



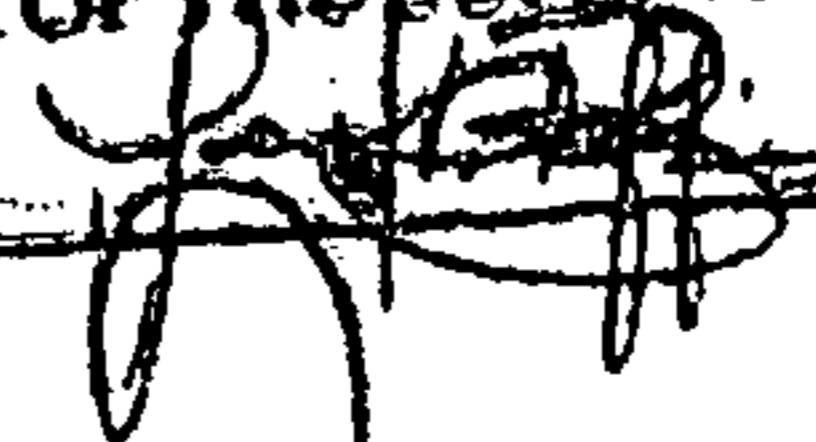
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FILED
ALAMEDA COUNTY

NOV - 8 2011

CLERK OF THE SUPERIOR COURT
By:  Deputy

Attorneys for Plaintiffs
LAVON GODFREY and GARY GILBERT

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

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| LAVON GODFREY and GARY GILBERT, on) behalf of themselves and all others similarly) situated,) | Case No. RG08379099 |
| Plaintiffs,) | PLAINTIFFS' OPPOSITION TO) DEFENSE COUNSEL'S MOTION TO BE) RELIEVED AS COUNSEL) |
| v.) | Date: November 17, 2011) Time: 2:00 p.m.) |
| OAKLAND PORT SERVICES CORP. d/b/a) AB TRUCKING, and DOES 1 through 20,) inclusive,) | Dept: 20) Judge: Robert B. Freedman) |
| Defendants.) |) |

I. INTRODUCTION

Plaintiffs file this Opposition to defense counsel's ill-timed Motion to be Relieved as Counsel on the basis that a grant of such motion will severely prejudice Plaintiffs' ability to pursue this matter on behalf of themselves and the class.

First, this case is scheduled to proceed to trial on November 29, 2011. The parties have been on notice of this date since the Court set it on February 4, 2011. Mr. Aboudi's motion comes absurdly close to the date set for trial. Further delay in this case severely prejudices the absent class members in a class certified nearly a year ago on December 3, 2010.

Second, because Defendant is a corporation and must be represented by counsel, defense counsel should not be granted permission to be relieved as counsel in the middle of this class

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1 action lawsuit. If defense counsel is relieved, it will leave the corporation without representation
2 and necessarily give rise to delay in resolving the class's claims. Defendant and defense counsel
3 should not be allowed to thwart Plaintiffs' ability to litigate their claims through delay tactics and
4 attempts to avoid Labor Code violations with impunity.

5 Third, defense counsel's conduct with regard to this motion gives serious cause for
6 question. The letter from Mr. Aboudi's doctor stating that Mr. Aboudi is "unable to perform the
7 necessary tasks of his profession" is dated September 20, 2011. Mr. Aboudi filed his motion to be
8 relieved as counsel on October 11, 2011 (twenty-one days after the date of the doctor's letter). Mr.
9 Aboudi offers no explanation of why he waited three weeks to give Plaintiffs any indication of this
10 obstacle, which arises on the eve of trial. Further, the doctor's letter provides that Mr. Aboudi
11 should be relived of his duties for "approximately the next three months," or until approximately
12 December 20, 2011 (twenty-one days after the trial in this matter is set to begin).

13 Fourth, despite Mr. Aboudi's purported inability to practice law, on October 14, 2011 Mr.
14 Aboudi filed an extensive opposition to Plaintiffs' motion for summary adjudication. Mr. Aboudi
15 then went above and beyond what was required by drafting several pages of supplemental briefing
16 in the twenty-four hour period between the Court's tentative ruling and the hearing on the motion.
17 This conduct does not indicate an inability to practice law.

18 Fifth, there is no sign that new legal counsel is willing and able to take over Mr. Aboudi's
19 representation of AB Trucking. Mr. Aboudi is the third attorney to request to be relieved as
20 counsel for Defendant since this case began. This fact indicates Plaintiffs will indeed suffer
21 prejudice as it is unlikely that new counsel will substitute for Mr. Aboudi, particularly in light of
22 the upcoming trial date.

23 Defense counsel's motion should be denied. Should the Court be inclined to grant defense
24 counsel's motion, it should not grant the motion unless and until such time as new defense counsel
25 substitutes in. At a minimum, defense counsel should not be relieved as counsel until after the trial
26 in this matter.

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1 **II. FACTUAL BACKGROUND**

2 Plaintiffs and Class Representatives Lavon Godfrey and Gary Gilbert (“Plaintiffs”) brought
3 this action on March 28, 2008 in the California Superior Court in the County of Alameda, alleging
4 that Defendant Oakland Port Services Corp., d/b/a AB Trucking (“Defendant”) violated the
5 California Labor Code, Industrial Wage Order No. 9¹, and the California Business and Professions
6 Code. The Second Amended Complaint filed September 20, 2010 is the operative complaint.²

7 This Court certified a class and subclasses on December 3, 2010.

8 On February 4, 2011, this Court set this matter for trial on November 29, 2011.

9 On October 11, 2011, defense counsel filed its motion to be relieved as counsel to be heard
10 on November 17, 2011.

11 **III. ARGUMENT**

12 **A. DEFENSE COUNSEL’S MOTION IS IMPERMISSIBLE AS COUNSEL FOR A**
13 **CORPORATION MAY BE “CHANGED” BUT NEITHER DEFENSE COUNSEL,**
14 **NOR DEFENDANT, HAS PRODUCED NEW REPRESENTATION**

15 Defense counsel has improperly filed a Motion to be Relieved as Counsel, without
16 substituting in adequate legal counsel for its client. A corporation may not represent itself. (See
17 *Merco Constr. Engineers Inc. v. Municipal Court* (1978) 21 Cal.3d 724 (“*Merco Constr.*”); *Vann*
18 *v. Shilleh* (1975) 54 Cal.App.3d 192, 199.) The California Judicial Council form submitted by
19 defense counsel in the pending matter states that corporations “may not” act as their own attorney
20 in most cases. The form also provides “notice” to the client that failure to retain an attorney may
21 lead to “entry of a default judgment.”

22 Sections 284 and 285 of California’s Code of Civil Procedure allow for an attorney to be
23 “changed” upon court order but do not provide a mechanism by which a corporation can represent
24 itself. Generally, counsel can be substituted when the client and the attorney agree to a change or
25 when the court orders a change based on the application of either the client or attorney. Here, no
26 substitute counsel is waiting in the wings and thus, if the Court were to relieve Mr. Aboudi,

27 ¹ Codified at 8 California Code of Regulations, section 11090.

28 ² All dates herein are taken from the Court’s Register of Actions for this case found on its Domain
Web System, *available at*: <http://apps.alameda.courts.ca.gov/domainweb/html/casesumbody.html>.

1 Defendant would be impermissibly unrepresented. As a result, defense counsel is the recognized
2 counsel for the Defendant and must continue to represent Defendant. Here, defense counsel
3 apparently intends to cease representing Defendant, without substituting in new counsel, leaving
4 Plaintiffs to move for default.

5 Defense counsel's motion should be denied because it is improper. Defense counsel seeks
6 to withdraw, not "change" as provided for by applicable authority.

7 **B. DEFENSE COUNSEL'S MOTION IS UNJUSTLY PREJUDICIAL TO THE CLASS**

8 The Court certified the class in December 2010. If new counsel comes in, as is required by
9 the Code of Civil Procedure, new counsel may argue the need to take a substantial amount of time
10 to educate themselves about the case. This will result in further, undue delay, which will unjustly
11 prejudice the rights of Plaintiffs and the class members, who Plaintiffs represent. The more time
12 that elapses, the greater the risk that class members may move from their last known addresses,
13 leave the area completely, or otherwise disappear.

14 Likewise, the more time that passes, the more likely it is that witnesses for trial will be
15 more difficult to locate—this is favorable to Defendant.

16 **1. Defense counsel's motion is untimely**

17 This Court set the trial date in this matter on February 4, 2011. The parties were aware of
18 the November 29, 2011 trial date nine months prior to Mr. Aboudi's filing of his motion to be
19 relieved.

20 Attached to the Declaration in support of attorney's motion to be relieved as counsel filed
21 by Mr. Aboudi ("Aboudi Decl.") is a letter from Mr. Aboudi's doctor stating that Mr. Aboudi is
22 "unable to perform the necessary tasks of his profession." (See Aboudi Decl. at Exhibit A.) The
23 doctor's letter is dated September 20, 2011. For unspecified reasons, Mr. Aboudi filed his motion
24 to be relieved as counsel on October 11, 2011 (twenty-one days after the date of the doctor's
25 letter). Mr. Aboudi offers no explanation as to why he waited three weeks to give Plaintiffs any
26 indication of this potential issue despite the fact that it is arising on the eve of trial.³ Further, the
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28 ³ The hearing date on Mr. Aboudi's motion to be relieved as counsel is November 17, 2011, which
is seven court days prior to the commencement of trial on November 29, 2011.

1 letter provides that Mr. Aboudi should be relieved of his duties for “approximately the next three
2 months,” or until approximately December 20, 2011 (twenty-one days after the trial in this matter
3 is set to begin). The time period recommended in the doctor’s letter would allow Mr. Aboudi to
4 withdraw from his duties right at the time of trial. This allotted time period is quite convenient for
5 Mr. Aboudi.

6 By contrast, a class of seventy-one members has been waiting to vindicate their rights
7 under the California Labor Code, corresponding Wage Order and the Business & Professions
8 Code, since March 2008. It is unfairly prejudicial to Plaintiffs and the class that Mr. Aboudi would
9 ask the Court to hear this motion seven court days before trial.

10 **2. Defense counsel does not objectively appear to be “unable to perform the**
11 **necessary tasks of his profession”**

12 Since the filing of his motion to be relieved, Mr. Aboudi filed an extensive opposition to
13 Plaintiffs’ motion for summary adjudication. Defendant’s memorandum of points and authorities
14 alone consisted of sixteen pages. Mr. Aboudi also filed a separate statement in support of
15 Defendant’s opposition, as well as a declaration of William Aboudi.

16 Moreover, Mr. Aboudi went above and beyond what was required by the Court in drafting
17 several pages of supplemental briefing. Mr. Aboudi not only drafted supplemental briefing and
18 apparently performed legal research to draft the briefing, but he did this in the twenty-four hour
19 period between the Court’s tentative ruling and the hearing on the motion. Mr. Aboudi’s conduct
20 in the last month, during the time covered by his doctor’s note, does not objectively evidence an
21 inability to practice law.

22 **3. Defense counsel should not be relieved because Defendant is a corporation and**
23 **must, therefore, be represented by counsel**

24 Defendant is a corporation and must be represented by counsel. (See *Merco Constr., supra*;
25 *Vann v. Shilleh, supra*.) Defense counsel should not be granted permission to be relieved as
26 counsel in the middle of this class action lawsuit leaving the corporation without representation and
27 necessarily giving rise to delay in resolving the class’s claims. Defendant and defense counsel
28 should not be permitted to delay this case endlessly through delay tactics, attempts to avoid

1 accountability, and attempts to prevent Plaintiffs from litigating class claims.

2 There is no indication that new legal counsel is willing and able to take over Mr. Aboudi's
3 representation of Defendant. In fact, Mr. Aboudi is the third attorney to request to withdraw as
4 counsel for Defendant since this case began. The Defendant was previously represented by
5 Michael Broad of the Law Offices of Michael Broad, and before that, Gordon & Rees. This fact
6 alone indicates Plaintiffs will indeed suffer prejudice as it is even more unlikely in this case that
7 new counsel will substitute for Mr. Aboudi.

8 As an alternative, Defendant should be ordered to retain substitute counsel and provide
9 sufficient information to the new counsel such that the November 29, 2011 trial may move
10 forward.

11 Alternatively, Defendant should be subject to default.

12 **IV. CONCLUSION**

13 In the interests of justice and for good cause showing, Plaintiffs respectfully request
14 defense counsel's motion be denied. Should the Court be inclined to grant defense counsel's
15 motion, it should not grant the motion unless and until such time as new defense counsel
16 substitutes in. Plaintiffs further request that should defense counsel's motion be granted, that
17 Defendant be given no more than 10 days from the date of that hearing to substitute in counsel, or
18 face default.

19 Dated: November 3, 2011

20 WEINBERG, ROGER & ROSENFELD
21 A Professional Corporation

22 By: 

23 LISL R. DUNCAN
24 Attorneys for Plaintiffs

25 118212/641053

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 November 3, 2011, 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:

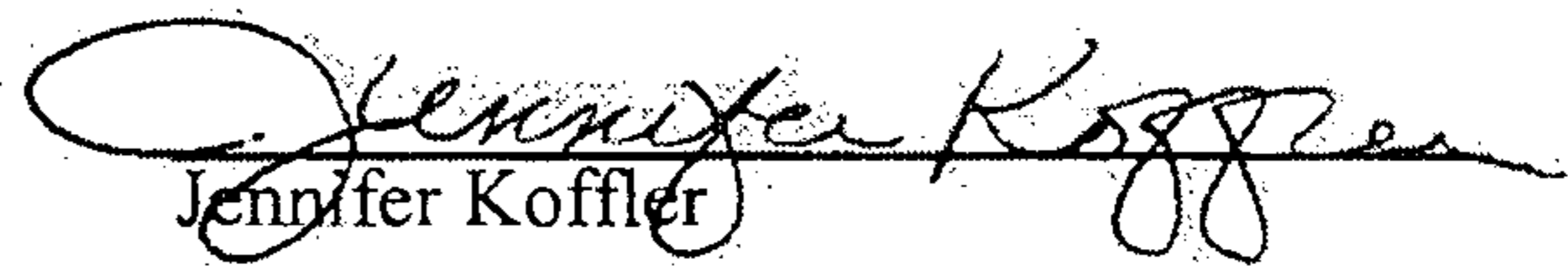
PLAINTIFFS' OPPOSITION TO DEFENSE COUNSEL'S MOTION TO BE RELIEVED AS COUNSEL

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 November 3, 2011.


Jennifer Koffler

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