

ORIGINAL



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ALAMEDA COUNTY

AUG 10 2011

EXH. Off/Clerk
BY Gina Baker

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10 Attorneys for Plaintiffs
11 LAVON GODFREY and GARY GILBERT

12 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 IN AND FOR THE COUNTY OF ALAMEDA

14	LAVON GODFREY and GARY GILBERT, on)	Case No. RG08379099
15	behalf of themselves and all others similarly)	
16	situated,)	PLAINTIFFS' SEPARATE STATEMENT
17		OF UNDISPUTED MATERIAL FACT IN
18	Plaintiffs,)	SUPPORT OF MOTION FOR
19		SUMMARY ADJUDICATION
20	v.)	
21		Date: October 28, 2011
22	OAKLAND PORT SERVICES CORP. d/b/a)	Time: 2:00 p.m.
23	AB TRUCKING, and DOES 1 through 20,)	Dept: 20
24	inclusive,)	Judge: Robert B. Freedman
25		Reservation Number: R-1204995
26	Defendants.)	

27 Plaintiffs and class representatives, Lavon Godfrey and Gary Gilbert, hereby submit their
28 Separate Statement of Undisputed Facts and supporting evidence on behalf of themselves and the
Class. Deposition transcripts and other evidence referenced are attached to the Declaration of
Caren P. Sencer filed herewith.

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I. FACTS IN SUPPORT OF ALL CAUSES OF ACTION

UNDISPUTED MATERIAL FACT	SUPPORTING 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.
2. During the relevant period, employee drivers worked shifts for Defendant AB Trucking (“AB”) regularly.	Deposition of William Aboudi ¹ (“W. Aboudi Depo.”) at 47:19-48:10, 49:15-21 and Exhs. 2, 3; Sencer Decl. ¶ 3 and Exh. B.
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.
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.
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 ² (“Godfrey Decl.”) at ¶11; Declaration of Gary Gilbert ³ (“Gilbert Decl.”) at ¶16.
6. During the relevant period, AB used the same payroll processing system for all employee drivers.	Deposition of Jovi Aboudi ⁴ (“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.
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.
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.
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.

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¹ Excerpts of the deposition of William Aboudi are attached to the Declaration of Caren P. Sencer (“Sencer Decl.”) filed herewith as Exhibit A.
² A copy of the Declaration of Plaintiff Lavon Godfrey in support of plaintiffs’ motion for class certification is attached to Sencer Decl. filed herewith as Exhibit C.
³ A copy of the Declaration of Plaintiff Gary Gilbert in support of plaintiffs’ motion for class certification is attached to Sencer Decl. filed herewith as Exhibit D.
⁴ A copy of the cited pages of the transcript of the deposition of Jovi Aboudi is attached to Sencer Decl. filed herewith as Exhibit E.

II. FACTS IN SUPPORT OF THE SIXTH CAUSE OF ACTION – FAILURE TO PROVIDE MEAL AND REST PERIODS

UNDISPUTED MATERIAL FACT	SUPPORTING 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.
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.
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 ⁵ ; W. Aboudi Depo. at Exhs. 2 and 16; Godfrey Decl. at ¶¶13-17; Deposition of Lavon Godfrey ⁶ (“Godfrey Depo.”) at 157:7-158:11; Gilbert Decl. at ¶¶14, 15.
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.
14. AB has no record of meal periods taken by employee drivers during the period of March 28, 2004 through March 15, 2011.	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.
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.
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.
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.
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.
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.

⁵ Although introduced and referenced to in J. Aboudi’s deposition, Exhibits 2 and 16 were marked and attached to the deposition of W. Aboudi. (See J. Aboudi Depo. at 24:23-24; 60:8-9.)


⁶ A copy of the cited pages of the transcript of the deposition of Lavon Godfrey is attached to Sencer Decl. filed herewith as Exhibit J.

1 **III. FACTS IN SUPPORT OF THE SECOND CAUSE OF ACTION – FAILURE TO PAY**
2 **FOR ALL HOURS WORKED**

UNDISPUTED MATERIAL FACT	SUPPORTING EVIDENCE
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.

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8 Dated: August 10, 2011

9 WEINBERG, ROGER & ROSENFELD
10 A Professional Corporation

11 By: 
12 CAREN P. SENCER
13 Attorneys for Plaintiffs

14 118212/631775

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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 August 10, 2011, I served upon the following parties in this action:

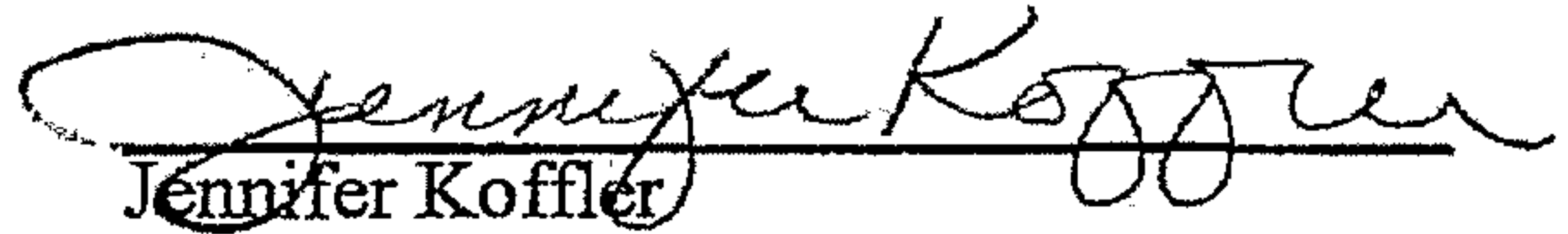
Jay Ian Aboudi
The Law Office of Jay Ian Aboudi
1855 Olympic Blvd., Ste. 210
Walnut Creek, CA 94596
jay@aboudi-law.com

copies of the document(s) described as:

**PLAINTIFFS' SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACT
IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION**

- 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 August 10, 2011.


Jennifer Koffler

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