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FILED
ALAMEDA COUNTY

NOV 10 2011

CLERK OF THE SUPERIOR COURT
By *[Signature]* Deputy

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

CASE NO. RG 08-379099

12 Plaintiffs,

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF EX
PARTE APPLICATION FOR AN
ORDER TO CONTINUE TRIAL ON
BEHALF OF DEFENDANT OAKLAND
PORT SERVICES CORPORATION
d/b/a AB TRUCKING**

13 v.
14

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

Date: November 10, 2011
Time: 3:00 p.m.
Place: Department 20
Judge: Hon. Robert Freedman

17 Defendants.
18

Trial Date: November 29, 2011

19 **I. INTRODUCTION**

20 OAKLAND PORT SERVICES CORP. d/b/a AB TRUCKING, a California Corporation,
21 (collectively hereinafter referred to as "AB Trucking" or "Defendants") hereby seek an order of
22 this Court, ex parte, pursuant to California Rules of Court 3.1200-3.1207, and 3.1332 to
23 continue the trial date from November 29, 2011 until early spring of 2012 (a total continuance of
24 90-120 days). Absent relief from the Court, potential legal counsel new to this case will not have
25 sufficient time to study the pleadings, prior rulings and Orders, written discovery, oral
26 depositions, and over 10,000 documents produced during the course of discovery. AB Trucking
27 is constitutionally entitled to prepared legal counsel. Trial call is in less than twenty days (20).
28 This is insufficient time for any new counsel to prepare for trial.

1 **II. RELEVANT FACTS**

2 **A. Background**

3 The Court is extremely familiar with the facts associated with this case so the
4 Defendants/Cross-Complainants will forego summarizing the underlying dispute. The facts
5 relevant for the Court to rule on this ex parte application are as follows:

6 1) Attorney Jay Ian Aboudi's motion to be relieved as counsel of record for
7 defendant AB Trucking is scheduled to be heard on November 17, 2011. Mr. Aboudi has
8 presented good cause to be relieved as counsel due to a debilitating illness. Mr. Bryant from the
9 Law Office of Bryant & Brown has agreed to substitute into the action if the pending motion to
10 be relieved as counsel is granted and the Court grants this motion to continue trial for a period of
11 90-120 days. (See Declaration of Jay Ian Aboudi filed in support of this ex parte application.)

12 **III. ARGUMENT**

13 **A. Court Can Grant Requested Relief Under California Law**

14 The court has discretion to grant or deny a continuance. (*Lazarus v. Titmus* (1998) 64
15 Cal.App.4th 1242, 1249 citing *Foster v. Civil Service Commission of Los Angeles County* (1983)
16 142 Cal.App.3rd 444, 448. Continuances are also governed by California Rules of Court, Rule
17 3.1332.

18 Rule 3.1332 (b) provides in relevant part:

19 "A party seeking a continuance of the date set for trial, whether contested or uncontested
20 or stipulated to by the parties, must make the request for a continuance by a noticed motion or an
21 ex parte application under the rules in chapter 4 of this division, with supporting declarations.
22 The party must make the motion or application as soon as reasonably practical once the necessity
23 for the continuance is discovered."

24 Rule 3.1332 (c) provides in relevant part:

25 "Although continuances of trials are disfavored, each request for a continuance must be
26 considered on its own merits. The court may grant a continuance only on an affirmative showing
27 of good cause requiring the continuance. Circumstances that may indicate good cause include:
28

1 (4) The substitution of trial counsel, but only where there is an affirmative showing that
2 the substitution is required in the interests of justice; ”

3 Rule 3.1332 (d) provides in relevant part:

4 “In ruling on a motion or application for continuance, the court must consider all the facts
5 and circumstances that are relevant to the determination. These may include:

6 (3) The length of the continuance requested;

7 (4) The availability of alternative means to address the problem that gave rise to the
8 motion or application for a continuance;

9 (5) The prejudice that parties or witnesses will suffer as a result of the continuance;

10 (9) Whether all parties have stipulated to a continuance;

11 (10) Whether the interests of justice are best served by a continuance, by the trial of the
12 matter, or by imposing conditions on the continuance; and

13 (11) Any other fact or circumstance relevant to the fair determination of the motion or
14 application.”

15 In this case, good cause supports a continuance of the trial date as set forth in Rule
16 3.1332.

17 **B. AB Trucking Cannot Be Unrepresented At Trial**

18 As set forth above, Jay Ian Aboudi’s motion to be relieved as counsel of record for
19 defendants OAKLAND PORT SERVICES CORP. d/b/a AB TRUCKING is scheduled for
20 November 17, 2011. A request for continuance supported by a showing of “good cause” usually
21 ought to be granted. (*Estate of Meeker* (1993) 13 Cal.App.4th 1099, 1105.) Here, Mr. Aboudi has
22 presented documented evidence of a debilitating illness that has precipitated his withdrawal from
23 representation of AB Trucking. If Mr. Aboudi is relieved as counsel of record for good cause,
24 AB Trucking will require additional time to allow new legal counsel to substitute into the case
25 and prepare to represent its interests at trial.

26 California case law has held that a corporation cannot represent itself in court, either in
27 propria persona or through an officer or agent who is not an attorney. (*Merco Constr. Engineers,*
28

1 *Inc. v. Municipal Court* (1978) 21 Cal. 3d 724, 729; See also *Van Gundy v. Camelot Resorts, Inc.*
2 (1983) 152 Cal.App.3d Supp. 29, 32; *Caressa Camille, Inc. v. Alcoholic Beverage Control*
3 *Appeals Bd.* (2002) 99 Cal.App.4th 1094, 1101; citing *Merco Constr. Engineers, Inc. v.*
4 *Municipal Court* (1978) 21 Cal.3d 724, 727, 729 and *Paradise v. Nowlin* (1948) 86 Cal.App.2d
5 897, 898.) While a natural person who is not an attorney may appear in propria persona, a
6 corporation is not a natural person and “can neither practice law nor appear or act in person.”
7 (*Paradise v. Nowlin*, supra, 86 Cal.App.2d at 898.) In court, a corporation can act only through
8 licensed attorneys. “A corporation cannot appear in court by an officer who is not an attorney.”
9 (Ibid.)

10 The interests of justice are best served by granting this short continuance to permit
11 OAKLAND PORT SERVICES CORPORATION d/b/a AB TRUCKING a fair opportunity to
12 retain legal counsel to defend itself at trial and provide such retained counsel sufficient time to
13 prepare for trial. (Cal. Rules of Court, Rule 3.1332(d)(11).)

14 **C. AB Trucking Is Constitutionally Entitled to Counsel**

15 Because a corporation may not appear without counsel, it is entitled to counsel. (See
16 *Vann v. Shilleh* (1975) 54 Cal.App.3d 192, at Part III, on a corporation’s constitutional right to
17 counsel:

18 “. . . There is a constitutional basis for the right to counsel in noncriminal proceedings
19 and, in its narrowest definition, it is the right to appear by counsel in any adversary proceedings
20 in which the adversary party has the benefit of the right to counsel.”

21 Because AB Trucking’s “adversary party has the benefit of the right to counsel” AB
22 Trucking is “constitutionally entitled to counsel” per *Vann v. Shilleh*.

23 **D. Granting Motion To Withdraw Creates Duty To Continue Trial**

24 As set forth above, a request for continuance supported by a showing of “good cause”
25 ought to be granted. (*Estate of Meeker*, supra., 13 Cal.App.4th at 1105.) However, denying a
26 continuance after permitting counsel to withdraw is deemed an abuse of discretion. (*Vann v.*
27 *Shilleh*, supra.) It is error to refuse to grant a continuance for the unavoidable absence of counsel.
28

1 (Muller v. Tanner (1969) 2 Cal.App.3d 445, 457-458.)

2 “... the refusal of a continuance which has the practical effect of denying the applicant a
3 fair hearing is reversible error.” (In re Marriage of Hoffmeister (1984) 161 Cal. App.3d 1163,
4 1169; 7 Witkin, Cal. Procedure (4th Ed. 1997) Trial, § 11, p. 37 and cases cited therein.)

5 Absent a continuance, AB Trucking must proceed to trial, through no fault of its own ,
6 with potentially new counsel rushed to acquire and examine three years of discovery, on top of
7 studying pleadings, several prior court rulings and orders, conducting legal research, and other
8 trial preparations. Information already digested by opposing counsel.

9 **IV. CONCLUSION**

10 Based on the foregoing, AB Trucking respectfully requests this court for a continuance in
11 the trial date.

12 Dated: November 10, 2011

Respectfully submitted,

JAY IAN ABOUDI, ATTORNEY AT LAW



JAY IAN ABOUDI

Attorney for Defendant OAKLAND PORT
SERVICES CORPORATION d/b/a AB TRUCKING