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**FILED**  
 ALAMEDA COUNTY

FEB 19 2010

4 JAY IAN ABOUDI (SBN: 251984)  
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CLERK OF THE SUPERIOR COURT  
 By PO Deputy

8 Attorneys for Defendant  
 9 OAKLAND PORT SERVICES CORPORATION  
 d/b/a AB TRUCKING (erroneously sued as AB  
 10 TRUCKING, INC.)

11  
 12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 13 FOR THE COUNTY OF ALAMEDA

15 LAVON GODFREY and GARY GILBERT, on  
 behalf of themselves and all others similarly  
 16 situated,

CASE NO. RG 08-379099

17 Plaintiffs,

**EX PARTE APPLICATION FOR  
 ORDER TO CONTINUE HEARING  
 DATE OF MOTION FOR CLASS  
 CERTIFICATION; MEMORANDUM IN  
 SUPPORT; AND DECLARATION OF  
 JAY ABOUDI**

18 v.

19 OAKLAND PORT SERVICES  
 CORPORATION d/b/a AB TRUCKING, and  
 20 DOES 1 through 20, inclusive,

Hearing Date: February 19, 2010  
 Hearing Time: 10:00 a.m.  
 Dept: Dept. 20, Judge Freedman  
 Action Filed: March 28, 2008  
 Trial Date: Not yet assigned

21 Defendants.

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 25 Defendant, OAKLAND PORT SERVICES CORPORATION d/b/a AB TRUCKING,  
 26 through its counsel, hereby applies ex parte for an order continuing the hearing on the motion for  
 27 class certification from the present date, March 12, 2010, to such other date as the Court deems  
 28 appropriate, not earlier than May 11, 2010.

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This application is made on the grounds that:

- (1) California Rules of Court sections 3.764(b)-(c)(1) provides the Court with authority to establish the timeline for completion of discovery necessary to the filing of the motion for class certification and any opposition to the motion; and
- (2) Defendant has acted with due diligence but has not completed discovery necessary to effectively present its opposition to the class certification motion, as set forth in the accompanying declaration of Jay Aboudi.

This application is based on the accompanying memorandum of points and authorities and declaration of Jay Aboudi, dated February 18, 2010; the pleadings and papers on file in this action; such matters of which this Court may take judicial notice; and any additional argument and evidence as may be presented at the ex parte hearing.

Dated: February 18, 2010

JAY IAN ABOUDI, ATTORNEY AT LAW

  
\_\_\_\_\_  
JAY I. ABOUDI, GENERAL COUNSEL  
Attorney for Defendant  
OAKLAND PORT SERVICES  
CORPORATION d/b/a AB TRUCKING

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10 d/b/a AB TRUCKING (erroneously sued as AB  
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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF ALAMEDA  
14

15 LAVON GODFREY and GARY GILBERT, on  
behalf of themselves and all others similarly  
16 situated,

17 Plaintiffs,

18 v.

19 OAKLAND PORT SERVICES  
CORPORATION d/b/a AB TRUCKING, and  
20 DOES 1 through 20, inclusive,

21 Defendants.  
22  
23

CASE NO. RG 08-379099

**DECLARATION OF JAY IAN ABOUDI  
IN SUPPORT OF EX PARTE  
APPLICATION FOR ORDER TO  
CONTINUE HEARING DATE OF  
MOTION FOR CLASS  
CERTIFICATION**

Hearing Date: February 19, 2010  
Hearing Time: 10:00 a.m.  
Dept: Dept. 20, Judge Freedman  
Action Filed: March 28, 2008  
Trial Date: Not yet assigned

24 **I, JAY IAN ABOUDI, declare:**

25 1. I am an attorney for Defendant OAKLAND PORT SERVICES CORPORATION  
26 d/b/a AB TRUCKING in this action. I have personal knowledge of each fact state in this  
27 declaration.

28 2. On December 15, 2010 Plaintiffs filed its Motion for Class Certification with the

1 hearing scheduled for January 15, 2010. The hearing was continued to March 12, 2010 thereby  
2 making Defendant's opposition due by February 26, 2010.

3 3. Defendant requires an additional 60 days to prepare and file its opposition for the  
4 following reasons:

- 5 • Pursuant to this Court's Order to Compel Further Answers to Interrogatories,  
6 Plaintiffs are to provide verified supplemental responses no later than February  
7 26, 2010. On or about February 16, 2010, Plaintiffs sent supplemental responses  
8 from both Plaintiffs GARY GILBERT and LAVON GODFREY. Plaintiff  
9 GODFREY's supplemental responses were sent without verification and  
10 Plaintiffs' counsel indicates that such verification would follow. A true and  
11 correct copy of Plaintiffs' letter dated February 16, 2010 is attached hereto as  
12 EXHIBIT A. Defendant anticipates the need for additional discovery as the  
13 interrogatories in dispute include witnesses and information relevant to class  
14 certification.
- 15 • On February 16, 2010, Plaintiffs' counsel failed to produce Plaintiff GARY  
16 GILBERT for his deposition scheduled for 9:00 a.m. Plaintiffs' counsel arranged  
17 for Plaintiff GILBERT's deposition to be taken at Santa Rita Jail located at 5325  
18 Broder Boulevard, Dublin, CA 94568, where Plaintiff GILBERT was being held.  
19 Upon arrival at Santa Rita Jail, counsel for Plaintiffs and counsel for Defendant  
20 were informed by a uniformed officer that Plaintiff GARY GILBERT had been  
21 released on February 11, 2010. While at Santa Rita Jail, Plaintiffs' counsel,  
22 Caren Sencer, attempted to contact Plaintiff GILBERT via telephone but was  
23 unsuccessful.
- 24 • Plaintiff GILBERT's deposition has been rescheduled for March 2, 2010. On  
25 February 17, 2010 Plaintiffs agreed to produce Plaintiff GILBERT for deposition  
26 on March 2, 2010. Transcripts are expected approximately 10 to 15 days after the  
27 scheduled deposition. A true and correct copy of Plaintiffs' letter dated February  
28 17, 2010 is attached hereto as EXHIBIT B.

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4. On February 18, 2010, I notified Plaintiffs' attorney by facsimile transmission that I would present to this Court on February 19, 2010 at 10:00 a.m. in Department 20, an application for an order to continue the hearing date of the motion for class certification. Plaintiff's attorney stated she did not intend to appear and oppose the application.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: February 18, 2010

  
JAY IAN ABOUDI, Esq.

STEWART WEINBERG  
DAVID A. ROSENFELD  
WILLIAM A. SCHOLZ  
VINCENT A. HARRINGTON, JR.  
W. DANIEL BOONE  
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\* Also admitted in Arizona  
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\*\*\*\*\* Also admitted in Missouri

February 16, 2010

Michael A. Broad  
166 Santa Clara Ave  
Oakland, CA 94610

"EXHIBIT A"

Re: Lavon Godfrey, et al. v. Oakland Port Services Corporation d/b/a AB Trucking  
Alameda County Superior Court No. RG 08-379099

Dear Mr. Broad:

Enclosed please find the following:

1. Plaintiff Gary Gilbert's Supplemental Responses to Defendant's Form Interrogatories – General, Set One;
2. Plaintiff Lavon Godfrey's Supplemental Responses to Defendant's Form Interrogatories – Employment, Set One; and
3. Plaintiff Lavon Godfrey's Supplemental Responses to Defendant's Form Interrogatories – General, Set One.

Ms. Godfrey's verifications to her supplemental responses will follow under separate cover.

If you have any questions, please feel free to contact me.

Sincerely,

  
Caren P. Sencer

CPS/jk  
opeiu 3 afl-cio(1)  
Enclosures  
cc: Jay Aboudi via e-mail  
118212/561422

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• Also admitted in Arizona  
•• Admitted in Hawaii  
••• Also admitted in Nevada  
•••• Also admitted in Illinois  
••••• Also admitted in Missouri

February 17, 2010

VIA FACSIMILE & U.S. MAIL

Michael A. Broad  
166 Santa Clara Ave  
Oakland, CA 94610

"EXHIBIT B"

Re: Lavon Godfrey, et al. v. Oakland Port Services Corporation d/b/a AB Trucking  
Alameda County Superior Court No. RG 08-379099

Dear Mr. Broad:

This letter will confirm that we will produce Plaintiff Gary Gilbert for deposition on March 2, 2010.

If you have any questions, please feel free to contact me.

Sincerely,

*Caren P. Sencer/jk*

Caren P. Sencer

CPS/jk  
opeiu 3 afl-cio(1)  
cc: Jay Aboudi via e-mail  
118212/561459

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15 LAVON GODFREY and GARY GILBERT, on  
behalf of themselves and all others similarly  
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17 Plaintiffs,

18 v.

19 OAKLAND PORT SERVICES  
CORPORATION d/b/a AB TRUCKING, and  
20 DOES 1 through 20, inclusive,

21 Defendants.

CASE NO. RG 08-379099

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF EX  
PARTE APPLICATION FOR ORDER  
TO CONTINUE HEARING DATE OF  
MOTION FOR CLASS  
CERTIFICATION**

Hearing Date: February 19, 2010  
Hearing Time: 10:00 a.m.  
Dept: Dept. 20, Judge Freedman  
Action Filed: March 28, 2008  
Trial Date: Not yet assigned

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23  
24 **I. INTRODUCTION**

25 OAKLAND PORT SERVICES CORPORATION d/b/a AB TRUCKING (the  
26 "Defendant"), through its counsel, requests the court to grant its ex parte application in the  
27 lawsuit at hand because the conduct of Plaintiffs' and Plaintiffs' counsel have precluded  
28 Defendant from completing its discovery prior to hearing on Plaintiffs' motion for class



1 certification, and for the reasons set forth below.

2 **II. PLAINTIFFS AND PLAINTIFFS' COUNSEL HAVE PRECLUDED**  
3 **DEFENDANT FROM COMPLETING DISCOVERY PRIOR TO THE HEARING**

4 "Any opposition to the motion must be served and filed at least 14 calendar days before  
5 the noticed or continued hearing, *unless the court for good cause orders otherwise.*" California  
6 Rules of Court sections 3.764(c)(1). "[E]ach party should have an opportunity to conduct  
7 discovery on class action issues before its documents in support of or in opposition to the motion  
8 must be filed." In addition, each party should have an opportunity to conduct discovery on class  
9 action issues before its documents in support of or in opposition to the motion must be filed.  
10 *Carabini v. Superior Court* (1994), 26 Cal.App.4th 239, 244.


11 Through no fault of its own, Defendant was precluded from completing all discovery  
12 necessary to prepare its opposition to Plaintiffs' motion for class certification presently  
13 scheduled for March 12, 2010.

14 First, the Court has already determined that Plaintiffs' responses to certain interrogatories  
15 were insufficient and compelled Plaintiffs to serve verified, supplemental responses. See  
16 *Declaration of Jay Ian Aboudi ("Aboudi Decl.")*, ¶¶ 2-3 Defendant should be provided  
17 additional time to review those responses.

18 Second, Plaintiffs' counsel failed to produce Plaintiff GARY GILBERT for his  
19 deposition scheduled for 9:00 a.m. on February 16, 2010 at Santa Rita Jail even though it was  
20 Plaintiffs' counsel that arranged the deposition location. See *Aboudi Decl.* ¶ 2-3. As a result of  
21 Plaintiffs' counsel's failure in that regard, Defendant incurred attorneys' fees and travel  
22 expenses. The deposition is now rescheduled to take place on March 2, 2010. See *Aboudi Decl.*  
23 ¶ 2-3.

24 Dated: February 18, 2010

JAY IAN ABOUDI, ATTORNEY AT LAW

  
JAY I. ABOUDI, GENERAL COUNSEL  
Attorney for Defendant  
OAKLAND PORT SERVICES  
CORPORATION d/b/a AB TRUCKING