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ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

VICTOR ADORNO, an individual, on behalf
of himself and all others similarly situated and
aggrieved,

Plaintiff,

vs.

WESTERN EXPRESS, INC., a Tennessee
Corporation; and DOES 1 through 25,
inclusive,

Defendants.

Case No.: CIVSB2431883

**CLASS ACTION & PAGA REPRESENTATIVE
ACTION COMPLAINT**

- (1) BREACH OF EXPRESS CONTRACT;**
- (2) BREACH OF IMPLIED CONTRACT;**
- (3) FAILURE TO PAY MINIMUM WAGES;**
- (4) FAILURE TO PAY OVERTIME WAGES;**
- (5) FAILURE TO FURNISH TIMELY AND
ACCURATE WAGE STATEMENTS;**
- (6) FAILURE TO REIMBURSE ALL
NECESSARY, BUSINESS-RELATED
EXPENSES;**
- (7) VIOLATION OF CALIFORNIA’S UNFAIR
COMPETITION LAW (“UCL”), CAL. BUS.
& PROF. CODE § 17200, *ET SEQ.*; AND**
- (8) CIVIL PENALTIES FOR VIOLATIONS
OF LABOR CODE, PURSUANT TO
CALIFORNIA’S PRIVATE ATTORNEYS
GENERAL ACT (“PAGA”), §§ 2698, *ET
SEQ.***

DEMAND FOR JURY TRIAL

1 **CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT**

2 Plaintiff VICTOR ADORNO (“ADORNO” or “Plaintiff”), on behalf of himself and all others
3 similarly situated and aggrieved, by and through his attorneys, Abramson Labor Group, hereby file this
4 Class Action and Private Attorneys General Act of 2004 (“PAGA”) Representative Action Complaint
5 against Defendants WESTERN EXPRESS, INC., a Tennessee Corporation; and DOES 1 through 25
6 inclusive, (collectively, “Defendants”), and state as follows:

7 **I. INTRODUCTION**

8 1. Plaintiff ADORNO brings this class and representative action on behalf of himself, on
9 behalf of a class defined as all current and former hourly non-exempt employees of WESTERN
10 EXPRESS, INC. in California at any time during the Class Period beginning four years prior to the filing
11 of this Complaint through the present (“Class Period”), and on behalf of all Aggrieved Persons who
12 worked for Defendants as hourly, non-exempt employees in California at any time during the period
13 beginning one year prior to the PAGA letter (defined below) through the present (“PAGA Period”).

14 2. This is also an enforcement action under the Labor Code Private Attorneys General Act
15 of 2004, California Labor Code section 2698 *et seq.* (“PAGA”) to recover civil penalties and any other
16 available relief on behalf of Plaintiff, the State of California, and other current and former employees
17 who work or worked for Defendants in California as non-exempt, hourly employees and who received at
18 least one wage statement during their employment, and against whom one or more violations of any
19 provision in Division 2, Part 2, Chapter 1 of the Labor Code or any provision regulating hours and days
20 of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order were committed, as set
21 forth in this complaint (“Aggrieved Employees”), at any time between one year and 65 days prior to the
22 filing of this complaint (i.e., August 15, 2023) until judgment (the “PAGA Period”). Plaintiff’s share of
23 civil penalties sought in this action does not exceed \$75,000.

24 3. Defendant WESTERN EXPRESS, INC. operates throughout California as a nationwide
25 trucking/transportation company transporting a variety of cargo, such as bales of hay, recycled paper,
26 plastic containers, and beverages.

27 4. Defendants’ policy and practice is to deny earned wages, including premium and overtime
28 pay, to their nonexempt employees in California. Additionally, Defendants require their employees to

1 be present and to perform work uncompensated in excess of eight hours per day and/or 40 hours per work
2 week by mandating that these employees perform various forms of compensable work off-the-clock
3 including, but not limited to, (1) turning on lights and the air compressor and (2) emailing lot checks and
4 plans pertaining to the day's trailer activity. Likewise, Defendants do not provide minimum wages and
5 overtime pay for this off-the-clock time. These off-the-clock periods exist for the sole benefit of
6 Defendants and occurred frequently and regularly at Defendants' locations throughout California. This
7 illegal practice has been in effect by Defendants since at least the start of the Class Period.

8 5. Moreover, Defendants fail to timely compensate employees for all wages earned and fail
9 to properly and accurately calculate minimum wages and overtime wages and report wages earned, hours
10 worked, and wage rates. For these reasons, Plaintiff brings this action on behalf of himself and other
11 hourly, nonexempt employees of Defendants to recover unpaid wages, overtime compensation, penalties,
12 interest, injunctive relief, damages, and reasonable attorneys' fees and costs.

13 6. Defendants' deliberate failure to pay their hourly, nonexempt employees their earned
14 wages and overtime compensation violates the California Labor Code and California's Unfair
15 Competition Law, codified under California's Business & Professions Code.

16 7. Defendants fail to reimburse Plaintiff and Class Members for a variety of unreimbursed
17 business expenses including expenses for (1) the use of their personal cell phones required for
18 communication purposes during their shifts and (2) for the purchase of needed tools (e.g., socket sets,
19 hand tools, flashlights, impact gun and drills, wrenches, screwdrivers, toolbox, pliers, vice grips, and an
20 endoscopic camera).

21 8. Plaintiff brings a class action under the California Code of Civil Procedure section 382
22 against all Defendants on behalf of all hourly, nonexempt employees of Defendants in California for
23 failing to provide the full, agreed-upon Tenure-Based Bonuses (defined below), for unpaid minimum
24 wages, unpaid overtime wages, failing to provide timely and accurate wage statements, failing to
25 reimburse all necessary, business-related expenses, and other related penalties and damages under the
26 California Labor Code and California Business & Professions Code.

27 **II. JURISDICTION AND VENUE**

28 9. This Court has jurisdiction over this matter because Defendants regularly conduct

1 business in California and committed and continue to commit the unlawful acts alleged herein in
2 California.

3 10. This Court has jurisdiction over this action pursuant to the California Constitution,
4 Article VI, section 10. The statute under which this action is brought does not specify any other basis
5 for jurisdiction.

6 11. This Court has jurisdiction over all Defendants because, on information and belief,
7 Defendants are citizens of California, have sufficient minimum contacts in California, and intentionally
8 avail themselves of the California market so as to render the exercise of jurisdiction over them by the
9 California courts consistent with traditional notions of fair play and substantial justice. There is no basis
10 for federal diversity jurisdiction in this action given that the State of California, as the real party in
11 interest in this action, is not a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin*
12 *Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot
13 be aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction in this
14 action, and that diversity jurisdiction cannot be established when Plaintiffs’ respective shares of the civil
15 penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

16 12. Venue lies properly with this Court, as it is the place where at least one defendant resides,
17 is incorporated or has its principal place of business, or a substantial amount of the events which gave
18 rise to this suit occurred and/or a cause of action arose. Thus, venue is proper in this Court, because
19 Defendants employ persons in this county and employed at least one plaintiff in this county, and thus a
20 substantial portion of the transactions and occurrences related to this action occurred in this county.

21 13. California Labor Code sections 2698 *et seq.*, the “Labor Code Private Attorneys General
22 Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys general their current
23 or former employers for various civil penalties for violating the California Labor Code.

24 **III. PARTIES**

25 14. Plaintiff VICTOR ADORNO (“ADORNO” or “Plaintiff”) is a resident of Rialto,
26 California. Defendants have employed Plaintiff as an hourly-paid, non-exempt employee for
27 approximately 5.0 years from October 2019 through the present. Plaintiff’s current position is Lead
28 Maintenance Technician, but he has previously held the following positions as well: Technician I,

1 Technician II, and Technician III. During his employment, Plaintiff has always reported to Defendants'
2 Bloomington, California location, which is located at 18244 Valley Blvd., Bloomington, CA 92316.
3 Plaintiff typically works five days per week for eight hours or more per day. At present, Plaintiff is
4 earning \$27.50 per hour plus certain nondiscretionary retention-based bonuses based on annual earnings
5 (as a proxy for hours worked) as a Lead Maintenance Technician.

6 15. Defendant WESTERN EXPRESS, INC. ("WESTERN EXPRESS") is, on information
7 and belief, a Tennessee Corporation doing business in California, with its principal place of business in
8 Nashville, Tennessee, at 7135 Centennial Place, Nashville, Tennessee 37209, and at all times hereinafter
9 mentioned, is an employer whose employees are engaged throughout this county and throughout the
10 State of California. WESTERN EXPRESS operates multiple California locations in San Bernardino
11 County and directs its operations from its Nashville, Tennessee headquarters. WESTERN EXPRESS
12 directs and supervises Plaintiff's work.

13 16. Defendants created the policies and procedures described herein and, at all times during
14 the Class Period, participated in, endorsed, implemented, and performed the conduct alleged herein.

15 17. The practices and policies complained of by way of this Complaint are enforced
16 throughout the State of California, including in San Bernardino County.

17 18. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
18 participation in the conduct alleged herein, of the Defendants sued as Does 1-25, inclusive, but are
19 informed and believe that said Defendants are legally responsible for the conduct alleged herein and
20 therefore sue these Defendants by such fictitious names. Plaintiff will amend this Complaint to allege
21 both the true names and capacities of the Doe Defendants when ascertained. Plaintiff is informed and
22 believes, and thereon alleges, that at all times mentioned herein, all Defendants, including Doe
23 Defendants, and each of them, were agents, servants, employees, successors in interest, and/or joint
24 venturers of their co-Defendants and were, as such, acting within the course, scope, and authority of said
25 agency, employment, and/or venture, and with the consent of their co-Defendants, and/or said acts were
26 ratified by their co-Defendants, and that each and every Defendant, as aforesaid, when acting as a
27 principal, was negligent in the selection and hiring, training, and supervision of each and every other
28 Defendant as an agent, servant, employee, successor in interest, and/or joint venturer. Plaintiff is

1 informed and believes that each Defendant acted in all respects pertinent to this action as the agent of
2 the other Defendant, carried out a joint scheme, business plan, or policy in all respects pertinent hereto,
3 and that the acts of each Defendant are legally attributable to each of the other Defendant.

4 **IV. FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

5 19. At all times relevant herein, Defendant WESTERN EXPRESS operates throughout
6 California as a nationwide trucking/transportation company transporting a variety of cargo, such as
7 bales of hay, recycled paper, plastic containers, and beverages.

8 20. Upon information and belief, Defendant WESTERN EXPRESS maintains its corporate
9 operations headquarters, including Human Resources in Nashville, Tennessee. Upon information and
10 belief, Defendant WESTERN EXPRESS maintains a single, centralized HR department at its
11 operations headquarters in Nashville, Tennessee, which is responsible for conducting recruiting and
12 hiring of new employees, as well as communicating and implementing Defendant WESTERN
13 EXPRESS'S company-wide policies, including timekeeping policies, to employees throughout
14 California. In particular, Plaintiff and other Class Members, on information and belief, received the
15 same standardized documents and/or written policies upon hire. Upon information and belief, the use
16 of standardized documents and/or written policies, including new hire documents, indicate that
17 Defendants dictated policies at the corporate-level and implemented them company-wide, regardless
18 of its employees' assigned locations or positions. On information and belief, all transactions regarding
19 hiring, terminations, promotions, and pay increases, etc., relating to Defendant WESTERN
20 EXPRESS'S California employees were submitted to and processed by Defendant WESTERN
21 EXPRESS'S HR department in Nashville, Tennessee.

22 21. Upon information and belief, Defendant WESTERN EXPRESS'S corporate records,
23 business records, data, and other information related to Defendant WESTERN EXPRESS, including,
24 in particular, HR records pertaining to their California employees, are also maintained at its operations
25 headquarters.

26 22. At all relevant times, Defendant WESTERN EXPRESS has been, and continues to be, a
27 "person" as that term is defined under California Business & Professions Code section 17021 and
28 California Labor Code sections 1-29.5.

1 23. At all times relevant herein, Plaintiff is employed by Defendants as an hourly,
2 nonexempt employee in the position of Lead Maintenance Technician in California during the Class
3 Period.

4 24. At all times relevant herein, Plaintiff and Class Members were assigned to and required
5 and permitted to work without pay while performing tasks including, but not limited to: (1) turning on
6 lights and the air compressor and (2) emailing lot checks and plans pertaining to the day's trailer
7 activity. Plaintiff and Class Members were not properly compensated for this work.

8 25. At all times relevant herein, Plaintiff and Class Members worked in excess of eight hours
9 per workday or 40 hours per work week. Defendants failed to properly pay for all hours worked in
10 excess of eight hours per day, and when compensated for overtime, failed to pay the correct amount of
11 overtime by underreporting Plaintiff's and Class Members' total hours worked. Defendants failed to
12 pay current and former hourly, nonexempt employees one and one-half times (1½) their regular rate of
13 pay for hours worked in excess of eight hours per day or 40 hours per workweek. Defendants also failed
14 to pay their employees at a rate no less than twice the regular rate of pay for work in excess of 12 hours
15 in one day or for all hours worked in excess of eight hours on the seventh consecutive day of work in a
16 workweek.

17 26. During the Class Period, Defendants require their hourly, nonexempt employees to
18 perform compensable work while off the clock: (1) turning on lights and the air compressor and (2)
19 emailing lot checks and plans pertaining to the day's trailer activity, none of which was recorded or
20 subsequently added and remains unpaid. Accordingly, during the Class Period, Defendants did not
21 provide minimum wages and overtime, where eligible, pay for this time worked off-the-clock that
22 Plaintiff and the Class endured.

23 27. Defendants regularly failed to pay their hourly, nonexempt employees the correct amount
24 of and rate for overtime wages. Defendants fail to record all hours as overtime by failing to record all
25 hours worked in a workday. This work, done primarily for the employer's benefit, is time that hourly,
26 nonexempt employees should be, but were not compensated for, both straight hours and overtime hours
27 worked in excess of 40 hours in a week, hours worked in excess of eight hours in a day, and for the first
28 eight hours worked on the seventh consecutive day of work in a workweek.

1 28. Supervisors employed by Defendants, including at Plaintiff's location, had knowledge of
2 and required Plaintiff and Class Members to perform compensable work during meal periods and also
3 during off-shift hours. Supervisors throughout California were aware that Plaintiff and others similarly
4 situated were performing work during these times without proper wages or, where eligible, overtime
5 compensation.

6 29. In light of Defendants' failure to record employees' off-the-clock time that employees
7 worked, Defendants failed to properly calculate hourly, nonexempt employees' hours and therefore,
8 employees' premium pay, minimum wages, and overtime wages due. Accordingly, Defendants failed
9 to provide accurate wage statements to their hourly, nonexempt employees identifying all hours worked
10 and all rates in effect during the pay period.

11 30. At all times relevant herein, the same unlawful practices and procedures described above
12 affect hourly, nonexempt workers of Defendants employed in California.

13 31. At all times relevant herein, Defendants failed to pay Plaintiff and Class Members for all
14 hours worked. Thus, Defendants did not pay Plaintiff and Class Members minimum wages in
15 accordance with law and, because Class Members were not compensated for compensable work
16 performed in that Plaintiff and other Class Members were required to clock in at the WESTERN
17 EXPRESS facilities after performing compensable work like (1) turning on lights and the air compressor
18 and (2) emailing lot checks and plans pertaining to the day's trailer activity. Defendants' policy and
19 practice was that employees perform these tasks off the clock without compensation, Defendants also
20 did not pay nonexempt employees all overtime wages in accordance with law.

21 32. At all times relevant herein, at the time of Plaintiff and Class Members' hire, Defendants
22 promised Plaintiff and Class Members that after each one-year period during which Plaintiff and Class
23 Members performed work for Defendants as nonexempt employees, Defendants would compensate
24 Plaintiff and Class Members with a specific percentage—a "Tenure-Based Bonus"—based on the total
25 number of hours worked in that year, respectively, by Plaintiff and Class Members' as a proxy for
26 Plaintiff and Class Members' total respective earnings for that past one-year period.

1 33. Upon information and belief, the tier for the Tenure-Based Bonus is broken down
2 between employees earning below \$50,000 that year versus employees earning \$50,000 or more, and
3 payouts for these Tenure-Based Bonuses are to occur in December for the past year of earnings.

4 34. Indeed, in past years, Plaintiff has received the Tenure-Based Bonus in the month of
5 December.

6 35. During the COVID-19 pandemic, Defendants announced to Plaintiff and Class Members
7 that for future payouts of the Tenure-Based Bonus, Defendants would be reducing that agreed-upon
8 percentage, thereby anticipatorily breaching the contracts Defendants entered into at the time Plaintiff
9 and Class Members each were hired.

10 36. At all times relevant herein, Defendants failed to reimburse Plaintiff and Class Members
11 for (1) the use of their personal cell phones required for communication purposes during their shifts and
12 (2) for the purchase of needed tools (e.g., socket sets, hand tools, flashlights, impact gun and drills,
13 wrenches, screwdrivers, toolbox, pliers, vice grips, and an endoscopic camera).

14 37. Defendants' conduct, as alleged herein, has caused Plaintiff and Class Members damages
15 including, but not limited to, loss of wages and compensation. Defendants are liable to Plaintiff and the
16 Class for failing to pay wages contractually promised, failing to pay minimum wages, failing to pay
17 overtime wages, failing to pay all wages owed every pay period, failing to provide timely and accurate
18 wage statements, failing to reimburse all necessary, business-related expenses, and unfair competition.

19 38. Plaintiff has complied with the procedures for bringing suit specified in California Labor
20 Code section 2699.3. By letter dated August 15, 2024, Plaintiff gave written notice by certified mail to
21 the Labor and Workforce Development Agency ("LWDA"), and Defendants, of the specific provisions
22 of the Labor Code alleged to have been violated, including the facts and theories to support the alleged
23 violations.

24 **V. CLASS ACTION AND REPRESENTATIVE ACTION ALLEGATIONS**

25 39. Plaintiff is a member of and seeks to be the representative for a Class of similarly situated
26 employees who all have been exposed to, have suffered, and/or were permitted to work under
27 Defendants' unlawful employment practices as alleged herein.

28 40. Plaintiff brings his first through seventh causes of action on behalf of himself and on

1 behalf of the following Class¹ of persons:

2 All current and former hourly non-exempt employees of WESTERN
3 EXPRESS INC. in California at any time during the Class Period through
4 the present.

4 41. This action is appropriately suited for a class action pursuant to Code of Civil Procedure
5 section 382 because there exists an ascertainable and sufficiently numerous Class, a well-defined
6 community of interest, and substantial benefits from certification that render proceeding as a class
7 superior to the alternatives.

8 42. Numerosity and Ascertainability. The size of the Class makes a class action both
9 necessary and efficient. On information and belief, the proposed Class includes hundreds of current and
10 former employees at Defendants' locations in California. Members of the Class are ascertainable through
11 Defendants' records but are so numerous that joinder of all individual Class Members would be
12 impractical.

13 43. Predominant Common Questions of Law and Fact. Pursuant to section 382, common
14 questions of law and fact exist as to all Class Members. These questions predominate over any
15 individualized issues. These common questions include but are not limited to:

- 16 a. Whether Defendants' policies and practices described in this Complaint were and are illegal;
17 b. Whether Plaintiff and each member of the Class were not paid minimum wage for each hour
18 worked or part thereof during which they were required to perform acts at the direction and
19 for the benefit of Defendants;
20 c. Whether Defendants engaged in a pattern or practice of failing to pay Plaintiff and the
21 members of the Class who worked as hourly, nonexempt employees in California for the total
22 hours worked during the Class Period;
23 d. Whether Defendants have engaged in a common course of requiring or permitting their
24 hourly, nonexempt employees to not report all hours worked during the Class Period;

27
28 ¹ Plaintiff reserves the right under California Rules of Court, Rule 3.765, to amend or modify the Class description
with greater particularity or further division into subclasses or limitation to particular issues.

- e. Whether Defendants have engaged in a common course of failing to maintain true and accurate time records for all hours worked by their nonexempt employees;
- f. Whether Defendants engaged in a pattern or practice of failing to pay appropriate amounts of overtime pay to Plaintiff and the Class for hours worked in excess of eight hours in a day;
- g. Whether Defendants engaged in a pattern or practice of failing to pay appropriate amounts of double time for hours worked in excess of 12 hours in a day;
- h. Whether Defendants violated section 510 of the Labor Code and/or section 3 of the applicable IWC Wage Order(s) by failing to pay overtime pay to Plaintiff and the Class for hours worked in excess of eight hours in a day;
- i. Whether Defendants violated section 510 of the Labor Code and/or section 3 of the applicable IWC Wage Order(s) by failing to pay overtime pay to Plaintiff and the Class for the first eight hours worked in a day on the seventh consecutive day in a workweek and double time for all hours worked in excess of eight hours on such days;
- j. Whether Defendants promised Plaintiff and members of the Class a specific bonus after a certain number of years to be calculated based on prior hours worked as a proxy for earnings during the Class Period;
- k. Whether Defendants engaged anticipatorily breached Plaintiff and members of the Class their contractually-promised bonuses during the Class Period;
- l. Whether Defendants violated Labor Code sections 218.5, 204, 1197, and 1198 due to failure to compensate Plaintiff and the Class for those acts Defendants required Plaintiff and members of the Class to perform for the benefit of Defendants;
- m. Whether Defendants violated Labor Code section 226(a) by issuing inaccurate wage statements to Plaintiff and members of the Class that failed to include bonus payments earned throughout the Class Period;
- n. Whether Defendants violated Labor Code section 226 by issuing inaccurate wage statements to Plaintiff and members of the Class that failed to accurately state the total hours worked and therefore, the total gross and net wages owed, to the detriment of Plaintiff and the Class;

- 1 o. Whether Defendants violated California Labor Code section 2802 by failing to reimburse
2 Plaintiff and Class Members for all necessary business-related expenses they incurred;
3 p. Whether Defendants have engaged in unfair competition by the above-listed conduct; and
4 q. The nature and extent of class-wide injury and the measure of damages for the injury.

5 44. Typicality. Plaintiff's claims are typical of the members of the Class. Plaintiff, like other
6 members of the Class working for Defendants in California, was subjected to Defendants' policies and
7 practices of refusing to provide the full percentage of the agreed-upon Tenure-Based Bonus, failing to
8 properly and fully pay all minimum and overtime wages, and failing to reimburse all necessary, business-
9 related expenses in violation of California wage and hour laws. Plaintiff's job duties were and are typical
10 of those of other class members who worked for Defendants in California.

11 45. Adequacy of Representation. Plaintiff will fairly and adequately represent the interests of
12 the Class because his individual interests are consistent with and not antagonistic to the interests of the
13 Class, and because Plaintiff has selected counsel who has the requisite resources and ability to prosecute
14 this case as a class action and are experienced labor and employment attorneys who have successfully
15 litigated other cases involving similar issues.

16 46. Superiority of Class Mechanism. The class action mechanism is superior to any
17 alternatives that might exist for the fair and efficient adjudication of these claims. Proceeding as a class
18 action would permit the large number of injured parties to prosecute their common claims in a single
19 forum simultaneously, efficiently, and without unnecessary duplication of evidence, effort and judicial
20 resources. A class action is the only practical way to avoid the potentially inconsistent results that
21 numerous individual trials are likely to generate. Moreover, class treatment is the only realistic means
22 by which Plaintiff can effectively litigate against a large, well-represented corporate defendant like
23 Defendants. In the absence of a class action, Defendants would be unjustly enriched because they would
24 be able to retain the benefits and fruits of the many wrongful violations of the California state laws.
25 Numerous repetitive individual actions would also place an enormous burden on the courts as they are
26 forced to take duplicative evidence and decide the same issues relating to Defendants' conduct over and
27 over again.

28 ///

1 **VI. FIRST CAUSE OF ACTION**

2 **Breach of Express Contract**

3 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

4 47. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
5 as if fully set forth herein.

6 48. Plaintiff and Class Members entered into identical, binding contracts with Defendants by
7 accepting Defendants' offer of employment as nonexempt employees.

8 49. The language provided to Plaintiff and Class Members in their onboarding documents,
9 and other materials made available to Plaintiff and Class Members promising tenure-and-earnings-based
10 bonuses became terms of the contract. That is, at the time of contract, the parties had the reasonable
11 expectation that, in exchange for each year of work for Defendants, Defendants would provide Plaintiff
12 and Class Members with a bonus based on Plaintiff and Class Members' annual earnings calculated using
13 Plaintiff and Class Members' respective hours worked for the past year. Upon information and belief, the
14 tier was broken down between employees earning below \$50,000 that year versus employees earning
15 \$50,000 or more.

16 50. Under their contracts with Defendants, and Defendants' usual and customary practice of
17 providing these bonuses, Plaintiff and Class Members began performing work for Defendants.

18 51. During the COVID-19 pandemic, Defendants announced to Plaintiff and Class Members
19 that the bonuses to be distributed to Plaintiff and Class Members would be less than the previously
20 agreed-upon rate or percentage of earnings for the past year.

21 52. Plaintiff and Class Members have fulfilled all requirements of their mutually agreed
22 contracts thus far, having begun performance and, in most Class members' cases, including Plaintiff,
23 have completed performance by accruing at least one year of work for Defendants.

24 53. Plaintiff and Class Members who have not fulfilled all requirements of their mutually
25 agreed contracts, intend to continue working for Defendants to fulfill their respective one-year periods to
26 earn the promised bonus.

27 54. By reducing the agreed-upon percentage of earnings for the past year while some Plaintiff
28 and the Class were partway through performance, Defendants anticipatorily breached the contracts they

entered into with Plaintiff and the Class.

55. Defendants' reduction in the percentage of bonus amounts to a material breach of the contract.

56. Plaintiff and members of the Class have suffered damages as a direct and proximate result of Defendants' breach, including being deprived of minimum wages that they were promised and reasonably expected to obtain, and for which they have performed and have suffered to work.

57. Plaintiff and Class Members are entitled to an award of money damages in an amount to be determined at trial as redress for Defendants' breach.

58. Plaintiff and Class Members are entitled to specific performance in the form of money damages in an amount to be determined at trial as redress for Defendants' breach.

59. Defendants' performance under the contracts is not excused because of financial hardships Defendants may have experienced as a result of COVID-19.

60. Defendants' unlawful conduct alleged herein occurred in the course of employment of Plaintiff and all others similarly situated and such conduct has continued through the filing of the initial Complaint.

VII. SECOND CAUSE OF ACTION

Breach of Implied Contract

(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)

61. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

62. Plaintiff pleads this Count in the alternative to the First Cause of Action.

63. Plaintiff and Class Members entered into an implied contract by accepting Defendants' offer employment with Defendants as nonexempt employees and beginning work.

64. The language Defendants provided to Plaintiff and Class Members at the time of onboarding and other materials made available to Plaintiff and Class Members promising tenure-and-earnings-based bonuses ("Tenure-Based Bonus") became terms of the contract. That is, at the time of contract, the parties had the reasonable expectation that, in exchange for each year of work for Defendants, Defendants would provide Plaintiff and Class Members with a bonus based on Plaintiff and

1 Class Members' annual earnings calculated using Plaintiff and Class Members' respective hours worked
2 for the past year. Upon information and belief, the tier was broken down between employees earning
3 below \$50,000 that year versus employees earning \$50,000 or more.

4 65. Under the implied contract, Plaintiff and Class Members began performance by
5 performing work for Defendants and have continued performance by remaining employed by Defendants
6 as nonexempt employees.

7 66. It was the reasonable expectation of Plaintiff and Class Members that Defendants would
8 calculate Plaintiff and Class Members' annual bonuses based on the mutually agreed-upon percentage
9 and intended at the outset of Plaintiff and Class Members' employment in accordance with the terms
10 Defendants' provided Plaintiff and Class Members upon hire and in keeping with Defendants' usual and
11 customary practice of providing the full bonuses that Defendants had provided Plaintiff and Class
12 Members in years past for previous one-year terms Plaintiff and Class Members worked.

13 67. Plaintiff and Class Members accepted Defendants' offer of employment and intended to
14 remain employed by Defendants for at least one year.

15 68. During the COVID-19 pandemic, Defendants announced to Plaintiff and Class Members
16 that the bonuses to be distributed to Plaintiff and Class Members would be reduced from the mutually
17 agreed-upon percentage of earnings for the past year.

18 69. Plaintiff and Class Members have fulfilled all requirements of their mutually agreed
19 contracts thus far, having begun performance and, in most Class members' cases, including Plaintiff,
20 have completed performance by accruing at least one year of work for Defendants.

21 70. Plaintiff and Class Members who have not fulfilled all requirements of their mutually
22 agreed contracts, intend to continue working for Defendants to fulfill their respective one-year periods to
23 earn the promised bonus.

24 71. By reducing the agreed-upon percentage of earnings for the past year while some Plaintiff
25 and the Class were partway through performance, Defendants anticipatorily breached the contracts they
26 entered into with Plaintiff and the Class.

27 72. Defendants' reduction in the percentage of bonus amounts to a material breach of the
28 implied in-fact contract.

1 73. Plaintiff and members of the Class have suffered damages as a direct and proximate result
2 of Defendants' breach, including being deprived of minimum wages that they were promised and
3 reasonably expected to obtain, and for which they have performed and have suffered to work.

4 74. Plaintiff and Class Members are entitled to an award of money damages in an amount to
5 be determined at trial as redress for Defendants' breach.

6 75. Plaintiff and Class Members are entitled to specific performance in the form of money
7 damages in an amount to be determined at trial as redress for Defendants' breach.

8 76. Defendants' performance under the contracts is not excused because of financial hardships
9 Defendants may have experienced as a result of COVID-19.

10 77. Defendants' unlawful conduct alleged herein occurred in the course of employment of
11 Plaintiff and all others similarly situated and such conduct has continued through the filing of the initial
12 Complaint.

13 **VIII. THIRD CAUSE OF ACTION**

14 **Failure to Pay Minimum Wages**

15 **Upon Payment of Wages in Violation of Cal. Labor Code §§ 510, 1194, 1194.2,**

16 **and 1197; IWC Wage Order No. 9-2001, § 4**

17 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

18 78. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
19 as if fully set forth herein.

20 79. Labor Code section 510 provides in relevant part: "[e]ight hours of labor constitutes a
21 day's work. Any work in excess of eight hours in one work day and any work in excess of 40 hours in
22 any one workweek and the first eight hours worked on the seventh day of work in any one workweek
23 shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an
24 employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than
25 twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any
26 seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay
27 of an employee."

28 80. Labor Code section 1197 provides: "The minimum wage for employees fixed by the

1 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
2 minimum so fixed is unlawful.”

3 81. Labor Code section 1182.12 establishes the right of employees to be paid minimum wages
4 for all hours worked in amounts set by state law.

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

10 83. Labor Code section 1194.2 provides in pertinent part: “In any action under Section 1193.6
11 or Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed
12 by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount
13 equal to the wages unlawfully unpaid and interest thereon.”

14 84. Pursuant to IWC Wage Order No. 9-2001, section (2)(H), at all times material hereto,
15 “hours worked” includes “the time during which an employee is subject to the control of an employer,
16 and includes all the time the employee is suffered or permitted to work, whether or not required to do
17 so.”

18 85. At all times relevant during the liability period, under the provisions of IWC Wage Order
19 No. 9-2001, Plaintiff and each Class Member should have received not less than the minimum wage in a
20 sum according to proof for the time worked, but not compensated.

21 86. For all hours that Plaintiff and Class Members worked, they are entitled to not less than
22 the California minimum wage and, pursuant to Labor Code section 1194.2(a) liquidated damages in an
23 amount equal to the unpaid minimum wages and interest thereon.

24 87. Pursuant to Labor Code section 1194, Plaintiff and Class Members are also entitled to
25 their attorneys’ fees, costs, and interest according to proof.

26 88. At all times relevant during the liability period, Defendants willfully failed and refused,
27 and continue to willfully fail and refuse, to pay Plaintiff and Class Members the amounts owed.

28 89. As described above, Defendants required Plaintiff and other Class Members to work off

1 the clock, such as Plaintiff and other Class Members were required to clock in at the WESTERN
2 EXPRESS facilities after performing compensable work like (1) turning on lights and the air compressor
3 and (2) emailing lot checks and plans pertaining to the day's trailer activity. Defendants' policy and
4 practice was that employees perform these tasks off the clock without compensation. Also, Defendants
5 did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment.
6 But to the extent that these off-the-clock hours did not qualify for overtime premium pay, Defendants did
7 not pay at least minimum wages for those hours worked off-the-clock.

8 90. Defendants' unlawful conduct alleged herein occurred in the course of employment of
9 Plaintiff and all other similarly situated nonexempt, hourly, nonexempt employees, and Defendants have
10 done so continuously throughout the filing of this complaint.

11 91. As a direct and proximate result of Defendants' violation of Labor Code sections 510 and
12 1197, Plaintiff and Class Members have suffered irreparable harm and money damages entitling them to
13 damages, injunctive relief or restitution. Plaintiff, on behalf of himself and the Class, seek damages and
14 all other relief allowable including all wages due while working as Defendants' hourly, nonexempt
15 employees, attorneys' fees, liquidated damages, prejudgment interest, and as to those employees no
16 longer employed by Defendants, waiting time penalties pursuant to Labor Code sections 200, *et seq.*

17 92. Plaintiff and Class Members are entitled to the unpaid amount of minimum wages, pre-
18 judgment interest, liquidated damages, statutory penalties, attorneys' fees, and costs according to Labor
19 Code sections 204, 558, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure 1021.5.

20 **IX. FOURTH CAUSE OF ACTION**

21 **Failure to Pay Overtime Wages**

22 **in Violation of Cal. Labor Code §§ 510 and 1194, IWC Wage Order No. 9-2001, § 3**

23 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

24 93. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
25 as if fully set forth herein.

26 94. Pursuant to section 3 of IWC Wage Order No. 9-2001; California Code of Regulations,
27 Title 8, Chapter 5, section 11040, section 12; and Labor Code sections 200, 204, 226, 500, 510, 1194,
28 and 1198, Defendants were required to compensate Plaintiff and Class Members for all overtime hours

1 worked, which is calculated at one and one-half (1½) times the regular rate of pay for hours worked in
2 excess of eight hours per day and/or 40 hours per week, and for the first eight hours on the seventh
3 consecutive work day, with double time after eight hours on the seventh day of any work week, or after
4 12 hours in any work day.

5 95. Plaintiff and members of the Class were and are nonexempt employees entitled to the
6 protections of IWC Wage Order No. 9-2001; California Code of Regulations, Title 8, section 11040,
7 section 12; and Labor Code sections 200, 226, 500, 510, 1194, and 1198. In addition, during the Class
8 Period, Plaintiff and other members of the Class consistently worked five days per week for shifts of
9 eight hours or more. During the course of Plaintiff's employment, and during the course of the
10 employment of the members of the Class, Defendants failed to compensate Plaintiff and the Class for
11 overtime hours worked as required under the aforementioned Labor Codes and Regulations.

12 96. Under the aforementioned Wage Orders, statutes, and regulations, Plaintiff and members
13 of the Class are entitled to one and one-half (1½) times and/or double their regular rate of pay for overtime
14 work performed during the four years preceding the filing of this Complaint, based on appropriate
15 calculations of the "total remuneration" for each workweek.

16 97. In violation of state law, Defendants have knowingly and willfully refused to perform
17 their obligations to compensate Plaintiff and the Class for all wages earned and all hours worked. As a
18 direct result, Plaintiff and the Class have suffered, and continue to suffer, substantial losses related to the
19 use and enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in seeking
20 to compel Defendants to fully perform their obligations under state law, all to their respective damage in
21 amounts according to proof at time of trial, but in amounts in excess of the minimum jurisdiction of this
22 Court.

23 98. Defendants committed the acts alleged herein knowingly and willfully, with the wrongful
24 and deliberate intention of injuring Plaintiff and the Class, from improper motives amounting to malice,
25 and in conscious disregard of Plaintiff's rights and the rights of the Class. Plaintiff and the Class are thus
26 entitled to recover nominal, actual, compensatory, punitive, and exemplary damages in amounts
27 according to proof a time of trial, but in amounts in excess of the minimum jurisdiction of this Court.

28 99. Defendants' conduct described herein violates IWC Wage Order No. 9-2001; California

Code of Regulations, Title 8, section 11040, section 12; and Labor Code sections 200, 226, 500, 510, 512, and 1198. Therefore, pursuant to Labor Code sections 200, 204, 226, 558, and 1194, Plaintiff and the Class are entitled to recover the unpaid balance of overtime compensation Defendants owes Plaintiff and the Class, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

X. FIFTH CAUSE OF ACTION

Failure to Furnish Timely and Accurate Wage Statements

Upon Payment of Wages in Violation of Cal. Labor Code § 227.3

(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)

100. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

101. Labor Code section 226(a) sets forth reporting requirements for employers when they pay wages, as follows: "Every employer shall . . . at the time of each payment of wages, furnish his or his employees . . . an itemized statement in writing showing (1) gross wages earned; (2) total hours worked by the employee . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis" Section (e) provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and shall be entitled to an award of costs and reasonable attorney's fees."

102. Defendants failed to accurately record the overtime hours worked by Plaintiff and Class Members.

103. Additionally, Defendants failed to accurately record all rates of pay in effect during the pay period.

104. Plaintiff and Class Members were damaged by these failures because, among other things, the failures hindered Plaintiff and the Class from determining the amounts of wages actually owed to them.

105. Plaintiff and Class Members request recovery of Labor Code section 226(e) penalties

1 according to proof, as well as interest, attorneys' fees and costs pursuant to Labor Code section 226(e),
2 in a sum as provided by the Labor Code and/or other statutes.

3 **XI. SIXTH CAUSE OF ACTION**

4 **Failure to Reimburse All Necessary, Business-Related Expenses**

5 **in Violation of Cal. Labor Code § 2802**

6 **(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)**

7 106. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
8 as if fully set forth herein.

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

13 108. During the applicable statutory period, Plaintiff and Class Members incurred necessary
14 expenditures and losses in direct consequence of the discharge of their employment duties and their
15 obedience to the directions of Defendants, Defendants did not reimburse Plaintiff and Class Members for
16 these expenditures or losses. Such expenses include, but are not limited to, expenses for (1) the use of
17 their personal cell phones required for communication purposes during their shifts and (2) for the
18 purchase of needed tools (e.g., socket sets, hand tools, flashlights, impact gun and drills, wrenches,
19 screwdrivers, toolbox, pliers, vice grips, and an endoscopic camera).

20 109. Defendants have failed to fully reimburse Plaintiff and Class Members for necessary
21 business-related expenses and losses.

22 110. Plaintiff and Class Members are entitled to recover their necessary unreimbursed
23 business-related expenses and losses incurred during the course and scope of their employment, plus
24 interest accrued from the date on which the employee incurred the necessary expenditures at the same
25 rate as judgments in civil actions in the State of California, pursuant to California Labor Code section
26 2802.

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California Business and Professions Code §§ 17200, *et seq.*

111. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

112. Section 17200 of the California Business and Professions Code (the “UCL”) prohibits any unlawful, unfair, or fraudulent business practices.

113. Through their actions alleged herein, Defendants have engaged in unfair competition within the meaning of the UCL. Defendants' conduct, as alleged herein, constitutes unlawful, unfair, and/or fraudulent business practices under the UCL.

114. Defendants' unlawful conduct under the UCL includes, but is not limited to, violating the statutes alleged herein. Defendants' unfair conduct under the UCL includes, but is not limited to, failure to pay Class Members wages and compensation they earned through labor provided, and failing to otherwise compensate Class Members, as alleged herein. Defendants' fraudulent conduct includes, but is not limited to, issuing wage statements containing false and/or misleading information about the time Class Members worked and the amount of wages or compensation due.

115. Defendants' violations of California wage and hour laws and illegal payroll practices or payment policies constitute a business practice because they were done repeatedly over a significant period of time, and in a systematic manner to the detriment of Plaintiff and Class Members.

116. Plaintiff has standing to assert this claim because he has suffered injury in fact and has lost money as a result of Defendants' conduct.

117. For the four years preceding the filing of this action, Plaintiff and Class Members have suffered damages and request restitutionary disgorgement of all monies and profits to be disgorged from Defendants in an amount according to proof at the time of trial and an injunction prohibiting them from engaging in the unlawful, unfair, and/or fraudulent conduct alleged herein.

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1 **XIII. EIGHTH CAUSE OF ACTION**

2 **For Civil Penalties Pursuant to California's Private Attorneys General Act of 2004 ("PAGA"),**

3 **§§ 2698, *et seq.*, for Violations of California Labor Code Sections**

4 **(Brought by Plaintiff on Behalf of Himself and the General Public Against All Defendants)**

5 118. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
6 as if fully set forth herein.

7 119. PAGA provides that any provision of law under the Labor Code and applicable IWC Wage
8 Order(s) that provides for a civil penalty to be assessed and collected by California's Labor and
9 Workforce Development Agency ("LWDA") for violations of the California Labor Code and applicable
10 IWC Wage Order(s) may, as an alternative, be recovered by aggrieved employees in a civil action brought
11 on behalf of themselves and other current or former employees pursuant to procedures outlined in
12 California Labor Code section 2699.3.

13 120. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any person
14 who was employed by the alleged violator and against whom one or more of the alleged violations was
15 committed."

16 121. Plaintiff and other current and former employees of Defendants are "aggrieved
17 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current or former
18 employees and one or more of the alleged violations were committed against them.

19 122. Pursuant to Labor Code sections 2699.3 and 2699.5, aggrieved employees, including
20 Plaintiff, may pursue a civil action arising under PAGA, alleging violations of any provision listed in
21 section 2699.5, after the following requirements have been met:

- 22 a. The aggrieved employee shall give written notice ("Employee's Notice") by online filing
23 to the LWDA and by certified mail to the employer of the specific provisions of the
24 California Labor Code alleged to have been violated, including the facts and theories to
25 support the alleged violations;
- 26 b. The Employee's Notice filed with the LWDA is accompanied by a \$75 filing fee; and
- 27 c. The LWDA shall provide notice ("LWDA Notice") to the employer and the aggrieved
28 employee by certified mail that it does not intend to investigate the alleged violation within

60 calendar days of the postmark date of the Employee's Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within 65 calendar days of the postmark date of the Employee's Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

123. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees, including Plaintiff, may pursue a civil action arising under PAGA for violations of any provision other than those listed in section 2699.5 after the following requirements have been met:

- a. The aggrieved employee shall give written notice by online filing ("Employee's Notice") to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations;
- b. The Employee's Notice filed with the LWDA is accompanied by a \$75 filing fee; and
- c. The employer may cure the alleged violation within 33 calendar days of the postmark date of the Employee's Notice. The employer shall give written notice by certified mail within that period of time to the aggrieved employee or representative and the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

124. On August 15, 2024, Plaintiff provided written notice by online filing to the LWDA and by certified mail to Defendant WESTERN EXPRESS, INC. of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff's notice to the LWDA was accompanied by the \$75 filing fee. A true and correct copy of Plaintiff's written notice to the LWDA and Defendant WESTERN EXPRESS INC. dated August 15, 2024 is attached hereto as "**Exhibit 1.**" Exhibit 1 is incorporated into this Complaint by reference.

125. As of the filing date of this complaint, over 65 days has passed since Plaintiff sent the LWDA Notice described above, and the LWDA has not responded that it intends to investigate Plaintiff's

1 claims. Defendants have not given notice that it has cured the alleged violations set forth in this
2 Complaint. Thus, Plaintiff has satisfied the administrative prerequisites under California Labor Code
3 section 2699.3(a) and (c) to recover civil penalties against all defendants, in addition to other remedies,
4 for violations of California Labor Code sections 204, 226(a), 510, 1174(d), 1182.12, 1194, 1197, 1197.1,
5 1198, and 2802.

6 126. Labor Code section 558(a) provides that “[a]ny employer or other person acting on behalf
7 of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating
8 hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil
9 penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each
10 pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid
11 wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
12 each pay period for which the employee was underpaid in addition to an amount sufficient to recover
13 underpaid wages.” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this
14 section are in addition to any other civil or criminal penalty provided by law.”

15 127. Defendants, at all times relevant herein, were employers or persons acting on behalf of an
16 employer(s) who violated Plaintiff’s and other non-party aggrieved employees’ rights by violating
17 various sections of the California Labor Code as set forth above.

18 128. As set forth below, Defendants have violated numerous provisions of both the Labor Code
19 sections regulating hours and days of work as well as the applicable IWC Wage Order(s), including:

- 20 a. Violations of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and the applicable
21 IWC Wage Order(s) for Defendants’ failure to compensate Plaintiff and other Class
22 Members with at least minimum wages for all hours worked as set forth above;
- 23 b. Violations of Labor Code sections 510, 1198, and the applicable IWC Wage Order(s) for
24 Defendants’ failure to compensate Plaintiff and other Class Members with overtime wages
25 for all hours worked in excess of eight in one day or 40 in one week and double time for
26 all hours worked in excess of 12 hours, as set forth above;
- 27 c. Violations of Labor Code sections 226(a), 1198, and the applicable IWC Wage Order(s)
28 for willful and intentional failure to provide accurate and complete wage statements to

1 Plaintiff and other Class Members as set forth above;

- 2 d. Violations of Labor Code sections 1174(d), 1198, and the applicable IWC Wage Order(s)
3 for failure to maintain payroll records. California Labor Code section 1198 provides that
4 the maximum hours of work and the standard conditions of labor shall be those fixed by
5 the Labor Commissioner and as set forth in the applicable IWC Wage Order(s). Section
6 1198 further provides that “[t]he employment of any employees for longer hours than
7 those fixed by the order or under conditions of labor prohibited by the order is unlawful.”
8 Pursuant to the applicable IWC Wage Order(s), employers are required to keep accurate
9 time records showing when the employee begins and ends each work period and meal
10 period. During the relevant time period, Defendants failed, on a companywide basis, to
11 keep records of accurate meal periods start and stop times for Plaintiff and other non-party
12 aggrieved employees in violation of section 1198. California Labor Code section 1174(d)
13 provides that “[e]very person employing labor in this state shall . . . [k]eep a record
14 showing the names and addresses of all employees employed and the ages of all minors”
15 and “[k]eep, at a central location in the state or at the plants or establishments at which
16 employees are employed, payroll records showing the hours worked daily by and the
17 wages paid to, and the number of piece-rate units earned by and any applicable piece rate
18 paid to, employees employed at the respective plants or establishments” During the
19 relevant time period, and in violation of Labor Code section 1174(d), Defendants willfully
20 failed to maintain accurate payroll records for Plaintiff and other non-party aggrieved
21 employees showing the daily hours they actually worked and the wages paid thereto as a
22 result of failing to record the off-the-clock hours that they worked;
- 23 e. Violations of Labor Code section 204 for failure to pay all earned wages during
24 employment as set forth above;
- 25 f. Violations of Labor Code section 2802 for failure to reimburse employees for all
26 necessary, business-related expenses incurred during employment as set forth above;
- 27 g. Plaintiff and other non-party aggrieved employees are therefore entitled to recover
28 penalties, attorneys’ fees, costs, and interest thereupon, pursuant to Labor Code section

2699(f)-(g); and

h. Any and all additional applicable civil penalties and sums as provided by the California Labor Code and/or other relevant statutes.

129. Pursuant to California Labor Code sections 2699(a), 2699.3, 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other non-party aggrieved employees, and the State of California against all defendants, in addition to other remedies, for violations of California Labor Code sections 204, 226(a), 226.7, 351, 510, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

130. In addition, Plaintiff seeks and is entitled to sixty-five percent (65%) of all penalties obtained under California Labor Code section 2699 to be allocated to the LWDA, for education of employers and employees about their rights and responsibilities under the California Labor Code, and thirty-five percent (35%) to all aggrieved employees.

131. Further, Plaintiff is entitled to recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 2699(g)(1), 218.5, 1194(a) and any other applicable statute.

XIV. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated and also on behalf of the general public, respectfully request that this Court find against all defendants as follows:

1. An order that this action may proceed and may be maintained as a class action;
2. All unpaid minimum wages and liquidated damages due to Plaintiff and each Class Member on their minimum wage claims;
3. All unpaid overtime wages due to Plaintiff and each Class Member;
4. All unpaid minimum wages and liquidated damages due to Plaintiff and each Class Member on their minimum wage claim;
5. For restitution of all monies due to Plaintiff and members of the Class and disgorged profits from the unlawful business practices of Defendants, including withholding of bonuses and other wages;
6. Statutory penalties under Labor Code section 226(e);
7. For reimbursement of business expenses under California Labor Code section 2802;
8. For penalties pursuant to Labor Code sections 204, 206, 210, 225.5, 226, 226.3, 354, 510, 558,

1174.5, 1182.12, 1194, 1194.2, 1197.1, 1198, and 2802;

9. For injunctive relief enjoining Defendants from engaging in the unlawful and unfair business practices complained of herein;

10. For all civil penalties permitted by California's Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, based on all the alleged statutory violations set forth in this Complaint;

11. For costs of suit and expenses incurred herein pursuant to Labor Code sections 226 and 1194;

12. Prejudgment interest at the maximum legal rate on all due and unpaid wages pursuant to Labor Code section 218.6 and Civil Code sections 3287 and 3289;

13. Actual damages in an amount to be determined at trial as redress for Defendants' breach;

14. Specific performance in the form of money damages in an amount to be determined at trial as redress for Defendants' breach;

15. Pre-judgment and post-judgment interest on such monetary relief;

16. For reasonable attorneys' fees pursuant to Labor Code sections 218.5, 226, 1194, 2699(g), and Code of Civil Procedure section 1021.5;

17. Accounting of Defendants' records for the liability period;

18. The cost of bringing this suit, including reasonable attorneys' fees;

19. General, special, and consequential damages, to the extent allowed by law; and

20. All such other and further relief that the Court may deem just and proper.

Dated: October 18, 2024

ABRAMSON LABOR GROUP

By:


Cheryl A. Kenner

Attorneys for Plaintiff VICTOR ADORNO,
individually, and on behalf of all others similarly
situated and aggrieved

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff VICTOR ADORNO, on behalf of himself and all others similarly situated and aggrieved,
3 hereby demand a jury trial with respect to all issues triable of right by jury.

4
5 Dated: October 18, 2024

ABRAMSON LABOR GROUP

6
7 By: Cheryl Kenner
8 Cheryl A. Kenner

9 Attorneys for Plaintiff VICTOR ADORNO,
10 individually, and on behalf of all others similarly
11 situated and aggrieved
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EXHIBIT 1



1700 W Burbank Blvd.
Burbank, California 91506
t | 213.493.6300
Cheryl.K@abramsonlabor.com
www.AbramsonLaborGroup.com

VIA ONLINE SUBMISSION

Stewart Knox, Secretary
California Labor & Workforce
Development Agency
800 Capitol Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814

VIA CERTIFIED MAIL

Western Express, Inc.
Attn: Legal Department
7135 Centennial Pl.
Nashville, TN 37209

Western Express, Inc.
Attn: Legal Department
18244 East Valley Blvd.
Bloomington, CA 92316

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO CALIFORNIA LABOR CODE
SECTION 2698, ET SEQ.**

To: The California Labor and Workforce Development Agency; Western Express, Inc.

From: Victor Adorno, on behalf of himself and all other current and former hourly nonexempt employees for violations of the California Labor Code

To Whom It May Concern:

Abramson Labor Group has been retained by former employee Victor Adorno ("Mr. Adorno") to seek compensation and all other available relief, including civil penalties on his behalf and on the behalf of all those similarly aggrieved (collectively with Mr. Adorno, "Claimants") who have been injured by Western Express, Inc. ("Western Express") violations of the California Labor Code. Mr. Adorno, on behalf of himself and all other similarly aggrieved current and former hourly nonexempt employees of Western Express, intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.* of the Labor Code Private Attorneys General Act of 2004 ("PAGA").

Factual Statement:

Western Express is a nationwide trucking/transportation company that is operating throughout California. Western Express transports a variety of cargo, such as bales of hay, recycled paper, plastic containers, and beverages.

Claimant Mr. Adorno works for Western Express as an hourly, nonexempt employee in the position of Lead Maintenance Technician, earning \$27.50 per hour and certain nondiscretionary retention-based bonuses based on annual earnings (as a proxy for hours worked) from approximately October 2019 through the present. Mr. Adorno, on behalf of himself and all other similarly aggrieved current and former employees in California in various positions, are or were engaged in fleet (tractor and trailer) maintenance for Western Express. As part of their employment with Western Express, Claimant and other hourly, nonexempt employees, collectively, "hourly nonexempt employees," are or were assigned to and required to suffer and permitted to work without pay, while performing tasks collectively including, but not limited to, tractor and trailer maintenance and repairs both onsite and in the field, operating the forklift, requesting parts, and addressing a range of issues relating to drivers.

Claimant Mr. Adorno regularly works five (5) days per week for 8 hours or more hours per day. During the entire course of his employment, Western Express has failed to pay minimum wages to Mr. Adorno and other hourly, nonexempt employees in violation of Labor Code sections 510, 1194, 1197, and 1182.12, and section 4 of IWC Wage Order No. 9-2001. As a consequence, Western Express has failed to comply with Labor Code sections 226.7, 510, and 512, and sections 3, 11, and 12 of all applicable Industrial Welfare Commission ("IWC") Wage Orders, including but not limited to, IWC Wage Order No. 9-2001. In violation of Labor Code sections 510, 1194, 1197, and 1182.12, Western Express has failed to compensate Claimants at a rate of one and one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek.

Western Express has also failed and continues to fail to pay all wages owed every pay period in violation of Labor Code section 204. Likewise, Western Express has failed and continues to fail to provide timely, accurate wage statements to Mr. Adorno and other aggrieved persons in violation of Labor Code section 226(a). Western Express has failed and continues to fail to fully reimburse Claimants for all necessary, business-related expenses and losses they incurred, including, but not limited to, all costs incurred for the costs incurred for the cell phone expenses and for the purchase of tools (e.g., socket sets, hand tools, flashlights, impact gun and drills, wrenches, screwdrivers, toolbox, pliers, vice grips, and an endoscopic camera), in violation of Labor Code section 2802. Mr. Adorno is informed and believes that such violations are ongoing, systematic, and continuous. Mr. Adorno intends to bring an action against Western Express under the Private Attorneys General Act ("PAGA") to recover wages and penalties as provided by California law.¹

¹ Without limitation, Mr. Adorno, if permitted, will seek any and all penalties otherwise capable of being collected by the Commission. This includes each provision as set forth in Labor Code section 2699.5 as follows:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230A, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101,

Theories of Labor Code Violations and Remedies:

Claimant Mr. Adorno has been employed by Western Express from approximately October 2019 through the present as a Lead Maintenance Technician. In addition to the job description provided earlier, Mr. Adorno also occasionally opens the facility by performing the following tasks before clocking in for his shift: turning on the facility's lights and air compressor and emailing lot checks and plans pertaining to the day's trailer activity. For a period of at least four (4) years prior to August 2024, but for our purposes here, one (1) year prior, Western Express has violated and continues to violate the California Labor Code sections as detailed below.

Claimants also were at all times entitled to payment of **minimum wages**. Western Express has failed and continues to fail to pay Claimants minimum wages for all hours worked as required by Labor Code sections 510, 1194, and 1194.2 and section 4 of IWC Wage Order No. 9-2001. First, Defendant Claimants worked a substantial amount of time while off-the-clock—meaning they were not punched in for work—and therefore, those working hours were not recorded and then compensated. This off-the-clock time primarily occurred because Claimants (1) were required to clock in at the Western Express facilities after performing compensable work like turning on lights and the air compressor and (2) emailing lot checks and plans pertaining to the day's trailer activity. Claimants' off-the-clock time was never subsequently added and, therefore, uncompensated. Accordingly, Claimants were not paid for that time spent working off the clock. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 1197.1 and section 20 of IWC Wage Order No. 9-2001.

At all times relevant herein, Claimants were entitled to the payment of **overtime**. That is, pursuant to Labor Code sections 510, 1194, 1197, and 1182.12, Western Express was required to compensate Claimants at a rate of one-and-one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek. Mr. Adorno and Claimants regularly worked overtime hours. Western Express has failed to and continues to fail to pay Claimants overtime wages owed for off-the-clock time worked that should have been compensated as overtime, yet regularly required them to work these overtime hours without premium pay under Labor Code section 1194. In short, during the entire course of their employment, Western Express failed to provide Mr. Adorno and continues to fail to provide all others similarly situated with all overtime pay in violation of 226.7, 510, and 512 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order 9-2001, section 3.

Claimants were at all times entitled to be provided timely and accurate **wage statements** from Western Express pursuant to Labor Code section 226. Because Western Express failed to pay Claimants minimum wages for all hours worked before, during, and after their shifts and for all overtime wages due, Claimants' wage statements were inaccurate in reflecting overtime and minimum wages, and all hours worked every pay period. As a consequence, Claimants' wage statements also do not reflect the accurate amount of net and gross wages owed. Accordingly, Claimants seek all available penalties as set forth in Labor Code sections 226(e) and 2699.

1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of, and subdivision (e) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651., and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

Finally, Claimants were entitled to be reimbursed by Western Express for all necessary, **business-related expenses** they incurred in executing their duties for Western Express. California Labor Code section 2802 provides that “An employer shall indemnify his or his employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or his duties, or of his or his obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Western Express, however, has failed to fully reimburse Mr. Adorno and Claimants for all necessary, business-related expenses and losses they incurred, including, but not limited to, all costs incurred for the expenses for the use of their personal cell phones and for the purchase of needed tools (e.g., socket sets, hand tools, flashlights, impact gun and drills, wrenches, screwdrivers, toolbox, pliers, vice grips, and an endoscopic camera). Accordingly, Claimants are entitled to recover their unreimbursed expenditures and losses pursuant to Labor Code section 2802.

Western Express’s uniform failure to pay minimum and overtime wages, failure to keep accurate time records, failure to furnish timely and accurate wage statements, and failure to reimburse all necessary, business-related expenses violate Labor Code sections 204, 221, 226(a), 226.7, 510, 512, 1182.12, 1194, 1197, and 2802, and as such, penalties are recoverable as set forth in Labor Code sections 210, 1194, *et seq.*, and 2699.

Claimants are entitled to recover unpaid wages, with interest, and are entitled to an award of attorneys’ fees as permitted by Labor Code section 1194, other penalties as permitted by Labor Code sections 210 and 2699, and waiting time penalties for former employees pursuant to Labor Code section 203.

Accordingly, Claimants seek the remedies set forth in the above-referenced Labor Code sections for themselves, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Mr. Adorno, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for themselves, all other aggrieved employees, and the State of California against Western Express for violations of California Labor Code sections 204, 221, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, and 2802.

Should you require any additional information, please feel free to contact me.

Sincerely,

ABRAMSON LABOR GROUP

A handwritten signature in cursive script that reads "Cheryl Kenner".

Cheryl A. Kenner