

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RANDY WALTZ, <i>et al.</i>	:	
	:	
	:	4:16-cv-00469-MWB
v.	:	
	:	
AVEDA TRANSPORTATION AND	:	
ENERGY SERVICES INC. and	:	
RODAN TRANSPORT USA LTD	:	
	:	

PLAINTIFFS’ MOTION FOR CONDITIONAL CERTIFICATION

Plaintiffs Randy Waltz and Gary Solinger respectfully move, pursuant to § 16(b) of the Fair Labor Standards Act, 29 U.S.C. § 216(b), for conditional certification of the following collective:¹

The 36 individuals already identified by Defendants as being employed by Rodan in the position of Field Supervisor/Truck Push and paid on a day-rate basis between October 10, 2013 and October 10, 2016.²

¹ Plaintiffs recently withdrew their request to proceed under Rule 23’s class action device. See Doc. 28. They continue to proceed under the FLSA’s collective action device, which permits workers to bring FLSA claims (as well as supplemental state law claims) on behalf of themselves and others who are similarly situated. See 29 U.S.C. § 216(b); see also *O’Brien v. Ed Donnelly Enterprises, Inc.*, 575 F.3d 567, 580 (6th Cir. 2009) (explaining that workers who join an FLSA collective retain the right to pursue supplemental state law claims asserted in the complaint).

² Defendants deny that Aveda (which is Rodan’s corporate parent) employed Plaintiffs or other collective members, *see, e.g.*, Defendants’ Responses to Waltz’s Interrogatories (Ex. A) at pp. 1-2, and admits that these 36 individuals were employed by Rodan, *see* Letter, dated October 10, 2016, from Robert E. Sheeder to Pete Winebrake (“the Sheeder Letter”) (Ex. F) at p. 1. Of course, whether Aveda can be liable as a joint employer under the FLSA is a premature “merits” issue that is irrelevant to the instant conditional certification motion.

The FLSA’s conditional certification standard is not difficult for employees to satisfy. *See generally* Sections III.A-B in Plaintiffs’ brief (discussing standard). Under the applicable “modest factual showing” standard, an FLSA plaintiff merely is required to “produce some evidence, ‘beyond pure speculation,’ of a factual nexus between the manner in which the employer’s alleged policy affected her and the manner in which it affected other employees.” *Symczyk v. Genesis Healthcare Corporation*, 656 F.3d 189, 192 (3d Cir. 2011). Conditional certification of the collective is warranted for the reasons described in Plaintiffs’ brief.

WHEREFORE, Plaintiffs respectfully request that the Court grant this motion and sign and enter the accompanying proposed order.

Date: October 31, 2016

Respectfully,

/s/ Mark J. Gottesfeld
Peter Winebrake
R. Andrew Santillo
Mark J. Gottesfeld
WINEBRAKE & SANTILLO, LLC
715 Twining Road, Suite 211
Dresher, PA 19025

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**RANDY WALTZ, on behalf of himself and
similarly situated employees,**

Plaintiffs,

v.

**AVEDA TRANSPORTATION AND
ENERGY SERVICES INC. and
RODAN TRANSPORT USA LTD,**

Defendants.

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**CIVIL ACTION NO. 4:16-cv-00469-(Brann)
ELECTRONICALLY FILED**

**DEFENDANTS’ OBJECTIONS AND RESPONSES TO RANDY WALTZ’S FIRST
INTERROGATORIES AND DOCUMENT REQUESTS**

To: Plaintiff Randy Waltz, by and through his attorney of record, Pete Winebrake, Winebrake & Santillo, LLC, 715 Twining Road, Suite 211, Dresher, PA 19025.

Defendants AVEDA TRANSPORTATION AND ENERGY SERVICES, INC.¹ (“AVEDA, INC.”) and RODAN TRANSPORT (USA) LTD (“RODAN”) (hereinafter collectively “Defendants”) hereby respond to Randy Waltz’s (“Waltz” or “Plaintiff”) First Interrogatories and Document Requests in accordance with Rules 33 and 34 of the Feral Rules of Civil Procedure and the Court’s Local Civil Rules, as follows:

GENERAL OBJECTIONS & RESERVATION OF RIGHTS

1. Discovery and investigation are continuing in this action. Further discovery, independent investigation, legal research and analysis may supply additional facts, add meaning to the known facts, and establish entirely new factual conclusions and legal contentions, all of which may lead to additions to, modifications of and variations from the responses set forth herein. The following responses are given without prejudice to the right to produce evidence of any subsequently discovered fact or information, or facts or information which this responding party may later recall, pursuant to the Federal Rules of Civil Procedure.

¹ Aveda Transportation and Energy Services, Inc. (“Aveda, Inc.”) has been improperly named in this lawsuit. Aveda, Inc. has no employees in the United States, and Waltz was not employed by Aveda, Inc. at any time relevant to his claims in this lawsuit. By responding to these Interrogatories and Document Requests, Aveda, Inc. is not waiving any defenses or objections to which it may otherwise be entitled.

2. Defendants generally object to these Interrogatories and Document Requests to the extent they seek information and documents from Aveda, Inc. Aveda, Inc. has no employees in the United States and is improperly named as a Defendant in this lawsuit.
3. Defendants generally object to these Interrogatories and Document Requests to the extent they request documents protected from disclosure by the attorney-client privilege, the attorney work product doctrine, the self-critical analysis privilege, privileged investigative communications, or privileged party communications. Defendants further object to these Interrogatories and Document Requests to the extent they seek privileged information prepared in anticipation of litigation or in defense of this matter. Such information is not subject to disclosure under Rule 26 of the Federal Rules of Civil Procedure and Rule 501 of the Federal Rules of Evidence.
4. Defendants generally object to these Interrogatories and Document Requests to the extent they request information and/or documents beyond the scope of Pre-Class/Conditional Certification discovery. Responsive information and/or documents provided, if any, will be limited to that which falls within the scope of Pre-Class/Conditional Certification discovery.
5. A response to a specific Request that states Defendants will produce the requested documents is not a representation that such documents exist or have ever existed but, instead, is a representation that, to the extent such documents do exist and are in the possession, custody, or control of Defendants, they will be produced in accordance with the terms of these General Objections and Reservation of Rights.
6. These Responses are made without prejudice to the right to supplement Responses. Defendants specifically reserve the right to seasonably supplement and amend any and all of their *Objections and Responses to Waltz's First Interrogatories and Document Requests*, in accordance with the Federal Rules of Civil Procedure.

INTERROGATORIES

1. Identify all individuals likely to have discoverable information that supports any defense to Plaintiff's legal or damages claims, and, for each individual, briefly describe the information that he/she may provide.

ANSWER: Defendants' General Objection #2 is specifically incorporated herein. Defendants specifically object to this Interrogatory on the grounds that it is overly broad, vague and ambiguous, in its request for "all individuals likely." Defendants further object to this Interrogatory on the grounds that it is duplicative of other discovery requests. Finally, Defendants object to this Interrogatory on the grounds that it is actually two (2) interrogatories

couched as one. Therefore, Defendants will consider this Interrogatory to constitute two (2) interrogatories for purposes of complying with the applicable civil discovery rules. Subject to and without waiving the foregoing objections, Defendants identify the following:

Paula Breeze
Vice-President Human Resources
467 21 Ave NE
Calgary, AB T2E 1S7
(403) 277-7782

Linda Clark
Manager Human Resources
2709 Tudor Road
Oklahoma City, OK 73127
(405) 808-3121

Tim Clark
Former VP Operations
1558 Tattersall Way
West Chester, PA 19380
(610) 620-5800

Madeleine Lewenko
Payroll Manager

Mark Rowe
Former Supervisor
222-111 McLaughlin DR
Spruce Grove, AB T7X 0T7
(570) 768-8868

Randy Waltz
c/o Peter Winebrake

Gary Solinger
c/o Peter Winebrake

The foregoing individuals may have knowledge relevant to the claims or defenses in this action, including, but not limited to, the following: Defendants' payroll and timekeeping policies and practices.

2. List each job title or position held by Plaintiff during his employment and, for each job title or position listed: (i) state the time period during which Plaintiff worked in the job title or position; and (ii) describe the duties, responsibilities, and requirements of the job title or position.

ANSWER: Defendants' General Objection #2 is specifically incorporated herein. Defendants specifically object to this Interrogatory on the grounds that it is at least three (3) interrogatories couched as one. Therefore, Defendants will consider this Interrogatory to constitute three (3) interrogatories for purposes of complying with the applicable civil discovery rules. Subject to and without waiving the foregoing objections, Defendants state as follows:

Position: Plaintiff held the position of Field Supervisor/Truck Push.

Time Period: May 5, 2014 to May 6, 2015.

Major duties and responsibilities of the Field Supervisor/Truck Push Position include, but are not limited to the following:

- Supervise Drivers, Picker Operator, and Riggers on a specific project or area;
- Ensure that Drivers, Picker Operator, and Riggers understand and follow company policies and procedures, as well as government and client regulations;
- Document employee problems and issues and discuss with Dispatcher and Terminal Manager;
- Identify remedial training needed by Drivers, Picker Operators and Riggers;
- Promote team work on the job;
- Work collaboratively with the client's representative; responsible for returning all equipment to Dispatch;
- Ensure that the trucks, trailers and associated equipment are handled according to company standards and that Drivers, picker Operators and Riggers operate them safely and professionally;
- Complete truck tickets accurately and timely;
- Prepare/monitor work schedule ensuring work is completed on schedule;

- Ensure that all loads comply with government safety and transportation standards and regulations;
- Conducts a FLRA on each site and project prior to work starting;
- Provide crew with appropriate tools/supplies;
- Assist in the investigation of accidents and incidents; and
- Perform as a Truck Push when needed.

Requirements:

- The following certificates and licenses are required for the **Field Supervisor/Truck Push** Position: WHMIS; TDG; PST; GODI; Standard First Aid, H2S Alive, Fall Protection, CSTS, Cargo Securement, FLRA, and HOS;
- Associate's degree or technical college education; and
- 15 years of oilfield experience as a Truck Push.

Also, see Field Supervisor/Truck Push job description that will be made available for Plaintiff's review and copying at the offices of Eckert Seamans Cherin & Mellott, LLC, 213 Market Street, 8th Floor, Harrisburg, PA 17101, at a mutually agreed upon date and time.

3. For each workweek of Plaintiff's employment state (or, pursuant to Civil Rule 33(d), produce documents stating) the following: (i) the number of hours Plaintiff worked; (ii) the number of hours for which Plaintiff received compensation; (iii) the manner in which Plaintiff was paid (e.g., "salary basis," "commission basis," "day-rate basis"); (iv) Plaintiff's total compensation; and (v) the portion of Plaintiff's total compensation attributable [to] overtime premium compensation.

ANSWER: Defendants' General Objection #2 is specifically incorporated herein. Defendants specifically object to this Interrogatory on the grounds that it purports to require Defendants to describe, summarize, or otherwise abstract information available from the face of the documents that have been or will be produced to Plaintiff, where the burden of ascertaining such

information is substantially the same for Plaintiff as for Defendants. Defendants further object to this Interrogatory on the grounds that it is at least five (5) interrogatories couched as one. Therefore, Defendants will consider this Interrogatory to constitute five (5) interrogatories for purposes of complying with the applicable civil discovery rules. Subject to and without waiving the foregoing objections, Defendants state as follows: Relevant time sheets and payroll Records will be made available for Plaintiff's review and copying at the offices of Eckert Seamans Cherin & Mellott, LLC, 213 Market Street, 8th Floor, Harrisburg, PA 17101, at a mutually agreed upon date and time. The burden of deriving responsive information - if any - from these documents will be substantially the same for either party.

4. Identify all individuals responsible for maintaining time, payroll, and compensation data concerning Plaintiff.

ANSWER: Defendants' General Objection #2 is specifically incorporated herein. Defendants specifically object to this Interrogatory on the grounds that it is overly broad, vague and ambiguous, in its request for "all individuals responsible for maintaining." Subject to and without waiving the foregoing objections, Defendants identify the following:

Madeleine Lewenko

5. Defendants admit that they "employed hundreds of employees at oil and gas rigs in approximately five States within the United States," that these employees have held "various job titles," and that some or all of these employees "have been paid on a day-rate basis." See Answer (Doc. 14) at ¶¶ 14, 16. With respect to such day-rate employees working at oil and gas rigs in the United States, provide the following information for all times after March 17, 2013: (i) state the total number of employees; (ii) state the total number of employees who performed any work in Pennsylvania; (iii) list all job titles; and

(iv) provide each employee's name, job title, last known address, and last known phone number.

ANSWER: Defendants' General Objection #2 is specifically incorporated herein. Defendants specifically object to this Interrogatory on the grounds that it is overly broad, vague and ambiguous, in its request for "all times" and "all job titles." Defendants further object to this Interrogatory on the grounds it seeks or could lead to disclosure of private information concerning Rodan's current or former employees other than Plaintiff, who are not parties to this lawsuit, and the disclosure of such information is premature and would unnecessarily violate their privacy rights. Defendants also object to this Interrogatory on the grounds that it is at least four (4) interrogatories couched as one. Therefore, Defendants will consider this Interrogatory to constitute four (4) interrogatories for purposes of complying with the applicable civil discovery rules. Subject to and without waiving the foregoing objections, Defendants state as follows:

- (i) Rodan employed forty-nine (49) individuals, in the United States, after March 17, 2013, who were paid on a day-rate basis;
- (ii) A total of nine (9) of the day-rate employees performed work in Pennsylvania after March 17, 2013; and
- (iii) Truck Push, Field Supervisor

6. Defendants admit that they "employed hundreds of employees at oil and gas rigs in approximately five States within the United States," that these employees have held "various job titles," and that some or all of these individuals "have been paid on a day-rate basis." See Answer (Doc. 14) at ¶¶ 14, 16. Were these day-rate employees classified and treated as overtime-exempt during any time since March 17, 2013? If "yes," provide the following information: (i) identify the *specific* FLSA exemption relied upon by Defendants; (ii) identify the *specific* PMWA exemption relied upon by Defendants; (iii) describe when Defendants made the decision to utilize the overtime exemption; (iv) identify each

individual who was involved in the decision to utilize the overtime exemption; and (v) for each individual identified, describe his/her role in the decision-making process.

ANSWER: Defendants' General Objection #2 is specifically incorporated herein. Defendants specifically object to the extent that this Interrogatory seeks information or documents protected by the Attorney-Client and/or Work Product privileges. Defendants further object to this Interrogatory on the grounds that it is at least five (5) interrogatories couched as one. Therefore, Defendants will consider this Interrogatory to constitute five (5) interrogatories for purposes of complying with the applicable civil discovery rules. Subject to and without waiving the foregoing objections, Defendants state as follows: Yes, employees paid on a day-rate basis were classified as overtime-exempt at some point since March 17, 2013.

- (i) FLSA Exemptions: Highly Compensated; Motor Carrier
- (ii) PMWA Exemptions:
- (iii) Rodan utilized overtime exemption(s) at all relevant times during Plaintiff's employment;
- (iv) Tim Clark, former VP of Operations
- (v) Mr. Clark was the sole decision maker.

7. Was Plaintiff classified and treated as overtime-exempt? If "yes," please: (i) identify the *specific* FLSA exemption relied upon by Defendants; (ii) identify the *specific* PMWA exemption relied upon by Defendants; (iii) describe when Defendants made the decision to utilize the overtime exemption; (iv) identify each individual who was involved in the decision to utilize the overtime exemption; and (v) for each individual identified, describe his/her role in the decision-making process.

ANSWER: Defendants' General Objection #2 is specifically incorporated herein. Defendants specifically object to this Interrogatory on the grounds that it purports to require Defendants to marshal all their evidence and is an attempt by Plaintiff to improperly limit Defendants' testimony. Defendants also object to the extent that this Interrogatory seeks information or

documents protected by the Attorney-Client and/or Work Product privileges. Defendants further object to this Interrogatory on the grounds that it is at least five (5) interrogatories couched as one. Therefore, Defendants will consider this Interrogatory to constitute five (5) interrogatories for purposes of complying with the applicable civil discovery rules. Subject to and without waiving the foregoing objections, Defendants state as follows: Yes, Plaintiff was classified as overtime-exempt at some point since March 17, 2013.

- (i) FLSA Exemptions: Highly Compensated; Motor Carrier
- (ii) PMWA Exemptions:
- (iii) Rodan utilized overtime exemption(s) at all relevant times during Plaintiff's employment;
- (iv) Tim Clark, former VP of Operations
- (v) Mr. Clark was the sole decision maker.

8. Have Defendants ever been the subject of a lawsuit or governmental investigation concerning its employee compensation or timekeeping practices? If "yes," (i) identify the individual or entity responsible for initiating each lawsuit or investigation; (ii) provide any caption, docket number, and/or case number assigned to each lawsuit or investigation; (iii) describe the subject matter of each lawsuit or investigation; and (iv) describe the outcome of each lawsuit or investigation.

ANSWER: Defendants' General Objection #2 is specifically incorporated herein. Defendants specifically object to this Interrogatory on the grounds that it is overly broad, vague and ambiguous, unlimited as to time frame, lacks specificity and foundation, and seeks information that is immaterial, irrelevant and not calculated to lead to the discovery of admissible evidence. Plaintiff's use of the terms or phrases "every" and unspecific "employee compensation or timekeeping practices" render this Interrogatory unduly broad and unspecific. Defendants further object to this Interrogatory on the grounds it seeks or could lead to disclosure of private information concerning Rodan's current or former employees other than Plaintiff, who are not

parties to this lawsuit, and the disclosure of such information would unnecessarily violate their privacy rights. Defendants also object to this Interrogatory on the grounds it seeks information, documents, or tangible items that are confidential or proprietary, or documents/tangible items containing confidential and proprietary business information related to Defendants. This information is not generally known to the public and disclosure of this information or documents containing this information could place the Company, or its successor, or its clients, at a competitive disadvantage or in direct violation of state or federal laws. Defendants will only produce such documents or tangible items, if at all, subject to a mutually agreed upon protective order limiting disclosure. Defendants also object to the extent that this Interrogatory seeks information or documents protected by the Attorney-Client and/or Work Product privileges. Defendants further object to this Interrogatory on the grounds that it exceeds the scope of information and documents subject to discovery at this phase in the proceedings. Defendants also object to this Interrogatory on the grounds it is at least five (5) interrogatories couched as one. Therefore, Defendants will consider this Interrogatory to constitute five (5) interrogatories for purposes of complying with the applicable civil discovery rules. Finally, Defendants object on the grounds that Plaintiff has exceeded the permissible number of interrogatories pursuant to the Federal Rules of Civil Procedure.

9. Have Defendants ever sought an opinion from the federal Department of Labor, the Pennsylvania Department of Labor and Industry, or any other governmental agency concerning compensation or timekeeping practices that are in any way relevant to this lawsuit. If “yes,” (i) identify the governmental agency from which the opinion was sought; (ii) describe the opinion received; and (iii) identify all individuals who were involved in seeking, obtaining, or responding to the opinion.

ANSWER: Defendants' General Objection #2 is specifically incorporated herein. Defendants specifically object to this Interrogatory on the grounds that it is overly broad, vague and ambiguous, unlimited as to time frame, lacks specificity and foundation, and seeks information that is immaterial, irrelevant and not calculated to lead to the discovery of admissible evidence. Plaintiff's use of the terms or phrases "ever" and unspecific "compensation or timekeeping practices," "any way relevant," "all individuals," and "involved" render this Interrogatory unduly broad and unspecific. Defendants further object to this Interrogatory on the grounds it seeks information, documents, or tangible items that are confidential or proprietary, or documents/tangible items containing confidential and proprietary business information related to Defendants. This information is not generally known to the public and disclosure of this information or documents containing this information could place the Company, or its successor, or its clients, at a competitive disadvantage or in direct violation of state or federal laws. Defendants will only produce such documents or tangible items, if at all, subject to a mutually agreed upon protective order limiting disclosure. Defendants also object to the extent that this Interrogatory seeks information or documents protected by the Attorney-Client and/or Work Product privileges. Pursuant to Rule 26 of the Federal Rules of Civil Procedure and Rule 501 of the Federal Rules of Evidence. Defendants further object to this Request on the grounds that it exceeds the scope of information and documents subject to discovery at this phase in the proceedings. Defendants also object to this Interrogatory on the grounds it is at least four (4) interrogatories couched as one. Therefore, Defendants will consider this Interrogatory to constitute four (4) interrogatories for purposes of complying with the applicable civil discovery rules. Finally, Defendants object on the grounds that Plaintiff has exceeded the permissible number of interrogatories pursuant to the Federal Rules of Civil Procedure.

DOCUMENT REQUESTS

1. All documents that Defendants may use to defend against Plaintiff's legal or damages claims.

RESPONSE: Defendants' General Objection #2 is specifically incorporated herein. Defendants specifically object to this Request on the grounds that it is overly broad, vague, ambiguous, lacks specificity and foundation, and seeks documents that are immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this Request as it fails to describe the requested documents with sufficient particularity, as Plaintiff's use of the term "[a]ll" and the undefined phrase "may use to defend" render the Request overly broad and unduly vague. Additionally, Defendants object to this Request to the extent it seeks documents that are not within its possession, custody or control. Defendants also object to this Request to the extent it purports to require Defendants to marshal all their evidence and is an attempt by Plaintiff to improperly limit Defendants' testimony. Defendants further object to the extent that this Request seeks information or documents protected by the Attorney-Client and/or Work Product privileges. Pursuant to Rule 26 of the Federal Rules of Civil Procedure and Rule 501 of the Federal Rules of Evidence, Defendants are withholding all correspondence between Defendants and their attorneys, and all documents and tangible things created by Defendants or their attorneys in anticipation of litigation. At this time, Defendants are not withholding any responsive documents, otherwise reportable on a privilege log, based on these objections. Finally, Defendants object to this Request on the grounds that it exceeds the scope of information and documents subject to discovery at this phase in the proceedings. Subject to and without waiving the foregoing objections, and to the extent that Defendants can ascertain the documents sought by this Request, Defendants will make non-privileged documents in its

possession that they intend to use to defend against class and/or conditional certification available for Plaintiff's review and copying at the offices of Eckert Seamans Cherin & Mellott, LLC, 213 Market Street, 8th Floor, Harrisburg, PA 17101, at a mutually agreed upon date and time.

2. All documents identified in response to the accompanying Interrogatories.

RESPONSE: Defendants' General Objection #2 is specifically incorporated herein. Subject to and without waiving the foregoing objection, responsive documents will be made available for Plaintiff's review and copying at the offices of Eckert Seamans Cherin & Mellott, LLC, 213 Market Street, 8th Floor, Harrisburg, PA 17101, at a mutually agreed upon date and time.

3. All documents, such as organizational charts, reflecting the composition and hierarchy of Defendants' business operations.

RESPONSE: Defendants' General Objection #2 is specifically incorporated herein. Defendants specifically object to this Request on the grounds that it is overly broad, vague, ambiguous, unlimited as to time and scope, lacks specificity and foundation, and seeks documents that are immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this Request as it fails to describe the requested documents with sufficient particularity, as Plaintiff's use of the term "[a]ll" and the undefined phrases "composition and hierarchy" and "business operations" render the Request overly broad and unduly vague. Defendants also object to this Request on the grounds it seeks information, documents, or tangible items that are confidential or proprietary, or documents/tangible items containing confidential and proprietary business information related to Defendants. This information is not generally known to the public and disclosure of this information or documents containing this information could place the Company, or its successor, or its clients, at a competitive disadvantage or in direct violation of state or federal laws. Defendants will only

produce such documents or tangible items, if at all, subject to a mutually agreed upon protective order limiting disclosure. Additionally, Defendants object to this Request to the extent it seeks documents that are not within its possession, custody or control. Defendants also object to this Request to the extent it purports to require Defendants to marshal all their evidence and is an attempt by Plaintiff to improperly limit Defendants' testimony. Defendants further object to the extent that this Request seeks information or documents protected by the Attorney-Client and/or Work Product privileges. Pursuant to Rule 26 of the Federal Rules of Civil Procedure and Rule 501 of the Federal Rules of Evidence, Defendants are withholding all correspondence between Defendants and their attorneys, and all documents and tangible things created by Defendants or their attorneys in anticipation of litigation. At this time, Defendants are not withholding any responsive documents, otherwise reportable on a privilege log, based on these objections. Finally, Defendants object to this Request on the grounds that it exceeds the scope of information and documents subject to discovery at this phase in the proceedings. Subject to and without waiving the foregoing objections, and to the extent Defendants can determine what documents are sought, Defendants will make Rodan's organizational chart available for Plaintiff's review and copying at the offices of Eckert Seamans Cherin & Mellott, LLC, 213 Market Street, 8th Floor, Harrisburg, PA 17101, at a mutually agreed upon date and time.

4. All documents concerning, reflecting, or pertaining to Plaintiff's scheduled work hours.

RESPONSE: Defendants' General Objection #2 is specifically incorporated herein. Defendants specifically object to this Request on the grounds that it is overly broad, vague, ambiguous, lacks specificity, and seeks documents that are immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this Request as it fails

to describe the requested documents with sufficient particularity, as Plaintiff's use of the undefined terms "[a]ll," "concerning" and "pertaining to" render the Request overly broad and unduly vague. Defendants also object to this Request on the grounds it seeks information, documents, or tangible items that are confidential or proprietary, or documents/tangible items containing confidential and proprietary business information related to Defendants. This information is not generally known to the public and disclosure of this information or documents containing this information could place the Company, or its successor, or its clients, at a competitive disadvantage or in direct violation of state or federal laws. Defendants will only produce such documents or tangible items, if at all, subject to a mutually agreed upon protective order limiting disclosure. Defendants further object to the extent that this Request seeks information or documents protected by the Attorney-Client and/or Work Product privileges. Pursuant to Rule 26 of the Federal Rules of Civil Procedure and Rule 501 of the Federal Rules of Evidence, Defendants are withholding all correspondence between Defendants and their attorneys, and all documents and tangible things created by Defendants or their attorneys in anticipation of litigation. At this time, Defendants are not withholding any responsive documents, otherwise reportable on a privilege log, based on these objections. Subject to and without waiving the foregoing objections, and to the extent Defendants can determine what documents are sought, Defendants will make relevant time sheets and payroll Records available for Plaintiff's review and copying at the offices of Eckert Seamans Cherin & Mellott, LLC, 213 Market Street, 8th Floor, Harrisburg, PA 17101, at a mutually agreed upon date and time.

5. All documents concerning, reflecting, or pertaining to Plaintiff's actual work hours.

RESPONSE: Defendants' General Objection #2 is specifically incorporated herein. Defendants

specifically object to this Request on the grounds that it is overly broad, vague, ambiguous, lacks specificity, and seeks documents that are immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this Request as it fails to describe the requested documents with sufficient particularity, as Plaintiff's use of the undefined terms "[a]ll," "concerning," "pertaining to," and "actual" render the Request overly broad and unduly vague. Defendants also object to this Request on the grounds it seeks information, documents, or tangible items that are confidential or proprietary, or documents/tangible items containing confidential and proprietary business information related to Defendants. This information is not generally known to the public and disclosure of this information or documents containing this information could place the Company, or its successor, or its clients, at a competitive disadvantage or in direct violation of state or federal laws. Defendants will only produce such documents or tangible items, if at all, subject to a mutually agreed upon protective order limiting disclosure. Defendants further object to the extent that this Request seeks information or documents protected by the Attorney-Client and/or Work Product privileges. Pursuant to Rule 26 of the Federal Rules of Civil Procedure and Rule 501 of the Federal Rules of Evidence, Defendants are withholding all correspondence between Defendants and their attorneys, and all documents and tangible things created by Defendants or their attorneys in anticipation of litigation. At this time, Defendants are not withholding any responsive documents, otherwise reportable on a privilege log, based on these objections. Subject to and without waiving the foregoing objections, and to the extent Defendants can determine what documents are sought, Defendants will make relevant time sheets and payroll Records available for Plaintiff's review and copying at the offices of Eckert Seamans Cherin & Mellott, LLC, 213 Market Street, 8th Floor, Harrisburg, PA 17101, at a mutually agreed upon

date and time.

6. All documents concerning, reflecting, or pertaining to Plaintiff's compensation.

RESPONSE: Defendants' General Objection #2 is specifically incorporated herein. Defendants specifically object to this Request on the grounds that it is overly broad, vague, ambiguous, lacks specificity, and seeks documents that are immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this Request as it fails to describe the requested documents with sufficient particularity, as Plaintiff's use of the undefined terms "[a]ll," "concerning," and "pertaining to," render the Request overly broad and unduly vague. Subject to and without waiving the foregoing objections, and to the extent Defendants can determine what documents are sought, Defendants will make relevant payroll Records available for Plaintiff's review and copying at the offices of Eckert Seamans Cherin & Mellott, LLC, 213 Market Street, 8th Floor, Harrisburg, PA 17101, at a mutually agreed upon date and time.

7. With respect to Plaintiff, all documents concerning, reflecting, or pertaining to the payroll data described in 29 C.F.R. § 516.2-3 and/or 34 Pa. Code § 231.31-32.

RESPONSE: Defendants' General Objection #2 is specifically incorporated herein. Defendants specifically object to this Request on the grounds that it is overly broad, vague, ambiguous, lacks specificity, and seeks documents that are immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this Request as it fails to describe the requested documents with sufficient particularity, as Plaintiff's use of the undefined terms "[a]ll," "concerning," and "pertaining to," render the Request overly broad and unduly vague. Defendants also object to this Request on the grounds it seeks information,

documents, or tangible items that are confidential or proprietary, or documents/tangible items containing confidential and proprietary business information related to Defendants. This information is not generally known to the public and disclosure of this information or documents containing this information could place the Company, or its successor, or its clients, at a competitive disadvantage or in direct violation of state or federal laws. Defendants will only produce such documents or tangible items, if at all, subject to a mutually agreed upon protective order limiting disclosure. Defendants further object to the extent that this Request seeks information or documents protected by the Attorney-Client and/or Work Product privileges. Pursuant to Rule 26 of the Federal Rules of Civil Procedure and Rule 501 of the Federal Rules of Evidence, Defendants are withholding all correspondence between Defendants and their attorneys, and all documents and tangible things created by Defendants or their attorneys in anticipation of litigation. At this time, Defendants are not withholding any responsive documents, otherwise reportable on a privilege log, based on these objections. Subject to and without waiving the foregoing objections, and to the extent Defendants can determine what documents are sought, Defendants will make relevant payroll Records available for Plaintiff's review and copying at the offices of Eckert Seamans Cherin & Mellott, LLC, 213 Market Street, 8th Floor, Harrisburg, PA 17101, at a mutually agreed upon date and time.

8. All documents concerning, reflecting, or pertaining to Plaintiff's employment, including, but not limited to, personnel files, job application materials, and documents concerning, reflecting, or pertaining to discipline, promotion, demotion, or the termination/discontinuance of Plaintiff's employment.

RESPONSE: Defendants' General Objection #2 is specifically incorporated herein. Defendants specifically object to this Request on the grounds that it is overly broad, vague, ambiguous, lacks

specificity, and seeks documents that are immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this Request as it fails to describe the requested documents with sufficient particularity, as Plaintiff's use of the undefined terms "[a]ll," "concerning," and "pertaining to," render the Request overly broad and unduly vague. Defendants also object to this Request on the grounds it seeks information, documents, or tangible items that are confidential or proprietary, or documents/tangible items containing confidential and proprietary business information related to Defendants. This information is not generally known to the public and disclosure of this information or documents containing this information could place the Company, or its successor, or its clients, at a competitive disadvantage or in direct violation of state or federal laws. Defendants will only produce such documents or tangible items, if at all, subject to a mutually agreed upon protective order limiting disclosure. Defendants further object to the extent that this Request seeks information or documents protected by the Attorney-Client and/or Work Product privileges. Pursuant to Rule 26 of the Federal Rules of Civil Procedure and Rule 501 of the Federal Rules of Evidence, Defendants are withholding all correspondence between Defendants and their attorneys, and all documents and tangible things created by Defendants or their attorneys in anticipation of litigation. At this time, Defendants are not withholding any responsive documents, otherwise reportable on a privilege log, based on these objections. Subject to and without waiving the foregoing objections, and to the extent Defendants can determine what documents are sought, Defendants will make Plaintiff's employment file available for Plaintiff's review and copying at the offices of Eckert Seamans Cherin & Mellott, LLC, 213 Market Street, 8th Floor, Harrisburg, PA 17101, at a mutually agreed upon date and time.

9. All documents concerning, reflecting, or pertaining to the terms, conditions, rules, duties, responsibilities, or requirements of Plaintiff's employment or of any job title or position held by Plaintiff.

RESPONSE: Defendants' General Objection #2 is specifically incorporated herein. Defendants specifically object to this Request on the grounds that it is overly broad, vague, ambiguous, lacks specificity, and seeks documents that are immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this Request as it fails to describe the requested documents with sufficient particularity, as Plaintiff's use of the undefined terms "[a]ll," "concerning," and "pertaining to," render the Request overly broad and unduly vague. Defendants also object to this Request on the grounds it seeks information, documents, or tangible items that are confidential or proprietary, or documents/tangible items containing confidential and proprietary business information related to Defendants. This information is not generally known to the public and disclosure of this information or documents containing this information could place the Company, or its successor, or its clients, at a competitive disadvantage or in direct violation of state or federal laws. Defendants will only produce such documents or tangible items, if at all, subject to a mutually agreed upon protective order limiting disclosure. Defendants further object to the extent that this Request seeks information or documents protected by the Attorney-Client and/or Work Product privileges. Pursuant to Rule 26 of the Federal Rules of Civil Procedure and Rule 501 of the Federal Rules of Evidence, Defendants are withholding all correspondence between Defendants and their attorneys, and all documents and tangible things created by Defendants or their attorneys in anticipation of litigation. At this time, Defendants are not withholding any responsive documents, otherwise reportable on a privilege log, based on these objections. Subject to and

without waiving the foregoing objections, and to the extent Defendants can determine what documents are sought, Defendants will make responsive documents available for Plaintiff's review and copying at the offices of Eckert Seamans Cherin & Mellott, LLC, 213 Market Street, 8th Floor, Harrisburg, PA 17101, at a mutually agreed upon date and time.

10. All documents concerning, reflecting, or pertaining to Defendants' decision that Plaintiff is overtime-exempt.

RESPONSE: Defendants' General Objection #2 is specifically incorporated herein. Defendants specifically object to this Request on the grounds that it is overly broad, vague, ambiguous, lacks specificity, and seeks documents that are immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this Request as it fails to describe the requested documents with sufficient particularity, as Plaintiff's use of the undefined terms "[a]ll," "concerning," and "pertaining to," render the Request overly broad and unduly vague. Defendants also object to this Request on the grounds it seeks information, documents, or tangible items that are confidential or proprietary, or documents/tangible items containing confidential and proprietary business information related to Defendants. This information is not generally known to the public and disclosure of this information or documents containing this information could place the Company, or its successor, or its clients, at a competitive disadvantage or in direct violation of state or federal laws. Defendants will only produce such documents or tangible items, if at all, subject to a mutually agreed upon protective order limiting disclosure. Defendants further object to the extent that this Request seeks information or documents protected by the Attorney-Client and/or Work Product privileges. Pursuant to Rule 26 of the Federal Rules of Civil Procedure and Rule 501 of the Federal Rules of Evidence, Defendants are withholding all correspondence between Defendants and their

attorneys, and all documents and tangible things created by Defendants or their attorneys in anticipation of litigation. At this time, Defendants are not withholding any responsive documents, otherwise reportable on a privilege log, based on these objections. Subject to and without waiving the foregoing objections, and to the extent Defendants can determine what documents are sought, Defendants will make responsive documents available for Plaintiff's review and copying at the offices of Eckert Seamans Cherin & Mellott, LLC, 213 Market Street, 8th Floor, Harrisburg, PA 17101, at a mutually agreed upon date and time.

11. If Defendants answered "yes" to Interrogatory 6, all documents concerning, reflecting, or pertaining to Defendants' decision that the employees are overtime-exempt.

RESPONSE: Defendants' General Objection #2 and specific objections to Interrogatory No. 6 are specifically incorporated herein. Defendants specifically object to this Request on the grounds that it is overly broad, vague, ambiguous, lacks specificity, and seeks documents that are immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this Request as it fails to describe the requested documents with sufficient particularity, as Plaintiff's use of the undefined terms "[a]ll," "concerning," and "pertaining to," render the Request overly broad and unduly vague. Defendants further object to this Request on the grounds it seeks or could lead to disclosure of private information concerning Rodan's current or former employees other than Plaintiff, who are not parties to this lawsuit, and the disclosure of such information would unnecessarily violate their privacy rights. Defendants also object to this Request on the grounds it seeks information, documents, or tangible items that are confidential or proprietary, or documents/tangible items containing confidential and proprietary business information related to Defendants. This information is not generally known to the public and disclosure of this information or documents containing this information could

place the Company, or its successor, or its clients, at a competitive disadvantage or in direct violation of state or federal laws. Defendants will only produce such documents or tangible items, if at all, subject to a mutually agreed upon protective order limiting disclosure. Defendants further object to the extent that this Request seeks information or documents protected by the Attorney-Client and/or Work Product privileges. Pursuant to Rule 26 of the Federal Rules of Civil Procedure and Rule 501 of the Federal Rules of Evidence, Defendants are withholding all correspondence between Defendants and their attorneys, and all documents and tangible things created by Defendants or their attorneys in anticipation of litigation. At this time, Defendants are not withholding any responsive documents, otherwise reportable on a privilege log, based on these objections. Finally, Defendants object to this Request on the grounds that it exceeds the scope of information and documents subject to discovery at this phase in the proceedings.

12. All documents concerning, reflecting, or pertaining to each lawsuit or governmental investigation identified in response to Interrogatory 8.

RESPONSE: Defendants' General Objection #2 and specific objections to Interrogatory No. 8 are specifically incorporated herein. Defendants specifically object to this Request on the grounds that it is overly broad, vague, ambiguous, lacks specificity, and seeks documents that are immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this Request as it fails to describe the requested documents with sufficient particularity, as Plaintiff's use of the undefined terms "[a]ll," "concerning," and "pertaining to," render the Request overly broad and unduly vague. Defendants further object to this Request on the grounds it seeks or could lead to disclosure of private information concerning Rodan's current or former employees other than Plaintiff, who are not parties to this lawsuit, and

the disclosure of such information would unnecessarily violate their privacy rights. Defendants also object to this Request on the grounds it seeks information, documents, or tangible items that are confidential or proprietary, or documents/tangible items containing confidential and proprietary business information related to Defendants. This information is not generally known to the public and disclosure of this information or documents containing this information could place the Company, or its successor, or its clients, at a competitive disadvantage or in direct violation of state or federal laws. Defendants will only produce such documents or tangible items, if at all, subject to a mutually agreed upon protective order limiting disclosure. Defendants further object to the extent that this Request seeks information or documents protected by the Attorney-Client and/or Work Product privileges. Pursuant to Rule 26 of the Federal Rules of Civil Procedure and Rule 501 of the Federal Rules of Evidence, Defendants are withholding all correspondence between Defendants and their attorneys, and all documents and tangible things created by Defendants or their attorneys in anticipation of litigation. At this time, Defendants are not withholding any responsive documents, otherwise reportable on a privilege log, based on these objections. Finally, Defendants object to this Request on the grounds that it exceeds the scope of information and documents subject to discovery at this phase in the proceedings. Subject to and without waiving the foregoing objections, none were identified.

13. All documents concerning, reflecting, or pertaining to each opinion identified in response to Interrogatory 9.

RESPONSE: Defendants' General Objection #2 and specific objections to Interrogatory No. 9 are specifically incorporated herein. Defendants specifically object to this Request on the grounds that it is overly broad, vague, ambiguous, lacks specificity, and seeks documents that are immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible

evidence. Defendants further object to this Request as it fails to describe the requested documents with sufficient particularity, as Plaintiff's use of the undefined terms "[a]ll," "concerning," and "pertaining to," render the Request overly broad and unduly vague. Defendants further object to this Request on the grounds it seeks or could lead to disclosure of private information concerning Rodan's current or former employees other than Plaintiff, who are not parties to this lawsuit, and the disclosure of such information would unnecessarily violate their privacy rights. Defendants also object to this Request on the grounds it seeks information, documents, or tangible items that are confidential or proprietary, or documents/tangible items containing confidential and proprietary business information related to Defendants. This information is not generally known to the public and disclosure of this information or documents containing this information could place the Company, or its successor, or its clients, at a competitive disadvantage or in direct violation of state or federal laws. Defendants will only produce such documents or tangible items, if at all, subject to a mutually agreed upon protective order limiting disclosure. Defendants further object to the extent that this Request seeks information or documents protected by the Attorney-Client and/or Work Product privileges. Pursuant to Rule 26 of the Federal Rules of Civil Procedure and Rule 501 of the Federal Rules of Evidence, Defendants are withholding all correspondence between Defendants and their attorneys, and all documents and tangible things created by Defendants or their attorneys in anticipation of litigation. At this time, Defendants are not withholding any responsive documents, otherwise reportable on a privilege log, based on these objections. Finally, Defendants object to this Request on the grounds that it exceeds the scope of information and documents subject to discovery at this phase in the proceedings. Subject to and without waiving the foregoing objections, none were identified.

Respectfully submitted,

BRACEWELL LLP

/s/Robert E. Sheeder

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Facsimile: (717) 237-6019

MFontana@Eckertseamans.com

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of July, 2016, a true and correct copy of the foregoing document was served *via email* on Plaintiff's counsel of record.

/s/Robert E. Sheeder

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RANDY WALTZ, on behalf of himself and
similarly situated employees,

Plaintiffs,

v.

AVEDA TRANSPORTATION AND
ENERGY SERVICES INC. and
RODAN TRANSPORT USA LTD,

Defendants.

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CIVIL ACTION NO. 4:16-cv-00469-(Brann)
ELECTRONICALLY FILED

VERIFICATION

BEFORE ME, the undersigned authority, on this day personally appeared Paula Breeze, who being by me first duly sworn stated upon her oath, under penalty of perjury under the laws of the United States of America, that she is duly authorized to make this verification; she has read *Defendants' Objections and Responses to Randy Waltz's First Interrogatories*, and the factual statements therein are based on her personal knowledge, or are based on sources of information available to her, including discussions with others with knowledge of the facts inquired about, or are based on a review of available documents, and that the factual allegations contained therein are true and correct.



Paula Breeze

SWORN BEFORE ME at the City of Calgary, in the Province of Alberta, this 15th day of July, 2016.



A notary public.

My appointment expires on 20 .

Patrick D. Fitzpatrick
A Commissioner for Oaths - Notary Public
in and for the Province of Alberta.
Member of the Law Society of Alberta and
My Appointment Expires at the Pleasure of
The Attorney General for the Province of Alberta

Exhibit B

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

RANDY WALTZ, et al.	:	
	:	
v.	:	4:16-cv-00469-MWB
	:	
AVEDA TRANSPORTATION AND ENERGY SERVICES INC. and RODAN TRANSPORT USA LTD	:	
	:	

**DEFENDANTS’ OBJECTIONS AND RESPONSES TO GARY SOLINGER’S FIRST
INTERROGATORIES AND DOCUMENT REQUESTS**

To: Plaintiff Gary Solinger, by and through his attorney of record, Pete Winebrake, Winebrake & Santillo, LLC, 715 Twining Road, Suite 211, Dresher, PA 19025.

Defendants AVEDA TRANSPORTATION AND ENERGY SERVICES, INC.¹ (“**AVEDA, INC.**”) and RODAN TRANSPORT (USA) LTD (“**RODAN**”) (hereinafter collectively “Defendants”) hereby respond to Gary Solinger’s (“Solinger” or “Plaintiff”) First Interrogatories and Document Requests in accordance with Rules 33 and 34 of the Feral Rules of Civil Procedure and the Court’s Local Civil Rules, as follows:

GENERAL OBJECTIONS & RESERVATION OF RIGHTS

1. Discovery and investigation are continuing in this action. Further discovery, independent investigation, legal research and analysis may supply additional facts, add meaning to the known facts, and establish entirely new factual conclusions and legal contentions, all of which may lead to additions to, modifications of and variations from the responses set forth herein. The following responses are given without prejudice to the right to produce evidence

¹ Aveda Transportation and Energy Services, Inc. (“Aveda, Inc.”) has been improperly named in this lawsuit. Aveda, Inc. has no employees in the United States, and neither Plaintiff Randy Waltz nor Solinger were employed by Aveda, Inc. at any time relevant to their claims in this lawsuit. By responding to these Interrogatories and Document Requests, Aveda, Inc. is not waiving any defenses or objections to which it may otherwise be entitled.

of any subsequently discovered fact or information, or facts or information which this responding party may later recall, pursuant to the Federal Rules of Civil Procedure.

2. Defendants generally object to these Interrogatories and Document Requests to the extent they seek information and documents from Aveda, Inc. Aveda, Inc. has no employees in the United States and is improperly named as a Defendant in this lawsuit.
3. Defendants generally object to these Interrogatories and Document Requests to the extent they request documents protected from disclosure by the attorney-client privilege, the attorney work product doctrine, the self-critical analysis privilege, privileged investigative communications, or privileged party communications. Defendants further object to these Interrogatories and Document Requests to the extent they seek privileged information prepared in anticipation of litigation or in defense of this matter. Such information is not subject to disclosure under Rule 26 of the Federal Rules of Civil Procedure and Rule 501 of the Federal Rules of Evidence.
4. Defendants generally object to these Interrogatories and Document Requests to the extent they request information and/or documents beyond the scope of Pre-Class/Conditional Certification discovery. Responsive information and/or documents provided, if any, will be limited to that which falls within the scope of Pre-Class/Conditional Certification discovery.
5. A response to a specific Request that states Defendants will produce the requested documents is not a representation that such documents exist or have ever existed but, instead, is a representation that, to the extent such documents do exist and are in the possession, custody, or control of Defendants, they will be produced in accordance with the terms of these General Objections and Reservation of Rights.
6. These Responses are made without prejudice to the right to supplement Responses. Defendants specifically reserve the right to seasonably supplement and amend any and all of their *Objections and Responses to Solinger's First Interrogatories and Document Requests*, in accordance with the Federal Rules of Civil Procedure.

INTERROGATORIES

1. Identify all individuals likely to have discoverable information that supports any defense to Plaintiff's legal or damages claims, and, for each individual, briefly describe the information that he/she may provide.

ANSWER: Defendants' General Objection #2 is specifically incorporated herein. Defendants specifically object to this Interrogatory on the grounds that it is overly broad, vague and ambiguous, in its request for "all individuals likely." Defendants further object to this Interrogatory on the grounds that it is duplicative of other discovery requests. Finally,

Defendants object to this Interrogatory on the grounds that it is actually two (2) interrogatories couched as one. Therefore, Defendants will consider this Interrogatory to constitute two (2) interrogatories for purposes of complying with the applicable civil discovery rules. Subject to and without waiving the foregoing objections, Defendants identify the following:

Paula Breeze
Vice-President Human Resources
467 21 Ave NE
Calgary, AB T2E 1S7
(403) 277-7782

Linda Clark
Manager Human Resources
2709 Tudor Road
Oklahoma City, OK 73127
(405) 808-3121

Tim Clark
Former VP Operations
1558 Tattersall Way
West Chester, PA 19380
(610) 620-5800

Madeleine Lewenko
Payroll Manager

Mark Rowe
Former Supervisor
222-111 McLaughlin DR
Spruce Grove, AB T7X 0T7
(570) 768-8868

Randy Waltz
c/o Peter Winebrake

Gary Solinger
c/o Peter Winebrake

The foregoing individuals may have knowledge relevant to the claims or defenses in this action, including, but not limited to, the following: Defendants' payroll and timekeeping policies and practices.

2. List each job title or position held by Plaintiff during his employment and, for each job title or position listed: (i) state the time period during which Plaintiff worked in the job title or position; and (ii) describe the duties, responsibilities, and requirements of the job title or position.

ANSWER: Defendants' General Objection #2 is specifically incorporated herein. Defendants specifically object to this Interrogatory on the grounds that it is at least three (3) interrogatories couched as one. Therefore, Defendants will consider this Interrogatory to constitute three (3) interrogatories for purposes of complying with the applicable civil discovery rules. Subject to and without waiving the foregoing objections, Defendants state as follows:

Position: Plaintiff held the position of Field Supervisor/Truck Push.

Time Period: October 25, 2012 to January 22, 2016.

Major duties and responsibilities of the Field Supervisor/Truck Push Position include, but are not limited to the following:

- Supervise Drivers, Picker Operator, and Riggers on a specific project or area;
- Ensure that Drivers, Picker Operator, and Riggers understand and follow company policies and procedures, as well as government and client regulations;
- Document employee problems and issues and discuss with Dispatcher and Terminal Manager;
- Identify remedial training needed by Drivers, Picker Operators and Riggers;
- Promote team work on the job;
- Work collaboratively with the client's representative; responsible for returning all equipment to Dispatch;
- Ensure that the trucks, trailers and associated equipment are handled according to company standards and that Drivers, picker Operators and Riggers operate them safely and professionally;

- Complete truck tickets accurately and timely;
- Prepare/monitor work schedule ensuring work is completed on schedule;
- Ensure that all loads comply with government safety and transportation standards and regulations;
- Conducts a FLRA on each site and project prior to work starting;
- Provide crew with appropriate tools/supplies;
- Assist in the investigation of accidents and incidents; and
- Perform as a Truck Push when needed.

Requirements:

- The following certificates and licenses are required for the **Field Supervisor/Truck Push** Position: WHMIS; TDG; PST; GODI; Standard First Aid, H2S Alive, Fall Protection, CSTS, Cargo Securement, FLRA, and HOS;
- Associate's degree or technical college education; and
- 15 years of oilfield experience as a Truck Push.

Also, see Field Supervisor/Truck Push job description that will be made available for Plaintiff's review and copying at the offices of Eckert Seamans Cherin & Mellott, LLC, 213 Market Street, 8th Floor, Harrisburg, PA 17101, at a mutually agreed upon date and time.

3. For *each workweek* of Plaintiff's employment state (or, pursuant to Civil Rule 33(d), produce documents stating) the following: (i) the number of hours Plaintiff worked; (ii) the number of hours for which Plaintiff received compensation; (iii) the manner in which Plaintiff was paid (e.g., "salary basis," "commission basis," "day-rate basis"); (iv) Plaintiff's total compensation; and (v) the portion of Plaintiff's total compensation attributable overtime premium compensation.

ANSWER: Defendants' General Objection #2 is specifically incorporated herein. Defendants specifically object to this Interrogatory on the grounds that it purports to require Defendants to

describe, summarize, or otherwise abstract information available from the face of the documents that have been or will be produced to Plaintiff, where the burden of ascertaining such information is substantially the same for Plaintiff as for Defendants. Defendants further object to this Interrogatory on the grounds that it is at least five (5) interrogatories couched as one. Therefore, Defendants will consider this Interrogatory to constitute five (5) interrogatories for purposes of complying with the applicable civil discovery rules. Subject to and without waiving the foregoing objections, Defendants state as follows: Relevant time sheets and payroll Records will be made available for Plaintiff's review and copying at the offices of Eckert Seamans Cherin & Mellott, LLC, 213 Market Street, 8th Floor, Harrisburg, PA 17101, at a mutually agreed upon date and time. The burden of deriving responsive information - if any - from these documents will be substantially the same for either party.

4. Identify all individuals responsible for maintaining time, payroll, and compensation data concerning Plaintiff.

ANSWER: Defendants' General Objection #2 is specifically incorporated herein. Defendants specifically object to this Interrogatory on the grounds that it is overly broad, vague and ambiguous, in its request for "all individuals responsible for maintaining." Subject to and without waiving the foregoing objections, Defendants identify the following:

Madeleine Lewenko

5. Was Plaintiff classified and treated as overtime-exempt? If "yes," please: (i) identify the *specific* FLSA exemption relied upon by Defendants; (ii) identify the *specific* PMWA exemption relied upon by Defendants; (iii) describe when Defendants made the decision to utilize the overtime exemption; (iv) identify each individual who was involved in the decision

to utilize the overtime exemption; and (v) for each individual identified, describe his/her role in the decision-making process.

ANSWER: Defendants' General Objection #2 is specifically incorporated herein. Defendants specifically object to this Interrogatory on the grounds that it purports to require Defendants to marshal all their evidence and is an attempt by Plaintiff to improperly limit Defendants' testimony. Defendants also object to the extent that this Interrogatory seeks information or documents protected by the Attorney-Client and/or Work Product privileges. Defendants further object to this Interrogatory on the grounds that it is at least five (5) interrogatories couched as one. Therefore, Defendants will consider this Interrogatory to constitute five (5) interrogatories for purposes of complying with the applicable civil discovery rules. Subject to and without waiving the foregoing objections, Defendants state as follows: Yes, Plaintiff was classified as overtime-exempt at some point since March 17, 2013.

- (i) FLSA Exemptions: Highly Compensated; Motor Carrier
- (ii) PMWA Exemptions:
- (iii) Rodan utilized overtime exemption(s) at all relevant times during Plaintiff's employment;
- (iv) Tim Clark, former VP of Operations
- (v) Mr. Clark was the sole decision maker.

DOCUMENT REQUESTS

1. All documents that Defendants may use to defend against Plaintiff's legal or damages claims.

RESPONSE: Defendants' General Objection #2 is specifically incorporated herein. Defendants specifically object to this Request on the grounds that it is overly broad, vague, ambiguous, lacks specificity and foundation, and seeks documents that are immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this Request as it fails to describe the requested documents with sufficient particularity, as

Plaintiff's use of the term "[a]ll" and the undefined phrase "may use to defend" render the Request overly broad and unduly vague. Additionally, Defendants object to this Request to the extent it seeks documents that are not within its possession, custody or control. Defendants also object to this Request to the extent it purports to require Defendants to marshal all their evidence and is an attempt by Plaintiff to improperly limit Defendants' testimony. Defendants further object to the extent that this Request seeks information or documents protected by the Attorney-Client and/or Work Product privileges. Pursuant to Rule 26 of the Federal Rules of Civil Procedure and Rule 501 of the Federal Rules of Evidence, Defendants are withholding all correspondence between Defendants and their attorneys, and all documents and tangible things created by Defendants or their attorneys in anticipation of litigation. At this time, Defendants are not withholding any responsive documents, otherwise reportable on a privilege log, based on these objections. Finally, Defendants object to this Request on the grounds that it exceeds the scope of information and documents subject to discovery at this phase in the proceedings. Subject to and without waiving the foregoing objections, and to the extent that Defendants can ascertain the documents sought by this Request, Defendants will make non-privileged documents in its possession that they intend to use to defend against class and/or conditional certification available for Plaintiff's review and copying at the offices of Eckert Seamans Cherin & Mellott, LLC, 213 Market Street, 8th Floor, Harrisburg, PA 17101, at a mutually agreed upon date and time.

2. All documents identified in response to the accompanying Interrogatories.

RESPONSE: Defendants' General Objection #2 is specifically incorporated herein. Subject to and without waiving the foregoing objection, responsive documents will be made available for

Plaintiff's review and copying at the offices of Eckert Seamans Cherin & Mellott, LLC, 213 Market Street, 8th Floor, Harrisburg, PA 17101, at a mutually agreed upon date and time.

3. All documents, such as organizational charts, reflecting the composition and hierarchy of Defendants' business operations.

RESPONSE: Defendants' General Objection #2 is specifically incorporated herein. Defendants specifically object to this Request on the grounds that it is overly broad, vague, ambiguous, unlimited as to time and scope, lacks specificity and foundation, and seeks documents that are immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this Request as it fails to describe the requested documents with sufficient particularity, as Plaintiff's use of the term "[a]ll" and the undefined phrases "composition and hierarchy" and "business operations" render the Request overly broad and unduly vague. Defendants also object to this Request on the grounds it seeks information, documents, or tangible items that are confidential or proprietary, or documents/tangible items containing confidential and proprietary business information related to Defendants. This information is not generally known to the public and disclosure of this information or documents containing this information could place the Company, or its successor, or its clients, at a competitive disadvantage or in direct violation of state or federal laws. Defendants will only produce such documents or tangible items, if at all, subject to a mutually agreed upon protective order limiting disclosure. Additionally, Defendants object to this Request to the extent it seeks documents that are not within its possession, custody or control. Defendants also object to this Request to the extent it purports to require Defendants to marshal all their evidence and is an attempt by Plaintiff to improperly limit Defendants' testimony. Defendants further object to the extent that this Request seeks information or documents protected by the Attorney-Client and/or

Work Product privileges. Pursuant to Rule 26 of the Federal Rules of Civil Procedure and Rule 501 of the Federal Rules of Evidence, Defendants are withholding all correspondence between Defendants and their attorneys, and all documents and tangible things created by Defendants or their attorneys in anticipation of litigation. At this time, Defendants are not withholding any responsive documents, otherwise reportable on a privilege log, based on these objections. Finally, Defendants object to this Request on the grounds that it exceeds the scope of information and documents subject to discovery at this phase in the proceedings. Subject to and without waiving the foregoing objections, and to the extent Defendants can determine what documents are sought, Defendants will make Rodan's organizational chart available for Plaintiff's review and copying at the offices of Eckert Seamans Cherin & Mellott, LLC, 213 Market Street, 8th Floor, Harrisburg, PA 17101, at a mutually agreed upon date and time.

4. All documents concerning, reflecting, or pertaining to Plaintiff's scheduled work hours.

RESPONSE: Defendants' General Objection #2 is specifically incorporated herein. Defendants specifically object to this Request on the grounds that it is overly broad, vague, ambiguous, lacks specificity, and seeks documents that are immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this Request as it fails to describe the requested documents with sufficient particularity, as Plaintiff's use of the undefined terms "[a]ll," "concerning" and "pertaining to" render the Request overly broad and unduly vague. Defendants also object to this Request on the grounds it seeks information, documents, or tangible items that are confidential or proprietary, or documents/tangible items containing confidential and proprietary business information related to Defendants. This information is not generally known to the public and disclosure of this information or documents

containing this information could place the Company, or its successor, or its clients, at a competitive disadvantage or in direct violation of state or federal laws. Defendants will only produce such documents or tangible items, if at all, subject to a mutually agreed upon protective order limiting disclosure. Defendants further object to the extent that this Request seeks information or documents protected by the Attorney-Client and/or Work Product privileges. Pursuant to Rule 26 of the Federal Rules of Civil Procedure and Rule 501 of the Federal Rules of Evidence, Defendants are withholding all correspondence between Defendants and their attorneys, and all documents and tangible things created by Defendants or their attorneys in anticipation of litigation. At this time, Defendants are not withholding any responsive documents, otherwise reportable on a privilege log, based on these objections. Subject to and without waiving the foregoing objections, and to the extent Defendants can determine what documents are sought, Defendants will make relevant time sheets and payroll Records available for Plaintiff's review and copying at the offices of Eckert Seamans Cherin & Mellott, LLC, 213 Market Street, 8th Floor, Harrisburg, PA 17101, at a mutually agreed upon date and time.

5. All documents concerning, reflecting, or pertaining to Plaintiff's actual work hours.

RESPONSE: Defendants' General Objection #2 is specifically incorporated herein. Defendants specifically object to this Request on the grounds that it is overly broad, vague, ambiguous, lacks specificity, and seeks documents that are immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this Request as it fails to describe the requested documents with sufficient particularity, as Plaintiff's use of the undefined terms "[a]ll," "concerning," "pertaining to," and "actual" render the Request overly broad and unduly vague. Defendants also object to this Request on the grounds it seeks

information, documents, or tangible items that are confidential or proprietary, or documents/tangible items containing confidential and proprietary business information related to Defendants. This information is not generally known to the public and disclosure of this information or documents containing this information could place the Company, or its successor, or its clients, at a competitive disadvantage or in direct violation of state or federal laws. Defendants will only produce such documents or tangible items, if at all, subject to a mutually agreed upon protective order limiting disclosure. Defendants further object to the extent that this Request seeks information or documents protected by the Attorney-Client and/or Work Product privileges. Pursuant to Rule 26 of the Federal Rules of Civil Procedure and Rule 501 of the Federal Rules of Evidence, Defendants are withholding all correspondence between Defendants and their attorneys, and all documents and tangible things created by Defendants or their attorneys in anticipation of litigation. At this time, Defendants are not withholding any responsive documents, otherwise reportable on a privilege log, based on these objections. Subject to and without waiving the foregoing objections, and to the extent Defendants can determine what documents are sought, Defendants will make relevant time sheets and payroll Records available for Plaintiff's review and copying at the offices of Eckert Seamans Cherin & Mellott, LLC, 213 Market Street, 8th Floor, Harrisburg, PA 17101, at a mutually agreed upon date and time.

6. All documents concerning, reflecting, or pertaining to Plaintiff's compensation.

RESPONSE: Defendants' General Objection #2 is specifically incorporated herein. Defendants specifically object to this Request on the grounds that it is overly broad, vague, ambiguous, lacks specificity, and seeks documents that are immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this Request as it fails

to describe the requested documents with sufficient particularity, as Plaintiff's use of the undefined terms "[a]ll," "concerning," and "pertaining to," render the Request overly broad and unduly vague. Subject to and without waiving the foregoing objections, and to the extent Defendants can determine what documents are sought, Defendants will make relevant payroll Records available for Plaintiff's review and copying at the offices of Eckert Seamans Cherin & Mellott, LLC, 213 Market Street, 8th Floor, Harrisburg, PA 17101, at a mutually agreed upon date and time.

7. With respect to Plaintiff, all documents concerning, reflecting, or pertaining to the payroll data described in 29 C.F.R. § 516.2-3 and/or 34 Pa. Code § 231.31-32.

RESPONSE: Defendants' General Objection #2 is specifically incorporated herein. Defendants specifically object to this Request on the grounds that it is overly broad, vague, ambiguous, lacks specificity, and seeks documents that are immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this Request as it fails to describe the requested documents with sufficient particularity, as Plaintiff's use of the undefined terms "[a]ll," "concerning," and "pertaining to," render the Request overly broad and unduly vague. Defendants also object to this Request on the grounds it seeks information, documents, or tangible items that are confidential or proprietary, or documents/tangible items containing confidential and proprietary business information related to Defendants. This information is not generally known to the public and disclosure of this information or documents containing this information could place the Company, or its successor, or its clients, at a competitive disadvantage or in direct violation of state or federal laws. Defendants will only produce such documents or tangible items, if at all, subject to a mutually agreed upon protective order limiting disclosure. Defendants further object to the extent that this Request seeks

information or documents protected by the Attorney-Client and/or Work Product privileges. Pursuant to Rule 26 of the Federal Rules of Civil Procedure and Rule 501 of the Federal Rules of Evidence, Defendants are withholding all correspondence between Defendants and their attorneys, and all documents and tangible things created by Defendants or their attorneys in anticipation of litigation. At this time, Defendants are not withholding any responsive documents, otherwise reportable on a privilege log, based on these objections. Subject to and without waiving the foregoing objections, and to the extent Defendants can determine what documents are sought, Defendants will make relevant payroll Records available for Plaintiff's review and copying at the offices of Eckert Seamans Cherin & Mellott, LLC, 213 Market Street, 8th Floor, Harrisburg, PA 17101, at a mutually agreed upon date and time.

8. All documents concerning, reflecting, or pertaining to Plaintiff's employment, including, but not limited to, personnel files, job application materials, and documents concerning, reflecting, or pertaining to discipline, promotion, demotion, or the termination/discontinuance of Plaintiff's employment.

RESPONSE: Defendants' General Objection #2 is specifically incorporated herein. Defendants specifically object to this Request on the grounds that it is overly broad, vague, ambiguous, lacks specificity, and seeks documents that are immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this Request as it fails to describe the requested documents with sufficient particularity, as Plaintiff's use of the undefined terms "[a]ll," "concerning," and "pertaining to," render the Request overly broad and unduly vague. Defendants also object to this Request on the grounds it seeks information, documents, or tangible items that are confidential or proprietary, or documents/tangible items containing confidential and proprietary business information related to Defendants. This

information is not generally known to the public and disclosure of this information or documents containing this information could place the Company, or its successor, or its clients, at a competitive disadvantage or in direct violation of state or federal laws. Defendants will only produce such documents or tangible items, if at all, subject to a mutually agreed upon protective order limiting disclosure. Defendants further object to the extent that this Request seeks information or documents protected by the Attorney-Client and/or Work Product privileges. Pursuant to Rule 26 of the Federal Rules of Civil Procedure and Rule 501 of the Federal Rules of Evidence, Defendants are withholding all correspondence between Defendants and their attorneys, and all documents and tangible things created by Defendants or their attorneys in anticipation of litigation. At this time, Defendants are not withholding any responsive documents, otherwise reportable on a privilege log, based on these objections. Subject to and without waiving the foregoing objections, and to the extent Defendants can determine what documents are sought, Defendants will make Plaintiff's employment file available for Plaintiff's review and copying at the offices of Eckert Seamans Cherin & Mellott, LLC, 213 Market Street, 8th Floor, Harrisburg, PA 17101, at a mutually agreed upon date and time.

9. All documents concerning, reflecting, or pertaining to the terms, conditions, rules, duties, responsibilities, or requirements of Plaintiff's employment or of any job title or position held by Plaintiff.

RESPONSE: Defendants' General Objection #2 is specifically incorporated herein. Defendants specifically object to this Request on the grounds that it is overly broad, vague, ambiguous, lacks specificity, and seeks documents that are immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this Request as it fails to describe the requested documents with sufficient particularity, as Plaintiff's use of the

undefined terms “[a]ll,” “concerning,” and “pertaining to,” render the Request overly broad and unduly vague. Defendants also object to this Request on the grounds it seeks information, documents, or tangible items that are confidential or proprietary, or documents/tangible items containing confidential and proprietary business information related to Defendants. This information is not generally known to the public and disclosure of this information or documents containing this information could place the Company, or its successor, or its clients, at a competitive disadvantage or in direct violation of state or federal laws. Defendants will only produce such documents or tangible items, if at all, subject to a mutually agreed upon protective order limiting disclosure. Defendants further object to the extent that this Request seeks information or documents protected by the Attorney-Client and/or Work Product privileges. Pursuant to Rule 26 of the Federal Rules of Civil Procedure and Rule 501 of the Federal Rules of Evidence, Defendants are withholding all correspondence between Defendants and their attorneys, and all documents and tangible things created by Defendants or their attorneys in anticipation of litigation. At this time, Defendants are not withholding any responsive documents, otherwise reportable on a privilege log, based on these objections. Subject to and without waiving the foregoing objections, and to the extent Defendants can determine what documents are sought, Defendants will make responsive documents available for Plaintiff’s review and copying at the offices of Eckert Seamans Cherin & Mellott, LLC, 213 Market Street, 8th Floor, Harrisburg, PA 17101, at a mutually agreed upon date and time.

10. All documents concerning, reflecting, or pertaining to Defendants’ decision that Plaintiff is overtime-exempt.

RESPONSE: Defendants’ General Objection #2 is specifically incorporated herein. Defendants specifically object to this Request on the grounds that it is overly broad, vague, ambiguous, lacks

specificity, and seeks documents that are immaterial, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this Request as it fails to describe the requested documents with sufficient particularity, as Plaintiff's use of the undefined terms "[a]ll," "concerning," and "pertaining to," render the Request overly broad and unduly vague. Defendants also object to this Request on the grounds it seeks information, documents, or tangible items that are confidential or proprietary, or documents/tangible items containing confidential and proprietary business information related to Defendants. This information is not generally known to the public and disclosure of this information or documents containing this information could place the Company, or its successor, or its clients, at a competitive disadvantage or in direct violation of state or federal laws. Defendants will only produce such documents or tangible items, if at all, subject to a mutually agreed upon protective order limiting disclosure. Defendants further object to the extent that this Request seeks information or documents protected by the Attorney-Client and/or Work Product privileges. Pursuant to Rule 26 of the Federal Rules of Civil Procedure and Rule 501 of the Federal Rules of Evidence, Defendants are withholding all correspondence between Defendants and their attorneys, and all documents and tangible things created by Defendants or their attorneys in anticipation of litigation. At this time, Defendants are not withholding any responsive documents, otherwise reportable on a privilege log, based on these objections. Subject to and without waiving the foregoing objections, and to the extent Defendants can determine what documents are sought, Defendants will make responsive documents available for Plaintiff's review and copying at the offices of Eckert Seamans Cherin & Mellott, LLC, 213 Market Street, 8th Floor, Harrisburg, PA 17101, at a mutually agreed upon date and time.

Respectfully submitted,

BRACEWELL LLP

/s/Robert E. Sheeder

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of July, 2016, a true and correct copy of the foregoing document was served *via email* on Plaintiff's counsel of record.

/s/Robert E. Sheeder

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RANDY WALTZ, on behalf of himself and
similarly situated employees,

Plaintiffs,

v.

AVEDA TRANSPORTATION AND
ENERGY SERVICES INC. and
RODAN TRANSPORT USA LTD,

Defendants.

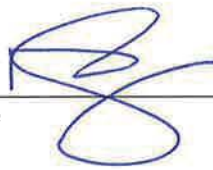
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CIVIL ACTION NO. 4:16-cv-00469-(Brann)
ELECTRONICALLY FILED

VERIFICATION

BEFORE ME, the undersigned authority, on this day personally appeared Paula Breeze, who being by me first duly sworn stated upon her oath, under penalty of perjury under the laws of the United States of America, that she is duly authorized to make this verification; she has read *Defendants' Objections and Responses to Gary Solinger's First Interrogatories*, and the factual statements therein are based on her personal knowledge, or are based on sources of information available to her, including discussions with others with knowledge of the facts inquired about, or are based on a review of available documents, and that the factual allegations contained therein are true and correct.

Paula Breeze



SWORN BEFORE ME at the City of Calgary, in the Province of Alberta, this 15th day of July, 2016.



A notary public.

My appointment expires on 20 .

Patrick D. Fitzpatrick
A Commissioner for Oaths - Notary Public
in and for the Province of Alberta.
Member of the Law Society of Alberta and
My Appointment Expires at the Pleasure of
The Attorney General for the Province of Alberta

Exhibit C

In The Matter Of:

Randy Waltz, et al., v

Aveda Transportation and Energy Services, Inc. et al.

TIMOTHY A. CLARK

October 12, 2016

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<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE MIDDLE DISTRICT OF PENNSYLVANIA</p> <p>3 -----</p> <p>4 RANDY WALTZ, et al.,</p> <p>5 Plaintiffs,</p> <p>6 v.</p> <p>7 AVEDA TRANSPORTATION AND</p> <p>8 ENERGY SERVICES INC. and</p> <p>9 RODAN TRANSPORT USA LTD,</p> <p>10 Defendants. NO. 4:16-cv-00469-MWB</p> <p>11 -----</p> <p>12 Dresher, Pennsylvania</p> <p>13 Wednesday, October 12, 2016</p> <p>14 TRANSCRIPT of testimony of TIMOTHY A.</p> <p>15 CLARK, as taken by and before Cheryl M. McCollum,</p> <p>16 a Registered Professional Reporter, at the offices</p> <p>17 of WINEBRAKE & SANTILLO, LLC, 715 Twining Road,</p> <p>18 Suite 211, commencing at 10:05 o'clock in the</p> <p>19 forenoon.</p>	<p>1 I N D E X</p> <p>2 WITNESS PAGE</p> <p>3 TIMOTHY A. CLARK</p> <p>4 By Mr. Winebrake 4</p> <p>5</p> <p>6 E X H I B I T S</p> <p>7 NUMBER DESCRIPTION PAGE</p> <p>8 Clark 1 Subpoena 4</p> <p>9 Clark 2 Bates No. Rodan 000083 68</p> <p>10 through Rodan 000084</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
Page 2	Page 4
<p>1 A P P E A R A N C E S:</p> <p>2 WINEBRAKE & SANTILLO, LLC</p> <p>3 BY: PETER WINEBRAKE, ESQ.</p> <p>4 MARK J. GOTTESFELD, ESQ.</p> <p>5 715 Twining Road, Suite 211</p> <p>6 Dresher, PA 19025</p> <p>7 (215) 884-2491</p> <p>8 mgottesfeld@winebrakelaw.com</p> <p>9 Attorneys for Plaintiffs</p> <p>10</p> <p>11 BRACEWELL, LLP</p> <p>12 BY: ROBERT E. SHEEDER, ESQ.</p> <p>13 1445 Ross Avenue, Suite 3800</p> <p>14 Dallas, TX 75202-2724</p> <p>15 (214) 758-1643</p> <p>16 robert.sheeder@bracewellllaw.com</p> <p>17 Attorneys for Defendants</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 (It is hereby stipulated and agreed</p> <p>2 by and between counsel that signing, sealing,</p> <p>3 certification and filing are waived;</p> <p>4 It is further stipulated and agreed</p> <p>5 by and between counsel that all objections, except</p> <p>6 as to the form of the question, are reserved until</p> <p>7 the time of trial.)</p> <p>8 (Exhibit Clark 1 marked for</p> <p>9 identification.)</p> <p>10 TIMOTHY A. CLARK, after having been</p> <p>11 first duly sworn, was examined and testified as</p> <p>12 follows:</p> <p>13 EXAMINATION</p> <p>14 BY MR. WINEBRAKE:</p> <p>15 Q. Okay. Mr. Clark, my name is Pete</p> <p>16 Winebrake, and to my left is Mark Gottesfeld, and</p> <p>17 we're both lawyers, and we represent Randy Waltz</p> <p>18 and another gentleman by the name of Gary Solinger,</p> <p>19 and we're trying to also represent additional</p> <p>20 people in a class and collective action that's been</p> <p>21 filed in Williamsport, Pennsylvania, against a</p> <p>22 company called Aveda Transportation and Energy</p> <p>23 Services Inc. as well as Rodan Transport USA</p> <p>24 Limited.</p>

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1 equipment from the federal government alluding to
2 just that in writing.
3 Q. An exemption dealing with weight
4 limits or --
5 A. Yeah, both weight limits, and then
6 in the case of the pole truck and the bed truck,
7 which are also specialized haul trucks, with
8 respect to wait time and hours on location for
9 logbook requirements as well.
10 Q. Okay. So the rig equipment, is it
11 transported from well site to well site with using
12 haul trucks, bed trucks, and pole trucks?
13 A. Just haul trucks.
14 Q. What the role of the haul trucks and
15 pole trucks?
16 A. The bed truck moves pieces of
17 equipment around location, very heavy pieces of
18 equipment. And the pole truck assists in load
19 securement, lifting a heavy piece of equipment up.
20 It's got two vertical poles like this, rolls over
21 and it acts as a fulcrum, and you would hook it
22 onto a specific load and it will assist to ensure
23 that that load is secure and we're not going to
24 have line breakage, gets on the truck safely or it

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1 gets moved. A smaller piece where you find
2 somebody just moving it across location with a pole
3 truck you may. But for the most part, the pole
4 truck and the bed truck, or the tandem, which is
5 the same thing as the bed truck, operate only on
6 location. But they have to go to and from.
7 Q. Right. They have to be driven to
8 and from the locations, but they do most -- they're
9 actually utilized on location?
10 A. Yes, sir.
11 Q. In other words, am I correct that
12 the bed trucks and the pole trucks do not -- are
13 not used to actually transport the rig equipment
14 from one location to another location?
15 MR. SHEETER: Objection.
16 Mischaracterizes the testimony. Go ahead.
17 A. That would be a violation of our
18 safety policy.
19 Q. To do what?
20 A. To do that.
21 Q. So am I correct that bed trucks and
22 pole trucks are not used to transport rig equipment
23 from one location to another location?
24 A. That would be a violation of our

Page 43

1 safety policy.
2 Q. So am I correct?
3 A. I'm not out on every single rig move
4 that's ever taken place, so policy is they're not
5 to be.
6 Q. But the haul trucks are the trucks
7 that are -- am I correct that the haul trucks are
8 what's used to transport rig equipment from one
9 rig -- from one well site to another well site?
10 A. Yes, sir.
11 Q. Okay. And then you had also
12 mentioned pickup trucks. What's the role of pickup
13 trucks?
14 A. Multiple roles. Obviously
15 transportation. A pickup truck would be used by a
16 terminal manager to come out on location and check
17 on how the rig move is going. The pickup trucks
18 are typically assigned to truck pushes because
19 they're the supervisor out on location. A pickup
20 would be assigned to your safety personnel for them
21 to go down on location and we would have safety on
22 the truck in big letters and allow them to get out.
23 Pickup truck would be used for running rounds prior
24 to the rig move to check for low power lines.

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1 Pickup truck would be used for crew transportation.
2 You know, multiple reasons why we would use a
3 pickup truck.
4 Q. What else can you think of?
5 A. Crew transportation, getting people
6 to and from the drilling rig. Oh, our crane
7 operators would use a pickup truck to haul their
8 rigging for their crane because it's very
9 expensive. If they didn't want to leave it on
10 location, they would bring it back with them at
11 night.
12 Q. These pickup trucks that you're
13 referring to, were they owned by the individual
14 employees, like were they their personal pickup
15 trucks or were they owned by Rodan?
16 A. The pickup trucks that we supplied
17 were owned by Rodan. Were there instances where
18 people got an auto allowance instead of a pickup
19 truck? There were when I joined the company, and
20 we made a pretty hard push because we had a lot of
21 pickup trucks and we weren't going to be giving out
22 auto allowances anymore and that you had to use a
23 company truck.
24 Q. And you said that they were assigned

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1 to the -- am I correct that the field
 2 supervisor/truck pushes, they were assigned pickup
 3 trucks?
 4 A. Yeah, the truck pushes had trucks,
 5 the safety personnel had trucks, and the crane
 6 operator had a truck typically.
 7 Q. How did the company go about
 8 assigning pickup trucks to particular field
 9 supervisor/truck pushes?
 10 A. Terminal manager would work it out
 11 when he hired the person.
 12 Q. So would a field supervisor/truck
 13 push, would he be assigned a pickup truck that he
 14 would use from site to site or would he be kind of
 15 swapping out pickup trucks as he moved from site to
 16 site?
 17 A. Again, I'm sure certain terminal
 18 managers had their own deals, but for the most
 19 part, what I saw was he would be given a pickup
 20 truck when he was hired and that was his truck.
 21 Q. And did the company pay insurance on
 22 that truck?
 23 A. They did if it was a company-owned
 24 vehicle.

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1 Q. Now, were those pickup trucks
 2 commercial motor vehicles?
 3 A. Yes.
 4 Q. And in what respect?
 5 A. They had commercial plates on them.
 6 Q. What different types of pickup
 7 trucks did the company use?
 8 A. Size-wise?
 9 Q. Yeah. Or brand, if that's easier.
 10 A. Fords or Chevys. F-150s, F-250s,
 11 F-350s. We had all of them. But primarily it was
 12 either Ford or Chevy.
 13 Q. F-150?
 14 A. Yep. F-250, F-350.
 15 Q. How many pickup trucks did Rodan own
 16 when you left the company?
 17 A. I just -- we just completed a major
 18 acquisition and we had bought a lot of pickup
 19 trucks through that acquisition, so I couldn't even
 20 give you a number. North of a hundred. Well
 21 north.
 22 Q. Yeah.
 23 A. I'm not in charge of supply chain
 24 assets, things of that nature. I mean, I know we

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1 had at least 10 to 15 pickup trucks at every single
 2 terminal. I'd have to look at a report to be able
 3 to tell you accurately. Especially being this far
 4 removed, at this point I have no idea.
 5 Q. Did the pickup trucks weigh under
 6 10,000 pounds?
 7 A. Yes, some of them did.
 8 Q. Do you happen to know -- I know a
 9 F-150 weighs under 10,000 pounds, right?
 10 A. Yeah, safety personnel typically
 11 would have a smaller truck because they really
 12 didn't haul a lot. I mean, they had their safety
 13 gear, things of that nature, but nothing real
 14 heavy. The crane operators and the truck pushers
 15 had the larger vehicles.
 16 Q. And that would be 250s?
 17 A. Yeah, typically F-250s are standard.
 18 Q. Did field supervisor/truck pushes
 19 have to fill out any Department of Transportation
 20 paperwork pertaining to their driving of the pickup
 21 trucks?
 22 A. From the DOT?
 23 Q. Uh-huh.
 24 A. When it was assigned to them?

Page 48

1 Q. Uh-huh.
 2 A. Not that I'm aware of.
 3 Q. What about the drivers of the haul
 4 trucks?
 5 A. Yes.
 6 Q. What about the drivers of the bed
 7 trucks?
 8 A. Yes.
 9 Q. What about the drivers of the pole
 10 trucks?
 11 A. Yes.
 12 Q. Why is it that those drivers had to
 13 fill out DOT paperwork but the field
 14 supervisor/truck pushes did not?
 15 A. To drive a haul truck you have to
 16 have a commercial driver's license.
 17 Q. Did field supervisor/truck pushes
 18 have to have a commercial driver's license?
 19 A. It was the expectation that most of
 20 them did.
 21 Q. Was it a requirement?
 22 A. It was in the job description as a
 23 requirement, I believe if my memory serves me well,
 24 but please don't quote me.

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1 Q. Yeah. And did any field
2 supervisor/truck pushes not have commercial
3 licenses?
4 A. That was all part of the onboarding
5 process that the safety department would vet, and I
6 really didn't get involved in reviewing each
7 individual hire in the company. We had an
8 onboarding process that went through the safety
9 team and there were specific things that they had
10 to check boxes on whenever they hired a new
11 employee. So their certifications, their
12 licensing, their background check, their drug test,
13 et cetera, that would all be done by the safety
14 team and the safety team would come back with a
15 clear to hire, so that would be outside the role of
16 my job description.
17 Q. Do you know, like, if we wanted to
18 figure out what particular field supervisor -- what
19 particular trucks were assigned to particular field
20 supervisor/truck pushes during specific times, how
21 would we go about figuring that out?
22 A. We have unit numbers, or had. I
23 still talk about it like I still work there
24 sometimes. Sorry. We had unit numbers on each

Page 50

1 unit and we could look up in the system and find
2 out what specific unit number that any piece of
3 equipment in Aveda, who it was assigned to.
4 Q. When you say "a unit number," what
5 do you mean by that?
6 A. There's a unit number. We'd number
7 every single unit in the company so we could track
8 it for inventory purposes and supply chain purposes
9 and we'd know where it is. So a pickup truck,
10 example, may have Unit No. 100 assigned to it.
11 Q. So did each pickup truck have its
12 own unit number?
13 A. Yes.
14 Q. And are you telling me there would
15 be documents -- when you say "in the system," what
16 are you referring to?
17 A. TMW. It was a software that we used
18 for managing our inventory.
19 Q. And it's called TMW?
20 A. Uh-huh.
21 Q. Do you know what that stands for?
22 A. TruckMate, I don't know, Wizard. I
23 don't know what the title is.
24 Q. That's the name of the software?

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1 A. Yes, sir.
2 Q. And then through this software you
3 would be able to figure out using -- am I correct
4 that through this software you'd be able to figure
5 out through the unit numbers what particular pickup
6 trucks were assigned to a particular field
7 supervisor/truck push?
8 A. To a certain degree. Garbage in,
9 garbage out. If it wasn't updated, sometimes the
10 information would be wrong. There have been
11 instances where I would get a call, not directly,
12 but say I got a consumer complaint and someone
13 said, hey, your truck was traveling at a high rate
14 of speed, you know, and they -- you know, whatever
15 happened, you know, they scared the crap out of us,
16 I would then -- obviously, we'd follow up on it, go
17 in the system and find out who the truck was
18 assigned to, and have the terminal manager sit down
19 and talk to them about what happened, et cetera,
20 and take disciplinary action if necessary.
21 Sometimes that information was wrong. Someone had
22 left employment, the truck had been reassigned to
23 somebody else and hadn't been updated in the system
24 yet.

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1 Q. And does the TMW system also enable
2 you to look at the specifications for the
3 individual pickup trucks, like to see the make and
4 the model and the year and the gross vehicle
5 weight?
6 A. No. I don't think that would be the
7 TMW. That would be on a spreadsheet, inventory
8 spreadsheet report, that we would keep separately.
9 Q. But would that inventory
10 spreadsheet, would that have the unit number on it
11 for each of those trucks?
12 A. To a varying degree of accuracy,
13 yes. And that, again, would be on the corporate
14 drive and management, senior management, would have
15 access to it. But we had people that were
16 specifically assigned to manage the inventory at
17 Aveda, and they're probably better suited to answer
18 those questions.
19 Q. Yeah, uh-huh.
20 So did -- would you -- did the field
21 supervisor/truck push position -- withdrawn.
22 Did the duties of the field
23 supervisor/truck push position include, in part at
24 least, driving pickup trucks?

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1 A. No. The duty -- the pickup truck
 2 was a tool used to get to and from location or to
 3 and from meetings or to and from -- I mean, the
 4 truck push would go on sales calls too sometimes,
 5 right, to help secure business.
 6 Q. Right.
 7 A. So -- so, yeah, okay, I mean, in
 8 that respect, yes, the pickup truck was -- was used
 9 in the normal operating course of business on a
 10 daily basis.
 11 Q. For the field supervisor/truck push
 12 employees?
 13 A. Uh-huh.
 14 Q. Uh-huh. And you said on a daily
 15 basis?
 16 A. Yeah, if they were working that day,
 17 yeah.
 18 Q. Right. So you would expect that
 19 every day in which a field supervisor/truck push
 20 was working he would be driving his pickup truck at
 21 some point in the day?
 22 A. That was -- that was typical
 23 standard operating procedure around the U.S.
 24 Q. Okay. That was going to be my next

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1 question. Would that be true of all of this --
 2 would you have that same expectation with respect
 3 to all of the field supervisor/truck pushes
 4 regardless of the particular terminal that they
 5 were assigned to?
 6 MR. SHEETER: Objection. Lack of
 7 foundation.
 8 A. Each terminal manager ran his own
 9 business.
 10 Q. Okay. But you just said that -- am
 11 I correct that all the field supervisor/truck
 12 pushes were assigned pickups?
 13 MR. SHEETER: Objection. Lack of
 14 foundation.
 15 A. They should have been assigned
 16 pickups, let me put it that way. It would be
 17 typical procedure for them to be assigned a pickup.
 18 Were there instances where they weren't? Probably.
 19 But, you know, I couldn't speak to any specific
 20 instance, no.
 21 Q. As you sit here today, can you
 22 recall any field supervisor/truck push not being
 23 assigned a pickup?
 24 MR. SHEETER: Objection. Lack of

Page 55

1 foundation.
 2 A. Can't.
 3 Q. As you sit here today --
 4 A. Well, either a pickup or an auto
 5 allowance, right.
 6 Q. Okay.
 7 A. Right. So if they weren't assigned
 8 a pickup, they may have said, Hey, I want to drive
 9 my own truck; is that possible? And they would say
 10 sure. Because we hadn't -- maybe we hadn't done
 11 these acquisitions yet, so I'm thinking back
 12 earlier in my career, we didn't have an abundance
 13 of pickups before we did some of these
 14 acquisitions. So if I think backwards to that
 15 point in time to when we secured additional assets,
 16 there were people that -- that drove their own
 17 truck, but we always gave them the option to get a
 18 company pickup truck. And then if they drove their
 19 own truck, they would typically request that we
 20 give them an auto allowance to help cover wear and
 21 tear and maintenance and any other expenses that
 22 they may have in utilizing their own pickup truck.
 23 Q. Okay. Bear with me for one moment.
 24 And you gave testimony just now

Page 56

1 about -- you had made reference to sales calls. Do
 2 you remember that?
 3 A. I did.
 4 Q. Yeah. What did you mean by that?
 5 A. Well, you got to go out to visit
 6 your customers, right. You have to know the time
 7 table of a rig move, when it's coming up. You do
 8 preplanning meetings where you go out and actually
 9 sit down with the customer on the drilling rig.
 10 We may be trying to win a new
 11 customer over, right. So if I walk in and I just
 12 secured a great meeting at the corporate level at
 13 Cabot down in Pittsburgh and I wanted to go in and
 14 impress them, I might pull in a truck push that has
 15 specific relevance in moving Cabot's drilling rigs,
 16 right, to be my expert at the table with me while
 17 I'm trying to convince you, the customer, why you
 18 should let me move your multimillion-dollar
 19 drilling rig, right. So I would bring the truck
 20 push in in that instance to help secure a new
 21 customer.
 22 Q. And the -- is that an instance where
 23 one of the --
 24 A. And not just me. It could be any

Page 57	Page 59
<p>1 sales rep in the company. 2 Q. Right. 3 A. You know, we had salespeople, too. 4 Q. Is that an example of a situation 5 where a truck push would be just using his pickup 6 to get to that location? 7 MR. SHEETER: Objection. Assumes 8 facts not in evidence. 9 A. A lot of times I'd drive them. They 10 come with me. 11 Q. Would there be times -- 12 A. We'd ride together. 13 Q. Would there be times where the field 14 supervisor/truck push would drive his assigned 15 pickup? 16 A. I imagine there were instances. I 17 can't give you exact times. But, you know, I met 18 people places before and I assume they didn't walk. 19 And I'm not trying to sound tongue-in-cheek. 20 MR. SHEETER: Objection. Not 21 responsive. Assumes facts not in evidence. 22 A. Without a specific instance, it's 23 hard for me to answer. 24 Q. So did the -- like, if a rig was</p>	<p>1 sure the rig is safe? 2 Then he would go out and look at the 3 other location and see how big the pad is, because 4 every pad varies in size. He'll look at the -- you 5 know, sometimes the tool push will measure on a 6 little map on how he wants the rig set up, you 7 know, and then he knows where to plot things out 8 and plan his rig move effectively. 9 Q. And would you expect that the field 10 supervisor/truck push would be using his pickup to 11 do all these things? 12 MR. SHEETER: Assumes facts not in 13 evidence. 14 A. I would assume he would most likely 15 use his truck, yeah. 16 Q. When you say "his truck," you mean 17 his pickup, right? 18 A. Yeah, of course. 19 Q. So do you know whether -- are there 20 any records kept for these pickups of, like, how 21 many miles they would be driven during particular 22 periods of time? 23 A. They're not required to keep 24 logbooks on the pickup.</p>
Page 58	Page 60
<p>1 going to get moved from one well site to another 2 well site, would the field supervisor/truck push 3 sort of be expected to go out to the -- to the 4 upcoming well site to kind of check out the 5 geography and stuff like that to start preparing 6 for the upcoming setup? 7 A. He would most likely, in typical 8 fashion, if it's done, there would be a 9 pre-rig-move meeting, there would be a 10 post-rig-move meeting. In the pre-rig-move meeting 11 we would go out to the rig itself, we would sit 12 down with the company man, the tool push, talk 13 about the upcoming rig move, what the expectations 14 are. And then we'd say, What well location is it 15 moving to? And then the truck push would probably, 16 if he's -- if he's, you know, doing his job, he'd 17 probably run the route between that location and 18 the other location, check for any potential hazards 19 along the way, whether it be the road's not wide 20 enough or we can't go down that road because the 21 county or the state wouldn't permit it, right, so 22 we have to find another route, running the route, 23 right. Are there any low overhead power lines or 24 bridges that I need to be concerned about to make</p>	<p>1 Q. Yeah. 2 A. So do we keep track of how many 3 miles are on our inventory? 4 Q. Yeah. 5 A. Yeah, of course we do. But I can't 6 tell you who drove the truck or where it went in 7 between those mileage checks. 8 Q. Right. 9 A. Uh-huh. 10 Q. Why aren't -- why were the field 11 supervisors/truck pushes not required to keep a 12 logbook with respect to their driving of the 13 pickups? 14 A. We never requested it, and they 15 weren't turning in receipts for tax 16 reimbursement -- 17 Q. Right. 18 A. -- or writing it off on their tax 19 returns, so I don't envision a scenario where we 20 would have required that. 21 Q. Uh-huh. 22 And then you also testified earlier 23 that there were also vans that were used by the 24 company. Do you remember that testimony?</p>

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1 Q. Is that the type of document that
2 you had in mind when you were giving your previous
3 testimony about job descriptions?
4 A. Yes, sir. Yes.
5 Q. Okay. And -- this particular job
6 description, which has been marked as Exhibit 2, is
7 for the field supervisor/truck push position,
8 right?
9 A. Correct.
10 Q. Would the job descriptions for the
11 other jobs that you were telling me about, would
12 they have the same sort of look as this? In other
13 words, they'd have the same setup, so to speak,
14 even if the contents were different?
15 A. Similar layout, uh-huh.
16 Q. And is this -- this particular job
17 description is dated April of '14. Do you see
18 that?
19 A. Yes.
20 Q. Is that when -- I think you told me
21 that you kind of revamped all the job descriptions.
22 Is that when you did it?
23 A. I did revamp them. I requested the
24 U.S. HR manager to get the job descriptions cleaned

Page 70

1 up and in place where they're accessible and we
2 were able to use them.
3 Q. Okay. And would that have been in
4 about the April 2014 time period?
5 A. Yeah, I mean, that makes sense. I
6 joined in October of '13 and things really -- and I
7 went down to Houston and that aligns with about
8 January of '14. So yes, most likely.
9 Q. Okay. Would there have been a
10 previous version of the field supervisor/truck push
11 job description prior to April of 2014?
12 A. Not that I had seen, which is one of
13 the reasons why I requested that it be done. It
14 may or may not exist. I was new to the company.
15 Q. And did this job -- did this job
16 description that we have before us as Exhibit 2,
17 was that job description still in effect when you
18 left the company in 2016?
19 A. To the best of my knowledge. It
20 would be more -- yeah, to the best of my knowledge,
21 yes. No one told me otherwise.
22 Q. And did the job description -- did
23 the -- withdrawn.
24 Did the field supervisor/truck push

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1 job description that we have before us, would that
2 have been applicable to all of the field
3 supervisor/truck pushes regardless of their
4 location?
5 A. Yes.
6 Q. Regardless of their terminal
7 assignment?
8 A. Yes.
9 There wasn't a specific job
10 description written for individual terminals. This
11 was crafted at the corporate level.
12 Q. Okay. Now, I see on this job
13 description it has -- do you see where it says
14 "Employment Status"?
15 A. Yes, I do.
16 Q. And then it says "Salaried." Do you
17 see that?
18 A. Yes, sir.
19 Q. But I have to tell you, I understand
20 from this case, and from some other materials, that
21 some field supervisor/truck pushes were day-rate
22 employees. Is that your understanding also?
23 A. Yes, sir.
24 Q. So can you explain to me why the job

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1 description said salaried if, in fact, some of the
2 field supervisor/truck pushes were day rate?
3 A. I can.
4 Q. Yeah.
5 A. When I joined the company, everybody
6 was day rate.
7 Q. Uh-huh.
8 A. I, along with our new CEO -- well,
9 he was -- I was new, he wasn't -- made a push to
10 change that over to a salaried position. That's
11 one of the reasons why the job descriptions were
12 written and it was changed from a classification
13 standpoint to a salaried position, which is why
14 this job description was crafted as such.
15 Q. Now, again -- I can show you the
16 documents, but it would bog us down -- I've seen
17 documents that indicate that, notwithstanding the
18 job description we have before us as Exhibit 2,
19 even after April of 2014 certain field
20 supervisor/truck pushes were still being paid on a
21 day rate.
22 A. That's correct.
23 Q. Would that surprise you?
24 A. No.

Randy Waltz, et al., v
Aveda Transportation and Energy Services, Inc. et al.

TIMOTHY A. CLARK
October 12, 2016

<p style="text-align: right;">Page 73</p> <p>1 Q. Why is it -- why would that be the 2 case? 3 A. Despite my directive to move all 4 truck pushes to salary, I was met with some 5 resistance both internally at a variety of 6 different levels with making that change. 7 Q. And why did you want to make the 8 change from day rate to salaried? 9 A. Variety of different reasons. 10 Financial consideration was number one. Setting up 11 the job description, as I understand, based on 12 their roles, number two. And number three would be 13 a safety concern as well. 14 Q. What was it about the safety? 15 A. Well, you wanted to make sure 16 that -- let me back up. Working on a day rate, 17 guys were making a tremendous amount of money. 18 North -- some of these guys were making over 19 \$300,000 a year because we were moving drilling 20 rigs and they would push really hard, right, in 21 order to make that happen. We were met with 22 resistance from truck pushes who threatened to quit 23 if we switched them to salaried, because they could 24 make more money if they were on day rate and they</p>	<p style="text-align: right;">Page 75</p> <p>1 a concern. 2 Q. Did the job description that we have 3 before us as Exhibit 2, would the job description 4 have applied to field supervisor/truck pushes even 5 if they were paid on a day-rate basis? 6 A. There was one job description for 7 truck push. This would be it. So the job 8 description would be identical, yes. 9 Q. For example, we know Mr. Waltz was 10 on a day rate, right. Would Exhibit 2 have applied 11 to him with the exception of the fact that it says 12 salaried for employment status? 13 A. I don't know when -- Mr. Waltz was 14 it? 15 MR. SHEETER: Yeah. 16 Q. Yeah. 17 A. -- was hired to join the company. 18 So there's a gap there. 19 Q. Yeah. 20 A. As I mentioned before, when I joined 21 the company, everybody was pretty much on the day 22 rate. I was a catalyst or a push to get these 23 positions converted to salary. So there was a 24 transition period in there that was taking place,</p>
<p style="text-align: right;">Page 74</p> <p>1 wanted to be on day rate. And then, of course, the 2 minute oil prices collapsed and things slowed down, 3 everybody wanted to go on salary because they 4 weren't making as much money anymore. 5 So that was the objective challenge 6 that we faced day in and day out, number one. 7 Number two, certain terminal managers had -- had 8 the ear at a very high level above me at Aveda 9 during my employment and thought it was best to 10 keep their key truck pushes that bring business to 11 specific terminals on day rate to keep them happy, 12 because that's what they wanted. They didn't want 13 to make the transition to salary whatsoever until 14 market conditions deteriorated. 15 But for me, purely from an 16 operational perspective, I felt that we could still 17 do a safe, efficient job in the time allotted and 18 move on a daily basis, but these guys were being 19 overcompensated at that point, and there would be a 20 push beyond that to pay them per rig move, right, 21 and if you pay them per rig move, then people are 22 going to rush to get more rigs moved at any given 23 period of time, right, when things were really 24 busy, and that's when people get hurt. So that was</p>	<p style="text-align: right;">Page 76</p> <p>1 but from that point where I said everybody should 2 be hired on a salaried basis moving forward, for 3 the most part that was followed. There were 4 particular instances where people felt that they 5 had enough pull that they could circumvent that 6 directive and still hire people. 7 Q. Yeah. I'm sorry if my question is 8 not clear. I just want to make sure that -- you 9 said that there's only one job description and -- 10 A. There is. 11 Q. -- that's Exhibit 2, right? 12 A. Yes. 13 Q. Am I correct that this job 14 description would have applied -- 15 A. Any truck push. 16 Q. -- to a field supervisor/truck push 17 paid on a day-rate basis as well as those paid on a 18 salaried basis? 19 A. This job description was written 20 from a specific point in time of April 2014 -- 21 Q. Yeah. 22 A. -- under the guise that all truck 23 pushes would be salaried moving forward, right, and 24 this is their job description.</p>

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1 Q. But even if they weren't salaried
2 moving forward, even if they stayed on the day
3 rate, would all the other aspects of the job
4 description have applied to them?
5 MR. SHEETER: Objection. Lack of
6 foundation. State what you know.
7 A. The job description applies to the
8 position itself.
9 Q. Regardless of how the position is
10 paid?
11 A. It's applies to truck pushes. The
12 position of truck push or job supervisor, this is
13 the job description for that position. How they're
14 compensated I would say is a separate issue. Yeah.
15 Q. Okay.
16 A. They're supposed to be salaried.
17 Q. I get that. But if they weren't,
18 all of the other aspects of the job description
19 would have applied to their job, correct?
20 A. They weren't when I got there, but,
21 yes, all the other aspects -- all the aspects of
22 this job description apply to that position.
23 Q. Even if it was day rate?
24 A. Were there people who had not made

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1 the transition because of their own volition? Yes.
2 Q. Okay. And who actually developed
3 the field supervisor/truck push job description?
4 A. I think there was input from a
5 variety of different levels. I know I had some
6 input on it. The terminal managers had some input
7 on it. Some senior truck pushes had some input on
8 it. But the document itself was crafted by our HR
9 team.
10 Q. Why did the company want to have a
11 single job description for the position?
12 A. Well, it's just good business
13 practice to have a job description for any position
14 when you're trying to recruit for a specialized
15 position. You know, you can identify your
16 candidate, right. It has to be a match to the
17 particular job description, or as close. Are there
18 exceptions? Sure. But also, from a day-to-day
19 management perspective, you want your employees to
20 know what the expectation is, right. And if you
21 don't set that expectation and put it out there,
22 then it's very difficult for you to be able to hold
23 them accountable later when they're not meeting
24 expectations.

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1 Q. So, in this case, the allegation is
2 that the field supervisor -- the day-rate field
3 supervisor/truck push employees should have been
4 paid overtime but that they were not because the
5 company had classified them as exempt from the
6 overtime laws.
7 A. Uh-huh.
8 Q. Is it your understanding that
9 day-rate field supervisor/truck pushes were
10 classified as exempt from the overtime laws?
11 A. Again, they were on day rate when I
12 got in there. I didn't really pay too much
13 attention to it other than the fact that I was
14 trying to transition them to salary. I didn't set
15 the policy, so I -- I didn't set the day-rate
16 policy. I had never been involved in setting that
17 policy at Aveda. This was the policy that I was
18 setting up and -- and that's really where I had the
19 only input.
20 Q. Well, that's not my question,
21 though. My question is whether you understood, as
22 the vice president of business -- of --
23 A. U.S. operations.
24 Q. -- of U.S. operations, did you

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1 understand that field supervisor/truck push
2 employees paid on a day-rate basis, that they were
3 classified by the company as not being eligible for
4 overtime pay?
5 A. Unaware of it.
6 Q. You didn't have an understanding of
7 that either way?
8 A. Never had that discussion either
9 way, no, sir.
10 Q. When I'm using this terminology
11 "exempt from the overtime laws," do you know what
12 that means?
13 A. Yeah, I've been around the business
14 long enough to know.
15 Q. What do you understand it to mean?
16 A. My understanding would be that
17 there's hourly positions and there's salaried
18 positions and someone who is exempt is qualified
19 for a salaried position, but you have to meet
20 certain criteria for an employee to be exempt based
21 upon Department of Labor law. But I'm not an
22 expert in it.
23 Q. So did you play any role in the
24 decision to classify field supervisor/truck pushes

Exhibit D

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RANDY WALTZ, on behalf of :
himself and similarly :
situated employees, :
Plaintiff :

vs. : NO. 4:16-CV-00469 (Brann)

AVEDA TRANSPORTATION AND :
ENERGY SERVICES INC. and :
RODAN TRANSPORT USA LTD. :
Defendants :

Deposition of: RANDY ALAN WALTZ
Taken by : Defendants
Before : Ervin S. Blank
Reporter-Notary Public
Beginning : September 15, 2016; 1:51 p.m.
Place : Miele & Rymsza, P.C.
36 West Fourth Street
Williamsport, Pennsylvania

COUNSEL PRESENT:

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STIPULATION

It is hereby stipulated by and between counsel for the respective parties that signing, sealing, certification and filing are hereby waived; and that all objections except as to the form of the question are reserved to the time of trial.

MR. BLANK: Good afternoon. My name is Ervin Blank from Ervin Blank Associates, located at 27 Farley Circle, Lewisburg, Pennsylvania. I am the video operator for these proceedings. Today's date is September 15, 2016, and the time is 1:51 p.m. We are located at the law firm of Miele & Rymsza, 36 West Fourth Street, Williamsport, Pennsylvania.

This deposition is being taken on behalf of the Defendants for use in the case of Randy Waltz versus Aveda Transportation, et al., Number 4:16-CV-00469 in the United States District Court for the Middle District of Pennsylvania. The name of the witness is Randy Waltz.

Counsel appearing on behalf of the Plaintiffs is Mark Gottesfeld. Counsel appearing on behalf of the Defendants is Robert Sheeder.

Please raise your right hand.

1 to the terminal, then go to the job site. If it was
2 north of my home, I would leave my home and go to the
3 job site.

4 Q Okay.

5 A If it was in Scranton or West Virginia or
6 Ohio, we would go a couple days or a day before and
7 get in a hotel, and then leave the hotel, go to the
8 job site. So it all depended on the job site.

9 Q So I take it you didn't get to spend a lot of
10 time at home in this position?

11 A No.

12 Q Okay. Now, let me ask you this. You
13 reported out of Cogan Station. Is that where you were
14 located when you were with Rodan primarily?

15 A That's where our terminal was, yes.

16 Q Okay. So that was where you were typically
17 reporting to or assigned out of?

18 A Yes.

19 Q Would that be a better way to put it?

20 A Yes.

21 Q Okay. And describe -- what was the staffing
22 like at Cogan Station? Obviously you were -- you were
23 a truck push/field supervisor. Who was in charge of
24 that terminal?

25 A When I initially went there, Mark Rowe was

1 later --

2 Q Okay.

3 A -- after they had reset or had their break.

4 Q Okay. Now, did you -- so you didn't take --
5 when you were working on site, not driving on public
6 roads, is it your testimony, sir, you didn't have any
7 set lunch break?

8 A No.

9 Q Did you have any kind of set break at all?

10 A No.

11 Q Okay. All right. Now, we talked a little
12 bit about the staffing at the Cogan Station terminal.
13 And did you work out of Cogan Station the whole time
14 you were with Rodan?

15 A I was assigned to Cogan Station.

16 Q Okay.

17 A I worked out of North Dakota, Midland, and
18 West Virginia.

19 Q Okay.

20 A But my home terminal was Cogan Station.

21 Q Cogan Station. Okay. Now, you testified
22 that basically what you were doing as a truck
23 push/field supervisor is you were going out and either
24 setting up rigs or taking down rigs, and then moving
25 them to another location in general. Is that fair?

1 A Yes.

2 Q Okay. Now, you said that you had done some
3 of this work in Pennsylvania and West Virginia. How
4 about Ohio, did you ever work in Ohio?

5 A Yeah.

6 Q Okay. Did you ever move a rig over to Ohio?

7 A To Ohio?

8 Q Yeah.

9 A For Aveda?

10 Q Um-hum, or Rodan.

11 A I don't recall. I would say there's a high
12 probability, but I don't recall. I know I've moved
13 rigs into Ohio. Whether it was for T Force or Aveda,
14 I couldn't --

15 Q You can't recall?

16 A Not with 100 percent certainty, no.

17 Q Okay. So you wouldn't dispute the fact that
18 you did, you just don't recall; is that correct?

19 A Correct.

20 Q How about into west Virginia, did you move
21 rigs from Pennsylvania into West Virginia?

22 A Yes.

23 Q How many times?

24 A Couldn't tell you.

25 Q More than once?

1 week when you were on day rate, didn't you?

2 A If I worked.

3 Q Okay. Did you ever receive any assurances
4 that you would make more than \$455.00 per week while
5 you were doing the day rate work?

6 A I was assured that if I worked, I would
7 receive my day rate.

8 Q And were you told you could expect to earn
9 more than \$455.00 a week?

10 MR. GOTTFELD: Objection to form.

11 THE WITNESS: There was no number.

12 BY MR. SHEEDER:

13 Q You were never given any kind of assurances?

14 A I was never told that I would make more than
15 \$455.00 a day.

16 Q Did you have a belief that you would?

17 MR. GOTTFELD: Objection to form. Asked
18 and answered. You may answer.

19 BY MR. SHEEDER:

20 Q Did you believe you would when you took on
21 the job?

22 A I knew when I took on the job, that if I
23 worked, I was going to make my day rate. I knew that
24 if I did not work, I wasn't going to make a dime.

25 Q And did you have any idea how many days you

1 Q Now, you said that at some point your salary
2 was reduced from 150 to what, 130,000?

3 A 135, I believe.

4 Q And when was that?

5 A I couldn't tell you.

6 Q Was it more than -- was it the last month you
7 were there?

8 A I couldn't tell you.

9 Q You have no idea?

10 A I couldn't tell you.

11 Q All right. Now, in this lawsuit you were
12 only claiming to be entitled for overtime for the
13 period of time that you were paid on a day rate;
14 correct?

15 A Correct.

16 Q Okay. So you're only claiming that you were
17 owed overtime in this case for the period from May,
18 2014, when you started around May the 4th, until
19 September 22nd, 2014, when you were switched to an
20 annual salaried position; correct?

21 A Yeah.

22 Q All right. Now, do you have any
23 understanding why you were initially paid on a day
24 rate?

25 A I believe because it benefited the company.

1 A Yes. There would be --

2 Q From beginning to the end?

3 A Yes.

4 Q All aspects?

5 MR. GOTTFELD: Objection to form.

6 THE WITNESS: Of my crew.

7 BY MR. SHEEDER:

8 Q All aspects performed by your crew, correct?

9 MR. GOTTFELD: Objection to form. Asked
10 and answered. We talked about this before.

11 MR. SHEEDER: Noted. Noted. You may
12 respond.

13 THE WITNESS: Yes, I supervised the rig down
14 and rig up of my crew.

15 BY MR. SHEEDER:

16 Q The whole thing?

17 MR. GOTTFELD: Objection to form.

18 BY MR. SHEEDER.

19 Q It's a simple question. I just need to tie
20 it up.

21 A Yes.

22 Q All right. Now, you state that this was the
23 same job duty, this rigging up and rigging down and
24 supervising the crew when they were doing the rigging
25 up and rigging down, that this was the same job duty

1 you had at all locations you worked at. Correct? Is
2 that correct?

3 A Yes.

4 Q Okay. Now, were the employees doing the same
5 thing at all the locations, basically rigging up and
6 rigging down?

7 A Yes. If we were rig up crew, we were rigging
8 up. If we were a rig down crew, we were rigging down.

9 Q Okay. And then there were sometimes when you
10 did some truck driving in addition, correct?

11 A Yes, but I was not supervising when I was
12 truck driving.

13 Q Okay. And when you were truck driving, I
14 believe you testified you've done some pole trucks --

15 A Correct.

16 Q -- driving. You had done some --

17 A Pole truck, bed truck. I've run them all.

18 Q All of them.

19 A I've worked on everything except the cranes
20 on location.

21 Q Okay.

22 A And if I was doing anything other than truck
23 pushing, I was not a supervisor.

24 Q Okay. You were a driver?

25 A I was either an operator or a driver, yes.

1 Q Do you mean by chaining loads?

2 A Helping the drivers throw chains.

3 Q Before they went out?

4 A Yeah.

5 Q And that holds whatever it is that's on?

6 A Yep.

7 Q Okay. You had to physically do that?

8 A Yes.

9 Q And typically as --

10 A I didn't have to, but we did to get the loads
11 out to keep the oil company happy.

12 Q Okay. And to make sure that it was safe when
13 the load left --

14 MR. GOTTESFELD: Objection to form.

15 BY MR. SHEEDER:

16 Q -- you put the chains on them, is that
17 correct?

18 A No. Drivers always had say over how they
19 wanted their loads chained.

20 Q But you said you helped put the chains on.

21 A I would put them where they asked. I'd say,
22 how do you want this. And they would say, pull back,
23 pull forward, put one here, put one there.

24 Q Did you do that with Corey?

25 A I had very little interaction with Corey

1 Q And you said that you had driven a pickup
2 truck in the morning?

3 A Yes.

4 Q What pickup truck was that?

5 A It was one of many. Probably -- it was
6 either an F-150 or a Ram 1500 or a GMC. I don't know
7 what model the GMC was.

8 Q Let's talk about the F-150. Was that a
9 vehicle that you owned?

10 A No.

11 Q Whose was it?

12 A Aveda's.

13 Q What about the -- when you say Ram 1500, are
14 you referring to a Dodge Ram?

15 A Yes, sir.

16 Q And was that your own vehicle?

17 A No.

18 Q Whose was it?

19 A Aveda's.

20 Q And what's the GMC, whose vehicle is that?

21 A Aveda's.

22 Q Now, did Aveda ever provide you with a
23 vehicle during your employment?

24 A Yes, I had a company issued pickup truck the
25 entire time I was there.

1 Q And what model was it?

2 A For the most part it was a Dodge Ram, I
3 believe a 1500. But I had all three at different
4 times, but for the majority of the time it was a Dodge
5 Ram.

6 Q Was one of your job duties to drive the Dodge
7 Ram?

8 A Yes.

9 Q And did that vehicle weigh less than 10,000
10 pounds?

11 A Yes.

12 Q Did you drive that vehicle on a frequent
13 basis?

14 A Every day. Every day I worked.

15 Q And I think you mentioned on this same date
16 here on Exhibit 41, you said that you were hauling a
17 swamper that day.

18 A Austin Bobeck.

19 Q Explain to me what you meant by that, hauling
20 a swamper.

21 A He would have rode out with me. I would have
22 met him at the terminal, picked him up -- picked him
23 and his gear up, and drove to -- I believe this was
24 West Virginia. So we drove to West Virginia.

25 Q And were you required to take that hauler and

1 transport him?

2 A Yes.

3 Q What about -- turn to the next page of this
4 exhibit. Now, you only indicate that you supervised a
5 rig skid that day, but how did you get to the job site
6 that day?

7 A Pickup truck.

8 Q Did you transport anyone that day?

9 A Probably the entire crew.

10 MR. SHEEDER: Objection. Nonresponsive.

11 THE WITNESS: The entire crew.

12 BY MR. GOTTESFELD:

13 Q And were you required to transport them?

14 A Yes.

15 Q Did you can have an option to say, I don't
16 want to transport these members of the crew today?

17 A No.

18 Q Aveda requires you to do that?

19 A Yes.

20 MR. SHEEDER: Objection, leading.

21 BY MR. GOTTESFELD:

22 Q Did that happen on a weekly basis?

23 A Yes.

24 Q Did that happen throughout your employment?

25 A Yes.

1 Q Besides transporting crew members in your
2 pickup truck, what if any other job duties did you do
3 regarding your pickup truck at Aveda?

4 MR. SHEEDER: Objection. Vague, ambiguous.

5 THE WITNESS: We hauled fuel. We hauled
6 bridles. We did route assessments, route surveys.
7 Used them for crew travel back and forth to the hotel
8 and between locations.

9 BY MR. GOTTESFELD:

10 Q Now, you say you hauled fuel. Describe to me
11 what that process entailed.

12 A We had a -- what we called a slip tank in the
13 bed of the pickup that we kept full of fuel, and we
14 would have to go get fuel, bring it to location and
15 fill the bed trucks and the loaders and the pole
16 trucks.

17 Q Where were you obtaining the fuel? Off site?

18 A Yes.

19 MR. SHEEDER: Objection. Leading.

20 BY MR. GOTTESFELD:

21 Q Ask -- where did you obtain fuel?

22 A We would go to a convenience store, Fleet
23 Pride, anywhere that took Western Express or Western
24 whatever, credit -- credit card, buy fuel.

25 Q What would you do next then after you

1 obtained the fuel?

2 A Taken back to location and fill the bed
3 truck, the loader, pole truck.

4 Q Would you do that?

5 A Yes.

6 Q How often did you haul fuel?

7 A The fuel tank was always fill. It was -- you
8 filled a piece of equipment every rig move.

9 Q The process of you obtaining fuel from a gas
10 tank or a gas location and then taking it to site, how
11 often did you do that?

12 A Every rig move.

13 Q What was your answer?

14 A Every rig move.

15 Q And then you said you hauled bridges?

16 A Hauled what?

17 Q You hauled something else?

18 A Bridles.

19 Q Bridles, excuse me.

20 A That was equipment we used. We call them
21 expendables, stuff you would use during the rig move.
22 And if you cut a bridle, you'd have to take it out of
23 service and you'd have to put a new one on. So we
24 carried bridles and shackles and slings to pull and
25 lift with, things like that. We had to take out the

1 equipment to disassemble and assemble the rigs.

2 Q And you were hauling that in the back of you
3 pickup truck?

4 A Yes.

5 Q How often were you doing that?

6 A All the time. Had a toolbox in the pickup.

7 Q From where to where would you haul them?

8 A From location to location, from the yard to
9 location, from the yard to the hotel. Wherever we
10 went, we had --

11 Q When you drove your truck back to, say the
12 hotel, would you often be hauling some type of
13 equipment in there?

14 MR. SHEEDER: Objection. You're leading.

15 THE WITNESS: Yes.

16 BY MR. GOTTESFELD:

17 Q And is that the bridles?

18 A Yes.

19 Q Anything else?

20 A Everything. Measuring sticks. High poles.
21 All the equipment for the rig move. Fuel.

22 Q Did Aveda require you to transport that
23 equipment?

24 A Yes.

25 MR. SHEEDER: Lack of foundation.

1 BY MR. GOTTESFELD:

2 Q You mentioned then you used a pickup truck in
3 connection with route assessments?

4 A Yes.

5 Q Could you tell me what that entailed?

6 A When you were going from one location to the
7 next location, truck pushers had to drive the route
8 and look for obstructions, obstacles, things that
9 could be a problem. Identify any hazards.

10 Q Were you driving off site to do that?

11 A Yes.

12 Q How often did you do route assessments?

13 A Every rig move.

14 Q Then you mentioned route surveys. Can you
15 tell me what that entailed?

16 A That's the same thing, but it was for bidding
17 purposes. We would go look at a route and say, it's a
18 typical rig move plus a day because of this or plus
19 because of -- or minus, it's a good route, it's in
20 field, we don't have to do any permits, things like
21 that. It was used to determine the -- what the --
22 what the manager would set the bid at for the rig
23 move.

24 Q Did Aveda require you to perform route
25 assessments?

1 A Yes.

2 Q Did Aveda require you to perform route
3 surveys?

4 A Yes.

5 Q Mr. Waltz, do you mind turning to Exhibit 39?

6 A Wow. It's messed up, out of order.

7 MR. SHEEDER: What is it? What's 39, do you
8 know?

9 MR. GOTTFELD: Truck ticket.

10 MR. SHEEDER: Okay.

11 THE WITNESS: Truck ticket for 9/7.

12 MR. SHEEDER: Okay. Got it.

13 BY MR. GOTTFELD:

14 Q Now, when you previously went through this
15 with counsel, you did not add up your hours of work on
16 this exhibit. Are you able to take a moment now and
17 add up the hours that you worked within Exhibit 39?
18 If you need a pen, let me know.

19 A Forty-eight hours, if my math is correct.

20 Q Exhibit 39?

21 A Yeah, 39.

22 Q And how many hours did you get on the first
23 day from --

24 A Two and a half.

25 Q Second day?

1 A Pickup truck.

2 Q What about when you left the site that day,
3 what did you drive?

4 A Pickup truck.

5 Q What about on September 9th, what did you
6 drive to the site on that day?

7 A Pickup truck.

8 Q What about when you left the site that day,
9 what did you drive?

10 A Pickup truck.

11 Q What about on September 10th, what did you
12 drive to the site?

13 A Pickup.

14 Q What about when you left the site on
15 November -- or on September 10th?

16 A Pickup.

17 Q You can put that aside, please.

18 Can you turn to Exhibit 35?

19 MR. SHEEDER: 35, Counsel?

20 MR. GOTTESFELD: Yes.

21 MR. SHEEDER: Hold on.

22 MR. GOTTESFELD: That's a truck ticket.

23 MR. SHEEDER: Hold on.

24 THE WITNESS: I have it.

25 MR. SHEEDER: 35? Let me find it.

1 MR. GOTTESFELD: Correct.

2 MR. SHEEDER: Still looking.

3 MR. GOTTESFELD: Do you have it there, Rob?

4 MR. SHEEDER: No, hang on. I thought I put
5 all those together. Hang on. 39. 35. 35. Okay.

6 BY MR. GOTTESFELD:

7 Q Okay, Mr. Waltz, do you have Exhibit 35 in
8 front of you?

9 A Yes, I do.

10 Q And if you can turn to the second page, you
11 previously testified about this page. Where it says
12 travel to West Virginia?

13 A Yep.

14 Q And do you recall where you testified that
15 you were driving a pickup truck?

16 A Yes, I was.

17 MR. SHEEDER: Objection, leading.

18 BY MR. GOTTESFELD:

19 Q What kind of pickup truck were you driving on
20 that day?

21 A I believe it was the Ram 1500, but it could
22 have been the Ford. It was a pickup.

23 Q Would that have been a truck that was
24 provided to you by Aveda?

25 A Yes.

1 Q What, if anything, would you have been
2 transporting?

3 MR. SHEEDER: Objection. Assumes facts not
4 in evidence. Lack of foundation.

5 THE WITNESS: Crew, tools, fuel.

6 BY MR. GOTTESFELD:

7 Q Would that have been a job duty that was
8 required of you by Aveda?

9 A Yes.

10 Q Turn to the third page, please.

11 A To what?

12 Q To the third page of that exhibit. When you
13 had driven to the site that day, would you have driven
14 a pickup truck?

15 A Yes.

16 MR. SHEEDER: Objection. Assumes facts not
17 in evidence.

18 BY MR. GOTTESFELD:

19 Q When you drove off the site that day, what
20 did you drive?

21 A Pickup.

22 MR. SHEEDER: Objection repeated.

23 BY MR. GOTTESFELD:

24 Q Turn to the next page, please.

25 A Yep.

1 Q What vehicle did you drive to the site on
2 August 27th?

3 A Pickup.

4 Q What about when you drove off the site that
5 day?

6 A Pickup.

7 Q What about on August 28th, what vehicle did
8 you drive to the site?

9 A Pickup.

10 Q What about -- what vehicle did you drive off
11 the site that day?

12 A Pickup.

13 Q Next page, please. On August 29th, what
14 vehicle did you drive to the site?

15 A Pickup.

16 Q And what vehicle did you drive off the site
17 that day?

18 A Pickup.

19 Q What about on August 30th, what vehicle did
20 you drive to the site that day?

21 A Pickup.

22 Q What vehicle did you drive off the site that
23 day?

24 A Pickup.

25 Q What about the first page on August 25th,

1 what vehicle did you drive to the site that day?

2 A Pickup truck.

3 Q What vehicle did you drive off the site that
4 day?

5 A Pickup.

6 Q Did you drive a hauler truck at all that
7 week?

8 A Did I drive a haul truck that day?

9 Q That week.

10 A That week? No.

11 Q Did you drive your pickup truck at all during
12 the shift?

13 A During what?

14 Q During the shift.

15 MR. SHEEDER: Objection. Lack of foundation.

16 BY MR. GOTTESFELD:

17 Q Let me strike that. What about when you were
18 on site, what involvement, if any, did you have
19 concerning your pickup trunk while you were on the
20 site?

21 A That's what we used to get to and from
22 location, it's what I used to go get fuel for the
23 loader and the bed truck, it's what we used to go to
24 the other locations to get rigging, if we needed it,
25 to take personnel between locations. Everything.

1 Q Okay. But based on the truck tickets you do
2 have in front of you, how many hours did you calculate
3 you worked?

4 MR. SHEEDER: Objection. Asked and answered

5 THE WITNESS: 47.5.

6 BY MR. GOTTESFELD:

7 Q How many was that?

8 A 47.5.

9 Q At a minimum, how many hours did you work
10 that week?

11 MR. SHEEDER: Objection. Assumes facts not
12 in evidence.

13 THE WITNESS: On the four days, 47.5. I
14 don't know, minus the three.

15 BY MR. GOTTESFELD:

16 Q Okay. And, Mr. Waltz, on Exhibit 24, when
17 you drove to the rig site for that day on July 16th,
18 what vehicle were you driving?

19 A Pickup.

20 Q What vehicle did you leave in on July 16th?

21 A Pickup. Pickup truck.

22 Q On July 17th, what vehicle did you drive to
23 the site?

24 A Pickup.

25 Q What vehicle did you drive when you left the

1 site on July 17th?

2 A Pickup.

3 Q What about on July 18th?

4 A Pickup.

5 Q Did you drive a pickup to the site?

6 A Yep, to. Yep.

7 Q What vehicle did you drive leaving the site?

8 A Pickup truck.

9 Q On July 19th it says travel to hotel to
10 relieve day shift push. What vehicle did you drive
11 when you were traveling to the hotel?

12 A Pickup truck.

13 Q Can you pull out Exhibit 17, Mr. Waltz? Mr.
14 Waltz, do you have Exhibit 17 in front of you?

15 A I do.

16 Q You previously testified that you picked up
17 Schenk in terminal and then dropped him off in yard.
18 Do you recall that testimony?

19 A Yes.

20 Q Scott Schenk was a swamper?

21 A Yes.

22 Q He worked -- did he work for Aveda?

23 A Yes.

24 Q In what vehicle were you transporting Mr.
25 Schenk?

1 A Pickup truck.

2 Q And where exactly -- strike that. Are you
3 able to tell from this first page what terminal you
4 picked him up at?

5 A Cogan Station, Pennsylvania.

6 Q And in what yard would you have dropped him
7 off at?

8 A We would have went to -- back to Cogan
9 Station.

10 Q On the second page, Mr. Waltz, on June 20th,
11 2014, what vehicle did you drive to the site that day?

12 A Pickup truck.

13 Q What vehicle did you drive off the site that
14 day?

15 A Pickup truck.

16 Q What about on June 21st, 2014, what vehicle
17 did you drive to the site?

18 A Pickup truck.

19 Q What vehicle did you drive off the site that
20 day?

21 A Pickup truck.

22 Q Mr. Waltz, can you please turn to Exhibit 5.
23 Do you have Exhibit 5 in front of you?

24 A I do.

25 Q On the first page on November 17th, 2014, you

1 see under description, you say travel to West
2 Virginia?

3 A I do.

4 Q Do you recall what vehicle you drove to West
5 Virginia?

6 A Pickup truck.

7 Q Where would you have driven from?

8 A I take that back. This day I would have
9 driven truck 2003, which I believe is a bed or a pole
10 truck. I believe it's a pole truck. And that would
11 have left Williamsport -- Cogan Station, Pennsylvania.

12 Q What about on November 18, 2014, do you know
13 what vehicle you drove that day?

14 A I would have driven my pickup truck to the
15 site that I worked -- the pole truck on site.

16 Q What about on November 18th, 2014, what
17 vehicle did you drive off the site?

18 A My pickup truck.

19 Q Did you transport any crew members that day?

20 A I did.

21 Q Did you transport any -- and what vehicle did
22 you transport those crew members in?

23 A My pickup truck.

24 Q Did you transport any equipment that day in
25 your pickup truck?

1 A I'm sure. Fuel, tools.

2 Q What about on November 19th, 2014, it says
3 crew travel to location.

4 A Driving my pickup truck.

5 Q And then it says crew traveled to hotel.
6 What vehicle did you drive?

7 A Pickup truck.

8 Q On November 20th, 2014, travel to location,
9 what vehicle did you use there?

10 A I drove my pickup truck.

11 Q Then it says return travel. Do you see the
12 fourth entry down on the same page?

13 A I do.

14 Q Where were you returning to? Is that
15 Pennsylvania?

16 A I believe I took that truck to West Virginia.

17 Q What truck?

18 A 2551. I can't be a hundred percent positive,
19 but I believe I took that truck to West Virginia, and
20 then took my pickup truck to the hotel, where it says
21 crew travel 5:15 to six.

22 Q Okay. So you took crew in your pickup truck
23 back to the hotel?

24 A Yes.

25 MR. SHEEDER: You're leading. Objection.

1 BY MR. GOTTESFELD:

2 Q Mr. Waltz, did you drive the crew in your
3 pickup truck on November 20th, 2014?

4 MR. SHEEDER: Note the leading edge.

5 THE WITNESS: Yes.

6 BY MR. GOTTESFELD:

7 Q Mr. Waltz, on November 21st, 2014, do you see
8 the entry where it says crew traveled to truck?

9 A Yes.

10 Q What vehicle did you drive for that entry?

11 A Pickup truck.

12 Q Did you transport crew in there?

13 A Yes.

14 Q Mr. Waltz, you can put that aside, please.

15 Can you turn to Exhibit 4?

16 A Yes.

17 Q On July 25th, 2014, what vehicle did you use
18 to travel to the site that day?

19 A Pickup.

20 MR. SHEEDER: Objection. You're assuming
21 facts not in evidence.

22 BY MR. GOTTESFELD:

23 Q Okay. Mr. Waltz, did you drive a vehicle to
24 the site on July 25th?

25 A Yes.

1 Q What vehicle did you drive?

2 A My pickup.

3 Q Did you drive a vehicle off the site on July
4 25th?

5 A Yes.

6 Q What vehicle did you drive?

7 A My pickup truck.

8 Q Did you transport crew members that day?

9 A Most likely.

10 MR. SHEEDER: Objection. Nonresponsive.

11 BY MR. GOTTESFELD:

12 Q Mr. Waltz, on July 26th, 2014, did you drive
13 a vehicle to the site that day?

14 A Yes.

15 Q What vehicle did you drive?

16 A My pickup.

17 Q Did you drive a vehicle off the site that
18 day?

19 A Yes.

20 Q What vehicle did you use?

21 A My pickup.

22 Q You can put that away, sir. And, Mr. Waltz,
23 if you could turn to Exhibit 2, which is the job
24 description.

25 A Yes.

1 MR. SHEEDER: Asked and answered, Counsel.
2 That's already been asked.

3 BY MR. GOTTESFELD:

4 Q And when you obtained gas and you put it in
5 the back of the pickup truck, approximately, if you
6 know, how many gallons were you fetching?

7 A Typically it was 65 to 75.

8 Q And just to be clear, the gas stations that
9 you fetched the gas from, where they on site or off
10 site?

11 A Off site.

12 Q Mr. Waltz, did other truck pushes/field
13 supervisors drive pickup trucks?

14 A Yes.

15 MR. SHEEDER: Objection. Lack of foundation.

16 BY MR. GOTTESFELD:

17 Q Which other truck pushes drive pickup trucks
18 at Aveda?

19 A All.

20 MR. SHEEDER: Lack of foundation.

21 BY MR. GOTTESFELD:

22 Q What was your answer?

23 A All.

24 Q Was that something they were required to do?

25 A All truck pushers were issued pickups.

1 MR. SHEEDER: Objection. Lack of foundation.

2 BY MR. GOTTFELD:

3 Q And was it one of their job duties to drive
4 those pickup trucks?

5 A Yes.

6 THE WITNESS: Objection. Lack of foundation.

7 BY MR. GOTTFELD:

8 Q How often did they drive the pickup trucks?

9 A Every day.

10 MR. SHEEDER: Objection again, lack of
11 foundation.

12 MR. GOTTFELD: No further questions, Mr.
13 Waltz.

14 REDIRECT EXAMINATION

15 BY MR. SHEEDER:

16 Q Well, unfortunately I have to go back over a
17 lot of things now. You said earlier, sir, you
18 testified that the company again, Aveda or Rodan,
19 issued you pickup trucks; is that correct?

20 A Yes.

21 Q How many pickup trucks were you issued during
22 the time you were there?

23 A I can recall driving three different pickup
24 trucks.

25 Q Now, when you were given one of these pickup

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REDIRECT EXAMINATION

BY MR. SHEEDER:

Q I got something. You testified earlier that all the trucks pushers drove company provided pickup trucks.

A Okay. That may not have been accurate.

Q That's what you testified to in response to your attorney's question. Do you recall that?

A I know all the truck pushers in Cogan Station, Pennsylvania, were issued pickup trucks.

Q How about everywhere else in the company?

A I don't know that.

Q Do you know -- do you know on -- well, let me ask you this. There were three pickup trucks. There was the Dodge Ram. What were the other two?

A There was the Dodge Ram -- we had Dodge Rams. We had Ford F-150s. We had at least one GMC. I couldn't tell you exactly how many of everything we had. We had multiple Dodge Rams. I think that was what we had the most of, and then probably Fords.

Q You're a married man, is that correct?

A That is correct.

Q Any kids?

A Yes.

Q How many?

1 requirements for safety than the state of
2 Pennsylvania, for example?

3 A I assume.

4 Q You assume what?

5 A They do.

6 Q Did you make any inquiry when you worked down
7 there as to what their specific safety requirements
8 were?

9 A I did not inquire, no.

10 Q Did you ever drive a hauler truck when you
11 were in Texas?

12 A I don't believe I did in Texas.

13 Q Did you do it in North Dakota?

14 A I don't believe I did for Aveda.

15 Q How about in New Mexico?

16 A No.

17 Q So to the extent you were driving a hauler
18 truck, it was up here, Cogan Station primarily;
19 correct?

20 A Pennsylvania, West Virginia, or -- I don't
21 even know that I drove one in Ohio for Aveda.

22 Q I think you said earlier you had.

23 A I said -- I believe I said I moved a rig
24 there as a truck pusher. I don't know that I drove a
25 haul truck.

1 Q Is it possible?

2 A It's possible.

3 MR. SHEEDER: Okay. I have no further
4 questions, sir.

5 RE CROSS-EXAMINATION

6 BY MR. GOTTESFELD:

7 Q Now you made me have three follow-up
8 questions. What vehicle did you drive when you were
9 in Texas?

10 A I drove one of the safety girl's trucks for a
11 few days until she came back, and then I do not recall
12 the rental that they got me, but I was gotten a rental
13 vehicle.

14 Q When you said the girl's truck, what kind of
15 truck? Do you know?

16 A I do not know exactly what it was. I believe
17 it was a Ford.

18 Q Pickup truck?

19 A But I can't swear to you that it was a Ford.

20 Q A pickup truck?

21 A Yes.

22 Q What about, do you remember what vehicle you
23 drove in North Dakota?

24 A I believe that was a Dodge.

25 Q Dodge?

1 A But I can't be a hundred percent certain.

2 Q Pickup truck?

3 A Yes.

4 Q What about in New Mexico, do you recall what
5 vehicle you drove there?

6 A That was whatever I was driving in Texas. I
7 don't remember whether I had her safety truck at the
8 time or I had my rental. I believe I had the rental
9 when I went to New Mexico, but I'm not 100 percent
10 certain on that.

11 MR. GOTTFELD: Okay. No further questions.

12 REDIRECT EXAMINATION

13 BY MR. SHEEDER:

14 Q I had asked you a question, I'm not sure that
15 I followed up. You had said that there were times
16 when you would supervise a rig down, supervise the
17 loading of the hauler truck and then would actually
18 drive the hauler truck. And I has asked you what
19 percentage of the time did you perform all three of
20 those duties, you know, supervise the rig down,
21 supervise the loading and drive the hauler truck. On
22 a one -- zero to 100 percent of the time, what
23 percentage of the time did you do that? If you know?

24 A I don't know.

25 Q You don't know?

Exhibit E

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RANDY WALTZ, on behalf	§	
of himself and	§	
similarly situated	§	
employees,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	CIVIL ACTION NO. 4:16-cv-00469
	§	
AVEDA TRANSPORTATION	§	
AND ENERGY SERVICES INC.	§	
and RODAN TRANSPORT USA	§	
LTD,	§	
	§	
Defendants.	§	

ORAL & VIDEOTAPED DEPOSITION OF
GARY SOLINGER
SEPTEMBER 22, 2016

ORAL & VIDEOTAPED DEPOSITION of GARY SOLINGER,
produced as a witness at the instance of the Defendants
and duly sworn, was taken in the above-styled and
numbered cause on the 22nd day of September, 2016, from
9:05 a.m. to 3:28 p.m., before Michele W. Kuhlmann, CSR
in and for the State of Texas, reported by method of
machine shorthand at the offices of Autrey Legal
Solutions, 24 Smith Road, Suite 160, Midland, Texas,
pursuant to the Federal Rules of Civil Procedure and the
provisions stated on the record or attached hereto.

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A P P E A R A N C E S

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ALSO PRESENT:

Mr. Tommy Fort, Videographer
Mr. Eric Clinton

1 whatever we had -- you know, what -- if they didn't have
2 enough for a haul truck that day and they needed me to
3 go out in the picker, I would take the picker out. If
4 they needed me in a tandem, I'd take the tandem out.

5 Q. Okay. Keep in mind I'm a lawyer so you gotta
6 give me the layman's terms. What's tandem?

7 A. Bed truck.

8 Q. Okay.

9 A. Yes.

10 Q. Anything else you did on that job?

11 A. No, sir.

12 Q. Okay. And if you'll -- you stopped working in
13 June, 2012, in Pennsylvania, correct?

14 A. Uh-huh.

15 Q. If you'll turn back to the first page, please.

16 A. (witness complies.)

17 Q. And then you applied to Rodan again in
18 October 15, 2012, correct?

19 A. Correct.

20 Q. And you applied to be a driver stationed out of
21 the Midland terminal --

22 A. Yes.

23 Q. -- is that right?

24 Please let me finish my question.

25 A. Sorry.

1 Q. Why did you move from Pennsylvania to Midland?

2 A. Job opportunity. More money, more work because
3 there wasn't no work up in Pennsylvania, slowing down
4 extremely.

5 Q. And you were hired for this job as a driver in
6 Midland, correct?

7 A. Yes, sir, when I first initially started I was
8 hired as a driver.

9 Q. And you applied on October 15th, correct?

10 A. I believe so, yes, sir.

11 Q. And you began work on October 25, 2012. Is
12 that correct?

13 A. Yes.

14 Q. You also worked some as a truck push field
15 supervisor in Midland at one point, correct?

16 A. Quite a bit.

17 Q. And you were employed at Rodan continuously
18 from this October 25th, 2012, date to January 22, 2016.
19 Is that correct?

20 A. Correct.

21 Q. And you resigned on January 22, 2016?

22 A. Yes.

23 Q. And why did you resign?

24 A. Because they cut our pay in half.

25 Q. And where do you work now?

1 is what we're going to -- the plan is for the night, you
2 know, they're going to rig down more."

3 We go back to the hotel or man camp and
4 then start our day over the next day.

5 Q. You either rigged up or rigged down as a truck
6 push. Is that right?

7 A. Yes.

8 Q. Can you explain what rigged up and rig down
9 mean?

10 A. Rig down is actually dismantling the rig
11 and rigging up is rigging the rig up, putting it back
12 together.

13 Q. Rigging down also includes -- it's dismantling
14 the rig, as you said, but it also includes loading the
15 rig up to be transported, correct?

16 A. Correct.

17 I'm not loading it up. The trucks are.
18 I'm having my guys set it out. My job was in charge of
19 dismantling the rig and making sure everything is safe
20 and proper work. I'm over all the hands out there, is
21 my duties.

22 Q. And you're also in charge of the entire work
23 site, correct?

24 A. Yes.

25 Q. Which would include loading the rig up,

1 correct?

2 A. Correct.

3 Q. How heavy were these rig moves?

4 A. Heavy was the rig move or the equipment?

5 Q. The truck that transported the rig move, how
6 heavy would it be generally?

7 MR. GOTTESFELD: Objection to form.

8 A. Well, in layman's does -- in the layman's
9 sense, you know, a pump is 100,000 pounds. A pit's
10 100,000. You know, some are a hundred and twenty. You
11 got your subs that are between 90,000 pounds, 100,000
12 pounds. Your trucks in general are between 50 and
13 70,000 pounds, depending on what kind of trucks you
14 have.

15 BY MR. DAVIS:

16 Q. So every truck's going to be far over 10,000
17 pounds, correct?

18 MR. GOTTESFELD: Objection; form.

19 A. No. No.

20 BY MR. DAVIS:

21 Q. Okay. Which trucks wouldn't --

22 A. Not --

23 Q. Which trucks were not --

24 A. Pickups are not. Pickups --

25 Q. Make sure I finish my question --

1 A. Sure.

2 Q. -- just for the record.

3 Which trucks are not over 10,000 pounds?

4 A. Pickups, our pickups, F-150's, 2500's, f --
5 yeah, pretty much what we had.

6 Q. But every other truck besides the pickup trucks
7 are over 10,000 pounds, correct?

8 A. I believe, yeah. Your main -- yeah. All your
9 equipment, yes. Anything that has to do with the rig
10 moving part of it as an -- I mean as of the equipment
11 that's hauling everything, of course, yes.

12 (Exhibit 3 was marked.)

13 BY MR. DAVIS:

14 Q. Handed you what's been marked as Deposition
15 Exhibit No. 3. This is a job description of the field
16 supervisor/truck push position. Is that correct?

17 A. This is apparently the duties.

18 What you say that again?

19 Q. This is a --

20 A. What's that --

21 Q. -- job description of the field
22 supervisor/truck push position, correct?

23 A. Yes.

24 Q. Have you ever seen this before?

25 A. No.

1 sometimes also drive?

2 MR. GOTTFELD: Objection to form.

3 You may answer.

4 A. Very rarely. That's something if -- if it is,
5 it would be something infield. If it was, you know,
6 pretty much infield, I'd push. If a guy was in the
7 middle of doing something, something happened to a guy,
8 he had to leave, drive his truck over. If not, we'd
9 unload it, put the truck in the corner. But not too
10 often, no.

11 Q. Did you ever drive a haul truck when you were
12 working as a truck push?

13 A. Don't recall, no, sir.

14 Q. Did you ever drive a pole truck when you were
15 working as a truck push?

16 A. No.

17 Q. Did you ever drive a bed truck when you were
18 working as a truck push?

19 A. No.

20 Q. What trucks did you drive when you were working
21 as a truck push?

22 A. Company pickup, F-150 or the 2500.

23 Q. A moment ago you mentioned moving something in
24 the infield. What truck would you have been driving --

25 A. A haul --

1 Q. Did you move any rigs from West Virginia to
2 Ohio?

3 A. Yes.

4 Q. From Ohio to West Virginia?

5 A. Yes.

6 Q. Did you move any rigs from Pennsylvania to West
7 Virginia?

8 A. Yep.

9 Q. Did you move any rigs from West Virginia to
10 Pennsylvania?

11 A. Yep.

12 Q. Move any rigs from West Virginia to Ohio?

13 A. I never have, no.

14 Q. Move any rigs from Ohio to West Virginia?

15 A. Don't recall.

16 Moved more rigs from West Virginia to
17 Pennsylvania and West Virginia and Pennsylvania back and
18 forth. Those were mainly our rigs --

19 Q. Any other --

20 A. -- up there.

21 Q. Any other terminals you worked at where you
22 moved rigs across the state lines?

23 A. The only two terminals I've worked at is
24 West -- or Pennsylvania and Midland.

25 Q. You haven't worked out of any other terminals

1 correct?

2 A. Correct.

3 Q. When you began working at the Midland terminal
4 you initially worked as a driver, correct?

5 A. Correct.

6 Q. When did you start working as a truck push?

7 A. I'll be honest, I could not put a date on it.
8 I'll be right honest. I don't recall.

9 Q. Have an idea of the approximate date?

10 A. It was within my first year there.

11 Q. How much did you make as an -- per hour as a
12 driver when you began at Rodan?

13 A. I want to -- 28, 29, something around there.

14 Q. As a driver when you began?

15 A. Yes. If I recall, somewhere in there. I know
16 in Pennsylvania, when I was with them up there, I made
17 more.

18 Q. And when you were working as a driver, you were
19 paid hourly, correct?

20 A. Correct.

21 Q. When you were working as a truck push, you were
22 paid a day rate, correct?

23 A. Correct.

24 Q. And when you were working as a driver and paid
25 hourly, you were paid overtime, correct?

1 A. Correct.

2 Q. Was it March, 2013, when you began working as a
3 truck push?

4 A. It's possible, yes.

5 Q. What was the day rate that you made?

6 A. 800, I believe, a day.

7 Q. You made 800 per day as a truck push?

8 A. I believe it was, yes, sir.

9 Q. Made 400 for half day rate?

10 A. Correct.

11 Q. At some point this was moved down to 720 per
12 day for a day rate?

13 A. Yes, sir.

14 Q. And for half day rate you would then make 360
15 per day, correct?

16 A. Correct.

17 Q. You also got moved to salary eventually,
18 correct?

19 A. Yes.

20 Q. Salary was an annual salary of \$120,000,
21 correct?

22 A. Correct.

23 Q. You were moved to that in September, 2015?

24 A. Yes. I'm sorry.

25 Q. And you continued to earn this \$120,000 salary

1 Q. You drove a haul truck and a bed truck --

2 A. Yeah.

3 Q. -- across state lines while you were on the
4 East Coast?

5 A. Correct.

6 And actually I drove pickups across state
7 lines because we would actually leave equipment in West
8 Virginia and transport back and forth.

9 Q. Finally (g), subdivision (g), you state your
10 job duties included rigging up and rigging down at oil
11 and gas rigs and supervising other employees, correct?

12 A. Correct.

13 Q. And you were ultimately responsible for what
14 happened at these oil and gas rigs as a truck push,
15 correct?

16 A. Correct.

17 Q. All the employees reported to you who were at
18 the site?

19 A. Yes. All of my employees, yes.

20 Q. Any other job duties you did that we haven't
21 discussed?

22 A. Not really that I believe.

23 Q. Go to Interrogatory 3.

24 It states the plaintiff is not current --
25 it states that you're not currently able to identify the

1 one we went through?

2 A. Okay.

3 Q. And in your response to number -- Interrogatory
4 No. 3 do you see the sentence there where it says "In
5 the absence of such discovery, Plaintiff typically
6 worked between 14 to 18 hours during his shifts"? Do
7 you see that?

8 A. Yes.

9 Q. What percentage of the time does that statement
10 hold true for you during your employment as a truck
11 pusher?

12 A. A very high percentage, very high.

13 Q. Are you able to give me a percentage now?

14 A. I would say probably 80 percent, 90 percent
15 roughly.

16 Q. And Mr. Solinger, you mentioned the names of
17 some other truck pushers before. Do other truck pushers
18 at Rodan perform the same job duties as you?

19 A. Yes.

20 Q. And what's your basis for saying that?

21 A. We're all truck pushers. We're all equal. You
22 know, we have the same titles, same jobs to do.

23 Q. You mentioned -- you talked a little bit about
24 Brad Harold before. Was Mr. Harold aware that you were
25 paid on a day rate basis?

1 A. Daily.

2 Q. You mentioned previously that you drove a
3 pickup truck across state lines when you were in the
4 East Coast and you mentioned West Virginia. Do you
5 recall that testimony?

6 A. Yes.

7 Q. What other states when you worked on the East
8 Coast, if any, did you also drive a pickup truck across
9 state lines?

10 A. New York. Been to New York several times
11 crossing over and going up and over. Just mainly West
12 Virginia and probably New York a few times.

13 Q. And any other states come to mind up there or
14 is that it?

15 A. That's about it up there.

16 Q. What pickup truck were you driving?

17 A. We had a 1500 Chevy is what we had up there.

18 Q. Is that a Dodge?

19 A. No. That's a Ford -- or I mean not a -- I'm
20 sorry. Sorry. Sorry. It was a 1500 Chevy, the older
21 one. They call it the green machine is what they called
22 it.

23 Q. And that's up in the East Coast?

24 A. Yes.

25 Q. And who provided that to you?

1 A. Rodan/Aveda.

2 Q. Was that something you were required to drive?

3 A. When we're out of town like that we took it
4 with us, yes.

5 Q. And just what were -- you mentioned you were
6 transporting equipment. Anything else you were doing
7 regarding that pickup truck on the East Coast?

8 A. No, just transporting employees and rigging and
9 stuff like that.

10 Q. And were those job duties you're required to
11 do?

12 A. Yes.

13 Q. Okay, Mr. Solinger. We're going to just go
14 backward through some of the exhibits, not all of them I
15 promise you.

16 I guess the first one I want to look at
17 is Solinger 85. You can pull it up and let me know when
18 you have it.

19 A. 85?

20 Q. Right.

21 A. Like you mean for the Rodan one, right? On the
22 bottom is what you're looking at?

23 Q. Yep. It says Rodan 000995.

24 A. Oh, 995?

25 Q. Yeah, but it's been marked as Exhibit 85.

1 Q. And is that true for June 2nd, June 3rd,
2 June 4th, June 6th, June 7th and June 8th of 2013?

3 A. Yes.

4 Q. Okay. Can you turn to Exhibit 15?

5 A. (Witness complies.)

6 Q. Do you have Exhibit 15 in front of you?

7 A. Yes.

8 Q. And do you recall your testimony in which you
9 said that this was a rig move from Texas to New Mexico?

10 A. Correct.

11 Q. And did you actually make the drive from Texas
12 to New Mexico?

13 A. Yes.

14 Q. And in what vehicle did you make that drive?

15 A. Company pickup. Either F-150 or it was a 2500
16 Dodge.

17 Q. Was that something that you were required to do
18 as part of your job duties?

19 A. Yes.

20 Q. Would you have been transporting anything?

21 A. Employees or, you know, sometimes chains,
22 rigging for the cranes, rigging for trucks, whatever,
23 yes.

24 MR. GOTTESFELD: You want to do it now?

25 Let's do it now or I'll forget. Change

1 the tape.

2 THE VIDEOGRAPHER: We're going off the
3 record at 2:44. That's the end of Tape No. 5.

4 (Break taken.)

5 THE VIDEOGRAPHER: We are back on the
6 record at 2:49. This is Tape No. 6 of the deposition of
7 Gary Solinger.

8 BY MR. GOTTESFELD:

9 Q. Mr. Solinger, can you turn to Exhibit 14?

10 A. Yes.

11 Q. And do you recall your testimony where you said
12 this was a rig move from Texas to New Mexico?

13 A. Yes.

14 Q. And did you make a drive from Texas to New
15 Mexico?

16 A. Correct.

17 Q. What vehicle did you drive?

18 A. Company pickup, F-150 or a 2500 Dodge.

19 Q. And was that something you were required to do?

20 A. Yes.

21 Q. Tell me why were you required to do that.

22 A. That's my -- was my transportation back and
23 forth to the location to the rig yard.

24 Q. And were all the crew members going as a unit?
25 Were there other vehicles in the line or was it just --

1 dispatch of Pioneer 79 is what I'm getting at so ...

2 Q. Well, when you made the rig move would you have
3 driven from one rig to the other?

4 A. Yes.

5 Q. And what vehicle did you drive?

6 A. My company pickup.

7 Q. And was that something you were required to do?

8 A. Yes.

9 Q. And did you transport crew members while making
10 that drive?

11 A. Yes.

12 Q. And what about Exhibit 12? Do you recall your
13 testimony where you said this was a rig move from Texas
14 to New Mexico?

15 A. Yes.

16 Q. And did you drive from Texas to New Mexico?

17 A. Yes.

18 Q. In what vehicle did you drive?

19 A. Company pickup.

20 Q. Was that something you were required to do?

21 A. Yes.

22 Q. Did you transport crew members?

23 A. Yes.

24 Q. What about in Exhibit 10? Do you recall your
25 testimony where you said this was a rig move from Texas

1 to New Mexico?

2 A. I'm sorry.

3 Yes.

4 Q. And did you drive from Texas to New Mexico as
5 part of this rig move?

6 A. Yes.

7 Q. What vehicle did you drive?

8 A. My company pickup.

9 Q. And did you transport any crew members?

10 A. Yes.

11 Q. Is there an average amount of time that it
12 takes to drive from one rig to another rig?

13 A. It just varies. The distance of the rig is
14 what it is.

15 Q. Can you even give me a range?

16 A. One and a half to two hours I would say.

17 Q. You can put that aside, please.

18 A. (Witness complies.)

19 Q. That was 11, right?

20 A. 10.

21 Q. Sorry.

22 What about Exhibit 9? This was a rig in
23 which you testified that the rig move was from Texas to
24 New Mexico. Do you recall that testimony?

25 A. Correct.

1 Q. And did you make --

2 A. Yes.

3 Q. -- the drive as part of this rig move?

4 A. Yes.

5 Q. What vehicle did you drive?

6 A. Company pickup.

7 Q. And was that something you were required to do?

8 A. Yes.

9 Q. And did you transport crew members?

10 A. Yes.

11 Q. All right. What about Exhibit 8? This was a
12 rig move from Texas to New Mexico. Do you recall
13 testifying about that?

14 A. Yes.

15 Q. And did you drive a vehicle as part of that rig
16 move from Texas into New Mexico?

17 A. Yes.

18 Q. What vehicle did you drive?

19 A. Company pickup.

20 Q. Was that something you were required to do?

21 A. Yes.

22 Q. And did you transport crew members?

23 A. Yes.

24 Q. Okay. What about Exhibit 7, please.

25 A. (Witness complies.)

1 Q. And do you recall your testimony that you had a
2 rig move from New Mexico to Texas in this particular
3 job?

4 A. Yes.

5 Q. And did you make the drive from New Mexico to
6 Texas as part of this rig move?

7 A. Yes.

8 Q. Was that something you were required to do?

9 A. Yes.

10 Q. And what vehicle did you drive?

11 A. Company pickup.

12 Q. And again when you say "company pickup truck,"
13 are you referring to only two trucks?

14 A. Yes.

15 Q. And which ones are they?

16 A. F-150 and the 1500 Dodge.

17 Q. And did you transport crew members as part of
18 this rig move?

19 A. Yes.

20 Q. How many crew members were you typically
21 transporting?

22 A. Usually between two and three.

23 Q. And what were their job titles?

24 A. Usually a loader operator, crane -- bed op- --
25 bed hand and a swamper.

1 Q. And when you were at Rodan was there a pickup
2 truck that was specifically assigned to you?

3 A. Yes.

4 Q. Which one was that?

5 A. At this time on this rig -- where -- I don't
6 see it on here.

7 I had 569. I had two different trucks
8 for a bit. I had a Ford -- I had a Dodge and then a
9 Ford is what I had.

10 Q. I see. So it changed during your time there?

11 A. Yes.

12 Q. Okay. You can put that aside.

13 A. (Witness complies.)

14 Q. I think we're on Exhibit 6 now. Do you have
15 that in front of you?

16 A. Yes.

17 Q. And do you recall your testimony where you said
18 this was a rig move from Texas to New Mexico?

19 A. Yes.

20 Q. Did you make the drive from Texas to New
21 Mexico?

22 A. Yes.

23 Q. What vehicle did you drive?

24 A. Company pickup.

25 Q. And was that something you were required to do?

1 A. Yes.

2 Q. And did you transport crew members?

3 A. Yes.

4 Q. And do you recall your previous testimony where
5 you estimated there may have been over 200 rig moves
6 that caused you to cross state lines as a truck push?

7 A. Yes.

8 Q. What vehicle did you drive during those rig
9 moves?

10 A. Company pickup.

11 Q. And again was that something that you were
12 required to do?

13 A. Yes.

14 Q. And did you transport crew members during those
15 drives?

16 A. Yes.

17 Q. Did other truck pushes drive pickup trucks as
18 well at Rodan?

19 A. Yes.

20 Q. Did other truck pushes cross state lines while
21 driving pickup trucks?

22 A. Yes.

23 Q. Did other truck pushes transport crew members
24 in pickup trucks?

25 A. Yes.

1 Q. Change gears here for one second.

2 Do you believe that when Rodan paid you a
3 day rate that it benefited Rodan?

4 A. Sure.

5 Q. And why do you say that?

6 A. Well, they got off cheap by, you know, not
7 paying us overtime.

8 Q. Now, sir, you previously testified about
9 performing route checks. Do you recall that testimony?

10 A. Yes.

11 Q. What vehicle did you drive when you performed
12 route checks?

13 A. My company pickup.

14 Q. Was that something you were required to do?

15 A. Yes.

16 Q. Did other truck pushes perform route checks?

17 A. Yes.

18 Q. Did they drive pickup trucks when performing
19 route checks?

20 A. Yes.

21 Q. How often did you perform route checks?

22 A. Once a week, twice a week maybe sometimes.
23 Sometimes you wouldn't do them for a while. Just
24 varied.

25 Q. And when you'd perform route checks, how long

1 would that take you typically?

2 A. 4 to 6 hours roughly. It's a rough estimate
3 just depending on where -- depending on where it was at
4 and how far the distance between locations were.

5 Q. And when you were performing route checks were
6 you driving on public highways?

7 A. Yes.

8 Q. What about when you drove between rig sites on
9 a pickup truck? Were you driving on public highways?

10 A. Yes.

11 Q. What about at the rig site? Did you use the
12 pickup truck on it?

13 A. Yes.

14 Q. How so?

15 A. Transporting myself to there and then if I had
16 to drive out to a driver, go out if something was out
17 there -- wrong down the road, get in my pickup and drive
18 down the road to see what was going on.

19 Q. And you're talking about on the actual rig site
20 itself, right?

21 A. Correct.

22 Q. Would you have occasion to load equipment onto
23 your pickup truck?

24 A. I've had to before, yes.

25 Q. And what are types of equipment that you would

1 load onto there?

2 A. I've had to take boards, stuff, had to take it
3 to the other end. If something had fell out -- off --
4 fell off a load going down the dirt road, pick it up and
5 we'd put it back in my pickup, take it to the new end.
6 Just in general simple stuff really.

7 Q. When you were driving onto the rig sites, how
8 would you describe the road conditions? Like were they
9 back roads? Were they paved?

10 MR. DAVIS: Objection; leading.
11 Objection; compound. Objection; assumes facts not in
12 evidence.

13 A. Some were paved. Some were getting -- coming
14 up close -- well, they were paved most of time getting
15 close, but then once you hit the lease roads it's all
16 dirt.

17 BY MR. GOTTESFELD:

18 Q. So regarding the leased roads, did you need
19 four-wheel drive in order to drive on them?

20 MR. DAVIS: Objection; leading.

21 A. Sometimes. Sometimes, yes.

22 BY MR. GOTTESFELD:

23 Q. And did having a pickup truck enable you to do
24 that?

25 MR. DAVIS: Objection; leading.

1 Q. Were you in charge of those employees?

2 A. No. I was in charge of my guys.

3 Q. And by "my guys" who are you referring to --

4 A. The employees --

5 Q. -- specifically?

6 A. -- at Rodan/Aveda.

7 Q. Was everyone responsible for safety on the work
8 site?

9 A. Yes.

10 Q. And let me ask you this. You testified about
11 driving to the site each day. Do you recall that
12 testimony?

13 A. Yes.

14 Q. When you drove from the -- what would you call
15 it again, the man camp?

16 A. Yes.

17 MR. DAVIS: Objection; leading.

18 BY MR. GOTTESFELD:

19 Q. Where did you drive -- from the man camp where
20 would you drive to after that?

21 MR. DAVIS: Objection; assumes facts not
22 in evidence.

23 A. To the location of the rig.

24 BY MR. GOTTESFELD:

25 Q. And what vehicle would you use to drive?

1 A. Company truck.

2 Q. Was that something you were required to do?

3 A. Yes.

4 Q. So each day when you left the man camp did you
5 drive a vehicle?

6 A. Yes.

7 Q. And what -- did you pick up employees after
8 that each day?

9 A. Usually or at the yard. We would all meet at
10 the yard.

11 Q. So you started at the man camp --

12 A. Uh-huh.

13 Q. -- and then you drove to the yard?

14 A. No. Our man camp is a yard. It's all in one
15 entity.

16 Q. So you pick up the crew members at the actual
17 yard?

18 A. Yes.

19 Q. And then you would drive them onto the site?

20 A. Correct.

21 Q. And did you always perform that job duty with a
22 pickup truck?

23 A. Yes.

24 Q. And that was something that you're required to
25 do?

1 A. Yes.

2 Q. Did other truck pushers perform that same job
3 duty?

4 A. Yes.

5 Q. And what about when you had to drive from the
6 yard to the rig site? Did you have to drive on public
7 highways?

8 A. Yes.

9 Q. And what about when you left the job site -- or
10 the rig site at the end of the day? Did you drive off
11 the rig site?

12 MR. DAVIS: Objection; compound.

13 A. Yes.

14 BY MR. GOTTESFELD:

15 Q. What vehicle did you drive off the rig site?

16 A. A company truck.

17 Q. And where'd you drive it to?

18 A. Back either to the hotel or to man camp.

19 Q. And was that something you were required to do?

20 A. Yes.

21 Q. Did you transport crew members while doing
22 that?

23 A. Yes.

24 Q. Did other truck pushes perform that same job
25 duty?

1 A. Yes.

2 Q. And was that always done with a pickup truck?

3 A. Yes.

4 Q. Was there an average amount of time that it
5 took you to drive from the yard to the rig site?

6 A. Just varied on locations. Average, hour and a
7 half, two hours I would say, I guess.

8 Q. Before you arrived at the rig site each day did
9 you have to make any phone calls?

10 A. Every once in a while.

11 Q. To who?

12 A. To dispatch.

13 Q. And what was the reason for that?

14 A. If I had a truck issue or if I had a driver
15 that didn't show up, a flat tire, just -- if we got a
16 phone call, you know, just in general somebody broke
17 down basically.

18 Q. Did you ever have to pick anyone up at the
19 airport as part of your job duties at Rodan?

20 A. Yes.

21 Q. Who would you pick up?

22 A. Employees, manager, mechanics, just guys coming
23 in from Pennsylvania to come down and work and go pick
24 them up.

25 Q. And was that something that was required of

1 you?

2 A. It was something asked of us, yes. Something
3 that -- I mean, if there was no one around and I was
4 there, that's -- I would do it.

5 Q. And did you drive a pickup truck while
6 performing that job duty?

7 A. Yes.

8 Q. Are there any other job duties that you can
9 think of that involved your pickup truck?

10 A. No.

11 MR. GOTTESFELD: No further questions.

12 MR. DAVIS: Can we go off the record?

13 THE VIDEOGRAPHER: Going off the record
14 at 3:04.

15 (Break taken.)

16 THE VIDEOGRAPHER: We are back on the
17 record at 3:18.

18 FURTHER EXAMINATION

19 BY MR. DAVIS:

20 Q. All right, Mr. Solinger. I want to go back
21 through some of these time sheets now that your counsel
22 has.

23 Your counsel went back through these time
24 sheets with you, correct?

25 A. Correct.

Exhibit F



Texas
New York
Washington, DC
Connecticut
Seattle
Dubai
London

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October 10, 2016

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Dresher, PA 19025

Via Email

Re: *Randy Waltz, on behalf of himself and similarly situated employees v. Aveda Transportation and Energy Services Inc. and Rodan Transport USA Ltd.*; Civil Action No. 4:16-cv-00469; In The United States District Court For The Middle District Of Pennsylvania

Dear Pete:

In accordance with our discussion, we have reviewed the payroll records of Rodan Transport (USA) Ltd. (“Rodan”) for employees paid on a day-rate basis. Other than Randy Waltz and Gary Solinger, Rodan employed thirty-four (34) employees paid on a day-rate basis between October 10, 2013 to October 10, 2016. For these thirty-four (34) employees, we have provided employee numbers and date ranges for which these employees were paid on a day-rate basis. These employees were not necessarily paid on a day-rate basis throughout these date ranges, but rather they were paid on a day-rate basis at some point during each of these date ranges.

<u>Employee Number:</u>	<u>Date Range Paid on Day-Rate:</u>
147	1/12/14 – 7/25/14
1170	5/15/16 – 5/28/16
186	6/15/14 – 5/28/16
295	10/10/13 – 4/5/14
205	10/10/13 – 6/28/14
343	10/10/13 – 8/8/15

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437	10/10/13 – 7/25/15
136	10/10/13 – 5/28/16
385	11/3/13 – 5/2/15
299	2/9/14 – 3/21/15
486	1/12/14 – 5/28/16
1142	2/7/16 – 5/28/16
898	12/13/15 – 5/28/16
575	11/29/15 – 12/12/15
91	10/10/13 – 1/11/14
805	7/26/15 – 2/20/16
436	10/10/13 – 8/8/15
124	10/10/13 – 2/7/15
287	10/10/13 – 5/28/16
278	10/10/13 – 2/22/14
190	10/10/13 – 9/6/14
50	10/10/13 – 10/19/13
185	10/10/13 – 7/26/14
589	7/13/14 – 7/26/14
940	2/21/16 – 3/15/16
317	10/10/13 – 6/13/15
34	10/10/13 – 5/28/16
489	6/29/14 – 7/12/14
458	6/1/14 – 9/5/15

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176	11/2/14 – 3/7/15
468	12/1/13 – 7/26/14
473	12/15/13 – 7/26/14
851	11/15/15 – 3/19/16
292	10/10/13 – 9/5/2015

Very truly yours,

/s/Robert E. Sheeder

cc: Clayton M. Davis, Esq.
Deborah G. Lacey, Paralegal

Exhibit G


 <p>AVEDA Transportation and Energy Services A Division of Rodan Transport (U.S.A.), Ltd.</p>	<p>Aveda Transportation and Energy Services Inc. Aveda, operating in western Canada and in the United States, is an aggressive and growing company in the oilfield hauling business.</p>		
<p>Job Title:</p>	<p>Field Supervisor / Truck Push</p>	<p>Date:</p>	<p>April 2014</p>
<p>Job Description:</p>			
<p>1 POSITION PURPOSE: The Field Supervisor / Truck Push is responsible for supervising the Drivers, Riggers, Picker Operators on a specific project or area. They are also responsible for managing the equipment, safety, environmental, compliance and customer service for the assigned trucking assignment.</p>			
<p>2 MAJOR DUTIES AND RESPONSIBILITIES:</p>			
<ul style="list-style-type: none"> • Supervise that Drivers, Picker Operator and Riggers understand and follow company policies and procedures, as well as government and client regulations. • Train, mentor and monitor the work of Drivers, Picker Operators and Riggers. • Document employee problems and issues and discusses with Dispatcher and Terminal Manager. • Identifies remedial training needed by Drivers, Picker Operators and Riggers. • Promotes team work on the job. • Works collaboratively with the client's representative. • Responsible for returning all equipment to Dispatch. • Responsible for ensuring that the trucks, trailers and associated equipment are handled according to company standards and that Drivers, Picker Operators and Riggers operate them safely and professionally. • Completes truck tickets accurately and timely. • Preparing/monitoring work schedule ensuring work is completed on schedule and • Ensures that all loads comply with government safety and transportation standards and regulations. • Conducts a FLRA on each site and project prior to work starting. • Providing crew with appropriate tools/supplies • Assists in the investigation of accidents and incidents. • Will perform as a Truck Push when needed. 			
<p>Job Location:</p>	<p>Various</p>	<p>Reporting Relationship:</p>	<p>Terminal Manager</p>
<p>Employment Status:</p>	<p>Salaried</p>	<p>Employment Type:</p>	<p>Full-Time</p>
<p>Supervises Others:</p>	<p>First level supervision of Drivers, Picker Operators and Riggers</p>	<p>Educational Requirement:</p>	<p>Associate's degree or technical college education</p>
<p>Certificates / Licenses</p>	<p>WHMIS, TDG, PST, GODI, Standard First Aid, H2S Alive, Fall Protection, CSTS, Cargo Securement, FLRA, HOS</p>	<p>Experience:</p>	<p>15 years of oilfield experience as a Truck Push</p>
<p>Skills:</p>			
<ul style="list-style-type: none"> • Must be self-motivated with organizational and time management skills. • High degree of personal integrity and the ability to collaborate with others in a team based environment. • Excellent interpersonal and demonstrated communication skills, both verbally and written 			

EXHIBIT
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- Excellent leadership and management, mentoring and coaching skills.
- Ability to promote an effective working relationship at all levels and create a positive work environment.
- Effective customer service orientation.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

_____	:	
RANDY WALTZ, <i>et al.</i>	:	
	:	4:16-cv-00469-MWB
v.	:	
	:	
AVEDA TRANSPORTATION AND	:	
ENERGY SERVICES INC. and	:	
RODAN TRANSPORT USA LTD	:	
_____	:	

ORDER

AND NOW, this _____ day of _____, 2016, upon consideration of Plaintiffs’ Motion for Conditional Certification and attached exhibits, *see* Doc. 31, Plaintiffs’ accompanying brief, *see* Doc. 32, Defendants’ response, and all other papers and proceedings herein, it is hereby **ORDERED** that the Motion is **GRANTED** as follows:

1. This action is conditionally certified, pursuant to Section 16(b) of the Fair Labor Standards Act, 29 U.S.C. § 216(b), on behalf of the following collective: **The 36 individuals already identified by Defendants as being employed by Rodan in the position of Field Supervisor/Truck Push and paid on a day-rate basis between October 10, 2013 and October 10, 2016.** Such individuals are referred to herein as “Putative Collective Members.”

2. Within five (5) business days of the entry of this Order, the parties must jointly submit to the Court proposed language for a notification form to be

approved by the Court informing all Putative Collective Members of their right to join this action as party plaintiffs. In drafting the proposed notification language, the parties should “be scrupulous to respect judicial neutrality” and “take care to avoid even the appearance of judicial endorsement of the merits of the action.”

Hoffman-LaRoche Inc. v. Sperling, 493 U.S. 165, 174 (1989); and

3. Within five (5) business days after the entry of this Order, Defendants must produce to Plaintiffs’ counsel an Excel spreadsheet listing the name, last known address, and last known phone number of all Putative Collective Members.

SO ORDERED:

Matthew W. Brann
United States District Judge

CERTIFICATE OF NON-CONCURRENCE

I hereby certify, pursuant to Local Civil Rule 7.1, that I have sought the concurrence of defense counsel with respect to the accompanying motion and have been informed that defendants do not concur in the relief sought therein.

Date: October 31, 2016

/s/ Mark J. Gottesfeld
Winebrake & Santillo, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
(215) 884-2491

IN THE UNITED STATES DISTRICT COURT
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RANDY WALTZ, *et al.*

v.

AVEDA TRANSPORTATION AND
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**PLAINTIFFS' BRIEF IN SUPPORT OF THEIR
MOTION FOR CONDITIONAL CERTIFICATION**

Date: October 31, 2016

Peter Winebrake
R. Andrew Santillo
Mark J. Gottesfeld
Winebrake & Santillo, LLC
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Dresher, PA 19025
(215) 884-2491

For Plaintiffs

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IN THE UNITED STATES DISTRICT COURT
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RANDY WALTZ, *et al.*

v.

AVEDA TRANSPORTATION AND
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**PLAINTIFFS' BRIEF IN SUPPORT OF THEIR
MOTION FOR CONDITIONAL CERTIFICATION**

Plaintiffs Randy Waltz and Gary Solinger (“Plaintiffs”) have filed this Fair Labor Standards Act (“FLSA”) collective action against Defendants Aveda Transportation and Energy Services Inc. (“Aveda”) and Rodan Transport USA Ltd. (“Rodan”), alleging that Defendants violated the FLSA and, with respect to Pennsylvania workers, the Pennsylvania Minimum Wage Act (“PMWA”) by failing to pay them overtime premium compensation for hours worked over 40 per week. Plaintiffs respectfully submit this brief in the hope of obtaining “conditional certification” of a collective¹ consisting of 36 individuals already identified by

¹ Plaintiffs recently withdrew their request to proceed under Rule 23’s class action device. See Doc. 28. They continue to proceed under the FLSA’s collective action device, which permits workers to bring FLSA claims (as well as supplemental state law claims) on behalf of themselves and others who are similarly situated. See 29 U.S.C. § 216(b); see also O’Brien v. Ed Donnelly Enterprises, Inc., 575 F.3d 567, 580 (6th Cir. 2009) (explaining that workers who join an FLSA collective retain the right to pursue supplemental state law claims asserted in the complaint).

Defendants as being employed by Rodan in the position of Field Supervisor/Truck Push and paid on a day-rate basis between October 10, 2013 and October 10, 2016.²

The FLSA’s conditional certification standard is not difficult for employees to satisfy. *See generally infra* at Sections III.A-B (discussing standard). Under the applicable “modest factual showing” standard, an FLSA plaintiff merely is required to “produce some evidence, ‘beyond pure speculation,’ of a factual nexus between the manner in which the employer’s alleged policy affected her and the manner in which it affected other employees.” *Symczyk v. Genesis Healthcare Corporation*, 656 F.3d 189, 192 (3d Cir. 2011). As discussed below, Plaintiffs satisfy this standard.

I. FLSA CONDITIONAL CERTIFICATION MOTIONS SHOULD BE DECIDED QUICKLY.

Plaintiffs respectfully suggest that this FLSA conditional certification motion should be decided quickly. As Judge Ambrose has observed, “‘time [is] of the essence’ for purposes of FLSA notice ‘[b]ecause the . . . statute of limitations is not tolled [until] a potential plaintiff opts in[to]’ the proposed collective action.”

² Defendants deny that Aveda (which is Rodan’s corporate parent) employed Plaintiffs or other collective members, *see, e.g.*, Defendants’ Responses to Waltz’s Interrogatories (Ex. A) at pp. 1-2, and admits that these 36 individuals were employed by Rodan, *see* Letter, dated October 10, 2016, from Robert E. Sheeder to Pete Winebrake (“the Sheeder Letter”) (Ex. F) at p. 1. Of course, whether Aveda can be liable as a joint employer under the FLSA is a premature “merits” issue that is irrelevant to the instant conditional certification motion.

Taylor v. Pittsburgh Mercy Health System, Inc., 2009 U.S. Dist. LEXIS 40080, *2 (W.D. Pa. May 11, 2009); *see also Altenbach v. The Lube Center, Inc.*, 2009 U.S. Dist. LEXIS 106131, *2-3 (M.D. Pa. Nov. 13, 2009) (Kane, J.) (“district courts have allowed the conditional certification of a class of putative plaintiffs before significant discovery takes place because the statute of limitations continues to run on unnamed class members’ claims until they opt into the collective action”).

II. BACKGROUND.

A. Rodan established a job title of Field Supervisor/Truck Push and maintained a common job description for this position.

Plaintiff RandyWaltz (“Mr. Waltz”) was employed by Rodan as a Field Supervisor/Truck Push from May 2014 until May 2015. *See* Defendants’ Responses to Waltz Interrogatories (Ex. A) at p. 4. Opt-in Plaintiff Gary Solinger (“Mr. Solinger”) was employed by Rodan as a Field Supervisor/Truck Push from October 2012 until January 2016. *See* Defendants’ Responses to Solinger Interrogatories (Ex. B) at p. 4.

Rodan maintained a common job description pertaining to the Field Supervisor/Truck Push position. *See* Deposition of Timothy Clark (“Clark Dep.”) (Ex. C) at 70:24-71:11, 75:2-75:8. A copy of the standardized job description is attached as Exhibit G. As indicated, the Field Supervisor/Truck Push job description is highly detailed. *See id.*

The job description was “crafted” at the corporate level and uniformly applied to Field Supervisors/Truck Pushes regardless of location. *See* Clark Dep. (Ex. C) at 70:24-71:11. Rodan maintained a common job description because it wanted its employees to know the common job expectations. *See id.* at 78:10-78:24. Rodan’s Vice President, Tim Clark (“Vice President Clark”), testified:

Q: Why did the company want to have a single job description for the position?

A: Well, it’s just good business practice to have a job description for any position when you’re trying to recruit for a specialized position. You know, you can identify your candidate, right. It has to be a match to the particular job description, or as close. Are there exceptions? Sure. But also, from a day-to-day management perspective, you want your employees to know what the expectation is, right. And if you don’t set that expectation and put it out there, then it’s very difficult for you to be able to hold them accountable later when they’re not meeting expectations.

Id. at 78:10-78:24.

That Rodan subjected Field Supervisors/Truck Pushes to uniform job expectations is supported by Mr. Waltz and Mr. Solinger’s testimony. Field Supervisors/Truck Pushes generally performed the same job duties regardless of location - rigging-up and rigging-down and supervising the crew on oil and gas rigs throughout the United States. *See* Deposition of Randy Waltz (“Waltz Dep.”) (Ex. D) at 36:21-37:5, 286:22-287:8; Deposition of Gary Solinger (“Solinger Dep.”) (Ex. E) at 38:5-38:21, 279:16-279:22. Rodan is in the business of

performing various services at oil and gas rigs throughout the United States. *See* Complaint (“Cpl.”) (Doc. 1) ¶ 13; Answer (“Ans.”) (Doc. 14) at ¶ 13. Mr. Solinger specifically testified that other Field Supervisors/Truck Pushes performed the same job duties as him. *See* Solinger Dep. (Ex. E) at 279:16-279:21. He further explained that “[w]e’re all truck pushers. We’re all equal. You know we have the same titles, same jobs to do.” *Id.* at 279:21-279:22.

B. Rodan already has identified 36 individuals who each held the job title of Field Supervisor/Truck Push and who were paid on a day-rate basis.

During the three-year period relevant to this lawsuit, Rodan already has identified thirty-four individuals in addition to Mr. Waltz and Mr. Solinger that it employed and compensated on a day-rate basis between October 10, 2013 to October 10, 2016. *See* the Sheeder Letter (Ex. F) at p. 1. Moreover, all of these thirty-four individuals, in addition to Mr. Waltz and Mr. Solinger, held the common job title of Field Supervisor/Truck Push. *See* Defendants’ Responses to Waltz’s Interrogatories (Ex. A) at p. 7. These 36 individuals will be referred to as “day-rate FSTPs.”

Rodan paid Mr. Waltz on a day-rate basis from approximately May 2014 up until late-September 2014. *See* Cpl. (Doc. 1) at ¶ 16; Ans. (Doc. 14) at ¶ 16; Waltz Dep. (Ex. D) at 106:20-106:24, 115:11-115:25. Rodan paid Mr. Solinger on a day-rate basis throughout the majority of his employment. *See* Solinger Dep. (Ex. E) at

107:21-107:23, 108:2-108:24, 21:20-22:20.

C. Rodan uniformly classified all day-rate FSTPs as overtime-exempt pursuant to the Motor Carrier Act Exemption and the Highly Compensated Exemption.

Rodan admits that it uniformly classified all day-rate FSTPs as overtime-exempt pursuant to the Motor Carrier Act exemption (“the MCA Exemption”) and the Highly Compensated Exemption. *See* Defendants’ Responses to Waltz’s Interrogatories (Ex. A) at pp. 7-8. Moreover, Vice President Clark was the “*sole decision maker*” with respect to Rodan’s classification of day-rate FSTPs as overtime-exempt. *See id.*

D. Rodan’s assertion of the MCA Exemption requires the Court to apply common legal principles to common facts.

The FLSA requires that covered employees receive overtime compensation “not less than one and one-half times” their regular rate of pay for all hours worked over 40 in a workweek. *See* 29 U.S.C. § 207(a)(1). However, workers who fall within the narrow confines of the MCA Exemption are not covered by the FLSA’s overtime pay requirement. *See* 29 U.S.C. § 213(b)(1).

Significant alterations to the MCA Exemption were made to the MCA exemption on June 6, 2008 when Congress enacted the SAFETEA-LU Technical Corrections Act of 2008 (“Technical Corrections Act”), Pub. L. No. 110-244. Pertinent to this lawsuit, the Technical Corrections Act extended the FLSA’s overtime protections to any employee of a motor carrier whose job “in whole *or in*

part affects the safe operation of vehicles lighter than 10,000 pounds.” *McMaster v. Eastern Armored Services, Inc.*, 780 F.3d 167, *4-5 (3d Cir. 2015) (emphasis supplied).

Accordingly, there is a common set of legal principles as to whether day-rate FSTPs are entitled to overtime compensation under the Technical Corrections Act, most notably whether day-rate FSTPs’ use of pickup trucks weighing less than 10,000 pounds is enough to bring them within the coverage of the FLSA. Plaintiffs submit that if day-rate FSTPs drove, *in part*, vehicles weighing less than 10,000 pounds, they will not be covered by the MCA exemption and will instead be entitled to overtime compensation under the FLSA. *See McMaster*, 780 F.3d 167, at *1.

Merits issues are *not* properly before the Court at the conditional certification stage. *See infra* at Section II.A. Nonetheless, for purposes of conditional certification, it is pertinent to observe that Plaintiffs will utilize common evidence in this lawsuit that is central to the ultimate issue of whether day-rate FSTPs are exempt under the MCA exemption.

As discussed below, in deciding whether day-rate FSTPs are entitled to overtime under the Technical Corrections Act, the Court will look to a common set of facts that apply to all 36 collective members.

1) Rodan supplied pickup trucks weighing less than 10,000 pounds to its day-rate FSTPs.

Defendants supplied pickup trucks weighing less than 10,000 pounds to its day-rate FSTPs. *See* Clark Dep. (Ex. C) at 44:12-44:17, 44:24-45:6, 47:5-47:7; Waltz Dep. (Ex. D) at 347:12-347:25, 390:9-390:10; Solinger Dep. (Ex. E) at 318:17-318:22. The Vice President of Operations explained that Defendants would assign pickup trucks to day-rate FSTPs when they were hired. *See* Clark Dep. (Ex. C) at 45:12-45:20. These pickup trucks were owned by Rodan, and Rodan paid the insurance on them. *See id.* at 44:12-44:17, 45:21-45:24.

Indeed, both Mr. Waltz and Mr. Solinger testified that Rodan supplied them with pickup trucks weighing less than 10,000 pounds. *See* Waltz Dep. (Ex. D) at 317:1-318:11 Solinger Dep. (Ex. E) at 39:16-40:5, 77:20-77:22, 317:1-317:9. Mr. Waltz primarily drove a Dodge Ram 1500 pickup truck, but he also drove a Ford 150 pickup truck and a GMC pickup truck that were issued by the company. *See* Waltz Dep. (Ex. D) at 317:1-318:5. Mr. Solinger primarily drove a Ford F-150 pickup truck or a Dodge 2500 pickup truck. *See* Solinger Dep. (Ex. E) at 77:20-77:22, 317:1-317:9.

Moreover, Mr. Waltz, who worked in Pennsylvania, testified that Rodan supplied pickup trucks to all day-rate FSTPs who worked in Cogan Station, PA. *See* Waltz Dep. (Ex. D) at 26:12-26:20, 36:20, 390:9-390:10. Further, Mr. Solinger, who worked in Texas, testified that other day-rate FSTPs drove pickup

trucks. *See* Solinger Dep. (Ex. E) at 21:20-22:20, 318:17-318:25, 319:16-319:20.

2) Rodan maintained business records that identified the particular pickup trucks it assigned to each day-rate FSTP.

Vice President Clark testified that Rodan maintained within its software system the specific unit number associated with each particular pickup truck Rodan assigned to each day-rate FSTP. *See* Clark Dep. (Ex. C) at 49:17-50:18. Mr. Clark testified:

Q: Do you know, like, if we wanted to figure out what particular field supervisor - what particular trucks were assigned to particular field supervisor/truck pushes during specific times, how would we go about figuring that out?

A: We would have unit numbers, or had. [. . .] We had unit numbers on each unit and we could look up in the system and find out what specific unit unnumber that any piece of equipment in Aveda, who it was assigned to.

Q: When you say “a unit number,” what do you mean by that?

A: There’s a unit number. We’d number every single unit in the company so we could track it for inventory purposes and supply chain purposes and we’d know where it is. So a pickup truck, example may have unit No. 100 assigned to it.

Q: So did each pickup truck have it own unit number?

A: Yes.

Id. at 49:17-50:13.

Rodan maintained detailed information, such as the make, model, year, and the gross vehicle weight of each pickup truck on a separate inventory spreadsheet additional. *See id.* at 52:1-52:18.

3) It was Rodan's standard operating procedure for day-rate FSTPs to drive pickup trucks weighing less than 10,000 pounds.

As Vice President Clark testified, it was Rodan's "[t]ypical standard operating procedure around the U.S." for day-rate FSTPs to regularly drive pickup trucks. *See Clark Dep. (Ex. C) at 53:18-53:23.* Mr. Clark testified:

Q: [. . .] So you would expect that every day in which a field supervisor/truck push was working he would be driving his pickup truck at some point in the day?

A: That was -- that was typical standard operating procedure around the U.S.

Id. at 53:18-53.23. For example, day-rate FSTPs drove pickup trucks to run routes prior to rig moves to check for any potential hazards ahead of time:

A: [. . .] And then the truck push would probably, if he's, you know, doing his job, he'd probably run the route between that location and the other location, check for any potential hazards along the way, whether it be the road's not wide enough or we can't go down that road because the county or the state wouldn't permit it, right so we have to find another route, running the route, right. Are there any low overhead power lines or bridges that I need to be concerned about to make sure the rig is safe? Then he would go out and look at the other location and see how big the pad is, because every pad varies in size. He'll look at the - you know, sometimes the toll push will measure on a little map on how he wants the rig set up,

you know, and then he knows where to plot things out and plan his rig move effectively.

Id. at 58:15-59:8; *see also id.* at 44:23-44:24 (testifying that “[p]ickup truck would be used for running rounds prior to the rig move to check for lower power lines.”).

Mr. Waltz and Mr. Solinger’s actual work experience corroborates Rodan’s “[t]ypical standard operating procedure around the U.S.” that day-rate FSTPs regularly drove pickup trucks weighing less than 10,000 pounds. *See id.* at 53:18-53:23. Both Mr. Waltz and Mr. Solinger testified at length regarding how they were constantly driving pickup trucks throughout their employment with Rodan. *See Waltz Dep. (Ex. D)* at 317:1-318:14, 319:3-321:12, 321:17-322:10, 323:2-323:13, 332:17-332:28; *Solinger Dep. (Ex. E)* at 318:4-318:13, 319:11-320:4. Specifically, both Mr. Waltz and Mr. Solinger testified that Rodan required them to drive their company pickup trucks to (i) transport crew members,³ (ii) perform route assessments/route checks,⁴ (iii) transport equipment in their pickup trucks,⁵ and (iv) drive to and from the rigs sites.⁶

Mr. Waltz and Mr. Solinger also drove their company pickup trucks

³ *See Waltz Dep. (Ex. D)* at 319:3-319:25, 330:1-330:9, 332:17-332:25, 341:16-341:23, 342:2-342:6, 342:17-343:5, 343:7-343:13; *Solinger Dep. (Ex. E)* at 310:8-310:13, 311:9-314:10, 314:22-316:25, 317:14-318:16, 323:19-325:23.

⁴ *See Waltz Dep. (Ex. D)* at 323:2-324:4; *Solinger Dep. (Ex. E)* at 319:8-319:15.

⁵ *See Waltz Dep. (Ex. D)* at 320:1-320:8, 321:17-322:24, 330:1-330:9, 332:17-332:25; *Solinger Dep. (Ex. E)* at 310:8-310:23, 320:22-321:6.

⁶ *See Waltz Dep. (Ex. D)* at 328:2-328:16, 330:19-330:25, 331:1-332:5, 338:16-339:8, 340:16-340:21, 341:12-341:18, 343:23-344:7, 344:12-344:21; *Solinger Dep. (Ex. E)* at 311:14-311:23, 320:11-320:21.

regardless of their work location. Although Mr. Waltz was assigned to the Cogan Station terminal near Williamsport, PA, when he worked in other states, such as Texas and North Dakota, he also drove a pickup truck. *See* Waltz Dep. (Ex. D) at 26:12-26:20, 36:20, 394:7-395:3. Likewise, although Mr. Solinger was assigned to the Midland terminal located in Midland, TX, he also drove a pickup truck in New Mexico, New York, Pennsylvania and West Virginia. *See* Solinger Dep. (Ex. E) at 21:20-22:20, 89:1-89:11, 272:1-272:8, 281:16-282:12.

Moreover, Mr. Waltz testified that other day-rate FSTPs who worked in Cogan Station, PA also drove pickup trucks every day that were issued by Rodan. *See* Waltz Dep. (Ex. D) at 347:12-348:9, 390:9-390:10. Likewise, Mr. Solinger, who was assigned to the Midland, TX terminal, testified that other day-rate FSTPs drove pickup trucks to *inter alia* transport crew members and perform route checks. *See* Solinger Dep., at 21:20-22:20, 318:17-318:25, 319:16-319:20.

E. Rodan's assertion of the Highly Compensated Exemption requires the Court to analyze common legal principles.

Rodan also alleges that day-rate FSTPs are exempt under the Highly Compensated exemption. *See* Defendants' Responses to Waltz's Interrogatories (Ex. A) at p. 8. Plaintiffs submit that whether Rodan can utilize the Highly Compensated Exemption for day-rate FSTPs will require this Court to analyze, at a later point in this litigation, common legal principles applicable to all day-rate FSTPs. Specifically, because Plaintiffs are only seeking to recover overtime

compensation during the portion of time that day-rate FSTPs were paid on a “day-rate basis,” Plaintiffs will argue, that as a matter of law, the highly compensated exemption is not applicable to day-rate FSPTS.

The Highly Compensated Exemption states that an employee earning over \$100,000 is exempt from the FLSA’s overtime provisions if certain criterion are met. *See* 29 C.F.R. § 541.601. Notably, an employer must demonstrate that the employees were paid at least \$455 per week “on a salary or fee basis.” *Id.* at § 541.601(b)(1). Rodan has admitted that day-rate FSTPs were paid on a “day-rate basis.” *See* Defendants’ Responses to Waltz’s Interrogatories (Ex. A) at p. 7; Sheeder Letter (Ex. F) at p. 1. Thus, there is a common question as to whether employees paid on a day-rate basis can be considered to have been paid on “a salary or fee basis” as required by § 541.601(b)(1). Indeed, Plaintiffs will point to *inter alia* a DOL regulation that provides that “[p]ayments based on the number of hours or days worked and not on the accomplishment of a given task are not considered payments on a fee basis.” 29 C.F.R. § 541.605(a).

III. ARGUMENT.

A. FLSA “Conditional Certification” Generally.

“Under the ‘collective action’ mechanism, an employee alleging an FLSA violation may bring an action on ‘behalf of himself . . . and other employees similarly situated,’ subject to the requirement that ‘[n]o employee shall be a party

plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought.”

Symczyk, 656 F.3d at 192 (quoting 29 U.S.C. § 216(b)).

Collective actions provide employees with “the advantage of lower individual costs to vindicate rights by the pooling of resources.” *Hoffman-La Roche Inc. v. Sperling*, 493 U.S. 165, 170 (1989); accord *Gallagher v. Lackawanna County*, 2008 U.S. Dist. LEXIS 43722, *20-21 (M.D. Pa. May 30, 2008) (Vanaskie, J.). These advantages, however, “depend[] on employees receiving accurate and timely notice . . . so that they can make informed decisions about whether to participate.” *Hoffman-LaRoche*, 493 U.S. at 170. As such, district courts have a “managerial responsibility to oversee the joinder of additional parties to assure that the task is accomplished in an efficient and proper way.” *Id.* at 170-71.

Conditional certification merely facilitates the notice process. As the Third Circuit has explained, conditional certification has nothing to do with “class certification” in the traditional sense: “the certification we refer to here is only the district court’s exercise of [its] discretionary power, upheld in *Hoffman-LaRoche*, to facilitate notice to potential class members, and is neither necessary nor sufficient for the existence of a representative action under FLSA.” *Symczyk*, 656 F.3d at 194 (internal quotations omitted). Put differently, ““conditional

certification' is not really a certification." *Zavala v. Wal Mart Stores, Inc.*, 691 F.3d 527, 536 (3d Cir. 2012).

Whether the lawsuit *ultimately* will proceed as a collective action is determined later in the litigation, "[a]fter discovery, and with the benefit of a much thicker record than it had at the notice stage." *Symczyk*, 656 F.3d at 193 (internal quotation omitted). As Judge Jones cogently observed:

The burden in this preliminary certification [stage] is light because the risk of error is insignificant: should further discovery reveal that the named positions, or corresponding claims, are not substantially similar the defendants will challenge the certification and the court will have the opportunity to deny final certification.

Craig v. Rite Aid Corp., 2009 U.S. Dist. LEXIS 114785, *9 (M.D. Pa. Dec. 9, 2009); *accord Chung v. Wyndham Vacation Resorts, Inc.*, 2014 U.S. Dist. LEXIS 126156, *3 (M.D. Pa. Sept. 9, 2014); *see also Mueller v. CBS, Inc.*, 201 F.R.D. 425, 429 (W.D. Pa. 2001) ("to require conclusive findings of 'similar situations' before providing notice . . . to absent class members 'would condemn any large class claim . . . to a chicken and egg limbo in which the class could only notify all its members to gather after it had gathered together all its members'").

Consistent with the above principles, courts deciding conditional certification motions are "careful not to delve into the merits of the case or determine issues of credibility." *Outlaw v. Secure Health, L.P.*, 2012 U.S. Dist. LEXIS 108218, *8 (M.D. Pa. Aug. 2, 2012) (Munley, J.); *see also Thompson v.*

Peak Energy Services USA, Inc., 2013 U.S. Dist. LEXIS 143704, *6 (W.D. Pa. Oct. 4, 2013) (Eddy, M.J.) (“premature to address the merits now.”); *Vargas v. General Nutrition Centers, Inc.*, 2012 U.S. Dist. LEXIS 154073, *12 (W.D. Pa. Oct. 26, 2012) (“[t]he thrust of the Court’s inquiry at this juncture . . . ‘is not on whether there has been an actual violation of the law’”); *Resch v. Krapf’s Coaches*, 2012 U.S. Dist. LEXIS 89993, *6 (E.D. Pa. June 28, 2012) (merits “need not be evaluated”); *Bishop v. AT&T Corp.*, 256 F.R.D. 503, 507 (W.D. Pa. 2009) (merits “are not addressed”).

B. The Lenient Conditional Certification Standard.

In *Symczyk*, the Third Circuit clarified that conditional certification motions are dictated by a “modest factual showing” standard:

Under the “modest factual showing” standard, a plaintiff must produce some evidence, “*beyond pure speculation*,” of a factual nexus between the manner in which the employer’s alleged policy affected her and the manner in which it affected other employees. We believe the “modest factual showing” standard – which works in harmony with the opt-in requirement to cabin the potentially massive size of collective actions – best comports with congressional intent and with the Supreme Court’s directive that a court “ascertain[] the contours of [a collective] action at the outset.”

Symczyk, 656 F.3d at 192-93 (emphasis supplied; internal citations omitted).

C. Because Plaintiffs Satisfy the “Modest Factual Showing” Standard, Conditional Certification Should Be Granted.

Applying the “modest factual showing” standard, the Court should

conditionally certify an FLSA collective consisting of: “The 36 individuals already identified by Defendants as being employed by Rodan in the position of Field Supervisor/Truck Push and paid on a day-rate basis between October 10, 2013 and October 10, 2016.” As discussed below, even in the absence of significant discovery, the record sufficiently demonstrates that Plaintiffs and the putative collective are bound together by common facts and legal issues:

First, Rodan established a common job title of Field Supervisor/Truck Push and maintained a common job description for this position. Mr. Waltz and Mr. Solinger were employed by Rodan as Field Supervisors/Truck Pushes. *See* Defendants’ Responses to Waltz’s Interrogatories and Solinger’s Interrogatories (Exs. A & B) at p. 4. Rodan maintained a detailed common job description that was applicable to all Field Supervisors/Truck Pushes regardless of location. *See* Clark Dep. (Ex. C) at 70:24-71:11, 75:2-75:8; Exhibit G. Mr. Waltz and Mr. Solinger’s testimony supports this as Field Supervisors/Truck Pushes generally performed the same exact job duties regardless of location - rigging-up and rigging-down and supervising the crew on oil and gas rigs. *See* Waltz Dep. (Ex. D) at 36:21-37:1, 286:22-287:8; Solinger Dep. (Ex. E) at 279:16-279:22.

Second, Defendants have identified thirty-four individuals in addition to Plaintiffs Randy Waltz and Gary Solinger that Rodan employed in the position of Field Supervisor/Truck Push and paid on a day-rate basis between October 10,

2013 to October 10, 2016. *See* Sheeder Letter (Ex. F) at p.1; Defendants' Responses to Waltz's Interrogatories (Ex. A) at p. 7.

Third, Rodan admits that it uniformly classified all day-rate FSTPs as overtime-exempt pursuant to the Motor Carrier Act exemption ("the MCA Exemption.") and the Highly Compensated Exemption. *See id.* at pp. 7-8.

Fourth, there is a common set of legal principles and facts as to whether day-rate FSTPs are entitled to overtime compensation under the Technical Corrections Act, principally whether day-rate FSTPs' use of pickup trucks weighing less than 10,000 pounds is enough to bring them within the coverage of the FLSA because of the Technical Corrections Act. For example, Rodan supplied pickup trucks weighing less than 10,000 pounds, which were owned and insured by Rodan, to its day-rate FSTPs, regardless of location. *See* Clark Dep. (Ex. C) at 43:11-43:19, 44:12-44:17, 47:5-47:7; *see also* Waltz Dep. (Ex. D) at 347:12-347:25, 390:9-390:10; Solinger Dep. (Ex. E) at 318:17-318:25, 319:16-319:20. Further, Rodan maintained within its software system the specific unit number associated with each particular pickup truck that Rodan assigned to each day-rate FSTP, which will allow the parties to identify the particular pickup truck that each day-rate FSTP drove while working for Rodan. *See* Clark Dep. (Ex. C) at 49:17-50:18, 52:1-52:18. Additionally, it was Rodan's typical standard operating procedure for day-rate FSTPs to drive pickup trucks weighing less than 10,000 pounds. *See* Clark

Dep. 53:18-53:23. Mr. Waltz and Mr. Solinger's actual work experience, which constantly involved the driving of pickup trucks, corroborates this. *See* Waltz Dep. 318:12-318:14, 319:3-321:12, 321:17-322:10, 323:2-323:13, 332:17-332:28, 347:12-348:9; Solinger Dep. 318:4-318:13, 319:21-319:24. Significantly, Mr. Waltz and Mr. Solinger drove pickup trucks *regardless* of their work location. *See* Waltz Dep. 394:7-395:3, 393:10-393:21; Solinger Dep. at Dep. 89:1-89:11, 272:1-272:8, 281:16-282:12. In addition, other day-rate FSTPs also drove pickup trucks. *See* Waltz Dep. at 347:12-348:9; 390:3-390:10; *see* Solinger Dep. at 318:14-318:25; 319:16-319:20.

Lastly, because of Defendants' blanket assertion of the Highly Compensated Exemption, there is a common legal question as to whether day-rate FSTPs paid on a day-rate basis can be considered to have been paid on "a salary or fee basis" as required by § 541.601(b)(1).

The existence of these common legal principles and facts – all of which are pertinent to Plaintiff's FLSA claim – justify conditional certification. Several district courts have authorized notice in collective actions challenging an employer's use of similar day-rate compensation schemes in the oil and gas industry. *See, e.g., Casarotto v. Exploration Drilling, Inc.*, 2015 U.S. Dist. LEXIS 143158 (D. Mont. Oct. 15, 2015); *Wedel v. Gyro Techs., Inc.*, 2015 U.S. Dist. LEXIS 138109 (S.D. Tex. Sept. 2, 2015); *Case v. Danos & Curole Marine Contrs.*,

L.L.C., 2015 U.S. Dist. LEXIS 58042 (E.D. La. May 4, 2015); *Wilson v. Atlas Oilfield Constr., Co., LLC*, 2014 U.S. Dist. LEXIS 127793 (W.D. Tex. Sept. 12, 2014); *Sandel v. Fairfield Indus.*, 2014 U.S. Dist. LEXIS 48161 (S.D. Tex. Apr. 8, 2014); *Prejean v. O'Brien's Response Mgmt.*, 2013 U.S. Dist. LEXIS 158948 (E.D. La. Oct. 7, 2013);⁷ *Thompson*, 2013 U.S. Dist. LEXIS 143704; *Akins v. Worley Catastrophe Response, LLC*, 2013 U.S. Dist. LEXIS 51272 (E.D. La. Apr. 8, 2013); *Daugherty v. Encana Oil & Gas (USA), Inc.*, 838 F. Supp. 2d 1127 (D. Colo. 2011).

In sum, conditional certification is warranted because Plaintiffs easily have “produc[ed] some evidence, ‘beyond pure speculation,’ of a factual nexus between the manner in which the employer’s alleged policy affected [them] and the manner in which it affected other employees.” *Symczyk*, 656 F.3d at 192.

IV. CONCLUSION.

For the above reasons, Plaintiffs request that the Court grant this Motion and conditionally certify the proposed FLSA collective.

Date: October 31, 2016

Respectfully,

/s/ Mark J. Gottesfeld

Peter Winebrake

R. Andrew Santillo

Mark J. Gottesfeld

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⁷ Adopted by *Prejean v. O'Brien's Response Mgmt.*, 2013 U.S. Dist. LEXIS 158949 (E.D. La. Nov. 6, 2013)

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CERTIFICATION OF WORD COUNT

I declare, subject to the penalty of perjury and pursuant to Local Civil Rule 7.8(b), that the attached memorandum of law is less than 5,000 words.

According to Microsoft Word, it is 4,710 words.

Date: October 31, 2016

/s/ Mark J. Gottesfeld

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