

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

EDWARD CLARKE,	)	Case No. 2:09-CV-03467 JAM-DAD
	)	
Plaintiff,	)	<u>ORDER GRANTING MOTION TO</u>
	)	<u>DISMISS</u>
v.	)	
	)	
MICHAEL LINDEMAN, LORRAINE	)	
LINDEMAN, DAVID NICKUM, VALLEY	)	
AGGREGATE TRANSPORT, INC., and	)	
ADMINISTRATION COMMITTEE FOR THE	)	
VALLEY AGGREGATE, INC., EMPLOYEE	)	
STOCK OWNERSHIP PLAN,	)	
	)	
Defendants.	)	
	)	

GOOD CAUSE APPEARING,

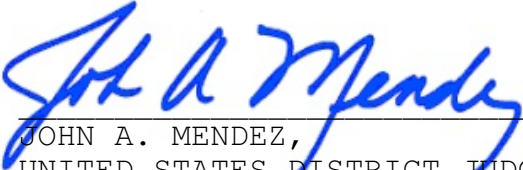
1. The Court grants Defendants David Nickum ("Nickum"), Valley Aggregate Transport, Inc. ("VAT") and Administration Committee for the Valley Aggregate Transport, Inc. Employee Stock Ownership Plan's ("Administration") Cross Motion to Strike (Document #23). Consideration of the documents submitted by Plaintiff in connection with Plaintiff's Opposition to Nickum, VAT and the Administration's Motion to Dismiss is improper for the reasons set forth in the Cross-Motion to Strike.

2. Nickum, VAT and the Administration's Motion to Dismiss

1 (Document #12) is GRANTED WITHOUT PREJUDICE. Plaintiff is ordered  
2 to file an Amended Complaint within twenty (20) days of the date of  
3 this Order. Plaintiff is cautioned that the Amended Complaint must  
4 set forth specifically and in greater detail his theory of  
5 liability against each of these three Defendants. Any attempt by  
6 Plaintiff to keep these three defendants in this case without more  
7 detailed allegations will be looked upon with disfavor. It is  
8 readily apparent to this Court that Plaintiff's primary dispute is  
9 with Defendants Michael and Lorraine Lindeman. This Court is not  
10 yet convinced that Defendants Nickum, VAT and the Administration  
11 can be held liable absent sufficient allegations going to their  
12 alleged fiduciary duties. However, this Court cannot say with  
13 certainty at this early stage of the proceedings that granting  
14 leave to amend would be futile. Accordingly, Plaintiff will be  
15 given one more opportunity to attempt to properly plead his claims  
16 against these three defendants.

17 IT IS SO ORDERED.

18 Dated: June 15, 2010.

  
\_\_\_\_\_  
JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE