



\*7210358\*

1 DAVID A. ROSENFELD, Bar No. 058163  
2 CAREN P. SENCER, Bar No. 233488  
3 WEINBERG, ROGER & ROSENFELD  
4 A Professional Corporation  
5 1001 Marina Village Parkway, Suite 200  
6 Alameda, California 94501-1091  
7 Telephone 510.337.1001  
8 Fax 510.337.1023

**FILED**  
ALAMEDA COUNTY

JAN 22 2009

CLERK OF THE SUPERIOR COURT  
By *Alohaeue Collins* Deputy

6 Attorneys for Plaintiffs  
7 LAVON GODFREY and GARY GILBERT

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 )  
11 behalf of themselves and all others similarly )  
12 situated, )

Case No. RG 08-379099  
**CLASS ACTION**

13 Plaintiffs,

**PLAINTIFFS' ERRATA TO  
STIPULATION**

14 v.

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

Defendants.

18 Plaintiffs hereby submit this Errata to Stipulation filed January 21, 2009. The First  
19 Amended Complaint referenced in said Stipulation was not attached. Attached hereto as Exhibit A  
20 is the First Amended Complaint referenced in the Stipulation.

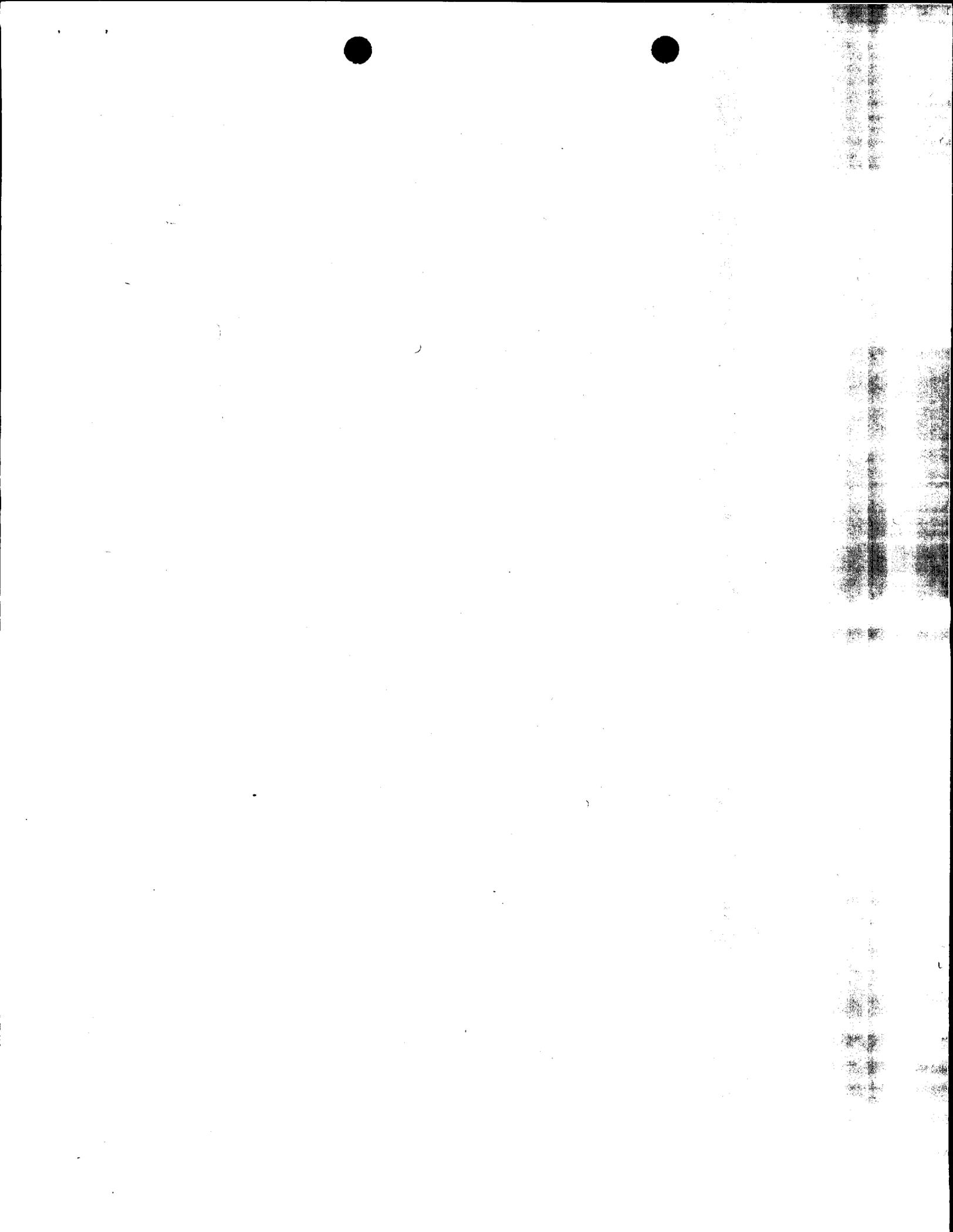
21 Dated: January 21, 2009

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

By: *DAVID A. ROSENFELD*

DAVID A. ROSENFELD  
CAREN P. SENCER  
Attorneys for Plaintiffs

26 118212/517944



1 DAVID A. ROSENFELD, Bar No. 058163  
2 CAREN P. SENCER, Bar No. 233488  
3 WEINBERG, ROGER & ROSENFELD  
4 A Professional Corporation  
5 1001 Marina Village Parkway, Suite 200  
6 Alameda, California 94501-1091  
7 Telephone 510.337.1001  
8 Fax 510.337.1023

9 Attorneys for Plaintiffs  
10 LAVON GODFREY and GARY GILBERT

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

13 LAVON GODFREY, and GARY GILBERT on ) Case No. RG 08-379099  
14 behalf of themselves and all others similarly )  
15 situated, ) **CLASS ACTION**

16 Plaintiffs, )

17 v. )

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

21 Defendants. )

22 **FIRST AMENDED COMPLAINT FOR**  
23 **UNFAIR BUSINESS PRACTICES AND**  
24 **VIOLATIONS OF THE LABOR CODE**

25 **I. INTRODUCTION**

26 This is an action brought by Plaintiffs LAVON GODFREY and GARY GILBERT  
27 (“Plaintiffs”), on their own behalf and on behalf of all those similarly situated, against Defendant  
28 OAKLAND PORT SERVICES CORP. d/b/a AB TRUCKING, INC., (“Defendant” or “AB  
Trucking”) and other as yet unnamed defendants, alleging unfair business practices, violations of  
the California Labor Code and violations of the Port of Oakland Living Wage Ordinance (Oakland  
City Charter, Section 728). Plaintiffs seek restitution, equitable accounting, statutory penalties,  
damages including declaratory and injunctive relief, attorneys’ fees, and costs of suit.

**II. PARTIES**

1. Plaintiff LAVON GODFREY was at all relevant times herein employed by  
Defendant as a truck driver at the Port of Oakland in California. She brings this action on her own

1 behalf and on behalf of others similarly situated.

2 2. Plaintiff GARY GILBERT was at all relevant times herein employed by Defendant  
3 as a truck driver at the Port of Oakland in California. He brings this action on his own behalf and  
4 on behalf of others similarly situated.

5 3. AB TRUCKING is a business entity doing business in California, and is a "person"  
6 as defined in California Labor Code § 18, and California Business and Professions Code § 17201.  
7 In addition, Defendant is an "employer" as that term is used in the California Labor Code and in  
8 the California Industrial Welfare Commission's orders regulating wages, hours, and working  
9 conditions.

10 4. Defendant AB TRUCKING. is incorporated in California and has corporate offices  
11 and is licensed to do business within the state.

12 5. Defendant is a Port Assisted Businesses ("PAB") under the Living Wage Charter  
13 Amendment of the Oakland City Charter, § 728. Defendant is believed to have contracts with the  
14 Port of Oakland which result in the employment of more than 20 persons and/or receives financial  
15 assistance from the Port of no less than \$50,000.

16 6. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as  
17 DOES 1 through 20, inclusive, and therefore sue these Defendants by such fictitious names.  
18 Plaintiffs will amend this complaint to allege their true names and capacities when ascertained.

19 7. At all relevant times herein, Defendants were the agent of each other and acting  
20 within the course and scope of their agency.

21 8. Venue is proper based on the location of the majority of Plaintiffs' work as well as  
22 the location of the commission of the acts alleged herein. The work giving rise to this complaint  
23 was performed in various counties in California but was based out of Alameda County. The Court  
24 has jurisdiction over this action pursuant to Subsection 9 of Oakland City Charter, § 728 which  
25 allows enforcement in any superior court of the state of California. Section 9(A) states:

26 Any person claiming a violation of this Section may bring an action against  
27 the PAB in the Municipal Court or Superior Court of the State of California,  
28 as appropriate, to enforce the provisions of this Section and shall be entitled  
to all remedies available to remedy any violation of this Section, including  
but not limited to back pay, reinstatement or injunctive relief. Violations of

1 this Section are declared to irreparably harm the public and covered  
2 employees generally.

3 The relief requested is within the jurisdiction of this Court.

4 **III. FACTUAL ALLEGATIONS**

5 9. During the four years prior to the filing of this action, Defendant provided  
6 transportation of product and containers to and from the Port of Oakland to various locations  
7 within California.

8 10. Defendant engaged in:

- 9 • A pattern and practice of failing to provide meal and rest periods as required  
10 under California law;
- 11 • A pattern and practice of failing to provide minimum compensation under  
12 the Port of Oakland Living Wage Ordinance;
- 13 • A pattern and practice of failing to provide employees with adequate wage  
14 statements;
- 15 • A pattern and practice of failing to pay wages for all hours worked;
- 16 • A pattern and practice of failing to keep accurate logs of driving work  
17 performed by employees;
- 18 • A pattern and practice of failing to provide all compensation owed in a  
19 timely manner
- 20 • A pattern and practice of failing to provide all compensation owed at the  
21 termination of employment; and
- 22 • Failing to pay minimum wage as required by California law.

23 11. The wages, hours and working conditions of individuals employed in the  
24 transportation industry are regulated by Industrial Wage Commission Wage Order 9, Cal. Code  
25 Regs. tit. 8, § 11090.

26 12. IWC Wage Order 9, section 4, and Labor Code § 1194 require an employer to  
27 provide compensation for all hours worked.

28 //

1 13. Plaintiffs allege that Defendant regularly did not pay employees for time worked  
2 and this included failing to pay minimum wages for all hours worked.

3 14. Under the terms of IWC Wage Order 9, section 11, employees are required to  
4 receive a ½ hour unpaid, off-duty meal period during each eight (8) hour shift. Employees  
5 working beyond ten (10) hours in a day are entitled to a second ½ hour unpaid, off-duty meal  
6 period.

7 15. Under the terms of IWC Wage Order 9, section 12, employees are entitled to two  
8 uninterrupted ten minute rest periods during each eight hour shift.

9 16. Labor Code § 226.7 requires employers to provide employees with meal and rest  
10 periods mandated by the IWC wage orders and provides for wages of one additional hour of pay at  
11 the employee's regular rate to compensate for each day such meal and/or rest period was not  
12 provided up to a maximum of 2 additional hours of compensation per day.

13 17. California Labor Code § 512 prescribes when meal periods must be provided. An  
14 employee is entitled to one thirty minute meal period in the first eight hours of work and a second  
15 meal period if the employee works more than ten hours of work. Under the terms of Labor Code §  
16 512, an employee may consent to waiver of a meal period but may not consent to waive his second  
17 meal period if he waived the first meal period.

18 18. The Defendants regularly failed to provide Plaintiffs and others their right to the  
19 state mandated ½ hour off-duty meal period and failed to authorize uninterrupted rest periods.

20 19. Plaintiffs have not been compensated one additional hour for each day a meal and or  
21 one additional hour for each day a rest period has not been provided.

22 20. Oakland City Charter Section 728 requires that all Port-Assisted Businesses provide  
23 compensation not less than the Oakland living wage. The July 2007-June2008 minimum  
24 compensation was \$11.58 without benefits and \$10.07 with benefits according Oakland Municipal  
25 code section 2.28. The current minimum compensation is \$12.45 without benefits and \$10.83 with  
26 benefits.

27 21. The Defendants have failed to provide at least the Oakland living wage rate for each  
28 hour worked.



1 All employees and former employees of Defendants who were not provided  
2 rest breaks or meal periods as required by California in the four years prior  
3 to the filing of this lawsuit and who are entitled to all restitutionary relief,  
4 legal relief and attorney's fees and costs.

5 All employees and former employees of Defendants who have worked for  
6 Defendants at the Port facility for the period 4 years immediately preceding  
7 the filing of this action and who have not been paid the minimum  
8 compensation required by Oakland Charter Section 728.

9 All employees and former employees of Defendants who were not provided  
10 accurate itemized wage statements as required by California law in the year  
11 prior to the filing of this lawsuit and who are entitled to all restitutionary  
12 relief, legal relief and attorney's fees and costs.

13 All employees and former employees of Defendants who were not paid in a  
14 timely basis upon termination as required by California law in the four years  
15 prior to the filing of this lawsuit and who are entitled to all restitutionary  
16 relief, legal relief and attorney's fees and costs.

17 All employees and former employees of Defendants who have worked for  
18 Defendants for the period 4 years immediately preceding the filing of this  
19 action and who have not been paid the minimum wage as required by  
20 California law.

21 30. Plaintiffs reserve the right under Rule 1855(b), California Rules of Court to  
22 amended or modify the class description with greater specificity or further division into sub-classes  
23 or limitation to particular issues.

24 31. This action may be properly maintained as a class action under Code of Civil  
25 Procedure § 382 because there is a well-defined community of interest in the litigation and the  
26 proposed class is easily ascertainable:

27 **A. Numerosity**

28 32. The members of the proposed class are so numerous that joinder of all the members  
of the class is impracticable. While the precise number of class members has not been determined  
at this time, Plaintiffs are informed and believe that Defendant employed more than fifty  
transportation employees during the relevant period.

33. Plaintiffs allege Defendant's employment records will provide information as to the  
number and location of all class members. Those records will furthermore disclose the amount of  
time worked, hours for which pay was received, and whether meal and rest periods were provided,  
or Plaintiffs and others similarly situated will have their own reasonable estimates of such monies.

1           **B.     Commonality**

2           34.     There are questions of law and fact common to the class that predominate over any  
3 questions affecting only individual class members. These common questions of law and fact  
4 include, without limitation:

5                 a.     Whether Defendant violated Labor Code § 1194 and Industrial Welfare  
6 Commission Order 9-2001, Section 4, by failing to provide compensation for each hour worked;

7                 b.     Whether Defendant violated Labor Code § 512 and IWC Wage Order 9,  
8 sections 11 and 12 by failing to provide meal and rest periods to employees;

9                 c.     Whether Defendant violated § 226.7 of the Labor Code by failing to provide  
10 off duty meal periods and rest periods without providing employees with compensatory  
11 remunerations;

12                d.     Whether Defendant violated Oakland City Charter § 728 by failing to  
13 provided the living wage to employees for each hour worked;

14                e.     Whether Defendant violated Labor Code §§ 201 and 202 by failing to pay  
15 all wages due at the time of termination of employment;

16                f.     Whether Defendant violated Labor Code § 204 by failing to provide all  
17 wages due on a biweekly basis;

18                g.     Whether Defendant violated Labor Code § 226 by failing to provide  
19 accurate itemized wage statements showing the applicable hourly rate for each hour worked and  
20 each category of compensation received; and

21                h.     Whether Defendant violated IWC Order 9 and Labor Code §1194 by not  
22 paying the minimum wage required by California law.

23           **C.     Typicality**

24           35.     The claims of the named Plaintiffs are typical of the claims of the proposed class.  
25 Plaintiffs and all members of the proposed class sustained injuries and damages arising out of and  
26 caused by Defendant's common course of conduct in violation of laws and regulations as alleged  
27 herein.

28     //

1           **D.     Adequacy of Representation**

2           36.     Plaintiffs are an adequate representative of the proposed class in that Plaintiffs have  
3 the same interests in the litigation of this case as the proposed class members. Plaintiffs are  
4 committed to vigorous prosecution of this case and have retained competent counsel who are  
5 highly experienced in class action and wage and hour litigation of this nature. Plaintiffs are not  
6 subject to any individual defenses different from those conceivably applicable to the class as a  
7 whole.

8           **E.     Superiority of Class Action**

9           37.     A class action is superior to other available means for the fair and efficient  
10 adjudication of this controversy. Individual joinder of all proposed class members is not  
11 practicable, and questions of law and fact common to the class predominate over any questions  
12 affecting only individual members of the class. Each member of the class has been damaged and is  
13 entitled to recovery by reason of Defendant's illegal policies and/or practices with respect to  
14 overtime, failure to pay prevailing wages, failure to provide meal and rest periods and inadequate  
15 wage statements for the defined period.

16           38.     Class action treatment will allow those similarly situated persons to litigate their  
17 claims in the manner that is most efficient and economical for the parties and the judicial system.  
18 Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of  
19 this action that would preclude its maintenance as a class action.

20           39.     A class action is superior to other available methods for the fair and efficient  
21 adjudication of this controversy because individual litigation of the claims of all proposed class  
22 members is impractical. Even if every proposed class member could afford individual litigation,  
23 the court system could not. It would be unduly burdensome to the courts in which individual  
24 litigation of numerous cases would proceed. Individualized litigation would also present the  
25 potential for varying, inconsistent, or contradictory judgments and would magnify the delay and  
26 expense to all parties and to the court system resulting from multiple trials of the same complex  
27 factual issues. By contrast, the conduct of this action as a class action, with respect to some or all  
28 of the issues presented herein, presents fewer management difficulties, conserves the resources of

1 the parties and the court system, and protects the rights of each proposed class member. Plaintiffs  
2 anticipate no management difficulties in this litigation.

3 40. Defendant has also acted, or has refused to act, in respects generally applicable to  
4 the proposed class, thereby making relief appropriate with regard to the members of the proposed  
5 class as a whole, as requested herein.

6 **V. FIRST CAUSE OF ACTION (UNFAIR BUSINESS PRACTICES**  
7 **BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.)**

8 41. Plaintiffs reallege and incorporate paragraphs 1 through 40, inclusive, as though set  
9 forth fully herein.

10 42. California Business and Professions Code § 17200 *et seq.* prohibits unfair  
11 competition in the form of any unlawful, unfair, deceptive, or fraudulent business practice.

12 43. Beginning at an exact date unknown to Plaintiffs, but at least since February 2004,  
13 the Defendant committed unlawful acts as defined by California Business & Professions Code §  
14 17200. The Defendant has engaged in unlawful and unfair business practices including, but not  
15 limited to, violations of:

- 16 a. California Industrial Welfare Commission Order No. 9-2001, section 4  
17 (payment for all hours worked);
- 18 b. Labor Code § 226.7 (failure to provide meal and rest periods);
- 19 c. Labor Code § 512 (failure to provide meal periods);
- 20 d. California Industrial Welfare Commission Order 9-2001, sections 11 and 12  
21 (failure to provide meal and rest periods);
- 22 e. Labor Code § 223 (secret payment of wages less than those designated by  
23 statute);
- 24 f. Oakland City Charter § 728 (living wage);
- 25 g. Labor Code § 201 (requirement to pay all wages upon discharge);
- 26 h. Labor Code § 202 (requirement to pay all wages to quitting employees);
- 27 i. Labor Code § 204 (requirement of payment of wages on a bimonthly basis);
- 28 j. Labor Code § 226 (accurate itemized wage statement); and

1 k. Labor Code § 1194 and California Industrial Welfare Commission Order 9-  
2 2001, failure to pay minimum wages.

3 44. The violation of these laws serve as unlawful predicate acts for purposes of  
4 Business & Professions Code § 17200 and remedies are provided therein under Business &  
5 Professions Code § 17203. Plaintiffs have suffered direct economic injury in that they has not  
6 been paid all wages and compensation due in a timely manner.

7 45. The acts and practices described in this Complaint constitute unlawful, unfair and  
8 fraudulent business practices, and unfair competition by the Defendant within the meaning of  
9 Business and Professions Code § 17200 *et seq.*

10 46. Business & Professions Code § 17203 provides that the Court may restore to any  
11 person in interest any money or property which may have been acquired by means of such unfair  
12 competition and to which those person have an ownership interest. Plaintiffs and other employees  
13 of Defendants are entitled to restitution pursuant to Business & Professions Codes §§ 17203 and  
14 17208 for all wages unlawfully withheld from them during the four years prior to the filing of this  
15 Complaint. Plaintiffs will, upon leave of the Court, amend this Complaint to state such amounts  
16 when they become ascertained.

17 47. Plaintiffs' success in this action will enforce important rights affecting the public  
18 interest, and in that regard, Plaintiffs sue on behalf of themselves and other current and former  
19 employees similarly situated. Plaintiffs seek and is entitled to unpaid wages at the living wage  
20 rate, unpaid compensation for missed meal and rest periods, injunctive relief, declaratory relief,  
21 and any other remedy owing to Plaintiffs.

22 48. Injunctive and declaratory relief is necessary and appropriate to prevent the  
23 Defendant from repeating their wrongful business practices alleged above.

24 49. To prevent the Defendant from profiting and benefiting from their wrongful and  
25 illegal acts, it is appropriate and necessary to enter an order requiring the Defendant to restore  
26 Plaintiffs and others all monies that are owed.

27 50. An actual controversy has arisen and now exists relating to the rights and duties of  
28 the Defendants and Plaintiffs as to whether Defendants must pay the living wage, wages for each

1 hour worked and compensation for missed meal and rest periods.

2 51. Plaintiffs require a declaration by this Court that Plaintiffs are entitled to be paid for  
3 all hours worked, are entitled to be paid at least the living wage rate, and be compensated for  
4 missed meal and rest periods pursuant to California Law.

5 52. Plaintiffs herein take upon themselves enforcement of these laws and lawful claims.  
6 There is a financial burden incurred in pursuing this action and it would be against the interests of  
7 justice to penalize Plaintiffs by forcing hereto pay attorneys' fees from the recovery in this action.  
8 Therefore, attorneys' fees are appropriate pursuant to California Code of Civil Procedure § 1021.5.

9 Wherefore, Plaintiffs pray judgment as set forth below.

10 **VI. SECOND CAUSE OF ACTION (FAILURE TO PAY FOR EACH HOUR WORKED IN**  
11 **VIOLATION OF LABOR CODE §§ 1194 AND 1182.12 AND IWC WAGE ORDER NO. 9,**  
12 **SECTION 4)**

13 53. Plaintiffs reallege and incorporate paragraphs 1 through 52, inclusive, as though  
14 fully set forth herein.

15 54. Labor Code § 1182.12 provides:

16 Notwithstanding any other provision of this part, on and  
17 after January 1, 2007, the minimum wage for all industries shall be  
18 not less than seven dollars and fifty cents (\$7.50) per hour, and on  
19 and after January 1, 2008, the minimum wage for all industries shall  
20 be not less than eight dollars (\$8.00) per hour.

21 55. IWC Order No. 9, section 4 provides for each employee to be paid no less than  
22 minimum wage for each hour worked and for those wage payments to be made on no less than a  
23 bi-weekly basis.

24 56. Plaintiffs worked for Defendant for hours which they were not compensated.  
25 Defendant regularly shorted hours on paychecks and deducted time from employee paychecks for  
26 meal periods even if such meal periods were not taken.

27 57. Labor Code § 204 requires employers to provide employees with all wages due and  
28 payable twice a month. As Defendant has failed to provide Plaintiffs and others similarly situated  
with wages for each hour worked, Defendant has violated Labor Code § 204.

//

1 58. Labor Code § 210 provides for civil penalties for violations of § 204 in the amount  
2 of \$100 per initial violation per employee and for subsequent violation or any willful or intentional  
3 violation, \$200 for each per employee, plus 25% of the amount unlawfully withheld.

4 59. Plaintiffs seek to recover that civil penalty for themselves and others similarly  
5 situated as provided for in Labor Code § 210 and the Wage Order. Plaintiffs seek to recover  
6 penalties for Defendant's violations on behalf of themselves and all others similarly situated.

7 60. Labor Code § 1194 provides for a private right of action to recover wages for hours  
8 worked but not compensated. It states, in pertinent part:

9 [A]ny employee receiving less than the legal minimum wage or the legal  
10 overtime compensation applicable to the employee is entitled to recover in a  
11 civil action the unpaid balance of the full amount of this minimum wage or  
overtime compensation, including interest thereon, reasonable attorney's  
fees, and costs of suit.

12 61. Plaintiffs seek to recover compensation for time worked but not paid, attorneys'  
13 fees and costs under Labor Code § 1194.

14 62. IWC Wage Order 9-2001 section 20(A) provides for civil penalties for violations of  
15 the Wage Order which result in underpayment of wages to employees. The penalty amounts to  
16 \$50 per employee for the first violation and \$100 per employee for each subsequent pay period in  
17 which the employee is under paid.

18 63. Plaintiffs seek to recover penalties under IWC Wage Order 16, section 20 for  
19 violations of section 4.

20 64. Labor Code § 218 provides for a private right of action to recover wages under the  
21 Labor Code. Plaintiffs seek to recover unpaid wages and penalties directly under § 218.

22 65. Labor Code § 218.6 provides for interest on all dues and unpaid wages in any action  
23 brought for the nonpayment of wages. Plaintiffs seek to recover interest on all wages due.

24 66. Plaintiffs seek to recover all unpaid overtime wages, penalties, and interest due to  
25 her and all others similarly situated.

26 Wherefore, Plaintiffs pray for judgment as set forth below.

27 //

28 //

1 **VII. THIRD CAUSE OF ACTION (LIVING WAGE -OAKLAND CITY CHARTER § 728)**

2 67. Plaintiffs reallege and incorporate paragraphs 1 through 66, inclusive, as though set  
3 forth fully herein.

4 68. Oakland City Charter, § 728 mandates that a PAB provide the Minimum  
5 Compensation referred to above.

6 69. Defendant has violated and continues to violate Oakland City Charter, § 728 by  
7 refusing to pay the Minimum Compensation required by Section 728 to all employees of  
8 Defendant.

9 70. Oakland City Charter § 728 (8) provides for a private right of action to enforce the  
10 provisions of the Living Wage Charter amendment, and provides for all remedies available to  
11 remedy any violation of Section 728 including, but not limited to backpay, reinstatement, or  
12 injunctive relief.

13 71. Plaintiffs have been damaged in that they have not been paid the Minimum  
14 Compensation at all times while employed by Defendant.

15 72. The Living Wage Charter Amendment also declares that any violation of the section  
16 constitutes irreparable harm to the public and covered employees generally. (Oakland City Charter  
17 § 728 (8).).

18 73. Plaintiffs' success in this action will enforce the mandate of the people of Oakland  
19 to protect the working people at the Port as well as the public interest at large.

20 74. Injunctive relief is necessary and appropriate to prevent Defendant from a continued  
21 violation of the Living Wage Charter Amendment and to save the economic livelihoods of workers  
22 at the Port of Oakland.

23 Wherefore, Plaintiffs pray for judgment as set forth below.

24 **VIII. FOURTH CAUSE OF ACTION (CALIFORNIA LABOR CODE §§ 226.7 & 512,**  
25 **IWC WAGE ORDER 9 – MEAL & REST PERIODS)**

26 75. Plaintiffs reallege and incorporate paragraphs 1 through 74, inclusive, as though set  
27 forth fully herein.

1 76. Labor Code § 226.7 provides:

2 (a) No employer shall require any employee to work during any meal or rest  
3 period mandated by an applicable order the industrial Welfare Commission.

4 (b) If an employer fails to provide an employee a meal period or rest period  
5 in accordance with an applicable order of the Industrial Welfare  
6 Commission, the employer shall pay the employee one additional hour of  
7 pay at the employee's regular rate of compensation for each workday that  
8 the meal or rest period is not provided.

9 77. Labor Code § 512 provides:

10 An employer may not employ an employee for a work period of more than  
11 five hours per day without providing the employee with a meal period of not  
12 less than 30 minutes, except that if the total work period per day of the  
13 employee is no more than six hours, the meal period may be waived by  
14 mutual consent of both the employer and employee. An employer may not  
15 employ an employee for a work period of more than 10 hours per day  
16 without providing the employee with a second meal period of not less than  
17 30 minutes, except that if the total hours worked is no more than 12 hours,  
18 the second meal period may be waived by mutual consent of the employer  
19 and employee.

20 78. IWC Wage Order 9, section 11, Meal Periods provides:

21 (A) No employer shall employ any person for a work period of more than  
22 five (5) hours without a meal period of not less than 30 minutes, except that  
23 when a work period of not more than six (6) hours will complete the day's  
24 work the meal period may be waived by mutual consent of the employer and  
25 the employee.

26 (B) An employer may not employ an employee for a work period of more  
27 than ten (10) hours per day without providing the employee with a second  
28 meal period of not less than 30 minutes, except that if the total hours worked  
is no more than 12 hours, the second meal period may be waived by mutual  
consent of the employer and the employee only if the first meal period was  
not waived.

(C) Unless the employee is relieved of all duty during a 30 minute meal  
period, the meal period shall be considered an "on duty" meal period and  
counted as time worked. An "on duty" meal period shall be permitted only  
when the nature of the work prevents an employee from being relieved of all  
duty and when by written agreement between the parties an on-the-job paid  
meal period is agreed to. The written agreement shall state that the employee  
may, in writing, revoke the agreement at any time.

(D) If an employer fails to provide an employee a meal period in accordance  
with the applicable provisions of this order, the employer shall pay the  
employee one (1) hour of pay at the employee's regular rate of  
compensation for each workday that the meal period is not provided.

29 79. IWC Wage Order 9, section 12, Rest Periods provides:

30 A) Every employer shall authorize and permit all employees to take rest  
31 periods, which insofar as practicable shall be in the middle of each work

1 period. The authorized rest period time shall be based on the total hours  
2 worked daily at the rate of ten (10) minutes net rest time per four (4) hours  
3 or major fraction thereof. However, a rest period need not be authorized for  
4 employees whose total daily work time is less than three and one-half (3 ½)  
5 hours. Authorized rest period time shall be counted as hours worked for  
6 which there shall be no deduction from wages.

7 (B) If an employer fails to provide an employee a rest period in accordance  
8 with the applicable provisions of this order, the employer shall pay the  
9 employee one (1) hour of pay at the employee's regular rate of  
10 compensation for each workday that the rest period is not provided.

11 80. Defendant has failed to provide Plaintiffs and other employees all meal and rest  
12 periods as required by Labor Code §§ 226.7 and 512 and IWC Wage Order 9.

13 81. IWC Wage Order 9, section 11 provides for an employee to be provided with 1  
14 hour's worth of compensation at his regular rate of compensation for each day of work that a meal  
15 period is not provided.

16 82. IWC Wage Order 9, section 12 provides for an employee to be provided with 1  
17 hour's worth of compensation at his regular rate of compensation for each day of work that a rest  
18 period is not provided.

19 83. Labor Code § 226.7 provides for one hour's compensation for failure to provide a  
20 meal or rest period. This is the same remedy as provided for in IWC Wage Order 9, sections 11  
21 and 12.

22 84. Plaintiffs seek the compensation owed to them and other similarly situated  
23 employees under Labor Code § 226.7 and IWC Wage Order 9, sections 11 and 12.

24 85. Labor Code § 558 provides for a civil penalty when an employer violates § 512.  
25 The initial violation is \$50 for each underpaid employee for each pay period for which the  
26 employee was underpaid in addition to an amount sufficient to recover underpaid wages.  
27 Subsequent violations are \$100 per underpaid employee per pay period.

28 86. IWC Wage Order 9-2001 section 20(A) provides for civil penalties for violations of  
the Wage Order which result in underpayment of wages to employees. The penalty amounts to  
\$50 per employee for the first violation and \$100 per employee for each subsequent pay period in  
which the employee is underpaid.

//

1 87. Plaintiffs seek the penalties available under Labor Code § 558 and IWC Wage  
2 Order 9-2001 section 20(A) on behalf of themselves and those similarly situated.

3 88. Labor Code § 204 requires an employer to pay an employee all wages due on a  
4 bimonthly basis. As Plaintiffs have not been paid wages for the meal and rest periods that have not  
5 been provided, this section and its enforcement mechanisms are applicable.

6 89. Labor Code § 210 provides a penalty when an employer violates § 204. The initial  
7 violation is \$100 for each failure to pay. Subsequent violations are \$200 for each failure to pay  
8 each employee, plus 25 percent of the amount unlawfully withheld.

9 90. Labor Code § 218 provides wage claimants with a private right of action to recover  
10 wages under the Labor Code. The payments owed to employees for meal and rest periods not  
11 provided are wages under Labor Code § 226.7.

12 91. Labor Code § 218.6 provides for an award of interest on all due and unpaid wages.  
13 Plaintiffs seek to recover interest on all wages due under the Section on behalf of themselves and  
14 others similarly situated.

15 92. Plaintiffs seek to recover all wages due and applicable penalties on behalf of  
16 themselves and others similarly situated.

17 Wherefore, Plaintiffs pray for judgment as set forth herein below.

18 **IX. FIFTH CAUSE OF ACTION (PAYMENT OF WAGES AND PENALTIES**  
19 **LABOR CODE §§ 201, 202, 203)**

20 93. Plaintiffs reallege and incorporate paragraphs 1 through 92, inclusive, as though  
21 fully set forth within.

22 94. Labor Code § 201 provides:

23 If an employer discharges an employee, the wages earned and unpaid at the  
24 time of discharge are due and payable immediately...

25 95. Labor Code § 202 provides:

26 If an employee not having a written contract for a definite period quits his or  
27 her employment, his or her wages shall become due and payable not later  
28 than 72 hours thereafter, unless the employee has given 72 hours previous  
notice of his or her intention to quit, in which case the employee is entitled to  
his or her wages at the time of quitting...



1 **XI. PRAYER FOR RELIEF**

2 Plaintiffs pray judgment as follows:

3 1. For preliminary, permanent and mandatory injunctive relief prohibiting the  
4 Defendants, its officers, agents, and all those acting in concert with them, from committing in the  
5 future those violations of law herein alleged;

6 2. For an order determining this matter to be a class action;

7 3. For an order imposing all statutory and/or civil penalties provided by law;

8 4. For an award of damages;

9 5. For an award of restitution according to proof, under the Labor Code and under  
10 Business & Professions Code § 17203;

11 6. For an equitable accounting to identify, locate, and restore to all current and former  
12 employees the wages they are due;

13 7. For penalties under Labor Code §§ 203, 210, 558, 226.3, and IWC Wage Order 9-  
14 2001;

15 8. For costs of suit incurred herein;

16 9. For an award of reasonable attorneys' fees as provided by Labor Code §§ 226(g)  
17 and 1194, Oakland City Charter § 728, Code of Civil Procedure § 1021.5, and otherwise; and

18 For such other and further relief as this Court deems just and proper.

19 Dated: January 20, 2009

20 WEINBERG, ROGER & ROSENFELD  
21 A Professional Corporation

22 By:

23   
24 DAVID A. ROSENFELD  
25 CAREN P. SENCER  
26 Attorneys for Plaintiffs

27 118212/515631

**PROOF OF SERVICE**  
(CCP 1013)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501-1091. On January 21, 2009, I served upon the following parties in this action:

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

copies of the document(s) described as:

**PLAINTIFFS' ERRATA TO STIPULATION**

- BY MAIL** I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Alameda, California. I am readily familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.
- BY PERSONAL SERVICE** I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and caused the same to be delivered by hand to the offices of each addressee.
- BY OVERNIGHT DELIVERY SERVICE** I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and placed the same for collection by Overnight Delivery Service by following the ordinary business practices of Weinberg, Roger & Rosenfeld, Alameda, California. I am readily familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing of Overnight Delivery Service correspondence, said practice being that in the ordinary course of business, Overnight Delivery Service correspondence is deposited at the Overnight Delivery Service offices for next day delivery the same day as Overnight Delivery Service correspondence is placed for collection.
- BY FACSIMILE** I caused to be transmitted each document listed herein via the fax number(s) listed above or on the attached service list.

I certify under penalty of perjury that the above is true and correct. Executed at Alameda, California, on January 21, 2009.

  
Jennifer Koffler

118212/517766