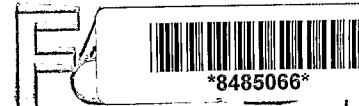


ORIGINAL



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  
5 A Professional Corporation  
6 1001 Marina Village Parkway, Suite 200  
7 Alameda, California 94501-1091  
8 Telephone 510.337.1001  
9 Fax 510.337.1023

FILED  
ALAMEDA COUNTY

JUL 19 2010

CLERK OF THE SUPERIOR COURT  
By [Signature] Deputy

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

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

12 Plaintiffs,

13 v.

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

16 Defendants. )

Case No. RG08-379099

) DECLARATION OF PLAINTIFF GARY  
) GILBERT IN SUPPORT OF  
) PLAINTIFFS' MOTION FOR CLASS  
) CERTIFICATION

) Date: August 20, 2010

) Time: 10 a.m.

) Dept: 20

) Judge: Robert B. Freedman

18 I, Gary Gilbert, declare:

19 1. I make this declaration upon my personal knowledge, and, if called as a witness, I  
20 could competently testify to the facts hereinafter stated.

21 2. I completed a four week program at the Teamsters Truck Driving School in 2008.

22 3. I acquired my "Class A" commercial truck driving license in 2008.

23 4. I applied for a truck driving position with AB Trucking on October 29, 2008.

24 5. I interviewed for a truck driving position with the dispatcher at AB Trucking  
25 approximately on or about October 29, 2008.

26 6. I took a drive test for AB Trucking on or about October 29, 2008. Following the  
27 drive test, the dispatcher and an AB Trucking supervisor said that after I completed three weeks of

1 training with AB Trucking for shifting gears I would be offered a truck driving position at AB  
2 Trucking. The supervisor who gave me the drive test indicated to the dispatcher and to me that my  
3 driving was sufficient, except that I was not yet as efficient at shifting the gears as the supervisor  
4 would have wished.

5 7. The dispatcher indicated to me that I would be employed by AB Trucking at the end  
6 of the three weeks of training.

7 8. I began training at AB Trucking on or about October 30, 2008.

8 9. To begin training with AB Trucking I signed a one-page agreement entitled,  
9 "Oakland Port Services Corporation Truck Driving Trainee Program: Trainee Participation and  
10 Release of Liability Agreement," on October 29, 2008. This agreement states: "Trainee  
11 understands that the OPS Training Program does not establish an employment relationship ...  
12 Trainee is not entitled to wages for the time spent in the OPS Training Program." At the time I  
13 signed this agreement, I was not certain about what this language meant, or if it was a valid  
14 contract, but what most concerned me was the possibility of a job. It is my current belief that I was  
15 performing a service for the benefit of AB Trucking as a trainee; despite the fact that I was still  
16 learning, I was performing a benefit for the company especially since I did have some previous  
17 similar and/or related experience as a graduate of truck driving school, a former bus driver and as a  
18 registered holder of a Class A license.

19 10. I was given a weekly schedule when I began training at AB Trucking. The schedule  
20 told me to report in the morning at a certain time to a certain truck.

21 11. Management at AB Trucking gave me the impression that I was required to train  
22 five days a week for approximately 40 hours a week. I drove with another driver at all times. I  
23 was under the impression that if I needed to leave I could; however if I wanted to do the training  
24 and receive a position, I needed to be there when the other driver was driving. I trained with a  
25 driver named Mark and a driver named Erik.

26 12. During my first week of training I rode with Mark. As a trainee with AB Trucking  
27 while driving with Mark, I rode in the truck, picked up trailers, hooked up trailers, performed pre

28

1 and post trip vehicle inspections, dropped trailers off, drove loads to different cities, drove loads in  
2 and out of the Port of Oakland, and picked up chassises. At times, I drove the truck while Mark sat  
3 in the cab with me.

4 13. During the next approximately seven weeks of training I rode with Erik. As a  
5 trainee with AB Trucking while driving with Erik, I rode in the truck, picked up trailers, hooked up  
6 trailers, performed pre and post trip vehicle inspections, dropped trailers off, drove loads to  
7 different cities, drove loads in and out of the Port of Oakland, and picked up chassises. At times, I  
8 drove the truck while Erik sat in the cab with me.

9 14. There was no pattern to the "meal and rest periods" I took when I drove with Mark.  
10 We would take bathroom breaks when we needed to, but frequently that involved relieving myself  
11 into a plastic bottle while in the cab of the truck and we did not stop the truck.

12 15. There was no pattern to the "meal and rest periods" I took when I drove with Erik.  
13 We would take bathroom breaks when we needed to, but frequently that involved relieving myself  
14 into a plastic bottle and we did not stop the truck. The majority of the time Erik and I would eat  
15 our lunch in the truck while driving down the road. If I did not have food with me, Erik would  
16 share his food with me. There were only a few occasions where we stopped to eat. When Erik and  
17 I were driving back and forth from the Port of Oakland, we almost always ate our lunch in the  
18 truck with the motor running while we were waiting in line at the Port.

19 16. I filled out a weekly time sheet when I was training for AB Trucking that was kept  
20 in the office area.

21 17. I was not paid by AB Trucking for the time period I trained with Mark and Erik. I  
22 was performing what AB Trucking considered "training" for a total of 8 weeks.

23 18. I did not advance to a paid position with AB Trucking. I have received no wages,  
24 nor any other payment, from AB Trucking.

25 //  
26 //  
27 //

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

I declare under penalty of perjury that the facts stated above are true and correct of my own personal knowledge, except as to those facts stated on information and belief, and as to those facts, I believe them to be true.

Executed this 12 day of July 2010, in OAKLAND California.

  
GARY GILBERT

118212/579326

**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 July 19, 2010, I served upon the following parties in this action:

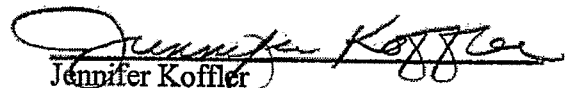
Jay Ian Aboudi  
The Law Office of Jay Ian Aboudi  
1855 Olympic Blvd., Ste. 210  
Walnut Creek, CA 94596

copies of the document(s) described as:

**DECLARATION OF PLAINTIFF GARY GILBERT IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

- 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 July 19, 2010.

  
Jennifer Koffler

118212/555975