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EASTERN DISTRICT OF CALIFORNIA  
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10 *Attorneys for Plaintiff*

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

10 EDWARD CLARKE,

11 Plaintiff,

12 vs.

13 MICHAEL LINDEMAN, LORRAINE  
14 LINDEMAN, DAVID NICKUM, VALLEY  
15 AGGREGATE TRANSPORT, INC., the  
16 BOARD OF DIRECTORS OF VALLEY  
17 AGGREGATE TRANSPORT, INC., and  
18 ADMINISTRATION COMMITTEE FOR  
19 THE VALLEY AGGREGATE, INC.  
20 EMPLOYEE STOCK OWNERSHIP PLAN.

21 Defendants.

) Case No. C 09-03467-JAM-DAD  
)  
) ~~PROPOSED~~ ORDER CERTIFYING  
) CLASS AND GRANTING FINAL  
) APPROVAL OF CLASS ACTION  
) SETTLEMENT

22 This matter comes before the Court on Plaintiff’s Motion for Final Approval of Class  
23 Action Settlement.

24 The proposed settlement in this case was preliminarily approved by this Court on  
25 September 22, 2011 (“Preliminary Approval Order”) (Dkt. No. 55). Pursuant to the Court’s  
26 Preliminary Approval Order and the Notice provided to the Class, the Court conducted a fairness  
27 hearing under Fed. R. Civ. P. 23(e) on December 14, 2011. The Court has reviewed the  
28 materials submitted by the parties, and has heard arguments presented at such hearing. For the

1 reasons cited on the record as well as those stated hereafter, the Court finds and orders as  
2 follows:

3 1. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §  
4 1331 and 29 U.S.C. § 1132(f).

5 2. The proposed Class is so numerous that joinder of all class members is  
6 impracticable. Fed. R. Civ. P. 23(a)(1). The Class has approximately 329 members, which  
7 satisfies the numerosity requirement. See *Jordan v. Los Angeles County*, 669 F.2d 1311, 1319-  
8 20 (9th Cir. 1982), *rev'd on other grounds*, 713 F.2d 503 (9th Cir. 1983); *Aguilar v. Melkonian*  
9 *Enterprises, Inc.*, 2006 WL 3199074, at \*3 (E.D. Cal. Nov. 3, 2006).

10 3. "There are questions of law or fact common to the class," Fed. R. Civ. P. 23(a)(2),  
11 including (1) whether Defendants owed fiduciary duties to the Valley Aggregate Transport, Inc.  
12 Employee Stock Ownership Plan ("the ESOP") and its participants; (2) whether Defendants  
13 breached their fiduciary duties to the ESOP and its participants; (3) the measure and aggregate  
14 amount of losses sustained by the ESOP; and (4) the proper remedy for the ESOP's losses.  
15 Thus, there is a "common contention" that is of "such a nature that it is capable of classwide  
16 resolution." *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551 (2011). See also *In re Syncor*  
17 *ERISA Litig.*, 227 F.R.D. 338, 344 (C.D. Cal. 2005).

18 4. Plaintiff's claims are typical of those of the Class. Fed. R. Civ. P. 23(a)(3).  
19 Plaintiff's and absent Class Members' claims all arise from the same acts and omissions  
20 allegedly committed by the ESOP's fiduciaries.

21 5. Plaintiff has "fairly and adequately protect[ed] the interests of the class" and will  
22 continue to do so. Fed. R. Civ. P. 23(a)(4). Plaintiff's interests are aligned with, not antagonistic  
23 to, the interests of the proposed Class. Plaintiff has also shown his ability and willingness to  
24 prosecute this action vigorously on behalf of the Class in the litigation to date. Thus, the  
25 adequacy requirement is met. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998);  
26 *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d  
27 1152, 1162 (9th Cir. 2001).

28 6. Class certification is proper under Federal Rule of Civil Procedure 23(b)(1).

1 Were the Court to adjudicate Plaintiff's claims that Defendants breached their fiduciary duties by  
2 causing the ESOP to pay more than fair market value for Valley Aggregate stock, engaging in  
3 prohibited transactions, and failing to remedy the breaches of co-fiduciaries, it would, as a  
4 practical matter, dispose of the absent Class Members' claims in those regards. *In re Schering*  
5 *Plough Corp. ERISA Litig.*, 589 F.3d 585, 604 (3d Cir. 2009) (holding that, because of "the  
6 derivative nature of ERISA § 502(a)(2) claims, breach of fiduciary duty claims brought under  
7 § 502(a)(2) are paradigmatic examples of claims appropriate for certification as a Rule 23(b)(1)  
8 class, as numerous courts have held"); *see also Colesberry v. Ruiz Food Prods., Inc.*, 2006 WL  
9 1875444, at \*5 (E.D. Cal. Jun. 30, 2006).

10 7. Thus, the Court hereby certifies a class of all persons who were participants in the  
11 Valley Aggregate Transport, Inc. Employee Stock Ownership Plan on January 9, 2004, or at any  
12 time thereafter, and/or beneficiaries of ESOP participants on January 9, 2004, or at any time  
13 thereafter. Excluded from the Class are Defendants and their immediate family and legal  
14 representatives and assigns of any such excluded persons.

15 8. Lewis, Feinberg, Lee, Renaker & Jackson, P.C. meets the requirements of Federal  
16 Rule of Civil Procedure 23(g). Lewis, Feinberg, Lee, Renaker & Jackson, P.C. is hereby  
17 appointed Class Counsel.

18 9. The notice given to the Class fully and accurately informed Class Members of all  
19 material elements of the proposed settlement, constituted the best notice practicable under the  
20 circumstances, constituted valid, due and sufficient notice to all Class Members, and complied  
21 fully with Rule 23 of the Federal Rules of Civil Procedure and the United States Constitution.

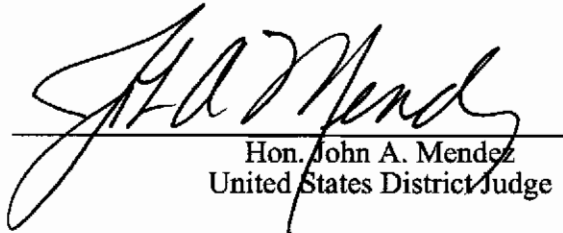
22 10. The Settlement Agreement is fair, reasonable and adequate in all respects to the  
23 Class Members pursuant to Rule 23 of the Federal Rules of Civil Procedure. The uncertainty  
24 and delay of further litigation strongly support the reasonableness and adequacy of the  
25 Settlement. No Class Member has objected to any aspect of the proposed settlement. The  
26 reaction of the Class to the proposed Settlement strongly supports the conclusion that the  
27 proposed Settlement is fair, reasonable, and adequate. Accordingly, the Court hereby grants  
28 final approval of the Settlement.

1           11.    The Court reserves exclusive and continuing jurisdiction over the class action, the  
2 Named Plaintiff, the Class, and the Defendants for the purposes of supervising the  
3 implementation, enforcement, construction, and interpretation of the Settlement Agreement, the  
4 Preliminary Approval Order, the distribution of Settlement Payments, and this Order.

5           12.    All claims in this action are hereby dismissed with prejudice.

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7           IT IS SO ORDERED.

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9           Date: 12-14-2011

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Hon. John A. Mendez  
United States District Judge