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**FILED**  
 ALAMEDA COUNTY  
 MAY 24 2013  
 CLERK OF THE SUPERIOR COURT  
 By *J. Lyman*

6 Attorneys for Plaintiffs  
 LAVON GODFREY and GARY GILBERT

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

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

13 Plaintiffs,

14 v.

15 OAKLAND PORT SERVICES CORP. d/b/a  
 AB Trucking, and DOES 1 through 20,  
 16 inclusive,

17 Defendants.

Case No. RG08379099

**PLAINTIFFS' OPPOSITION TO  
 DEFENSE COUNSEL'S MOTION TO BE  
 RELIEVED AS COUNSEL**

Date: June 7, 2013  
 Time: 10:00 a.m.  
 Dept. 20  
 Judge: Hon. Robert B. Freedman

Action Filed: March 28, 2008  
 Trial Date: February 14, 2012

20 **I. INTRODUCTION**

21 Plaintiffs file this Opposition to defense counsel's ill-timed motion to be relieved as  
 22 counsel on the basis that granting such a motion would severely prejudice Plaintiffs' ability to  
 23 pursue this matter on behalf of the Class and themselves. Because Defendant is a corporation and  
 24 must be represented by counsel, defense counsel should not be granted permission to be relieved as  
 25 counsel just after trial and a ruling substantially in favor of the Class, but before Notice to the  
 26 Class, before any mechanism for claims administration has been established, and before it is clear  
 27 whether any amount to pay the Judgment will be available to the Class. At a minimum, defense

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1 counsel's motion should be denied unless and until such time as new defense counsel substitutes  
2 in.

3 The instant motion is another attempt by AB to cause unnecessary delay. Indeed, AB and  
4 its counsel have already caused significant delay in this litigation by (1) requesting a Statement of  
5 Decision from the Court, rather than accepting the Court's Notice of Intended Decision ("NOID"),  
6 (2) filing Objections to the Proposed Statement of Decision ("PSOD"), and (3) even after the Court  
7 denied those Objections, asking the Court to wait *yet another* sixty (60) days before issuing a Final  
8 Judgment. (See Declaration of Lisl R. Duncan in support of Plaintiffs' opposition to defense  
9 counsel's motion to be relieved as counsel ("Duncan Dec.") at ¶¶3-7.) This process took well-over  
10 five months.

11 Furthermore, the attorney seeking to be relieved as counsel is the *fourth* attorney on the  
12 case. (Duncan Dec. at ¶8.) Each time AB has brought in a new attorney it has caused significant  
13 delay while the new attorney reviewed the files and familiarized himself with the case.<sup>1</sup> (*Id.*) This  
14 delay while new defense counsel "got up to speed," occurred in December 2008 and on the eve of  
15 trial, in part causing the trial date to be delayed ninety (90) days, or until February 2012. (See  
16 Order Granting Continuance, filed December 2, 2011.) Moreover, this is the third attorney asking  
17 to be relieved as counsel ostensibly because he has not been paid by AB. (*Id.*) This is severely  
18 prejudicial to the Class as AB continues to force the Class to be yet another creditor in line for  
19 money owed.

20 AB and its counsel—who accepted representation of AB in this case with knowledge that a  
21 Judgment might issue in favor of the Class, requiring a Claims Administration process—should not  
22 be permitted to further delay this matter.

## 23 **II. FACTUAL BACKGROUND AND LEGAL ARGUMENT**

24 Plaintiffs filed a class action complaint against AB on March 28, 2008, alleging numerous  
25 wage and hour violations. A Class of drivers was certified and the Class substantially prevailed at  
26

27 <sup>1</sup> Plaintiffs acknowledge the delay was less when the third attorney, Mr. Jay I. Aboudi, substituted into the case in  
28 place of Mr. Michael Broad, as Mr. Jay Aboudi had previously been working on the case with Mr. Broad in Mr. Jay  
Aboudi's capacity as general counsel for AB.



1 trial. The damages due and owing are close to a million dollars. (Duncan Dec. at ¶2.)

2 Defense counsel has improperly filed a motion to be relieved as counsel, without  
3 substituting in adequate legal counsel for its client. A corporation may not represent itself. (See  
4 *Merco Constr. Engineers Inc. v Municipal Court* (1978) 21 Cal. 3d 724; *Vann v. Shilleh* (1975) 54  
5 Cal. App. 3d 192, 199.) In fact, even the form defense counsel used to file his motion clearly states  
6 on its face that corporations “may not” act as their own attorney in most cases.

7 Section 284 of California’s Code of Civil Procedure allows an attorney to be “changed”  
8 upon court order. It states:

9 The attorney in an action or special proceeding may be changed  
10 at any time before or after judgment or final determination, as  
follows:

11 1. Upon the consent of both client and attorney, filed with the  
12 clerk, or entered upon the minutes;

13 2. Upon the order of the court, upon the application of either  
14 client or attorney, after notice from one to the other.

Section 285 requires that:

15 When an attorney is changed, as provided in the last section,  
16 written notice of the change and of the substitution of a new  
17 attorney, or of the appearance of the party in person, must be given  
to the adverse party. Until then he must recognize the former  
attorney.

18 Here, defense counsel apparently intends to cease representing AB, without substituting in  
19 new counsel, leaving Plaintiffs without any means to facilitate the claims process for the Class.  
20 Mr. Bill Aboudi cannot appear on behalf of AB. Even if the parties are able to reach an informal  
21 resolution before defense counsel is no longer AB’s counsel of record, that settlement must still be  
22 processed before the Court for Court approval.

23 Defense counsel has conveniently scheduled his motion to be heard before several  
24 important, post-Judgment matters in this case are complete. More specifically, defense counsel has  
25 filed his motion to be heard *after* the Court’s Judgment yet *before* any claims administration.  
26 Having already on several prior occasions unnecessarily delayed litigation of this matter, AB and  
27 defense counsel’s timing of this motion to be relieved as counsel appears calculated to thwart

1 Plaintiffs' ability to timely collect on the Judgment issued.

2 At a minimum, should the Court be inclined to grant defense counsel's motion, defense  
3 counsel should be required to remain as counsel through the claims administration process. As an  
4 alternative, Defendant should be ordered to retain counsel by a date certain.

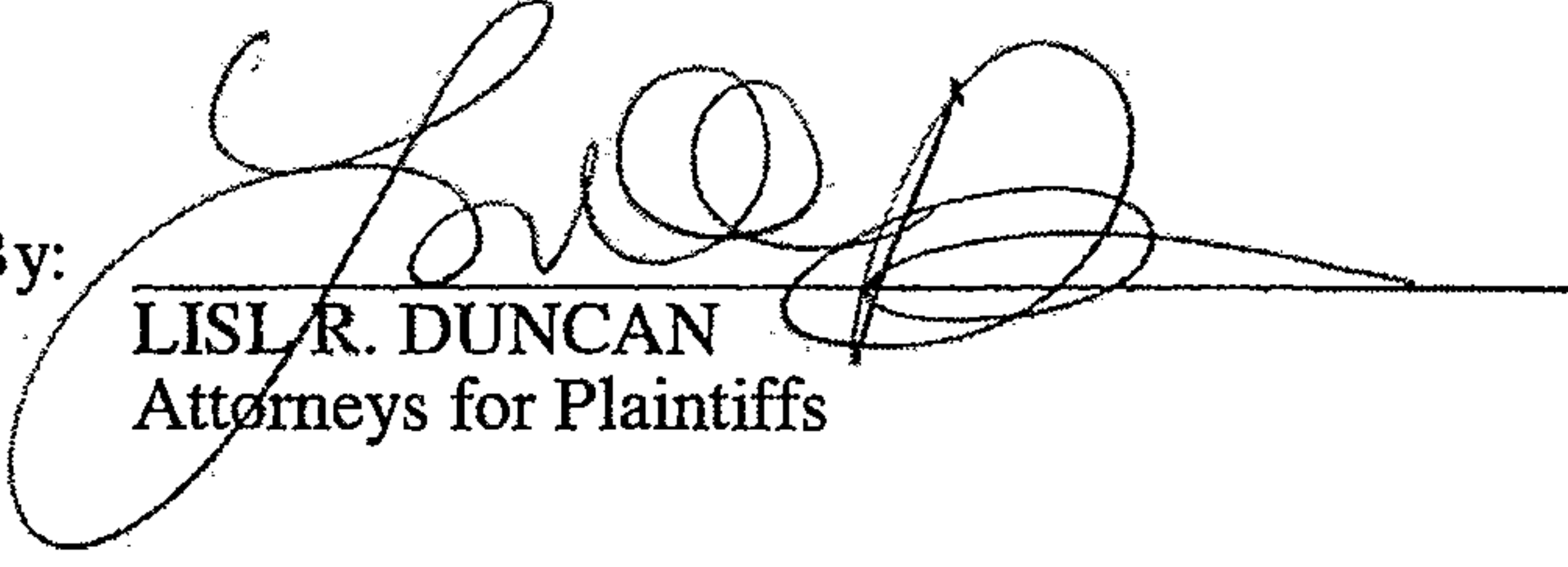
5 **III. CONCLUSION**

6 In the interests of justice and for good cause showing, Plaintiffs respectfully request  
7 defense counsel's motion be denied unless and until such time as AB substitutes in counsel, and at  
8 a minimum, until after the claims administration process is conducted or the parties otherwise  
9 reach a settlement approved by the Court.

10 Finally, Plaintiffs respectfully request the Court issue an Order, in any case, reiterating its  
11 prior Order—in a manner that may be read and understood by any prospective counsel for AB—  
12 that AB is prohibited from transferring its property, proceeds and/or assets in any manner other  
13 than in the ordinary course of business until the Judgment, or any amount determined to be owed in  
14 a Court approved settlement, is paid. Plaintiffs accordingly file a [proposed] order herewith.

15  
16 Dated: May 22, 2013

17 WEINBERG, ROGER & ROSENFELD  
18 A Professional Corporation

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20 By:   
21 LISL R. DUNCAN  
22 Attorneys for Plaintiffs

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**PROOF OF SERVICE**

I am a citizen of the United States and resident of the State of California. I am employed in the County of Los Angeles, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On May 24, 2013, I served the following documents in the manner described below:

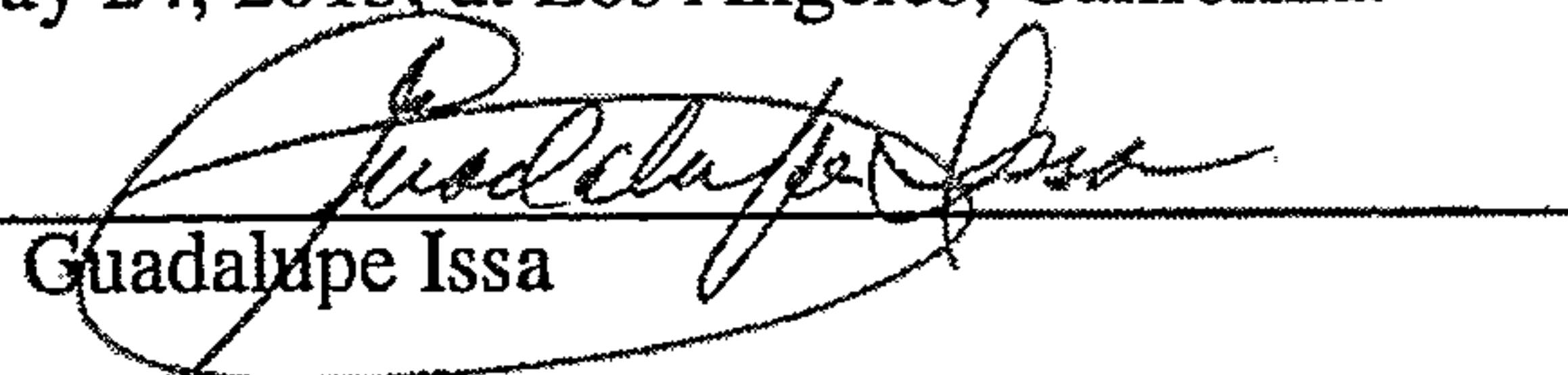
**PLAINTIFFS' OPPOSITION TO DEFENSE COUNSEL'S  
MOTION TO BE RELIEVED AS COUNSEL**

- (BY U.S. MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing with the United States Parcel Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Los Angeles, California.
- (BY OVERNIGHT MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained by United Parcel Service for overnight delivery.
- (BY FACSIMILE) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of document(s) to be transmitted by facsimile and I caused such document(s) on this date to be transmitted by facsimile to the offices of addressee(s) at the numbers listed below.
- BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system on \_\_\_\_\_ from \_\_\_\_\_@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

Guy A. Bryant, Esq.  
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476 3<sup>rd</sup> Street  
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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 24, 2013, at Los Angeles, California.

  
\_\_\_\_\_  
Guadalupe Issa