

ORIGINAL



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 CAREN P. SENCER, Bar No. 233488
 2 LISL R. DUNCAN, Bar No. 261875
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 3 A Professional Corporation
 1001 Marina Village Parkway, Suite 200
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6 Attorneys for Plaintiffs
 LAVON GODFREY and GARY GILBERT

FILED
ALAMEDA COUNTY
 SEP 16 2010
 CLERK OF THE SUPERIOR COURT
 By M Hayes Deputy

7
 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)		
	situated,)		CLASS ACTION
12	Plaintiffs,)		DECLARATION OF LISL R. DUNCAN
			IN SUPPORT OF PLAINTIFFS' EX
13	v.)		PARTE APPLICATION FOR AN ORDER
			SHORTENING TIME
14	OAKLAND PORT SERVICES CORP. d/b/a)	Date:	September 17, 2010
15	AB TRUCKING, and DOES 1 through 20,)	Time:	10:00 a.m.
	inclusive,)	Dept:	20
16	Defendants.)	Judge:	Robert B. Freedman

17

18 1. I, Lisl R. Duncan, am an attorney at the law firm of Weinberg, Roger and
 19 Rosenfeld, attorneys for the Plaintiffs in the above-captioned matter, and I make this declaration of
 20 my own personal knowledge.

21 2. Attached herewith is a true and correct copy of the Court's Order following the last
 22 hearing between the parties attached as Exhibit 1.

23 3. In keeping with the Court's recommendations, I sent a copy of Plaintiffs' proposed
 24 second amended complaint with a cover letter to counsel for Defendant, Jay Aboudi, on Tuesday,
 25 August 24, 2010 via PDF and email.¹ I also sent Mr. Aboudi a copy of the same cover letter and
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¹ I learned subsequently that I had inadvertently sent the email to Mr. Aboudi's prior email address.

1 proposed second amended complaint via overnight mail on Wednesday, August 25, 2010.² A true
2 and correct copy of the cover letter sent to Mr. Aboudi and proposed second amended complaint is
3 attached herewith as Exhibit 2. Mr. Aboudi was sent a "Draft" version of the second amended
4 complaint, but the "Draft" version was identical in substance to the proposed second amended
5 complaint filed in conjunction with this declaration.

6 4. Mr. Aboudi and I communicated via several voicemails on August 30 and 31 and on
7 September 1, wherein he confirmed to me that he had received the proposed second amended
8 complaint.

9 5. Mr. Aboudi stated that Defendant would not agree to a stipulation allowing
10 Plaintiffs' filing of the second amended complaint. He has offered no explanation for this position.

11 6. Filed in conjunction with this application is the notice of motion for a hearing to
12 amend the complaint together with supporting documents, which I intend to file and serve on
13 behalf of Plaintiffs Godfrey and Gilbert.

14 7. The delay in hearing this matter after the normal time for service of the above-
15 described papers would cause substantial hardship to Plaintiffs because the case is in advanced
16 stages of litigation as Plaintiffs have filed their motion for class certification. At the class
17 certification hearing, the Court indicated an order such as this would be appropriate given the
18 circumstances of the case.

19 8. Defendant's attorney is Jay Ian Aboudi. Mr. Aboudi's address and telephone
20 number are: 1855 Olympic Blvd., Ste. 210, Walnut Creek, CA 94596, (925) 465-5155.

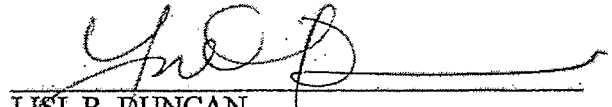
21 9. On September 16, 2010, I sent notice of this Ex Parte Application to Mr. Aboudi via
22 facsimile at approximately 9:45 a.m., providing notice of the room, department, time, date, and
23 relief requested, and I requested Mr. Aboudi to advise whether he opposes the application to
24 shorten time. Attached hereto as Exhibit 3 is a true and correct copy of the notice.

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² These copies were mailed to Mr. Aboudi's correct address.

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I declare under penalty of perjury that the foregoing is true and correct of my own personal knowledge. Executed this 16 day of September 2010.



LISL R. DUNCAN

118212/588952

Exhibit 1

Exhibit 1

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

Godfrey Plaintiff/Petitioner(s) vs. AB Trucking, Inc.	No. <u>RG08379099</u> Case Management Order Date: 08/20/2010 Time: 10:00 AM Dept: 20 Judge: Robert B. Freedman
Defendant/Respondent(s) (Abbreviated Title)	

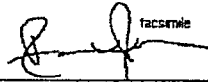
ORDER re: CASE MANAGEMENT

OTHER ORDERS

1. The parties are referred to the Court's tentative ruling regarding plaintiffs' class certification motion.
2. Assuming the procedural issues identified in the tentative ruling can be resolved, the parties should be prepared to address a case and trial management plan for the period following a final ruling on class certification. Specifically, the parties should be prepared to identify contemplated post certification ("merits" related) discovery, any anticipated dispositive motions, a realistic trial date and a schedule for compliance with Local Rule 3.35 and any proposals for modification of timelines for expert witness disclosure.
3. The parties should also be prepared to inform the Court of any contemplated mediation or a request for a judicially supervised settlement conference.

Any delay in the trial, caused by non-compliance with any order contained herein, shall be the subject of sanctions pursuant to CCP 177.5.

Dated: 08/20/2010



Judge Robert B. Freedman

Exhibit 2

Exhibit 2

STEWART WEINBERG
DAVID A. ROSENFELD
WILLIAM A. SOKOL
VINCENT A. HARRINGTON, JR.
W. DANIEL BOONE
WYTHE MICHELSON
BARRY E. HINKLE
JAMES RUTKOWSKI
SANDRA KAE BENSON
CHRISTIAN L. RAISNER
JAMES J. WESSER
THEODORE FRANKLIN
ANTONIO NUZ
MATTHEW J. GAUGER
ASHLEY K. FREDA
LINDA SALDANA JONES
PATRICIA A. DAVIS
ALAN G. CROWLEY
KRISTINA L. HILLMAN
EMILY P. RICH
BRUCE A. HANLAND
CONCEPCION E. LOZANO-BATISTA
CAREN P. BENDER

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MARCEL A. BOGNER
KIRKMAN R. STEELE
ANA M. GALLEGOS
GARY P. PROVENCHER
LESLIE R. DUNCAN
JORDAN D. MAZUR
JACOB J. WHITE
SHARON A. SEIDENSTEIN
LESLIE V. FREEMAN
EZEKIEL D. CAUDER
YURI V. GOTTFERMAN

PATRICIA M. GATES, Of Counsel
ROBERTA D. PERKINS, Of Counsel
RICHARD T. DRURY, Of Counsel
NINA FERDEL, Of Counsel

* Also admitted in Arizona
** Admitted in Hawaii
*** Also admitted in Nevada
**** Also admitted in Nevada
***** Also admitted in Missouri
***** Also admitted in New York

August 24, 2010

VIA E-MAIL AND UPS TO

Jay Ian Aboudi
The Law Office of Jay Ian Aboudi
1855 Olympic Blvd., Ste. 210
Walnut Creek, CA 94596

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

Dear Mr. Aboudi:

Please find enclosed Plaintiffs' second amended complaint. A hardcopy is also being sent to you via overnight mail. The Court indicated Defendant would have a week from receipt of this amended complaint, or August 31, 2010, to review and determine whether you will enter into a stipulation for Plaintiffs to file this amended complaint.

Defendant has knowledge of all the allegations in Plaintiffs' proposed second amended complaint. In fact, Defendant has had knowledge of these allegations since 2008. For example, in our letter to Defendant of December 31, 2008, prior to filing the first amended complaint we stated, "Mr. Gilbert has told us that he has been working for your client without being paid at all which is a violation of the state minimum wage law." Mr. Gilbert's signed "trainee" agreement, upon which Defendant relies for the very proposition that Mr. Gilbert should be classified as a non-employee (i.e. Plaintiffs' "misclassified claim"), is an exhibit that was entered by Defendant to Mr. Gilbert's deposition. Defendant served form interrogatories (employment) upon Ms. Godfrey, but not upon Mr. Gilbert, presumably because Defendant did not want to risk characterizing Mr. Gilbert as an employee. Furthermore, the parties discussed the overtime issue at length in the depositions of Mr. and Ms. Aboudi and in numerous informal discussions of counsel throughout this litigation. Mr. Aboudi explained at length how in his opinion AB Trucking drivers are not required to keep DOT logs, but still fall under DOT and are thus not entitled to overtime. Defendant did not object, and in fact affirmatively responded to Plaintiffs' Request for Production of Documents No. 12 seeking all documents pertaining to Defendant's practices and policies for authorizing overtime hours to drivers.

You are well aware of all these allegations.

LOS ANGELES OFFICE
3435 Wilshire Boulevard, Suite 620
Los Angeles, CA 90010-1007
TEL 213.380.2344 FAX 213.381.1088

SACRAMENTO OFFICE
425 J Street, Suite 520
Sacramento, CA 95814-2341
TEL 916.443.8800 FAX 916.442.0244

HONOLULU OFFICE
1099 Alaieka Street, Suite 1002
Honolulu, HI 96817
TEL 808.528.8880 FAX 8

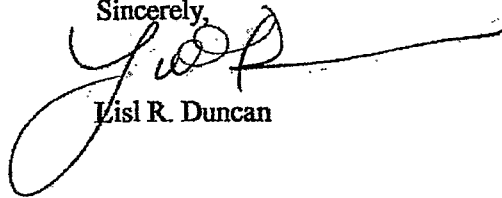
EXHIBIT 2

August 23, 2010
Jay Ian Aboudi
Page 2

Moreover, Judge Freedman was very clear that he will allow the filing of the amended complaint, either by stipulation or Court order, so either we can go through two additional rounds of motion practice before the Court to get to this result, or you can agree to the stipulation.

Please get back to me as soon as possible and do not hesitate to contact me should you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisl R. Duncan", with a long horizontal flourish extending to the right.

Lisl R. Duncan

LRD/jk
opeiu 3 afl-cio(1)
Enclosure
118212/585935

Draft 8/23/10

LRD

1 DAVID A. ROSENFELD, Bar No. 058163
2 CAREN P. SENCER, Bar No. 233488
3 LISL R. DUNCAN, Bar No. 261875
4 WEINBERG, ROGER & ROSENFELD
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7 Alameda, California 94501-1091
8 Telephone 510.337.1001
9 Fax 510.337.1023

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

11 LAVON GODFREY, and GARY GILBERT on) Case No. RG 08-379099
12 behalf of themselves and all others similarly)
13 situated,) **CLASS ACTION**
14 Plaintiffs,)
15 v.) **SECOND AMENDED COMPLAINT**
16 OAKLAND PORT SERVICES CORP. d/b/a) **FOR UNFAIR BUSINESS PRACTICES**
17 AB TRUCKING, and DOES 1 through 20,) **AND VIOLATIONS OF THE LABOR**
18 inclusive,) **CODE**
19 Defendants.)

18 **I. INTRODUCTION**

19 This is an action brought by Plaintiffs LAVON GODFREY and GARY GILBERT
20 ("Plaintiffs"), on their own behalf and on behalf of all those similarly situated, against Defendant
21 OAKLAND PORT SERVICES CORP. d/b/a AB TRUCKING, INC., ("Defendant" or "AB
22 Trucking") and other as yet unnamed defendants, alleging unfair business practices, violations of
23 the California Labor Code and violations of the Port of Oakland Living Wage Ordinance (Oakland
24 City Charter, Section 728). Plaintiffs seek restitution, equitable accounting, statutory penalties,
25 damages including declaratory and injunctive relief, attorneys' fees, and costs of suit.

26 **II. PARTIES**

27 1. Plaintiff LAVON GODFREY was at all relevant times herein employed by

1 Defendant as a truck driver at the Port of Oakland in California. She brings this action on her own
2 behalf and on behalf of others similarly situated.

3 2. Plaintiff GARY GILBERT at all relevant times herein was suffered and permitted to
4 work as a truck driver by Defendant at the Port of Oakland in California, although Defendant
5 classified him as a non-employee "trainee." He brings this action on his own behalf and on behalf
6 of others similarly situated.

7 3. AB TRUCKING is a business entity doing business in California, and is a "person"
8 as defined in California Labor Code § 18, and California Business and Professions Code § 17201.
9 In addition, Defendant is an "employer" as that term is used in the California Labor Code and in
10 the California Industrial Welfare Commission's orders regulating wages, hours, and working
11 conditions.

12 4. Defendant AB TRUCKING. is incorporated in California and has corporate offices
13 and is licensed to do business within the state.

14 5. Defendant is a Port Assisted Businesses ("PAB") under the Living Wage Charter
15 Amendment of the Oakland City Charter, § 728. Defendant is believed to have contracts with the
16 Port of Oakland which result in the employment of more than 20 persons and/or receives financial
17 assistance from the Port of no less than \$50,000.

18 6. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as
19 DOES 1 through 20, inclusive, and therefore sue these Defendants by such fictitious names.
20 Plaintiffs will amend this complaint to allege their true names and capacities when ascertained.

21 7. At all relevant times herein, Defendants were the agent of each other and acting
22 within the course and scope of their agency.

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1 8. Venue is proper based on the location of the majority of Plaintiffs' work as well as
2 the location of the commission of the acts alleged herein. The work giving rise to this complaint
3 was performed in various counties in California but was based out of Alameda County. The Court
4 has jurisdiction over this action pursuant to Subsection 9 of Oakland City Charter, § 728 which
5 allows enforcement in any superior court of the state of California. Section 9(A) of § 728 states:

6 Any person claiming a violation of this Section may bring an action against
7 the PAB in the Municipal Court or Superior Court of the State of California,
8 as appropriate, to enforce the provisions of this Section and shall be entitled
9 to all remedies available to remedy any violation of this Section, including
but not limited to back pay, reinstatement or injunctive relief. Violations of
this Section are declared to irreparably harm the public and covered
employees generally.

10 The relief requested is within the jurisdiction of this Court.

11 **III. FACTUAL ALLEGATIONS**

12 9. During the four years prior to the filing of this action, Defendant provided
13 transportation of product and containers to and from the Port of Oakland to various locations
14 within California.

15 10. Defendant engaged in:

- 16 • A pattern and practice of failing to pay wages for all hours worked;
- 17 • A pattern and practice of failing to pay wages for any hours worked as a
18 result of misclassification of drivers' employment status;
- 19 • A pattern and practice of failing to pay minimum wage as required by
20 California law;
- 21 • A pattern and practice of failing to provide minimum compensation under
22 the Port of Oakland Living Wage Ordinance;
- 23 • A pattern and practice of failing to pay overtime wages as required by
24 California law;
- 25 • A pattern and practice of failing to provide meal and rest periods as required
26 under California law;
- 27 • A pattern and practice of failing to provide employees with accurate wage

1 statements;

2 • A pattern and practice of failing to provide all compensation owed in a
3 timely manner; and

4 • A pattern and practice of failing to provide all compensation owed at the
5 time of discharge or quit.

6 11. The wages, hours and working conditions of individuals employed in the
7 transportation industry are regulated by Industrial Wage Commission Wage Order 9, Cal. Code
8 Regs. tit. 8, § 11090.

9 12. IWC Wage Order 9, section 4, and Labor Code § 1194 require an employer to
10 provide compensation for all hours worked.

11 13. Plaintiffs allege that Defendant regularly did not pay employees for time worked at
12 the appropriate rates, this included failing to pay minimum wages for each hour worked, overtime
13 wages and/or Oakland Living wages for all hours worked.

14 14. Plaintiffs worked for Defendant for hours which they were not compensated.
15 Defendant regularly shorted hours on paychecks and deducted time from employee paychecks for
16 meal periods even if such meal periods were not taken.

17 15. Plaintiffs worked for Defendant for hours which they were not compensated.
18 Defendant classifies some drivers as non-employee "trainees" who perform driver duties, but who
19 are not paid any wages. These "trainees" are misclassified as non-employees. "Trainees" perform
20 functions performed by drivers classified as employees, but they do not receive any cognizable
21 training. Defendant does not provide "trainees" with compensation. Defendant's policies and
22 practices prevented "trainees," like drivers classified as employees, from taking all rest and meal
23 periods to which they were entitled.

24 16. Labor Code § 510 states an employee must be compensated for "work." It also
25 provides that any work in excess of eight hours in one workday and any work in excess of 40 hours
26 in any one workweek and the first eight hours worked on the seventh day of work in any one
27 workweek shall be compensated at the rate of no less than one and one-half times the regular rate
28 of pay for an employee.

1 17. IWC Wage Order 9, section 3 provides that employees shall not be employed more
2 than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee
3 receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked
4 over 40 hours in the workweek or over 8 hours in a workday.

5 18. Plaintiffs worked for Defendant more than eight (8) hours in any workday and/or
6 more than 40 hours in any workweek for hours which they were not compensated at a rate of one
7 and one-half (1 1/2) times their regular rate of pay. Defendant maintains a policy of not
8 compensating any driver, regardless of proper classification, at a time-and-one-half rate for hours
9 worked over eight-in-a-day and forty-in-a-week.

10 19. Plaintiffs and putative class members are entitled to overtime wages based on either
11 (1) the Department of Transportation ("DOT") exemption from the Federal Labor Standards Act
12 not being applicable or (2) the "spotter" exception to DOT requirements.

13 20. When Plaintiffs and putative class members missed a meal period during a shift, it
14 caused the shift to extend past eight hours, but Defendant did not compensate drivers for the hours
15 worked in excess of eight hours in a workday at the overtime rate.

16 21. Oakland City Charter Section 728 requires that all Port-Assisted Businesses provide
17 compensation not less than the Oakland living wage. The July 2007-June 2008 minimum
18 compensation was \$11.58 without benefits and \$10.07 with benefits according Oakland Municipal
19 code section 2.28. The current minimum compensation is \$12.82 without benefits and \$11.15 with
20 benefits as of July 1, 2010.

21 22. The Defendants have failed to provide at least the Oakland living wage rate for each
22 hour worked.

23 23. Under the terms of IWC Wage Order 9, section 11, employees are required to
24 receive a 1/2 hour unpaid, off-duty meal period during each eight (8) hour shift. Employees
25 working beyond ten (10) hours in a day are entitled to a second 1/2 hour unpaid, off-duty meal
26 period.

27 24. Under the terms of IWC Wage Order 9, section 12, employees are entitled to two
28 uninterrupted ten minute rest periods during each eight hour shift.

1 25. Labor Code § 226.7 requires employers to provide employees with meal and rest
2 periods mandated by the IWC wage orders and provides for wages of one additional hour of pay at
3 the employee's regular rate to compensate for each day such meal and/or rest period was not
4 provided up to a maximum of 2 additional hours of compensation per day.

5 26. California Labor Code § 512 prescribes when meal periods must be provided. An
6 employee is entitled to one thirty minute meal period in the first eight hours of work and a second
7 meal period if the employee works more than ten hours of work. Under the terms of Labor Code §
8 512, an employee may consent to waiver of a meal period but may not consent to waive his second
9 meal period if he waived the first meal period.

10 27. The Defendants regularly failed to provide Plaintiffs and others their right to the
11 state mandated ½ hour off-duty meal period and failed to authorize uninterrupted rest periods.

12 28. Plaintiffs and others have not been compensated one additional hour for each day a
13 meal and/or one additional hour for each day a rest period has not been provided.

14 29. Labor Code §§ 201 and 202 require the payment of all wages due upon the
15 termination of the employment relationship.

16 30. The Defendant failed to provide Plaintiffs and others similarly situated with their
17 final paychecks until after the termination of the employment relationship. Defendant failed to
18 provide all wages due in the final paycheck and have failed to make such payment to date.

19 31. California Labor Code § 203 provides a penalty, of up to 30 days of wages at the
20 employee's regular rate, for each day after termination of the employment relationship that wages
21 are not provided to a separated employee.

22 32. California Labor Code § 226 requires the employer to provide each employee with
23 an accurate itemized wage statement showing, among other things, all hours worked and the
24 correct hourly rate provided to the employee for those hours worked. Failure to provide this
25 accurate statement allows the employee to collect damages, seek injunctive relief and recover
26 penalties.

27 33. Defendants have failed to provide an accurate itemized wage statement reflecting
28 the total hours of each category of compensation earned and the itemized wage statements fail to

1 provide adequate information regarding the employer and the home address of the employee.

2 34. As a proximate and direct result of Defendant's actions, Plaintiffs and others
3 similarly situated have suffered damages and are entitled to penalties in an amount to be specified
4 at trial.

5 35. As a proximate and direct result of Defendant's actions, Defendant unlawfully
6 acquired money or property from Plaintiffs and others similarly situated in an amount to be
7 specified at trial.

8 **IV. CLASS ALLEGATIONS**

9 36. Plaintiffs realleges, and incorporates by reference, the allegations contained in
10 paragraphs 1 through 35 above, as if fully stated herein.

11 37. Plaintiffs bring this action on behalf of themselves and all other current and former
12 employees similarly situated as a class action under Code of Civil Procedure § 382. Plaintiffs seek
13 to represent a class of all drivers¹ who performed work for AB out of its Oakland, California
14 facility from the period of March 28, 2004 through November 1, 2010 [or projected date of mailing
15 of the class notice]. Should the Court determine that subdividing the class would be beneficial,
16 seven sub-classes are readily defined as follows:

17 (1) The All Hours Worked Subclass

18 All drivers employed by Defendant during March 28, 2004 through
19 November 1, 2010 who were not paid for all hours worked in any work
20 week.

21 (2) The Misclassified Employee or No Wages Received Subclass

22 All individuals who were misclassified as "non-employee trainees" rather
23 than as drivers and as a result were not paid by Defendant for any hours
24 worked in any work week during March 28, 2004 through November 1,
25 2010.

26 ¹ "Driver" means an employee who operates a vehicle described in subdivision (b) of Section 15210 of the California
27 Vehicle Code, or an individual operating a "motor vehicle." "Motor vehicle" includes, though is not limited to, a
28 vehicle(s) that (1) has a gross vehicle weight rating (GVWR) of 26,001 pounds or more; (2) is a combination vehicle
with a gross combination weight rating of 26,001 or more pounds, if the trailer(s) has a GVWR of 10,001 or more
pounds; (3) tows any vehicle with a GVWR of 10,001 pounds or more; (4) tows more than one vehicle or a trailer bus;
(5) has three or more axles (excludes three axle vehicles weighing 6,000 pounds or less gross); (6) is any size vehicle
which requires hazardous material placards or is carrying material listed as a select agent or toxin; and/or (7) transports
hazardous wastes (California Health and Safety Code §§25115 and 25117).

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(3) The Overtime Subclass

All drivers employed by Defendant during March 28, 2004 through November 1, 2010 who were not paid for hours worked over eight (8) in a day and/or forty (40) in a week at an overtime rate of time-and-one-half the regular rate.

(4) The Living Wage Subclass

All drivers employed by Defendant during March 28, 2004 through November 1, 2010 who were paid less than the Oakland Living Wage for any hour worked.

(5) The Meal and Rest Period Subclass

All drivers employed by Defendant during March 28, 2004 through November 1, 2010 who were not provided rest breaks and/or meal periods as required by California law.

(6) The Wages Owed at Discharge or Quitting Subclass

All drivers employed by Defendant during March 28, 2004 through November 1, 2010 who were not paid all wages owed at the time of discharge or quitting as required under Labor Code sections 201, 202 and 203.

(7) The Inaccurate Wage Statement Subclass

All drivers employed by Defendant during March 28, 2004 through November 1, 2010 who were not provided with accurate itemized wage statements in violation of Labor Code section 226.

38. Plaintiffs reserve the right under Rule 3.765(b), California Rules of Court to amended or modify the class description with greater specificity or further division into sub-classes or limitation to particular issues.

39. This action may be properly maintained as a class action under Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation and the proposed class is easily ascertainable:

A. Numerosity

40. The members of the proposed class are so numerous that joinder of all the members of the class is impracticable. Plaintiffs are informed and believe that Defendant employed well over fifty drivers during the relevant period.

41. Plaintiffs allege Defendant's employment records will provide information as to the

1 number and location of all class members. Those records will furthermore disclose the amount of
2 time worked, hours for which pay was received, and whether meal and rest periods were provided,
3 or Plaintiffs and others similarly situated will have their own reasonable estimates of such monies.

4 **B. Commonality**

5 42. There are questions of law and fact common to the class that predominate over any
6 questions affecting only individual class members. These common questions of law and fact
7 include, without limitation:

8 a. Whether Defendant violated Labor Code § 1194 and Industrial Welfare
9 Commission Order 9-2001, Section 4, by failing to provide compensation for each hour worked;

10 b. Whether Defendant violated IWC Wage Order 9 and Labor Code §1194 by
11 not paying the minimum wage for all hours worked;

12 c. Whether Defendant violated IWC Wage Order 9 and Labor Code §1194 by
13 not paying the minimum wage for any hours worked as a result of misclassification of drivers'
14 employment status;

15 d. Whether Defendant violated IWC Wage Order 9 and Labor Code §§ 510 and
16 1194 for failing to pay overtime;

17 e. Whether Defendant violated Oakland City Charter § 728 by failing to
18 provided the living wage to employees for each hour worked;

19 f. Whether Defendant violated Labor Code § 512 and IWC Wage Order 9,
20 sections 11 and 12 by failing to provide meal and rest periods to employees;

21 g. Whether Defendant violated § 226.7 of the Labor Code by failing to provide
22 off duty meal periods and rest periods without providing employees with compensatory
23 remunerations;

24 h. Whether Defendant violated Labor Code §§ 201 and 202 by failing to pay
25 all wages due at the time of termination of employment;

26 i. Whether Defendant violated Labor Code § 226 by failing to provide
27 accurate itemized wage statements showing the applicable hourly rate for each hour worked and
28 each category of compensation received.

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C. Typicality

43. The claims of the named Plaintiffs are typical of the claims of the proposed class. Plaintiffs and all members of the proposed class sustained injuries and damages arising out of and caused by Defendant's common course of conduct in violation of laws and regulations as alleged herein.

D. Adequacy of Representation

44. Plaintiffs are an adequate representative of the proposed class in that Plaintiffs have the same interests in the litigation of this case as the proposed class members. Plaintiffs are committed to vigorous prosecution of this case and have retained competent counsel who are highly experienced in class action and wage and hour litigation of this nature. Plaintiffs are not subject to any individual defenses different from those conceivably applicable to the class as a whole.

E. Superiority of Class Action

45. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed class members is not practicable, and questions of law and fact common to the class predominate over any questions affecting only individual members of the class. Each member of the class has been damaged and is entitled to recovery by reason of Defendant's illegal policies and/or practices with respect to failure to pay for all hours worked, for any hours worked as a result of misclassification of employment status, overtime, the Oakland Living Wage, to provide meal and rest periods, to provide all compensation owed at discharge or quit, and to provide adequate wage statements for the defined period.

46. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

47. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because individual litigation of the claims of all proposed class

1 members is impractical. Even if every proposed class member could afford individual litigation,
2 the court system could not. It would be unduly burdensome to the courts in which individual
3 litigation of numerous cases would proceed. Individualized litigation would also present the
4 potential for varying, inconsistent, or contradictory judgments and would magnify the delay and
5 expense to all parties and to the court system resulting from multiple trials of the same complex
6 factual issues. By contrast, the conduct of this action as a class action, with respect to some or all
7 of the issues presented herein, presents fewer management difficulties, conserves the resources of
8 the parties and the court system, and protects the rights of each proposed class member. Plaintiffs
9 anticipate no management difficulties in this litigation.

10 48. Defendant has also acted, or has refused to act, in respects generally applicable to
11 the proposed class, thereby making relief appropriate with regard to the members of the proposed
12 class as a whole, as requested herein.

13 **V. FIRST CAUSE OF ACTION (UNFAIR BUSINESS PRACTICES**
14 **BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.)**

15 49. Plaintiffs reallege and incorporate paragraphs 1 through 48, inclusive, as though set
16 forth fully herein.

17 50. California Business and Professions Code § 17200 *et seq.* prohibits unfair
18 competition in the form of any unlawful, unfair, deceptive, or fraudulent business practice.

19 51. Beginning at an exact date unknown to Plaintiffs, but at least since February 2004,
20 the Defendant committed unlawful acts as defined by California Business & Professions Code §
21 17200. The Defendant has engaged in unlawful and unfair business practices including, but not
22 limited to, violations of:

23 a. California Industrial Welfare Commission Order No. 9-2001, section 4
24 (payment for all and/or any hours worked);

25 b. Labor Code § 1194 and California Industrial Welfare Commission Order 9-
26 2001 (failure to pay minimum wages)

27 c. Labor Code §§ 510, 1194 and California Industrial Welfare Commission
28 Order 9-2001 (failure to pay overtime)

- 1 d. Oakland City Charter § 728 (failure to pay the living wage);
2 e. Labor Code § 226.7 (failure to provide meal and rest periods);
3 f. Labor Code § 512 (failure to provide meal periods);
4 g. California Industrial Welfare Commission Order 9-2001, sections 11 and 12
5 (failure to provide meal and rest periods);
6 h. Labor Code § 223 (secret payment of wages less than those designated by
7 statute);
8 i. Labor Code § 201 (requirement to pay all wages upon discharge);
9 j. Labor Code § 202 (requirement to pay all wages to quitting employees).

10 52. The violation of these laws serve as unlawful predicate acts for purposes of
11 Business & Professions Code § 17200 and remedies are provided therein under Business &
12 Professions Code § 17203. Plaintiffs have suffered direct economic injury in that they have not
13 been paid all wages and compensation due in a timely manner.

14 53. The acts and practices described in this Complaint constitute unlawful, unfair and
15 fraudulent business practices, and unfair competition by the Defendant within the meaning of
16 Business and Professions Code § 17200 *et seq.*

17 54. Business & Professions Code § 17203 provides that the Court may restore to any
18 person in interest any money or property which may have been acquired by means of such unfair
19 competition and to which those person have an ownership interest. Plaintiffs and other employees
20 of Defendants are entitled to restitution pursuant to Business & Professions Codes §§ 17203 and
21 17208 for all wages unlawfully withheld from them during the four years prior to the filing of this
22 Complaint. Plaintiffs will, upon leave of the Court, amend this Complaint to state such amounts
23 when they become ascertained.

24 55. Plaintiffs' success in this action will enforce important rights affecting the public
25 interest, and in that regard, Plaintiffs sue on behalf of themselves and other current and former
26 employees similarly situated. Plaintiffs seek and are entitled to unpaid wages at the living wage
27 rate, unpaid compensation for missed meal and rest periods, injunctive relief, declaratory relief,
28 and any other remedy owing to Plaintiffs.

1 56. Injunctive and declaratory relief is necessary and appropriate to prevent the
2 Defendant from repeating their wrongful business practices alleged above.

3 57. To prevent the Defendant from profiting and benefiting from their wrongful and
4 illegal acts, it is appropriate and necessary to enter an order requiring the Defendant to restore
5 Plaintiffs and others all monies that are owed.

6 58. An actual controversy has arisen and now exists relating to the rights and duties of
7 the Defendants and Plaintiffs as to whether Defendants must pay wages for each hour worked,
8 overtime wages, the living wage, provide compensation for missed meal and rest periods, provide
9 accurate wage statements and all compensation at the time of discharge or quitting.

10 59. Plaintiffs require a declaration by this Court that Plaintiffs are entitled to be paid for
11 all hours worked, for any hours worked as a result of misclassification of employment status, to
12 receive at least the living wage rate, to be compensated at time and one-half for hours worked
13 beyond 8 in a day and/or 40 in a week, to be compensated for missed meal and rest periods
14 pursuant to California Law, to be compensated for all wages owed at the time of discharge or
15 quitting and to receive penalties for these violations.

16 60. Plaintiffs herein take upon themselves enforcement of these laws and lawful claims.
17 There is a financial burden incurred in pursuing this action and it would be against the interests of
18 justice to penalize Plaintiffs by forcing hereto pay attorneys' fees from the recovery in this action.
19 Therefore, attorneys' fees are appropriate pursuant to California Code of Civil Procedure § 1021.5.

20 Wherefore, Plaintiffs pray judgment as set forth below.

21 **VI. SECOND CAUSE OF ACTION (FAILURE TO PAY FOR ALL HOURS WORKED IN**
22 **VIOLATION OF LABOR CODE §§ 510, 1182.12, 1194 AND IWC WAGE ORDER NO. 9,**
23 **SECTION 4)**

24 61. Plaintiffs reallege and incorporate paragraphs 1 through 60, inclusive, as though
25 fully set forth herein.

26 62. Labor Code § 1182.12 provides:

27 Notwithstanding any other provision of this part, on and
28 after January 1, 2007, the minimum wage for all industries shall be
not less than seven dollars and fifty cents (\$7.50) per hour, and on
and after January 1, 2008, the minimum wage for all industries shall
be not less than eight dollars (\$8.00) per hour.

1 63. IWC Order No. 9, section 4 provides for each employee to be paid no less than
2 minimum wage for each hour worked and for those wage payments to be made on no less than a
3 bi-weekly basis.

4 64. Plaintiffs worked for Defendant for hours which they were not compensated.
5 Defendant regularly shorted hours on paychecks and deducted time from employee paychecks for
6 meal periods even if such meal periods were not taken.

7 65. Labor Code § 510 states an employee must be compensated for "work." Labor
8 Code § 510 provides:

9 (a) Eight hours of labor constitutes a day's work. Any work in
10 excess of eight hours in one workday and any work in excess of 40
11 hours in any one workweek and the first eight hours worked on the
12 seventh day of work in any one workweek shall be compensated at the
13 rate of no less than one and one-half times the regular rate of pay
14 for an employee. Any work in excess of 12 hours in one day shall be
15 compensated at the rate of no less than twice the regular rate of pay
16 for an employee. In addition, any work in excess of eight hours on
17 any seventh day of a workweek shall be compensated at the rate of no
18 less than twice the regular rate of pay of an employee. Nothing in
19 this section requires an employer to combine more than one rate of
20 overtime compensation in order to calculate the amount to be paid to
21 an employee for any hour of overtime work. The requirements of this
22 section do not apply to the payment of overtime compensation to an
23 employee working pursuant to any of the following:

24 (1) An alternative workweek schedule adopted pursuant to Section
25 511.

26 (2) An alternative workweek schedule adopted pursuant to a
27 collective bargaining agreement pursuant to Section 514.

28 (3) An alternative workweek schedule to which this chapter is
inapplicable pursuant to Section 554.

(b) Time spent commuting to and from the first place at which an
employee's presence is required by the employer shall not be
considered to be a part of a day's work, when the employee commutes
in a vehicle that is owned, leased, or subsidized by the employer and
is used for the purpose of ridesharing, as defined in Section 522 of
the Vehicle Code.

(c) This section does not affect, change, or limit an employer's
liability under the workers' compensation law.

66. Labor Code § 1194 provides for a private right of action to recover wages for hours
worked but not compensated. It states, in pertinent part:

[A]ny employee receiving less than the legal minimum wage or the legal
overtime compensation applicable to the employee is entitled to recover in a
civil action the unpaid balance of the full amount of this minimum wage or
overtime compensation, including interest thereon, reasonable attorney's
fees, and costs of suit.

1 67. Plaintiffs seek to recover compensation for time worked but not paid, attorneys'
2 fees and costs under Labor Code § 1194.

3 68. IWC Wage Order 9-2001 section 20(A) provides for civil penalties for violations of
4 the Wage Order which result in underpayment of wages to employees. The penalty amounts to
5 \$50 per employee for the first violation and \$100 per employee for each subsequent pay period in
6 which the employee is under paid.

7 69. Plaintiffs seek to recover penalties under IWC Wage Order 16, section 20 for
8 violations of section 4.

9 70. Labor Code § 218 provides for a private right of action to recover wages under the
10 Labor Code. Plaintiffs seek to recover unpaid wages and penalties directly under § 218.

11 71. Labor Code § 218.6 provides for interest on all dues and unpaid wages in any action
12 brought for the nonpayment of wages. Plaintiffs seek to recover interest on all wages due.

13 72. Plaintiffs seek to recover all unpaid overtime wages, penalties, and interest due to
14 them and all others similarly situated.

15 Wherefore, Plaintiffs pray for judgment as set forth below.

16 **VII. THIRD CAUSE OF ACTION (FAILURE TO PAY FOR ANY HOURS WORKED DUE**
17 **TO MISCLASSIFICATION OF EMPLOYMENT STATUS IN VIOLATION OF LABOR**
18 **CODE §§ 510, 1182.12, 1194 AND IWC WAGE ORDER NO. 9, SECTION 4)**

19 73. Plaintiffs reallege and incorporate paragraphs 1 through 72, inclusive, as though
20 fully set forth herein.

21 74. Labor Code § 1182.12 provides:

22 Notwithstanding any other provision of this part, on and
23 after January 1, 2007, the minimum wage for all industries shall be
24 not less than seven dollars and fifty cents (\$7.50) per hour, and on
25 and after January 1, 2008, the minimum wage for all industries shall
26 be not less than eight dollars (\$8.00) per hour.

27 75. IWC Order No. 9, section 4 provides for each employee to be paid no less than
28 minimum wage for each hour worked and for those wage payments to be made on no less than a
bi-weekly basis.

76. Plaintiffs worked for Defendant for hours which they were not compensated.

1 Defendant classifies some drivers as non-employee "trainees" who perform driver duties, but who
2 are not paid any wages. These "trainees" are misclassified as non-employees. "Trainees" perform
3 functions performed by drivers classified as employees, but they do not receive any cognizable
4 training. Defendant does not provide "trainees" with compensation.

5 77. Like individuals classified as drivers, Defendant's policies and practices prevented
6 "trainees," from taking all rest and meal periods to which they were entitled. As trainees were not
7 paid any wages, they did not receive state minimum wage or Oakland living wage for any hour
8 worked. They were not compensated at time and one-half for any hours worked beyond 8 in a day
9 or 40 in a workweek.

10 78. Labor Code § 510 states an employee must be compensated for "work," as cited
11 above.

12 79. IWC Wage Order 9-2001 section 4(a) requires that an employer pay an employee
13 for all hours worked at the minimum wage rate.

14 80. Labor Code § 1194 provides for a private right of action to recover wages for hours
15 worked but not compensated. It states, in pertinent part:

16 [A]ny employee receiving less than the legal minimum wage or the legal
17 overtime compensation applicable to the employee is entitled to recover in a
18 civil action the unpaid balance of the full amount of this minimum wage or
overtime compensation, including interest thereon, reasonable attorney's
fees, and costs of suit.

19 81. Plaintiffs seek to recover compensation for time worked but not paid, attorneys'
20 fees and costs under Labor Code § 1194.

21 82. IWC Wage Order 9-2001 section 20(A) provides for civil penalties for violations of
22 the Wage Order which result in underpayment of wages to employees. The penalty amounts to
23 \$50 per employee for the first violation and \$100 per employee for each subsequent pay period in
24 which the employee is under paid.

25 83. Plaintiffs seek to recover penalties under IWC Wage Order 16, section 20 for
26 violations of section 4.

27 84. Labor Code § 218 provides for a private right of action to recover wages under the
28 Labor Code. Plaintiffs seek to recover unpaid wages and penalties directly under § 218.

1 85. Labor Code § 218.6 provides for interest on all dues and unpaid wages in any action
2 brought for the nonpayment of wages. Plaintiffs seek to recover interest on all wages due.

3 86. Plaintiffs seek to recover all unpaid wages, penalties, and interest due to them and
4 all others similarly situated.

5 Wherefore, Plaintiffs pray for judgment as set forth below.

6 **VIII. FOURTH CAUSE OF ACTION (FAILURE TO PAY OVERTIME IN VIOLATION OF**
7 **LABOR CODE §§ 510, 1194 AND IWC WAGE ORDER NO. 9, SECTION 3)**

8 87. Plaintiffs reallege and incorporate paragraphs 1 through 86, inclusive, as though
9 fully set forth herein.

10 88. Labor Code § 510 provides for the payment of overtime wages, as cited above.

11 89. IWC Order No. 9, section 3(A) provides:

12 (1) ... employees shall not be employed more than eight (8) hours in any
13 workday or more than 40 hours in any workweek unless the employee
14 receives one and one-half (1 1/2) times such employee's regular rate of pay
15 for all hours worked over 40 hours in the workweek. Eight (8) hours of
16 labor constitutes a day's work. Employment beyond eight (8) hours in any
17 workday or more than six (6) days in any workweek is permissible provided
18 the employee is compensated for such overtime at not less than:

17 (a) One and one-half (1 1/2) times the employee's regular rate of pay for all
18 hours worked in excess of eight (8) hours up to and including 12 hours in
19 any workday, and for the first eight (8) hours worked on the seventh (7th)
20 consecutive day of work in a workweek; and

19 (b) Double the employee's regular rate of pay for all hours worked in excess
20 of 12 hours in any workday and for all hours worked in excess of eight (8)
21 hours on the seventh (7th) consecutive day of work in a workweek.

20 (c) The overtime rate of compensation required to be paid to a nonexempt
21 full-time salaried employee shall be computed by using the employee's
22 regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

22 90. Plaintiffs worked for Defendant more than eight (8) hours in any workday and/or
23 more than 40 hours in any workweek for hours which they were not compensated at a rate of one
24 and one-half (1 1/2) times their regular rate of pay. Defendant maintains a policy of not
25 compensating any driver, those classified as employees and those misclassified as "trainees," for
26 hours worked over eight-in-a-day and forty-in-a-week, at a time-and-one-half rate.

27 91. Plaintiffs and putative class members are entitled to overtime wages based on either
28

1 (1) under State law or (2) under the "spotter" exception to the Motor Carrier Act exemption to the
2 Fair Labor Standards Act.

3 92. When Plaintiffs and others missed a meal period during a shift, it caused the shift to
4 extend beyond eight hours, but Defendant did not compensate drivers for the hours worked in
5 excess of eight hours in a workday at the overtime rate.

6 93. Labor Code § 1194 provides for a private right of action to recover wages for hours
7 worked but not compensated. It states, in pertinent part:

8 [A]ny employee receiving less than the legal minimum wage or the legal
9 overtime compensation applicable to the employee is entitled to recover in a
10 civil action the unpaid balance of the full amount of this minimum wage or
overtime compensation, including interest thereon, reasonable attorney's
fees, and costs of suit.

11 94. Plaintiffs seek to recover compensation for time worked but not paid, attorneys'
12 fees and costs under Labor Code § 1194.

13 95. IWC Wage Order 9-2001 section 20(A) provides for civil penalties for violations of
14 the Wage Order which result in underpayment of wages to employees. The penalty amounts to
15 \$50 per employee for the first violation and \$100 per employee for each subsequent pay period in
16 which the employee is under paid.

17 96. Plaintiffs seek to recover penalties under IWC Wage Order 16, section 20 for
18 violations of section 3.

19 97. Labor Code § 218 provides for a private right of action to recover wages under the
20 Labor Code. Plaintiffs seek to recover unpaid wages and penalties directly under § 218.

21 98. Labor Code § 218.6 provides for interest on all dues and unpaid wages in any action
22 brought for the nonpayment of wages. Plaintiffs seek to recover interest on all wages due.

23 99. Plaintiffs seek to recover all unpaid wages, penalties, and interest due to them and
24 all others similarly situated.

25 Wherefore, Plaintiffs pray for judgment as set forth below.

26 **IX. THIRD CAUSE OF ACTION (LIVING WAGE -OAKLAND CITY CHARTER § 728)**

27 100. Plaintiffs reallege and incorporate paragraphs 1 through 99, inclusive, as though set
28 forth fully herein.

1 101. Oakland City Charter, § 728 mandates that a Port Assisted Business provide the
2 Minimum Compensation referred to above.

3 102. Defendant has violated and continues to violate Oakland City Charter, § 728 by
4 refusing to pay the Minimum Compensation required by Section 728 to all employees of
5 Defendant.

6 103. Oakland City Charter § 728 (8) provides for a private right of action to enforce the
7 provisions of the Living Wage Charter amendment, and provides for all remedies available to
8 remedy any violation of Section 728 including, but not limited to backpay, reinstatement, or
9 injunctive relief.

10 104. Plaintiffs have been damaged in that they have not been paid the Minimum
11 Compensation at all times while employed by Defendant.

12 105. The Living Wage Charter Amendment also declares that any violation of the section
13 constitutes irreparable harm to the public and covered employees generally. (Oakland City Charter
14 § 728 (8).)

15 106. Plaintiffs' success in this action will enforce the mandate of the people of Oakland
16 to protect the working people at the Port as well as the public interest at large.

17 107. Injunctive relief is necessary and appropriate to prevent Defendant from a continued
18 violation of the Living Wage Charter Amendment and to save the economic livelihoods of workers
19 at the Port of Oakland.

20 Wherefore, Plaintiffs pray for judgment as set forth below.

21 **X. FOURTH CAUSE OF ACTION (CALIFORNIA LABOR CODE §§ 226.7 & 512,**
22 **IWC WAGE ORDER 9 – MEAL & REST PERIODS)**

23 108. Plaintiffs reallege and incorporate paragraphs 1 through 108, inclusive, as though
24 set forth fully herein.

25 109. Labor Code § 226.7 provides:

26 (a) No employer shall require any employee to work during any meal or rest
27 period mandated by an applicable order the industrial Welfare Commission.

28 (b) If an employer fails to provide an employee a meal period or rest period
in accordance with an applicable order of the Industrial Welfare

1 Commission, the employer shall pay the employee one additional hour of
2 pay at the employee's regular rate of compensation for each workday that
the meal or rest period is not provided.

3 110. Labor Code § 512 provides:

4 An employer may not employ an employee for a work period of more than
5 five hours per day without providing the employee with a meal period of not
6 less than 30 minutes, except that if the total work period per day of the
7 employee is no more than six hours, the meal period may be waived by
8 mutual consent of both the employer and employee. An employer may not
9 employ an employee for a work period of more than 10 hours per day
without providing the employee with a second meal period of not less than
30 minutes, except that if the total hours worked is no more than 12 hours,
the second meal period may be waived by mutual consent of the employer
and employee.

10 111. IWC Wage Order 9, section 11, Meal Periods provides:

11 (A) No employer shall employ any person for a work period of more than
12 five (5) hours without a meal period of not less than 30 minutes, except that
13 when a work period of not more than six (6) hours will complete the day's
work the meal period may be waived by mutual consent of the employer and
the employee.

14 (B) An employer may not employ an employee for a work period of more
15 than ten (10) hours per day without providing the employee with a second
16 meal period of not less than 30 minutes, except that if the total hours worked
is no more than 12 hours, the second meal period may be waived by mutual
consent of the employer and the employee only if the first meal period was
not waived.

17 (C) Unless the employee is relieved of all duty during a 30 minute meal
18 period, the meal period shall be considered an "on duty" meal period and
19 counted as time worked. An "on duty" meal period shall be permitted only
20 when the nature of the work prevents an employee from being relieved of all
duty and when by written agreement between the parties an on-the-job paid
meal period is agreed to. The written agreement shall state that the employee
may, in writing, revoke the agreement at any time.

21 (D) If an employer fails to provide an employee a meal period in accordance
22 with the applicable provisions of this order, the employer shall pay the
23 employee one (1) hour of pay at the employee's regular rate of
compensation for each workday that the meal period is not provided.

24 112. IWC Wage Order 9, section 12, Rest Periods provides:

25 A) Every employer shall authorize and permit all employees to take rest
26 periods, which insofar as practicable shall be in the middle of each work
27 period. The authorized rest period time shall be based on the total hours
worked daily at the rate of ten (10) minutes net rest time per four (4) hours
or major fraction thereof. However, a rest period need not be authorized for
28 employees whose total daily work time is less than three and one-half (3 ½)
hours. Authorized rest period time shall be counted as hours worked for
which there shall be no deduction from wages.

1 (B) If an employer fails to provide an employee a rest period in accordance
2 with the applicable provisions of this order, the employer shall pay the
3 employee one (1) hour of pay at the employee's regular rate of
4 compensation for each workday that the rest period is not provided.

5 113. Defendant has failed to provide Plaintiffs and other employees all meal and rest
6 periods as required by Labor Code §§ 226.7 and 512 and IWC Wage Order 9.

7 114. IWC Wage Order 9, section 11 provides for an employee to be provided with 1
8 hour's worth of compensation at his regular rate of compensation for each day of work that a meal
9 period is not provided.

10 115. IWC Wage Order 9, section 12 provides for an employee to be provided with 1
11 hour's worth of compensation at his regular rate of compensation for each day of work that a rest
12 period is not provided.

13 116. Labor Code § 226.7 provides for one hour's compensation for failure to provide a
14 meal or rest period. This is the same remedy as provided for in IWC Wage Order 9, sections 11
15 and 12.

16 117. Plaintiffs seek the compensation owed to them and other similarly situated
17 employees under Labor Code § 226.7 and IWC Wage Order 9, sections 11 and 12.

18 118. Labor Code § 558 provides for a civil penalty when an employer violates § 512.
19 The initial violation is \$50 for each underpaid employee for each pay period for which the
20 employee was underpaid in addition to an amount sufficient to recover underpaid wages.
21 Subsequent violations are \$100 per underpaid employee per pay period.

22 119. IWC Wage Order 9-2001 section 20(A) provides for civil penalties for violations of
23 the Wage Order which result in underpayment of wages to employees. The penalty amounts to
24 \$50 per employee for the first violation and \$100 per employee for each subsequent pay period in
25 which the employee is underpaid.

26 120. Plaintiffs seek the penalties available under Labor Code § 558 and IWC Wage
27 Order 9-2001 section 20(A) on behalf of themselves and those similarly situated.

28 121. Labor Code § 218 provides wage claimants with a private right of action to recover
wages under the Labor Code. The payments owed to employees for meal and rest periods not

1 provided are wages under Labor Code § 226.7.

2 122. Labor Code § 218.6 provides for an award of interest on all due and unpaid wages.
3 Plaintiffs seek to recover interest on all wages due under the Section on behalf of themselves and
4 others similarly situated.

5 123. Plaintiffs seek to recover all wages due and applicable penalties on behalf of
6 themselves and others similarly situated.

7 Wherefore, Plaintiffs pray for judgment as set forth herein below.

8 **XI. FIFTH CAUSE OF ACTION (FAILURE TO PAY WAGES OWED AT DISCHARGE**
9 **OR QUITTING**
10 **LABOR CODE §§ 201, 202, 203)**

11 124. Plaintiffs reallege and incorporate paragraphs 1 through 123, inclusive, as though
12 fully set forth within.

13 125. Labor Code § 201 provides:

14 If an employer discharges an employee, the wages earned and unpaid at the
15 time of discharge are due and payable immediately...

16 126. Labor Code § 202 provides:

17 If an employee not having a written contract for a definite period quits his or
18 her employment, his or her wages shall become due and payable not later
19 than 72 hours thereafter, unless the employee has given 72 hours previous
20 notice of his or her intention to quit, in which case the employee is entitle to
21 his or her wages at the time of quitting...

22 127. Defendant has failed to pay employees discharged from their employment all wages
23 owed immediately as provided for under § 201 of the Labor Code. Defendant's failure to pay
24 includes, but is not limited to, failing to pay wages for each hour worked, wages at the living wage
25 rate and compensation for missed meal and rest periods.

26 128. Defendant has failed to pay employees who have quit their employment with
27 Defendant all wages owed immediately as provided for under § 202 of the Labor Code.
28 Defendant's failure to pay includes, but is not limited to, failing to pay wages for each hour
worked, wages at the living wage rate and compensation for missed meal and rest periods.

129. Labor Code § 203 provides for civil penalties in the amount of one days wages for
each day of violation of §§ 201 and 202 for up to 30 days. Plaintiffs seek penalties on behalf of

1 themselves and all class members who have quit or have been discharged and have failed to
2 receive the proper payment of wages dues.

3 130. Labor Code § 218 provides for a private right of action to recover wages and
4 penalties under the Labor Code. Plaintiffs seek to recover penalties directly under § 218.

5 131. Plaintiffs seek to recover all wages due and applicable penalties on behalf of
6 themselves and others similarly situated.

7 Wherefore, Plaintiffs pray judgment as set forth herein below.

8 **XII. SIXTH CAUSE OF ACTION (INACCURATE WAGE STATEMENTS**
9 **CALIFORNIA LABOR CODE § 226)**

10 132. Plaintiffs reallege and incorporate all the allegations in paragraphs 1 through 131,
11 inclusively, as though fully set forth herein.

12 133. Labor Code § 226(a) provides:

13 Each employer shall, semimonthly or at the time of each payment of wages,
14 furnish each of his or her employees, either as a detachable part of the check,
15 draft, or voucher paying the employee's wages, or separately when wages
16 are paid by personal check or cash, an accurate itemized wage statement in
17 writing showing (1) gross wages earned, (2) total hours worked by the
18 employee, (3) the number of piece-rate units earned and any applicable piece
19 rate if the employee is paid on a piece-rate basis, (4) all deductions, provided
20 that all deductions made on written orders of the employee may be
21 aggregated and shown as one item, (5) net wages earned, (6) the inclusive
22 dates of the period for which the employee is paid, (7) the name of the
23 employee and his or her social security number, (8) the name and address of
24 the legal entity that is the employer, and (9) all applicable hourly rates in
25 effect during the pay period and the corresponding number of hours worked
26 at each hourly rate by the employee.

21 134. As a direct and proximate result of Defendant's failure to pay Plaintiffs and other
22 employees the wages mandated by law, none of the statements provided by Defendant to Plaintiffs
23 and other employees have accurately reflected the total number of hours worked or the correct
24 wage rate for each hour worked and they have been denied the protections afforded to them under
25 the law.

26 135. As a direct and proximate result of Defendant's automatic deduction of 1 hour of
27 work for a meal period regardless of whether the meal period was taken, the total number of hours
28 worked, as reported on the wage statements, is and has been incorrect.

1 136. Labor Code § 226(e) provides for recovery of all actual damages or fifty dollars for
2 the initial pay period in which a violation occurs and one hundred dollars per employee for each
3 violation in a subsequent pay period, up to an aggregate of \$4000.

4 137. Labor Code § 226.3 provides civil penalties for violations of § 226 in the amount of
5 \$250 per initial violation and \$1000 per employee for each subsequent violation.

6 138. Plaintiffs seek to recover that civil penalty for the Treasury of the State as provided
7 for in Labor Code § 266.3. Plaintiffs seek to recover these penalties on behalf of themselves and
8 others similarly situated.

9 139. Plaintiffs also seek injunctive relief and to recover attorneys fees and costs under
10 Labor Code § 226(g).

11 140. Plaintiffs seek to recover all wages due and applicable penalties on behalf of
12 themselves and others similarly situated.

13 Wherefore, Plaintiffs pray judgment as set forth herein below.

14 **XIII. PRAYER FOR RELIEF**

15 Plaintiffs pray judgment as follows:

16 1. For preliminary, permanent and mandatory injunctive relief prohibiting the
17 Defendants, its officers, agents, and all those acting in concert with them, from committing in the
18 future those violations of law herein alleged;

19 2. For an order determining this matter to be a class action;

20 3. For an order imposing all statutory and/or civil penalties provided by law;

21 4. For an award of damages;

22 5. For an award of restitution according to proof, under the Labor Code and under
23 Business & Professions Code § 17203;

24 6. For an equitable accounting to identify, locate, and restore to all current and former
25 employees the wages they are due;

26 7. For penalties under Labor Code §§ 203, 558, 226.3, and IWC Wage Order 9-2001;

27 8. For costs of suit incurred herein;

28 9. For an award of reasonable attorneys' fees as provided by Labor Code §§ 226(g)

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and 1194, Oakland City Charter § 728, Code of Civil Procedure § 1021.5, and otherwise; and

For such other and further relief as this Court deems just and proper.

Dated: August ____, 2010

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

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

118212/585826

Exhibit 3

Exhibit 3

***** TRANSMISSION REPORT *****

SID : WEINBERG, ET AL

Number L1 : 5103371023
Number L2 :

Date : 09-16-10 09:41

Date/Time	9-16 9:41
Dialled number	19254655169
Subscriber	+19254655169
Durat.	0' 45"
Mode	NORMAL
Pages	2
On	Line 1
Status	Correct

WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501-1691

Voice: 510.337.1001
Fax: 510.337.1023

DATE: Thursday, September 16, 2010

Confidentiality:

FROM: Lisl R. Duncan

PLEASE DELIVER AS SOON AS POSSIBLE TO:

RECIPIENT:	FAX #	PHONE #
Jay Ian Aboudi The Law Office of Jay Ian Aboudi	(925) 465-5169	(925) 465-5155

Total number of pages including this page: 2.
If you do not receive all the pages, please call and ask for the mailroom.

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

Please review the correspondence attached.

PLEASE NOTE: The information contained in this facsimile message is privileged and confidential, and is intended only for the use of the individual named above and others who have been specifically authorized to receive it. If you have received this communication in error, or if any problems occur with transmission, please notify us immediately by telephone. Thank you.

WEINBERG, ROGER & ROSENFELD

A Professional Corporation

1001 Marina Village Parkway, Suite 200

Alameda, CA 94501-1091

Voice: 510.337.1001

Fax: 510.337.1023

DATE: Thursday, September 16, 2010

Confirmation: jk

FROM: Lisl R. Duncan

PLEASE DELIVER AS SOON AS POSSIBLE TO:

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STEWART WEINBERG
DAVID A. ROSENFELD
WILLIAM A. SORDEL
VINCENT A. HARRINGTON, JR.
W. DANIEL BOONE
BLYTHE MICKELSON
BARRY E. HINKLE
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SANDRA RAE BENSON
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CAREN P. SENCER

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LISL R. DUNCAN
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JACOB J. WHITE
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LESLIE V. FREEMAN
EZEKIEL D. CORDER
YURI Y. GOTTESMAN

PATRICIA M. GATES, Of Counsel
ROBERTA D. PERKINS, Of Counsel
RICHARD T. DRURY, Of Counsel
NANA FENDEL, Of Counsel

• Also admitted in Arizona
** Admitted in Hawaii
*** Also admitted in Nevada
**** Also admitted in Illinois
***** Also admitted in Missouri
***** Also admitted in New York

September 16, 2010

VIA FACSIMILE

Jay Ian Aboudi
The Law Office of Jay Ian Aboudi
1855 Olympic Blvd., Ste. 210
Walnut Creek, CA 94596

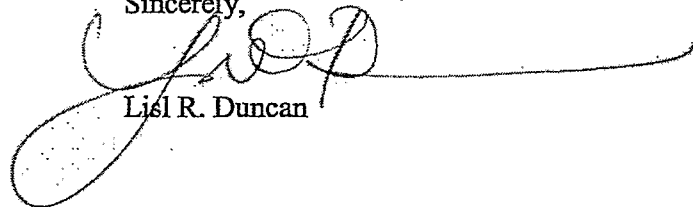
Re: Lavon Godfrey, et al. v. Oakland Port Services Corporation d/b/a AB Trucking
Alameda County Superior Court, Case No. RG 08-379099

Dear Mr. Aboudi:

Pursuant to CRC Rule 3.1203, we are informing you that on September 17, 2010 at 10:00 a.m., we will appear *ex parte* before Judge Freedman in Department 20 to request an order shortening time on Plaintiffs' motion for leave to file a second amended complaint. We are seeking the order pursuant to the Court's direction at our last hearing in this matter. A courtesy copy of our moving papers will follow shortly via email and PDF today.

Please contact me via facsimile, e-mail, or phone to let me know if you will oppose this Application. My fax number is (510) 337-1023, my e-mail address is lduncan@unioncounsel.net and my telephone number is (510) 337-1001.

Sincerely,



Lisl R. Duncan

LRD/jk
opeiu 3 afl-cio(1)
118212/589271

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:

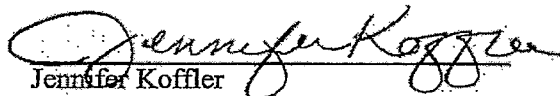
DECLARATION OF LISL R. DUNCAN IN SUPPORT OF PLAINTIFFS' EX PARTE APPLICATION FOR AN ORDER SHORTENING TIME

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