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 8 CALIFORNIA SIERRA EXPRESS, INC.

9 UNITED STATES DISTRICT COURT  
 10 EASTERN DISTRICT OF CALIFORNIA

12 ANTHONY AGUIAR, individually,  
 13 and on behalf of all others similarly  
 14 situated,

15 Plaintiff,

16 v.

17 CALIFORNIA SIERRA EXPRESS,  
 INC., a Nevada corporation; DOES 1  
 18 through 50, inclusive

19 Defendants.

Case No. 2:11-cv-02827-JAM-GGH

**ORDER GRANTING CALIFORNIA SIERRA  
 EXPRESS, INC.’S MOTION TO DISMISS  
 PLAINTIFF’S FIRST AMENDED COMPLAINT  
 AND DISMISSING ACTION WITH  
 PREJUDICE**

Hon. John A. Mendez

1 On May 2, 2012, Defendant California Sierra Express, Inc.’s (“Defendant” or  
2 “California Sierra Express”) Motion to Dismiss Plaintiff’s First Amended Complaint  
3 (“FAC”) and Strike Class Allegations (Doc. # 25) came on for hearing before the  
4 Honorable John A. Mendez.<sup>1</sup> Defendant also submitted a Request for Judicial Notice in  
5 Support of its Motion to Dismiss and to Strike (Doc. # 26). Plaintiff did not oppose  
6 Defendant’s Motion or its Request for Judicial Notice, but requested leave to file a Second  
7 Amended Complaint. *See* Doc. # 28 (Pl. Not. of Non-Opp’n). After reviewing all  
8 documents in support of and in opposition to the Motion, the Court hereby GRANTS  
9 California Sierra Express’s Motion and DISMISSES this action WITH PREJUDICE, and  
10 without further leave to amend.

11 Plaintiff’s attempt to maintain a putative class action on behalf of former and current  
12 employees of California Sierra Express for alleged violations of several provisions of the  
13 California Labor Code as well as unfair business practices under the California Business  
14 and Professions Code section 17200 (“UCL”) fails for the following independent reasons.

15  
16 **I. THE FEDERAL AVIATION ADMINISTRATION AUTHORIZATION ACT, 49 U.S.C. §  
14501 ET SEQ. (“FAAAA”), PREEMPTS PLAINTIFF’S CLAIMS**

17 Congress enacted the FAAAA to preempt and eliminate burdensome state laws that  
18 affect the interstate trucking industry. *See* 49 U.S.C. § 14501. The FAAAA thus  
19 preempts laws that effectively “interfere[] with competitive market forces in the industry  
20 as to routes, services, or pricing.” *Am. Trucking Ass’ns, Inc. v. City of L.A.*, 660 F.3d 384,  
21 397 (9th Cir. 2011).

22 All of plaintiff’s claims are related to California Labor Code provisions regarding  
23 meal and rest breaks (or compensation and record-keeping relating to alleged “unpaid  
24 wages for rest and meal periods”). *See, e.g.*, FAC ¶¶ 32-34, 37-39, 43-43, 46-47 (Doc. #  
25 23). California Sierra Express could not avoid these claims without significantly  
26 impacting its trucking routes, services, and pricing. Among other things, the standards

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28 <sup>1</sup> Troy M. Yoshino appeared on behalf of Defendant; plaintiff’s counsel did not make an  
appearance.

1 plaintiff ultimately seeks to impose here would effectively bind California Sierra Express  
2 to schedules and frequencies of routes that allow for “off-duty breaks ‘at specific times  
3 throughout the workday in a way that would interfere with competitive market forces  
4 within . . . the industry,’” and all of plaintiff’s claims are preempted. *See Esquivel v.*  
5 *Vistar Corp.*, 2012 WL 516094, at \*5 (C.D. Cal. Feb. 8, 2012) (citing *Dilts v. Penske*  
6 *Logistics LLC*, 819 F. Supp. 2d 1109, 1120 (S.D. Cal. 2011)). Plaintiff did not  
7 demonstrate that he can overcome these preemption issues, and the Court finds that he  
8 cannot do so. As such, the preemption argument Defendant makes is one reason to  
9 dismiss plaintiff’s claims with prejudice, and without leave to amend.

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11 **II. PLAINTIFF HAS FAILED TO STATE A CLAIM AGAINST CALIFORNIA SIERRA  
EXPRESS FOR OTHER REASONS AS WELL**

12 Plaintiff fails to allege facts sufficient to pass Fed. R. Civ. P. 12(b)(6) scrutiny under  
13 the principles set forth in *Ashcroft v. Iqbal*, 556 U.S. 662, ---, 129 S. Ct. 1937 (2009), and  
14 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). Plaintiff has already amended his  
15 complaint once, in lieu of responding to California Sierra Express’s earlier-filed motion to  
16 dismiss (Doc. # 8), but he nonetheless continues to assert “threadbare, legal conclusions  
17 that merely parrot the statutory requirements” of provisions of the California Labor Code  
18 and the UCL. *See Nelson v. Dollar Tree Stores, Inc.*, Case No. 11-1334 JAM-CMK, 2011  
19 WL 3568498 (E.D. Cal. Aug. 15, 2011). Because plaintiff’s FAC does not contain  
20 sufficient factual matter alleging a plausible claim to relief, and because plaintiff already  
21 has had an opportunity to amend in response to prior Rule 12 Motions by California Sierra  
22 Express, dismissal with prejudice is now warranted. *Iqbal*, 129 S. Ct. at 1951.

23 **III. AMENDMENT WOULD BE FUTILE**

24 “Leave to amend is properly denied where amendment would be futile.” *Cigarettes*  
25 *Cheaper! v. State Bd. of Equalization*, No. 11-00631-JAM-EFB, 2011 WL 2560214, at \*2  
26 (E.D. Cal. June 28, 2011); *see also Johnson v. Am. Airlines, Inc.*, 834 F.2d 721, 724 (9th  
27 Cir. 1987) (“[F]utility includes the inevitability of a claim’s defeat on summary  
28 judgment.”). Amendment here is futile because plaintiff’s claims are subject to dismissal

1 on preemption grounds, the FAC relies only on threadbare allegations and legal  
2 conclusions, and plaintiff cites no authority suggesting that California Sierra Express's  
3 Motion to Dismiss is without merit in any of the dispositive grounds it asserts.

4 Separately, plaintiff's failure to properly request leave to amend is an independent  
5 basis for dismissal with prejudice. Plaintiff neither attached the proposed amended  
6 pleading nor lodged a proposed order in accordance with Local Rule 137(c). *See* Doc. #  
7 28 (Pl. Not. of Non-Opp'n). Consequently, the Court cannot evaluate whether plaintiff  
8 qualifies for leave to amend, and, under the circumstances here, any attempt to do so  
9 would be "an exercise in futility" and create undue delay. *See Himmelberger v.*  
10 *Lamarque*, 2008 WL 5234046, at \*3-\*4 (N.D. Cal. Dec. 15, 2008); *see also Cigarettes*,  
11 2011 WL 2560214, at \*2. Plaintiff's FAC is thus dismissed with prejudice, and without  
12 leave to amend.

#### 13 **IV. CONCLUSION**

14 For the foregoing reasons, the Court hereby GRANTS California Sierra Express's  
15 Motion and DISMISSES this action against it WITH PREJUDICE. California Sierra  
16 Express's Motion to Strike Class Allegations is denied as moot.

17 **IT IS SO ORDERED.**

18  
19 Dated: May 3, 2012

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21 /s/ John A. Mendez  
22 The Hon. John A. Mendez  
23 Judge of the U.S. District Court  
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