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ALAMEDA COUNTY

May 03, 2013

CLERK OF  
THE SUPERIOR COURT  
By Rosanne Case, Deputy

CASE NUMBER:  
**RG08379099**

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13 d/b/a AB TRUCKING  
14

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

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

Case No. RG08379099  
**JOINT STATUS REPORT**  
  
Date: May 10, 2013  
Time: 2:00 p.m.  
Dept: 20  
Judge: Robert B. Freedman

1 Plaintiffs LAVON GODFREY and GARY GILBERT (collectively "Plaintiffs") and  
2 Defendant OAKLAND PORT SERVICES CORP. d/b/a AB TRUCKING ("AB Trucking") submit  
3 this Joint Status Report in preparation for the complex case management conference ("CCMC")  
4 scheduled for May 10, 2013 at 2:00 p.m.

5 A. FACTUAL SUMMARY

6 This is a wage and hour class action suit brought by former drivers of AB Trucking. The  
7 operative complaint was filed on September 20, 2010 (the Second Amended Complaint "SAC").  
8 Plaintiffs alleged unfair business practices, violations of the California Labor Code and violations  
9 of the Port of Oakland's Living Wage Ordinance (Oakland City Charter, Section 728) ("OLW").  
10 The Class certified in December 2010 ("Drivers") is: All drivers who performed work for  
11 Defendant out of its Oakland, California facility from the period of March 28, 2004 through the  
12 date of notice to the class [March 15, 2011] ("statutory period").

13 Trial in the matter took place in February 2012. On October 2, 2012, the court issued a  
14 Notice of Intended Decision and Order ("NOID"). On October 11, 2012, AB Trucking filed a  
15 Request for Written Statement of Decision. On November 2, 2012, Plaintiffs filed their Proposed  
16 Statement of Decision ("PSOD").

17 On April 8, 2013, the Court issued its Order re: statement of decision, proposed judgment,  
18 claims administration issues and related post-trial case management.

19 The Order states:

- 20 • The court concludes that Plaintiffs' claims and entitlement to relief under  
21 California law are not preempted by the federal law or regulations and the  
22 cases cited by Defendant are not applicable to the class members'  
23 participation in Defendant's operations. (¶5.)
- 24 • The balance of the Objections identify and object to seven numbered (i.e.  
25 objections 2 through 8). The court overrules Objections 2 through 8. (¶6.)

26 The Order also set the hearing on May 10, 2013 at 2:00 p.m. to resolve the form and content of the  
27 SOD and a judgment consistent therewith, and to address the timing and implementation of a  
28 claims process. Among other items, the Court requested the parties prepare a Joint Status Report  
identifying anticipated issues and addressing the claims process.

1 Plaintiffs have reserved a hearing date of June 14, 2013 at 10:00 a.m. (#R-1393305) to  
2 address their fee request.

3 **B. STATEMENT OF DECISION**

4 **1. Plaintiffs' position**

5 Plaintiff is amenable to proceeding as the Court sees most fit for the purpose of drafting and  
6 issuing a SOD and consistent judgment. Plaintiff disagrees with Defendant's below-stated position  
7 and agrees with the Court that the federal law, regulations and cases cited by Defendant "are not  
8 applicable to the class members' participation in Defendant's operations."<sup>1</sup> (Order, ¶5.)

9 **2. Defendant's position**

10 Defendant continues to object to the proposed SOD. At this time, the Court has no reason to  
11 look outside of California Law for guidance on the application or scope of FAAAA preemption on  
12 the motor carrier industry. If the Court chooses to seek additional guidance under Federal law, then  
13 the pending U.S. Supreme Court decision in regarding FAAAA preemption or the various pending  
14 Ninth Circuit decisions are the most persuasive precedent a California Superior Court should  
15 follow. Defendant was disappointed to see the "11/19/12 Order Denying Defendants' Motion for  
16 Summary Judgment issued by the Honorable Judge Claudia Wilken in the U.S. District Court for  
17 Northern California" (*Mendez v. R & L Carriers, Inc.*, Case No C 11-2478 CW) referenced  
18 favorably in the Court's April 8, 2013 Order.<sup>2</sup>

19 **C. PROPOSED TIMING AND IMPLEMENTATION OF CLAIMS PROCESS**

20 **1. Plaintiffs' position**

21 Through the course of this litigation, but particularly in the latter stages, AB Trucking has  
22 informally made reference to its alleged delicate financial circumstances. Consequently, Plaintiffs  
23 are concerned that sending notice to the Class—before it is clear whether Defendant has resources  
24 to comply with the Judgment (or what resources Defendant possesses), and thus what monies may  
25 be available to class members, how they may become available, and when—may prove

26  
27 <sup>1</sup> The Court's Order does not cite to *Mendez v. R & L Carriers, Inc.*, Case No C 11-2478 CW, but rather states it has  
"informational value, but not precedential effect." (Order, ¶4.)

28 <sup>2</sup> Unpublished opinions may not be cited as precedent. [Cal. Rules of Court, rule 8.1115].

1 problematic. Plaintiffs take their responsibility as Class Representatives seriously and believe that  
2 providing the Class with complete and accurate information, to the best of Class Counsel's  
3 knowledge, is in the best interest of the Class.

4 Therefore, Plaintiffs propose that the amounts owed to the class under the impending  
5 judgment be Ordered placed in Plaintiffs' counsel's trust fund account within thirty (30) days of  
6 the issuance of judgment. Plaintiffs propose setting a case management conference at the same  
7 time to determine the method for distributing those monies under a claims process. Monies so  
8 deposited will remain in the trust fund account until such time as they are ordered distributed by  
9 the Court to implement an approved claims process.

10 Under any scenario, AB Trucking should be required to pay for the claims process in full.

11 Plaintiffs object to Defendant's below-request that the Court continue or postpone its  
12 issuance of a final ruling, Judgment and SOD. Plaintiffs will address Defendant's pending motion  
13 in the course of the regular briefing schedule when a noticed motion is received. There is no  
14 reason to further delay this process.

## 15 **2. Defendant's position**

16 Defendant vehemently objects to any Writ of Attachment or similar order that would  
17 compel Defendant to be subject to an audit and/or forfeiture of funds to be placed into a "trust"  
18 fund account. The Court previously and correctly authorized a protective order with regard to this  
19 matter that was more than sufficient to protect the interests of the class. A similar such protective  
20 order would be much more appropriate than what Plaintiffs are requesting.

21 The state of the law with regard to the FAAAA preemption doctrine is in flux with various  
22 cases working their way up through both the state and federal courts. It is expected that the U.S.  
23 Supreme Court will weigh in on this very issue within the next 60 days (oral arguments occurred  
24 on April 16, 2013). Defendant would be irreparably harmed if it were required to access in excess  
25 of \$750,000 in less than 30 days. Such an order would force Defendant immediately into  
26 bankruptcy which would not benefit any member of the class. This would be an even more  
27 egregious result if the U.S. Supreme Court were to rule 30 days later that the FAAAA preemption

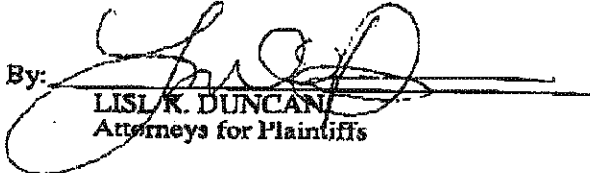
1 doctrine squarely applied to the case at bar.

2 In addition, defense counsel has scheduled a Motion to Be Relieved As Counsel of Record  
 3 in this case which is scheduled to be heard on June 7, 2013. Unfortunately, Defendant has been  
 4 unable to pay for legal services provided in accordance with legal service agreements entered into.  
 5 Plaintiffs have scheduled a Motion for Attorney Fees scheduled for June 14, 2013. AB Trucking is  
 6 a corporation and must have legal counsel in order to appear and defend itself in a court of law.  
 7 Defense counsel can not be compelled to make an appearance in Appellate Court where such  
 8 counsel is not receiving compensation. Therefore, Defendant strongly requests that this Court  
 9 (which has already waited in excess of 6 months to render a determination) postpone making any  
 10 final ruling until July 16, 2013. This will permit time for Defendant to obtain new competent  
 11 counsel to address this case on appeal if required, address any post-trial motions, and provide the  
 12 Court with further guidance on the true scope of the FAAAA preemption doctrine on the motor  
 13 carrier industry.

14  
15 Dated: May 3, 2013

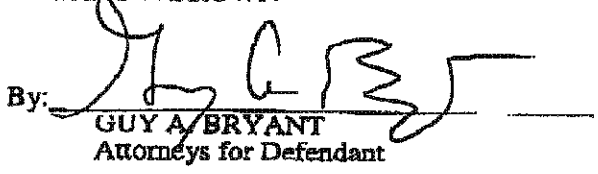
Respectfully submitted,

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

17  
18 By:   
LISL K. DUNCAN  
Attorneys for Plaintiffs

19  
20 Dated: 5/3/13

BRYANT & BROWN

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22 By:   
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**PROOF OF SERVICE**

I am a citizen of the United States and resident of the State of California. I am employed in the County of Los Angeles, 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 May 3, 2013, I served the following documents in the manner described below:

**JOINT STATUS REPORT**

- (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 Los Angeles, California.
- (BY MESSENGER SERVICE) by consigning the document(s) to an authorized courier and/or process server for hand delivery on this date.
- (BY FACSIMILE) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of document(s) to be transmitted by facsimile and I caused such document(s) on this date to be transmitted by facsimile to the offices of addressee(s) at the numbers listed below.
- BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system on \_\_\_\_\_ from \_\_\_\_\_@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 3, 2013, at Los Angeles, California.

Melanie Garion