

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

<b>Godfrey</b>	
VS.	Plaintiff/Petitioner(s)
<b>AB Trucking, Inc.</b>	
(Abbreviated Title)	Defendant/Respondent(s)

No. **RG08379099**

**Minutes**

Department 20 Honorable Robert B. Freedman, Judge  
Reporter Kathy Lyons CSR#7230

Cause called for Motion: August 20, 2010.

For attendance, see "Attendance Sheet" filed for this date.  
On the renewed Motion of plaintiffs Lavon Godfrey and Gary Gilbert, on behalf of themselves and all others similarly situated ("Plaintiffs") for Class Certification ("Motion") -

**PARTIES ARE TO APPEAR.**

The Court concludes that the claims asserted by Plaintiffs in this case are generally suitable for class treatment, and anticipates that a class and subclasses will be certified. There remain, however, certain procedural issues that must first be resolved.

As pointed out by defendant Oakland Port Services Corporation dba AB Trucking ("Defendant") in its opposition, the subclasses proposed by Plaintiffs in the instant Motion do not mirror those set forth in the currently operative complaint (First Amended Complaint, filed January 23, 2009, "Complaint"). Specifically, the Complaint sets forth subclasses for 1) all hours worked, 2) meal and rest breaks, 3) Oakland Living Wage, 4) accurate wage statements, 5) timely termination pay, and 6) minimum wage, while the current proposal for certification includes a) all hours worked, b) misclassified employee or no wages received, c) overtime, d) Oakland Living Wage, and e) meal and rest breaks. And while the Court agrees with Plaintiffs that they need not be irrevocably bound to the definitions in the Complaint, proper procedures must be followed in the implementation of modifications.

Since a determination of whether common questions predominate necessarily includes an examination of "the issues framed by the pleadings..." (Hicks v. Kaufman and Broad Home Corporation (2001) 89 Cal.App.4th 908, 916), to the extent Plaintiffs seek certification of claims not set forth in the Complaint, the appropriate procedure would be to amend the pleading beforehand. This applies to the proposed "misclassified employee or no wages received" subclass, and the "overtime" subclass." Plaintiffs' argument in their reply that the Complaint "clearly provides the basis for [these] subclasses" is not well taken. Most notable by its absence in the Complaint is any allegation of a violation of Labor Code section 510. Furthermore, the Complaint makes no cognizable distinction between the claims that Plaintiffs now seek to pursue on behalf of the "all hours worked" subclass and those they seek to pursue on behalf of the "no wages received" subclass.

The Court is likewise concerned that Plaintiffs appear to have abandoned their claims for violations of Labor Code sections 201, 202 & 203 (wages at discharge) and 226 (itemized statements), despite the fact that the record appears to support such claims, at least to the extent that they are derivative of Plaintiffs' other claims. Indeed, the Court articulated this concern in its tentative ruling published prior to the June 25, 2010 hearing date, indicating that it expects an explanation for such abandonment from Plaintiffs. (See California Rule of Court 3.770.) Plaintiffs should be prepared to address this issue.

The Court is inclined to require that Plaintiffs' Complaint be amended before further action on the instant Motion is taken. The parties should be prepared to address the most expeditious procedure to this end

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**Minutes**

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(e.g., stipulation? Court's own motion?) Defendant should also be prepared to further address its "due process" concerns.

Finally (but not necessarily exhaustively), the Court notes that in apparent response to the Court's indication in its earlier tentative ruling that the use of the term "the present" as an end date for the proposed class period is inappropriate, Plaintiffs now propose an end date of "March 28, 2008" (the date the original complaint was filed). The record does not reflect, however, any changes in Defendant's policies and practices implicated in this case that would support this end date. Unless the Court is missing something, it would expect that the appropriate end date for the class period would be the date of notice to the class. Plaintiffs should be prepared to address this issue.

Case continued to 02:00 PM on 10/07/2010 in Department 20, Civil Law and Motion, Administration Building, 1221 Oak Street, Oakland.

Minutes of 08/20/2010  
Entered on 08/20/2010

Executive Officer / Clerk of the Superior Court

By  digital

Deputy Clerk