

FILED BY FAX

ALAMEDA COUNTY

April 30, 2010

CLERK OF  
THE SUPERIOR COURT  
By Rosanne Case, Deputy

CASE NUMBER:

RG08379099

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5 Attorney for Defendant  
OAKLAND PORT SERVICES CORPORATION  
6 d/b/a AB TRUCKING (erroneously sued as AB  
TRUCKING, INC.)  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF ALAMEDA  
10

11 LAVON GODFREY and GARY GILBERT, on  
behalf of themselves and all others similarly  
12 situated,

13 Plaintiffs,

14 v.

15 OAKLAND PORT SERVICES  
CORPORATION d/b/a AB TRUCKING, and  
16 DOES 1 through 20, inclusive,

17 Defendants.  
18

CASE NO. RG 08-379099

**DEFENDANT'S COMPLEX CASE  
MANAGEMENT CONFERENCE  
STATEMENT**

Date: May 7, 2010  
Time: 11:00 a.m.  
Dept: Dept. 20, Judge Freedman  
Action Filed: March 28, 2008  
Trial Date: Not yet assigned

19 Pursuant to Rule 3.260 of the Alameda Local Rules on Complex Civil Litigation,  
20 Defendant Oakland Port Services Corporation d/b/a AB Trucking (hereinafter "AB Trucking" or  
21 "AB") hereby submits its Complex Case Management Conference Statement in connection with  
22 the Initial Complex Case Management Conference Scheduled for May 7, 2010. Plaintiffs'  
23 counsel indicated that it intends to file a separate CCMC Statements.

24 **A. Background**

25 This case has a factor not common in the trucking industry. Defendant is a trucking  
26 company located near the Port of Oakland ("Port"), providing drayage transportation for import  
27 and export goods in and out of the Port of Oakland. AB Trucking is owned by Bill Aboudi, its  
28 President, who supervises AB's thirteen employee truck drivers. Employee drivers' duties vary

1 widely. For example, some drivers work exclusively between the Port and a public truck parking  
2 facility adjacent to the Port; some drivers are authorized to make deliveries to areas outside of  
3 the Port and within the Bay Area; other drivers' duties are limited to much farther destinations  
4 including Southern California and Nevada; finally, some qualified drivers are authorized to  
5 provide relevant instruction to individuals to whom they may be assigned or who volunteer for  
6 such instruction.

7       Although some of these formerly incarcerated individuals may already have a Class A  
8 truck driving license, companies engaged in Port cargo transportation seek additional  
9 qualifications beyond mere possession of a valid Class A license. In addition, many of these  
10 individuals are or have been enrolled in rehabilitation programs as part of the terms of their  
11 release. Consequently, such individuals have difficulty in finding employment especially  
12 without competency in Port cargo transportation (*e.g.*, connecting to and operating with a  
13 chassis, marine terminal requirements and paperwork, customer service, etc...) Because such  
14 training cannot be obtained through traditional truck driving courses, AB has made available its  
15 trucks and its drivers to formerly incarcerated individuals to provide them a better chance of  
16 employment with any trucking company engaged in Port cargo transportation. In fact, after  
17 training with AB, many are able to obtain jobs as truck drivers with local trucking companies  
18 and AB does not hesitate to make referrals and recommendations on their behalf.

19       AB allows these formerly incarcerated individuals (hereinafter "Trainee") to use AB's  
20 trucks, assigns them to a qualified employee truck driver, and allows the Trainee to watch and  
21 ride along with the employee truck driver. At some point in time and under direct supervision of  
22 the employee driver to whom he or she was assigned, the Trainee is allowed to drive the truck,  
23 perform inspections, and educated on how to prepare the truck and chassis for safe operation. At  
24 no time is a Trainee allowed to operate AB's trucks on a public road without an employee driver  
25 with him or her and, even within the confines of the public truck parking facility, at no time is a  
26 Trainee allowed to operate AB's trucks without direct supervision. Attendance by the Trainee is  
27 entirely optional as they are not hired employees. The Trainee receives no payment or  
28 compensation nor is the Trainee promised such payment or compensation, and the Trainee is

1 never promised a position of employment. Similarly, AB does not receive or request any  
2 payment or compensation for providing its resources. This opportunity that AB provides to  
3 previously incarcerated individuals has the support of Mayor Dellums's administration.

4 **B. Statement Of Issues Presented In The Case**

5 Plaintiff Lavon Godfrey (hereinafter "Godfrey") a former employee truck driver with AB  
6 Trucking, contends that defendant failed to provide meal and rest periods, failed to provide one  
7 additional hour of pay for each day a meal or rest period has not been provided and failed to  
8 provide accurate wage statements, and as a result, failing to pay wages for all hours worked and  
9 failing to pay all compensation owed in a timely manner, and failing to provide all compensation  
10 owed at the termination of employment, as required by California law. Godfrey also contends  
11 that AB is a "Port Assisted Business" and, as such, she is entitled to compensation not less than  
12 that provided by the Oakland living wage law.

13 Plaintiff Gary Gilbert (hereinafter "Gilbert") was a Trainee. Defendant expects Gilbert to  
14 contend (although it is not clear from the complaint) that defendant failed to provide meal and  
15 rest periods, failed to provide one additional hour of pay for each day a meal or rest period has  
16 not been provided and failed to provide accurate wage statements, and as a result, failing to pay  
17 wages for all hours worked and failing to pay all compensation owed in a timely manner, and  
18 failing to provide all compensation owed at the termination of employment, as well as being  
19 denied minimum wage while he was a Trainee as required by California law.

20 Plaintiffs seek class treatment for this action in the form of unpaid wages, rest and meal  
21 period penalties, injunctive and other equitable relief and reasonable attorneys' fees and costs.

22 Defendant contends that Plaintiffs were provided with all required meal and rest periods.  
23 Godfrey was an employee truck driver who took her two ten-minute breaks at her choosing, as  
24 well as her one hour lunch break, which could be taken in a one-hour interval or two thirty-  
25 minute intervals. Defendant contends that AB Trucking is not a Port Assisted Business as AB  
26 has no contracts with the Port of Oakland, that it is not bound by the Living Wage Charter  
27 Amendment within the context of the Oakland City Charter section 728, but in any event,  
28 Godfrey was paid in excess of the Living Wage ordinance.

1 Gilbert, on the other hand, was never an employee. This was made clear to Gilbert when  
2 he first came to participate as a Trainee. There were no trucks or positions available at such  
3 time. Gilbert acknowledged the absence of an employer-employee relationship during his  
4 deposition. He had previously completed the four week truck driving course administered by the  
5 Teamsters, which allowed him to obtain his commercial driver's license but which nevertheless  
6 did not provide him the necessary skills to be employed as a commercial truck driver. He was  
7 allowed to ride alongside one of AB's employee drivers, and eventually drive a truck himself,  
8 but never without an AB employee driver at his side. Gilbert has signed paperwork so stating the  
9 above facts.

10 Defendant contends that it has at all relevant times complied with all of the applicable  
11 California Labor Code provisions and Industrial Welfare Commission Wage Orders regarding  
12 recordkeeping, meal and rest periods.

13 Defendant further contends that this action is not appropriate for litigation as a class  
14 action. Plaintiffs are unable to meet the requirements of section 382 of the California Code of  
15 Civil Procedure, which requires plaintiffs to demonstrate, *inter alia*, that (1) common questions  
16 of law and fact predominate; (2) the claims of the class representatives are typical of the class;  
17 (3) the class representatives can adequately represent the class; and (4) a class action is superior  
18 to other methods available for the fair and efficient adjudication of the controversy and will  
19 confer substantial benefits on the parties and the court. Determining the issues raised by  
20 plaintiffs will require an analysis of numerous factors including the existence of an employer-  
21 employee relationship, the duties he or she performed, the amount of time actually spent  
22 performing those duties, his or her qualifications and skills, his or her authorized working radius,  
23 his or her traveled distance that determines the applicability of state and federal motor carrier  
24 laws regulating hours of service and drivers engaged in interstate commerce, and whether his or  
25 her performance met the reasonable expectations of defendant. By its very nature, this analysis  
26 requires an individualized determination of facts and defenses for each driver. The highly fact  
27 intensive, individualized nature of the analysis makes it inappropriate for class treatment.

28 //

1 **C. The Number of Parties and Their Posture**

2 This litigation involves three parties, Lavon Godfrey and Gary Gilbert, plaintiffs, and  
3 Oakland Port Services Corporation d/b/a AB Trucking, defendant.

4 Plaintiffs are represented by Caren P. Sencer and Lisl R. Duncan of Weinberg, Roger &  
5 Rosenfeld, APC, 1001 Marina Village Parkway, Suite 200, Alameda, CA 94501.

6 Defendant is represented by Jay Ian Aboudi, Esq., 1855 Olympic Boulevard, Suite 210,  
7 Walnut Creek, CA 94596. A hearing on the motion to withdraw by Michael Broad, the former  
8 attorney of record, was originally scheduled for May 6, 2010 but was dropped after the filing of  
9 substitution of attorney on April 15, 2010.

10 **D. Deadlines And Limits On Joinder Of Parties And Pleadings**

11 Defendant requests that the deadline for joinder of parties and amendment of pleadings  
12 be on or before 20 days following the Case Management Conference. Defendant neither  
13 anticipates the need to join parties to this action not the need to file additional or amended  
14 pleadings.

15 **E. Class Discovery And Class Certification**

16 Plaintiffs' counsel produced Plaintiff GARY GILBERT for his deposition on March 22,  
17 2010 at Santa Rita Jail in Dublin, California. Upon notice on March 30, 2010 from the court  
18 reporter, the original transcript of deponent GARY GILBERT's deposition is currently a period  
19 of inspection and signature through April 29, 2010 during which deponent GARY GILBERT  
20 may review and sign the transcript and make any corrections therein.

21 On March 3, 2010, Defendant received written correspondence from Port Attorney David  
22 L. Alexander responding to Defendant's California Public Records Act Request under  
23 Government Code Section 6250 *et seq.* which indicated that the documents under the Request  
24 would not be available until after March 12, 2010. The Port Attorney's office did not produce  
25 such documents until April 12, 2010.

26 **F. Class Certification**

27 As discussed above, plaintiffs' claims are not appropriate for class treatment under  
28 section 382 of the California Code of Civil Procedure. Plaintiffs' claims will require highly

1 individualized inquiries to determine his—and any putative class member’s—right to recovery.  
2 Such an action fails to meet the community of interest standards of section 382.

3 **G. Proposed Schedule For The Conduct Of The Litigation**

4 **1. Discovery**

5 Plaintiff has propounded written discovery. There have been several rounds of meet and  
6 confer letters and supplemental responses from Defendant. Defendant has responded to this  
7 discovery to the extent that it is relevant to plaintiffs’ individual claims and the issue of class  
8 maintainability. Plaintiff has also taken the depositions of Bill Aboudi, and Jovi Aboudi, the  
9 payroll clerk for AB Trucking.

10 As discussed above, Defendant has taken the second deposition of Plaintiff Gary Gilbert  
11 on March 22, 2010 and the transcript of such deposition is in a period of inspection and signature  
12 through April 29, 2010. Documents under Defendant’s Public Records Request to the Port  
13 Attorney’s office was not produced until April 12, 2010, a delay of about thirty (30) days.

14 **2. Discovery Closed Until Class Certification**

15 Defendant suggests that once discovery regarding (i) the merits of plaintiffs’ individual  
16 claims and defendant’s defenses and (ii) the class certification issue has been completed,  
17 discovery should be closed until after a dispositive ruling on plaintiff’s motion for class  
18 certification.

19 **3. Trial Date**

20 Defendant believes it is premature to set a trial date in this matter.

21 As discussed above, plaintiffs’ claims are not appropriate for class treatment under  
22 section 382 of the California Code of Civil Procedure. A trial length of at least five to eight  
23 weeks may be required if plaintiffs’ highly individualized claims are provided class treatment.

24 **H. Procedural Posture And Any Outstanding Procedural Problems**

25 **1. Unserved Parties**

26 To defendant’s knowledge, there are no unserved parties.

27 **2. Unserved/Unfiled Cross-Complaints**

28 Defendant does not presently intend to file a Cross Complaint in this action.

1           **3. Related Actions and Potential Coordination or Consolidation**

2           To defendant's knowledge, there are no pending related actions.

3           **4. Jurisdictional and Venue Issues**

4           Jurisdiction and venue appear proper in this court.

5           **5. Status of Discovery**

6           The parties continue to engage in the meet and confer process and ongoing written  
7           discovery.

8           **6. Unresolved Law and Motion Matters**

9           At the last CCMC on March 12, 2010, it was expected that Defendant would file its  
10          Opposition before May 7, 2010, which currently serves as a holding date. Given the unforeseen  
11          delays resulting from: (a) the Port Attorney's late production of documents pursuant to a Public  
12          Records Request, (b) the present review and signature period of Plaintiff GARY GILBERT's  
13          deposition through April 29, 2010, and (c) the withdrawal of Defendant's attorney, Defendant  
14          may ask this Court for a short extension of time in order to file its Opposition to Plaintiff's  
15          Motion for Class Certification.

16          Nevertheless, Defendant intends to file its Opposition on or before May 7, 2010.

17          **7. ADR Proceedings**

18          Defendant does not believe this is an appropriate case for ADR.

19          **8. Severance of Issues for Trial**

20          Defendant suggests that this issue is more appropriately addressed closer to trial.

21          **9. Calendar Conflicts or Other Matters That May Affect Setting a Trial Date**

22          As of this date, there are no known conflicting trial dates for Defendant's counsel.

23          **I. Suggestions For Streamlining Litigation**

24          This case involves a defendant small company with its president who also runs the  
25          company on a day-to-day basis. It currently has thirteen employee truck drivers and, at any  
26          given period of time, may have approximately zero to five Trainees. Beyond motions to compel  
27          further answers to written discovery or further answers to deposition questions as well as class  
28          certification issues, defendant sees areas of streamlining that would be necessary.

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Dated: April 29, 2010

**JAY IAN ABOUDI, ATTORNEY AT LAW**



**JAY IAN ABOUDI**  
Attorney for Defendant  
OAKLAND PORT SERVICES  
CORPORATION d/b/a AB TRUCKING  
(erroneously sued as AB TRUCKING, INC.)



1 *Godfrey v. Oakland Port Services Corporation dba AB Trucking*  
2 Alameda County Superior Court Case No. RG 08-379099

3  
4 **PROOF OF SERVICE**

5 I am a resident of the State of California, over the age of eighteen years, and not  
6 a party to the within action. My business address is: 1855 Olympic Blvd., Ste. 210,  
7 Walnut Creek, CA 94596. On the date below, I served the within documents:

8 **DEFENDANT'S DISCOVERY STATUS REPORT**

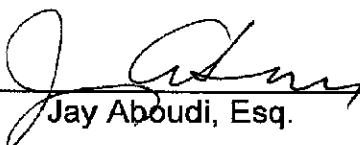
- 9  by transmitting via facsimile the document(s) listed above to the fax number(s)  
10 set forth below on this date before 10:00 A.M.
- 11  by placing the document(s) listed above in a sealed envelope with postage  
12 thereon fully prepaid, in United States mail in the State of California at Walnut  
13 Creek, addressed as set forth below.
- 14  by personally delivering the document(s) listed above to the person(s) at the  
15 address(es) set forth below.

16 Lisl Duncan, Esq.  
17 Weinberg, Roger & Rosenfeld  
18 A Professional Corporation  
19 1001 Marina Village Parkway, Suite 200  
20 Alameda, CA 94501-1091  
21 Tel: (510) 337-1001  
22 Fax: (510) 337-1023

23 I am readily familiar with the firm's practice of collection and processing  
24 correspondence for mailing. Under that practice it would be deposited with the U.S.  
25 Postal Service on that same day with postage thereon fully prepaid in the ordinary  
26 course of business. I am aware that on motion of the party served, service is presumed  
27 invalid if postal cancellation date or postage meter date is more than one day after the  
28 date of deposit for mailing in affidavit.

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

Executed on April 29, 2010 at Walnut Creek, California.

  
Jay Aboudi, Esq.