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7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 EDWARD CLARKE, ) Case No. C 09-03467-JAM-DAD  
11 )  
Plaintiff, ) **ORDER PRELIMINARILY**  
12 ) **APPROVING CLASS ACTION**  
vs. ) **SETTLEMENT, DIRECTING NOTICE**  
13 ) **TO CLASS, AND SETTING FINAL**  
MICHAEL LINDEMAN, LORRAINE ) **APPROVAL AND FAIRNESS**  
14 ) **HEARING**  
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 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )  
Defendants. )

22 Plaintiff, having made an application pursuant to Rule 23(e)<sup>1</sup> for entry of an order (a)  
23 preliminarily approving the settlement of the Litigation pursuant to the Stipulation and  
24 Agreement of Settlement (the “Settlement”) filed on August 24, 2011; (b) approving the form of  
25 Class Notice and directing the manner of delivery thereof; and (c) scheduling a hearing to  
26 consider the fairness of the Settlement pursuant to Rule 23(e)(2), and upon consideration of the

27 \_\_\_\_\_  
28 <sup>1</sup> All rule references are to the Federal Rules of Civil Procedure.

1 Settlement,

2 IT IS HEREBY ORDERED THAT:

3 1. The Settlement is hereby PRELIMINARILY APPROVED as appearing on its  
4 face to be fair, reasonable, and adequate and to have been the product of serious, informed, and  
5 extensive arms-length negotiations among the Parties.

6 2. A hearing (the "Final Approval and Fairness Hearing") pursuant to Rule 23(e) is  
7 hereby SCHEDULED to be held before the Court on December 14, 2011, at 9:30 a.m. at the  
8 United States District Court, Eastern District of California, 501 I Street, Suite 4-200, Courtroom  
9 6, Sacramento, California, for the following purposes:

- 10 a. to determine whether the proposed Settlement is fair, reasonable and  
11 adequate and should be approved by the Court;
- 12 b. to determine whether the Order Approving Settlement and Final  
13 Judgment as provided under the Settlement should be entered, and to  
14 determine whether the Released Persons should be released of and from  
15 the Released Claims as provided in the Settlement;
- 16 c. to consider Named Plaintiff's application for an incentive award;
- 17 d. to consider Class Counsel's application for an award of attorney's fees  
18 and expenses; and
- 19 e. to rule upon such other matters as the Court may deem  
20 appropriate.

21 3. The form of Class Notice appended to the Declaration of Nina Wasow in  
22 Support of Plaintiff's Motion for Preliminary Approval as Exhibit 2 is hereby APPROVED.  
23 Class Counsel shall mail the Class Notice within seven days of this Order's file stamp date.

24 4. Any individual or entity who believes he, she, or it is a Class Member and  
25 wishes to participate in the Settlement, but does not receive a copy of the Class Notice, may  
26 obtain one on written request. Such persons shall send to Class Counsel, Lewis, Feinberg, Lee,  
27 Renaker & Jackson, P.C., 476 9<sup>th</sup> Street, Oakland, CA 94607, a written request for the Class  
28 Notice that contains the following information: (a) the full name of (i) the individual or entity

1 making the request and (ii) the employee through whose services the person claims to be a Class  
2 Member; (b) the name used by such employee as of the time his or her employment with the  
3 Company ended; and (c) the years during which such employee was employed with the  
4 Company. The request must be mailed by first-class mail, postage prepaid, and postmarked on  
5 or before 30 days following the entry of this Order. Class Counsel shall cause a copy of the  
6 Class Notice to be promptly sent by first-class mail, postage prepaid, to each person or entity  
7 who submits a timely and complete written request.

8         5.         In the event that a Class Notice sent by mail is returned as undeliverable, Class  
9 Counsel shall make reasonable efforts to obtain a valid mailing address as soon as practicable.  
10 In any event, such efforts must be completed no less than 60 days before the Final Approval and  
11 Fairness Hearing date. Following each search that results in a corrected address, Class Counsel  
12 shall promptly resend the Class Notice to the Class Member by first-class mail, postage prepaid.

13         6.         Class Counsel shall file a motion for attorney's fees and expenses no later than  
14 September 28, 2011, which shall be heard at the time of the Final Approval and Fairness  
15 Hearing.

16         7.         The form and manner of delivery of Class Notice directed hereby meet the  
17 requirements of Rule 23(c)(2)(A) and due process, constitute the best notice practicable under  
18 the circumstances, and shall constitute due and sufficient notice to all Class Members.

19         8.         Any person or entity wishing to object to the Settlement, or otherwise to be  
20 heard concerning the Settlement at the Final Approval and Fairness Hearing, must timely send a  
21 notice of intent to object or appear by first-class mail, postage prepaid, to Class Counsel,  
22 Counsel for the Defendants, and the Court. To be considered timely, the notice must bear a  
23 postmark no later than thirty-five (35) days after the Class Notice is mailed. The notice must set  
24 forth any and all objections to the Settlement and include any supporting papers and arguments.  
25 Any person or entity who fails to submit such a timely written notice shall be barred from  
26 making any statement objecting to the Settlement, including at said hearing, and shall forever  
27 waive his, her, or its objection, except by special permission of the Court. Class Counsel shall  
28 file any objections with the Court with the motion for final approval.

1           9.       Plaintiff will file the motion for final approval of the Settlement no later than  
2 twenty eight (28) days before the Final Approval and Fairness Hearing.

3           10.       Pending the Court's further review of the Settlement, all proceedings in the  
4 Litigation, other than proceedings pursuant to the Settlement, shall be stayed, and all Class  
5 Members shall be enjoined from commencing any other action based upon any of the claims at  
6 issue in the Litigation.

7           11.       If the Court fails to approve the Settlement, or if the Settlement is terminated at  
8 the discretion of any Party due to a material modification, the Settlement shall be deemed null  
9 and void and shall have no further force and effect, and neither the Settlement nor the  
10 negotiations leading to it shall be used or referred to by any person or entity in this or in any  
11 other action or proceeding for any purpose. The Parties shall then be restored to their respective  
12 positions in the Litigation as of April 10, 2011, except that the trial and pretrial dates previously  
13 scheduled in this matter shall be re-set to available future dates on the Court's calendar. The  
14 rights and duties of the Parties shall revert to their status prior to the Settlement, and the  
15 Litigation shall continue as if the Settlement had not been reached. In such event, any order  
16 entered by this Court in accordance with the terms of the Settlement shall be treated as vacated.

17           IT IS SO ORDERED.

18  
19 Date: 9/21/2011

/s/ John A. Mendez  
Hon. John A. Mendez  
United States District Judge