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 TVI, INC.

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 18 **UNITED STATES DISTRICT COURT**
 19 **NORTHERN DISTRICT OF CALIFORNIA**
 20 **SAN FRANCISCO DIVISION**

21 PETRINA SMITH, an individual on behalf of)
 herself, and on behalf of all persons similarly)
 22 situated,)
)
 23 Plaintiff,)
)
 24 vs.)
)
 25 TVI, INC., a Washington corporation conducting)
 business in the State of California, and Does 1 to)
 26 10,)
)
 27 Defendant.)

Case No. CV-08-4679 MHP
 Judge: Hon. Marilyn H. Patel
 Ctrm: 15, 18th Floor

**~~PROPOSED~~ ORDER APPROVING
 STIPULATION AND DISMISSAL OF
 ALL REMAINING CLAIMS AND
 DISMISSAL OF PLAINTIFF'S
 COMPLAINT, IN ITS ENTIRETY,
 WITH PREJUDICE**

Action Filed: October 9, 2008
 Trial Date: None Set

1 THE COURT HEREBY APPROVES the "Stipulation Regarding Dismissal of All
2 Remaining Claims and Dismissal of Plaintiff's Complaint, in Its Entirety, With Prejudice"
3 ("stipulation") filed by the parties to this action on April 21, 2009. Specifically, Plaintiff Petrina
4 Smith ("Plaintiff") and Defendant TVI, Inc. ("Defendant" or "TVI") (collectively, the "Parties"),
5 stipulated and agreed, through their respective counsel of record, that Plaintiff will and hereby does
6 dismiss all of her remaining state law claims and, as a result, will and hereby does dismiss
7 Plaintiff's First Amended Complaint ("Complaint"), in its entirety, with prejudice, as set forth
8 below:

- 9 1. In the First Amended Complaint, filed February 5, 2009, Plaintiff alleged individual
10 and collective claims arising under the Fair Labor Standards Act ("FLSA"), 29
11 U.S.C. Section 216. Specifically, Plaintiff alleged that Defendant improperly
12 classified Plaintiff and other members of the purported class as exempt and failed to
13 pay overtime compensation to Plaintiff and proposed class members.
- 14 2. Plaintiff sought to bring her FLSA claim individually and as an opt-in collective
15 action on behalf of "all Operations Supervisors employed in the United States by
16 Defendant during the Class Period," pursuant to 29 U.S.C. Section 216(b).
- 17 3. At the February 25, 2009 Case Management Conference in this matter, the Court
18 specifically authorized Defendant to take Plaintiff's "deposition for the purposes of
19 determining her adequacy as a class representative or anything related to what
20 [Defendant] would want to know about her with regard to her status as a class
21 representative." Feb. 25, 2009 CMC transcript at 10:2-7.
- 22 4. On March 26, 2009, Defendant took Plaintiff's deposition pursuant to the Court's
23 directive, and inquired into issues related to Plaintiff's adequacy as a class
24 representative. In her deposition, Plaintiff unequivocally testified and admitted that,
25 as an Operations Supervisor at TVI, her most important and primary duty was
26 managing and supervising the Operations department and all of the department's
27 employees. As a result of this and other undisputed testimony by Plaintiff relevant
28 to the FLSA, the Parties agreed and stipulated that Plaintiff was not misclassified as

1 exempt under the FLSA, and thus lacked standing to pursue any individual and/or
2 collective claim under the FLSA.

- 3 5. A set forth in the stipulation filed by the Parties on April 6, 2009, Plaintiff agreed to
4 dismiss and did dismiss, with prejudice, all individual and collective FLSA claims.
5 In its Order filed April 9, 2009, the Court approved the Parties' April 6, 2009
6 stipulation and dismissed all FLSA claims, individual and collective, with prejudice.
- 7 6. Following the dismissal of Plaintiff's individual and collective FLSA claims, the
8 only claims remaining in Plaintiff's Complaint are Plaintiff's individual state law
9 claims, including alleged misclassification, alleged missed meal and rest periods,
10 alleged failure to provide wages when due, alleged failure to provide itemized
11 employee wage statements (all alleged pursuant to the California Labor Code), and
12 the alleged violation of the Unfair Competition Law (Cal. Bus. & Prof. Code
13 §17200, *et seq.*).
- 14 7. The Parties have reached an agreement to settle Plaintiff's remaining individual
15 California state law claims, the terms of which will be set forth in a separate
16 settlement agreement between the Parties. As a result of the settlement agreement,
17 Plaintiff will and hereby does dismiss all remaining state law claims. Because
18 Plaintiff's individual state law claims are the only claims that remain, Plaintiff will
19 and hereby does dismiss her Complaint in its entirety, with prejudice.

20 The Court hereby approves of the Parties' stipulation, and each of its terms. Therefore, all
21 of Plaintiff's remaining state law claims are hereby dismissed and, as a result, Plaintiff's Complaint,
22 in its entirety, is also hereby dismissed, with prejudice.

23 **IT IS SO ORDERED.**

