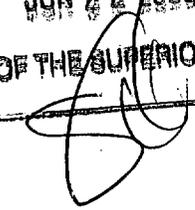




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 15 OAKLAND PORT SERVICES CORPORATION
 16 d/b/a AB TRUCKING (erroneously sued as AB
 17 TRUCKING, INC.)

FILED
ALAMEDA COUNTY
 JUN 22 2009
 CLERK OF THE SUPERIOR COURT
 By  Deputy

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 13 FOR THE COUNTY OF ALAMEDA

14
 15 LAVON GODFREY, on behalf of herself and)
 16 all others similarly situated,)
 17 Plaintiffs,)
 18 v.)
 19 OAKLAND PORT SERVICES)
 20 CORPORATION d/b/a AB TRUCKING, and)
 21 DOES 1 through 20, inclusive,)
 22 Defendants.)

CASE NO. RG 08-379099
**DEFENDANT'S COMPLEX CASE
 MANAGEMENT CONFERENCE
 STATEMENT**
 Action Filed: March 28, 2008
 Dept: Dept. 20, Judge Freedman
 Trial Date: Not yet assigned
 Date: June 25, 2009
 Time: 2:00 p.m.

22 Pursuant to Rule 3.260 of the Alameda Local Rules on Complex Civil Litigation,
 23 Defendant Oakland Port Services Corporation d/b/a AB Trucking (hereinafter "AB Trucking" or
 24 "AB") hereby submits its Complex Case Management Conference Statement in connection with
 25 the Initial Complex Case Management Conference Scheduled for June 25, 2009.

26 //
 27 //
 28 //

1 **A. Background**

2 This case has a factor not common in the trucking industry. Defendant is a trucking
3 company located near the Port of Oakland ("Port"), providing drayage transportation for import
4 and export goods in and out of the Port of Oakland. AB Trucking is owned by Bill Aboudi, its
5 President, who supervises AB's thirteen employee truck drivers. Employee drivers' duties vary
6 widely. For example, some drivers work exclusively between the Port and a public truck parking
7 facility adjacent to the Port; some drivers are authorized to make deliveries to areas outside of
8 the Port and within the Bay Area; other drivers' duties are limited to much farther destinations
9 including Southern California and Nevada; finally, some qualified drivers are authorized to
10 provide relevant instruction to individuals to whom they may be assigned or who volunteer for
11 such instruction.

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

24 AB allows these formerly incarcerated individuals (hereinafter "Trainee") to use AB's
25 trucks, assigns them to a qualified employee truck driver, and allows the Trainee to watch and
26 ride along with the employee truck driver. At some point in time and under direct supervision of
27 the employee driver to whom he or she was assigned, the Trainee is allowed to drive the truck,
28 perform inspections, and educated on how to prepare the truck and chassis for safe operation. At

1 no time is a Trainee allowed to operate AB's trucks on a public road without an employee driver
2 with him or her and, even within the confines of the public truck parking facility, at no time is a
3 Trainee allowed to operate AB's trucks without direct supervision. Attendance by the Trainee is
4 entirely optional as they are not hired employees. The Trainee receives no payment or
5 compensation nor is the Trainee promised such payment or compensation, and the Trainee is
6 never promised a position of employment. Similarly, AB does not receive or request any
7 payment or compensation for providing its resources. This opportunity that AB provides to
8 previously incarcerated individuals has the support of Mayor Dellums's administration.

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

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

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

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

27 Defendant contends that Plaintiffs were provided with all required meal and rest periods.
28 Godfrey was an employee truck driver who took her two ten-minute breaks at her choosing, as

1 well as her one hour lunch break, which could be taken in a one-hour interval or two thirty-
2 minute intervals. Defendant contends that AB Trucking is not a Port Assisted Business as AB
3 has no contracts with the Port of Oakland, that it is not bound by the Living Wage Charter
4 Amendment within the context of the Oakland City Charter section 728, but in any event,
5 Godfrey was paid in excess of the Living Wage ordinance.

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

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

18 Defendant further contends that this action is not appropriate for litigation as a class
19 action. Plaintiffs are unable to meet the requirements of section 382 of the California Code of
20 Civil Procedure, which requires plaintiffs to demonstrate, *inter alia*, that (1) common questions
21 of law and fact predominate; (2) the claims of the class representatives are typical of the class;
22 (3) the class representatives can adequately represent the class; and (4) a class action is superior
23 to other methods available for the fair and efficient adjudication of the controversy and will
24 confer substantial benefits on the parties and the court. Determining the issues raised by
25 plaintiffs will require an analysis of numerous factors including the existence of an employer-
26 employee relationship, the duties he or she performed, the amount of time actually spent
27 performing those duties, his or her qualifications and skills, his or her authorized working radius,
28 his or her traveled distance that determines the applicability of state and federal motor carrier

1 laws regulating hours of service and drivers engaged in interstate commerce, and whether his or
2 her performance met the reasonable expectations of defendant. By its very nature, this analysis
3 requires an individualized determination of facts and defenses for each driver. The highly fact
4 intensive, individualized nature of the analysis makes it inappropriate for class treatment.

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

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

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

10 Defendant is represented by Michael Broad of the Law Offices of Michael Broad, 166
11 Santa Clara Avenue, Oakland, CA 94610. Defendant is also represented by Jay Ian Aboudi,
12 General Counsel for Oakland Port Services Corporation, 11 Burma Road, Oakland, CA 94607.

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

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

18 **E. Class Discovery And Class Certification**

19 Defendant recognizes that plaintiff may obtain discovery regarding whether class
20 certification is appropriate in this action. However, plaintiff has served discovery that in part, is
21 seeking information that is far beyond the scope needed to determine whether class treatment is
22 appropriate. Defendant believes that discovery should be conducted in waves, with the first
23 wave limited to plaintiff's individual claims, defendant's defenses to those claims, and whether
24 this action is maintainable as a class action.

25 Plaintiff has served written discovery and has taken the deposition of Bill Aboudi, the
26 president of AB Trucking. Defendant has taken the deposition of Gilbert which has not been
27 completed and is set to be completed at a future date. Defendant also is taking the deposition of
28 Godfrey on June 24, 2009, the day before this Case Management Conference. Defendant seeks

1 to propound some written discovery on plaintiffs.

2 **F. Class Certification**

3 As discussed above, plaintiffs' claims are not appropriate for class treatment under
4 section 382 of the California Code of Civil Procedure. Plaintiffs' claims will require highly
5 individualized inquiries to determine his—and any putative class member's—right to recovery.
6 Such an action fails to meet the community of interest standards of section 382.

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

8 **1. Discovery**

9 Plaintiff has propounded written discovery. There have been several rounds of meet and
10 confer letters and supplemental responses from Defendant. Defendant has responded to this
11 discovery to the extent that it is relevant to plaintiffs' individual claims and the issue of class
12 maintainability. Plaintiff has also taken the deposition of Bill Aboudi and plans to take the
13 deposition of Jovi Aboudi, the payroll clerk for AB Trucking.

14 Defendant has taken the deposition of Gilbert which has not been completed and is set to
15 be completed at a future date. Defendant also is taking the deposition of Godfrey on June 24,
16 2009, the day before this Case Management Conference. Defendant seeks to propounds some
17 written discovery on plaintiff. Defendant proposed a time period of four months for this initial
18 phase of discovery.

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

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

24 **3. Trial Date**

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

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

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

2 Plaintiffs filed their Amended Complaint on January 20, 2009. Defendant filed its
3 Answer on February 17, 2009. This case was determined complex on May 1, 2009. Plaintiff has
4 served written discovery as noted above.

5 **1. Unserved Parties**

6 To defendant's knowledge, there are no unserved parties.

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

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

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

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

11 **4. Jurisdictional and Venue Issues**

12 Jurisdiction and venue appear proper in this court.

13 **5. Status of Discovery**

14 As noted above, plaintiff has served written discovery and has taken the deposition of
15 Bill Aboudi, the president of AB Trucking. Defendant has taken the deposition of Gilbert which
16 has not been completed and is set to be completed at a future date. Defendant also is taking the
17 deposition of Godfrey on June 24, 2009, the day before this Case Management Conference.
18 Defendant seeks to propound some written discovery on plaintiffs.

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

20 There are no unresolved law and motion matters currently pending. However, once
21 plaintiffs and defendant work through disputes about plaintiffs' propounded written discovery, it
22 is anticipated that plaintiff may file a motion to compel further responses. Defendant may file a
23 motion to compel as to questions that Gilbert refused to answer after the completion of his
24 deposition.

25 **7. ADR Proceedings**

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

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

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

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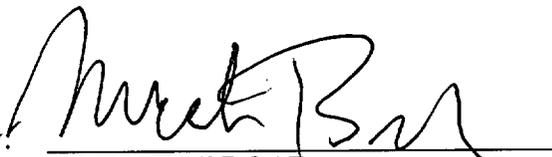
9. Calendar Conflicts or Other Matters That May Affect Setting a Trial Date

Defendant's counsel will be out of town during the Labor Day weekend and for two weeks in October 2009.

I. Suggestions For Streamlining Litigation

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

Dated: June 22, 2009

By: 
MICHAEL BROAD
Attorney for Defendant
OAKLAND PORT SERVICES
CORPORATION d/b/a AB TRUCKING
(erroneously sued as AB TRUCKING,
INC.)

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 June 22, 2009I served the following: Defendant Oakland Port Services's Case Management Conference Statement

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
Lisl Duncan
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 22nd day of June, 2009 at Oakland, California.



Alexandria Alonga