

David Mara, Esq. (SBN 230498)
Jill Vecchi, Esq. (SBN 299333)
MARA LAW FIRM, PC
2650 Camino Del Rio North, Suite 302
San Diego, California 92108
Telephone: (619) 234-2833
Facsimile: (619) 234-4048

Kane Moon, Esq. (SBN 249834)
Allen Feghali, Esq. (SBN 301080)
Charlotte Mikat-Stevens, Esq. (SBN 327047)
MOON LAW GROUP, PC
1055 W. Seventh Street, Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

Representing Plaintiffs YOVANIK FLORES,
HUNG NGUYEN, and DIEGO BEDYOA
MORENO on behalf of themselves, all others
similarly situated, and on behalf of the general
public

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA**

YOVANIK FLORES, HUNG NGUYEN,
and DIEGO BEDOYA MORENO on
behalf of themselves, all others similarly
situated, and on behalf of the general
public,

Plaintiffs,

v.

HOME EXPRESS DELIVERY
SERVICE, LLC DBA TEMCO
LOGISTICS; and DOES 1-100,

Defendants.

Case No. RG21096517
(Related Case No. RG21100509)

**SUPPLEMENTAL BRIEF IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL**

Date: July 18, 2023
Time: 3:00 p.m.
Judge: Hon. Brad Seligman
Dept.: 23
Reservation ID: 062533213396

Filed: April 13, 2021
Trial: None Set

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I. INTRODUCTION 1

II. DISCOVERY AND INVESTIGATION..... 1

III. PRIOR SETTLEMENTS 1

IV. PLAINTIFFS’ CLAIMS 2

 a. Rest Periods 2

 b. Meal Periods 6

 c. Wage Statements 10

 d. Failure to Reimburse for Business Expenses 13

 e. Waiting Time Penalties 14

 f. Unpaid Wages 15

 g. Temperature Control Guidelines 16

 h. Failure to Timely Pay Wages During Employment 16

 i. PAGA Violations..... 16

V. THE SETTLEMENT AMOUNT IS REASONABLE 17

VI. CY PRES BENEFICIARY 18

VII. OBJECTIONS 19

VIII. CONCLUSION 20

TABLE OF AUTHORITIES

Cases

<i>Alcantar v. Hobart Serv.</i> (9th Cir. 2015) 800 F.3d 1047.....	9
<i>Alvarado v. Wal-Mart Assoc. Inc.</i> (C.D. Cal. Nov. 3, 2021) 2021 U.S. Dist. LEXIS 245799	13
<i>Avila v. Cold Spring Granite Co.</i> (E.D. Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142	17
<i>Cummings v. Starbucks</i> (C.D. Cal. March 24, 2014) 2014 U.S. Dist. LEXIS 51970	5
<i>Donohue v. AMN Services, LLC</i> (2021) 11 Cal.5th 58	7, 9, 10
<i>Flores v. Supervalu, Inc.</i> (9th Cir. 2013) 509 F. App'x 593	10
<i>Hernandez v. BCI Coca-Cola Bottling Co.</i> (9th Cir. 2014) 554 Fed. Appx. 661	12
<i>In re Taco Bell Wage and Hour Actions</i> (E.D. Cal. Nov. 27, 2012) 2012 U.S. Dist. LEXIS 168219	6
<i>Koval v. Pacific Bell Telephone Co.</i> (2014) 232 Cal.App.4th 1050	6, 14
<i>Lampe v. Queen of the Valley Medical Center</i> (2018) 19 Cal.App.5th 832.....	9
<i>Mendiola v. CPS Security Solutions, Inc.</i> (2015) 60 Cal.4th 833	15
<i>Mkhitarian v. Bank of the West</i> (Los Angeles County Superior Court, Jan. 4, 2021) 2021 Cal. Super. LEXIS 145746	9
<i>Morgan v. United Retail Inc.</i> (2010) 186 Cal.App.4th 1136.....	12
<i>Morgan v. Wet Seal, Inc.</i> (2012) 210 Cal.App.4th 1341	14
<i>Ordonez v. Radio Shack</i> (C.D. Cal. Jan. 17, 2013) 2013 U.S. Dist. LEXIS 7868	5
<i>Sultan v. Medtronic, Inc.</i> (C.D. Cal. 2012) 2012 WL 3042212	10
<i>Thurman v. Bayshore Transit Management, Inc.</i> (2012) 203 Cal. App. 4th 1112.....	16, 17
<i>Twomey v. Cal. Rehab. Inst. LLC</i> (Los Angeles County Superior Court, April 30, 2021) 2021 Cal. Super. LEXIS 122911	7

Statutes

Cal. Code Civ. Proc. § 384(a).....	18
Cal. Code Regs. Tit. 8 § 13520	14, 15

1	Cal. Lab. Code § 226(e)	12
2	Cal. Lab. Code § 2802(a)	13
3	Cal. Lab. Code § 512(a)	6
4	Other Authorities	
5	United Way Bay Area, <i>Mayor’s Youth Jobs+</i> , https://sfyouthjobs.org/ (last visited July 11, 2023)	
6		19
7	United Way Bay Area, <i>SparkPoint</i> , https://uwba.org/what-we-do/sparkpoint-program/ (last	
8	visited July 11, 2023)	19
9	United Ways of California, <i>Who We Are</i> , https://unitedwaysca.org/who-we-are/ (last visited July	
10	11, 2023).....	18

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **I. INTRODUCTION**

2 On May 19, 2023, Plaintiffs Yovanik Flores, Hung Nguyen, and Diego Bedoya Moreno
3 (“Plaintiffs”), filed a motion for preliminary approval and requested that this Court preliminarily
4 approve the Class and Representative Action Settlement Agreement and Release of Claims
5 (hereinafter “Agreement”) entered into between Plaintiffs and Defendant Home Express Delivery
6 Service, LLC dba Temco Logistics (“Defendant” or “Temco”) (hereinafter Plaintiffs and
7 Defendant are collectively referred to as the “Parties”). After considering the Parties’ papers, the
8 Court issued a tentative ruling expressing concerns about the settlement. Plaintiffs’ address each
9 of the Court’s concerns herein and provide the requested information and documents.

10 **II. DISCOVERY AND INVESTIGATION**

11 After filing, the Parties engaged in formal and informal discovery. On November 1, 2023,
12 Plaintiffs Flores and Nguyen served one set of special interrogatories and one set of requests for
13 production of documents on Defendant. Defendant responded to this discovery on February 11,
14 2022. On May 13, 2022, Defendant served form interrogatories and requests for production of
15 documents on both Plaintiffs Flores and Nguyen. On June 21, 2022, Plaintiffs Flores and Nguyen
16 responded to this discovery. Thereafter, the Parties agreed to attend mediation and engage in
17 informal discovery geared toward mediation. This formal and informal discovery led to Defendant
18 producing hundreds of pages of documents that included all relevant wage and hour policies and
19 samples of all wage statements in place during the Class Period. In addition, Defendant produced
20 Excel files that contained a 10% sampling of Class Members’ time and wage records. This equated
21 to records for approximately 233 individuals. Defendant also produced the hire and termination
22 dates for all Class Members and information regarding all pay codes used to pay employees.
23 Plaintiffs had an expert conduct an analysis of the time and wage records. Further, Plaintiffs
24 provided their attorneys with wage statements they received while working for Defendant.

25 **III. PRIOR SETTLEMENTS**

26 It should be noted that there are prior class action settlements that impact this case.
27 Defendant disclosed to Plaintiffs the existence of the prior settlements in three cases that
28 involve overlapping claims and theories of liability. Each of these cases previously reached a class

1 and/or PAGA settlement.

2 First, the cases *Alejandro Olivera v. C&B Delivery Service et al.* and *Guillermo Mendez*
3 *et al. v. C&B Delivery Service, et al.* were settled together on a class-wide basis. The settlement
4 class in these matters included current and former drivers and helpers who were employed by
5 Defendant and worked out of Defendant's Pomona warehouse from May 25, 2020, through
6 December 4, 2020, or any of Defendant's other warehouses throughout California at any time
7 between May 26, 2016, through December 4, 2020. Second, the case *Edgardo Acevedo and*
8 *Alfredo Arechiga v. C&B Delivery Service et al* was also settled on a class-wide basis. The
9 settlement class in this matter included all non-exempt drivers/helpers/technicians employed
10 by Defendant from March 5, 2015, through May 24, 2020, working at Defendant's Pomona
11 warehouse. Third, the case *Arturo Tapia Lopez v. Temco Logistics et al.* was settled on a PAGA
12 basis. The settlement in *Lopez* included a PAGA claims release for all non-exempt employees
13 employed by Defendant from March 30, 2018, through June 26, 2020.

14 As such, some Class Members have already settled the claims at issue in this case and
15 received a settlement payment for some of the workweeks within the proposed Class Period
16 currently at issue before this Court. Workweeks for which a settlement payment has already been
17 paid are excluded from this settlement.

18 **IV. PLAINTIFFS' CLAIMS**

19 **a. Rest Periods**

20 Plaintiffs allege that employees are not provided with lawful rest periods. Employers have
21 an obligation to provide employees with ten (10) minute rest periods. An employer's obligation to
22 provide its employees with rest periods arises under the Industrial Welfare Commission Wage
23 Orders. Wage Order 9-2001, Section 12(A) states, "[e]very employer shall authorize and permit
24 all employees to take rest periods, which insofar as practicable shall be in the middle of each work
25 period. The authorized rest period time shall be based on the total hours worked daily at the rate
26 of ten (10) minutes net rest time per four (4) hours or major fraction thereof."

27 Here, prior to mediation, Plaintiffs obtained Defendant's rest period policies that applied
28 during the Class Period. Based off these policies, Plaintiffs allege that Defendant does not provide

1 full net ten-minute rest periods, does not provide duty-free rest periods, and only provides three
2 rest periods per shift regardless of shift length.

3 First, Plaintiffs assert that Defendant's policies fail to inform employees that rest periods
4 are a net ten minutes at a suitable rest area. Defendant's employee handbook includes a section
5 entitled "ATTENDANCE." In this section, Defendant's employee handbook states, "An employee
6 will be considered to have taken an unexcused absence or tardy if the employee is absent from
7 work during scheduled work hours without permission, including full- or partial-day absences, late
8 arrivals, or early departures. **However, the Company allows a 5-minute grace period on an**
9 **employee's arrival at work and a 5-minute grace period when an employee returns from**
10 **lunch.**" Exhibit 1 attached hereto (Excerpts from Defendant's Employee Handbook at Bates
11 D000017) (emphasis added); *see also* Exhibit 2 attached hereto (Excerpts from Defendant's
12 Employee Handbook in place beginning in November 2021 at page 12). Based off this provision,
13 Plaintiffs contend that Defendant's policies allow a 5-minute grace period on an employee's arrival
14 at work and a 5-minute grace period when an employee returns from lunch, but no grace period is
15 provided for rest periods. Plaintiffs assert that this means that employees are not provided with full
16 ten-minute rest periods because they must use some of their rest period time to get to and from a
17 suitable rest location.

18 Defendant counters that it did not include rest periods in this section because employees
19 do not have to clock out for rest periods. As such, there is no time recording which would show an
20 employee arriving back late from a rest break. Defendant asserts that employees are informed that
21 they are entitled to a full ten-minute rest break at a suitable rest area and that, in practice, the five-
22 minute grace period also applies to rest periods. Defendant also argues that the policy states
23 employees get ten-minutes of rest, which is what the Wage Order requires of employers. Further,
24 Defendant contends that employees are not disciplined or otherwise punished for arriving late from
25 rest periods. Defendant alleges that if litigation continues, it would be able to show that it advises
26 employees that their rest period time does not begin until they reach a suitable rest area and that
27 they are entitled to take a full ten-minute break at this area before they have to leave to return to
28 work.

1 Second, Plaintiffs contend that employees are not provided with duty-free rest periods.
2 Defendant's employee handbook includes a Supplement for California Employees that sets forth
3 Defendant's policies for meal and rest breaks. In this supplement, under the heading "MEAL
4 PERIODS AND REST BREAKS" Defendant states, "You are relieved of all work duties during
5 your meal period, and you are free to use your meal period time for whatever purpose you desire."
6 Exhibit 1 attached hereto (Excerpts from Defendant's Employee Handbook at Bates D000052);
7 *see also* Exhibit 2 attached hereto (Excerpts from Defendant's Employee Handbook in place
8 beginning in November 2021 at page 47). Plaintiffs assert that Defendant fails to include similar
9 language for rest periods. As such, Plaintiffs contend that rest periods are not duty-free.

10 Defendant asserts that employees are provided the opportunity to take legally compliant
11 rest periods and that employees are relieved of all work duties during such rest periods. Defendant
12 asserts that rest periods are duty-free and employees not to perform any work duties while on rest
13 periods. Defendant also contends that if litigation were to continue, it would provide declarations
14 from employees stating that they knew rest periods were duty-free and that they did not perform
15 any work while they were on rest periods. Defendant contends that meal periods and rest periods
16 were, at all times, treated as being the same and that employees were informed and knew that they
17 were relieved of all duties during meal and rest periods and that they were free to use their break
18 time for whatever purpose they desired.

19 Third, Plaintiffs assert that Defendant does not provide employees with four rest periods
20 in shifts of over fourteen hours. Plaintiffs assert that employees work long hours that, at times,
21 qualify for a fourth rest period but that such rest period is not provided. Defendant's rest period
22 policy in its Supplement for California Employees states:

23 Employees are also authorized and permitted to take one 10-minute rest break for
24 every four hours worked or major portion thereof. Rest breaks should be taken as
25 close to the middle of every four-hour work period as practicable. The Company
26 encourages employees to take all authorized rest breaks each workday. If you work
27 more than six hours in a day, then you are authorized and permitted to take two paid
28 rest breaks each day. If you work six hours or fewer, then you are authorized and
permitted to take one paid rest break each day. If you work more than 10 hours in
a day, then you are authorized and permitted to take an additional rest break.
Employees working fewer than 3-1/2 hours in a day are not entitled to a rest break.

1 Exhibit 1 attached hereto (Excerpts from Defendant’s Employee Handbook at Bates D000053);
2 *see also* Exhibit 2 attached hereto (Excerpts from Defendant’s Employee Handbook in place
3 beginning in November 2021 at page 48).

4 Defendant asserts that its rest period policy is lawful and that it provides employees with
5 rest periods in compliance with California law. Defendant contends that just because it does not
6 enumerate how many breaks an employee is entitled to in a fourteen-hour shift, employees know
7 that they are entitled to an additional rest period because Defendant’s rest period policy ***begins***
8 with the sentence, “Employees are also authorized and permitted to take one 10-minute rest break
9 for ***every*** four hours worked or major portion thereof.” Exhibit 1 attached hereto (Defendant’s
10 Employee Handbook at Bates D000053) (emphasis added); *see also* Exhibit 2 attached hereto
11 (Excerpts from Defendant’s Employee Handbook in place beginning in November 2021 at page
12 48). Moreover, as the policy states, Defendant “encourages employees to take all authorized rest
13 breaks each workday.” *Id.* In addition, Defendant asserts that if Plaintiffs were to prevail under
14 this theory, a premium would only be owed in the shifts over fourteen hours. Defendant asserts
15 that there are only approximately 888 shifts over fourteen hours in the sampling which represents
16 2.75% of shifts. Even if Plaintiffs were to prevail on this claim, Defendant contends that the
17 damages associated with this theory would be significantly lower the damages Plaintiffs have
18 calculated. Defendant, however, does not believe that Plaintiffs would be able to recover any
19 damages because it contends it lawfully provided all rest periods to Class Members.

20 Defendant further contends that even if the Court finds that its written rest period policy
21 is unlawful, a fact Defendant adamantly disputes, several district courts have found that liability
22 requires more than a facially defective policy, and requires proof that a rest period was unlawfully
23 denied. *See, e.g., Ordonez v. Radio Shack* (C.D. Cal. Jan. 17, 2013) 2013 U.S. Dist. LEXIS 7868
24 (certification denied where rest break policy as written was legally deficient, but putative class
25 members were provided legally compliant rest breaks); *Cummings v. Starbucks* (C.D. Cal. March
26 24, 2014) 2014 U.S. Dist. LEXIS 51970 (certification denied even though rest break policy was
27 facially unlawful as evidence demonstrated employees received rest breaks in compliance with
28 California law and ignoring such evidence would be an abuse of discretion); *In re Taco Bell Wage*

1 *and Hour Actions* (E.D. Cal. Nov. 27, 2012) 2012 U.S. Dist. LEXIS 168219, adopted as final order
2 by *In re Taco Bell Wage and Hour Actions* (E.D. Cal. Jan. 2, 2013) 2013 U.S. Dist. LEXIS 380
3 (denying class certification given the lack of class-wide method of proving whether offending
4 policy was consistently applied to class).

5 Defendant also asserts that even if its written rest period policy is found to be unlawful,
6 this case involves employees who worked at multiple different locations in California and in
7 different job positions. On this basis, Defendant contends that no uniform policy exists because
8 the Court would have to look at what each manager or supervisor at each location told each
9 category of employee in practice. *See Koval v. Pacific Bell Telephone Co.* (2014) 232 Cal.App.4th
10 1050, 1062 (“While Pacific Bell maintained written policies that are uniform, in the sense that they
11 are in writing, the evidence supports the trial court’s conclusion that supervisors did not
12 consistently articulate these policies to class members. Instead, substantial evidence supports the
13 court’s finding that each supervisor conveyed the policies to class members orally, a practice which
14 the evidence also shows resulted in diverse practices and differing interpretations as to what rules
15 required.”).

16 In evaluating the strength of Plaintiffs’ rest period claim, Plaintiffs had to take Defendant’s
17 arguments into consideration.

18 **b. Meal Periods**

19 Plaintiffs contend that Defendant does not provide employees with meal periods that
20 conform with California law. Employers have an obligation under California law to provide
21 employees with thirty (30) minute meal periods. Under California Labor Code section 512(a),
22 “[a]n employer may not employ an employee for a work period of more than five hours per day
23 without providing the employee with a meal period of not less than 30 minutes” Cal. Lab.
24 Code § 512(a). An employer “satisfies this obligation [to provide meal periods] if it relieves its
25 employees of all duty, relinquishes control over their activities and permits them a reasonable
26 opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them
27 from doing so.” *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040.

28 Here, Plaintiffs contend that Defendant’s time records show non-compliant meal periods.

1 In *Donohue v. AMN Services, LLC*, the California Supreme Court issued a decision, wherein it
2 ruled that time records showing late, short, or missed meal periods raises a rebuttable presumption
3 that the meal periods were not provided: “If time records show missed, short, or delayed meal
4 periods with no indication of proper compensation, then a rebuttable presumption arises” that the
5 meal periods were not provided in accordance with California law. *Donohue v. AMN Services,*
6 *LLC* (2021) 11 Cal.5th 58, 74.

7 Prior to mediation, Defendant produced a sampling of time and pay records for Class
8 Members, consisting of a 10% sample size. Plaintiffs sent these records to an expert, Jarrett Gorlick
9 of Berger Consulting Group, for review prior to mediation. Based upon Plaintiffs’ expert’s review,
10 Plaintiffs contend that the time records show non-compliant meal periods in approximately 40%
11 of shifts. Exhibit 3 attached hereto (Plaintiffs’ Pre-Mediation Expert Analysis). Plaintiffs’ expert
12 also determined that Defendant paid meal period premiums in approximately 33% of shifts. *Id.* In
13 shifts with a non-compliant meal period but for which no premium was paid, under *Donohue*,
14 Plaintiffs contend that meal period violations occurred.

15 Defendant contends that the presumption under *Donohue* can be rebutted. As the Los
16 Angeles County Superior Court stated in *Twomey v. California Rehabilitation Institute, LLC*,
17 “[a]pplying the presumption does not mean that time records showing missed, short, or delayed
18 meal periods result in ‘automatic liability’ for the employers. If time records show missed, short,
19 or delayed meal periods with no indication of proper compensation, then a rebuttable presumption
20 arises. Employers can rebut the presumption by presenting evidence that employees were
21 compensated for noncompliant meal periods or that they had in fact been provided compliant meal
22 periods during which they chose to work.” *Twomey v. Cal. Rehab. Inst. LLC* (Los Angeles County
23 Superior Court, April 30, 2021) 2021 Cal. Super. LEXIS 122911 *1, *4). Under *Donohue*,
24 “[e]mployers can rebut the presumption by presenting evidence that employees were compensated
25 for noncompliant meal periods or that they had in fact been provided compliant meal periods
26 during which they chose to work.” *Donohue, supra*, 11 Cal.5th at 77.

27 Defendant contends that it can, and will, rebut the presumption if litigation continues. First,
28 Defendant asserts that its meal period policy is lawful. Defendant’s meal period policy states:

1 When you work a shift of more than five hours, the Company provides you with a
2 30-minute, off duty unpaid and uninterrupted meal period before the end of the fifth
3 hour of work, unless you work 6 hours or less in a workday and you and the
4 Company agree to voluntarily waive the meal period. You should begin your meal
5 period by no later than the end of the fifth hour of work. You are relieved of all
your work duties during your meal period, and you are free to use your meal period
time for whatever purpose you desire.

6 When you work more than 10 hours, the Company provides you with a second 30-
7 minute off-duty, unpaid and uninterrupted meal period. However, if you work more
8 than 10 hours in a day, but not more than 12 hours, then you and the Company can
agree to waive your second meal period.

9 Exhibit 1 attached hereto (Excerpts from Defendant's Employee Handbook at Bates D000053);
10 *see also* Exhibit 2 attached hereto (Excerpts from Defendant's Employee Handbook in place
11 beginning in November 2021 at pages 47-48). As set forth in this policy, Defendant contends that
12 it provides employees with meal periods in compliance with California law and, on that basis,
13 would be able to show that it provides lawful meal periods to employees.

14 In addition, Defendant asserts that the time records show a high compliance rate which
15 evidences the fact that it provides employees with lawful meal periods. Based upon Plaintiffs'
16 expert's analysis, the time records show no meal period violations (meaning either a lawful meal
17 period was taken, or a premium was paid) in approximately 73% of shifts. Defendant contends
18 that this percentage should actually be higher because Defendant asserts that Plaintiffs' expert's
19 analysis does not take into consideration meal period waivers that were entered into between
20 Defendant and employees. Defendant contends that if shifts of between five and six hours that are
21 covered by first meal period waivers are taken into consideration, the percentage of compliant
22 meal periods would be higher. Plaintiffs' expert's analysis shows that there are approximately
23 4,134 shifts of between five and six hours without a recorded meal period. In addition, the number
24 of compliant meal periods would be higher if shifts of between ten and twelve hours that are
25 covered by second meal period waivers are taken into consideration. Plaintiffs' expert's analysis
26 shows that there are approximately 81,995 shifts between ten and twelve hours without a recorded
27 second meal period. Defendant asserts that in each of these categories of shifts, no meal period
28 need be provided because employees signed first or second meal period waivers. When taking

1 these 86,129 shifts into consideration, Defendant contends the time records show a meal period
2 compliance rate of 80%. Defendant asserts that this high compliance rate coupled with its lawful
3 meal period policy and the fact that it paid meal period premiums will enable it to rebut the
4 *Donohue* presumption.

5 Further, Defendant contends that this showing would defeat class certification. In
6 *Mkhitarian v. Bank of the West*, the Los Angeles County Superior Court found that “In assessing
7 the reasons why breaks or meal periods may have been missed, the Court would have to
8 individually assess the existence of meal period waivers and whether Defendant . . . complied with
9 those waivers.” *Mkhitarian v. Bank of the West* (Los Angeles County Superior Court, Jan. 4, 2021)
10 2021 Cal. Super. LEXIS 145746 *1, *68.

11 Moreover, Defendant asserts that it is not required to police meal periods: “An employer
12 is liable only if it does not provide an employee with the opportunity to take a compliant meal
13 period. The employer is not liable if the employee chooses to take a short or delayed meal period
14 or no meal period at all. The employer is not required to police meal periods to make sure no work
15 is performed. Instead, the employer’s duty is to ensure that it provides the employee with bona
16 fide relief from duty and that this is accurately reflected in the employer’s time records.” *Donohue*,
17 *supra*, 11 Cal.5th at 78. Defendant contends that, based on the evidence outlined herein, it has met
18 this duty.

19 Defendant also alleges that if litigation continues it would be able to show that, in shifts
20 where a lawful meal period was not recorded, employees either took a lawful meal period and
21 failed to accurately record it or knowingly and voluntarily decided to skip the meal period or take
22 a late or short meal period. Defendant contends that this showing would defeat class certification.
23 In *Lampe v. Queen of the Valley Medical Center*, the Court of Appeal states that “[t]he question
24 of whether a missed meal break was due to the employer’s failure to allow it or from the
25 employee’s voluntary choice not to take it requires an individualized inquiry.” *Lampe v. Queen of*
26 *the Valley Medical Center* (2018) 19 Cal.App.5th 832, 848; *see also Alcantar v. Hobart Serv.* (9th
27 Cir. 2015) 800 F.3d 1047, 1054 (denial of class certification affirmed; “questions as to why
28 [employees] missed their meal and rest breaks, whether because of their employer’s failure to

1 provide them or their own choice to forgo them, would predominate over questions common to
2 the class”); *Flores v. Supervalu, Inc.* (9th Cir. 2013) 509 F. App’x 593, 594 (class certification
3 denied as to claims for meal and rest period violations; claims required “examination of ‘a number
4 of human factors and individual idiosyncrasies’ having ‘little to do with an overarching policy’”);
5 *Sultan v. Medtronic, Inc.* (C.D. Cal. 2012) 2012 WL 3042212, at *2 (class certification denied;
6 “reasons that employees fail to take breaks can be manifold: the employees could have forgotten,
7 wanted to finish assignments, were not hungry, did not want to leave the premises, wanted to leave
8 early or, possibly, were manipulating their timecards”). On this basis, Defendant contends that
9 individual issues would predominate its showing rebutting the presumption. To determine whether
10 employees forgot to accurately record their meal period time or voluntarily chose to skip a meal
11 period or take a later or short meal period, the Court would have to ask each employee what
12 happened during that particular shift.

13 Plaintiffs disagree that individual issues would predominate any showing by Defendant
14 attempting to rebut the *Donohue* presumption. As noted in *Donohue*, “[r]epresentative testimony,
15 surveys, and statistical analysis,’ along with other types of evidence, ‘are available as tools to
16 render manageable determinations of the extent of liability.” *Donohue, supra*, 11 Cal.5th at 77
17 (quoting *Brinker, supra*, 53 Cal.4th at 1054). Plaintiffs, however, did have to take into
18 consideration the arguments set forth by Defendant and the fact that those arguments could, in fact,
19 rebut the presumption which would extinguish liability for Plaintiffs’ meal period claim.

20 **c. Wage Statements**

21 Plaintiffs allege that employees are not provided with accurate itemized wage statements.
22 California Labor Code § 226(a) provides that employers must furnish an accurate itemized
23 statement in writing showing: (1) gross wages earned; (2) total hours worked by the employee; (3)
24 the number of piece rate units earned and applicable piece rate if the employee is paid on a piece
25 rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which
26 the employee is paid; (7) the name of the employee and only the last four digits of his or her social
27 security number or employee identification number other than a social security number; (8) the
28 name and address of the legal entity that is the employer; and (9) all applicable hourly rates in

1 effect during the pay period and corresponding number of hours worked at each hourly rate by the
2 employee.

3 Here, Plaintiffs allege that Defendant fails to provide employees with accurate itemized
4 wage statements because Defendant's wage statements do not meet California Labor Code §
5 226(a)'s requirements because Defendant does not list the accurate name of the legal entity that is
6 the employer on the detachable part of the check, and does not accurately itemize all regular time
7 and overtime hours. As to the name on employees' wage statements, Plaintiffs contend that the
8 wage statements list the name of the employer as "HOME EXPRESS DELIVERY SERVICE LLC
9 DBA: HOME EXPRESS DELIVERY SERVICE." *See* Exhibit 4 attached hereto (example of
10 Plaintiff Flores' wage statement). Plaintiffs contend that the accurate name of the employer is
11 "Home Express Delivery Service, Inc." which does business as "Temco Logistics."

12 Defendant argues the accurate entity name appears on the check portion of the wage
13 statement. *See* Exhibit 4 attached hereto (example of Plaintiff Flores' wage statement). Defendant
14 also argues that California Labor Code § 226 does not expressly require that a company's complete
15 name or the name registered with the California Secretary of State be included on wage statements
16 and that the name it includes on wage statements is sufficient to meet the requirements of
17 California Labor Code § 226.

18 In addition, Plaintiffs contend that Defendant does not accurately itemize all regular time
19 and overtime hours on wage statements because it includes "rest and recovery" hours as a separate
20 itemization on wage statements. It is Plaintiffs' position that these hours are double included in the
21 total hours worked itemization on wage statements. Plaintiffs contend that these hours are included
22 in either the "regular" hours or "overtime" hours, and then again in the "rest and recovery" hours.
23 On this basis, Plaintiffs contend that the itemization of the total hours worked for the pay period
24 is inaccurate.

25 In response, Defendant argues that employees can ascertain the required information, such
26 as hours worked, using simple math. Defendant contends that employees can easily and simply
27 add up the hours for the categories of "regular" hours, "overtime" hours, and "double time" hours
28 to determine the total hours worked. Defendant relies on cases which hold that "[w]age statements

1 comply with § 226(a) when a plaintiff employee can ascertain the required information by
2 performing simple math, using figures on the face of the wage statement.” *Hernandez v. BCI Coca-*
3 *Cola Bottling Co.* (9th Cir. 2014) 554 Fed. Appx. 661, 662 (citing *Morgan v. United Retail Inc.*
4 (2010) 186 Cal.App.4th 1136).

5 Defendant further argues that the issues alleged by Plaintiffs only occurred for a very small
6 portion of the Class Period. Defendant asserts that these alleged violations were only present in
7 the time period of approximately April 2020 to January 2021. These alleged issues also did not
8 appear on all Class Members’ wage statements. Defendant contends that these alleged issues
9 occurred when Defendant changed payroll providers. Defendant asserts that the new payroll
10 provider worked to correct the issue and the issue was fully corrected by January 2021. Defendant
11 provided Plaintiffs with copies of current wage statements which do not show these alleged
12 violations. *See* Exhibit 5 attached hereto (examples of Class Members’ wage statements). As such,
13 Defendant contends that even if the Court were to agree with Plaintiffs’ arguments, the damages
14 for this claim would be significantly lower than what Plaintiff estimates because the violation was
15 not present during the entire Class Period and did not affect every employee. For the reasons stated
16 above, however, Defendant does not believe that its wage statements were ever unlawful and that
17 any damages are owed for this claim.

18 Further, Defendant also asserts that any violation of California Labor Code § 226 was not
19 “knowing and intentional.” *See* Cal. Lab. Code § 226(e) (“An employee suffering injury as a result
20 of a **knowing and intentional** failure by an employer” may recover damages”) (emphasis added);
21 *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1195 (“Some statutory penalties are
22 imposed only if an employers’ violation was ‘willful’ or ‘knowing.’ . . . [S]ection 226, subdivision
23 (e) penalizes an employer’s ‘knowing and intentional’ failure to provide itemized wage statements
24 under section 226, subdivision (a)[.]”). Defendant further contends that employees cannot show
25 that they have suffered an injury because of any potential violation of California Labor Code §
26 226. Defendant contends that employees knew to talk to their manager or the Human Resources
27 department if they had any questions or concerns with their wage statements. As such, disputes
28 exist as to whether Defendant’s wage statements violated California Labor Code § 226(a)(8),

1 whether any such violation was knowing and intentional, and whether employees suffered an
2 injury.

3 In evaluating the potential liability and damages for this claim, Plaintiffs had to take
4 Defendant's arguments into consideration.

5 **d. Failure to Reimburse for Business Expenses**

6 Plaintiffs allege that employees are not reimbursed for all expenses incurred for business
7 purposes. Under California Labor Code § 2802(a), "An employer shall indemnify his or her
8 employee for all necessary expenditures or losses incurred by the employee in direct consequence
9 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
10 even though unlawful, unless the employee, at the time of obeying the directions, believed them
11 to be unlawful." Cal. Lab. Code § 2802(a).

12 Here, Plaintiffs assert that Defendant requires employees to buy tools necessary in
13 performing their jobs when they are hired and are not reimbursed for this expense. Plaintiffs
14 contend that Class Members had to buy tools such as drills and bits, hand tools, and tie-down
15 straps. Plaintiffs base this off their own experiences and the experiences of other Class Members.
16 Plaintiffs do not believe that all Class Members experienced this alleged violation but included all
17 Class Members in the damage calculation to ensure that they were providing the Court with the
18 *maximum* potential damages, even if the damages likely would be lower than this amount.
19 Plaintiffs took this factor into consideration in providing the Court with an estimated realistic
20 exposure for this claim.

21 Defendant asserts that it provides all tools necessary for performing the work duties and
22 that tools will be bought for employees if they ask for the tool. Defendant argues that there are no
23 policies, whether formal or informal, that require employees to buy tools. Defendant contends that
24 to prevail on this claim, Plaintiffs must show (1) they and the Class Members incurred expenses;
25 (2) the expenses were *necessary* to discharge their duties; and (3) the expenses were not
26 reimbursed. *See Alvarado v. Wal-Mart Assoc. Inc.* (C.D. Cal. Nov. 3, 2021) 2021 U.S. Dist. LEXIS
27 245799. Defendant argues that Plaintiffs cannot show the expenses were necessary because
28 Defendant asserts it provided employees with all items necessary to perform their jobs. As such,

1 Defendant contends there are not damages associated with this claim as Plaintiffs cannot show that
2 employees necessarily had to purchase tools.

3 In addition, Defendant argues that at certification, the Court would have to ask each
4 employee whether they were told they had to purchase tools to perform their job duties. Defendant
5 contends that doing so would defeat certification. Defendant asserts that this case is like *Morgan*
6 *v. Wet Seal, Inc.* (2012) 210 Cal.App.4th 1341. In that case, the plaintiffs alleged that the employer
7 required employees to purchase company clothing to wear for work and sought certification based
8 on the employer's failure to reimburse for this expense. "Without a clear company policy, the
9 appellate court concluded there was no common method to prove classwide liability because each
10 individual plaintiff would have his or her own story and individual interpretation of what he or she
11 had been told." *Koval v. Pacific Bell Telephone Co.* (2014) 232 Cal.App.4th 1050, 1063
12 (summarizing holding in *Morgan v. Wet Seal, Inc.* (2012) 210 Cal.App.4th 1341).

13 In evaluating the potential liability and damages for this claim, Plaintiffs had to take
14 Defendant's arguments into consideration.

15 **e. Waiting Time Penalties**

16 Plaintiffs also pursued waiting time penalties. This claim is derivative of Plaintiffs' meal
17 and rest period claims as Defendant failed to pay meal and rest period premiums. Should Plaintiffs'
18 meal and rest period claims fail, this claim would also fail.

19 In addition, Defendant contends that even if Plaintiffs were successful in their meal and
20 rest period claims, they would have to prove Defendant "willfully" failed to pay employees the
21 appropriate wages due upon separation of employment. "A willful failure to pay wages within the
22 meaning of Labor Code Section 203 occurs when an employer intentionally fails to pay wages to
23 an employee when those wages are due. However, a good faith dispute that any wages are due will
24 preclude imposition of waiting time penalties under Section 203." Cal. Code Regs., tit. 8, § 13520.
25 "A 'good faith dispute' that any wages are due occurs when an employer presents a defense, based
26 in law or fact, which would preclude any recovery on the part of the employee. The fact that a
27 defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist."
28 *Id.* Defendant contends that any failure to pay wages due at the separation of employment was not

1 willful. Defendant argues that it would not be liable for waiting time penalties because a “good
2 faith dispute” exists over the payment of those wages. *See* Cal. Code Regs., tit. 8, § 13520; *Amaral*
3 *v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.

4 In evaluating the potential liability and damages for this claim, Plaintiffs had to take
5 Defendant’s arguments into consideration.

6 **f. Unpaid Wages**

7 Under California law, employees must be paid for all “hours worked,” as that phrase is
8 defined in the Wage Order and interpreted by California courts. Hours worked is defined in the
9 Wage Order as “the time during which an employee is subject to the control of an employer, and
10 includes all the time the employee is suffered or permitted to work, whether or not required to do
11 so.” Wage Order 1-2001, Subd. 2(G); *see also Mendiola v. CPS Security Solutions, Inc.* (2015) 60
12 Cal.4th 833. Here, Plaintiffs evaluated this theory of liability and the violations that they believed
13 to be occurring proved otherwise. When filing the case, Plaintiffs believed that they were not paid
14 the proper wages for all hours worked. Specifically, Plaintiffs believed that their time records
15 would show that they were not being paid overtime or double time wages for all overtime and
16 double time hours worked. During the course of discovery, Plaintiffs investigated this claim and
17 found that this was not the case. Plaintiffs determined that they had, in fact, been paid the proper
18 compensation for the hours that they worked.

19 In addition, Plaintiffs believed that some employees were paid on a piece-rate basis and
20 were owed wages for rest period time and other non-productive time. After filing, Plaintiffs
21 became aware of other lawsuits that were previously filed, and were in the process of settlement
22 approval, over these issues. Under the settlements in these actions, the affected employees released
23 these claims and received settlement payments. After Defendant settled these related actions, it
24 changed its policies and practices and ensured that compensation was being paid for rest period
25 and non-productive time. As such, the issues that Plaintiffs believed to be occurring when they
26 filed their lawsuit, were no longer present.

27 Because Plaintiffs investigated and evaluated the straight time and overtime claims and
28 found no liability outside of what was already settled, these claims were included in the release.

1 **g. Temperature Control Guidelines**

2 Plaintiffs contend that Defendant violates the temperature control guidelines contained in
3 IWC Wage Order 9-2001. IWC Wage Order 9-2001, Section 14 states that “[t]he temperature
4 maintained in each work area shall provide reasonable comfort consistent with industry-wide
5 standards for the nature and the process of work.” Plaintiffs contend that Defendant fails to ensure
6 its facilities are maintained at the temperatures required by the IWC Wage Order. Defendant
7 asserts that it does maintain its facilities at the proper temperature and that individualized inquiries
8 will predominate any showing by Plaintiffs to the contrary. If Plaintiffs are successful in this claim,
9 they would be able to recover PAGA penalties for each pay period in which a violation occurred.
10 In their preliminary approval motion, Plaintiffs included these violations in their PAGA damages
11 assessment.

12 **h. Failure to Timely Pay Wages During Employment**

13 Plaintiffs contend that Defendant fails to timely pay wages due and payable during
14 employment. This claim is based upon Defendant’s failure to pay alleged meal and rest period
15 premiums to employees when owed during their employment. As such, this claim is subject to the
16 same risks as Plaintiffs’ rest period and meal period claims. Defendant contends that it paid all
17 owed premiums. If Plaintiffs are successful in this claim, they would be able to recover PAGA
18 penalties for each pay period in which a violation occurred. In their preliminary approval motion,
19 Plaintiffs included these violations in their PAGA damages assessment.

20 **i. PAGA Violations**

21 Plaintiffs’ PAGA claims are subject to the same risks on the merits as Plaintiffs’ non-
22 PAGA claims. Section 2699, subdivision (e)(2) provides that “[i]n any action by an aggrieved
23 employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may
24 award a lesser amount than the maximum penalty amount specified by this part if, based on the
25 facts and circumstances of the particular case, to do otherwise would result in an award that is
26 unjust, arbitrary, oppressive, or confiscatory.” In *Thurman v. Bayshore Transit Management, Inc.*
27 (*“Thurman”*) (2012) 203 Cal. App. 4th 1112, the court determined that an award of the maximum
28 penalty allowed may be unjust in circumstances outside of when a defendant cannot afford to pay

1 the maximum amount. *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal. App. 4th
2 1112, 1135-1136. The *Thurman* court found that penalties may be reduced when a defendant has
3 taken its obligations to comply with the law seriously. *Id.* Defendant argues that if the case were
4 to continue in litigation, it would be able to show that it took its obligations to comply with the
5 law seriously. As such, if Plaintiffs are able to prevail on the merits of their PAGA claims, it is
6 likely that the Court would reduce the maximum penalty allowed.

7 As a majority of Plaintiffs' PAGA claims are based on the same alleged unlawful conduct
8 as their class claims, Plaintiffs' PAGA claims are subject to the same risks on the merits as
9 Plaintiffs' class claims. The likelihood of the Court reducing the PAGA penalties awarded to
10 Plaintiffs and the aggrieved employees – assuming liability is proven as to each of Plaintiffs'
11 claims – is higher in this case where these same individuals may also be receiving money for the
12 same unlawful conduct under the class claims. *See Avila v. Cold Spring Granite Co.* (E.D. Cal.
13 Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142 *17 (“Because
14 the PAGA penalties sought are at least partially duplicative of penalties granted by the underlying
15 Labor Code violations, *see, e.g.*, Cal. Lab. Code §§ 203, 226, 558(a), 1194.2, and because a Court
16 has discretion in whether and in what amount to award PAGA penalties, *see* Cal. Lab. Code §
17 2699(e)(2), Plaintiffs recognize that the potential PAGA penalties are highly uncertain.”).
18 Plaintiffs must take into consideration the risks their underlying claims faced, as well as the risk
19 that the Court would likely reduce the amount of PAGA penalties awarded.

20 Defendants argue that Plaintiffs' PAGA claims cannot be tried in a manageable manner
21 that comports with due process and that this would prevent Plaintiffs from being able to recover
22 under their PAGA cause of action. In evaluating the potential liability and damages for this claim,
23 Plaintiffs had to take Defendant's arguments into consideration.

24 **V. THE SETTLEMENT AMOUNT IS REASONABLE**

25 In light of the risks Plaintiffs' claims faced, which were addressed above, Plaintiffs and
26 their Counsel believe that the settlement amount of \$1,200,000 is reasonable and fair. In evaluating
27 the potential damages in the previously filed motion for preliminary approval, Plaintiffs attempted
28 to apprise the Court of the full exposure if none of Defendant's arguments were taken into

1 consideration. Plaintiffs wanted to be fully transparent with the Court as to what the damages may
2 be, even if it may be unlikely that Plaintiffs would be able to recover those maximum amounts.
3 When taking into account the risks to Plaintiffs' claims, the exposure is significantly lower.

4 For example, if the Court were only to agree with Plaintiffs' "after 14 hours" rest period
5 claim, damages would only be owed in approximately 2.75% of shifts, or approximately 11,022
6 shifts. This would make the potential damages for Plaintiffs' rest period claim approximately
7 \$203,135 (11,022 shifts x \$18.43 average hourly rate = \$203,135.46). As another example, if
8 Plaintiffs' wage statement violations only occurred from April 1, 2020, to January 21, 2021, the
9 damages for this claim would be approximately \$735,050 [(745 pay period x \$50 for an initial
10 violation = \$37,250) + (6,978 pay periods x \$100 for a subsequent violation = \$697,800)]. If
11 Defendant's contention that not all employees employed during this period time were subject to
12 these violations is correct, then this amount would be further reduced. Moreover, if Defendant
13 rebutted the presumption under *Donohue*, Plaintiffs would not be entitled to any damages for their
14 meal period claim. As such, Plaintiffs' claims were subject to significant risks and potential
15 limitations on damages. When taking these factors into account, the settlement amount of
16 \$1,200,000 is reasonable.

17 **VI. CY PRES BENEFICIARY**

18 The Parties have designated the United Way as the cy pres recipient. Under California
19 Code of Civil Procedure § 384, the unpaid cash residue and unclaimed or abandoned funds in class
20 action litigation should be distributed in a manner designated to either further the purposes
21 underlying the class action or causes of action, or to promote justice for all Californians. Cal. Code
22 Civ. Proc. § 384(a).

23 Here, the United Way furthers the purposes underlying this class action or causes of action.
24 The United Way of California is an umbrella organization, supporting multiple local United Ways
25 throughout the state that all serve the public by working towards financial stability of the citizens
26 they support. United Ways of California, *Who We Are*, <https://unitedwaysca.org/who-we-are/> (last
27 visited July 11, 2023). Many of these local United Ways have specific programs aimed at
28 promoting steady, gainful employment of Californians, something that meets the objectives of a

lawsuit brought with the aim of enforcing employee rights, and supports silent class members through the variety of programs offered. For example, the United Way Bay Area, the local program covering the location in which Plaintiff worked, has programs such as “SparkPoint,” which operates counseling centers throughout the Bay Area that offer job coaching and training, career development, and business development, providing Northern Californians with the skills needed to find and maintain a lifelong career. United Way Bay Area, *SparkPoint*, <https://uwba.org/what-we-do/sparkpoint-program/> (last visited July 11, 2023). The United Way Bay Area also offers programs like “Mayors Youth Jobs+,” which helps young adults find employment through internships, apprenticeships, trainings, and other opportunities to allow future members of the workforce to obtain employment and post-secondary opportunities. United Way Bay Area, *Mayor’s Youth Jobs+*, <https://sfyouthjobs.org/> (last visited July 11, 2023). Beyond just programs like these that support job seekers and employees in the Bay Area, the United Way also advocates at the policy level for an increase to the State minimum wage. Accordingly, the Court should approve United Way as the cy pres recipient.

VII. OBJECTIONS

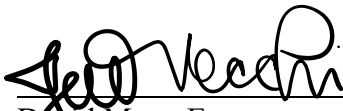
The Parties have entered into an Addendum to Class and Representative Action Settlement Agreement and Release of Claims (the “Addendum”) that provides that Class Members who wish to object to the proposed settlement may file a written objection and/or attend the final approval hearing and assert their objection. The Addendum provides that Class Members may attend the final approval hearing and assert their objection, whether or not they have submitted a written objection. The Addendum is attached hereto as Exhibit 6. The Class Notice has also been updated accordingly. A redlined version of the Class Notice is attached hereto as Exhibit 7, and a clean version is attached hereto as Exhibit 8. Plaintiffs have also prepared a revised proposed order that includes the amended notice. A redlined version of the proposed order is attached hereto as Exhibit 9, and a clean version was submitted to the Court along with this filing. Finally, Plaintiffs have submitted the proposed settlement, including the Addendum and amended Class Notice, to the California Labor and Workforce Development Agency (the “LWDA”). A copy of the LWDA’s confirmation of submission is attached hereto as Exhibit 10.

1 **VIII. CONCLUSION**

2 For the reasons set forth herein and in the motion for preliminary approval, Plaintiffs
3 respectfully request that the Court grant preliminary approval of the Parties' Agreement.

4
5 Dated: May 19, 2023

MARA LAW FIRM, PC

6
7 
8 David Mara, Esq.
9 JN Vecchi, Esq.
Representing Plaintiffs

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 1

EMPLOYEE HANDBOOK TEMCO LOGISTICS

HOURS AND DAYS OF WORK

Supervisors will designate the hours and days of work for each employee. The Company reserves the right to assign and change schedules and hours of work in accordance with its operational needs.

The seven-day workweek for payroll purposes commences on Sunday at 12:01 a.m. and runs through Saturday at midnight. The workday for payroll purposes begins at 12:01 a.m. and ends at midnight 24 hours later.

ATTENDANCE

Regular and punctual attendance is an essential function of every job at the Company. Non-exempt employees must use the biometric clocks to clock in and out to track hours worked and meal periods. Late arrival, early departure or other absences from scheduled hours are disruptive and should be avoided. Absences and tardiness will be considered excused if the employee requested the time off in accordance with the Company's policies on vacation, sick time, leaves of absence, or other time off; and received the required approval for the absence or tardy.

An employee will be considered to have taken an unexcused absence or tardy if the employee is absent from work during scheduled work hours without permission, including full- or partial-day absences, late arrivals, and early departures. **However, the Company allows a 5-minute grace period on an employee's arrival at work and a 5-minute grace period when an employee returns from lunch.** If you are unable to reach your supervisor, you should contact your next-level manager; if neither your supervisor nor next-level manager is available, contact Human Resources.

The Company reserves the right to discipline employees for unexcused absences or tardies. Discipline may include counseling, oral or written warnings, suspensions, or termination of employment, in the Company's discretion. If you fail to report to work for three consecutive assigned work days without notifying your supervisor or Human Resources, the Company may consider you to have abandoned your position and therefore have voluntarily terminated your at-will employment.

WORK SCHEDULE

Work schedules are posted and is the responsibility of each employee to know assigned schedule, be punctual and ready to report for work on a regular basis.

If there is an instance when you need to deviate from your work schedule, talk to your manager. The Company strives to be flexible, with requests handled on a case-by-case basis. If you can't come on a day when you're scheduled to work, you're expected to contact your supervisor or manager by telephone or email at least 2 hours prior to your expected start time. If you need to leave early, unless due to an emergency, you should notify your supervisor at least 1 day in advance.

EMPLOYEE HANDBOOK

SUPPLEMENT FOR CALIFORNIA EMPLOYEES

This California Supplement describes some of the additional practices and procedures in effect at Home Express Delivery Service, LLC dba "Temco Logistics" ("the Company") for California employees. Employees should read, understand, and comply with all provisions of this California supplement as well as the Company's general Employee Handbook. As we operate in multiple states, for the purpose of brevity in this supplement, we cannot list every situation where California laws and regulations may differ from those listed in the Company's general Employee Handbook. If there is a discrepancy between the general Employee Handbook and this California supplement, then this supplement will govern. Furthermore, if there is a discrepancy between applicable law and this supplement or the Company's general Employee Handbook, then the law always governs.

PAYMENT OF WAGES

In addition to the policies and practices stated in the Company's general Employee Handbook, upon involuntary termination of your employment with the Company, your final paycheck will be paid immediately at the time of discharge. If you voluntarily resign or quit from your employment without giving at least 72 hours' notice, the Company will pay your final paycheck within 72 hours of the resignation date.

OVERTIME, NON-EXEMPT EMPLOYEES

In addition to the policies and practices stated in the Company's general Employee Handbook, California non-exempt employees will be paid one and one-half times their regular rate of pay for hours worked in excess of eight (8) hours in a work day or forty (40) hours in a workweek and for the first eight (8) hours worked on the seventh (7th) consecutive day worked in a workweek. Non-exempt employees will be paid two times their regular rate of pay for all hours worked in excess of twelve (12) hours in a workday and in excess of eight (8) hours worked on the seventh (7th) consecutive day worked in a workweek.

MEAL PERIODS AND REST BREAKS

When you work a shift of more than five hours, the Company provides you with a 30-minute, off duty unpaid and uninterrupted meal period before the end of the fifth hour of work, unless you work 6 hours or less in a workday and you and the Company agree to voluntarily waive the meal period. You should begin your meal period by no later than the end of your fifth hour of work. You are relieved of all your work duties during your meal period, and you are free to use your meal period time for whatever purpose you desire.

When you work a shift of more than 10 hours, the Company provides you with a second 30-minute off-duty, unpaid and uninterrupted meal period. However, if you work more

than 10 hours in a day, but not more than 12 hours, then you and the Company can agree to waive your second meal period.

Each non-exempt employee is required to record accurately the time they begin and end each meal period. Non-exempt employees must not perform any work “off the clock” during meal periods. Any time spent performing work during a meal period must be reflected on the employee’s time record.

Employees are also authorized and permitted to take one 10-minute paid rest break for every four hours worked or major portion thereof. Rest breaks should be taken as close to the middle of each four-hour work period as practicable. The Company encourages employees to take all authorized rest breaks each workday. If you work more than six hours in a day, then you are authorized and permitted to take two paid rest breaks each day. If you work six hours or fewer, then you are authorized and permitted to take one paid rest break each day. If you work more than 10 hours in a day, then you are authorized and permitted to take an additional rest break. Employees working fewer than 3-1/2 hours in a day are not entitled to a rest break.

Employees may not add their rest periods to their meal period as a means of taking a longer meal period. Employees also should not work through their meal or rest breaks in order to arrive late or leave early.

The Company will assume that you have been provided with your meal and rest periods as set forth in this policy unless you notify Human Resources of a problem or submit a **Meal / Rest Period Issue Notice** form to Human Resources advising us of an issue with a meal or rest period. You may do so without fear of retaliation, which Company policy prohibits. If you report working during your meal period, returning to work prior to the end of your meal period, being denied a meal or rest period, or being required to delay your meal period until after the end of your 5th hour of work, then you will be paid in accordance with applicable law. Employees will be subject to discipline for violating this policy. If you have any questions regarding this policy or your meal and rest period entitlements, please contact Human Resources immediately.

VACATIONS

Employees who leave the Company will be paid for all accrued unused vacation hours.

SICK TIME

All California employees who complete 30 days of employment in California are eligible for paid sick leave; however, employees must first complete 90 days of employment prior to taking sick leave.

The Company provides its full-time employees (including temporary, seasonal or per diem positions) with paid sick leave up front on their employment anniversary date, as allowed under California law and as outlined below by region. The Company also provides its part-time employees (including temporary, seasonal or per diem positions)

Exhibit 2

EMPLOYEE HANDBOOK TEMCO LOGISTICS

November 2021

HOURS AND DAYS OF WORK

Supervisors will designate the hours and days of work for each employee. The Company reserves the right to assign and change schedules and hours of work in accordance with its operational needs.

The seven-day workweek for payroll purposes commences on Sunday at 12:01 a.m. and runs through Saturday at midnight. The workday for payroll purposes begins at 12:01 a.m. and ends at midnight 24 hours later.

ATTENDANCE

Regular and punctual attendance is an essential function of every job at the Company. Non-exempt employees must use the biometric clocks to clock in and out to track hours worked and meal periods. Late arrival, early departure or other absences from scheduled hours are disruptive and should be avoided. Absences and tardiness will be considered excused if the employee requested the time off in accordance with the Company's policies on vacation, sick time, leaves of absence, or other time off; and received the required approval for the absence or tardy.

An employee will be considered to have taken an unexcused absence or tardy if the employee is absent from work during scheduled work hours without permission, including full- or partial-day absences, late arrivals, and early departures. However, the Company allows a 5-minute grace period on an employee's arrival at work and a 5-minute grace period when an employee returns from lunch. If you are unable to reach your supervisor, you should contact your next-level manager; if neither your supervisor nor next-level manager is available, contact Human Resources.

The Company reserves the right to discipline employees for unexcused absences or tardies. Discipline may include counseling, oral or written warnings, suspensions, or termination of employment, in the Company's discretion. If you fail to report to work for three consecutive assigned work days without notifying your supervisor or Human Resources, the Company may consider you to have abandoned your position and therefore have voluntarily terminated your at-will employment.

WORK SCHEDULE

Work schedules are posted and is the responsibility of each employee to know assigned schedule, be punctual and ready to report for work on a regular basis.

If there is an instance when you need to deviate from your work schedule, talk to your manager. The Company strives to be flexible, with requests handled on a case-by-case basis. If you can't come on a day when you're scheduled to work, you're expected to contact your supervisor or manager by telephone or email at least 2 hours prior to your expected start time. If you need to leave early, unless due to an emergency, you should notify your supervisor at least 1 day in advance.

EMPLOYEE HANDBOOK

SUPPLEMENT FOR CALIFORNIA EMPLOYEES

This California Supplement describes some of the additional practices and procedures in effect at Home Express Delivery Service, LLC dba "Temco Logistics" ("the Company") for California employees. Employees should read, understand, and comply with all provisions of this California supplement as well as the Company's general Employee Handbook. As we operate in multiple states, for the purpose of brevity in this supplement, we cannot list every situation where California laws and regulations may differ from those listed in the Company's general Employee Handbook. If there is a discrepancy between the general Employee Handbook and this California supplement, then this supplement will govern. Furthermore, if there is a discrepancy between applicable law and this supplement or the Company's general Employee Handbook, then the law always governs.

PAYMENT OF WAGES

In addition to the policies and practices stated in the Company's general Employee Handbook, upon involuntary termination of your employment with the Company, your final paycheck will be paid immediately at the time of discharge. If you voluntarily resign or quit from your employment without giving at least 72 hours' notice, the Company will pay your final paycheck within 72 hours of the resignation date.

OVERTIME, NON-EXEMPT EMPLOYEES

In addition to the policies and practices stated in the Company's general Employee Handbook, California non-exempt employees will be paid one and one-half times their regular rate of pay for hours worked in excess of eight (8) hours in a work day or forty (40) hours in a workweek and for the first eight (8) hours worked on the seventh (7th) consecutive day worked in a workweek. Non-exempt employees will be paid two times their regular rate of pay for all hours worked in excess of twelve (12) hours in a workday and in excess of eight (8) hours worked on the seventh (7th) consecutive day worked in a workweek.

MEAL PERIODS AND REST BREAKS

When you work a shift of more than five hours, the Company provides you with a 30-minute, off duty unpaid and uninterrupted meal period before the end of the fifth hour of work, unless you work 6 hours or less in a workday and you and the Company agree to voluntarily waive the meal period. You should begin your meal period by no later than the end of your fifth hour of work. You are relieved of all your work duties during your meal period, and you are free to use your meal period time for whatever purpose you desire.

When you work a shift of more than 10 hours, the Company provides you with a second 30-minute off-duty, unpaid and uninterrupted meal period. However, if you work more

than 10 hours in a day, but not more than 12 hours, then you and the Company can agree to waive your second meal period.

Each non-exempt employee is required to record accurately the time they begin and end each meal period. Non-exempt employees must not perform any work “off the clock” during meal periods. Any time spent performing work during a meal period must be reflected on the employee’s time record.

Employees are also authorized and permitted to take one 10-minute paid rest break for every four hours worked or major portion thereof. Rest breaks should be taken as close to the middle of each four-hour work period as practicable. The Company encourages employees to take all authorized rest breaks each workday. If you work more than six hours in a day, then you are authorized and permitted to take two paid rest breaks each day. If you work six hours or fewer, then you are authorized and permitted to take one paid rest break each day. If you work more than 10 hours in a day, then you are authorized and permitted to take an additional rest break. Employees working fewer than 3-1/2 hours in a day are not entitled to a rest break.

Employees may not add their rest periods to their meal period as a means of taking a longer meal period. Employees also should not work through their meal or rest breaks in order to arrive late or leave early.

The Company will assume that you have been provided with your meal and rest periods as set forth in this policy unless you notify Human Resources of a problem or submit a **Meal / Rest Period Issue Notice** form to Human Resources advising us of an issue with a meal or rest period. You may do so without fear of retaliation, which Company policy prohibits. If you report working during your meal period, returning to work prior to the end of your meal period, being denied a meal or rest period, or being required to delay your meal period until after the end of your 5th hour of work, then you will be paid in accordance with applicable law. Employees will be subject to discipline for violating this policy. If you have any questions regarding this policy or your meal and rest period entitlements, please contact Human Resources immediately.

VACATIONS

Employees who leave the Company will be paid for all accrued unused vacation hours.

SICK TIME

All California employees who complete 30 days of employment in California are eligible for paid sick leave; however, employees must first complete 90 days of employment prior to taking sick leave.

The Company provides its full-time employees (including temporary, seasonal or per diem positions) with paid sick leave up front on their employment anniversary date, as allowed under California law and as outlined below by region. The Company also provides its part-time employees (including temporary, seasonal or per diem positions)

Exhibit 3

Flores v Home Express Delivery Mediation Analysis

File Date: 4/13/2021 | Mediation Date: 2/2/2023 | Data Date Range: 4/13/2017 - 12/14/2022 | Extrapolated to 4/13/2017 - 2/2/2023

Data Source: Temco.Flores--Timepunch1 | Temco.Flores--Timepunch2 | Temco.Flores--Payroll1 | Temco.Flores--Payroll2

	2017	2018	2019	2020	2021	2022	Total	Extrapolated To Class
Number of Employees Included in Employee List	59	109	163	641	1,266	1,535	2,438	n/a
Number of Employees Analyzed (in Timekeeping Data)	5	12	21	69	130	121	233	n/a
Number of Shifts Analyzed (in Timekeeping Data)	723	1,788	3,303	6,244	9,504	10,438	32,000	99.98%
Average Number of Hours per Shift	9.9	9.4	8.7	8.9	9.6	9.5	9.3	9.3
Number of Biweekly Pay Periods Analyzed (in Timekeeping Data)	78	193	341	697	1,055	1,151	3,515	45,258
Number of Workweeks Analyzed (in Timekeeping Data)	149	364	652	1,291	2,001	2,244	6,701	86,279
Number of Pay Periods in PAGA Period (in Timekeeping Data)	-	-	-	605	1,055	1,151	2,811	37,882
Multiplier to Extrapolate to Class (Estimated Shifts in the Class / Shifts Analyzed) ¹							12.53	n/a
Average Rate of Pay	\$12.33	\$13.91	\$15.11	\$16.86	\$18.99	\$20.87	\$18.43	n/a
Number of Shifts Greater than or Equal to 3.5 Hours	723	1,781	3,277	6,132	9,441	10,352	31,706	99.1%
Number of Shifts Greater than 5 Hours	722	1,758	3,230	5,958	9,117	9,834	30,619	95.7%
Number of Shifts Greater than 6 Hours	717	1,737	3,179	5,838	8,914	9,630	30,015	93.8%
Number of Shifts Greater than 8 Hours	650	1,480	2,227	4,304	7,108	7,871	23,640	73.9%
Number of Shifts Greater than 10 Hours	299	583	527	1,730	4,035	4,330	11,504	36.0%
Number of Shifts Greater than 12 Hours	104	166	138	507	1,363	1,717	3,995	12.5%

Meal Break Analysis²

Number of Recorded 1st Meal Breaks for Shifts Greater than 5 Hours	314	975	2,145	5,544	8,223	8,625	25,826	84.3%	323,496
Number of 1st Meal Breaks Recorded After the End of the 5th Hour (Shifts Greater than 5 Hours)	164	324	443	215	223	151	1,520		19,039
Percentage of Shifts When 1st Meal Break was Recorded After the End of the 5th Hour	52.2%	33.2%	20.7%	3.9%	2.7%	1.8%	5.9%		5.9%
Number of Shifts Between 5 and 6 Hours Without a Recorded 1st Meal Break	5	16	25	69	100	115	330		4,134
Percentage of Shifts Between 5 and 6 Hours Without a Recorded 1st Meal Break	100.0%	76.2%	49.0%	57.5%	49.3%	56.4%	54.6%		54.6%
Number of Shifts Greater than 6 Hours Without a Recorded 1st Meal Break	403	767	1,060	345	794	1,094	4,463		55,903
Percentage of Shifts Greater than 6 Hours Without a Recorded 1st Meal Break	56.2%	44.2%	33.3%	5.9%	8.9%	11.4%	14.9%		14.9%
Number of 1st Meal Breaks Shorter than 30 minutes (Shifts Greater than 5 Hours)	118	298	674	242	24	24	1,380		17,286
Percentage of Shifts When 1st Meal Break was Shorter than 30 Minutes (Shifts Greater than 5 Hours)	37.6%	30.6%	31.4%	4.4%	0.3%	0.3%	5.3%		5.3%
Number of 1st Meal Breaks Exactly 30 minutes (Shifts Greater than 5 Hours)	79	294	807	3,286	6,349	6,565	17,380		217,701
Percentage of Shifts When 1st Meal Break was 30 Minutes (Shifts Greater than 5 Hours)	25.2%	30.2%	37.6%	59.3%	77.2%	76.1%	67.3%		67.3%
Number of Recorded 2nd Meal Breaks for Shifts Greater than 10 Hours	-	-	5	543	1,281	1,295	3,124	27.2%	39,131
Number of Shifts Between 10 and 12 Hours Without a Recorded 2nd Meal Break	195	417	389	1,017	2,268	2,260	6,546		81,995
Percentage of Shifts Between 10 and 12 Hours Without a Recorded 2nd Meal Break	100.0%	100.0%	100.0%	83.2%	84.9%	86.5%	87.2%		87.2%
Number of Shifts Greater than 12 Hours Without a Recorded 2nd Meal Break	104	166	133	170	486	775	1,834		22,973
Percentage of Shifts Greater than 12 Hours Without a Recorded 2nd Meal Break	100.0%	100.0%	96.4%	33.5%	35.7%	45.1%	45.9%		45.9%
Number of Unique Meal Break Violations	625	1,345	2,147	1,783	3,344	3,679	12,923		161,873
Percentage of Unique Meal Break Violations (Over all Shifts Analyzed)	86.4%	75.2%	65.0%	28.6%	35.2%	35.2%	40.4%		40.4%
Number of Paid Meal Premium Payments (in Payroll Data)	-	-	-	328	1,426	1,891	3,645	32.9%	53,180
Number of Pay Periods in PAGA Period with at Least One Unique Meal Break Violation	-	-	-	361	774	868	2,003	71.3%	26,993

1. The number of estimated shifts was calculated by subtracting the hire date from the termination date (or extrapolation date if not terminated) for each employee to determine the number of calendar days, which were multiplied by 4.54/7, or 95% of the provided data's average 4.78 shifts per week.

2. Unique meal break violations are defined as shifts with at least one of the following: 1) recorded 1st meal break after the end of the 5th hour for shifts greater than 5 hours, 2) 1st meal break less than 30 minutes for shifts greater than 5 hours, 3) no 1st meal break for shifts greater than 5 hours, or 4) no 2nd meal break for shifts greater than 10 hours.

Exhibit 4

Earnings Statement

YOVANIK FLORES

Company: 0PN27 - HOME EXPRESS DELIVERY SERVICE LLC

Emp #: AOUT

Pay Date: 10/23/2020

DBA: HOME EXPRESS DELIVERY SERVICE

Period Start: 10/04/2020

230 DIAMOND ST

Dept: 600000 - Training

Period End: 10/17/2020

LAGUNA BEACH, CA 92651

(949) 715-9844

Pay Basis: Hourly

Earnings	Rate	Hours/Units	Current Period	Year to Date
Regular	17.00	76.00	1,292.00	2,108.00
Double Time	34.00	1.48	50.32	50.32
Overtime	25.50	9.65	246.08	246.08
Rest and Recovery	0.00	3.57	0.00	0.00
Gross Pay		90.70	1,588.40	2,404.40

W/H Taxes

(S) Federal W/H	48.86	48.86
Medicare	23.03	34.86
Social Security	98.48	149.07
(H/O) California State W/H	19.81	19.81
CaliforniaSDI Tax	15.88	24.04

Deductions

None	0.00	0.00
------	------	------

Net Pay 1,382.34 2,127.76

Voucher No.: 273044581DD

Net Pay Distribution

Direct Deposit Net Check

1,382.34

2,127.76 A/C:5395

Hour Detail	Date	Pay Code	Labor Allocation	Rate	Total Hours
	10/6	Rest and Recovery	Newark - 0 - No Code	0.00	0.34
	10/6	Regular	Newark - 0 - No Code	17.00	8.00
	10/6	Overtime	Newark - 0 - No Code	25.50	0.50
	10/7	Rest and Recovery	Newark - 0 - No Code	0.00	0.34
	10/7	Regular	Newark - 0 - No Code	17.00	8.00
	10/7	Overtime	Newark - 0 - No Code	25.50	0.50
	10/8	Rest and Recovery	Newark - 0 - No Code	0.00	0.34
	10/8	Regular	Newark - 0 - No Code	17.00	7.93
	10/9	Rest and Recovery	Newark - 0 - No Code	0.00	0.34
	10/9	Regular	Newark - 0 - No Code	17.00	8.00
	10/9	Overtime	Newark - 0 - No Code	25.50	0.10
	10/10	Rest and Recovery	Newark - 0 - No Code	0.00	0.34
	10/10	Regular	Newark - 0 - No Code	17.00	8.00
	10/10	Overtime	Newark - 0 - No Code	25.50	0.52
	10/13	Rest and Recovery	Newark - 0 - No Code	0.00	0.34
	10/13	Regular	Newark - 0 - No Code	17.00	8.00
	10/14	Rest and Recovery	Newark - 0 - No Code	0.00	0.17
	10/14	Regular	Newark - 0 - No Code	17.00	4.07
	10/15	Rest and Recovery	Newark - 0 - No Code	0.00	0.51
	10/15	Regular	Newark - 0 - No Code	17.00	8.00
	10/15	Overtime	Newark - 0 - No Code	25.50	4.00

THE FACE OF THIS DOCUMENT HAS A COLOURED VOID PANTOGRAPH BACKGROUND, HEAT SENSITIVE RED ICON, ARTIFICIAL WATERMARK, AND MICROPRINTING.

HOME EXPRESS DELIVERY SERVICE LLC DBA TEMCO

46-2489120

230 DIAMOND ST.

LAGUNA BEACH, CA 92651

[2] 600000

Wells Fargo Bank
Oklahoma City, OK

11-24/1210

273044581DD

paycom

This is not a check

DATE: 10/23/2020

This is not a check

One Thousand Three Hundred Eighty-Two And 34/100 Dollars

***1,382.34

This is not a check

Direct Deposit Voucher

NON-NEGOTIABLE

DEPOSIT
TO THE
ORDER
OF
MP

YOVANIK FLORES
33125 GULL CT
FREMONT, CA 94555

THE REVERSE SIDE OF THIS DOCUMENT HAS LISTED SECURITY FEATURES

Earnings Statement

Company: OPN27 - HOME EXPRESS DELIVERY SERVICE LLC
 DBA: HOME EXPRESS DELIVERY SERVICE
 230 DIAMOND ST
 LAGUNA BEACH, CA 92651 (949) 715-9844

Emp #: AOUT
 Dept: 600000 - Training
 Pay Basis: Hourly

Pay Date: 10/23/2020
 Period Start: 10/04/2020
 Period End: 10/17/2020

10/15	Double Time	Newark - 0 - No Code	34.00	1.48
10/16	Rest and Recovery	Newark - 0 - No Code	0.00	0.34
10/16	Regular	Newark - 0 - No Code	17.00	8.00
10/16	Overtime	Newark - 0 - No Code	25.50	0.65
10/17	Rest and Recovery	Newark - 0 - No Code	0.00	0.51
10/17	Regular	Newark - 0 - No Code	17.00	8.00
10/17	Overtime	Newark - 0 - No Code	25.50	3.38

paycom 59:184:12:MC

THE FACE OF THIS DOCUMENT HAS A COLOURED VOID PANTOGRAPH BACKGROUND, HEAT SENSITIVE RED ICON, ARTIFICIAL WATERMARK, AND MICROPRINTING.

HOME EXPRESS DELIVERY SERVICE LLC DBA TEMCO
 46-2489120
 230 DIAMOND ST.
 LAGUNA BEACH, CA 92651
 [2] 600000

This is not a check
 This is not a check
 This is not a check

YOVANIK FLORES
 33125 GULL CT
 FREMONT, CA 94555

NON-NEGOTIABLE

MP

THE REVERSE SIDE OF THIS DOCUMENT HAS LISTED SECURITY FEATURES.



Exhibit 5

Earnings Statement

REDACTED

Company: OZU78 - HOME EXPRESS DELIVERY SERVICE
LLC

Pay Date: 12/30/2022 DBA: TEMCO LOGISTICS
Period Start: 12/11/2022 230 DIAMOND ST
Period End: 12/24/2022 LAGUNA BEACH CA 92651

Emp #: A200
Dept: 300000 - Warehouse
Pay Basis: Hourly

	Rate	Hours/Units	Current Period	Year To Date	
Earnings					
Regular	17.85	73.48	1311.62	33981.12	
Overtime	26.78	6.22	166.54	3142.36	
Sick Full Time	17.85	0.00	0.00	1139.60	
Vacation 1	17.85	0.00	0.00	851.20	
Holiday 1	17.85	8.00	142.80	854.00	
Lunch Penalty	17.85	0.00	0.00	123.55	
Gross		87.70	1620.96	40091.83	
W/H Taxes					
Federal W/H(S)			125.54	2212.45	
Medicare			23.35	575.79	
Social Security			99.83	2461.99	
California State W/H(H/2)			8.48	172.14	
CaliforniaSDI Tax			17.71	436.80	
Deductions					
GARN %			0.00	1748.97	
401k Fixed			0.00	-46.45	
401k Percent			0.00	46.45	
Accident			5.00	126.58	
MetLife Dental 2000			10.87	319.67	
MetLife Vision			0.00	62.70	
Net Pay			1330.18	31974.74	Voucher No. 437888877DD
Net Pay Distribution					
Direct Deposit Net Check			1330.18	31974.74	A/C:9367
Employee Benefits, Allowances, and Other					
			Current Period	Year To Date	YTD Taken Available
Sick Full Time Hours			0.00	56.00	56.00 0.00
Vacation Hours			3.08	87.78	32.00 55.78
401k Percent - Match			0.00	46.45	*Company Match

--> "Please remember to designate a beneficiary for your employer paid life insurance"

TEMCO LOGISTICS
25361 Commercentre Ste 250
Lake Forest, CA 92630

Dept: 300000

Net Pay:

One Thousand Three Hundred Thirty And 18/100 Dollars

Voucher No. 437888877DD

DATE: 12/30/2022

1330.18

REDACTED

For Record Purposes Only
****NON-NEGOTIABLE****

Company: OZU78 - HOME EXPRESS DELIVERY SERVICE
LLC

DBA: TEMCO LOGISTICS

Emp #: A30H

Period Start: 12/11/2022230 DIAMOND STDept: 100002 - Human Resources

Period End: 12/24/2022LAGUNA BEACH CA 92651Pay Basis: Hourly

	Rate	Hours/Units	Current Period	Year To Date	
Earnings					
Regular	22.00	40.58	892.76	24098.17	
Overtime	33.00	1.90	62.70	2470.23	
2022 CA COVID Supp PSL Batch 1	22.00	24.00	528.00	528.00	
Sick Part Time	22.00	0.00	0.00	218.68	
Holiday 1	22.00	0.00	0.00	624.00	
Lunch Penalty	22.00	1.00	22.00	273.00	
Gross		67.48	1505.46	28212.08	
W/H Taxes					
Federal W/H(S)			112.98	1890.11	
Medicare			21.83	409.08	
Social Security			93.34	1749.15	
California State W/H(S/0)			35.46	655.18	
CaliforniaSDI Tax			16.56	310.33	
Deductions					
Net Pay			1225.29	23198.23	Voucher No. 437886746DD
Net Pay Distribution					
Direct Deposit Net Check			1225.29	23198.23	A/C:1697
Employee Benefits, Allowances, and Other					
Unpaid Time Off Hours **				0.00	8.00 -8.00

**Accruals balances are accurate as of processing 12/29/2022 01:11 pm

TEMCO LOGISTICS
25361 Commercentre Ste 250
Lake Forest, CA 92630

Dept: 100002

Net Pay:

One Thousand Two Hundred Twenty Five And 29/100 Dollars

Voucher No. 437886746DD

DATE: 12/30/2022

1225.29

REDACTED

For Record Purposes Only
****NON-NEGOTIABLE****

Exhibit 6

ADDENDUM TO CLASS AND REPRESENTATIVE ACTION SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

Subject to final approval by the Court, this Addendum to the Parties' Class and Representative Action Settlement Agreement and Release of Claims is between Plaintiffs Yovanik Flores, Hung Nguyen, and Diego Bedoya Moreno (hereinafter, "Plaintiffs"), on behalf of themselves and the Class, and Defendant Home Express Delivery Service, LLC (hereinafter, "Defendant" or "Temco") (collectively, Plaintiffs and Defendant are referred to in this Agreement as the "Parties").

I. AMENDMENT TO SETTLEMENT AGREEMENT

- A. Section III, Paragraph 65(D) entitled "Objections to Settlement" shall be amended to read as follows:

Objections to Settlement. The Class Notice will provide that the Class Members who wish to object to the Settlement may, but are not required to, do so in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than the Response Deadline. The timeframe to submit a written objection will be increased by fourteen (14) calendar days for re-mailings. Class Counsel will provide any written objections to the Court at the time the final approval motion is filed.

- a. **Format.** Written Objections shall state: (a) the objecting person's full name, address, and telephone number; (b) the words "Notice of Objection" or "Formal Objection;" and (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection. Objections may also, but do not have to, include a list identifying witness(es) the objector may call to testify at the Final Approval hearing and provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing.
- b. **Right to Appear at Final Approval Hearing.** Class Members may also appear at the Final Approval Hearing, either in person or through the objector's own counsel, and assert their objection whether or not they have submitted a written objection.

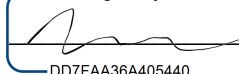
II. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: 7/11/2023

YOVANIK FLORES

DocuSigned by:

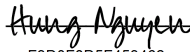


DD7FAA36A405440...

Dated: 7/11/2023

HUNG NGUYEN

DocuSigned by:



F3D0F8D5F453462...

Dated: _____

DIEGO BEDOYA MORENO

Dated: _____

HOME EXPRESS DELIVERY SERVICE, LLC

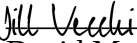
Craig Erickson

APPROVED AS TO FORM BY:

Dated: 7/11/2023

MARA LAW FIRM, PC

DocuSigned by:



David Mara, Esq.

Jill Vecchi, Esq.

*Attorneys for Plaintiffs Yovanik Flores and Hung
Nguyen and the Proposed Class/Aggrieved
Employees*

Dated: _____

MOON LAW GROUP, PC

Kane Moon, Esq.

Allen Feghali, Esq.

Charlotte Mikat-Stevens, Esq.

*Attorneys for Plaintiff Diego Bedoya Moreno and
the Proposed Class/Aggrieved Employees*

Dated: _____

SEYFARTH SHAW LLP

Kamran Mirrafati, Esq.

Laura Heyne, Esq.

Heather Horn, Esq.

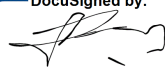
Attorneys for Defendant

Dated: _____

HUNG NGUYEN

Dated: 7/11/2023

DIEGO BEDOYA MORENO

DocuSigned by:

3FFGC347A02F4DE...

Dated: _____

HOME EXPRESS DELIVERY SERVICE, LLC

Craig Erickson

APPROVED AS TO FORM BY:

Dated: _____

MARA LAW FIRM, PC

David Mara, Esq.
Jill Vecchi, Esq.
*Attorneys for Plaintiffs Yovanik Flores and Hung
Nguyen and the Proposed Class/Aggrieved
Employees*

Dated: July 11, 2023

MOON LAW GROUP, PC

Charlotte Mikat-Stevens

Kane Moon, Esq.
Allen Feghali, Esq.
Charlotte Mikat-Stevens, Esq.
*Attorneys for Plaintiff Diego Bedoya Moreno and
the Proposed Class/Aggrieved Employees*

Dated: _____

SEYFARTH SHAW LLP

Kamran Mirrafati, Esq.
Laura Heyne, Esq.
Heather Horn, Esq.
Attorneys for Defendant

Dated: _____

HUNG NGUYEN

Dated: _____

DIEGO BEDOYA MORENO

Dated: 7/11/2023

HOME EXPRESS DELIVERY SERVICE, LLC

Craig Erickson
Craig Erickson

APPROVED AS TO FORM BY:

Dated: _____

MARA LAW FIRM, PC

David Mara, Esq.
Jill Vecchi, Esq.
*Attorneys for Plaintiffs Yovanik Flores and Hung
Nguyen and the Proposed Class/Aggrieved
Employees*

Dated: _____

MOON LAW GROUP, PC

Kane Moon, Esq.
Allen Feghali, Esq.
Charlotte Mikat-Stevens, Esq.
*Attorneys for Plaintiff Diego Bedoya Moreno and
the Proposed Class/Aggrieved Employees*

Dated: July 11, 2023

SEYFARTH SHAW LLP



Kamran Mirrafati, Esq.
Laura Heyne, Esq.
Heather Horn, Esq.
Attorneys for Defendant

Exhibit 7

ALAMEDA COUNTY SUPERIOR COURT

If you worked for Home Express Delivery Service, LLC dba Temco Logistics (“Temco”) in California as a non-exempt employee at any time between April 13, 2017, through June 9, 2023, a class action settlement may affect your rights. You may be entitled to a payment under this settlement.

A court authorized this notice. This is not a solicitation from a lawyer.

- Former employees, Yovanik Flores, Hung Nguyen, and Diego Bedoya Moreno (“Plaintiffs”), filed proposed class action lawsuits against Temco. The lawsuits allege that Temco failed to provide employees with lawful meal and rest periods, failed to pay employees all wages owed, failed to reimburse for business expenses, failed to provide lawful paychecks to employees, failed to pay all wages due at termination of employment, and that Temco violated temperature control guidelines (among other related claims). The lawsuit also seeks to recover penalties pursuant to the California Private Attorneys General Act (“PAGA”). Temco denies all alleged violations and denies liability. The Court has not made a ruling on the merits of the case. The Parties have agreed to settle the claims set forth in the lawsuit.
- Your legal rights are affected whether you act or do not act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING	Get a settlement payment and give up any rights to sue for the Released Claims (defined below). <u>If you are still employed by Temco and choose to receive a settlement payment, this will not affect your employment.</u>
EXCLUDE YOURSELF	Get no payment as a Class Member. This is the only option that allows you to ever be part of any other lawsuit against Temco involving the legal claims and statutory period alleged in this case. Please note that you are unable to exclude yourself from the PAGA portion of the settlement if you are a PAGA Aggrieved Employee.
OBJECT	<u>Inform the</u> Court about why you don’t agree with the settlement.

Deleted: Write to the

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court still has to decide whether to approve of the settlement. Payments will be made if the Court approves the settlement. Please be patient.

Page 1

QUESTIONS? CALL 1-800-XXX-XXXX OR VISIT www.WEBSITE.COM

WHAT INFORMATION IS IN THIS NOTICE?

1. Why have I received this Notice?	Page 2
2. What is this case about?	Page 2
3. How does the class action settlement work?	Page 3
4. Who are the attorneys representing the parties?	Page 3
5. How do I participate in the settlement?	Page 4
6. How do I request to be excluded from the settlement?	Page 4
7. How do I object to the settlement?	Page 5
8. How does this settlement affect employees' rights?	Page 6
9. How much is the settlement?	Page 7
10. How much can I expect to receive from the settlement?	Page 7
11. Will taxes be taken out of my settlement share?	Page 8
12. When can I expect to receive money from the settlement?	Page 8
13. How will the attorneys be paid?	Page 9
14. How will the class representative be paid?	Page 9
15. What do I do if I need more information or have questions?	Page 9

1. *Why Have I Received this Notice?*

Temco's records indicate that you were employed as a non-exempt employee in California by Temco at sometime between April 13, 2017, through June 9, 2023, and have not previously released your claims against Temco. This period of time is referred to as the "Class Period." If you worked for Temco in California during the "Class Period," you may be entitled to money under this Settlement. This Notice provides you with basic information about the case and advises you of your options with regard to the Settlement.

2. *What is this Case About?*

A class action lawsuit and a PAGA lawsuit both entitled *Yovanik Flores and Hung Nguyen v. Home Delivery Express, LLC dba Temco Logistics* were filed in the Alameda County Superior Court, Case Nos. RG21096517 and RG21100509. They were commenced by former employees of Temco named Yovanik Flores and Hung Nguyen. Mr. Flores and Mr. Nguyen are what is referred to as the "Plaintiff" or "Class Representative" in these cases.

Another class action lawsuit was entitled *Diego Bedoya Moreno v. Home Express Delivery Service, LLC* was filed in the Los Angeles County Superior Court, Case No. 22STCV08430. This case was commenced by a former employee of Temco named Diego Bedoya Moreno. Mr. Moreno is the "Plaintiff" or "Class Representative" in this case.

On April 14, 2023, Plaintiffs filed an amended complaint in the Alameda County Superior Court. Their amended complaint alleges that Temco (1) failed to pay all straight time wages; (2) failed to pay all overtime wages; (3) failed to provide meal periods; (4) failed to authorize and permit rest periods; (5) knowing and intentional failed to comply with itemized employee wage statement provisions; (6) failed to pay all wages at the time of termination of employment; (7) failed to indemnify necessary business expenses; (8) violated the temperature control guidelines; (9) failed

to timely pay wages due and payable during employment (10) violated the Unfair Competition Law; and (11) violated the Private Attorneys General Act of 2004 (“PAGA”).

The Court has not decided whether Plaintiffs or Temco is correct. Plaintiffs would still have had to successfully certify the class and prove their claims at trial on a class-wide basis. However, the Parties have concluded that it is in their respective best interests and the interests of the Class Members to settle this lawsuit on the terms summarized in this Notice.

3. *How Does this Class Action Settlement Work?*

Plaintiffs and their attorneys believe the settlement is fair, adequate, and reasonable. The Alameda County Superior Court has reviewed the terms of the settlement and preliminarily determined the settlement is fair, adequate, and reasonable. On [date of ruling on preliminary approval], the Court conditionally certified the Class for settlement purposes only and directed that you receive this Notice.

The Court will hold a Final Fairness Hearing concerning the proposed settlement on [date of final approval hearing], 2023 at [time a.m./p.m.], in Department 23 before Judge Brad Seligman, located at 1221 Oak Street, Oakland, California 94612. The date of the Final Fairness Hearing may change without further notice to the Class. You are advised to check the Court’s website (instructions on accessing this site are provided in Section 15 of this Notice) to confirm that the date has not been changed.

4. *Who Are the Attorneys Representing the Parties?*

Attorneys for Plaintiffs and the Class ("Class Counsel")	Attorneys for Temco
MARA LAW FIRM, PC David Mara (dmara@maralawfirm.com) Jill Vecchi (jvecchi@maralawfirm.com) 2650 Camino Del Rio North, Suite 302 San Diego, CA 92108 Telephone: (619) 234-2833	SEYFARTH SHAW LLP Kamran Mirrafati Laura Heyne Heather Horn 2029 Century Park East, Suite 3500 Los Angeles, California 90067 Telephone: (310) 201-5290

MOON LAW GROUP, PC

Kane Moon

(kmoon@moonlawgroup.com)

Allen Feghali

(afeghali@moonlawgroup.com)

Charlotte Mikat-Stevens

(cmikat-stevens@moonlawgroup.com)

1055 W. Seventh Street, Suite 1880

Los Angeles, California 90017

Telephone: (213) 232-3128

Deleted: & YANG

Deleted: A

Deleted: anc.

Deleted: yang

Deleted: llen.

Deleted: yang

Deleted: harlotte.

Deleted: yang

The Court has appointed Mara Law Firm, PC, and Moon Law Group, PC, to represent you and all other Class Members (“Attorneys for the Class” or “Class Counsel”) simultaneously in this Settlement. You do not need to hire your own attorney because Mara Law Firm, PC, and Moon Law Group, PC, are working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

Deleted: & Yang

Deleted: A

Deleted: & Yang

Deleted: A

5. How do I Participate in the Settlement?

If you do nothing, you will automatically be included as a participant in this Settlement and will not have to take any further action to receive your settlement payment. By participating in the Settlement, you will be bound by the Release. It is your responsibility to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or a settlement payment.

Important Note: Temco will not retaliate against you in any way for either participating or not participating in this Settlement.

HOW TO GET YOUR MONEY IF YOU ARE A CLASS MEMBER:

If you do nothing, you **will** receive money and **will** be bound by the release of claims stated in this notice.

6. How Do I Request to be Excluded from the Settlement?

If you request to be excluded from the settlement, you **will not** receive a settlement payment. This is the only option that allows you to ever be a part of any other lawsuit against Temco about the legal claims and statutory period alleged in this case. By timely opting out, you will no longer be a part of the Settlement. Except that, because Class Members are unable to exclude themselves from the PAGA portion of the Settlement, you will receive, only if you are a PAGA Aggrieved Employee, a pro rata share of the PAGA allocation to Aggrieved Employees and be bound by the release of PAGA claims, as explained in Section 8 of this notice.

HOW TO REQUEST TO BE EXCLUDED FROM THE SETTLEMENT:

How can I request to be excluded from the settlement?	You can request to be excluded from the settlement by mailing the Settlement Administrator a written request for exclusion.
Is there a deadline to request to be excluded?	If you send a written request to the Settlement Administrator, you must postmark your request by RESPONSE DEADLINE .
What information do I need to provide?	Your request for exclusion must include: (1) your name and telephone number; (2) your intention to exclude yourself from the settlement (e.g., "I want to exclude myself from this settlement."); and (3) the request for exclusion must be signed by you or your lawful representative.

The proposed settlement includes the settlement of claims for civil penalties under PAGA. An employee may not request exclusion from the settlement of a PAGA claim. Thus, if the court approves this settlement, then even if you request exclusion from the settlement, you still will receive an individual settlement share for the PAGA claims if you were employed between February 24, 2021, through June 9, 2023, and will be deemed to have released the PAGA claims. A request for exclusion will preserve your right to individually pursue only the remaining substantive, individual and/or class claims.

7. *How Do I Object to the Settlement?*

You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. You cannot object to the settlement if you have requested to be excluded from the settlement.

HOW TO OBJECT TO THE SETTLEMENT:

How can I object to the settlement?	You can object to the settlement by mailing the Settlement Administrator a written objection <u>and/or appearing at the Final Approval Hearing. You may, but do not have to, submit both a written objection and appear at the Final Approval Hearing in order to object.</u>
--	---

Is there a deadline to request to be excluded?	If you send a written objection to the Settlement Administrator, you must postmark your request by RESPONSE DEADLINE .
What information do I need to provide?	<u>If you submit a written objection, your</u> objection must include: (a) your full name, address, and telephone number; (b) the words “Notice of Objection” or “Formal Objection;” (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection. You may also, but do not have to, list identifying witness(es) you may call to testify at the Final Approval hearing and provide true and correct copies of any exhibit(s) you intend to offer at the Final Approval hearing.

Deleted: Your

Objectors who want to appear at the Final Fairness/Approval Hearing and assert their objection to the Court may do so. Class Members may attend the Final Fairness/Approval Hearing and object whether or not they have filed a written objection. The date and time for the Final Fairness/Approval Hearing is set forth in Section 2, above.

Deleted: must state the intention to do so at the time of submitting the written objection(s)

If the Court rejects the objection, the objector will receive a settlement payment and will be bound by the terms of the settlement and will release claims as defined in Section 8 of this notice and in the settlement agreement.

Deleted: Class Members who fail to file timely objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether an appeal or otherwise) to the settlement, unless otherwise ordered by the Court.

8. How Does This Settlement Affect Employees’ Rights?

If the proposed settlement is approved by the Court, a final judgment will be entered by the Court. All Class Members who do not opt out of the settlement will be bound by the Court’s final judgment and will release Temco, and the other Released Parties¹ from the released claims. The claims released under the settlement are: all claims that were pled or any claims that could have been pled in the operative complaints based upon the facts alleged in the Lawsuits including, but not limited to: (1) Failure to Pay All Straight Time Wages; (2) Failure to Pay All Overtime Wages; (3) Failure to Authorize and Permit Rest Periods; (4) Failure to Provide Meal Periods; (5) Failure to Provide Accurate and Complete Wage Statements; (6) Failure to Timely Pay Wages Owed at Termination (Labor Code §§ 201, 202, and 203); (7) Failure to Reimburse Business Expenses; (8) Violation of Unfair Competition Law based upon violations of the California Labor Code sections set forth herein; (9) Violation of the Temperature Control Guidelines of the California Wage Orders; and (10) Failure to Timely Pay Wages Due and Payable During Employment. The release will be as to the Released Parties. The release shall be for the Class Period. The release shall be for the period of time between April 13, 2017, through June 9, 2023.

¹ “Released Parties” means Home Express Delivery Service, LLC, its subsidiaries, d/b/as, and all affiliated entities (including but not limited to C&B Delivery Service, Inc.), and each of its past or present officers, directors, employees, and agents which could be jointly liable with Defendant for the claims alleged.

In addition, the proposed settlement includes the settlement of claims for civil penalties under the PAGA. If you worked for Temco from February 24, 2021, through June 9, 2023, you are a PAGA Aggrieved Employee. PAGA Aggrieved Employees will fully release and discharge Defendant and the Released Parties from any and all claims that were or reasonably could have been alleged based on the claims, facts and/or allegations that were contained in Plaintiffs' PAGA Letters and the operative complaints of the Lawsuits. This release will be for the period of time between February 24, 2021, through June 9, 2023 ("PAGA Period").

If you would like to see the settlement documents or complaints on file, you can check www.INSERT.com, the Court's website, or contact Class Counsel. Directions for accessing the Court's website are outlined in Section 15 of this notice. Class Counsel's information is outlined in Section 4 of this notice.

9. How Much is the Settlement?

The total maximum amount that Temco is required to pay under this settlement is \$1,200,000. This amount is referred to as the "Gross Settlement Amount." The Gross Settlement Amount includes the following amounts: (1) approximately \$615,040 for disbursement to Class Members who do not request to be excluded from the settlement; (2) \$10,000 each to Plaintiffs Yovanik Flores, Hung Nguyen, and Diego Bedoya Moreno for their efforts in bringing this action; (3) costs to administer the settlement – meaning costs associated with mailing this notice to employees and costs associated with sending out settlement checks – to the Settlement Administrator, Phoenix Class Action Administration Solutions, which will not to exceed \$30,000; (3) payment of \$56,250 to the Labor and Workforce Development Agency and payment of \$18,750 to PAGA Aggrieved Employees pursuant to the Private Attorneys' General Act of 2004; and (4) payment to Class Counsel in an amount not to exceed \$399,960 (33 1/3% of the Gross Settlement Amount) in attorneys' fees for investigating the facts of the case, litigating the case, and negotiating the settlement, and an amount not to exceed \$50,000 for actual costs spent litigating this case. All of these payments are subject to Court approval.

The Court will not approve any of these requests until the Final Fairness Hearing. If the any of the amounts awarded are less than the amounts requested, the difference shall become part of the amount available for distribution to employees who do not request to be excluded from the settlement.

10. How Much Can I Expect to Receive from the Settlement?

Each employee who does not request to be excluded from the settlement will be provisionally assigned an award amount based on his or her tenure as part of the Class. To arrive at this figure, Temco will provide the Settlement Administrator with data showing the number of Workweeks credited to each Class Member during the Class Period. The Settlement Administrator will then calculate the total number of Workweeks worked by all Participating Class Members during the Class Period ("Total Workweeks"). To determine the Individual Settlement Payment for each Participating Class Member, the Settlement Administrator will (1) divide each Participating Class Member's respective Workweeks by the Total Workweeks, and (2) multiply the resulting figure by the Net Settlement Amount. One day worked in a given week will be credited as a workweek for purposes of this calculation. Therefore, your settlement payment ties directly to the number of workweeks you worked for Temco between April 13, 2017, through June 9, 2023.

Page 7

QUESTIONS? CALL 1-800-XXX-XXXX OR VISIT www.WEBSITE.COM

Although your exact settlement share cannot be precisely calculated until employees have had the opportunity to request to be excluded from the settlement, based upon the calculation formula above, your approximate share of the settlement is: \$ [REDACTED] (based on Temco's data which shows you worked # of workweeks between April 13, 2017, through June 9, 2023).

Please note that under the law, the case can only go back four years from the date it was filed. This means the case can go back to April 13, 2017. If you began your employment prior to April 13, 2017, this lawsuit can only compensate you for the weeks you worked for Temco on or after April 13, 2017. In addition, if you released claims through a prior settlement, you will be entitled to the number of workweeks you worked after the end of the prior settlement period.

If you believe the number of workweeks attributed to you is incorrect, you must notify the Settlement Administrator by mail or telephone no later than [INSERT], explaining the basis for the dispute and must produce any supporting documentation showing that the workweeks credited to you are inaccurate. In response to a dispute submitted by a Class Member, Temco will review its records, the documentation provided by the Class Member, and shall provide information to the Settlement Administrator in response to any such disputed claim. The Settlement Administrator will make an initial determination about any disputes submitted. The Court shall have the right to review any decision by the Settlement Administrator regarding disputes.

You may also be entitled to a payment for your release of PAGA claims if you worked for Temco on or after February 24, 2021, through June 9, 2023. If you worked for Temco during this time period you are a PAGA Aggrieved Employee. Your payment as a PAGA Aggrieved Employee is \$ [REDACTED] (based on Temco's data which shows you worked # of pay periods between February 24, 2021, through June 9, 2023). If you submit a dispute, as outlined in the paragraph above, the initial determination made by the Settlement Administrator, subject to Court review, will also apply to the number of pay periods you are attributed to have worked as a PAGA Aggrieved Employee.

11. Will Taxes be Taken Out of My Settlement Share?

Yes, twenty percent (20%) of each settlement payment is intended to settle employees' claims for unpaid wages. This portion of your settlement share will be reduced by applicable payroll tax withholdings and deductions. Temco will pay the employer's share of legally required payroll taxes separately and outside of the settlement. The Settlement Administrator will issue you an IRS Form W-2 with respect to this portion of your settlement share.

Eighty percent (80%) of each settlement payment is intended to settle employees' claims for interest and penalties. This portion will not be reduced by payroll tax withholding and deductions. The Settlement Administrator will issue you an IRS Form 1099 with respect to this portion of your settlement share.

Payments to PAGA Aggrieved Employees will be allocated as 100% penalties. This portion will not be reduced by payroll tax withholding and deductions. The Settlement Administrator will issue you an IRS Form 1099 with respect to this portion of your settlement share.

12. When Can I Expect to Receive Money from the Settlement?

If you do not request to be excluded from the settlement, you should receive your settlement check approximately two months after the settlement becomes final. The settlement becomes final when the settlement can no longer be appealed, or, if there are no objectors and no plaintiffs in intervention at the time the Court grants final approval of the settlement, the date the Court enters judgment granting final approval of the settlement. As such, if there are no objections to the settlement, you should receive your settlement check approximately two months after the date of the Final Fairness Hearing, listed in Section 3 of this notice.

Please note that you must cash or deposit your settlement check within 180 calendar days after the check is mailed to you. If you have not cashed or redeemed your check within 90 days after it was mailed, the Settlement Administrator will send you a reminder postcard indicating that unless the check is redeemed or deposited in the next 90 days, it will expire and become non-negotiable. If your check was lost or misplaced, please contact the Settlement Administrator. If any checks remain uncashed or not deposited by the expiration of the 180-day period after mailing, they will be deemed void and of no further force and effect. This means that you will not be able to cash or redeem your settlement check 180 days after its issuance. The funds from settlement checks that are voided will be distributed to a *cy pres* recipient. The *cy pres* recipient shall be The United Way, a non-profit organization that supports projects that benefit employees and applicants throughout the State of California.

13. How Will the Attorneys Be Paid?

The Court-appointed attorneys for Plaintiffs and the Class will be paid from the Gross Settlement Amount, subject to Court approval, in an amount not to exceed 33 1/3% of the Gross Settlement Amount (\$399,960) in attorneys' fees and an amount not to exceed \$50,000 in actual litigation costs. Temco has paid and will continue to pay all of its own attorneys' fees and costs.

14. How Will the Class Representative Be Paid?

Plaintiffs Yovanik Flores, Hung Nguyen, and Diego Bedoya Moreno will also be paid, subject to Court approval, an amount not to exceed \$10,000, each, in consideration for bringing this case, for the time and effort they put into litigating this case and for conferring a benefit upon other employees and the State of California.

15. What do I do if I Need More Information or Have Questions?

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at www.INSERT.com. You can also receive a copy of the settlement agreement by contacting Class Counsel. You may also ask Class Counsel for a copy of any of the case documents to be mailed to you free of charge. Please refer to the *Temco* Class Action Settlement when calling the settlement administrator or Class Counsel.

The pleadings and other records in this litigation may also be examined online on the Alameda County Superior Court's website, known as "eCourt Public Portal,"

at <https://eportal.alameda.courts.ca.gov>. After arriving at the website, click the “Search” tab at the top of the page, then select the Document Downloads link, enter the case number (RG21096517), and click “Submit.” Images of every document filed in the case may be viewed at a minimal charge. You may also view images of every document filed in the case free of charge by using one of the computer terminal kiosks available at each court location that has a facility for civil filings. Two of the court houses you can visit to do this are the René C. Davidson Courthouse located at 1225 Fallon Street, Oakland, California 94612, and the Hayward Hall of Justice located at 24405 Amador Street, Hayward, California 94544. To view the Register of Actions, go to the “Search” tab at the top of the page, then select the “Search by Case Number,” enter the case number (RG21096517), select “Search,” and click the link to the case name. You will see the Register of Actions and more.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

Exhibit 8

ALAMEDA COUNTY SUPERIOR COURT

If you worked for Home Express Delivery Service, LLC dba Temco Logistics (“Temco”) in California as a non-exempt employee at any time between April 13, 2017, through June 9, 2023, a class action settlement may affect your rights. You may be entitled to a payment under this settlement.

A court authorized this notice. This is not a solicitation from a lawyer.

- Former employees, Yovanik Flores, Hung Nguyen, and Diego Bedoya Moreno (“Plaintiffs”), filed proposed class action lawsuits against Temco. The lawsuits allege that Temco failed to provide employees with lawful meal and rest periods, failed to pay employees all wages owed, failed to reimburse for business expenses, failed to provide lawful paychecks to employees, failed to pay all wages due at termination of employment, and that Temco violated temperature control guidelines (among other related claims). The lawsuit also seeks to recover penalties pursuant to the California Private Attorneys General Act (“PAGA”). Temco denies all alleged violations and denies liability. The Court has not made a ruling on the merits of the case. The Parties have agreed to settle the claims set forth in the lawsuit.
- Your legal rights are affected whether you act or do not act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING	Get a settlement payment and give up any rights to sue for the Released Claims (defined below). <u>If you are still employed by Temco and choose to receive a settlement payment, this will not affect your employment.</u>
EXCLUDE YOURSELF	Get no payment as a Class Member. This is the only option that allows you to ever be part of any other lawsuit against Temco involving the legal claims and statutory period alleged in this case. Please note that you are unable to exclude yourself from the PAGA portion of the settlement if you are a PAGA Aggrieved Employee.
OBJECT	Inform the Court about why you don’t agree with the settlement.

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court still has to decide whether to approve of the settlement. Payments will be made if the Court approves the settlement. Please be patient.

WHAT INFORMATION IS IN THIS NOTICE?

1. Why have I received this Notice?	Page 2
2. What is this case about?	Page 2
3. How does the class action settlement work?	Page 3
4. Who are the attorneys representing the parties?	Page 3
5. How do I participate in the settlement?	Page 4
6. How do I request to be excluded from the settlement?	Page 4
7. How do I object to the settlement?	Page 5
8. How does this settlement affect employees' rights?	Page 6
9. How much is the settlement?	Page 7
10. How much can I expect to receive from the settlement?	Page 7
11. Will taxes be taken out of my settlement share?	Page 8
12. When can I expect to receive money from the settlement?	Page 8
13. How will the attorneys be paid?	Page 9
14. How will the class representative be paid?	Page 9
15. What do I do if I need more information or have questions?	Page 9

1. Why Have I Received this Notice?

Temco's records indicate that you were employed as a non-exempt employee in California by Temco at sometime between April 13, 2017, through June 9, 2023, and have not previously released your claims against Temco. This period of time is referred to as the "Class Period." If you worked for Temco in California during the "Class Period," you may be entitled to money under this Settlement. This Notice provides you with basic information about the case and advises you of your options with regard to the Settlement.

2. What is this Case About?

A class action lawsuit and a PAGA lawsuit both entitled *Yovanik Flores and Hung Nguyen v. Home Delivery Express, LLC dba Temco Logistics* were filed in the Alameda County Superior Court, Case Nos. RG21096517 and RG21100509. They were commenced by former employees of Temco named Yovanik Flores and Hung Nguyen. Mr. Flores and Mr. Nguyen are what is referred to as the "Plaintiff" or "Class Representative" in these cases.

Another class action lawsuit was entitled *Diego Bedoya Moreno v. Home Express Delivery Service, LLC* was filed in the Los Angeles County Superior Court, Case No. 22STCV08430. This case was commenced by a former employee of Temco named Diego Bedoya Moreno. Mr. Moreno is the "Plaintiff" or "Class Representative" in this case.

On April 14, 2023, Plaintiffs filed an amended complaint in the Alameda County Superior Court. Their amended complaint alleges that Temco (1) failed to pay all straight time wages; (2) failed to pay all overtime wages; (3) failed to provide meal periods; (4) failed to authorize and permit rest periods; (5) knowing and intentional failed to comply with itemized employee wage statement provisions; (6) failed to pay all wages at the time of termination of employment; (7) failed to indemnify necessary business expenses; (8) violated the temperature control guidelines; (9) failed

to timely pay wages due and payable during employment (10) violated the Unfair Competition Law; and (11) violated the Private Attorneys General Act of 2004 (“PAGA”).

The Court has not decided whether Plaintiffs or Temco is correct. Plaintiffs would still have had to successfully certify the class and prove their claims at trial on a class-wide basis. However, the Parties have concluded that it is in their respective best interests and the interests of the Class Members to settle this lawsuit on the terms summarized in this Notice.

3. *How Does this Class Action Settlement Work?*

Plaintiffs and their attorneys believe the settlement is fair, adequate, and reasonable. The Alameda County Superior Court has reviewed the terms of the settlement and preliminarily determined the settlement is fair, adequate, and reasonable. On [date of ruling on preliminary approval], the Court conditionally certified the Class for settlement purposes only and directed that you receive this Notice.

The Court will hold a Final Fairness Hearing concerning the proposed settlement on [date of final approval hearing], 2023 at [time a.m./p.m.], in Department 23 before Judge Brad Seligman, located at 1221 Oak Street, Oakland, California 94612. The date of the Final Fairness Hearing may change without further notice to the Class. You are advised to check the Court’s website (instructions on accessing this site are provided in Section 15 of this Notice) to confirm that the date has not been changed.

4. *Who Are the Attorneys Representing the Parties?*

Attorneys for Plaintiffs and the Class ("Class Counsel")	Attorneys for Temco
MARA LAW FIRM, PC David Mara (dmara@maralawfirm.com) Jill Vecchi (jvecchi@maralawfirm.com) 2650 Camino Del Rio North, Suite 302 San Diego, CA 92108 Telephone: (619) 234-2833	SEYFARTH SHAW LLP Kamran Mirrafati Laura Heyne Heather Horn 2029 Century Park East, Suite 3500 Los Angeles, California 90067 Telephone: (310) 201-5290

MOON LAW GROUP, PC Kane Moon (kmoon@moonlawgroup.com) Allen Feghali (afeghali@moonlawgroup.com) Charlotte Mikat-Stevens (cmikat-stevens@moonlawgroup.com) 1055 W. Seventh Street, Suite 1880 Los Angeles, California 90017 Telephone: (213) 232-3128	
---	--

The Court has appointed Mara Law Firm, PC, and Moon Law Group, PC, to represent you and all other Class Members (“Attorneys for the Class” or “Class Counsel”) simultaneously in this Settlement. You do not need to hire your own attorney because Mara Law Firm, PC, and Moon Law Group, PC, are working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

5. *How do I Participate in the Settlement?*

If you do nothing, you will automatically be included as a participant in this Settlement and will not have to take any further action to receive your settlement payment. By participating in the Settlement, you will be bound by the Release. It is your responsibility to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or a settlement payment.

Important Note: *Temco will not retaliate against you in any way for either participating or not participating in this Settlement.*

HOW TO GET YOUR MONEY IF YOU ARE A CLASS MEMBER:	If you do nothing, you <u>will</u> receive money and <u>will</u> be bound by the release of claims stated in this notice.
--	--

6. *How Do I Request to be Excluded from the Settlement?*

If you request to be excluded from the settlement, you **will not** receive a settlement payment. This is the only option that allows you to ever be a part of any other lawsuit against Temco about the legal claims and statutory period alleged in this case. By timely opting out, you will no longer be a part of the Settlement. Except that, because Class Members are unable to exclude themselves from the PAGA portion of the Settlement, you will receive, only if you are a PAGA Aggrieved Employee, a pro rata share of the PAGA allocation to Aggrieved Employees and be bound by the release of PAGA claims, as explained in Section 8 of this notice.

HOW TO REQUEST TO BE EXCLUDED FROM THE SETTLEMENT:

How can I request to be excluded from the settlement?	You can request to be excluded from the settlement by mailing the Settlement Administrator a written request for exclusion.
Is there a deadline to request to be excluded?	If you send a written request to the Settlement Administrator, you must postmark your request by RESPONSE DEADLINE .
What information do I need to provide?	Your request for exclusion must include: (1) your name and telephone number; (2) your intention to exclude yourself from the settlement (e.g., “I want to exclude myself from this settlement.”); and (3) the request for exclusion must be signed by you or your lawful representative.

The proposed settlement includes the settlement of claims for civil penalties under PAGA. An employee may not request exclusion from the settlement of a PAGA claim. Thus, if the court approves this settlement, then even if you request exclusion from the settlement, you still will receive an individual settlement share for the PAGA claims if you were employed between February 24, 2021, through June 9, 2023, and will be deemed to have released the PAGA claims. A request for exclusion will preserve your right to individually pursue only the remaining substantive, individual and/or class claims.

7. *How Do I Object to the Settlement?*

You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. You cannot object to the settlement if you have requested to be excluded from the settlement.

HOW TO OBJECT TO THE SETTLEMENT:

How can I object to the settlement?	You can object to the settlement by mailing the Settlement Administrator a written objection and/or appearing at the Final Approval Hearing. You may, but do not have to, submit both a written objection and appear at the Final Approval Hearing in order to object.
--	--

Is there a deadline to request to be excluded?	If you send a written objection to the Settlement Administrator, you must postmark your request by RESPONSE DEADLINE .
What information do I need to provide?	If you submit a written objection, your objection must include: (a) your full name, address, and telephone number; (b) the words “Notice of Objection” or “Formal Objection;” (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection. You may also, but do not have to, list identifying witness(es) you may call to testify at the Final Approval hearing and provide true and correct copies of any exhibit(s) you intend to offer at the Final Approval hearing.

Objectors who want to appear at the Final Fairness/Approval Hearing and assert their objection to the Court may do so. Class Members may attend the Final Fairness/Approval Hearing and object whether or not they have filed a written objection. The date and time for the Final Fairness/Approval Hearing is set forth in Section 2, above.

If the Court rejects the objection, the objector will receive a settlement payment and will be bound by the terms of the settlement and will release claims as defined in Section 8 of this notice and in the settlement agreement.

8. *How Does This Settlement Affect Employees’ Rights?*

If the proposed settlement is approved by the Court, a final judgment will be entered by the Court. All Class Members who do not opt out of the settlement will be bound by the Court’s final judgment and will release Temco, and the other Released Parties¹ from the released claims. The claims released under the settlement are: all claims that were pled or any claims that could have been pled in the operative complaints based upon the facts alleged in the Lawsuits including, but not limited to: (1) Failure to Pay All Straight Time Wages; (2) Failure to Pay All Overtime Wages; (3) Failure to Authorize and Permit Rest Periods; (4) Failure to Provide Meal Periods; (5) Failure to Provide Accurate and Complete Wage Statements; (6) Failure to Timely Pay Wages Owed at Termination (Labor Code §§ 201, 202, and 203); (7) Failure to Reimburse Business Expenses; (8) Violation of Unfair Competition Law based upon violations of the California Labor Code sections set forth herein; (9) Violation of the Temperature Control Guidelines of the California Wage Orders; and (10) Failure to Timely Pay Wages Due and Payable During Employment. The release will be as to the Released Parties. The release shall be for the Class Period. The release shall be for the period of time between April 13, 2017, through June 9, 2023.

¹ “Released Parties” means Home Express Delivery Service, LLC, its subsidiaries, d/b/as, and all affiliated entities (including but not limited to C&B Delivery Service, Inc.), and each of its past or present officers, directors, employees, and agents which could be jointly liable with Defendant for the claims alleged.

In addition, the proposed settlement includes the settlement of claims for civil penalties under the PAGA. If you worked for Temco from February 24, 2021, through June 9, 2023, you are a PAGA Aggrieved Employee. PAGA Aggrieved Employees will fully release and discharge Defendant and the Released Parties from any and all claims that were or reasonably could have been alleged based on the claims, facts and/or allegations that were contained in Plaintiffs' PAGA Letters and the operative complaints of the Lawsuits. This release will be for the period of time between February 24, 2021, through June 9, 2023 ("PAGA Period").

If you would like to see the settlement documents or complaints on file, you can check www.INSERT.com, the Court's website, or contact Class Counsel. Directions for accessing the Court's website are outlined in Section 15 of this notice. Class Counsel's information is outlined in Section 4 of this notice.

9. *How Much is the Settlement?*

The total maximum amount that Temco is required to pay under this settlement is \$1,200,000. This amount is referred to as the "Gross Settlement Amount." The Gross Settlement Amount includes the following amounts: (1) approximately \$615,040 for disbursement to Class Members who do not request to be excluded from the settlement; (2) \$10,000 each to Plaintiffs Yovanik Flores, Hung Nguyen, and Diego Bedoya Moreno for their efforts in bringing this action; (3) costs to administer the settlement – meaning costs associated with mailing this notice to employees and costs associated with sending out settlement checks – to the Settlement Administrator, Phoenix Class Action Administration Solutions, which will not to exceed \$30,000; (3) payment of \$56,250 to the Labor and Workforce Development Agency and payment of \$18,750 to PAGA Aggrieved Employees pursuant to the Private Attorneys' General Act of 2004; and (4) payment to Class Counsel in an amount not to exceed \$399,960 (33 1/3% of the Gross Settlement Amount) in attorneys' fees for investigating the facts of the case, litigating the case, and negotiating the settlement, and an amount not to exceed \$50,000 for actual costs spent litigating this case. All of these payments are subject to Court approval.

The Court will not approve any of these requests until the Final Fairness Hearing. If the any of the amounts awarded are less than the amounts requested, the difference shall become part of the amount available for distribution to employees who do not request to be excluded from the settlement.

10. *How Much Can I Expect to Receive from the Settlement?*

Each employee who does not request to be excluded from the settlement will be provisionally assigned an award amount based on his or her tenure as part of the Class. To arrive at this figure, Temco will provide the Settlement Administrator with data showing the number of Workweeks credited to each Class Member during the Class Period. The Settlement Administrator will then calculate the total number of Workweeks worked by all Participating Class Members during the Class Period ("Total Workweeks"). To determine the Individual Settlement Payment for each Participating Class Member, the Settlement Administrator will (1) divide each Participating Class Member's respective Workweeks by the Total Workweeks, and (2) multiply the resulting figure by the Net Settlement Amount. One day worked in a given week will be credited as a workweek for purposes of this calculation. Therefore, your settlement payment ties directly to the number of workweeks you worked for Temco between April 13, 2017, through June 9, 2023.

Although your exact settlement share cannot be precisely calculated until employees have had the opportunity to request to be excluded from the settlement, based upon the calculation formula above, your approximate share of the settlement is: \$ [REDACTED] (based on Temco's data which shows you worked # of workweeks between April 13, 2017, through June 9, 2023).

Please note that under the law, the case can only go back four years from the date it was filed. This means the case can go back to April 13, 2017. If you began your employment prior to April 13, 2017, this lawsuit can only compensate you for the weeks you worked for Temco on or after April 13, 2017. In addition, if you released claims through a prior settlement, you will be entitled to the number of workweeks you worked after the end of the prior settlement period.

If you believe the number of workweeks attributed to you is incorrect, you must notify the Settlement Administrator by mail or telephone no later than [REDACTED], explaining the basis for the dispute and must produce any supporting documentation showing that the workweeks credited to you are inaccurate. In response to a dispute submitted by a Class Member, Temco will review its records, the documentation provided by the Class Member, and shall provide information to the Settlement Administrator in response to any such disputed claim. The Settlement Administrator will make an initial determination about any disputes submitted. The Court shall have the right to review any decision by the Settlement Administrator regarding disputes.

You may also be entitled to a payment for your release of PAGA claims if you worked for Temco on or after February 24, 2021, through June 9, 2023. If you worked for Temco during this time period you are a PAGA Aggrieved Employee. Your payment as a PAGA Aggrieved Employee is \$ [REDACTED] (based on Temco's data which shows you worked # of pay periods between February 24, 2021, through June 9, 2023). If you submit a dispute, as outlined in the paragraph above, the initial determination made by the Settlement Administrator, subject to Court review, will also apply to the number of pay periods you are attributed to have worked as a PAGA Aggrieved Employee.

11. Will Taxes be Taken Out of My Settlement Share?

Yes, twenty percent (20%) of each settlement payment is intended to settle employees' claims for unpaid wages. This portion of your settlement share will be reduced by applicable payroll tax withholdings and deductions. Temco will pay the employer's share of legally required payroll taxes separately and outside of the settlement. The Settlement Administrator will issue you an IRS Form W-2 with respect to this portion of your settlement share.

Eighty percent (80%) of each settlement payment is intended to settle employees' claims for interest and penalties. This portion will not be reduced by payroll tax withholding and deductions. The Settlement Administrator will issue you an IRS Form 1099 with respect to this portion of your settlement share.

Payments to PAGA Aggrieved Employees will be allocated as 100% penalties. This portion will not be reduced by payroll tax withholding and deductions. The Settlement Administrator will issue you an IRS Form 1099 with respect to this portion of your settlement share.

12. When Can I Expect to Receive Money from the Settlement?

If you do not request to be excluded from the settlement, you should receive your settlement check approximately two months after the settlement becomes final. The settlement becomes final when the settlement can no longer be appealed, or, if there are no objectors and no plaintiffs in intervention at the time the Court grants final approval of the settlement, the date the Court enters judgment granting final approval of the settlement. As such, if there are no objections to the settlement, you should receive your settlement check approximately two months after the date of the Final Fairness Hearing, listed in Section 3 of this notice.

Please note that you must cash or deposit your settlement check within 180 calendar days after the check is mailed to you. If you have not cashed or redeemed your check within 90 days after it was mailed, the Settlement Administrator will send you a reminder postcard indicating that unless the check is redeemed or deposited in the next 90 days, it will expire and become non-negotiable. If your check was lost or misplaced, please contact the Settlement Administrator. If any checks remain uncashed or not deposited by the expiration of the 180-day period after mailing, they will be deemed void and of no further force and effect. This means that you will not be able to cash or redeem your settlement check 180 days after its issuance. The funds from settlement checks that are voided will be distributed to a *cy pres* recipient. The *cy pres* recipient shall be The United Way, a non-profit organization that supports projects that benefit employees and applicants throughout the State of California.

13. How Will the Attorneys Be Paid?

The Court-appointed attorneys for Plaintiffs and the Class will be paid from the Gross Settlement Amount, subject to Court approval, in an amount not to exceed 33 1/3% of the Gross Settlement Amount (\$399,960) in attorneys' fees and an amount not to exceed \$50,000 in actual litigation costs. Temco has paid and will continue to pay all of its own attorneys' fees and costs.

14. How Will the Class Representative Be Paid?

Plaintiffs Yovanik Flores, Hung Nguyen, and Diego Bedoya Moreno will also be paid, subject to Court approval, an amount not to exceed \$10,000, each, in consideration for bringing this case, for the time and effort they put into litigating this case and for conferring a benefit upon other employees and the State of California.

15. What do I do if I Need More Information or Have Questions?

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at www.INSERT.com. You can also receive a copy of the settlement agreement by contacting Class Counsel. You may also ask Class Counsel for a copy of any of the case documents to be mailed to you free of charge. Please refer to the *Temco* Class Action Settlement when calling the settlement administrator or Class Counsel.

The pleadings and other records in this litigation may also be examined online on the Alameda County Superior Court's website, known as "eCourt Public Portal,"

at <https://eportal.alameda.courts.ca.gov>. After arriving at the website, click the “Search” tab at the top of the page, then select the Document Downloads link, enter the case number (RG21096517), and click “Submit.” Images of every document filed in the case may be viewed at a minimal charge. You may also view images of every document filed in the case free of charge by using one of the computer terminal kiosks available at each court location that has a facility for civil filings. Two of the court houses you can visit to do this are the René C. Davidson Courthouse located at 1225 Fallon Street, Oakland, California 94612, and the Hayward Hall of Justice located at 24405 Amador Street, Hayward, California 94544. To view the Register of Actions, go to the “Search” tab at the top of the page, then select the “Search by Case Number,” enter the case number (RG21096517), select “Search,” and click the link to the case name. You will see the Register of Actions and more.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

Exhibit 9

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA**

YOVANIK FLORES, HUNG NGUYEN,
and DIEGO BEDOYA MORENO on
behalf of themselves, all others similarly
situated, and on behalf of the general
public,

Plaintiffs,

v.

HOME EXPRESS DELIVERY
SERVICE, LLC DBA TEMCO
LOGISTICS; and DOES 1-100,

Defendants.

Case No. RG21096517
(Related Case No. RG21100509)

**AMENDED [PROPOSED] ORDER
GRANTING PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT,
CONDITIONAL CERTIFICATION,
APPROVAL OF CLASS NOTICE, SETTING
OF FINAL APPROVAL HEARING DATE**

Date: July 18, 2023
Time: 3:00 p.m.
Judge: Hon. Brad Seligman
Dept.: 23
Reservation ID: 062533213396

Filed: April 13, 2021
Trial: None Set

Deleted: June 13
Deleted: 9:15 a

1 **I. RECITALS**

2 This action is currently pending before this Court as a putative class action and representative
3 action (the “Action”). Plaintiffs Yovanik Flores, Hung Nguyen, and Diego Bedoya Moreno have applied
4 to this Court for an order preliminarily approving the settlement of the Action in accordance with the Class
5 and Representative Action Settlement Agreement and Release of Claims (the “Agreement”) and the
6 Addendum to Class and Representative Action Settlement Agreement and Release of Claims (the
7 “Addendum”), which together with the exhibits annexed thereto, sets forth the terms and conditions for a
8 proposed settlement and entry of judgment upon the terms and conditions set forth therein. The Court has
9 read and considered the Memorandum of Points and Authorities in support of Plaintiffs’ Motion for
10 Preliminary Approval of Class and PAGA Action Settlement, Conditional Certification, Approval of Class
11 Notice, Setting of Final Approval Hearing Date and the declarations submitted therewith. The Court has
12 also considered the Supplemental Brief in Support of Plaintiffs’ Motion for Preliminary Approval. For
13 purposes of this Order, the Court adopts all defined terms as set forth in the Agreement.

Deleted: the

14 **II. FINDINGS**

15 After review and consideration of the Agreement, the Addendum, and Plaintiffs’ motion for
16 preliminary approval and the papers in support thereof, the Court hereby finds and orders as follows:

- 17 1. The Agreement falls within the range of reasonableness meriting possible final approval.
- 18 2. The certification of the Class solely for purposes of settlement is appropriate in that: (1)
19 the Class Members are ascertainable and so numerous that joinder of all Class Members is impracticable;
20 (2) there are questions of law and fact common to the Class which predominate over any individual
21 questions; (3) Plaintiffs’ claims are typical of the claims of the Class; (4) Plaintiffs and their Counsel have
22 fairly and adequately represented and protected the interests of the Class; and (5) a class action, and class-
23 wide resolution of the action via class settlement procedures is superior to other available methods for the
24 fair and efficient adjudication of the controversy.
- 25 3. The Agreement, and the obligations of the Parties as set forth therein, is fair, reasonable,
26 and is an adequate settlement of this case and is in the best interests of the Class in light of the factual,
27 legal, practical, and procedural considerations raised by this case.

- 28 4. Plaintiffs do not have any conflicts that would preclude them from serving as Class

Representatives, and their appointment comports with the requirements of due process.

5. Class Counsel does not have any conflicts that would preclude them from acting as Class Counsel, and they meet the requirements for appointment as Class Counsel and the requirements of due process.

6. The notice of proposed class action settlement attached hereto as **Exhibit A** complies with due process because the notice of proposed class action settlement is reasonably calculated to adequately apprise Class Members of: (i) the pending lawsuit; (ii) the terms of the proposed Agreement; and (iii) their rights, including the right to either participate in the settlement, exclude themselves from the settlement, or object to the settlement. Plaintiffs' proposed plan for class notice and settlement administration is the best notice practicable under the circumstances.

III. ORDER

The Court having considered the papers submitted in support of the motion for preliminary approval, HEREBY ORDERS THE FOLLOWING:

1. The Court finds on a preliminary basis that the provisions of the Agreement are fair, just, reasonable, and adequate and, therefore, meet the requirements for preliminary approval.

2. The following Class is conditionally certified for purposes of settlement only: All non-exempt, hourly employees of Defendant in the State of California from April 13, 2017, through June 9, 2023, who did not previously release their claims against Defendant.

3. The Agreement provides for the following release as to Participating Class Members,¹ which is hereby approved conditionally: Participating Class Members will release all claims that were pled or any claims that could have been pled in the operative complaints based upon the facts alleged in the Lawsuits including, but not limited to: (1) Failure to Pay All Straight Time Wages; (2) Failure to Pay All Overtime Wages; (3) Failure to Authorize and Permit Rest Periods; (4) Failure to Provide Meal Periods; (5) Failure to Provide Accurate and Complete Wage Statements; (6) Failure to Timely Pay Wages Owed at Termination (Labor Code §§ 201, 202, and 203); (7) Failure to Reimburse Business Expenses; (8) Violation of Unfair Competition Law based upon violations of the California Labor Code sections set

¹ Participating Class Members are Class Members who do not submit a valid and timely request to exclude themselves from the Settlement.

1 forth herein; (9) Violation of the Temperature Control Guidelines of the California Wage Orders; and (10)
2 Failure to Timely Pay Wages Due and Payable During Employment. The release will be as to the Released
3 Parties. The release shall be for the Class Period.

4 4. This settlement also releases claims under the Private Attorneys General Act of 2004
5 ("PAGA"). These claims are asserted on behalf of PAGA Aggrieved Employees defined as: All non-
6 exempt, hourly employees of Defendant in the State of California who worked within the PAGA Period.
7 The PAGA Period is February 24, 2021, through June 9, 2023. PAGA Aggrieved Employees may not
8 request to be excluded from the PAGA portion of the settlement, including the Released PAGA Claims.
9 All PAGA Aggrieved Employees will receive a portion of the Net PAGA Settlement Amount.

10 5. The Agreement provides for the following release as to PAGA Aggrieved Employees,
11 which is hereby approved conditionally: Each PAGA Aggrieved Employee shall fully release and
12 discharge Defendant and the Released Parties from any and all claims that were or reasonably could have
13 been alleged based on the claims, facts and/or allegations that were contained in Plaintiffs' PAGA Letters
14 and the operative complaints of the Lawsuits. The release will be as to the Released Parties. The release
15 shall be for the PAGA Period.

16 6. The settlement appears to be fair, adequate and reasonable to the Class. The settlement falls
17 within the range of reasonableness and appears to be presumptively valid, subject only to any objections
18 that may be raised at the final approval hearing and final approval by this Court.

19 7. Plaintiffs Yovanik Flores, Hung Nguyen, and Diego Bedoya Moreno are conditionally
20 approved as the Class Representatives for the Class.

21 8. The proposed Service Payment Awards to Plaintiffs Yovanik Flores, Hung Nguyen, and
22 Diego Bedoya Moreno in the amounts of \$10,000, each, will be considered by the Court at the time of
23 final approval.

24 9. Mara Law Firm, PC, and Moon Law Group, PC, are conditionally approved as Class
25 Counsel for the Class.

26 10. The proposed awards of up to \$399,960 in attorneys' fees and up to \$50,000 in actual costs
27 payable to Class Counsel will be considered by the Court at the time of final approval.

28 11. A final approval hearing on the question of whether the settlement, attorneys' fees and
3

Deleted: & Yang

Deleted: A

costs to Class Counsel, and the Service Payment Award should be finally approved as fair, reasonable and adequate as to Class Members is scheduled in Department 23 on the date and time set forth in the Implementation Schedule below.

12. The Court confirms Phoenix Settlement Administrators as the Settlement Administrator.

13. The proposed payment of up to \$30,000 to Phoenix Settlement Administrators for its services as the Settlement Administrator will be considered by the Court at the time of final approval.

14. The Court also hereby conditionally approves and orders payment from the Gross Settlement Amount of the PAGA Payment of \$75,000 (75% of which shall be paid to the Labor and Workforce Development Agency, and 25% of which shall be distributable to PAGA Aggrieved Employees).

15. The Court approves, as to form and content, the Notice of Class Action Settlement in substantially the form attached hereto as **Exhibit A**. The Court approves the procedure for Class Members to participate in, to opt out of, and to object to, the settlement as set forth in the notice.

16. The Court directs the mailing of the notice of class action settlement by first class mail to Class Members in English and Spanish languages in accordance with the Implementation Schedule below. The Court finds the dates selected for the mailing and distribution of the notice, as set forth in the Implementation Schedule, meet the requirements of due process and provide the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

IV. IMPLEMENTATION SCHEDULE

The Court orders the following Implementation Schedule for further proceedings:

Deadline for Defendant to submit Class Data to Settlement Administrator:	<u>August 1, 2023</u> [14 calendar days of entry of this Order]
Deadline for Settlement Administrator to Mail Class Notices to Class Members	<u>August 15, 2023</u> [14 calendar days after receipt of the Class Data]

Deleted: June 27

Deleted: July 11

Deadline for Class Members to Postmark Requests for Exclusion, Objections, or Disputes (“Response Deadline”)	<u>October 14, 2023</u> [60 calendar days after mailing of Notice to Class Members]
Deadline for Class Members with Re-Mailed Class Notices to Postmark Requests for Exclusion and Objections	<u>October 28, 2023</u> [14 calendar days after Response Deadline]
Deadline for Class Counsel to file a Motion for Final Approval	<u>November 8, 2023</u> [16 court days before Final Approval Hearing]
Deadline to Provide the Court with the Settlement Administrator’s Declaration Outlining Requests for Exclusion, Objections, and Disputes	<u>November 8, 2023</u> [16 court days before Final Approval Hearing]
Final Approval Hearing and Final Approval	Tuesday, <u>December 5, 2023</u> , at <u>3:00 p.m.</u>

Deleted: September 9

Deleted: September 23

Deleted: October 9

Deleted: October 9

Deleted: October 31

Deleted: 9:15 a

IT IS SO ORDERED.

Dated: _____, 2023

By _____
Honorable Brad Seligman
Alameda Superior Court Judge

Exhibit 10