

RSB



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

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

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

16 Plaintiffs,

17 v.

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

21 Defendants.

CASE NO. RG 08-379099

**[PROPOSED]
ORDER STRIKING PORTIONS OF
PLAINTIFFS' SECOND AMENDED
COMPLAINT**

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

22 The motion by defendant to strike portions of plaintiffs' second amended complaint having come
23 on regularly for hearing and the court being duly advised in the premises:

24 The motion is granted and the following portions of the second amended complaint are
25 and shall be stricken therefrom:

- 26 1. The wholly new alleged violations of (1) an alleged "pattern and practice of failing to
27 pay wages for any hours worked as a result of misclassification of drivers' employment status"
28 (nowhere previously alleged and nowhere mentioned in the notice of motion or motion upon the
basis of which defendant stipulated to the filing of the SAC) and (2) an alleged "pattern and
practice of failing to pay overtime wages as required by California law" (similarly nowhere

08/20/2010

1 previously alleged and nowhere mentioned in the notice of motion or motion upon the basis of
2 which defendant stipulated to the filing of the SAC).

3 2. The two new subclasses inserted in the SAC as follows:

4 (4) The Living Wage Subclass

5 All drivers employed by Defendant during March 28, 2004 through
6 November 1, 2010 who were paid less than the Oakland Living Wage for any
7 hour worked.

8 * * * *

9 (6) The Wages Owed at Discharge or Quitting Subclass

10 All drivers employed by Defendant during March 28, 2004 through
11 November 1, 2010 who were not paid all wages owed at the time of discharge or
12 quitting as required under Labor Code sections 201, 202 and 203.

13 3. All reference to a supposed subclass that allegedly would be entitled to assert a claim
14 based on a supposed failure by defendant to pay the Oakland Living Wage.

15 4. All reference to a supposed subclass that allegedly would be entitled to assert a claim
16 based on a supposed failure by defendant to pay all wages owed at the time of discharge or
17 quitting.

18 5. All reference to a supposed sub class that allegedly would be entitled to assert a claim
19 based on a supposed failure by defendant to pay all wages owed at the time of discharge or
20 quitting.

21 6. The two newly asserted "commonality" issues (1) of "whether Defendant violated
22 IWC Wage Order 9 and Labor Code §1194 by not paying the minimum wage for any hours
23 worked as a result of misclassification of drivers' employment status" and (2) of "whether
24 Defendant violated IWC Wage Order 9 and Labor Code §§ 510 and 1194 for failing to pay
25 overtime."

26 7. All reference to any so-called Inaccurate Wage Statement Subclass (defined in the
27 SAC as "All drivers employed by Defendant during March 28, 2004 through November 1, 2010
28 who were not provided with accurate itemized wage statements in violation of Labor Code

1 section 226”).

2 8. All reference to a so-called Inaccurate Wage Statement Subclass (defined in the SAC
3 as “All drivers employed by Defendant during March 28, 2004 through November 1, 2010 who
4 were not provided with accurate itemized wage statements in violation of Labor Code section
5 226”).

6 9. The reference in paragraph 121 of the SAC to “Labor Code § 218.”

7 Dated: _____

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Hon. Robert Freedman
Judge of the Superior Court

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3 **PROOF OF SERVICE**

4 I am a resident of the State of California, over the age of eighteen years, and not a party
5 to the within action. My business address is: 1855 Olympic Blvd., Ste. 210, Walnut Creek, CA
6 94596. On the date below, I served the within documents:

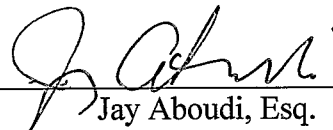
- 7
- 8 1) **DEFENDANT'S NOTICE OF MOTION AND MOTION TO STRIKE PORTIONS**
9 **OF PLAINTIFFS' SECOND AMENDED COMPLAINT;**
 - 10 2) **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
11 **DEFENDANT'S MOTION TO STRIKE PORTIONS OF PLAINTIFFS' SECOND**
12 **AMENDED COMPLAINT;**
 - 13 3) **DECLARATION OF JAY IAN ABOUDI IN SUPPORT OF DEFENDANT'S**
14 **MOTION TO STRIKE PORTIONS OF PLAINTIFFS' SECOND AMENDED**
15 **COMPLAINT; and**
 - 16 4) **[PROPOSED] ORDER STRIKING PORTIONS OF PLAINTIFFS' SECOND**
17 **AMENDED COMPLAINT.**

18 by placing the documents listed above in a sealed envelope and caused the same to be personally
19 delivered by hand to the persons at the address set forth below:

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Lisl Duncan, Esq.
Weinberg, Roger & Rosenfeld
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501-1091

I am readily familiar with the firm's practice of collection and processing correspondence
for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
motion of the party served, service is presumed invalid if postal cancellation date or postage
meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above
is true and correct. Executed on October 20, 2010 at Walnut Creek, California.



Jay Aboudi, Esq.