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10 Attorneys for Defendant
11 Wildwood Express

12 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF FRESNO

14 JEREMIAH VILLARREAL, on behalf of himself
15 and all others similarly situated, and on behalf of
16 the general public,

17 Plaintiff,

18 vs.

19 WILDWOOD EXPRESS; and DOES 1-100,

20 Defendants

Case No. 18CECG00417

*[Assigned for all purposes to the Honorable
Donald Black]*

**DEFENDANT WILDWOOD EXPRESS
AMENDMENT TO ANSWER**

Action Filed: January 13, 2017
Trial Date: None Set

21 Defendant Wildwood Express hereby amends its answer filed on February 2, 2018, to Plaintiff's
22 Complaint. The following affirmative defenses are hereby added:

23 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

24 Plaintiff's Second Cause of Action for Failure to Pay Overtime fails to state a cause of action
25 because Defendant is exempt from overtime requirements pursuant to the Federal Motor Carrier Act in
26 that Defendant is a motor carrier that transports product via interstate commerce.

27 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

28 Plaintiff's Second Cause of Action for Failure to Pay Overtime fails to state a cause of action
against Defendant because Defendant is exempt from overtime requirements pursuant to Title 12 of the
California Code of Regulations, subchapter 6.5, Section 1200 and following.

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1 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

2 Plaintiff's causes of action, and each of them, are barred in light of the California Supreme
3 Court's observation in *Stop Youth Addiction, Inc. v. Lucky Stores, Inc.* (1998) 17 Cal.4th 553, 566, that
4 "the UCL cannot be used to state a cause of action the gist of which is absolutely barred under some
5 other principle of law."
6

7 Dated: March 1, 2019

8 FERBER LAW, A Professional Corporation

9
10 By: 

11 Michelle R. Ferber
12 Jonathan R. Babione
13 Julie Ann Giammona
14 Connor M. Day
15 Attorneys for Defendant
16 Wildwood Express
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PROOF OF SERVICE

I declare that I am over the age of 18 and not a party to the within-entitled action. I am employed at Ferber Law, A Professional Corporation, and my business address is 2603 Camino Ramon, Suite 385, San Ramon, California 94583.

On March 1, 2019, I served the within document(s):


DEFENDANT WILDWOOD EXPRESS AMENDMENT TO ANSWER

- VIA MAIL** by placing a true copy in a sealed envelope with postage thereon fully prepaid in the United States Mail at San Ramon, California addressed as shown below. I am readily familiar with this firm's business practice for collection and processing of correspondence for mailing with the United States Postal Service. I caused such sealed envelope with postage thereon fully prepaid to be placed in the United States mail the same day as this declaration at San Ramon, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.
- VIA ELECTRONIC TRANSMISSION** – I transmitted a PDF version of this document by electronic mail to the parties identified below using the email addresses indicated.
- VIA FACSIMILE** by transmitting the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- VIA OVERNIGHT DELIVERY** by placing the documents listed above in a sealed envelope, in a box regularly maintained by United Parcel Service, with delivery fees paid, at San Ramon, California addressed as set forth below.
- VIA HAND DELIVERY** by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

David Mara, Esq.
Jill Vecchi, Esq.
Matthew Crawford, Esq.
Nikki Ousdahl, Esq.
The Turley & Mara Law Firm
7428 Trade Street
San Diego, CA 92121

Executed on March 1, 2019, at San Ramon, California.

I declare under penalty of perjury that the foregoing is true and correct.



Christine Pierce