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ALAMEDA COUNTY

January 28, 2011

CLERK OF
THE SUPERIOR COURT
By Rosanne Case, Deputy

CASE NUMBER:
RG08379099

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5 Attorney for Defendant
OAKLAND PORT SERVICES CORPORATION d/b/a
6 AB TRUCKING (erroneously sued as AB
TRUCKING, INC.)
7

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF ALAMEDA
10

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

18
19 Defendant OAKLAND PORT SERVICES CORP. d/b/a AB TRUCKING (hereinafter "AB
20 Trucking") submits this version of the Joint Complex Case Management Statement in preparation
21 for the complex case management conference scheduled for February 4, 2011 at 11:00 a.m. This
22 version differs in some minor ways to the Joint Complex Case Management Statement submitted
23 by Plaintiffs. Counsel were unable to finalize the final joint version together. For the Court's
24 convenience, all the text here that is in normal font is the same between the two CMC statements
25 submitted; the differences between the two are highlighted here in **bold italics** below:

26 A. FACTUAL SUMMARY

27 This is a wage and hour class action suit brought by two former drivers of Defendant AB
28 Trucking. Plaintiffs allege unfair business practices, violations of the California Labor Code and

1 violations of the Port of Oakland's Living Wage Ordinance (Oakland City Charter, Section 728)
2 ("OLW"). Plaintiffs seek to recover all wages alleged to be due and alleged applicable penalties
3 on behalf of themselves and the Class. Plaintiffs also seek the difference between the Living Wage
4 and the *allegedly lower* wage rate *asserted to have been* paid for the four (4) years prior to the
5 filing of the Complaint, for themselves and the Class. Plaintiffs request treble damages pursuant to
6 the OLW, costs of litigation and attorneys' fees.

7 AB Trucking denies all of Plaintiffs' allegations.

8 B. PARTIES

9 The two individual Plaintiffs are truck drivers who *allegedly* worked for Defendant and are
10 *asserted to be* representatives of the Class and Subclasses. Plaintiffs and the Class are represented
11 by the law firm Weinberg, Roger and Rosenfeld, 1001 Marina Village Parkway, Suite 200,
12 Alameda, CA 94501.

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

15 C. DEADLINES AND LIMITS ON JOINDER AND AMENDED PLEADINGS

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

17 D. CLASS DISCOVERY AND CLASS CERTIFICATION

18 Plaintiffs have filed the class certification motion. The Court granted Plaintiffs' motion for
19 class certification on December 3, 2010.

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

24 E. PROPOSED LITIGATION SCHEDULE

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

1 Defendant intends to conduct additional depositions of unnamed class members anticipated
2 to last no more than a half day respectively. Defendant anticipates noticing these depositions for
3 late March and/or early April 2011.

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

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

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

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

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

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

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

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

25 Plaintiffs withdraw their original request for a jury trial. Plaintiffs wish to proceed on all
26 issues before the Court. Plaintiffs only recently notified Defendant of this change during the meet
27 and confer process for this CMC. Plaintiffs propose that, should a jury trial occur, for any reason
28 presently unknown to the parties, the legal issues presented below should be decided by the Court

1 and the factual issues presented below should be decided by the jury.

2 Defendant does not concur with Plaintiffs' current presentation of the factual and legal
3 issues. Furthermore, Defendant proposes that the question of separation of issues between Court
4 and jury be addressed after the Court rules on the contemplated dispositive motions 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 *during*
12 *which* subclass members *allegedly* were misclassified and *allegedly* received no wages is time for
13 which they must be paid; whether the time *during which* subclass members *allegedly* did not
14 receive meal and rest periods was time they *allegedly* worked and time for which they must be
15 paid; and corresponding jury instructions.

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

19 b) Misclassified/received no wages. The legal questions presented by this claim
20 include: what is the appropriate jury instruction to be applied to determine whether drivers in this
21 subclass were "employees" of Defendant *and to determine whether any of the drivers were non-*
22 *employee trainees.*

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

27 c) Overtime wages. The legal questions presented by this claim include: does the
28 "spotter" exemption to DOT regulations apply.

1 The factual questions presented include: whether the members of this subclass are
2 "spotters," whether subclass members were not in fact paid overtime, the number of hours, if any,
3 for which these members *allegedly* were not paid, and the amount of compensation, if any, that
4 should be awarded as a result.

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

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

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

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

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

19 f) ———— *[Omitted: Defendant believes the Court has not approved a sixth and*
20 *seventh subclass as otherwise asserted in Plaintiff's CMC statement]*

21 g) ———— *[Omitted: Defendant believes the Court has not approved a sixth and*
22 *seventh subclass as otherwise asserted in Plaintiff's CMC statement]*

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

25 F. TRIAL MANAGEMENT PLAN

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

27 G. POTENTIAL EVIDENTIARY ISSUES

28 There are no potential evidentiary issues identified at this time, although some may arise as

1 the result of additional discovery, dispositive motions and/or bifurcation of the liability and
2 damages issues at trial.

3 H. PROCEDURAL POSTURE

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

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

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

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

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

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

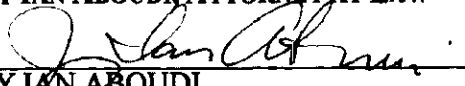
12 7. **ADR Proceedings:** Plaintiffs believe it would be in the best interest of the parties
13 to participate in mediation as soon as possible. Plaintiffs propose mediation occur as early as late
14 February 2011, but in any event no later than thirty (30) days prior to trial. Defendant does not
15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

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

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

21
22 Dated: January 28, 2011

JAY IAN ABOUDI, ATTORNEY AT LAW


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

1 *Godfrey v. Oakland Port Services Corporation dba AB Trucking*
2 Alameda County Superior Court Case No. RG 08-379099

3 **PROOF OF SERVICE**

4 I am a resident of the State of California, over the age of eighteen years, and not a party
5 to the within action. My business address is: 1855 Olympic Blvd., Ste. 210, Walnut Creek, CA
94596. On the date below, I served the within documents:

6 **DEFENDANT'S JOINT CASE MANAGEMENT STATEMENT**

7 by transmitting via facsimile the document(s) listed above to the fax number(s) set
8 forth below on this date before 5:00 P.M.

9 by placing the document(s) listed above in a sealed envelope with postage thereon
10 fully prepaid, in United States mail in the State of California at Walnut Creek,
11 addressed as set forth below.

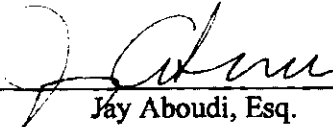
12 by personally delivering the document(s) listed above to the person(s) at the
13 address(es) set forth below.

14 Lisl Duncan, Esq.
15 Weinberg, Roger & Rosenfeld
16 A Professional Corporation
17 1001 Marina Village Parkway, Suite 200
18 Alameda, CA 94501-1091
19 Tel: (510) 337-1001
20 Fax: (510) 337-1023

21 I am readily familiar with the firm's practice of collection and processing correspondence
22 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
23 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
24 motion of the party served, service is presumed invalid if postal cancellation date or postage
25 meter date is more than one day after the date of deposit for mailing in affidavit.

26 I declare under penalty of perjury under the laws of the State of California that the above
27 is true and correct.

28 Executed on January 28, 2011 at Walnut Creek, California.


Jay Aboudi, Esq.