

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JAMAAL FOSTER and ANTIWON	:	
BROWN Individually And On Behalf of	:	
All Others Similarly Situated,	:	
	:	
Plaintiffs,	:	
	:	Civil Action Number:
vs.	:	1:11-CV-3342-JEC
	:	
A-1 QUALITY LABOR SERVICES,	:	
LLC and WILLIAM J. FOSTER, III,	:	
	:	
Defendants.	:	

**JOINT STIPULATION FOR STAY AND
CONDITIONAL CERTIFICATION**

Plaintiffs Jamaal Foster and Antiwon Brown, together with all opt-in Plaintiffs, and Defendants A-1 Quality Labor Services, LLC (“hereinafter “A-1”) and William J. Foster, III have entered into this Joint Stipulation to memorialize the Parties’ agreements for a temporary stay of formal discovery and for conditional certification of this action as a collective action under Section 16(b) of the Fair Labor Standards Act. The Parties respectfully seek the Court’s approval of this Stipulation and proposed Scheduling Order.

1. Plaintiffs, non-exempt former workers of Defendant A-1 and allegedly of Defendant William Foster, filed this case under the Fair Labor

Standards Act, 29 U.S.C. §§ 201 – 219, as amended by the Portal-to-Portal Act, id. §§ 251 – 62 (FLSA). They allege that their employer(s) improperly classified them as independent contractors who were not required to be paid overtime compensation pursuant to the FLSA, instead of employees who are required to receive such overtime compensation.

2. Defendants deny that they have violated the FLSA in any respect and vigorously contests liability. Defendants also dispute the allegation that Defendant William J. Foster, III is an “employer” as that term is defined under the FLSA. Defendants also deny that workers in the putative collective action described in Plaintiffs’ Complaint are “similarly situated” under § 216(b) for any purpose, including for purposes of determining whether conditional certification of this matter as a collective action would be appropriate. Defendants further deny that this matter should be maintained as a collective action through trial and assert that, even if conditionally certified, it should be decertified.

3. Under the terms of the Parties’ Stipulation, Defendants will consent to this Court’s entering a Consent Order (attached as Exhibit A) conditionally certifying this matter as a collective action under § 216(b) for the exclusive purpose of litigating the class’s claims that they were improperly classified as independent contractors and denied overtime pay for hours worked each seven day

work period in excess of forty. Defendants' consent to Plaintiffs' motion for conditional certification is made without prejudice to their right later to argue that Plaintiffs and any opt-in Plaintiffs are not "similarly situated" under applicable law. Defendants do not, by consenting to Plaintiffs' motion, admit that Plaintiffs or any opt-in Plaintiffs are "similarly situated."

4. The Parties acknowledge that Defendants intend to file a Motion to Decertify the Class, as provided for in any Scheduling Order entered by the Court, if this matter is not resolved by agreement after the expiration of the discovery period which shall follow the stay of this matter which is agreed to herein.

5. The Opt-In Class shall consist of all current and former A-1 workers who were classified as independent contractors, regardless of job title, who performed any work in the Saalfeld Warehouse in Georgia at any time between September 30, 2008 and the present. By agreeing to this "class" period, Plaintiffs are not waiving their right to seek liquidated damages, nor are Defendants waiving their right to assert that they are not liable for all or part of any alleged damages that Plaintiffs or putative opt-in Plaintiffs claim to have incurred during this time period.

6. Tolling of Statute of Limitations for the Claims. The Parties' agree that the statute of limitations for the FLSA overtime claims shall be tolled as of

September 30, 2008 for all opt-in Plaintiffs who opt in to this action during the opt-in period. Defendants do not consent to the tolling of the statute of limitations regarding any other claims of any nature, including, by way of example, claims arising under state or federal wage payment laws, state or federal laws pertaining to discrimination or harassment in the workplace, or common law claims relating to employment.

7. The Parties agree to, and ask the Court for, a stay of this matter through February 28, 2013, to allow them to obtain the contact information for all putative class members, to send out the Notice of Lawsuit and Consent to Join Forms to those putative class members and to permit a sixty (60) day opt-in period. During the stay, the parties will continue to produce electronically stored information and documents to one another as had been previously requested, but only to the extent this information and documents pertain to the claims of the putative class members (who worked at the Saalfeld Warehouse in Georgia). Also, the Parties reserve the right after the stay to seek the reproduction of documents or data exchanged during the stay in some other form and the form of production during the stay shall have no effect on the Parties' right to request or their obligation to produce documents or electronically stored information in the form in which such were created and/or maintained, including native format.

8. The Parties acknowledge that the exchange of limited information contemplated by this Stipulation will have no effect on the scope of discovery after the stay.

9. Within five (5) business days after the Court enters the Consent Order granting conditional certification, Defendants will provide Plaintiffs' Counsel with a list of current (as of that date) and former workers as described by Paragraph 5, together with their last known address, last known telephone numbers (both home and cell), date of birth, social security numbers, beginning and (with respect to former workers) ending date of work at the Saalfeld Warehouse and job titles of each (the "Opt-In List"). The Opt-In List will be transmitted to Plaintiffs' Counsel in a Microsoft Excel file.

10. Within fourteen (14) business days after receiving the Opt-In List described in Paragraph 9, Plaintiffs' Counsel will send notice in the form attached as Exhibit B, via first-class U.S. mail, to each worker or former worker on the Opt-In List. The notice of lawsuit and consent to join form shall be contained in an envelope which shall be consistent with annexed Exhibit "C". If any notice is returned as undeliverable, Plaintiffs' Counsel will use reasonable efforts to identify an alternative address for the worker or former worker for whom notice was returned (including utilizing "skip tracing" tools such as Accurant) or attempting to

reach such current or former worker by telephone. If Plaintiffs' Counsel identifies an alternative address or addresses, they will send a second notice to all alternate addresses within five (5) business days after receiving the returned notice or identifying the alternative address or addresses. Upon request, Defendants shall, within three business days, provide Plaintiffs' Counsel with all information they may have within their possession which may be used to assist in locating any worker or former worker whose notice of the lawsuit is returned as undeliverable. Such information, if known, includes but is not limited to, last known email addresses, prior addresses and emergency contact information Defendants may have on file for that worker or former worker. Nothing in this provision shall be construed to impose limits on Plaintiffs or Plaintiffs' Counsel different from those imposed by law regarding contacting workers or former workers during the notice period for the purpose of locating relevant and helpful witnesses and documents, and it is expressly understood that Plaintiffs and Plaintiffs' Counsel have been, and will continue to contact persons they believe may have information relevant to this lawsuit, within the confines of the law. Counsel for the Plaintiffs may provide information to the putative class through notices on their web sites.

11. The time period for opting into this action will be 60 days, which includes 3 days for mailing the Notice. Thus, the opt-in period will close at 11:59

P.M. on the 60th day (including the day of the mailing) after the first notice is mailed. For those workers or former workers who are sent a second notice, the opt-in period will close at 11:59 P.M. on the 60th day (including the day of the mailing) after the second notice is mailed. The current or former worker must send an executed consent form from each worker or former worker who seeks to join this lawsuit as a party plaintiff before the opt-in period closes. Late consent forms will not be accepted absent agreement of the Parties. For opt-ins who receive a second notice and whose consent form is filed more than 60 days after the date the first notice was mailed, Plaintiffs' Counsel must provide Defendants' Counsel a declaration, made under penalty of perjury, that contains, for each signed consent form received after the first 60-day period: (i) the date that the first notice was returned as undeliverable; (ii) the date that the second notice was mailed; and (ii) the date that the signed consent form was received.

12. Plaintiffs' Counsel will provide Defendants' Counsel with copies of the signed consent forms on a regular, rolling basis as they are received and Plaintiffs' Counsel shall file them with the court within fourteen (14) days after receipt. Within a reasonable period of time after the opt-in period closes, Defendants' Counsel will provide Plaintiffs' Counsel with agreed-upon and available pay and timekeeping information and records and other discoverable

information requested by Plaintiffs' Counsel that may be in Defendants' possession.

13. The Parties will file a Joint Report to the Court about the status of the action within 14 days after the expiration of the stay, that is, on or before March 14, 2013.

Respectfully submitted, this 16th day of November, 2012.

/s Mitchell D. Benjamin
Mitchell D. Benjamin
Georgia Bar No. 049888
Matthew C. Billips
Georgia Bar No. 057110
John R. Ulmer
Georgia Bar No. 721650
BILLIPS & BENJAMIN LLP
One Tower Creek
3101 Towercreek Parkway, Suite 190
Atlanta, Georgia 30339
(770) 859-0751 Telephone
(770) 859-0752 Facsimile
benjamin@bandblawyers.com
billips@bandblawyers.com
ulmer@bandblawyers.com

/s David L. Pardue
David L. Pardue
Georgia Bar No.
Michael D. Stacy
Georgia Bar No.
KAUFMAN, MILLER
& FORMAN, P.C.
8215 Roswell Road, Building 800
Atlanta, Georgia 30350
(770) 390-0200 Telephone
(770) 395-6720 Facsimile
dlp@kauflaw.net
mds@kauflaw.net

ATTORNEYS FOR DEFENDANTS

/s Charles R. Bridgers
Kevin D. Fitzpatrick, Jr.
Georgia Bar No. 262375
Charles R. Bridgers
Georgia Bar No. 080791
DELONG CALDWELL, BRIDGERS
& FITZPATRICK, LLC
3100 Centennial Tower
101 Marietta Street, NW

Atlanta, Georgia 30303
(404) 979-3150 Telephone
(404) 979-3170 Facsimile
kevin.fitzpatrick@dcbflegal.com
charlesbridgers@dcbflegal.com

ATTORNEYS FOR PLAINTIFFS

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JAMAAL FOSTER and ANTIWON BROWN	:	
Individually And On Behalf of All Others	:	
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vs.	:	1:11-CV-3342-JEC
	:	
A-1 QUALITY LABOR SERVICES, LLC and	:	
WILLIAM J. FOSTER, III,	:	
	:	
Defendants.	:	

CERTIFICATE OF COMPLIANCE AND SERVICE

The undersigned hereby certifies that this day, I served JOINT STIPULATION FOR STAY AND CONDITIONAL CERTIFICATION which was typed in Times New Roman 14 point type, by filing them with the Court using the ECF filing system, which will automatically serve a copy on the counsel identified below:

David L. Pardue
Michael D. Stacy
Robert J. Kaufman
KAUFMAN, MILLER & FORMAN, P.C.
8215 Roswell Road, Building 800
Atlanta, Georgia 30350

Respectfully submitted this 16th day of November, 2012.

BILLIPS & BENJAMIN, LLP
One Tower Creek
3101 Towercreek Parkway, Suite 190
Atlanta, Georgia. 30339
(770) 859-0751 Telephone
(770) 859-0752 Facsimile

/s Mitchell D. Benjamin
Mitchell D. Benjamin
Georgia Bar No. 049888