaching this settlement amount, each party took into account a wide
5 range of possible outcomes that would be impacted by the number of overtime hours
6 that each Plaintiff would likely be able to prove, method for calculating overtime, the
7 question whether the Court would award liquidated damages, or find that a three year
8 statute of limitations should be applied. Plaintiffs also faced substantial risks that their
9 overtime claims would be calculated under the fluctuating work week method which, as
10 demonstrated in the chart below, drastically reduces Plaintiffs' overtime claims.
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13 **METHOD FOR CALCULATING OVERTIME AND ALLOCATION**

14 12. Plaintiffs' individual overtime damages were calculated based on the
15 following factors: (1) the time period that they worked as merchandising assistant store
16 manager or specialty assistant store manager within the statute of limitations; (2) their
17 regular rate of pay as determined by Home Depot payroll data; and (3) an estimate of 15
18 hours of overtime for each week that the plaintiff worked, based on Home Depot's
19 policy of scheduling assistant managers for 55 weekly hours.
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22 13. Damages under the FLSA involve at least four variables: hours worked,
23 the statute of limitations (two or three years), liquidated damages, and the half-time
24 method of calculating damages. For the purposes of estimating damages, the parties
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1 agreed that 15 hours of overtime per week was reasonable because plaintiffs were
 2 scheduled to work 55 hours per week. The following examples show the range of
 3 possible recovery given the remaining three variables:
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5	Total Time And A Half Overtime Owed – 3 Year Statute Of Limitations	Maximum Recovery With Liquidated Damages - 3 Year Statute Of Limitations	Total Time And A Half Overtime Owed – 2 Year Statute Of Limitations	Maximum Recovery With Liquidated Damages - 2 Year Statute Of Limitations
6	\$801,555.12	\$1,603,110.25	\$686,237.24	\$ 1,372,474.48
7				
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9				
10	Total Half Time Overtime Owed – 3 Year Statute Of Limitations	Maximum Recovery With Liquidated Damages Half Time 3 Year Statute Of Limitations	Total Half Time Overtime Owed – 2 Year Statute Of Limitations	Maximum Recovery With Liquidated Damages - – 2 Year Statute Of Limitations
11	\$ 272,494.32	\$544,988.64	\$238,403.90	\$476,807.81
12				

14
 15 14. Once a total settlement amount was agreed to by the parties, plaintiffs’
 16 individual settlement allocations were determined based on their pro rata share of the
 17 total aggregate settlement for the 41 plaintiffs based on the value of their two-year
 18 claim. No plaintiff was given preferential treatment.
 19

20 15. Based on this analysis, the 14 plaintiffs in this action were allocated a total
 21 of \$376,941.72. Each plaintiff’s individual allocation is as follows:
 22

23	Plaintiff	Pro Rata	W-2 Portion	1099 Portion	Fees and Costs	Total
24	John J. Ambrosino	2.62%	\$11,536.98	\$11,536.97	\$15,504.43	\$38,578.38
25	Angela Ashworth	1.86%	\$8,186.97	\$8,186.97	\$11,002.39	\$27,376.33
26	Susan M. Clarke	2.06%	\$9,102.95	\$9,102.95	\$12,233.37	\$30,439.26
27	Merat Farokhnia	1.56%	\$6,882.12	\$6,882.12	\$9,248.82	\$23,013.05
28	Susan J. Giebelhaus	2.00%	\$8,837.98	\$8,837.97	\$11,877.27	\$29,553.22

1	David Ingle	1.37%	\$6,039.76	\$6,039.76	\$8,116.78	\$20,196.30
2	Peggy M. Jensen	0.94%	\$4,163.99	\$4,163.98	\$5,595.94	\$13,923.91
3	Joseph R. Leon	1.48%	\$6,514.05	\$6,514.05	\$8,754.17	\$21,782.26
4	Joseph A. Lorenz ³	6.61%	\$29,161.90	\$29,161.90	\$39,190.20	\$97,514.19
5	Jennifer L. Machamer	1.02%	\$4,484.36	\$4,484.36	\$6,026.49	14,995.21
6	Jose J. Mendoza	1.75%	\$7,735.08	\$7,735.08	\$10,395.10	\$25,865.26
7	Christopher Mills	0.52%	\$565.40	\$565.39	\$3,082.53	\$4,213.32
8	Kevin J. Mussro	1.11%	\$4,893.17	\$4,893.16	\$6,575.87	\$13,362.20
9	Michael A. Sanchez	0.89%	\$3,926.22	\$3,926.22	\$5,276.39	\$13,128.83

10 16. Plaintiffs' counsel's attorneys' fees and expenses were then calculated.
11 Pursuant to the contingency fee arrangement with each plaintiff, plaintiffs' counsel's
12 fees amount to \$113,588.76, which is 33.3% of the settlement calculated only after
13 expenses are deducted from the settlement. As explained below, the expenses deducted
14 here in the amount of \$39,291.15 are based on each plaintiff's *pro rata* allocation of the
15 total expenses plaintiffs' counsel incurred litigating this matter from 2004 to the present
16 on behalf of the plaintiffs.

17 Plaintiffs Have Been Fully Informed And Approved The Settlement

18 17. Plaintiffs' counsel sought each plaintiff's approval before agreeing to
19 resolve their claims based on an aggregate settlement. Before agreeing to settle their
20 claims in the aggregate, each plaintiff was informed that they would receive a *pro rata*
21 allocation based on the value of their claim relative to the other 41 plaintiffs. Plaintiffs
22 were further informed that the proposed settlement included their attorney's fees and the

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25 ³ A portion of plaintiff Lorenz's claim calculation included his California overtime
26 which was not time-barred. Plaintiff Lorenz was the only plaintiff with a viable state
27 law misclassification claim

1 pro-rated expenses and would therefore be deducted out of their settlement. Plaintiffs
2 were also informed what their net allocation (before taxes) would be before agreeing to
3 the settlement.
4

5 18. Prior to agreeing to the initial settlement agreement, each plaintiff was
6 advised through an email of their pro rata allocation of the aggregate settlement, their
7 attorney's fees, and expenses. Then, after agreeing upon settlement terms, we sent the
8 Settlement Agreement to each of the 14 plaintiffs, explained the terms of the settlement,
9 and set forth each plaintiff's individual settlement allocation and amount paid on each
10 plaintiff's behalf for attorney's fees and expenses associated with the settlement. My
11 firm has been available to and has answered any questions that plaintiffs have had
12 during the process.
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16 19. By email, each plaintiff was further advised of the changes in the release of
17 claims from the initial settlement agreement to the revised settlement agreement before
18 agreeing to the Revised Settlement Agreement.
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20 Plaintiffs' Attorneys' Fees And Expenses Are Reasonable

21 20. As plaintiffs' counsel, we have worked diligently to investigate plaintiffs'
22 claims. We also shouldered a significant risk of nonpayment if Home Depot were to
23 prevail. The action was litigated on a 33.3% contingency fee basis, and each plaintiff
24 has a fee agreement with our firm, which provided for payment of attorney's fees to
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1 counsel in the amount of one third of any settlement amount after expenses are deducted
2 from the gross settlement amount. Before accepting the terms of the settlement, each
3 plaintiff was advised of and accepted the amount of fees and expenses on his/her behalf
4 as part of the settlement. Counsel did not receive any payment for their time spent
5 litigating, nor did they receive reimbursement for their out-of-pocket expenses during
6 the litigation.
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9 21. We seek an award of 33.3% of the net settlement fund, after the costs are
10 deducted. Three other district courts have approved plaintiffs' request for a fee award
11 of 33.3% plus expenses. *See Smalley et al. v. Home Depot, U.S.A., Inc.*, 3:11-cv-02951-
12 JCS (N.D. Cal. Mar. 17, 2014) (approving settlement in the parallel matter that included
13 an award of 33.3% in attorneys' fees and a *pro rata* allocation of expenses); *Johnson et*
14 *al. v. Home Depot, U.S.A., Inc.*, 3:11-cv-03561-PGS-TJB (D.N.J. Mar. 3, 2014) (same);
15 *Love v. Home Depot, U.S.A., Inc.*, 4:11-cv-00485-JMM (E.D. Ark. Mar. 5, 2014) (same).
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19 22. We have put significant time and resources into the action, expending 475
20 hours. Our lodestar fee amount is approximately \$158,383.38. We are seeking only
21 \$113,588,76.00 in attorneys' fees (one third the total settlement amount after expenses
22 are deducted pursuant to our fee agreement with each Plaintiff). Even if I reduced my
23 rate to \$600 an hour, plaintiffs' counsel's lodestar would be \$120,914.50, which is still
24 above the requested attorneys' fees. *See* Exhibit 3. Based on the documented 475 hours
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1 of work by plaintiffs' counsel, the requested fee award of \$113,000 averages to an
2 hourly rate of less than \$240.

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4 23. Attached here to as Exhibit 4 are my firm's billing records for this case.
5 Time has been tracked contemporaneously and sometime entries have been removed
6 due to plaintiffs' counsel's billing judgment. In calculating our lodestar, we have also
7 not included the estimated hundreds of hours of time spent litigating this matter between
8 2004 and 2011, in which counsel obtained conditional certification of a national class
9 which allowed plaintiffs the ability to opt into the litigation, tolled the statute of
10 limitations for plaintiffs while the motion for conditional certification was pending, and
11 took and defended multiple depositions and obtained document discovery from Home
12 Depot, all of which plaintiffs' counsel believes furthered plaintiffs' claims in this
13 matter. However we have included half of the time we spent briefing plaintiffs' motion
14 in *Smalley* for the proper method of calculating damages in this matter because that
15 work was used to craft the motion filed here.
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20 24. Attorneys from my firm billed at a rate of \$225 to \$695 per hour over the
21 course of the litigation. *See* Exhibit 4. Paralegals billed at \$150 per hour. *Id.* And
22 when attorneys billed for travel, they billed at half their hourly rate. *Id.*

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24 25. Plaintiffs' counsel's billing rates are within the range of those attorneys
25 practicing complex wage and hour matters in this jurisdiction. For example, in 2012,
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1 Scott Cole and Associates, APC sought a 33.3 % award in attorneys' fees and billed at
2 rates that ranged between \$320 for attorneys admitted to the bar in 2011 to \$720 for
3 attorneys admitted to the bar in 1992. See Exhibit 5 (*Moore et al. v. Fitness Int'l, LLC*,
4 3:12-cv-155`-LAB-NLS (S.D. Cal. Oct. 8, 2013) (Doc. No. 32-1 at 6, Exhibit D)). The
5 *Moore* court subsequently granted plaintiffs' counsels' request for 33.3% in attorney's
6 fees. *Moore et al. v. Fitness Int'l, LLC*, 3:12-cv-155`-LAB-NLS (S.D. Cal. Oct. 8,
7 2013) (Doc. No. 36 at 9) (attached hereto as Exhibit 6).

10 26. Similarly, in 2013, the attorneys pursuing a FLSA collective action sought
11 a 30% award in attorneys' fees based on a 1.26 multiplier. The attorneys' billable rates
12 ranged from \$750, \$700, and \$650 for partners admitted to the bar in 1974, 1984, and
13 1987 respectively, and an hourly rate of \$350 for an associate admitted in 2001. See
14 Exhibit 7 (*Graham et al. v. Overland Solutions, Inc.*, 10CV0672 BEN (BLM), (S.D.Cal.
15 Jan. 14, 2013) (Doc. No. 102-2)). The *Graham* Court subsequently granted class
16 counsel's request for attorney's fees. See Exhibit 7 (*Graham et al. v. Overland*
17 *Solutions, Inc.*, 10CV0672 BEN (BLM), (S.D.Cal. Jan. 30, 2013) (Doc. No. 106)).

21 27. Our fee agreements in this action also provide for reimbursement of costs.
22 Plaintiffs' counsel thus seeks reimbursement of pro rata expenses totaling \$39,291.15,
23 all of which counsel advanced with the risk of no recovery. An itemization of plaintiffs'
24 counsel's costs is attached hereto as Exhibit 8.

1 28. The pro rata expenses are based on plaintiffs' counsel's total expenses in
2 litigating this action, including the expenses incurred in *Aquilino v. Home Depot,*
3 *U.S.A., Inc.*, 04-cv4100 (D.N.J. 2004), as well as the other three actions subject to the
4 aggregate settlement. Starting from 2004 through the present, plaintiffs' counsel has
5 incurred a total of \$182,826.00 in expenses litigating this action on behalf of plaintiffs
6 and the others involved in the aggregate settlement. *See* Exhibit 8. Those expenses
7 include mediator fees, filing fees, correspondence with clients, postage, depositions and
8 travel expenses for depositions, court appearances, as well as document discovery from
9 defendant. *Id.*

13 29. Specifically, plaintiffs' counsel incurred \$135,476.18 in expenses in the
14 earlier *Aquilino* action that are relevant to this action. But plaintiffs' counsel is not
15 seeking expenses that were not borne for the common good of the opt-in plaintiffs.
16 Plaintiffs' counsel capped expenses incurred for everyone in *Aquilino* at \$105,000
17 before allocating those expenses among plaintiffs and the other 27 plaintiffs who are
18 settling their claims in the aggregate settlement. Plaintiffs' counsel also incurred an
19 additional \$47,352.42 in expenses for the 41 plaintiffs, including the 14 plaintiffs here,
20 who are part of the aggregate settlement with Home Depot. Thus, plaintiffs' counsel
21 only seeks \$152,352.00 of its total allocable expenses from the aggregate settlement.

25 30. Some of the 41 plaintiffs sat for depositions while others had yet to be
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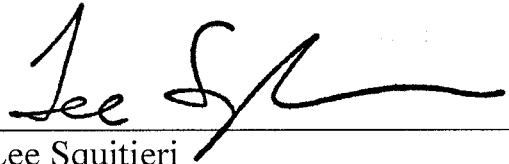
1 deposited. Each plaintiff however would eventually be deposited and each plaintiff who
2 was deposited contributed to the strength of each plaintiff's claim. As such, plaintiffs'
3 counsel believed it was fair and equitable to allocate all costs and expenses (including
4 those incurred for individual plaintiff depositions) to each plaintiff on a *pro rata* basis
5 that was determined by each plaintiff's claim value in relation to the other plaintiffs in
6 the aggregate settlement. Plaintiffs' counsel allocated those expenses across all 41
7 plaintiffs based on each plaintiff's *pro rata* share in the total aggregate settlement.
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10 31. Based on the claim value of each plaintiff here, plaintiffs' counsel seeks
11 reimbursement of \$39,291.15 in expenses from the plaintiffs. This amount is based on
12 plaintiffs' *pro rata* share of expenses compared to the 27 other plaintiffs who are part of
13 the aggregate settlement with Home Depot.
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16 32. After fees and costs, the amount to be distributed to plaintiffs under this
17 settlement is approximately \$224,061.81. This amount is slightly higher than if the
18 plaintiffs prevailed on liability, established the full amount of their estimated overtime
19 hours, failed to prove a willful violation for entitlement to a third year of liability or
20 liquidated damages, lost on the half time overtime method, but did not pay anything
21 from the recovery to their attorneys for fees and costs.
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I declare under penalty of perjury under the laws of the United States that the foregoing statements are true and correct.



Lee Squitieri

Executed on May 27, 2014 in New York, New York