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10 Attorneys for Defendant, Cardinal
 11 Logistics Management Corporation

12 **UNITED STATES DISTRICT COURT**
 13 **NORTHERN DISTRICT OF CALIFORNIA**
 14 **SAN FRANCISCO DIVISION**

16 GERALD SMITH, SAMIR RADY, and)
 FLORENTINO FIGUEROA, on behalf of)
 17 themselves and all others similarly situated,)
)
 18 Plaintiffs,)

19 vs.)

20 CARDINAL LOGISTICS MANAGEMENT)
 CORPORATION,)
 21)
 Defendant.)

CASE NO. 07-CV-02104 SC

CLASS ACTION

STIPULATION RE CLASS NOTICE

23 The parties to the above-entitled action, through their respective counsel, hereby stipulate and
 24 agree as follows:

25 1. On October 10, 2008, Plaintiffs filed their Motion for Approval of Class Notice (Doc.
 26 No. 84) (the "Motion").
 27
 28

1 2. The parties subsequently engaged in discussions as to whether a stipulation could be
2 reached on the form and manner of class notice. On October 24, 2008, the parties stipulated that the
3 response of Defendant Cardinal Logistics Management Corporation (“Cardinal”), to the Motion
4 would be due on October 28, 2008 (Doc. Nos. 87, 88). The parties have now reached agreement
5 regarding the issues raised by the Motion, obviating the need for any response to the Motion by
6 Cardinal.

7 3. The parties stipulate and agree to the form of Class Notice attached hereto as Exhibit
8 A (the “Class Notice”).

9 4. The parties stipulate and agree to the following Class Notice process:

- 10 A. Within 14 calendar days of the date that this Court enters its Order approving
11 this Stipulation, Cardinal will provide a class list, in electronic format,
12 containing the names and last known addresses of all members of the class as
13 certified by the Court on September 5, 2008 (“the Class List”), to Class
14 Counsel and the designated Administrator. The list provided to the
15 Administrator will also contain the social security numbers of the class
16 members. The Administrator will sign a non-disclosure agreement concerning
17 the social security numbers;
- 18 B. The Administrator for the Class Notice process will be Rosenthal & Company
19 LLC (“Rosenthal”), a well known and well respected class action
20 administration firm located in the Bay Area;
- 21 C. Rosenthal will print the Class Notice on standard 8-1/2 x 11-size, stationary-
22 quality, paper. Both sides of the paper will be printed. The Notices will be
23 individually addressed to each class member;
- 24 D. Within 21 days of the date that the Class List is provided to Rosenthal,
25 Rosenthal will mail the Class Notice to each person identified on the Class
26 List. The Notice will be sent by first class mail in a full-size, 9 x 12 inch
27 envelope, without folding;
- 28

- 1 E. Prior to mailing, Rosenthal will process the class member addresses through
2 the National Change of Address database;
- 3 F. After the Class Notices have been mailed, Rosenthal will receive and process
4 any Class Notices that are returned by the Postal Services as undeliverable.
5 For those class members, Rosenthal will conduct an address search using credit
6 bureau information, and re-mail the Notice to any new addresses that are
7 found;
- 8 G. The Class Notice will contain a date by which requests for exclusion must be
9 postmarked that is 60 days from the initial date that Class Notices are mailed.
10 This will give class members, including those whose Class Notices might need
11 to be re-mailed, ample time to request exclusion if they so choose. Rosenthal
12 will receive the requests for exclusion, make copies, and forward to counsel;
- 13 H. The Class Notice process and the functions of the Administrator will otherwise
14 be as described in the Notice Plan and Cost Estimate prepared by Rosenthal &
15 Company that was submitted as Exhibit 3 to Declaration of Kim E. Card filed
16 in support of Plaintiffs' Motion;
- 17 I. The Class Notice will direct class members to contact Class Counsel if they
18 have any questions. The Class Notice will also specifically inform them that if
19 they make a request via email, Class Counsel will provide "pdf" copies of the
20 significant pleadings in the case via return email;
- 21 J. At the conclusion of the Class Notice process, Rosenthal will provide a
22 Declaration for filing with the Court verifying the notice procedures that were
23 followed;

24 5. Because the mailing of the Class Notice may cause class members to make inquiries to
25 Cardinal about the litigation, Cardinal stipulates and agrees to instruct its personnel to refer any
26 inquiries to counsel for the class members, and to refrain from engaging in any substantive
27 communications with class members regarding the litigation.
28

1 **IT IS SO STIPULATED.**

2 Dated: October 30, 2008

3 CHAVEZ & GERTLER LLP
4 HERUM CRABTREE BROWN
5 LAW OFFICES OF KIM E. CARD

6 By: /s/ Kim E. Card
7 KIM E. CARD (SBN: 147779)
8 **Attorneys for Plaintiffs Smith, et al,**
9 **and the Proposed Plaintiff Class**

10 Dated: October 30, 2008

11 SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY

12 By: /s/ Robert L. Browning
13 James H. Hanson, *Pro Hac Vice*, Ind. Bar No. 08100-49
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28 Fax: (626) 795-4790
Attorneys for Defendant

29 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

30 Dated: 11/3, 2008

31 By: _____
32 THE HONORABLE JUDGE SAMUEL CONTI
33 SENIOR JUDGE
34 UNITED STATES DISTRICT COURT
35



NOTICE OF CLASS ACTION

Gerald Smith, et al. v. Cardinal Logistics Management Corporation
United States District Court
Northern District of California, Case No. 07-2104 SC
The Honorable Samuel Conti, United States District Judge

[DATE OF MAILING]
[CLASS MEMBER NAME
ADDRESS
CITY, STATE, ZIP]

This is a Notice to inform you that a class action has been filed in California against Cardinal Logistics Management Corporation (“Cardinal”). You have been identified as a current or former driver in California for Cardinal, and as a member of the class that has been certified in the case. ***YOU ARE NOT BEING SUED.*** You are a member of the class of workers on whose behalf the case was filed. The purpose of this Notice is to explain what the case is about, and to tell you about your legal rights and options. **PLEASE READ THIS NOTICE CAREFULLY. *If you want to be part of this class action, you do not have to do anything in response to this Notice.***

DESCRIPTION OF THE CASE. The case is called *Gerald Smith, et al. v. Cardinal Logistics Management Corporation*, United States District Court for the Northern District of California, Case No. 07-2104 SC. The Plaintiffs in the case claim that Cardinal misclassified the class members, who are current and former drivers of Home Depot delivery trucks, as *independent contractors*, when in fact, under applicable provisions of California law, the class members were *employees* who had certain rights under the California Labor Code. The Plaintiffs also claim that by misclassifying the class members, Cardinal required its drivers to pay for employment-related expenses (including truck leases, fuel, repairs, maintenance, insurance, property damage, etc.) that were legally Cardinal’s responsibility. In addition, the Plaintiffs allege that Cardinal should have provided meal and rest breaks to the drivers because they were employees, but failed to do so. The Complaint asserts causes of action under California Labor Code §2802 and other provisions of California law. The Plaintiffs are asking the Court to award money damages and restitution to the class members for all employment-related expenses they were required to pay. In addition, the Complaint seeks restitution and penalties for the meal and rest break violations, injunctive and declaratory relief, and attorneys’ fees, costs and expenses.

Cardinal has denied the allegations of the Complaint, denies that the class members were employees, and denies that there has been any wrongdoing. Cardinal has also asserted various legal defenses to the claims made by the Plaintiffs.

The court has not made any findings of liability, and no decisions have been made on the merits of the claims. This notice is to inform you about the court’s certification of the case as a class action, as described below. The certification of the class, however, is not an indication of the court’s opinion on the merits of Plaintiffs’ claims or a determination of the likelihood of Plaintiffs’ success or recovery of damages in this action. The court has only decided that this case may proceed as a class action.

WHO IS IN THE CLASS? On September 5, 2008, the Court issued an Order certifying the class in the case. The class is defined as including the following people:

Exhibit A

NOTICE OF CLASS ACTION

Smith v. Cardinal Logistics

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All persons who: (1) at any time from March 14, 2003 up to and through the time of judgment in this matter, **performed work for Cardinal Logistics Management Corporation in California as a delivery truck driver, making local deliveries from Home Depot stores;** and (2) were designated and paid by Cardinal as an independent contractor, rather than as an employee; and (3) did *not* employ other drivers to perform the work assigned to them by Cardinal.

The Court has named Plaintiffs Gerald Smith, Samir Rady and Florentino Figueroa as Class Representatives.

YOU ARE RECEIVING THIS NOTICE BECAUSE YOU WERE IDENTIFIED BY CARDINAL AS A MEMBER OF THE CLASS, AS DESCRIBED ABOVE.

SUMMARY OF THE CLAIMS. The central claim made in the case by the Plaintiffs is that Cardinal misclassified the class members as independent contractors, when in fact they were employees as a matter of law. Based on this allegation, the Complaint alleges that Cardinal violated California Labor Code §2802 by requiring the class members to pay for employment-related expenses, without reimbursing the class members for those costs. The Complaint also alleges, among other claims, that Cardinal violated Labor Code §226 by failing to provide itemized wage statements as required by law; violated Labor Code §512 and applicable Regulations by failing to provide meal and rest breaks; violated Labor Code §3751 by passing on the cost of workers compensation insurance; and violated Business and Professions Code §17200, *et seq.* The Plaintiffs are asking the Court to find that the class members were or are employees of Cardinal, and to award money damages and restitution for un-reimbursed expenses. The Plaintiffs are also asking that the Court order Cardinal to change certain of its business practices. In addition, the Plaintiffs ask for attorneys' fees and costs.

Cardinal has denied the allegations of the Complaint and denies that the class members were employees. Specifically, Cardinal has raised a number of defenses to Plaintiffs' allegations including that the claims are untimely or have been waived by Plaintiffs; that the Plaintiffs have been properly paid; that Plaintiffs' state law claims are preempted by Federal statutes and regulations; that Plaintiffs consented to be classified by Cardinal as independent contractors; and, that any damages award to Plaintiffs should be reduced by any amount determined to be owed by Plaintiffs to Cardinal.

WHAT ARE YOUR CHOICES? You have certain rights and choices you can make about your participation as a class member in this case.

◆***IF YOU WANT TO BE A CLASS MEMBER***, and be represented in the case by the attorneys for the class, who are identified below, ***you do not have to do anything in response to this Notice.*** If you do nothing in response to this Notice, your name will stay on the list of class members. If there is a settlement, or if damages are awarded following a trial, ***you will be eligible to receive a share of the money as approved or ordered by the Court.*** You will also be *bound* by any orders or final judgment entered by the Court, and you will not have the right to file your own lawsuit on the same claims.

◆**IF YOU DO NOT WANT TO BE A CLASS MEMBER**, you have a right to request exclusion from the class and from the case. If you request exclusion, you will **not** be part of the case. This means that, if there is a settlement, or if the Court awards money damages to the class members, **you will not receive any money**. You will **not** be bound by any orders or by the final judgment that may be entered, and you would retain the right to file your own lawsuit.

INSTRUCTIONS FOR SUBMITTING A REQUEST FOR EXCLUSION:

If you want to request exclusion from the class, you **must** send the attached form, by mail, to the Administrator for this case at the following address: Cardinal Logistics Class Action, c/o Rosenthal & Co., [ADDRESS]. You must print your name and address on the form clearly, and you must sign and date it. **Your form must be postmarked by: [INSERT DEADLINE/60 days from mailing].**

◆**If you want to be represented in the case by your own attorney**, you may enter an appearance through an attorney that you choose and retain. You do not have to have your own attorney to be part of the case. If you do not enter an appearance through your own attorney, you will be represented in the case by the attorneys for the class.

WHAT HAPPENS NEXT? After this Notice process is complete, the case will continue in discovery (the exchange of documents and information) and in litigation of the legal and factual issues. If the case is not resolved by settlement, the Court will eventually set a trial date. If there is any settlement in the case, or after there has been a trial and a Judgment has been entered, **you will receive another notice**. For this reason, you are requested to notify Class Counsel of any corrections or changes in your name or address.

IF YOU HAVE QUESTIONS. If you have any questions about this case, or about your rights and options, you may contact the attorneys for the class (“Class Counsel”) by mail, e-mail, or telephone. Contact information for Class Counsel is listed below. If you wish, you may make a request to Class Counsel **via email** for copies of the significant pleadings in this case, including the Complaint and Order granting class certification. Class counsel can provide copies of those documents to you via return email in pdf format.

ATTORNEYS FOR THE CLASS:

Kim E. Card LAW OFFICES OF KIM E. CARD 1690 Sacramento Street Berkeley, California 94702 Telephone: (510) 684-5863 Facsimile: (510) 644-2659 kimecard@sonic.net	Jonathan E. Gertler CHAVEZ & GERTLER, LLP 42 Miller Avenue Mill Valley, California 94941 Telephone: (415) 381-5599 Facsimile: (415) 381-5572 jon@chavezgertler.com	Jennifer K. Whipple HERUM CRABTREE BROWN 2291 West March Lane, Suite B100 Stockton, California 95207 Telephone: (209) 472-7700 Facsimile: (209) 472-7986 jwhipple@herumcrabtree.com
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This Notice was approved by the Court on _____, 2008.

THE HONORABLE SAMUEL CONTI
UNITED STATES DISTRICT JUDGE

Gerald Smith, et al. v. Cardinal Logistics Management Corporation
United States District Court
Northern District of California, Case No. 07-2104 SC
The Honorable Samuel Conti, United States District Judge

REQUEST FOR EXCLUSION FROM CLASS ACTION

****ATTENTION! DO NOT SEND IN THIS FORM IF YOU WANT TO BE PART OF THE CLASS, AND WANT TO SHARE IN ANY DAMAGES OR MONEY THAT MAY BE AWARDED. IF YOU SEND IN THIS FORM YOU WILL BE EXCLUDED FROM THE CLASS AND FROM THE CASE, AND YOU WILL NOT RECEIVE ANY MONEY.****

I request exclusion from the class in this case, *Gerald Smith, et al. v. Cardinal Logistics Management Corporation*.

[Signature]

[Printed Name]

[Address]

[City]

[State]

[Zip Code]

THIS REQUEST MUST BE MAILED TO ADMINISTRATOR, CARDINAL LOGISTICS CLASS ACTION, C/O ROSENTHAL & CO., P.O. BOX 6177, NOVATO, CA 94948-6177, ON OR BEFORE _____, 2009 IN ORDER TO EXCLUDE YOU FROM THE CLASS IN THIS MATTER.