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**FILED**  
ALAMEDA COUNTY

OCT 11 2012

CLERK OF THE SUPERIOR COURT

By *KmD Dutton* Deputy

8 Attorney for Defendant  
9 OAKLAND PORT SERVICES CORP. d/b/a  
10 AB TRUCKING, a California Corporation,

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

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

16 Plaintiffs,

17 vs.

18 OAKLAND PORT SERVICES CORP. d/b/a  
19 AB TRUCKING, and DOES 1-20

20 Defendant.

) Case No.: RG 08-379099

) **DEFENDANT'S REQUEST FOR**  
) **WRITTEN STATEMENT OF DECISION**  
) **PURSUANT TO CCP § 632**

) Action Filed: March 28, 2008

) Hearing Date: November 9, 2012

) Dept.: 20

) Time: 2:00 p.m.

) Trial Date: February 14, 2012

) Before Honorable Judge Robert B. Freedman

21 Pursuant to California Code of Civil Procedure Section 632, Defendant OAKLAND  
22 PORT SERVICES CORP. d/b/a AB TRUCKING, a California Corporation, (collectively  
23 hereinafter referred to as "AB Trucking" or "Defendant") respectfully request that the Court  
24 issue a written statement of decision regarding the following questions of fact, finding of fact,  
25 and conclusions of law as to the following causes of action and/or controverted issues:

1           1.       The specific acts of Defendant that comprise the basis for the Court's  
2 determination that AB Trucking failed to pay employees classified as "trainees". Specifically,  
3 please identify which employees were classified as "trainees" and were not paid. For those  
4 employees identified as "trainees," please explain which time periods they were not paid.

5           2.       The specific acts of Defendant that comprise the basis for the Court's  
6 determination that AB Trucking failed to pay for all hours worked for each employee.  
7 Specifically, please identify each employee that did not receive payment for all hours worked.  
8 Please identify each day that the employees identified above failed to receive payment for all  
9 hours worked (Overtime claims and OLW claims should not be included in this explanation as  
10 per Court determination).

11           3.       Whether the grounds underlying the Court's finding that the Plaintiffs' UCL and  
12 Labor Code Claims (Business & Professions Code section 17200, et seq. and Labor Code  
13 Sections 201, 202, 203, and 226) were proven based upon, inter alia, the knowing and willful  
14 failure of Defendant to pay wages deemed owed.

15           4.       The specific acts of Defendant demonstrating that "class members were routinely  
16 and consistently precluded by Defendant from taking meal periods and rest breaks."

17           5.       The *Brinker* Court concluded that:

18           "Employees must accurately record the time they begin and end each meal period each  
19 day. If an employee finds that, due to work requirements, he or she has not been able to take one  
20 or more required daily meal periods, then the employee must report such on his or her time  
21 record. The employee will be paid for the time worked and one hour of premium pay for that  
22 day." (Emphasis added.)

23           However, this Court determined the following:

24           "Defendant consistently failed to pay for all hours worked by deducting one hour per day  
25 for each employee. Both the Defendant's own records and the testimony of Ms. Aboudi

1 confirmed this practice violation of Wage Order 9(4)B. The evidence is in conflict as to when, if  
2 at all, this practice ceased. Defendant's failure to keep adequate and accurate records for the  
3 period in question pursuant to Wage Order 9(7) compels the court to construe the evidence  
4 against Defendant."

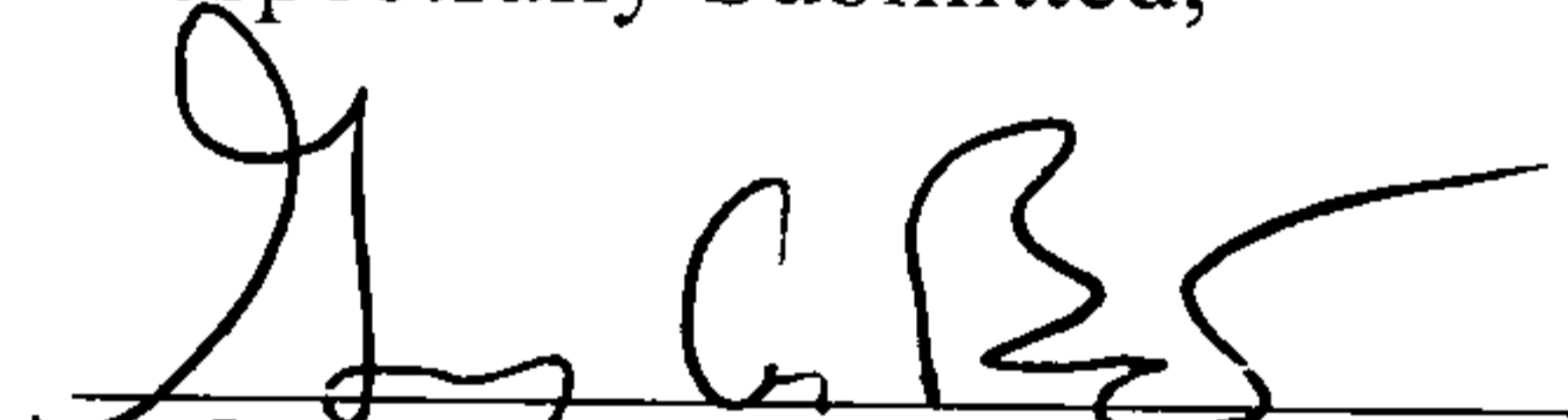
5 Please clarify how class members complied with *Brinker* and accurately recorded the  
6 time they began and ended each meal period each day. Please clarify how the Court's evidentiary  
7 opinion relying on Wage Order 9(7) does not contradict the holding in *Brinker* set forth above.

8 6. The legal and factual basis for why Defendant's preemption claim under the  
9 Federal Aviation Administration Authorization Act is not applicable to the case at bar.

10 Counsel for Plaintiffs will prepare a Supplemental Memorandum setting forth the  
11 proposed recovery for the class with computations based on the Court's conclusions in the  
12 Notice of Intended Decision.

13  
14 Dated this 11th day of October, 2012.

15 Respectfully Submitted,

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17 Guy A. Bryant  
18 Bryant & Brown  
19 Attorney for Defendant  
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5 Attorney for Defendant  
OAKLAND PORT SERVICES CORP. d/b/a  
6 AB TRUCKING, a California Corporation,

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF ALAMEDA

10  
11 LAVON GODFREY and GARY GILBERT, ) Case No.: RG 08-379099  
on behalf of themselves and all other similarly )  
12 situated, ) **PROOF OF SERVICE**  
Plaintiffs, ) Action Filed: March 28, 2008  
13 ) Date: May 11, 2012  
14 vs. ) Dept.: 20et for Trial: February 14, 2012  
OAKLAND PORT SERVICES CORP. d/b/a )  
16 AB TRUCKING, and DOES 1-20 )  
17 Defendant. )  
18 )  
19 )  
20 )

21  
22 **PROOF OF SERVICE**

23 I am employed in the County of Alameda, State of California. I am over the age of 18  
24 and not a party to the within action. My business address is 476 Third Street, Oakland,  
California, 94607.

25 On October 11, 2012, I served the foregoing documents described as:

1 **DEFENDANT'S REQUEST FOR WRITTEN STATEMENT OF DECISION PURSUANT**  
2 **TO CCP § 632**

3 on the interested parties in this action by placing a true copy thereof enclosed in a  
4 sealed envelope addressed as follows:

5 **SEE MAILING LIST INCLUDED HEREIN**

6

7 (BY MAIL) I am readily familiar with the firm's practice of collection and  
8 processing correspondence for mailing. Under that practice it would be  
9 deposited with U.S. postal service on that same day with postage thereon fully  
10 prepaid at Oakland, California in the ordinary course of business.

11

12 (BY FACSIMILE) by faxing a true and correct copy thereof to the person(s) at the  
13 fax number set forth above.

14

15 (BY FEDERAL EXPRESS) by using express mail service and causing to be  
16 delivered overnight next day delivery a true copy thereof to the person(s) at the  
17 address set forth above.

18

19 (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand  
20 to the offices of the addressee.

21

22 (FEDERAL) I declare that I am employed in the office of a member of the bar  
23 of this court at whose direction the service was made.

24

25 (STATE) I declare under penalty of perjury under the laws of the State of  
California that the above is true and correct.

GUY A. BRYANT

  
Signature

1  
2 **SERVICE LIST**  
3

4  
5 **VIA U.S. MAIL ON ALL PARTIES LISTED HEREIN:**

6 **Attorney for:** LAVON GODFREY and GARY GILBERT, ET AL.

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Lisl R. Duncan  
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