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FILED
ALAMEDA COUNTY
SEP 16 2010
CLERK OF THE SUPERIOR COURT
By *M. Hays* Deputy

6 Attorneys for Plaintiffs
7 LAVON GODFREY and GARY GILBERT

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

10 LAVON GODFREY, and GARY GILBERT on) Case No. RG08379099
11 behalf of themselves and all others similarly)
12 situated,) **CLASS ACTION**
13 Plaintiffs,)
14 v.) MEMORANDUM OF POINTS AND
15 OAKLAND PORT SERVICES CORP. d/b/a) AUTHORITIES IN SUPPORT OF
16 AB TRUCKING, and DOES 1 through 20,) PLAINTIFFS' EX PARTE
17 inclusive,) APPLICATION FOR AN ORDER
18 Defendants.) SHORTENING TIME
19) Date: September 17, 2010
20) Time: 10:00 a.m.
21) Dept: 20
22) Judge: Robert B. Freedman

19 Defendants will not be prejudiced by an order shortening time. The underlying motion to
20 amend will be a simple one. Plaintiffs' motion for leave to file the second amended complaint is
21 submitted concurrently herewith for the Court's convenience. (See Declaration of Lisl R. Duncan
22 in Support of Motion to Amend Complaint at Exh. C.)

23 It is not controversial that Defendant has had knowledge of all the allegations in Plaintiffs'
24 proposed second amended complaint. In fact, Defendant has had knowledge of these allegations
25 since 2008. This includes knowledge of allegations about payment for failure to pay for all hours
26 worked as a result of misclassification of employment status. This also includes knowledge of
27 allegations about failure to pay overtime wages.

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FIRST TEND SUPPORT SERVICES

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1 For example, in a letter written December 31, 2008, prior to the stipulation resulting in the
2 filing of the first amended complaint, Plaintiffs wrote to Defendant, "Mr. Gilbert has told us that he
3 has been working for your client without being paid at all which is a violation of the state
4 minimum wage law." (See Declaration of Lisl R. Duncan in Support of Plaintiffs' Motion to
5 Amend the Complaint ("Duncan Decl. MAC") filed concurrently at ¶ 6 and Exh. A.) Mr. Gilbert's
6 signed "trainee" agreement, upon which Defendant relies for the very proposition that Mr. Gilbert
7 should be classified as a non-employee, i.e. Plaintiffs' "misclassified claim," is an exhibit that was
8 entered by Defendant to Mr. Gilbert's deposition. (Duncan Decl. MAC at ¶ 7; see Exhibit E to the
9 Declaration of Lisl R. Duncan in Support of Plaintiffs' Motion for Class Certification filed July 19,
10 2010.) Defendant served form interrogatories (employment) upon Ms. Godfrey, but not upon Mr.
11 Gilbert, presumably because Defendant did not want to risk characterizing Mr. Gilbert as an
12 employee. (Duncan Decl. MAC at ¶ 8.)

13 Secondly, the parties discussed the overtime issue at length in the depositions of Mr. and
14 Ms. Aboudi and in numerous informal discussions of counsel throughout the litigation. In his
15 deposition, Mr. Aboudi explained at length how in his opinion AB Trucking drivers are not
16 required to keep DOT logs, but still fall under DOT regulations and are thus not exempted from
17 state and federal overtime requirements. (Duncan Decl. MAC at ¶ 9; see Exhibit B at p. 171:8-23
18 and C to the Declaration of Lisl R. Duncan in Support of Plaintiffs' Motion for Class
19 Certification.) Defendant did not object, and in fact affirmatively responded to, Plaintiffs' Request
20 for Production of Documents No. 12 seeking all documents pertaining to Defendant's practices and
21 policies for authorizing overtime hours to drivers. (Duncan Decl. MAC at ¶ 10 and Exh. B.)

22 Accordingly, a shortened notice and response time for the motion will not be prejudicial or
23 burdensome to Defendants.

24 In comparison, the failure to shorten time will be prejudicial to the Plaintiffs and result in
25 further Court delays. Plaintiffs filed their motion for class certification on December 15, 2009.
26 Through a series of discovery delays and requests for additional time, the matter has been set for
27 hearing on January 15, 2010, March 12, 2010, May 7, 2010, June 25, 2010 and August 20, 2010.

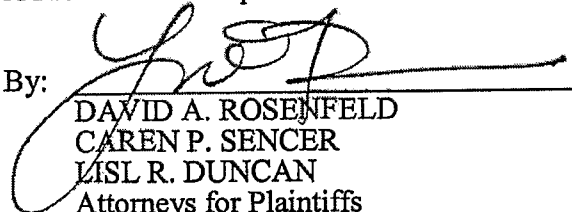
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At the most recent hearing, the Court indicated that the complaint should be amended to provide clearer pleadings aligning with the subclasses described in the class certification motion. The Court indicated Defendant should be given a copy of the proposed second amended complaint and in the event Defendant did not agree to the amendment, an ex parte motion shortening time for the motion to amend the complaint should be filed.

It was the clear direction of the Court that the matter should move forward without further delay. Failure to grant the ex parte motion will result in continued delays and the motion for class certification not being heard until more than a year after it was originally filed.

Dated: September 16, 2010

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By: 
DAVID A. ROSENFELD
CAREN P. SENCER
LISL R. DUNCAN
Attorneys for Plaintiffs

118212/588953

PROOF OF SERVICE
(CCP 1013)

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501-1091. On September 16, 2010, I served upon the following parties in this action:

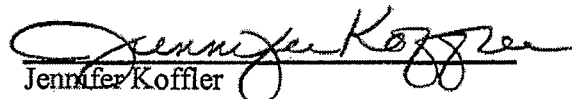
Jay Ian Aboudi
The Law Office of Jay Ian Aboudi
1855 Olympic Blvd., Ste. 210
Walnut Creek, CA 94596
jay@aboudi-law.com

copies of the document(s) described as:

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PLAINTIFFS' EX PARTE APPLICATION FOR AN ORDER SHORTENING
TIME**

- BY MAIL** I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Alameda, California. I am readily familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.
- BY OVERNIGHT DELIVERY SERVICE** I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and placed the same for collection by Overnight Delivery Service by following the ordinary business practices of Weinberg, Roger & Rosenfeld, Alameda, California. I am readily familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing of Overnight Delivery Service correspondence, said practice being that in the ordinary course of business, Overnight Delivery Service correspondence is deposited at the Overnight Delivery Service offices for next day delivery the same day as Overnight Delivery Service correspondence is placed for collection.
- BY E-MAIL** I caused to be transmitted each document listed herein via the e-mail address(es) listed above or on the attached service list.

I certify under penalty of perjury that the above is true and correct. Executed at Alameda, California, on September 16, 2010.


Jennifer Koffler

118212/555975