



*Handwritten initials*

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 8  
 9 Attorney for Defendant  
 10 OAKLAND PORT SERVICES CORP. d/b/a  
 11 AB TRUCKING, a California Corporation,

**FILED**  
ALAMEDA COUNTY

OCT 19 2012

CLERK OF THE SUPERIOR COURT  
By *[Signature]*

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

11 LAVON GODFREY and GARY GILBERT,  
 12 on behalf of themselves and all other similarly  
 13 situated,  
 14  
 15 vs.  
 16 OAKLAND PORT SERVICES CORP. d/b/a  
 17 AB TRUCKING, and DOES 1-20  
 18  
 19  
 20 Defendant.

) Case No.: RG 08-379099  
 )  
 ) **DEFENDANT'S OPPOSITION TO EX**  
 ) **PARTE APPLICATION FOR WRIT OF**  
 ) **ATTACHMENT ORDER; CCP §§ 483.010**  
 ) **and 484.040**  
 )  
 ) Action Filed: March 28, 2008  
 ) Hearing Date: October 19, 2012  
 ) Dept.: 20  
 ) Time: 9:45 a.m.  
 ) Trial Date: February 14, 2012  
 ) Before Honorable Judge Robert B. Freedman

21 **I. Introduction**

22 Pursuant to California Code of Civil Procedure Section 634, Defendant OAKLAND  
 23 PORT SERVICES CORP. d/b/a AB TRUCKING, a California Corporation, (collectively  
 24 hereinafter referred to as "AB Trucking" or "Defendant") respectfully opposes Plaintiffs Ex  
 25 Parte Application for Writ of Attachment Order.

1 Plaintiffs have failed to provide submit evidence that they have an order or judgment that  
2 is fixed or readily ascertainable. Plaintiffs have failed to establish that they have provided proper  
3 notice of hearing and that exigent circumstances exist to permit the Court to ignore California  
4 Code of Civil Procedure section 484.040. Defendant respectfully request that the Ex Parte  
5 Application for Writ of Attachment Order be denied.

6 **II. Argument**

7 **A. Claim For Damages Not Fixed or Readily Ascertainable.**

8 The Court conducted a 10 day bench trial between February 14, 2012 and March 12,  
9 2012, which included several rulings on motions that substantially reduced the number of claims.  
10 On October 2, 2012, the Court issued its Notice of Intended Decision (“NOID”) and the  
11 following import events have occurred:

- 12 • On October 11, 2012, Defendant filed a written Request for Statement of  
13 Decision.
- 14 • On October 19, 2012, Defendant filed an objection to Plaintiffs Proposed  
15 Judgment After Trial in the amount of \$1,376,160.99 pursuant to Cal. Rules of  
16 Court, Rule 3.1590(j).
- 17 • The matter is currently scheduled for further compliance hearing on November  
18 9, 2012.

19 Pursuant to California Code of Civil Procedure section 483.010 no Writ of Attachment  
20 can be issued if the damages are not fixed or readily ascertainable. Section 483.010 provides:

21  
22 “483.010. (a) Except as otherwise provided by statute, an attachment  
23 may be issued only in an action on a claim or claims for money, each  
24 of which is based upon a contract, express or implied, where the  
25 total amount of the claim or claims is a fixed or readily  
ascertainable amount not less than five hundred dollars (\$500)  
exclusive of costs, interest, and attorney's fees.”

1 At the present time, the Court must at a minimum issue a Statement of Decision and potentially  
2 schedule a hearing to determine whether any attorneys fees claimed in this case are "reasonable."

3 Based on the foregoing, Plaintiffs Application for Writ of Attachment violates Section 483.010.

4 **B. Plaintiffs Failed To Provide Proper Notice of Hearing.**

5 California Code of Civil Procedure section 484.040 provides in relevant part:

6 "No order or writ shall be issued under this article except  
7 after a hearing. At the times prescribed by subdivision (b) of  
8 Section 1005" (i.e., 16 court days notice.)

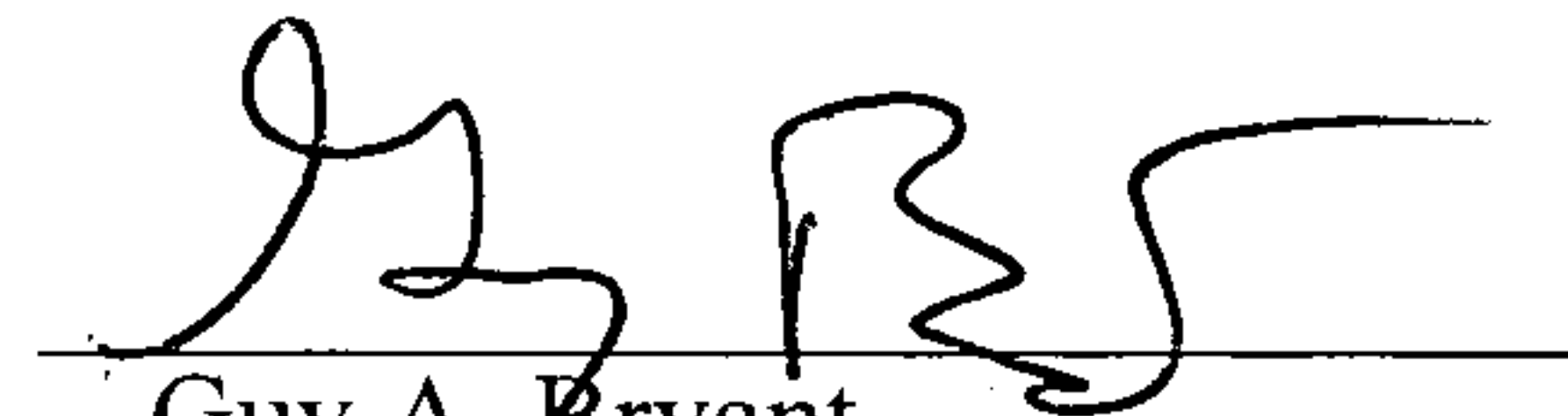
9 In the instant case, Plaintiffs Counsel arguably did not provide 24 hours notice of the  
10 pending Ex Parte Application. Plaintiffs Counsel has presented no credible evidence for the  
11 Court to establish exigent circumstances that would require the Court to issue a Writ of  
12 Attachment Order in violation of Section 484.040. Given that the matter is currently scheduled  
13 for a November 9, 2012 compliance hearing, the issuance of a Writ of Attachment Order today is  
14 unreasonable.

15 **III. Conclusion**

16 Based on the foregoing, Defendant respectfully requests that the Court deny Plaintiffs  
17 Application for a Writ of Attachment Order.

18 Dated this 19th day of October, 2012.

19  
20 Respectfully Submitted,

21 

22 Guy A. Bryant  
23 Bryant & Brown  
24 Attorney for Defendant  
25

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
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17 Defendant. )  
18 )  
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) Case No.: RG 08-379099

) **PROOF OF SERVICE**

) Action Filed: March 28, 2008

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

) Before Honorable Judge Robert B. Freedman

) Hearing Date: October 19, 2012

21  
22 **PROOF OF SERVICE**

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

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



1 **DEFENDANT'S OPPOSITION TO EX PARTE APPLICATION FOR WRIT OF**  
2 **ATTACHMENT ORDER; CCP §§ 483.010 and 484.040. DECLARATION OF GUY A.**  
3 **BRYANT IN SUPPORT OF DEFENDANT'S OPPOSITION TO EX PARTE**  
4 **APPLICATION FOR WRIT OF ATTACHMENT ORDER**

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

7 **SEE MAILING LIST INCLUDED HEREIN**

8

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

13

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

16

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

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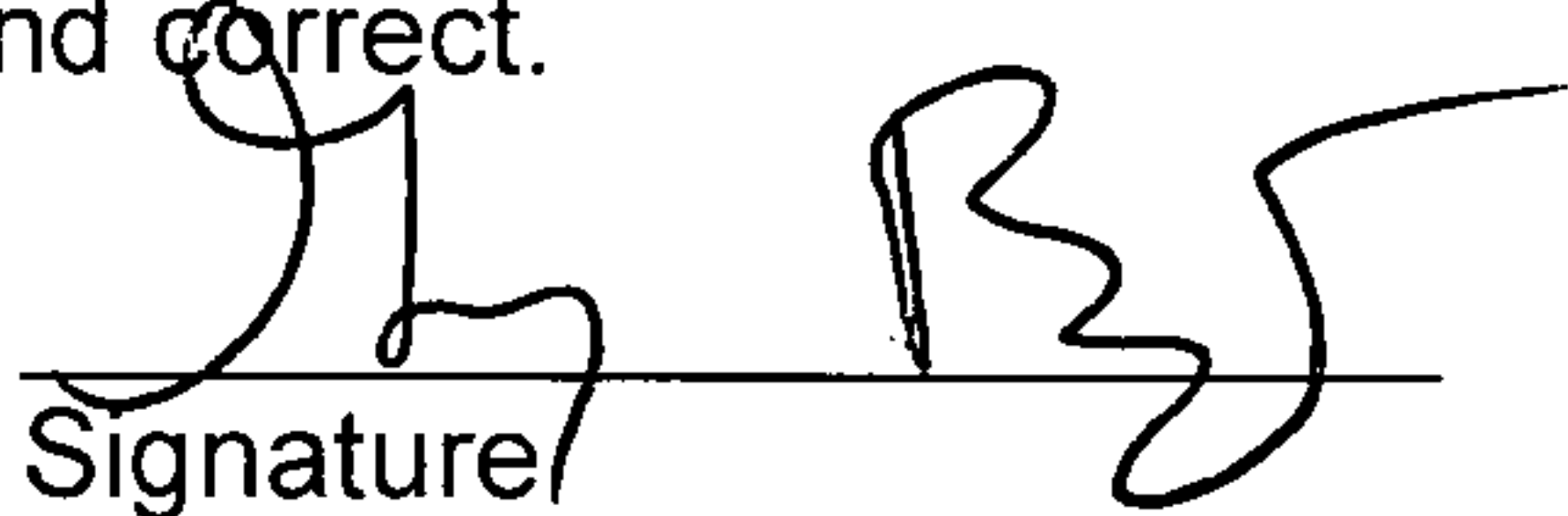
21 (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand  
22 to the offices of the addressee.

23

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

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

GUY A. BRYANT

  
Signature

1  
2 **SERVICE LIST**  
3

4  
5 **VIA PERSONAL ON ALL PARTIES LISTED HEREIN:**

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

7 David A. Rosenfeld

Lisl R. Duncan

8 Weinberg, Roger & Rosenfeld

A Professional Corporation

9 1001 Marina Village Parkway, Suite 200

Alameda, California 94501-1091  
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