



2010

1 JAY IAN ABOUDI (SBN: 251984)
2 THE LAW OFFICE OF JAY IAN ABOUDI
3 1855 Olympic Blvd., Ste. 210
4 Walnut Creek, CA 94596
5 Telephone: (925) 465-5155
6 Facsimile: (925) 465-5169

FILED
ALAMEDA COUNTY
OCT 20 2010
CLERK OF THE SUPERIOR COURT
By *M. Hayes* Deputy

5 Attorney for Defendant
6 OAKLAND PORT SERVICES CORPORATION
7 d/b/a AB TRUCKING (erroneously sued as AB
8 TRUCKING, INC.)

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF ALAMEDA

11 LAVON GODFREY and GARY GILBERT, on
12 behalf of themselves and all others similarly
13 situated,

CASE NO. RG 08-379099

13 Plaintiffs,

**DEFENDANT'S DEMURRER TO
PLAINTIFFS' SECOND AMENDED
COMPLAINT**

14 v.

15 OAKLAND PORT SERVICES
16 CORPORATION d/b/a AB TRUCKING, and
17 DOES 1 through 20, inclusive,

Date: December 3, 2010
Time: 10:00 a.m.
Place: Department 20
Judge: Hon. Robert Freedman
Action Filed: March 28, 2008
Reservation No.: R-1117196

17 Defendants.

18
19 TO THE COURT; PLAINTIFFS LAVON GODFREY AND GARY GILBERT; TO DAVID A.
20 ROSENFELD, ESQ.; TO CAREN P. SENCER, ESQ.; TO LISL R. DUNCAN, ESQ.; AND TO
21 WEINBERG, ROGER & ROSENFELD, counsel for plaintiffs:

22 PLEASE TAKE NOTICE that on December 3, 2010, at 10:00 a.m. or as soon thereafter
23 as the matter can be heard, in Department 20 of the above-entitled court, the Honorable Robert
24 B. Freedman presiding, hearing shall be had on defendant's demurrer to plaintiffs' second
25 amended complaint.

26 This demurrer is based on the present notice of demurrer and the accompanying
27 memorandum of points and authorities in support served and filed concurrently herewith.

28 The grounds for demurrer are as follows:

1 1. Each subclass fails to independently meet all the requirements of Rule 23(a) and fails
2 to meet at least one of the categories specified in Rule 23(b).

3 2. The “numerosity” allegation is insufficient in the SAC.

4 3. The allegations in the SAC about Mr. Gilbert and about Ms. Godfrey are inadequate
5 and evasive and do not name these plaintiffs as objects of any of defendant’s alleged violations,
6 failing to show that Mr. Gilbert actually has standing even to sue as a so-called uncompensated
7 trainee and failing to show that he has the ability to represent others as a class representative of
8 persons who assertedly were uncompensated trainees, thus failing to state a cause of action in
9 Mr. Gilbert as a plaintiff on that account.

10 4. The SAC lacks sufficient allegations to support the notion of commonality.

11 5. The “typicality” allegations are woefully inadequate, saying nothing about the
12 typicality of the claims of the subclasses.

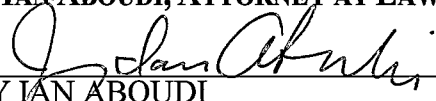
13 6. The SAC fails to establish facts that meet the requirement that the named plaintiffs can
14 adequately represent the subclasses because facts are not alleged to support the notion that the
15 named plaintiffs have interests common with, and not antagonistic to, those of absent class
16 members.

17 7. The SAC fails to allege facts upon which the court can find that questions of law or
18 fact common to the members of the class predominate over any questions affecting only
19 individual members.

20 Dated: October 20, 2010

Respectfully submitted,

JAY IAN ABOUDI, ATTORNEY AT LAW



JAY IAN ABOUDI
Attorney for Defendant
OAKLAND PORT SERVICES
CORPORATION d/b/a AB TRUCKING
(erroneously sued as AB TRUCKING, INC.)