

o. C07-02104 SC | Dockets.Justia.com

1 Plaintiffs Gerald Smith, Samir Rady, and Florentino Figueroa (“Class Representatives”)  
2 and Defendant Cardinal Logistics Management Corporation (“Defendant”) (collectively, “the  
3 Parties”) submit the following stipulation and joint request to the Court regarding the Parties’  
4 upcoming trial and discovery deadlines.

5 1. This is a certified class action alleging violations of the California Labor Code  
6 and California Business & Professions Code for the alleged misclassification of delivery truck  
7 drivers.

8 2. On January 22, 2010, the Court set this matter for trial on February 7, 2011  
9 (Docket #128). The Parties continue to believe that trial will take approximately three weeks.

10 3. The Parties have agreed in principle on the terms of a proposed settlement and on  
11 an amount that will be presented for approval to Defendant’s senior and subordinated debt  
12 holders.

13 4. Defendant is highly leveraged; all of Defendant’s assets are held as security for  
14 Defendant debt; and the loan documents contain various financial covenants. Under the terms  
15 of those financial covenants, a majority of Defendant’s senior and subordinated debt holders  
16 must approve the proposed settlement; otherwise, Defendant’s acceptance of the proposed  
17 settlement will trigger a Defendant default, which could lead to foreclosure by Defendant’s  
18 debt holders.

19 5. Defendant is in the process of communicating this proposed settlement to its  
20 senior and subordinated debt holders for approval, but the process is time consuming and may  
21 take until late October or mid-November.

22 6. A primary factor warranting settlement is the highly leveraged financial  
23 condition of Defendant and the risk to the class that a Defendant default (including a default  
24 that will occur if a large judgment is rendered against Defendant at trial) and foreclosure by  
25 Defendant’s debt holders will leave the plaintiffs unable to collect on any judgment obtained  
26 against Defendant.

27 7. Settlement discussions in this matter have been complicated, and protracted, as a  
28 result of Defendant’s financial condition and circumstances. At the time of the Parties’  
mediation last October, Defendant provided revenue expectations and assumptions for 2010.

1 Given the uncertainty of a broader economic recovery and other factors, the Parties were  
2 unable to agree on a reliable forecast for 2010 or the resulting impact on the range of  
3 settlement. Since the Court's January 2010 Scheduling Order, the Parties have continued to  
4 participate in settlement discussions, and have benefitted from additional clarity in Defendant's  
5 financial picture.

6 8. While settlement discussions have been taking place, the Parties have been  
7 concurrently preparing for trial and conducting discovery. However, because the Parties have  
8 agreed in principle as discussed above and are awaiting the approval of Defendant's senior and  
9 subordinated debt holders before the Parties seek preliminary approval from the Court, the  
10 parties believe the substantial cost of expert reports, expert depositions, additional discovery,  
11 pretrial and trial preparation, and further law and motion practice, may threaten any final  
12 resolution of the case, will cause the Court to commit resources in ruling on dispositive and  
13 pre-trial motions, will cause additional time and expense to be incurred by the parties, and will  
14 diminish the classwide recovery. Expert discovery in particular will be expensive, and in the  
15 event a settlement is finalized between the Parties in the next 30-45 days, any costs that have  
16 been expended on the preparation of expert reports will diminish the classwide recovery.

17 9. In addition to the trial date of February 7, 2011, the Court's Status Conference  
18 Order of January 22, 2010 also set a discovery deadline of December 7, 2011, and a last  
19 hearing date for any motions of January 7, 2011 (which means motions would have to be filed  
20 by December 3, 2010). As with the expert costs, the costs of completing discovery in the  
21 coming weeks will diminish the class recovery if a settlement is ultimately finalized.

22 10. Accordingly, for the foregoing reasons, the Parties respectfully request that the  
23 Court grant a brief continuance of the trial date, of the corresponding deadlines for expert  
24 disclosure and reports, discovery cut off, and of the hearing date for any motions. The Parties  
25 respectfully request that the Court vacate the current trial date of February 7, 2011, and  
26 continue the start of trial by approximately 90 days, until May 9, 2011. The Parties further  
27 respectfully request that the Court vacate and reset the deadlines set forth in the Court's  
28 January 22, 2010, Order accordingly, in order that the Parties may conclude their settlement  
before undertaking further discovery, including expert discovery, and further motion practice.

1 These dates include: a continuance of disclosure of experts and production of expert reports by  
2 approximately 60 days from November 9, 2010 to January 10, 2011; the continuance of the  
3 discovery deadline, including depositions of experts, by approximately 60 days from December  
4 7, 2010 to February 7, 2011, and the continuance of the hearing date for any motions by  
5 approximately 45 days from January 11, 2011, to February 25, 2011.

6 IT IS SO STIPULATED.

7  
8 Respectfully Submitted,

9 Dated: October 4, 2010

CHAVEZ & GERTLER LLP

10  
11 /s/ Kim E. Card

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

Kim E. Card  
Class Counsel

13  
14 Dated: October 4, 2010

SCOPELITIS, GARVIN, LIGHT,  
HANSON & FEARY

15  
16 /s/ Robert L. Browning

17 By: \_\_\_\_\_

Robert L. Browning  
Attorneys for Defendant CARDINAL  
LOGISTICS MANAGEMENT CORP.

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DATED: October 5, 2010

## ATTESTATION REGARDING THE SIGNATURE OF NON-FILING COUNSEL

Dated: October 4, 2010

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