

1 to state facts sufficient to constitute a cause of action against this answering defendant.

2 Defendant alleges each cause of action is barred by any and all applicable statutes of
3 limitations.

4 Defendant denies any wrongdoing on its part, and expressly denies that plaintiffs, or any
5 individual claimed to be similarly situated as plaintiffs, has been damaged as alleged, and as a
6 result, defendant alleges plaintiffs, and those claimed to be similarly situated as plaintiffs, have
7 failed to mitigate their alleged pecuniary losses and damages.

8 Defendant alleges the First Amended Complaint fails to state a claim for which punitive
9 and/or exemplary damages may be granted and defendant has committed no acts justifying an
10 award of punitive damages.

11 Defendant alleges plaintiffs have waived and/or are estopped from asserting, in whole or
12 in part, each cause of action upon which they seek relief.

13 Defendant alleges each cause of action is barred, in whole or in part, by the doctrine of
14 unclean hands and/or laches.

15 Defendant alleges each cause of action is barred, in whole or in part, by the doctrine of
16 unjust enrichment.

17 Defendant alleges that plaintiffs' recovery is limited in whole or in part by the doctrine of
18 after-acquired evidence.

19 Defendant alleges plaintiffs' First Amended Complaint and each and every claim
20 contained therein are barred in whole or in part and cannot be maintained against defendant
21 because the alleged losses or harms sustained by plaintiffs, if any, resulted from causes other than
22 any act or omission by defendant.

23 Defendant alleges that plaintiffs' First Amended Complaint, and each and every claim
24 contained therein, are barred in whole or in part because the conduct of defendant was privileged
25 at all material times.

26 Defendant alleges each cause of action is barred, in whole or in part, by the doctrine of
27 avoidable consequences.

28 Defendant alleges plaintiffs are not entitled to attorney's fees pursuant to, among other

1 items, Code of Civil Procedure section 1021.5, Labor Code section 1197.1(1), and otherwise.

2 Defendant alleges plaintiffs lack standing to assert the claims against defendant,
3 particularly because plaintiffs have not suffered any injury as a result of any of the alleged
4 conduct of defendant in plaintiffs' First Amended Complaint.

5 Defendant alleges plaintiffs did not accurately report the hours for which they seek
6 allegedly unpaid wages, overtime and penalties; therefore, plaintiffs are barred from seeking to
7 recover any such amounts from defendant.

8 Plaintiffs were not secretly paid a lower wage; rather, plaintiffs were paid in accordance
9 with the terms of their employment with defendant.

10 Defendant alleges that plaintiffs were paid in full any and all amounts due during their
11 employment.

12 Defendant alleges a private right of action does not exist for the alleged Labor Code
13 violations claimed by plaintiffs in the First Amended Complaint.

14 Defendant alleges no basis exists either based on the allegations in the First Amended
15 Complaint or any of its stated causes of action for the imposition of penalties upon defendant.

16 Defendant alleges its payment of wages to plaintiff and the purported class is, and was,
17 not "unfair," "unlawful" or "fraudulent" within the meaning of California Business and
18 Professions Code section 17200.

19 Defendant alleges that plaintiffs' claims are barred by accord and satisfaction, release,
20 and/or settlement.

21 Defendant alleges plaintiffs' First Amended Complaint fails to satisfy any of the
22 prerequisites for class certification as to any cause of action.

23 Defendant alleges certification of a class, based upon the facts and circumstances alleged
24 in plaintiffs' First Amended Complaint, would constitute a denial of defendant's due process
25 rights in violation of the Fourteenth Amendment and the California Constitution.

26 Defendant alleges prosecution of a representative action and certification of the alleged
27 class as representative of the general public under California Business and Professions Code
28 section 17200, based upon the facts and circumstances alleged in plaintiffs' First Amended

1 Complaint, would constitute a denial of defendant's due process rights in violation of the
2 Fourteenth Amendment and the California Constitution.

3 **RESERVATION OF ADDITIONAL DEFENSES**

4 Defendant reserves the right to amend this Answer should it discover facts demonstrating
5 the existence of new and/or additional affirmative defenses and/or should a change in the law
6 support the inclusion of new and/or additional affirmative defenses. This reservation of
7 additional defenses includes, but it not limited to, the possibility of a change in the law to support
8 the inclusion of new and/or additional affirmative defenses based on the anticipated ruling by the
9 Supreme Court of the State of California in three pending cases, namely, *Brinker Restaurant v. S.*
10 *C. (Hohnbaum)*, case number S166350 (concerning the proper interpretation of California's
11 statutes and regulations governing an employe's duty to provide meal and rest breaks to hourly
12 workers); *Brinker Restaurant v. S. C. (Hohnbaum)*, case number S157479 (same); and *Brinkley*
13 *v. Public Storage*, case number S168806 (same).

14 **PRAYER FOR RELIEF**

15 WHEREFORE, defendant prays that:

- 16 1. Plaintiff take nothing by this action;
- 17 2. Any motion for class certification be denied:
- 18 3. Judgment be entered in favor of defendant and against plaintiff:
- 19 4. Defendant be awarded cost of suit;
- 20 5. Defendant be awarded its reasonable attorneys' fees incurred by this action; and
- 21 6. For such other and further relief in favor of defendant as this court deems just and

22 proper.

23 Dated February 10, 2009.

24 Respectfully submitted,

25 

26 MICHAEL BROAD
27 Attorney for Defendants OAKLAND PORT
28 SERVICES CORP. dba AB TRUCKING

PROOF OF SERVICE

I declare that I am employed in the County of Alameda, California. I am over the age of 18 years and not a party to the within-entitled cause my business address is 166 Santa Clara Ave. Oakland, California 94610.

On February 10, 2009 I served the following: Defendant Oakland Port Services Answer to First Amended Complaint

on the interested parties in this action,

XX by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

_____ by transmitting a true copy thereof, addressed as follows:

Caren Sencer
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501-1091

XX (By first class mail) I placed such envelope in the mail, postage fully prepaid, at Oakland, California on the same day.

_____ (By personal service) I caused such envelope to be delivered by hand to the offices of the addressee.

_____ (By telecopier transmission (FAX)) I caused such document(s) to be transmitted by Fax machine to the office of the addressee.

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

Executed this 10th day of February, 2009 at Oakland, California.



Alexandria Alonga