-----Original Message-----

From: Miles Locker
Sent: Sunday, February 04, 2001 7:52 PM
To: 'emptypckts@hotmail.com'; Doug McConkle
Cc: Arthur Lujan; Tom Grogan; Roger Miller; Susan Nakagama; Ysmael Raymundo; Greg Rupp; Abigael Calva; Gary Hermann; Nance Steffen; Agnes Barling; Allyce Kimerling; Anne Hipshman; Anne Rosenzweig; Anne Stevason; Dave Gurley; David Balter; Edna Garcia; Fred Duscha; Johanna Hsu; John Fennacy; Melanie Slaton; Michael Jackman; Mike Villeneuve; Rachel Folberg; Ramon Yuen-Garcia; Robert Villalovos; Susan Dovi; Tim Kolesnikow; Tom Cadell; Tom Fredericks; Tom Kerrigan; William Reich
Subject: RE: ORDER NO. 9-2000

California overtime requirements for workers in the transportation industry are found at Industrial Welfare Commission ("IWC") order 9-2001, section 3. Certain drivers are exempted from these overtime requirements. The exemption applies if the hours of service of the drivers are regulated by either the U.S. Department of Transportation, or the California Highway Patrol. This exemption is found at Subsection (L) of section 3, which provides: "The provisions of this section are not applicable to employees whose hours of service are regulated by: (1) The United States Department of Transportation Code of Federal Regulations, title 49, sections 395.1 to 395.13, Hours of Service of Drivers, or; (2) Title 13 of the California Code of Regulations, subchapter 6.5, section 1200 and the following sections, regulating hours of drivers."

Pursuant to the federal regulations, the US Department of Transportation regulates the hours of drivers of trucks used on highways in interstate commerce whose gross weight exceeds 10,001 pounds. For purposes of the federal Transportation Act, a truck is used in "interstate commerce" if the truck crosses state lines, or if the cargo being carried crossed state lines.

Pursuant to the state regulations, and Vehicle Code sections 34500-34500.1, the CHP regulates the hours of drivers of certain types of trucks used on California highways, within California's boundaries. The types of trucks regulated by the CHP include: 1) motor trucks of 3 or more axles weighing over 10,000 pounds, 2) any commercial motor vehicle (regardless of the number of axles) with a gross weight of over 26,000 pounds, 3) buses, school buses, farm labor buses, tour buses and paratransit vehicles [this category does *not* include airport shuttle vans], 4) truck tractors, 5) any combination of motor truck and vehicle which exceeds 40 feet in length, and 6) any truck carrying hazardous materials or waste (regardless of the truck's weight).

Drivers whose hours of service are regulated under the above-described federal or state regulations are not covered by the overtime provisions of IWC Wage Order 9-2001 (or any of its predecessor orders). However, such drivers would be covered by various other requirements set forth in the IWC wage order, including the requirement to pay no less than the minimum wage for all hours worked (defined as all time during which the employee is subject to the employer's control and all time during which the employee is suffered or permitted to work), and the requirements for meal and rest periods.

You are correct when you state that the purpose of federal and state regulations governing drivers' hours of service is to protect the public safety. Neither the federal Department of Transportation nor the CHP have the authority to require employers who violate the maximum

hours of service to pay overtime; and because of the exemption in the IWC orders, neither does the State Labor Commissioner.

-----Original Message-----
From: **Doug McConkle**
Sent: Thursday, January 25, 2001 9:12 AM
To: Miles Locker
Subject: FW: ORDER NO. 9-2000

This individual has contacts us again requesting our assistance. Is there an anticipated date for response that I could forward to him?

-----Original Message-----
From: Doug McConkle
Sent: Thursday, December 14, 2000 3:04 PM
To: Miles Locker
Subject: FW: ORDER NO. 9-2000

Could you please respond to this email and cc us with your response.

Thank you

-----Original Message-----
From: Howard Hartman [SMTP:emptypckts@hotmail.com]
Sent: Thursday, November 30, 2000 6:34 PM
To: iwc@dir.ca.gov
Subject: ORDER NO. 9-2000

Dear Sirs:

I am a petroleum transport driver living in Redding Ca. On page 19 of Order 9-2000 section (J) #1 & #2. Says that: The provisions of this section are not applicable to employees whose hours of service are regulated by.

(1) the United States Department of Transportation Code of Federal Regulations, title 49, sections 395.1 to 395.13, Hours of Service of Drivers, or

(2) Title 13 of the California Code Of Regulations subchapter 6.5, section 1200 and the following sections, regulating hours of drivers.

The company I work for delivers product **only** within the borders of California. We are paid by the load and work between 12 and 15 hours per day 5 - 6 days per week. I have asked my manager if we were going to be paid for the overtime that we are required to work and why we were not told about the Alternative Workweek Option. I was told that they did not have to pay overtime or give us the option of having a alternative workweek schedule.

I spoke with the Division of Labor Standards Enforcement in Redding, Ca. on 11/29/00. I was told they could not help because of the above mentioned sections. But they did not know what the sections said or how they effected the order.

I called the California Highway Patrol to find out how they were involved in setting my pay. They told me that there are laws prohibiting them from setting pay scales or overtime rates of pay. They said the Hours of Service set by them are for the **safety** of the driver and public.

I also have a call into the U.S. Department of Labor. I have not as of this writing received a return call.

I am hoping that you can help me to understand why we are not entitled to overtime pay. And why we were excluded from this wage order.

Sincerely,
Howard Hartman
4521 Arrowrock St
Shasta Lake, Ca. 96019
emptypckts@hotmail.com