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**FILED**  
**ALAMEDA COUNTY**

OCT 20 2010

CLERK OF THE SUPERIOR COURT

By *[Signature]* Deputy

7 Attorney for Defendant  
8 OAKLAND PORT SERVICES CORPORATION  
9 d/b/a AB TRUCKING (erroneously sued as AB  
10 TRUCKING, INC.)

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE COUNTY OF ALAMEDA

13 LAVON GODFREY and GARY GILBERT, on  
14 behalf of themselves and all others similarly  
15 situated,

CASE NO. RG 08-379099

16 Plaintiffs,

**DEFENDANT'S NOTICE OF MOTION  
AND MOTION TO STRIKE PORTIONS  
OF PLAINTIFFS' SECOND AMENDED  
COMPLAINT**

17 v.

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

Date: December 3, 2010  
Time: 10:00 a.m.  
Place: Department 20  
Judge: Hon. Robert Freedman  
Action Filed: March 28, 2008  
Reservation No.: R-1117224

21 Defendants.

22 TO THE COURT; PLAINTIFFS LAVON GODFREY AND GARY GILBERT; TO DAVID A.  
23 ROSENFELD, ESQ.; TO CAREN P. SENCER, ESQ.; TO LISL R. DUNCAN, ESQ.; AND TO  
24 WEINBERG, ROGER & ROSENFELD, counsel for plaintiffs:

25 PLEASE TAKE NOTICE that on December 3, 2010, at 10:00 a.m. or as soon thereafter  
26 as the matter can be heard, in Department 20 of the above-entitled court, the Honorable Robert  
27 B. Freedman presiding, hearing shall be had on a motion by defendant to strike portions of  
28 plaintiffs' second amended complaint.

The motion is based on the present notice of motion and motion, the accompanying  
memorandum of points and authorities in support, and the Declaration of Jay Ian Aboudi, all of

1 which are served and filed concurrently.

2 The portions of the second amended complaint (“SAC”) that defendant seeks to have  
3 stricken are as follows:

4 1. The wholly new alleged violations of (1) an alleged “pattern and practice of failing to  
5 pay wages for any hours worked as a result of misclassification of drivers’ employment status”  
6 (nowhere previously alleged and nowhere mentioned in the notice of motion or motion upon the  
7 basis of which defendant stipulated to the filing of the SAC) and (2) an alleged “pattern and  
8 practice of failing to pay overtime wages as required by California law” (similarly nowhere  
9 previously alleged and nowhere mentioned in the notice of motion or motion upon the basis of  
10 which defendant stipulated to the filing of the SAC).

11 2. The two new subclasses inserted in the SAC as follows:

12 (4) The Living Wage Subclass

13 All drivers employed by Defendant during March 28, 2004 through  
14 November 1, 2010 who were paid less than the Oakland Living Wage for any  
15 hour worked.

16 \* \* \* \*

17 (6) The Wages Owed at Discharge or Quitting Subclass

18 All drivers employed by Defendant during March 28, 2004 through  
19 November 1, 2010 who were not paid all wages owed at the time of discharge or  
20 quitting as required under Labor Code sections 201, 202 and 203.

21 3. All reference to a supposed subclass that allegedly would be entitled to assert a claim  
22 based on a supposed failure by defendant to pay the Oakland Living Wage.

23 4. All reference to a supposed subclass that allegedly would be entitled to assert a claim  
24 based on a supposed failure by defendant to pay all wages owed at the time of discharge or  
25 quitting.

26 5. All reference to a supposed sub class that allegedly would be entitled to assert a claim  
27 based on a supposed failure by defendant to pay all wages owed at the time of discharge or  
28 quitting.

1           6. The two newly asserted "commonality" issues (1) of "whether Defendant violated  
2 IWC Wage Order 9 and Labor Code §1194 by not paying the minimum wage for any hours  
3 worked as a result of misclassification of drivers' employment status" and (2) of "whether  
4 Defendant violated IWC Wage Order 9 and Labor Code §§ 510 and 1194 for failing to pay  
5 overtime."

6           7. All reference to any so-called Inaccurate Wage Statement Subclass (defined in the  
7 SAC as "All drivers employed by Defendant during March 28, 2004 through November 1, 2010  
8 who were not provided with accurate itemized wage statements in violation of Labor Code  
9 section 226").

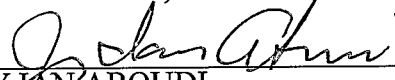
10           8. All reference to a so-called Inaccurate Wage Statement Subclass (defined in the SAC  
11 as "All drivers employed by Defendant during March 28, 2004 through November 1, 2010 who  
12 were not provided with accurate itemized wage statements in violation of Labor Code section  
13 226").

14           9. The reference in paragraph 121 of the SAC to "Labor Code § 218."

15 Dated: October 20, 2010

Respectfully submitted,

**JAY IAN ABOUDI, ATTORNEY AT LAW**

  
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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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