

1 MICHAEL BROAD (SBN: 121348)
Attorney at Law
2 166 Santa Clara Avenue
Oakland, CA 94610
3 Telephone: (510) 835-5772
Facsimile: (510) 835-5773

4 JAY IAN ABOUDI (SBN: 251984)
5 GENERAL COUNSEL
OAKLAND PORT SERVICES CORPORATION
6 11 Burma Road
Oakland, CA 94607
7 Telephone: (510) 719-5583
Facsimile: (510) 803-4529

8 Attorneys for Defendant
9 OAKLAND PORT SERVICES CORPORATION
10 d/b/a AB TRUCKING (erroneously sued as AB
TRUCKING, INC.)

FILED BY FAX

ALAMEDA COUNTY

January 15, 2010

CLERK OF
THE SUPERIOR COURT
By Rosanne Case, Deputy

CASE NUMBER:
RG08379099

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF ALAMEDA
14

15 LAVON GODFREY and GARY GILBERT, on
behalf of themselves and all others similarly
16 situated,

17 Plaintiffs,

18 v.

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

21 Defendants.
22
23

CASE NO. RG 08-379099

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO COMPEL FURTHER
ANSWERS TO INTERROGATORIES
AND FOR SANCTIONS**

Hearing Date: February 11, 2010
Hearing Time: 2:00 p.m.
Dept: Dept. 20, Judge Freedman
Action Filed: March 28, 2008
Trial Date: Not yet assigned
Reservation No. R - 1027608

24 **I. INTRODUCTION**

25 OAKLAND PORT SERVICES CORPORATION d/b/a AB TRUCKING (the
26 "Defendant") requests the court to grant its motion to compel further answers and for sanctions
27 in the lawsuit at hand because Plaintiffs LAVON GODFREY and GARY GILBERT'S refusal to
28

1 answer fully is without substantial justification and for the reasons set forth below.

2 **II. LEGAL ARGUMENT**

3 **1. Each named Plaintiff should be compelled to provide further answers to Form**
4 **Interrogatory No. 2.11 because their answers are inadequate.**

5 Form Interrogatory No. 2.11 seeks information regarding any agency or employment
6 relationship that each Plaintiff claims existed during those circumstances and events giving rise
7 to this action. Each Plaintiff's relationship to Defendant as well as a description of his duties
8 with Defendant, are entirely relevant in that one of the tests for class certification is whether the
9 named plaintiffs would adequately represent the interests of the class. *Howard Gunty Profit*
10 *Sharing Plan v. Superior Court* (2001) 88 Cal.App.4th 572, 578.

11 **2. Each named Plaintiff should be compelled to provide further answers to Form**
12 **Interrogatory No. 12.1 because their answers are inadequate.**

13 Form Interrogatory 12.1 seeks, generally, information about witnesses. This
14 interrogatory is proper as it seeks the identity of any percipient witness or witnesses who can
15 testify to facts on which each Plaintiff's contentions are based. *CCP* § 2030.010(b); see *Burke v.*
16 *Superior Court* (1969) 71 Cal.2d 276, 281. Plaintiffs responded by identifying only "all AB
17 Trucking management." That response is insufficient for two primary reasons:

- 18 (A) It is clear that witnesses have been omitted, such as the other Plaintiff;
19 (B) Identifying "all AB Trucking management" as witnesses communicates no
20 information because defendant is a corporate entity. If Plaintiffs believe there are representatives
21 of the corporation who are witnesses, they must identify them.

22 **3. Plaintiff GODFREY should be compelled to provide further answers to Form**
23 **Interrogatory No. 207.2 because her answers are improper and inadequate.**

24 "Answers must be complete and responsive. Thus, it is not proper to answer by stating,
25 'See my deposition', 'See my pleading', or 'See the financial statement'." *Deyo v. Kilbourne*
26 (1978) 84 Cal.App.3d 771, 783-84. Plaintiff GODFREY'S response to this form interrogatory
27 that she "testified to making such complaints...in her deposition" constitutes an improper
28

1 answer. Plaintiff GODFREY should be required to provide answers to form interrogatories they
2 merely neglected to answer in good faith. Plaintiff GODFREY'S partial response is grossly
3 inadequate and non-responsive.

4 **4. Each named Plaintiff and Plaintiffs' Counsel must pay monetary sanctions to**
5 **Defendant because their failure to serve a timely response is without "substantial**
6 **justification."**

7 California Code of Civil Procedure section 2030.250(a) provides that "[t]he party to
8 whom the interrogatories are directed shall sign the response under oath unless the response
9 contains only objections." "Unsworn responses are tantamount to no response at all." *Appleton*
10 *v. Superior Court* (1988), 206 Cal.App.3d 632, 635. Where fact-specific responses are required,
11 a lack of verification renders those responses untimely. *Food 4 Less Supermarkets, Inc. v.*
12 *Superior Court* (1995) 40 Cal.App.4th 651, 656-57. Furthermore, "[i]f a party to whom
13 interrogatories were directed fails to serve a timely response, the propounding party may move
14 for an order compelling responses and for a monetary sanction." See Weil & Brown, Cal.
15 Practice Guide, Civil Procedure Before Trial, (The Rutter Group 2009) Discovery, ¶ 8:1137, p.
16 8F-7, citing CCP § 2030.290(b) and *Sinaiko Healthcare Consulting Inc. v. Pacific Healthcare*
17 *Consultants* (2007) 148 Cal.App.4th 390, 404.

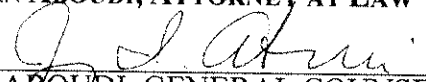
18 Plaintiffs' failure to verify its responses constitutes a failure to serve timely responses.
19 See *Declaration of Jay Ian Aboudi ("Aboudi Decl.")*, ¶¶ 2-3. Accordingly, the court "must
20 impose a monetary sanction against the delinquent party unless that party acted with 'substantial
21 justification' or the sanction would be unjust." CCP § 2030.290. Although not required, as both
22 Plaintiffs failed to serve timely responses, Defendant nevertheless made a reasonable and good
23 faith effort to resolve the matter informally with opposing counsel. See CCP § 2030.290,
24 *Sinaiko v. Pacific*, 148 Cal.App.4th at 411, *Leach v. Superior Court* (1980), 111 Cal.App.3d 902,
25 906; see also *Aboudi Decl.* ¶ 7. Furthermore, both Plaintiffs' continuing failure to serve timely
26 and verified responses justifies the awarding of monetary sanctions against Plaintiffs and
27 Plaintiffs' counsel. See *Aboudi Decl.* ¶ 5.

28

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

Dated: January 15, 2010

JAY IAN ABOUDI, ATTORNEY AT LAW



JAY I. ABOUDI, GENERAL COUNSEL
Attorney for Defendant
OAKLAND PORT SERVICES
CORPORATION d/b/a AB TRUCKING