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d/b/a AB TRUCKING (erroneously sued as AB  
TRUCKING, INC.)

**FILED BY FAX**  
ALAMEDA COUNTY  
February 05, 2010  
CLERK OF  
THE SUPERIOR COURT  
By Denise Dalton, Deputy  
CASE NUMBER:  
**RG08379099**

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

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

Plaintiffs,

v.

OAKLAND PORT SERVICES  
CORPORATION d/b/a AB TRUCKING, and  
DOES 1 through 20, inclusive,

Defendants.

CASE NO. RG 08-379099

**REPLY MEMORANDUM IN SUPPORT  
OF MOTION TO COMPEL FURTHER  
ANSWERS TO INTERROGATORIES  
AND FOR SANCTIONS;**

**SUPPLEMENTAL DECLARATION OF  
JAY IAN ABOUDI IN SUPPORT  
THEREOF**

Hearing Date: February 11, 2010  
Hearing Time: 2:00 p.m.  
Dept: Dept. 20, Judge Freedman  
Action Filed: March 28, 2008  
Trial Date: Not yet assigned  
Reservation No. R - 1027608

**I. INTRODUCTION**

OAKLAND PORT SERVICES CORPORATION d/b/a AB TRUCKING (the  
“Defendant”) has moved to compel further answers to three form interrogatories and for

1 sanctions. Defendant did not receive verifications to supplemental responses until after this  
2 Motion was brought. This Motion should be granted and sanctions awarded because:

- 3 • bringing the Motion was required to force plaintiffs to provide further information;
- 4 • Plaintiffs concede that they failed to provide timely responses;
- 5 • Plaintiffs fail to provide substantial justification to serve timely responses; and
- 6 • Plaintiffs have refused to provide additional information in response to form  
7 interrogatories 2.11, 12.1, and 207.2.

8  
9 **II. LEGAL ARGUMENT**

10 This Motion is neither procedurally nor factually improper. In its Opposition, Plaintiff  
11 incorrectly cites California Rule of Court 3.1020(c) and argues that “Defendant improperly  
12 incorporates responses to both of the two Plaintiffs into one separate statement.” Assuming that  
13 Plaintiff is referring to California Rule of Court 3.1345(c), Defendant made no such violation.  
14 Furthermore, since Plaintiffs’ responses to form interrogatories 2.11 and 12.1 were identical,  
15 verbatim, including the use of the pronoun “her,” the separate statement is “full and complete so  
16 that no person is required to review any other document in order to determine the full request and  
17 full response.” California Rule of Court 3.1345(c)

18 **A. Defendant fulfilled all of its obligations to meet and confer with Plaintiffs**

19 Plaintiffs erroneously argue that Defendant did not satisfy its meet and confer obligations  
20 with respect to Form Interrogatory 2.11. “[W]here there has been a total failure to respond to  
21 interrogatories within the time prescribed by statute,” attempts to obtain an informal resolution of  
22 each issue are not required. *Leach v. Superior Court* (1980), 111 Cal.App.3d 902, 906.

23 Plaintiffs’ opposing Memorandum does not refute the fact that Plaintiffs responses lacked  
24 the requisite verifications. See *Duncan Decl.* ¶ 12. Plaintiff argues that “Defendant implicitly  
25 agreed the responses and the verifications were timely.” *Oppos.* at 3:1-3. That argument fails  
26 because Defendant made no such agreement and Plaintiffs misstate the correspondence between  
27 counsel whereby Defendant expressly stated, and re-stated, on numerous occasions that the

1 verifications were not timely served with the responses. See *Supplemental Declaration of Jay*  
2 *Ian Aboudi* (“*Aboudi Supp. Decl.*”) ¶ 2 and ¶ 4.

3 Plaintiffs suggestion that Defendant was unwilling to make “serious efforts” to engage in  
4 the meet and confer process and that this Motion is an abuse of the discovery process is  
5 incredible for two primary reasons: (1) it was Plaintiffs who declined Defendant’s request to  
6 meet and confer in person regarding the parties’ lengthy meet and confer letters; and (2) as  
7 discussed above and in its Motion (at p. 3), Defendant was under no obligation to meet and  
8 confer but Defendant nevertheless voluntarily engaged in the meet and confer process. See  
9 *Aboudi Supp. Decl.* ¶ 4.

10 **1. Each named Plaintiff should be compelled to provide further answers to Form**  
11 **Interrogatory No. 2.11 because their answers are inadequate.**

12 Plaintiffs neglected to answer subsection (b) of Form Interrogatory No. 2.11. In addition  
13 to its original improper answer directing Defendant to “See my deposition,” Plaintiff improperly  
14 asserts that Plaintiffs’ class certification “motion sets forth a thorough description of Plaintiffs’  
15 job duties asserted for class certification.” *Oppos.* at 7:1-6. The subject form interrogatory was  
16 served upon Plaintiffs on September 8, 2009, well before the Plaintiffs’ motion for class  
17 certification was filed.

18 **2. Each named Plaintiff should be compelled to provide further answers to Form**  
19 **Interrogatory No. 12.1 because their answers are inadequate.**

20 Plaintiffs insist that they have answered Form Interrogatory No. 12.1 to the best of their  
21 ability by identifying Defendant’s management in general and by improperly directing  
22 Defendant and the Court to individuals they may have identified at deposition. Plaintiffs’  
23 proffered clarification of “AB Trucking management” does not adequately answer this  
24 interrogatory as it is absolutely certain that Plaintiffs have not, in fact, identified all such known  
25 witnesses. It is perplexing that Plaintiffs cannot identify non-management employees at AB  
26 Trucking with whom they claim to have worked. Plaintiffs must be required to identify all  
27 witnesses known to them.

1           **3. Plaintiff GODFREY should be compelled to provide further answers to Form**  
2 **Interrogatory No. 207.2 because her answers are improper and inadequate.**

3           Plaintiffs set forth a lengthy argument that GODFREY's response amounting to "See my  
4 deposition" was nevertheless proper. As Defendant discussed in its Motion, citing case law  
5 directly on point, Plaintiff GODFREY's answer is improper and must provide further answers.

6           **B. Plaintiffs' belated attempt to avoid this Motion by providing verifications**  
7 **after the time required by statute makes moot neither this Motion nor defendant's request**  
8 **for sanctions.**

9           Plaintiffs' failure to provide verifications to both their original responses and to their  
10 supplemental responses caused Defendant to incur the attorneys' fees and costs of filing a  
11 Motion to Compel. This is similar to the situation in *Sinaiko Healthcare Consulting, Inc. v.*  
12 *Pacific Healthcare Consultants* (2007) 148 Cal.App.4<sup>th</sup> 390, 405, in which defendants served  
13 answers to interrogatories late, and plaintiffs brought a Motion to Compel. In *Sinaiko*,  
14 defendants argued that the Court had no authority to rule on a Motion to Compel when answers  
15 had, in fact, been served prior to the bringing of the Motion. The Court of Appeal rejected that  
16 argument, ruling that the Court not only had the power to compel answers but it had the power to  
17 review the answers provided and to compel further answers. Furthermore, the case of *Villa v.*  
18 *Cole* (1992) 4 Cal.App.4<sup>th</sup> 1327, on which Plaintiffs rely upon in their Opposition, is  
19 inapplicable.


20           Here, Plaintiffs make the absurd suggestion that it is acceptable practice in California  
21 courts to submit unverified responses, and then subsequently provide the requisite verifications  
22 solely for the purpose of avoiding sanctions.

23           **C. Plaintiffs have not met their burden of demonstrating that their failure to**  
24 **serve a timely response is with substantial justification.**

25           Plaintiffs' subsequent delivery of verifications renders their responses untimely and in no  
26 way rectifies their blatant violation of CCP § 2030.250(a). Plaintiffs' statement that their failure  
27 to provide verification was "inadvertent error" and "mistake" is incredible because both named

1 Plaintiffs' verifications were dated November 11, 2009, only five days after Plaintiffs  
 2 acknowledged their failure to provide verifications. See *Duncan Decl.* ¶6-7; see also *Aboudi*  
 3 *Supp. Decl.* ¶ 3. Plaintiffs remain, therefore, subject to sanctions under CCP § 2030.290.

4  
 5 Dated: February 4, 2010

**JAY IAN ABOUDI, ATTORNEY AT LAW**  
  
 JAY I. ABOUDI, GENERAL COUNSEL  
 Attorney for Defendant  
 OAKLAND PORT SERVICES  
 CORPORATION d/b/a AB TRUCKING

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