

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

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

No. **RG08379099**

Minutes

Department 20 Honorable Robert B. Freedman, Judge
Reporter Teri Rosette CSR#6631

Cause called for Motion: December 03, 2010.

The Motion of plaintiffs Lavon Godfrey and Gary Gilbert, on behalf of themselves and all others similarly situated ("Plaintiffs") for Class Certification ("Motion") is ruled on as follows:

BACKGROUND:

The operative class action complaint in the instant action (Second Amended Complaint, filed September 20, 2010, hereafter "Complaint") contains causes of action for 1) Unfair Business Practices (Business & Professions Code §§17200, et seq., "UCL"), 2) Failure to Pay for All Hours Worked (Labor Code §§510, 1182.12, and 1194; IWC Wage Order No. 9, §4), 3) Failure to Pay for Any Hours Worked Due to Misclassification of Employment Status (Labor Code §§510, 1182.12 and 1194; IWC Wage Order No. 9, §40, 4) Failure to Pay Overtime (Labor Code §§510 and 1194; IWC Wage Order No. 9, §3), 5) Failure to Pay Living Wage (Oakland City Charter §728), 6) Failure to Provide Meal and/or Rest Periods (Labor Code §§226.7 and 512; IWC Wage Order No. 9), 7) Failure to Pay Wages Owing at Discharge or Quitting (Labor Code §§201, 202 and 203), and 8) Failure to Provide Accurate Itemized Wage Statements (Labor Code §226). Plaintiffs seek relief from defendant Oakland Port Services Corp. dba AB Trucking ("Defendant") on behalf of all of Defendant's employees who worked as drivers (as defined in the Complaint, page 7, fn. 1) during the applicable time period. Defendant's challenges to the operative Complaint, heard concurrently with the instant Motion, were overruled and denied by separate orders.

MOTION:

Plaintiffs now seek certification of a class and subclasses defined (with minor modifications made by the Court) as follows:

Class:

All drivers who performed work for Defendant out of its Oakland, California facility from the period of March 28, 2004 through the date of notice to the class ("Drivers").

Subclasses:

- 1) All Drivers who were not paid for all hours worked in any work week;
- 2) All Drivers who were misclassified as "non-employee trainees" and as a result were not paid for any hours worked;
- 3) All Drivers who were not paid for hours worked over eight in a day and/or forty in a week at an overtime rate of pay;
- 4) All Drivers who were paid less than the Oakland Living Wage for any hour worked; and
- 5) All Drivers who were not provided rest breaks and/or meal periods as required by California law.

LEGAL STANDARDS:

Class actions in California are governed by Code of Civil Procedure §382, authorizing such suits "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court." The Court must inquire into numerosity, ascertainability, whether common questions of law or fact predominate, whether the class representatives have claims or defenses typical of the class; and whether the class representatives can represent the class adequately. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 435.)

Other relevant considerations include the probability that each class member will come forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the class approach would actually serve to deter and redress alleged wrongdoing. (*Linder v. Thrifty Oil Co.*, supra, 23 Cal.4th at 435.) In addition, the trial court may assess the advantages of alternative procedures for handling the controversy. (*Caro v. Procter & Gamble Co.* (1993) 18 Cal. App. 4th 644, 660-662.) It is Plaintiffs' burden to support each of the above factors with a factual showing. (*Hamwi v. Citinational-Buckeye Inv. Co.* (1977) 72 Cal.App.3d 462.)

The Court is vested with discretion in weighing the concerns that affect class certification. (*Sav-on Drug Stores Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, 336.) "[B]ecause group action also has the potential to create injustice, trial courts are required to 'carefully weigh respective benefits and burdens and to allow maintenance of the class-action only where substantial benefits accrue both to litigants and the courts.'" (*Linder v. Thrifty Oil Co.*, supra, 23 Cal.4th at 435.)

Class certification is "essentially a procedural [question] that does not ask whether an action is legally or factually meritorious." (*Linder v. Thrifty Oil Co.*, supra, 23 Cal.4th at 439.) Accordingly, "the focus in a certification dispute is on what type of questions -- common or individual -- are likely to arise in the action, rather than on the merits of the case[.]" (*Sav-on Drug Stores Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327.)

EVIDENCE:

In support of the instant Motion, Plaintiffs have submitted transcript excerpts from the depositions of William Aboudi (Defendant's president), Jovi Aboudi (Defendant's person most knowledgeable regarding Defendant's payroll system and payment of wages), Levon Godfrey and Gary Gilbert. Plaintiffs have also submitted Defendant's responses to written discovery, documents obtained from Defendant, and the Declarations of both Levon Godfrey and Gary Gilbert. Defendant's objection to the Godfrey and Gilbert declarations on the basis of the date of filing is not well taken, and is **HEREBY OVERRULED**.

Defendant, for its part, submitted no evidence with its opposition filed on November 22, 2010, and a review of the record from Plaintiffs' earlier attempts to obtain class certification reveals only a very brief Declaration of William I. Aboudi, submitted by Defendant on May 7, 2010, limited to references to the number and status of Drivers on the date of that declaration. Defendant apparently intends to rest solely on its assertion that Plaintiffs' evidence does not provide adequate support for class certification. As will become readily apparent, the Court disagrees with this assertion.

NUMEROSITY AND ASCERTAINABILITY:

Based on Defendant's payroll records, Plaintiffs estimate that the proposed class consists of over 50 Drivers, all of whom can be identified through Defendant's personnel records. Although Defendant purports to challenge numerosity, it has presented no evidence to contradict Plaintiffs' estimate. Accordingly, the Court finds that Plaintiffs proposed class is sufficiently numerous and ascertainable.

COMMON QUESTIONS:

Plaintiffs' Complaint and moving papers clearly set forth the legal and factual issues common to all putative class members for each of Plaintiffs' causes of action, with clear reference to the evidentiary record as appropriate. The Court notes that Plaintiffs' earlier motions for class certification fell short in various ways, as enumerated by the Court in its interim orders. While the evidentiary record continues to have its weak spots, and notwithstanding Defendant's arguments to the contrary, the Court concludes that these deficiencies have been adequately addressed, and commonality adequately supported. The Court notes in this regard that Defendant does not identify any individual issues, much less argue that individual issues will predominate over common ones.

TYPICALITY AND ADEQUACY:

The Court further finds that Plaintiffs claims are typical, and Plaintiffs and their counsel will adequately represent the interests of the proposed class.

RULING:

The Motion is GRANTED. The Court hereby certifies the class and subclasses as defined, above. Plaintiffs Levon Godfrey and Gary Gilbert are HEREBY APPOINTED as representatives of the class, and Lisl R. Duncan and the firm of Weinberg, Roger & Rosenfeld are HEREBY APPOINTED as class counsel.

FURTHER PROCEEDINGS:

The Court declines Plaintiffs' request to include approval of the proposed class notice in the instant order. Rather, the parties are directed to meet and confer regarding (a) content of class notice, (b) manner of giving notice, (c) means of notice (Rule of Court 3.766(d)(e)(f)), and (d) all logistical matters regarding dissemination of the class notice (e.g., identification of administrator, timing, cost allocation, etc.). Approval of the class notice process should be placed before the Court either by stipulation or by noticed motion. In either case, Plaintiffs must also comply with Rule of Court 3.766(b) and an order that complies with Rule of Court 3.766(c) must be provided. Any stipulation should be submitted no later than December 30, 2010. If a noticed motion is necessary, such motion must be noticed for hearing no later than January 28, 2011.

The order will be issued by the court.

Minutes of 12/03/2010
Entered on 12/03/2010

Executive Officer / Clerk of the Superior Court

By  digital

Deputy Clerk