



1 \$1,376,160.99 pursuant to Cal. Rules of Court, Rule 3.1590(j). The Court conducted a 10 day  
2 bench trial between February 14, 2012 and March 12, 2012, which included several rulings on  
3 motions that substantially reduced the number of claims. On October 2, 2012, the Court issued  
4 its Notice of Intended Decision (“NOID”). On October 11, 2012, Defendant filed a written  
5 Request for Statement of Decision. The matter is scheduled for further compliance hearing on  
6 November 9, 2012.

7 **II. Eliminated Claims:**

8 Plaintiffs originally filed a complaint against Defendant and Mr. Aboudi personally  
9 requesting damages for the following claims: 1) Unfair Business Practices; 2) Failure to Pay for  
10 All Hours Worked; 3) Failure to Pay for Any Hours Worked Due to Misclassification of  
11 Employment Status; 4) Failure to Pay Overtime; 5) Failure to Pay Living Wage; 6) Failure to  
12 Provide Meal and/or Rest Periods; 7) Failure to Pay Wages Owing at Discharge or Quitting; and  
13 8) Failure to Provide Accurate Itemized Wage Statements.

14 Since the original filing of the complaint the following claims have been eliminated:

15 **A. Multi-Million Dollar Overtime Claim Was Dismissed During Trial.**

16 During the trial in February 2012, Plaintiffs dismissed the over-time claim.<sup>1</sup> Plaintiffs  
17 admitted AB Trucking drivers and trainees have always been required to obtain a Class A  
18 commercial driver’s license and follow the Department of Transportation (“DOT”) Safety  
19 regulations due to the weight and size of the commercial vehicles they drive (Class 8), weight  
20 and size of the containers transported, and because of the various federal, state and Port of  
21 Oakland operational requirements commercial truck drivers must follow. Exempted from  
22 California overtime compensation requirements are “employees whose hours of service are  
23  
24

25 <sup>1</sup> It was also conceded at trial that Plaintiffs are exempt from FLSA over time coverage per 29 U.S.C. § 213(b)  
[exemption from FLSA over-time laws].

1 regulated by . . . the United States Department of Transportation Code of Federal Regulations,  
2 Title 49, Sections 395.1 to 395.13.”(IWC Wage Order, 9-2001, §3.)

3 This admission is very important for two reasons. First, this admission confirms that  
4 Defendant was acting in good faith when it reasonably believed that Truck drivers and trainees  
5 were exempt from certain California wage & hour requirements. Defendant respectfully requests  
6 the Court to consider this issue if any determination about whether the Defendant acted  
7 “willfully” with regard to any purported violation must be determined.

8 Second, this admission supports Defendant’s contention that the application of the over-  
9 time exemption was readily apparent at the time this lawsuit was filed, and therefore, a  
10 determination of any right to obtain statutory attorney fees (e.g., labor Code § 218.5) must be  
11 subject to a properly noticed motion.

12 **B. Plaintiffs OLW Liability Claim Denied.**

13 During trial in February 2012, Plaintiffs revised their claim to limit the Oakland Living  
14 Wage Ordinance (“OLW”) liability period to January 28, 2005- February 10, 2006 (this  
15 represented an elimination of approximately 5 years of purported liability [i.e., alleged liability  
16 originally extended to March 15, 2011]). At the conclusion of Plaintiffs’ case, Defendant orally  
17 moved for a “*non-suit*” on the ground that not a single Plaintiff class member that testified had  
18 been employed by AB Trucking during the relevant liability period. (e.g., Ike Cooper – hired  
19 March 2008; Gary Gilbert- started training December 2008; Steve Wellemeyer – hired October  
20 2007; Saga LLeweylan- hired October 2007; Gina Williams- hired 2007; Lavon Godfrey –  
21 employed December 2006- May 2007.) The Court granted Defendant’s non-suit motion in  
22 accordance with California Code of Civil Procedure 581(c)(a).<sup>2</sup> The Court denied the remaining  
23 OLW claim in its NOID.

24  
25 <sup>2</sup> Nonsuit is available in a bench trial immediately after the close of plaintiff’s opening statement. (*Lingenfelter v. County of Fresno* (2007) 154 Cal.App.4th 198.)

1 **III. Specific Objections to Proposed Judgment After Trial**

2 **A. Objection- FAAAA Preempts Wage and Hour Claim Against Defendant.**

3 In *Dilts v. Penske Logistics, LLC, supra.*, (S.D. Cal. Oct. 19, 2011) 267 F.R.D. 625, cited  
4 by *Brinker*, a federal court held that the Federal Aviation Administration Authorization Act  
5 ("FAAA Act") preempted the application of California's meal and rest break laws on truck  
6 drivers. According to this federal court, the meal and rest break law interfered with competitive  
7 market forces (price, route or service) in violation of the FAAA Act. The goal of the FAAA Act  
8 is to deregulate the motor carrier industry and to help ensure that transportation rates, routes, and  
9 services rely on competitive market forces. The Act contains a broad preemption statute which  
10 declares that a state may not enact or enforce a law or regulation that is related to a price, route,  
11 or service of any motor carrier. (49 U.S.C. § 14501(c)(1).) The term "motor carrier" means a  
12 person providing commercial motor vehicle transportation for compensation. (49 U.S.C. § 13102  
13 [14]; Mr. Aboudi testified at trial that AB Trucking's Motor Carrier number is **MC-310575**.)  
14 Relation to price, route, or service is found where "the regulation has more than an indirect,  
15 remote, or tenuous effect on the motor carrier's prices, routes, or services." Even if the law does  
16 not directly regulate motor carriers, preemption will apply if the effect of the regulation would be  
17 to make carriers offer different services than what the market would dictate. In *Dilts*, the court  
18 concluded the California meal break laws imposed conditions that affected the "frequency and  
19 scheduling of transportation" and the laws impacted Penske's "prices" because of the increased  
20 cost of additional drivers, helpers, tractors, and trailers necessary to ensure off-duty breaks under  
21 California law.

22 The fact that *Dilts* was specifically cited by *Brinker Restaurant Corp. v. Superior Court*  
23 (2012) 53 Cal.4th 1004 without disapproval is worth noting. It strongly suggests that the  
24 Supreme Court is indeed sensitive to the fact that the commercial trucking industry may deserve  
25 special consideration to be deemed exempt from California meal break laws. This interpretation

1 is consistent with the following statement: “What will suffice may vary from industry to  
2 industry, and we cannot in the context of this class certification proceedings delineate the full  
3 range of approaches that in each instance might be sufficient to satisfy the law.” (*Brinker* at p.  
4 1040.)<sup>3</sup> Based on the foregoing, Defendant files this objection to the proposed judgment.

5  
6 **B. Objection- Notice Motion Required to Obtain Attorney Fees in This Case.**

7 1. Plaintiffs Not Entitled To Attorney Fees For Overtime Claims.

8 Attorney Caren P. Sencer in her Declaration in Support of Attorney Fees (“Sencer  
9 Decl.”) has requested attorney fees pursuant to California Code of Civil Procedure section  
10 1021.5 and Labor Code sections 226(g) and 1194. (Sencer Decl. at p. 1, lines 23-26.) It is true  
11 that in actions for unpaid overtime an award of attorney fees is mandatory; but the award must be  
12 reasonable. (Labor Code § 1194.) However, during the trial in this case Plaintiffs dismissed their  
13 overtime claims. Plaintiffs are not entitled to receive a judgment for attorney fees as a prevailing  
14 party on the overtime claims because of this dismissal during the trial.

15 2. Plaintiffs Not Entitled To Attorney Fees For OLW Claims.

16 The Court denied all of Plaintiffs claims for damages with regard to the OLW. Plaintiffs  
17 are not entitled to receive a judgment for attorney fees as a prevailing party on the OLW claims  
18 due to the denial of such claims.

19 3. Unclear Attorney Fees Are Costs In This Case.

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<sup>3</sup> Several federal courts in California have now recently dismissed wage and hour putative class actions brought by  
24 truck drivers, alleging claims based on violations of California’s meal break laws, on the ground that those laws (as  
25 applied to a motor carrier truck drivers) are preempted by the FAAA Act. (*See Esquivel et al. v. Vistar Corp. et al.*,  
Case No. 2:11-cv-07284 [C.D. Cal. Feb. 8, 2012]; *Brandon Campbell v. Vitran Express*, 2012 U.S. Dist. LEXIS  
85509 (C.D. Cal, 2012); and *Reinhardt v. Gemini Motor Transportation*, 2012 U.S. Dist. LEXIS 58039 (E.D. Cal,  
2012).)

1 When authorized by statute reasonable attorney fees may be deemed “allowable costs” by  
2 the Court. (CCP § 1033.5 et seq.; *Santisas v. Goodin* (1998) 17 Cal.4th 599, at 606.) In wage and  
3 hour claim actions, the prevailing party may be entitled to reasonable attorney fees as costs if the  
4 party requested such items at the commencement of the action. (Labor Code § 218.5; *On-line*  
5 *Power, Inc. v. Mazur* (2007) 149 Cal.App.4th 1079, at 1086.) In this case, it is unclear whether  
6 the Plaintiffs requested attorney fees as costs at the outset of this litigation.

7 Generally, in order to obtain a costs award, the prevailing party must serve and file a  
8 memorandum of costs. (Cal. Rules of Court, Rule 3.1700(a).) Moreover, the prevailing party  
9 generally should submit the “costs bill” after securing entry of order or judgment. (*Boonyarit v.*  
10 *Payless Shoesource, Inc.* (2006) 145 Cal.App.4th 1188, 1192-1193 [prejudgment costs award  
11 reversed because defendant failed to secure entry of order or judgment of dismissal by filing  
12 proposed judgment of dismissal with memorandum of costs, and did not ensure that trial court  
13 executed judgment with costs award].)

14  
15 As outlined above, on October 11, 2012, Defendant filed and served a Request for  
16 Statement of Decision. The Court has not entered judgment in this matter and any consideration  
17 of attorney fees as costs is untimely.

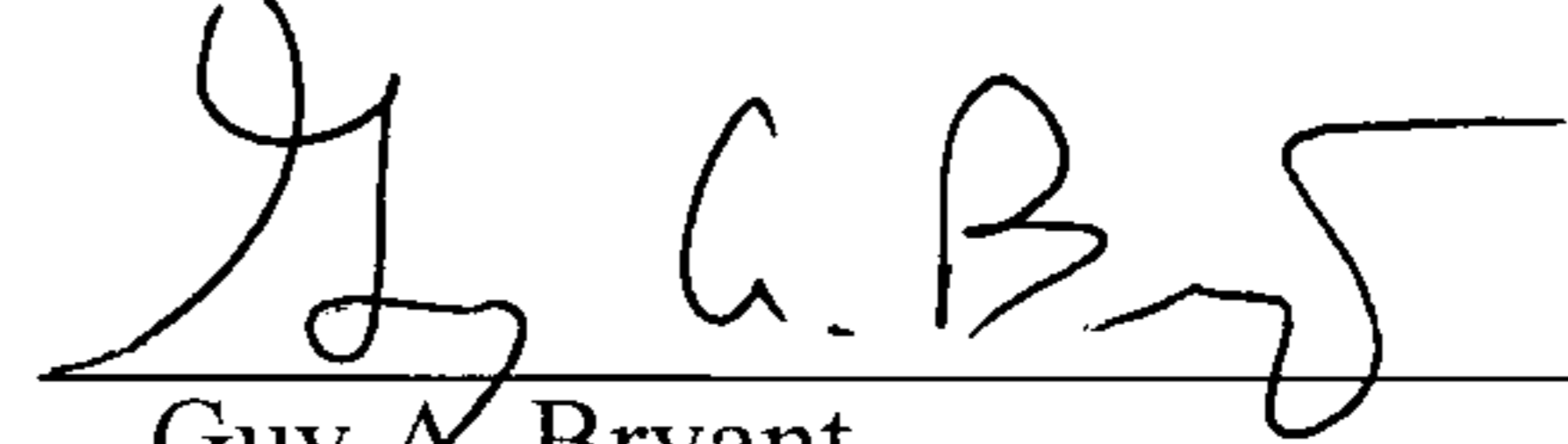
18 4. Noticed Motion Required If Attorney Fees Are Costs.

19 Despite California Code of Civil Procedure section 1033.5, statutes authorizing fee  
20 awards prescribe a noticed motion procedure (e.g., CCP § 1021.5). These specific statutes prevail  
21 over the generalized procedures set forth in Section 1033.5. For example, a noticed motion is  
22 required whenever the court is required to determine “entitlement” to fees (e.g., prevailing party  
23 determinations) or to “fix the amount of fees” (e.g., to determine a “reasonable fee”). (Cal. Rules  
24 of Court, Rule 3.1702.)  
25

1 In general, statutory attorney fees are determined by the court pursuant to the "lodestar"  
2 method. (*Serano v. Priest* (1977) 20 Cal.3d 25, at 48.) However, in class action cases the courts  
3 have developed two methods for calculating attorney fees- the lodestar method and the  
4 "percentage of recovery" method. (See *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th  
5 224, at 254.) Regardless of the method chosen in this case, the Court will be required to  
6 determine both the entitlement to fees and which fees are reasonable. As a result, Rule 3.1702  
7 requires that Plaintiffs be required to submit a noticed motion in order to recover any potential  
8 attorney fees.

9 Dated this 19th day of October, 2012.

10 Respectfully Submitted,

11 

12 Guy A. Bryant  
13 Bryant & Brown  
14 Attorney for Defendant

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3 Oakland, CA 94607  
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4 (510) 836-7564 (Facsimile)

5 Attorney for Defendant  
OAKLAND PORT SERVICES CORP. d/b/a  
6 AB TRUCKING, a California Corporation,

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF ALAMEDA

10  
11 LAVON GODFREY and GARY GILBERT, )  
12 on behalf of themselves and all other similarly )  
situated, )

13 Plaintiffs, )

14 vs. )

15 OAKLAND PORT SERVICES CORP. d/b/a )  
16 AB TRUCKING, and DOES 1-20 )

17 Defendant. )  
18 )  
19 )  
20 )

) Case No.: RG 08-379099

) **PROOF OF SERVICE**

) Action Filed: March 28, 2008

) Date: May 11, 2012

) Dept.: 20 for Trial: February 14, 2012

) Before Honorable Judge Robert B. Freedman

) Hearing Date; November 9, 2012

21  
22 **PROOF OF SERVICE**

23 I am employed in the County of Alameda, State of California. I am over the age of 18  
24 and not a party to the within action. My business address is 476 Third Street, Oakland,  
California, 94607.

25 On October 19, 2012, I served the foregoing documents described as:



1 **DEFENDANT'S OBJECTION TO [PROPOSED] JUDGEMENT AFTER TRIAL; CCP §**  
2 **634**

3 on the interested parties in this action by placing a true copy thereof enclosed in a  
4 sealed envelope addressed as follows:

5 **SEE MAILING LIST INCLUDED HEREIN**

6

7 (BY MAIL) I am readily familiar with the firm's practice of collection and  
8 processing correspondence for mailing. Under that practice it would be  
9 deposited with U.S. postal service on that same day with postage thereon fully  
10 prepaid at Oakland, California in the ordinary course of business.

11

12 (BY FACSIMILE) by faxing a true and correct copy thereof to the person(s) at the  
13 fax number set forth above.

14

15 (BY FEDERAL EXPRESS) by using express mail service and causing to be  
16 delivered overnight next day delivery a true copy thereof to the person(s) at the  
17 address set forth above.

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19 (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand  
20 to the offices of the addressee.

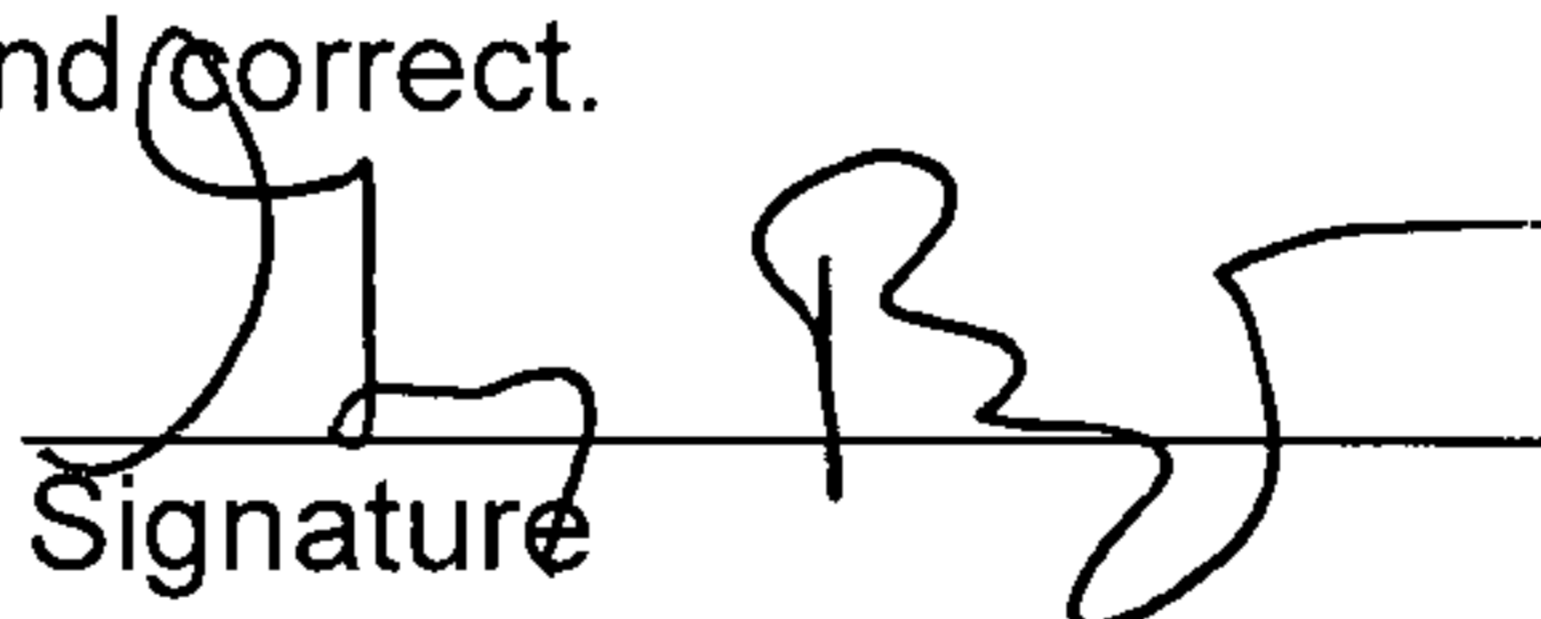
21

22 (FEDERAL) I declare that I am employed in the office of a member of the bar  
23 of this court at whose direction the service was made.

24

25 (STATE) I declare under penalty of perjury under the laws of the State of  
California that the above is true and correct.

GUY A. BRYANT

  
Signature

**SERVICE LIST**

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**VIA PERSONAL ON ALL PARTIES LISTED HEREIN:**

**Attorney for:** LAVON GODFREY and GARY GILBERT, ET AL.

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