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**FILED**  
**ALAMEDA COUNTY**

**DEC 03 2009**

**CLERK OF THE SUPERIOR COURT**  
By Molly E. [Signature] Deputy

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13 OAKLAND PORT SERVICES CORPORATION  
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15 Attorneys for Defendant  
16 OAKLAND PORT SERVICES CORPORATION d/b/a  
17 AB TRUCKING (erroneously sued as AB TRUCKING, INC.)

18 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
19 IN AND FOR THE COUNTY OF ALAMEDA

21 LAVON GODFREY and GARY GILBERT, on ) Case No. RG 08-379099  
22 behalf of themselves and all others similarly )  
23 situated, ) JOINT CASE MANAGEMENT  
24 ) CONFERENCE STATEMENT  
25 Plaintiffs, )  
26 v. )  
27 OAKLAND PORT SERVICES CORP. d/b/a ) DATE: December 10, 2009  
28 AB TRUCKING, and DOES 1 through 20, ) TIME: 2:00 p.m.  
inclusive, ) DEPT.: 20  
Defendants. ) JUDGE: Robert Freedman

ORIGINAL

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JOINT CASE MANAGEMENT CONFERENCE STATEMENT

CASE NO. RG 08-379099

**FAXED**

1 Pursuant to this court's Order issued October 20, 2009, Plaintiffs Lavon Godfrey and Gary  
2 Gilbert (hereinafter "Godfrey" or "Gilbert") and Defendant Oakland Port Services Corporation  
3 d/b/a AB Trucking (hereinafter "AB Trucking" or "AB") hereby submit this Joint Complex Case  
4 Management Conference Statement in connection with the Complex Case Management  
5 Conference Scheduled for December 10, 2009.

6 A. FACTUAL SUMMARY

7 Plaintiffs allege unfair business practices, violations of the California Labor Code and  
8 violations of the Port of Oakland's Living Wage Ordinance (Oakland City Charter, Section 728).  
9 Plaintiffs, on behalf of themselves and other similarly situated employees, seek to recover wages  
10 owed for work performed as drivers with AB Trucking. Under the Oakland City Charter, Port-  
11 Assisted businesses are required to pay their employees no less than the Oakland Living Wage per  
12 hour. This living wage is significantly higher than the federal or state minimum wage and the  
13 wage rates paid by AB Trucking. AB Trucking failed to provide employees meal periods and rest  
14 periods in accordance with applicable law, compensation for overtime at the appropriate rate,  
15 compensation for all hours worked and compensation at the wage rate required by the Oakland  
16 City Charter.

17 The individual Plaintiffs contend they are former employees of AB Trucking. AB Trucking  
18 is a trucking drayage operation located at the Port of Oakland. AB Trucking is located at 11  
19 Burma Road, Oakland, California 94607, within the general Port area. The individual Plaintiffs  
20 and other similarly situated current and former employees allege they did not receive compensation  
21 at the rates required under the Living Wage Charter Amendment. Plaintiffs' Complaint asserts  
22 Causes of Action ("COA") for violations of Business and Professions Code § 17200 (1st COA,  
23 Unfair Business Practices); for violations of the Oakland City Charter § 728 (3rd COA, Living  
24 Wage); for violations of Labor Code §§ 226.7 and 512, and IWC Wage Order 9 (4th COA, Meal  
25 and Rest Periods); for violations of Labor Code §§ 201, 202 and 203 (5th COA, Payment of Wages  
26 and Penalties); and for violations of Labor Code § 226 (6th COA, Payroll Stubs).

27 Plaintiffs seek to recover all wages due and applicable penalties on behalf of themselves  
28 and others similarly situated. Plaintiffs also seek the difference between the Living Wage and the

1 wage rate paid for the four (4) years prior to the filing of the Complaint, for themselves and those  
2 similarly situated. Under Section 9 of the Port Living Wage Ordinance, the Plaintiffs are  
3 requesting treble damages, costs of litigation and attorneys fees.

4 Defendant contends that it has at all relevant times complied with all of the applicable  
5 California Labor Code provisions and Industrial Welfare Commission Wage Orders regarding  
6 recordkeeping, meal and rest periods. Defendant contends that AB Trucking is not a Port Assisted  
7 Business as AB has no contracts with the Port of Oakland, that it is not bound by the Living Wage  
8 Charter Amendment within the context of the Oakland City Charter section 728. Further  
9 Defendant contends Gilbert was never an "employee" of AB Trucking.

10 Defendant contends that this action is not appropriate for litigation as a class action as  
11 determining the issues raised by plaintiffs will require an analysis of numerous factors including  
12 the existence of an employer-employee relationship, the duties he or she performed, the amount of  
13 time actually spent performing those duties, his or her qualifications and skills, his or her  
14 authorized working radius, his or her traveled distance that determines the applicability of state and  
15 federal motor carrier laws regulating hours of service and drivers engaged in interstate commerce,  
16 and whether his or her performance met the reasonable expectations of defendant. By its very  
17 nature, this analysis requires an individualized determination of facts and defenses for each driver.  
18 The highly fact intensive, individualized nature of the analysis makes it inappropriate for class  
19 treatment.

20 B. PARTIES

21 The two individual Plaintiffs bring suit on behalf of themselves and other similarly situated  
22 employees and former employees of AB Trucking. Plaintiffs are represented by the law firm  
23 Weinberg Roger and Rosenfeld.

24 Defendant is represented by Michael Broad of the Law Offices of Michael Broad, 166  
25 Santa Clara Avenue, Oakland, CA 94610. Defendant is also represented by Jay Ian Aboudi,  
26 General Counsel for Oakland Port Services Corporation, 11 Burma Road, Oakland, CA 94607.

27 C. DEADLINES AND LIMITS ON JOINDER AND AMENDED PLEADINGS

28 Neither party intends to join any additional parties.

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**D**     CLASS DISCOVERY AND CLASS CERTIFICATION

**Plaintiffs' Statement:** Whether employees received overtime payments, payment for all hours worked and the Living Wage or some other lesser wage, can be established simply by payroll documentation. Deposition testimony confirms all employees were paid under the same payroll system. Plaintiffs have requested and received some documents related to all workers showing the commonality of the time keeping practices. These documents show employees working more than 8 hours a day and 40 hours in a work week. These time records also show neither meal nor rest periods were recorded.

**Defendant's Statement:** As discussed above, Plaintiffs' claims are not appropriate for class treatment under section 382 of the California Code of Civil Procedure. Plaintiffs' claims will require highly individualized inquiries to determine his—and any putative class member's—right to recovery. Such an action fails to meet the community of interest standards of section 382. Accordingly, defendant believes that discovery should be conducted in waves, with the first wave limited to plaintiff's individual claims, defendant's defenses to those claims, and whether this action is maintainable as a class action.

**E.**     PROPOSED LITIGATION SCHEDULE

1.     **Discovery Plan** – Defendant is still completing the depositions of the named Plaintiffs. Plaintiffs anticipate additional written discovery on the merits after class certification.

Defendant suggests that once discovery regarding (i) the merits of plaintiffs' individual claims and defendant's defenses and (ii) the class certification issue has been completed, discovery should be closed until after a dispositive ruling on plaintiffs' motion for class certification. Based on discovery responses provided, Defendant may file motions to compel further responses.

2.     **Law and Motion** – Plaintiffs' motion for class certification is scheduled to be heard on January 15, 2010. A briefing schedule for motions for summary judgment/adjudication can be set after the class certification hearing.

3.     **Projected Trial Date** – Plaintiffs propose a trial date in July 2010 and Plaintiffs' anticipated motion for summary judgment to be heard in June 2010. Defendant believes it is premature to set a trial date in this matter. Defendant believes, as discussed above, plaintiffs'

1 claims are not appropriate for class treatment under section 382 of the California Code of Civil  
2 Procedure. Defendant anticipates a trial length of at least five to eight weeks if plaintiffs' highly  
3 individualized claims are provided class treatment.

4 F. POTENTIAL EVIDENTIARY ISSUES

5 There are no potential evidentiary issues identified at this time.

6 G. PROCEDURAL POSTURE

7 1. **Unserved Parties:** All named Defendants have been served.

8 2. **Unserved/Unfiled Cross-Complaints:** None known.

9 3. **Related Actions:** None known.

10 4. **Jurisdictional or Venue Issues:** None known or anticipated.

11 5. **Discovery Status:** The parties continue to engage in the meet and confer process  
12 and ongoing written discovery.

13 6. **Unresolved Law and Motion Matters:** The motion for class certification will  
14 be heard January 15, 2010. Defendant may also file a motion to compel as to the whether Mr.  
15 Gilbert has any previous felony conviction(s), which Plaintiffs' counsel blocked during Gilbert's  
16 deposition on February 13, 2009.

17 7. **ADR Proceedings:** Plaintiffs believe it would be in the best interest of the parties  
18 to participate in mediation after class certification. Defendant does not believe this is an  
19 appropriate case for ADR.

20 8. **Severance or Issues for Trial:** There are currently no known issues that  
21 should be severed for trial purposes. Bifurcation of liability and damage issues may be efficient  
22 for trial purposes.

23 9. **Calendar Conflicts:** As of this date, there are no known conflicting trial dates for  
24 Plaintiffs' counsel.

25 H. OTHER MATTERS

26 Plaintiffs are agreeable to streamlining discovery as set forth above and to use e-filing.  
27 Beyond motions to compel further answers to written discovery or further answers to deposition  
28 questions as well as class certification issues, defendant see areas of streamlining that would be

1 necessary.

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3 Dated: December 2, 2009

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WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

5

6 By: 

DAVID A. ROSENFELD  
CAREN P. SENCER  
LISL R. DUNCAN  
Attorneys for Plaintiffs

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9 Dated: December 2, 2009

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JAY IAN ABOUDI, ATTORNEY AT LAW

11

12 By: 

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

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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 December 3, 2009, I served upon the following parties in this action:

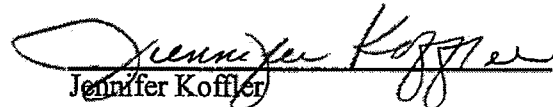
Michael A. Broad	Jay Ian Aboudi
166 Santa Clara Ave	Oakland Port Services Corporation
Oakland, CA 94610	11 Burma Road
	Oakland, CA 94607

copies of the document(s) described as:

JOINT CASE MANAGEMENT CONFERENCE STATEMENT

- 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 PERSONAL SERVICE** I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and caused the same to be delivered by hand to the offices of each addressee.
- 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 FACSIMILE** I caused to be transmitted each document listed herein via the fax number(s) 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 December 3, 2009.

  
Jennifer Koffler

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