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FILED
ALAMEDA COUNTY

OCT 20 2010

CLERK OF THE SUPERIOR COURT

[Signature]
Deputy

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

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,

CASE NO. RG 08-379099

Plaintiffs,

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANT'S MOTION TO STRIKE
PORTIONS OF PLAINTIFFS' SECOND
AMENDED COMPLAINT**

v.

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

Date: December 3, 2010
Time: 10:00 a.m.
Place: Department 20
Judge: Hon. Robert Freedman
Action Filed: March 28, 2008
Reservation No.: R-1117224

Defendants.

INTRODUCTION

The factual assertions made in the Declaration of Jay Ian Aboudi are incorporated herein by this reference as though fully set forth. To avoid repetition and to preserve paper and the court's time, this incorporation by reference is made for the convenience of the court and the parties.

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1 **I. THE NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE THE**
2 **SECOND AMENDED COMPLAINT LIMITED THE ALLEGATIONS THAT**
3 **COULD BE INCLUDED IN THAT NEW PLEADING AND IN THEIR NEW**
4 **PLEADING THE PLAINTIFFS WENT WELL BEYOND THE NOTICE GIVEN**

5 In the case of *Hernandez v. National Dairy Products Co.* (1954) 126 Cal. App. 2d 490,
6 493 the court states: "A notice of motion must state the grounds upon which the motion is to be
7 made. (Code Civ. Proc., § 1010.) Unless leave of court is obtained, the motion may not be made
8 upon any grounds other than those enumerated in the notice of motion. If new matter were
9 permitted in the actual motion, a notice of motion would be reduced to little purpose other than
10 to advise the time and place of hearing. Actually, however, it must also sufficiently define the
11 issues for the information and attention of the adverse party and the court."

12 In *Westphal v. Westphal* (1943) 61 Cal. App. 2d 544, 550, the court said: "The grounds of
13 the motion must be stated in the notice (Code Civ. Proc., § 1010) and the court can only consider
14 the grounds so stated. . . ." To the same effect is *W. H. Marston Co. v. Kochritz* (1927) 80 Cal.
15 App. 352, 359 ("an amended complaint, filed after answer and without leave of court first
16 obtained, where plaintiff was not entitled as a matter of right to file such amendment, is subject
17 to be stricken from the files on motion of the defendant").

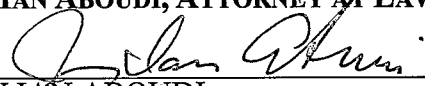
18 **II. CONCLUSION**

19 For the foregoing reasons, defendant respectfully requests that the court enter an order
20 striking from the second amended complaint those matters itemized in the notice of motion and
21 motion for an order striking portions of plaintiffs' second amended complaint.

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23 Dated: October 20, 2010

Respectfully submitted,

24 **JAY IAN ABOUDI, ATTORNEY AT LAW**

25 
26 **JAY IAN ABOUDI**
27 Attorney for Defendant
28 OAKLAND PORT SERVICES
CORPORATION d/b/a AB TRUCKING
(erroneously sued as AB TRUCKING, INC.)