

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Godfrey	
VS.	Plaintiff/Petitioner(s)
AB Trucking, Inc.	
(Abbreviated Title)	Defendant/Respondent(s)

No. **RG08379099**

Minutes

Department 20 Honorable Robert B. Freedman, Judge
Reporter Tracy Turner CSR#13030

Cause called for Motion: February 09, 2012.

For attendance, see "Attendance Sheet" filed for this date.

On the Motion of defendant Oakland Port Services Corp. dba AB Trucking ("Defendant") To Reconsider Class Certification Order, Amend, Modify or Decertify a Class Action ("Motion") -

PARTIES ARE TO APPEAR.

The parties are informed that the court will consider the complete submissions by both parties, overruling any and all procedural objections.

Notwithstanding its improper invocation of Code of Civil Procedure section 1008 in its opening papers, as clarified in its reply, Defendant seeks decertification, apparently as to all of the claims of plaintiffs Lavon Godfrey and Gary Gilbert, on behalf of themselves and others similarly situated ("Plaintiffs"), that were certified by way of this court's December 3, 2010 order.

Defendant, represented by new counsel, is essentially attempting to cure the fundamental problem with Defendant's original opposition to the class certification motion, i.e., that Defendant at that point in time submitted almost no evidence whatsoever in support of its opposition. Defendant now submits a detailed Declaration of William I. Aboudi, excerpts from the depositions of one current and one former employee of Defendant, excerpts from the deposition of Jovi Aboudi taken prior to class certification that were not submitted earlier, and various documents related to Defendant's status as a registered motor carrier.

Defendant argues that its new evidence clearly demonstrates that Defendant (a) is not subject to California overtime rules, (b) is exempt from the Oakland Living Wage Ordinance rules, and (c) has a meal and rest break policy that complies with applicable state law. What Defendant fails to do, however, is to articulate how its arguments and new evidence can be treated as anything other than an attempt to adjudicate merits issues. In Defendant's entire opening brief it uses the words "common issues of fact do not predominate over individual issues in this case" only twice, once in the notice of motion and again in the introduction section of its memorandum of points and authorities. None of arguments, however, include any discussion or analysis of "common" versus "individual" issues. In sum, while the new evidence may bear on the ultimate outcome, it does not change the court's conclusion that the issues may still be addressed on a class-wide basis. Accordingly, the court intends to DENY the Motion.

Having said that, the court notes that although the issue is not currently properly before the court for adjudication, the current evidentiary record certainly appears to suggest that the Oakland Living Wage Ordinance does not apply to Defendant. Plaintiffs should be prepared to address whether they have or will consider voluntary dismissal of these claims.

Ruling on Motion for Reconsideration Taken Under Submission

Minutes

M7285009

Minutes of 02/09/2012
Entered on 02/10/2012

Executive Officer / Clerk of the Superior Court

By  digital

Deputy Clerk