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FILED
ALAMEDA COUNTY

NOV 24 2010

CLERK OF THE SUPERIOR COURT

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
Deputy

IN AND FOR THE COUNTY OF ALAMEDA

ORIGINAL

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

Plaintiffs,

v.

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

Defendants.)

Case No. RG08379099
**PLAINTIFFS' REPLY TO
DEFENDANTS' OBJECTION TO
PLAINTIFFS' ATTEMPT TO USE
GILBERT AND GODFREY
DECLARATIONS**

Date: December 3, 2010
Time: 10:00 a.m.
Dept: 20
Judge: Robert B. Freedman
Reservation Number: R-1114331

1 **I. INTRODUCTION**

2 Plaintiffs moved to certify a class and five subclasses of individuals who performed work
3 for AB Trucking ("Defendant" or "AB") but did not receive all the appropriate compensation due
4 to them for that work. Defendant opposes the motion for class certification and submits objections
5 to Plaintiffs' reliance on the named Plaintiffs' declarations in support of its opposition.
6 Defendant's objections are misguided.

7 **II. ARGUMENT**

8 **A. BY THE COURT'S OWN ORDER, THE PREVIOUSLY-FILED DECLARATIONS**
9 **OF GODFREY AND GILBERT MAY BE RELIED UPON**

10 Plaintiffs followed the Court's direction in relying upon material previously filed and
11 served in this case. Defendant "objects" to Plaintiffs' reliance on the Declarations of Plaintiffs
12 Godfrey and Gilbert in support of Plaintiffs' class certification motion scheduled to be heard
13 December 3, 2010 because Defendant alleges this reliance is made "without service and filing of
14 those declarations." (Defendant's Objection to Plaintiffs' Attempt to Rely ["Obj.,"] at p. 1:20-23.)

15 This statement is erroneous and disregards the Court's order. Plaintiffs indisputably served
16 the Declarations of Plaintiffs Godfrey and Gilbert on Defendant and filed these declarations with
17 the Court, on July 19, 2010. (Available at [http://apps.alameda.courts.ca.gov/domainweb/html/](http://apps.alameda.courts.ca.gov/domainweb/html/casesumbody.html)
18 [casesumbody.html](http://apps.alameda.courts.ca.gov/domainweb/html/casesumbody.html), "Motion for Class Certification Filed for Plaintiff," Documents #17129541:
19 Godfrey and #17129542: Gilbert.) Not only were these Declarations served on Defendant in July,
20 but they have been available for Defendant's review on the Court's website since that time.

21 Moreover, the Court specifically instructed the parties that material already filed might be
22 relied upon without refile and reserving the material. The Court's Case Management Order of
23 10/07/10 at 2:00 p.m. states, in pertinent part:

24 4. To the extent the parties rely on declarations or other material filed in
25 support of, opposition, or reply to opposition of the previous class certification
26 motion, they may incorporate such materials by reference in connection with the
27 contemplated renewed motion. However, each side must provide "hard copy"
28 courtesy copies of all such material to Dept. 20 along with courtesy copies of any
new filings.

Plaintiffs made very minor modifications to the class certification motion filed July 19,

1 2010 before refiling the motion in its current form, which is scheduled to be heard on December 3,
2 2010. As a result and in the interest of clarity, Plaintiffs refiled the notice of motion, the
3 memorandum of points and authorities and the declaration of Lisl R. Duncan in support thereof.
4 Plaintiffs saw no need to refile the Declarations of Plaintiffs Godfrey and Gilbert as the documents
5 were unchanged and, following the Court's direction, served "hard copy" courtesy copies on the
6 Court and referenced the Declarations in their moving papers.

7 Defendant argues that because the Court "dropped" the class certification motion that was
8 set to be heard on October 7, 2010, then the Declarations somehow ceased to be part of the record
9 in this case. (Obj. at p. 3:3-5.) This line of reasoning fails, however, because it ignores the Court's
10 order expressly instructing that previously filed material could be relied upon and it ignores the
11 reasons the motion was "dropped." The motion was not dropped because of any issue with the
12 Declarations in question, but rather to deal with procedural matters in the case. Defendant itself
13 acknowledges these procedural matters when it states that in dropping the motion the Court also
14 directed "that a newly revised Motion for Class Certification be filed 'no later than November 22,
15 2010'." (*Id.*)

16 **B. JUDICIAL NOTICE IS NOT APPROPRIATE**

17 Plaintiffs agree with Defendant that seeking judicial notice of the Court of the Declarations
18 is not appropriate in these circumstances. The case law is clear that the Court does not take
19 judicial notice of "affidavits." (See Obj. at p. 4:1-5.) Plaintiffs did not attempt to seek judicial
20 notice because Plaintiffs relied on the Court's express order and the fact that the Declarations had
21 previously been filed and served on Defendant in the same litigation.

22 **C. DEFENDANT IS NOT PREJUDICED**

23 Defendant is not prejudiced by Plaintiffs' reliance on the named Plaintiffs' Declarations. It
24 is Defendant who attempts to play games by pretending it is unfamiliar with these Declarations,
25 even when Defendant admits it received the Declarations in question. (See e.g. Obj. at p. 3:13-15.)
26 Defendant has never previously asserted that service of the Declarations was improper.

27 Moreover, the Declarations were filed with the Court and are available on the Court's

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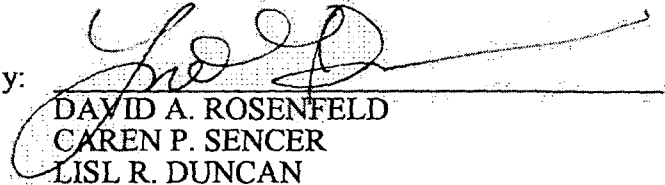
1 website, where they have been available since July 19, 2010.

2 **III. CONCLUSION**

3 Based on the forgoing, Defendant's Objections should be stricken and disregarded in their
4 entirety. Plaintiffs have established substantial evidence in support of the class and each of the five
5 subclasses to be certified and the motion should be granted.

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7 Dated: November 24, 2010

WEINBERG, ROGER & ROSENFELD
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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 November 24, 2010, 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' REPLY TO DEFENDANTS' OBJECTION TO PLAINTIFFS' ATTEMPT TO USE GILBERT AND GODFREY DECLARATIONS

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 November 24, 2010.



Karen Scott

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