

EXHIBIT 1

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUL 19 2019

BY Mayela Martinez
MAYELA MARTINEZ, DEPUTY

FILED BY FAX

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

STEPHEN BENAVIDES, as an individual
and on behalf of all others similarly
situated,

Plaintiffs,

v.

WESTERN EXPRESS, INC., a Tennessee
corporation; and DOES 1 through 50,
inclusive,

Defendants.

CIV DS 1921020
CASE NO.

CLASS ACTION COMPLAINT FOR:

- (1) VIOLATION OF CAL. LABOR CODE §§ 226(a) AND 226.2;
- (2) VIOLATION OF CAL. LABOR CODE §§ 226.2 AND 226.7;
- (3) VIOLATION OF CAL. LABOR CODE § 2698, *ET SEQ.*;
- (4) VIOLATION OF CAL. BUS. & PROF. CODE § 17200, *ET SEQ.*

DEMAND EXCEEDS \$25,000.00

Plaintiff Stephen Benavides ("Plaintiff") hereby submits this Class Action Complaint ("Complaint") against Defendant Western Express, Inc. (the "Company" or "Defendant"), a Tennessee corporation, and DOES 1-50 (hereinafter collectively referred to as "Defendants"), individually and on behalf of the Class of all other similarly situated current and former employees of Defendants for penalties and/or damages for violations of the California Labor Code, including without limitation, failure to provide employees with accurate itemized wage

1 statements and paid rest breaks as follows:

2 **INTRODUCTION**

3 1. This class action is within the Court’s jurisdiction under California Labor Code §§
4 226, 226.2, 226.7 and 2698, *et seq.* and the California Industrial Welfare Commission’s (“IWC”)
5 Wage Orders.

6 2. This Complaint challenges systemic illegal employment practices resulting in
7 violations of the California Labor Code against employees of Defendants.

8 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 jointly and severally have acted intentionally and with deliberate indifference and conscious
10 disregard to the rights of all employees by failing to keep accurate records and failing to provide
11 accurate itemized wage statements and paid rest breaks.

12 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
13 engaged in, among other things a system of willful violations of the California Labor Code and
14 applicable IWC Wage Orders by creating and maintaining policies, practices and customs that
15 knowingly deny employees the above stated rights and benefits.

16 **JURISDICTION AND VENUE**

17 5. The Court has jurisdiction over the violations of the California Labor Code §§ 226,
18 226.2, 226.7 and 2698, *et seq.* As alleged below, Plaintiff has met all of the jurisdictional
19 requirements to proceed under the Private Attorney General’s Act (the “PAGA”), Labor Code §
20 2698, *et seq.*

21 6. Venue is proper in San Bernardino County because Defendants maintain business
22 locations in this County and Plaintiff performed work for Defendants in this County.

23 **PARTIES**

24 7. Since on or about December 15, 2018, Plaintiff has worked for Defendant as a
25 non-exempt driver employee. During Plaintiff’s employment, he received defective paystubs
26 from Defendant and did not receive paid rest breaks.

27 8. Defendant is a Tennessee corporation engaged in logistics services, including
28 transportation/truck driving services.

1 9. Plaintiff was and is a victim of the policies, practices, and customs of Defendants
2 complained of in this action in ways that have deprived Plaintiff of the rights guaranteed by
3 California Labor Code §§ 226, 226.2, 226.7 and 2698, *et seq.* and the applicable IWC Wage
4 Orders.

5 10. Plaintiff is informed and believes, and based thereon alleges, that at all times
6 herein mentioned Defendants and DOES 1 through 50 are and were business entities, individuals,
7 and partnerships, licensed to do business and actually doing business in the State of California.

8 11. As such, and based upon all the facts and circumstances incident to Defendants'
9 business in California, Defendants are subject to California Labor Code §§ 226, 226.2, 226.7 and
10 2698, *et seq.* and the IWC Wage Orders.

11 12. Plaintiff does not know the true names or capacities, whether individual, partner or
12 corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason,
13 said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
14 complaint when the true names and capacities are known. Plaintiff is informed and believes, and
15 based thereon alleges, that each of said fictitious Defendants was responsible in some way for the
16 matters alleged herein and proximately caused Plaintiff and members of the general public and
17 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

18 13. At all times herein mentioned, each of said Defendants participated in the doing of
19 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
20 Defendants, and each of them, were the agents, servants and employees of each of the other
21 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
22 within the course and scope of said agency and employment.

23 14. Plaintiff is informed and believes, and based thereon alleges, that at all times
24 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
25 joint venturer of, or working in concert with each of the other co- Defendants and was acting
26 within the course and scope of such agency, employment, joint venture, or concerted activity. To
27 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
28 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
Defendants.

1 15. At all times herein mentioned, Defendants, and each of them, were members of,
2 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
3 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

4 16. At all times herein mentioned, the acts and omissions of various Defendants, and
5 each of them, concurred and contributed to the various acts and omissions of each and all of the
6 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
7 herein mentioned, Defendants, and each of them, ratified each and every act or omission
8 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
9 and abetted the acts and omissions of each and all of the other Defendants in proximately causing
10 the damages as herein alleged.

11 **CLASS ACTION ALLEGATIONS**

12 17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
13 California Code of Civil Procedure § 382, of the following classes:

- 14 a. All current and former California driver employees who received a wage
15 statement from Defendant at any time during the period of time from July
16 19, 2018, through the present (“Wage Statement Class”); and
17 b. All current and former California non-exempt driver employees who
18 worked shifts of 3.5 hours or more at any time from July 19, 2015, through
19 the present (“Rest Break Class”).

20 18. **Numerosity and Ascertainability:** The members of the Class are so numerous
21 that joinder of all members would be impractical, if not impossible. The identity of the members
22 of the Class is readily ascertainable by review of the Company’s records, including payroll
23 records. Plaintiff is informed and believes, and based thereon alleges, that the Company failed to:
24 (a) provide accurate itemized wage statements to employees in violation of Labor Code §§ 226
25 and 226.2 and (b) provide paid rest breaks in violation of Labor Code §§ 226.2 and 226.7.

26 19. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
27 necessary steps to represent fairly and adequately the interests of the class defined above.
28 Plaintiff’s attorneys are ready, willing and able to fully and adequately represent the class and the
named Plaintiffs. Plaintiff’s attorneys have prosecuted and settled wage-and-hour class actions in

1 the past and currently have a number of wage-and-hour class actions pending in California courts.

2 20. The Company uniformly administered a corporate policy, practice of failing to: (a)
3 provide accurate itemized wage statements to employees in violation of Labor Code §§ 226 and
4 226.2 and (b) provide paid rest breaks in violation of Labor Code §§ 226.2 and 226.7.

5 21. **Common Question of Law and Fact:** There are predominant common questions
6 of law and fact and a community of interest amongst Plaintiffs and the claims of the Class
7 concerning the Company's failure to: (a) provide accurate itemized wage statements to employees
8 in violation of Labor Code §§ 226 and 226.2 and (b) provide paid rest breaks in violation of
9 Labor Code §§ 226.2 and 226.7.

10 22. **Typicality:** The claims of the named Plaintiff are typical of the claims of all
11 members of the Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar
12 and typical manner as the Class members. Plaintiff was not provided proper and accurate wage
13 statements identifying all information required by Labor Code §§ 226(a) and 226.2. First,
14 Defendant's pay statements issued to Plaintiff and Class Members failed to identify the inclusive
15 dates of the pay period for which the employee is paid. This is a violation of Labor Code §
16 226(a)(6). Second, Defendant's wage statements failed to identify the total hours of compensable
17 rest and recovery periods, the rate of compensation, and the gross wages paid for those periods
18 during the pay period in violation of Labor Code § 226.2(a)(2)(A). Third, Defendant's wage
19 statements failed to identify the hourly rates in effect during the pay period and the corresponding
20 number of hours worked at each hourly rate in violation of Labor Code § 226(a)(9). Fourth,
21 Defendant's wage statements failed to identify total hours worked by the employee in violation of
22 Labor Code § 226(a)(2). Defendant also failed to provide compliant rest periods. Specifically,
23 Defendant failed to pay Plaintiff and Class Members wages for rest periods. Because Plaintiff and
24 Class Members were paid on a piece rate basis, they did not receive paid rest periods. This is a
25 violation of Labor Code §§ 201-204, 226, 226.2(a)(1), and 226.7. Thus, Plaintiff is a member of
26 the Class and has suffered the alleged violations of California Labor Code §§ 226, 226.2, 226.7,
27 and 2698, *et seq.*, and the applicable IWC Wage Orders.

28 23. The California Labor Code and upon which Plaintiff bases these claims is broadly

1 remedial in nature. These laws and labor standards serve an important public interest in
2 establishing minimum working conditions and standards in California. These laws and labor
3 standards protect the average working employee from exploitation by employers who may seek to
4 take advantage of superior economic and bargaining power in setting onerous terms and
5 conditions of employment.

6 24. The nature of this action and the format of laws available to Plaintiff and members
7 of the Class identified herein make the class action format a particularly efficient and appropriate
8 procedure to redress the wrongs alleged herein. If each employee were required to file an
9 individual lawsuit, the corporate Defendant would necessarily gain an unconscionable advantage
10 since it would be able to exploit and overwhelm the limited resources of the individual Plaintiff
11 with Defendants' vastly superior financial and legal resources. Requiring each Class member to
12 pursue an individual remedy would also discourage the assertion of lawful claims by employees
13 who would be disinclined to file an action against their former and/or current employer for real
14 and justifiable fear of retaliation and permanent damage to their careers at subsequent
15 employment.

16 25. The prosecution of separate actions by the individual class members, even if
17 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
18 to individual Class members against the Company and which would establish potentially
19 incompatible standards of conduct for the Company, and/or (b) adjudications with respect to
20 individual Class members which would, as a practical matter, be dispositive of the interest of the
21 other Class members not parties to the adjudications or which would substantially impair or
22 impede the ability of the Class members to protect their interests. Further, the claims of the
23 individual members of the Class are not sufficiently large to warrant vigorous individual
24 prosecution considering all of the concomitant costs and expenses.

25 26. Such a pattern, practice and uniform administration of corporate policy regarding
26 illegal employee compensation described herein is unlawful and creates an entitlement to
27 recovery by Plaintiffs and the Class identified herein, in a civil action any and all applicable
28 penalties and/or damages, reasonable attorneys' fees, and costs of suit according to the mandate
of California Labor Code §§ 226 and 2698, *et seq.* and Code of Civil Procedure § 1021.5.

1 27. Proof of a common business practice or factual pattern, which the named Plaintiff
2 experienced and are representative of, will establish the right of each of the members of the Class
3 to recovery on the causes of action alleged herein.

4 28. The Class is commonly entitled to a specific fund with respect to the compensation
5 illegally and unfairly retained by the Company. The Class is commonly entitled to restitution of
6 those funds being improperly withheld by the Company. This action is brought for the benefit of
7 the entire class and will result in the creation of a common fund.

8 **FIRST CAUSE OF ACTION**

9 **VIOLATION OF LABOR CODE §§ 226(a) AND 226.2**

10 **(AGAINST THE COMPANY AND DOES 1-50 BY PLAINTIFF AND THE WAGE**
11 **STATEMENT CLASS)**

12 29. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 28 as
13 though fully set for herein.

14 30. The Company failed in its affirmative obligation to provide accurate itemized
15 wage statements in violation of Labor Code §§ 226(a) and 226.2. First, Defendant’s pay
16 statements issued to Plaintiff and Class Members failed to identify the inclusive dates of the pay
17 period for which the employee is paid. This is a violation of Labor Code § 226(a)(6). Second,
18 Defendant’s wage statements failed to identify the total hours of compensable rest and recovery
19 periods, the rate of compensation, and the gross wages paid for those periods during the pay
20 period in violation of Labor Code § 226.2(a)(2)(A). Third, Defendant’s wage statements failed to
21 identify the hourly rates in effect during the pay period and the corresponding number of hours
22 worked at each hourly rate in violation of Labor Code § 226(a)(9). Fourth, Defendant’s wage
23 statements failed to identify total hours worked by the employee in violation of Labor Code §
24 226(a)(2). Plaintiff asserts that Defendant issued similar defective wage statements to all class
25 members in violation of Section 226(a).

26 31. Such a pattern, practice and uniform administration of corporate policy as
27 described herein is unlawful and creates an entitlement to recovery by Plaintiffs and the Class
28 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226,
including interest thereon, attorneys’ fees, and costs of suit according to the mandate of California

1 Labor Code § 226.

2 **SECOND CAUSE OF ACTION**

3 **VIOLATION OF LABOR CODE §§ 226.2 AND 226.7**

4 **(AGAINST THE COMPANY AND DOES 1-50 BY PLAINTIFF AND THE REST BREAK**
5 **CLASS)**

6 32. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 28 as
7 though fully set for herein.

8 33. Defendant failed to provide paid rest periods in compliance with California Labor
9 Code §§ 226.2 and 226.7. These statutes require an employer to pay wages for 10-minute off-
10 duty rest periods for every 3.5 hours worked. Defendant paid Plaintiff and Class Members on a
11 piece-rate basis, but failed to pay wages for the time spent by Plaintiff and Class Members on
12 their rest periods. Therefore, Defendant owes 1 additional hour of premium pay for every non-
13 compliant rest period, as well as all remedies set forth in Labor Code § 226.2.

14 34. Plaintiff seeks all applicable remedies on behalf of Plaintiff and the Class,
15 including without limitation, unpaid wages for rest periods, premium pay for non-compliant rest
16 periods, prejudgment interest and costs.

17 **THIRD CAUSE OF ACTION**

18 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

19 **(AGAINST THE COMPANY AND DOES 1-50 BY PLAINTIFF AS PROXY FOR STATE**
20 **OF CALIFORNIA)**

21 35. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 34 as
22 though fully set for herein.

23 36. Plaintiff seeks penalties on behalf of the State of California on behalf of all
24 similarly aggrieved employees for the time period of May 15, 2018, through the present, arising
25 from Defendants' violations of Labor Code §§ 201-204, 226, 226.2, and 226.7.

26 37. On or about May 15, 2019, Plaintiff sent notice to the Labor Workforce
27 Development Agency (the "LWDA") of the aforementioned violations of the Labor Code. This
28 violation is applicable to all current and former employees of the employer, including the

1 aggrieved employee.

2 38. As of the date of the filing of this Complaint, the LWDA has not notified Plaintiffs
3 whether it intends to investigate the claims. Therefore, Plaintiff may seek applicable penalties
4 under the PAGA.

5 39. Such a pattern, practice and uniform administration of corporate policy as
6 described herein is unlawful and creates an entitlement to recovery by the Plaintiff on behalf of
7 the State of California, in a civil action, for penalties pursuant to the PAGA, Labor Code §
8 2699(a), including interest thereon, attorneys' fees, and costs of suit according to the mandate of
9 PAGA for Defendant's violations of the Labor Code.

10 **FOURTH CAUSE OF ACTION**

11 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200, ET SEQ.**

12 **(AGAINST THE COMPANY AND DOES 1-50 BY PLAINTIFF AND THE REST BREAK**
13 **CLASS)**

14 40. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 39 as
15 though fully set for herein.

16 41. Defendants, and each of them, have engaged and continue to engage in unfair and
17 unlawful business practices in California by practicing, employing and utilizing the employment
18 practices outlined above, include, to wit, by failing to provide paid rest periods in violation of
19 Labor Code §§ 226.2 and 226.7.

20 42. Defendants' utilization of such unfair and unlawful business practices constitutes
21 unfair, unlawful competition and provides an unfair advantage over Defendants' competitors.

22 43. Plaintiff seeks individually and on behalf of other members of the Class similarly
23 situated, full restitution of monies, as necessary and according to proof, to restore any and all
24 monies withheld, acquired and/or converted by the Defendants by means of the unfair practices
25 complained of herein.

26 44. Plaintiff is informed and believes, and based thereon alleges, that at all times
27 herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices,
28 as proscribed by California Business and Professions Code § 17200, *et seq.*, including those set
forth herein above thereby depriving Plaintiff and other members of the class the minimum

1 working condition standards and conditions due to them under the California laws as specifically
2 described therein.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for judgment individually and all others on whose behalf
5 this suit is brought against Defendants, jointly and severally, as follows:

- 6 1. For an order certifying the proposed Class;
- 7 2. For an order appointing Plaintiff as the representative of the Class as described
8 herein;
- 9 3. For an order appointing counsel for Plaintiff as Class counsel;
- 10 4. Upon the First Cause of Action, for damages and/or penalties pursuant to
11 California Labor Code §§ 226 and 226.2, and for costs and attorneys' fees;
- 12 5. Upon the Second Cause of Action, for damages and/or penalties pursuant to
13 California Labor Code §§ 226.2 and 226.7, and for costs;
- 14 6. Upon the Third Cause of Action, for civil penalties according to proof pursuant to
15 Labor Code § 2698, *et seq.*;
- 16 7. Upon the Fourth Cause of Action, for restitution and/or injunctive relief enjoining
17 Defendant's unlawful business practices;
- 18 8. On all causes of action, for attorneys' fees and costs as provided by California
19 Labor Code §§ 226, 226.2, and 2698, *et seq.*, and Code of Civil Procedure § 1021.5; and
- 20 9. For such other and further relief as the Court may deem just and proper.

21 DATED: July 11, 2019

POLARIS LAW GROUP, LLP

22 By: William L. Marder
23 William L. Marder
24 Attorneys for PLAINTIFF and the CLASS