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 19 *Allied Waste Transportation, Inc.*

20 UNITED STATES DISTRICT COURT  
 21 EASTERN DISTRICT OF CALIFORNIA

22 JERRY DARNEAL, an individual; on behalf of  
 23 himself and all other similarly situated current  
 24 and former employees,

25 Plaintiff,

26 vs.

27 ALLIED WASTE TRANSPORTATION, INC.,  
 28 a Delaware Corporation; and DOES 1 through  
 100, Inclusive,

Defendants.

Case No. 10-CV-01940-KJM-GGH

CLASS ACTION

**STIPULATION FOR VOLUNTARY  
 DISMISSAL; ORDER**

Hon. Kimberly J. Mueller  
 Date Filed: June 11, 2010  
 Trial Date: None

29 This Stipulation and proposed Order is entered into between Plaintiff JERRY  
 30 DARNEAL (“Plaintiff”) and Defendant ALLIED WASTE TRANSPORTATION, INC.

1 (“Defendant”) (hereinafter the “Parties”) , by and through their counsel of record, as follows:

2 WHEREAS Plaintiff initiated the above entitled action by filing a proposed wage and  
3 hour class action complaint on June 11, 2010 against Defendant (hereinafter “the Action”);

4 WHEREAS, on July 21, 2010, Defendant removed the Action on the grounds that this  
5 Court had original federal jurisdiction under 28 U.S.C. § 1332(d)(2);

6 WHEREAS Plaintiff has not filed a motion for class certification in the Action, and  
7 after conducting class discovery, has decided to not pursue certification of a class action in this  
8 Action;

9 WHEREAS Plaintiff now desires to dismiss his claims against Defendant with  
10 prejudice due to a settlement with Defendant;

11 WEHREAS Fed. Rules Civ. Proc. R. 23(e) permits voluntary dismissal of the Class  
12 Action Allegations and dismissal of the named plaintiff’s claims prior to certification of a class  
13 action without court approval or notice to the class;<sup>1</sup>

14 WHEREAS dismissal of this case will not impair the claims of putative class members,  
15 if any, because the Action has not been certified as a class action;

16 WHEREAS notice to the proposed class is not warranted in this case, as the Action has

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18 <sup>1</sup> Rule 23(e) states that “[t]he claims, issues, or defenses **of a certified class** may be settled,  
19 voluntarily dismissed, or compromised only with the court’s approval. *See Fed Rules Civ Proc*  
20 *R 23(e)* (emphasis added). The 2003 Committee Notes to revisions to Rule 23(e) make clear  
21 that court approval is **not** required for settlements which seek to resolve only the named  
22 representative’s individual claims when this is sought prior to certification of a class:

21 Rule 23(e)(1)(A) resolves the ambiguity in former Rule 23(e)'s reference to  
22 dismissal or compromise of "a class action." That language could be -- and at  
23 times was -- read to require court approval of settlements with putative class  
24 representatives that resolved only individual claims. See Manual for Complex  
25 Litigation Third, § 30.41. The new rule requires approval only if the claims,  
26 issues, or defenses **of a certified class** are resolved by a settlement, voluntary  
27 dismissal, or compromise.

24 *See Fed R Civ P 23(e)(1), Committee Note of 2003* (emphasis added); *See also Bender Practice*  
25 *Guide: Fed Pretrial Civ Proc in CA*, at 20.41 (“Rule 23 requires court approval of a voluntary  
26 dismissal or settlement with notice to the class members, but the requirement of court approval  
27 applies **only after certification** of the action as a class action [see Fed R Civ P 23(e)(1)].  
28 Before certification, plaintiffs may settle or dismiss their individual claims as in an individual  
action [see Fed R Civ P 23(e)(1), Committee Note of 2003]. Similarly, the plaintiffs may  
amend the complaint to delete the class allegations and proceed as in an individual suit [see  
Fed R Civ P 15].”) (parentheticals in original).

1 not been certified as a class action and neither Plaintiff or his counsel have otherwise engaged  
2 in communication and/or promotion of the Action with prospective class members;

3 WHEREAS, in light of these Recitations, the Parties request that the Case Management  
4 Conference Currently Set for July 20, 2011 at 10:30 a.m. be VACATED.

5 IT IS HEREBY STIPULATED AND AGREED, by and between the Parties, that that  
6 the Court enter an order that this case be dismissed with prejudice, but that such order will not  
7 affect the rights of putative class members other than Plaintiff to bring any claims they may  
8 have.

9 Dated: July 12, 2011

POLLARD | BAILEY

10 **S**

11 \_\_\_\_\_  
12 By:

DYLAN F. POLLARD, Esq.  
*Attorneys for Plaintiff*

13  
14  
15 Dated: July 12, 2011

SEYFARTH SHAW LLP

16  
17 By: /S/-Peter Urias (as authorized on  
7.10.11)

18 PETER D. URIAS, Esq  
*Attorneys for Defendant*

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**ORDER**

The Parties having so stipulated, and GOOD CAUSE appearing, the Court ORDERS:

1. That this matter is dismissed with prejudice and all pending dates in this case, including the July 20, 2011 Case Management Conference, are VACATED;

2. That, because no class has been certified, this Order has no effect on the rights of putative class members other than Plaintiff Jerry Darneal.

IT IS SO ORDERED.

DATED: July 12, 2011.

  
UNITED STATES DISTRICT JUDGE