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**FILED BY FAX**

ALAMEDA COUNTY

December 10, 2010

CLERK OF  
THE SUPERIOR COURT  
By Rosanne Case, Deputy

CASE NUMBER:  
**RG08379099**

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,

14 Plaintiffs,

15 v.

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

19 Defendants.

CASE NO. RG 08-379099

**ANSWER BY DEFENDANT OAKLAND  
PORT SERVICES CORPORATION  
d/b/a AB TRUCKING TO PLAINTIFFS'  
SECOND AMENDED COMPLAINT**

**BY FAX**

Judge: Hon. Robert Freedman  
Department: 20  
Action Filed: March 28, 2008

20 Defendant OAKLAND PORT SERVICES CORPORATION d/b/a AB TRUCKING  
21 answers the unverified Second Amended Complaint on file herein, and each cause of action  
22 thereof, with a general denial of each and every allegation contained in plaintiffs' unverified  
23 complaint pursuant to Code of Civil Procedure section 431.30(d), and further specifically denies  
24 plaintiffs have been damaged in the amount or manner alleged or in any other manner  
25 whatsoever. Defendant also denies plaintiffs and others are entitled to any of the relief sought in  
26 the Second Amended Complaint.

27 In addition, defendant asserts the following affirmative defenses and prays for judgment  
28 as set forth below:

**AFFIRMATIVE DEFENSES**

Defendant alleges that the Second Amended Complaint and the causes of action therein

1 fail to state facts sufficient to constitute a cause of action against this answering defendant.

2 Defendant alleges each cause of action is barred by any and all applicable statutes of  
3 limitations.

4 Defendant denies any wrongdoing on its part, and expressly denies that plaintiffs, or any  
5 individual claimed to be similarly situated as plaintiffs, has been damaged as alleged, and as a  
6 result, defendant alleges plaintiffs, and those claimed to be similarly situated as plaintiffs, have  
7 failed to mitigate their alleged pecuniary losses and damages.

8 Defendant alleges the Second Amended Complaint fails to state a claim for which  
9 punitive and/or exemplary damages may be granted and defendant has committed no acts  
10 justifying an award of punitive damages.

11 Defendant alleges plaintiffs have waived and/or are estopped from asserting, in whole or  
12 in part, each cause of action upon which they seek relief.

13 Defendant alleges each cause of action is barred, in whole or in part, by the doctrine of  
14 unclean hands and/or laches.

15 Defendant alleges each cause of action is barred, in whole or in part, by the doctrine of  
16 unjust enrichment.

17 Defendant alleges that plaintiffs' recovery is limited in whole or in part by the doctrine of  
18 after-acquired evidence.

19 Defendant alleges plaintiffs' Second Amended Complaint and each and every claim  
20 contained therein are barred in whole or in part and cannot be maintained against defendant  
21 because the alleged losses or harms sustained by plaintiffs, if any, resulted from causes other  
22 than any act or omission by defendant.

23 Defendant alleges that plaintiffs' Second Amended Complaint, and each and every claim  
24 contained therein, are barred in whole or in part because the conduct of defendant was privileged  
25 at all material times.

26 Defendant alleges each cause of action is barred, in whole or in part, by the doctrine of  
27 avoidable consequences.

28 //

1 Defendant alleges plaintiffs are not entitled to attorney's fees pursuant to, among other  
2 items, Code of Civil Procedure section 1021.5, Labor Code section 1197.1(1), and otherwise.

3 Defendant alleges plaintiffs lack standing to assert the claims against defendant,  
4 particularly because plaintiffs have not suffered any injury as a result of any of the alleged  
5 conduct of defendant in plaintiffs' Second Amended Complaint.

6 Defendant alleges plaintiffs did not accurately report the hours for which they seek  
7 allegedly unpaid wages, overtime and penalties; therefore, plaintiffs are barred from seeking to  
8 recover any such amounts from defendant.

9 Plaintiffs were not secretly paid a lower wage; rather, plaintiffs were paid in accordance  
10 with the terms of their employment with defendant.

11 Defendant alleges that plaintiffs were paid in full any and all amounts due during their  
12 employment.

13 Defendant alleges a private right of action does not exist for the alleged Labor Code  
14 violations claimed by plaintiffs in the Second Amended Complaint.

15 Defendant alleges no basis exists either based on the allegations in the Second Amended  
16 Complaint or any of its stated causes of action for the imposition of penalties upon defendant.

17 Defendant alleges its payment of wages to plaintiffs and the purported class is, and was,  
18 not "unfair," "unlawful" or "fraudulent" within the meaning of California Business and  
19 Professions Code section 17200.

20 Defendant alleges that plaintiffs' claims are barred by accord and satisfaction, release,  
21 and/or settlement.

22 Defendant alleges plaintiffs' Second Amended Complaint fails to satisfy any of the  
23 prerequisites for class certification as to any cause of action.

24 Defendant alleges certification of a class, based upon the facts and circumstances alleged  
25 in plaintiffs' Second Amended Complaint, would constitute a denial of defendant's due process  
26 rights in violation of the Fourteenth Amendment and the California Constitution.

27 Defendant alleges prosecution of a representative action and certification of the alleged  
28 class as representative of the general public under California Business and Professions Code

1 section 17200, based upon the facts and circumstances alleged in plaintiffs' Second Amended  
2 Complaint would constitute a denial of defendant's due process rights in violation of the  
3 Fourteenth Amendment and the California Constitution.

4 **RESERVATION OF ADDITIONAL DEFENSES**

5 Defendant reserves the right to amend this Answer should it discover facts demonstrating  
6 the existence of new and/or additional affirmative defenses and/or should a change in the law  
7 support the inclusion of new and/or additional affirmative defenses. This reservation of  
8 additional defenses includes, but it not limited to, the possibility of a change in the law to support  
9 the inclusion of new and/or additional affirmative defenses based on the anticipated rulings by  
10 the Supreme Court of the State of California in three pending cases, namely, *Brinker Restaurant*  
11 *v. S.C. (Hohnbaum)*, case number S166350 (concerning the proper interpretation of California's  
12 statutes and regulations governing an employer's duty to provide meal and rest breaks to hourly  
13 employees); *Brinkley v. Public Storage*, case number S168806 (same); and *Hernandez v.*  
14 *Chipotle Mexican Grill, Inc.*, case number S188755 (same).

15 **PRAYER FOR RELIEF**

16 WHEREFORE, defendant prays that:


- 17 1. Plaintiffs take nothing by this action;
- 18 2. Any motion for class certification be denied;
- 19 3. Judgment be entered in favor of defendant and against plaintiffs;
- 20 4. Defendant be awarded cost of suit;
- 21 5. Defendant be awarded its reasonable attorneys' fees incurred by this action; and
- 22 6. For such other and further relief in favor of defendant as this court deems just and

23 proper.

24 Dated: December 10, 2010

Respectfully submitted,

25 **JAY IAN ABOUDI, ATTORNEY AT LAW**

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

3 **PROOF OF SERVICE**

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

7 **1) ANSWER BY DEFENDANT OAKLAND PORT SERVICES CORPORATION**  
8 **d/b/a AB TRUCKING TO PLAINTIFFS' SECOND AMENDED COMPLAINT**

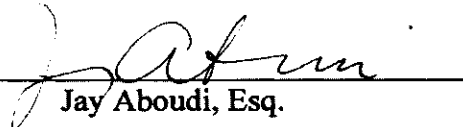
- 9  by transmitting via facsimile the document(s) listed above to the fax number(s) set  
10 forth below on this date before 10:00 A.M.
- 11  by placing the document(s) listed above in a sealed envelope with postage thereon  
12 fully prepaid, in United States mail in the State of California at Walnut Creek,  
13 addressed as set forth below.
- 14  by placing the document(s) listed above in a sealed envelope and caused the same to  
15 be personally delivered by hand the document(s) listed above to the person(s) at the  
16 address(es) set forth below.

17  
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 Tel: (510) 337-1001  
24 Fax: (510) 337-1023

25 I am readily familiar with the firm's practice of collection and processing correspondence  
26 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same  
27 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on  
28 motion of the party served, service is presumed invalid if postal cancellation date or postage  
meter date is more than one day after the date of deposit for 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 December 10, 2010 at Walnut Creek, California.

  
Jay Aboudi, Esq.