



FILED
ALAMEDA COUNTY

FFR 0 9 2012

CLERK OF THE SUPERIOR COURT
By [Signature] Deputy

1 Meredith E. Brown - 142134
2 Guy A. Bryant -146190
3 The Law Office of Bryant & Brown
4 476 Third Street
5 Oakland, CA 94607
6 (510) 836-7563 (Telephone)
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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

) **AB TRUCKING'S MOTION IN LIMINE**
) **TO EXCLUDE EVIDENCE OF**
) **SETTLEMENT DISCUSSIONS**
) **BETWEEN THE PARTIES**

) Action Filed: March 28, 2008

) Date: February 9, 2012

) Dept.: 20

) Time: 3:00 p.m.

) Set for Trial: February 14, 2012

) Before Honorable Judge Robert Freedman

21
22 TO EACH PARTY AND TO THE ATTORNEY OF RECORD FOR EACH PARTY IN THIS
23 ACTION:

24 YOU ARE HEREBY NOTIFIED THAT on February 9, 2012 at 2:00 p.m. in Department 20 of
25 this Court, located at the Alameda County Superior Court, 1221 Oak Street, Oakland, California,

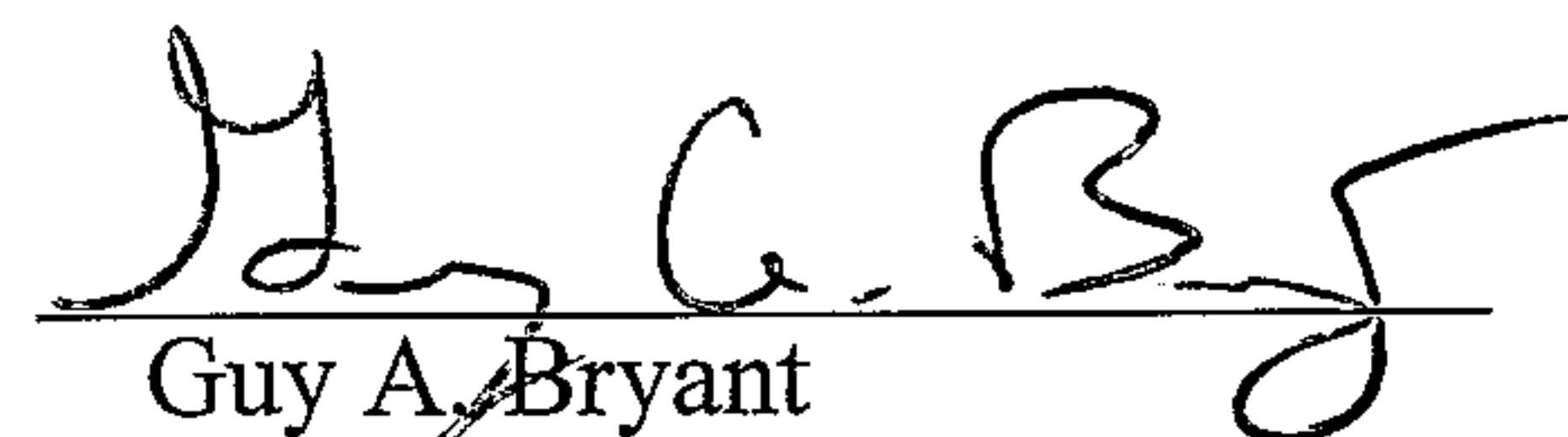
1 Defendant OAKLAND PORT SERVICES CORP. d/b/a AB TRUCKING, a California
2 Corporation, (collectively hereinafter referred to as "AB Trucking" or "Defendant") will move
3 the Court in limine to limit lay and expert testimony to the scope of their designations and
4 deposition testimony, and to instruct the parties and the parties' experts and attorneys:
5

- 6 1. Not to mention, refer to, interrogate concerning or attempt to convey to the court
7 whatsoever, either directly or indirectly any of the facts herein mentioned;
- 8 2. To warn and caution each and everyone of the witnesses to strictly follow the same
9 instructions; and
- 10 3. To have all documents which go before the court be scrutinized and corrected so as not to
11 mention, refer to or to display to the court in any manner, directly or indirectly, the facts
12 or evidence precluded.

13 AB Trucking brings this Motion due to the concern that Plaintiffs and their counsel, whether
14 through testimony, opening statement, closing argument, examination or cross-examination of
15 witnesses, and document exhibits, may attempt to refer to demands or offers of settlement with
16 individual members of the class in this case.

17 Dated this 9th day of February, 2012.

18 Respectfully Submitted,

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20 Guy A. Bryant
21 BRYANT & BROWN
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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION**

2 California Evidence Code section 1152 provides as follows:

3 “(a) **Evidence** that a person has, in compromise or from
4 humanitarian motives, furnished or offered or promised to furnish
5 money or any other thing, act, or service to another who has
6 sustained or will sustain or claims that he or she has sustained or
7 will sustain loss or damage, as well as any conduct or statements
8 made in negotiation thereof, is inadmissible to prove his or her
9 liability for the loss or damage or any part of it.”

10 Section 1152 stems from the recognized ideal that compromises are favored in law and
11 the parties to a lawsuit should be able to take steps to settle disputes without fear of future
12 repercussions. (*Potter v. Pacific Coast Lumber Co.* (1951) 37 Cal.2d 592; *Fieldson Associates,*
13 *Inc. V. White Cliff Laboratories, Inc.* (1969) 276 Cal.App.2d 770.) In light of these manifest
14 policy considerations, reference to pre-trial negotiations including demands and offers to
15 compromise have been held by California Courts to be inadmissible at trial. (*Cano v. Tyrell*
16 (1967) 256 Cal.App.2d 824.

17 California Evidence Code section 1119 precludes reference to written or oral communications
18 made during the mediation process as set forth below:

19 “(a) No **evidence** of anything said or any admission made for the
20 purpose of, in the course of, or pursuant to, a mediation or a
21 mediation consultation is admissible or subject to discovery, and
22 disclosure of the **evidence** shall not be compelled, in any
23 arbitration, administrative adjudication, civil action, or other
24 noncriminal proceeding in which, pursuant to law, testimony can be
25 compelled to be given.

 (b) No writing, as defined in Section 250, that is prepared for
the purpose of, in the course of, or pursuant to, a mediation or a
mediation consultation, is admissible or subject to discovery, and
disclosure of the writing shall not be compelled, in any arbitration,
administrative adjudication, civil action, or other noncriminal
proceeding in which, pursuant to law, testimony can be compelled to
be given.

1 (c) All communications, negotiations, or settlement discussions by
2 and between participants in the course of a mediation or a mediation
3 consultation shall remain confidential.”

4 California Evidence Code section 352 provides as follows:

5 “The court in its discretion may exclude **evidence** if its
6 probative value is substantially outweighed by the probability that
7 its admission will (a) necessitate undue consumption of time or (b)
8 create substantial danger of undue prejudice, of confusing the
9 issues, or of misleading the jury.”

10 Evidence Code Section 352 provides the court with the authority to preclude introduction of
11 settlement demands, offers and statements made in the negotiations due to their inherent
12 prejudicial effect. For example, evidence of pre-trial offers to compromise, mediation attempts or
13 other offered settlement discussions might suggest to the court that a particular dollar amount as
14 a measure of damages is appropriate. This in turn, brings prejudice to the inherent power
15 bestowed on the court to award damages at its own discretion.

16 Similarly, evidence that defendant may have offered to assist members of the class to
17 address a concern at issue in this case, whether through formal mediation or otherwise, may
18 create a prejudicial environment for defendant. Defendant is concerned that humanitarian efforts
19 that have been provided to the community and potential members of the class or other employees
20 may be used to improperly influence the Court.

21 **CONCLUSION**

22 Defendant AB Trucking humbly requests that this Motion be granted due to the concern that
23 Plaintiffs and their counsel, whether through testimony, opening statement, closing argument,
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1 examination or cross-examination of witnesses, and document exhibits, may attempt to refer to
2 humanitarian efforts, demands or offers of settlement in this case.

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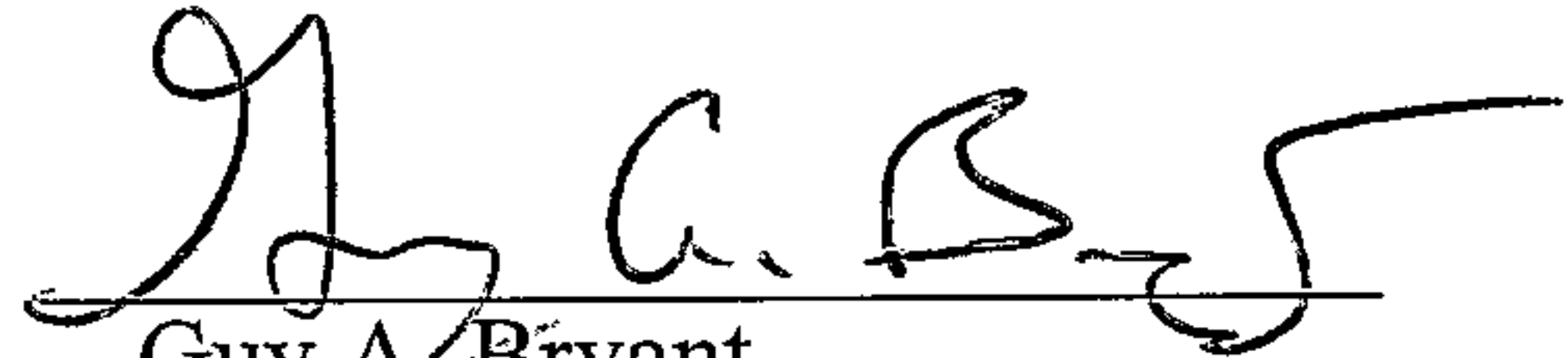
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5 Dated this 9th day of February, 2012.

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Respectfully Submitted,

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Guy A. Bryant
BRYANT & BROWN

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) **PROOF OF SERVICE**

) Action Filed: March 28, 2008

) Date: February 9, 2012

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) Before Honorable Judge Robert B. Freedman

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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 9, 2012, I served the foregoing documents described as:

1 **AB TRUCKING'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF**
2 **SETTLEMENT DISCUSSIONS BETWEEN THE PARTIES**

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

5 **SEE MAILING LIST INCLUDED HEREIN**

6

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

8

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

11

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

13

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

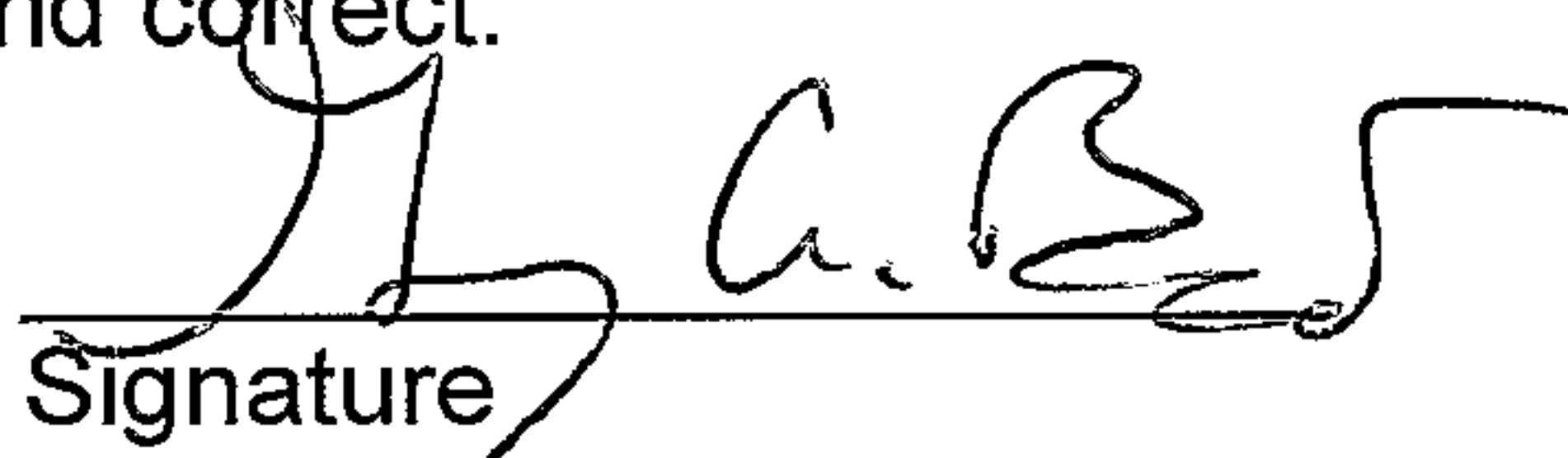
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(FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

18

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

21 GUY A. BRYANT

Signature 

1
2 **SERVICE LIST**

3
4
5 **VIA PERSONAL ON ALL PARTIES LISTED HEREIN:**

6 **Attorney for:** LAVON GODFREY and GARY GILBERT, ET AL.

7 David A. Rosenfeld
8 Lisl R. Duncan
9 Weinberg, Roger & Rosenfeld
10 A Professional Corporation
11 1001 Marina Village Parkway, Suite 200
12 Alameda, California 94501-1091
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