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ALAMEDA COUNTY

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THE SUPERIOR COURT
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CASE NUMBER:

RG20062287

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*Attorneys for Plaintiff and the Putative Class***IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA****FOR THE COUNTY OF ALAMEDA**

ALEJANDRO OLIVERA, on behalf of
himself and all others similarly situated;

Plaintiffs,

v.

C & B DELIVERY SERVICE, a California
Corporation doing business as TEMCO
WAREHOUSES & DISTRIBUTION; HOME
EXPRESS DELIVERY SERVICE, LLC, a
California Limited Liability Company doing
business as TEMCO LOGISTICS, and DOES
1 through 10, inclusive,

Defendants.

Case No.: RG20062287

CLASS ACTION**FIRST AMENDED COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF**

- 1. FAILURE TO PAY MINIMUM WAGES (Labor Code §§ 226.2, 1182.11-1182.13, 1194, 1194.2, 1197 & 1198; Wage Order No. 9);**
- 2. FAILURE TO PAY OVERTIME (Labor Code §§ 510 & 1194; Wage Order No. 9);**
- 3. FAILURE TO PROVIDE OFF-DUTY MEAL PERIODS (Labor Code §§ 226.7 & 512; Wage Order No. 9);**
- 4. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS (Labor Code §§ 226.2 & 226.7; Wage Order No. 9);**
- 5. FAILURE TO FURNISH ADEQUATE WAGE STATEMENTS (Labor Code §§ 226, 226.2 & 226.3; Wage Order No. 9);**
- 6. WAITING TIME PENALTIES (Labor Code §§ 201, 202 & 203);**
- 7. UNLAWFUL BUSINESS PRACTICES (Business & Professions Code §§ 17200 *et seq.*); and**
- 8. VIOLATIONS OF THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (Labor Code § 2698, *et seq.*)**

DEMAND FOR JURY TRIAL

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I. INTRODUCTION

1. This is a class action under Code of Civil Procedure section 382 and a representative action under Labor Code section 2698, *et seq.*, brought by plaintiff ALEJANDRO OLIVERA (“Plaintiff”).

2. Plaintiff seeks to represent a class of current and former drivers and helpers (“Delivery Workers”) who were employed by defendants C & B DELIVERY SERVICE, a California Corporation doing business as TEMCO WAREHOUSES & DISTRIBUTION and HOME EXPRESS DELIVERY SERVICE, LLC, a California Limited Liability Company dba TEMCO LOGISTICS (collectively, “Defendants”) working out of Defendants’ warehouses throughout California except for the Pomona warehouse (“Class Members”). Plaintiff also seeks to represent two subclasses of Delivery Workers, as described below.

3. Defendants are in the logistics business. Defendants contract with retail stores such as Costco, Home Depot, and JCPenney to provide delivery, installation, and disposal services for customers who purchase their products. Plaintiff and Class Members completed these duties while working out of Defendants’ warehouses in Hayward, California, located in Alameda County, and other warehouses throughout California. Defendants’ website states that they perform over 4,000 deliveries per day, operating 7 days per week.

4. Defendants committed various violations of California wage and hour law throughout Plaintiff’s and Class Members’ employment. Defendants have sought to avoid various duties and obligations owed to employees under the California Labor Code, Industrial Welfare Commission Wage Order No. 9 (“Wage Order No. 9”), and the General Minimum Wage Order (“Minimum Wage Order”) including but not limited to failure to: (1) Pay minimum wages; (2) Pay overtime; (3) Provide meal periods; (4) Authorize and permit rest periods; (5) Furnish adequate wage statements; and (6) Pay all wages upon separation.

5. Plaintiff brings claims on behalf of Class Members for unpaid minimum and overtime wages, liquidated damages, payment for missed meal and rest periods, statutory and civil penalties, interest, and attorneys’ fees and costs under Labor Code sections 203, 218.5, and 1194, and Code of Civil Procedure section 1021.5. Plaintiff, on behalf of himself and Class Members,

1 also seeks equitable and injunctive relief for these violations pursuant to Business and Professions
2 Code sections 17200-17208 (referred to herein as the “UCL”).

3 6. Plaintiff also brings a claim seeking civil penalties under the Private Attorneys
4 General Act, Labor Code sections 2698 *et seq.* (“PAGA”).

5 **II. JURISDICTION**

6 7. Venue is proper in this judicial district, pursuant to Code of Civil Procedure section
7 395(a). Defendants employ or have employed Plaintiff and Class Members doing business out of
8 warehouses throughout California, including in the city of Hayward, which is located within
9 Alameda County, California. The unlawful acts alleged herein have occurred in and have a direct
10 effect on Plaintiff and those similarly situated within the State of California and the County of
11 Alameda.

12 8. This Court has jurisdiction over this class action pursuant to Article 6, section 10 of
13 the California Constitution and California Code of Civil Procedure section 410.10.

14 9. On information and belief, Plaintiff’s and Class Members’ monetary claims total
15 less than \$75,000.00 per person.

16 **III. PARTIES**

17 **A. PLAINTIFF**

18 10. Plaintiff and Class Members are current or former drivers or helpers paid on a piece
19 rate and/or hourly basis who were employed by Defendants working out of their Hayward
20 warehouses located at 31145 Wiegman Rd, Hayward, CA 94544 and 2802 W Winton Ave,
21 Hayward, CA 94545 (“Hayward Warehouses”) and/or other California locations except for the
22 warehouse(s) located in Pomona (collectively, “California Warehouses”) at some time during the
23 period beginning May 22, 2016 to the present (the “Class Period”).

24 11. Plaintiff is a resident of California and worked for Defendants at the Hayward
25 Warehouses as a Delivery Worker from approximately July 2019 to November 2019.

26 **B. DEFENDANTS**

27 12. Defendant C & B DELIVERY SERVICE, a California Corporation doing business
28 as TEMCO WAREHOUSES & DISTRIBUTION (hereinafter, “C & B DELIVERY”) is a

1 California corporation. Plaintiff is informed and believes, and on that basis alleges, that C & B
2 DELIVERY maintains its headquarters in Pomona, California and conducts business throughout
3 the State of California out of its California Warehouses, including out of its Hayward Warehouses,
4 located in Alameda County. Defendant C & B DELIVERY is and at all times relevant herein, has
5 been an employer covered by the Labor Code and Wage Order No. 9.

6 13. Defendant HOME EXPRESS DELIVERY SERVICE, LLC., a California Limited
7 Liability Company doing business as TEMCO LOGISTICS, (hereinafter, "HOME EXPRESS") is
8 a California corporation. Plaintiff is informed and believes, and on that basis alleges, that HOME
9 EXPRESS maintains its headquarters in Laguna Beach, California and conducts business
10 throughout the State of California out of its California Warehouses, including out of its Hayward
11 Warehouses, located in Alameda County. Defendant HOME EXPRESS is, and at all times relevant
12 herein, has been an employer covered by the Labor Code and Wage Order No. 9.

13 14. The true names and capacities, whether individual, corporate, associate, or
14 otherwise, of Defendants sued herein as DOES 1 through 10, inclusive, are currently unknown to
15 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
16 section 474. Plaintiff is informed and believes, and based thereon alleges, that each of the
17 Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts
18 referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true
19 names and capacities of the Defendants designated hereinafter as DOES when such identities
20 become known.

21 15. As employers of Plaintiff and the Class Members throughout the relevant time
22 period hereto, Defendants, and each of them, are either solely or jointly and severally liable for the
23 economic damages, including statutory penalties, owed to Plaintiff and Class Members under
24 common law and by statute.

25 16. Plaintiff is informed and believes and thereon alleges that Defendants operate a
26 logistic business as a single integrated enterprise. Plaintiff is informed and believes that Defendants
27 are joint employers and work as a joint enterprise.
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17. Plaintiff is informed and believes, and thereon alleges, that Defendants each acting as agents and/or employers and/or under the direction and control of each of the other Defendants, and that said acts and failures to act were within the course and scope of said agency, employment and/or direction and control. Plaintiff is informed and believes, and thereon alleges, that at all times material hereto Defendants were and are agents of each other.

IV. STATEMENT OF FACTS

18. Defendants are in the logistics business. Defendants contract with retail stores such as Costco, Home Depot, and JCPenney to provide delivery, installation, and removal services of appliances and other products to customers. Defendants employ Delivery Workers to provide these services. Plaintiff and Class Members worked out of Defendants' California Warehouses.

19. Defendants required Plaintiff and Class Members to pick up and load products from Defendants' California Warehouses to drive to specific locations to install these products, and, thereafter, to remove old products for numerous different customers during specific time frames throughout a given day. Defendants' website states "Our philosophy of continuous improvement is always aimed at ultimate customer satisfaction." Plaintiff and Class Members usually completed these tasks on a team of two, consisting of a "driver" and a "helper."

20. Plaintiff is informed and believes and thereon alleges that, throughout the relevant time period of this action, Defendants have employed at least two hundred (200) Class Members.

21. At all times relevant hereto, the California Labor Code and Wage Order No. 9 have applied to Plaintiff and Class Members.

22. Plaintiff is informed and believes and thereon alleges that, through common practices, policies and/or schemes, Defendants paid Plaintiff and Class Members on a piece rate basis, and later, an hourly basis, and failed to pay them minimum and overtime wages, and compensation for missed meal and rest periods in order to systematically deprive them of the benefits and protections applicable to employees under California law.

23. Plaintiff's and Class Members' primary job duties involved loading, driving, installing new appliances or products, and removing old appliances or products for customers.

1 24. Defendants controlled all work details, including Plaintiff's and Class Members'
2 respective schedules and work locations, in part, in the form of a manifest that Defendants gave to
3 Delivery Drivers at the beginning of their shifts.

4 25. Based on the foregoing and other relevant factors, Plaintiff and other Class
5 Members were employees of Defendants.

6 26. Plaintiff and Class Members regularly worked over eight (8) hours per day and forty
7 (40) hours per week.

8 27. Defendants first paid Plaintiff and Class Members on a piece rate basis. During that
9 time, Defendants failed to pay Plaintiff and Class Members separately for their rest periods and for
10 nonproductive time. Defendants also failed to properly pay Class Members overtime.

11 28. Defendants then began to pay Plaintiff and Class Members on an hourly basis and
12 automatically deducted thirty minutes of pay from Plaintiff and Class Members for meal periods
13 they did not receive. However, Defendants continued to fail to properly pay Class Members
14 overtime.

15 29. Defendants required Plaintiff and Class Members to continuously work without
16 authorizing or providing paid rest periods. Plaintiff and Class Members regularly worked more
17 than three-and-one-half (3½) hours without being authorized or permitted to take a paid ten (10)
18 minute rest period. Defendants failed to pay one additional hour of pay at Plaintiff's and Class
19 Members' respective regular rates of compensation for each workday that they were not provided a
20 rest period.

21 30. Defendants required Plaintiff and Class Members to continuously drive and serve
22 numerous customers in certain time frames throughout the day without providing proper off-duty
23 meal periods. Plaintiff and Class Members regularly worked more than five (5) hours per day
24 without receiving an adequate off-duty meal period of at least thirty (30) minutes during which
25 they were relieved of all duties. Defendants also failed to provide Plaintiff and other Class
26 Members with a second meal period of not less than thirty (30) minutes during which they are
27 relieved of all duties when they worked more than ten (10) hours per day. Defendants failed to pay
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one additional hour of pay at Plaintiff's and Class Members' respective regular rates of compensation for each workday Defendants did not provide them with an adequate meal period.

31. Defendants also failed to provide Plaintiff and Class Members with adequate itemized wage statements. For example, the wage statements provided by Defendants to Plaintiff and Class Members do not adequately include all hours worked. Defendants also failed to provide Class Members who were paid a piece rate with wage statements indicating the number of piece-rate units earned and applicable piece rates, separate pay for rest periods and non-productive time.

32. Defendants did not pay Plaintiff and Class Members all wages owed at the time of termination.

V. CLASS ACTION ALLEGATIONS

33. Except as to the PAGA claim set forth below, Plaintiff brings this lawsuit as a class action pursuant to Code of Civil Procedure section 382 on behalf of himself and all similarly situated employees.

34. The class and subclasses that Plaintiff seeks to represent are defined as:

The Class: All individuals whom Defendants employed as drivers and/or helpers who worked out of Defendants' California Warehouses, except for the Pomona warehouse. ("Class" or "Class Members")

The Piece Rate Subclass: All individuals whom Defendants employed as drivers and/or helpers who worked out of Defendants' California Warehouses, except for the Pomona warehouse, and were paid on a piece rate basis at any time during the Class Period. ("Piece Rate Subclass" or "Piece Rate Subclass Members")

The Hourly Pay Subclass: All individuals whom Defendants employed as drivers and/or helpers who worked out of Defendants' California Warehouses, except for the Pomona warehouse, and were paid on an hourly basis at any time during the Class Period ("Hourly Pay Subclass" or "Hourly Pay Subclass Members") (Hourly Pay Subclass and Piece Rate Subclass, collectively "Subclasses") (Piece Rate Subclass Members and Hourly Pay Subclass Members collectively "Subclass Members").

35. The claims herein have been brought and may properly be maintained as a class action under Code of Civil Procedure section 382 because there is a well-defined community of

1 interest among Class Members with respect to the claims asserted herein and the Class and
2 Subclasses are easily ascertainable:

3 a. Ascertainability and Numerosity: The potential members of the Class and Subclasses as
4 defined herein are so numerous that joinder would be impracticable. Plaintiff is
5 informed and believes, and based thereon alleges, that Defendants have employed at
6 least two hundred (200) Class and Subclass Members during the Class Period. The
7 names and addresses of the Class and Subclass Members are available from Defendants.
8 Notice can be provided to the Class and Subclass Members via first class mail using
9 techniques and a form of notice similar to those customarily used in class action
10 lawsuits of this nature.

11 b. Commonality: There are questions of law and fact common to Plaintiff and the Class
12 and Subclasses that predominate over any questions affecting only individual members
13 of the Class and Subclasses. These common questions of law and fact include, without
14 limitation:

- 15 i. Whether Defendants have violated Labor Code sections 1182.11-1182.13,
16 1194, 1194.2, 1197 and 1198, Wage Order No. 9, and the Minimum Wage
17 Order by failing to pay Class and Subclass Members the minimum wage for all
18 hours worked;
- 19 ii. Whether Defendants have violated Labor Code sections 226.2 by failing to pay
20 Piece Rate Subclass Members the minimum wage for nonproductive work
21 performed and for rest periods;
- 22 iii. Whether Defendants have violated Labor Code sections 510 and 1194 and
23 Wage Order 9 by failing to pay Class and Subclass Members overtime wages;
- 24 iv. Whether Defendants have violated Labor Code section 226.7 and Wage Order
25 No. 9 by failing to authorize and permit Class and Subclass Members paid rest
26 periods;

- 1 v. Whether Defendants have violated Labor Code sections 226.7 and 512, and
2 Wage Order No. 9 by failing to provide Class and Subclass Members meal
3 periods;
- 4 vi. Whether Defendants have violated Labor Code sections 226.2 by failing to
5 issue Piece Rate Subclass Members with adequate and legally compliant wage
6 statements
- 7 vii. Whether Defendants have violated Labor Code section 226 and Wage Order
8 No. 9 by failing to issue Class and Subclass Members with adequate and legally
9 compliant wage statements;
- 10 viii. Whether Defendants have violated Labor Code sections 201-203 by failing,
11 upon termination, to timely pay Class and Subclass Members wages that were
12 due;
- 13 ix. Whether the violations set forth in subsections i-vii set forth immediately above
14 constitute an unlawful, unfair, and/or fraudulent business practice under
15 Business and Professions Code Section 17200, *et seq.*;
- 16 x. What relief is necessary to remedy Defendants' unfair and unlawful conduct as
17 herein alleged; and
- 18 xi. Other questions of law and fact.
- 19 c. Typicality: Plaintiff's claims are typical of the claims of the Class and Subclasses: He
20 was employed by Defendants as a Delivery Worker during the Class Period in
21 California and was paid on a piece rate, and, later, an hourly basis. Plaintiff and all
22 members of the Class and Subclasses have sustained injuries-in-fact due to their
23 damages arising out of and caused by Defendants' common course of conduct in
24 violation of law, as alleged herein.
- 25 d. Adequacy of Representation: Plaintiff is a member of the Class and Subclasses that he
26 seeks to represent, and will fairly and adequately represent and protect the interests of
27 Class and Subclass Members. Counsel representing Plaintiff are competent and
28 experienced in litigating wage and hour class actions.

1 e. Superiority of Class Action: A class action is superior to other available means for the
2 fair and efficient adjudication of this controversy. Individual joinder of all Class and
3 Subclass Members is not practicable, and questions of law and fact common to the
4 Class and Subclasses predominate over any questions affecting only individual
5 members of the Class and Subclasses. Class and Subclass Members have suffered
6 injury and are entitled to recover by reason of Defendants' illegal policies and/or
7 practices as alleged herein. Class action treatment will allow those similarly situated
8 persons to litigate their claims in the manner that is most efficient and economical for
9 the parties and the judicial system. Further, the prosecution of separate actions against
10 Defendants by individual Class and Subclass Members would create a risk of
11 inconsistent or varying adjudications that would establish incompatible standards of
12 conduct for Defendants.

13 VI. DAMAGES

14 36. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff and
15 similarly situated Class and Subclass Members are owed, among other things, minimum and
16 overtime wage compensation plus interest and liquidated damages, payments for meal and rest
17 period violations, waiting time penalties, and other statutory penalties, in an amount that exceeds
18 \$25,000, the precise amount of which will be proven at trial.

19 VII. CAUSES OF ACTION

20 FIRST CAUSE OF ACTION

21 **FAILURE TO PAY MINIMUM WAGE FOR ALL HOURS WORKED** 22 **(Labor Code §§ 226.2, 1182.11-1182.13, 1194, 1194.2, 1197 & 1198;** 23 **Wage Order No. 9; Minimum Wage Order)**

24 37. The allegations of each of the preceding paragraphs are realleged and incorporated
25 herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the
26 above-described Class, Piece Rate Subclass, and Hourly Pay Subclass, of similarly situated
27 Delivery Workers who were employed by Defendants out of their California Warehouses.
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1 38. Throughout the Class Period, Labor Code sections 226.2, 1182.11-1182.13, 1194,
2 1194.2, 1197, 1198, Wage Order No. 9, and the General Minimum Wage Order were in full force
3 and effect and required Defendants to pay non-exempt employees at least the applicable minimum
4 wage for all hours worked.

5 39. Throughout the Class Period, as a result of the policies and practices set forth
6 herein, Defendants failed to pay Plaintiff, Class, and Subclass Members, and continually fail to pay
7 them, minimum wages as required by law for all of their hours worked.

8 40. Employees paid on a piece rate basis are entitled to pay for all hours worked,
9 including at least the minimum wage for all non-productive work.

10 41. Pursuant to Labor Code section 226.2 employees paid on a piece-rate basis must be
11 compensated separately for rest periods and non-productive time.

12 42. Defendants failed to pay Plaintiff and Piece Rate Subclass Members at least the
13 minimum wage for non-productive work and also failed to compensate them separately for rest
14 periods.

15 43. Defendants automatically deducted thirty minutes of pay from Plaintiff and Hourly
16 Pay Subclass Members when they regularly worked over five (5) hours per day.

17 44. As a direct and proximate result of Defendants' acts and/or omissions, Plaintiff,
18 Class, and Subclass Members have suffered economic damages in amounts to be determined at
19 trial.

20 45. Labor Code section 1194(a) provides that an employee who has not been paid
21 minimum wages as required by section 1197 may recover the unpaid balance of the full amount of
22 such wages, interest thereon, attorneys' fees and the costs of suit.

23 46. Labor Code section 1194.2 provides that employees who have not been paid at least
24 minimum wages for their hours worked are entitled to recover liquidated damages in an amount
25 equal to the minimum wages that a defendant unlawfully failed to pay them in amounts according
26 to proof at the time of trial.

27 47. Plaintiff, on behalf of himself, the Class, the Piece Rate Subclass, and the Hourly
28 Pay Subclass, requests restitution of unpaid wages and other relief as described below.

SECOND CAUSE OF ACTION
FAILURE TO PAY OVERTIME
(Labor Code §§ 510 & 1194; Wage Order No. 9)

48. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the above-described Class, Piece Rate Subclass, and Hourly Pay Subclass, of similarly situated Delivery Workers who were employed by Defendants out of their California Warehouses.

49. Throughout the Class Period, Defendants have required and permitted Plaintiff, Class, and Subclass Members to work in excess of eight (8) hours per day and forty (40) hours per week.

50. Defendants' piece rate based pay did not compensate Plaintiff and Piece Rate Subclass Members for overtime when Plaintiff and Piece Rate Subclass Members regularly worked over eight (8) hours per day and forty (40) hours per week.

51. Defendants automatically deduct thirty minutes of pay from Plaintiff and Hourly Subclass Members' pay when they regularly work over eight (8) hours per day and forty (40) hours per week and are therefore entitled to overtime pay. Accordingly, the thirty minutes of deducted pay often translates to unpaid overtime wages.

52. Labor Code section 1194(a) provides that an employee who has not been paid overtime wages may recover the unpaid balance of the full amount of such wages, interest thereon, attorneys' fees and the costs of suit.

53. By failing to pay overtime compensation to Plaintiff, Class, and Subclass Members, Defendants have violated Labor Code section 510 and Wage Order No. 9 section 3.

54. Plaintiff, on behalf of himself, the Class, the Piece Rate Subclass, and the Hourly Pay Subclass, requests restitution of unpaid overtime wages and other relief as described below.

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS
(Labor Code §§ 226.7 & 512; Wage Order No. 9)

55. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the

1 above-described Class, Piece Rate Subclass, and Hourly Pay Subclass, of similarly situated
2 Delivery Workers who were employed by Defendants out of their California Warehouses.

3 56. Plaintiff, Class, and Subclass Members have regularly worked in excess of five (5)
4 hours per day without being permitted to take a thirty (30) minute meal period as required by Labor
5 Code sections 226.7 and 512 and Wage Order No. 9, section 11(A).

6 57. Plaintiff, Class, and Subclass Members have regularly worked in excess of ten (10)
7 hours a day without being permitted to take a second thirty (30) minute meal period as required by
8 Labor Code sections 226.7 and 512 and Wage Order No. 9, section 11(B).

9 58. Pursuant to Labor Code section 226.7(c) and Wage Order No. 9 section 11(D),
10 Defendants are liable for one hour of additional pay at Plaintiff, Class, and Subclass Members'
11 respective regular rate of pay for each workday Defendants failed to provide meal periods to
12 Plaintiff, Class, and Subclass Members.

13 59. By violating Labor Code section 226.7 and Wage Order No. 9, section 11,
14 Defendants are also liable for interest under Labor Code section 218.6, reasonable attorneys' fees
15 and costs under Labor Code section 218.5.

16 60. Plaintiff, on behalf of himself and the Class, the Piece Rate Subclass, and the
17 Hourly Pay Subclass, requests restitution of unpaid meal period premiums and other relief as
18 described below.

19 **FOURTH CAUSE OF ACTION**

20 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**
21 **(Labor Code §§ 226.2 & 226.7; Wage Order No. 9)**

22 61. The allegations of each of the preceding paragraphs are realleged and incorporated
23 herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the
24 above-described Class, Piece Rate Subclass, and Hourly Pay Subclass, of similarly situated
25 Delivery Workers who were employed by Defendants out of their California Warehouses.

26 62. Plaintiff, Class, and Subclass Members have regularly worked in excess of three and
27 one-half (3½) hours a day without being permitted to take at least a ten (10) minute paid rest period
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1 for every three and one-half (3½) hours worked, or major fraction thereof, as required by Wage
2 Order No. 9, section 12(A) and Labor Code section 226.7.

3 63. Pursuant to Labor Code section 226.2 employees paid on a piece-rate basis must be
4 compensated separately for rest periods.

5 64. Defendants failed to permit proper paid rest periods to Plaintiff, Class, and Subclass
6 Members and failed to compensate Piece Rate Subclass Members separately for rest periods.

7 65. Accordingly, Defendants are liable to Plaintiff, Class, and Subclass Members for
8 one hour of additional pay at the regular rate of compensation for each workday a rest period
9 violation occurred, pursuant to Labor Code section 226.7(c) and Wage Order No. 9, section 12(B).

10 66. By violating Labor Code section 226.7 and Wage Order No. 9, section 12,
11 Defendants are also liable for interest under Labor Code section 218.6, reasonable attorneys' fees
12 and costs under Labor Code section 218.5.

13 67. Plaintiff, on behalf of himself and the Class, the Piece Rate Subclass, and the
14 Hourly Pay Subclass, requests restitution of unpaid rest period premiums and other relief as
15 described below.

16 **FIFTH CAUSE OF ACTION**

17 **FAILURE TO FURNISH ADEQUATE WAGE STATEMENTS** 18 **(Labor Code §§ 226, 226.2, 226.3; Wage Order No. 9)**

19 68. The allegations of each of the preceding paragraphs are realleged and incorporated
20 herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the
21 above-described Class, Piece Rate Subclass, and Hourly Pay Subclass, of similarly situated
22 Delivery Workers who were employed by Defendants out of their California Warehouses.

23 69. Labor Code sections 226(a), 226(a)(2), and Wage Order No. 9 section 7 require
24 employers, semi-monthly or at the time of payment, to furnish employees a statement showing
25 gross and net wages earned and total hours worked. In addition, pursuant to Labor Code sections
26 226 and 226.2, employers are required to furnish an employee paid on a piece-rate basis with a
27 statement itemizing the number of piece-rate units, the applicable piece rates of pay, and gross
28 wages paid for rest period and non-productive time.

1 70. An employee suffering injury as the result of a knowing and intentional failure of an
2 employer to comply with Labor Code section 226(a) may recover the greater of all actual damages
3 or fifty dollars (\$50.00) for the initial pay period in which a violation occurs and one hundred
4 dollars (\$100.00) for each violation in a subsequent pay period, not to exceed the aggregate penalty
5 of four thousand dollars (\$4,000.00) and is entitled to an award of costs and reasonable attorney's
6 fees pursuant to Labor Code section 226(e)(1).

7 71. Defendants knowingly and intentionally failed to furnish Plaintiff, Class, and
8 Subclass Members with legally compliant wage statements in accordance with Labor Code sections
9 226, 226.2 and Wage Order No. 9. Defendants failed to furnish Piece Rate Subclass Members with
10 a statement itemizing the number of piece-rate units, the applicable piece rates of pay, and gross
11 wages paid for rest periods and non-productive time. Defendants failed to furnish Hourly Pay
12 Subclass Members with adequate wage statements showing gross and net wages earned and total
13 hours worked.

14 72. Plaintiff, on behalf of himself and the Class, the Piece Rate Subclass, and the
15 Hourly Pay Subclass, requests restitution of wage statement penalties and other relief as described
16 below.

17 **SIXTH CAUSE OF ACTION**
18 **WAITING TIME PENALTIES**
19 **(Labor Code §§ 201, 202 & 203)**

20 73. The allegations of each of the preceding paragraphs are realleged and incorporated
21 herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the
22 above-described Class, Piece Rate Subclass, and Hourly Pay Subclass, of similarly situated
23 Delivery Workers who were employed by Defendants out of their California Warehouses.

24 74. Labor Code section 201 requires an employer who discharges an employee to pay
25 all compensation due and owing to said employee immediately upon discharge. Labor Code
26 section 202 requires an employer to promptly pay compensation due and owing to said employee
27 within seventy-two hours of that employee's termination of employment by resignation. Labor
28 Code section 203 provides that if an employer willfully fails to pay compensation promptly upon

1 discharge or resignation, as required under sections 201 and 202, then the employer is liable for
2 waiting time penalties in the form of continued compensation for up to thirty work days.

3 75. Defendants willfully failed and refused, and continues to willfully fail and refuse, to
4 timely pay compensation and wages, including minimum and overtime wages, to Plaintiff and to
5 all other Class and Subclass Members who are no longer employed by Defendants, as required by
6 Labor Code sections 201-202. As a result, Defendants are liable to Plaintiff and other Class and
7 Subclass Members whose are no longer employed by Defendants for waiting time penalties,
8 together with interest thereon and attorneys' fees and costs, under Labor Code section 203.

9 76. Plaintiff, on behalf of himself and the Class, the Piece Rate Subclass, and the
10 Hourly Pay Subclass, requests restitution of waiting time penalties and other relief as described
11 below.

12 **SEVENTH CAUSE OF ACTION**

13 **UNFAIR COMPETITION AND UNFAIR BUSINESS PRACTICES** 14 **(Business & Professions Code §§ 17200 *et seq.*)**

15 77. The allegations of each of the preceding paragraphs are realleged and incorporated
16 herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the
17 above-described Class, Piece Rate Subclass, and Hourly Pay Subclass, of similarly situated
18 Delivery Workers who were employed by Defendants out of their California Warehouses.
19 Defendants' failure to pay legally required compensation, authorize and permit meal and rest
20 periods, provide adequate wage statements, and pay all wages due upon the termination, as alleged
21 above, constitute unlawful and/or unfair activities prohibited by Business and Professions Code
22 section 17200. Plaintiff reserves the right to identify additional unfair and unlawful practices by
23 Defendants as further investigation and discovery warrants.

24 78. Moreover, Business and Professions Code section 17203 provides that the Court
25 may restore to an aggrieved party any money or property acquired by means of unlawful and unfair
26 business practices. Plaintiff seeks a court order requiring an audit and accounting of the payroll
27 records to determine the amount of restitution of all unpaid wages owed to himself, Class, and
28

Subclass Members, as well as a determination of the amount of funds to be paid to current and former employees that can be identified and located pursuant to a court order and supervision.

79. Plaintiff and all Class and Subclass Members are persons who have suffered injury in fact as a result of Defendants' unfair competition within the meaning of Business and Professions Code section 17204, and who comply with the requirements of Code of Civil Procedure section 382, as set forth above, and therefore have standing to bring this claim for injunctive relief, restitution, and other appropriate equitable relief.

80. As a result of its unlawful and/or unfair acts, Defendants have reaped and continue to reap unfair benefits and illegal profits at the expense of Plaintiff and proposed Class and Subclass Members. Defendants should be enjoined from this activity and made to restore to Plaintiff and proposed Class and Subclass Members their wrongfully withheld wages, interest thereon, and related statutory penalties, pursuant to Business and Professions Code sections 17202 and 17203.

81. Private enforcement of these rights is necessary, as no other agency has raised a claim to protect these workers. There is a financial burden incurred in pursuing this action that would be unjust to place upon Plaintiff, as the burden of enforcing workforce-wide rights is disproportionately greater than that of enforcing only Plaintiff's individual claims. Additionally, Plaintiff is a low-income worker who cannot afford to spend part of his wages on enforcing others' wage rights. Therefore, it would be against the interests of justice to force payment of attorneys' fees from Plaintiff's recovery in this action. Accordingly, attorneys' fees are appropriate and sought pursuant to the Code of Civil Procedure section 1021.5.

82. Plaintiff, on behalf of himself, the Class, the Piece Rate Subclass, and the Hourly Pay Subclass, requests restitution of unpaid wages and other relief as described below, request restitution of unpaid wages, wage premiums, injunctive relief and other relief as described below.

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1 **EIGHTH CAUSE OF ACTION**

2 **PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**
3 **(Labor Code §§ 2698 *et seq.*)**

4 83. The allegations of each of the preceding paragraphs are realleged and incorporated
5 herein by reference. Plaintiff alleges as follows a representative cause of action on behalf of
6 himself and all other aggrieved employees.

7 84. Pursuant to Labor Code section 2699.3(a), on June 18, 2020, Plaintiff gave notice
8 by electronic filing and by certified mail to Defendants, and the Labor and Workforce
9 Development Agency ("LWDA") of the factual and legal basis for the labor law violations alleged
10 in this complaint. The LWDA has not provided notice pursuant to Labor Code section
11 2699.3(a)(2)(A), and 65 calendar days have passed since the postmark date of Plaintiff's LWDA
12 notice. Therefore, Plaintiff is entitled to commence a civil action pursuant to Labor Code section
13 2699.

14 85. Labor Code section 2699(f) provides, in pertinent part: "For all provisions of this
15 code except those for which a civil penalty is specifically provided, there is established a civil
16 penalty for a violation of these provisions, as follows: . . . If, at the time of the alleged violation, the
17 person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
18 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each
19 aggrieved employee per pay period for each subsequent violation."

20 86. Labor Code section 2699(g)(1) provides, in pertinent part: [A]n aggrieved employee
21 may recover the civil penalty described in subdivision (f) in a civil action . . . filed on behalf of
22 himself or herself and other current or former employees against whom one or more of the alleged
23 violations was committed. Any employee who prevails in any action shall be entitled to an award
24 of reasonable attorney's fees and costs.

25 87. Plaintiff is an aggrieved employee as defined by Labor Code section 2699(a).

26 88. Plaintiff's cause of action under Labor Code section 2698, *et seq.* is based on the
27 following allegations:
28

- a. Violations of Labor Code section 558 for failing to pay wages due. Specifically, Defendant does not pay wages to Plaintiff and other aggrieved employees for all hours worked as required by Labor Code sections 1194, 1194.2, 1197, and 1198.
- b. Violations of Labor Code sections 558 and 1197.1 for failing to at least minimum wages for all hours worked and for failing to pay all wages due at the time of termination. Specifically, Defendants do not pay at least minimum wages to Plaintiff and other aggrieved employees for all hours worked, as a result of deducting thirty minutes from Plaintiff and other aggrieved employees' pay each day.
- c. Violations of Labor Code sections 558, 510 and 1194 for failing to pay overtime. Defendants do not pay Plaintiff and other aggrieved employees overtime for their overtime hours worked. Specifically, Defendants do not pay overtime wages to Plaintiff and other aggrieved employees as a result of deducting thirty minutes from Plaintiff and other aggrieved employees' pay each day.
- d. Violations of Labor Code section 558 for failing to pay wages due, including those for missed meal periods as required by Labor Code sections 226.7 and 512. Specifically, Defendants do not pay one additional hour of pay to Plaintiff and other aggrieved employees at their regular rate of pay for a missed meal period.
- e. Violations of Labor Code section 558 for failing to pay wages due, including those for missed rest periods as required by Labor Code section 226.7. Specifically, Defendants do not pay one additional hour of pay to Plaintiff and aggrieved employees at their regular rate of compensation for each missed rest period.
- f. Violations of Labor Code section 226, subdivision (a) for failing to provide adequate itemized wage statements that included, among other things, all hours worked.
- g. Violations of Labor Code sections 201 through 203, requiring the timely payment of wages. Defendants have not timely paid those aggrieved employees who are no longer employed with Defendants all wages owed and due at the time of termination of their employment.
- h. Violations of Labor Code sections 204 and 210, based on Defendants' failure to pay

1 Plaintiff and other aggrieved employees all wages owed on their regular payday.

2 89. As a direct and proximate result of Defendants' unlawful practices and policies,
3 Plaintiff and other aggrieved employees have suffered and continue to suffer monetary losses.

4 90. Plaintiff, on behalf of himself and all other aggrieved employees, requests civil
5 penalties against Defendants for violations of the Labor Code, as provided under Labor Code
6 section 2699(f), plus reasonable attorneys' fees and costs, as provided under Labor Code section
7 2699(g)(1), in amounts to be proven at trial.

8 **VIII. REQUEST FOR JURY TRIAL**

9 Plaintiff requests a trial by jury on behalf of himself and the above-described Class and
10 Subclasses.

11 **IX. PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff, on behalf of himself and the above-described Class and
13 Subclasses, request relief as follows:

- 14 a. Certification of the above-described Class and Subclasses as a class action, pursuant to
15 Code of Civil Procedure section 382;
- 16 b. Certification of the above-described Class and Subclasses as a representative class
17 under Business and Professions Code section 17200;
- 18 c. Provision of Class Notice to all Class and Subclass Members who worked for
19 Defendants during the Class Period;
- 20 d. A declaratory judgment that Defendants have knowingly and intentionally violated the
21 Business and Professions Code sections 17200-17208, by the conduct set forth above.
- 22 e. A declaratory judgment that Defendants' violations as described above were willful;
- 23 f. An equitable accounting to identify, locate, and restore to all Class and Subclass
24 Members the wages and interest that are due;
- 25 g. An award to Plaintiff, Class, and Subclass Members of damages in the amount of
26 unpaid minimum and overtime wages pursuant to Labor Code section 1194, including
27 interest thereon, subject to proof at trial;
- 28

- 1 h. An award pursuant to Labor Code section 1194.2 to Plaintiff, Class, and Subclass
2 Members of liquidated damages due to Defendants' failure to pay the minimum wage;
3 i. An award to Plaintiff, Class, and Subclass Members of meal and rest period premiums
4 pursuant to Labor Code section 226.7 for failure to provide meal and rest periods;
5 j. An award of penalties pursuant to Labor Code section 226 to Plaintiff, Class, and
6 Subclass Members for failing to provide lawful itemized wage statements;
7 k. An award of payments due as waiting time penalties as to Plaintiff and those Class and
8 Subclass Members who are no longer employed by Defendants, pursuant to Labor Code
9 section 203;
10 l. An award of civil penalties under Labor Code section 2698, *et seq.*
11 m. An order requiring Defendants to pay restitution of all amounts owed to Plaintiff, Class,
12 and Subclass Members for Defendants' failure to pay legally required minimum and
13 overtime wages, meal and rest period premiums, and interest thereon, in an amount
14 according to proof, pursuant to Business & Professions Code section 17203;
15 n. An award to Plaintiff, Class, and Subclass Members of reasonable attorneys' fees and
16 costs, pursuant to Code of Civil Procedure section 1021.5 and Labor Code sections 203,
17 218.5, 226(e), 1194, 2802, 2699, and/or other applicable law;
18 o. An award to Plaintiff, Class, and Subclass Members of such other and further relief as
19 this Court deems just and proper.

20 DATED: August 24, 2020

HUNTER PYLE LAW

21
22 By:  _____
23 Hunter Pyle

24 Attorneys for Plaintiff and the Putative Class
25
26
27
28

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff, on behalf of himself and the proposed Class, Piece Rate Subclass, and Hourly Pay
3 Subclass, hereby demands a jury trial in this matter for all claims so triable.
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5 DATED: August 24, 2020

HUNTER PYLE LAW

6
7 By:  _____

Hunter Pyle

8 Katherine Fiester

9 Attorneys for Plaintiff and the Putative Class
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PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is Hunter Pyle Law, 428 13th Street, 11th Floor, Oakland, California 94612. On this day, I served the following Document(s):

FIRST AMENDED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

☒ By Electronic Service. Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Kamran Mirrafati
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San Francisco, CA 94104-1520

Attorney for Defendants C & B Delivery Service dba Temco Warehouses & Distribution and
Home Express Delivery Service, LLC dba Temco Logistics

I declare under penalty of perjury that the foregoing is true and correct. Executed in Oakland, California, on this date, August 24, 2020.



DARLENE SANCHEZ