

FILED BY FAX

ALAMEDA COUNTY

November 24, 2010

CLERK OF
THE SUPERIOR COURT
By Rosanne Case, Deputy

CASE NUMBER:
RG08379099

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

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

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

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

13 Plaintiffs,

14 v.

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

17 Defendants.
18

CASE NO. RG 08-379099

**REPLY MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF
DEFENDANT'S MOTION TO STRIKE
PORTIONS OF PLAINTIFFS' SECOND
AMENDED COMPLAINT**

Date: December 3, 2010
Time: 10:00 a.m.
Place: Department 20
Judge: Hon. Robert Freedman
Action Filed: March 28, 2008

19 **INTRODUCTION**

20 The factual assertions made in the Declaration of Jay Ian Aboudi are incorporated herein
21 by this reference as though fully set forth. To avoid repetition and to preserve paper and the
22 court's time, this incorporation by reference is made for the convenience of the court and the
23 parties.

24 **I. THE FACT THAT THE DEFENDANT "ENTERED INTO A STIPULATION**
25 **WHEREBY DEFENDANT AGREED TO THE FILING OF THE SAC"**
26 **(PLAINTIFFS' OPP. AT 2:13-14) DOES NOT EQUATE TO DEFENDANT**
27 **HAVING ACQUIESCED TO THE INCLUSION OR APPROPRIATENESS OF**
28 **THE ALLEGATIONS THEREIN**

Plaintiffs confuse "filing" with "content." The fact that the defendant acquiesced to the

1 filing of the SAC (*see* Plaintiffs' Opposition to Defendant's Motion to Strike Portions of
2 Plaintiffs' Second Amended Complaint ("Pls.' Opp.") at 2:13-14; 3:7-16) does not signal in any
3 way that the defendant "agreed to the filing of that exact language" in the SAC. (Pls.' Opp. at
4 3:12.) Plaintiffs point to absolutely no language in the stipulation that in any way shows that the
5 defendant "agreed to the filing of that exact language" or to the filing of any exact language, or
6 for that matter, any language. The defendant acquiesced to the filing of the SAC and obviously
7 reserved the right to respond to it in any way. What Plaintiffs seek to do is construe the
8 acquiescence to the filing of the SAC as if it were a commitment to file, in response, an
9 admission to all of the allegations of the SAC. That would be an absurdity for this defendant to
10 acquiesce to and it is, indeed, exactly not what this defendant agreed to. Defendant agreed only
11 to the "filing" of the SAC.

12 If the SAC went beyond the notice that stated the grounds upon which the motion was to
13 be made, it went beyond the notice; and this defendant is fully entitled to point that out.

14 Plaintiffs argue that defendant received "proper notice" (Pls.' Opp. at 4:1), that defendant
15 received "notice of the substance of the amendments to the complaint." (*Id* at 4:2.) Regardless,
16 that in no way deprives the defendant of objecting to amendments that went beyond the notice.

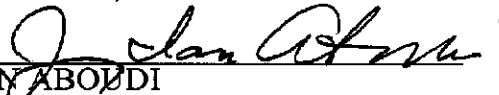
17 II. CONCLUSION

18 For the foregoing reasons, defendant respectfully requests that the court enter an order
19 striking from the second amended complaint those matters itemized in the notice of motion and
20 motion for an order striking portions of plaintiffs' second amended complaint.

21 Dated: November 24, 2010

Respectfully submitted,

22 JAY IAN ABOUDI, ATTORNEY AT LAW

23 
24 JAY IAN ABOUDI
25 Attorney for Defendant
26 OAKLAND PORT SERVICES
27 CORPORATION d/b/a AB TRUCKING
28 (erroneously sued as AB TRUCKING, INC.)

1 Godfrey v. Oakland Port Services Corporation dba AB Trucking
2 Alameda County Superior Court Case No. RG 08-379099

3 **PROOF OF SERVICE**

4 I am a resident of the State of California, over the age of eighteen years, and not a
5 party to the within action. My business address is: 1855 Olympic Blvd., Ste. 210, Walnut
6 Creek, CA 94596. On the date below, I served the within documents:

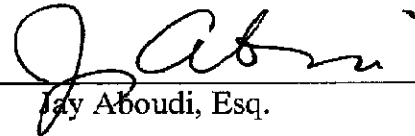
7 **1) REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
8 DEFENDANT'S MOTION TO STRIKE PORTIONS OF PLAINTIFFS'
9 SECOND AMENDED COMPLAINT**

- 10 by transmitting via facsimile the document(s) listed above to the fax number(s) set
11 forth below on this date before 5:00 p.m.
- 12 by placing the document(s) listed above in a sealed envelope with postage thereon
13 fully prepaid, in United States mail in the State of California at Walnut Creek,
14 addressed as set forth below.
- 15 by sending the document (s) listed above through United States Postal Service
16 EXPRESS MAIL with postage thereon fully prepaid, in the State of California in
17 Walnut Creek addressed as set forth below.

18 Lisl Duncan, Esq.
19 Weinberg, Roger & Rosenfeld
20 A Professional Corporation
21 1001 Marina Village Parkway, Suite 200
22 Alameda, CA 94501-1091

23 I am readily familiar with the firm's practice of collection and processing
24 correspondence for mailing. Under that practice it would be deposited with the U.S. Postal
25 Service on that same day with postage thereon fully prepaid in the ordinary course of
26 business. I am aware that on motion of the party served, service is presumed invalid if postal
27 cancellation date or postage meter date is more than one day after the date of deposit for
28 mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the
above is true and correct. Executed on November 24, 2010 at Walnut Creek, California.

29 
30 Jay Aboudi, Esq.