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Jerry N. Budin (State Bar No. 88539)
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2401 E. Orangeburg Ave., Suite 675-309
Modesto, CA 95355
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Attorney for Plaintiffs,
FRANCISCO QUINONEZ, et al.

Cory B. Chartrand
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300 N. Palm Street, Post Office Box 709
Turlock, California 95381-0709
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Facsimile: (209) 667-2357

Attorneys For Defendants,
DIRECT DAIRY TRANSPORT, LLC and BRAD
NYMAN

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
(Fresno Division)

FILED

AUG 31 2009

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY CLERK

Quinonez et al v. Direct Dairy Transport, LLC

Doc. 18

FRANCISCO QUINONEZ, et al.,
Plaintiffs,
v.
DIRECT DAIRY TRANSPORT, LLC, et
al.,
Defendants.

CASE NO. 1:08-CV-1984 LJO SMS

STIPULATION AND ~~PROPOSED~~ ORDER TO CERTIFY COLLECTIVE ACTION AND TO FACILITATE NOTICE TO POTENTIAL CLASS MEMBERS ; EXHIBITS A-B

IT IS HEREBY STIPULATED by and between the parties, through their respective counsel, as follows:

1. This action is suitable to be certified as an "opt-in" collective action under the Fair Labor Standards Act [29 U.S.C. Section 216(b)]("FLSA") as to the First, Third and Fifth Causes

~~PROPOSED~~ ORDER

Plaintiffs, FRANCISCO QUINONEZ, et al. and Defendants DIRECT DAIRY TRANSPORT, et al. have filed a stipulation requesting that this court certify this case as an “opt-in” collective action under the Fair Labor Standards Act (FLSA), appoint class representatives and class counsel and authorize the mailing of a collective action notice and consent form to potential members of the “opt-in” class. After reviewing the parties’ stipulation, the Court finds good cause for granting said request and issues the following orders:

1. An “opt-in” class is certified as a collective action under 29 U.S.C. §216(b) as to the First, Third and Fifth Causes Of Action in the complaint herein and is defined as follows:

All persons who are employed or have been employed by defendant DIRECT DAIRY TRANSPORT, LLC in the State of California who, on or after December 30, 2005 to the time of trial, have worked as a truck driver hauling milk from dairies to processing plants within the State of California and have worked in excess of forty (40) hours per week without being paid overtime for those excess hours.

2. Plaintiffs FRANCISO QUINONEZ, BLAS PENA and HUMBERTO DEL RIO MORENO are hereby appointed Class Representatives.

3. Plaintiffs’ Counsel, Jerry Budin, is hereby appointed Class Counsel.

4. Class Counsel is authorized to mail the Notice (Exhibit A attached hereto) and the Consent Form (attached hereto as Exhibit B) to all putative “opt-in” class members.

5. Within fifteen (15) days of entry of this order, defendant DIRECT DAIRY TRANSPORT shall disclose to Class Counsel the name, last known address and Social Security number for all of its truck drivers satisfying the “opt-in” class definition.

6. Within thirty (30) days of entry of this order, plaintiffs’ counsel shall mail the Notice and Consent Form to all truck drivers satisfying the “opt-in” class definition.


7. The deadline to file a Consent Form shall be sixty (60) days after the date of the

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mailing.

8. The filing deadline for plaintiffs' motion for class certification under F.R.C.P. Rule 23 is extended to January 12, 2010.

Dated: Aug 31 2009



LAWRENCE J. O'NEILL
United States District Judge

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE EASTER DISTRICT OF CALIFORNIA

FRANCISCO QUINONEZ, et al.,) CASE NO. 1:08-CV-1984 LJO SMS
)
Plaintiffs,)
vs.)
)
DIRECT DAIRY TRANSPORT, LLC,)
et al.,)
Defendants.)
-----)

TO: CURRENT AND FORMER MILK TRUCK DRIVERS OF DIRECT
DAIRY TRANSPORT

FROM: Plaintiffs FRANCISCO QUINONEZ, BLAS PENA and
HUMBERTO DEL RIO MORENO and their attorney, Jerry
Budín

NOTICE OF OVERTIME COLLECTIVE ACTION LAWSUIT

**IF YOU WORKED AS A MILK TRUCK DRIVER FOR DIRECT DAIRY TRANSPORT IN
CALIFORNIA AT ANY TIME ON OR AFTER DECEMBER 30, 2005, THIS NOTICE
MAY AFFECT YOUR RIGHTS.**

PLEASE READ THIS NOTICE CAREFULLY

Introduction

The purpose of this notice is to advise you of an overtime lawsuit that has been filed against **DIRECT DAIRY TRANSPORT ("DIRECT DAIRY")** and to advise you of the legal rights you have in connection with that suit.

Description Of The Lawsuit

On December 30, 2008, FRANCISCO QUINONEZ, BLAS PENA and HUMBERTO DEL RIO ("Plaintiffs"), on behalf of themselves and other truck drivers, filed a lawsuit against DIRECT DAIRY alleging that they worked for DIRECT DAIRY as a truck driver and were entitled to overtime compensation for hours worked in excess of forty (40) per week, but that DIRECT DAIRY did not pay them any overtime. Defendant DIRECT DAIRY denies all of the allegations in the lawsuit and denies that it owes or that plaintiffs are entitled to any overtime compensation.

Persons Eligible To Receive This Notice

The plaintiffs seek to recover overtime compensation for

themselves and, also, on behalf of a class of other similarly-situated truck drivers. On September ____, 2009, the Court certified a class of similarly-situated truck drivers and approved sending this notice. You have been identified as a member of this class because the records of DIRECT DAIRY indicate that you meet the following definition:

1. You worked as a truck driver for DIRECT DAIRY in California at any time on or after December 30, 2005.

2. You hauled milk from dairies to processing plants within the State of California.

3. You worked in excess of forty (40) hours per week but did not receive overtime compensation for those excess hours.

Your Right To Participate In This Lawsuit

If you fit the definition above, you may join this lawsuit to recover overtime compensation. To do that, you must complete and sign the enclosed **Notice Of Consent** and return it to plaintiffs' attorney as soon as possible so that it can be filed with the Court. The **Filing Deadline** to join the case is **November (date to be inserted which is 60 days after mailing)__, 2009**.

Your Right Not To Join This Lasuit

You are not required to join in this case by filing a Notice Of Consent. It is completely voluntary. However, if you do not file a consent form and join in this case, you will not be entitled to receive any overtime compensation or other relief from DIRECT DAIRY in this case if it is determined that any truck drivers are entitled to overtime compensation.

Furthermore, if you do not join this lawsuit, you will not be bound by any judgment, whether it is favorable or unfavorable to the Plaintiffs and the collective class.

In addition, if you do not join this lawsuit, you are free to file your own lawsuit and until you do so, the statute of limitations will continue to run on your claims against DIRECT DAIRY.

Effect Of Joining This Suit

If you decide to join this case by filing a **Notice Of Consent**, you will be bound by the judgment, whether it is favorable or unfavorable.

Even if you sign a **Notice Of Consent**, however, your continued right to participate in this lawsuit and your right to recover overtime compensation may depend upon a later decision by the Court that you and the plaintiffs are not similarly-situated or that the statute of limitations has run against you or that you are not entitled to overtime compensation. In other words, filing a **Notice Of Consent** does not automatically guarantee that you will receive

overtime compensation.

Your Legal Representation If you Join

If you decide to join this lawsuit, you will be represented by plaintiffs' attorney as counsel for the class. The class counsel is:

Jerry N. Budin
LAW OFFICE OF JERRY BUDIN
2401 E. Orangeburg Ave., Ste. 675-309
Modesto, CA 95355
Telephone: (209) 544-3030
Facsimile: (209) 544-3144

Class counsel's costs and fees will be paid out of any recovery against DIRECT DAIRY. If the class does not prevail against DIRECT DAIRY, costs and fees will be determined by federal statute.

No Opinion Expressed As To The Merits Of The Case

This notice is for the sole purpose of determining the identity of those truck drivers who wish to be involved in this case. Although the Court has authorized the sending of this notice, the Court has taken no position regarding the ultimate outcome of the case.

How To Join This Lawsuit

Enclosed with this letter is a form to be used if you wish to join this lawsuit. The **Notice Of Consent** form must be completed, dated, signed and mailed to class counsel or personally delivered to class counsel's office as soon as possible.

Please remember this **DEADLINE**: Unless class counsel receives the **Notice Of Consent** and files it with the Court on or before **November __, 2009**, you will not be allowed to join in this case.

Protection Against Retaliation

If you choose to take part in this case, the law prohibits DIRECT DAIRY from discriminating or retaliating against you in any way for joining the case.

Further Information

Further information about this case and the procedures and deadline for filing a **Notice Of Consent** can be obtained by calling, e-mailing or writing to class counsel as follows:

Jerry N. Budin
LAW OFFICE OF JERRY BUDIN
2401 E. Orangeburg Ave., Ste. 675-309
Modesto, CA 95355
Telephone: (209) 544-3030
Facsimile: (209) 544-3144
E-Mail: jerrybudin@msn.com

**DEADLINE TO FILE CONSENT FORM IS
NOVEMBER (date to be inserted which is 60
days after mailing)____, 2009**

EXHIBIT B

1 Jerry Budin, Esq.
State Bar #88539
2 LAW OFFICE OF JERRY BUDIN
2401 E. Orangeburg Ave., Ste. 675-309
3 Modesto, California 95355
Telephone: (209) 544-3030
4 Facsimile: (209) 544-3144

5 Attorney for Plaintiffs,
FRANCISCO QUINONEZ, et al.
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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10 (Fresno District)

11 FRANCISCO QUINONEZ, et al.,) CASE NO. 1:08-CV-1984 LJO SMS
12 Plaintiffs,)
13 vs.) NOTICE OF CONSENT TO
14 DIRECT DAIRY TRANSPORT, LLC,) JOIN AS PARTY PLAINTIFF
15 et al.,)
Defendants.)
16

17 TO: CLERK OF THE COURT AND TO EACH PARTY AND COUNSEL OF
18 RECORD:

19 I, _____, hereby consent to be a party
20 (Print Name) plaintiff in this case. I worked as a truck driver for DIRECT
21 DAIRY TRANSPORT in California on or after December 30, 2005 and
22 hauled milk from dairies to processing plants within the State of
23 California. I worked in excess of forty (40) hours per week but
24 did not receive overtime compensation for those excess hours.

25 I authorize attorney Jerry Budin to file this Consent with the
26 Clerk of the Court.

27 I declare under penalty of perjury under the laws of the State
28 of California that the foregoing is true and correct.

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DATE: _____, 2009

(Full Signature)

(Print Name)

(Address)

(City, State, Zip Code)

(Telephone Number)