

RCD
Complex
D-26



1 JAY IAN ABOUDI (SBN: 251984)
2 THE LAW OFFICE OF JAY IAN ABOUDI
3 1855 Olympic Blvd., Ste. 210
4 Walnut Creek, CA 94596
5 Telephone: (925) 465-5155
6 Facsimile: (925) 465-5169

FILED
ALAMEDA COUNTY

OCT 14 2011

5 Attorney for Defendant
6 OAKLAND PORT SERVICES CORPORATION
7 d/b/a AB TRUCKING (erroneously sued as AB
8 TRUCKING, INC.)

CLERK OF THE SUPERIOR COURT
By Christina Alia Deputy

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

10 LAVON GODFREY and GARY GILBERT, on
11 behalf of themselves and all others similarly
12 situated,

CASE NO. RG 08-379099

12 Plaintiffs,

**DEFENDANT OAKLAND PORT
SERVICES CORPORATION'S
SEPARATE STATEMENT OF
UNDISPUTED MATERIAL FACTS IN
OPPOSITION TO PLAINTIFFS'
MOTION FOR SUMMARY
ADJUDICATION**

13 v.

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

Date: October 28, 2011
Time: 2:00 p.m.
Place: Department 20
Judge: Hon. Robert Freedman
Action Filed: March 28, 2008
Trial Date: November 29, 2011
Reservation No.: R-1204995

16 Defendants.

19 **I. FACTS AGAINST ALL CAUSES OF ACTION**

Moving Parties' Purported Undisputed Material Facts and Alleged Supporting Evidence	Opposing Party's Response and Evidence
1. The class period or relevant period is March 28, 2004 through March 15, 2011, spanning from four years prior to the filing of the Complaint until the date of the mailing of the Class Notice. (Alameda Superior Court, Dept. 20, Docket No. 12794709 – Order granting class certification on December 3, 2010.)	1. Undisputed.

1 2 3 4 5 6 7	2. During the relevant period, employee drivers worked shifts for Defendant AB Trucking ("AB") regularly. (Deposition of William Aboudi ("W. Aboudi Depo.") at 47:19-48:10, 49:15-21 and Exhs. 2, 3; Sencer Decl. ¶ 3 and Exh. B.)	2. Disputed. AB hired employee drivers. However, when work volume was high, AB also obtained the services of independent contractors. Drivers generally but not always worked eight-hour shifts. Occasionally, depending on work volume, drivers' shifts were either shorter or longer than eight hours. (Declaration of William Aboudi ¶ 2; Deposition of David Blyth at 14:3-17, 15:15-25, 63:14-23; Deposition of Jose Luis Navarro at 13:19-25.)
8 9 10 11 12 13 14 15 16	3. During the relevant period, employee drivers for AB reported to the same small group of supervisors. (W. Aboudi Depo. at 14:14-15:17, 16:14-17:16.)	3. Disputed. Employee drivers for AB did not always report to the same small group of supervisors. Depending on work load, drivers were contracted to other companies or to customers directly for special projects. Until 2007, Oakland Port Services had two dispatchers, one in Vallejo and one in Oakland. The Vallejo dispatcher, Bill Snyder, supervised 2 dedicated Baymodal drivers. On occasion, Bill Snyder supervised up to 4 employee drivers (2 Baymodal employee drivers plus 2 AB Trucking employee drivers). When Bill Snyder resigned, Oakland Port Services reverted to having one dispatcher, located in Oakland. (Declaration of William Aboudi ¶ 3.)
17 18 19 20 21	4. During the relevant period, employee drivers were under the control and direction of AB President, William Aboudi. (W. Aboudi Depo. at 14:14-15:17, 16:14-17:16.)	4. Disputed. William Aboudi made all hiring and firing decisions. Dispatchers were authorized to fire drivers who came to work obviously intoxicated. Control and direction was delegated to the dispatchers in the sense that the dispatchers were required to know when a driver was taking breaks and would dispatch drivers accordingly. (Declaration of William Aboudi ¶ 4.)
22 23 24 25 26 27 28	5. During the relevant period, employee drivers used the same timecard system. (W. Aboudi Depo. at 91:7-20, and Exh. 2; Declaration of Lavon Godfrey ("Godfrey Decl.") at ¶11; Declaration of Gary Gilbert ("Gilbert Decl.") at ¶16.)	5. Disputed. Employee drivers used time sheets that changed in format over time. AB started keeping track of unpaid trainees' time on time sheets both in order to satisfy DOT regulations and to satisfy specific requests from parole and probation officers regarding certain individuals. The time sheets were used for no other purpose with respect to unpaid trainees. The time sheets also were adapted to other operational needs as the needs arose; for example: (1) a space for the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	truck number was added; (2) office staff and drivers were separated from one another on the sheets; (3) a space to tally hours worked was added; and (4) "employee drivers and paid hired trainees" were distinguished from "unpaid trainees." (Declaration of William Aboudi ¶ 5.)
6. During the relevant period, AB used the same payroll processing system for all employee drivers. (Deposition of Jovi Aboudi ("J. Aboudi Depo.") at 7:10-14; 8:12-9:4; 9:16-10:3, 10:22-11:9, 12:6-12; W. Aboudi Depo. at Exhs. 2, 3; Sencer Decl. ¶ 3 and Exh. B.)	6. Disputed. The payroll processing system changed approximately four times between 2004 and 2011. Early on the payroll was called in or faxed to the payroll company. After that, it was done online through a web interface. Each payroll service provider used varying web interface systems over the time. (Declaration of William Aboudi ¶ 6.)
7. During the relevant period, it could take as many as 8 hours to get through the terminal at the Port of Oakland. (W. Aboudi Depo. at 76:16-77:5.)	7. Disputed. Although it is true it <i>could</i> take as many as 8 hours to get through the terminal at the Port of Oakland, this is in fact an extremely rare occurrence. William Aboudi has witnessed it only during the 2002 lockout of the longshoremen. (Declaration of William Aboudi ¶ 7; Deposition of David Blyth at 16:4-20.)
8. During the relevant period, employee drivers who left their place in the queue while in line at the Port of Oakland would lose their place in the line. (W. Aboudi Depo. 101:10-14.)	8. Disputed. The phrase "the <i>queue</i> while in <i>line</i> " is vague, seemingly redundant, and thus unintelligible. A queue is a line; a queue while in line is confused. No one gate per se provides access to the Port of Oakland. The Port is accessed via a number of public streets from which numerous entrances to the port's many terminals are provided and lines of varying lengths exists at these entrances to the different terminals. Some such lines are long, some such lines are short. The length of a wait depends on whether the terminal has a long or a short line. Any drivers who work for AB Trucking who leave the line and thus lose their place in the line are situated similarly to those of all other companies whose drivers leave the line and thus lose their place in the line. (Declaration of William Aboudi ¶ 8.)
9. During the relevant period, there was no area for an employee driver to legally and safely pull the truck over while waiting to enter the Port of Oakland. (W. Aboudi Depo. at 103:21-104:10.)	9. Disputed. "The Port of Oakland" covers miles of space from the Bay Bridge to the San Leandro border, the Maritime Facilities cover 1,210 acres of Marine Terminals, Intermodal Rail Facility and Maritime

	Support Area, all designed to make sure trucks exit the freeway system onto streets serving the Port. (Declaration of William Aboudi ¶ 9; Deposition of Jose Luis Navarro at 27:19-25 – 28:1-8.)
--	--

II. FACTS AGAINST THE SIXTH CAUSE OF ACTION—ALLEGED FAILURE TO PROVIDE MEAL AND REST PERIODS

Moving Parties' Purported Undisputed Material Facts and Alleged Supporting Evidence	Opposing Party's Response and Evidence
10. During the relevant period, AB failed to inform employee drivers that they are entitled and required to take a 30-minute off-duty meal break no later than five hours after beginning their shifts. (W. Aboudi Depo. at 58:16-59:14, 116:13-118:8, 99:14-100:6; Godfrey Decl. at ¶¶13-16; Gilbert Decl. at ¶¶14, 15; Sencer Decl. at ¶ 7 and Exhs. F, G, H and I.)	10. Disputed. Employee drivers were verbally informed about meal breaks, and depending on the driver's dispatch and type of load, drivers were instructed to stop every two hours to check on the load and take a break. (Declaration of William Aboudi ¶ 10.)
11. During the relevant period, no written policy on meal periods existed at AB and no written policy on meal periods was provided to employee drivers. (W. Aboudi Depo. at 116:13-15; 99:14-100:13; Godfrey Decl. at ¶16; Gilbert Decl. at ¶¶14, 15; Sencer Decl. at ¶ 7 and Exhs. F, G, H and I.)	11. Disputed. Meal period policy was given to the employee drivers verbally at the time of hire and on an ongoing basis thereafter, based on the driver's work experience. A Department of Transportation book was issued to each employee driver and that book defines the meal break. (Declaration of William Aboudi ¶ 11.)
12. During the relevant period, employee drivers were not provided 30-minute, off-duty meal periods within every five hours worked. (J. Aboudi Depo. at 35:10-36:17, 60:8-61:6 ; W. Aboudi Depo. at Exhs. 2 and 16; Godfrey Decl. at ¶¶13-17; Deposition of Lavon Godfrey ("Godfrey Depo.") at 157:7-158:11; Gilbert Decl. at ¶¶14, 15.)	12. Disputed. Employee drivers were provided with one hour lunch breaks. (Declaration of William Aboudi ¶ 12.)
13. During the relevant period, AB's time keeping system did not provide a place for employee drivers to record their meal periods each shift. (W. Aboudi Depo. at 118:12-13, and Exhs. 2, 3, and 16; Godfrey Decl. at ¶16; J. Aboudi Depo. at 35:10-36:17, 60:8-61:6; Sencer Decl. ¶ 3 and Exh. B.)	13. Disputed. Beginning on April 21, 2009, AB started providing a place for employee drivers to record their meal periods each shift. (Declaration of William Aboudi ¶ 13.)
14. AB has no record of meal periods taken by employee drivers during the period of March 28, 2004 through March 15, 2011.	14. Disputed. AB does have a record of meal periods taken by employee drivers beginning on April 21, 2009. (Declaration of William

1 2 3	(W. Aboudi Depo. at 118:12-13, 177:17-23 and Exhs. 2, 3, and 16; Godfrey Decl. at ¶16; J. Aboudi Depo. at 35:10-36:17, 60:8-61:6; Sencer Decl. ¶ 3 and Exh. B.)	Aboudi ¶ 14.)
4 5 6 7 8 9 10	15. During the relevant period, AB followed a payroll policy applicable to all employee drivers of automatically deducting one hour from each employee driver's shift reported-time for a meal period. (W. Aboudi Depo. at Exhs. 2, 3, and 16; J. Aboudi Depo. at 35:10-36:17, 60:8-61:6; Godfrey Depo. at 176:6-177:11; Godfrey Decl. at ¶17; Sencer Decl. ¶ 3 and Exh. B.)	15. Disputed. Employees who did not report they had not taken a lunch break were presumed to have taken their lunch break. No deduction was made for any shift shorter than 5 hours. A deduction simply means that a lunch was taken. AB had a policy regarding how to treat lunch breaks, whether reported or not reported, and that was to always take lunch breaks when possible. AB treated all employee drivers in the same manner under that policy. (Declaration of William Aboudi ¶ 15.)
11 12 13 14 15 16	16. During the relevant period, employee drivers did not receive a 10-minute, off-duty paid rest period for every four hours worked. (W. Aboudi Depo. at 95:16-96:12, 97:24-99:16, 102:5-103:1; Godfrey Decl. at ¶13-15, 16; Gilbert Decl. at ¶¶14, 15; Sencer Decl. at ¶ 7 and Exhs. F, G, H and I.)	16. Disputed. Lavon Godfrey is the only person who has said that she did not receive a 10-minute, off-duty paid rest period for every four hours worked, but she said that at the same time she also claimed she never took more than a one-minute bathroom break, if any. (Declaration of William Aboudi ¶ 16; Deposition of David Blythe at 27:1-16, 28:20-24, 29:16-25; Deposition of Jose Luis Navarro at 25:7-15, 26:7-25.)
17 18 19 20	17. During the relevant period, no written policy on rest periods existed at AB and no written policy on rest periods was provided to employee drivers. (W. Aboudi Depo. at 95:16-18; Godfrey Decl. at ¶16; Gilbert Decl. at ¶¶14, 15; Sencer Decl. at ¶ 7 and Exhs. F, G, H and I.)	17. Disputed. Beginning on November 27, 2009 a written policy on rest periods was provided to employee drivers. (Declaration of William Aboudi ¶ 17.)
21 22	18. During the relevant period, AB did not keep any records showing rest periods taken by employee drivers. (W. Aboudi Depo. at 103:2-6.)	18. Disputed. Beginning on April 21, 2009, AB Trucking maintained records showing rest periods taken by employee drivers. (Declaration of William Aboudi ¶ 18.)
23 24 25 26 27 28	19. During the relevant period, employee drivers did not receive compensation of an additional hour of pay for a missed meal or rest period. (J. Aboudi Depo. at 13:17-14:9.)	19. Disputed. Employee drivers did receive compensation of an additional hour of pay for a missed meal or rest period. (Declaration of William Aboudi ¶ 19.)

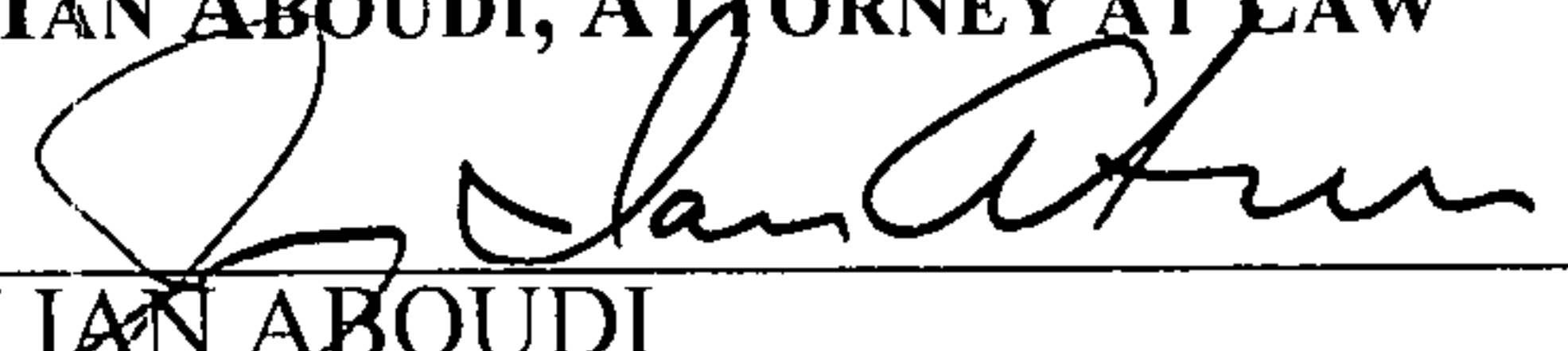
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

--	--

III. FACTS AGAINST THE SECOND CAUSE OF ACTION—ALLEGED FAILURE TO PAY FOR ALL HOURS WORKED

Moving Parties' Purported Undisputed Material Facts and Alleged Supporting Evidence	Opposing Party's Response and Evidence
<p>20. During the relevant period, all employee drivers suffered an hour deduction from hours worked each day based on AB's assumption that a 1 hour meal period was taken. Employee drivers actually worked the hour and, as a result, they have not been compensated for 1 hour worked per day. (W. Aboudi Depo. at Exhs. 2, 3, and 16; J. Aboudi Depo. at 35:10-36:17, 60:8-61:6; Godfrey Depo. at 176:6-177:11; Sencer Decl. ¶ 3 and Exh. B.)</p>	<p>20. Disputed. Employee drivers took their one-hour meal period unless they notified AB Trucking otherwise. (Deposition of David Blythe at 25:1-24, 64:14-20, 78:20-25; Deposition of Jose Luis Navarro at 20:24-25, 21:2 – 25:15, 31:11-25.)</p>

Dated: October 14, 2011

JAY IAN ABOUDI, ATTORNEY AT LAW

 JAY IAN ABOUDI
 Attorney for Defendant OAKLAND PORT SERVICES CORPORATION d/b/a AB TRUCKING