

FILED BY FAX

ALAMEDA COUNTY

August 17, 2010

CLERK OF
THE SUPERIOR COURT
By Denise Dalton, Deputy

CASE NUMBER:
RG08379099

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8 OAKLAND PORT SERVICES CORPORATION
9 d/b/a AB TRUCKING (erroneously sued as AB
10 TRUCKING, INC.)

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

13 LAVON GODFREY and GARY GILBERT, on
14 behalf of themselves and all others similarly
15 situated,

16 Plaintiffs,

17 v.

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

21 Defendants.

CASE NO. RG 08-379099

**DEFENDANT'S RESPONSE TO
OBJECTION AND MOTION TO
STRIKE THE DECLARATION OF
WILLIAM I. ABOUDI FILED IN
SUPPORT OF OPPOSITION TO
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION**

Date: August 20, 2010
Time: 10:00 am
Place: Department 20
Judge: Hon. Robert Freedman

INTRODUCTION

22 Defendant hereby responds to Plaintiffs' motion to strike and evidentiary objections
23 submitted in conjunction with Plaintiffs' reply to the opposition to Plaintiffs' motion for class
24 certification.

25 **I. MOTION TO STRIKE IS AN INAPPROPRIATE WAY TO OBJECT TO THE
DECLARATION SUBMITTED TO SUPPORT AN OPPOSITION TO A MOTION**

26 The correct way to object to the declaration is by evidentiary objections, not by motion to
27 strike. (*See* Code Civ. Proc. § 437c(d).) A motion to strike is generally used to attack the
28 pleadings, not the evidence that is submitted in support of motions. (Code Civ. Proc. §

1 435(a)(2).) The motion lies to strike “any irrelevant, false or improper matter inserted in any
2 pleading,” or any pleading or part thereof “not drawn or filed in conformity with the laws of this
3 state, court rule or order of court.” (Code Civ. Proc. § 436.) Clearly, that is not the case here.

4 Furthermore, a motion to strike is subject to the 16-court days notice period, unless the
5 court grants leave for a shorter notice period. Clearly, with the motion to strike served on June
6 10, 2010, and a hearing date of June 25, 2010, Plaintiffs failed to satisfy the requisite notice
7 period.

8 **III. THE EVIDENTIARY OBJECTIONS RAISED BY PLAINTIFFS’ LACK ANY**
9 **SUBSTANTIVE MERIT**

10 In its filing, Plaintiffs raise a number of objections to the Declaration of William Aboudi
11 (“Aboudi Decl.”) filed by Defendant in connection with its opposition to the Plaintiffs’ motion
12 for class certification. None of those objections has any merit or substance.

13 Plaintiffs’ first objection to the Aboudi Declaration is on the grounds of lack of
14 foundation for Mr. Aboudi’s personal knowledge of the events and facts of the matter beyond
15 mere speculation. This is plain silly. The Aboudi Declaration clearly states that Mr. Aboudi is
16 the president of the Defendant and his personal knowledge of the facts of this matter derive from
17 him being the chief executive officer of the Defendant responsible for its business operations.
18 (See Aboudi Decl. at ¶ 1). Considering that the Defendant is not a large public company, it is not
19 hard to see that as the president of a company, Mr. Aboudi would have personal knowledge of
20 the facts related to the Company’s operations.

21 Plaintiffs’ second objection to the Aboudi Declaration is on the grounds that the
22 assertions made in the declaration’s paragraphs 2-5 are vague and ambiguous as to time. This is
23 also a silly argument, considering that all 4 paragraphs mentioned prominently feature the word
24 “currently,” which is a clear indication of the time period to which these statements relate.

25 Plaintiffs’ third objection to the Aboudi Declaration is on the grounds that paragraphs 2
26 and 3 of the declaration are patently false as they contradict the testimony provided by Mr.
27 Aboudi during his deposition. The testimony Plaintiffs refer to talks about the fact that no
28 drivers who work for the Plaintiff are currently entitled to overtime pay since it is the company

1 policy not to pay overtime to its drivers. (See Declaration of Lisl R. Duncan in Support of
2 Plaintiffs' Motion for Class Certification, Exhibit B, 119:20-120:4.) Plaintiffs' claim that the
3 statements in paragraphs 2 and 3 of the Aboudi Declaration contradict the testimony given by
4 Mr. Aboudi is predicated on a conclusion that there actually are (or were) any drivers employed
5 by the Defendant who are entitled to overtime compensation. Indeed, this fact has not been
6 proven, and is in dispute – otherwise the lawsuit at hand would not be before this court. If, as
7 Defendant alleges, there are (and were) no drivers employed by Defendant who are entitled to
8 overtime compensation, then clearly, Mr. Aboudi's statement is consistent with his deposition
9 testimony.

10 Plaintiffs' fourth objection to the Aboudi Declaration is on the grounds that paragraphs 2
11 to 4 contain inadmissible hearsay statements. As Plaintiffs' counsel, is well aware, "hearsay
12 evidence" is defined as "evidence of a statement that was made other than by a witness while
13 testifying at the hearing and that is offered to prove the truth of the matter stated." (See *Evidence*
14 *Code §1200*.) This is clearly not the case. Mr. Aboudi is not offering someone else's statements
15 to prove the truth of the matters that he is asserting. Rather, he is testifying based on his personal
16 knowledge of the way the Defendant is operated and run, on the basis of him being its president
17 and chief executive officer.

18 Plaintiffs' fifth objection to the Aboudi Declaration is on the grounds that the assertions
19 made in paragraphs 2 to 5 are improper legal conclusions. Clearly, the statements made by Mr.
20 Aboudi in paragraphs 2 to 5 of the declaration, are statements of fact that discuss solely the
21 drivers the Defendant currently employs, and what kind of rights and benefits the drivers' enjoy.
22 These facts might be in dispute by the Plaintiffs, but that does not change the nature of those
23 statements, which is purely factual.

24 Plaintiffs' sixth objection to the Aboudi Declaration is on the grounds that the
25 information asserted in paragraphs 2 to 5 is irrelevant because the paragraphs make reference to
26 those employees which Defendant "currently employs," and liability applies to all drivers subject
27 to the violations during the statutory period, regardless of whether they are currently employed
28 or not. Again, this objection is inapposite. Indeed, the statements are limited in time scope to

1 the current situation with employee benefits and rights of the Defendant. However, these
 2 statements are clearly relevant to the subject matter of this lawsuit, which looks into whether the
 3 Defendant has committed violations over a period of time with respect to such benefits and
 4 rights, and the current state of things is relevant to said inquiry.

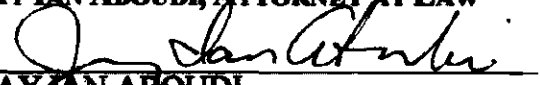
5 Plaintiffs' final objection to the Aboudi Declaration is on the grounds that paragraph 4 is
 6 compound. This objection is just plainly absurd. Such an objection lies to an interrogatory or an
 7 examination or deposition question, but there is no prohibition on making compound statements
 8 in declarations.

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Dated: August 17, 2010

Respectfully submitted,

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 **PROOF OF SERVICE**

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

7 **DEFENDANT'S RESPONSE TO OBJECTION AND MOTION TO STRIKE THE
8 DECLARATION OF WILLIAM I. ABOUDI FILED IN SUPPORT OF OPPOSITION TO
9 PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

10 by transmitting via facsimile the document(s) listed above to the fax number(s) set
11 forth below on this date before 5:00 P.M.

12 by placing the document(s) listed above in a sealed envelope with postage thereon
13 fully prepaid, in United States mail in the State of California at Walnut Creek,
14 addressed as set forth below.

15 by placing the document(s) listed above in a sealed envelope and caused the same to
16 be personally delivered by hand the document(s) listed above to the person(s) at the
17 address(es) set forth below.

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

25 I am readily familiar with the firm's practice of collection and processing correspondence
26 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
27 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
28 motion of the party served, service is presumed invalid if postal cancellation date or postage
meter date is more than one day after the 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 August 17, 2010 at Walnut Creek, California.


Jay Aboudi, Esq.