

PCD - Complex



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FILED  
ALAMEDA COUNTY

APR 30 2010

6 Attorneys for Plaintiffs  
LAVON GODFREY and GARY GILBERT

CLERK OF THE SUPERIOR COURT  
By M. G. [Signature] Deputy

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF ALAMEDA

11	LAVON GODFREY and GARY GILBERT, on )	Case No.	RG 08-379099
12	behalf of themselves and all others similarly )		
13	situated, )		
14	Plaintiffs, )		PLAINTIFFS' COMPLEX CASE
15	v. )		MANAGEMENT CONFERENCE
16	OAKLAND PORT SERVICES CORP. d/b/a )	Date: May 7, 2010	
17	AB TRUCKING, and DOES 1 through 20, )	Time: 11:00 a.m.	
18	inclusive, )	Judge: Robert B. Freedman	
19	Defendants. )	Dept.: 20	

19 Plaintiffs LAVON GODFREY and GARY GILBERT (hereinafter "GODFREY and/or  
20 GILBERT") submit this Complex Case Management Statement in preparation for the complex  
21 case management conference scheduled for May 7, 2010.

22 A. FACTUAL SUMMARY

23 This is a wage and hour class action litigation brought by two former drivers of Defendant  
24 AB Trucking. Plaintiffs allege unfair business practices, violations of the California Labor Code  
25 and violations of the Port of Oakland's Living Wage Ordinance (Oakland City Charter, Section  
26 728). The individual Plaintiffs and other similarly situated current and former employees allege  
27 they did not receive compensation at the rates required under the Living Wage Charter  
28 Amendment. Plaintiffs' Complaint asserts Causes of Action ("COA") for violations of Business

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1 and Professions Code § 17200 (1st COA, Unfair Business Practices); for violations of Labor Code  
2 §§ 1194 and 1182.12 and IWC Wage Order 9 (2d COA, Failure to Pay for All Hours Worked); for  
3 violations of the Oakland City Charter § 728 (3rd COA, Living Wage); for violations of Labor  
4 Code §§ 226.7 and 512, and IWC Wage Order 9 (4th COA, Meal and Rest Periods); for violations  
5 of Labor Code §§ 201, 202 and 203 (5th COA, Payment of Wages and Penalties); and for  
6 violations of Labor Code § 226 (6th COA, Payroll Stubs).

7 Plaintiffs seek to recover all wages due and applicable penalties on behalf of themselves  
8 and others similarly situated. Plaintiffs also seek the difference between the Living Wage and the  
9 wage rate paid for the four (4) years prior to the filing of the Complaint, for themselves and those  
10 similarly situated. Under Section 9 of the Port Living Wage Ordinance, the Plaintiffs are  
11 requesting treble damages, costs of litigation and attorneys' fees.

12 B. PARTIES

13 The two individual Plaintiffs bring suit on behalf of themselves and other similarly situated  
14 employees and former employees of AB Trucking. Plaintiffs are represented by the law firm  
15 Weinberg, Roger and Rosenfeld.

16 Defendant is represented by Jay Ian Aboudi, 1855 Olympic Boulevard, Suite 210  
17 Walnut Creek, CA 94596.

18 C. DEADLINES AND LIMITS ON JOINDER AND AMENDED PLEADINGS

19 Plaintiff does not intend to join any additional parties.

20 D. CLASS DISCOVERY AND CLASS CERTIFICATION

21 **Plaintiffs' Statement:** Whether employees received overtime payments, payment for all  
22 hours worked and the Living Wage or some other lesser wage, can be established simply by  
23 payroll documentation. Deposition testimony confirms all employees were paid under the same  
24 payroll system. Plaintiffs have requested and received some documents related to all workers  
25 showing the commonality of the time keeping practices. These documents show employees  
26 working more than 8 hours a day and 40 hours in a work week. These time records also show  
27 neither meal nor rest periods were recorded. Plaintiff's class certification motion, filed with the  
28 court December 15, 2009, gives further analysis of this position.

1 E. PROPOSED LITIGATION SCHEDULE

2 Pursuant to the fifth complex case management conference on March 12, 2010, the Court  
3 scheduled this conference for May 7, 2010. The Court and the parties anticipated that the Court  
4 would designate the date of the class certification hearing at the May 7<sup>th</sup> conference. At the May  
5 12<sup>th</sup> Conference, the Court ordered the Defendant to file its opposition to Plaintiffs' class  
6 certification motion with sufficient time for Plaintiffs to have an opportunity to review the  
7 opposition prior to the May 7<sup>th</sup> case management conference. It was expected that at the May 7<sup>th</sup>  
8 hearing, Plaintiffs would advise the Court if Plaintiffs would require additional discovery in order  
9 to file the reply. Plaintiff GILBERT was produced for his continued deposition on March 22, 2010  
10 and the deposition moved forward as scheduled and was completed March 22, 2010, as required by  
11 the Order.

12 Despite the Court's requirement that Defendant file its opposition before the May 7<sup>th</sup> case  
13 management conference, and multiple attempts on Plaintiffs' part to remind Defendant of the  
14 importance of filing its opposition before this date, Defendant has failed to produce an opposition.  
15 It was only after Plaintiffs' multiple attempts to contact Defendant that Plaintiffs' prodding  
16 resulted in Defendant informing Plaintiffs of its difficulties with filing an opposition. Defendant  
17 contacted Plaintiffs on April 27, 2010 and requested Plaintiffs enter into a stipulation to extend the  
18 time by which Defendant could file its opposition to the class certification motion. Defendant's  
19 request was based on three perceived difficulties it characterized as having arisen since March 12<sup>th</sup>.  
20 These difficulties Defendant perceives as restricting its ability to produce the opposition in a timely  
21 manner were foreseeable, and are not, as Defendant would argue, issues that were outside of  
22 Defendant's control. As a result, Plaintiffs did not agree to Defendant's proposed stipulation and  
23 further delay of this case.

24 Defendant presents three difficulties preventing the timely filing of its opposition: (1)  
25 Defendant argues that the information response to its public records request to the Port was not  
26 produced by the Port on a timely basis; (2) the review and comment period following Mr. Gilbert's  
27 deposition ended only a few weeks before the CCMC statement was due and finally; (3) attorney  
28 Michael Broad's withdrawal from the case, all prevented Defendant from filing its opposition by

1 the designated date. It is reasonable to expect Defendant to have foreseen all of these issues.

2 This lawsuit was filed in March 2008 and discovery began in July 2008. Defendant should  
3 have requested information from the Port earlier in the discovery process, or at least with sufficient  
4 time prior to Plaintiffs' filing of the class certification motion (which Plaintiffs repeatedly advised  
5 in CCMC statements would be filed). Defendant could have subpoenaed records from the Port if it  
6 was concerned about delay. Regardless, Defendant received the information sought from the Port  
7 on April 12, 2010. If Defendant was concerned about the time frame, Defendant should have  
8 approached Plaintiffs on April 12<sup>th</sup>, rather than waiting until April 27, 2010.

9 Defendant is aware of the timeline for the review and comment period following a  
10 deposition, and certainly the Court was aware of this timeline when it established the date by  
11 which Defendant should file its opposition at the March 12<sup>th</sup> conference. The continued deposition  
12 of Plaintiff GILBERT was completed March 22, 2010, in keeping with the requirements of the  
13 Court's Order. The Court did not perceive this timeline as problematic. Moreover, the length of  
14 the comment period should not have affected Defendant's use of the deposition transcript prior to  
15 that date in creating a draft of the opposition.

16 Finally, Defendant was aware of the outstanding bill to attorney Michael Broad and could  
17 have anticipated Mr. Broad's seeking withdrawal from the case. It is unlikely Defendant had no  
18 discussion with Mr. Broad prior to his filing the motion to be relieved as counsel. Plaintiffs  
19 received notice of the hearing on the motion to be relieved as counsel on March 29, 2010. Again,  
20 Defendant waited until April 27<sup>th</sup> to approach Plaintiffs with concerns.

21 It has been over 135 days since the filing of Plaintiffs' motion for class certification. It is  
22 clear Defendant is attempting to take advantage of Plaintiffs and the Court by causing these delays.  
23 At best, Defendant shows no respect for the Court or the parties involved by disregarding the  
24 timelines set by the Court and approaching Plaintiffs weeks after it became aware of any potential  
25 difficulties.

26 Plaintiffs would support any appropriate remedy the Court might be able to fashion under  
27 these circumstances. Plaintiffs, however, do not seek any such remedy that would result in further  
28 delay. At the very least, Plaintiffs request Defendant be held to the strictest of time standards

1 going forward. Plaintiffs propose that an appropriate remedy might be for the Court to sanction  
2 Defendant for the cost and time associated with the filing of this Complex Case Management  
3 Conference Statement and Plaintiffs' multiple attempts to remind and follow up with Defendant  
4 regarding Defendant's opposition.

5 Plaintiffs' counsel has spent 2.5 hours contacting opposing counsel via letter, email and  
6 telephone, and drafting this statement. It is anticipated that counsel will spend an additional 1 hour  
7 attending the case management conference on May 7, 2010. Applying the accepted market rate of  
8 \$275 per hour for Plaintiffs' counsel Lisl Duncan's time, this total comes to \$962.50. Should the  
9 Court require, Plaintiffs would be happy to furnish this information in the form of a declaration.  
10 Please see the exhibits attached herewith, which are true and correct copies of the correspondence  
11 sent to Defendant regarding this matter.

12 As discussed above, Plaintiffs filed their motion for class certification on December 15,  
13 2009 and the parties await a schedule for reply and hearing. A briefing schedule for motions for  
14 summary judgment/adjudication can be set after the class certification.

15 Plaintiffs could propose a trial date in September 2010 and Plaintiffs' anticipate a motion  
16 for summary judgment to be heard in August 2010. However, these estimates may be adjusted  
17 based on the decisions reached at the May 7<sup>th</sup> conference.

18 F. POTENTIAL EVIDENTIARY ISSUES

19 There are no potential evidentiary issues identified at this time.

20 G. PROCEDURAL POSTURE

- 21 1. **Unserved Parties:** All named Defendants have been served.
- 22 2. **Unserved/Unfiled Cross-Complaints:** None known.
- 23 3. **Related Actions:** None known.
- 24 4. **Jurisdictional or Venue Issues:** None known or anticipated.
- 25 5. **Discovery Status:** The parties continue to engage in the meet and confer process  
26 and ongoing written discovery.
- 27 6. **Unresolved Law and Motion Matters:** The hearing date for the motion for  
28 class certification will be set by the Court.



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April 13, 2010

Jay Ian Aboudi  
The Law Office of Jay Ian Aboudi  
1855 Olympic Blvd., Ste. 210  
Walnut Creek, CA 94596

Re: Lavon Godfrey, et al. v. Oakland Port Services Corporation d/b/a AB Trucking  
Alameda County Superior Court No. RG 08-379099

Dear Mr. Aboudi:

As you know, we have a subsequent complex case management conference before the Court on May 7, 2010. This letter will serve to remind you that Judge Freedman stated that Plaintiffs should receive Defendant's opposition to the class certification motion well before May 7<sup>th</sup>. To date, we have not yet received this opposition, and we look forward to receiving it soon.

Please contact me should you have any questions or concerns.

Sincerely,

  
Lisl R. Duncan

LRD/jk  
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• Also admitted in Arizona  
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•••• Also admitted in Illinois  
••••• Also admitted in Missouri  
•••••• Also admitted in New York

April 21, 2010

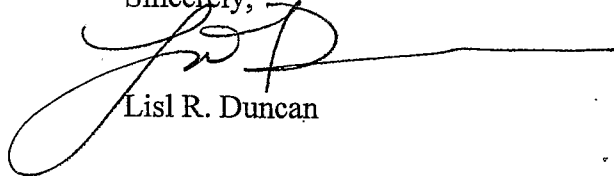
Jay Ian Aboudi  
The Law Office of Jay Ian Aboudi  
1855 Olympic Blvd., Suite 210  
Walnut Creek, CA 94596

Re: Lavon Godfrey, et al. v. Oakland Port Services Corporation d/b/a AB Trucking  
Alameda County Superior Court No. RG 08-379099

Dear Mr. Aboudi:

We have not received Defendant's Opposition to Plaintiffs' Motion for Class Certification. We have also received no response to our letter of April 13, 2010. Our Case Management Conference Statement in this matter is due April 29, 2010. At this point, Plaintiffs have no way to provide the Court with an informed estimation of what, if any, discovery Plaintiffs still require. We look forward to receiving your Opposition prior to April 29, 2010. Please contact me should you have any questions or concerns.

Sincerely,



Lisl R. Duncan

LRD/map  
opeiu 3 afl-cio(1)  
118212/568952



## Lisl Duncan

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**From:** Lisl Duncan  
**Sent:** Tuesday, April 27, 2010 11:47 AM  
**To:** 'Jay Aboudi'  
**Cc:** Caren Sencer  
**Subject:** Godfrey et. al v. AB Trucking - opposition

Jay,

When can we expect Defendant's opposition to our class certification motion? As you know from the last case management conference and from our last few letters to you, we have a CCMC statement due this Thursday, April 29, 2010. Plaintiffs must have an opportunity to review your opposition before updating the Court on the status of the litigation via the CCMC statement. To date, you have had Plaintiffs' motion for class certification for 133 days and it is difficult for us to see cause for further delay.

We look forward to receipt of your opposition.

Thank you.

Lisl R. Duncan

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Please consider the environment before printing this email.

## Lisl Duncan

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**From:** Lisl Duncan  
**Sent:** Thursday, April 29, 2010 7:51 AM  
**To:** Jay Ian Aboudi  
**Subject:** RE: Godfrey, et al. v. Oakland Port, et al.

Jay,

As we discussed over the phone yesterday, Plaintiffs cannot agree at this point to any stipulation that would further push out the class certification process. We will proceed with filing a separate CCMC statement.

Thank you.

-----Original Message-----

**From:** Jay Ian Aboudi <jay@aboudi-law.com>  
**Sent:** Wednesday, April 28, 2010 12:27 PM  
**To:** lduncan@unioncounsel.net <lduncan@unioncounsel.net>  
**Subject:** Godfrey, et al. v. Oakland Port, et al.

Lisl,

Attached is a proposed stipulation to set a date for the due date of Defendants' Opposition and to provide Plaintiffs time to review and therefore determine whether Plaintiffs will need to conduct additional discovery for its Reply.

Given the circumstances beyond our control, it makes sense to continue the CCMC set for May 7, 2010 which would otherwise be unproductive and a waste of the Court's resources. Furthermore, we are agreeing to set a firm due date to file our Opposition so that we may get through the class certification stage in this matter.

Please give me a call as soon as possible so that we can meet and confer on this issue. You may reach me directly at (925) 465-5162. Thank you.

Best,

Jay

This email communication may contain CONFIDENTIAL INFORMATION WHICH ALSO MAY BE LEGALLY PRIVILEGED and is intended only for the use of the intended recipients identified above. If you are not the intended recipient of this communication, you are hereby notified that any unauthorized review, use, dissemination, distribution, downloading, or copying of this communication is strictly prohibited. If you are not the intended recipient and have

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1 **PROOF OF SERVICE**  
2 (CCP 1013)

3 I am a citizen of the United States and an employee in the County of Alameda, State of  
4 California. I am over the age of eighteen years and not a party to the within action; my business  
5 address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501-1091. On April  
6 29, 2010, I served upon the following parties in this action:

7 Jay Ian Aboudi  
8 The Law Office of Jay Ian Aboudi  
9 1855 Olympic Blvd., Ste. 210  
10 Walnut Creek, CA 94596

copies of the document(s) described as:

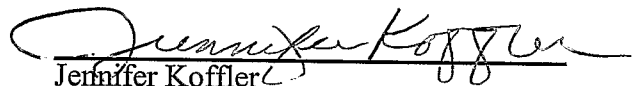
11 **PLAINTIFFS' COMPLEX CASE MANAGEMENT CONFERENCE STATEMENT**

12  **BY MAIL** I placed a true copy of each document listed herein in a sealed envelope,  
13 addressed as indicated herein, and caused each such envelope, with postage thereon fully  
14 prepaid, to be placed in the United States mail at Alameda, California. I am readily familiar  
15 with the practice of Weinberg, Roger & Rosenfeld for collection and processing of  
16 correspondence for mailing, said practice being that in the ordinary course of business, mail  
17 is deposited in the United States Postal Service the same day as it is placed for collection.

18  **BY OVERNIGHT DELIVERY SERVICE** I placed a true copy of each document listed  
19 herein in a sealed envelope, addressed as indicated herein, and placed the same for  
20 collection by Overnight Delivery Service by following the ordinary business practices of  
21 Weinberg, Roger & Rosenfeld, Alameda, California. I am readily familiar with the practice  
22 of Weinberg, Roger & Rosenfeld for collection and processing of Overnight Delivery  
23 Service correspondence, said practice being that in the ordinary course of business,  
24 Overnight Delivery Service correspondence is deposited at the Overnight Delivery Service  
25 offices for next day delivery the same day as Overnight Delivery Service correspondence is  
26 placed for collection.

27  **BY E-MAIL** I caused to be transmitted each document listed herein via the e-mail  
28 address(es) listed above or on the attached service list.

I certify under penalty of perjury that the above is true and correct. Executed at Alameda,  
California, on April 29, 2010.

  
Jennifer Koffler

118212/555975