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similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO**

AMBER BRAXTON, an individual;
TAVARES ANDREWS, an individual, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

CAPITAL EXPRESS LINES, INC., a
California corporation; and DOES 1 through
10, inclusive,

Defendants.

Case No. 24CV010352

**FIRST AMENDED COMPLAINT FOR
CLASS ACTION AND PAGA
PENALTIES**

- (1) **UNLAWFUL FAILURE TO PAY
MINIMUM WAGES;**
- (2) **FAILURE TO REIMBURSE
BUSINESS EXPENSES;**
- (3) **FAILURE TO FURNISH TIMELY
AND ACCURATE WAGE
STATEMENTS;**
- (4) **FAILURE TO PAY ALL WAGES
OWED EVERY PAY PERIOD**
- (5) **FAILURE TO PAY ALL WAGES
UPON SEPARATION;**
- (6) **VIOLATION OF CALIFORNIA'S
UNFAIR COMPETITION ACT
("UCL"), Bus. & Prof. Code § 17200
et seq.; AND**
- (7) **PAGA PENALTIES (Labor Code
§ 2698, et seq.)**

DEMAND FOR JURY TRIAL

Plaintiffs AMBER BRAXTON and TAVARES ANDREWS (“Plaintiffs”), on behalf of aggrieved employees and others similarly situated, by and through their undersigned attorneys, for this Class and Representative Action Complaint against Defendants CAPITAL EXPRESS LINES, INC. and Does 1 through 10 (hereinafter “Defendant”), respectfully alleges the following:

NATURE OF THE ACTION

1. This is a class action for wage and labor violations arising out of, among other things, Defendant's improper compensation plan for its truck drivers. As set forth herein, Defendant pays its truck drivers based on mileage-rate, which fails to compensate for non-driving time and commits other labor violations, including but not limited to, failure to pay wages, failure to reimburse business expenses, and other labor code violations and unfair business practices.

2. Plaintiffs seek to represent the following Class:

All current or former drivers for Defendant, who were California residents at any time beginning four (4) years prior to the filing of this action through the date notice is mailed to the Class (the “Class period”).

3. As alleged herein, Defendants employ many California drivers, and engage in a pattern and practice of failing to fully compensate them according to California law. Plaintiffs bring class claims on behalf of all similarly situated drivers.

4. Plaintiffs also bring this representative action pursuant to the Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq. (“PAGA”) on behalf of the State of California and current and former aggrieved employees of Defendants for engaging in a pattern and practice of wage and hour violations under the California's Labor Code and applicable wage orders.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the entire action by virtue of the fact that this is a civil action wherein the matter in controversy, exclusive of interest and costs, exceeds the jurisdictional minimum of the Court. The acts and omissions complained of in this action took place in the State of California, or at least one Defendant resides in the state of California. Venue

1 is proper because this is a class action, the acts and/or omissions complained of took place, in
2 whole or in part within the venue of this Court, and/or one or more Defendant resides within the
3 venue of this court.

4 **PARTIES**

5 6. Plaintiff AMBER BRAXTON, was, at all relevant times, a citizen of the State of
6 California, employed by Defendant as a driver during the liability period as alleged herein.

7 7. Plaintiff TAVARES ANDREWS, was, at all relevant times, a citizen of the State
8 of California, employed by Defendant as a driver during the liability period as alleged herein.

9 8. Plaintiffs are informed and believe, and thereon alleges that Defendant CAPITAL
10 EXPRESS LINES, INC. ("Capital Express"), is a California corporation, with its principal place
11 of business at 8180 Signal Court Sacramento, CA 95824. Plaintiffs are informed and believe, and
12 thereon alleges that Defendant Capital Express conducted business in the state California,
13 specifically, provided, marketed, advertised, and otherwise conducted transportation business in
14 the State of California that is the subject of this lawsuit.

15 1. Plaintiffs are currently ignorant of the true names and capacities, whether
16 individual, corporate, associate, or otherwise, of the defendants sued herein under the fictitious
17 names Does 1 through 10, inclusive, and therefore sue such defendants by such fictitious names.
18 Plaintiffs will seek leave to amend this complaint to allege the true names and capacities of said
19 fictitiously named defendants when their true names and capacities have been ascertained.
20 Plaintiffs are informed and believe and thereon allege that each of the fictitiously named
21 defendants is legally responsible in some manner for the events and occurrences alleged herein,
22 and for the damages suffered by the Class.

23 Plaintiffs are informed and believe and thereon allege that all defendants, including the fictitious
24 Doe defendants, were at all relevant times acting as actual agents, conspirators, ostensible agents,
25 alter egos, partners and/or joint venturers and/or employees of all other defendants, and that all
26 acts alleged herein occurred within the course and scope of said agency, employment, partnership,
27 and joint venture, conspiracy or enterprise, and with the express and/or implied permission,
28 knowledge, consent authorization and ratification of their co-defendants; however, each of these

allegations are deemed “alternative” theories whenever not doing so would result in a contradiction with other allegations.

FACTS COMMON TO ALL CAUSES OF ACTION

2. Defendant provides trucking services throughout California and employs drivers to conduct its business.

3. At all times during the liability period, Defendants employed Plaintiffs and Class members as drivers in providing Defendants' services, but paid them on a per-mile basis, which, among other things, fails to compensate for non-driving time in violation of California Labor Code.

4. Defendants set Plaintiffs and class members' compensation and paid them on a per-mile basis for individual driving jobs. Plaintiffs and class members were required to perform non-driving and/or non-productive duties, including but not limited to, truck and trailer inspections, waiting time, and other on-duty time. Defendants failed to properly and lawfully compensate Plaintiffs at minimum wages for non-productive time, including pre and post trip inspections, waiting time. At all times during the liability period, Defendants had the power to control wages, hours, and/or working conditions of Plaintiffs and Class members.

5. Plaintiffs driving over-the-road routes, away from home for days at a time, were on duty for purposes of wage compensation. Defendants failed to properly and lawfully compensate Plaintiffs when on trips away from home, and failed to comply with 29 CFR § 785.22.

6. At all times during the liability period, Defendants employed Plaintiffs and the Class, but Plaintiffs and the Class were charged for and/or not reimbursed for business expenses in violation of California Labor Code sections 201, 202, 203, 204, 226.7, 512, 2802, 2698 *et seq.* and subsections 11, and 12 of the applicable Industrial Welfare Commission Orders.

7. At all times during the liability period, Defendants failed to pay Class members for all hours worked. Defendants failed to properly and lawfully compensate Plaintiffs and Class members for non-driving time, including but not limited to, pre and post trip inspections, waiting time, and other on duty time.

8. At all times during the liability period, Defendants failed to reimburse Plaintiffs

1 and Class members for the business expenses they incurred performing job duties for Defendants
2 including, but not limited to use of personal phones, fuel, maintenance, truck payments, and
3 insurance.

4 9. Defendants have engaged in a pattern and practice of improper compensation .
5 Plaintiffs are informed and believe there are other current and former aggrieved employees who
6 suffered similar violations. Plaintiffs bring this action on behalf of other current and former
7 aggrieved employees.

8 10. Defendants' conduct, as alleged herein, has caused Plaintiffs and Class members
9 damages including, but not limited to, loss of wages and compensation. Defendants are liable to
10 Plaintiffs and the Class for failing to pay minimum wages, failing to pay all wages owed each pay
11 period, failure to provide timely and accurate wage statements, failure to pay all wages owed
12 upon termination, and unfair competition.

13 11. Plaintiffs are a members of and seeks to be the representative for the Class of
14 similarly situated employees and aggrieved employees who all have been exposed to, have
15 suffered, and/or were permitted to work under, Defendants' unlawful employment practices as
16 alleged herein.

17 **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

18 12. Plaintiffs bring this action on behalf of themselves, and on behalf of all others
19 similarly situated, and as a member of the Class defined as follows:

20 All current or former drivers for Defendants, who were California
21 residents at any time beginning four (4) years prior to the filing of the
22 Complaint through the date notice is mailed to the Class (the "Class
23 period").

24 13. Plaintiffs reserve the right to amend or otherwise alter the Class definition
25 presented to the Court at the appropriate time, or to propose or eliminate sub-classes, in response
26 to facts learned through discovery, legal arguments advanced by Defendants or otherwise.

27 14. This action has been brought and may be properly maintained as a class action
28 pursuant to the provisions of California's class action statute, and other applicable law.

1 15. **Numerosity of the Class:** Members of the Class are so numerous that their
2 individual joinder is impracticable. The precise number of Class members and their addresses are
3 known to Plaintiffs or will be known to Plaintiffs through discovery. Class members may be
4 notified of the pendency of this action by mail, electronic mail, the Internet, or published notice.

5 16. **Existence of Predominance of Common Questions of Fact and Law:** Common
6 questions of law and fact exist as to all members of the Class. These questions predominate over
7 any questions affecting only individual Class members. These common legal and factual
8 questions include:

- 9 a. Whether Plaintiffs and each member of the Class were not paid minimum wage for
10 each hour worked or part thereof during which they were required to perform acts at
11 the direction and for the benefit of Defendant;
- 12 b. Whether Defendants failed to pay Plaintiffs and the members of the Class who
13 worked as drivers in California for the total hours worked during the Class period;
- 14 c. Whether Defendants violated Labor Code § 226(a) by issuing inaccurate itemized
15 wage statements to Plaintiffs and members of the Class;
- 16 d. Whether Defendants violated Labor Code § 2802 by failing to reimburse Plaintiffs
17 and Class members for business expenses they incurred.
- 18 e. Whether Defendants engaged in an unfair business practice in violation of Business &
19 Professions Code §17200, et seq., based on the labor practices and Labor Code
20 violations alleged herein.
- 21 f. Whether Plaintiffs and the rest of the Class are entitled to recover damages, penalties,
22 injunctive relief or other equitable relief on the grounds that Defendants have used
23 uniform policies and procedures that have, from time to time, violated California
24 labor laws and regulations and caused Plaintiffs and the rest of the Class to suffer the
25 same or similar injuries.
- 26 g. The nature and extent of class-wide injury and the measure of damages for the injury.

27 17. **Typicality:** Plaintiff's claims are typical of the claims of the members of the
28 subclasses they represent because Plaintiff, as a driver of Defendants, was exposed and subjected

1 to the same unlawful business practices as other drivers employed by Defendants during the
2 liability period.

3 18. **Adequacy:** Plaintiffs are adequate representative of the Class they seek to
4 represent because their interests do not conflict with the interests of the members of the class
5 Plaintiffs seek to represent. Plaintiffs have retained counsel competent and experienced in
6 complex class action litigation and Plaintiffs intend to prosecute this action vigorously. The
7 interests of members of each Class will be fairly and adequately protected by Plaintiffs and their
8 counsel.

9 19. **Superiority and Substantial Benefit:** The class action is superior to other
10 available means for the fair and efficient adjudication of Plaintiffs and the Class members' claims.
11 The damages suffered by each individual Class member may be limited. Damages of such
12 magnitude are small given the burden and expense of individual prosecution of the complex and
13 extensive litigation necessitated by Defendants' conduct. Further, it would be virtually
14 impossible for the Class members to redress the wrongs done to them on an individual basis. Even
15 if members of the Class themselves could afford such individual litigation, the court system could
16 not. Individualized litigation increases the delay and expense to all parties and the court system,
17 due to the complex legal and factual issues of the case. By contrast, the class action device
18 presents far fewer management difficulties, and provides the benefits of single adjudication,
19 economy of scale, and comprehensive supervision by a single court.

20 20. The Class should also be certified because:

21 a. The prosecution of separate actions by individual members of the Class would
22 create a risk of inconsistent or varying adjudications with respect to individual Class members
23 which would establish incompatible standards of conduct for Defendants;

24 b. The prosecution of separate actions by individual members of the Class would
25 create a risk of adjudication with respect to them, which would, as a practical matter, be
26 dispositive of the interests of the other Class members not parties to the adjudications, or
27 substantially impair or impede their ability to protect their interests; and

28 c. Defendants have acted or refused to act on grounds generally applicable to the

1 Class, and/or the general public, thereby making appropriate final and injunctive relief with
2 respect to the Classes as a whole.

3 **FIRST CAUSE OF ACTION**
4 **UNLAWFUL FAILURE TO PAY MINIMUM WAGES**
5 **(Violation of Labor Code §§ 510, 1194, 1194.2, 1197; Wage Order No. 9-2001, §4)**
6 **(Against All Defendants)**

7 21. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
8 herein.

9 22. Labor Code § 510 provides in relevant part: “[e]ight hours of labor constitutes a
10 day’s work. Any work in excess of eight hours in one work day and any work in excess of 40
11 hours in any one workweek and the first eight hours worked on the seventh day of work in any
12 one workweek shall be compensated at the rate of no less than one and one-half times the regular
13 rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at
14 the rate of no less than twice the regular rate of pay for an employee. In addition, any work in
15 excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no
16 less than twice the regular rate of pay of an employee.”

17 23. Labor Code §1197 provides: “The minimum wage for employees fixed by the
18 commission is the minimum wage to be paid to employees, and the payment of a less wage than
19 the minimum so fixed is unlawful.”

20 24. Labor Code § 1194, subdivision (a) provides: “Notwithstanding any agreement to
21 work for a lesser wage, an employee receiving less than the legal minimum wage or the legal
22 overtime compensation applicable to the employee is entitled to recover in a civil action the
23 unpaid balance of the full amount of this minimum wage or overtime compensation, including
24 interest thereon, reasonable attorney’s fees, and costs of suit.”

25 25. Labor Code § 1194.2 provides in relevant part: “In any action under Section
26 1193.6 or Section 1194 to recover wages because of the payment of a wage less than the
27 minimum wage fixed by an order of the commission, an employee shall be entitled to recover
28 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

26. Pursuant to IWC Wage Order No. 9-2001, at all times material hereto, “hours

1 worked” includes “the time during which an employee is subject to the control of an employer,
2 and includes all the time the employee is suffered or permitted to work, where or not required to
3 do so.”

4 27. Plaintiffs and Class members were required to work non-driving time, for which
5 they were not compensated, in violation of California’s minimum wage laws. This includes, but
6 is not limited to, time for pre and post trip inspections, waiting time, and other on duty time.
7 Plaintiff’s mile rate pay failed to compensate Plaintiffs and Class members at the applicable
8 minimum wage for all the hours worked, driving and non-driving.

9 28. At all times relevant during the liability period, under the provisions of Wage
10 Order No. 9-2001, Plaintiffs and each Class member should have received not less than the
11 minimum wage in a sum according to proof for the time worked, but not compensated.

12 29. For all hours that Plaintiffs and the Class members worked, they are entitled to not
13 less than the California minimum wage and, pursuant to Labor Code § 1194.2(a) liquidated
14 damages in an amount equal to the unpaid minimum wages and interest thereon. Pursuant to
15 Labor Code § 1194, Plaintiffs and the Class members are also entitled to their attorneys’ fees,
16 costs and interest according to proof.

17 30. At all times relevant during the liability period, Defendants willfully failed and
18 refused, and continues to willfully fail and refuse, to pay Plaintiffs and Class members the
19 amounts owed.

20 31. Defendants’ unlawful conduct alleged herein occurred in the course of
21 employment of Plaintiffs and all other similarly situated drivers, and Defendants have done so
22 continuously throughout the filing of this complaint.

23 32. As a direct and proximate result of Defendants’ violation of Labor Code §§ 510
24 and 1197, Plaintiffs and other Class members have suffered irreparable harm and money
25 damages entitling them to damages, injunctive relief or restitution. Plaintiff, on behalf of
26 themselves and on behalf of the Class, seeks damages and all other relief allowable including all
27 wages due while working as Defendants’ drivers, attorneys’ fees, liquidated damages,
28 prejudgment interest, and as to those employees no longer employed by Defendants, waiting

1 time penalties pursuant to Labor Code § 200 *et seq.*

2 33. Plaintiffs and the Class members are entitled to back pay, pre-judgment interest,
3 liquidated damages, statutory penalties, attorneys' fees and costs, and for Plaintiffs and the Class
4 of members no longer employed, waiting time penalties pursuant to Labor Code § 1194.

5 **SECOND CAUSE OF ACTION**
6 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
7 **(Violation of Labor Code § 2802)**
8 **(Against All Defendants)**

9 34. Plaintiffs re-allege and incorporate all preceding paragraphs as if set forth fully
10 herein.

11 35. California Labor Code § 2802 provides "An employer shall indemnify his or her
12 employee for all necessary expenditures or losses incurred by the employee in direct
13 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
14 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
15 believed them to be unlawful."

16 36. During the applicable statutory period, Plaintiffs and the Class members incurred
17 necessary expenditures and losses in direct consequence of the discharge of their employment
18 duties and their obedience to the directions of Defendants. These business expenses which
19 Plaintiffs and class members incurred, which were not reimbursed include, but are not limited to
20 use of personal phones, fuel, maintenance, and insurance. Defendants did not reimburse these
21 expenditures or losses to Plaintiffs and the Class members.

22 37. Defendant has failed to fully reimburse Plaintiffs and the members of the Class for
23 necessary business-related expenses and losses.

24 38. Plaintiffs and the Class members are entitled to recover their unreimbursed
25 expenditures and losses pursuant to Labor Code § 2802.

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27 **THIRD CAUSE OF ACTION**
28 **FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS**
(Violation of Labor Code §§ 226 and 226.3)
(Against All Defendants)

1 39. Plaintiffs re-alleges and incorporate all preceding paragraphs as if fully set forth
2 herein.

3 40. California Labor Code § 226(a) provides: “Every employer shall, semimonthly or
4 at the time of each payment of wages, furnish each of his or her employees, either as a
5 detachable part of the check, draft, or voucher paying the employee's wages, or separately when
6 wages are paid by personal check or cash, an accurate itemized statement in writing showing (1)
7 gross wages earned, (2) total hours worked by the employee..., (3) the number of piece-rate units
8 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
9 deductions, provided that all deductions made on written orders of the employee may be
10 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
11 which the employee is paid, (7) the name of the employee and his or her social security number,
12 except that by January 1, 2008, only the last four digits of his or her social security number or an
13 employee identification number other than a social security number may be shown on the
14 itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all
15 applicable hourly rates in effect during the pay period and the corresponding number of hours
16 worked at each hourly rate by the employee.”

17 41. Labor Code § 226(e) provides that an employee is entitled to recover \$50 for the
18 initial pay period in which a violation of § 226 occurs and \$100 for each subsequent pay period,
19 as well as an award of costs and reasonable attorneys’ fees, for all pay periods in which the
20 employer knowingly and intentionally failed to provide accurate itemized statements to the
21 employee causing the employee to suffer injury.

22 42. Plaintiffs are informed, believe and thereon allege that at all times relevant,
23 Defendants knowingly and intentionally failed to furnish and continues to knowingly and
24 intentionally fail to furnish Plaintiffs and each Class member with timely and accurate itemized
25 statements showing the gross wages earned by each of them, as required by Labor Code § 226
26 (a), in that the payments owed to Plaintiffs and the members of the Class for unpaid minimum
27 wages, were not included in gross wages earned by Plaintiffs and the Class.

28 43. Defendant’s failure to provide Plaintiffs and members of the Class with accurate

1 itemized wage statements during the Class period has caused Plaintiffs and members of the Class
2 to incur economic damages in that they were not aware that they were owed and not paid
3 compensation for hours worked without pay, and for overtime worked without pay. Defendants
4 provided inaccurate information regarding hours worked, which masked their underpayment of
5 wages to Plaintiffs and the Class.

6 44. As a result of Defendant's issuance of inaccurate itemized wage statements to
7 Plaintiffs and members of the Class in violation of Labor Code § 226(a), Plaintiffs and the
8 members of the Class are each entitled to recover penalties pursuant to § 226(e) of the Labor
9 Code.

10 **FOURTH CAUSE OF ACTION**
11 **FAILURE TO PAY ALL WAGES OWED EVERY PAY PERIOD**
12 **(Violation of Labor Code § 204)**
(Against All Defendants)

13 45. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth
14 herein.

15 46. California Labor Code § 204 establishes the fundamental right of all employees in
16 the State of California to be paid wages in a timely fashion for their work.

17 47. At all times relevant during the liability period, Defendant failed to pay Plaintiffs
18 and the Class the full amount of all owed wages when due as required by California Labor Code
19 § 204.

20 48. Defendant failed to pay Plaintiffs and other similarly situated employees all wages
21 earned each pay period. Plaintiffs are informed, believe, and thereon allege, that at all times
22 relevant during the liability period, Defendants maintained a policy or practice of not paying
23 Plaintiffs and other similarly situated employees: (i) minimum wages for all hours worked and;
24 (ii) overtime wages for all overtime hours worked.

25 49. As a result of Defendant's unlawful conduct, Plaintiffs and members of each Class
26 have suffered damages in an amount, subject to proof, to the extent they were not paid all wages
27 each pay period. The precise amount of unpaid wages is not presently known to Plaintiffs but can
28 be determined directly from Defendants' records or indirectly based on information from

1 Defendants' records.

2 **FIFTH CAUSE OF ACTION**
3 **FAILURE TO PAY ALL WAGES UPON SEPARATION**
4 **(Against all Defendants)**

5 50. Plaintiffs re-allege and incorporate herein by this reference each of the allegations
6 set forth in the preceding paragraphs.

7 51. At all times relevant to this Complaint, Plaintiffs and members of the Class were
8 employees of Defendant, covered by California Labor Code sections 201 and 202.

9 52. Pursuant to California Labor Code sections 201 and 202, Plaintiffs and members of
10 the Class were entitled upon termination to timely payment of all wages earned and unpaid prior
11 to termination. Discharged employees were entitled to payment of all wages earned and unpaid
12 prior to discharge immediately upon termination. Employees who resigned were entitled to
13 payment of all wages earned and unpaid prior to resignation within seventy-two (72) hours after
14 giving notice of resignation or, if they gave seventy-two (72) hours previous notice, they were
15 entitled to payment of all wages earned and unpaid prior to resignation at the time of resignation.

16 53. Defendant failed to pay Plaintiffs and members of the Class who separated from
17 Defendants during the Class Period all wages earned and unpaid prior to separation of
18 employment, in accordance with either California Labor Code section 201 or 202. Plaintiffs are
19 informed and believe and thereon allege that at all relevant times within the limitations period
20 applicable to this cause of action Defendant maintained a policy or practice of not paying hourly
21 employees all earned wages timely upon separation of employment.

22 54. Defendant's failure to pay Plaintiffs and members of the Class who separated from
23 Defendants during the Class Period all wages earned prior to separation of employment timely in
24 accordance with California Labor Code sections 201 and 202 was willful. Defendants had the
25 ability to pay all wages earned by hourly workers prior to separation of employment in
26 accordance with California Labor Code sections 201 and 202, but intentionally adopted policies
27 or practices incompatible with the requirements of California Labor Code sections 201 and 202.
28 Defendant's practices include failing to pay at least minimum wage for all time worked and

1 overtime wages for overtime hours worked. When Defendants failed to pay Plaintiffs and
2 members of the Class all earned wages timely upon separation of employment, Defendants knew
3 what it was doing and intended to do what it did.

4 55. Pursuant to either California Labor Code section 201 or 202, Plaintiffs and
5 members of the Class who separated from Defendants during the Class Period are entitled to all
6 wages earned prior to separation of employment that Defendants did not pay them.

7 56. Pursuant to California Labor Code section 203, Plaintiffs and members of the
8 Class who separated from Defendants during the Class Period are entitled to continuation of their
9 wages, from the day their earned and unpaid wages were due upon separation until paid, up to a
10 maximum of thirty (30) days.

11 57. As a result of Defendant's conduct, Plaintiffs and members of the Class who
12 separated from Defendant during the Class Period have suffered damages in an amount, subject to
13 proof, to the extent they were not paid for all wages earned prior to separation.

14 58. As a result of Defendant's conduct, Plaintiffs and members of the Class who
15 separated from Defendants during the Class Period have suffered damages in an amount, subject
16 to proof, to the extent they were not paid all continuation wages owed under California Labor
17 Code section 203.

18 59. Plaintiffs and members of the Class who separated from Defendants during the
19 Class Period are entitled to recover the full amount of their unpaid wages, continuation wages
20 under section 203, and interest thereon.

21 **SIXTH CAUSE OF ACTION**
22 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION ACT**
23 **(Violation of California's Unfair Competition Law, Bus. & Prof. Code §§ 17200 *et***
24 ***seq.***
25 **(Against All Defendants)**

26 60. Plaintiffs re-alleges and incorporate all preceding paragraphs as if fully set forth
27 herein.

28 61. Section 17200 of the California Business and Professions Code (the "UCL")
prohibits any unlawful, unfair, or fraudulent business practices.

1 62. Through its action alleged herein, Defendant has engaged in unfair competition
2 within the meaning of the UCL. Defendants' conduct, as alleged herein, constitutes unlawful,
3 unfair, and/or fraudulent business practices under the UCL.

4 63. Defendant's unlawful conduct under the UCL includes, but is not limited to,
5 violating the statutes alleged herein. Defendants' unfair conduct under the UCL includes, but is
6 not limited to, failure to pay Class members wages and compensation they earned through labor
7 provided, and failing to otherwise compensate Class members, as alleged herein. Defendants'
8 fraudulent conduct includes, but is not limited to, issuing wage statements containing false and/or
9 misleading information about the time the Class members worked and the amount of wages or
10 compensation due.

11 64. Plaintiffs have standing to assert this claim because he has suffered injury in fact
12 and have lost money as a result of Defendant's conduct.

13 65. Plaintiffs and the Class seek restitutionary disgorgement from Defendants, and an
14 injunction prohibiting them from engaging in the unlawful, unfair, and/or fraudulent conduct
15 alleged herein.

16 **SEVENTH CAUSE OF ACTION**
17 **REPRESENTATIVE CLAIM UNDER THE CALIFORNIA LABOR CODE**
18 **PRIVATE ATTORNEY GENERAL ACT**
19 **(Violation of California's Labor Code §§ 2698 et seq.)**
20 **(Against All Defendants)**

21 9. Plaintiffs re-alleges, and incorporate by reference, the preceding paragraphs of this
22 Complaint, as though fully set forth herein.

23 10. Plaintiffs bring this cause of action in their representative capacity on behalf of the
24 State of California and on behalf of the following employees of Defendants:

25 All current or former employees of Defendants who at any time
26 from May 3, 2023 to the present (the "PAGA Period") worked for
27 Defendant as drivers in California or were in similar position, and
28 suffered one or more Labor Code violations enumerated in sections
2698 et seq. of the Labor Code ("Aggrieved Employees").

11. The claims alleged herein are appropriately suited for a Labor Code Private

1 Attorneys General Act of 2004 (“PAGA”) action because:

2 a. Pursuant to California Labor Code § 2699(a), any provision of the *Labor Code*
3 “that provides for a civil penalty to be assessed and collected by the Labor and Workforce
4 Development Agency or any of its departments, divisions, commissions, boards, agencies, or
5 employees, for a violation of this code, may, as an alternative, be recovered through a civil action
6 brought by an aggrieved employee on behalf of other current or former employees pursuant to the
7 procedures specified in section 2699.3.”

8 b. This action involves allegations of violations of provisions of the California Labor
9 Code that provides or do not provide for a civil penalty to be assessed and collected by the
10 LWDA or any departments, divisions, commissions, boards, agencies, or employees.

11 c. California Labor Code that provides or do not provide for a civil penalty to be
12 assessed and collected by the LWDA or any departments, divisions, commissions, boards,
13 agencies, or employees.

14 d. Plaintiffs were “aggrieved employee” because they were employed by the alleged
15 violators and had one or more of the alleged violations committed against them.

16 e. Plaintiffs satisfied the procedural requirements of section 2699.3 by serving, via
17 certified mail, the LWDA and Defendants with notice for wage and hour violations and penalties,
18 including the facts and theories to support each violation. More than 65 days have passed since
19 Plaintiffs served via certified mail to LWDA and her former employer. Therefore, Plaintiffs
20 satisfied all the administrative requirements to pursue civil penalties against Defendants pursuant
21 to Labor Code section 2698, *et seq.*

22 12. Plaintiffs filed this cause of action pursuant to Labor Code section 2699(a) and (f),
23 on behalf of all current and former aggrieved employees of Defendants to recover civil penalties.

24 13. Defendants, including the Doe defendants, were Plaintiff’s employers or persons
25 acting on behalf of Plaintiff’s employer, within the meaning of California Labor Code § 558, who
26 violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or
27 any provision regulating hours and days of work in any order of the Industrial Welfare
28 Commission and, as such, are subject to penalties for each underpaid employee, as set forth in

1 Labor Code § 558, at all relevant times.

2 66. Plaintiff, on behalf of aggrieved employees of Defendants, seeks to recover all
3 applicable civil penalties pursuant to PAGA.

4 **PRAYER**

5 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated and
6 also on behalf of the general public, pray for judgment against Defendants as follows:

- 7 A. An order that this action may proceed and be maintained as a class action;
8 B. An order that this action may proceed and be maintained as a representative action;
9 C. For all unpaid minimum wages and liquidated damages due to Plaintiffs and each
10 Class member on their minimum wage claim;
11 D. For continuation wages under Labor Code § 203;
12 E. For statutory penalties under Labor Code § 226(e);
13 F. An order requiring Defendants to comply with Labor Code § 226(a) with respect to
14 all currently employed members of the Class;
15 G. For reimbursement of business expenses under Labor Code § 2802;
16 H. For restitutionary disgorgement pursuant to the UCL;
17 I. An order enjoining Defendants from further unfair and unlawful business practices
18 in violation of Business & Professions Code §§ 17200 *et seq.*;
19 J. For unpaid wages;
20 K. For penalties and other relief pursuant to Labor Code § 2698 *et seq.* for Plaintiffs
21 and all other Aggrieved Employees;
22 L. Prejudgment interest at the maximum legal rate;
23 M. Reasonable attorneys' fees;
24 N. Accounting of Defendants' records for the liability period;
25 O. General, special and consequential damages, to the extent allowed by law;
26
27 P. Costs of suit; and
28 Q. Such other relief as the Court may deem just and proper.

1 DATED: July 8, 2024

HAFFNER LAW PC

2
3 By:



Joshua H. Haffner

Alfredo Torrijos

Vahan Mikayelyan

Attorneys for Plaintiffs and others

Similarly situated

1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs demand a trial by jury for himself and the Class members on all claims so
3 triable.

4
5 DATED: July 8, 2024

HAFFNER LAW PC

6 By:



7 Joshua H. Haffner
8 Alfredo Torrijos
9 Vahan Mikayelyan
Attorneys for Plaintiffs and others
Similarly situated

PROOF OF SERVICE
Case No. 24CV010352

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 15260 Ventura Blvd., Suite 1520 Sherman Oaks, CA 91403.

On **July 8, 2024**, I served the foregoing document described as

1. FIRST AMENDED COMPLAINT FOR CLASS ACTION AND PAGA PENALTIES

on the interested parties in the action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Attorney	Defendant
Michelle Ferber, Esq. Jennifer R. Lucas, Esq. Christine Pierce FERBER LAW 2603 CAMINO RAMON, SUITE 385 SAN RAMON, CA 94583 O: 925.3559800 D: 925.886.5222 EMAILS: mferber@ferberlaw.com jlucas@ferberlaw.com cpierce@ferberlaw.com	Attorneys for Defendant CAPITAL EXPRESS LINES, INC.

☒ BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address vh@haffnerlawyers.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ [STATE] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

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

Executed on July 8, 2024, at Sherman Oaks, California.



Vahan Mikayelyan