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Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

<p>Godfrey</p> <p style="text-align: right;">Plaintiff/Petitioner(s)</p> <p style="text-align: center;">VS.</p> <p>AB Trucking, Inc.</p> <hr/> <p style="text-align: right;">Defendant/Respondent(s) (Abbreviated Title)</p>	<p style="text-align: center;">No. <u>RG08379099</u></p> <p style="text-align: center;">Order</p> <p style="text-align: center;">Motion to Compel Further Answers to Interrogatories Partial Grant</p>
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The Motion to Compel Further Answers to Interrogatories was set for hearing on 02/11/2010 at 02:00 PM in Department 20 before the Honorable Robert B. Freedman. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The Motion of defendant Oakland Port Services Corporation d/b/a AB Trucking ("Defendant") to Compel Further Answers to Interrogatories ("Motion") is ruled on as follows:

At issue are Form Interrogatories ("FI") 2.11 and 12.1 to both plaintiffs Lavon Godfrey ("Godfrey") and Gary Gilbert ("Gilbert") and FI 207.2 to Godfrey only.

1) Verifications - It is undisputed that neither the original discovery responses nor the supplemental responses were accompanied by verifications when initially served. Nor is it disputed that all missing verifications were subsequently provided prior to the filing of the instant Motion. The remaining verification issues are (a) whether the untimeliness of the verifications resulted in a waiver of objections, and (b) whether the untimeliness of the verifications should be considered to support an award of monetary sanctions in connection with the instant Motion.

As to (a), the answer is "yes." Plaintiffs have offered no authority for the extension of Code of Civil Procedure ("CCP") section 2030.250(a) ["[t]he party to whom the interrogatories are directed shall sign the response under oath unless the response contains only objections"] to factual responses to interrogatories on the basis that "no changes were made to Plaintiffs' responses or supplemental responses" before the late verifications were provided. Plaintiffs' position ignores the established principle that an unverified response is tantamount to no response at all. (Appleton v. Sup. Ct. (1988) 206 Cal.App.3d 632, 635.) As further addressed below, however, even if Plaintiffs' objections had not been waived, those objections which formed a basis for the withholding of substantive responses were not well taken in any event.

As to (b), the answer is "no." Given that the verifications issue touched a broad range of written discovery requests that are not implicated in the instant Motion, and that no verifications remained outstanding by the time the Motion was filed, the Court does not consider Plaintiffs' late verifications to be an appropriate basis for monetary sanctions.

2) FI 2.11 - Plaintiffs admit that neither of them provided a substantive response to subsection (b) of this FI, and argue in their opposition that their failure to do so was justified because (a) they each provided testimony at their deposition on the subject of their job duties at deposition, and (b) Defendant is fully aware of those job duties. Neither of these arguments is well taken. Notwithstanding Plaintiffs attempt to invoke so-called "common practices" of avoiding unnecessary overlap of written discovery and deposition testimony, Plaintiffs have provided no authority to support the conclusion that the existence of deposition testimony vitiates the requirement of compliance with CCP sections 2030.210, et seq. Nor is the information sought by this FI within the scope of CCP section 2030.220(c) ["except where the information is equally available to the propounding party"]. Both Plaintiffs shall provide complete, verified supplemental responses to FI 2.11 forthwith.

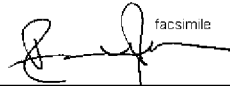
3) FI 12.1 - Plaintiffs both responded to this FI by identifying general categories of persons ("individuals with whom Plaintiff[s] worked ... supervisory personnel ... [and] AB Trucking management"), and again asserting CCP section 2030.220(c). Plaintiffs' responses are inadequate. Defendant is entitled to know the identities of specific witnesses currently known to Plaintiffs, and Plaintiffs shall provide complete, verified supplemental responses accordingly.

4) FI 207.2 - Godfrey's response to this FI included non-specific reference to her deposition testimony only. As discussed in connection with FI 2.11, above, this response is inadequate. Godfrey shall provide a complete, verified supplemental response forthwith.

Supplemental responses in compliance with this order shall be served by Plaintiffs no later than February 26, 2010.

Defendant's request for monetary sanctions is DENIED. Any right to recover monetary sanctions with respect to FI 12.1 and 207.2 is cancelled by Defendant's failure to meet and confer regarding FI 2.11.

Dated: 02/11/2010

A handwritten signature in black ink, appearing to read "R. B. Freedman", with a horizontal line underneath it. The word "facsimile" is printed in small text to the right of the signature.

Judge Robert B. Freedman

SHORT TITLE:

Godfrey VS AB Trucking, Inc.

CASE NUMBER:

RG08379099

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