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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 Alice  
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,

**DECLARATION OF JAY IAN ABOUDI  
IN SUPPORT OF DEFENDANT  
OAKLAND PORT SERVICES  
CORPORATION'S 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, JAY IAN ABOUDI, declare:

20 1. I am an attorney at law, licensed by the State of California to practice law and an active  
21 member in good standing of the State Bar of California. I have personal knowledge of the fact set  
22 forth in this declaration and am competent to testify, and if called as a witness I could and would  
23 testify was set forth herein. I am counsel of record for defendant OAKLAND PORT SERVICES  
24 CORPORATION d/b/a AB TRUCKING and I submit this declaration in support of my client's  
25 opposition to plaintiffs' motion for summary adjudication.


26 2. In the above-captioned action on June 10, 2011 there was taken the deposition of  
27 David Blyth. Attached hereto as **Exhibit "A"** is a true and correct copy of the title page and  
28 selected excerpt pages, highlighted, of the transcript of the deposition of David Blyth.

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3. In the above-captioned action on June 13, 2011 there was taken the deposition of Jose Luis Navarro. Attached hereto as **Exhibit "B"** is a true and correct copy of the title page and selected excerpt pages, highlighted, of the transcript of the deposition of Jose Luis Navarro.

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

Dated: October 14, 2011

  
JAY IAN ABOUDI

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

- - -

LAVON GODFREY AND GARY GILBERT, ON )  
BEHALF OF THEMSELVES AND ALL OTHERS )  
SIMILARLY SITUATED, )  
PLAINTIFFS, )  
VS. ) CASE NO.:  
OAKLAND PORT SERVICES CORP., DBA ) RG08379099  
AB TRUCKING, AND DOES 1 THROUGH 20, )  
INCLUSIVE, )  
DEFENDANTS. )

DEPOSITION OF DAVID BLYTH  
SACRAMENTO, CALIFORNIA  
FRIDAY, JUNE 10, 2011

ATKINSON-BAKER, INC.  
COURT REPORTERS  
(800) 288-3376  
www.depo.com  
REPORTED BY: PATRICIA GRAY-CONRAD, CSR No. 12633  
FILE NO.: A505254

1 APPEARANCES:

2

3 For the Plaintiffs:

4 WEINBERG, ROGER & ROSENFELD  
5 BY: LISL R. DUNCAN, ESQ.  
6 1001 Marina Village Parkway  
7 Suite 200  
8 Alameda, California 94501  
9 510.337.1001  
10 510.337.1023 FAX

11 For the Defendants:

12 LAW OFFICES OF JAY IAN ABOUDI  
13 BY: JAY IAN ABOUDI, ESQ.  
14 1855 Olympic Boulevard  
15 Suite 210  
16 Walnut Creek, California 94596  
17 925.465.5155  
18 925.465.5169 FAX

19 Also Present:

20 William Aboudi

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I N D E X

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E X H I B I T S

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1 hour?

2 A Yeah. I got my license here. It was  
3 approximately a year after I started my employment. On  
4 this particular license, it says 7-15-08. So it was  
5 probably right around that time in '09. I'm not sure.

6 Q So you believe in approximately July of 2009?

7 A Yes.

8 Q Your wage rate became \$13?

9 A Yes.

10 MS. DUNCAN: And let the record reflect that the  
11 witness is using his driver's license to refresh his  
12 recollection.

13 THE WITNESS: Yes.

14 BY MS. DUNCAN:

15 Q I'm going to ask you some questions about your  
16 employment at AB Trucking. For all of the questions I  
17 ask, I'm referring to the time period of 2004 through  
18 the present.

19 However, you were not employed at AB Trucking  
20 as far as back as 2004, so all of the questions I'm  
21 asking are pertaining to the time period that you were  
22 employed by AB Trucking.

23 If you have something that comes up that's  
24 responsive to one of my questions that's outside of the  
25 time period that you were worked for AB Trucking for

1 some reason, then let me know it's outside the time  
2 period.

3 A Okay.

4 Q When you worked at AB Trucking, did you have a  
5 set start time?

6 A Yes, I did.

7 Q What time was it?

8 A 7:00 a.m.

9 Q And who gave you the start time?

10 A Trina.

11 Q Do you know Trina's position?

12 A Dispatcher.

13 Q Did you have a set stop time?

14 A No.

15 Q Was there a time that you typically stopped  
16 work?

17 A 4:00 p.m.

18 Q When you worked for AB Trucking, was there  
19 more than one dispatcher?

20 A Yes.

21 Q Who were they?

22 A That would be Trina and Juan.

23 Q Did Trina -- was Trina the dispatcher when you  
24 started the job?

25 A Yes.

1 Q And did Juan take over for her?

2 A Yes.

3 Q Do you know approximately when Juan took over?

4 A No, I couldn't tell you. I know she was

5 injured and he took her place.

6 Q When you worked for AB Trucking, who were your

7 managers or who was your manager?

8 A My manager?

9 Q If you had one.

10 A No. It was the dispatcher.

11 Q Okay. Do you know who supervised, if anyone,

12 the dispatcher?

13 A The owner.

14 Q And the owner is Bill Aboudi?

15 A Yes.

16 Q Did the dispatcher give you your schedule each

17 day?

18 A No. No. It was a set start time and from

19 day-to-day, we did as needed.

20 Q And who would give you your route or your jobs

21 for the day?

22 A The dispatchers.

23 Q Did you drive to cities throughout California

24 as a driver for AB Trucking?

25 A Yes.



1 Q Did you drive into the Port of Oakland as a  
2 truck driver for AB Trucking?

3 A Yes.

4 Q Could you give us an estimate of the amount of  
5 time you spent as a driver physically inside the Port of  
6 Oakland?

7 A That's funny. No. Really, from day-to-day,  
8 sometimes there's a four-mile line just to get to the  
9 gate and you could spend all day doing one load.  
10 Sometimes you could pull right in and you'd be out in  
11 ten minutes. It was just from day-to-day.

12 Q And in response to my question, you laughed.  
13 Could you explain to us what was amusing?

14 A I'm still doing it. And from day-to-day,  
15 there's absolutely no way of telling. It seems like I  
16 spent my life in the Port though.

17 Q So is it fair to say that you spent a --

18 A A great amount of time in the Port, yes.

19 Q So you spent a great amount of time in the  
20 Port while you were a truck driver for AB Trucking?

21 A Oh, yeah.

22 Q As a truck driver when you started, were you a  
23 trainee?

24 A Yes.

25 Q How long were you a trainee for?

1 Q How would you, if you would, take lunch when  
2 you were a trainee?

3 A When you could.

4 Q Could you describe what mean by, "when you  
5 could"?

6 A Well the Port is a funny place. Like I said,  
7 sometimes you could be caught inside the premises for  
8 many hours and sometimes you can get in and out. The  
9 best time to take a lunch break in that situation is  
10 along the road in between the yard and the Port.

11 There's countless -- not countless, but  
12 there's probably ten places where they have hot food  
13 available on the side of the road.

14 Q Is that where -- and along the side of the  
15 road between AB Trucking and the Port, is that where you  
16 would usually take your lunches when you were a trainee?

17 A When I was a trainee, wherever we stopped.

18 Q Did you take lunch as a trainee when the  
19 driver took lunch?

20 A Yes. Actually, as a trainee, I could sit  
21 there and eat all day long.

22 Q Because you were waiting for the driver?

23 A No, because I was sitting in the passenger's  
24 seat.

25 Q When you were a trainee, do you recall if the

1 driver ever ate while the motor was running in the  
2 truck?

3 A He's a truck driver. That's what we do.

4 Q So is that a yes?

5 A I do that, of course, yes.

6 Q When you were a trainee, did anyone at AB  
7 Trucking instruct you to take a meal break?

8 A Sometimes.

9 Q Can you give us an example?

10 A Trina would call me on the radio and tell me  
11 to take a break.

12 Q Did she give you any specific instructions  
13 about how long the break should be?

14 A Usually an hour.

15 Q How often did that happen when you were a  
16 trainee?

17 A I'm not sure. I can't put a number on it.

18 Q Could you give us an estimate if it was less  
19 than 50 percent of the time, more than 50 percent of the  
20 time?

21 A No.

22 Q When you were a driver, did anyone at AB  
23 Trucking inform you about AB Trucking's policy on meal  
24 periods?

25 A No.

1 Q Did you have an understanding of what AB  
2 Trucking's policy was on meal periods?

3 A Yes.

4 Q What was your understanding?

5 A Eat when you can.

6 Q Did anyone from AB Trucking instruct you to  
7 take a meal period when you were a truck driver?

8 A Yeah.

9 Q Who was that?

10 A Trina.

11 Q Did she do that from the very beginning when  
12 you started as a truck driver?

13 A Yeah.

14 Q And what would she say when she would instruct  
15 you to take a break?

16 A She would call me and tell me to take a break.

17 Q Did she ever explain what she meant by a  
18 break?

19 A That's pretty self-explanatory. A break is a  
20 break.

21 Q Did she ever explain how long the break should  
22 be?

23 A Sometimes. Sometimes.

24 Q What would she say?

25 A I can't recall word-for-word, you know. We

1 had times to take a break and we would take a break  
2 and get something to eat.

3 Q Has there ever been a time when you were a  
4 truck driver when you had the truck stopped in order to  
5 take a break or to eat and the dispatcher called you on  
6 radio to ask you to go on another assignment?

7 A Possibly.

8 Q What do you mean by "possibly"?

9 A I think I recall once when my break was cut  
10 short, but that was the only time I can recall.

11 Q Was there ever a time when the owner, Bill  
12 Aboudi, called you while you were on a break or eating?

13 A Never.

14 Q Was there ever a time when anyone else at AB  
15 Trucking called you while you were eating or on a break?

16 A No.

17 Q Did you ever spend longer than ten hours  
18 driving a truck for AB Trucking?

19 A Yesterday. No, that was my truck. No.

20 Q While you were working as a trainee for AB  
21 Trucking, did you take uninterrupted ten-minute breaks  
22 for every four hours when you were working?

23 A I took breaks whenever I felt like it,  
24 seriously. I've been doing this a lot of years.

25 Q I'm just specifically asking about when you

1 were a trainee?

2 A Oh, yeah, I took breaks.

3 Q Were you able to take breaks if the driver was  
4 still driving?

5 A Well, if he took a break. Other than that,  
6 I'm just sitting there. So I was driving, which I did  
7 as a trainee sometimes.

8 Q When did you drive as a trainee?

9 A Well, I got my license and I had to practice a  
10 little bit.

11 Q And did Steve sit in the cab with you while  
12 you were driving?

13 A That's the law.

14 Q So is that a yes?

15 A Yes.

16 Q When you became a driver for AB Trucking, did  
17 you take ten-minute uninterrupted rest breaks every ten  
18 minutes?

19 A Every ten minutes?

20 Q I'm sorry. Every four hours?

21 A I took a lot breaks, yeah. I can really tell  
22 you yes.

23 Q When you say "breaks," are you referring to a  
24 time when the truck is turned off?

25 A Uh-huh.

1 Q In that a yes?

2 A Yes. Sorry.

3 Q Do you know if the truck that you were driving  
4 as a driver for AB Trucking had GPS on it?

5 A Yes, it did.

6 Q Are you aware of whether or not AB Trucking  
7 knew when your truck was stopped?

8 A Sure they did.

9 Q How were you aware of this?

10 A How I was aware of this?

11 Q Yes.

12 A I've been in the office many times. I asked  
13 them to see on the computer how it worked and they  
14 showed me.

15 Q They showed you?

16 A Yeah, sure. Up on the computer screen, they  
17 could show me how fast the truck is moving, where it's  
18 at, it's exact location, if the truck is pulled to the  
19 side of the road, if the motor is running or if it's  
20 off. Yeah, the GPS works really nice.

21 Q When you were a trainee for AB Trucking, did  
22 you ever -- were you ever in the truck or driving the  
23 truck longer than ten hours in a day?

24 A No.

25 Q Has AB Trucking ever compensated you for

1 any other complaints regarding your paycheck?

2 A No.

3 Q Okay. So let's go -- now, you stated earlier  
4 that your start time was 7:00 a.m.; is that correct?

5 A Yes.

6 Q And you also stated that you didn't have a set  
7 stop time; is that correct?

8 A Correct.

9 Q Now, did every -- did all AB drivers start at  
10 the same time?

11 A For the most part, yes.

12 Q And when you say "for the most part," what do  
13 you mean?

14 A There were slow periods when we would rotate  
15 starting times.

16 Q I see. How often -- what do you mean by  
17 "periods" by the way?

18 A If I remember correctly, it was during  
19 wintertime when there was not a lot of work. We were  
20 working to spread the work amongst the drivers so  
21 everybody had a chance to make a paycheck.

22 Q About what month would you say a slow period  
23 started while you were working there?

24 A I think it was February.

25 Q Of what year?



1 A 2008.

2 Q 2008. And the slow period, you would say,  
3 lasted for how long?

4 A Maybe a little over a month.

5 Q Okay. Earlier you were asked if you ever ate  
6 in the truck.

7 Did you eat in the truck while you were  
8 driving it?

9 A Yeah.

10 Q And did you consider that -- let me rephrase.  
11 Now, can you give me an example of what you  
12 would eat while you were driving?

13 A Snacks.

14 Q So you would eat snacks.

15 Would you consider that a meal break?

16 A No.

17 Q Did you take meal breaks inside your truck?

18 A Sometimes.

19 Q Would you take it outside of your truck?

20 A Yes.

21 Q Okay. Now, you also -- let's go jump to a  
22 different topic here.

23 You testified earlier that you filled out log  
24 books; is that correct?

25 A Yes.

1           A       Couple of weeks any way.

2           Q       Okay. You said when you started working at AB  
3 Trucking -- well, strike that.

4                    You said when you went to AB Trucking seeking  
5 employment and you talked to Cynthia, she asked you if  
6 you had a permit.

7                    Can you clarify what you meant by permit?

8           A       A driver's permit.

9           Q       So is that different, in your opinion, from a  
10 Class A license?

11          A       Yes.

12          Q       You just testified about some snacks that you  
13 would eat in the truck. In an effort to clarify the  
14 questions I asked you earlier, when I asked you if there  
15 was ever a time you were eating in the truck and  
16 dispatch called you and they sent you on another  
17 assignment, did you answer that question thinking of the  
18 snacks that you were eating or did you answer that  
19 question thinking of eating as a meal break?

20          A       That's a possibility. I believe a couple of  
21 times it actually had been during a meal time that I was  
22 called. But it didn't happen that often.

23          Q       Okay. Can you give me an estimate of how many  
24 times a week, when you were a driver, you would take  
25 your "meal period," your lunch break, in the truck with

1 the motor running?

2 A With the motor running?

3 Q Yes.

4 A Never.

5 Q Okay.

6 A Huh-uh.

7 Q What about when you were waiting in line at  
8 the port?

9 A There's no idling at the port. You turn your  
10 motor off.

11 Q Okay. And how long would you turn your motor  
12 off at the port in order to eat during a meal period?

13 A Do you specifically mean in the port on the  
14 property?

15 Q While you're waiting in line?

16 A Or waiting in line to get into the port?

17 Q Yes. While you're waiting in line to get into  
18 the port, is that when you would turn off your vehicle?

19 A Well, yeah, the line moves but sometimes you  
20 sit there for quite awhile.

21 Q So the restriction about idling your truck,  
22 that applies only when you enter the port and you're on  
23 port property?

24 A No. That's state law.

25 Q I just want to clarify.

1           When you were waiting in line in the port, for  
2 the port, at any point in the line whether outside of  
3 port property, in port property, were there times when  
4 you would eat in the truck?

5           A       Yeah.

6           Q       Would you consider those times that you were  
7 eating in the truck, while waiting in line, a meal  
8 period?

9           A       Sometimes.

10          Q       And why would you consider it sometimes to be  
11 a meal period?

12          A       Sometimes you have no choice. It's the nature  
13 of the business. If the line's miles and miles long, of  
14 course you're going to eat. You're going to drink.

15          Q       So what would -- finish.

16          A       No, go ahead.

17          Q       What would be the maximum amount of time that  
18 you would be stopped in one place not moving in line to  
19 enter the Port of Oakland?

20          A       It's an impossible question. The maximum  
21 time?

22          Q       That you, in your experience, working for AB  
23 Trucking, have been stopped in one place while waiting  
24 in line?

25          A       Couple hours. I mean, just dead stopped on

1 the side of the road, yeah.

2 Q And how frequently does that happen where it's  
3 one or two hours?

4 A That was quite the exception. They had a  
5 computer failure at the port and everybody sat in that  
6 line.

7 Q So that was a rare occasion?

8 A Yeah, very repair.

9 Q So on a typical day, your moving along in the  
10 line to get into the port.

11 Typically, how long would you be stopped in  
12 one place?

13 A In one place typically, just maybe under a  
14 minute every stop.

15 Q Okay.

16 A The line moves pretty well when you're on the  
17 street pulling in.

18 Q Then once you get into the port, does the  
19 amount of time you're stopped increase a bit?

20 A Once again, that's an impossible question  
21 because it's different every time you go in there.

22 Q Okay.

23 A Sometimes you can get in and out. I mean, you  
24 go in there. You hook your chassis. You go to your  
25 spot and you leave. Other times, you're stuck in there

1 for hours.

2 Q And when you say "stuck" --

3 A I mean stuck.

4 Q -- are you in one place not moving?

5 A Yes.

6 Q Thanks.

7 MR. ABOUDI: I would like to follow up with a  
8 couple small questions when you're finished.

9 MS. DUNCAN: Uh-huh.

10 BY MS. DUNCAN:

11 Q Mr. Blyth, have you ever heard of Industrial  
12 Welfare Commission Wage Orders?

13 A Only on the TV and very recently.

14 Q Are you aware that wage orders are regulations  
15 that enforce the California Labor Code?

16 MR. ABOUDI: Objection; calls for a legal  
17 conclusion.

18 BY MS. DUNCAN:

19 Q Are you aware of that?

20 A Yes.

21 Q Are you aware of the fact that Wage Order 9,  
22 which covers the transportation industry, allows for a  
23 learner rate of no less than 85 percent of the minimum  
24 wage for the first 160 hours of work if the employee has  
25 no previous, similar or related experience?

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 IN AND FOR THE COUNTY OF ALAMEDA  
3

4 LAVON GODFREY AND GARY GILBERT,  
5 on behalf of themselves and  
6 others similarly situated,  
7 Plaintiffs,

8 vs.

Case No. RG08379099

9 OAKLAND PORT SERVICES CORP.  
10 D/B/A AB TRUCKING, and DOES  
11 1 through 20, inclusive,  
12 Defendants.  
13

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14 DEPOSITION OF JOSE LUIS NAVARRO  
15 JUNE 13, 2011  
16 ALAMEDA, CALIFORNIA  
17  
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19

20 ATKINSON-BAKER, INC.  
21 COURT REPORTERS  
22 800-288-3376  
23 www.depo.com

24 REPORTED BY: DEBRA L. ACEVEDO-RAMIREZ, RPR, CSR. 7692  
25 Arizona 50807  
FILE NO: A505421

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PAGE

DEPOSITION OF JOSE LUIS NAVARRO

MONDAY, JUNE 13, 2011

EXAMINATION BY MS. DUNCAN

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EXAMINATION BY MR. ABOUDI

52

EXAMINATION BY MS. DUNCAN

53

E X H I B I T S

1 - PLAINTIFF'S NOTICE OF DEPOSITION SUBPOENA

FOR PERSONAL APPEARANCE OF JOSE

LUIS NAVARRO

9

2 - PROOF OF SERVICE FOR JOSE LUIS NAVARRO

10

3 - DOCUMENT

38

4 - DOCUMENT

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1                   IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2                                 IN AND FOR THE COUNTY OF ALAMEDA

3  
4       LAVON GODFREY AND GARY GILBERT,  
5       on behalf of themselves and  
6       others similarly situated,  
7                 Plaintiffs,

8       vs.

Case No. RG08379099

9       OAKLAND PORT SERVICES CORP.  
10       D/B/A AB TRUCKING, and DOES  
11       1 through 20, inclusive,  
12                 Defendants.

\_\_\_\_\_ /

13                 BE IT REMEMBERED THAT, pursuant to Notice of Taking  
14       Deposition, and on June 13, 2011, commencing at the hour  
15       of 10:06 a.m., thereof, at Weinberg, Roger & Rosenfeld,  
16       1001 Marina Village Parkway, Suite 200, Alameda,  
17       California 94501-1091, before me, Debra L.  
18       Acevedo-Ramirez, Certified Shorthand Reporter, in and  
19       for the City and County of San Francisco, State of  
20       California, there personally appeared:

21                         JOSE LUIS NAVARRO,

22                 called as a witness by the plaintiffs,  
23                 who, being by me first duly sworn, was  
24                 thereupon examined and interrogated as  
25                         hereinafter set forth.

---o0o---

1 Q. Okay. At the bottom of this page it explains  
2 that you're entitled to a witness fee and for  
3 reimbursement for the miles that you drove to come here.

4 A. I hadn't noticed to that point. I hadn't  
5 noticed about that.

6 Q. Okay. So the amount is prescribed by  
7 California law. So, I calculated a check for you which  
8 is the witness fee, plus the amount of miles between  
9 your home, the address I have for you, and this office.  
10 So I'll give this to you now and it is in exchange for  
11 coming to this deposition.

12 A. All right. That's fine.

13 Q. And let me know if your address has changed  
14 since the address on the deposition notice.

15 A. No, it's the same.

16 Q. Okay. Mr. Navarro, do you presently work for  
17 AB Trucking?

18 A. Yes.

19 Q. Okay. And do you know approximately when you  
20 started working for AB Trucking?

21 A. It was approximately in the year 2000.

22 Q. Okay. And are you a truck driver?

23 A. Yes.

24 Q. Do you have your Class A license?

25 A. Yes.

1 Q. Do you know approximately when you first got  
2 your Class A license?

3 A. Well, I don't know approximately. It was in  
4 '93 or '94 -- 1994.

5 Q. Okay. And have you had it from that time  
6 consistently until now or was there a time where you did  
7 not have it?

8 A. No, I've always had it.

9 Q. What is your current wage rate at AB Trucking?

10 A. Beg pardon?

11 Q. How much money do you earn per hour?

12 A. I get 17 an hour.

13 Q. And how much did you earn when you first began  
14 working at AB Trucking?

15 A. About 11.

16 Q. And do you know when it -- after 11, did you  
17 go up to a higher rate?

18 A. Yes. I got raises. First I went to 12.

19 Q. And then?

20 A. Then 13. Then 14. 15 -- 15.50, until I got  
21 to 17.

22 Q. Okay. I'm going to ask you some questions  
23 about your working insurance and for all of the  
24 questions, I'm referring to the time period of  
25 March 2004 up until the present. So if your answer is

1 referring to a time period before 2004, please let me  
2 know.

3 A. That's fine.

4 Q. Were you a trainee for AB Trucking when you  
5 started?

6 A. When I started? Well, when I started a person  
7 trained me, so that I would...

8 Q. And how long were you trained when you  
9 started?

10 A. Right around a month or a little more than a  
11 month by the person who was training me to be familiar  
12 with everything.

13 Q. And were you paid for the time that you were  
14 being trained?

15 A. Yes.

16 Q. And who was training you?

17 A. Well, he's no longer there. I remember his  
18 first name. His name was Tony.

19 Q. Okay. Okay. So as a driver from 2004 up to  
20 the present, do you have a set start time?

21 A. Yes.

22 Q. What time is that?

23 A. 7:30.

24 Q. And is there a time that you finish working?

25 A. Well, nearly as 4:00, 4:30.

1 Q. And you mentioned earlier the dispatcher.  
2 Does the dispatcher give you your work assignments and  
3 tell you where to go?

4 A. Yes.

5 Q. Okay. And currently the dispatcher is Juan;  
6 is that correct?

7 A. Yes.

8 Q. Was there a different dispatcher before Juan?

9 A. Yes, there was a different one.

10 Q. And what was that person's name?

11 A. Well, it was a lady by the name of Trina. She  
12 just doesn't work there anymore.

13 Q. Okay. Do you have a manager at AB Trucking?

14 A. It's -- well, sometimes the dispatcher would  
15 give me what I had to do.

16 Q. And the witness is referring to Bill Aboudi  
17 who is present at the deposition. Is that correct?

18 A. That's correct.

19 Q. Okay. And did Bill -- does Bill Aboudi give  
20 you your work assignments?

21 A. These days, no. Maybe once a year or so he  
22 does, but no.

23 Q. Was that always the case?

24 A. Yes.

25 Q. Do you currently drive to cities in

1 Trucking, do you keep track of the hours that you work?

2 A. No. But when we start in the morning, we  
3 write down what time we started, and in the evening, we  
4 write down what time we finish, but there is no other  
5 count.

6 Q. And where do you write it down?

7 A. In the office there is a sheet where we write  
8 down what time we would come in and what time we leave.

9 Q. And has that been the practice at AB Trucking  
10 since March of 2004?

11 A. Yes.

12 Q. Does anyone in the office ever write down your  
13 hours for you?

14 A. The person who is in charge there is the one  
15 who...

16 Q. The one who -- the person in charge writes  
17 down your hours sometimes?

18 A. Sometimes in our presence she asks us what  
19 time we come in and what time we're leaving.

20 Q. So sometimes you write down the hours and  
21 sometimes the person in charge writes down the hours?

22 A. Yes.

23 Q. And what is the name of the person who is in  
24 charge that you are referring to?

25 A. Her name is Cynthia.

1 Q. And do you know what her job title is?

2 A. No.

3 Q. Okay. Does she work in the office?

4 A. Yes.

5 Q. Does she seem like a secretary or an office  
6 manager?

7 A. Well, a secretary.

8 Q. Okay. And so either Cynthia or you write down  
9 your hours and it's been that way since 2004?

10 A. No, nearly I'm the one who writes down the  
11 hours. It's just...

12 Q. Okay. So usually you write down the hours?

13 A. Yes.

14 Q. Okay. And has there been any difference in  
15 your practice of recording hours since 2004 to the  
16 present?

17 A. No, none.

18 Q. Okay. When you began working as a driver for  
19 AB Trucking, did anyone from the company explain to you  
20 anything about meal periods?

21 A. Well -- well, a long time ago they told us we  
22 had to take a lunch hour.

23 Q. Do you know approximately what year that was?

24 A. I don't remember the year but, in fact, they  
25 talked to me and I talked to them at the yard, too, and

1 more than anything, they told me that I have to take my  
2 lunch at 12 o'clock.

3 Q. Okay. Did they give you those instructions in  
4 approximately April 2008?

5 A. No. You're talking about 2008?

6 Q. Yes.

7 A. Two, three, four years ago they have talked to  
8 me about that, because I talked to them asking them to  
9 give me another order and they tell me that now once I  
10 finish my lunch.

11 Q. So you think how many years ago, like three  
12 years ago. So in 2008?

13 A. Several years ago. I don't remember how many,  
14 but yes, always.

15 Q. Okay. So before they told you that you needed  
16 to take one hour for lunch, had anyone from the company  
17 talked to you about meal periods?

18 A. Well, they hadn't -- well, I don't remember  
19 but... but, yes they told me as a regular thing, one is  
20 supposed to take a lunch hour.

21 Q. Okay. Do you remember when they told you  
22 that?

23 A. When I first started when I was filling out  
24 the application.

25 Q. Okay. And did they tell you how long the meal



1 period was to be?

2 A. Well, it's an hour exactly. Just one hour.

3 Q. Okay. And they told you this in 2000?

4 A. Yes. It's been a lot of years since then.

5 Uh-huh.

6 Q. So, yes, they told you in 2000?

7 A. Yes, yes, they told me that in 2000. I don't  
8 remember the name of that person who I handed the  
9 application to. They don't work there anymore.

10 Q. Okay. So from 2004 to 2008, did you ever take  
11 one hour meal period where you were -- you had the truck  
12 turned off and you were not interrupted by dispatch?

13 A. No.

14 Q. Excuse me. There was a beeping sound. So,  
15 between 2004 to 2008, you did not receive a full one  
16 hour meal period where the truck was turned off and you  
17 were not interrupted by dispatch; is that correct?

18 MR. ABOUDI: Objection. Compound and calls  
19 for a legal conclusion.

20 THE WITNESS: How is that? Can you repeat the  
21 question?

22 MS. DUNCAN: Yes.

23 Q. Okay. A meal period is a time where you are  
24 relieved from all duty?

25 A. Yes.

1 Q. So that means that the truck is turned off and  
2 it means that no one from work can call you on the radio  
3 to give you a new assignment?

4 A. Nobody calls me.

5 Q. Okay. And a meal period is a time where you  
6 are free to do whatever you want?

7 A. Exactly.

8 Q. Okay. So from 2004 to 2008, did you ever  
9 receive a full one hour meal period?

10 A. Did I receive a period?

11 Q. A meal period.

12 A. Well, I've always -- well, I've always had a  
13 period. I've always had that hour from noon to 1:00.  
14 1:00 is...

15 Q. Okay. What about from 2008 to the present, do  
16 you have one hour for a meal period each day?

17 A. Nearly as a regular thing, yes.

18 Q. What do you mean by "nearly"?

19 A. Well, because depending on the place we're  
20 going to go, sometimes it lasts more than an hour,  
21 right, because when I'm eating, sometimes I take a  
22 little more than an hour or they take a little while to  
23 answer me after I report in.

24 Q. Okay. Did Mr. Aboudi ever explain to you what  
25 AB Trucking's policy on meal periods is?

1 A. No.

2 Q. Okay. So who told you in approximately three  
3 years ago that you had to take one hour for lunch?

4 A. Well, that was the dispatcher, but he did also  
5 tell us one time when we started taking lunch, we should  
6 report into the office.

7 Q. The dispatcher told you that?

8 A. The dispatcher told us and Bill Aboudi one  
9 time told us that we had to say, hey, we're taking lunch  
10 right now and...

11 Q. Okay. And when they told you that you should  
12 call in and say when you were taking lunch, do you know  
13 approximately when that happened?

14 A. I don't remember that. That was a long time  
15 ago. I don't remember the year, the date. It was a  
16 long time ago.

17 Q. Okay. But before the time that you were  
18 instructed to call in and say when you were at lunch,  
19 before that time did the company ask you to report when  
20 you were taking a lunch?

21 A. Well, yes, he told us once, but I don't  
22 remember exactly. But he did say that when we were  
23 doing that, we should call in and let them know just to  
24 let them know.

25 Q. And Bill told you that?

1 A. Yes.

2 Q. Okay. And when Bill Aboudi told you that --  
3 do you recall if it was before 2008 or after 2008?

4 A. I don't remember, but it must have been  
5 before.

6 Q. And what makes you recall that it was before?

7 A. Because -- well, because the rules that we've  
8 had, I don't remember what he says about the precautions  
9 and all that.

10 Q. Okay. When does he tell you about  
11 precautions?

12 A. Well, when he sees us in the afternoon when  
13 we're leaving, he tells us that, you know, we should  
14 take precautions and if we were tired, well, then we  
15 should rest.

16 Q. Okay.

17 A. If you could give me a minute. I need to go  
18 to the bathroom.

19 MS. DUNCAN: Do you know where it is?

20 MR. ABOUDI: It's over on this way, left,  
21 right?

22 MS. DUNCAN: I'll show you where it is.

23 COURT REPORTER: Are we off the record?

24 MS. DUNCAN: Yes.

25 (Whereupon, a break was taken from 12:38 p.m.)

1 to 12:42 p.m.)

2 MS. DUNCAN: Would you mind reading back the  
3 question before the break?

4 (Whereupon, the record was read back by the  
5 Court Reporter.)

6 BY MS. DUNCAN:

7 Q. So you said that he says if you are tired, you  
8 should rest. When you say "he," who are you referring  
9 to?

10 A. To the boss, Bill.

11 Q. Okay. And when you say, "he says you should  
12 rest," do you understand that to be the same thing as  
13 taking a lunch?

14 A. No, that's different because when you take  
15 lunch, that's because you are going to take lunch, but  
16 when you are tired from driving, that's resting so as to  
17 relax and continue driving.

18 Q. Do you drive -- you said you drove to the Port  
19 of Oakland. When you drive to the Port of Oakland, how  
20 long does it typically take for you to drive in and back  
21 out?

22 A. Well, it depends because there are times when  
23 it takes an hour. Other times up to three or four hours  
24 or longer. One time I was there all day, a whole day,  
25 eight hours, just one trip.

1 Q. Do you know approximately what year that was  
2 in when you were there that whole day?

3 A. Well, sometimes it happens often, but it must  
4 have been 2005, 2006. I don't recall exactly. That  
5 happens often.

6 Q. It happens often where you have to stay there  
7 for a whole eight hours?

8 A. Not often but once in awhile.

9 Q. Okay. So, since 2004, can you give me an  
10 estimate of how many times you have had to wait at the  
11 Port of Oakland for eight hours?

12 A. How many times? That's been about three or  
13 four times is -- the interpreter making sure that is  
14 stuttering speech was understood.

15 It's been about three or four times.

16 Q. Okay. All the times that you were waiting at  
17 the Port for eight hours, did you eat?

18 A. Yes.

19 Q. Where were you when you were eating?

20 A. It was a regular thing. I'm usually in the  
21 truck since I take my own lunch. I don't have to get  
22 out of my truck or any place to go.

23 Q. And on those particular times when you were in  
24 the Port for eight hours and you were eating, was the  
25 truck on or was it off?

1           A.    Off.

2           Q.    And were you in line?

3           A.    No.  I was there off to one side of the line.

4           Q.    So you got out of line?

5           A.    Yes, because when one has a problem fetching  
6 or dropping off a container, one has to get out of line  
7 and move to one side there.

8           Q.    Did you have a problem getting a container at  
9 that time?

10          A.    No, but the problem is sometimes they give us  
11 a number to fetch the container, and that number isn't a  
12 good one, so between the time that they manage to  
13 contact the container company -- interpreter speaking.  
14 I didn't catch the last part of the answer.

15                    We just sit there and wait for them to resolve  
16 the problem.

17          Q.    So is that after you have gone through the  
18 line?

19          A.    Yes.  Yeah.

20          Q.    So going back to the three to four times that  
21 you waited in line at the Port for eight hours, where  
22 did you eat each time?

23          A.    Out there in the truck.

24          Q.    Okay.  And was the truck on?

25          A.    No.

1 Q. Were you pulled over to the side of the road?

2 A. Yes, to one side.

3 Q. Okay. And so you removed yourself from the  
4 line of trucks waiting to get into the Port?

5 A. Yes, because one has to be out of the way and  
6 not be in the way until the problems are solved, because  
7 sometimes a problem can be fixed in half an hour. Other  
8 times, it's -- one is going to be two, three or more  
9 hours until the problem can be proved.

10 Q. So all of the three to four times you were  
11 there for eight hours, there was a problem with the  
12 Port?

13 A. No.

14 Q. So, when you were finished eating on these  
15 three to four times when you were there for eight hours,  
16 how did you get back in line?

17 A. I don't get back in line until everything is  
18 solved because when there is a problem like this, I  
19 notify the company and they take care of resolving the  
20 problem.

21 Q. So on all three to four times that you were in  
22 the Port for eight hours, there was a problem and you  
23 reported that problem to the company?

24 A. Not a problem. At the Port, there isn't a  
25 problem there. Rather, the problem is when one is



1 taking a container that is latent (sic), the company  
2 gives us a number and this number is called a booking  
3 number. So, once we're there at the Port, we're there  
4 in line and we get to a certain speaker, so we give the  
5 information to the people who work there at the Port.  
6 Sometimes the number we've been given isn't correct.  
7 So, they make us get out of line to one side. We call  
8 back the company where we work and we tell them this  
9 number is no good. Then they take care of fixing that,  
10 but sometimes it takes a long time for that to happen.

11 Q. Okay. So this process that you have just  
12 described, the last time that you were stuck at the Port  
13 for eight hours, did this problem happen that you have  
14 just described?

15 A. Often. Often. This problem that I just  
16 described doesn't always last eight hours, but  
17 sometimes, yeah, three or four hours, it will last.

18 Q. Okay. So can you explain to me during a time  
19 when you had to wait at the Port for over four hours,  
20 when there was no problem like this with the container  
21 number --

22 A. Yes.

23 Q. -- where you would eat?

24 A. There, in the truck where I'm waiting.

25 Q. Okay. So, the situation you are describing

1 where you pull over to the side of the road and you eat  
2 in the truck on the side, does that happen when there is  
3 a problem with the container number or some other  
4 problem?

5 A. No.

6 Q. When else does that occur?

7 A. What does?

8 Q. Pulling over to the side of the road.

9 A. Well, when there is a problem in the truck or  
10 something, we'll pull over.

11 Q. Okay. So do you ever pull over to the side of  
12 the road in order to take your one hour meal period?

13 A. No, just when I get to the Port here or when I  
14 get to another city like Hayward or something. When  
15 I've got to wait, that's when I take my lunch when I'm  
16 waiting.

17 Q. And where is your truck while you are waiting?

18 A. Well, I'm in the truck there. For example, if  
19 I'm -- for example, if I'm at a Port there and I'm  
20 waiting for the Port to open up again, I'll just take my  
21 lunch there.

22 Q. Okay. And are you in line at that time?

23 A. There are times -- there are times when I'm  
24 there. There are times when I'm not. There are times  
25 when I pull over to one side.

1 Q. Okay. Can you give us an estimate from 2004  
2 to the present of the times when you are at the Port of  
3 Oakland when you take your meal period in your truck in  
4 line?

5 MR. ABOUDI: Objection. The question is vague  
6 and it's been asked and answered.

7 MS. DUNCAN: Go ahead.

8 THE WITNESS: How is that again? Can I have  
9 the question again?

10 MS. DUNCAN: Would you mind repeating it back?

11 (Whereupon, the record was read back by the  
12 Court Reporter.)

13 THE WITNESS: Nearly regularly I do it when  
14 I'm there in the yard when I'm there picking up the  
15 container.

16 BY MS. DUNCAN:

17 Q. Okay. And what time is that usually?

18 A. At 12:00.

19 Q. What do you do between 7:30 and 12 o'clock  
20 usually?

21 A. Usually I'm fetching -- dropping off  
22 containers at the Port.

23 Q. So, do you usually take a container from the  
24 yard to the Port in the morning?

25 A. Yes.

1 Q. Okay. And then you drop that container at the  
2 Port?

3 A. Yes.

4 Q. So when you return to the AB Trucking yard, do  
5 you return to pick up another container?

6 A. Another one, yes.

7 Q. Okay. Usually between 7:30 and the time that  
8 you take your lunch break at noon, do you take one  
9 uninterrupted rest period?

10 A. Well, no, because it's nothing when one is  
11 going to the Port. One is there waiting 10, 20,  
12 25 minutes until the lines start moving.

13 Q. Right. And when you are waiting until the  
14 lines start moving, your truck is on?

15 A. No.

16 Q. So your truck is off, but you are waiting in  
17 line?

18 A. Yes.

19 Q. Do you pull to the side?

20 A. Yes. Well, you know, the lines are right next  
21 to the emergency lanes, right there.

22 Q. Okay. Is it difficult to get back in line  
23 when you are finished with your break?

24 A. No, because nearly all the truckers who are  
25 waiting are in the same line. So we're all waiting.

1 MR. ABOUDI: This is the interpreter speaking.  
2 I could use a bathroom break.

3 MS. DUNCAN: Okay.

4 (Whereupon, a break was taken from 1:03 p.m.  
5 to 1:09 p.m.)

6 MS. DUNCAN: Would you mind repeating the last  
7 question?

8 (Whereupon, the record was read back by the  
9 Court Reporter.)

10 BY MS. DUNCAN:

11 Q. So if you are pulled to the side and you're  
12 resting and the line starts moving, do you stop your  
13 brake?

14 A. Well, yes, we start moving.

15 Q. Okay. And what about if you are pulled to the  
16 side in the emergency area and you are eating if the  
17 line starts moving, what do you do?

18 A. Well, I wait until I'm finished eating.

19 Q. And then what do you do?

20 A. Well, I keep eating and then later I get back  
21 in line.

22 Q. Okay. And how long have you been doing that  
23 practice?

24 A. Ever since -- well, I don't remember how long,  
25 but a long time.

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12 resting and the line starts moving, do you stop your  
13 brake?

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15 Q. Okay. And what about if you are pulled to the  
16 side in the emergency area and you are eating if the  
17 line starts moving, what do you do?

18 A. Well, I wait until I'm finished eating.

19 Q. And then what do you do?

20 A. Well, I keep eating and then later I get back  
21 in line.

22 Q. Okay. And how long have you been doing that  
23 practice?

24 A. Ever since -- well, I don't remember how long,  
25 but a long time.

1 are cases like this, it's -- it's folks like them who  
2 are supporting the case.

3 Q. And you have had experience with that?

4 A. Yes. In the past regarding this job that I  
5 had where I was hurt.

6 Q. So was there any indication that you had that  
7 made you think that this case was like what had happened  
8 to you before?

9 MR. ABOUDI: Asked and answered.

10 THE WITNESS: Well, nearly as a regular thing,  
11 that's what one associates with, that sort of thing.

12 BY MS. DUNCAN:

13 Q. I'm just trying to understand where you got  
14 the association from.

15 A. Well, no, because the experience has happened  
16 in the past. I draw the same conclusion.

17 Q. Okay. When you were looking at Exhibit 3, you  
18 were pointing to the first page; is that correct?

19 A. Yes.

20 Q. Did you read the part where it says that  
21 drivers are entitled to payment for all hours worked?

22 A. Yes.

23 Q. Okay. And for overtime payment?

24 A. I read all this.

25 Q. Okay. And you said that your -- I think you

1 said the term comfortable enough. Were you concerned  
2 that there could be a problem if you participated in  
3 this lawsuit?

4 A. Yes, conflicts and all that. I don't like  
5 being in conflict, because I'm working comfortably and  
6 I don't have any problems.

7 Q. Okay. Do you know what Mr. Aboudi thinks  
8 about this lawsuit?

9 MR. ABOUDI: Objection. The question is  
10 ambiguous.

11 THE WITNESS: No.

12 BY MS. DUNCAN:

13 Q. Has he ever told you his opinion about the  
14 lawsuit?

15 A. No.

16 Q. Did anyone besides your wife talk to you about  
17 taking yourself out of the lawsuit?

18 A. I spoke with the work mate, a fellow there  
19 that works in the yard, for him to fill out a letter for  
20 me because I didn't want to participate. So I asked for  
21 his help in filling out that letter. He helped me fill  
22 it out saying that I didn't -- I didn't want to  
23 participate in this.

24 Q. And how did you know he could help you?

25 A. Because he speaks English and he writes