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Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Godfrey <p style="text-align: right;">Plaintiff/Petitioner(s)</p> <p style="text-align: center;">VS.</p> AB Trucking, Inc. <p style="text-align: right;">Defendant/Respondent(s) (Abbreviated Title)</p>	No. <u>RG08379099</u> Order Motion for Class Certification Dropped
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The Motion for Class Certification was set for hearing on 06/25/2010 at 11:00 AM in Department 20 before the Honorable Robert B. Freedman. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The Motion of plaintiffs Lavon Godfrey and Gary Gilbert, on behalf of themselves and all others similarly situated ("Plaintiffs") for Class Certification ("Motion") is CONTINUED for further briefing. While the Court finds the Motion to be deficient in many respects, it is inclined to conclude that this action is a potentially suitable vehicle for the litigation of some claims on a class-wide basis. Before this inclination can evolve to a class certification order, however, significant additional work is called for.

Plaintiffs allege in their operative complaint (First Amended Complaint, filed on January 23, 2009, "Complaint") that they were formerly employed as truck drivers by defendant Oakland Port Services Corp. dba AB Trucking ("Defendant"). The Complaint contains causes of action for (1) Violations of Business & Professions Code sections 17200, et seq. ("UCL"), (2) Violation of Labor Code section 1194 and 1182.12 and IWC Wage Order No. 9, Section 4 [Failure to Pay for Each Hour Worked], (3) Violation of the Oakland Living Wage Ordinance, (4) Violations of Labor Code sections 226.7 & 512 and IWC Wage Order 9 [Meal & Rest Periods], (5) Violations of Labor Code sections 201, 202 & 203 [payment of wages after discharge], and (6) Violation of Labor Code section 226 [Payroll Stubs].

The Court notes at the outset that Plaintiffs do not address their 5th and 6th causes of action at all in the Motion. The Court will expect Plaintiffs to explain whether these claims are being abandoned, and if so, why. If they are not being abandoned, Plaintiffs must clearly articulate how they fit into the class claims sought to be certified.

According to their Notice of Motion, Plaintiffs seek certification "that this action is maintainable as a class action." They have not, however, offered an overall definition of the proposed class. Instead, Plaintiffs move directly to the enumeration of 5 so-called "subclasses," none of which are adequately defined. For example, all of the proposed subclasses utilize the language "[a]ll drivers employed by Defendant" with no attempt to define the term "driver." None of the proposed subclass definitions include any specific temporal limitations, apart from generic "during the statutory period" language. In a footnote in their supporting memorandum of points and authorities, Plaintiffs state that "[t]he 'statutory period' is March 2, 2004 through the present." For reasons that should be obvious, however, use of the term "the present" is insufficient for these purposes. In sum, Plaintiffs must present a proposed class definition and proposed sub-class definitions that are clear and concise.

Defendant's argument that the two named plaintiffs lack standing to seek injunctive relief because they are not still working for Defendant is not well taken. Nor is the Court persuaded that the named plaintiffs are not suitable class representatives on the basis of their legal backgrounds. The Court is troubled, however, by the paucity of evidence regarding the work history of either of the named Plaintiffs with Defendant, and specifically with the lack of a declaration from either of them. Indeed, the record is less than clear as to whether Gary Gilbert ever advanced to a paid position with Defendant.

Commonality is determined with reference to the claims asserted. (*Hicks v. Kaufman and Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916, fn.22.) Accordingly, before the Court can assess this factor critical to the class certification analysis, Plaintiffs must clearly articulate their theories of recovery for the claims of each subclass. They have not done so with respect to their proposed "misclassified employee class." To begin with, it is not clear what "misclassified" means in this context. Does it mean misclassified as "trainee" rather than "employee", or something else?

Furthermore, Plaintiffs' evidentiary presentation in support of this proposed subclass (aka the "No Wages Received Class") includes a one line excerpt from the deposition of Gary Gilbert, the proposed representative of this subclass, as well as excerpts from Bill Aboudi's deposition regarding "unpaid trainees." Also included, but not discussed, is a copy of a document that was an exhibit to the Gilbert deposition entitled "Oakland Port Services Corporation Truck Driver Training Program Trainee Participation and Release of Liability Agreement." It is not clear to the Court whether Plaintiffs are asserting that this document, which purports to confirm the understood absence of an "employment relationship" is ineffective because it conflicts with otherwise applicable statutory authority and/or IWC Wage Order No. 9(4), or something else.

Plaintiffs' request for judicial notice of the Oakland Living Wage Ordinance, IWC Wage Order 9, Article VII of The Charter of the City of Oakland and Schedule N Declarations of Compliance will be GRANTED. However, the only evidence submitted by Plaintiffs on the issue of whether the Oakland Living Wage Ordinance applies to Defendant is the statement by Bill Aboudi in his deposition that Defendant operates a facility on City property. This cannot be considered "substantial" evidence on this issue for purposes of class certification. Accordingly, unless Plaintiffs are able to present further evidence on this issue, the proposed "Living Wage Class" should be withdrawn from the Motion.

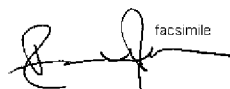
Nor have Plaintiffs articulated what the difference between the meal and rest break subclass and the "not paid for all hours worked" subclass is. In the Court's view, the evidentiary record is adequate to support certification of a meal and rest break subclass, in light of the record testimony of Bill Aboudi and Jovi Aboudi regarding Defendant's time recording policies. Defendant's opposition arguments on this issue go to the merits of the underlying claims, rather than to whether certification is appropriate. Likewise, the evidence in the record is adequate to support certification of an Overtime Class. However, clear subclass definitions are critical.

In sum, Plaintiffs are directed to, essentially, start over. Claims must be clearly articulated, class and subclasses clearly defined, and the evidentiary record supporting each claim clearly identified. Plaintiffs' supplementary presentation shall be filed and served no later than July 19, 2010. Defendant's opposition thereto shall be filed and served no later than August 11, 2010. Defendant is advised to focus its opposition on whether Plaintiffs' claims are suitable for class treatment, as opposed to whether they will ultimately prevail. Plaintiff's reply shall be filed and served no later than August 16, 2010.

The hearing is CONTINUED to August 20, 2010 at 10:00 a.m. in Department 20.

The parties are advised that the Case Management Conference scheduled for June 25, 2010 will also be CONTINUED to August 20, 2010 at 10:00 a.m. in Department 20. Accordingly, no appearances are required on June 25, 2010.

Dated: 06/25/2010

A handwritten signature in black ink, appearing to read "R. Freedman", is written over a horizontal line. To the right of the signature, the word "facsimile" is printed in a small font.

Judge Robert B. Freedman

SHORT TITLE: Godfrey VS AB Trucking, Inc.	CASE NUMBER: RG08379099
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ADDITIONAL ADDRESSEES

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