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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
 1001 Marina Village Parkway, Suite 200
 Alameda, California 94501
 Telephone (510) 337-1001
 Fax (510) 337-1023

6 Attorneys for Plaintiffs
 LAVON GODFREY and GARY GILBERT

FILED
 ALAMEDA COUNTY

FEB 08 2012

CLERK OF THE SUPERIOR COURT
 by *Lucia Pessier* Dept.

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

10 LAVON GODFREY and GARY GILBERT, on
 11 behalf of themselves and all others similarly
 12 situated,
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 14 Plaintiffs,
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 16 v.
 17
 18 OAKLAND PORT SERVICES CORP. d/b/a
 AB TRUCKING, and DOES 1 through 20,
 19 inclusive,
 20
 21 Defendants.

Case No. RG08379099

**PLAINTIFFS' NOTICE OF MOTION
 AND MOTION TO QUASH AND
 OBJECTION TO DEFENDANT'S
 NOTICE TO ATTEND TRIAL AND
 PRODUCE DOCUMENTS
 [CCP § 1987(C)]**

Date: February 9, 2012, Pretrial Conf.
 Time: 3:00 p.m.
 Dept.: 20
 Judge: Hon. Robert B. Freedman
 Reservation Number: R - 1259604

Trial Date: February 14, 2012

FAXED

19 TO ALL PARTIES AND ATTORNEYS OF RECORD:

20 On February 9, 2012 at 3:00 p.m. in Department 20 of the Alameda County Superior
 21 Court, this matter will come on for pretrial conference. At this conference, Plaintiffs will ask the
 22 Court to quash Defendant's Notice to Attend and Produce based on the reasons and Plaintiffs'
 23 objections set out in the motion below.

I. MOTION AND OBJECTIONS

24 On January 26, 2012, Plaintiffs received Defendant's Notice to Attend and Produce
 25 Documents and things at Trial. (See Declaration of Lisl R. Duncan in Support of Motion Quash
 26 filed herewith at Exhibit A.) Pursuant to California Code of Civil Procedure ("CCP") section
 27 1987, Plaintiffs Godfrey, Gilbert and the Class (hereinafter referred to as "Plaintiffs") hereby
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1 move to quash and object to Defendant's Notice to Attend Trial and Produce Documents.

2 **II. GENERAL OBJECTIONS**

3 Plaintiffs object that Defendant's Notice to Attend and Produce Documents fails to
4 specifically identify the particular person or persons whose attendance at trial is desired. (See
5 CCP § 1987.) Defendant's Notice refers to Lavon Godfrey and Gary Gilbert, however, it also
6 refers generally to "other plaintiffs included in the represented class action that have not "opted
7 out" (i.e., members of the purported class action)." Defendant's request is thus insufficient and
8 improper.

9 Defendant's request is overly broad. The purpose of proceeding as a class action is to
10 spare the Court and the parties the expense and inefficiency of requiring the presence and
11 testimony of each individual class member. The Class of well-over fifty individuals would not
12 even be able to fit inside the courtroom.

13 Finally, Defendant has waived its opportunity to produce *any* exhibits, other than for
14 impeachment purposes, at trial, including the documents it now requests in its Notice to Attend
15 Trial and Produce Documents, because it failed to produce copies of exhibits and an Index of
16 Exhibits in the time required by Local Rule 3.35(b). Plaintiffs, by contrast, produced copies of
17 exhibits and an Index of Exhibits to Defendant on or about November 7, 2011. Allowing
18 Defendant to disregard court rules would be prejudicial to the Class.

19 **Response to Request No. 1**

20 Plaintiffs incorporate their General Objections as though set forth fully herein. Plaintiffs
21 object on the grounds that the Notice to Attend and Produce Documents makes untimely requests.
22 Plaintiffs object on the grounds that this request is overly broad, unduly burdensome and not
23 reasonably tailored to lead to the discovery of admissible evidence. Plaintiffs object on the
24 grounds that this request seeks information protected by the work product and/or attorney-client
25 privilege. Defendant has waived its opportunity to produce any exhibits, other than for
26 impeachment purposes, at trial, including the documents it requests in its Notice to Attend Trial
27 and Produce Documents, because it failed to produce copies of exhibits and an Index of Exhibits
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1 in the time required by Local Rule 3.35(b).

2 Plaintiffs will lodge with the Court the original deposition transcripts of: William Aboudi,
3 Jovi Aboudi, David Blyth and Jose Luis Navarro. For the forgoing reasons, Plaintiffs object to
4 the request for production of "any copies of deposition transcripts created in connection with this
5 litigation."

6 **Response to Request No. 2**

7 Plaintiffs incorporate their General Objections as though set forth fully herein. Plaintiffs
8 object on the grounds that the Notice to Attend and Produce Documents makes untimely requests.
9 Plaintiffs object to this request on the ground that it is vague, vague as to time, ambiguous,
10 compound, burdensome, oppressive, harassing, and overbroad. Plaintiffs object on the grounds
11 that this request is not reasonably tailored to lead to the discovery of admissible evidence.
12 Plaintiffs object on the grounds that this request seeks information subject to the work product
13 and/or attorney-client privilege. Plaintiffs object to this request in that it seeks information
14 equally or more available to Defendant. Defendant has waived its opportunity to produce any
15 exhibits, other than for impeachment purposes, at trial, including the documents it requests in its
16 Notice to Attend Trial and Produce Documents, because it failed to produce copies of exhibits
17 and an Index of Exhibits in the time required by Local Rule 3.35(b).

18 The discovery process in this litigation was conducted over the course of more than three
19 years. The records exchanged in discovery are voluminous. Discovery was not exchanged in
20 electronic format. Defendant has already obtained in discovery "all originals and any copies of
21 discovery taken in this matter," particularly due to the fact that the vast majority of records
22 produced were produced by Defendant. Finally, Plaintiffs have already provided Defendant with
23 a complete copy of all documents listed on Plaintiffs' Index of Exhibits (hundreds of pages),
24 provided to Defendant on or about November 7, 2011.

25 Plaintiffs will lodge with the Court the original deposition transcripts of: William Aboudi,
26 Jovi Aboudi, David Blyth and Jose Luis Navarro. For the forgoing reasons, other than these
27 original deposition transcripts and prospective exhibit copies described above, Plaintiffs object to
28 the production of "all originals and any copies of discovery taken in this matter."

1 **Response to Request No. 3**

2 Plaintiffs incorporate their General Objections as though set forth fully herein. Plaintiffs
3 object on the grounds that the Notice to Attend and Produce Documents makes untimely requests.
4 Plaintiffs object on the grounds that this request is overly broad, unduly burdensome and not
5 reasonably tailored to lead to the discovery of admissible evidence. Plaintiffs object on the
6 grounds that this request seeks information protected by the work product and/or attorney-client
7 privilege. Plaintiffs object on the grounds this request is duplicative of No. 1. Plaintiffs object to
8 this request in that it seeks information equally or more available to Defendant. Defendant has
9 waived its opportunity to produce any exhibits, other than for impeachment purposes, at trial,
10 including the documents it requests in its Notice to Attend Trial and Produce Documents, because
11 it failed to produce copies of exhibits and an Index of Exhibits in the time required by Local Rule
12 3.35(b).

13 Plaintiffs will lodge with the Court the original deposition transcripts of: William Aboudi,
14 Jovi Aboudi, David Blyth and Jose Luis Navarro. Plaintiffs did not notice the depositions of
15 Godfrey and Gilbert, and therefore, do not have, nor have ever had, the original deposition
16 transcripts of the Godfrey and/or Gilbert depositions. For this reason, Plaintiffs previously sent a
17 Notice to Produce to Defendant, sent on or about November 7, 2011, requesting Defendant lodge
18 the original Godfrey and Gilbert deposition transcripts at trial. For the forgoing reasons,
19 Plaintiffs object to the request for production of "any copies of deposition transcripts of Lavon
20 Godfrey, Gary Gilbert, David Blyth, and Jose Luis Navarro" and to the "original deposition
21 transcripts" of Godfrey and Gilbert.

22 **Response to Request No. 4**

23 Plaintiffs incorporate their General Objections as though set forth fully herein. Plaintiffs
24 object on the grounds that the Notice to Attend and Produce Documents makes untimely requests.
25 Plaintiffs object on the grounds that this request is overly broad, unduly burdensome and not
26 reasonably tailored to lead to the discovery of admissible evidence. Plaintiffs object on the
27 grounds that this request seeks information protected by the work product and/or attorney-client
28 privilege. Plaintiffs object on the grounds this request is duplicative of No. 1. Defendant has

1 waived its opportunity to produce any exhibits, other than for impeachment purposes, at trial,
2 including the documents it requests in its Notice to Attend Trial and Produce Documents, because
3 it failed to produce copies of exhibits and an Index of Exhibits in the time required by Local Rule
4 3.35(b).

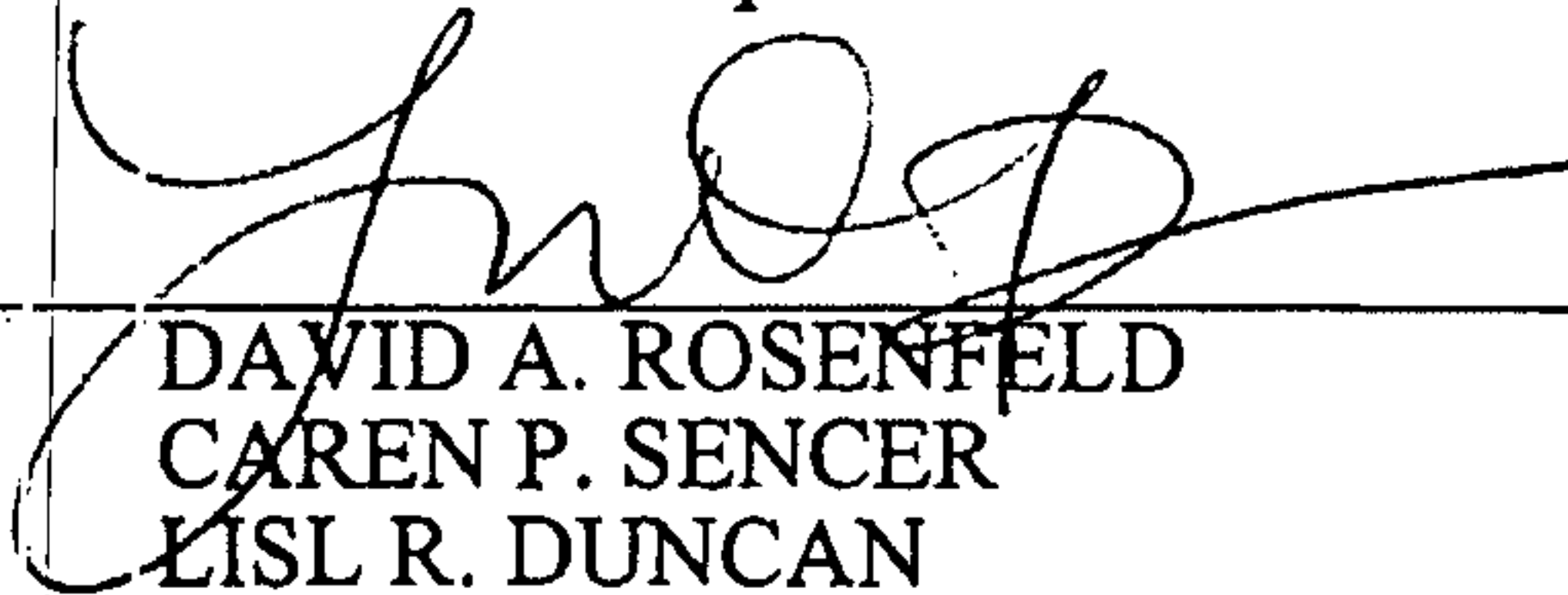
5 Plaintiffs will lodge with the Court the original deposition transcripts of: William Aboudi
6 and Jovi Aboudi. For the forgoing reasons, Plaintiffs object to the request for production of "any
7 copies of deposition transcripts of Jovi Aboudi and Bill Aboudi."

8 **III. CONCLUSION**

9 For the foregoing reasons, Defendant's Notice to Attend to all Class members should be
10 quashed. In addition, Defendant's Notice to Produce documents should be quashed in accordance
11 with Plaintiffs' objections above.

12 Dated: February 2, 2012

WEINBERG, ROGER & ROSENFELD
A Professional Corporation



15 By: DAVID A. ROSENFELD
CAREN P. SENCER
LISL R. DUNCAN

17 Attorneys for Plaintiffs
LAVON GODFREY and GARY GILBERT

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**PROOF OF SERVICE
(CCP §1013)**

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On February 2, 2012, I served the following documents in the manner described below:

**PLAINTIFFS' NOTICE OF MOTION AND MOTION TO QUASH AND OBJECTION
TO DEFENDANT'S NOTICE TO ATTEND TRIAL AND PRODUCE DOCUMENTS
[CCP § 1987(c)]**

- (BY U.S. MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing with the United States Parcel Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Alameda, California.
- (BY OVERNIGHT MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained by United Parcel Service for overnight delivery.
- (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from jkoffler@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

Mr. Guy A. Bryant
Bryant & Brown
476 3rd Street
Oakland, CA 94607
(510) 836-7564 (fax)
guybryant@bryantbrownlaw.com

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 2, 2012, at Alameda, California.


Jennifer Koffler

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