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**FILED**  
ALAMEDA COUNTY

FEB 06 2012

CLERK OF THE SUPERIOR COURT  
By *R.C. Hughes* DEPUTY

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2 Guy A. Bryant -146190  
3 The Law Office of Bryant & Brown  
4 476 Third Street  
5 Oakland, CA 94607  
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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

) **DEFENDANT'S OPPOSITION TO**  
) **PLAINTIFFS' MOTION TO QUASH**  
) **DEFENDANT'S NOTICE TO ATTEND**  
) **TRIAL AND PRODUCE DOCUMENTS**

) Action Filed: March 28, 2008

) Dept.: 20

) Time: 9:30 a.m.

) Set for Trial: February 14, 2012

) Before Honorable Judge Robert B. Freedman

) Reservation number: R-1259604

21 **I. INTRODUCTION**

22 OAKLAND PORT SERVICES CORP. d/b/a AB TRUCKING, a California Corporation,  
23 (collectively hereinafter referred to as "AB Trucking" or "Defendant") hereby opposes Plaintiffs  
24 "Motion to Quash Defendant's Notice to Attend Trial and Produce Documents" ("Motion to  
25 Quash"). In accordance with California Code of Civil Procedure section 1987[b] and [c]

1 Defendant AB Trucking served a Notice to Attend and Produce Documents and Things at Trial  
2 (“Notice”) on January 18, 2012. In this case, service of the Notice was proper and timely. Due to  
3 the unique circumstances of AB Trucking’s prior legal counsel and the procedurally adequate  
4 service of the Notice, Plaintiffs’ Motion to Quash should be denied.

5 **II. ARGUMENT**

6  
7 **A. Defendant’s Notice Was Timely Served.**

8 In this case, the Notice to Attend And Produce Documents at Trial was served January  
9 18, 2012, by mail upon Plaintiffs pursuant to California Code of Civil Procedure sections 1987  
10 (c), and 1013. Plaintiffs were provided the statutory amount of time to be required to appear and  
11 produce the requested documents with in its possession or control (more than 25 days before  
12 trial). Moreover, the Notice is appropriate because it compels the attendance and production of  
13 documents from “parties” to an action. (California Code of Civil Procedure section 1987[b] and  
14 [c].)

15  
16 **B. Unique Circumstances Require Denial of Motion**

17 **1. Defendant’s Prior Legal Counsel Under Medical Supervision**

18 Bryant & Brown substituted into this case on November 23, 2011. Subsequent to taking  
19 on the matter this office learned that on October 11, 2011, prior legal counsel had filed a motion  
20 to be relieved as counsel of record for AB Trucking due to a psychiatric condition. Apparently,  
21 on September 20, 2011, Dr. Richard Silver of the Permanente Medical Group, Inc. wrote a letter  
22 stating that he had recently diagnosed a mental medical condition with regard to prior defense  
23 counsel. The letter indicated that prior defense counsel would need to take a minimum of a 3  
24 month sabbatical for his health.  
25

1 It appears that prior defense counsel has taken Dr. Richard's prescription to heart, as this  
2 office has been unable to reach prior defense counsel and secure most of the relevant client files  
3 necessary to properly litigate the matter.<sup>1</sup> This office has received some of the deposition  
4 transcripts in the case and several bankers' boxes of documents that have not been organized in a  
5 particularly useful order.<sup>2</sup> In short, this office is severely disadvantaged as we have no way of  
6 verifying what has been produced or received through the discovery process.<sup>3</sup> As a result, this  
7 office truly requires access to files in the possession of Plaintiffs' counsel's in order to properly  
8 defend the matter.<sup>4</sup>

9 2. Plaintiffs Argue Defendant Can Not Present Witnesses And Exhibits

10 Plaintiffs' counsel is arguing that prior defense counsel has waived all of AB Trucking's  
11 rights to present witnesses and introduce exhibits at trial except for impeachment purposes for  
12 failure to comply with Local Rule 3.35 (b). Bryant & Brown is not clear whether this is indeed  
13 the case. However, the Court maintains discretion to permit AB Trucking an additional  
14 opportunity to present evidence and witness testimony in its defense that is not prejudicial to  
15 Plaintiffs' case in chief. (CCP § 128(a)(8).) Attached and served along with this opposition to the  
16 Motion to Quash is AB Trucking's witness list and exhibit list. Please be advised that these are  
17 the same witnesses and documents presented in the Defendant's Trial Management Plan filed  
18 and served on January 30, 2012.

21 \_\_\_\_\_  
22 <sup>1</sup> It is rumored that prior defense counsel has gone on a retreat.

23 <sup>2</sup> Unfortunately, important records, including the original depositions taken by prior defense counsel, are  
24 unavailable.

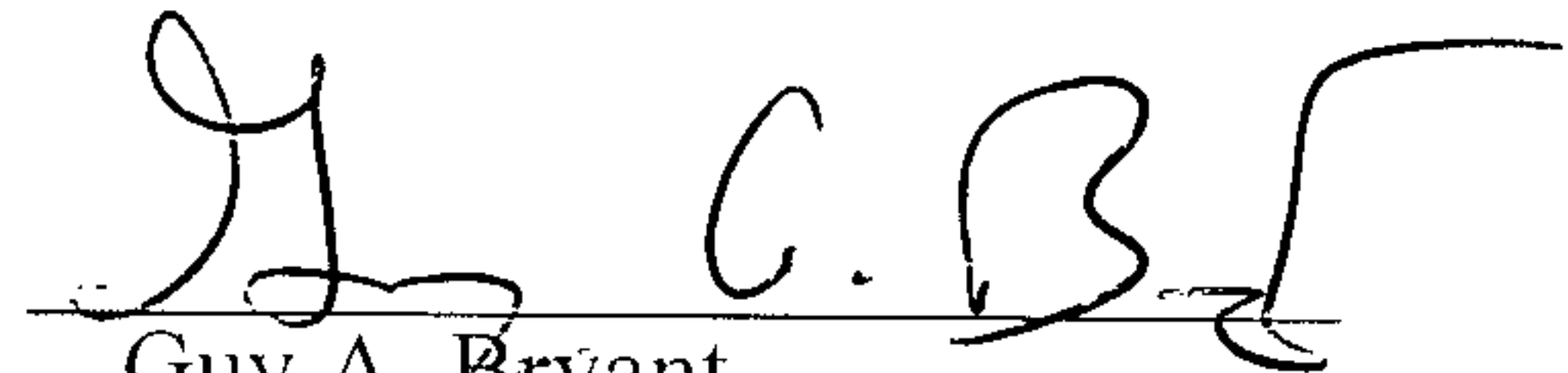
25 <sup>3</sup> This office remembers the Court's admonition when Mr. Bryant made his first appearance in the case on 12/2/11.  
The Court warned that an attorney "substitutes into a case at his/her peril and the Court's calendar and prior rulings  
must take precedent."

<sup>4</sup> After filing the instant motion, Plaintiffs' counsel reached out and offered to copy some of their files and split the  
costs with Defendant. While Defendant appreciates this offer, Defendant wishes to wait to receive guidance from the  
Court as to the pending Motion to Reconsider Class Certification before committing to this large expense.

1                   **III. CONCLUSION**

2                   Defendant AB Trucking's service of the Notice was proper and timely. Due to the unique  
3                   circumstances involving AB Trucking's prior legal counsel and the procedurally adequate  
4                   service of the Notice, Plaintiffs' Motion to Quash should be denied. AB Trucking respectfully  
5                   requests that the Court consider what exhibits and witnesses AB Trucking be allowed to present  
6                   at trial after a determination on the Motion to Reconsider Class Certification has been rendered.  
7

8                   Dated this 6th day of February, 2012.

9                     
10                     
11                   Guy A. Bryant  
12                   Bryant & Brown  
13                   Attorneys for Defendant

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8 FOR THE COUNTY OF ALAMEDA  
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10 ) Case No.: RG 08-379099  
11 LAVON GODFREY and GARY GILBERT, )  
on behalf of themselves and all other similarly )  
12 situated, )

Plaintiffs,

13 vs.  
14

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

16 Defendant.  
17  
18  
19  
20

) Case No.: RG 08-379099

) **DEFENDANT'S WITNESS LIST**

) Action Filed: March 28, 2008

) Dept.: 20

) Time: 9:30 a.m.

) Set for Trial: February 14, 2012

) Before Honorable Judge Robert B. Freedman

21 TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:

22 In accordance with the Local Rules of the Superior Court of California, County of  
23 Alameda, Section 3.35, Defendant AB Trucking hereby produces the following preliminary list  
24 of witnesses below upon which we intend to present to testify at trial. AB Trucking has not  
25

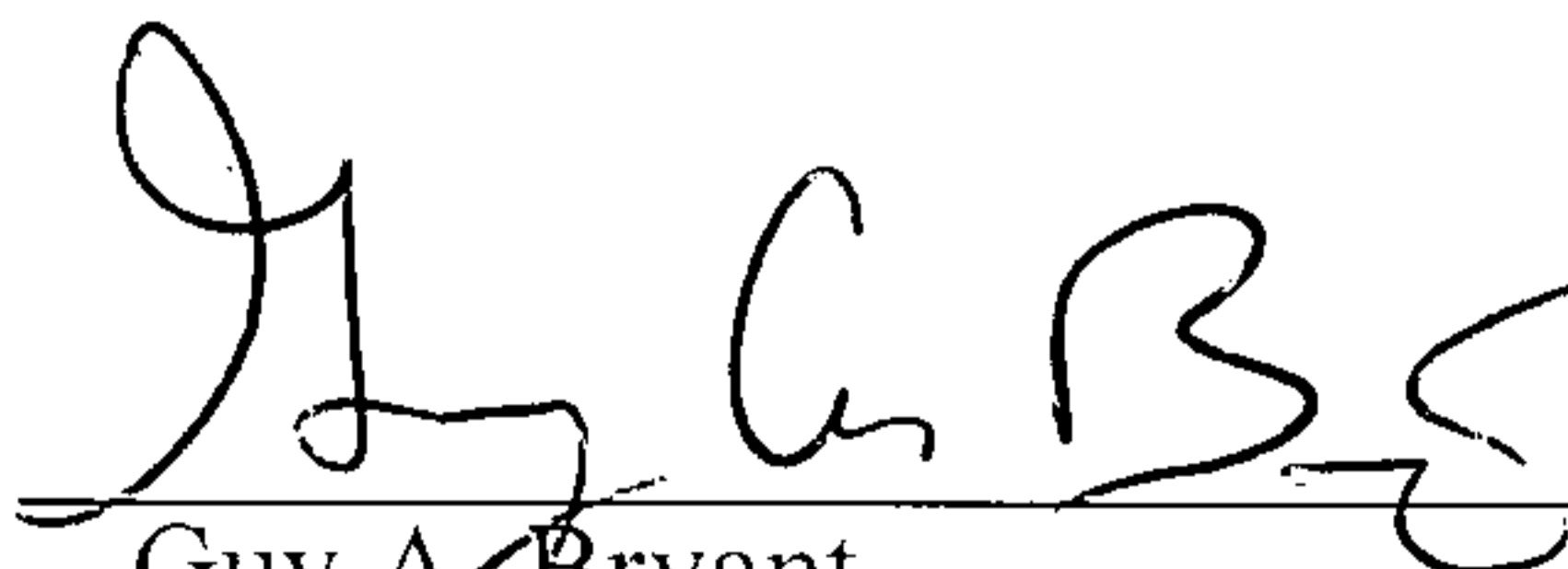
1 completed its investigation of the facts relating to this matter or its preparation for trial.  
2 Consequently, the production of the following list of witnesses is based only upon such  
3 information and documents presently available and specifically known to be relevant by AB  
4 Trucking, and this witness list is given without prejudice to AB Trucking's right to produce, up  
5 to the time of trial, or in rebuttal, subsequently discovered witnesses possessing proof of facts  
6 subsequently discovered to be relevant to the case at bar. Moreover, these witnesses are  
7 appearing by agreement and the listing of these witnesses is not a waiver of AB Trucking's right  
8 to challenge any subpoenas that may have been issued in this case. Subject to the foregoing  
9 preliminary statement, AB Trucking submits the following list of potential witnesses:

10  
11 Witness List

- 12 1. William Aboudi ("Bill")  
13 2. Jovi Aboudi  
14 3. David Blyth  
15 4. Jose Luis Navarro  
16 5. Miguel Silva  
17 6. Lavon Godfrey  
18 7. Gary Gilbert

19 Defendant reserves the right to call additional witnesses for rebuttal evidence.

20 Dated this 6th day of February, 2012.

21  
22   
23 Guy A. Bryant  
24 Bryant & Brown  
25 Attorneys for Defendant

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16 AB TRUCKING, and DOES 1-20 )

Defendant.  
17 )  
18 )  
19 )  
20 )

Case No.: RG 08-379099

**DEFENDANT'S EXHIBIT LIST**

Action Filed: March 28, 2008

Dept.: 20

Time: 9:30 a.m.

Set for Trial: February 14, 2012

Before Honorable Judge Robert B. Freedman

21 TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:

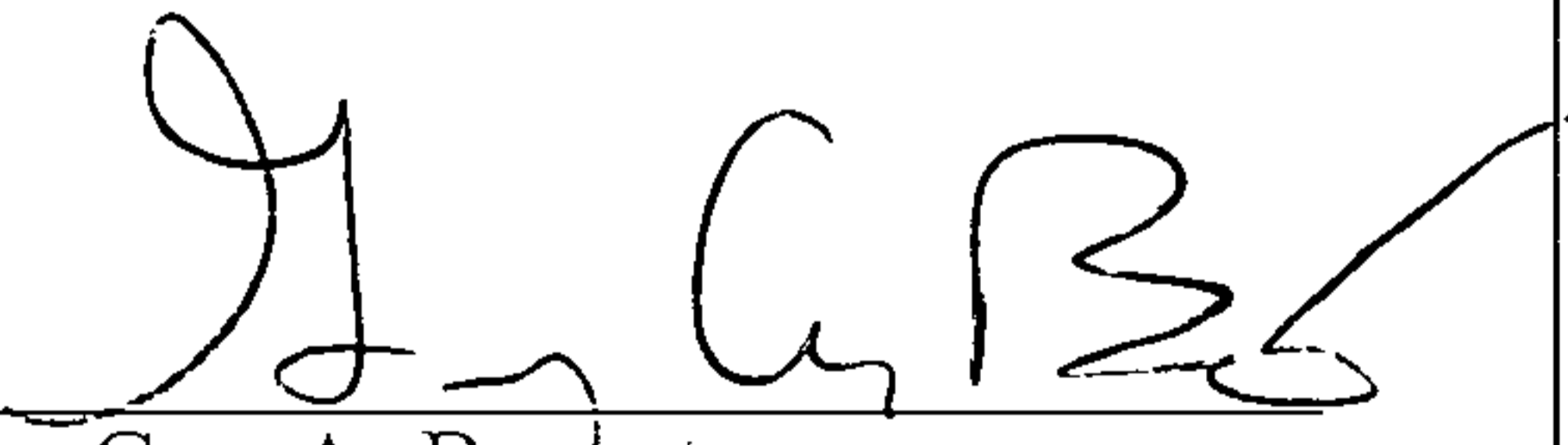
22 In accordance with the Local Rules of the Superior Court of California, County of  
23 Alameda, Section 3.35, Defendant AB Trucking hereby produces the following preliminary list  
24 of exhibits below upon which we intend to present at trial. AB Trucking has not completed its  
25

1 investigation of the facts relating to this matter or its preparation for trial. Consequently, the  
 2 production of the following list of exhibits is based only upon such information and documents  
 3 presently available and specifically known to be relevant by AB Trucking, and this exhibit list is  
 4 given without prejudice to AB Trucking's right to produce, up to the time of trial, or in rebuttal,  
 5 subsequently discovered exhibits possessing proof of facts subsequently discovered to be  
 6 relevant to the case at bar. Moreover, the listing of these exhibits is not a waiver of AB  
 7 Trucking's right to challenge any subpoenas that may have been issued in this case. Subject to  
 8 the foregoing preliminary statement, AB Trucking submits the following list of exhibits:

9  
 10 **Exhibit List**

|    |    |   |
|----|----|---|
| 11 | 1. | Declaration of William ("Bill") I. Aboudi dated January 12, 2012.   |
| 12 | 2. | 2006 letter from the Industrial Welfare Commission and cover page of Wage Order, #9 addressed to AB Trucking.                 |
| 13 | 3. | Federal Motor Carrier Safety Administration ("FMCSA") on-line data showing that AB Trucking is registered as a motor carrier. |
| 14 | 4. | Bill Aboudi's June 8, 2009 deposition at pp. 35, lines 3- 17, 36-41, 138, 142-144, 180, lines 14-21.                          |
| 15 | 5. | June 10, 2011 deposition of former AB Trucking truck driver David Blyth at pp. 23-32.   |
| 16 | 6. | June 13, 2011 deposition of AB Trucking truck driver Jose Luis Navarro at pp. 20-28, 35.                                      |
| 17 | 7. | Jovi Aboudi's September 11, 2009 deposition at p. 36, lines 1-17, p. 60, lines 8-25, and p. 61, line 1.                       |

21 Dated this 6th day of February, 2012.

22   
 23 Guy A. Bryant  
 24 Bryant & Brown  
 25 Attorneys for Defendant



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

20 Defendant.

) 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,  
25 California, 94607.

On February 6, 2012, I served the foregoing documents described as:

PROOF OF SERVICE

Page 1 of 3

1 **DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION TO QUASH**  
2 **DEFENDANT'S NOTICE TO ATTEND TRIAL AND PRODUCE DOCUMENTS;**  
3 **DEFENDANT'S WITNESS LIST; DEFENDANT'S EXHIBIT LIST.**

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

6 **SEE MAILING LIST INCLUDED HEREIN**

7

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

12

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

15

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

19

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

22

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

25

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

GUY A. BRYANT

Signature 

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**SERVICE LIST**

**VIA PERSONAL 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  
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Alameda, California 94501-1091