

1 BREN K. THOMAS, Bar No. 156226
2 MATTHEW E. FARMER, Bar No. 190484
3 LITTLER MENDELSON
4 A Professional Corporation
5 5200 North Palm Avenue, Suite 302
6 Fresno, California 93704.2225
7 Telephone: 559.244.7500
8 Facsimile: 559.244.7525
9 bkthomas@littler.com
10 mfarmers@littler.com

11 Attorneys for Defendant
12 EMADCO DISPOSAL SERVICE, INC.

13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF CALIFORNIA

15 ROBERT DOWLING, an individual,
16 and MICHAEL SMITH, an
17 individual, individually, and acting
18 on behalf of other aggrieved
19 employees, and for the interests of
20 the general public,

21 Plaintiffs,

22 v.

23 EMADCO DISPOSAL SERVICE,
24 INC., a California Corporation; and
25 DOES 1 through 10, inclusive,

26 Defendant.

Case No. 1:11-CV-00139-LJO-SKO

**STIPULATION AND ORDER TO FILE
SETTLEMENT AGREEMENT UNDER
SEAL**

27 Plaintiffs Robert Dowling and Michael Smith ("Plaintiffs") and Defendant Emadco
28 Disposal Service, Inc. ("Defendant") pursuant to Federal Rules of Civil Procedure, Rule 5.2 and U.S.
Eastern District Local Rules, Rule 141, hereby jointly stipulate that the parties have entered into a
Confidential Settlement Agreement and request entry of this proposed order to allow filing of the
Confidential Settlement Agreement under seal. The parties jointly stipulate and agree the following
facts and matters support the filing of the Confidential Settlement Agreement under seal:

1. Plaintiffs initiated this lawsuit against Defendant alleging, inter alia, violations
of the Fair Labor Standards Act ("FLSA"). Additionally, on behalf of themselves and similarly
situated employees, Plaintiffs sought various penalties under the California Private Attorneys

Stipulation and [Proposed] Order to File Settlement
Agreement Under Seal
(No. 1:11-CV-00139-LJO-SKO)

1 General Act ("PAGA") in regards to alleged wage and hour violations by Defendant. Defendant
2 completely denied any liability and without admitting liability, resolved the claims asserted by
3 Plaintiffs in this lawsuit as memorialized in the Confidential Settlement Agreement.

4 2. Pursuant to the FLSA, the Confidential Settlement Agreement must be
5 approved by the Court. *D.A. Schulte, Inc. v. Gangi*, 328 U.S. 108 (1946); *Brooklyn Savings Bank v.*
6 *O'Neil*, 324 U.S. 697 (1945); *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1352-55
7 (11th Cir. 1982); *Jarrard v. Southeastern Shipbuilding Corp.*, 163 F.2d 960, 961 (5th Cir. 1947).

8 3. Additionally, pursuant to the PAGA, the Confidential Settlement Agreement
9 must be approved by the Court. Cal. Lab. Code, § 2699(l).

10 4. Assuring confidentiality in settlement was a key and material term of the
11 parties' Confidential Settlement Agreement. None of the parties would have agreed to this early
12 settlement in this case without agreed to protections of confidentiality.

13 5. Individuals have a protectable privacy interest in their financial affairs. *Cobb*
14 *v. Superior Court*, 99 Cal.App.3d 543, 550 (1979). Corporations, such as Defendant, even enjoy
15 privacy rights in regards to financial and employment information as were both at issue in this case.
16 *Ameri-Medical Corp. v. WCAB*, 42 Cal.App.4th 1260, 1286-1289 (1996). Such privacy interests
17 readily attach to confidential settlement agreements, like the one submitted to the Court in this case.
18 *Hinshaw, Winkler, Draa, Marsh & Still v. Superior Court*, 51 Cal.App.4th 233, 241 (1996).

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 6. Given the authority above, the parties had no choice but to file the
2 Confidential Settlement Agreement with the Court for approval. The parties stipulate and agree that
3 despite that required filing, the confidentiality of the settlement must be maintained.

4 **IT IS HEREBY STIPULATED AND AGREED.**

5 Dated: May 16, 2011

MORTIMER & SCHWIN

6
7 /s/ _____
8 Kevin Schwin
9 Attorneys for Plaintiffs,
10 Robert Dowling and Michael Smith

11
12 Dated: May 16, 2011

LITTLER MENDELSON

13 /s/ _____
14 Matthew E. Farmer
15 Attorneys for Defendant
16 Emadco Disposal Service, Inc.
17
18
19
20
21
22
23
24
25
26
27
28

1 **ORDER**

2

3 The Court, having read and considered the above stipulation and agreement of the

4 parties, hereby finds good cause exists to order the Confidential Settlement Agreement sealed. The

5 Court hereby orders the Confidential Settlement Agreement shall be filed under seal with the Court.

6

7

8 IT IS SO ORDERED.

9 Dated: May 17, 2011

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE