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 AB TRUCKING, a California Corporation,

FILED
ALAMEDA COUNTY

JAN 12 2012

CLERK OF THE SUPERIOR COURT
 By [Signature] Deputy

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

<p>11 LAVON GODFREY and GARY GILBERT, 12 on behalf of themselves and all other similarly 13 situated, Plaintiffs,</p> <p>14 vs.</p> <p>15 OAKLAND PORT SERVICES CORP. d/b/a 16 AB TRUCKING, and DOES 1-20 17 Defendant.</p>	<p>) Case No.: RG 08-379099)) NOTICE OF MOTION AND MOTION) TO RECONSIDER CLASS) CERTIFICATION ORDER, AMEND,) MODIFY OR DECERTIFY A CLASS) ACTION; CCP § 1008 AND CAL. RULES) OF COURT, RULE 3.764)) Action Filed: March 28, 2008) Date: February 9, 2012) Dept.: 20) Time: 2:00 p.m.) Reservation Number: R-1249926) Set for Trial: February 14, 2012) Before Honorable Judge Robert B. Freedman)))</p>
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1 TO EACH PARTY AND TO THE ATTORNEY OF RECORD FOR EACH PARTY IN THIS
2 ACTION:

3 YOU ARE HEREBY NOTIFIED THAT on February 9, 2012 at 2:00 p.m. in Department
4 20 of this Court, located at the Alameda County Superior Court, 1221 Oak Street, Oakland,
5 California, Defendant OAKLAND PORT SERVICES CORP. d/b/a AB TRUCKING, a
6 California Corporation, (collectively hereinafter referred to as "AB Trucking" or "Defendant")
7 will move to amend, modify or decertify the class as set forth in the December 3, 2010 Order of
8 Honorable Judge Robert B. Freedman.

9 Decertification of the proposed class is proper in this case because new substantive
10 evidence and case law have emerged during the course of 2011 that establish that common issues
11 of fact do not predominate over individual issues in this case. Specifically, through this motion
12 Defendant will demonstrate, inter alia, the following:

13
14 1. AB Trucking drivers and trainees have always been required to obtain a Class A
15 commercial driver's license and follow the Department of Transportation ("DOT") Safety
16 regulations due to the weight and size of the commercial vehicles they drive (Class 8), weight
17 and size of the containers transported, and because of the various federal, state and Port of
18 Oakland operational requirements commercial truck drivers must follow. Exempted from
19 California overtime compensation requirements are "employees whose hours of service are
20 regulated by . . . the United States Department of Transportation Code of Federal Regulations,
21 Title 49, Sections 395.1 to 395.13."(IWC Wage Order, 9-2001, §3.) As a result, AB Trucking
22 drivers and trainees should be deemed exempt from state overtime laws.

23
24 2. AB Trucking has never employed more than 20 employees and never had a
25 contract or lease with the City of Oakland or Port of Oakland as defined in Section 728 of the

1 Oakland City Charter (Living Wage Ordinance). As a result, AB Trucking is not a covered Port
2 Assisted Business subject to the provisions of Section 728 of the Oakland City Charter or subject
3 to the Amended Port Ordinance Number 3666 (“Ordinance 3666”) that incorporated Section
4 728.

5 3. *Tien v. Tenet Healthcare Corp.* (2011) 192 Cal.App.4th 1055 is a newly decided
6 California appellate case clarifying the landmark California Supreme Court decision of *Linder v.*
7 *Thrifty Oil Co.* (2000) 23 Cal.4th 429. *Tien* held that *Linder* does not “foreclose courts from
8 examining a legal issue in addressing certification; *Linder* said only that a plaintiff need not
9 establish a likelihood of success on the merits in order to obtain class certification. . . *Linder*
10 expressly recognized that whether the claims of the representative plaintiffs are typical of class
11 claims was an issue that might intertwine with the merits of the case, thus necessarily requiring
12 the court to consider those merits.” (*Tien v. Tenet Healthcare Corp.*, *supra*, 192 Cal.App.4th at
13 1069; See also *Fireside Bank v. Superior Court*, (2007) 40 Cal.4th 1069.)

14 4. On June 10, 2011, the deposition of former AB Trucking truck driver/trainee
15 David Blyth occurred. On June 13, 2011 the deposition of AB Trucking truck driver/trainee Jose
16 Luis Navarro occurred. Both of these men provided new factual testimony under oath about AB
17 Trucking’s meal and break policy. Their testimony includes the following: 1) they were
18 employed with AB Trucking during the relevant time period of this litigation and were made
19 aware of AB Trucking’s policy to encourage employees to take meal breaks and rest periods by
20 supervisors; 2) dispatchers would contact them on occasion and remind them to take their breaks,
21 3) they took breaks when ever they needed to, and 4) they could take breaks without interruption,
22 “with the engine turned off” and away from their vehicles.
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13 1069; See also *Fireside Bank v. Superior Court*, (2007) 40 Cal.4th 1069.)

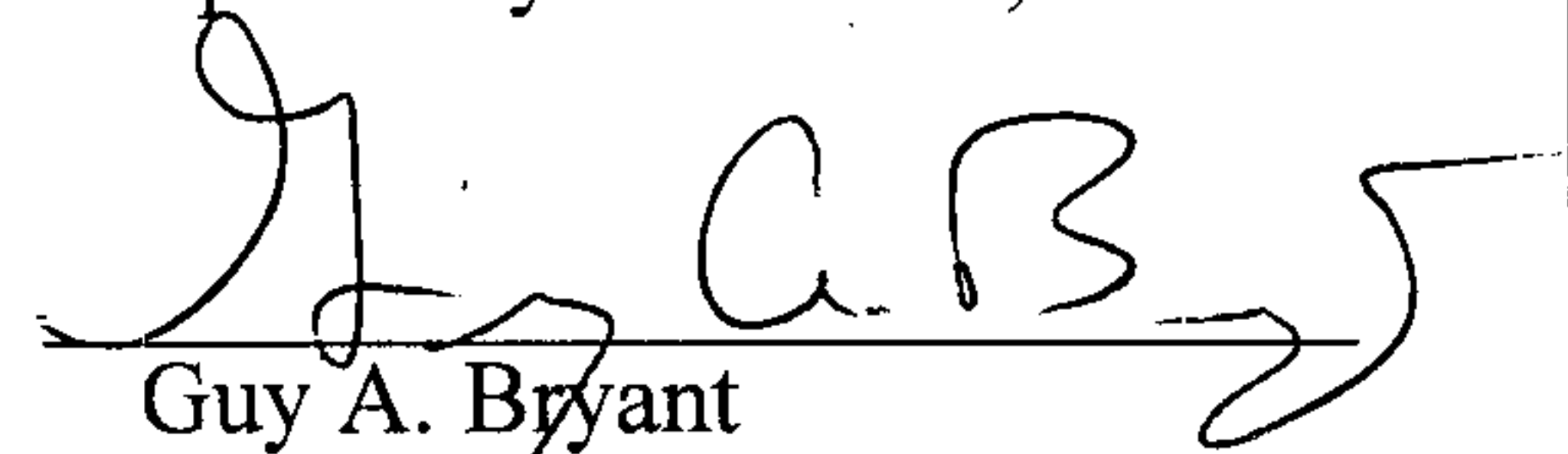
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18 employed with AB Trucking during the relevant time period of this litigation and were made
19 aware of AB Trucking’s policy to encourage employees to take meal breaks and rest periods by
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21 3) they took breaks when ever they needed to, and 4) they could take breaks without interruption,
22 “with the engine turned off” and away from their vehicles.
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1 5. In *Dilts v. Penske Logistics, LLC*, 2011 U.S. Dist. LEXIS 122421 (S.D. Cal. Oct.
2 19, 2011) a federal court recently held that the Federal Aviation Authorization Act ("FAA Act")
3 preempted the application of California's meal and rest break laws on truck drivers. According to
4 the federal court, the meal and rest break law interfered with competitive market forces (price,
5 route or service) in violation of the FAA Act.

6 This motion will be based upon the provisions of California Code of Civil Procedure
7 section 1008, California Rules of Court, Rule 3.764, upon all the papers, records, and documents
8 on file herein and upon evidence, oral and documentary, to be presented at the hearing of the
9 motion hereto and served and filed herewith, and any other cited authority presented by
10 appearing counsel during oral argument.

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12 Dated this 12th day of January, 2012.

13
14 Respectfully Submitted,

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16 Guy A. Bryant
17 Bryant & Brown
18 Attorneys for Defendant
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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,)
on behalf of themselves and all other similarly)
12 situated,)

13 Plaintiffs,

14 vs.

15 OAKLAND PORT SERVICES CORP. d/b/a)
16 AB TRUCKING, and DOES 1-20)

17 Defendant.)

) Case No.: RG 08-379099

) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT OF**
) **MOTION TO RECONSIDER CLASS**
) **CERTIFICATION ORDER, AMEND,**
) **MODIFY OR DECERTIFY A CLASS**
) **ACTION; CCP § 1008 AND CAL. RULES**
) **OF COURT, RULE 3.764**

) Action Filed: March 28, 2008

) Date: February 9, 2012

) Dept.: 20

) Time: 2:00 p.m.

) Reservation Number: R-1249926

) Set for Trial: February 14, 2012

) Before Honorable Judge Robert Freedman
)
)
20)

TABLE OF CONTENTS

1

2

3 **I. INTRODUCTION**..... p. 2

4 **II. Relevant Facts** p. 4

5

6 **A. Background** p. 4

7

8 **1. AB Trucking Exemption From California**
Overtime Rules-DOT Regulations..... p. 4

9

10 **2. AB Trucking Is Exempt From Oakland**
Living Wage Ordinance Rules..... p.6

11

12 **3. AB Trucking’s Meal And Rest Period Policy**..... p.7

13 **III. ARGUMENT** p.10

14

15 **A. Class Certification Orders Are**
Tentative And Subject To Modification..... p.10

16

17 **B. The Court Or Any Party May Move To**
Decertify A Class..... p.10

18

19 **C. Legal Standard For Class Certification**.....p.11

20

21 **D. The Requirements For Class Certification**
Have Not Been Met In This Case.....p.12

22

23 **1. AB Trucking Drivers Are Exempt From**
California Overtime Laws..... p.12

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1
2
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4
5
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13
14
15
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24
25

2. AB Trucking Is Not Covered Under
The Oakland Living Wage Ordinance. p.13

3. New Evidence Shows AB Trucking
Complied With Meal and Rest Period Rules. p.15

4. Dependent Claims Should Not Be Basis
To Preserve Class Certification. p.17

a) *Unfair Business Practices.* p.17

b) *Failure to Provide Accurate
Itemized Wage Statements.* p.18

c) *Misclassification of Employment/
Failure to Pay for All Hours Worked.* p.18

d) *Failure to Pay Wages Owing at Discharge or Quitting.* p.19

IV. CONCLUSION. p.19

TABLE OF AUTHORITIES

Federal Cases

Barnick v. Wyeth, (C.D. Cal. 2007) 346 F.Supp. 1102. p.18,19

Dilts v. Penske Logistics, LLC, 2011 U.S. Dist. LEXIS 122421 (S.D. Cal. Oct. 19, 2011). p.3,16

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State Cases

Arenas v. El Torito Restaurants, Inc. (2010) 183 Cal.App.4th 723. p.12

Barnhill v. Robert Saunders & Co., (1981) 125 Cal.App.3d 1. p.19

Brinker Restaurant Corp. v. Superior Court (2008) 165 Cal.App.4th 25. p.17

Brinkley v. Public Storage, Inc. (2008) 167 Cal.App.4th 1278. p.17

Cicairos v. Summit Logistics, Inc. (2005) 133 Cal.App.4th 949. p.16,17

Cortez v. Purolator Air Filtration Products Co., (2000) 23 Cal.4th 163. p.17

Farmers Ins. Exchange v. Superior Court, (1992) 2 Cal.4th 377. p.17

Fireside Bank v. Superior Court, (2007) 40 Cal.4th 1069. p.3,11

Hamwi v. Citinational-Buckeye Inv. Co. (1977) 72 Cal.App.3d 462. p.11

Hernandez v. Chipotle Mexican Grill, Inc. (2010) 189 Cal.App.4th 751. p.17

Hicks v. Kaufman & Broad Home Corp. (2001) 89 Cal.App.4th 908. p.12

Linder v. Thrifty Oil Co. (2000) 23 Cal.4th 429. p.3,11,12

Sav-on Drug Stores, Inc. v. Superior Court (2004) 34 Cal.4th 319. p.11

Tien v. Tenet Healthcare Corp. (2011) 192 Cal.App.4th 1055. p.3,11,17

Vasquez v. Superior Court (1971) 4 Cal.3d 800. p.10

Walsh v IKON Office Solutions, Inc. (2007) 148 Cal.App.4th 1440. p.11,12

1	<u>Federal Statutes</u>	
2	29 U.S.C. § 213(b)	p.13
3	49 U.S.C. § 14501©(1).	p.16
4	49 U.S.C. § 13102(14).	p.16
5	<u>Federal Regulations</u>	
6	Code of Federal Regulations, Title 49, Sections 395.1 to 395.13.	p.2,13
7	Code of Federal Regulations, Title 49, Sections 383.5.	p.13
8	<u>State Statutes</u>	
9	Code of Civil Procedure section 382.	p.11
10	Code of Civil Procedure section 1008 (c) and (e).	p.10
11	Bus. & Prof. Code §17200.	p.17
12	California Labor Code §226.	p.18
13	<u>State Rules</u>	
14	California Rules of Court, Rule 3.764.	p.10
15	California Rules of Court, Rule 3.767(b).	p.10
16	IWC Wage Order, 9-2001, §3.	p.2,13
17	<u>State Regulations</u>	
18	Cal. Code of Regs. §§ 11010-11150.	p.18
19	8 Cal. Code of Regs. §13520.	p.19
20	<u>Other Authority</u>	
21	Amended Port Ordinance Number 3666.	p.3,14
22	Section 728 of the Oakland City Charter.	p.2,13,14
23	Oakland Code of Ordinances, Title 2, Chapter 2.28.	p.14
24	Webster's 9 th New Collegiate Dict. (1984) p. 948.	p.17

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1 **I. INTRODUCTION**

2 OAKLAND PORT SERVICES CORP. d/b/a AB TRUCKING, a California Corporation,
3 (collectively hereinafter referred to as “AB Trucking” or “Defendant”) hereby seeks an order of
4 this Court, pursuant to California Rules of Court, Rule 3.764 to decertify the class as set forth in
5 the December 3, 2010 Order of Honorable Judge Robert B. Freedman (“Order”). (See December
6 3, 2010, Order attached and incorporated herein as **Exhibit 1** to the Declaration of Guy A.
7 Bryant filed in support of this Motion.) Decertification of the class is proper in this case because
8 new substantive evidence and case law have emerged during the course of 2011 that establish
9 that common issues of fact do not predominate over individual issues in this case. Specifically,
10 through this motion Defendant will demonstrate, inter alia, the following:

11 1. AB Trucking drivers and trainees have always been required to obtain a Class A
12 commercial driver’s license and follow the Department of Transportation (“DOT”) Safety
13 regulations due to the weight and size of the commercial vehicles they drive (Class 8), weight
14 and size of the containers transported, and because of the various federal, state and Port of
15 Oakland operational requirements commercial truck drivers must follow. Exempted from
16 California overtime compensation requirements are “employees whose hours of service are
17 regulated by . . . the United States Department of Transportation Code of Federal Regulations,
18 Title 49, Sections 395.1 to 395.13.”(IWC Wage Order, 9-2001, §3.) As a result, AB Trucking
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20 2. AB Trucking has never employed more than 20 employees and never had a
21 contract or lease with the City of Oakland or Port of Oakland as defined in Section 728 of the
22 Oakland City Charter (Living Wage Ordinance). As a result, AB Trucking is not a covered Port
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12 4. On June 10, 2011, the deposition of former AB Trucking truck driver/trainee
13 David Blyth occurred. On June 13, 2011 the deposition of AB Trucking truck driver/trainee Jose
14 Luis Navarro occurred. Both of these men provided new factual testimony under oath about AB
15 Trucking's meal and break policy. Their testimony includes the following: 1) they were
16 employed with AB Trucking during the relevant time period of this litigation and were made
17 aware of AB Trucking's policy to encourage employees to take meal breaks and rest periods by
18 supervisors; 2) dispatchers would contact them on occasion and remind them to take their breaks,
19 3) they took breaks when ever they needed to, and 4) they could take breaks without interruption,
20 "with the engine turned off" and away from their vehicles.
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22 5. In *Dilts v. Penske Logistics, LLC*, 2011 U.S. Dist. LEXIS 122421 (S.D. Cal. Oct.
23 19, 2011) a federal court recently held that the Federal Aviation Authorization Act ("FAA Act")
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23 preempted the application of California's meal and rest break laws on truck drivers. According to
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1 the Court, the meal and rest break law interfered with competitive market forces (price, route or
2 service) in violation of the FAA Act.

3 **II. Relevant Facts**

4 **A. Background**

5 The Court is extremely familiar with the facts associated with this case so the Defendant
6 will forego summarizing all matters underlying this dispute. The facts relevant for the Court to
7 rule on this motion are as follows:

8 **1. AB Trucking Exemption From California Overtime Rules-DOT Regulations**

9 California is home to some of the largest and most complex port operations in the world.
10 Together, the Ports of Los Angeles and Long Beach are the third largest port operation in the
11 world and the busiest seaport in America. They handle approximately 43 percent of America's
12 imports, including 62 percent of all shipments to West Coast ports from Asian exporters. In
13 addition, the Port of Oakland ("Port") is the fourth busiest port in the United States and handles
14 more than 99 percent of the containerized goods moving through Northern California. In many
15 respects, the backbone of the complex intermodal transportation system is port trucking or
16 drayage, which generally involves the movement of international/interstate shipping containers
17 by truck via public roadway to or from the Port.
18

19 AB Trucking is a small drayage company that works near the Port. Port drayage is an
20 important part of the local trucking industry that specializes in hauling container freights
21 between port terminals and business warehouses, retail establishments, manufacturers or rail
22 lines. Port drivers are the individuals who pick up a container from a port terminal operation and
23 haul it by truck from the port to the rail yard, a company warehouse or local delivery destination.
24 AB Trucking drivers and trainees have always (including from March 28, 2004 to the present)
25

1 utilized Class 8 commercial vehicle trucks (Class 8 definition means gross vehicle weight rating
2 (GVWR) of anything above 33,000 pounds) which include tractor trailer trucks to carry out
3 drayage operations in the state of California or locations in the state of Nevada. (See Declaration
4 of Bill I. Aboudi attached and incorporated herein as **Exhibit 2** to the Declaration of Guy A.
5 Bryant filed in support of this Motion.)

6 AB Trucking drivers have always been required to follow the Department of
7 Transportation (“DOT”) Safety regulations due to the weight and size of the commercial vehicles
8 driven, weight and size of the containers transported, and various federal, state and Port of
9 Oakland operational requirements commercial truck drivers must follow. AB Trucking drivers
10 and trainees haul tractor trailers loaded with containers full of goods, utilize Class A commercial
11 driver’s licenses (“CDL”), and are not excluded from DOT safety rules. (See June 10, 2011
12 deposition of former AB Trucking truck driver/trainee David Blyth attached and incorporated
13 herein as **Exhibit 4** to the Declaration of Guy A. Bryant filed in support of this Motion at pp. 19-
14 32; See June 13, 2011 deposition of former AB Trucking truck driver/trainee Jose L. Navarro
15 attached and incorporated herein as **Exhibit 5** to the Declaration of Guy A. Bryant filed in
16 support of this Motion at pp. 13-28, 35.) Because all drivers and trainees of AB Trucking were
17 engaged in interstate commerce, had Class A commercial driver’s licenses (“CDL”) (a driver's
18 license required in the United States to operate any type of vehicle which has a gross vehicle
19 weight rating (GVWR) of 26,000 lb), drove vehicles that weighed in excess of 10,000 pounds,
20 and were regulated by the DOT, Federal Motor Carrier Safety Administration (“FMCSA”) and
21 Federal Highway Administration (FHWA), it was AB Trucking’s good faith understanding that
22 such employees are deemed exempt from the California overtime laws.
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1 AB Trucking has had a DOT Number as a registered motor carrier (#663960) during the
2 years relevant to this litigation. (See **Exhibit 2.**) Therefore, any “company policy” regarding the
3 payment of overtime for drivers/trainees at AB Trucking was based upon a good faith
4 understanding of DOT and other federal regulations. This policy was communicated to and
5 understood by AB Trucking drivers and trainees.

6 **2. AB Trucking Is Exempt From Oakland Living Wage Ordinance Rules**

7 AB Trucking has never employed more than 20 employees at any time during its
8 operations and it currently employs six (6) truck drivers due to the difficult economy and this
9 burdensome litigation. (See **Exhibit 2** attached to the Declaration of Guy A. Bryant incorporated
10 herein and filed in support of this Motion; See excerpt of Bill Aboudi’s June 8, 2009 deposition
11 at p. 180, lines 14-21 incorporated herein as **Exhibit 3** to the Declaration of Guy A. Bryant filed
12 in support of this Motion.)

13
14 AB Trucking has never had a contract with the City of Oakland and has never leased
15 property from the City of Oakland. On June 8, 2009, Mr. Aboudi testified under oath that AB
16 Trucking never had a lease agreement with the City of Oakland. (See Declaration of Bill Aboudi
17 incorporated herein as **Exhibit 2** and attached to the Declaration of Guy A. Bryant filed in
18 support of this Motion; See excerpt of Bill Aboudi’s June 8, 2009 deposition at pp. 35-41
19 incorporated herein as **Exhibit 3** and attached to the Declaration of Guy A. Bryant filed in
20 support of this Motion.) On June 8, 2009, Mr. Aboudi testified under oath that AB Trucking has
21 never had a contract with the Port of Oakland. (See **Exhibit 3** to the Declaration of Guy A.
22 Bryant filed in support of this Motion.) Because AB Trucking never employed more than 20
23 employees from 2002 to the present and never had a contract with the City of Oakland, AB
24 Trucking believed in good faith that the provisions of the City of Oakland Living Wage
25

1 Ordinance or Port's Living Wage Ordinance were not applicable to the operations of AB
2 Trucking.

3 **3. AB Trucking's Meal And Rest Period Policy**

4 AB Trucking has always had a policy to encourage its employees to take all of their
5 breaks and meal periods. This policy was communicated to all employees and employees were
6 not pressured to forego breaks or meal periods. In fact, AB Trucking made log books available
7 to truck drivers so they could log their hours behind the wheel pursuant to DOT regulations and
8 document meal and rest breaks in accordance with the law. (See June 10, 2011 deposition of
9 former AB Trucking truck driver David Blyth attached and incorporated herein as **Exhibit 4** to
10 the Declaration of Guy A. Bryant filed in support of this Motion at pp. 23-32.) Mr. Blyth and Mr.
11 Navarro testified at length that they were not prevented from taking rest breaks and meal breaks.
12 (See **Exhibit 4** and **Exhibit 5**.) Specifically, Mr. Blyth testified to the following among other
13 issues relevant to meal periods and breaks: 1) he was employed with AB Trucking from 2008-
14 2009 and was aware of AB Trucking's policy to encourage employees to take meal breaks and
15 rest periods; 2) dispatchers would contact him on occasion and remind him to take a break, 3) he
16 took breaks "when ever he felt like it," 4) he could take breaks "with the engine turned off" and
17 away from his vehicle, and 5) there were "at least 10" meal trucks available along the side of the
18 road near the Port to obtain hot food. (See **Exhibit 4** attached and incorporated herein to the
19 Declaration of Guy A. Bryant filed in support of this Motion at pp. 23-32.)
20

21 Specifically, Mr. Navarro, with the use of an interpreter, testified to the following issues
22 relevant to meal periods and breaks: 1) he had been employed with AB Trucking since 2004 and
23 was aware of the AB Trucking policy encouraging employees to take meal breaks and rest
24 periods from communications he received from the dispatcher and Mr. Aboudi; 2) the dispatcher
25

1 would contact him on occasion and remind him to take a break, 3) during meal periods he was
2 free “to do what ever he wanted” and he was never interrupted during his breaks by the office, 4)
3 he could take breaks “with the engine turned off” and away from his vehicle, and 5) That he was
4 able to eat meals even when he was stuck at the Port for 8 hours. (See **Exhibit 5** attached and
5 incorporated herein to the Declaration of Guy A. Bryant filed in support of this Motion at pp. 20-
6 28, 35.)

7 The Port and most of AB Trucking’s vendors follow a standard meal and break time
8 schedule: 10 minute breaks at 10:00 a.m. and 3:00 p.m., 1 hour lunch at 12:00 noon. During
9 these break times the Port completely shuts down and no loading or unloading of trucks can
10 occur. AB Trucking drivers generally coordinate their breaks with the break periods referenced
11 above and they take advantage of the various restroom stations and meal trucks that are often
12 located around company warehouses and similar areas surrounding the Port. (See **Exhibit 2** and
13 **Exhibit 4**.) For example, on Maritime Street in Oakland, there are always a minimum of three
14 meal trucks strategically stationed along the road to be conveniently accessible to truck drivers
15 waiting in line to enter or exit Port entrances. In addition, some truck drivers choose to bring
16 their lunches and snacks from home. (*Id.*)

18 On September 11, 2009, Jovi Aboudi (Payroll Officer for AB Trucking) testified at her
19 deposition that “TimeCalc” a payroll software program used by AB Trucking had an “automatic
20 setting” for showing a 1 hour break deduction with regard to an employee’s pay. However, Ms.
21 Aboudi testified that she would write notes manually on the payroll sheets she received if she
22 “received instructions from Bill” about not deducting an employee’s pay with regard to the hour
23 lunch period. Ms. Aboudi specifically testified that if she received instructions from Bill (or
24 other managers in the Oakland office) then she would not “deduct an hour break.” (See excerpt
25

1 of Jovi Aboudi's September 11, 2009 deposition at p. 36, lines 1-17, p. 60, lines 8-25, and p. 61,
2 line 1 incorporated herein as **Exhibit 6** to the Declaration of Guy A. Bryant filed in support of
3 this Motion.)

4 TimeCalc, the computer software program, may have an "automatic setting" but AB
5 Trucking does not have an automatic policy with regard to deducting one hour's pay for meal or
6 rest breaks. It has always been AB Trucking's policy to make adjustments to employee payroll to
7 never deduct from an employee's pay check their meal breaks if that employee was entitled to be
8 paid. In his role as president of AB Trucking, Mr. Aboudi personally reviews time sheets and
9 dispatch assignments of all truck drivers and trainees. He also signs off on all payments to
10 employees. He would instruct Ms. Aboudi on occasion to adjust payroll to not deduct payment
11 for meal or rest breaks when appropriate. He would make sure that appropriate adjustments were
12 made to an employee's pay and that the employee received the adjusted payment. (See **Exhibit 2**
13 and **Exhibit 4**.)

15 Mr. Aboudi further testified at his deposition that AB Trucking always had a policy with
16 regard to meal periods that was communicated to all truck drivers. He explained that "we
17 expected all drivers to take their meal break, one hour, every shift." This policy was explained at
18 the "time of hire" and during the course of employment on as needed basis. Some drivers have
19 their schedules set for them while many other drivers have full control over when and how to
20 take their breaks because they are on the road and other locations away from the AB Trucking
21 office. This is the process that has been followed through out the history of AB Trucking. (See
22 **Exhibit 2, Exhibit 4 and Exhibit 5**; See also **Exhibit 3** attached to the Declaration of Guy A.
23 Bryant incorporated herein and filed in support of this Motion at p. 116, lines 13-25, p. 117, lines
24 15-25.)

1 **III. ARGUMENT**

2 **A. Class Certification Orders Are Tentative And Subject To Modification.**

3 On December 3, 2010, this Court issued an Order granting the certification of a class.
4 (See December 3, 2010, Order attached and incorporated herein as **Exhibit 1** to the Declaration
5 of Guy A. Bryant filed in support of this Motion.) The United States Supreme Court has
6 characterized class-certification orders as “inherently tentative,” such that the certifying court
7 “remains free to modify them in the light of subsequent developments in the case.” (*Gen. Tel. of*
8 *the Southwest v. Falcon*, 457 U.S.147, 160 (1982); *Vasquez v. Superior Court* (1971) 4 Cal.3d
9 800, 821.) Even after a certification order is entered, the judge remains free to modify it in the
10 light of subsequent developments in the litigation. (*Id.*)

11
12 In California, the California Rules of Court confirm the established principle that orders
13 granting class certification may be “altered or amended as necessary.” (California Rules of
14 Court, Rule 3.767(b).) Thus, certification orders can be modified at any time prior to trial.
15 (*Vasquez v. Superior Court, supra*, 4 Cal.3d at p. 821.)

16
17 **B. The Court Or Any Party May Move To Decertify A Class**

18 California Rules of Court, Rule 3.764 provides in relevant part:

19 “Any party may file a motion to: (1) Certify a class; (2) Determine the existence of and certify
20 subclasses; (3) Amend or modify an order certifying a class; or (4) Decertify a class.”

21 The California Code of Civil Procedure provides that if a court at any time determines
22 that there has been a change of law that warrants it to reconsider a prior order it entered, it may
23 do so on its own motion or upon the motion of a party and enter a different order. (CCP § 1008
24 (c) and (e).) Moreover, based upon discovery or other developments, the party opposing the class
25

1 may move to decertify the class on the ground that the prerequisites for a class action do not in
2 fact exist. (*Walsh v IKON Office Solutions, Inc.* (2007) 148 Cal.App.4th 1440, 1450.)

3 **C. Legal Standard For Class Certification**

4 Class actions in California are governed by Code of Civil Procedure section 382,
5 authorizing such suits “when the question is one of a common or general interest, of any persons,
6 or when the parties are numerous, and it is impracticable to bring them all before the court.” A
7 court must inquire into the numerosity, ascertainability, whether common questions of law or
8 fact predominate, whether the class representatives have claims or defenses typical of the class;
9 and whether the class representatives can represent the class adequately. (*Linder v. Thrifty Oil*
10 *Co.*, (2000) 23 Cal.4th 429, 435.) It is the Plaintiffs’ burden to support each of the above factors
11 with a factual showing. (*Hamwi v. Citinational-Buckeye Inv. Co.* (1977) 72 Cal.App.3d 462.)

12 A court is vested with discretion to weigh the concerns that affect class certification.
13 (*Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) Plaintiffs have
14 erroneously argued that class certification is “essentially a procedural [question] that does not
15 ask whether an action is legally or factually meritorious.” (See *Linder v. Thrifty Oil Co.*, *supra*,
16 23 Cal.4th 439.)

17 However, *Tien v. Tenet Healthcare Corp.* (2011) 192 Cal.App.4th 1055, a new California
18 appellate case, has clarified the *Linder* decision to explain that a court is required to consider the
19 substantive merits of a claim when making a determination on class certification. *Tien* held that
20 *Linder* does not “foreclose courts from examining a legal issue in addressing certification; *Linder*
21 said only that a plaintiff need not establish a likelihood of success on the merits in order to obtain
22 class certification. (*Tien*, 192 Cal.App.4th at p. 1069; citing *Fireside Bank v. Superior Court*,
23 (2007) 40 Cal.4th 1069, 1091-1092.) “*Linder* expressly recognized that whether the claims of the
24
25

1 representative plaintiffs are typical of class claims was an issue that might intertwine with the
2 merits of the case, thus necessarily requiring the court to consider those merits.” (*Id.*; citing
3 *Linder v. Thrifty Oil Co.*, *supra*, 23 Cal.4th at p. 443.)

4 When determining whether common questions of law or fact predominate, a trial court
5 must examine the issues framed by the pleadings and the law applicable to the causes of action
6 alleged. (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916.) “Whether
7 common issues predominate over individual issues necessarily involves an examination of the
8 issues framed by the pleadings and the law applicable to the causes of action alleged so that the
9 court can consider the form a trial of those issues would take.” (*Tien, supra*, 192 Cal.App.4th at
10 p. 1069; citing *Hicks, supra*, 89 Cal.App.4th at p. 916.) In summary, in determining whether
11 common issues “predominate,” courts must consider both plaintiff’s legal theories and
12 defendant’s affirmative defenses. (*Walsh v IKON Office Solutions, Inc.*, *supra*, 148 Cal.App.4th
13 at p. 1450.) If it is found the class action will splinter into individual trials, common questions
14 do not predominate and litigation of the action in the class format is inappropriate. (See *Arenas v.*
15 *El Torito Restaurants, Inc.* (2010) 183 Cal.App.4th 723, 732.)

17 **D. The Requirements For Class Certification Have Not Been Met In This Case.**

18 1. **AB Trucking Drivers Are Exempt From California Overtime Laws.**

19 AB Trucking drivers and trainees have always (including from March 28, 2004 to the
20 present) utilized Class 8 commercial vehicle trucks (“CMV”)(Class 8 definition means gross
21 vehicle weight rating (GVWR) of anything above 33,000 pounds) which include tractor trailer
22 trucks to carry out drayage operations in the state of California or locations in the state of
23 Nevada. (See Declaration of Bill I. Aboudi attached and incorporated herein as **Exhibit 2** to the
24 Declaration of Guy A. Bryant filed in support of this Motion.) The United States Department of
25

1 Transportation Code of Federal Regulations, Title 49 section 383.5 defines a CMV more
2 specifically as follows:

3 “*Commercial motor vehicle (CMV)* means a motor vehicle or combination of motor vehicles
4 used in commerce to transport passengers or property if the motor vehicle—

5 (1) Has a gross combination weight rating or gross combination weight of 11,794 kilograms or
6 more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross
7 vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds),
8 whichever is greater; or

9 (2) Has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms
10 (26,001 pounds or more), whichever is greater; or . . .”

11 Commercial Motor Vehicles are plainly regulated by Title 49, Sections 395.1 to 395.13
12 of the Code of Federal Regulations. (See 49 C.F.R. Section 395.3.) Similarly, all drivers and
13 trainees of AB Trucking were engaged in interstate commerce, had Class A commercial driver’s
14 licenses (“CDL”) (a driver's license required by the DOT to operate any type of vehicle which
15 has a gross vehicle weight rating (GVWR) of 26,000 lb) (See 49 C.F.R. Section 383.5), and
16 hauled tractor trailers with containers as long as 53 feet. (See **Exhibit 2**, **Exhibit 4**, and **Exhibit**
17 **5**.) Most of the IWC Wage Orders (including the IWC Wage Orders that are most likely to apply
18 to drivers) exempt employees whose hours of service are regulated by . . . the United States
19 Department of Transportation Code of Federal Regulations, Title 49, Sections 395.1 to 395.13.”
20 (IWC Wage Order, 9-2001, §3; see also 29 U.S.C. § 213(b) [exemption from FLSA over-time
21 laws].) As a result, AB Trucking drivers and trainees should be deemed exempt from state
22 overtime laws.

22 2. AB Trucking Is Not Covered Under The Oakland Living Wage Ordinance

23 On March 5, 2002, Oakland voters passed Measure I (“§728). This measure amended the
24 City of Oakland Charter effective April 25, 2002, by adding Section 728 entitled “Living Wage
25 and Labor Standards at Port assisted Businesses.” On October 1, 2002, the Port Board of

1 Directors Amended Port Ordinance Number 3666 ("Ordinance 3666") to incorporate the
2 provisions of §728 and to apply those provisions to month-to-month tenants effective November
3 1, 2002. Any tenancy agreement with the Aviation or Maritime Divisions that go into month-to-
4 month status after November 1, 2002 will be subject to the Living Wage requirements if the
5 contract meets the other minimum standards for coverage set forth in §728.

6 Section 728 of the Oakland City Charter applies to businesses involved in a Port of
7 Oakland aviation or maritime business (i.e., those located at Oakland International Airport or in
8 the seaport area or those providing aviation or maritime related services) that also:

- 9
- 10 • pay the Port \$50,000 or more by means of a contract, lease or license (for leases under
11 one year, this applies if \$50,000 or more is paid over 5 years),
 - 12 • hold service contracts with the Port, where the Port pays \$50,000 or more over the term
13 of the contract,
 - 14 • hold a subcontract, sublease, sublicense, management agreement, etc. with any of the
15 above companies, or
 - 16 • receive \$50,000 or more in financial assistance from the Port.
 - 17 • have more than 20 employees spending more than 25% of their work time working on
18 Port-related work.

19 City of Oakland Living Wage Ordinance, Oakland Code of Ordinances, Title 2, Chapter
20 2.28, Section 2.28.010 [Title and Purpose] provides: "This chapter shall be known as the
21 "Oakland living wage ordinance." The purpose of this chapter is to require that nothing less than
22 a prescribed minimum level of compensation (a living wage) be paid to employees of service
23 contractors of the city and employees of CFARs.

24 Section 2.28.020 [Definitions] provides in relevant part:

25 "City" means the city of Oakland and all city agencies, departments and offices.

"City financial assistance recipient" (CFAR) means any person who receives from the city
financial assistance as contrasted with generalized financial assistance such as through tax
legislation, in an amount of one hundred thousand dollars (\$100,000.00) or more in a twelve (12)
month period.

1 “Contractor” means any person that enters into a service contract with the city in an amount
equal to or greater than twenty-five thousand dollars (\$25,000.00).

2 AB Trucking has never employed more than 20 employees at any time during its
3 operations. (See **Exhibit 2** and **Exhibit 3**, p. 35, lines 3- 17.) Moreover, AB Trucking has never
4 had a contract with the City of Oakland. (*Id.*) In 2010, Plaintiffs’ counsel sent a Public Records
5 Act request to the Port of Oakland requesting all documents provided to AB Trucking and
6 OMSS from the Port. In response, all Plaintiffs’ counsel received was a “space assignment” that
7 was provided in 2005 in exchange for a \$974.00 deposit. (See Declaration of Lisl R. Duncan In
8 Support of Plaintiffs’ Motion For Class Certification dated July 19, 2010 attached and
9 incorporated herein as **Exhibit 7** to the Declaration of Guy A. Bryant filed in support of this
10 motion.) A space assignment in exchange for a \$974.00 deposit is not a contract as defined
11 under the terms of the Living Wage Ordinance.
12

13 3. New Evidence Shows AB Trucking Complied With Meal and Rest Period Rules

14 On June 10, 2011, the deposition of former AB Trucking truck driver/trainee David Blyth
15 occurred. On June 13, 2011 the deposition of former AB Trucking truck driver/trainee Jose Luis
16 Navarro occurred. Both of these men provided new factual testimony under oath about AB
17 Trucking’s meal and break policy. As set forth above, their testimony included the following: 1)
18 they were employed with AB Trucking during the relevant time period of this litigation and were
19 made aware of AB Trucking’s policy to encourage employees to take meal breaks and rest
20 periods by supervisors; 2) dispatchers would contact them on occasion and remind them to take
21 their breaks, 3) they took breaks when ever they needed to, 4) they could take breaks without
22 interruption, “with the engine turned off” and away from their vehicles, and 5) they filled out
23 their own time records. (See **Exhibit 4** and **Exhibit 5**.)
24
25

1 In *Dilts v. Penske Logistics, LLC*, 2011 U.S. Dist. LEXIS 122421 (S.D. Cal. Oct. 19,
2 2011) a federal court recently held that the Federal Aviation Authorization Act ("FAA Act")
3 preempted the application of California's meal and rest break laws on truck drivers. According to
4 this federal court, the meal and rest break law interfered with competitive market forces (price,
5 route or service) in violation of the FAA Act. The goal of the FAA Act is to deregulate the motor
6 carrier industry and to help ensure that transportation rates, routes, and services rely on
7 competitive market forces. The Act contains a broad preemption statute which declares that a
8 state may not enact or enforce a law or regulation that is related to a price, route, or service of
9 any motor carrier. (49 U.S.C. § 14501(c)(1).) The term "motor carrier" means a person providing
10 commercial motor vehicle transportation for compensation. (49 U.S.C. § 13102 [14]; AB
11 Trucking's Motor Carrier number is **MC-310575**.) Relation to price, route, or service is found
12 where "the regulation has more than an indirect, remote, or tenuous effect on the motor carrier's
13 prices, routes, or services." Even if the law does not directly regulate motor carriers, preemption
14 will apply if the effect of the regulation would be to make carriers offer different services than
15 what the market would dictate. In *Penske*, the court concluded the California meal break laws
16 imposed conditions that affected the "frequency and scheduling of transportation" and the laws
17 impacted *Penske's* "prices" because of the increased cost of additional drivers, helpers, tractors,
18 and trailers necessary to ensure off-duty breaks under California law.

19 This Court is aware the law on this issue is unsettled in California. In *Ciciaros* (a non-
20 class action case), the Court of Appeal held that the employer's obligation to provide employees
21 with an adequate meal period was not satisfied by assuming that the meal periods were taken,
22 because employers have "an affirmative obligation to ensure workers are actually relieved of all
23 duty." (*Cicairos v. Summit Logistics, Inc.* (2005) 133 Cal.App.4th 949.) The California Supreme
24 Court has since granted review of *Cicairos* and three other appellate cases that held contrary to
25 *Cicairos* that California law only requires an employer to make rest period available does not

1 require an employer to ensure that employees take rest periods. (See *Brinker Restaurant Corp. v.*
2 *Superior Court* (2008) 165 Cal.App.4th 25; *Brinkley v. Public Storage, Inc.* (2008) 167
3 Cal.App.4th 1278; *Hernandez v. Chipotle Mexican Grill, Inc.* (2010) 189 Cal.App.4th 751.)

4 In this case, the admissible evidence offered in support of this motion would satisfy the
5 more rigorous test of *Cicairos*. Here, the testimony of Mr. Blyth, Mr. Navarro, and Mr. Aboudi
6 demonstrate that AB Trucking did not pressure its drivers to make a “certain number of trips
7 during a work day” and did not create a work environment that effectively deprived drivers of an
8 opportunity to take breaks. (*Cicairos, supra*, 133 Cal.App.4th at pp. 962-963.) Defendant has
9 requested that the Court refrain from moving forward to trial on this issue due to the unsettled
10 status of the law and the pending ruling on *Brinker* by the California Supreme Court later this
11 year. However, if the Court is inclined to press forward with a ruling on this matter then
12 Defendant humbly requests that the Court follow the ruling in *Tien* where the court held: “In
13 keeping with the ordinary dictionary meaning of ‘provide,’ which means ‘to supply or make
14 available’ (Webster’s 9th New Collegiate Dict. (1984) p. 948), the mandatory language does not
15 mean employers must ensure employees take meal breaks.” (*Tien, supra*, 192 Cal.App.4th at p.
16 1066.)

17 4. Dependent Claims Should Not Be Basis To Preserve Class Certification

18 a) *Unfair Business Practices*

19 In California, for example, a claim under California’s Unfair Competition Law (UCL) is
20 usually pled in conjunction with wage-and-hour claims. The UCL allows recovery of restitution,
21 as well as injunctive relief, for “any unlawful, unfair or fraudulent business act or practice. . . .”
22 Bus. & Prof. Code §17200. An action based on the UCL “borrows” violations of other laws
23 when committed pursuant to business activity. (*Farmers Ins. Exchange v. Superior Court*, (1992)
24 2 Cal.4th 377, 383.) Claims under the UCL are derivative of other claims and should fail if the
25 other claims fail. (*Cortez v. Purolator Air Filtration Products Co.*, (2000) 23 Cal.4th 163.)

1 b) *Failure to Provide Accurate Itemized Wage Statements*

2 Plaintiffs have alleged that AB Trucking failed to furnish class members with accurate
3 wage statements showing all the information required by California Labor Code §226: (a)
4 by, for example, failing to include compensation for allegedly missed meal or rest periods; (b)
5 the failure was knowing and intentional; and (c) the class members suffered injury as a result.
6 This claim is almost always dependent upon the viability of plaintiffs' wage and meal-period
7 claims asserted and thus will usually fail if these other claims fail. (*See, e.g., Barnick v. Wyeth,*
8 *(C.D. Cal. 2007) 346 F.Supp. 1102* [district court granted summary judgment on Labor Code
9 §226 claim after finding that plaintiff was an exempt outside salesperson].) There is no evidence
10 of "knowing and intentional" failure to comply with the requirements of §226 by AB Trucking.
11 Moreover, there is no evidence that the company willfully or intentionally gave drivers pay
12 statements that did not accurately reflect the hours they actually worked.

13 c) *Misclassification of Employment/Failure to Pay for All Hours Worked*

14 AB Trucking employed different levels of Trainees during the years relevant for this
15 lawsuit. Most Trainees were paid, including named representative Lavon Godfrey, if they
16 already had a Class A license and other industry related experience. (See **Exhibit 2** and **Exhibit**
17 **5.**) Depending on the level of experience/background of the new driver, that would determine
18 what amount of training or pay such driver would receive. This was done on a case by case basis
19 as AB Trucking was working with non-profit organizations and Oakland law enforcement
20 authorities to assist individuals that had criminal records (e.g., Plaintiff Lavon Godfrey) return to
21 the workforce. (See **Exhibit 2.**) Under California law, employers may pay new inexperienced
22 employees less than the minimum wage for the first 160 hours of employment. (See Cal. Code of
23 Regs. §§ 11010-11150.) An employer can pay "learners" 85% of the minimum wage under such
24
25

1 circumstances. (*Id.*) Given the facts in this case, there is no “community of interest” between the
2 members of the purported class of Trainees. Thus, the Trainees should not qualify as an
3 ascertainable class due to each trainee’s unique background. (**Exhibit 3**, pp. 138, 142-144.)

4 d) *Failure to Pay Wages Owing at Discharge or Quitting*

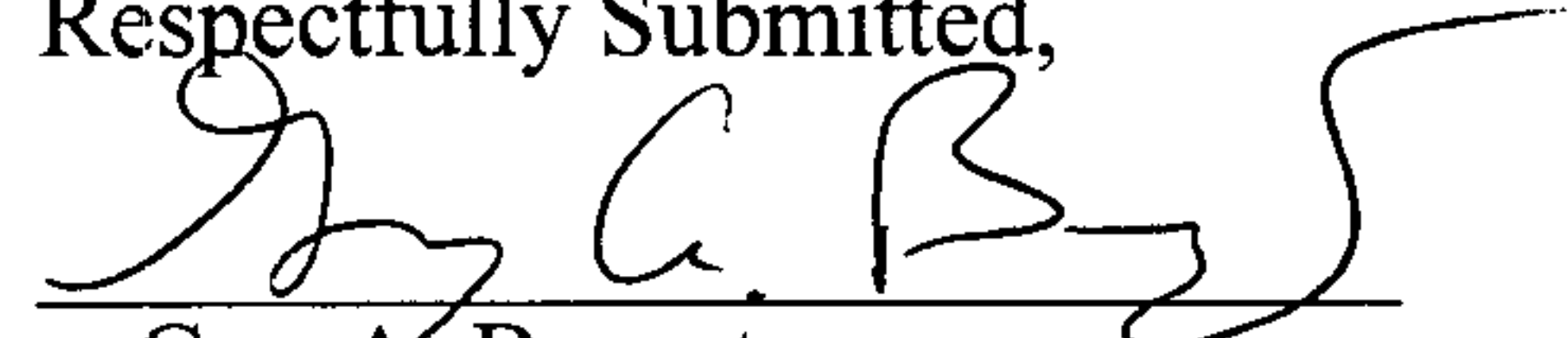
5 Waiting-time penalty claims usually are dependent upon plaintiffs’ wage and meal-period
6 payment claims, and therefore should fail if the other claims fail. (*Barnick v. Wyeth, supra*, 346
7 F.Supp. 1102.) Moreover, a company arguably should not be found to have “willfully” failed to
8 pay wages if it can show that there was a good faith dispute, in law or fact, that the claimed
9 wages were due at the time of termination. (*See* 8 Cal. Code of Regs. §13520; *see, e.g., Barnhill*
10 *v. Robert Saunders & Co.*, (1981) 125 Cal.App.3d 1 [denying former employee’s waiting time
11 penalties because, although the defendant employer had improperly asserted the equitable
12 defense of setoff, the state of the law regarding the application of that defense was not settled at
13 the time the employer asserted it, and the employer demonstrated that it had a good faith belief
14 that the defense applied at that time].)

15
16 **IV. CONCLUSION**

17 Based on the foregoing, AB Trucking respectfully requests this court for an order
18 decertifying the class as defined in the December 3, 2010 Order attached as **Exhibit 1**.

19 Dated this 12th day of January, 2012.

20 Respectfully Submitted,

21 

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23 Bryant & Brown
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25

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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
) **REQUEST FOR JUDICIAL NOTICE IN**
) **SUPPORT OF MOTION TO**
) **RECONSIDER CLASS CERTIFICATION**
) **ORDER, AMEND, MODIFY OR**
) **DECERTIFY A CLASS ACTION; CCP §**
) **1008 AND CAL. RULES OF COURT,**
) **RULE 3.764**
)
) Action Filed: March 28, 2008
) Date: February 9, 2012
) Dept.: 20
) Time: 2:00 p.m.
) Reservation Number: R-1249926
) Set for Trial: February 14, 2012
) Before Honorable Judge Robert B. Freedman
)
)
)

21 **INTRODUCTION**

22 Defendant OAKLAND PORT SERVICES CORP. d/b/a AB TRUCKING, a California
23 Corporation, (collectively hereinafter referred to as "AB Trucking" or "Defendant") hereby
24
25

1 requests that this court take judicial notice, according to Evidence Code sections 452(d) and 453,
2 of the following items:

- 3 • Declaration of Lisl R. Duncan In Support of Plaintiffs' Motion For Class Certification
4 dated July 19, 2010 ("Duncan Declaration") attached and incorporated herein as **Exhibit**
5 **7** to the Declaration of Guy A. Bryant.
- 6 • December 3, 2010 Order of Honorable Judge Robert B. Freedman ("Order") Granting
7 Plaintiffs' Motion For Class Certification as **Exhibit 1** to the Declaration of Guy A.
8 Bryant.

9
10 **Memorandum of Points and Authorities**

11 Evidence Code section 452(d) provides that the court can take judicial notice of the
12 records and pleadings in the pending action, or in any other action pending in the same court, or
13 any other court of record in the U.S.¹ Evidence Code section 453 provides that a trial court shall
14 take judicial notice of any matter specified in Section 452 if a party requests it and:

- 15 a) gives each adverse party sufficient notice of the request, through the pleadings or
16 otherwise, to enable such adverse party to prepare to meet the request; and
- 17 b) furnishes the court with sufficient information to enable it to take judicial notice of the
18 matter.²

19 Specifically, AB Trucking requests this court take judicial notice of the court records
20 listed above. The Duncan Declaration is relevant because it confirms that AB Trucking did not
21 have any contracts with the Port of Oakland other than simple "space assignment" that was kept
22

23
24
25 ¹ Evid. Code § 452(d).

² Evid. Code § 453.

1 open pursuant to a \$974.00 deposit. Ms. Duncan declared that she only received approximately 8
2 pages of documents after submitting a Public Records Act request to the Port of Oakland
3 demanding "all documents provided to Defendant from the Port of Oakland." (Duncan
4 Declaration at ¶ 18; also attached to the Declaration of Guy Bryant as part of **Exhibit 7** for the
5 Court's convenience is the 1 page Port of Oakland Tariff No. 2A document showing the \$974.00
6 space assignment deposit originally attached to the Duncan Declaration.) The Duncan
7 Declaration confirms the fact that no contracts with the Port of Oakland were obtained by AB
8 Trucking which would require AB Trucking to comply with the Oakland Living Wage
9 Ordinance ("Section 728"). Section 728 of the Oakland City Charter applies to businesses
10 involved in a Port of Oakland aviation or maritime business (i.e., those located at Oakland
11 International Airport or in the seaport area or those providing aviation or maritime related
12 services) that also:

- 14 • pay the Port \$50,000 or more by means of a contract, lease or license (for leases under
15 one year, this applies if \$50,000 or more is paid over 5 years),
- 16 • hold service contracts with the Port, where the Port pays \$50,000 or more over the term
17 of the contract,
- 18 • hold a subcontract, sublease, sublicense, management agreement, etc. with any of the
19 above companies, or
- 20 • receive \$50,000 or more in financial assistance from the Port.
- 21 • have more than 20 employees spending more than 25% of their work time working on
22 Port-related work.

23 The provisions of Section 728 are not applicable to AB Trucking because it did employ
24 more than 20 employees and never had contracts with the Port of Oakland anywhere near
25 \$50,000.

26 The December 3, 2010 Order of Honorable Judge Robert B. Freedman ("Order")
27 Granting Plaintiffs' Motion For Class Certification because it represents a snapshot in time
28 before the additional discovery occurred in this case and the emergence of new case law.

1 On June 10, 2011, the deposition of former AB Trucking truck driver/trainee David Blyth
2 occurred. On June 13, 2011 the deposition of AB Trucking truck driver/trainee Jose Luis
3 Navarro occurred. Both of these men provided new factual testimony under oath about AB
4 Trucking relevant to this litigation. Their testimony included the following: 1) they were
5 employed with AB Trucking during the relevant time period of this litigation and were made
6 aware of AB Trucking's policy to encourage employees to take meal breaks and rest periods by
7 supervisors; 2) dispatchers would contact them on occasion and remind them to take their breaks,
8 3) they took breaks when ever they needed to, and 4) they could take breaks without interruption,
9 "with the engine turned off" and away from their vehicles.

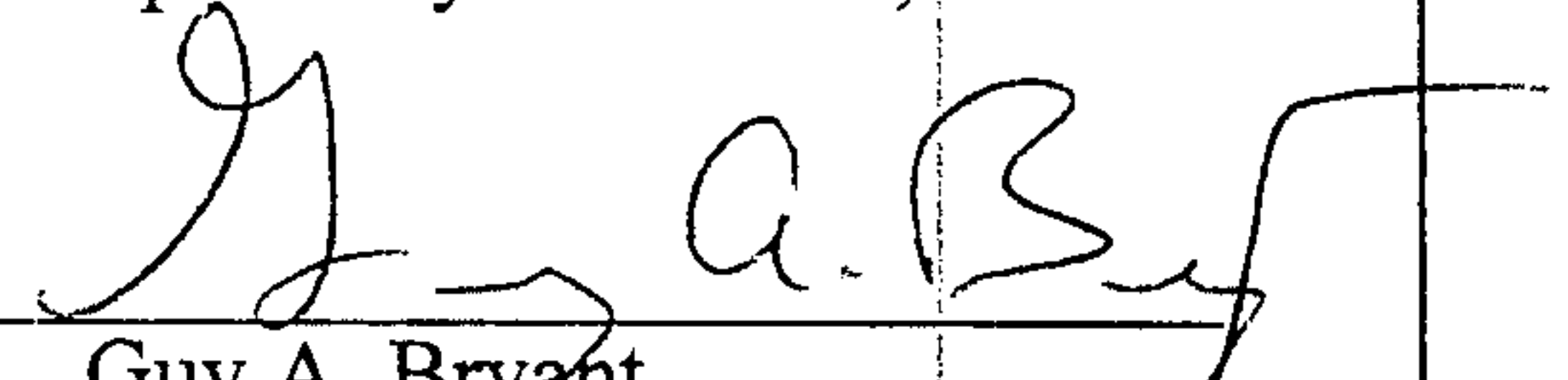
10 Based upon the foregoing documents and other evidence presented in support of this
11 instant motion to reconsider class certification, the Court has received new evidence allowing
12 modification or decertification of the class "in the light of subsequent developments in the
13 litigation." (*Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.)
14

15 **Conclusion**

16 Based on Evidence Code sections 452(d) and 453, the Cross-Complainant requests that
17 this court take judicial notice of Exhibits 1 and 7 attached to the declaration of Guy A. Bryant.

18 Dated this 12th day of January, 2012.

19
20 Respectfully Submitted,

21 

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23 Bryant & Brown
24 Attorney for Defendant
25

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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) **[PROPOSED] ORDER**
12 situated,)
Plaintiffs,) Action Filed: March 28, 2008
13) Date: February 9, 2012
vs.) Dept.: 20
14) Time: 2:00 p.m.
OAKLAND PORT SERVICES CORP. d/b/a) Reservation Number: R-1249926
15) Set for Trial: February 14, 2012
16 AB TRUCKING, and DOES 1-20) Before Honorable Judge Robert B. Freedman
Defendant.)
17)
18)
19)
20)

1 The Motion to Reconsider Class Certification Order, Amend, Modify or Decertify a Class
2 Action filed by AB Trucking came on for hearing on February 9, 2012 at 2:00 p.m. in
3 Department 20 of this Court, located at the Alameda County Superior Court, 1221 Oak Street,
4 Oakland, California. Attorney Guy Bryant appeared on behalf of Defendant AB Trucking.
5 Attorneys David A. Rosenfeld and Lisl R. Duncan appeared on behalf of Plaintiffs Lavon
6 Godfrey and Gary Gilbert, et al.

7 Having read and considered the motion, the memoranda filed by the parties, and having
8 heard argument of counsel.

9 **IT IS ORDERED THAT:**

10 The motion to decertify the class pursuant to California Code of Civil Procedure section
11 1008 and California Rules of Court, Rule 3.764 is GRANTED.
12

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16 Dated: _____

17 _____
18 Hon. Robert B. Freedman
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1 Meredith E. Brown - 142134
Guy A. Bryant -146190
2 The Law Office of Bryant & Brown
476 Third Street
3 Oakland, CA 94607
(510) 836-7563 (Telephone)
4 (510) 836-7564 (Facsimile)

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,
12 on behalf of themselves and all other similarly
situated,

13 Plaintiffs,

14 vs.

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

17 Defendant.
18
19
20

) Case No.: RG 08-379099

) **PROOF OF SERVICE**

) Action Filed: March 28, 2008

) Date: February 9, 2012

) Dept.: 20

) Time: 2:00 p.m.

) Reservation Number: R-1249926

) Set for Trial: February 14, 2012

) Before Honorable Judge Robert B. Freedman

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 January 12, 2012, I served the foregoing documents described as:

1 NOTICE OF MOTION AND MOTION TO RECONSIDER CLASS CERTIFICATION
2 ORDER, AMEND, MODIFY OR DECERTIFY A CLASS ACTION; MEMORANDUM
3 OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO RECONSIDER
4 CLASS CERTIFICATION ORDER, AMEND, MODIFY OR DECERTIFY A CLASS
5 ACTION; REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION;
6 DECLARATION OF GUY A. BRYANT IN SUPPORT OF MOTION; PROPOSED
7 ORDER.

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

10 **SEE MAILING LIST INCLUDED HEREIN**

11

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

16

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

19

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

23

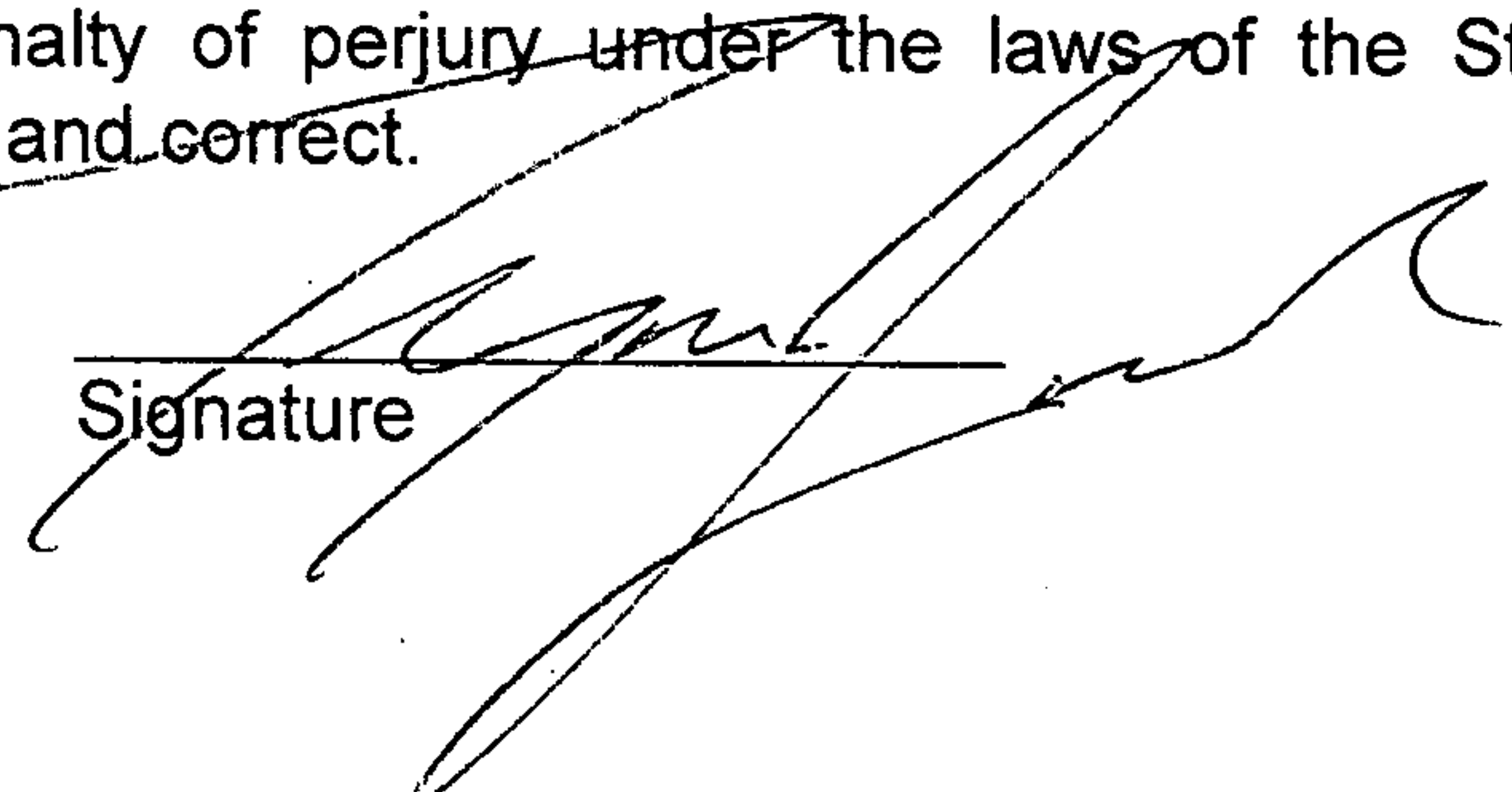
24 (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand
25 to the offices of the addressee.

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

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

TYRON JORDAN

Signature



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SERVICE LIST

VIA PERSONAL SERVICE ON ALL PARTIES LISTED HEREIN:

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

David A. Rosenfeld
Lisl R. Duncan
Weinberg, Roger & Rosenfeld
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, California 94501-1091

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OAKLAND PORT SERVICES CORP. d/b/a
6 AB TRUCKING, a California Corporation,

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

11	LAVON GODFREY and GARY GILBERT,	)	Case No.: RG 08-379099
12	on behalf of themselves and all other similarly	)	DECLARATION OF GUY A. BRYANT IN
13	situated,	)	SUPPORT OF MOTION TO
	Plaintiffs,	)	RECONSIDER CLASS CERTIFICATION
14	vs.	)	ORDER, AMEND, MODIFY OR
15	OAKLAND PORT SERVICES CORP. d/b/a	)	DECERTIFY A CLASS ACTION; CCP §
16	AB TRUCKING, and DOES 1-20	)	1008 AND CAL. RULES OF COURT,
	Defendant.	)	RULE 3.764
17		)	Action Filed: March 28, 2008
18		)	Date: February 9, 2012
19		)	Dept.: 20
20		)	Time: 2:00 p.m.
		)	Reservation Number: R-1249926
		)	Set for Trial: February 14, 2012
		)	Before Honorable Judge Robert B. Freedman

21
22 I, Guy A. Bryant, declare that I am an attorney licensed to practice before all courts of the
23 State of California, and am the attorney of record for Defendant OAKLAND PORT SERVICES
24 CORP. d/b/a AB TRUCKING, a California Corporation, (collectively hereinafter referred to as
25

1 “AB Trucking” or “Defendant”) in the above-entitled action. If called to testify I could
2 competently attest to the following from my personal knowledge:

3 1. On December 3, 2010, this Court issued an Order granting the certification of a class. A
4 true and correct copy of the December 3, 2010, Order is attached and incorporated herein as
5 **Exhibit 1.**

6 2. A true and correct copy of the Declaration of William (“Bill”) I. Aboudi is attached and
7 incorporated herein as **Exhibit 2.**

8 3. A true and correct copy of the June 10, 2011 deposition of former AB Trucking truck
9 driver/trainee David Blyth is attached and incorporated herein as **Exhibit 4.**

10 4. A true and correct copy of the June 13, 2011 deposition of AB Trucking truck
11 driver/trainee Jose Luis Navarro is attached and incorporated herein as **Exhibit 5.**

12 5. A true and correct copy of the September 11, 2009 deposition of Jovi Aboudi is attached
13 and incorporated herein as **Exhibit 6.**

14 6. A true and correct copy of the July 19, 2010 Declaration of Lisl R. Duncan In Support of
15 Plaintiffs’ Motion For Class Certification and dated attached and incorporated herein as **Exhibit**

16 7. For the Court’s convenience is the 1 page Port of Oakland Tariff No. 2A document
17 referencing a \$974.00 deposit for a space assignment that was originally attached to the Duncan
18 Declaration.

19 9. A true and correct copy of the 2006 letter from the Industrial Welfare Commission and
20 cover page of Wage Order, #9 addressed to AB Trucking attached and incorporated herein as
21 **Exhibit 8.** Also attached and incorporated herein as part of **Exhibit 8** is a true and correct copy
22 of the Federal Motor Carrier Safety Administration (“FMCSA”) on-line data showing that AB
23 Trucking is registered as a motor carrier. I was able to confirm that AB Trucking has a DOT
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25

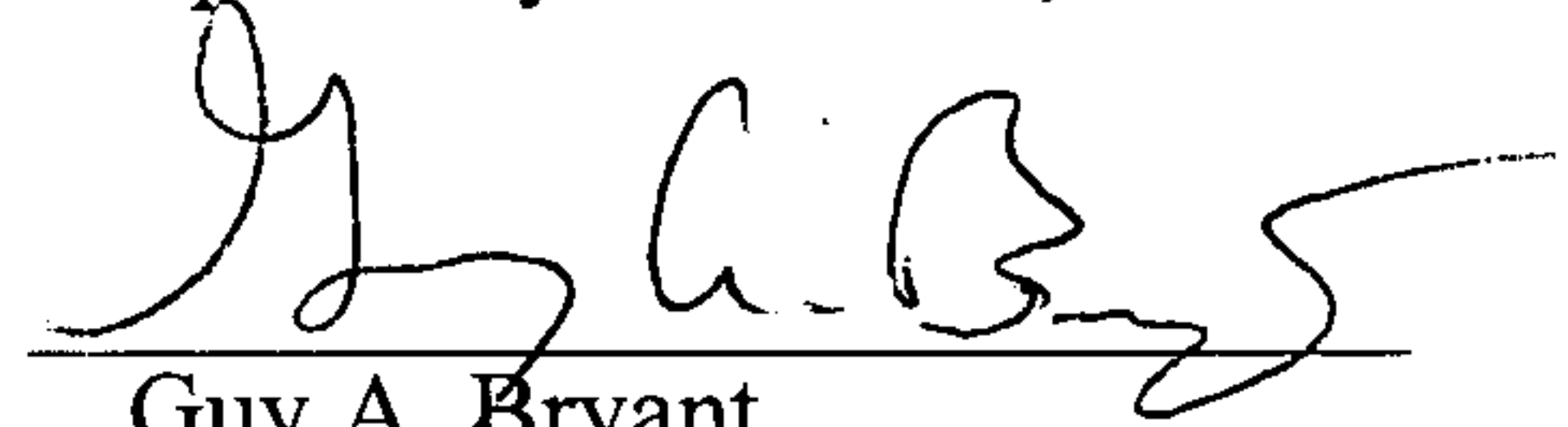
1 Number (#663960) and has been a regulated by the DOT during the years relevant to this
2 litigation. This information shows that AB Trucking is authorized to have up to 20 Trucks and up
3 to 20 drivers. Currently, AB Trucking has approximately 6 trucks and 6 drivers.

4 10. AB Trucking's Motor Carrier number is MC-310575. AB Trucking has been a registered
5 motor carrier during the years relevant to this litigation.

6 I declare under the penalty of perjury that the foregoing is true and correct. Executed in
7 Oakland, California.

8
9 Dated this 12th day of January, 2012.

10 Respectfully Submitted,

11 

12 Guy A. Bryant
13 Bryant & Brown
14 Attorneys for Defendants
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1

Weinberg, Roger & Rosenfeld
Attn: Rosenfeld, David A.
1001 Marina Village Parkway,
Ste. 200
Alameda, CA 94501-1091

Gordan & Rees, LLP
Attn: Alford, Fletcher C.
Embarcadero Center West
275 Battery Street, Suite 2000
San Francisco, CA 94111

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

Godfrey

Plaintiff/Petitioner(s)

VS.

AB Trucking, Inc.

Defendant/Respondent(s)

(Abbreviated Title)

No. RG08379099

Order

Motion for Class Certification
Granted

The Motion for Class Certification was set for hearing on 12/03/2010 at 10:00 AM 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 Class Certification ("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. Defendant's challenges to the operative Complaint, heard concurrently with the instant Motion, were overruled and denied by separate orders.

MOTION:

Plaintiffs now seek certification of a class and subclasses defined (with minor modifications made by the Court) as follows:

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").

Order

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.

LEGAL STANDARDS:

Class actions in California are governed by Code of Civil Procedure §382, authorizing such suits "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court." The Court must inquire into numerosity, ascertainability, whether common questions of law or fact predominate, whether the class representatives have claims or defenses typical of the class; and whether the class representatives can represent the class adequately. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 435.)

Other relevant considerations include the probability that each class member will come forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the class approach would actually serve to deter and redress alleged wrongdoing. (*Linder v. Thrifty Oil Co.*, supra, 23 Cal.4th at 435.) In addition, the trial court may assess the advantages of alternative procedures for handling the controversy. (*Caro v. Procter & Gamble Co.* (1993) 18 Cal. App. 4th 644, 660-662.) It is Plaintiffs' burden to support each of the above factors with a factual showing. (*Hamwi v. Citinational-Buckeye Inv. Co.* (1977) 72 Cal.App.3d 462.)

The Court is vested with discretion in weighing the concerns that affect class certification. (*Sav-on Drug Stores Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, 336.) "[B]ecause group action also has the potential to create injustice, trial courts are required to 'carefully weigh respective benefits and burdens and to allow maintenance of the class-action only where substantial benefits accrue both to litigants and the courts.'" (*Linder v. Thrifty Oil Co.*, supra, 23 Cal.4th at 435.)

Class certification is "essentially a procedural [question] that does not ask whether an action is legally or factually meritorious." (*Linder v. Thrifty Oil Co.*, supra, 23 Cal.4th at 439.) Accordingly, "the focus in a certification dispute is on what type of questions -- common or individual -- are likely to arise in the action, rather than on the merits of the case[.]" (*Sav-on Drug Stores Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327.)

EVIDENCE:

In support of the instant Motion, Plaintiffs have submitted transcript excerpts from the depositions of William Aboudi (Defendant's president), Jovi Aboudi (Defendant's person most knowledgeable regarding Defendant's payroll system and payment of wages), Levon Godfrey and Gary Gilbert. Plaintiffs have also submitted Defendant's responses to written discovery, documents obtained from Defendant, and the Declarations of both Levon Godfrey and Gary Gilbert. Defendant's objection to the Godfrey and Gilbert declarations on the basis of the date of filing is not well taken, and is **HEREBY OVERRULED**.

Defendant, for its part, submitted no evidence with its opposition filed on November 22, 2010, and a review of the record from Plaintiffs' earlier attempts to obtain class certification reveals only a very brief Declaration of William I. Aboudi, submitted by Defendant on May 7, 2010, limited to references to the number and status of Drivers on the date of that declaration. Defendant apparently intends to rest solely on its assertion that Plaintiffs' evidence does not provide adequate support for class certification. As will become readily apparent, the Court disagrees with this assertion.

NUMEROSITY AND ASCERTAINABILITY:

Based on Defendant's payroll records, Plaintiffs estimate that the proposed class consists of over 50 Drivers, all of whom can be identified through Defendant's personnel records. Although Defendant

purports to challenge numerosity, it has presented no evidence to contradict Plaintiffs' estimate. Accordingly, the Court finds that Plaintiffs proposed class is sufficiently numerous and ascertainable.

COMMON QUESTIONS:

Plaintiffs' Complaint and moving papers clearly set forth the legal and factual issues common to all putative class members for each of Plaintiffs' causes of action, with clear reference to the evidentiary record as appropriate. The Court notes that Plaintiffs' earlier motions for class certification fell short in various ways, as enumerated by the Court in its interim orders. While the evidentiary record continues to have its weak spots, and notwithstanding Defendant's arguments to the contrary, the Court concludes that these deficiencies have been adequately addressed, and commonality adequately supported. The Court notes in this regard that Defendant does not identify any individual issues, much less argue that individual issues will predominate over common ones.

TYPICALITY AND ADEQUACY:

The Court further finds that Plaintiffs claims are typical, and Plaintiffs and their counsel will adequately represent the interests of the proposed class.

RULING:

The Motion is GRANTED. The Court hereby certifies the class and subclasses as defined, above. Plaintiffs Levon Godfrey and Gary Gilbert are HEREBY APPOINTED as representatives of the class, and Lisl R. Duncan and the firm of Weinberg, Roger & Rosenfeld are HEREBY APPOINTED as class counsel.

FURTHER PROCEEDINGS:

The Court declines Plaintiffs' request to include approval of the proposed class notice in the instant order. Rather, the parties are directed to meet and confer regarding (a) content of class notice, (b) manner of giving notice, (c) means of notice (Rule of Court 3.766(d)(e)(f)), and (d) all logistical matters regarding dissemination of the class notice (e.g., identification of administrator, timing, cost allocation, etc.). Approval of the class notice process should be placed before the Court either by stipulation or by noticed motion. In either case, Plaintiffs must also comply with Rule of Court 3.766(b) and an order that complies with Rule of Court 3.766(c) must be provided. Any stipulation should be submitted no later than December 30, 2010. If a noticed motion is necessary, such motion must be noticed for hearing no later than January 28, 2011.

Dated: 12/03/2010

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

2

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5 Attorney for Defendant
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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,
12 on behalf of themselves and all other similarly
situated,

13 Plaintiffs,

14 vs.

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

17 Defendant.

) Case No.: RG 08-379099

) **DECLARATION OF WILLIAM (“BILL”)**
) **I. ABOUDI IN SUPPORT OF MOTION**
) **TO RECONSIDER CLASS**
) **CERTIFICATION ORDER, AMEND,**
) **MODIFY OR DECERTIFY A CLASS**
) **ACTION; CCP § 1008 AND CAL. RULES**
) **OF COURT, RULE 3.764**

) Action Filed: March 28, 2008

) Date: February 9, 2012

) Dept.: 20

) Time: 2:00 p.m.

) Reservation Number: R-1249926

) Set for Trial: February 14, 2012

) Before Honorable Judge Robert B. Freedman

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22 I, William (“Bill”) I. Aboudi, declare that I am the President of Defendant OAKLAND
23 PORT SERVICES CORP. d/b/a AB TRUCKING, a California Corporation, (collectively
24 hereinafter referred to as “AB Trucking” or “Defendant”) in the above-entitled action. I am the
25

1 person most knowledgeable about the following facts and have personal knowledge thereof. If
2 called to testify I could competently attest to the following from my personal knowledge:

3 1. The Port of Oakland ("Port") is the fourth busiest port in the United States and handles
4 more than 99 percent of the containerized goods moving through Northern California. In many
5 respects, the backbone of the complex intermodal transportation system is port trucking or
6 drayage, which generally involves the movement of international/interstate shipping containers
7 by truck via public roadway to or from the Port.

8 2. AB Trucking is a small drayage company that works near the Port. Port drayage is an
9 important part of the local trucking industry that specializes in hauling container freights
10 between port terminals and business warehouses, retail establishments, manufacturers or rail
11 lines. Port drivers are the individuals who pick up a container from a port terminal operation and
12 haul it by truck from the port to the rail yard, a company warehouse or local delivery destination.
13 AB Trucking drivers have always (including from March 28, 2004 to the present) utilized
14 commercial motor vehicles (weighing in excess of 10,000 lbs.) to carry out drayage operations in
15 the state of California or deliveries to locations in the state of Nevada.
16

17 3. AB Trucking drivers and trainees have always used Class 8 commercial vehicle trucks
18 with a gross vehicle weight rating (GVWR) above 33,000 pounds (including tractor trailer
19 trucks) for all Port drayage related operations.

20 4. AB Truck Drivers have always been required to follow the Department of Transportation
21 ("DOT") Safety regulations due to the weight and size of the commercial vehicles driven, weight
22 and size of the containers transported, and various federal, state and Port of Oakland operational
23 requirements commercial truck drivers must follow. AB Trucking has had a DOT Number as a
24 registered motor carrier (#663960) during the years relevant to this litigation. Moreover, AB
25

1 Trucking has been regulated by the Federal Motor Carrier Safety Administration (“FMCSA”)
2 during the years relevant to this litigation. AB Trucking drivers have never been “spotters” or
3 excluded from DOT safety rules. Because all drivers and trainees of AB Trucking were engaged
4 in interstate commerce, had Class A commercial driver’s licenses (“CDL”) (a driver's license
5 required in the United States to operate any type of vehicle which has a gross vehicle weight
6 rating (GVWR) of 26,000 lb), drove vehicles that weighed in excess of 10,000 pounds, and were
7 regulated by the DOT, Federal Motor Carrier Safety Administration (“FMCSA”) and Federal
8 Highway Administration (FHWA), it was my good faith understanding that such employees are
9 deemed exempt from the California overtime laws. AB Trucking has A DOT Number as a
10 motor carrier. Any “company policy” regarding the payment of overtime for drivers/trainees at
11 AB Trucking was based upon my good faith understanding of the DOT and other federal
12 regulations. This policy was communicated to and understood by AB Trucking drivers and
13 trainees. For example, an IWC, Wage Order 9 was obtained and posted in the AB Trucking
14 Office beginning in 2001.

15
16 5. AB Trucking has never had a contract with the City of Oakland and has never leased
17 property from the City of Oakland. On June 8, 2009, I testified under oath that AB Trucking has
18 never had a lease agreement with the City of Oakland. (See excerpt of Bill Aboudi’s June 8,
19 2009 deposition at pp. 35-41 incorporated herein as Exhibit C to the Declaration of Guy A.
20 Bryant filed in support of this Motion.) On June 8, 2009, I testified under oath that AB Trucking
21 has never had a contract with the Port of Oakland. (See Exhibit C to the Declaration of Guy A.
22 Bryant filed in support of this Motion.)

23 6. AB Trucking has never employed more than 20 employees at any time during its
24 operations and it currently employs six (6) truck drivers due to the difficult economy and this
25

1 burdensome litigation. (See also Exhibit C attached to the Declaration of Guy A. Bryant
2 incorporated herein and filed in support of this Motion at p. 180, lines 14-21.)

3 7. Because AB Trucking never employed more than 20 employees from 2002 to the present
4 and never had a contract with the City of Oakland, I believed in good faith that the provisions of
5 the City of Oakland Living Wage Ordinance or Port's Living Wage Ordinance were not
6 applicable to the operations of AB Trucking.

7 8. AB Trucking from March 28, 2004 to the present has maintained a policy to pay all
8 employees for all hours worked in a workweek. AB Trucking is unaware of any employee that
9 was "not paid for all hours worked in any work week." The confusion may have occurred in this
10 case because AB Trucking hires different levels of drivers and paid them differently as set forth
11 below:

12
13 **Regular Driver Employee:**

14 **Driver:** is a person working with the required knowledge and DOT requirements.

15 **Driver New Hire Trainee:** is a person that meets DOT requirement but lacks knowledge about
16 company procedures or working at the Port, they are given a two week training with an
17 experienced driver (how to fill our paperwork, logs, parking space assignment in the yard,
18 company codes at terminals, chassis use , etc. and are paid.

19 **Non-Regular Driver Trainee:**

20 **Trainee with Class A license,** is a trainee that has a class A license from the Teamsters truck
21 driving school but is not able to drive a Class 8 truck due to poor training (not giving them
22 enough time behind the wheel) they train them enough to get the Class A but not well enough to
23 guarantee the employee a Job.

1 **Trainee with Class A license**, we also would allow former drivers to practice/refresh their skills
2 before we take them to DMV for a driving test. (drivers/trainee would be paid.)

3 **Trainee with a Class A permit**, is a person that has permit and is training free of charge with
4 one of our drivers and when ready is taken to DMV for a driving test to get the CDL.

5
6 **Trainee studying to get a Class A Permit**, is a person that is interested in driving a truck but is
7 still studying to get the permit, they are normally formerly incarcerated individuals in the second
8 stage of the half way house.

9 AB Trucking started tracking the formerly incarcerated Trainee's time based on a request from
10 Parole Officers that wanted to track the people under their supervision. Depending on the level of
11 experience/background of the new driver, that would determine what amount of training or pay
12 such driver would receive. This was done on a case by case basis as AB Trucking was
13 voluntarily working with non-profits working with formally incarcerated individuals and
14 Oakland law enforcement authorities to assist individuals that had criminal records (e.g., Plaintiff
15 Lavon Godfrey) return to the workforce.

16
17 9. AB Trucking has always had a policy to encourage our employees to take all of their
18 breaks and meal periods. This policy was communicated to all employees and employees were
19 not pressured to forego breaks or meal periods. In fact, AB Trucking made log books available
20 to truck drivers so they could log their hours behind the wheel pursuant to DOT regulations and
21 documenting breaks in accordance with the law.

22 The Port and most of AB Trucking's vendors follow a standard meal and break time
23 schedule of: breaks at 10:00 a.m. and 3:00 p.m., lunch at 12:00 noon. During these break times
24 the Port completely shuts down and no loading or unloading of trucks can occur. AB Trucking
25 drivers generally coordinate their breaks with the break periods referenced above and they take

1 advantage of the various restroom stations and meal trucks that are often located around
2 company warehouses and similar areas surrounding the Port. For example, on Maritime Avenue
3 in Oakland, there are always a minimum of three meal trucks strategically stationed along the
4 road to be conveniently accessible to truck drivers waiting in line to enter or exit Port entrances.
5 In addition, some truck drivers choose to bring their lunches and snacks from home.

6 10. On September 11, 2009, Jovi Aboudi (Payroll Officer for AB Trucking) testified at her
7 deposition that "TimeCalc" a payroll software program used by AB Trucking had an "automatic
8 setting" for showing a 1 hour break deduction with regard to an employee's pay. However, Ms.
9 Aboudi testified that she would write notes manually on the payroll sheets she received if she
10 "received instructions from Bill" about not deducting an employee's pay with regard to the hour
11 lunch period. Ms. Aboudi specifically testified that if she received instructions from Bill (or
12 other managers in the Oakland office) then she would not "deduct an hour break." (See excerpt
13 of Jovi Aboudi's September 11, 2009 deposition at p. 36, lines 1-17, p. 60, lines 8-25, and p. 61,
14 line 1 incorporated herein as **Exhibit 6** to the Declaration of Guy A. Bryant filed in support of
15 this Motion.)
16

17 11. TimeCalc, the computer software program, may have an "automatic setting" but AB
18 Trucking does not have an automatic policy with regard to deducting one hour's pay for meal or
19 rest breaks. It has always been AB Trucking's policy to make adjustments to employee payroll to
20 never deduct from an employee's pay check their meal breaks if that employee was entitled to be
21 paid. In my role as president of AB Trucking, I personally review time sheets and dispatch
22 assignments of all truck drivers and trainees. I also sign off on all payments to employees. I
23 would instruct Ms. Aboudi on occasion to adjust payroll to not deduct payment for meal or rest
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25

1 breaks when appropriate. I would make sure that appropriate adjustments were made to an
2 employee's pay and that the employee received the adjusted payment.

3 12. I testified at my deposition that AB Trucking always had a policy with regard to meal
4 periods that was communicated to all truck drivers. We receive and post Wage Order, #9 at the
5 AB Trucking office for all employees to see. This practice has been going on since AB trucking
6 was founded. (See letter from Industrial Welfare Commission and cover page of Wage Order,
7 #9 addressed to AB Trucking attached and incorporated herein as **Exhibit 8** to the Declaration of
8 Guy A. Bryant filed in support of this Motion.) I explained that we expected all drivers to "take
9 their meal break, one hour, every shift." This policy was explained at the "time of hire" and
10 during the course of employment on as needed basis. Some drivers have their schedules set for
11 them while many other drivers have full control over when and how to take their breaks because
12 they are on the road and other locations away from the AB Trucking office. This is the process
13 that has been followed through out the history of AB Trucking. (See also **Exhibit 3** attached to
14 the Declaration of Guy A. Bryant incorporated herein and filed in support of this Motion at p.
15 116, lines 13-25, p. 117, lines 15-25.)
16

17 I declare under the penalty of perjury that the foregoing is true and correct. Executed in
18 Oakland, California.

19 Dated this 12th day of January, 2012.

20
21 Respectfully Submitted,

22 
23 _____
24 William I. Aboudi
25

3

EXHIBIT B

CSR NO. 11669

INGRID SKOROBHATY

REPORTED BY:

DEPOSITION OF BILL ABOUDI
ALAMEDA, CALIFORNIA
Monday, June 8, 2009

LAVON GODFREY and GARY GILBERT,
on behalf of themselves and all
others similarly situated,
Plaintiffs,
vs.
OAKLAND PORT SERVICES CORP.
d/b/a AB TRUCKING, and DOES 1
through 20, inclusive,
Defendants.

No. RG 08-379099

---000---

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

1 don't put them ever into a position, "Leave now. Be
2 there an hour and 15 minutes later." We give them a
3 wide range of window, so that way they can do that.

4 Q. Do you tell them what time to be there, or you
5 tell them just to get the load there?

6 A. The appointment. Usually there's an
7 appointment to deliver. Some there's no appointments.
8 They have to get there as quickly as they can.

9 Q. Other than knowing what time the appointment
10 time is, is there any other way for a driver to know how
11 much time you expect them to take on a particular trip?

12 A. No.

13 Q. Does the company have a written policy on meal
14 periods?

15 A. No.

16 Q. Does the company have a oral policy on meal
17 periods?

18 A. Yes.

19 Q. And what is that policy?

20 A. They have to be flexible and work their meal
21 period -- it depends on the driver. Some drivers, we
22 set their schedule for them. We tell them when we want
23 them to take their lunch breaks. And some drivers we
24 cannot. They have to figure out when their lunch break
25 is going to be and whether it's going to be taken in a

1 full hour or two half-hour breaks.

2 Q. So is there an oral policy, or is there an
3 application dependent upon situation?

4 MR. BROAD: Does that make sense to you?

5 THE WITNESS: No, not really, because you're
6 dealing with truck driving, not office work, where I can
7 say, "Let's take a break."

8 MS. SENCER: Q. I didn't ask you if it was a
9 scheduled time. I asked if there was a policy.

10 A. So what is a policy? Define a policy for me.
11 What are you thinking?

12 Q. A policy would be a set statement from
13 management as to what you expect the practice to be,
14 okay?

15 Do you have a set policy -- that is,
16 communicated to the drivers -- regarding what you expect
17 to happen with meal periods?

18 A. Yes. We expect them to take their meal break,
19 one hour, every shift.

20 Q. And how is that communicated to the drivers?

21 A. I tell 'em.

22 Q. When do you tell them?

23 A. When I hire them and as we go along, if need
24 be, if they need clarification.

25 Q. When is the last time you provided a driver

1 not --

2 Q. Does AB Trucking run a trainee program?

3 A. Does AB Trucking run a training program? That
4 was the question?

5 Q. Yes.

6 A. We train people, but I don't know if you would
7 call it a -- I guess you would call it a training
8 program, yes.

9 Q. When did the program begin?

10 MR. BROAD: You know, there's been no
11 definition of what the word "program" is, and so if you
12 feel uncomfortable identifying what AB Trucking does as
13 a program, you should say so.

14 THE WITNESS: We train people. Is that the
15 question?

16 MS. SENCER: Mm-hmm.

17 Q. When did AB start training people?

18 A. Well, it depends on defining -- there's two
19 distinctions between trainees. We have paid, and we
20 have just regular training unpaid, where somebody just
21 needs help to get their license, and we do that. And
22 then we have our own internal training when we hire
23 someone that we go through and we train people, so if
24 you were to ask in general, we've always trained people.

25 Q. Does AB hire any individual in a paid position

1 A. That's correct.

2 Q. Are they paid at what their regular rate will
3 be?

4 A. That's correct.

5 Q. And do those two weeks count towards the
6 90-day probationary period?

7 A. That's correct.

8 Q. Do the established drivers have the right to
9 say, "No, I do not want a trainee riding with me"?

10 A. Do they have the right to say that?

11 Q. Yes.

12 A. They could.

13 Q. Has any?

14 A. No.

15 Q. And that is the training of employees who are
16 coming in as paid status with a commercial driver's
17 license, correct?

18 A. That's correct.

19 Q. And the second category would be individuals
20 that you're helping to get a commercial driver's
21 license; is that correct?

22 A. Not necessarily, no.

23 Q. Isn't that what you said before, is that they
24 are unpaid and you're helping to get their license?

25 A. Yeah, it could be. Could be getting some more

1 training because they didn't get enough training at a
2 truck-driving school. Some come in, they have an
3 expired license, and they just need a refresher and they
4 need the use of our truck to go to DMV to take their
5 test. It just varies.

6 Q. Is this a paid service?

7 A. A paid --

8 Q. A paid service.

9 A. Paid on --

10 MR. BROAD: Do they pay you?

11 MS. SENCER: Q. Do individuals pay to use
12 your trucks for a refresher?

13 A. No.

14 Q. Do individuals pay for help to get their
15 license?

16 A. No.

17 Q. Did individuals pay for more training?

18 A. No.

19 Q. How is it determined who will be part of this
20 trainee group?

21 MR. BROAD: This is the unpaid trainees,
22 correct?

23 MS. SENCER: That's what he's calling them.

24 THE WITNESS: They usually ask. Some are
25 referred. It just varies. We've gotten them primarily

1 from halfway houses that -- they had somebody that
2 worked for us, and that person asks if they can bring
3 their -- this person that they're in a program with.
4 That's typically how people find out about us and that
5 we allow them to do that.

6 And I've had a TV production person that likes
7 to drive a truck that asked me, and we trained him, and
8 he got his license.

9 Two months ago, we had somebody that was in
10 the business, lost his license, came back, refresher,
11 and he went and got his license and went and got a job.
12 It just varies. Every case is different.

13 MS. SENCER: Q. What is the training program
14 used for these unpaid trainees?

15 A. What is what?

16 Q. The training program. Do you have an
17 established way that you teach these unpaid trainees?
18 Is there an established way that you teach them?

19 A. No.

20 Q. Is there a manual that they're provided with?

21 A. No. We usually -- we can't let them drive the
22 truck unless they have a permit, so we ask them to study
23 for the Class A permit and go to DMV and get it. And
24 then as the driver feels comfortable with them handling
25 the truck and getting enough experience, then he'll let

1 A. We'll record incidents that happened. "This
2 guy's a jerk." It varies. Somebody called in on this
3 person. Things that relate to the trainees.

4 MS. SENCER: We're going mark this next one as
5 3.

6 (Deposition Exhibit No. 3 was
7 marked for identification.)

8 MS. SENCER: Q. You have in front of you
9 what's been marked as Exhibit 3 for this deposition. It
10 starts with a 2007 Godfrey 0002 Bates Stamp. Is this a
11 similar payroll-confirmation receipt as to the 2008 one
12 we had previously been looking at?

13 A. Yes.

14 Q. And looking at page 0003, the second page in
15 the pack, it seems to indicate that there are 20
16 employees with wages in this week in 2007. Do you see
17 that?

18 A. Mm-hmm, yes.

19 Q. Are were there 20 drivers, or does this
20 include some other category of employee?

21 A. This is all categories, everybody.

22 Q. In January 2007, how many drivers were
23 employed?

24 A. When?

25 Q. January 2007.

1 State of California)

2 County of Alameda)


3

4 I, INGRID SKOROBOHATY, hereby certify that the
5 witness in the foregoing deposition was by me duly sworn
6 to testify to the truth, the whole truth and nothing but
7 the truth in the within entitled cause; that said
8 deposition was taken at the time and place herein named;
9 that the deposition is a true record of the witness'
10 testimony as reported to the best of my ability by me, a
11 duly Certified Shorthand Reporter and disinterested
12 person, and was thereafter transcribed under my
13 direction into typewriting by computer; that the witness
14 was given an opportunity to read, correct and sign the
15 deposition.

16 I further certify that I am not interested in
17 the outcome of said action nor connected with nor
18 related to any of the parties in said action nor to
19 their respective counsel.

20 IN WITNESS WHEREOF, I have hereunder
21 subscribed my hand on this 19th day of June
22 20 09.

23
24
25



INGRID SKOROBOHATY, CSR NO. 11669

Index

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1
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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

- - -

LAVON GODFREY AND GARY GILBERT, ON)
BEHALF OF THEMSELVES AND ALL OTHERS)
SIMILARLY SITUATED,)

PLAINTIFFS,)

VS.)

OAKLAND PORT SERVICES CORP., DBA)
AB TRUCKING, AND DOES 1 THROUGH 20,)
INCLUSIVE,)

DEFENDANTS.)

CASE NO.:
RG08379099

DEPOSITION OF DAVID BLYTH
SACRAMENTO, CALIFORNIA
FRIDAY, JUNE 10, 2011

ATKINSON-BAKER, INC.
COURT REPORTERS
(800) 288-3376
www.depo.com

REPORTED BY: PATRICIA GRAY-CONRAD, CSR No. 12633

FILE NO.: A505254

1 THE COURT REPORTER: Is that a yes?

2 THE WITNESS: Yes, sorry.

3 BY MS. DUNCAN:

4 Q Did you pick up trailers?

5 A Yes.

6 Q Did you hook up trailers?

7 A Yes.

8 Q Did you perform pre and post trip vehicle
9 inspections?

10 A Yes.

11 Q Did you drop trailers off?

12 A Yes.

13 Q Did you drive loads to different cities in
14 California?

15 A Sometimes.

16 Q And you did drive loads in and out of the Port
17 of Oakland?

18 A Sometimes.

19 Q Did you pick up chassis?

20 A Sometimes.

21 Q Were you going to clarify something?

22 A Not really. Actually, sort of. As a trainee,
23 you're not allowed in the ports. A lot of the time,
24 you're just not allowed in the Port. The driver is the
25 only person allowed in certain ports.

1 They do let you in but other than that, you
2 wait outside. So as a trainee, you're denied access to
3 some of the ports. The ports you are allowed access to,
4 you go in and learn how the system works.

5 Q And whose rule is that?

6 A That's Homeland Security's.

7 Q And does that rule apply to the Port of
8 Oakland?

9 A That rule applies to the Port of Oakland,
10 airports, railroads, all of it, fuel depots.

11 Q So who were the truck drivers that you rode
12 with when you were a trainee?

13 A Let's see. Steve Wellemeyer. I can't recall.

14 Q Were there a number of others?

15 A No, there was a couple of others. It was
16 brief; a day here, a day there. Usually I rode with
17 Steve.

18 Q So when Steve would drive a truck into the
19 Port of Oakland, what would you do?

20 A I'd wait outside.

21 Q How long would you usually wait?

22 A Refer to my previous answer of ten minutes to,
23 oh, my God.

24 Q Ten minutes to, can you give us an estimation?

25 A No, not really. I think the longest actually

1 was two, three hours.

2 Q When you became a driver for AB Trucking, did
3 you -- I assume you drove in the truck; is that correct?

4 A Yes.

5 Q Did you pick up trailers?

6 A Yes.

7 Q Did you hook up trailers?

8 A Yes.

9 Q Did you perform pre and post trip vehicle
10 inspections?

11 A Yes.

12 Q Did you drop trailers off?

13 A Yes.

14 Q Did you drive loads to different cities in
15 California?

16 A Yes.

17 Q Did you drive loads in and out of the Port of
18 Oakland?

19 A Yes.

20 Q And did you pick up chassis?

21 A Yes.

22 Q As a trainee, were you ever given an employee
23 handbook?

24 A I'm trying to remember actually. You know, I
25 don't recall.

1 Q Do you know if you were given an employee
2 handbook as a driver?

3 A You know, honestly, I don't remember.

4 Q Slightly different question.

5 Did you ever receive an employee handbook from
6 AB Trucking?

7 A If I did, I threw it away like everywhere else
8 I've ever worked.

9 Q Do you have a recollection of receiving a
10 handbook from AB Trucking?

11 A No, I don't. Are you implying that they had a
12 handbook?

13 Q No. I just asked if you ever received one.

14 Did you ever receive a document from AB
15 Trucking entitled, Oakland Port Services Corporation
16 Truck Driver Training Program, Trainee Participation and
17 Release of Liability Agreement?

18 A No.

19 Q When you were working as a truck driver for AB
20 Trucking, were you ever paid overtime? And by overtime
21 I mean, paid at one and-a-half times your regular wage
22 rate for all hours worked over 40 hours in a week or
23 over eight hours in a day.

24 A No.

25 Q I'm going to ask you some questions about meal

1 and rest periods while you were working for AB Trucking
2 as a truck driver. And when I say the term meal period,
3 what I'm referring to is a half-hour, unpaid, off-duty
4 meal period. And if I say something about a rest break,
5 I'm referring to an uninterrupted, ten-minute rest
6 period which is paid.

7 Also, when I'm referring to a rest period, I
8 mean that it's a period of time, the ten minutes,
9 uninterrupted, happens during the first four hours that
10 you work and another one during the second four hours
11 that you work.

12 So were you ever given a written policy on
13 meal periods from AB Trucking?

14 A No, not that I recall.

15 Q And were you ever given a written policy on
16 rest periods?

17 A No.

18 Q Were you given any type of a training or
19 orientation on meal and rest periods from AB Trucking?

20 A No, I doubt it.

21 Q Did AB Trucking ever ask you to record or keep
22 track of your meal periods?

23 A My log book.

24 Q In your log book?

25 A That's the law.

1 Q Can you explain what you mean by your log
2 book?

3 A My log book logs the hours that I sit behind
4 the wheel of a motor vehicle and that is curbed by the
5 DOT. That's the law. I keep track of my hours.

6 Q And who gave you, if anyone, your log book?

7 A AB Trucking supplied log books.

8 Q And when did they give you the first log book?

9 A When I asked them for it. Because I didn't
10 realize -- when I first started, I was buying my own.
11 And one of the other drivers informed me that we had
12 them in the office. I can't recall when I got my first
13 one.

14 Q Okay. And did you submit your log book to AB
15 Trucking?

16 A No, I kept it.

17 Q So did you ever show AB Trucking the log book?

18 A No.

19 Q During the period of time that you worked for
20 AB Trucking as a trainee, did the dispatcher ever call
21 the driver that you were with on the two-way radio while
22 he was eating?

23 A While he was eating?

24 Q Yes.

25 A I don't remember. It's been awhile.

1 Q How would you, if you would, take lunch when
2 you were a trainee?

3 A When you could.

4 Q Could you describe what mean by, "when you
5 could"?

6 A Well the Port is a funny place. Like I said,
7 sometimes you could be caught inside the premises for
8 many hours and sometimes you can get in and out. The
9 best time to take a lunch break in that situation is
10 along the road in between the yard and the Port.

11 There's countless -- not countless, but
12 there's probably ten places where they have hot food
13 available on the side of the road.

14 Q Is that where -- and along the side of the
15 road between AB Trucking and the Port, is that where you
16 would usually take your lunches when you were a trainee?

17 A When I was a trainee, wherever we stopped.

18 Q Did you take lunch as a trainee when the
19 driver took lunch?

20 A Yes. Actually, as a trainee, I could sit
21 there and eat all day long.

22 Q Because you were waiting for the driver?

23 A No, because I was sitting in the passenger's
24 seat.

25 Q When you were a trainee, do you recall if the

1 driver ever ate while the motor was running in the
2 truck?

3 A He's a truck driver. That's what we do.

4 Q So is that a yes?

5 A I do that, of course, yes.

6 Q When you were a trainee, did anyone at AB
7 Trucking instruct you to take a meal break?

8 A Sometimes.

9 Q Can you give us an example?

10 A Trina would call me on the radio and tell me
11 to take a break.

12 Q Did she give you any specific instructions
13 about how long the break should be?

14 A Usually an hour.

15 Q How often did that happen when you were a
16 trainee?

17 A I'm not sure. I can't put a number on it.

18 Q Could you give us an estimate if it was less
19 than 50 percent of the time, more than 50 percent of the
20 time?

21 A No.

22 Q When you were a driver, did anyone at AB
23 Trucking inform you about AB Trucking's policy on meal
24 periods?

25 A No.

1 Q Did you have an understanding of what AB
2 Trucking's policy was on meal periods?

3 A Yes.

4 Q What was your understanding?

5 A Eat when you can.

6 Q Did anyone from AB Trucking instruct you to
7 take a meal period when you were a truck driver?

8 A Yeah.

9 Q Who was that?

10 A Trina.

11 Q Did she do that from the very beginning when
12 you started as a truck driver?

13 A Yeah.

14 Q And what would she say when she would instruct
15 you to take a break?

16 A She would call me and tell me to take a break.

17 Q Did she ever explain what she meant by a
18 break?

19 A That's pretty self-explanatory. A break is a
20 break.

21 Q Did she ever explain how long the break should
22 be?

23 A Sometimes. Sometimes.

24 Q What would she say?

25 A I can't recall word-for-word, you know. We

1 had times to take a break and we would take a break
2 and get something to eat.

3 Q Has there ever been a time when you were a
4 truck driver when you had the truck stopped in order to
5 take a break or to eat and the dispatcher called you on
6 radio to ask you to go on another assignment?

7 A Possibly.

8 Q What do you mean by "possibly"?

9 A I think I recall once when my break was cut
10 short, but that was the only time I can recall.

11 Q Was there ever a time when the owner, Bill
12 Aboudi, called you while you were on a break or eating?

13 A Never.

14 Q Was there ever a time when anyone else at AB
15 Trucking called you while you were eating or on a break?

16 A No.

17 Q Did you ever spend longer than ten hours
18 driving a truck for AB Trucking?

19 A Yesterday. No, that was my truck. No.

20 Q While you were working as a trainee for AB
21 Trucking, did you take uninterrupted ten-minute breaks
22 for every four hours when you were working?

23 A I took breaks whenever I felt like it,
24 seriously. I've been doing this a lot of years.

25 Q I'm just specifically asking about when you

1 were a trainee?

2 A Oh, yeah, I took breaks.

3 Q Were you able to take breaks if the driver was
4 still driving?

5 A Well, if he took a break. Other than that,
6 I'm just sitting there. So I was driving, which I did
7 as a trainee sometimes.

8 Q When did you drive as a trainee?

9 A Well, I got my license and I had to practice a
10 little bit.

11 Q And did Steve sit in the cab with you while
12 you were driving?

13 A That's the law.

14 Q So is that a yes?

15 A Yes.

16 Q When you became a driver for AB Trucking, did
17 you take ten-minute uninterrupted rest breaks every ten
18 minutes?

19 A Every ten minutes?

20 Q I'm sorry. Every four hours?

21 A I took a lot breaks, yeah. I can really tell
22 you yes.

23 Q When you say "breaks," are you referring to a
24 time when the truck is turned off?

25 A Uh-huh.

1 Q In that a yes?

2 A Yes. Sorry.

3 Q Do you know if the truck that you were driving
4 as a driver for AB Trucking had GPS on it?

5 A Yes, it did.

6 Q Are you aware of whether or not AB Trucking
7 knew when your truck was stopped?

8 A Sure they did.

9 Q How were you aware of this?

10 A How I was aware of this?

11 Q Yes.

12 A I've been in the office many times. I asked
13 them to see on the computer how it worked and they
14 showed me.

15 Q They showed you?

16 A Yeah, sure. Up on the computer screen, they
17 could show me how fast the truck is moving, where it's
18 at, it's exact location, if the truck is pulled to the
19 side of the road, if the motor is running or if it's
20 off. Yeah, the GPS works really nice.

21 Q When you were a trainee for AB Trucking, did
22 you ever -- were you ever in the truck or driving the
23 truck longer than ten hours in a day?

24 A No.

25 Q Has AB Trucking ever compensated you for

1 missing a meal period?

2 A No.

3 Q Has AB Trucking ever compensated you from
4 missing a rest break?

5 A No.

6 Q When you were working as a driver for AB
7 Trucking, did you receive a full, one-hour uninterrupted
8 meal period every day that you were working for AB
9 Trucking?

10 A I'm not sure that's possible. No.

11 Q Did you ever receive a full one-hour,
12 uninterrupted meal period --

13 A Yes.

14 Q Let me finish my question.

15 A Sorry.

16 Q While driving as a truck driver for AB
17 Trucking?

18 A Yes.

19 Q Can you give us an estimate of how often?

20 A As how often as possible.

21 Q So once a week, once a month, three times a
22 week?

23 A Two, three times a week at least.

24 Q And was that the case for the entire period
25 that you worked for AB Trucking as a truck driver or did

1 it change throughout?

2 A No, that was the case.

3 Q Do you know whether or not one hour of pay was
4 deducted from each day that you worked at AB Trucking
5 for your lunch?

6 A I have no idea.

7 Q And then, same question about when you were a
8 trainee.

9 A I couldn't tell you.

10 Q When you were a trainee, did you ever receive
11 a full, one-hour uninterrupted meal period?

12 A Sure.

13 Q And can you give us an estimate how
14 frequently?

15 A Two or three times a week probably.

16 Q That meal period, as a trainee, was when the
17 engine was not running in the truck?

18 A Yeah. I was not in it.

19 Q Thank you.

20 MS. DUNCAN: The record will reflect that Bill
21 Aboudi is sitting here today in this room.

22 BY MS. DUNCAN:

23 Q So you have seen him today.

24 But prior to today, when was the last time you
25 spoke with Bill Aboudi?

REPORTER'S CERTIFICATE

I, PATRICIA GRAY-CONRAD, CSR No. 12633, Certified Shorthand Reporter, certify;

That the foregoing proceedings were taken before me at the time and place therein set forth; at which time, the witness was placed under oath by me;

That the testimony of the witness, the questions propounded, and all objections and statements made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

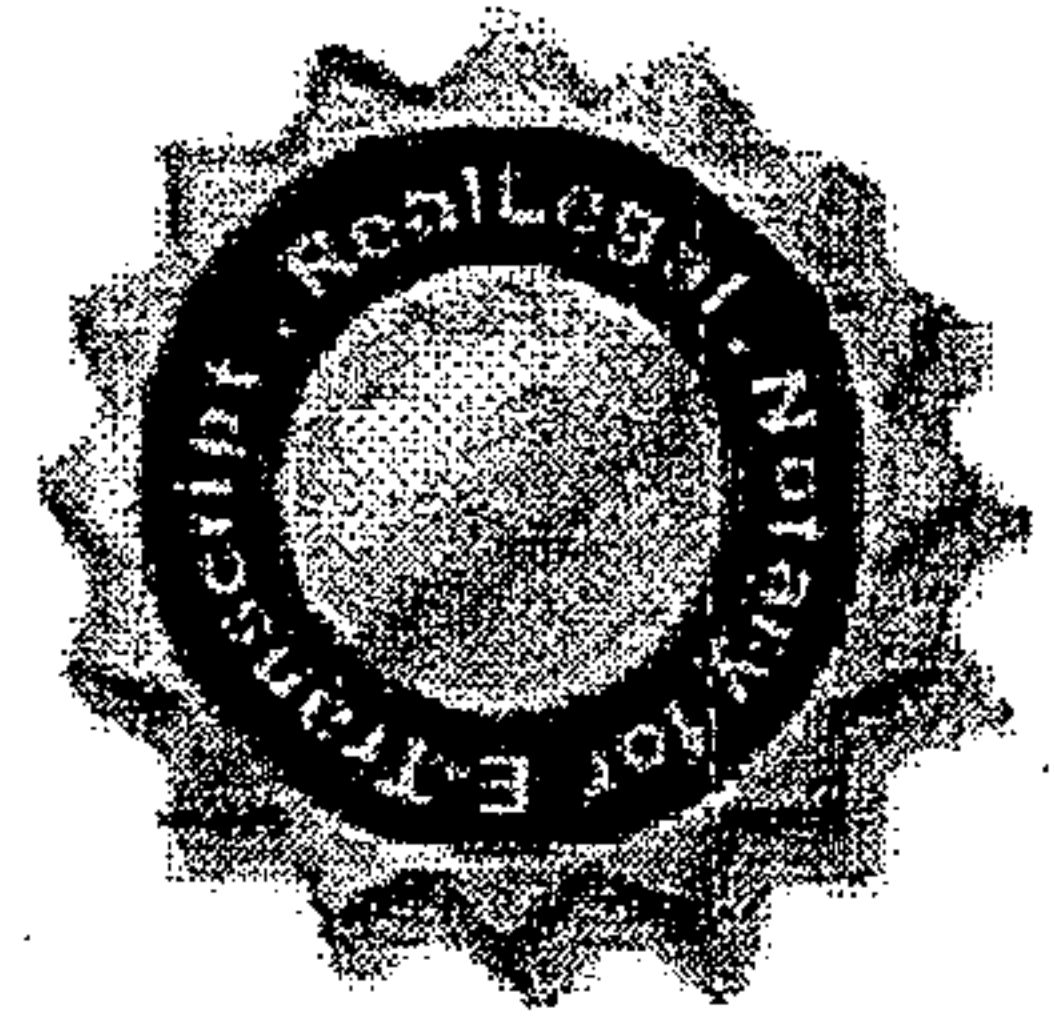
That the foregoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am not a relative or employee of any attorney of the parties, nor financially interested in the action.

I declare under penalty of perjury, under the laws of California, that the foregoing is true and correct.

Dated this 17th day of June, 2011.


PATRICIA GRAY-CONRAD, CSR NO. 12633



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

LAVON GODFREY AND GARY GILBERT,
on behalf of themselves and
others similarly situated,
Plaintiffs,

vs.

Case No. RG08379099

OAKLAND PORT SERVICES CORP.
D/B/A AB TRUCKING, and DOES
1 through 20, inclusive,
Defendants.

DEPOSITION OF JOSE LUIS NAVARRO
JUNE 13, 2011
ALAMEDA, CALIFORNIA

ATKINSON-BAKER, INC.
COURT REPORTERS
800-288-3376
www.depo.com

REPORTED BY: DEBRA L. ACEVEDO-RAMIREZ, RPR, CSR. 7692
Arizona 50807
FILE NO: A505421

1 referring to a time period before 2004, please let me
2 know.

3 A. That's fine.

4 Q. Were you a trainee for AB Trucking when you
5 started?

6 A. When I started? Well, when I started a person
7 trained me, so that I would...

8 Q. And how long were you trained when you
9 started?

10 A. Right around a month or a little more than a
11 month by the person who was training me to be familiar
12 with everything.

13 Q. And were you paid for the time that you were
14 being trained?

15 A. Yes.

16 Q. And who was training you?

17 A. Well, he's no longer there. I remember his
18 first name. His name was Tony.

19 Q. Okay. Okay. So as a driver from 2004 up to
20 the present, do you have a set start time?

21 A. Yes.

22 Q. What time is that?

23 A. 7:30.

24 Q. And is there a time that you finish working?

25 A. Well, nearly as 4:00, 4:30.

1 Q. And you mentioned earlier the dispatcher.
2 Does the dispatcher give you your work assignments and
3 tell you where to go?

4 A. Yes.

5 Q. Okay. And currently the dispatcher is Juan;
6 is that correct?

7 A. Yes.

8 Q. Was there a different dispatcher before Juan?

9 A. Yes, there was a different one.

10 Q. And what was that person's name?

11 A. Well, it was a lady by the name of Trina. She
12 just doesn't work there anymore.

13 Q. Okay. Do you have a manager at AB Trucking?

14 A. It's -- well, sometimes the dispatcher would
15 give me what I had to do.

16 Q. And the witness is referring to Bill Aboudi
17 who is present at the deposition. Is that correct?

18 A. That's correct.

19 Q. Okay. And did Bill -- does Bill Aboudi give
20 you your work assignments?

21 A. These days, no. Maybe once a year or so he
22 does, but no.

23 Q. Was that always the case?

24 A. Yes.

25 Q. Do you currently drive to cities in

1 California?

2 A. Yes.

3 Q. And do you currently drive to the Port of
4 Oakland?

5 A. Yes, also to the Port of Oakland.

6 Q. Okay. And what about during the period of
7 March 2004, up until the present, did you drive the
8 whole time to different cities in California?

9 A. Beg your pardon?

10 Q. Since 2004 -- since March 2004, did you always
11 drive to different cities throughout California?

12 A. Well, as a regular thing, I usually park
13 between the yard and the Port and sometimes, for
14 example, they send me to Hayward, San Francisco,
15 Stockton, like that.

16 Q. How frequently -- how many times a week do you
17 drive to another city out of Oakland?

18 A. Outside of Oakland, well, there are times when
19 it's one or two times a week or three.

20 Q. Okay. Has that been the same since 2004 or
21 has there been a change?

22 A. No, it's the same. When there is a lot of
23 work, I just stick to the Port here and when there
24 isn't, they send me to San Francisco or Hayward and like
25 that.

1 Q. Okay. So it's been that way since 2004?

2 A. Yes.

3 Q. Do you ever drive outside of California for AB
4 Trucking?

5 A. Just two or three or four times I drove
6 outside of California several years ago, but not
7 anymore.

8 Q. Do you remember approximately what year?

9 A. In 2005 or 2006. I'm not exactly sure. I
10 don't remember what years.

11 Q. Okay. Mr. Navarro, have you ever been given
12 an Employee Handbook by AB Trucking?

13 A. Employee manual, no. No, I don't recall
14 exactly.

15 Q. Okay. As a driver, do you ride in the truck?

16 A. Yes.

17 Q. Okay. Do you pick up trailers?

18 A. Containers are what I pick up.

19 Q. Do you hook up the containers to your truck?

20 A. Yes.

21 Q. With what do you use to connect?

22 A. I don't quite understand your question. What
23 do I use to disconnect them?

24 Q. I'm wondering if there is a different term you
25 use other than trailer.

1 A. Well, because, for example, when they dispatch
2 me to go to Port to pick up a container, what I do is I
3 connect the chassis with where the container goes and if
4 they tell me to take it to the yard, I take it to the
5 yard and I disconnect it there. When you connect it --
6 you disconnect it and you have to unhook all the hoses
7 and leave it there in the yard. I disconnect the air
8 hoses and I disconnect what's called the fifth wheel
9 where the container goes.

10 Q. So, in terms of your job duties, you don't
11 work with trailers?

12 A. Beg pardon? Trailers?

13 Q. I think we may have a problem with the word.
14 Okay. So, let me just try to clarify. Do you
15 understand the word that I'm using "trailers"?

16 A. Well, because, for example, well, there are
17 some boxes, I suppose you could call them that are
18 53 feet long. Those are called trailers as well and
19 those are connected to the tractor as well, and we
20 hardly use those. What we use more are the containers
21 that we get from the Port of Oakland.

22 Q. Okay. And when you say "we," who are you
23 referring to?

24 A. Oh, well, there are a lot of other drivers who
25 work as well from other places.

1 Q. Okay. Are you also referring to the other
2 drivers at AB Trucking?

3 A. Well, yes, also, yeah.

4 Q. Okay. Do you perform pre and post trip field
5 inspections?

6 A. Well, nearly is a regular thing before one
7 starts working, one inspects the vehicle.

8 Q. So you do that?

9 A. Yes.

10 Q. And do you also in your job duties pick up
11 chassis?

12 A. Yes, also that's where the containers go.

13 Q. When you began working at AB Trucking and
14 someone was training you, did you sign a contract or
15 some other written agreement with AB Trucking?

16 A. No. I started working for them. I just
17 filled out the application when one fills out when one
18 is going to start working with the company.

19 Q. Okay. Mr. Navarro, during the time you have
20 worked for AB Trucking, have you ever been paid overtime
21 wages meaning at a rate of one and a half times your
22 regular wage rate for every hour beyond eight hours in a
23 day and 40 hours in a week?

24 A. No.

25 Q. Okay. During the time you worked for AB

1 Trucking, do you keep track of the hours that you work?

2 A. No. But when we start in the morning, we
3 write down what time we started, and in the evening, we
4 write down what time we finish, but there is no other
5 count.

6 Q. And where do you write it down?

7 A. In the office there is a sheet where we write
8 down what time we would come in and what time we leave.

9 Q. And has that been the practice at AB Trucking
10 since March of 2004?

11 A. Yes.

12 Q. Does anyone in the office ever write down your
13 hours for you?

14 A. The person who is in charge there is the one
15 who...

16 Q. The one who -- the person in charge writes
17 down your hours sometimes?

18 A. Sometimes in our presence she asks us what
19 time we come in and what time we're leaving.

20 Q. So sometimes you write down the hours and
21 sometimes the person in charge writes down the hours?

22 A. Yes.

23 Q. And what is the name of the person who is in
24 charge that you are referring to?

25 A. Her name is Cynthia.

1 Q. And do you know what her job title is?

2 A. No.

3 Q. Okay. Does she work in the office?

4 A. Yes.

5 Q. Does she seem like a secretary or an office
6 manager?

7 A. Well, a secretary.

8 Q. Okay. And so either Cynthia or you write down
9 your hours and it's been that way since 2004?

10 A. No, nearly I'm the one who writes down the
11 hours. It's just...

12 Q. Okay. So usually you write down the hours?

13 A. Yes.

14 Q. Okay. And has there been any difference in
15 your practice of recording hours since 2004 to the
16 present?

17 A. No, none.

18 Q. Okay. When you began working as a driver for
19 AB Trucking, did anyone from the company explain to you
20 anything about meal periods?

21 A. Well -- well, a long time ago they told us we
22 had to take a lunch hour.

23 Q. Do you know approximately what year that was?

24 A. I don't remember the year but, in fact, they
25 talked to me and I talked to them at the yard, too, and

1 more than anything, they told me that I have to take my
2 lunch at 12 o'clock.

3 Q. Okay. Did they give you those instructions in
4 approximately April 2008?

5 A. No. You're talking about 2008?

6 Q. Yes.

7 A. Two, three, four years ago they have talked to
8 me about that, because I talked to them asking them to
9 give me another order and they tell me that now once I
10 finish my lunch.

11 Q. So you think how many years ago, like three
12 years ago. So in 2008?

13 A. Several years ago. I don't remember how many,
14 but yes, always.

15 Q. Okay. So before they told you that you needed
16 to take one hour for lunch, had anyone from the company
17 talked to you about meal periods?

18 A. Well, they hadn't -- well, I don't remember
19 but... but, yes they told me as a regular thing, one is
20 supposed to take a lunch hour.

21 Q. Okay. Do you remember when they told you
22 that?

23 A. When I first started when I was filling out
24 the application.

25 Q. Okay. And did they tell you how long the meal

1 period was to be?

2 A. Well, it's an hour exactly. Just one hour.

3 Q. Okay. And they told you this in 2000?

4 A. Yes. It's been a lot of years since then.

5 Uh-huh.

6 Q. So, yes, they told you in 2000?

7 A. Yes, yes, they told me that in 2000. I don't
8 remember the name of that person who I handed the
9 application to. They don't work there anymore.

10 Q. Okay. So from 2004 to 2008, did you ever take
11 one hour meal period where you were -- you had the truck
12 turned off and you were not interrupted by dispatch?

13 A. No.

14 Q. Excuse me. There was a beeping sound. So,
15 between 2004 to 2008, you did not receive a full one
16 hour meal period where the truck was turned off and you
17 were not interrupted by dispatch; is that correct?

18 MR. ABOUDI: Objection. Compound and calls
19 for a legal conclusion.

20 THE WITNESS: How is that? Can you repeat the
21 question?

22 MS. DUNCAN: Yes.

23 Q. Okay. A meal period is a time where you are
24 relieved from all duty?

25 A. Yes.

1 Q. So that means that the truck is turned off and
2 it means that no one from work can call you on the radio
3 to give you a new assignment?

4 A. Nobody calls me.

5 Q. Okay. And a meal period is a time where you
6 are free to do whatever you want?

7 A. Exactly.

8 Q. Okay. So from 2004 to 2008, did you ever
9 receive a full one hour meal period?

10 A. Did I receive a period?

11 Q. A meal period.

12 A. Well, I've always -- well, I've always had a
13 period. I've always had that hour from noon to 1:00.
14 1:00 is...

15 Q. Okay. What about from 2008 to the present, do
16 you have one hour for a meal period each day?

17 A. Nearly as a regular thing, yes.

18 Q. What do you mean by "nearly"?

19 A. Well, because depending on the place we're
20 going to go, sometimes it lasts more than an hour,
21 right, because when I'm eating, sometimes I take a
22 little more than an hour or they take a little while to
23 answer me after I report in.

24 Q. Okay. Did Mr. Aboudi ever explain to you what
25 AB Trucking's policy on meal periods is?

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A. No.

Q. Okay. So who told you in approximately three years ago that you had to take one hour for lunch?

A. Well, that was the dispatcher, but he did also tell us one time when we started taking lunch, we should report into the office.

Q. The dispatcher told you that?

A. The dispatcher told us and Bill Aboudi one time told us that we had to say, hey, we're taking lunch right now and...

Q. Okay. And when they told you that you should call in and say when you were taking lunch, do you know approximately when that happened?

A. I don't remember that. That was a long time ago. I don't remember the year, the date. It was a long time ago.

Q. Okay. But before the time that you were instructed to call in and say when you were at lunch, before that time did the company ask you to report when you were taking a lunch?

A. Well, yes, he told us once, but I don't remember exactly. But he did say that when we were doing that, we should call in and let them know just to let them know.

Q. And Bill told you that?

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A. Yes.

Q. Okay. And when Bill Aboudi told you that -- do you recall if it was before 2008 or after 2008?

A. I don't remember, but it must have been before.

Q. And what makes you recall that it was before?

A. Because -- well, because the rules that we've had, I don't remember what he says about the precautions and all that.

Q. Okay. When does he tell you about precautions?

A. Well, when he sees us in the afternoon when we're leaving, he tells us that, you know, we should take precautions and if we were tired, well, then we should rest.

Q. Okay.

A. If you could give me a minute. I need to go to the bathroom.

MS. DUNCAN: Do you know where it is?

MR. ABOUDI: It's over on this way, left, right?

MS. DUNCAN: I'll show you where it is.

COURT REPORTER: Are we off the record?

MS. DUNCAN: Yes.

(Whereupon, a break was taken from 12:38 p.m.)

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to 12:42 p.m.)

MS. DUNCAN: Would you mind reading back the question before the break?

(Whereupon, the record was read back by the Court Reporter.)

BY MS. DUNCAN:

Q. So you said that he says if you are tired, you should rest. When you say "he," who are you referring to?

A. To the boss, Bill.

Q. Okay. And when you say, "he says you should rest," do you understand that to be the same thing as taking a lunch?

A. No, that's different because when you take lunch, that's because you are going to take lunch, but when you are tired from driving, that's resting so as to relax and continue driving.

Q. Do you drive -- you said you drove to the Port of Oakland. When you drive to the Port of Oakland, how long does it typically take for you to drive in and back out?

A. Well, it depends because there are times when it takes an hour. Other times up to three or four hours or longer. One time I was there all day, a whole day, eight hours, just one trip.

1 Q. Do you know approximately what year that was
2 in when you were there that whole day?

3 A. Well, sometimes it happens often, but it must
4 have been 2005, 2006. I don't recall exactly. That
5 happens often.

6 Q. It happens often where you have to stay there
7 for a whole eight hours?

8 A. Not often but once in awhile.

9 Q. Okay. So, since 2004, can you give me an
10 estimate of how many times you have had to wait at the
11 Port of Oakland for eight hours?

12 A. How many times? That's been about three or
13 four times is -- the interpreter making sure that is
14 stuttering speech was understood.

15 It's been about three or four times.

16 Q. Okay. All the times that you were waiting at
17 the Port for eight hours, did you eat?

18 A. Yes.

19 Q. Where were you when you were eating?

20 A. It was a regular thing. I'm usually in the
21 truck since I take my own lunch. I don't have to get
22 out of my truck or any place to go.

23 Q. And on those particular times when you were in
24 the Port for eight hours and you were eating, was the
25 truck on or was it off?

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A. Off.

Q. And were you in line?

A. No. I was there off to one side of the line.

Q. So you got out of line?

A. Yes, because when one has a problem fetching or dropping off a container, one has to get out of line and move to one side there.

Q. Did you have a problem getting a container at that time?

A. No, but the problem is sometimes they give us a number to fetch the container, and that number isn't a good one, so between the time that they manage to contact the container company -- interpreter speaking. I didn't catch the last part of the answer.

We just sit there and wait for them to resolve the problem.

Q. So is that after you have gone through the line?

A. Yes. Yeah.

Q. So going back to the three to four times that you waited in line at the Port for eight hours, where did you eat each time?

A. Out there in the truck.

Q. Okay. And was the truck on?

A. No.

1 Q. Okay. While you were eating -- strike that.
2 While you were on a meal period since 2004 to
3 the present, has the dispatcher ever called you on the
4 radio?

5 A. No.

6 Q. Okay. While you are on a rest break, a
7 ten-minute uninterrupted rest break, did the dispatcher
8 ever call you during that time?

9 A. No. Nearly no.

10 Q. Okay. And after you take your meal period on
11 a day where you take your meal period at AB Trucking,
12 after that, what do you do?

13 THE INTERPRETER: This is interpreter
14 speaking. May I have the question back again, please?

15 (Whereupon, the record was read back by the
16 Court Reporter.)

17 THE WITNESS: After I finish eating and the
18 rest period is over and all that?

19 BY MS. DUNCAN:

20 Q. Yes.

21 A. Well, if I don't have containers, I call into
22 the office and I tell them that I'm ready or if I've got
23 a container, then I continue on to the other container.

24 Q. And is that usually to the Port of Oakland?

25 A. Nearly as everything I'm always there.

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STATE OF CALIFORNIA)
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COUNTY OF SAN FRANCISCO)

SS.

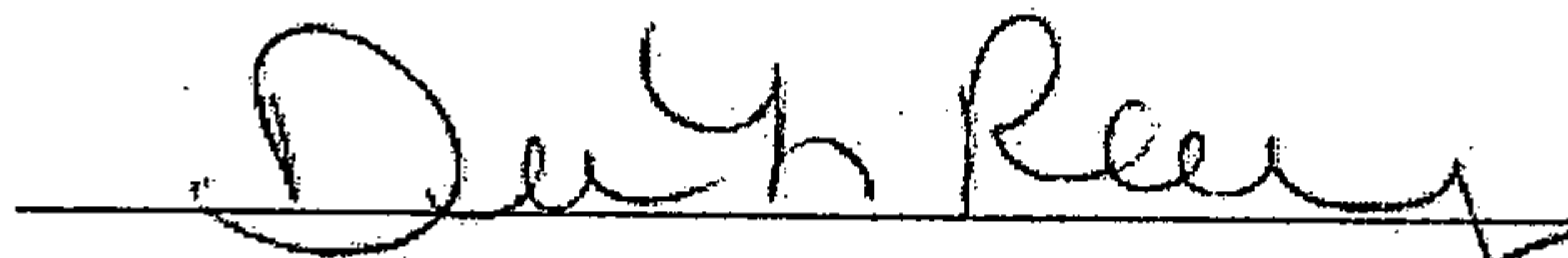
I, DEBRA L. ACEVEDO-RAMIREZ, hereby certify:

That I am a Certified Shorthand Reporter of the State of California;

That in pursuance of my duties as such, I attended the proceedings in the foregoing matter and reported all of the proceedings and testimony taken therein;

That the foregoing is a full, true and correct transcript of my shorthand notes so taken.

Dated: June 21, 2011



DEBRA L. ACEVEDO-RAMIREZ, RPR, CSR 7692



6

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

LAVON GODFREY AND GARY)
GILBERT, ON BEHALF OF)
THEMSELVES AND ALL OTHERS)
SIMILARLY SITUATED,)

PLAINTIFFS,)

VS.)

NO. RG 08-379099)

OAKLAND PORT SERVICES)
CORP. D/B/A AB TRUCKING,)
AND DOES 1 THROUGH 20,)
INCLUSIVE,)

DEFENDANTS.)

DEPOSITION OF JOVI ABOUDI

ALAMEDA, CALIFORNIA

FRIDAY, SEPTEMBER 11, 2009

REPORTED BY:

SARAH M. HURD MONTGOMERY

CSR NO. 11442

EXHIBIT C

1 MR. BROAD: That's you?

2 THE WITNESS: That's me.

3 MS. DUNCAN: Q. Wednesday, 8.5, is that you?

4 A. That's me.

5 Q. And Thursday and Friday, 6.5 and 7.2?

6 A. Let's see, 7.2, yes, that's me.

7 Q. And how do you make those calculations?

8 A. TimeCalc.

9 Q. And what numbers do you enter into TimeCalc?

10 A. We put in as 7:30, out as 4:30.

11 Q. And do you subtract any other time from that?

12 A. Yes, the TimeCalc would do the -- its own
13 calculation for the hour break.

14 Q. Okay. And did you enter that into TimeCalc?

15 A. Yes.

16 Q. So it's an automatic setting?

17 A. Yes.

18 MS. DUNCAN: This is Exhibit 3.

19 MR. BROAD: Thank you.

20 MS. DUNCAN: Mm-hmm. Could we turn to page 12.

21 Q. In the total this week column for driver 43 --

22 A. Mm-hmm, yes.

23 Q. -- there's an X. Do you have an understanding
24 as to what this would indicate?

25 A. I have to see the whole package. I don't know.

1 MS. DUNCAN: It's at the top of the pay stub to
2 the left of where it says Lavon.

3 Q. Is the reason that the beginning and the ending
4 of the pay period, is the reason that those two sections
5 are blank is because it is not a pay period?

6 A. Manual check.

7 Q. A manual check.

8 Exhibit 16. So at the bottom of this page is a
9 little note. Is that your handwriting?

10 A. Yes.

11 Q. Do you know why you would have written that?

12 A. This could be the two people that I oversee in
13 Oakland -- in Vallejo. So it must have been a personal
14 problem with them, so they didn't have any lunch break.

15 Q. Okay.

16 A. They went home early.

17 Q. Do you -- have you ever received instructions
18 from Bill or one of the two -- other two people working
19 in the Oakland office to make a note like this for any
20 of the employees in the Oakland office?

21 A. Yes.

22 Q. For the drivers as well?

23 A. Yes.

24 Q. And for purposes of payroll, how would you use
25 this note?

1 A. Then I don't deduct an hour break.

2 Q. Okay. But it happens automatically, right, on
3 TimeCalc?

4 A. Yeah, it happens automatically.

5 Q. And then would you just add it back in?

6 A. Yes.

7 Q. This is Exhibit 18. You said earlier that you
8 don't integrate the payroll functions that you do?

9 A. Yes.

10 Q. Okay. But do any of the AB Trucking time
11 sheets look like this, what's shown in Exhibit 18?

12 A. No.

13 Q. Okay. So do you use this time sheet as part of
14 your role as payroll?

15 A. No.

16 Q. Okay. Do you recognize this document?

17 A. No.

18 Q. Okay. This is Exhibit 19 and Exhibit 20.

19 MR. BROAD: Okay, 19 and 20.

20 MS. DUNCAN: Q. Looking at Exhibit 19, this
21 one page, could you tell me what this is a copy of?

22 A. No. I don't know.

23 Q. Do you recognize this?

24 A. I don't know.

25 MR. BROAD: That's all right.

1 State of California)

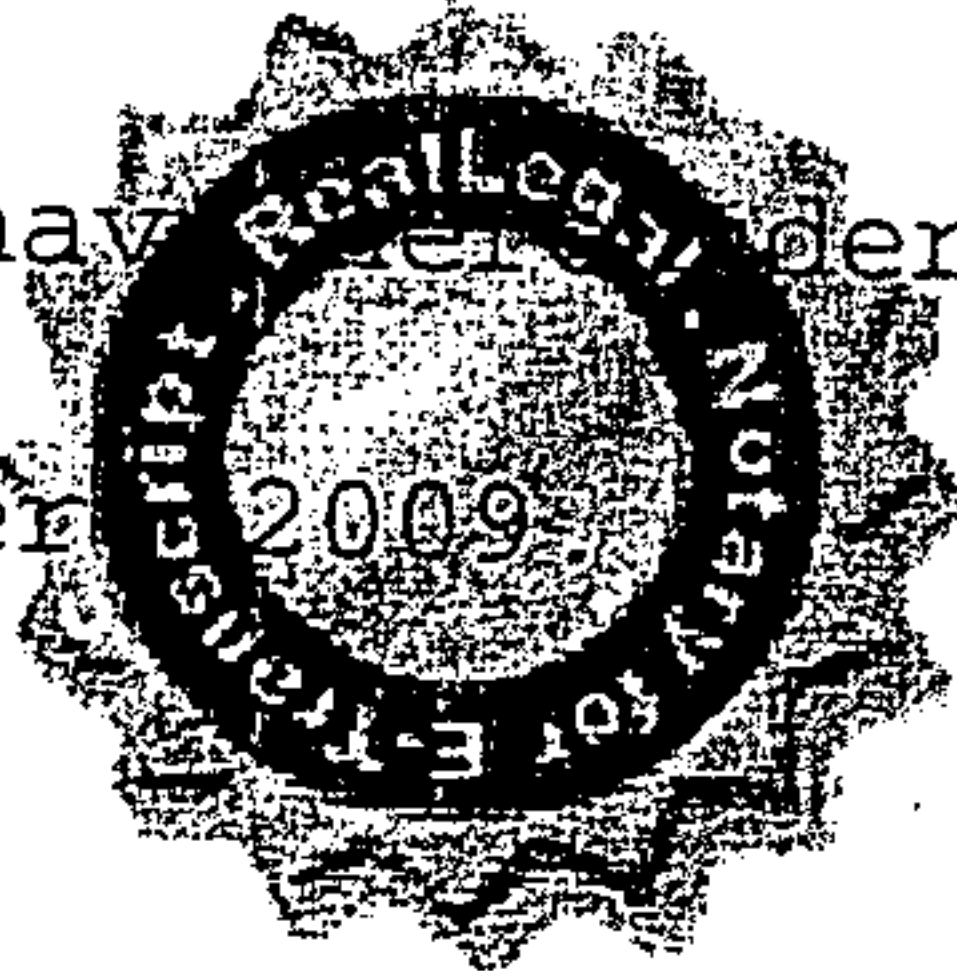
2 County of Sonoma)

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4 I, SARAH M. HURD MONTGOMERY, hereby certify
5 that the witness in the foregoing deposition was by me
6 duly sworn to testify to the truth, the whole truth and
7 nothing but the truth, in the within entitled cause;
8 that said deposition was taken at the time and place
9 herein named; that the deposition is a true record of
10 the witness's testimony as reported to the best of my
11 ability by me, a duly Certified Shorthand Reporter and
12 disinterested person, and was thereafter transcribed
13 under my direction into typewriting by computer; that
14 the witness was given an opportunity to read, correct
15 and sign the deposition.

16 I further certify that I am not interested in
17 the outcome of said action nor connected with nor
18 related to any of the parties in said action nor to
19 their respective counsel.

20 IN WITNESS WHEREOF, I have hereunder subscribed
21 my hand on 25th day of September 2009



22
23 Sarah M. Hurd Montgomery

24 SARAH M. HURD MONTGOMERY, CSR 11442

25

7

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6 Attorneys for Plaintiffs
LAVON GODFREY and GARY GILBERT
7

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF ALAMEDA

10 LAVON GODFREY and GARY GILBERT, on) Case No. RG 08-379099
11 behalf of themselves and all others similarly)
situated,)
12 Plaintiffs,) DECLARATION OF LISL R. DUNCAN
13) IN SUPPORT OF PLAINTIFFS' MOTION
v.) FOR CLASS CERTIFICATION
14)
15 OAKLAND PORT SERVICES CORP. d/b/a) Date: August 20, 2010
16 AB TRUCKING, and DOES 1 through 20,) Time: 10:00 a.m.
inclusive,) Dept: 20
17 Defendants.) Judge: Robert Freedman

18 I, Lisl R. Duncan, hereby declare and state as follows:

- 19 1. I am an attorney duly licensed to practice law before all the courts in the State of
20 California, and I am an associate with Weinberg, Roger & Rosenfeld, the attorneys of record for
21 Plaintiffs Lavon Godfrey and Gary Gilbert. I have personal knowledge of the following facts, and
22 if called to testify, I could and would competently testify to each fact contained in this declaration.
- 23 2. For the Court's convenience, a copy of the Complaint is attached hereto as Exhibit
24 A.
- 25 3. A true and correct copy of excerpts from the reporter's transcript of the deposition
26 of William Aboudi, president of Defendant Oakland Port Services and the individual produced by
27 Defendant as its person most knowledgeable regarding the company's timekeeping practices, daily
28 operations, policies and practices regarding meal periods and rest periods, and compliance with

1 wage/hour laws, is attached hereto as Exhibit B.

2 4. A true and correct copy of excerpts from the reporter's transcript of the deposition
3 of Jovi Aboudi, the individual produced by Defendant as its person most knowledgeable regarding
4 the company's payroll system and payment of wages, is attached hereto as Exhibit C.

5 5. Prior to Mr. Aboudi's deposition, Plaintiffs propounded requests for production of
6 documents on Defendant. In response, Defendant provided responses and documents, bates
7 stamped: OPS 00001 – 00280, Godfrey 2004 0001 – 0245, Godfrey 2005 0001 – 0307, Godfrey
8 2006 0001 – 0423, Godfrey 2007 0001 – 0557, Godfrey 2008 0001 – 0111. Some of these
9 documents were introduced and authenticated in the depositions of Mr. Aboudi and Ms. Aboudi.

10 6. A true and correct copy of excerpts from the reporter's transcript of the deposition
11 of Plaintiff Lavon Godfrey, is attached hereto as Exhibit D.

12 7. A true and correct copy of excerpts from the reporter's transcript of the deposition
13 of Plaintiff Gary Gilbert, is attached hereto as Exhibit E.

14 8. From responses and documents received during discovery, it is apparent that
15 Oakland Port Services, d/b/a AB Trucking has no training manuals or materials related to meal and
16 rest periods or written policy on meal and rest periods. This determination is made based on
17 Defendant's responses to Plaintiffs' requests for production of documents 33, 34, and 36 and
18 Defendant's responses to Plaintiffs' Special Interrogatories 41 and 43. Attached hereto as Exhibit
19 F are Plaintiffs' Requests for Production of Documents, Set 1. Attached hereto as Exhibit G are
20 Defendant's Responses to Plaintiffs' requests for production for documents. Attached hereto as
21 Exhibit H are Plaintiffs' Special Interrogatories, Set 1. Attached hereto as Exhibit I are
22 Defendant's responses to Plaintiffs' special interrogatories, Set 1. In these responses, AB Trucking
23 states that there are no training materials. This is confirmed through the document production,
24 which, although providing Plaintiffs' with nearly 2,000 pages of documents, contains not a single
25 page of training materials or manuals provided to the drivers. Further, the Deposition testimony of
26 Mr. Aboudi, attached above as Exhibit B, supports this conclusion as Mr. Aboudi testifies, on
27 pages 57:12-17, 58:16-59:12, 116:13-118:8, 118:12-25, that there were no written training
28 materials provided to the drivers.

1 9. Mr. Aboudi's deposition testimony confirms that AB Trucking uses the same
2 payroll processing system for all the drivers and produces earnings statements that are identical in
3 form. See exhibits 2 – 4, 10 to Exhibit B.

4 10. Weinberg, Roger & Rosenfeld is a 40-attorney firm based in Alameda, California
5 with additional offices in Sacramento, Los Angeles, and Honolulu. The Weinberg, Roger &
6 Rosenfeld law firm is one of the largest and most prominent union-side labor law firms in the
7 country. The firm's primary practice is to represent employees, unions, and employee benefit
8 plans in relation to all aspects of their legal needs. Our litigation practice ranges from wage and
9 hour class actions to labor arbitrations to appellate work. The firm has represented employees in
10 numerous wage and hour lawsuits brought as class actions, including, among others, the seminal
11 *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575 (holding that employees must be
12 compensated for required time on employer-provided buses under California law). Other
13 successful wage and hour class actions brought by the firm include *Weddle et al. v. Frito-Lay Inc.*,
14 No. C 99-05272 PJH (N.D. Cal.) and *Yarbrough et al. v. Labor Ready, Inc.*, No.836186-2
15 (Alameda County Superior Court). A firm resume is attached hereto as Exhibit J.

16 11. David Rosenfeld, the supervising attorney in this case, is a named shareholder of the
17 law firm. Mr. Rosenfeld has been practicing union side labor law since his graduation from
18 University of California, Berkeley, Boalt Hall School of Law, in 1973. Since 2004, Mr. Rosenfeld
19 has taught Labor Law and various Employment Law classes and seminars at Boalt Hall. Mr.
20 Rosenfeld has argued many important cases before the United States Supreme Court, the California
21 Supreme Court, various federal and state courts of appeal and the National Labor Relations Board.
22 He had primary responsibility for the seminal wage and hour cases of *Morillion v. Royal Packing*
23 *Co.* (2000) 22 Cal.4th 575, broadening an employer's obligation to pay for all hours worked to
24 include travel time on company vehicles, and *Cicairos v. Summit Logistics, Inc.* (2005) 133
25 Cal.App.4th 949, an ongoing wage/hour litigation regarding breaks for meals and rest. He has also
26 brought other successful wage and hour class actions, including but not limited to *Fitz et al. v. Able*
27 *Iron Works*, Los Angeles Superior Court Case No. BC343271; *Hernandez et al. v. Central Precast*
28 *Concrete, Inc.*, Alameda Superior Court Case No. RG05247294; *Matthews et al. v. Petrochem*

1 *Insulation, Inc.*, Alameda Superior Court Case No. 2002067565; *Weddle et al. v. Frito-Lay Inc.*,
2 No. C 99-05272 PJH (N. D. Cal.); and *Yarbrough et al. v. Labor Ready, Inc.*, No.836186-2
3 (Alameda County Superior Court).

4 12. Caren Sencer is a shareholder at the Law Firm and was admitted to the California
5 Bar in 2004. Her practice includes the representation of unions, their members and working people
6 in both state and federal court as well as in administrative proceedings. She graduated from the
7 University of California, Berkeley, Boalt Hall in 2004 where she served as the Editor in Chief of
8 the Berkeley Journal of Employment and Labor Law for the 2003-2004 publications. She has
9 worked with Mr. Rosenfeld on many of the cases referenced above including *Quintero, et al. v.*
10 *KCB Towers, Inc.*, San Bernardino County Superior Court No. SCVSS 144871; *Fitz et al. v. Able*
11 *Iron Works*, Los Angeles Superior Court Case No. BC343271; *Hernandez et al. v. Central Precast*
12 *Concrete, Inc.*, Alameda Superior Court Case No. RG05247294 and both the trial court and
13 appellate work in *Cicairos v. Summit Logistics, Inc.* (2005) 133 Cal.App.4th 949, San Joaquin
14 County Superior Court No. CV 014837 and its companion case, *Bluford v. Safeway, Inc.* San
15 Joaquin County Superior Court No. CV 028541.

16 I am a second-year associate at the Law Firm and was admitted to the California Bar in
17 2008. I graduated from University of California, Hastings College of the Law in 2008. While at
18 Hastings, I served as the Editor in Chief for the Hastings Race & Poverty Law Journal.

19 14. Caren P. Sencer and I, both firm attorneys, have been litigating this case and will
20 continue to do so as part of the class counsel team along with Mr. Rosenfeld. Our practice areas
21 include the representation of unions, their members and working people in both state and federal
22 court as well as in administrative proceedings. Caren Sencer and I have been particularly active in
23 the firm's wage and hour practice, including prevailing wage litigation and class representation.
24 See the firm resume attached hereto as Exhibit J for further details if desired.

25 15. Our firm is able and willing to devote substantial resources to this matter and will
26 vigorously represent the class. We have vigorously investigated and prosecuted the class
27 members' claims, by litigating pleadings issues in the Superior Court and in the Court of Appeal,
28 propounding and enforcing written discovery, taking depositions, and analyzing Defendant's

1 voluminous document production.

2 16. The named plaintiffs have devoted considerable time and effort to this action,
3 meeting with Plaintiffs' counsel, responding to written discovery requests, and testifying at
4 depositions. (See the Declaration of Lavon Godfrey and the Declaration of Gary Gilbert filed
5 concurrently.) Plaintiffs propose to serve as representatives of the class, and their declarations
6 have been provided in support of the Motion for Class Certification. They seek to assert the claims
7 alleged herein not only on their own behalf, but on behalf of all similarly-situated individuals.

8 17. Plaintiffs have plead this action as a class action seeking to represent a class of *all*
9 *drivers who performed work for AB Trucking out of its Oakland, California facility from the period*
10 *of March 28, 2004 through March 28, 2008.* Plaintiffs propose sub-classes for purposes of clarity.
11 Specifically, "all drivers" in the putative class will either fall into an "All Hours Worked" subclass
12 or a "Misclassified Employee or No Wages Received" subclass.¹ Drivers who were considered by
13 Defendant to be employee drivers were not paid for all hours worked because there were times that
14 drivers were performing work, when they were not compensated. Drivers who were considered by
15 Defendant to be non-employee trainees were not paid at all.

16 Regardless of whether a driver falls into the "All Hours Worked" subclass or the
17 "Misclassified Employee or No Wages Received" subclass, that same driver may also properly be
18 a member of the "Overtime" subclass, "Living Wage" subclass, and/or "Meal and Rest Period"
19 subclass. Both drivers in the "All Hours Worked" subclass and drivers in the "Misclassified
20 Employee or No Wages Received" subclass, are owed wages by Defendant, the difference is
21 simply why they are owed wages. The rate at which the drivers should have been paid (the
22 overtime wage rate and/or living wage rate), will apply to either subclass. Similarly, whether
23 drivers received all required meal and rest periods applies regardless of whether that driver was
24 classified as an employee or a non-employee.

25 In sum, Plaintiffs seek to represent a class of all drivers as described in detail above. This

26
27 ¹ It is possible an individual might fit into the "Misclassified Employee or No Wages Received" subclass during the
28 first period of his/her employment and then later in that employment transition into the "All Hours Worked" subclass
because he/she is later hired as an employee. However, during any one given time period, an individual could not be
part of *both* of these two subclasses *at the same time*.

1 class is divided into two sub-classes: the "All Hours Worked" subclass and the "Misclassified
2 Employee or No Wages Received" subclass. The full class described above may also be divided
3 into the "Overtime", "Living Wage", and/or "Meal and Rest Period" subclasses.

4 18. On May 5, 2010, I sent an information request via email and regular mail to the Port
5 of Oakland seeking all documents provided to Oakland Port Services Corporation and/or AB
6 Trucking and/or OMSS, which the Port produced on or about April 12, 2010. Attached herewith is
7 a true and correct copy of this correspondence is attached as Exhibit K. On June 15, 2010 received
8 correspondence from the Port and on June 23, 2010, our office received eight pages of
9 documentation via email and PDF from the Port in response to our request. A true and correct
10 copy of this correspondence and the information provided is attached herewith as Exhibit L. This
11 information shows Defendant was approved for a "space assignment" by the Port of Oakland for
12 "OAB Bldg R070 Rooms 2, 17, 22, 23 at Bataan Avenue" on February 28, 2005. This "space
13 assignment" was signed by William Aboudi, president of AB Trucking, a representative of the
14 Port's Risk Management Office, and the Manager of Tenant Services and Chief Wharfinger of the
15 Maritime Division. On July 14, 2010, I printed a copy of the Board of Port Commissioners Port of
16 Oakland Tariff No. 2-A, Section 1: Definition of Technical Terms. Page 6 of the PDF file (labeled
17 on the document itself as "original page 18") defines "space assignment." A true and correct copy
18 of page 6 ("original page 18") is attached herewith as Exhibit M (available at
19 http://www.portofoakland.com/pdf/mari_tarif_02_2007.pdf; last viewed July 14, 2010).

20 I declare under penalty of perjury that the foregoing is true and correct from my own
21 personal knowledge. Executed this 19 day of July 2010, in Alameda, California.

22 
23 _____
24 LISL R. DUNCAN

25 118212/547141

**BOARD OF PORT COMMISSIONERS
PORT OF OAKLAND MARITIME DIVISION**

**PORT OF OAKLAND TARIFF NO. 2A
STANDARD TARIFF ASSIGNMENT: WHARF/SPACE**

ASSIGNMENT NO.: 1112MMJ1
 TENANT NO.: 6070
 DATE PREPARED: February 24, 2005
 EFFECTIVE DATE: March 1, 2005
 PAGE 5 NOT APPLICABLE:

NAME OF FIRM Oakland Port Services		Phone: 510-553-1701
BILLING ADDRESS 2505 Bataan Avenue Suite A		Fax: 510-553-9115
CITY Oakland		E-Mail: bill@abtruck.com
State CA	Zip 94607	

SECTION A: TYPE AGREEMENT

<input type="checkbox"/> PREFERENTIAL NON EXCLUSIVE WHARF ASSIGNMENT	<input checked="" type="checkbox"/> SPACE ASSIGNMENT	<input type="checkbox"/> VESSEL BERTH RESERVATION
<input type="checkbox"/> SECONDARY WHARF ASSIGNMENT	<input type="checkbox"/> TEMPORARY WHARF ASSIGNMENT BERTHING OF NON-OPERATIVE VESSEL	<input type="checkbox"/> CONTAINER CRANE ASSIGNMENT (SECONDARY USE)
<input type="checkbox"/> SECONDARY WHARF ASSIGNMENT (FACILITY/VSL OPERATIONAL)	<input type="checkbox"/> USE OF NON-OPERATIVE FACILITY	<input type="checkbox"/> PREFERENTIAL CONTAINER CRANE ASSIGNMENT

THIS ASSIGNMENT IS SUBJECT TO ALL APPLICABLE RULES AND REGULATIONS OF PORT OF OAKLAND TARIFF NO. 2-A

SECTION B: DESCRIPTION OF AREA/ASSIGNEE INFORMATION (Complete all applicable information)

VESSEL	VOYAGE	LOA	ETA	ETD
VESSEL OWNER/LINE	BERTH DESIRED			
VESSEL CHARTERER				
TO LOAD (Commodity Type and Amount/No. of Containers)	TO DISCHARGE (Commodity Type and Amount/No. of Containers)			
TERMS OF AFFREIGHTMENT	TERMS OF AFFREIGHTMENT			
AGENCY FIRM	AUTHORIZED INDIVIDUAL			
CONTAINER CRANE DESIRED	CRANE LOCATION			
REASON AREA REQUIRED Trucker support offices				
LOCATION OF WHARF, WHARF AREA, SPACE, OR FACILITY DESIRED OAB Bldg R070 Rooms 2, 17, 22, 23 at 2505 Bataan Avenue				


TYPE OF AREA	SQ. FT/MONTH	RATE	AMOUNT	CALCULATIONS/REMARKS
LAND:				
Unpaved	x	\$0.104	= \$0.00	Utilities will be billed separately. Possessory Interest tax to be billed by Alameda County.
Rocked	x	\$0.128	= \$0.00	
Rocked/Lights/Fencing	x	\$0.148	= \$0.00	
Paved	x	\$0.153	= \$0.00	
Paved/Lights/Fencing	x	\$0.190	= \$0.00	
TRUCK or RAIL DOCK FACILITIES:				
Roofted/Doors/Levelers	x	\$0.480	= \$0.00	
Roofted/Doors/No Levelers	x	\$0.410	= \$0.00	
Roofted/No Doors/No Levelers	x	\$0.290	= \$0.00	
Platforms Only	x	\$0.190	= \$0.00	
WAREHOUSE SPACE:				
First Floor Level	x	\$0.300	= \$0.00	
BONDED STORAGE SPACE:				
First Floor Level	x	\$0.320	= \$0.00	
OFFICE SPACE, N.O.S.:				
Non-Air Conditioned	974.00 x	\$1.000	= \$974.00	
Air Conditioned	x	\$1.140	= \$0.00	
UTILITIES (Cost Plus 5%):	x		=	
MONTHLY DOCKAGE:	x		=	
MISCELLANEOUS (Identify):	x		=	
PRORATE FOR 30 DAYS		TOTAL AMOUNT PER PERIOD	974.00	

SUMMARY OF CHARGES PER PERIOD OF USE

Note: Charges specified in Assignment are subject to latest revisions of the Port of Oakland Tariff No. 2-A upon the effective date of such revisions. Pursuant to Item 10155 of Port of Oakland Tariff No. 2-A, Space Assignment rates do not include charges for utilities (water, electricity or telephone)

SECTION C: APPROVAL

Applicant hereby agrees to comply with the Rates, Rules, Regulations and Conditions of Port of Oakland Tariff No. 2-A and with the attached General/Special provisions of this assignment.

Applicant: Oakland Port Services
By:  Dated: 2/25/05
Type or Print Name and Title of Applicant's Representative: Bill Aboudi, President

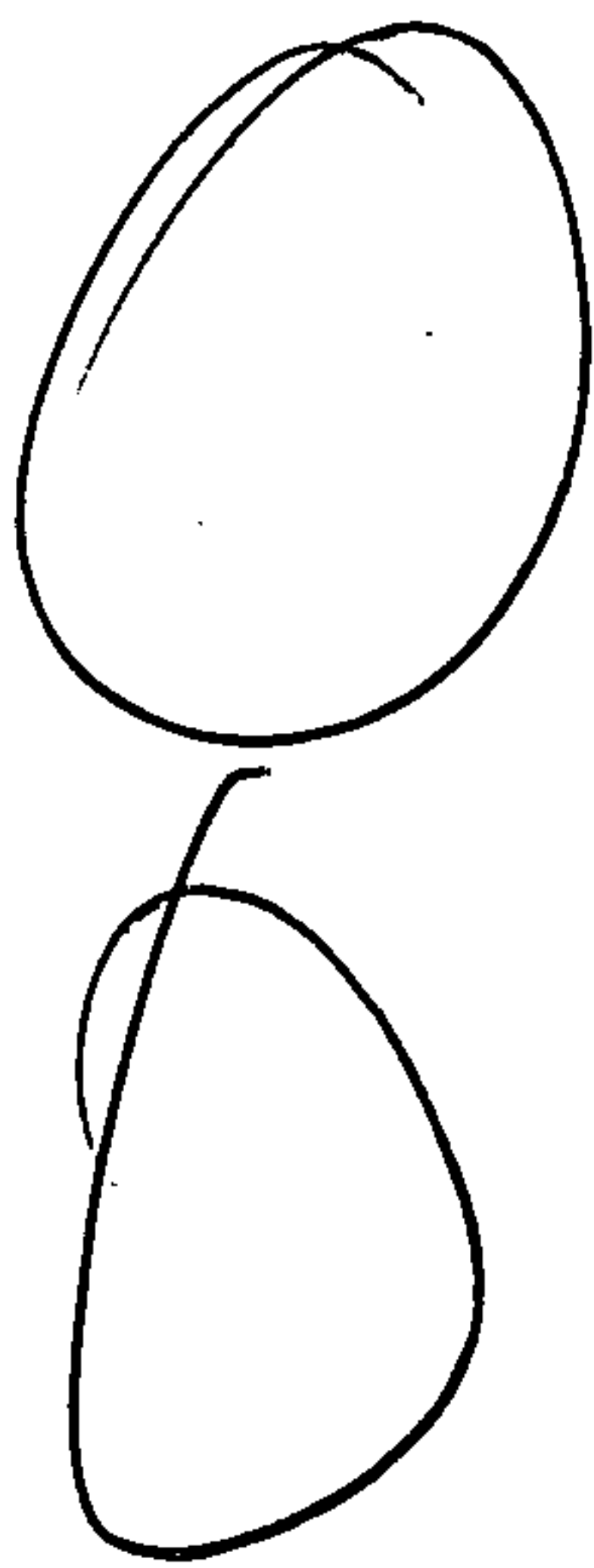
Certificate of Insurance on File with Port

Signature of Port Risk Management Office/Date

2-28-05

Application Approved (Date)


 Manager, Tenant Services and Chief Wharfinger, Maritime Division



Please note the public information numbers (available 9am-5pm) for following areas:

Fresno
70 East Shaw Avenue, Suite 315
Fresno, CA 93710
559) 244-5340

Stockton
11 East Channel Street, Room 317
Stockton, CA 95202
209) 948-7770 or (209) 948-7771

Yakima
555 California Avenue, Suite 200
Yakima, CA 98901
509) 395-2710

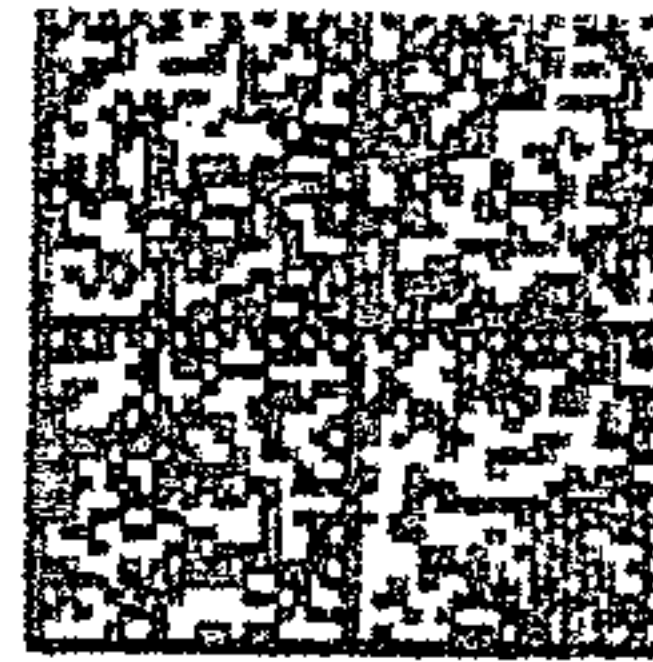
San Bernardino
64 West Fourth Street, Room 348
San Bernardino, CA 92401
909) 383-4334 and (213) 620-6330

Santa Barbara
11 East Canon Perdido Street, Room 3
Santa Barbara, CA 93101
805) 568-1222

San Diego
550 West Main Street
San Diego, CA 92101
619) 353-0607

Call Toll-Free (800) 703-4774

State of California
Department of Industrial Relations
INDUSTRIAL WELFARE COMMISSION
P.O. Box 420603
San Francisco, CA 94142-0603



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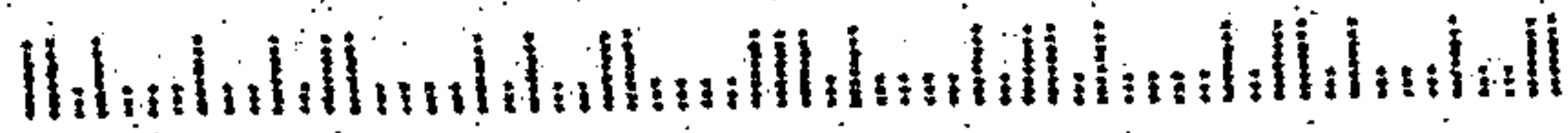


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Ms. Doris Vaughn
C/O AB TRUCKING
P.O. Box 24929
Oakland, CA 94623

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OSP 01 55735

34623+1929-23 8026





OFFICIAL NOTICE

INDUSTRIAL WELFARE COMMISSION

ORDER NO. 9-2001

REGULATING

WAGES, HOURS AND WORKING CONDITIONS IN THE

TRANSPORTATION INDUSTRY

Effective January 1, 2001 as amended

This Order Must Be Posted Where Employees Can Read It Easily

Employers should post this notice as they would a calendar, opening it to display the title and official text, and allowing other pages to hang loose for reference and ease of reading.

Guy Bryant

From: Bill Aboudi [baboudi@gmail.com]
 Sent: Wednesday, January 11, 2012 8:42 AM
 To: Guy Bryant
 Subject: DOT# 663960

SAFER Layout			
Entity Type: Carrier			
Operating Status: REGISTERED		Out of Service Date: None	
Legal Name: OAKLAND PORT SERVICES CORPORATION			
DBA Name: AB TRUCKING			
Physical Address: 11 BURMA ROAD OAKLAND, CA 94607			
Phone: (510) 835-0930			
Mailing Address: P O BOX 24929 OAKLAND, CA 94623			
USDOT Number: 663960		State Carrier ID Number:	
MC or MX Number: MC-310575		DUNS Number: --	
Power Units: 20		Drivers: 20	
MCS-150 Form Date: 10/04/2010		MCS-150 Mileage (Year): 3,000,000 (2009)	
Operation Classification:			
Operation Classification			
SAFER Layout	SAFER Layout	SAFER Layout	
X	Auth. For Hire Exempt For Hire Private(Property) Priv. Pass. (Business)	Priv. Pass.(Non- business) Migrant U.S. Mail Fed. Gov't	State Gov't Local Gov't Indian Nation UNKNOWN
Carrier Operation:			
Carrier Operation			
SAFER Layout	SAFER Layout	SAFER Layout	
X	Interstate	Intrastate Only (HM)	Intrastate Only (Non-HM)

Cargo Carried:

Cargo Carried

SAFER Layout		SAFER Layout		SAFER Layout	
X	General Freight		Liquids/Gases	Chemicals	
X	Household Goods	X	Intermodal Cont. Passengers	X	Commodities Dry Bulk
X	Metal: sheets, coils, rolls		Oilfield Equipment	X	Refrigerated Food
	Motor Vehicles		Livestock	X	Beverages
	Drive/Tow away		Grain, Feed, Hay	X	Paper Products
	Logs, Poles, Beams, Lumber		Coal/Coke		Utilities
X	Building Materials	X	Meat	X	Agricultural/Farm Supplies
	Mobile Homes		Garbage/Refuse	X	Construction
			US Mail		Water Well
X	Machinery, Large Objects				
	Fresh Produce				