

FILED BY E-DELIVERY

ALAMEDA COUNTY

January 28, 2011

CLERK OF
THE SUPERIOR COURT
By Rosanne Case, Deputy

CASE NUMBER:
RG08379099

1 DAVID A. ROSENFELD, Bar No. 058163
2 CAREN P. SENCER, Bar No. 233488
3 LISL R. DUNCAN, Bar No. 261875
4 WEINBERG, ROGER & ROSENFELD
5 A Professional Corporation
6 1001 Marina Village Parkway, Suite 200
7 Alameda, California 94501-1091
8 Telephone 510.337.1001
9 Fax 510.337.1023

6 Attorneys for Plaintiffs
LAVON GODFREY and GARY GILBERT

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF ALAMEDA

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11	LAVON GODFREY and GARY GILBERT, on)	Case No.	RG08379099
12	behalf of themselves and all others similarly)		
13	situated,)		
14	Plaintiffs,)		
15	v.)		
16	OAKLAND PORT SERVICES CORP. d/b/a)	Date: February 4, 2011	
17	AB TRUCKING, and DOES 1 through 20,)	Time: 11:00 a.m.	
18	inclusive,)	Judge: Robert B. Freedman	
19	Defendants.)	Dept.: 20	

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19 Plaintiffs LAVON GODFREY and GARY GILBERT (hereinafter "GODFREY and/or
20 GILBERT," collectively "Plaintiffs") and Defendant OAKLAND PORT SERVICES CORP. d/b/a
21 AB TRUCKING (hereinafter "AB Trucking") submit this Joint Complex Case Management
22 Statement in preparation for the complex case management conference scheduled for February 4,
23 2011 at 11:00 a.m.

24 A. FACTUAL SUMMARY

25 This is a wage and hour class action suit brought by two former drivers of Defendant AB
26 Trucking. Plaintiffs allege unfair business practices, violations of the California Labor Code and
27 violations of the Port of Oakland's Living Wage Ordinance (Oakland City Charter, Section 728)
28 ("OLW"). Plaintiffs seek to recover all wages alleged to be due and alleged applicable penalties

1 on behalf of themselves and the Class. Plaintiffs also seek the difference between the Living Wage
2 and the lower wage rate alleged to have been paid for the four (4) years prior to the filing of the
3 Complaint, for themselves and the Class. Plaintiffs request treble damages pursuant to the OLW,
4 costs of litigation and attorneys' fees.

5 AB Trucking denies all of Plaintiffs' allegations.

6 B. PARTIES

7 The two individual Plaintiffs are truck drivers who allege to have worked for Defendant
8 and are representatives of the Class and Subclasses. Plaintiffs and the Class are represented by the
9 law firm Weinberg, Roger and Rosenfeld, 1001 Marina Village Parkway, Suite 200, Alameda, CA
10 94501.

11 Defendant is a small trucking company and is represented by the Law Office of Jay Ian
12 Aboudi, 1855 Olympic Boulevard, Suite 210, Walnut Creek, CA 94596.

13 C. DEADLINES AND LIMITS ON JOINDER AND AMENDED PLEADINGS

14 The parties do not intend to join any additional parties.

15 D. CLASS DISCOVERY AND CLASS CERTIFICATION

16 Plaintiffs have filed their class certification motion. The Court granted Plaintiffs' motion
17 for class certification on December 3, 2010.

18 The parties submitted a proposed class notice to the Court, which the Court denied without
19 prejudice on January 11, 2011. The parties intend to submit a modified proposed class notice to
20 the Court as soon as possible. The parties propose the approved Class Notice be sent to the Class
21 in late February 2011.

22 E. PROPOSED LITIGATION SCHEDULE

23 1. **Merits Discovery Prior to Trial:** The parties intend to conduct limited additional
24 discovery. Plaintiffs intend to conduct a half day deposition of the person most knowledgeable at
25 the Oakland Port to authenticate and explain certain documents already in Plaintiffs' possession.
26 Plaintiffs anticipate noticing this deposition for late March 2011.

27 Defendant intends to conduct additional depositions of unnamed class members anticipated
28 to last no more than a half day respectively. Defendant anticipates noticing these depositions for

1 late March and/or early April 2011.

2 2. **Contemplated dispositive motions:** The parties intend to file dispositive motions.
3 Plaintiffs intend to file a motion for summary judgment and adjudication in April 2011.

4 Defendant intends to file a motion to decertify the class. In addition, Defendant anticipates
5 filing a motion for summary judgment and adjudication. Defendant intends to file both motions
6 between April and June 2011.

7 3. **Trial date:** The parties are unable to come to an agreement on the trial date and
8 respectfully request the Court to make the determination.

9 **PLAINTIFFS' POSITION:** Based on the foregoing, Plaintiffs request the Court for a trial
10 date in early September 2011.

11 **DEFENDANT'S POSITION:** Based on the foregoing, Defendant requests the Court for a
12 trial date in early January 2012.

13 4. **Timeline for trial:** Plaintiffs propose bifurcation of liability and damage issues at
14 trial to increase efficiency. Plaintiffs anticipate the liability stage of the trial to take 3-4 days.
15 Depending on the number of claims, if any, for which Defendant is found liable, Plaintiffs predict
16 the damages portion of the trial will take 1-3 days. Defendant is amenable to any possible
17 bifurcation of liability and damage issues but believes that this question should be addressed after
18 the Court rules on the contemplated dispositive motions above. Defendant anticipates the trial will
19 take, at a minimum, 7 days.

20 5. **Separation of issues between Court and jury:**

21 Defendant believes that it is premature to determine if any issues should be separated
22 between Court and Jury.

23 Plaintiffs withdraw their original request for a jury trial. Plaintiffs wish to proceed on all
24 issues before the Court. Plaintiffs only recently notified Defendant of this change during the meet
25 and confer process for this CMC. Plaintiffs propose that, should a jury trial occur, for any reason
26 presently unknown to the parties, the legal issues presented below should be decided by the Court
27 and the factual issues presented below should be decided by the jury. If no jury trial occurs, the
28 Court should decide all issues below.

1 Defendant does not concur with Plaintiffs' current presentation of the factual and legal
2 issues, set forth below. Furthermore, Defendant proposes that the question of separation of issues
3 between Court and jury be addressed after the Court rules on the contemplated dispositive motions
4 above.

5 Again, Defendant denies all Plaintiffs' claims, including those characterized by Plaintiffs
6 below. Plaintiffs separate the legal and factual issues as follows:

7 a) All hours worked. For the reasons explained in Plaintiffs' memorandum of
8 points and authorities in support of its motion for class certification at p. 9, the inquiries necessary
9 to address this claim overlap with claims: (b) the misclassified/received no wages claim and (e) the
10 meal and rest periods claim, discussed below.

11 The additional legal questions presented by this claim include: whether the time, if any,
12 subclass members were misclassified and received no wages is time for which they must be paid;
13 whether the time, if any, subclass members did not receive meal and rest periods was time they
14 worked and time for which they must be paid; and corresponding jury instructions, if relevant.

15 The factual questions presented by this claim include: how many hours, if any, did subclass
16 members work for which they were not paid, and the amount of compensation, if any, that should
17 be awarded as a result.

18 b) Misclassified/received no wages. The legal questions presented by this claim
19 include: what is the appropriate jury instruction to be applied, if relevant, to determine whether
20 drivers in this subclass were "employees" of Defendant.

21 The factual issues presented by this claim include: whether members of this subclass were
22 employees or non-employee trainees, whether subclass members were not in fact paid, the number
23 of hours, if any, for which these members were not paid, and the amount of compensation, if any,
24 that should be awarded as a result.

25 c) Overtime wages. The legal questions presented by this claim include: do DOT
26 regulations apply and/or does the "spotter" exemption to DOT regulations apply.

27 The factual questions presented include: whether the members of this subclass are
28 "spotters," whether subclass members were not in fact paid overtime, the number of hours, if any,

1 for which these members were not paid, and the amount of compensation, if any, that should be
2 awarded as a result.

3 d) Oakland Living Wage. The legal questions presented by this claim include:
4 does the OLW apply.

5 The factual questions presented include: whether subclass members were not in fact paid
6 the OLW, the number of hours, if any, for which these members were not paid at the OLW rate,
7 and the amount of compensation, if any, that should be awarded as a result.

8 e) Meal and rest periods. The legal questions presented by this claim include:
9 what is required by the applicable statute and what is the appropriate jury instruction, if relevant,
10 regarding what constitutes a sufficient meal period and rest period.

11 The factual questions presented include: whether subclass members did not in fact receive
12 meal periods, whether members did not in fact receive rest periods, the number of meal periods, if
13 any, not received, the number of rest periods, if any, not received, and the amount of
14 compensation, if any, that should be awarded as a result.

15 The Court would then determine the legal question of whether premium pay should be
16 awarded (a different consideration than payment for all hours worked discussed above in (a).)

17 f) Payment of Wages After Discharge or Quit. The legal questions presented by this
18 claim include: what is required by the applicable statute and what is the appropriate jury
19 instruction, if relevant, regarding what constitutes compliance with the statute.

20 The factual questions presented include: whether correct payment was fully received, and
21 the amount of compensation, if any, that should be awarded as a result.

22 The Court would then determine the legal question of whether the corresponding penalty
23 should be awarded.

24 g) Inaccurate Wage Statements. The legal questions presented by this claim
25 include: what is the appropriate jury instruction, if relevant, regarding what constitutes compliance
26 with the statute.

27 The factual questions presented include: whether subclass members in fact received
28 accurate wage statements, and the amount of compensation, if any, that should be awarded as a

1 result.

2 The Court would then determine the legal question of whether the corresponding penalty
3 should be awarded.

4 h) Attorneys' fees and costs. This determination would be made in a fee
5 motion immediately following the disposition of all legal and factual issues tried at the trial.

6 F. TRIAL MANAGEMENT PLAN

7 The parties are still meeting and conferring on this issue.

8 G. POTENTIAL EVIDENTIARY ISSUES

9 There are no potential evidentiary issues identified at this time, although some may arise as
10 the result of additional discovery, dispositive motions and/or bifurcation of the liability and
11 damages issues at trial.

12 H. PROCEDURAL POSTURE

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

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

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

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

17 5. **Discovery Status:** The parties continue to engage in the meet and confer process
18 regarding the discovery outlined above.

19 6. **Unresolved Law and Motion Matters:** The parties will set dates for the
20 dispositive motions as outlined above.

21 7. **ADR Proceedings:** Plaintiffs believe it would be in the best interest of the parties
22 to participate in mediation as soon as possible. Plaintiffs propose mediation occur as early as late
23 February 2011, but in any event no later than thirty (30) days prior to trial. Defendant does not
24 believe at this present time that this is an appropriate case for ADR.

25 8. **Severance of Issues for Trial:** There are currently no known issues that
26 should be severed for trial purposes, other than bifurcation of liability and damage issues as
27 suggested above.

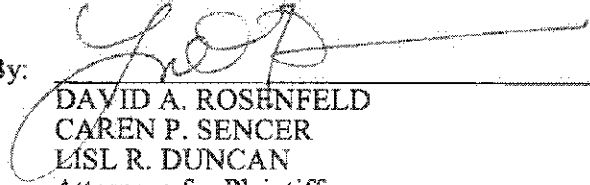
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9. **Calendar Conflicts:** As of this date, there are no known conflicting trial dates for either Plaintiffs' counsel or Defendant's counsel.

Dated: January 27, 2011

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By: 

DAVID A. ROSENFELD
CAREN P. SENCER
LISL R. DUNCAN
Attorneys for Plaintiffs

APPROVED AS TO FORM:

Dated: January , 2011

THE LAW OFFICE OF JAY IAN ABOUDI

By: _____
JAY IAN ABOUDI
Attorneys for Defendant

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PROOF OF SERVICE
(CCP 1013)

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501-1091. On January 28, 2011, I served upon the following parties in this action:

Jay Ian Aboudi
The Law Office of Jay Ian Aboudi
1855 Olympic Blvd., Ste. 210
Walnut Creek, CA 94596
jay@aboudi-law.com

copies of the document(s) described as:

PLAINTIFFS' COMPLEX CASE MANAGEMENT CONFERENCE STATEMENT

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

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

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

I certify under penalty of perjury that the above is true and correct. Executed at Alameda, California, on January 28, 2011.


Jennifer Koffler

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