

1 Daniel Feinberg – CA State Bar No. 135983  
 Nina Wasow – CA State Bar No. 242047  
 2 LEWIS, FEINBERG, LEE, RENAKER & JACKSON, P.C.  
 476 9th Street  
 3 Oakland, CA 94607  
 Telephone: (510) 839-6824  
 4 Facsimile: (510) 839-7839  
 Email: [dfeinberg@lewisfeinberg.com](mailto:dfeinberg@lewisfeinberg.com)  
 5 Email: [nwasow@lewisfeinberg.com](mailto:nwasow@lewisfeinberg.com)

6 *Attorneys for Plaintiff*

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 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,	)	<b>ORDER DENYING MOTION TO</b>
	)	<b>DISMISS BY DEFENDANTS DAVID</b>
12 vs.	)	<b>NICKUM, VALLEY AGGREGATE</b>
	)	<b>TRANSPORT, INC., and THE</b>
13 MICHAEL LINDEMAN, LORRAINE	)	<b>ADMINISTRATION COMMITTEE</b>
14 LINDEMAN, DAVID NICKUM, VALLEY	)	<b>FOR THE VALLEY AGGREGATE</b>
AGGREGATE TRANSPORT, INC., the	)	<b>TRANSPORT, INC. EMPLOYEE</b>
15 BOARD OF DIRECTORS OF VALLEY	)	<b>STOCK OWNERSHIP PLAN</b>
AGGREGATE TRANSPORT, INC., and	)	
16 ADMINISTRATION COMMITTEE FOR	)	
THE VALLEY AGGREGATE, INC.	)	
17 EMPLOYEE STOCK OWNERSHIP PLAN.	)	
	)	
18 Defendants.	)	
	)	
	)	
	)	

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 22 This matter comes before the Court on a Motion to Dismiss by Defendants David  
 23 Nickum, Valley Aggregate Transport, Inc., and the Administration Committee for the Valley  
 24 Aggregate Transport, Inc. Employee Stock Ownership Plan. Having considered the parties'  
 25 papers and the arguments presented at the hearing on October 6, 2010, the Motion is DENIED.

26 IT IS SO ORDERED.

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Dated: October 18, 2010

/s/ John A. Mendez  
The Honorable John Mendez  
United States District Judge

Approved as to Form:

Dated: October 15, 2010

LEWIS, FEINBERG, LEE,  
RENAKER & JACKSON, P.C.

By: /s/ Nina Wasow  
Daniel Feinberg  
Nina Wasow  
*Attorneys for Plaintiff*

Dated: October 15, 2010

TRUCKER HUSS

By: /s/ R. Bradford Huss  
R. Bradford Huss  
Virginia Perkins  
*Attorneys for Defendants David Nickum,  
Valley Aggregate Transport, Inc., and  
Administration Committee for the Valley  
Aggregate Transport, Inc. Employee Stock  
Ownership Plan*