

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

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

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

Attorneys for Defendant
OAKLAND PORT SERVICES CORPORATION
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

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

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

Plaintiffs,

v.

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

Defendants.

CASE NO. RG 08-379099

**DECLARATION OF JAY IAN ABOUDI
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

I, JAY IAN ABOUDI, declare:

1. I am an attorney for Defendant OAKLAND PORT SERVICES CORPORATION
d/b/a AB TRUCKING in this action. I have personal knowledge of each fact stated in this
declaration.

2. On September 8, 2009, Plaintiffs LAVON GODFREY and GARY GILBERT

1 were each served personally through their attorneys with interrogatories propounded by
2 Defendant OAKLAND PORT SERVICES CORPORATION d/b/a AB TRUCKING. On
3 September 28, 2009, Defendant granted Plaintiffs a two week extension to provide responses by
4 October 22, 2009.

5 3. On October 22, 2009 Plaintiffs LAVON GODFREY and GARY GILBERT had
6 served unverified responses to the interrogatories. Plaintiff GARY GILBERT mailed the
7 verification to Defendant on November 20, 2009 which Defendant received on November 24,
8 2009. Plaintiff LAVON GODFREY mailed the verification to Defendant on December 15,
9 2009.

10 4. Three of the responses are inadequate in that unmeritorious objections were
11 interposed and the answers provided were evasive and incomplete.

12 5. On January 5, 2010, Plaintiffs LAVON GODFREY and GARY GILBERT served
13 supplemental responses to several interrogatories but, again, responses were unverified and
14 inadequate. Defendant subsequently received Plaintiff GARY GILBERT'S verification to these
15 supplemental responses on January 13, 2010. Defendant still has not received Plaintiff LAVON
16 GODFREY'S signed verification to these supplemental responses.

17 6. I am informed and believe and thereon allege that each of the disputed questions
18 and answers were made by or upon the advice of both named Plaintiffs' counsel.

19 7. Prior to filing this motion, I made a reasonable and good faith effort to resolve
20 informally the issues presented by this motion by sending to opposing counsel two letters for
21 each of the named Plaintiffs (copies attached as EXHIBITS A and B), as well as calling
22 opposing counsel. While certain issues were resolved, those questions set forth in the Statement
23 of Interrogatories and Responses in Dispute were not resolved.

24 8. Plaintiffs LAVON GODFREY and GARY GILBERT should each be ordered to
25 answer fully and completely each of the interrogatories in dispute based upon the following: The
26 information sought is relevant to the subject matter of this action and is not privilege or
27 otherwise exempt from discovery. The information sought by the interrogatories is required for
28 the additional reasons set forth in the separate Statement of Interrogatories and Responses in

1 Dispute.

2 9. Because of the unmeritorious objections, the failure to provide verified responses,
3 and the unreasonable refusal to respond fully to the specified interrogatories, Defendant
4 OAKLAND PORT SERVICES CORPORATION has incurred and will incur reasonable costs
5 and attorney fees for bringing this motion in the amount of \$2,540.00, consisting of the
6 following: (a) Motion fee—\$40.00; (b) Attorney fees—\$1000.00 to meet and confer, and
7 \$1,500.00 to prepare and file this motion.

8 10. Based upon my experience, I can estimate that I will spend four hours additional
9 time to prepare the reply to this motion, prepare for oral argument and attend the hearing. At the
10 billing rate of \$250.00 per hour, the reasonable value of my services, I estimate there will be
11 additional fees incurred of \$1000.00.

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

14
15 Dated: January 15, 2010

16 
17 _____
18 JAY IAN ABOUDI, Esq.

18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

11 Burma Road
Oakland, CA 94607
(510) 835-0930 main
(510) 835-0832 fax
www.abtruck.com



Oakland Port Services Corporation



GENERAL COUNSEL

JAY IAN ABOUDI
JAY@ABTRUCK.COM

December 14, 2009

Sent Via Facsimile, E-mail, & US Mail

Lisl R. Duncan, Esq.
David A. Rosenfeld, Esq.
Caren P. Sencer, Esq.
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, California 94501
lduncan@unioncounsel.net

Re: **Plaintiff Lavon Godfrey's Responses to Written Discovery**
Lavon Godfrey, and Gary Gilbert v. Oakland Port Services Corp. d/b/a AB Trucking
Alameda County Superior Court Case No. RG 05-379099

Dear Ms. Duncan:

We have reviewed your client's responses to the discovery propounded by Oakland Port Services Corporation d/b/a AB Trucking ("AB") and find many evasive and disingenuous. As explained below, Ms. Lavon Godfrey's responses to Defendant's Special Interrogatories, Form Interrogatories, Request for Admissions, and Demand for Production of Documents are highly inadequate. Please consider this letter our meet and confer preliminary to a motion to compel if more forthcoming answers are not provided by December 28, 2009.

Responses Untimely. Your client's responses are untimely. Section 2030.250(a),(c) of the California Code of Civil Procedure provides that responses must be signed under oath by the party to whom the interrogatories are directed. Where a verification is required, an unverified response is ineffective; it is the equivalent of no response at all. *Appleton v. Sup.Ct. (Cook) (1988) 206 CA3d 632, 636, 253 CR 762, 764*. We did not receive your client's responses in a timely manner as they were not verified pursuant to CCP § 2030.250(a) and (c). Although the responses you provided contained your signature, the portion containing fact-specific responses must be verified. *See Food 4 Less Supermarkets, Inc. v. Sup.Ct. (Fletcher) (1995) 40 CA4th 651, 657*. We still have not received your client's verification as of the date of this letter. Based on these representations, your failure to provide verified responses subjects you to sanctions pursuant to section 2030.290(b) of the California Code of Civil Procedure.

Objections Waived. Having failed to deliver your client's responses on or before the due date, Section 2030.290(a) of the California Code of Civil Procedure applies directly to your client's responses as well:

If a party to whom interrogatories are directed fails to serve a timely response, the following rules apply: (a) The party to whom the interrogatories are directed waives any right to exercise the option to produce writings under Section 2030.230, as well as any objection to the interrogatories, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010).

Failing to respond within the time limit effectively waives most objections to interrogatories, including claims of privilege and "work product" protection. *Leach v. Sup.Ct.* (1980) 111 CA3d 902, 905-906, 169 CR 42, 43-44]. In addition to being unverified, your client's responses were not produced on or before October 22, 2009. As you requested on September 28, 2009, we granted an additional two weeks thereby making your client's responses due on or before October 22, 2009. Your client's responses were mailed on the due date. Your client's untimely and responses effectively waive the objections you raised on your client's behalf.

General Objections. Your objections that the requests are burdensome and oppressive are without merit. "If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party." CCP § 2030.220(c); *Regency Health Services, Inc. v. Sup.Ct. (Settles)* (1998) 64 CA4th 1496, 1504, 76 CR2d 95, 100 (citing text). The responding party must make a reasonable effort to obtain whatever information is sought; and if unable to do so, must specify why the information is unavailable and what efforts he or she made to obtain it. See *Deyo v. Kilbourne* (1978) 84 CA3d 771, 782, 149 CR 499, 509.

As you are aware, boilerplate general objections are improper under section 2030.290(2) of the California Code of Civil Procedure. Furthermore, "[t]he fact alone that the response to an interrogatory may be expensive and burdensome does not justify a refusal to answer." *Alpine Mut. Water Co. v. Superior Court for Ventura County*, 259 Cal.App.2d 45, 55 (citing *West Pico Furniture Company of Los Angeles v. Superior Court* (1961) 56 Cal.2d 499, 504 (hereinafter "West Pico")). "[T]here is no rule which olds that proper discovery is limited to interrogatories which may be answered without effort or loss of time." *Sigerseth v. Superior Court*, 23 Cal.App.3d 427, 433. "An objection to an interrogatory on the grounds of burden is not valid unless the burden results in injustice." *West Pico* 56 Cal.2d 407.

Plaintiff Lavon Godfrey's objections are boilerplate for the reasons set forth above. Such general and boilerplate objections have the effect of obstructing discovery. If there are individual requests which, for justified reasons may have valid burdensome objections, we welcome the opportunity to meet and confer on these issues.

Your objections that these discovery requests serve no purpose other than to vex, harass and annoy plaintiff are also without merit. These discovery requests are entirely relevant to the subject matter especially in light of the fact that they were formulated from the allegations of your client's Complaint. As you are aware, "any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved...if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence..." CCP § 2017.010; see also *West Pico* 56 Cal.2d 407, 416.

Further, your objection on the grounds that these requests are oppressive and burdensome because your client had previously responded to a question in her deposition is unavailing. An objection to an interrogatory is invalid on the ground that a question has been asked and answered at deposition. See *Coy v. Sup.Ct. (Wolcher)* (1962) 58 C2d 210, 218.

Responses to Special Interrogatories: Set One

Special Interrogatory No. 1

This interrogatory seeks to determine the factual bases of your client's specific allegation that her action meets the class certification requirements of section 382 of the California Code of Civil Procedure. The propounding party is entitled to the facts constituting the general position upon which your client bases such a claim. See *Tehachapi-Cummings County Water Dist. v. Superior Court of Kern County*, (1968) 267 Cal.App.2d 42, 46; see also *Sheets v. Superior Court*, (1967) 257 Cal.App.2d 1. "An interrogatory is not objectionable because an answer...relates to fact or the application of law to fact, or would be based on...legal theories...." CCP § 2030.010(b). An interrogatory may properly ask a party to state his or her contentions as to any matter or issue in the case; and the facts, witnesses or writings on which the contentions are based. CCP § 2030.010(b); see *Burke v. Sup.Ct. (Fidelity & Dep. Co. of Maryland)* (1969) 71 C2d 276, 281.

Your client's response is factually devoid and does not provide the factual bases of the allegations in her complaint. Rather, your client has provided a summary of law and class action procedure.

Regarding your objections that "[p]laintiff cannot reasonably be expected to formulate a complete response at this stage in the litigation" because discovery is not complete and trial preparation is ongoing, they are without merit. Your client has taken two depositions: (1) on June 8, 2009, Plaintiffs took the deposition of the person designated most qualified in several subject areas by AB; and (2) on September 11, 2009 Plaintiffs took the deposition of additional persons most knowledgeable on payroll practices and other practices of AB. In addition, AB has provided you with approximately 1600 pages of Bates-numbered documents dated between 2004 and 2008 pursuant to your Request for Production of Documents dated July 15, 2008.

Responding party's objections to this interrogatory appears to be based on the use of the plural form of the word "claim." These objections are disingenuous for two main reasons: (1) this interrogatory cites language directly from your complaint; and (2) this interrogatory specifically identifies the location in the complaint by paragraph number. So there can be no misunderstanding by your client as to the use of the terms "support" and "claims" that are the subject matter of the discovery requests, I clarify them here and request your client serve supplemental responses to the special interrogatories based on this clarification.

"CLAIMS" is now clarified to mean "claim" in the singular form. That term should be interpreted using the common meaning when referring to a specific "allegation," "contention," or "statement" that you make in the Complaint.

Responding party also seems to be struggling with the concept of "SUPPORT." In the context of the request to "State all facts which SUPPORT..." responding party is requested to **provide specific facts constituting the general position upon which your client bases such a claim.**

Your supplemental responses must provide the factual bases for the claim specified in this interrogatory.

Special Interrogatory No. 2

This interrogatory seeks the identity of individual witnesses who have knowledge of the claim specified in this interrogatory. Your objections to identifying percipient witnesses under Special Interrogatory No. 2 based on AB having knowledge of these facts are improper and in bad faith. It does not call for a legal conclusion. This interrogatory is proper as it seeks the identity of any percipient witness or witnesses who on which the contentions are based. CCP § 2030.010(b); see *Burke v. Sup.Ct. (Fidelity & Dep. Co. of Maryland)* (1969) 71 C2d 276, 281. Furthermore, where an interrogatory asks the names of all witnesses to a particular event then known to the responding party, a response omitting the name of a known witness could subject the adversary to unfair surprise at trial

and therefore may result in an order excluding that witness' testimony. See *R & B Auto Ctr., Inc. v. Farmers Group, Inc.* (2006) 140 CA4th 327, 356.

Your supplemental responses must provide names, addresses and telephone numbers of any percipient witnesses who have knowledge of the specified CLAIM as clarified in this letter.

Special Interrogatory No. 3

This interrogatory seeks the identity of all documents which evidence, refer or relate to, support or describe each and every fact supporting the claim specified in this interrogatory. The responding party must describe these records with *sufficient particularity* that they can be easily located. See CCP § 2030.230; see also *Fuss v. Sup.Ct. (Rosenthal)* (1969) 273 CA2d 807, 815–817.

Your client's response is in bad faith and fails to adequately *specify* which documents you rely upon to support the claim specified in this interrogatory. Your response directs us to a the approximately 1600 Bates-numbered time sheets and payroll records dated between 2004 and 2008 that AB produced pursuant to your Request for Production of Documents dated July 15, 2008. The broad and generic response to a direct request is unacceptable and violates the responding party's duty under CCP § 2030.220(a) to provide "complete and straightforward" answers. Accordingly, your supplemental responses must identify each of the documents produced by AB specifically by Bates number. To the extent that any document responsive to this request was not produced by AB, your supplemental responses must specify, in sufficient detail to permit us to locate and to identify the document(s).

Special Interrogatories Nos. 4, 7, 10, 16, 19, 22, 25, 28, 31, 34, 37, and 40

Similar to Special Interrogatory No. 1 above, your responses to these interrogatories are factually devoid and therefore non-responsive. Your supplemental responses must provide the factual bases for the claim specified in each of these interrogatories.

Special Interrogatories Nos. 5, 8, 11, 14, 17, 20, 23, 26, 29, 32, 35, 38, and 41

Similar to Special Interrogatory No. 2 above, your response fails to specifically identify any individual(s) that have knowledge of the facts on which your contention is based. Therefore, it is non-responsive. Your supplemental responses must provide names, addresses and telephone numbers of any percipient witnesses who have knowledge of the claim specified in each of these interrogatories.

Special Interrogatories Nos. 6, 9, 12, 15, 18, 21, 24, 27, 30, 33, 36, and 39

Similar to Special Interrogatory No. 3 above, your response does not provide *sufficient particularity* in order to identify documents which provide the facts on which your contention is based. Your supplemental responses must identify, by Bates number, each of the documents in each of these interrogatories. To the extent that any document responsive to this request was not produced by AB, your supplemental responses must specify, in sufficient detail to permit us to locate and to identify the document(s).

Special Interrogatory No. 43

Your response is inadequate and non-responsive to this interrogatory. This interrogatory seeks the specific amount of damages Ms. Godfrey seeks on behalf of herself and the proposed class. To the extent that Ms. Godfrey is unable to state the amount of damages on behalf of the proposed class, we will accept a statement of the amount of damages she seeks to recover on behalf of herself.

Special Interrogatory No. 44

This interrogatory seeks the complete factual basis for the calculation of any amount Ms. Godfrey is seeking to recover on behalf of herself and the proposed class. To the extent that Ms.

Godfrey is unable to provide the factual basis for the proposed class, we will accept a response that provides the complete factual basis for the calculation of any amount Ms. Godfrey is seeking to recover on behalf of herself.

Special Interrogatory No. 45

This interrogatory seeks the specific facts on which Ms. Godfrey's bases her contention that she is entitled to the amount stated in Special Interrogatory No. 43. Your supplemental responses must provide the factual bases of Ms. Godfrey's contention.

Responses to Form Interrogatories: Set One

Your client objects to numerous Form Interrogatories on the ground that the interrogatory is overbroad as to the time period covered. Where you make this objection, please understand it to mean the time period from **March 28, 2004 through March 28, 2008**.

Your client also objects to numerous Form Interrogatories on the ground that the term "**INCIDENT**" is "vague" and "ambiguous." If the definition of the term "**INCIDENT**," as indicated in *Sec. 4(a)(1)* of Judicial Council Form DISC-001 presents confusion, we clarify it to mean: "**The pattern and practice by Oakland Port Services Corporation from March 28, 2004 through March 28, 2008 of failing to provide meal and rest periods to drivers as required under California law, failing to provide minimum compensation under Port of Oakland Living Wage Ordinance, failing to provide employees with adequate wage statements, failing to pay wages for all hours worked, failing to keep accurate logs of driving work performed by employees, failing to provide all compensation in a timely manner and failing to provide all compensation owed at the termination of employment.**"

Form Interrogatory No. 2.5

This interrogatory seeks the identity and location of percipient witnesses as discussed above. Your supplemental responses must provide specific responses by letter (*i.e.*, (a), (b), (c), and (d)) to this interrogatory.

Form Interrogatory No. 2.6

This interrogatory seeks the identity and location of persons who have knowledge of relevant facts. (For example, your client's Complaint alleges that this action can be properly maintained as a class action under CCP § 382; specifically that she can adequately represent the class. The identity and location of witnesses who have knowledge of your client's claim to be an adequate representative are entirely relevant and is not covered under the California right to privacy). Accordingly, your supplemental responses must provide the names, addresses, and telephone numbers of any percipient witnesses who have knowledge of facts that you allege in your complaint.

Form Interrogatory No. 9.1

Your response to this Form Interrogatory is highly inadequate as they are non-responsive to the request. Form Interrogatory No. 9.1 asks that you state: (a) the nature; (b) the date it occurred; (c) the amount; (d) the name, ADDRESS, and telephone number of each PERSON to whom an obligation was incurred. Your supplemental responses must provide specific responses by letter (*i.e.*, (a), (b), (c), and (d)) to this interrogatory.

Form Interrogatory No. 12.1

This interrogatory seeks the identity and location of percipient witnesses as discussed above. Your supplemental responses must provide specific responses by letter (*i.e.*, (a), (b), (c), and (d)) to this interrogatory.

Form Interrogatory No. 12.2

This interrogatory seeks the identity and location of any individual whom Plaintiff or Plaintiff's counsel has interviewed regarding the INCIDENT as now clarified in this letter. This includes any individual that Plaintiff has contacted in order to determine the suitability of potential class action. Your supplemental responses must provide specific responses by letter (*i.e.*, (a), (b), (c), and (d)) to this interrogatory.

Form Interrogatory Nos. 12.3, 12.6

As the term INCIDENT is now clarified in this letter, your supplemental responses must provide specific responses by letter (*i.e.*, (a), (b), (c), and (d)) to this interrogatory.

Form Interrogatory No. 14.2

Your response that "AB Trucking was charged resulting in the instant litigation" suggests a confusion between "filing this lawsuit" and the term "charge." This interrogatory seeks to determine whether any person was *cited* or *charged* by any government entity. Within this context, your supplemental responses must provide specific responses by letter (*i.e.*, (a), (b), (c), and (d)) to this interrogatory.

Form Interrogatory No. 17.1

Your response to this Form Interrogatory is highly inadequate as they are non-responsive to the request. As stated above, your objections to identifying percipient witnesses under Form Interrogatory 17.1 based on invasion of privacy are improper and bad faith. Your supplemental responses must provide specific responses by letter (*i.e.*, (a), (b), (c), and (d)) to this interrogatory.

Form Interrogatory No. 50.1

This interrogatory seeks the identity of the agreement which Plaintiff alleges as existing between Defendant AB Trucking and Port of Oakland and/or City of Oakland. As stated above, the responding party must describe this agreement with *sufficient particularity* that they can be easily located. Your client's general response is in bad faith and fails to address the existence of any such agreement and fails to adequately *specify* which documents you rely upon to support the claim. Your supplemental responses must provide specific responses by letter (*i.e.*, (a), (b), (c), and (d)) to this interrogatory.

Form Interrogatory Nos. 50.2 through 50.6

These interrogatories seek specific information regarding any agreement which Plaintiff alleges as existing between Defendant AB Trucking and the Port of Oakland and/or City of Oakland. Specifically, these interrogatories seek specific information regarding any agreement that Plaintiff believes qualifies AB as a Port Assisted Business as alleged in the Complaint. These interrogatories do not call for a legal opinion—they ask for require a simple "yes" or "no" response along with the factual bases for your response.

Form Interrogatory No. 200.1

Your supplemental responses must provide specific responses by letter (*i.e.*, (a), (b), (c), and (d)) to this interrogatory. In addition, your supplemental responses must identify each of the

documents produced by AB specifically by Bates number. To the extent that any document responsive to this request was not produced by AB, your supplemental responses must specify, in sufficient detail to permit us to locate and to identify the document(s).

Form Interrogatory No. 200.4

Your supplemental responses must provide specific responses by letter (*i.e.*, (a), (b), (c), and (d)) to this interrogatory. In addition, your supplemental responses must identify each of the documents produced by AB specifically by Bates number. To the extent that any document responsive to this request was not produced by AB, your supplemental responses must specify, in sufficient detail to permit us to locate and to identify the document(s).

Form Interrogatory No. 201.1

Your client failed to respond to this Interrogatory.

Form Interrogatory No. 207.2

As stated above, your objection that a question has been asked and answered at deposition is improper. Your supplemental responses must provide specific responses by letter (*i.e.*, (a), (b), (c), and (d)) to this interrogatory. In addition, your supplemental responses must identify each of the documents produced by AB specifically by Bates number. To the extent that any document responsive to this request was not produced by AB, your supplemental responses must specify, in sufficient detail to permit us to locate and to identify the document(s).

Form Interrogatory No. 210.6

This interrogatory seeks the identity and location of persons who have knowledge of relevant facts. Defendant is willing to meet and confer with Responding Party to limit the scope of this interrogatory to the extent that it seeks information not covered under the California right to privacy

Form Interrogatory No. 217.0

Similar to Form Interrogatory 17.1 above, your response to this Form Interrogatory is highly inadequate as they are non-responsive to the request. Your supplemental responses must provide specific responses by letter (*i.e.*, (a), (b), (c), and (d)) to this interrogatory.

Responses to Request for Admissions: Set One

These requests are not unduly overbroad, burdensome, and oppressive, nor does this request call for a legal conclusion. They ask for a simple affirmative or negative response and your objections are without merit as discussed above. To the extent that these requests are overbroad as to the time period covered, please understand it to mean the **time period from March 28, 2004 through March 28, 2008**.

In light of the clarification provided in this letter, we ask that you reconsider your responses to **Request Nos. 1, 3, 4, 5, 6, 7, and 14**.

Request No. 2

This request seeks to determine the adequacy of Plaintiff as representative of the putative class. They ask for a simple affirmative or negative response and your objections are without merit as discussed above.

Request No. 8

This request seeks to determine the adequacy of Plaintiff as representative of the putative class. Whether Plaintiff purporting to be an adequate representative has entered into an incentive agreement with your firm is entirely relevant to the issue of whether your client's claims are typical of the claims of the class. See *J.P. Morgan & Co., Inc. v. Superior Court*, 113 Cal.App.4th 195 (Cal. Ct. App. 2003) (A class action should not be certified where there is evidence of a conflict of interest among the proposed class members that "goes to the very subject matter of the litigation."). Specifically, this request seeks to determine whether such an agreement ties the incentive award to the ultimate recovery in this matter, thereby creating a material conflict between your client and the putative class. Propounding party requests either an affirmative or negative response to is willing to meet and confer regarding this request as well as how this request is addressed in Form Interrogatory Nos. 17.1 and 217.0 – if no incentive agreement exists, we will accept a response to that effect.

Responses to Demand for Production of Documents: Set One

Your client's responses directing the Propounding party to documents "produced by Defendant..." are unacceptable for the reasons set forth above. We ask that you reconsider your responses to these demands.

We ask that you reconsider your responses to these demands. To the extent that producing documents would be duplicative (for those documents that AB produced), we will accept a response that identifies each of the documents produced by AB specifically by Bates number. To the extent that any document responsive to this request was not produced by AB, you must produce such documents.

Demand No. 5

Although it appears that two separate Demands are named "Demand No. 5," the Demands are clearly distinguishable. It appears from the format of your response that you erroneously consider these two Demands as identical. Your failure to respond to the two distinct Demands are evasive and in bad faith.

We ask that you reconsider your response to the second Demand No. 5 which seeks production of "Any and all DOCUMENTS which support the third cause of action for 'Living Wage—Oakland City Charter § 728' contained in YOUR Complaint." You must produce documents responsive to this request in order to avoid a motion to compel and/or a motion to strike.

Sincerely,



Jay Ian Aboudi
General Counsel

cc: Michael Broad, Esq.

11 Burma Road
Oakland, CA 94607
(510) 835-0930 main
(510) 835-0832 fax
www.abtruck.com

EXHIBIT B



Oakland Port Services Corporation



GENERAL COUNSEL

JAY IAN ABOUDI
JAY@ABTRUCK.COM

December 14, 2009

Sent Via Facsimile, E-mail, & US Mail

Lisl R. Duncan, Esq.
David A. Rosenfeld, Esq.
Caren P. Sencer, Esq.
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, California 94501
lduncan@unioncounsel.net

Re: **Plaintiff Gary Gilbert's Responses to Written Discovery**
Lavon Godfrey, and Gary Gilbert v. Oakland Port Services Corp. d/b/a AB Trucking
Alameda County Superior Court Case No. RG 05-379099

Dear Ms. Duncan:

We have reviewed your client's responses to the discovery propounded by Oakland Port Services Corporation d/b/a AB Trucking ("AB") and find many evasive and disingenuous. As explained below, Mr. Gary Gilbert's responses to Defendant's Special Interrogatories, Form Interrogatories, Request for Admissions, and Demand for Production of Documents are highly inadequate. Please consider this letter our meet and confer preliminary to a motion to compel if more forthcoming answers are not provided by December 28, 2009.

Responses Untimely. Your client's responses are untimely. Section 2030.250(a),(c) of the California Code of Civil Procedure provides that responses must be signed under oath by the party to whom the interrogatories are directed. Where a verification is required, an unverified response is ineffective; it is the equivalent of no response at all. *Appleton v. Sup.Ct. (Cook) (1988) 206 CA3d 632, 636, 253 CR 762, 764*. We did not receive your client's responses in a timely manner as they were not verified pursuant to CCP § 2030.250(a) and (c). Although the responses you provided contained your signature, the portion containing fact-specific responses must be verified. *See Food 4 Less Supermarkets, Inc. v. Sup.Ct. (Fletcher) (1995) 40 CA4th 651, 657*. We received Mr. Gilbert's verification on November 24, 2009 along with your letter dated November 20, 2009. Based on these representations, your failure to provide verified responses subjects you to sanctions pursuant to section 2030.290(b) of the California Code of Civil Procedure.

Objections Waived. Having failed to deliver your client's responses on or before the due date, Section 2030.290(a) of the California Code of Civil Procedure applies directly to your client's responses as well:

If a party to whom interrogatories are directed fails to serve a timely response, the following rules apply: (a) The party to whom the interrogatories are directed waives any right to exercise the option to produce writings under Section 2030.230, as well as any objection to the interrogatories, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010).

Failing to respond within the time limit effectively waives most objections to interrogatories, including claims of privilege and "work product" protection. *Leach v. Sup.Ct. (1980) 111 CA3d 902, 905-906, 169 CR 42, 43-44*. In addition to being unverified, your client's responses were not produced on or before October 22, 2009. As you requested on September 28, 2009, we granted an additional two weeks thereby making your client's responses due *on or before* October 22, 2009. Your client's responses were mailed *on* the due date. Your client's untimely and responses effectively waive the objections you raised on your client's behalf.

General Objections. Your objections that the requests are burdensome and oppressive are without merit. "If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party." *CCP § 2030.220(c); Regency Health Services, Inc. v. Sup.Ct. (Settles) (1998) 64 CA4th 1496, 1504, 76 CR2d 95, 100* (citing text). The responding party must make a reasonable effort to obtain whatever information is sought; and if unable to do so, must specify why the information is unavailable and what efforts he or she made to obtain it. *See Deyo v. Kilbourne (1978) 84 CA3d 771, 782, 149 CR 499, 509*.

As you are aware, boilerplate general objections are improper under section 2030.290(2) of the California Code of Civil Procedure. Furthermore, "[t]he fact alone that the response to an interrogatory may be expensive and burdensome does not justify a refusal to answer." *Alpine Mut. Water Co. v. Superior Court for Ventura County, 259 Cal.App.2d 45, 55* (citing *West Pico Furniture Company of Los Angeles v. Superior Court (1961) 56 Cal.2d 499, 504* (hereinafter "*West Pico*"). "[T]here is no rule which holds that proper discovery is limited to interrogatories which may be answered without effort or loss of time." *Sigerseith v. Superior Court, 23 Cal.App.3d 427, 433*. "An objection to an interrogatory on the grounds of burden is not valid unless the burden results in injustice." *West Pico 56 Cal.2d 407*.

Plaintiff Gary Gilbert's objections are boilerplate for the reasons set forth above. Such general and boilerplate objections have the effect of obstructing discovery. If there are individual requests which, for justified reasons may have valid burdensome objections, we welcome the opportunity to meet and confer on these issues.

Your objections that these discovery requests serve no purpose other than to vex, harass and annoy plaintiff are also without merit. These discovery requests are entirely relevant to the subject matter especially in light of the fact that they were formulated from the allegations of your client's Complaint. As you are aware, "any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved...if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence..." *CCP § 2017.010*; see also *West Pico 56 Cal.2d 407, 416*.

Further, your objection on the grounds that these requests are oppressive and burdensome because your client had previously responded to a question in his deposition is unavailing. An objection to an interrogatory is invalid on the ground that a question has been asked and answered at deposition. *See Coy v. Sup.Ct. (Wolcher) (1962) 58 C2d 210, 218*.

Responses to Special Interrogatories: Set One

Special Interrogatory No. 1

This interrogatory seeks to determine the factual bases of your client's specific allegation that his action meets the class certification requirements of section 382 of the California Code of Civil Procedure. The propounding party is entitled to the facts constituting the general position upon which your client bases such a claim. See *Tehachapi-Cummings County Water Dist. v. Superior Court of Kern County*, (1968) 267 Cal.App.2d 42, 46; see also *Sheets v. Superior Court*, (1967) 257 Cal.App.2d 1. "An interrogatory is not objectionable because an answer...relates to fact or the application of law to fact, or would be based on...legal theories..." CCP § 2030.010(b). An interrogatory may properly ask a party to state his or her contentions as to any matter or issue in the case; and the facts, witnesses or writings on which the contentions are based. CCP § 2030.010(b); see *Burke v. Sup.Ct. (Fidelity & Dep. Co. of Maryland)* (1969) 71 C2d 276, 281.

Your client's response is factually devoid and does not provide the factual bases of the allegations in his complaint. Rather, your client has provided a summary of law and class action procedure.

Regarding your objections that "[p]laintiff cannot reasonably be expected to formulate a complete response at this stage in the litigation" because discovery is not complete and trial preparation is ongoing, they are without merit. Your client has taken two depositions: (1) on June 8, 2009, Plaintiffs took the deposition of the person designated most qualified in several subject areas by AB; and (2) on September 11, 2009 Plaintiffs took the deposition of additional persons most knowledgeable on payroll practices and other practices of AB. In addition, AB has provided you with approximately 1600 pages of Bates-numbered documents dated between 2004 and 2008 pursuant to your Request for Production of Documents dated July 15, 2008.

Responding party's objections to this interrogatory appears to be based on the use of the plural form of the word "claim." These objections are disingenuous for two main reasons: (1) this interrogatory cites language directly from your complaint; and (2) this interrogatory specifically identifies the location in the complaint by paragraph number. So there can be no misunderstanding by your client as to the use of the terms "support" and "claims" that are the subject matter of the discovery requests, I clarify them here and request your client serve supplemental responses to the special interrogatories based on this clarification.

"CLAIMS" is now clarified to mean "claim" in the singular form. That term should be interpreted using the common meaning when referring to a specific "allegation," "contention," or "statement" that you make in the Complaint.

Responding party also seems to be struggling with the concept of "SUPPORT." In the context of the request to **"State all facts which SUPPORT..."** responding party is requested to **provide specific facts constituting the general position upon which your client bases such a claim.**

Your supplemental responses must provide the factual bases for the claim specified in this interrogatory.

Special Interrogatory No. 2

This interrogatory seeks the identity of individual witnesses who have knowledge of the claim specified in this interrogatory. Your objections to identifying percipient witnesses under Special Interrogatory No. 2 based on AB having knowledge of these facts are improper and in bad faith. It does not call for a legal conclusion. This interrogatory is proper as it seeks the identity of any percipient witness or witnesses who on which the contentions are based. CCP § 2030.010(b); see *Burke v. Sup.Ct. (Fidelity & Dep. Co. of Maryland)* (1969) 71 C2d 276, 281. Furthermore, where an interrogatory asks the names of all witnesses to a particular event then known to the responding party, a response omitting the name of a known witness could subject the adversary to unfair surprise at trial

and therefore may result in an order excluding that witness' testimony. See *R & B Auto Ctr., Inc. v. Farmers Group, Inc.* (2006) 140 CA4th 327, 356.

Your supplemental responses must provide names, addresses and telephone numbers of any percipient witnesses who have knowledge of the specified **CLAIM** as clarified in this letter.

Special Interrogatory No. 3

This interrogatory seeks the identity of all documents which evidence, refer or relate to, support or describe each and every fact supporting the claim specified in this interrogatory. The responding party must describe these records with *sufficient particularity* that they can be easily located. See *CCP § 2030.230*; see also *Fuss v. Sup.Ct. (Rosenthal)* (1969) 273 CA2d 807, 815-817.

Your client's response is in bad faith and fails to adequately *specify* which documents you rely upon to support the claim specified in this interrogatory. Your response directs us to a the approximately 1600 Bates-numbered time sheets and payroll records dated between 2004 and 2008 that AB produced pursuant to your Request for Production of Documents dated July 15, 2008. The broad and generic response to a direct request is unacceptable and violates the responding party's duty under *CCP § 2030.220(a)* to provide "complete and straightforward" answers. Accordingly, your supplemental responses must identify each of the documents produced by AB specifically by Bates number. To the extent that any document responsive to this request was not produced by AB, your supplemental responses must specify, in sufficient detail to permit us to locate and to identify the document(s).

Special Interrogatories Nos. 4, 7, 10, 16, 19, 22, 25, 28, 31, 34, 37, and 40

Similar to Special Interrogatory No. 1 above, your responses to these interrogatories are factually devoid and therefore non-responsive. Your supplemental responses must provide the factual bases for the claim specified in each of these interrogatories.

Special Interrogatories Nos. 5, 8, 11, 14, 17, 20, 23, 26, 29, 32, 35, 38, and 41

Similar to Special Interrogatory No. 2 above, your response fails to specifically identify any individual(s) that have knowledge of the facts on which your contention is based. Therefore, it is non-responsive. Your supplemental responses must provide names, addresses and telephone numbers of any percipient witnesses who have knowledge of the claim specified in each of these interrogatories.

Special Interrogatories Nos. 6, 9, 12, 15, 18, 21, 24, 27, 30, 33, 36, and 39

Similar to Special Interrogatory No. 3 above, your response does not provide *sufficient particularity* in order to identify documents which provide the facts on which your contention is based. Your supplemental responses must identify, by Bates number, each of the documents in each of these interrogatories. To the extent that any document responsive to this request was not produced by AB, your supplemental responses must specify, in sufficient detail to permit us to locate and to identify the document(s).

Special Interrogatory No. 43

Your response is inadequate and non-responsive to this interrogatory. This interrogatory seeks the specific amount of damages Mr. Gilbert seeks on behalf of himself and the proposed class. To the extent that Mr. Gilbert is unable to state the amount of damages on behalf of the proposed class, we will accept a statement of the amount of damages he seeks to recover on behalf of himself.

Special Interrogatory No. 44

This interrogatory seeks the complete factual basis for the calculation of any amount Mr. Gilbert is seeking to recover on behalf of himself and the proposed class. To the extent that Mr.

Gilbert is unable to provide the factual basis for the proposed class, we will accept a response that provides the complete factual basis for the calculation of any amount Mr. Gilbert is seeking to recover on behalf of himself.

Special Interrogatory No. 45

This interrogatory seeks the specific facts on which Mr. Gilbert bases his contention that he is entitled to the amount stated in Special Interrogatory No. 43. Your supplemental responses must provide the factual bases of Mr. Gilbert's contention.

Responses to Form Interrogatories: Set One

Your client objects to numerous Form Interrogatories on the ground that the interrogatory is overbroad as to the time period covered. Where you make this objection, please understand it to mean the time period from **March 28, 2004 through March 28, 2008**.

Your client also objects to numerous Form Interrogatories on the ground that the term "INCIDENT" is "vague" and "ambiguous." If the definition of the term "INCIDENT," as indicated in *Sec. 4(a)(1)* of Judicial Council Form DISC-001 presents confusion, we clarify it to mean: **"The pattern and practice by Oakland Port Services Corporation from March 28, 2004 through March 28, 2008 of failing to provide meal and rest periods to drivers as required under California law, failing to provide minimum compensation under Port of Oakland Living Wage Ordinance, failing to provide employees with adequate wage statements, failing to pay wages for all hours worked, failing to keep accurate logs of driving work performed by employees, failing to provide all compensation in a timely manner and failing to provide all compensation owed at the termination of employment."**

Form Interrogatory No. 2.5

This interrogatory seeks the identity and location of percipient witnesses as discussed above. Your supplemental responses must provide specific responses by letter (*i.e.*, (a), (b), (c), and (d)) to this interrogatory.

Form Interrogatory No. 2.6

This interrogatory seeks the identity and location of persons who have knowledge of relevant facts. (For example, your client's Complaint alleges that this action can be properly maintained as a class action under CCP § 382; specifically that he can adequately represent the class. The identity and location of witnesses who have knowledge of your client's claim to be an adequate representative are entirely relevant and is not covered under the California right to privacy). Accordingly, your supplemental responses must provide the names, addresses, and telephone numbers of any percipient witnesses who have knowledge of facts that you allege in your complaint.

Form Interrogatory No. 9.1

Your response to this Form Interrogatory is highly inadequate as they are non-responsive to the request. Form Interrogatory No. 9.1 asks that you state: (a) the nature; (b) the date it occurred; (c) the amount; (d) the name, ADDRESS, and telephone number of each PERSON to whom an obligation was incurred. Your supplemental responses must provide specific responses by letter (*i.e.*, (a), (b), (c), and (d)) to this interrogatory.

Form Interrogatory No. 12.1

This interrogatory seeks the identity and location of percipient witnesses as discussed above. Your supplemental responses must provide specific responses by letter (*i.e.*, (a), (b), (c), and (d)) to this interrogatory.

Form Interrogatory No. 12.2

This interrogatory seeks the identity and location of any individual whom Plaintiff or Plaintiff's counsel has interviewed regarding the INCIDENT as now clarified in this letter. This includes any individual that Plaintiff has contacted in order to determine the suitability of potential class action. Your supplemental responses must provide specific responses by letter (*i.e.*, (a), (b), (c), and (d)) to this interrogatory.

Form Interrogatory Nos. 12.3, 12.6

As the term INCIDENT is now clarified in this letter, your supplemental responses must provide specific responses by letter (*i.e.*, (a), (b), (c), and (d)) to this interrogatory.

Form Interrogatory No. 14.2

Your response that "AB Trucking was charged resulting in the instant litigation" suggests a confusion between "filing this lawsuit" and the term "charge." This interrogatory seeks to determine whether any person was *cited* or *charged* by any government entity. Within this context, your supplemental responses must provide specific responses by letter (*i.e.*, (a), (b), (c), and (d)) to this interrogatory.

Form Interrogatory No. 17.1

Your response to this Form Interrogatory is highly inadequate as they are non-responsive to the request. As stated above, your objections to identifying percipient witnesses under Form Interrogatory 17.1 based on invasion of privacy are improper and bad faith. Your supplemental responses must provide specific responses by letter (*i.e.*, (a), (b), (c), and (d)) to this interrogatory.

Form Interrogatory No. 50.1

This interrogatory seeks the identity of the agreement which Plaintiff alleges as existing between Defendant AB Trucking and Port of Oakland and/or City of Oakland. As stated above, the responding party must describe this agreement with *sufficient particularity* that they can be easily located. Your client's general response is in bad faith and fails to address the existence of any such agreement and fails to adequately *specify* which documents you rely upon to support the claim. Your supplemental responses must provide specific responses by letter (*i.e.*, (a), (b), (c), and (d)) to this interrogatory.

Form Interrogatory Nos. 50.2 through 50.6

These interrogatories seek specific information regarding any agreement which Plaintiff alleges as existing between Defendant AB Trucking and the Port of Oakland and/or City of Oakland. Specifically, these interrogatories seek specific information regarding any agreement that Plaintiff believes qualifies AB as a Port Assisted Business as alleged in the Complaint. These interrogatories do not call for a legal opinion—they ask for require a simple "yes" or "no" response along with the factual bases for your response.

Responses to Request for Admissions: Set One

These requests are not unduly overbroad, burdensome, and oppressive, nor does this request call for a legal conclusion. They ask for a simple affirmative or negative response and your objections are without merit as discussed above. To the extent that these requests are overbroad as to the time period covered, please understand it to mean the **time period from March 28, 2004 through March 28, 2008.**

In light of the clarification provided in this letter, we ask that you reconsider your responses to **Request Nos. 7, 8, 10, 13, 14 and 15.**

Request Nos. 1, 2, 3, 4, and 5

This request seeks to determine Mr. Gilbert's alleged employment status, specifically, whether he was entitled to compensation as a trainee. They ask for a simple affirmative or negative response and your objections are without merit as discussed above. Defendant is willing to meet and confer regarding these requests.

Request Nos. 6 and 9

These requests seek to determine the adequacy of Plaintiff as representative of the putative class. Whether Plaintiff purporting to be an adequate representative has entered into an incentive agreement with your firm is entirely relevant to the issue of whether your client's claims are typical of the claims of the class. See *J.P. Morgan & Co., Inc. v. Superior Court*, 113 Cal.App.4th 195 (Cal. Ct. App. 2003) (A class action should not be certified where there is evidence of a conflict of interest among the proposed class members that "goes to the very subject matter of the litigation."). Specifically, this request seeks to determine whether such an agreement ties the incentive award to the ultimate recovery in this matter, thereby creating a material conflict between your client and the putative class. Propounding party requests either an affirmative or negative response to is willing to meet and confer regarding this request as well as how this request is addressed in Form Interrogatory No. 17.1 and – if no incentive agreement exists, we will accept a response to that effect.

Request Nos. 11 and 12

This request seeks specific information regarding the document "Oakland Port Services Corporation Truck Driver Training Program Trainee Participation and Release of Liability Agreement" which bears Mr. Gilbert's name and signature. They ask for a simple affirmative or negative response and your objections are without merit as discussed above.

Responses to Demand for Production of Documents: Set One

Your client's responses directing the Propounding party to documents "produced by Defendant..." are unacceptable for the reasons set forth above. We ask that you reconsider your responses to these demands.

We ask that you reconsider your responses to these demands. To the extent that producing documents would be duplicative (for those documents that AB produced), we will accept a response that identifies each of the documents produced by AB specifically by Bates number. To the extent that any document responsive to this request was not produced by AB, you must produce such documents.

Demand No. 5

Although it appears that two separate Demands are named "Demand No. 5," the Demands are clearly distinguishable. It appears from the format of your response that you erroneously consider

these two Demands as identical. Your failure to respond to the two distinct Demands are evasive and in bad faith.

We ask that you reconsider your response to the second Demand No. 5 which seeks production of "Any and all DOCUMENTS which support the third cause of action for 'Living Wage—Oakland City Charter § 728' contained in YOUR Complaint." You must produce documents responsive to this request in order to avoid a motion to compel and/or a motion to strike.

Sincerely,



Jay Ian Aboudi
General Counsel

cc: Michael Broad, Esq.