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Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Godfrey <p style="text-align: right;">Plaintiff/Petitioner(s)</p> <p style="text-align: center;">VS.</p> AB Trucking, Inc. <p style="text-align: right;">Defendant/Respondent(s) (Abbreviated Title)</p>	No. <u>RG08379099</u> Order Motion for Summary Adjudication Denied
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The Motion for Summary Adjudication was set for hearing on 11/10/2011 at 03:00 PM in Department 20 before the Honorable Robert B. Freedman. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The Motion of plaintiffs Lavon Godfrey and Gary Gilbert, on behalf of themselves and all others similarly situated ("Plaintiffs") for Summary Adjudication ("Motion") is ruled on as follows:

BACKGROUND:

The operative class action complaint in the instant action (Second Amended Complaint, filed September 20, 2010, hereafter "Complaint") contains causes of action for 1) Unfair Business Practices (Business & Professions Code §§17200, et seq., "UCL"), 2) Failure to Pay for All Hours Worked (Labor Code §§510, 1182.12, and 1194; IWC Wage Order No. 9, §4), 3) Failure to Pay for Any Hours Worked Due to Misclassification of Employment Status (Labor Code §§510, 1182.12 and 1194; IWC Wage Order No. 9, §40), 4) Failure to Pay Overtime (Labor Code §§510 and 1194; IWC Wage Order No. 9, §3), 5) Failure to Pay Living Wage (Oakland City Charter §728), 6) Failure to Provide Meal and/or Rest Periods (Labor Code §§226.7 and 512; IWC Wage Order No. 9), 7) Failure to Pay Wages Owing at Discharge or Quitting (Labor Code §§201, 202 and 203), and 8) Failure to Provide Accurate Itemized Wage Statements (Labor Code §226). Plaintiffs seek relief from defendant Oakland Port Services Corp. dba AB Trucking ("Defendant") on behalf of all of Defendant's employees who worked as drivers (as defined in the Complaint, page 7, fn. 1) during the applicable time period.

On December 3, 2010, this Court certified the following class and subclasses:

Class: All drivers who performed work for Defendant out of its Oakland, California facility from the period of March 28, 2004 through the date of notice to the class ("Drivers").

Subclasses: 1) All Drivers who were not paid for all hours worked in any work week; 2) All Drivers who were misclassified as "non-employee trainees" and as a result were not paid for any hours worked; 3) All Drivers who were not paid for hours worked over eight in a day and/or forty in a week at an overtime rate of pay; 4) All Drivers who were paid less than the Oakland Living Wage for any hour worked; and 5) All Drivers who were not provided rest breaks and/or meal periods as required by California law.

MOTION:

Plaintiffs now move for summary adjudication of the 2nd and 6th causes of action, asserting that the requisite elements of both causes of action are established by the evidence submitted by Plaintiffs in support of the Motion. That evidence includes (a) excerpts from the depositions of William Aboudi and Jovi Aboudi, (b) the Declarations of Lavon Godfrey and Gary Gilbert, (c) excerpts from the depositions of Lavon Godfrey and Gary Gilbert, and (d) copies of select timecards and payroll records produced by Defendant during discovery. The Court notes that all of Plaintiffs' evidence was first produced in support of their motion for class certification. Completely absent is any discussion of how the damages component of each of the subject causes of action can and should be handled, much less any actual evidence related to damages.

DISCUSSION and RULING:

Although no procedural issues were raised by Defendant in its opposition, prior to the initial hearing on October 28, 2011, the Court issued a tentative ruling in which it raised the issue of whether the relief sought by Plaintiffs by way of the instant Motion falls within the parameters of Code of Civil Procedure section 437c(f)(1). In response to the tentative ruling, Defendant filed a supplemental brief, and at the hearing Plaintiffs presented citations to several class action cases in which the issue of liability appeared to have been treated separately from the issue of damages in the summary adjudication context. Having reviewed all authorities cited, the Court concludes that nothing therein supports the proposition that claims brought on behalf of a certified class are not subject to the rule that summary adjudication may only be granted if it "completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (Code of Civil Procedure ("CCP") sections 437c(f)(1); CCP section 437c(n)(3); Dept. of Industrial Relations v. UI Video Stores, Inc. (1997) 55 Cal.App.4th 1084, 1097.) Accordingly, the Motion is DENIED.

TRIAL DATE:

In the absence of a stipulation of the parties to continue the trial in this case until after the California Supreme Court issues its decision in *Brinker v. Sup.Ct.* (S166350), or until otherwise ordered by the Court, the current trial date of November 29, 2011 at 9:30 a.m. will be maintained.

Dated: 11/10/2011

A handwritten signature in black ink, appearing to read 'R. Freedman', is written over a horizontal line. To the right of the signature, the word 'facsimile' is printed in a small font.

Judge Robert B. Freedman

SHORT TITLE: Godfrey VS AB Trucking, Inc.	CASE NUMBER: RG08379099
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ADDITIONAL ADDRESSEES

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