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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

In Re: Farmers Insurance Exchange Claims  
Representatives' Overtime Pay Litigation

MDL Case No 1439(B)

STIPULATION AND ~~RECEIVED~~ ORDER  
REGARDING *HOFFMAN-LAROCHE*  
NOTICE

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This Document Relates to: All Actions

ORIGINAL

WHEREAS, plaintiffs are current or former insurance claims representatives employed by defendant Farmers Insurance Exchange (“FIE”);

WHEREAS, this lawsuit alleges, among other things, that FIE violated the Fair Labor Standards Act (“FLSA”) by classifying plaintiffs as exempt from overtime pay requirements;

WHEREAS, plaintiffs’ FLSA claim is brought as a collective action on behalf of themselves and others “similarly situated” pursuant to 29 U.S.C. §216(b);

WHEREAS, the Supreme Court in *Hoffman-LaRoche Inc. v Sperling*, 493 U.S. 165 (1989), held that district courts have discretion to implement 29 U.S.C. §216(b) actions by facilitating notice to potential plaintiffs informing them of the pendency of the lawsuit and their right to opt in by a specified deadline;

WHEREAS, the parties have reached agreement on the terms of a proposed order regarding the distribution of a *Hoffman-LaRoche* notice as well as the form of the “consent to join” that will be mailed to potential plaintiffs, but the parties have been unable to agree on the precise language and format of the notice itself;

WHEREAS, the parties attach hereto the agreed-upon consent to join form along with their respective proposed forms of notice and a redlined version of the notice, which highlights the differences between the two proposed forms;

WHEREAS, the parties have been unable to agree whether the statute of limitations for plaintiffs who opt in after receiving notice of the pendency of this lawsuit should be equitably tolled and if so, effective to what date, but the parties have agreed to a briefing schedule so that this issue may be presented to the Court and have included that briefing schedule in the proposed order;

THEREFORE, the parties hereby agree and stipulate that:

- (1) The Court should sign the attached proposed order setting forth the terms under which *Hoffman-LaRoche* notice will be sent to potential plaintiffs and setting the briefing schedule for the issue of equitable tolling;
- (2) The Court should review the two attached proposed form of notices and attach to the signed order the notice that the Court deems appropriate, along with the consent to join form; and
- (3) Through this Stipulation, FIE agrees to the mailing of notice only and is not stipulating that this action is properly certificated as a collective action under the FLSA or that individuals who opt in after receiving notice are “similarly situated” for purposes of 29 U.S.C. §216(b)

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**SO STIPULATED:**

Dated: 10/28/05

Dated: 10/28/05

By: *Barnes H. Ellis*  
For Barnes H. Ellis

By: *N. Robert Stoll*  
Joshua L. Ross

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Defendants' Liaison Counsel

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Defendants' Lead Counsel

Plaintiffs' Lead Counsel

The foregoing stipulation is approved and **IT IS HEREBY ORDERED** that Poorman Douglas Corporation (the "Claims Administrator") shall serve as the Court-appointed administrator to facilitate the sending of the attached notice and the collection and filing with the Court of any returned "Consent to Join" forms

**IT IS HEREBY FURTHER ORDERED** that by November 17, 2005, [fourteen days from the date of this order] defendant Farmers Insurance Exchange ("FIE") provide to the Claims Administrator, in the format preferred by the Claims Administrator, the names and last known mailing addresses of all current and former FIE personal lines Claims Representatives, Senior Claims Representatives, and/or Special Claims Representatives who were employed in any one or more of these positions and performed work outside of California at any time within three years prior to December 1, 2004, and who did not receive Court-approved notice of the FLSA action in MDL Case No 1439(A) or otherwise participate in MDL Case No 1439(A). FIE need not provide the names and addresses of any such employees who were, during the entire time of their employment with FIE since December 1, 2001, classified as non-exempt from overtime pay requirements

**IT IS HEREBY FURTHER ORDERED THAT** the Claims Administrator shall mail notice substantially in the form attached hereto to these potential plaintiffs by November 25, 2005, [twenty-one days from the date of this order]. The Claims Administrator shall promptly notify the parties if any notices are returned as undeliverable. Within three days of being informed that a notice was returned as undeliverable, FIE shall provide the Claims Administrator the Social Security number of the individual for whom the returned notice was intended. The Claims Administrator shall use the Social Security number provided by FIE to obtain a current address for any individual whose notice is returned as

undeliverable, and it shall promptly re-mail the notice to that current address. The Claims Administrator shall keep a record of the addresses that it updates and the dates on which notice was sent to those addresses. The Claims Administrator shall not be required to re-mail notice to any particular individual more than three times.

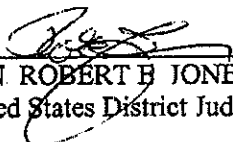
**IT IS HEREBY FURTHER ORDERED THAT**, absent a showing of good cause or excusable neglect, to participate in the FLSA collective action in this case an individual must return his or her Consent to Join form postmarked on or before February 8, 2006, [75 days after notice mailed], to:

Poorman-Douglas Corporation  
P.O. Box \_\_\_\_\_  
Portland, Oregon \_\_\_\_\_

**IT IS HEREBY FURTHER ORDERED THAT** no additional FLSA notice shall be mailed in any action currently included in MDL Case No. 1439(B).

**IT IS HEREBY FURTHER ORDERED THAT** plaintiffs shall file their motion for equitable tolling of the statute of limitations on or before November 11, 2005; defendant shall file its opposition on or before November 22, 2005; and plaintiffs shall file their reply on or before December 2, 2005. Plaintiffs' reply shall be no longer than five pages.

Dated: Nov 3, 2005

  
\_\_\_\_\_  
HON. ROBERT B. JONES  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

In Re: Farmers Insurance Exchange Claims  
Representatives' Overtime Pay Litigation

MDL Docket No 1439(B)

This Document Relates to:  
*Balliet et al v Farmers Insurance Exchange*,  
CV 04-09148 TJH (C D. Cal )

**NOTICE OF LAWSUIT AGAINST  
FARMERS INSURANCE EXCHANGE**

TO: Present and Former Employees of Farmers Insurance Exchange Who Worked As Personal Lines Claims Representatives, Senior Claims Representatives, or Special Claims Representatives, Who Performed Work Outside of California On or After December 1, 2001, and Who Were Classified As Exempt From Overtime Pay Requirements During All or Part of Their Employment

DATE: \_\_\_\_\_, 2005

RE: *Balliet et al v Farmers Insurance Exchange*, CV 04-09148 TJH (C D. Cal ), a Fair Labor Standards Act Lawsuit Against Farmers Insurance Exchange

**THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE FEDERAL DISTRICT COURT, HONORABLE ROBERT E. JONES, U.S. DISTRICT COURT JUDGE.**

**I. INTRODUCTION**

The purpose of this Notice is to inform you of a collective action lawsuit against Farmers Insurance Exchange ("Farmers") in which you are similarly situated to the named plaintiffs, to advise you of your rights, and to explain how you may participate.

**II. DESCRIPTION OF THE LAWSUIT**

Plaintiffs Diana Balliet, Kelly Delgado, Jim Sverdrup, and Paul Whitlock filed this lawsuit, *Balliet et al v Farmers Insurance Exchange* ("*Balliet*"), on behalf of themselves and other current and former personal lines claims representatives of Farmers, alleging that they are owed overtime pay under the federal Fair Labor Standards Act ("FLSA"). Plaintiffs also allege claims under the Employee Retirement Income Security Act and Montana, Utah, and Washington state overtime laws; these non-FLSA claims are not the subject of this notice.

Plaintiffs allege that they are entitled to recover overtime wages from Farmers because Farmers unlawfully classified them as "exempt" from overtime pay requirements under the

FIE's Proposed Notice

FLSA. Plaintiffs also seek an additional equal amount as liquidated damages, and prejudgment interest, attorneys' fees and costs. Farmers denies plaintiffs' allegations.

This lawsuit involves many of the same issues that were decided in *In re. Farmers Insurance Exchange Claims Representatives' Overtime Pay Litigation*, MDL Docket No 1439(A) (D. Or.) ("MDL"), some in favor of the claims representative plaintiffs, some in favor of Farmers. All of those rulings are now pending before the federal Ninth Circuit Court of Appeals. While the Court of Appeals rulings in MDL may affect the overtime rights of anyone who joins this lawsuit, neither the outcome of this case or those appeals can presently be known. Because of the statute of limitations, eligible claims representatives who do *not* join this litigation or file their own separate claims may lose their rights to recover overtime for work performed in the past for Farmers.

### III. COMPOSITION OF THE CLASS

The four named plaintiffs in *Balliet* seek to sue on behalf of themselves and also on behalf of all other current and former Farmers' employees who are similarly situated. Specifically, plaintiffs seek to sue on behalf of any and all current and former Farmers' employees who (a) are or have been, at any time since December 1, 2001, employed as personal lines Claims Representatives, Senior Claims Representatives, and/or Special Claims Representatives; (b) worked overtime hours (more than forty (40) hours in a workweek) during this period; (c) were classified by Farmers as exempt from overtime pay requirements at any time during this period; and (d) have not otherwise received compensation for all overtime worked during this period.

### IV. YOUR RIGHT TO PARTICIPATE IN THIS SUIT

If you fit the definition above, you may join the FLSA claim in this suit (that is, you may "opt in") by mailing the attached "Consent to Join" form, postmarked no later than \_\_\_\_\_ to:

Poorman-Douglas Corporation  
P O Box \_\_\_\_\_  
Portland, Oregon \_\_\_\_\_

If you choose to join in the FLSA claim, your Consent to Join form must be postmarked on or before \_\_\_\_\_. If you fail to return the Consent to Join form to the above address postmarked on or before \_\_\_\_\_, you will not be able to recovery any overtime back wages under the FLSA claim in this lawsuit.

If you file a Consent to Join form, your continued right to participate in the FLSA claim may depend upon a later decision by the District Court that you and the plaintiffs are actually "similarly situated" in accordance with federal law.

### V. EFFECT OF JOINING THIS SUIT

If you join the FLSA claim, you will be bound by the judgment, whether favorable or unfavorable. While this suit is proceeding, you may be required to respond to written questions, sit for depositions, and/or testify in court.

Plaintiffs attorneys' will be paid on a contingency fee basis, which means that if there is no recovery, there will be no attorneys' fee. If there is a recovery, the attorneys for the class will receive attorneys' fees as determined by the Court, which may be a part of any settlement obtained or money judgment entered in favor of all members of the class, or which may be ordered by the Court to be separately paid by Farmers, or which may be a combination of the two. By joining this lawsuit, you designate the named plaintiffs and plaintiffs' attorneys as your representatives, and, to the fullest extent possible under applicable laws, to make decisions on your behalf concerning the litigation, the method and manner of conducting this litigation, and all other matters pertaining to this lawsuit. These decisions and agreements made and entered into by the representative plaintiffs will be binding on you if you join this lawsuit.

#### **VI. NO LEGAL EFFECT IN NOT JOINING THIS SUIT**

If you choose not to join the FLSA claim, you will not be affected by any judgment or settlement rendered in this case on this claim, whether favorable or unfavorable to the class. If you choose not to join in this lawsuit, you are free to file your own lawsuit. However, if you choose not to join in this lawsuit and do not otherwise pursue legal action, you may lose your right to seek compensation for overtime under the FLSA under the applicable statute of limitations.

#### **VII. NO RETALIATION PERMITTED**

Federal law prohibits Farmers from discharging or in any other manner discriminating against you because you have exercised your rights under the FLSA to seek compensation.

## VIII. YOUR LEGAL REPRESENTATION IF YOU JOIN

If you choose to join this suit, your interests will be represented by the named plaintiffs through their attorneys, as counsel for the class. Counsel for the class include:

**N. Robert Stoll**  
**Joshua L. Ross**  
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Facsimile: (415) 434-0513

## IX. FURTHER INFORMATION

Further information about this Notice, the deadline for filing a "Consent to Join," or questions concerning this lawsuit may be obtained by writing or telephoning plaintiffs' attorneys at the numbers and addresses stated above, or at (866) 854-8550, or at [info@farmersovertime.com](mailto:info@farmersovertime.com)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

In Re: Farmers Insurance Exchange Claims  
Representatives' Overtime Pay Litigation

MDL Docket No 1439(B)

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This Document Relates to:  
*Balliet et al v. Farmers Insurance Exchange,*  
CV 04-09148 TJH (C D Cal)

CONSENT TO JOIN

To participate in this lawsuit, this form must be postmarked on or before \_\_\_\_\_,  
and mailed to:

Poorman-Douglas Corporation  
P.O. Box \_\_\_\_\_  
Portland, Oregon \_\_\_\_\_

I work or have worked for Farmers Insurance Exchange ("Farmers"), during some or all of the time since December 1, 2001, as a personal lines Claims Representative, Senior Claims Representative, and/or Special Claims Representative, and during that time period worked more than forty (40) hours in a work week for which I did not receive overtime compensation from Farmers. **I WANT TO JOIN THE LAWSUIT** entitled *Balliet et al v. Farmers Insurance Exchange*, which alleges that Farmers has violated the Fair Labor Standards Act ("FLSA"). I understand that this lawsuit seeks unpaid overtime wages that may be owed to me, and that by joining the lawsuit I will become a plaintiff. By joining this lawsuit, I designate the plaintiffs named in the complaint and their attorneys as my representatives, and, to the fullest extent possible under applicable laws, to make decisions on my behalf concerning my FLSA claim, the method and manner of conducting and resolving the litigation, and all other matters pertaining to the lawsuit. I understand I have the right to choose other attorneys and to pursue my claims on my own behalf, and I choose to be represented in this matter by collective action counsel Rudy, Exelrod & Zieff, LLP; Lewis, Feinberg, Renaker & Jackson, P.C.; Stoll, Stoll, Berne, Lokting & Shlachter, P.C.; Lieff, Cabraser, Heimann & Bernstein, LLP; Altshuler, Berzon, Nussbaum, Rubin & Demain, and other attorneys with whom they may associate.

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State and Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Branch Claims Office(s) In Which You Worked: \_\_\_\_\_

Signature: \_\_\_\_\_ Date signed: \_\_\_\_\_

Proposed Consent to  
Join