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

MAR 26 2018

BY Anne Perry
ANNE PERRY, DEPUTY

6 Attorneys for Defendant, Laboratory Express, Inc. dba Lab Express

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN BERNARDINO - CENTRAL DISTRICT**

11 MARIO BONELLO individually and on behalf of
all others similarly situated,

12 Plaintiff,

13 vs.

14 LABORATORY EXPRESS, INC., dba LAB
15 EXPRESS, a corporation; and DOES 1-10,
16 inclusive,

17 Defendants.

Case No. CIVDS1714584

Assigned for All Purposes To:
Hon. David Cohn
Dept. S26

**ANSWER OF DEFENDANT LABORATORY
EXPRESS, INC. TO PLAINTIFF'S FIRST
AMENDED COMPLAINT**

JURY TRIAL DEMANDED

18 Complaint Filed: August 1, 2017
19 Trial Date: None Set

20
21 Defendant Laboratory Express, Inc. dba Lab Express ("Defendant") hereby answers the First
22 Amended Complaint ("Complaint") filed by Plaintiff Mario Bonello ("Plaintiff") as follows:
23

24 **GENERAL DENIAL**

25 Pursuant to California Code of Civil Procedure section 431.30(d), Defendant denies, generally
26 and specifically, conjunctively and disjunctively, each and every allegation of the Complaint, and each
27 and every cause of action contained and asserted therein. Defendant further denies that it is liable to
28 Plaintiff in any sum whatsoever. Defendant further denies that this action may be appropriately

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ANSWER OF DEFENDANT LABORATORY EXPRESS, INC. TO PLAINTIFF'S FIRST AMENDED COMPLAINT

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1 maintained as a class action and/or representative action. Defendant further denies, generally and
2 specifically, that Plaintiff has suffered damages in the amount alleged, or in any sum, or that Plaintiff
3 is entitled to any relief at all, by reason of any wrongful act or omission or purported act or omission
4 of Defendant.

5
6 **SEPARATE DEFENSES**

7 Defendant further alleges the following separate and independent affirmative defenses. Certain
8 additional affirmative defenses to the Complaint, or to one or more of the purported causes of action
9 contained therein, may be available to Defendant. Such additional affirmative defenses, however,
10 require discovery before they can be properly alleged. Defendant will move to amend its Answer, if
11 necessary, to allege such affirmative defenses once they have been ascertained or according to proof at
12 that time. By alleging the defenses below, Defendant does not in any way concede that it has the
13 burden of proof or persuasion on any of these issues.

14
15 **FIRST SEPARATE DEFENSE**

16 **(Failure to State Facts Sufficient to Constitute a Cause of Action)**

17 1. The Complaint and each purported cause of action asserted therein against Defendant
18 fails to state facts sufficient to constitute a cause of action against Defendant.

19
20 **SECOND SEPARATE AND ADDITIONAL DEFENSE**

21 **(Failure to Exhaust Remedies)**

22 2. As a separate and additional defense to the Complaint and to each purported cause of
23 action against Defendant asserted therein, Defendant alleges that Plaintiff's and/or the purported class
24 members' claims cannot be pursued due to the failure to satisfy administrative prerequisites.

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1 **THIRD SEPARATE AND ADDITIONAL DEFENSE**

2 **(Failure to State Facts to Establish and/or Maintain Class or Representative Action)**

3 3. As a separate and additional defense to the Complaint and to each purported cause of
4 action against Defendant asserted therein, Defendant alleges that the Complaint and each purported
5 cause of action asserted therein against Defendant fails to allege facts sufficient to establish and/or
6 maintain a class or representative action, including, but not limited to, the necessary prerequisites of
7 numerosity, commonality, typicality, and adequacy of representation.

8
9 **FOURTH SEPARATE AND ADDITIONAL DEFENSE**

10 **(Statute of Limitations)**

11 4. As a separate and additional defense to the Complaint and to each purported cause of
12 action against Defendant asserted therein, Defendant alleges that the Complaint and each cause of
13 action set forth therein are barred, in whole or in part, by the applicable statutes of limitations,
14 including, but not limited to, California Code of Civil Procedure sections 337(1), 338(a), 338(d),
15 339(1), 340(a), and/or 343, and California Business and Professions Code section 17208.

16
17 **FIFTH SEPARATE AND ADDITIONAL DEFENSE**

18 **(Independent Contractor Relationship)**

19 5. As a separate and additional defense to the Complaint and to each purported cause of
20 action against Defendant asserted therein, Defendant alleges that Plaintiff and the purported class
21 members are parties to a valid and binding Independent Contractor Agreement, which thereby prevents
22 the relief they seek pursuant to the California Labor Code, Wage Orders, or otherwise, all of which
23 require Plaintiff and the purported class members to establish that an employment relationship existed
24 between themselves and Defendant.

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1 **SIXTH SEPARATE AND ADDITIONAL DEFENSE**

2 **(Waiver)**

3 6. As a separate and additional defense, Defendant alleges that the Complaint, and each
4 cause of action set forth therein, is barred by the doctrine of waiver in that Plaintiff and the purported
5 class members waived claims pleaded in the Complaint by, on information and belief, failing to abide
6 by Defendant’s scheduling policies and expectations as to their job duties, and failing to take rest
7 breaks and meal periods that were authorized and provided by Defendant.

8
9 **SEVENTH SEPARATE AND ADDITIONAL DEFENSE**

10 **(Good Faith)**

11 7. As a separate and additional defense to the Complaint and to each purported cause of
12 action against Defendant asserted therein, Defendant alleges that Plaintiff’s attempt to recover
13 penalties and attorneys’ fees is barred because Defendant’s alleged failure to pay owed wages, if any,
14 was the result of a good faith dispute as to whether such wages were due and owing.

15
16 **EIGHTH SEPARATE AND ADDITIONAL DEFENSE**

17 **(No Injury for Alleged Improper Wage Statements)**

18 8. As a separate and additional defense to the Complaint and to each purported cause of
19 action against Defendant asserted therein, Defendant alleges that Plaintiff’s claims for improper wage
20 statements are barred because Plaintiff has no legally cognizable injury as a result of any allegedly
21 improper wage statements, nor has Plaintiff pleaded any such legally cognizable injury.

22
23 **NINTH SEPARATE AND ADDITIONAL DEFENSE**

24 **(Failure to Exhaust Administrative Requirements Under PAGA)**

25 9. As a separate and additional defense to the Complaint, Defendant alleges that the
26 Complaint and each cause of action set forth therein, is barred in whole or in part because Plaintiffs
27 failed to provide adequate notice and/or comply with administrative procedures mandated by Labor
28 Code section 2699.3.

1 **TENTH SEPARATE AND ADDITIONAL DEFENSE**

2 **(No Unfair or Fraudulent Conduct)**

3 10. As a separate and additional defense to the Complaint, Defendant alleges that
4 Defendant cannot be liable for any violation of California Business & Professions Code § 17200 et
5 seq. because its actions towards Plaintiff and the purported class members were not unfair, fraudulent,
6 nor likely to mislead Plaintiff or the public. Defendant's conduct and dealings with Plaintiff and the
7 purported class members were lawful and authorized by applicable state and federal statutes, rules and
8 regulations, and such actions, conduct, and dealings were carried out in good faith and for legitimate
9 business purposes.

10
11 **ELEVENTH SEPARATE AND ADDITIONAL DEFENSE**

12 **(No Injury Apart from Himself)**

13 11. As a separate and additional defense to the Complaint, Defendant alleges that Plaintiff's
14 cause of action for unfair business practices fails as Plaintiff cannot articulate an injury separate and
15 apart from an injury to himself.

16
17 **TWELFTH SEPARATE AND ADDITIONAL DEFENSE**

18 **(Offset)**

19 12. As a separate and additional defense to the Complaint and to each purported cause of
20 action against Defendant asserted therein, Defendant alleges that Defendant is entitled to offset any
21 damages suffered by Plaintiff and/or the purported class members against sums owed by Plaintiff and
22 the purported class members to Defendant as a result of the breaches of contract, torts, and other
23 wrongful conduct by Plaintiff and the purported class members, including any unpaid employee
24 advances.

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1 **THIRTEENTH SEPARATE AND ADDITIONAL DEFENSE**

2 **(Damages Not Caused by Defendant)**

3 13. As a separate and additional defense, Defendant alleges that Plaintiff is barred, in whole
4 or in part, from asserting each and every purported cause of action alleged in the Complaint, or from
5 recovering any damages thereunder from Defendant, because, to the extent Plaintiff and/or the
6 purported class members have suffered damages as alleged in the Complaint, which Defendant denies,
7 such damages were caused not by Defendant, but were instead caused by the acts and/or omissions of
8 others and/or by circumstances for which Defendant is not legally responsible.

9
10 **FOURTEENTH SEPARATE AND ADDITIONAL DEFENSE**

11 **(Doctrine of Unclean Hands)**

12 14. As a separate and additional defense, Defendant alleges that the Complaint and each
13 cause of action set forth therein, is barred by the doctrine of unclean hands given Plaintiff's and any
14 purported class members' own conduct of failing to follow Defendant's policies by, among other
15 things, failing to take rest breaks or meal periods that drivers were empowered to take in their
16 discretion based on their own preferences and/or failing to properly perform according to their job
17 expectations as set forth in the contract.

18
19 **FIFTEENTH SEPARATE AND ADDITIONAL DEFENSE**

20 **(Ratification/Acquiescence By Plaintiff)**

21 15. As a separate and additional defense, Defendant alleges that the Complaint and each
22 purported cause of action set forth therein is barred and/or recovery is limited or excluded because
23 Plaintiff ratified, consented to, welcomed, and/or acquiesced in the acts upon which the Complaint is
24 based.

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1 **SIXTEENTH SEPARATE AND ADDITIONAL DEFENSE**

2 **(Mitigation and/or Limitation of Damages)**

3 16. As a separate and additional defense, Defendant alleges that the Complaint and each
4 cause of action set forth therein, is barred insofar as Plaintiff and/or the purported class members failed
5 to mitigate their damages, if any.

6

7 **SEVENTEENTH SEPARATE AND ADDITIONAL DEFENSE**

8 **(De Minimis Doctrine)**

9 17. As a separate and additional defense, Defendant alleges that the Complaint and each
10 cause of action set forth therein, is barred to the extent that the *de minimis* doctrine applies to
11 Plaintiff's and/or the purported class members' claims.

12

13 **EIGHTEENTH SEPARATE AND ADDITIONAL DEFENSE**

14 **(Not Entitled to Liquidated Damages)**

15 18. As a separate and additional defense to the Complaint and to the claim for recovery of
16 liquidated damages pursuant to California Labor Code Section 1194.2, Defendant alleges that, in the
17 event that it is determined that Defendant is liable under California Labor Code Section 1194, Plaintiff
18 and the putative class members are not entitled to recover liquidated damages because the acts or
19 omissions giving rise to the action were in good faith and that Defendant had reasonable grounds for
20 believing that the acts or omissions were not a violation of any provision of the Labor Code relating to
21 minimum wage or an order of the Industrial Welfare Commission.

22

23 **NINETEENTH SEPARATE AND ADDITIONAL DEFENSE**

24 **(Unmanageability)**

25 19. Plaintiff's representative claim for penalties under Labor Code Section 2698 *et seq.* is
26 barred as any such claim requires a showing of liability as to each alleged individual aggrieved
27 employee, and thus, this individualized assessment makes the claim unmanageable.

1 **TWENTIETH SEPARATE AND ADDITIONAL DEFENSE**

2 **(No Willfulness)**

3 20. Plaintiff's attempt to recover waiting time penalties is barred because Defendant's
4 alleged failure to pay owed wages, if any, was not intentional or willful.

5
6 **TWENTY-FIRST SEPARATE AND ADDITIONAL DEFENSE**

7 **(Estoppel)**

8 21. Plaintiff's Complaint, and each cause of action alleged therein, is barred because
9 Plaintiff is estopped from asserting each of the claims alleged therein.

10
11 **TWENTY-SECOND SEPARATE AND ADDITIONAL DEFENSE**

12 **(Laches)**

13 22. The Complaint and each cause of action alleged therein, is barred by the doctrine of
14 laches in that Plaintiff unreasonably delayed in bringing this action and such delay caused damage to
15 Defendant by including, among other things, the loss of witnesses, documents, and/or information due
16 to the passage of time.

17
18 Certain additional separate defenses to the Complaint, or to one or more of the purported
19 claims contained therein, may be available to Defendant. However, these additional affirmative
20 defenses require discovery before they can be properly alleged. Defendant will move to amend its
21 Answer, if necessary, to allege such affirmative defenses once they have been ascertained or according
22 to proof at that time.

23
24 **PRAYER FOR RELIEF**

25 **WHEREFORE**, Defendant requests the following relief:

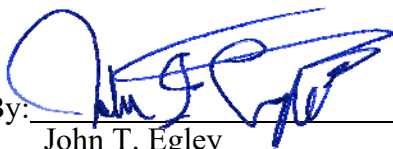
- 26 1. That Plaintiff takes nothing by this action;
27 2. That judgment be awarded in favor of Defendant;

1 3. That Defendant be awarded its costs of suit incurred herein, inclusive of reasonable
2 attorneys' fees according to law; and

3 4. For such other and further relief as the Court may deem just and proper.
4

5 Dated: March 26, 2018

CALL & JENSEN
A Professional Corporation
John T. Egley
Kevin P. Jackson

7
8 By: 
9 John T. Egley

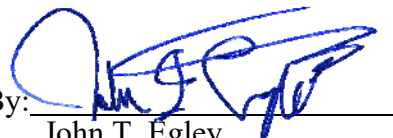
10 Attorneys for Defendant Laboratory Express, Inc. dba
11 Lab Express

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13
14 **DEMAND FOR JURY TRIAL**

15 Answering Defendant asserts its right to a trial by jury on all issues raised in the Complaint and
16 in this Answer.
17

18 Dated: March 26, 2018

CALL & JENSEN
A Professional Corporation
John T. Egley
Kevin P. Jackson

20
21 By: 
22 John T. Egley

23 Attorneys for Defendant Laboratory Express, Inc. dba
24 Lab Express

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF ORANGE

3 I am employed in the County of Orange, State of California. I am over the age of 18 and not a
4 party to the within action; my business address is 610 Newport Center Drive, Suite 700, Newport
5 Beach, CA 92660.

6 On March 26, 2018, I served the foregoing document described as **ANSWER OF**
7 **DEFENDANT LABORATORY EXPRESS, INC. TO PLAINTIFF'S FIRST AMENDED**
8 **COMPLAINT** on the following person(s) in the manner indicated:

9 Samuel A. Wong
10 Kashif Haque
11 Jessica L. Campbell
12 Ali S. Carlsen
13 AEGIS LAW FIRM, PC
14 9811 Irvine Center Drive, Suite 100
15 Irvine, CA 92618
16 Tel: (949) 379-6250
17 Fax: (949) 379-6251

Attorneys for Plaintiff
MARIO BONELLO

18 (BY ELECTRONIC SERVICE) I am causing the document(s) to be served on the Filing
19 User(s) through the Court's Electronic Filing System.

20 (BY MAIL) I am familiar with the practice of Call & Jensen for collection and processing of
21 correspondence for mailing with the United States Postal Service. Correspondence so collected and
22 processed is deposited with the United States Postal Service that same day in the ordinary course of
23 business. On this date, a copy of said document was placed in a sealed envelope, with postage fully
24 prepaid, addressed as set forth herein, and such envelope was placed for collection and mailing at Call
25 & Jensen, Newport Beach, California, following ordinary business practices.

26 (BY FEDEX) I am familiar with the practice of Call & Jensen for collection and processing of
27 correspondence for delivery by overnight courier. Correspondence so collected and processed is
28 deposited in a box or other facility regularly maintained by FedEx that same day in the ordinary course
of business. On this date, a copy of said document was placed in a sealed envelope designated by
FedEx with delivery fees paid or provided for, addressed as set forth herein, and such envelope was
placed for delivery by FedEx at Call & Jensen, Newport Beach, California, following ordinary
business practices.

(BY FACSIMILE TRANSMISSION) On this date, at the time indicated on the transmittal
sheet, attached hereto, I transmitted from a facsimile transmission machine, which telephone number is
(949) 717-3100, the document described above and a copy of this declaration to the person, and at the
facsimile transmission telephone numbers, set forth herein. The above-described transmission was
reported as complete and without error by a properly issued transmission report issued by the facsimile

1 transmission machine upon which the said transmission was made immediately following the
2 transmission.

3 (BY ELECTRONIC TRANSMISSION) I served electronically from the electronic notification
4 address of _____ the document described above and a copy of this declaration to the person
5 and at the electronic notification address set forth herein. The electronic transmission was reported as
6 complete and without error.

7 I declare under penalty of perjury under the laws of the State of California that the foregoing is
8 true and correct, and that this declaration was executed on March 26, 2018, at Newport Beach,
9 California.

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Connie Valles