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ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT
By George Clark
Deputy

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7 LAVON GODFREY and GARY GILBERT

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF ALAMEDA

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

13 Plaintiffs,

14 v.

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

18 Defendants.

Case No. RG08379099

**PLAINTIFFS' OBJECTION TO AND
MOTION TO STRIKE THE
DECLARATION OF WILLIAM
("BILL") ABOUDI IN OPPOSITION
TO PLAINTIFFS' MOTION FOR
SUMMARY ADJUDICATION**

Date: October 28, 2011
Time: 2:00 p.m.
Dept.: 20
Judge: Hon. Robert B. Freedman
Reservation Number: R-1204995

19 **I. INTRODUCTION**

20 Plaintiffs hereby move to strike the Declaration of William Aboudi ("W. Aboudi
21 Declaration") submitted in support of Defendant's opposition to Plaintiffs' motion for summary
22 adjudication.¹ Alternatively, Plaintiffs object to the content of the declaration as set forth herein.

23 **II. FACTUAL HISTORY**

24 Plaintiffs filed their motion for summary adjudication on August 10, 2011. Concurrently
25 with its opposition, Defendant filed a declaration of W. Aboudi. Plaintiffs' reply brief is filed
26 concurrently herewith.

27 ¹ Plaintiffs were unable to fully and completely address all issues in this motion as there were
28 significant new issues and new information raised by Defendant in its opposition unknown
before, such as Defendant's allegations that liability period would end at April 21, 2009 in some
cases. Plaintiffs reserve the right to supplement this motion.

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III. ARGUMENT

A. THE W. ABOUDI DECLARATION CONTAINS INADMISSIBLE AND IMPROPER EVIDENCE AND SHOULD BE STRICKEN

Striking the entirety of the declaration is warranted primarily because the declaration offers irrelevant statements (statements that do not create a dispute of fact), legal conclusions made by an unqualified lay person and interested witness, unsupported statements, statements that violate the secondary evidence rule, and statements that are demonstrably false in that they contradict other evidence in the record, including Mr. Aboudi's own prior testimony. The Court has the authority to exclude this improper evidence: "The court's inherent power to curb abuses and promote fair process extends to the preclusion of evidence. Even without such abuses the trial court enjoys 'broad authority of the judge over the admission and exclusion of evidence.' (3 Witkin, Cal. Evidence (3d ed. 1986) Introduction of Evidence at Trial, § 1707, p. 1667.)" (*Peat, Marwick, Mitchell & Co. v. Superior Court* (1988) 200 Cal.App.3d 272, 288.)

The W. Aboudi declaration makes a statement of fact in the first paragraph about the identity of W. Aboudi. Although Plaintiffs do not dispute W. Aboudi's ability to identify himself, all other portions of the declaration—including all substantive paragraphs—should be stricken in their entirety as inadmissible and improper evidence.

1. Paragraph 2:

Paragraph 2 is intended to create a dispute with SUF ¶ 2. Plaintiffs state in SUF ¶ 2 that employee drivers worked shifts for AB; Aboudi then states "why" employee drivers worked shifts. Aboudi's statement does not contradict or undercut Plaintiffs' statement. Aboudi's statement does not dispute SUF ¶ 2. Thus, Aboudi's statement is not relevant. Paragraph 2 is also ambiguous and vague as to time, and the statement lacks foundation. (Evid. Code §§ 702(a).)

2. Paragraph 3:

Paragraph 3 is intended to create a dispute with SUF ¶ 3. However, as was the problem with paragraph 2, the statement does not undercut SUF ¶ 3, which states that there was a small

1 group of supervisors to which employee drivers reported. The particular identity of any of the
2 supervisors in that small group is irrelevant. Moreover, W. Aboudi's prior deposition testimony,
3 in which he describes this small group of supervisors, contradicts paragraph 3 and supports SUF ¶
4 3. (See W. Aboudi Depo. at 14:14-15:17, 16:14-17:16.) Paragraph 3 is also ambiguous and
5 vague as to time, and is a hearsay statement. (Evid. Code § 1200.)

6 **3. Paragraph 4:**

7 Paragraph 4, which states that "control and direction was delegated to dispatchers" is
8 contradicted by W. Aboudi's prior testimony establishing that all employees of AB report to him,
9 as the president. (W. Aboudi Depo. at 14:14-15:17, 16:14-17:16.) Later inconsistent statements
10 are impermissible. Paragraph 4 does not dispute SUF ¶ 4. SUF ¶ 4 states that employee drivers
11 were under the control and direction of Aboudi. Paragraph 4 is also ambiguous and vague as to
12 time, and the statement lacks foundation. (Evid. Code §§ 702(a).)

13 **4. Paragraph 5:**

14 Paragraph 5 is irrelevant as it does not dispute SUF ¶ 5, which it is intended to dispute.
15 SUF ¶ 5 says that drivers used the same timecard system. Aboudi does not dispute that drivers
16 used the same timecards as each other at the same time, rather his statement is that the format of
17 the timecard used by all drivers changed over time. Aboudi's statement does not change the fact
18 that all drivers used the same timecard system; drivers simply all moved over to whatever new
19 format AB required of all drivers. There were not separate timecard systems for different drivers.
20 Paragraph 5 is also ambiguous and vague as to time, and the statement lacks foundation. (Evid.
21 Code §§ 702(a).)

22 **5. Paragraph 6:**

23 Paragraph 6 is intended to dispute SUF ¶ 6, which states that the same payroll processing
24 system was used for all employee drivers, but it fails. Whether or not the calculations done by
25 AB's payroll as to all drivers were faxed or sent online to the payroll company that printed
26 paychecks, does not change the fact that all drivers were subject to the same payroll processing
27 system. The calculations were done at AB by AB's payroll and were then sent to the payroll
28 provider. This was the process. In any case, Jovi Aboudi, AB's person most qualified regarding

1 payroll, testified that payroll calculations were sent "online" making no reference to fax
2 transmittal. (See J. Aboudi Decl. at 7:10-14, 10:22-25; 11:1-25, 14:19-25, 15:1-4.) Paragraph 6
3 is also ambiguous and vague as to time, and the statement lacks foundation. (Evid. Code §§
4 702(a).)

5 **6. Paragraph 7:**

6 Paragraph 7 is offered to dispute SUF ¶ 7, but it is irrelevant because it does not create a
7 dispute. Aboudi's statement that he personally has only witnessed an 8 hour wait at the Port of
8 Oakland, does not undercut or contradict the fact that it could take as many as 8 hours to get
9 through the terminal at the Port of Oakland. Aboudi agrees that it can take as many as 8 hours.
10 Paragraph 7 is also ambiguous and vague as to time, and the statement lacks foundation. (Evid.
11 Code §§ 702(a).)

12 **7. Paragraph 8:**

13 Paragraph 8 is offered to dispute SUF ¶ 8, but it is likewise irrelevant because it does not
14 undercut or contradict SUF ¶ 8. Whether or not there are multiple entrances to the Port does not
15 change the fact that an employee who left his place in line at the Port of Oakland would lose that
16 place in line. Regardless of the entrance, what happens once the driver is in line, is what is
17 covered by SUF ¶ 8. Paragraph 8 is also ambiguous and vague as to time, and the statement lacks
18 foundation. (Evid. Code §§ 702(a).)

19 Plaintiffs made a supplemental request for production of documents on September 16,
20 2011. Defendant produced no documentation regarding its assertions in this paragraph.
21 Defendant does not attach the policies and/or records referenced. The Court is not required to
22 comb a document, it should be easily referenced.

23 Paragraph 8 violates the secondary evidence rule because it attempts to offer oral
24 testimony regarding the contents of a writing, i.e. a map of the Port of Oakland. (Evid. Code §
25 1523(a).)

26 **8. Paragraph 9:**

27 SUF ¶ 9 states that there was no area safe for a driver to legally and safely pull over
28 during the statutory period. Paragraph 9, offered to refute this, again does not contradict or

1 undermine this fact. Plaintiffs explain the conditions inside the Port and Aboudi is describing the
2 geography of the Port. This is irrelevant and also should be stricken. Paragraph 9 is further
3 ambiguous and vague as to time, and the statement lacks foundation. (Evid. Code §§ 702(a).)

4 **9. Paragraph 10:**

5 Paragraph 10 provides an improper legal conclusion. W. Aboudi cannot make
6 conclusions about “meal periods.” Permitting any witness, including a presumed *expert*, to give
7 his or her opinion on the legal conclusions to be drawn from the evidence both invades the court’s
8 province and is irrelevant. (See *Communications Satellite Corp. v. Franchise Tax Bd.* (1984) 156
9 Cal.App.3d 726, 747 (expert precluded from giving his views on provisions of the Uniform Act);
10 *Elder v. Pacific Tel. & Tel. Co.* (1977) 66 Cal.App.3d 650, 654.) Paragraph 10 is also ambiguous
11 and vague as to time, and the statement lacks foundation. (Evid. Code §§ 702(a).)

12 Plaintiffs made a supplemental request for production of documents on September 16,
13 2011. Defendant produced no documentation, for instance evidence of records of employees
14 stopping every two hours, regarding its assertions in this paragraph.

15 **10. Paragraph 11:**

16 Paragraph 11 states that a meal period policy was given verbally. This does not create a
17 dispute with SUF ¶ 11, which states that no *written* policy on meal periods existed at AB or was
18 provided to drivers. Therefore, paragraph 11 is irrelevant.

19 In addition, paragraph 11 also asserts that a Department of Transportation handbook was
20 given to drivers, implying this handbook provided drivers with a written meal period policy.
21 However, Mr. Aboudi testified in his prior deposition that drivers were not provided any written
22 policy on meal periods. (See W. Aboudi Depo. at 116:13-15.)

23 Plaintiffs further object to this paragraph on the grounds that it provides a legal
24 conclusion, lacks foundation, is ambiguous and vague as to time, and is a hearsay statement. (See
25 Evid. Code §§ 210, 350-351; Evid. Code § 702(a); Evid. Code § 1200.)

26 **11. Paragraph 12:**

27 Paragraph 12 is an improper legal conclusion: “Employee drivers were provided with one
28 hour lunch breaks.” W. Aboudi is not qualified for purposes of this lawsuit to make a

1 determination as to whether employee drivers were informed about “meal breaks.” The term
2 “meal period,” as well as the term “rest period,” holds specific legal definitions under the
3 California Labor Code and IWC Wage Orders. Likewise, W. Aboudi cannot conclude that
4 drivers “were provided” with meal periods.

5 Moreover, this statement is contradicted by testimony of the person most qualified
6 regarding payroll and by reviewing Defendant’s payroll records. (See J. Aboudi Depo. at 35:10-
7 36:17, 60:8-61:6, and Exhs. 2 and 16; W. Aboudi Depo. at Exhs. 2 and 16.) Later inconsistent
8 statements are impermissible. The records show that drivers had an hour deducted for a meal
9 period, but the records do not reflect any indication that these meal periods were taken.

10 Plaintiffs further object to this paragraph on the grounds that it lacks foundation for W.
11 Aboudi’s alleged personal knowledge beyond mere speculation (Evid. Code § 702(a)) and on the
12 grounds of hearsay. (See Evid. Code § 1200.)

13 **12. Paragraph 13:**

14 Plaintiffs’ SUF ¶ 13, states that AB’s time keeping did not provide a place for employee
15 drivers to record their meal periods each shift. Paragraph 13, offered to dispute this SUF, does
16 not do so, instead providing irrelevant information that does not contradict, nor undercut the SUF.
17 (See Evid. Code §§ 210, 350-351.) Paragraph 13 asserts that beginning on April 21, 2009 (over a
18 year after the filing of the lawsuit and five years after the start of the statutory period), AB started
19 providing a place of employee drivers to record meal periods. This does dispute SUF ¶ 13, rather
20 it supports SUF ¶ 13. Paragraph 13 supports the fact that, during the statutory period, AB failed
21 to record meal periods.

22 Mr. Aboudi now, suddenly and conveniently, makes assertions about implementing new
23 written policies and maintaining written records post-filing of this suit. This is the first Plaintiffs
24 or the Court have heard this news. Plaintiffs made a supplemental request for production of
25 documents on September 16, 2011. Defendant produced no documentation regarding its
26 assertions in this paragraph. Namely, no records of drivers taking meal periods have been
27 provided.

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1 Defendant does not attach the policies and/or records referenced. The Court is not
2 required to comb a document, it should be easily referenced.

3 Paragraph 13 also violates the secondary evidence rule because it attempts to offer oral
4 testimony regarding the contents of a writing, i.e. records of meal periods. (Evid. Code §
5 1523(a).)

6 Plaintiffs further object to this paragraph on the grounds that it lacks foundation for W.
7 Aboudi's alleged personal knowledge beyond mere speculation. Evid. Code § 702(a).

8 **13. Paragraph 14:**

9 SUF ¶ 14 states, AB has no record of meal periods taken by employee drivers during the
10 period of March 28, 2004 through March 15, 2011. Paragraph 14, again, presents irrelevant
11 information. (Evid. Code §§ 210, 350-351.) Paragraph 14 states that AB began keeping records
12 on April 21, 2009. There is no dispute, however, that *during* the period of March 28, 2004
13 through March 15, 2011, AB has not kept record of meal periods taken by employee drivers.

14 This is the first Plaintiffs or the Court have heard about these new record keeping.
15 Plaintiffs made a supplemental request for production of documents on September 16, 2011.
16 Defendant produced no documentation regarding its assertions in this paragraph. Namely, no
17 records of drivers taking meal periods have been provided.

18 Defendant does not attach the policies and/or records referenced. The Court is not
19 required to comb a document, it should be easily referenced.

20 Paragraph 14 violates the secondary evidence rule because it attempts to offer oral
21 testimony regarding the contents of a writing, i.e. records of meal periods. (Evid. Code §
22 1523(a).)

23 Plaintiffs further object to this paragraph on the grounds that it lacks foundation for W.
24 Aboudi's alleged personal knowledge beyond mere speculation. Evid. Code § 702(a).

25 **14. Paragraph 15:**

26 Paragraph 15 intends to refute SUF ¶ 15, which discusses the automatic deduction from
27 drivers of one hour, per day for a meal period. Aboudi's statement is contradicted by the
28 testimony of the person most qualified regarding payroll. (See J. Aboudi Depo. at 35:10-36:17,

1 60:8-61:6, and Exhs. 2 and 16.) Later inconsistent statements are impermissible. No evidence
2 has been produced to show that a deduction “simply means that a lunch was taken” as Aboudi
3 asserts. In fact, the evidence shows the opposite.

4 Paragraph 15 is also an improper legal conclusion as to “lunch break.”

5 Mr. Aboudi now, suddenly and conveniently, makes assertions about implementing new
6 written policies and maintaining written records post-filing of this suit. This is the first Plaintiffs
7 or the Court have heard this news. Plaintiffs made a supplemental request for production of
8 documents on September 16, 2011. Defendant produced no documentation regarding its
9 assertions in this paragraph. Namely, no records of drivers taking meal periods have been
10 provided.

11 Defendant does not attach the policies and/or records referenced. The Court is not
12 required to comb a document, it should be easily referenced.

13 Paragraph 15 violates the secondary evidence rule because it attempts to offer oral
14 testimony regarding the contents of a writing, i.e. records of meal periods. (Evid. Code §
15 1523(a).)

16 Plaintiffs further object to this paragraph on the grounds that it lacks foundation for W.
17 Aboudi’s alleged personal knowledge beyond mere speculation and because it is hearsay. (See
18 Evid. Code §§ 702(a), 1200.)

19 **15. Paragraph 16:**

20 Paragraph 16 makes reference to Plaintiff Godfrey’s statements about not receiving rest
21 breaks. This paragraph does not undercut SUF ¶ 16, which states that during the relevant period
22 employee drivers did not receive rest periods. Defendant tries to throw doubt on Ms. Godfrey’s
23 credibility in paragraph 16, which is irrelevant. The opposing party must show that some
24 “material fact” is in controversy and it is not enough simply to raise some issue as to the
25 credibility of the moving party’s declarations. (See CCP § 437c(e); Evid. Code §§ 210, 350-351.)

26 Plaintiffs further object to this paragraph on the grounds that it is vague and ambiguous as
27 to time, lacks foundation for W. Aboudi’s alleged personal knowledge beyond mere speculation
28 and because it is hearsay. (See Evid. Code §§ 702(a), 1200.)

1 **16. Paragraph 17:**

2 Paragraph 17 asserts that beginning on November 27, 2009 (over a year after the filing of
3 the lawsuit and five years after the start of the statutory period), AB provided a written policy on
4 rest periods. This does not dispute SUF ¶ 17, rather it supports SUF ¶ 17. Paragraph 17 supports
5 the fact that, *during* the statutory period, no written policy on rest periods was provided to drivers.
6 The information presented in Paragraph 17 is, therefore, irrelevant. (Evid. Code §§ 210, 350-
7 351.)

8 Plaintiffs made a supplemental request for production of documents on September 16,
9 2011. Defendant produced no documentation regarding its assertions in this paragraph. Namely,
10 no records of a policy on rest periods have been provided.

11 Defendant does not attach the policies and/or records referenced. The Court is not
12 required to comb a document, it should be easily referenced.

13 Paragraph 15 violates the secondary evidence rule because it attempts to offer oral
14 testimony regarding the contents of a writing, i.e. a written policy on rest periods. (Evid. Code §
15 1523(a).)

16 Plaintiffs further object to this paragraph on the grounds that it lacks foundation for W.
17 Aboudi's alleged personal knowledge beyond mere speculation. (See Evid. Code § 702(a).)

18 **17. Paragraph 18:**

19 Paragraph 18 asserts that beginning on April 21, 2009 (over a year after the filing of the
20 lawsuit, five years after the start of the statutory period, and seven months *before* AB now claims
21 it provided a written rest period policy to drivers), AB maintained records showing rest periods
22 taken by employee drivers. This does not dispute SUF ¶ 18, rather it supports SUF ¶ 18.
23 Paragraph 18 supports the fact that, *during* the statutory period, no AB did not keep any records
24 showing rest periods taken. The information presented in Paragraph 18 is, therefore, irrelevant.
25 (Evid. Code §§ 210, 350-351.)

26 Plaintiffs made a supplemental request for production of documents on September 16,
27 2011. Defendant produced no documentation regarding its assertions in this paragraph. Namely,
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1 no records of rest periods provided to drivers have been provided.

2 Defendant does not attach the policies and/or records referenced. The Court is not
3 required to comb a document, it should be easily referenced.

4 Paragraph 18 violates the secondary evidence rule because it attempts to offer oral
5 testimony regarding the contents of a writing, i.e. records of meal periods. (Evid. Code §
6 1523(a).)

7 Plaintiffs further object to this paragraph on the grounds that it lacks foundation for W.
8 Aboudi's alleged personal knowledge beyond mere speculation. (See Evid. Code § 702(a).)

9 **18. Paragraph 19**

10 Paragraph 19 is intended to dispute SUF ¶ 19. It fails for several reasons. First, it
11 provides an improper legal conclusion regarding the terms "meal period" and "rest period."
12 Second, the testimony of AB's person most qualified on payroll processing contradicts Mr.
13 Aboudi's assertion to the extent he is asserting drivers were compensated more than "one or two
14 times." AB's payroll processing expert testified that she recalls that "once or twice" AB
15 compensated a driver who said he or she missed a meal period (note no reference to being
16 compensated for a missed *rest* period.) (See J. Aboudi Depo. at 13:17-23.) Based on the number
17 of years in the statutory period (six) and the number of drivers in the class (over 75) if this
18 occurred *only one or two times* during the statutory period, then the fact that "during the relevant
19 period, employee drivers did not receive compensation of an additional hour of pay for a missed
20 meal or rest period" is undisputed. (See SUF ¶ 19.).

21 Plaintiffs further object to this paragraph on the grounds that it lacks foundation for W.
22 Aboudi's alleged personal knowledge beyond mere speculation. (See Evid. Code § 702(a).)

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1 **B. THE W. ABOUDI DECLARATION CONTAINS INADMISSIBLE AND**
 2 **IMPROPER EVIDENCE RENDERING A SIGNIFICANT PORTION OF IT**
 3 **INADMISSIBLE**

4 Should the Court find that striking the W. Aboudi Declaration is not an appropriate
 5 remedy, it is nevertheless subject to the following objections:

OBJECTIONABLE STATEMENT OR MATERIAL	OBJECTION	COURT'S RULING
6 1. I am president of 7 OAKLAND PORT 8 SERVICES CORPORATION 9 dba AB TRUCKING. I have 10 personal knowledge of the 11 facts set forth in this 12 declaration. If called as a 13 witness I could and would 14 testify as set forth herein. I 15 submit this declaration as 16 evidence in opposition to 17 plaintiffs motion for summary 18 adjudication.	No objection.	
13 2. AB hired employee 14 drivers. However, when work 15 volume was high, AB also 16 obtained the services of 17 independent contractors. 18 Drivers generally but not 19 always worked eight-hour 20 shifts. Occasionally, depending 21 on work volume, drivers' shifts 22 were either shorter or longer 23 than eight hours.	Relevance. Evid. Code §§ 210, 350-351. Ambiguous and vague as to time. Lack of foundation for W. Aboudi's alleged personal knowledge beyond mere speculation. Evid. Code § 702(a).	Sustained: _____ Overruled: _____ Sustained: _____ Overruled: _____ Sustained: _____ Overruled: _____
20 3. Employee drivers for 21 AB did not always report to 22 the same small group of 23 supervisors. Depending on 24 work load, drivers were 25 contracted to other companies 26 or to customers directly for 27 special projects. Until 2007, 28 Oakland Port Services had two dispatchers, one in Vallejo and one in Oakland. The Vallejo dispatcher, Bill Snyder, supervised 2 dedicated Baymodal drivers. On occasion, Bill Snyder supervised up to 4 employee drivers (2 Baymodal employee drivers plus 2 AB Trucking	Relevance. Evid. Code §§ 210, 350-351. Ambiguous and vague as to time. W. Aboudi gave contradictory testimony. See W. Aboudi Depo. at 14:14-15:17, 16:14- 17:16. Hearsay. Evid. Code § 1200.	Sustained: _____ Overruled: _____ Sustained: _____ Overruled: _____ Sustained: _____ Overruled: _____

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OBJECTIONABLE STATEMENT OR MATERIAL	OBJECTION	COURT'S RULING
employee drivers). When Bill Snyder resigned, Oakland Port Services reverted to having one dispatcher, located in Oakland.		
4. I made all hiring and firing decisions. Dispatchers were authorized to fire drivers who came to work obviously intoxicated. Control and direction was delegated to the dispatchers in the sense that the dispatchers were required to know when a driver was taking breaks and would dispatch drivers accordingly.	<p>Relevance. Evid. Code §§ 210, 350-351.</p> <p>Ambiguous and vague as to time.</p> <p>W. Aboudi gave contradictory testimony. See W. Aboudi Depo at 14:14-16, see also 14:14-15:17, 16:14-17:16.</p> <p>Provides a legal conclusion.</p>	<p>Sustained: _____</p> <p>Overruled: _____</p> <p>Sustained: _____</p> <p>Overruled: _____</p> <p>Sustained: _____</p> <p>Overruled: _____</p> <p>Sustained: _____</p> <p>Overruled: _____</p>
5. Employee drivers used time sheets that changed in format over time. AB started keeping track of unpaid trainees' time on time sheets both in order to satisfy DOT regulations and to satisfy specific requests from parole and probation officers regarding certain individuals. The time sheets were used for no other purpose with respect to unpaid trainees. The time sheets also were adapted to other operational needs as the needs arose; for example: (1) a space for the truck number was added; (2) office staff and drivers were separated from one another on the sheets; (3) a space to tally hours worked was added; and (4) "employee drivers and paid hired trainees" were distinguished from "unpaid trainees."	<p>Relevance. Evid. Code §§ 210, 350-351.</p> <p>Ambiguous and vague as to time.</p> <p>Lack of foundation for W. Aboudi's alleged personal knowledge beyond mere speculation. Evid. Code § 702(a).</p>	<p>Sustained: _____</p> <p>Overruled: _____</p> <p>Sustained: _____</p> <p>Overruled: _____</p> <p>Sustained: _____</p> <p>Overruled: _____</p>
6. The payroll processing system changed approximately four times between 2004 and 2011. Early on the payroll was	Relevance. Evid. Code §§ 210, 350-351.	<p>Sustained: _____</p> <p>Overruled: _____</p>

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<p>called in or faxed to the payroll company. After that, it was done online through a web interface. Each payroll service provider used varying web interface systems over the time.</p>	<p>Contradicted by testimony of AB's person most qualified regarding payroll. See J. Aboudi Decl. at 7:10-14, 10:22-25; 11:1-25, 14:19-25, 15:1-4.</p> <p>Ambiguous and vague as to time.</p> <p>Lack of foundation for W. Aboudi's alleged personal knowledge beyond mere speculation. Evid. Code § 702(a).</p>	<p>Sustained: _____</p> <p>Overruled: _____</p> <p>Sustained: _____</p> <p>Overruled: _____</p> <p>Sustained: _____</p> <p>Overruled: _____</p>
<p>7. Although it is true it could take as many as 8 hours to get through the terminal at the Port of Oakland, this is in fact an extremely rare occurrence. I witnessed it only during the 2002 lockout of the longshoremen.</p>	<p>Relevance. Evid. Code §§ 210, 350-351.</p> <p>Ambiguous and vague as to time.</p> <p>Lack of foundation for W. Aboudi's alleged personal knowledge beyond mere speculation. Evid. Code § 702(a).</p>	<p>Sustained: _____</p> <p>Overruled: _____</p> <p>Sustained: _____</p> <p>Overruled: _____</p> <p>Sustained: _____</p> <p>Overruled: _____</p>
<p>8. No one gate per se provides access to the Port of Oakland. The Port is accessed via a number of public streets from which numerous entrances to the port's many terminals are provided and lines of varying lengths exists at these entrances to the different terminals. Some such lines are long, some such lines are short. The length of a wait depends on whether the terminal has a long or a short line. Any drivers who work for AB Trucking who leave the line and thus lose their place in the line are situated similarly to those of all other companies whose drivers leave the line</p>	<p>Relevance. Evid. Code §§ 210, 350-351.</p> <p>Ambiguous and vague as to time.</p> <p>Lack of foundation for W. Aboudi's alleged personal knowledge beyond mere speculation. Evid. Code § 702(a).</p> <p>Not provided despite Plaintiffs' request for supplemental document production.</p>	<p>Sustained: _____</p> <p>Overruled: _____</p> <p>Sustained: _____</p> <p>Overruled: _____</p> <p>Sustained: _____</p> <p>Overruled: _____</p> <p>Sustained: _____</p> <p>Overruled: _____</p>

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OBJECTIONABLE STATEMENT OR MATERIAL	OBJECTION	COURT'S RULING
and thus lose their place in the line.	Secondary evidence rule. Evid. Code § 1523(a).	Sustained: _____ Overruled: _____
9. "The Port of Oakland" covers miles of space from the Bay Bridge to the San Leandro border, the Maritime Facilities cover 1,210 acres of Marine Terminals, Intermodal Rail Facility and Maritime Support Area, all designed to make sure trucks exit the freeway system onto streets serving the Port.	Relevance. Evid. Code §§ 210, 350-351. Ambiguous and vague as to time. Lack of foundation for W. Aboudi's alleged personal knowledge beyond mere speculation. Evid. Code § 702(a).	Sustained: _____ Overruled: _____ Sustained: _____ Overruled: _____ Sustained: _____ Overruled: _____
10. Employee drivers were verbally informed about meal breaks, and depending on the driver's dispatch and type of load, drivers were instructed to stop every two hours to check on the load and take a break.	Ambiguous and vague as to time. Provides a legal conclusion. Lack of foundation for W. Aboudi's alleged personal knowledge beyond mere speculation. Evid. Code § 702(a). Hearsay. Evid. Code § 1200.	Sustained: _____ Overruled: _____ Sustained: _____ Overruled: _____ Sustained: _____ Overruled: _____
11. Meal period policy was given to the employee drivers verbally at the time of hire and on an ongoing basis thereafter, based on the driver's work experience. A Department of Transportation book was issued to each employee driver and that book defines the meal break.	Relevance. Evid. Code §§ 210, 350-351. Ambiguous and vague as to time. W. Aboudi gave contradictory testimony. See W. Aboudi Depo. at 116:13-15; 99:14-100:13. Provides a legal conclusion.	Sustained: _____ Overruled: _____ Sustained: _____ Overruled: _____ Sustained: _____ Overruled: _____ Sustained: _____

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OBJECTIONABLE STATEMENT OR MATERIAL	OBJECTION	COURT'S RULING
	<p>Lack of foundation for W. Aboudi's alleged personal knowledge beyond mere speculation. Evid. Code § 702(a).</p> <p>Hearsay. Evid. Code § 1200.</p>	<p>Overruled: _____</p> <p>Sustained: _____</p> <p>Overruled: _____</p>
<p>12. Employee drivers were provided with one hour lunch breaks.</p>	<p>Ambiguous and vague as to time.</p> <p>Contradicted by testimony of person most qualified regarding payroll and by reviewing Defendant's payroll records. See J. Aboudi Depo. at 35:10-36:17, 60:8-61:6, and Exhs. 2 and 16; W. Aboudi Depo. at Exhs. 2 and 16.</p> <p>Provides a legal conclusion.</p> <p>Lack of foundation for W. Aboudi's alleged personal knowledge beyond mere speculation. Evid. Code § 702(a).</p> <p>Hearsay. Evid. Code § 1200.</p>	<p>Sustained: _____</p> <p>Overruled: _____</p> <p>Sustained: _____</p> <p>Overruled: _____</p> <p>Sustained: _____</p> <p>Overruled: _____</p> <p>Sustained: _____</p> <p>Overruled: _____</p>
<p>13. Beginning on April 21, 2009, AB started providing a place for employee drivers to record their meal periods each shift.</p>	<p>Relevance. Evid. Code §§ 210, 350-351.</p> <p>Lack of foundation for W. Aboudi's alleged personal knowledge beyond mere speculation. Evid. Code § 702(a).</p> <p>Not provided despite Plaintiffs' request for supplemental document</p>	<p>Sustained: _____</p> <p>Overruled: _____</p> <p>Sustained: _____</p> <p>Overruled: _____</p> <p>Sustained: _____</p> <p>Overruled: _____</p>

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OBJECTIONABLE STATEMENT OR MATERIAL	OBJECTION	COURT'S RULING
	<p>production.</p> <p>Secondary evidence rule. Evid. Code § 1523(a).</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>
<p>14. AB does have a record of meal periods taken by employee drivers beginning on April 21, 2009.</p>	<p>Relevance. Evid. Code §§ 210, 350-351.</p> <p>Lack of foundation for W. Aboudi's alleged personal knowledge beyond mere speculation. Evid. Code § 702(a).</p> <p>Not provided despite Plaintiffs' request for supplemental document production.</p> <p>Secondary evidence rule. Evid. Code § 1523(a).</p>	<p>Sustained: _____</p> <p>Overruled: _____</p> <p>Sustained: _____</p> <p>Overruled: _____</p> <p>Sustained: _____</p> <p>Overruled: _____</p>
<p>15. Employees who did not report they had not taken a lunch break were presumed to have taken their lunch break. No deduction was made for any shift shorter than 5 hours. A deduction simply means that a lunch was taken. AB had a policy regarding how to treat lunch breaks, whether reported or not reported, and that was to always take lunch breaks when possible. AB treated all employee drivers in the same manner under that policy.</p>	<p>Ambiguous and vague as to time.</p> <p>Contradicted by testimony of person most qualified regarding payroll. J. Aboudi Depo. at 35:10-36:17, 60:8-61:6, and Exhs. 2 and 16.</p> <p>Provides a legal conclusion.</p> <p>Lack of foundation for W. Aboudi's alleged personal knowledge beyond mere speculation. Evid. Code § 702(a).</p> <p>Not provided despite Plaintiffs' request for supplemental document production.</p> <p>Secondary evidence rule. Evid. Code § 1523(a).</p>	<p>Sustained: _____</p> <p>Overruled: _____</p> <p>Sustained: _____</p> <p>Overruled: _____</p> <p>Sustained: _____</p> <p>Overruled: _____</p> <p>Sustained: _____</p> <p>Overruled: _____</p> <p>Sustained: _____</p> <p>Overruled: _____</p>

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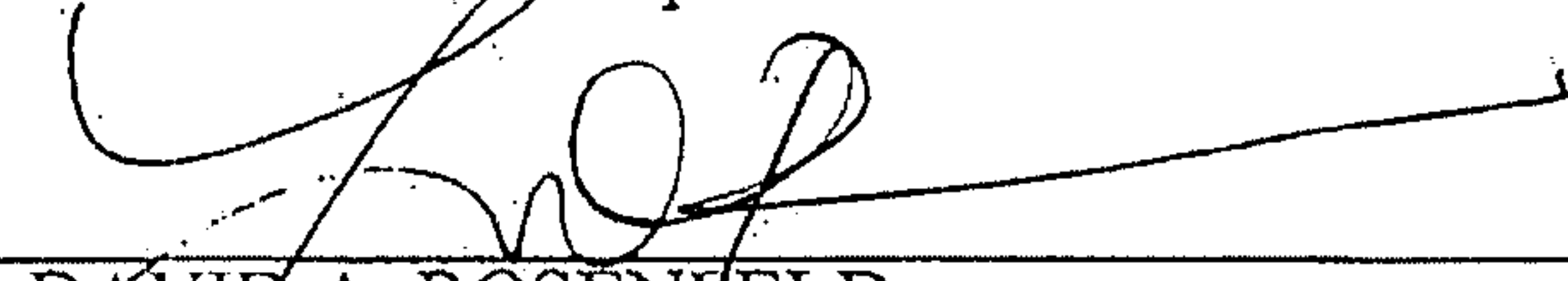
OBJECTIONABLE STATEMENT OR MATERIAL	OBJECTION	COURT'S RULING
	Hearsay. Evid. Code § 1200.	Overruled: _____ Sustained: _____ Overruled: _____
16. Lavon Godfrey is the only person who has said that she did not receive a 10-minute, off-duty paid rest period for every four hours worked, but she said that at the same time she also claimed she never took more than a one-minute bathroom break, if any.	Relevance. Evid. Code §§ 210, 350-351. Ambiguous and vague as to time. Lack of foundation for W. Aboudi's alleged personal knowledge beyond mere speculation. Evid. Code § 702(a). Hearsay. Evid. Code § 1200.	Sustained: _____ Overruled: _____ Sustained: _____ Overruled: _____ Sustained: _____ Overruled: _____ Sustained: _____ Overruled: _____
17. Beginning on November 27, 2009, a written policy on rest periods was provided to employee drivers.	Relevance. Evid. Code §§ 210, 350-351. Lack of foundation for W. Aboudi's alleged personal knowledge beyond mere speculation. Evid. Code § 702(a). Not provided despite Plaintiffs' request for supplemental document production. Secondary evidence rule. Evid. Code § 1523(a).	Sustained: _____ Overruled: _____ Sustained: _____ Overruled: _____ Sustained: _____ Overruled: _____ Sustained: _____ Overruled: _____
18. Beginning on April 21, 2009, AB Trucking maintained records showing rest periods taken by employee drivers.	Relevance. Evid. Code §§ 210, 350-351. Lack of foundation for W. Aboudi's alleged personal knowledge beyond mere speculation. Evid. Code §	Sustained: _____ Overruled: _____ Sustained: _____ Overruled: _____

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OBJECTIONABLE STATEMENT OR MATERIAL	OBJECTION	COURT'S RULING
	702(a). Not provided despite Plaintiffs' request for supplemental document production. Secondary evidence rule. Evid. Code § 1523(a).	Sustained: _____ Overruled: _____ Sustained: _____ Overruled: _____
19. Employee drivers did receive compensation of an additional hour of pay for a missed meal or rest period.	Ambiguous and vague as to time. Contradicted by testimony of Defendant's person most qualified regarding payroll. See J. Aboudi Depo. at 13:17-14:9. Provides a legal conclusion. Lack of foundation for W. Aboudi's alleged personal knowledge beyond mere speculation. Evid. Code § 702(a).	Sustained: _____ Overruled: _____ Sustained: _____ Overruled: _____ Sustained: _____ Overruled: _____ Sustained: _____ Overruled: _____

Dated: October 20, 2011

WEINBERG, ROGER & ROSENFELD
A Professional Corporation



By: DAVID A. ROSENFELD
CAREN P. SENCER
LISL R. DUNCAN
Attorneys for Plaintiffs
LAVON GODFREY and GARY GILBERT

118212/641237

PROOF OF SERVICE
(CCP 1013)

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501-1091. On October 21, 2011, I served upon the following parties in this action:

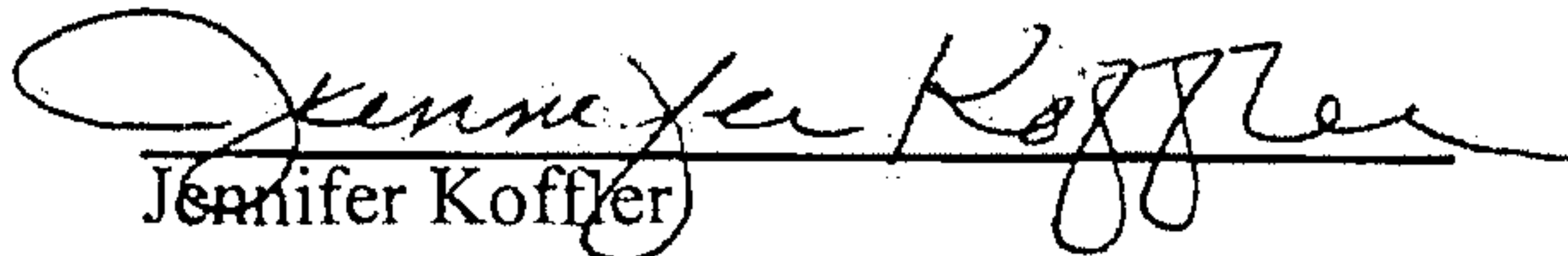
Jay Ian Aboudi
The Law Office of Jay Ian Aboudi
1855 Olympic Blvd., Ste. 210
Walnut Creek, CA 94596
jay@aboudi-law.com

copies of the document(s) described as:

**PLAINTIFFS' OBJECTION TO AND MOTION TO STRIKE THE
DECLARATION OF WILLIAM ("BILL") ABOUDI IN OPPOSITION TO
PLAINTIFFS' MOTION FOR SUMMARY ADJUDICATION**

- BY MAIL** I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Alameda, California. I am readily familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.
- BY OVERNIGHT DELIVERY SERVICE** I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and placed the same for collection by Overnight Delivery Service by following the ordinary business practices of Weinberg, Roger & Rosenfeld, Alameda, California. I am readily familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing of Overnight Delivery Service correspondence, said practice being that in the ordinary course of business, Overnight Delivery Service correspondence is deposited at the Overnight Delivery Service offices for next day delivery the same day as Overnight Delivery Service correspondence is placed for collection.
- BY E-MAIL** I caused to be transmitted each document listed herein via the e-mail address(es) listed above or on the attached service list.

I certify under penalty of perjury that the above is true and correct. Executed at Alameda, California, on October 21, 2011.


Jennifer Koffler

118212/555975