



FILED
ALAMEDA COUNTY

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By *[Signature]*
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Deputy

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15 Attorneys for Defendant
OAKLAND PORT SERVICES CORPORATION d/b/a
16 AB TRUCKING (erroneously sued as AB TRUCKING, INC.)

18 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 IN AND FOR THE COUNTY OF ALAMEDA

21	LAVON GODFREY and GARY GILBERT, on)	Case No.	RG 08-379099
22	behalf of themselves and all others similarly)		
	situated,)	JOINT CASE MANAGEMENT	
23	Plaintiffs,)	CONFERENCE STATEMENT	
24	v.)		
25	OAKLAND PORT SERVICES CORP. d/b/a)	DATE: January 15, 2009	
26	AB TRUCKING, and DOES 1 through 20,)	TIME: 11:00 a.m.	
	inclusive,)	DEPT.: 20	
27	Defendants.)	JUDGE: Robert Freedman	

1 Pursuant to this court's Order issued October 20, 2009, Plaintiffs Lavon Godfrey and Gary
2 Gilbert (hereinafter "Godfrey" or "Gilbert") and Defendant Oakland Port Services Corporation
3 d/b/a AB Trucking (hereinafter "AB Trucking" or "AB") hereby submit this Joint Complex Case
4 Management Conference Statement in connection with the Complex Case Management
5 Conference Scheduled for January 15, 2010.

6 A. FACTUAL SUMMARY

7 Plaintiffs allege unfair business practices, violations of the California Labor Code and
8 violations of the Port of Oakland's Living Wage Ordinance (Oakland City Charter, Section 728).
9 Plaintiffs, on behalf of themselves and other similarly situated employees, seek to recover wages
10 owed for work performed as drivers with AB Trucking. Under the Oakland City Charter, Port-
11 Assisted businesses are required to pay their employees no less than the Oakland Living Wage per
12 hour. This living wage is significantly higher than the federal or state minimum wage and the
13 wage rates paid by AB Trucking. Plaintiffs contend that AB Trucking failed to provide employees
14 meal periods and rest periods in accordance with applicable law, compensation for overtime at the
15 appropriate rate, compensation for all hours worked and compensation at the wage rate required by
16 the Oakland City Charter.

17 The individual Plaintiffs contend they are former employees of AB Trucking. Plaintiffs
18 contend that AB Trucking is a trucking drayage operation located at the Port of Oakland. AB
19 Trucking is located at 11 Burma Road, Oakland, California 94607, within the general Port area.
20 The individual Plaintiffs and other similarly situated current and former employees allege they did
21 not receive compensation at the rates required under the Living Wage Charter Amendment.
22 Plaintiffs' Complaint asserts Causes of Action ("COA") for violations of Business and Professions
23 Code § 17200 (1st COA, Unfair Business Practices); for violations of Labor Code §§ 1194 and
24 1182.12 and IWC Wage Order 9 (2d COA, Failure to Pay for All Hours Worked); for violations of
25 the Oakland City Charter § 728 (3rd COA, Living Wage); for violations of Labor Code §§ 226.7
26 and 512, and IWC Wage Order 9 (4th COA, Meal and Rest Periods); for violations of Labor Code
27 §§ 201, 202 and 203 (5th COA, Payment of Wages and Penalties); and for violations of Labor
28 Code § 226 (6th COA, Payroll Stubs).

1 Plaintiffs seek to recover all wages due and applicable penalties on behalf of themselves
2 and others similarly situated. Plaintiffs also seek the difference between the Living Wage and the
3 wage rate paid for the four (4) years prior to the filing of the Complaint, for themselves and those
4 similarly situated. Under Section 9 of the Port Living Wage Ordinance, the Plaintiffs are
5 requesting treble damages, costs of litigation and attorneys' fees.

6 Defendant contends that it has at all relevant times complied with all of the applicable
7 California Labor Code provisions and Industrial Welfare Commission Wage Orders regarding
8 recordkeeping, meal and rest periods. Defendant contends that AB Trucking is not a Port Assisted
9 Business as AB has no contracts with the Port of Oakland, that it is not bound by the Living Wage
10 Charter Amendment within the context of the Oakland City Charter section 728. Further
11 Defendant contends Gilbert was never an "employee" of AB Trucking.

12 Defendant contends that this action is not appropriate for litigation as a class action as
13 determining the issues raised by plaintiffs will require an analysis of numerous factors including
14 the existence of an employer-employee relationship, the duties he or she performed, the amount of
15 time actually spent performing those duties, his or her qualifications and skills, his or her
16 authorized working radius, his or her traveled distance that determines the applicability of state and
17 federal motor carrier laws regulating hours of service and drivers engaged in interstate commerce,
18 and whether his or her performance met the reasonable expectations of defendant. By its very
19 nature, this analysis requires an individualized determination of facts and defenses for each driver.
20 The highly fact intensive, individualized nature of the analysis makes it inappropriate for class
21 treatment.

22 B. PARTIES

23 The two individual Plaintiffs bring suit on behalf of themselves and other similarly situated
24 employees and former employees of AB Trucking. Plaintiffs are represented by the law firm
25 Weinberg, Roger and Rosenfeld.

26 Defendant is represented by Michael Broad of the Law Offices of Michael Broad, 166
27 Santa Clara Avenue, Oakland, CA 94610. Defendant is also represented by Jay Ian Aboudi,
28 General Counsel for Oakland Port Services Corporation, 11 Burma Road, Oakland, CA 94607.

1 C. DEADLINES AND LIMITS ON JOINDER AND AMENDED PLEADINGS

2 Neither party intends to join any additional parties.

3 D. CLASS DISCOVERY AND CLASS CERTIFICATION

4 **Plaintiffs' Statement:** Whether employees received overtime payments, payment for all
5 hours worked and the Living Wage or some other lesser wage, can be established simply by
6 payroll documentation. Deposition testimony confirms all employees were paid under the same
7 payroll system. Plaintiffs have requested and received some documents related to all workers
8 showing the commonality of the time keeping practices. These documents show employees
9 working more than 8 hours a day and 40 hours in a work week. These time records also show
10 neither meal nor rest periods were recorded. Plaintiff's class certification motion, filed with the
11 court December 15, 2009, gives further analysis of this position.

12 **Defendant's Statement:** As discussed above, Plaintiffs' claims are not appropriate for
13 class treatment under section 382 of the California Code of Civil Procedure. Plaintiffs' claims will
14 require highly individualized inquiries to determine his—and any putative class member's—right
15 to recovery. Such an action fails to meet the community of interest standards of section 382.
16 Accordingly, defendant believes that discovery should be conducted in waves, with the first wave
17 limited to plaintiff's individual claims, defendant's defenses to those claims, and whether this
18 action is maintainable as a class action.

19 E. PROPOSED LITIGATION SCHEDULE

20 1. **Discovery Plan** – Defendant is still completing the deposition of one of the named
21 Plaintiffs. While there were prior limitations on the remainder of this deposition taking place,
22 those limitations are no longer in effect. The parties anticipate additional written discovery on the
23 merits after class certification.

24 Defendant suggests that once discovery regarding (i) the merits of plaintiffs' individual
25 claims and defendant's defenses and (ii) the class certification issue has been completed, discovery
26 should be closed until after a dispositive ruling on plaintiffs' motion for class certification. Based
27 on discovery responses provided, Defendant may file motions to compel further responses until
28 January 15, 2010.

1 2. **Law and Motion** – The hearing date for the motion for class certification will be
2 set at the Case Management Conference of January 15, 2010. As discussed above, Plaintiffs filed
3 their motion on December 15, 2009 and the parties await a schedule for opposition, reply and
4 hearing. A briefing schedule for motions for summary judgment/adjudication can be set after the
5 class certification hearing.

6 Defendant intends to file a motion for summary judgment/adjudication by January 15,
7 2010. The hearing date for the Defendant's motion for summary judgment/adjudication will be set
8 for a date on or after March 31, 2010.

9 Plaintiffs believe Defendant's motion for summary judgment/adjudication is premature
10 based on *Fireside Bank v. Superior Court* (2007) 40 Cal. 4th 1069, and that the class certification
11 motion must be decided first.

12 3. **Projected Trial Date** – Plaintiffs propose a trial date in July 2010 and Plaintiffs'
13 anticipated motion for summary judgment to be heard in June 2010. Defendant believes it is
14 premature to set a trial date in this matter. Defendant anticipates a trial length of at least five to
15 eight weeks if plaintiffs' highly individualized claims are provided class treatment.

16 F. POTENTIAL EVIDENTIARY ISSUES

17 There are no potential evidentiary issues identified at this time.

18 G. PROCEDURAL POSTURE

19 1. **Unserved Parties:** All named Defendants have been served.

20 2. **Unserved/Unfiled Cross-Complaints:** None known.

21 3. **Related Actions:** None known.

22 4. **Jurisdictional or Venue Issues:** None known or anticipated.

23 5. **Discovery Status:** The parties continue to engage in the meet and confer process
24 and ongoing written discovery.

25 6. **Unresolved Law and Motion Matters:** The hearing date for the motion for
26 class certification will be set at the Case Management Conference January 15, 2010. Defendant
27 intends to file a motion for summary judgment/adjudication by January 15, 2010. The hearing date
28 for the Defendant's motion for summary judgment/adjudication will be set for a date on or after

1 March 31, 2010. As stated above, Plaintiffs believe the class certification motion must be decided
2 first. (*Fireside Bank v. Superior Court* (2007) 40 Cal. 4th 1069.)

3 7. **ADR Proceedings:** Plaintiffs believe it would be in the best interest of the parties
4 to participate in mediation after class certification. Defendant does not believe this is an
5 appropriate case for ADR.

6 8. **Severance or Issues for Trial:** There are currently no known issues that
7 should be severed for trial purposes. Bifurcation of liability and damage issues may be efficient
8 for trial purposes.

9 9. **Calendar Conflicts:** As of this date, there are no known conflicting trial dates for
10 Plaintiffs' counsel.

11 **H OTHER MATTERS**

12 Plaintiffs are agreeable to streamlining discovery as set forth above and to use e-filing.
13 Beyond motions to compel further answers to written discovery or further answers to deposition
14 questions as well as class certification issues, defendant see areas of streamlining that would be
15 necessary.

16 Dated: January 8, 2010

17 WEINBERG, ROGER & ROSENFELD
18 A Professional Corporation

19 By: 

20 DAVID A. ROSENFELD
21 CAREN P. SENCER
22 LISL R. DUNCAN
23 Attorneys for Plaintiffs

24 Dated: January 8, 2010

25 Jay Ian Aboudi, Attorney at Law

26 By: 

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

118212/555720

PROOF OF SERVICE
(CCP 1013)

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501-1091. On January 8, 2010, I served upon the following parties in this action:

Michael A. Broad
166 Santa Clara Ave
Oakland, CA 94610

Jay Ian Aboudi
General Counsel
Oakland Port Services Corporation
11 Burma Road
Oakland, CA 94607

copies of the document(s) described as:

JOINT CASE MANAGEMENT CONFERENCE STATEMENT

BY MAIL I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Alameda, California. I am readily familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

BY OVERNIGHT DELIVERY SERVICE I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and placed the same for collection by Overnight Delivery Service by following the ordinary business practices of Weinberg, Roger & Rosenfeld, Alameda, California. I am readily familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing of Overnight Delivery Service correspondence, said practice being that in the ordinary course of business, Overnight Delivery Service correspondence is deposited at the Overnight Delivery Service offices for next day delivery the same day as Overnight Delivery Service correspondence is placed for collection.

BY E-MAIL I caused to be transmitted each document listed herein via the e-mail address(es) listed above or on the attached service list.

I certify under penalty of perjury that the above is true and correct. Executed at Alameda, California, on January 8, 2010.


Jennifer Koffler

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