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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)

**DECLARATION OF DAVID MARA, ESQ.,
IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF
CLASS AND PAGA ACTION SETTLEMENT,
CONDITIONAL CERTIFICATION,
APPROVAL OF CLASS NOTICE, SETTING
OF FINAL APPROVAL HEARING DATE**

Date: June 13, 2023
Time: 9:15 a.m.
Judge: Hon. Brad Seligman
Dept.: 23
Reservation ID: 062533213396

Filed: April 13, 2021
Trial: None Set

1 I, DAVID MARA, declare as follows:

- 2 1. I am President of Mara Law Firm, PC, and counsel of record for Plaintiff and the putative
3 class in this matter. I am duly admitted to practice before all the courts of the state of
4 California. The following facts are within my personal knowledge and, if called to testify,
5 I could and would competently testify thereto.
- 6 2. I have been practicing law in California since 2004.
- 7 3. I extensively handle employment cases which involve violations of the California Labor
8 Code and Industrial Welfare Commission Wage Orders, such as wage and hour class
9 actions and cases alleging violations of the Private Attorneys General Act of 2004
10 (“PAGA”).
- 11 4. I have litigated over three hundred and fifty (350) class action and PAGA lawsuits. I have
12 been litigating wage and hour class action lawsuits for approximately sixteen (16) years. I
13 graduated from California Western School of Law and was admitted to practice law in
14 California in May 2004. I primarily handle wage and hour class actions and PAGA actions.
15 I am the President of Mara Law Firm, PC and was a partner of The Turley & Mara Law
16 Firm, APLC.
- 17 5. I was co-class counsel in *Hohnbaum v. Brinker Restaurant Corp.* (San Diego County
18 Superior Court, Case No. GIC834348) which was the underlying case in the California
19 Supreme Court’s landmark decision in *Brinker Restaurant Corp. v. Superior Court* (2012)
20 53 Cal.4th 1004, in which the California Supreme Court delineated the scope of employer
21 obligations to provide, and employee rights to receive, meal and rest periods under
22 California law. I also wrote the Amicus Curiae brief on behalf of CAOC in the decision by
23 the California Supreme Court in *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th
24 257 (rest breaks must be duty-free and time spent being on call during rest breaks is not
25 considered duty-free). I also wrote the Amicus Curiae brief on behalf of CAOC in the
26 matter currently pending before the California Supreme Court, *Frlekin v. Apple, Inc.* (Cal.
27 S. Ct. No. S243805).
- 28 6. I have been named as class counsel in the following certified cases as a result of the court

1 granting a motion for class certification: *Mario Norona v. B&G Delivery System, Inc.*
2 (Sacramento County Superior Court, Case No. 34-2015-00186826-CU-OE-GDS); *Jerald*
3 *Schroeder v. YRC, Inc.; et al.* (Central District of California, Case No. 12-cv-01374-TJH);
4 *John Martin v. Sysco Corporation, et al.* (Eastern District of California, Case No. 1:16-cv-
5 00990-DAD-SAB); *William Smith v. Werner Enterprises, Inc. d/b/a C.L. Werner, Inc.*
6 (District of Nebraska, Case No. 8:15-cv-287); *Thomas Perez v. City of San Diego* (San
7 Diego County Superior Court, Case No. 37-2014-00016621-CU-OE-CTL); *Denson Sales,*
8 *et al. v. United Road Services, Inc. et al* (Northern District of California, Case No. 19-cv-
9 08404-JST), *Eric Mendez v. M&N Consulting, Inc. dba A-Line Messenger Service* (San
10 Bernardino County Superior Court, Case No. CIVDS1923624); and *Denson Sales v.*
11 *Professional Auto Transport, Inc. et al.* (San Bernardino County Superior Court, Case No.
12 CIVDS2010153).

- 13 7. I have also been named as class counsel in numerous cases during the settlement process.
14 Here is a non-exhaustive list of cases where I have been named as class counsel in cases
15 during the settlement process: *Kenneth Cox v. 3PL Worx, et al.* (Yolo County Superior
16 Court, Case No. CV-18-100); *Brian Davidson v. A&B Trucking Services, Inc.* (Kern
17 County Superior Court Case No. BCV-16-102985); *Alex Vega, et al. v. Advance Beverage*
18 *Co., Inc.* (Kern County Superior Court, Case No. BCV-16-100848); *Jaime Ruiz v. Altura*
19 *Centers for Health* (Kern County Superior Court, Case No. BCV-19-101577); *George*
20 *Zamudio v. AmeriPride Service, Inc.* (Alameda County Superior Court, Case No.
21 RG1809666); *Richard Hendricks v. Antonini Freight Express, Inc.* (San Joaquin County
22 Superior Court, Case No. STK-CV-UOE-2016-6999); *Alton Davis v. Apria Healthcare*
23 *Group, Inc.* (San Diego County Superior Court, Case No. 37-2014-00004724-CU-OE-
24 CTL); *Alan Atchison v. Ashley Furniture Industries, Inc., et al.* (Central District of
25 California, Case No. 17-cv-00528-JAK-SP); *Bernard Payton v. Atech Logistics, Inc.*
26 (Sonoma County Superior Court, Case No. SCV 258595); *Ramon Jenkins v. Compass*
27 *Group USA, Inc., et al.* (Yolo County Superior Court, Case No. CVCV-18-747); *Timothy*
28 *Spikes, et al. v. Bear Trucking, Inc., et al.* (San Bernardino County Superior Court, Case

No. CIVDS1715151); *Joshua Turpen v. Benjamin's Transfer Inc.* (Solano County Superior Court, Case No. FCS048845); *Cesar Mendoza v. Bi-Rite Food Service, Inc.* (San Mateo County Superior Court, Case No. 17CIV02044); *Terrance Bailey v. Blue Apron, LLC; et al.* (Northern District of California, Case No. 18-cv-07000-VC); *Jeffrey Weast v. California Aseptic Beverages, LLC* (San Bernardino County Superior Court, Case No. CIVDS1825256); *Michael Valentich v. Hub Construction Specialties, Inc.* (San Bernardino County Superior Court, Case No. JCCPDS4893); *Jose De Jesus Ortega Velazquez v. Hunter Landscape, Inc.; et al.* (San Bernardino County Superior Court, Case No. CIVDS1928062); *Adrian Diaz v. Keystone Automotive Operations, Inc.* (Riverside County Superior Court, Case No. RIC1817450); *Arturo Gonzalez v. NCI Group, Inc. dba NCI Building Systems* (Eastern District of California, Case No. 18-cv-00948-AWI-SKO); *Larry Perez v. The Nielsen Company (US), LLC* (Orange County Superior Court, Case No. 30-2021-01194324-CU-OE-CXC); *Erik Martinez v. Patrick Industries, Inc.* (San Bernardino County Superior Court, Case No. CIVDS2009663); *Randolph Fitch v. Shaw Industries, Inc.; et al.* (San Bernardino County Superior Court, Case No. CIVSB2024674); *Joshua Rael v. Intercontinental Hotels Group Resources, Inc.* (Los Angeles County Superior Court, Case No. 19STCV16010); and *Aaron Romero v. Vitro Flat Glass, LLC* (Kern County Superior Court, Case No. BCV-21-101357).

8. Jill Vecchi is a partner at Mara Law Firm, PC. She solely handles wage and hour class actions and PAGA actions. Ms. Vecchi graduated from Santa Clara University School of Law and was admitted to practice law in California in December 2014 and received her undergraduate degree from University of California, Riverside in 2010. Ms. Vecchi has been litigating wage and hour class actions for almost eight (8) years and has handled over one hundred (100) class action and PAGA lawsuits.

9. Ms. Vecchi has been named as class counsel in the following certified cases as a result of the court granting a motion for class certification: *Mario Norona v. B&G Delivery System, Inc.* (Sacramento County Superior Court, Case No. 34-2015-00186826-CU-OE-GDS); *Jerald Schroeder v. YRC, Inc.; YRC Worldwide, Inc.* (Central District of California, Case

No. 12-cv-01374-TJH); *John Martin v. Sysco Corporation; Sysco Central California, Inc.* (Eastern District of California, Case No. 1:16-cv-00990-DAD-SAB); and *Denson Sales, et al. v. United Road Services, Inc. et al* (Northern District of California, Case No. 19-cv-08404-JST).

10. Ms. Vecchi has also been named as class counsel in numerous cases during the settlement process. Here is a non-exhaustive list of cases where Ms. Vecchi has been named as class counsel in cases during the settlement process: *Kenneth Cox v. 3PL Worx, et al.* (Yolo County Superior Court, Case No. CV-18-100); *Brian Davidson v. A&B Trucking Services, Inc.* (Kern County Superior Court Case No. BCV-16-102985); *Alex Vega, et al. v. Advance Beverage Co., Inc.* (Kern County Superior Court, Case No. BCV-16-100848); *Alton Davis v. Apria Healthcare Group, Inc.* (San Diego County Superior Court, Case No. 37-2014-00004724-CU-OE-CTL); *Timothy Spikes, et al. v. Bear Trucking, Inc., et al.* (San Bernardino County Superior Court, Case No. CIVDS1715151); *Terrance Bailey v. Blue Apron, LLC; et al.* (Northern District of California, Case No. 18-cv-07000-VC); *Jeffrey Weast v. California Aseptic Beverages, LLC* (San Bernardino County Superior Court, Case No. CIVDS1825256); *Michael Valentich v. Hub Construction Specialties, Inc.* (San Bernardino County Superior Court, Case No. JCCPDS4893); *Jose De Jesus Ortega Velazquez v. Hunter Landscape, Inc.; et al.* (San Bernardino County Superior Court, Case No. CIVDS1928062); *Adrian Diaz v. Keystone Automotive Operations, Inc.* (Riverside County Superior Court, Case No. RIC1817450); *Arturo Gonzalez v. NCI Group, Inc. dba NCI Building Systems* (Eastern District of California, Case No. 18-cv-00948-AWI-SKO); *Larry Perez v. The Nielsen Company (US), LLC* (Orange County Superior Court, Case No. 30-2021-01194324-CU-OE-CXC); *Erik Martinez v. Patrick Industries, Inc.* (San Bernardino County Superior Court, Case No. CIVDS2009663); *Randolph Fitch v. Shaw Industries, Inc.; et al.* (San Bernardino County Superior Court, Case No. CIVSB2024674); *Joshua Rael v. Intercontinental Hotels Group Resources, Inc.* (Los Angeles County Superior Court, Case No. 19STCV16010); and *Aaron Romero v. Vitro Flat Glass, LLC* (Kern County Superior Court, Case No. BCV-21-101357).

11. A class action was filed by Plaintiffs Yovanik Flores and Hung Nguyen in the Alameda County Superior Court on April 13, 2021 (Case No. RG21096517). On May 3, 2021, Plaintiffs Flores and Nguyen filed a First Amended Complaint. The First Amended Complaint alleges the following causes of action against Defendant: (1) failure to pay all straight time wages; (2) failure to pay all overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) knowing and intentional failure to comply with itemized employee wage statement provisions; (6) failure to pay all wages at the time of termination of employment; and (7) violation of Unfair Competition Law.

12. On February 24, 2021, Plaintiffs Yovanik Flores and Hung Nguyen provided notice to the LWDA in accordance with the PAGA. A copy of Plaintiffs Flores and Nguyen's notice that was submitted to the LWDA is attached hereto as **Exhibit 2**. On May 24, 2021, Plaintiffs Flore and Nguyen filed a complaint in the Alameda County Superior Court alleging that Defendant violated the PAGA (Case No. RG21100509). Plaintiffs Flores and Nguyen's complaint alleges the following violations of the PAGA against Defendant: (1) failure to pay all straight time wages; (2) failure to pay all overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) knowing and intentional failure to comply with itemized employee wage statement provisions; (6) failure to pay all wages at the time of termination of employment.

13. On April 14, 2023, Plaintiffs Flores and Nguyen filed a Second Amended Complaint in the Alameda County Superior Court. The Second Amended Complaint adds Plaintiff Moreno and his counsel into this action as well as Plaintiffs' claims for civil penalties under PAGA and claims for Temco's failure to indemnify necessary business expenses, violation of temperature control guidelines, and failure to timely pay wages due and payable during employment. Plaintiffs also filed an amended notice to the LWDA in accordance with the PAGA. A copy of Plaintiffs' amended notice that was submitted to the LWDA is attached hereto as **Exhibit 3**.

14. After filing, the Parties engaged in formal and informal discovery. Plaintiffs served one set of special interrogatories and one set of requests for production of documents on

1 Defendant, which Defendant responded to. In addition, Defendant served form
2 interrogatories and requests for production of documents on Plaintiffs, which Plaintiffs
3 responded to. This discovery led to Defendant producing hundreds of pages of documents
4 and Excel files that contained a sampling of Class Members' time and wage records and
5 the hire and termination dates for all Class Members. Included within these documents are
6 Defendant's wage and hour policies, including its meal and rest period policies. Plaintiffs
7 had an expert conduct an analysis of the time and wage records.

8 15. The Parties attended an all-day mediation with wage and hour mediator Michael Dickstein
9 on August 31, 2022. A settlement was not reached at mediation. With the help of Mr.
10 Dickstein, the Parties continued their settlement discussions post-mediation and were
11 ultimately able to reach a settlement. The Parties then met and conferred over all the terms
12 of the settlement and finalized their settlement in the Parties' Agreement. The Parties'
13 Agreement is attached hereto as **Exhibit 1**.

14 16. Plaintiffs allege that Defendant failed to provide employees with rest periods in accordance
15 with California law because Plaintiff asserts that employees were not provided with net
16 ten-minute rest periods, were not provided with duty-free rest periods, and were not
17 provided with a fourth rest period in shifts of over fourteen hours. If Plaintiffs were to
18 prevail on this claim for the entire class period, Plaintiffs and the Class Members would be
19 entitled to the following maximum potential damages: \$7,387,315 (400,831 shifts x \$18.43
20 average hourly rate = \$7,387,315.33).

21 17. Plaintiffs' rest period claim is subject to risks at certification and on the merits. As noted
22 above, Plaintiffs allege that employees are not provided with net ten-minute rest periods,
23 duty-free rest periods, or fourth rest periods in shifts of over fourteen hours. Plaintiffs' rest
24 period claim is subject to risks at class certification. Defendant contends that the policies
25 in its written policies are lawful and that employees are provided with rest periods in
26 compliance with California law. Defendant argues that its policy does not need to include
27 the word "net" and that it provides employees with net ten-minute rest periods. Defendant
28 contends that it informs employees that they are entitled to ten minutes of rest at a suitable

1 rest area and that the time it takes to and from a suitable rest area is not included in
2 employees' rest period time. Defendant also argues that it provides employees with 5-
3 minute grace periods for rest periods to ensure employees receive full ten-minute rest
4 periods. If litigation were to continue, Defendant asserts that it would provide declarations
5 from employees affirming that they received full rest periods and stating that employees
6 rest periods were fifteen, not ten, minutes in length. In addition, Defendant contends that
7 employees were relieved of all duties and employer controls during meal periods.
8 Defendant also contends that it provides employees with a fourth rest period if they work
9 more than fourteen hours in a shift. As such, Defendant argues that Plaintiff cannot show
10 that employees did not receive fourth rest periods in accordance with California law.
11 Should litigation continue, and as noted above, Defendant contends that it will provide
12 declarations which show that employees did receive compliant rest periods. Defendant
13 asserts that at certification the Court would have to ask each employee whether or not they
14 received a rest period in compliance with California law which would defeat certification
15 because individualized issues would then predominate.

16 18. This claim is also subject to risks on the merits. Defendant contends that its rest period
17 policies and practices are lawful. If the case is certified, Defendant would file a motion for
18 summary judgment on this issue. There is a risk that the Court could agree with Defendant,
19 which would eliminate all exposure under this claim. In addition, Defendant asserts that if
20 Plaintiffs were only to prevail on their claim that Defendant failed to provide employees
21 with fourth rest periods when they worked shifts of over fourteen hours, a premium would
22 only be owed in 880 shifts. Defendant contends that this would significantly reduce
23 Plaintiffs' maximum exposure.

24 19. Based on these arguments, Plaintiffs estimate that they have a 50% chance of prevailing
25 on this claim. Therefore, Plaintiffs estimate the realistic value of this claim as
26 \$3,693,657.50 (50% of \$7,387,315).

27 20. Plaintiffs allege that Defendant failed to provide employees with meal periods in
28 accordance with California law because Plaintiffs assert that Defendant's time records

1 show meal period violations. If Plaintiffs were to prevail on this claim for the entire class
2 period, Plaintiffs and the Class Members would be entitled to the following maximum
3 potential damages: \$2,983,319 (161,873 shifts with meal period violations x \$18.43
4 average hourly rate= \$2,983,319.39).

5 21. Plaintiffs rely on *Donohue v. AMN Services, Inc.* (2021) 11 Cal.5th 58, 74, to show that
6 Defendant does not provide meal periods in conformity with California law. Plaintiffs
7 assert that Defendant's time records show that meal periods were late, short, or missed
8 raising a rebuttable presumption that these meal periods were not provided in compliance
9 with California law. Defendant contends that it can rebut the presumption that arises under
10 *Donohue v. AMN Services, Inc.* Defendant asserts that at all times, it maintained legally
11 compliant meal period policies, and provided its employees the opportunity to take a meal
12 break as required by *Brinker*. Defendant asserts that the time records show over a 75%
13 compliance rate for meal periods. Defendant asserts that to the extent an employee did not
14 take a legally compliant meal period, it can show that employees voluntarily chose to take
15 a short or late meal period or to skip the meal period entirely in these shifts. There is a risk
16 that Defendant could meet its burden of proof in showing this by providing evidence that
17 employees were provided with proper meal periods, and it was the employee's choice to
18 take a late or short meal period or forgo taking a meal period altogether. Defendant asserts
19 that its high, greater than 75% compliance rate is indicative of lawfully provided meal
20 periods. Defendant contends that this percentage is actually higher because this percentage
21 does not take into account shifts between 5 and 6 hours that are covered by meal period
22 waivers. If these shifts are taken into consideration, Defendant asserts that the percentage
23 of compliant meal periods would be much higher. Further, Defendant contends that even
24 if Plaintiffs were to prevail, the potential damages would be lower than what Plaintiffs
25 calculate because employees would not be entitled to meal period premiums for shifts in
26 which a premium was already paid.

27 22. For all of these reasons, Plaintiffs estimate that they have a 20% chance of prevailing on
28 this claim at certification and on the merits. Therefore, Plaintiffs estimate the realistic value

of this claim as \$596,663.80 (20% of \$2,983,319).

23. Plaintiffs allege that Defendant failed to provide accurate itemized wage statements. The statute of limitations for Plaintiffs' wage statement claim is one year. Under California Labor Code § 226(e)(1), the damages for breach of this section are fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000). If Plaintiffs were to prevail on this claim and assume that all employees who worked within the wage statement statute of limitations are entitled to the maximum penalty of \$4,000, the damages would be \$10,484,000 (\$4,000 x 2,621 employees = \$10,484,000).

24. Plaintiffs' wage statement claim is subject to risks on the merits. Plaintiffs allege that Defendant failed to provide accurate itemized wage statements because Defendant's wage statements fail to itemize the legal entity that is the employer and fail to itemize all regular and overtime hours. Defendant argues that California law does not expressly require that a company's complete name or the name registered with the California Secretary of State be included on wage statements. In addition, Defendant argues that employees can ascertain the required information, such as hours worked, using simple math. Defendant relies on cases which hold that "[w]age statements comply with § 226(a) when a plaintiff employee can ascertain the required information by performing simple math, using figures on the face of the wage statement." *Hernandez v. BCI Coca-Cola Bottling Co.* (9th Cir. 2014) 554 Fed. Appx. 661, 662 (citing *Morgan v. United Retail Inc.* (2010) 186 Cal.App.4th 1136).

25. Defendant also asserts that any violation of California Labor Code § 226 was not "knowing and intentional." Defendant further contends that employees cannot show that they have suffered an injury as a result of any potential violation of California Labor Code § 226. Should litigation continue, the Parties would file cross motions for summary judgment on these issues. This claim is subject to the risk that the Court finds that entity name on Defendant's wage statements complies with California Labor Code § 226 and that employees can determine the hours worked by using simple math. Even if the Court finds

1 in Plaintiffs' favor on this issue, this claim is still subject to the risks that the Court sides
2 with Defendant that such a violation was not "knowing and intentional", and that Plaintiffs
3 and the Class Members did not suffer any injury from this violation.

4 26. As such, Plaintiffs estimate that they have a 70% chance of prevailing on this claim at
5 certification and on the merits. Therefore, Plaintiffs estimate the realistic value of this claim
6 as \$7,338,800 (70% of \$10,484,000).

7 27. Plaintiffs allege that Defendant failed to reimburse employees for all business expenses.
8 Plaintiffs contend that Defendant owes Class Members reimbursements tools they had to
9 purchase to perform their jobs. Plaintiffs estimate that these tools cost approximately \$150.
10 If Plaintiffs were to prevail on this claim, Plaintiffs and the Class Members would be
11 entitled to the following maximum potential damages: \$438,750 (2,925 class members x
12 \$150 = \$438,750).

13 28. Plaintiffs assert that employees are required to purchase tools to perform their job duties.
14 Plaintiffs' business reimbursement claim is subject to risks at class certification and on the
15 merits. Defendant argues that it provides all necessary tools to employees and that
16 employees do not have to purchase any tools on their own. Defendant argues that there are
17 no policies, whether formal or informal, that requires employees to do so. As such,
18 Defendant argues that at certification, the Court would have to ask each employee whether
19 or not they thought they had to purchase tools to perform their job duties. Defendant
20 contends that doing so would defeat certification. In addition, Defendant contends that it
21 provides all necessary tools to employees and that if employees need a specific tool, they
22 can tell Defendant and Defendant will purchase it for them. As such, Defendant contends
23 there are not damages associated with this claim. Plaintiffs estimate that they have a 20%
24 chance of prevailing on this claim. Therefore, Plaintiffs estimate the realistic value of this
25 claim as \$87,750 (20% of \$438,750).

26 29. If Plaintiffs were to prevail on their meal and rest period claims, they and the Class
27 Members may also be entitled to waiting time penalties. Plaintiffs calculate the potential
28 maximum exposure under his waiting time penalties cause of action as \$7,764,374 (1,510

1 former employees in statute of limitations period x 30 days x 9.3 average shift length x
2 \$18.43 average hourly rate = \$7,764,374.70).

3 30. This claim is derivative of Plaintiffs' meal and rest period claims. Should Plaintiffs' meal
4 and rest period claims fail or not be certified, this claim would also fail. As noted above,
5 Plaintiffs' meal and rest period claims are subject to risks at certification and on the merits.
6 This claim is subject to those same risks.

7 31. Further, this claim is also subject to its own risks on the merits independent of the risks of
8 Plaintiffs' meal and rest period claims. This is because this claim has a "willful"
9 component. "Some statutory penalties are imposed only if an employers' violation was
10 'willful' or 'knowing.' . . . [S]ection 203 penalizes an employer that 'willfully' fails to pay
11 wages due under *section 201* or *202*[.]" *Amaral v. Cintas Corp. No. 2* (2008) 163
12 Cal.App.4th 1157, 1195. Defendant contends that even if Plaintiffs are successful in their
13 meal and rest period claims, they would have to prove Defendant "willfully" failed to pay
14 Class Members appropriate wages due upon separation of employment. "A willful failure
15 to pay wages within the meaning of Labor Code Section 203 occurs when an employer
16 intentionally fails to pay wages to an employee when those wages are due." Cal. Code
17 Regs. Tit. 8 § 13520; *see also Amaral, supra*, 163 Cal.App.4th at 1201 ("The settled
18 meaning of 'willful,' as used in *section 203*, is that an employer has intentionally failed or
19 refused to perform an act which was required to be done."). "However, a good faith dispute
20 that any wages are due will preclude imposition of waiting time penalties under Section
21 203." Cal. Code Regs. Tit. 8 § 13520. "A 'good faith dispute' that any wages are due occurs
22 when an employer presents a defense, based in law or fact, which would preclude any
23 recovery on the part of the employee. The fact that a defense is ultimately unsuccessful
24 will not preclude a finding that a good faith dispute did exist." *Id.*

25 32. Defendant contends that any failure to pay wages due at the separation of employment was
26 not willful. Defendant argues that it would not be liable for waiting time penalties because
27 a "good faith dispute" exists over the payment of those wages. *See* Cal. Code Regs. Tit. 8
28 § 13520; *Amaral, supra*, 163 Cal.App.4th at 1201.

1 33. Due to this, Plaintiffs estimate that they have a 40% chance of prevailing on this claim.

2 Therefore, Plaintiffs estimate the realistic value of this claim as \$3,105,749.60 (40% of
3 \$7,764,374).

4 34. Plaintiffs also seek PAGA penalties. PAGA allows the private enforcement of certain
5 California Labor Code sections relating to wage and hour violations. PAGA Section
6 2699(f)(2) reads, in part, as follows:

7 [T]he civil penalty is one hundred dollars (\$100) for each aggrieved employee per
8 pay period for the initial violation and two hundred dollars (\$200) for each
aggrieved employee per pay period for each subsequent violation.

9 Plaintiffs allege that Defendant has seven (7) violations – unlawful rest and meal periods,
10 failure to timely pay wages, failure to follow the temperature control guidelines in the
11 Wage Order, inaccurate wage statements, failure to reimburse for business expenses, and
12 waiting time penalties – of the California Labor Code sections which give rise to PAGA
13 penalties. The statute of limitations for PAGA violations go back one year. Not all of the
14 violations alleged by Plaintiffs occurred in every pay period. For example, Plaintiffs’
15 claims for waiting time penalties and failure to reimburse for business expenses only
16 occurred in one pay period (when an employee’s employment with Defendant was
17 terminated and when the employee was hired). Therefore, the maximum potential damages
18 under Plaintiffs’ PAGA claim are:

19 37,882 pay periods x 5 violations (meal, rest, wage statements, temperature control, timely
20 wages) x \$100 = \$18,941,000

21 2,621 pay periods x 2 violations (business reimbursements and waiting time penalties) x \$100 =
22 \$524,200

23 Total maximum PAGA penalties: \$19,465,200

24 35. Plaintiffs’ PAGA claims are subject to the same risks on the merits as Plaintiffs’ non-
25 PAGA claims. Section 2699, subdivision (e)(2) provides that “[i]n any action by an
26 aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or
27 (f), a court may award a lesser amount than the maximum penalty amount specified by
28

1 this part if, based on the facts and circumstances of the particular case, to do otherwise
2 would result in an award that is unjust, arbitrary, oppressive, or confiscatory.” In *Thurman*
3 *v. Bayshore Transit Management, Inc.* (“*Thurman*”) (2012) 203 Cal. App. 4th 1112, the
4 court determined that an award of the maximum penalty allowed may be unjust in
5 circumstances outside of when a defendant cannot afford to pay the maximum amount.
6 *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal. App. 4th 1112, 1135-
7 1136. The *Thurman* court found that penalties may be reduced when a defendant has taken
8 its obligations to comply with the law seriously. *Id.* Defendant argues that if the case were
9 to continue in litigation, it would be able to show that it took its obligations to comply
10 with the law seriously. As such, if Plaintiffs are able to prevail on the merits of their PAGA
11 claims, it is likely that the Court would reduce the maximum penalty allowed.

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

26 37. Plaintiffs’ PAGA claims face the risk that the Court will likely reduce Plaintiffs’ PAGA
27 exposure for the reasons outlined above. It should be noted that all Aggrieved Employees
28 are also Class Members. Plaintiffs estimate that their PAGA exposure would likely be

1 reduced by 70% to \$5,839,560 (30% of \$19,465,200).

2 38. In light of the risks Plaintiffs' claims faced, Plaintiffs and their Counsel believe that the
3 settlement amount of \$1,200,000 – with an average settlement share amount estimated at
4 \$210.27 – is a reasonable and fair settlement amount.

5 I declare under penalty of perjury under the laws of the State of California that all the
6 foregoing is true and correct.

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9 Dated: May 19, 2023

MARA LAW FIRM, PC

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David Mara, Esq.
Representing Plaintiffs

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Exhibit 1

CLASS AND REPRESENTATIVE ACTION SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

Subject to final approval by the Court, this settlement agreement (hereinafter, "Agreement") is made 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"). This Agreement is intended to settle the claims in the actions entitled *Flores; Nguyen v. Home Delivery Service, LLC dba Temco Logistics*, Alameda County Superior Court Case Nos. RG21096517 and RG21100509, and *Duran; Moreno v. Home Express Delivery Service, LLC*, Los Angeles County Superior Court Case No. 22STCV08430 (hereinafter, the "Lawsuits").

I. DEFINITIONS

In addition to the other terms defined in this agreement, the terms below have the following meaning:

1. **Actions:** refers to the lawsuits entitled *Flores; Nguyen v. Home Delivery Service, LLC dba Temco Logistics*, Alameda County Superior Court Case Nos. RG21096517 and RG21100509, and *Duran; Moreno v. Home Express Delivery Service, LLC*, Los Angeles County Superior Court Case No. 22STCV08430.
2. **Administration Costs:** refers to all costs associated with administration of the settlement contemplated by this Agreement. Administrative Costs include all fees and costs for, among other things, printing, copying, formatting, postage, envelopes, computer searches to locate addresses, calculation of payments to individual class members, calculation of applicable payroll withholdings and payroll taxes, preparation and filing of appropriate IRS Forms, any costs associated with the process for any uncashed settlement checks, and any other expenses the Settlement Administrator incurs to complete the settlement process according to the terms of this Agreement. Administrative Costs are borne in the first instance by the Settlement Administrator. The reasonable fees and costs incurred by the Settlement Administrator to administer this Settlement, which shall not exceed \$30,000.00. All Administration Costs shall be paid from the Gross Settlement Amount. If the actual administration costs are less than the amount allocated in this Agreement, or if the Court awards less than the amount requested, the difference in the amount allocated in this Agreement and the amount awarded by the Court will become part of the Net Settlement Amount for distribution to Participating Class Members.
3. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement:** The settlement agreement reflected in this document, titled "Class and Representative Action Settlement Agreement and Release of Claims."

4. **Attorneys' Cost Award:** The amount that the Court orders Defendant to pay Class Counsel for payment of actual litigation costs, which shall not exceed \$50,000.00. The Cost Award will be paid from the Gross Settlement Amount and will not be opposed by Defendant. The Cost Award is subject to Court approval. If the actual costs incurred are less than the amount allocated in this Agreement, or if the Court awards less than the amount requested, the difference in the amount allocated in this Agreement and the amount awarded by the Court will become part of the Net Settlement Amount for distribution to Participating Class Members.
5. **Attorneys' Fee Award:** The amount of attorneys' fees approved of by the Court and awarded to Class Counsel. This amount shall not exceed three-three and one-third percent (33 1/3%) of the Gross Settlement Amount. Three-three and one-third percent (33 1/3%) of the Gross Settlement Amount is \$399,960.00. The Attorneys' Fee Award shall be paid from the Gross Settlement Amount. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
6. **Class:** All non-exempt, hourly employees of Defendant in the State of California from April 13, 2017, through whichever date occurs first: June 9, 2023 or the date of preliminary approval, who did not previously release their claims against Defendant
7. **Class Counsel or Plaintiffs' Counsel:** David Mara and Jill Vecchi of Mara Law Firm, PC, and Kane Moon, Allen Feghali, and Charlotte Mikat-Stevens of Moon & Yang, APC.
8. **Class Data:** The electronic database Defendant shall deliver to the Settlement Administrator which will list the following information for each Class Member: (1) first and last name; (2) last-known mailing address; (3) last-known telephone number; (4) last-known email address (if any); (5) social security number; (6) hire and termination dates; and (7) the total number of workweeks and PAGA Pay Periods during which the Class Member performed actual work for Defendant during the Class Period. The Class Data shall be based on Defendant's payroll, personnel, and other business records.
9. **Class Member:** Each person eligible to participate in this Settlement who is a member of the Class as defined above.
10. **Class Notice:** The Notice of Class Action Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval. The Settlement Administrator will mail the Court-approved Class Notice to Class Members in English and Spanish. The Class Notice will inform Class Members that they have until the Response Deadline to either object to the Settlement or

to opt-out of the Settlement, and will state the date set for the Final Approval hearing and inform Class Members of their right to appear at the hearing. The Class Notice will also inform each Class Member of the dollar amounts of any Individual Settlement Share and/or Individual PAGA Payment Share payable to the Class Member, and the number of workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. The Class Notice will also inform Class Members of their right to challenge the number of workweeks and/or PAGA Pay Periods as set out in the Notice.

11. **Class Period:** April 13, 2017, through whichever date occurs first: June 9, 2023 or the date of preliminary approval.
12. **Class Representatives or Plaintiffs:** Yovanik Flores, Hung Nguyen, and Diego Bedoya Moreno.
13. **Class Representative Enhancement Payment(s):** The amount the Court awards to each Plaintiff as the Class Representatives, which will not exceed \$10,000.00 each. This payment shall be paid from the Gross Settlement Amount. This payment is being offered in consideration for Plaintiffs executing a general release of claims against Defendant, a release that is broader than any Participating Class Member will provide in consideration for a settlement share. This payment is also offered in consideration for the Plaintiffs' actions in conferring a benefit upon the State of California and the Class, for the time and effort Plaintiffs put into pursuing the litigation, and for assuming the risks inherent in bringing and presenting their respective Actions. If the Court awards less than the amount requested, then the other terms of this Agreement shall still remain in effect, and any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
14. **Counsel for Defendant:** Kamran Mirrafati, Laura Heyne, and Heather Horn of Seyfarth Shaw LLP.
15. **Court:** The Alameda County Superior Court.
16. **Cy Pres Beneficiary:** The United Way, which is a non-profit organization that supports projects that benefit employees and applicants throughout the State of California. The Parties agree that designating The United Way as the Cy Pres Beneficiary will "further the purposes of the underlying class proceedings in this action and will promote justice for all Californians."
17. **Defendant:** Home Express Delivery Service, LLC.
18. **Disbursement of the Settlement:** The date on which the Settlement Administrator shall disburse the Gross Settlement Amount as indicated herein. Under the terms of this Settlement Agreement, within ten (10) calendar days of Defendant funding the Gross Settlement Amount, the Settlement Administrator

shall disburse: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorneys' Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payments paid to the Class Representatives, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and Participating Class Members, as approved by the Court.

19. **Effective Date**: The date upon which, the final approval of 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.
20. **Employer Taxes**: Defendant's portion of payroll taxes as the Class Members' current or former employer (including the employer's payment of applicable FICA, FUTA, and SUI contributions, etc.) owed to the appropriate local, state, and federal taxing authorities. Defendant will pay its portion of payroll taxes separate and apart from the Gross Settlement Amount.
21. **Final Approval**: The final order entered by the Court granting final approval of this Agreement.
22. **Final Judgment**: The judgment entered by the Court upon entering its order granting Final Approval.
23. **Funding of Settlement**: Pursuant to the Settlement Administrator's electronic transfer instructions, Defendant shall wire to the Settlement Administrator the Gross Settlement Amount no later than fifteen (15) calendar days from the Effective Date, into the Qualified Settlement Fund "QSF" established by the Settlement Administrator.
24. **Gross Settlement Amount or GSA**: refers to the payment Defendant is obligated to make in connection with the Agreement: One Million Two Hundred Thousand Dollars (\$1,200,000.00). In no event shall Defendant be obligated to pay more than this amount, other than the employer's share of payroll taxes, to be calculated following filing of the Final Approval Order. Defendant's portion of payroll taxes as the Class Members' current or former employer will be paid outside of and in addition to the Gross Settlement Amount. The Gross Settlement Amount includes without limitation: (1) the Net Settlement Amount to be paid to Participating Class Members, according to each Class Member's pro-rata Individual Settlement Share; (2) the Attorneys' Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payments paid to the Class Representatives, as approved by the Court; (4) the Administration Costs, as approved by the Court; (5) the PAGA Payment to the LWDA, as approved by the Court; and (6) the PAGA Payment to individual

PAGA Aggrieved Employees. No portion of the Gross Settlement Amount will revert to Defendant for any reason.

25. **Individual PAGA Share(s):** The amount payable to each PAGA Aggrieved Employee according to their pro-rata share of the twenty-five percent (25%) allocated to the PAGA Payment.
26. **Individual Settlement Share(s):** refers to the amount calculated by the Settlement Administrator to distribute to each Class Member as consideration for the Released Class Claims. The Individual Settlement Payment shall be paid from the Net Settlement Amount. Class Members are not required to submit a claim form to receive their Individual Settlement Shares pursuant to this Agreement. Rather, Participating Class Members will receive an Individual Settlement Share automatically, without the return of a claim form.
27. **LWDA:** refers to the California Labor & Workforce Development Agency, which helps to enforce The Labor Code Private Attorneys General Act, California Labor Code section 2698, *et seq.* (“PAGA”) and which will receive the LWDA portion of the PAGA Payment.
28. **Net Settlement Amount or NSA:** The total amount of money available for payout and distribution to Participating Class Members, which is the GSA less the Attorneys’ Fee Award, Attorneys’ Cost Award, Class Representative Enhancement Payments, the PAGA Payment, and Administration Costs. The payment of employee-side taxes on the portion of the settlement shares earmarked as wages shall be paid out of the Net Settlement Amount. Thus, the Individual Settlement Shares that are paid out of the Net Settlement Amount shall be reduced by the employee’s tax liability for the share.
29. **PAGA:** The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).
30. **PAGA Aggrieved Employees:** All non-exempt, hourly employees of Defendant in the State of California who worked within the PAGA Period.
31. **PAGA Pay Period:** Any Pay Period during which a PAGA Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
32. **PAGA Payment:** The PAGA Payment consists of a total of \$75,000.00 of the Gross Settlement Amount allocated to satisfy the PAGA penalties claim. Seventy-five percent (75%) of the PAGA Payment (\$56,250.00) shall be paid to the LWDA, and twenty-five percent (25%) (\$18,750,000.00) of the PAGA Payment shall distributed to PAGA Aggrieved Employees pro rata pursuant to Labor Code §2699(i).

33. **PAGA Period**: refers to the period from February 24, 2021, through whichever date occurs first: June 9, 2023 or the date of preliminary approval.
34. **Participating Class Members**: All Class Members who do not submit a valid and timely request to exclude themselves from this Settlement.
35. **Parties**: Plaintiffs Yovanik Flores, Hung Nguyen, and Diego Bedoya Moreno, as individuals and as Class Representatives, and Defendant Home Express Delivery Service, LLC.
36. **Plaintiffs**: Yovanik Flores, Hung Nguyen, and Diego Bedoya Moreno.
37. **Preliminary Approval or Preliminary Approval Order**: The Court's order preliminarily approving the Class Action and PAGA Settlement.
38. **Released Class Claims**: 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 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.
39. **Released PAGA Claims**: Each PAGA Aggrieved Employee shall 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. The release will be as to the Released Parties. The release shall be for the PAGA Period.
40. **Released Parties**: 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.
41. **Response Deadline**: Sixty (60) calendar days from the initial mailing of the Class Notice by the Settlement Administrator to Class Members. The Response Deadline shall be the last date on which any Class Member may fax, email, or mail (a) a request for exclusion from the settlement or (b) his or her objection to the settlement. Class Members to whom Class Notices are resent after having

been returned undeliverable to the Settlement Administrator shall have an additional fourteen (14) calendar days beyond the Response Deadline.

42. **Second Amended Complaint:** Before Plaintiffs file a motion for preliminary approval, Plaintiffs will file a Second Amended Complaint adding in Plaintiff Moreno, his counsel, and his additional claims, as well as claims for: (1) Failure to Indemnify Necessary Business Expenses; (2) Violation of Temperature Control Guidelines of the California Wage Orders; (3) Failure to Timely Pay Wages Due and Payable During Employment prior to seeking settlement approval; and (4) penalties under of Labor Code § 2699, et seq. The Second Amended Complaint is attached hereto as **Exhibit B**.
43. **Settlement Administration:** No later than fourteen (14) calendar days after receiving the Class Data, the Settlement Administrator will mail the Class Notices by first class U.S. mail (“USPS”) to all Class Members at the mailing address and email address Defendant has on file for those Class Members, except that the Settlement Administrator will conduct a skip trace, and/or using all reasonably available sources, methods, and means, for the mailing address of all former employee Class Members. For any Class Notice returned undelivered with a USPS forwarding address, not later than five (5) business days after receipt of any such Class Notice, the Settlement Administrator will re-mail the Class Notice using the forwarding address provided. For any Class Notice returned as undelivered without a USPS forwarding address, the Settlement Administrator will conduct a search for Class Members’ current mailing addresses using all reasonably available sources, methods, and means, including, but not limited to skip traces. If the Settlement Administrator is unable to locate a current address, the Settlement Administrator shall call the last-known phone number provided by Defendant to attempt to obtain an accurate address and shall promptly re-mail the Class Notice to the updated address if one is obtained. If the Settlement Administrator is unable to locate an accurate address for the Class Member by telephone, the Settlement Administrator will promptly provide the Class Member’s contact information to Class Counsel to perform a TLOxp search. Any Class Member who does not receive a Notice after the steps outlined above have been taken will still be bound by the Settlement and/or judgment.
44. **Settlement Administrator:** The third party administrator agreed upon by Parties to administer this Settlement is Phoenix Class Action Administration Solutions (“Phoenix”).
45. **Workweeks:** refers to a workweek in which a Class Member was employed by Defendant during the Class Period, and received any regular pay. Any workweek in which the Class Member received only remuneration other than regular pay (such as Paid Time Off, for example) will not be an Eligible Workweek.

II. RECITALS

- 46.** A class action was filed by Plaintiffs Yovanik Flores and Hung Nguyen in the Alameda County Superior Court on April 13, 2021 (Case No. RG21096517). On May 3, 2021, Plaintiffs filed a First Amended Complaint. The First Amended Complaint alleges the following causes of action against Defendant: (1) failure to pay all straight time wages; (2) failure to pay all overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) knowing and intentional failure to comply with itemized employee wage statement provisions; (6) failure to pay all wages at the time of termination of employment; and (7) violation of Unfair Competition Law.
- 47.** On February 24, 2021, Plaintiffs Yovanik Flores and Hung Nguyen provided notice to the LWDA in accordance with the PAGA. On May 24, 2021, Plaintiffs filed a complaint in the Alameda County Superior Court alleging that Defendant violated the PAGA (Case No. RG21100509). Plaintiffs complaint alleges the following violations of the PAGA against Defendant: (1) failure to pay all straight time wages; (2) failure to pay all overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) knowing and intentional failure to comply with itemized employee wage statement provisions; (6) failure to pay all wages at the time of termination of employment.
- 48.** On March 8, 2022, Plaintiff Diego Bedoya Moreno filed a class action complaint against Defendant in the Los Angeles County Superior Court (Case No. 22STCV08430). On April 27, 2022, Plaintiff filed a First Amended Complaint. Plaintiff's First Amended Complaint alleges causes of action for: (1) failure to pay minimum wages; (2) failure to pay overtime compensation; (3) failure to provide meal periods; (4) failure to authorize and permit rest breaks; (5) failure to indemnify necessary business expenses; (6) failure to timely pay wages at termination; (7) failure to provide accurate itemized wage statements; (8) Unfair Business Practices; and (9) civil penalties under PAGA.
- 49.** As part of this Settlement, Plaintiffs will file a Second Amended Complaint in the Alameda County Superior Court and amend their PAGA notice as set forth herein. The Parties agree that this Second Amended Complaint will become one of the operative complaints for purposes of this Settlement Agreement.
- 50.** Prior to entering into this Settlement, the Parties engaged in both formal and informal discovery. Plaintiffs served one set of special interrogatories and one set of requests for production of documents on Defendant, which Defendant responded to. In addition, Defendant served form interrogatories and requests for production of documents on Plaintiffs, which Plaintiffs responded to. This discovery led to Defendant producing hundreds pages of documents and Excel files that contained a sampling of Class Members' time and wage records and the hire and termination dates for all Class Members.

51. The Parties attended mediation with mediator Michael Dickstein on February 2, 2023. This mediation was initially unsuccessful. After the mediation, the Parties continued settlement negotiations with the help of Mr. Dickstein. These settlement negotiations were successful and the Parties reached the settlement at issue here.
52. **Benefits of Settlement to Class Members.** Plaintiffs and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiffs and Class Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiffs and Class Counsel have conducted extensive informal and formal discovery as well as settlement negotiations. Based on the foregoing, Plaintiffs and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of Class Members.
53. **Defendant's Reasons for Settlement.** Defendant recognizes that the defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendant have been and, unless this Settlement is approved, will continue to be devoted to the defense of the claims asserted by Plaintiffs. Defendant, therefore, has agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Class and PAGA Claims.
54. **Defendant's Denial of Wrongdoing.** Defendant denies (1) all the material allegations in the Action; (2) that it violated any applicable laws, (3) that it is liable for damages, penalties, interest, restitution, attorneys' fees, or costs, or for any other compensation or remedy with respect to anyone on account of the claims asserted in the Action, and (4) that class certification, or representative treatment is appropriate as to any claim in the Action. Defendant contends that its policies, procedures, and practices comply with all applicable laws asserted in the Action. Nonetheless, without admitting any liability or wrongdoing whatsoever and without admitting that class certification or representative treatment is appropriate for any purpose other than for settlement purposes alone, Defendant has agreed to settle the Action on the terms set forth in this Agreement, to avoid the burden, expense, and uncertainty of litigation. Any statements by Defendant in this Agreement are made for settlement purposes only.
55. **Plaintiffs' Claims.** Plaintiffs assert that Defendant's defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement, may be construed as or may be used as an admission, concession, or indication by or against

Plaintiffs, Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Actions.

III. SETTLEMENT TERMS AND CONDITIONS

- 56. Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum Gross Settlement Amount that Defendant is obligated to pay under this Settlement Agreement is \$1,200,000.00, with the exception of Defendant's portion of Employer Taxes as the Class Members' current or former employer which will be paid outside of and in addition to the Gross Settlement Amount. The Gross Settlement Amount includes, but is not limited to: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorneys' Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payments paid to the Class Representatives, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the PAGA Payment, as approved by the Court. No portion of the Gross Settlement Amount will revert to Defendant for any reason.
- 57. Certification of Settlement Class.** This Agreement is contingent upon the Court's certification of the Settlement Class under California Code of Civil Procedure section 382 for settlement purposes only, and upon the Court's approval of a PAGA representative action releasing the Released PAGA Claims for settlement purposes only. Defendant does not waive, and instead expressly reserves, the right to challenge the propriety of class certification or representative treatment for any other purpose should the Court not approve the Agreement.
- 58. Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiff and Class Members for purposes of this Settlement only. If the Settlement does not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with the question of whether the Court should certify any claims in a non-settlement context in the Actions or in any other lawsuit. If the Settlement does not become effective, Defendant reserves the right to contest any issues relating to class certification and liability.
- 59. Appointment of Class Representatives.** Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiffs Yovanik Flores, Hung Nguyen, and Diego Bedoya Moreno shall be appointed as representatives for the Class, subject to Court approval.
- 60. Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties stipulate and agree, subject to Court approval, that Class Counsel will represent the Class.

- 61. Individual Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Settlement Share from the Net Settlement Amount to each Participating Class Member.

A. Calculation.

- i. Individual Class Settlement Share Calculation.** Each Participating Class Member will receive a proportionate share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period. A Participating Class Member's pro-rata share is equal to (i) the number of weeks he or she worked for Defendant in California, in an hourly, non-exempt position, based on the Class Data provided by Defendant, divided by (ii) the total number of weeks worked by all Participating Class Members based on the same Class Data, which is then multiplied by the Net Settlement Amount. One day worked in a given week will be credited as a work week for purposes of this calculation. Therefore, the value of each Participating Class Member's Individual Settlement Share ties directly to the amount of weeks that he or she worked.
- ii. Effect of Prior Settlements.** Class Members who released claims through prior settlements will be entitled to the number of workweeks they worked after the end of the prior settlement periods. Stated differently, workweeks worked by Class Members for which settlement funds have already been paid through other prior settlements will not be included in this settlement.
- iii. Number of Workweeks and Escalator.** It was estimated for purposes of mediation that there are approximately 94,178 workweeks between the start of the Class Period and the February 2, 2023 mediation date. As such, this settlement is estimated to encompass approximately 94,178 workweeks. To the extent that the total number of workweeks increases by more than ten percent (10%) of 94,178 (in other words, above 103,596), the Gross Settlement Amount shall increase proportionately. Alternatively, in the event that this escalator provision is triggered, Defendant has the option to adjust the end date of the Class Period so as to have an earlier end date in order to limit the number of covered workweeks.

- B. Tax Withholdings.** Each Participating Class Member's Individual Settlement Share will be apportioned as follows: 20% wages and 80%

interest and penalties. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. Payment of all amounts will be made subject to backup withholding unless a duly executed W-9 form is received from the payee(s). The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by the Settlement Administrator on IRS 1099 Forms. Only the employee share of payroll tax withholdings shall be from each Participating Class Member's Individual Settlement Share. The employer share of payroll tax withholdings shall be paid separate from and in addition to the Gross Settlement Amount.

C. Tax Treatment and Payment. The Parties agree that Plaintiffs and the Participating Class Members who receive any payment pursuant to this Settlement shall be solely responsible for any and all individual tax obligations associated with this Settlement and shall hold Defendant harmless from any and all liability with regard thereto.

62. Individual PAGA Payment. Of the total \$75,000.00 of the GSA allocated to satisfy Plaintiffs' PAGA penalties claim, twenty-five percent (25%) (\$18,750.00) shall be distributed by the Settlement Administrator to each PAGA Aggrieved Employee on a pro rata basis, as calculated by the Settlement Administrator, pursuant to Labor Code §2699(i).

A. Calculation.

i. Individual PAGA Settlement Share Calculation. Each PAGA Aggrieved Employee will receive a portion of the PAGA Payment (\$18,750.00). The allocation of the PAGA Payment to each PAGA Aggrieved Employee, regardless of any opt-out or objection, shall be calculated pro rata based on the total number of PAGA Pay Periods each PAGA Aggrieved Employee worked during the PAGA Period. The pro-rata share is equal to (i) dividing the total amount allocated to PAGA Aggrieved Employees by the total number of PAGA Pay Periods worked by all PAGA Aggrieved Employees during the PAGA Period and (ii) multiplying the result by each PAGA Aggrieved Employee's total PAGA Pay Periods. The Settlement Administrator shall make these calculations based on the Class Data provided by Defendant.

ii. Effect of Prior Settlements. PAGA Aggrieved Employees who released PAGA claims through prior settlements will be entitled to the number of workweeks they worked after the end of the prior settlement periods. Stated differently, workweeks worked by PAGA Aggrieved Employees for which settlement funds have already been

paid through other prior settlements will not be included in this settlement.

B. Tax Withholdings. Payments to PAGA Aggrieved Employees will be allocated as 100% penalties. The Settlement Administrator will report the individual PAGA Payment on IRS 1099 Forms.

C. Tax Treatment and Payment. The Parties agree that Plaintiffs and the PAGA Aggrieved Employees who receive any payment pursuant to this Settlement shall be solely responsible for any and all individual tax obligations associated with this Settlement and shall hold Defendant harmless from any and all liability with regard thereto.

63. Constituents of Gross Settlement Amount Disbursement. Subject to the terms and conditions of this Agreement, the Settlement Administrator shall disburse the Gross Settlement Amount as directed later on herein to the following:

A. To the Named Plaintiffs. In addition to their Individual Settlement Share, and subject to the Court's approval, the named Plaintiffs Yovanik Flores, Hung Nguyen, and Diego Bedoya Moreno will receive up to \$10,000.00 each in consideration for providing Defendant a General Release, a release that is broader than the claims released by Participating Class Members, as well as for the time, effort, and exposure to risks in presenting and pursuing their claims. The Settlement Administrator will pay the Class Representative Enhancement Payments out of the Gross Settlement Amount. Payroll tax withholdings and deductions will not be taken from the Class Representative Enhancement Payments. An IRS Form 1099 will be issued to Plaintiffs by the Settlement Administrator with respect to their Class Representative Enhancement Payment.

B. To Class Counsel. At the Final Approval Hearing, Class Counsel will apply to the Court for an Attorneys' Fee Award not to exceed thirty-three and one-third (33.33%) of the GSA (which equates to \$399,960.00) and an Attorneys' Cost Award not to exceed \$50,000.00. The Settlement Administrator will pay the Court-approved amounts for the Attorneys' Fee Award and Cost Award out of the Gross Settlement Amount. The Settlement Administrator may purchase an annuity to utilize U.S. treasuries and bonds or other attorneys fee deferral vehicles for Class Counsel. Payroll tax withholding and deductions will not be taken from the Attorneys' Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel by the Settlement Administrator with respect to the Attorneys' Fee Award. In the event the Court does not approve the entirety of the application for the Attorneys' Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference

between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorneys' Fee Award and/or Cost Award, the difference shall become part of the NSA and be available for distribution to Participating Class Members. The Attorneys' Fee Award shall be allocated 50% to Mara Law Firm, PC, and 50% to Moon & Yang APC. The Attorneys' Costs Award shall be allocated based upon to costs incurred as set forth in the declarations submitted with final approval.

- C. To the Responsible Tax Authorities.** The Settlement Administrator will pay the amount of the Participating Class Members' portion of normal payroll withholding taxes out of each Class Member's Individual Settlement Share. Defendant's portion of payroll taxes as the current or former employer (including the Employer Taxes payment of applicable FICA, FUTA, and SUI contributions, etc.) will be paid outside of and in addition to the GSA. The Settlement Administrator will calculate the amount of the Participating Class Members' and Defendant's portion of payroll withholding taxes and will forward the amount of the Participating Class Members' portion of normal payroll withholding taxes to the appropriate taxing authorities.
- D. To the Settlement Administrator.** The Settlement Administrator – Phoenix – will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed \$30,000.00. This will be paid out of the Gross Settlement Amount. If the actual amount of Administration Costs is less than the amount estimated and/or requested and/or awarded, the difference shall become part of the NSA and be available for distribution to Participating Class Members.
- E. PAGA Payment.** The Settlement Administrator will pay \$56,250.00 of the Gross Settlement Amount to the LWDA, which constitutes seventy-five percent (75%) of the \$75,000.00 allocated to satisfy the PAGA penalties claim. The remaining twenty-five percent (25%) of the \$75,000.00 PAGA Payment (which equates to \$18,750.00) shall be paid from the GSA and be available for distribution to PAGA Aggrieved Employees on a pro-rata basis pursuant to Labor Code § 2699(i).
- F. To Participating Class Members.** The Settlement Administrator will pay Participating Class Members according to the Individual Settlement Share calculations set forth above. All payments to Participating Class Members shall be made from the Net Settlement Amount.

- 64. Appointment of Settlement Administrator.** Solely for the purposes of this Settlement, the Parties stipulate and agree that Phoenix shall be retained to serve as Settlement Administrator. The Settlement Administrator shall be responsible for preparing, printing, mailing, and emailing the Class Notice to Class

Members; performing skip traces and re-mailing Notices to Class Members; calling Class Members with undeliverable Notices to obtain accurate addresses where USPS did not provide a forwarding address; keeping track of any objections or requests for exclusion from Class Members; calculating any and all payroll tax deductions as required by law; calculating each Class Member's Individual Settlement Share and Individual PAGA Payment Share (if applicable); maintaining a website, which will include settlement documents; providing weekly status reports to Defendant's Counsel and Class Counsel, which is to include updates on any objections or requests for exclusion that have been received; providing a due diligence declaration for submission to the Court prior to the Final Approval hearing; mailing and re-mailing Individual Settlement Shares to Participating Class Members and/or Individual PAGA Payment Shares to PAGA Aggrieved Employees; mailing the PAGA Payment to the LWDA; distributing the Attorneys' Fee Award and Cost Award to Class Counsel; printing and providing Participating Class Members, PAGA Aggrieved Employees, and Plaintiffs with Form W-2s and 1099 Forms as required under this Agreement and applicable law; providing a due diligence declaration for submission to the Court upon the completion of the Settlement; providing any funds remaining as a result of uncashed checks to The United Way, in the amounts directed per this Settlement, including the administration of related tax reimbursements; and for such other tasks as the Parties mutually agree. The Parties each represent that they do not have any financial interest in Phoenix or otherwise have a relationship with Phoenix that could create a conflict of interest.

65. Procedure for Approving Settlement.

A. Amending the Complaint and PAGA Notice.

- i. Prior to filing a Motion for Preliminary Approval, the Parties agree to stipulate to permit Plaintiffs leave to file a Second Amended Complaint.
- ii. Prior to filing a Motion for Preliminary Approval, Plaintiffs will file an amended PAGA notice that conforms with the Released PAGA Claims.

B. Motion for Preliminary Approval and Conditional Certification.

- i. **Plaintiffs' Responsibilities.** Plaintiffs will move for an order: (1) conditionally certifying the Class for settlement purposes only; (2) granting Preliminary Approval of the Settlement Agreement according to the terms in this Agreement and provide for the Notice of Class Action Settlement to be sent to Class Members as specified in this Agreement, substantially in the form attached hereto as **Exhibit A**; (3) setting a date for the Final Approval

hearing; and (4) approving the Class Notice. At the same time that Plaintiffs file their Motion for Preliminary Approval, Plaintiffs shall send a copy of the Agreement to the LWDA pursuant to the 2016 amendments to PAGA (Labor Code § 2699(1)(2)). At the Preliminary Approval hearing, Plaintiffs will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class and Preliminary Approval of the Settlement; appointing the Class Representative, Class Counsel, and Settlement Administrator; approving the Class Notice; and setting the Final Approval hearing. Defense Counsel shall have the opportunity to review and comment on a draft of the preliminary approval motion and proposed order granting preliminary approval before they are filed. Defense Counsel shall provide any proposed revisions and/or comments to these documents to Plaintiffs' Counsel within seven (7) calendar days of receiving the documents from Plaintiffs' Counsel. If Plaintiffs' Counsel do not receive proposed revisions and/or comments within this time frame, it will be assumed that Defense Counsel does not have any revisions and/or comments to them and Plaintiffs may proceed with filing the documents.

- ii. **Effect of Denial of Preliminary Approval.** Should the Court decline to conditionally certify the Class or to Preliminarily Approve all material aspects of the Settlement, the Settlement Agreement will be null and void, and the Parties will have no further obligations under it. Provided, however, that the amounts of the Attorneys' Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payments shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement, and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement Agreement. Any order or proceeding relating to an application for the Attorneys' Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payments shall not operate to terminate or cancel this Settlement Agreement. Notwithstanding this provision, nothing in this Agreement shall limit Plaintiffs' or Class Counsel's ability to appeal any decision by the Court to award less than the requested Attorneys' Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payments.

- C. **Notice to Class Members.** After the Court enters its Preliminary Approval Order, every Class Member will be provided with the Class Notice in accordance with the following procedure:

- i. Delivery of Class Data.** Within fourteen (14) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator an electronic database of Class Data, which will list the following information for each Class Member: (1) first and last name; (2) last-known mailing address; (3) last-known telephone number; (4) last-known email address; (5) social security number; (6) hire and termination dates; and (7) the total number of workweeks and PAGA Pay Periods during which the Class Member performed actual work for Defendant during the Class Period. If any or all of this information is unavailable to Defendant, Defendant will so inform Class Counsel, and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Settlement Administrator will conduct a skip trace, and/or other reasonably available sources, methods, and means, for the mailing address of all former Defendant employee Class Members. The Class Data shall be based on Defendant's payroll, personnel, and other business records. The Settlement Administrator shall maintain the Class Data and all information contained within the Class Data as private and confidential.
- ii. Preparation of Class Notices.** Based on the information in the Class Data and the formula set forth herein, the Settlement Administrator shall promptly calculate the estimated Individual Settlement Share for every Class Member and Individual PAGA Payment Share (if applicable), to be included in the individualized Class Notice to be sent to that Class Member, and shall prepare and email a spreadsheet setting forth those calculations to Class Counsel and Defense Counsel no fewer than five (5) calendar days before mailing the Class Notices to Class Members. The Class Notices will inform each Class Member of his/her right to do nothing, dispute the number of workweeks worked, opt out of the Settlement, or object to the Settlement. It will also inform Class Members that if they first request exclusion from the Settlement and then object, the objections would not be considered valid; in addition, if the Class Members object and then request exclusion from the Class Settlement, the Class Members would be deemed to have waived their objection.
- iii. Mailing of Class Notices.** Within fourteen (14) calendar days after receipt of the Class Data, the Settlement Administrator will mail via first-class regular U.S. Mail and email the Class Notice to all identified Class Members using the mailing and email address information provided by Defendant and the results of the skip trace, and/or other reasonably available sources, methods, and

means, performed on all former Defendant employee Class Members.

- iv. **Returned Notices.** If a Class Notice is returned because of an incorrect address, within five (5) business days from receipt of the returned Notice, the Settlement Administrator will re-mail the Class Notice using the forwarding address provided; if no forwarding address is provided, the Settlement Administrator will conduct a search for a current address for the Class Member and then re-mail the Class Notice to the Class Member. The Settlement Administrator will use the National Change of Address Database and skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is returned by U.S. Postal Service as undeliverable without a forwarding address. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail, performing address searches for all mail returned without a forwarding address, and promptly re-mailing to Class Members for whom new addresses are found.
- v. **Undeliverable Notices.** If the Settlement Administrator is unable to locate a current address through a database search or skip trace within five (5) business days from receipt of the returned Notice, the Settlement Administrator shall call the last-known phone number provided by Defendant to attempt to obtain an accurate address. If an address is obtained, the Settlement Administrator shall promptly re-mail the Class Notice to the updated address. If the Class Notice is re-mailed, the Settlement Administrator will note for its own records the date and address of each re-mailing. If the Settlement Administrator is unable to locate an accurate address for the Class Member by telephone, the Settlement Administrator will promptly provide the contact information of the Class Member with the undeliverable Notice to Class Counsel. Class Counsel will provide this contact information to perform a TLOxp search using the available contact information. The TLOxp search performs a “deep skiptrace” of the Class Member and will have a greater chance of locating a better address to provide the Class Member with Notice.
- vi. **Weekly Status Reports.** The Settlement Administrator shall provide a weekly status report to the Parties’ respective counsel. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant’s Counsel of the number of Notices mailed and emailed, the number of Notices returned as

undeliverable, the number of Notices re-mailed, and the number of requests for exclusion or objections received.

- vii. **Settlement Administrator's Declaration.** No later than fourteen (14) calendar days after the Response Deadline, or on a date mutually agreed upon by the Parties and the Settlement Administrator, the Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel at the same time as the final approval motion is filed. Before the Final Approval hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur following the date of the filing of its prior declaration.

D. Objections to Settlement. The Class Notice will provide that the Class Members who wish to object to the Settlement must do so in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than the Response Deadline. The timeframe to submit an objection will be increased by fourteen (14) calendar days for re-mailings. Class Counsel will provide any objections to the Court at the time the final approval motion is filed.

- a. **Format.** Any 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. **Notice of Intent to Appear.** Absent good cause found by the Court, Class Members who timely file valid objections to the Settlement may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector's own counsel, provided the objector has first notified the Settlement Administrator by sending his/her written objections to the Settlement Administrator, postmarked no later than the Response Deadline.

E. Request for Exclusion from the Settlement ("Opt-Out"). The Class Notice will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator a written request for exclusion. The written request for exclusion must: (a) state the Class Member's name and telephone number; (b) state the Class Member's

intention to exclude themselves from or opt-out of the Settlement; (c) be addressed to the Settlement Administrator; (d) be signed by the Class Member or his or her lawful representative; and (e) be postmarked no later than the Response Deadline. The timeframe to submit an opt-out request will be increased by fourteen (14) calendar days for re-mailings. A PAGA Aggrieved Employee may not Opt-Out of releasing his or her PAGA claims or from receiving his or her allocated share of the Individual PAGA Payment Settlement Amount.

- i. Confirmation of Authenticity.** If there is a question about the authenticity of a signed request for exclusion, the Settlement Administrator may demand additional proof of the Class Member's identity. Any Class Member who returns a timely, valid, and executed request for exclusion will not participate in or be bound by the Settlement and subsequent judgment, and will not receive an Individual Settlement Share. A Class Member who does not complete and mail a timely request for exclusion will automatically be included in the Settlement, will receive an Individual Settlement Share, and will be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the subsequent judgment, regardless of whether he or she has objected to the Settlement.
- ii. Report.** No later than five (5) business days after the Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Notices mailed to Class Members, the number of Notices returned as undeliverable, the number of Notices re-mailed to Class Members, the number of re-mailed Notices returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid requests for exclusion, and the number of Class Members who returned invalid requests for exclusion. The Settlement Administrator will promptly provide an updated report for any timely responses received from Class Members whose Notice was re-mailed.

F. Class Member Disputes. If a Class Member who receives a Class Notice wishes to dispute the number of workweeks listed on the Class Notice, the Class Member may notify the Settlement Administrator by mail or telephone no later than the Response Deadline and should produce any available supporting evidence, such as wage statements, offers of employment, termination letters, and/or other employment records, to the Settlement Administrator. The documentation should provide evidence of the dates the Class Member contends he or she worked for Defendant during the Class Period. The Settlement Administrator shall then provide the

documentation provided by the Class Member to Counsel for Defendant. Defendant shall 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. Defendant's records shall be presumed to be determinative, but the Settlement Administrator shall evaluate the evidence submitted by the Class Member and make the decision as to which dates should be applied. The determination by the Settlement Administrator shall be final and binding.

G. No Solicitation of Objection or Requests for Exclusion. Neither the Parties nor their respective counsel will solicit or otherwise encourage, directly or indirectly, any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Judgment.

H. Settlement Website. The Settlement Administrator shall establish a website to host documents relevant to this lawsuit and the proposed settlement. Such documents include: the operative complaint; Defendant's operative answer; this Joint Stipulation and Settlement Agreement, together with its exhibits; the Class Notice; the forthcoming settlement motions; and the Court's orders on those motions.

I. Motion for Final Approval.

- i. Plaintiffs' Responsibilities.** Plaintiffs shall submit to the Court a Motion for Final Approval and a proposed order granting their Motion for Final Approval. The proposed order granting Plaintiffs' Motion for Final Approval shall include findings and orders (a) approving the Agreement, (b) adjudging the terms to be fair, reasonable, and adequate, (c) reciting the Released Class and PAGA Claims in full, (d) directing that the terms of the Agreement be carried out, and (e) retaining jurisdiction to oversee enforcement of this Agreement and the Court's orders. The Motion shall include the following payments in accord with the terms of the Settlement: (1) the Attorneys' Fee Award; (2) the Attorneys' Cost Award; (3) Administrative Costs; (4) the Class Representative Enhancement Payments; and (5) the PAGA Payment. Class Counsel will also move the Court for an order of Final Approval (and associated entry of Judgment) releasing and barring any Released Class Claims of the Participating Class Members. Defense Counsel shall have the opportunity to review and comment on a draft of the motion and proposed order before they are filed. Plaintiffs' Counsel will provide Defense Counsel with drafts of these documents no later than eight (8) calendar days prior to the date they are to be filed with the Court. Defense Counsel shall provide any proposed revisions and/or comments to these documents to Plaintiffs' Counsel within seven (7) calendar

days of receiving the documents from Plaintiffs' Counsel. If Plaintiffs' Counsel do not receive proposed revisions and/or comments within this time frame, it will be assumed that Defense Counsel does not have any revisions and/or comments to them and Plaintiffs may proceed with filing the documents.

ii. Denial or Appeal of Final Approval. If the Court does not grant Final Approval of the Settlement, or if the Court's Final Approval of the Settlement is reversed or materially modified on appellate review, then this Settlement will become null and void. If that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Agreement, with the exception that both Parties (Plaintiffs and Defendant) will be equally responsible for the Settlement Administrator's Administration Costs through that date. An award by the Court of a lesser amount than sought by Plaintiffs and Class Counsel for the Class Representative Enhancement Payments, Attorneys' Fee Award, and Attorneys' Cost Award will not constitute a material modification to the Settlement within the meaning of this paragraph.

iii. Proposed Order and Judgment. Upon Final Approval of the Settlement, Plaintiffs shall present to the Court a proposed Final Approval Order, approving of the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters, and (3) addressing such post-judgment matters as may be appropriate under Court rules and applicable law.

J. Waiver of Right to Appeal. Provided that the Judgment is consistent with the terms and conditions of this Agreement, if Class Members do not timely object to the Settlement, then the Parties and their respective counsel waive any and all rights to appeal from the Judgment, including, but not limited to, all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, and any extraordinary writ, and the Judgment will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceeding, or post-judgment proceeding.

K. Vacating, Reversing, or Modifying Judgment on Appeal. If, after a notice of appeal, the reviewing Court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement Agreement, and that Court's decision is not completely reversed and the

Judgment is not fully affirmed on review by a higher Court, then this Settlement will become null and void and the Parties will have no further obligations under it, with the exception that Defendant will be solely responsible for the Settlement Administrator's Administration Costs through that date. A material modification would include, but not necessarily be limited to, any alteration of the Gross Settlement Amount, an alteration in the calculation of the Net Settlement Amount, and any change to the calculation of the Individual Settlement Share.

L. Disbursement of Settlement Shares and Payments. Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Court's Final Approval Order and Judgment. The Settlement Administrator shall keep Defendant's Counsel and Class Counsel apprised of all distributions from the Gross Settlement Amount. The Settlement Administrator shall respond to questions from Defendant's Counsel and Class Counsel. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiffs, Class Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.

- i. Funding the Settlement.** Defendant shall wire to the Settlement Administrator the Gross Settlement Amount no later than fifteen (15) calendar days of the Effective Date.
- ii. Disbursement.** Within ten (10) calendar days after the Defendant wires the GSA to the Settlement Administrator, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorneys' Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payments paid to the Class Representatives, as approved by the Court; (4) the Administration Costs, as approved by the Court; (5) the PAGA Payment to the LWDA and individual shares to PAGA Aggrieved Employees; and (6) Class Members' portion of payroll taxes owed for amounts allocated as wages.
- iii. Qualified Settlement Fund or QSF.** The Parties agree that the QSF is intended to be a "Qualified Settlement Fund" under Section 468B of the Code and Treasury Regulations (§ 1.4168B-1, 26 C.F.R. § 1.468B-1 *et seq.*), and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.

M. Settlement Administrator's Final Report. After the disbursement of all funds, upon request by the Parties, the Settlement Administrator will serve on the Parties a declaration providing a final report summarizing relevant events to date and advising the total dollar amount paid to Class Members, the status of any uncashed checks, and any amount remaining in the QSF. Plaintiffs shall file this declaration with the Court. The Settlement Administrator will promptly provide any supplemental declaration required by the Court or the Parties.

N. Uncashed Checks. Participating Class Members must cash or deposit their Individual Settlement Share checks within one hundred and eighty (180) calendar days after the checks are mailed to them.

i. **Reminder Postcard.** If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced.

ii. **Cy Pres.** If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel the checks. All funds associated with the Individual Settlement Share checks and Individual PAGA Payment Share checks returned as undeliverable and funds associated with those checks remaining un-cashed, shall be transmitted by the Settlement Administrator to a cy pres beneficiary. The cy pres beneficiary selected by the Parties is The United Way. The United Way is a non-profit organization that supports projects that benefit employees and applicants throughout the State of California.

66. Legal Fees. Defendant is responsible for paying for all of Defendant's own legal fees, costs, and expenses incurred in the Actions. Defendant is not responsible for paying Plaintiffs' legal fees, costs, and expenses other than paying the GSA as specified in this Agreement.

67. Release of Claims. As of the Effective Final Settlement Date, Class Members who did not submit a timely and valid request for exclusion will release the Released Parties from the Released Class and PAGA Claims outlined in this Agreement. The released claims include without limitation claims meeting the above definition(s) under any and all applicable statutes, including without limitation any applicable provision of the California Labor Code; Private Attorneys General Act (California Labor Code §§ 2698, et seq.); California Business & Professions Code §§ 17200 et seq.; or any provision of the

applicable California Industrial Welfare Commission Wage Orders based on the facts or claims alleged in the Complaint(s) in the Action. With regard to claims that were raised or that reasonably could have been raised in the operative complaint or PAGA Notice letter, Class Members and PAGA Aggrieved Employees waive all rights and benefits afforded by California Civil Code section 1542 and do so understanding the significance of that waiver (including the full text of section 1542 in the Settlement). Participating Class Members agree not to sue or otherwise make a claim against any of the Released Parties for any of the Released Class and PAGA Claims. This release excludes any release of any claims not permitted to be released by law, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act ("FEHA"), unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

- 68. Plaintiffs' Release of Claims and General Release.** As of the Effective Final Settlement Date, and in exchange for the Class Representative Enhancement Payments to the named Plaintiffs in an amount not to exceed \$10,000.00 each, Plaintiffs shall, in addition to the Release of Claims provided in this Agreement, give the following general release of claims, for themselves and their respective spouse, heirs, successors, and assigns, forever releasing the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties, and expenses of any nature whatsoever, from the beginning of time through the date of their signatures on this Agreement, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state, or local statute, rule, ordinance, or regulation, including, but not limited, to all claims arising out of, based upon, or relating to their employment with Defendant or the remuneration for, or termination of, such employment. Plaintiffs' Release of Claims also includes a waiver of California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

This release excludes any release of any claims not permitted to be released by law, as well as claims or actions to enforce this Agreement.

- 69. Settlement is Contingent Upon Release of Claims.** This Agreement is conditioned upon the releases by the Participating Class Members and Class Representatives as described herein, and upon covenants by the Participating Class

Members and Class Representatives that they will not participate in any actions, lawsuits, proceedings, complaints, or charges in any court or before any administrative body related to any claims they have released under this Settlement.

70. Inadmissibility of Settlement Documents. The Parties agree that this Agreement and all exhibits thereto shall be inadmissible in any proceeding, except an action or proceeding to approve, interpret, or enforce this Agreement. The Parties agree that, to the extent permitted by law, this Agreement will operate as a complete defense to—and may be used as the basis for an injunction against—any action, suit, or other proceeding attempted in breach of this Agreement

71. Miscellaneous Terms

A. No Admission of Liability. Defendant makes no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendant reserves the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under the claims asserted in the Actions, or that but for the Settlement, a Class should be certified in the Actions. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant of liability or wrongdoing. This Settlement and Plaintiffs' and Defendant's willingness to settle the Actions will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with this Settlement).

B. No Effect on Employee Benefits. The Class Representative Enhancement Payments and/or Individual Settlement Shares and/or Individual PAGA Payment Shares paid to Plaintiffs and Participating Class Members shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacation, holiday pay, retirement plans, etc.) of Plaintiffs or the Participating Class Members. The Parties agree that any Class Representative Enhancement Payment and/or Individual Settlement Share and/or Individual PAGA Payment Shares paid to Plaintiffs or the Participating Class Members under the terms of this Agreement do not represent any modification of Plaintiffs' or Participating Class Members' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendant. Further, any Class Representative Enhancement Payment shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Defendant.

- C. Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their respective counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
- D. Authorization to Enter Into Settlement Agreement.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their respective counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of mediator Michael Dickstein for guidance and to assist the Parties in negotiating a resolution of their disagreement(s), and in all cases, all such documents, supplemental provisions, and assistance of Michael Dickstein will be consistent with this Agreement. The guidance provided by Michael Dickstein will not be binding on any of the Parties.
- E. Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
- F. Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Actions in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.
- G. Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.

- H. Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
- I. No Prior Assignment.** Plaintiffs hereby represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or rights herein released and discharged.
- J. Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
- K. Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Actions and have arrived at this Agreement through arm's-length negotiations, taking into account all relevant factors, current, and potential.
- L. No Tax or Legal Advice.** The Parties understand and agree that the Parties and their respective counsel are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Class Members will assume any such tax obligations or consequences that may arise from this Agreement, and that Class Members shall not seek any indemnification from the Parties, respective counsel for the Parties, or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Class Member, such Class Member assumes all responsibility for the payment of such taxes.
- M. Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their respective counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.
- N. Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and

the validity and enforceability of the remaining provisions shall not be affected thereby.

O. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

P. Execution in Counterpart. This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

Q. Computation of Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or on a state or federal legal holiday, such date or deadline shall be on the first business day thereafter.

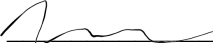
IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

AGREED AND UNDERSTOOD BY:

Dated: 5/5/2023

YOVANIK FLORES

DocuSigned by:

DD7FAA36A405440...

Dated: 5/4/2023

HUNG NGUYEN

DocuSigned by:

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Dated: _____

DIEGO BEDOYA MORENO

the validity and enforceability of the remaining provisions shall not be affected thereby.

O. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

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IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

AGREED AND UNDERSTOOD BY:

Dated: _____

YOVANIK FLORES

Dated: _____

HUNG NGUYEN

Dated: 05052023

DIEGO BEDOYA MORENO


Diego Bedoya Moreno (May 5, 2023 09:57 PDT)

Dated: 5/5/2023

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 & YANG, APC

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

Dated: May 5, 2023

SEYFARTH SHAW LLP

K

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

Dated: _____

HOME EXPRESS DELIVERY SERVICE, LLC

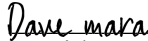
Craig Erickson

APPROVED AS TO FORM BY:

Dated: 5/5/2023

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 & YANG, APC

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: _____

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: May 5, 2023

MOON & YANG, APC

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

Exhibit *A*

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	Write to 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
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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
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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 & YANG, APC Kane Moon (kane.moon@moonyanglaw.com) Allen Feghali (allen.feghali@moonyanglaw.com) Charlotte Mikat-Stevens (charlotte.mikat-stevens@moonyanglaw.com) 1055 W. Seventh Street, Suite 1880 Los Angeles, California 90017 Telephone: (213) 232-3128	
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The Court has appointed Mara Law Firm, PC, and Moon & Yang, APC, 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 & Yang, APC, 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 **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.
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?	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.
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Objectors who want to appear at the Final Fairness/Approval Hearing must state the intention to do so at the time of submitting the written objection(s).

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.

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.

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

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.

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 [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 B

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

Attorneys for Plaintiffs on behalf of themselves,
all others similarly situated, and on behalf of the general public

Additional Counsel on the Next Page

**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

**PLAINTIFFS' SECOND AMENDED CLASS
ACTION COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF, DECLARATORY
RELIEF, AND RESTITUTION**

- 1) Failure to Pay All Straight Time Wages;
- 2) Failure to Pay All Overtime Wages;
- 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, IWC Wage Order No. 9-2001(11); Cal. Code Regs., tit. 8 § 11090);
- 4) Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; IWC Wage Order No. 9-2001(12); Cal. Code Regs. Title 8 § 11090);
- 5) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Lab. Code §§ 226, 1174, 1175);
- 6) Failure to Pay All Wages Due at the Time of Termination of Employment (Lab. Code §§201-203);
- 7) Failure to Indemnify Necessary Business Expenses (Lab. Code § 2802);
- 8) Violation of Temperature Control Guidelines (IWC Wage Order No. 9-2001(14); Cal. Code Regs., tit. 8 § 11090);
- 9) Failure to Timely Pay Wages Due and Payable During Employment;
- 10) Violation of Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.); and
- 11) Civil Penalties Under PAGA (Labor Code §§ 2699, et seq.).

DEMAND FOR JURY TRIAL

1 Kane Moon, Esq. (249834)
2 Allen Feghali, Esq. (301080)
3 Charlotte Mikat-Stevens, Esq. (327047)
4 **MOON & YANG, APC**
5 1055 W. Seventh Street, Suite 1880
6 Los Angeles, California 90017
7 Telephone: (213) 232-3128
8 Facsimile: (213) 232-3125

9 Attorneys for Plaintiffs on behalf of themselves,
10 all others similarly situated, and on behalf of the general public
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1 Plaintiffs YOVANIK FLORES, HUNG NGUYEN, and DIEGO BEDOYA MORENO
2 (“Plaintiffs”), on behalf of themselves, all others similarly situated, and on behalf of the general
3 public, complains of Defendants HOME EXPRESS DELIVERY SERVICE, LLC DBA TEMCO
4 LOGISTICS (“Defendant” or “TEMCO LOGISTICS”) and/or DOES and for causes of action and
5 alleges:

6 1. This is a class action pursuant to California Code of Civil Procedure section 382 on behalf
7 of Plaintiffs, YOVANIK FLORES, HUNG NGUYEN, and DIEGO BEDOYA MORENO
8 and all hourly non-exempt employees of Defendants TEMCO LOGISTICS and/or DOES
9 in California.

10 2. At all times mentioned herein, Defendants TEMCO LOGISTICS and/or DOES have
11 conducted business in Alameda County and elsewhere within California.

12 3. TEMCO LOGISTICS and/or DOES are a premiere white glove solutions provider
13 delivering and installing home goods. TEMCO LOGISTICS and/or DOES provide final
14 mile delivery and installation services. TEMCO LOGISTICS and/or DOES perform
15 residential, business, job site, and commercial deliveries.

16 4. During the relevant time period, TEMCO LOGISTICS and/or DOES employed non-
17 exempt employees. Non-exempt employees, such as Plaintiffs, are employed by TEMCO
18 LOGISTICS and/or DOES in California to deliver and install appliances. TEMCO
19 LOGISTICS and/or DOES also employ workers in its warehouses in California as hourly,
20 non-exempt employees.

21 5. At all times mentioned herein, the common policies and practices of Defendants TEMCO
22 LOGISTICS and/or DOES were a direct cause of Defendant’s and/or DOES’ failure to
23 comply with California’s wage and hours laws, Wage Orders, and/or the California Labor
24 Code, as set forth more fully within.

25 6. For at least four (4) years prior to the filing of this action and through to the present,
26 Defendants TEMCO LOGISTICS and/or DOES have had a consistent policy and/or
27 practice of not paying Plaintiffs and all hourly non-exempt employees for all of the hours
28

1 they worked.

2 7. For at least four (4) years prior to the filing of this action and through to the present,
3 Defendants TEMCO LOGISTICS and/or DOES have had a continuous and widespread
4 policy of not paying Plaintiff and those similarly situated for all hours they worked,
5 including before clocking in for their work shift, after clocking out for their work shift, and
6 during unpaid meal periods. For example, Plaintiffs and the Class were required to load the
7 trucks prior to starting the delivery route, and prior to clocking into work. Plaintiffs and
8 the Class were also required to unload the truck prior after the routes. Although some
9 additional pay was provided to compensate for some of this time, not all time was
10 compensated, leading to off the clock work that was uncompensated. Also, in those
11 instances where Plaintiffs and the Class clocked into work at the office, there was typically
12 a line to clock in, which was off the clock and uncompensated.

13 8. For at least four (4) years prior to the filing of this action and through to the present,
14 Defendants TEMCO LOGISTICS and/or DOES have had a consistent policy and/or
15 practice of failing to provide all straight time and overtime wages owed to hourly non-
16 exempt employees, as mandated under the California Labor Code and the implementing
17 rules and regulations of the Industrial Welfare Commission's ("IWC") California Wage
18 Orders.

19 9. For at least four (4) years prior to the filing of this action and through to the present,
20 Defendants TEMCO LOGISTICS and/or DOES have had a consistent policy of requiring
21 hourly non-exempt employees within the State of California, including Plaintiffs, to work
22 through meal periods and work at least five (5) hours without a meal period and failing to
23 pay such employees one (1) hour of pay at the employees' regular rate of compensation for
24 each workday that the meal period is not provided, or other compensation, as required by
25 California's state wage and hour laws, and automatically deducting a half hours pay from
26 their wages.

27 10. For at least four (4) years prior to filing of this action and through the present, Defendants
28

1 TEMCO LOGISTICS and/or DOES did not have a policy of allowing its hourly non-
2 exempt employees working shifts of ten (10) or more hours in a day to take a second meal
3 period of not less than thirty (30) minutes as required by the applicable Wage Order of the
4 IWC.

5 11. For at least four (4) years prior to the filing of this action and through to the present,
6 Defendants TEMCO LOGISTICS and/or DOES have had a consistent policy of requiring
7 hourly non-exempt employees within the State of California, including Plaintiffs, to work
8 over ten (10) hours without providing an additional, uninterrupted meal period of thirty
9 (30) minutes and failing to pay such employees one (1) hour of pay at the employees'
10 regular rate of compensation for each workday that the meal period is not provided, or
11 other compensation, as required by California's state wage and hour laws.

12 12. For at least four (4) years prior to the filing of this action and through to the present,
13 Defendants TEMCO LOGISTICS and/or DOES have had a consistent policy and/or
14 practice of requiring its hourly non-exempt employees, including Plaintiffs, to work for
15 over four hours, or a major fraction thereof, without a 10 minute rest period, and failing to
16 pay such employees one (1) hour of pay at the employees' regular rate of compensation for
17 each workday that the rest period is not provide, or other compensation, as required by
18 California's state wage and hour laws.

19 13. For at least four (4) years prior to the filing of this action and through to the present,
20 TEMCO LOGISTICS and/or DOES wrongfully required Plaintiffs and the Class to pay
21 expenses that they incurred in direct discharge of their duties for Defendants without
22 reimbursement, including the purchase tools, drills and bits, hand tools, tie-down straps,
23 and certain clothing. Also, although drivers were provided with company telephones,
24 helpers/assistants were not provided with company phones, and so they were required to
25 use their personal cellular telephones for work, without reimbursement.

26 14. For at least four (4) years prior to the filing of this action and through to the present,
27 Defendants TEMCO LOGISTICS and/or DOES and/or their officers and/or managing
28

agents have had a consistent policy and/or practice of willfully failing to provide to Plaintiffs and its hourly non-exempt employees including, but not limited to, production workers, shipping workers, receiving workers, inventory workers, or similar job designations and titles, and all other similarly situated non-exempt, hourly employees, accurate itemized employee wage statements.

15. For at least four (4) years prior to the filing of this action and through to the present, Defendants TEMCO LOGISTICS and/or DOES and/or their officers and/or managing agents have had a consistent policy and/or practice of willfully failing to timely pay wages owed to Plaintiffs and those hourly non-exempt employees who left Defendants TEMCO LOGISTICS' and/or DOES' employ or who were terminated.

16. For at least four (4) years prior to the filing of this action and through to the present, Defendants TEMCO LOGISTICS and/or DOES, by failing to lawfully pay Plaintiffs and those similarly situated all the wages they are owed, engaged in false, unfair, fraudulent and deceptive business practices within the meaning of the Business and Professions Code section 17200, et seq.

17. Throughout the statutory period, Defendants TEMCO LOGISTICS and/or DOES' employees, including Plaintiffs and those similarly situated were not provided all straight time and overtime wages owed, meal periods and rest periods, or compensation in lieu thereof, as mandated under the California Labor Code, and the implementing rules and regulations of the Industrial Welfare Commissions ("IWC") California Wage Orders.

18. Throughout the statutory period, Defendants TEMCO LOGISTICS and/or DOES' employees, including Plaintiffs and those similarly situated, were not provided with accurate and itemized employee wage statements.

19. Defendants TEMCO LOGISTICS and/or DOES failed to comply with Labor Code section 226, subdivision (a), by itemizing in wage statements all hourly compensation and accurately reporting total hours worked by Plaintiffs and the members of the proposed class. Plaintiffs and members of the proposed class are entitled to penalties not to exceed

- 1 \$4,000 for each employee pursuant to Labor Code section 226(b).
- 2 20. Defendants TEMCO LOGISTICS and/or DOES have failed to comply with IWC Wage
3 Order 9-2001(7) by failing to maintain accurate time records showing hourly
4 compensation, when the employee begins and ends each work day and total daily hours
5 worked by itemizing in wage statements and accurately reporting total hours worked by
6 Plaintiff and members of the proposed class.
- 7 21. Defendants TEMCO LOGISTICS' and/or DOES' failure to retain accurate records of total
8 hours worked by Plaintiffs and the proposed class was willful and deliberate, was a
9 continuous breach of Defendants TEMCO LOGISTICS' and/or DOES' duty owed to
10 Plaintiffs and the proposed class.
- 11 22. Throughout the statutory period, Defendants TEMCO LOGISTICS' and/or DOES'
12 employees, including Plaintiffs those similarly situated, were not timely paid all wages
13 owed to them at the time of termination.
- 14 23. Defendants TEMCO LOGISTICS and/or DOES are and were aware that Plaintiffs and
15 members of the proposed class were not paid all straight time and overtime wages owed,
16 nor provided meal and rest periods. Defendants TEMCO LOGISTICS' and/or DOES'
17 denial of wages and other compensation due to Plaintiffs and members of the proposed
18 class was willful and deliberate.
- 19 24. Defendants TEMCO LOGISTICS and/or DOES, each and collectively, controlled the
20 wages, hours, and working conditions of Plaintiffs and the proposed class, creating a joint-
21 employer relationship over Plaintiffs and the proposed class.
- 22 25. Plaintiffs YOVANIK FLORES, HUNG NGUYEN, and DIEGO BEDOYA MORENO, on
23 behalf of themselves and all of Defendants TEMCO LOGISTICS' and/or DOES' hourly
24 non-exempt employees bring this action pursuant to California Labor Code sections 201,
25 202, 203, 204, 218, 218.5, 222, 223, 224, 226, subd. (b), 226.7, 233, 234, 510, 512, 515,
26 558, 1194, 1197, 2699 *et seq.*, 2802, and California Code of Regulations, Title 8, section
27 11090, seeking unpaid wages, overtime, meal and rest period compensation, penalties,
28

injunctive and other equitable relief, unreimbursed business expenses, relief under the Labor Code Private Attorneys General Act of 2004 (“PAGA”), and reasonable attorneys’ fees and costs.

26. Plaintiffs YOVANIK FLORES, HUNG NGUYEN, and DIEGO BEDOYA MORENO, on behalf of themselves and all putative Class members made up of Defendants TEMCO LOGISTICS’ and/or DOES’ hourly non-exempt employees in California, pursuant to California Business and Professions Code sections 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits Defendants TEMCO LOGISTICS and/or DOES enjoyed from their failure to pay all straight time wages, overtime wages, and meal and rest period compensation.

I. VENUE

27. Venue as to each Defendant, TEMCO LOGISTICS and/or DOES, is proper in this judicial district, pursuant to Code of Civil Procedure section 395. Defendants TEMCO LOGISTICS and/or DOES conduct business and commit Labor Code violations within Alameda County, and each Defendants and/or DOE is within California for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiffs and those similarly situated within the State of California and within Alameda County. Defendants TEMCO LOGISTICS and/or DOES employ numerous Class members who work in Alameda County, in California.

II. PARTIES

A. Plaintiffs

28. Throughout the statutory period, Plaintiffs YOVANIK FLORES, HUNG NGUYEN, and DIEGO BEDOYA MORENO were and are residents of California. During the statutory period, Plaintiffs YOVANIK FLORES, HUNG NGUYEN, and DIEGO BEDOYA MORENO were employed by Defendants TEMCO LOGISTICS and/or DOES in California. Plaintiffs YOVANIK FLORES and HUNG NGUYEN performed work in Alameda County. Plaintiff DIEGO BEDOYA MORENO performed work in Los Angeles

County.

29. A notice correspondence showing compliance with Labor Code Section 2699.3 was sent to the LWDA and Defendant on February 24, 2021. This notice demonstrates that Plaintiffs YOVANIK FLORES and HUNG NGUYEN are aggrieved employees and have standing to bring a representative action on behalf of the LWDA and as a private attorney general. The violations alleged in this notice also form the basis for the allegations herein. No notice of cure by Defendant and/or DOES was provided and no notice of investigation was received from the LWDA in the statutorily proscribed sixty-five (65) day period since the mailing of the notice of the action.

30. Plaintiff DIEGO BEDOYA MORENO has exhausted his administrative remedies pursuant to California Labor Code § 2699.3. On February 20, 2022, Plaintiff DIEGO BEDOYA MORENO gave written notice by online filing to the Labor and Workforce Development Agency and by certified mail to Defendants of the specific provisions of the Labor Code that Defendants have violated against Plaintiff DIEGO BEDOYA MORENO and current and former aggrieved employees, including the facts and theories to support the violations. At the time of this filing, 65 days has elapsed since Plaintiffs provided notice, but the Labor and Workforce Development Agency has not indicated that it intends to investigate Defendants' Labor Code violations discussed in the notice. Accordingly, Plaintiffs may commence a civil action to recover penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code described in this Complaint.

31. Plaintiffs and the proposed class of similarly situated non-exempt, hourly employees are covered by, inter alia, California IWC Occupational Wage Order No. 9-2001, and Title 8, California Code of Regulations, § 11090.

B. Defendants.

32. TEMCO LOGISTICS and/or DOES are a premiere white glove solutions provider delivering and installing home goods. TEMCO LOGISTICS and/or DOES provide final mile delivery and installation services. TEMCO LOGISTICS and/or DOES perform

residential, business, job site, and commercial deliveries.

33. TEMCO LOGISTICS and/or DOES employ non-exempt employees in California. Non-exempt employees, such as Mr. Flores, Mr. Nguyen, and Mr. Moreno, are employed by TEMCO LOGISTICS and/or DOES in California to deliver and install appliances. TEMCO LOGISTICS and/or DOES also employs workers in its warehouses in California as hourly, non-exempt employees.

34. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants DOES 1-100, inclusive, are presently unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

35. Plaintiff is informed and believes, and based thereon alleges, that each Defendant and/or DOE acted in all respects pertinent to this action as the agent of the other Defendants and/or DOES, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendants and/or DOES are legally attributable to the other Defendants and/or DOES.

III. CLASS ACTION ALLEGATIONS

36. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a class action pursuant to section 382 of the California Code of Civil Procedure. Plaintiffs seek to represent a Class composed of and defined as follows:

All non-exempt employees of Defendants TEMCO LOGISTICS and/or DOES who were employed in the State of California during the period of the relevant statute of limitations ("Class Members").

1
2 Plaintiffs also seek to represent subclasses composed of and defined as follows:
3

4 All Class Members who worked one (1) or more shifts in excess of
5 five (5) hours.
6

7 All Class Members who worked one (1) or more shifts in excess of
8 six (6) hours.
9

10 All Class Members who worked one (1) or more shifts in excess of
11 ten (10) hours.
12

13 All Class Members who worked one (1) or more shifts in excess of
14 twelve (12) hours.
15

16 All Class Members who worked one (1) or more shifts in excess of
17 fourteen (14) hours.
18

19 All Class Members who worked one (1) or more shifts in excess of
20 fifteen (15) hours.
21

22 All Class Members who worked one (1) or more shifts in excess of
23 three (3) hour and one-half hours, but less than or equal to six (6)
24 hours.
25

26 All Class Members who worked one (1) or more shifts in excess of
27 six (6) hours, but less than or equal to ten (10) hours.
28

1
2 All Class Members who separated their employment from
3 Defendants.

4
5 All Class Members who worked one (1) or more shifts in which they
6 received a wage statement for the corresponding pay period.

7
8 All Class Members who were deducted wages for meal periods.

9
10 All Class Members who incurred business expenses without
11 reimbursement during their employment with Defendants.

12
13 All Class Members who worked in Defendants' facilities that were
14 not temperature controlled.

15
16 All Class Members who were not timely paid all wages due and
17 payable during their employment.

18
19 37. Plaintiffs reserve the right under rule 1855, subdivision (b), California Rules of Court, to
20 amend or modify the Class description with greater specificity or further division into
21 subclasses or limitation to particular issues.

22 38. This action has been brought and may properly be maintained as a class action under the
23 provisions of section 382 of the California Code of Civil Procedure because there is a well-
24 defined community of interest in the litigation and the proposed Class is easily
25 ascertainable.

26 **A. Numerosity.**

27 39. The potential members of the Class and subclasses as defined are so numerous that joinder
28

of all the members of the Class is impracticable. While the precise number of Class and subclass members has not been determined at this time, Plaintiffs are informed and believe that Defendants TEMCO LOGISTICS and/or DOES currently employ, and during the liability period employed, over one hundred (100) employees, all in the State of California, in positions as hourly non-exempt employees.

40. Accounting for employee turnover during the relevant periods increases this number substantially. Upon information and belief, Plaintiffs allege Defendants TEMCO LOGISTICS' and/or DOES' employment records will provide information as to the number and location of all Class members. Joinder of all members of the proposed Class is not practicable.

B. Commonality.

41. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class members. These common questions of law and fact include, without limitation:

(1) Whether TEMCO LOGISTICS and/or DOES violated the Labor Code and/or applicable IWC Wage Orders in failing to pay Class Members all earned wages at the regular rate for all hours worked.

(2) Whether TEMCO LOGISTICS and/or DOES' uniform policies and/or practices whereby Class Members were pressured and/or incentivized to forego taking meal and/or rest periods.

(3) Whether TEMCO LOGISTICS and/or DOES violated Labor Code section 226.7, IWC Wage Order No. 9-2001 or other applicable IWC Wage Orders, and/or California Code of Regulations, Title 8, section 11090, by failing to authorize, permit, and/or provide rest periods to Class Members for every four (4) hours or major fraction thereof worked and/or failing to pay said Class Member one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period was not authorized,

permitted and/or provided.

(4) Whether TEMCO LOGISTICS and/or DOES willfully failed to pay, in a timely manner, wages owed to members of the proposed Class who left TEMCO LOGISTICS' and/or DOES' employ or who were terminated.

(5) Whether TEMCO LOGISTICS and/or DOES violated Labor Code section 203, which provides for the assessment of a penalty against the employer, by willfully failing to timely pay all wages owed to Class Members who left TEMCO LOGISTICS' and/or DOES' employ or who were terminated.

(6) Whether TEMCO LOGISTICS and/or DOES had uniform policies and/or practices of failing to provide Class Members accurate and itemized wage statements.

(7) Whether TEMCO LOGISTICS and/or DOES had uniform policies and/or practices of failing to timely pay all wages owed to Class Members who left TEMCO LOGISTICS and/or DOES' employ or who were terminated.

(8) Whether TEMCO LOGISTICS and/or DOES failed to reimburse Class Members for all necessary business expenses.

(9) Whether TEMCO LOGISTICS and/or DOES violated the temperature control guidelines set forth in IWC Wage Order 9-2001.

(10) Whether TEMCO LOGISTICS and/or DOES failed to timely pay all wages due and payable to Class Members during their employment.

42. The answer to each of these respective questions will generate a common answer capable of resolving class-wide liability in one stroke.

43. Said common questions predominate over any individualized issues and/or questions

affecting only individual members.

C. Typicality.

44. The claims of the named Plaintiffs are typical of the claims of the proposed class. Plaintiffs and all members of the proposed class sustained injuries and damages arising out of and caused by TEMCO LOGISTICS' and/or DOES' common course of conduct in violation of laws and regulations that have the force and effect of law and statutes as alleged.

45. Plaintiffs YOVANIK FLORES, HUNG NGUYEN, and DIEGO BEDOYA MORENO were subjected to the same uniform policies and/or practices complained of herein that affected all such employees. Thus, as YOVANIK FLORES, HUNG NGUYEN, and DIEGO BEDOYA MORENO were subjected to the same unlawful policies and practices as all hourly non-exempt employees, their claims are typical of the class they seek to represent.

D. Adequacy of Representation.

46. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class.

47. Plaintiffs are ready and willing to take the time necessary to help litigate this case.

48. Plaintiffs have no conflicts that will disallow them to fairly and adequately represent and protect the interests of the members of the Class.

49. Counsel who represent Plaintiffs are competent and experienced in litigating large employment class actions.

50. Specifically, David Mara, Esq. and Jill Vecchi, Esq. of Mara Law Firm, PC, and Kane Moon, Esq., Allen Feghali, Esq., and Charlotte Mikat-Stevens of Moon & Yang, APC, are California lawyers in good standing.

51. Counsel who represent Plaintiffs are competent and experienced in litigating large employment class actions.

52. The lawyers at Mara Law Firm, PC, and Moon & Yang, APC, have been named class counsel in numerous cases and their practice is primarily focused on representing classes,

1 large and small, on the basis of California Labor Code and IWC Wage Order Violations
2 similar to those alleged herein. The attorneys at the firms are also frequently called upon
3 to and do author amicus briefs on behalf of the Consumer Attorneys of California on cases
4 in the appellate courts and Supreme Court of California involving important issues relating
5 to those alleged herein.

6 53. Mara Law Firm, PC, and Moon & Yang, APC, have the resources to take this case to trial
7 and judgment, if necessary.

8 54. Mara Law Firm, PC, and Moon & Yang, APC, have the experience, ability, and ways and
9 means to vigorously prosecute this case.

10 **E. Superiority of Class Action.**

11 55. A class action is superior to other available means for the fair and efficient adjudication of
12 this controversy. Individual joinder of all Class members is not practicable, and questions
13 of law and fact common to the Class predominate over any questions affecting only
14 individual members of the Class. Each member of the Class has been damaged and is
15 entitled to recovery by reason of Defendants TEMCO LOGISTICS' and/or DOES' illegal
16 policies and/or practices of failing to pay all straight time and overtime wages owed, failing
17 to permit or authorize rest periods, failing to provide meal periods, knowingly and
18 intentionally failing to comply with wage statement requirements, and failing to pay all
19 wages due at termination.

20 56. Class action treatment will allow those similarly situated persons to litigate their claims in
21 the manner that is most efficient and economical for the parties and the judicial system.
22 Plaintiffs are unaware of any difficulties that are likely to be encountered in the
23 management of this action that would preclude its maintenance as a class action.

24 57. Because such common questions predominate over any individualized issues and/or
25 questions affecting only individual members, class resolution is superior to other methods
26 for fair and efficient adjudication.

27 **IV. CAUSES OF ACTION**

**FIRST CAUSE OF ACTION AGAINST TEMCO LOGISTICS AND/OR DOES:
Failure to Pay All Straight Time Wages**

58. Plaintiffs and those similarly situated Class members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

59. Defendants TEMCO LOGISTICS and/or DOES have had a continuous policy of not paying Plaintiffs and those similarly situated for all hours worked.

60. It is fundamental that an employer must pay its employees for all time worked. California Labor Code sections 218 and 218.5 provides a right of action for nonpayment of wages. Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 223 prohibits the pay of less than a statutory or contractual wage scale. Labor Code section 1197 prohibits the payment of less than the minimum wage. Labor Code section 1194 states that an employee receiving less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage. Labor Code section 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not have the effect of reducing the agreed upon wage.

61. Plaintiffs and those similarly situated Class members were employed by Defendants TEMCO LOGISTICS and/or DOES at all relevant times. Defendants TEMCO LOGISTICS and/or DOES were required to compensate Plaintiffs for all hours worked and were prohibited from making deductions that had the effect of reducing the agreed upon wage.

62. Defendants TEMCO LOGISTICS and/or DOES have a continuous policy of not paying Plaintiffs and similarly situated Class members for all hours worked. Plaintiffs and similarly situated Class members worked as master technicians for a portion of the relevant time period. Defendants TEMCO LOGISTICS and/or DOES pay master technicians, such as Plaintiffs, on a piece-rate basis. As such, Defendants TEMCO LOGISTICS and/or DOES fail to pay non-exempt employees, such as Plaintiffs, for all hours worked.

63. Defendants TEMCO LOGISTICS and/or DOES require employees, like Plaintiffs, to remain with their vehicles when and if they receive a meal period. Thus, Plaintiffs and similarly situated Class Members are always under the control of Defendants TEMCO LOGISTICS and/or DOES and must be compensated for the time that their records indicate an unpaid meal period was taken.

64. Defendants TEMCO LOGISTICS and/or DOES also pay some technicians on a piece-rate basis, whereby they are paid based on the amount and type of installs they perform. These piece-rate pay structures fail to separately pay for rest period time or for the performance of other “non-productive” work, i.e., work that is not the specific task for which the piece-rate pay system is compensating them. Defendants TEMCO LOGISTICS’ and/or DOES’ piece-rate pay system fails to pay for pre- and post-shift duties. Under California law, Defendants TEMCO LOGISTICS and/or DOES must provide employees with paid rest periods. Defendants TEMCO LOGISTICS’ and/or DOES’ piece-rate pay system also fails to pay for rest period time.

65. Defendants TEMCO LOGISTICS and/or DOES have a continuous policy of not paying Plaintiff and Class Members for all hours worked, as they fail to pay for all the time Plaintiff and Class Members were subject to Defendants TEMCO LOGISTICS’ and/or DOES’ compensable control throughout the workday. This includes, but is not limited to, time spent working through meal periods, and/or any other time in the day when Plaintiffs and Class Members were performing work tasks, subject to the control of their employer and/or otherwise had work duties.

66. Under Defendants TEMCO LOGISTICS’ and/or DOES’ policies and procedures, non-exempt, hourly employees, like Plaintiffs, are subject to Defendants TEMCO LOGISTICS’ and/or DOES’ control before and after shifts when they are not being paid.

67. Class Members are not paid for all time under Defendants TEMCO LOGISTICS’ and/or DOES’ control during unpaid meal periods.

68. Plaintiffs and similarly situated Class Members are informed and believe and thereon

1 allege that Defendants TEMCO LOGISTICS and/or DOES breached the legal duty to pay
2 full wages to Plaintiffs and similarly situated Class Members by deducting a portion of the
3 wages earned by Plaintiffs and similarly situated Class Members when they work through
4 their meal periods, are not relieved of all work duties during their meal periods, and/or
5 when Defendants TEMCO LOGISTICS and/or DOES recorded a meal period for Plaintiffs
6 and similarly situated Class Members when no meal period was taken. Specifically,
7 Plaintiffs and similarly situated Class Members worked through their meal periods to
8 satisfy their demanding work duties imposed by Defendants TEMCO LOGISTICS and/or
9 DOES, thereby denying them the right to be completely free from employer control under
10 California law.

11 69. Thus, Defendants TEMCO LOGISTICS and/or DOES shave/steal earned wages from
12 Plaintiffs and each and every member of the Class each and every day they work.
13 Defendants TEMCO LOGISTICS and/or DOES have not paid Plaintiffs and the members
14 of the Class all straight time wages owed.

15 70. Plaintiffs and the Class Members are informed and believe and thereon allege that as a
16 direct result of Defendants TEMCO LOGISTICS' and/or DOES' uniform policies and/or
17 practices, Plaintiffs and the Class Members have suffered, and continue to suffer,
18 substantial unpaid wages, and lost interest on such wages, and expenses and attorneys' fees
19 in seeking to compel Defendants TEMCO LOGISTICS and/or DOES to fully perform their
20 obligations under state law, all to their respective damage in amounts, according to proof
21 at trial.

22 71. As a direct result of Defendants TEMCO LOGISTICS's and/or DOES' policy of illegal
23 wage theft, Plaintiffs and those similarly situated have been damaged in an amount to be
24 proven at trial.

25 72. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described
26 below.

27 **SECOND CAUSE OF ACTION AGAINST TEMCO LOGISTICS AND/OR DOES:**
28 **Failure to Pay All Overtime Wages**

1 73. Plaintiffs and those similarly situated Class members hereby incorporate by reference each
2 and every other paragraph in this Complaint herein as if fully plead.

3 74. It is fundamental that an employer must pay its employees for all overtime hours worked.
4 California Labor Code § 510 states that eight hours of labor constitutes a day's work. Any
5 work in excess of eight hours in one workday and any work in excess of 40 hours in any
6 one workweek and the first eight hours worked on the seventh day of work in any one
7 workweek shall be compensated at the rate of no less than one and one-half times the
8 regular rate of pay for an employee.

9 75. California Labor Code § 510 dictates that any work in excess of 12 hours in one day shall
10 be compensated at the rate of no less than twice the regular rate of pay for an employee. In
11 addition, any work in excess of eight hours on any seventh day of a workweek shall be
12 compensated at the rate of no less than twice the regular rate of pay of an employee.

13 76. Defendants TEMCO LOGISTICS and/or DOES failed to pay all overtime when Plaintiffs
14 and Class Members worked over eight (8) hours per day and when Plaintiffs and Class
15 Members worked over 40 hours per week. Plaintiffs and Class Members frequently worked
16 over 8 hours per day or over 40 hours per week.

17 77. Defendants TEMCO LOGISTICS and/or DOES failed to pay all double time when
18 Plaintiffs and Class Members worked over twelve (12) hours per day. Plaintiffs and Class
19 Members frequently worked over 12 hours per day.

20 78. Defendants TEMCO LOGISTICS and/or DOES have a pattern and practice of employing
21 non-exempt employees to work substantial daily hours. It is not uncommon for a non-
22 exempt employee, such as technicians like Plaintiffs, to work up to sixteen hours in a day.
23 Employees are not paid all overtime at the appropriate rate of time and a half or double
24 time for all overtime hours worked in a pay period.

25 79. Plaintiffs and those similarly situated Class members were employed by Defendants
26 TEMCO LOGISTICS and/or DOES at all relevant times. Defendants TEMCO
27 LOGISTICS and/or DOES were required to compensate Plaintiffs and Class Members for
28

all overtime hours worked and were prohibited from making deductions that had the effect of reducing the agreed upon wage.

80. Defendants TEMCO LOGISTICS and/or DOES failed to pay for the overtime that was due, pursuant to IWC Wage Order No. 9-2001, item 3(A).

81. Plaintiff and the Class members are informed and believe and thereon allege that as a direct result of Defendants TEMCO LOGISTICS's and/or DOES' uniform policies and/or practices, Plaintiffs and the Class Members have suffered, and continue to suffer, substantial unpaid overtime wages, and lost interest on such overtime wages, and expenses and attorneys' fees in seeking to compel Defendants TEMCO LOGISTICS and/or DOES to fully perform their obligations under state law, all to their respective damage in amounts according to proof at time of trial. Defendants TEMCO LOGISTICS and/or DOES committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention on injuring Plaintiffs and the Class Members. Defendants TEMCO LOGISTICS and/or DOES acted with malice or in conscious disregard of Plaintiffs' and the Class Member's rights. In addition to compensation, Plaintiffs are also entitled to any penalties allowed by law.

82. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described below.

**THIRD CAUSE OF ACTION AGAINST TEMCO LOGISTICS AND/OR DOES:
Failure to Provide Meal Periods, or Compensation in Lieu Thereof (Lab. Code §§ 226.7, 512, IWC Wage Order No. 9-2001(11); Cal. Code Regs., tit. 8, § 11090)**

83. Plaintiffs and those similarly situated Class Members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

84. Under California Labor Code section 512 and IWC Wage Order No. 9, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During this meal periods of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer

1 during the thirty (30) minute meal period, the employee has not been provided a meal
2 period in accordance with the law. Also, the employee is to be compensated for any work
3 performed during the thirty (30) minute meal period.

4 85. In addition, an employer may not employ an employee for a work period of more than ten
5 (10) hours per day without providing the employee with another meal period of less than
6 thirty (30) minutes.

7 86. Under California Labor Code section 226.7, if the employer does not provide an employee
8 a meal period in accordance with the above requirements, the employer shall pay the
9 employee one (1) hour of pay at the employee's regular rate of compensation for each
10 workday that the meal period is not provided.

11 87. Defendants TEMCO LOGISTICS and/or DOES breached the legal duty to provide meal
12 periods to employees by imposing a continuous and consistent policy requiring Plaintiffs
13 and similarly situated Class Members to work through their meal periods to satisfy the
14 demanding workload duties imposed by Defendants TEMCO LOGISTICS and/or DOES,
15 thereby denying Plaintiffs and similarly situated Class Members of the right to be
16 completely free from employer control under California law. Defendants TEMCO
17 LOGISTICS and/or DOES scheduled routes for Plaintiff and similarly situated Class
18 Members with fifteen (15) to nineteen (19) stops per route. Mr. Flores was suspended by
19 Defendants TEMCO LOGISTICS and/or DOES for finishing his route too late. Therefore,
20 Plaintiffs and similarly situated Class Members had to work through their meal periods in
21 order to complete their routes as quickly as possible.

22 88. Defendants TEMCO LOGISTICS and/or DOES has a consistent policy and/or practice of
23 not providing meal periods to Plaintiffs and Class Members and/or providing compensation
24 in lieu thereof. Specifically, Defendants TEMCO LOGISTICS' and/or DOES' business
25 model was such that Plaintiffs and Class Members were assigned too much work that could
26 not be reasonably completed in their assigned shift. The result is that Class Members
27 routinely and regularly are forced to eat their meals while working.
28

1 89. Defendants TEMCO LOGISTICS and/or DOES have a consistent policy and/or practice
2 of not providing meal periods to Plaintiffs and Class Members and/or providing
3 compensation in lieu thereof. As a matter of policy and practice, Defendants TEMCO
4 LOGISTICS and/or DOES do not provide employees with full 30-minute meal periods for
5 each day worked where they are free from Defendants TEMCO LOGISTICS' and/or
6 DOES' control. Plaintiffs and Class Members are always subjected to Defendants TEMCO
7 LOGISTICS' and/or DOES' control throughout the workday, even during mandated
8 breaks and meal periods.

9 90. Due to the thrust of business, Defendants TEMCO LOGISTICS' and/or DOES' policies
10 and practices encourage employees to stay working and/or under Defendants TEMCO
11 LOGISTICS' and/or DOES' control, as opposed to encouraging the rest and nourishment
12 meal periods are designed to provide. As a matter of policy and practice, Defendants
13 TEMCO LOGISTICS and/or DOES fail to relinquish all control over Class Members to
14 permit them with reasonable opportunities to take meal periods.

15 91. Further, Defendants TEMCO LOGISTICS and/or DOES instituted a consistent
16 policy/practice of not providing second meal periods to Plaintiffs and similarly situated
17 Class Members and/or providing compensation in lieu thereof. Specifically, Plaintiffs and
18 Class Members are required to work ten (10) to seventeen (17) hour shifts but never receive
19 second meal periods.

20 92. Failing to provide compensation for such unprovided or improperly provided meal periods,
21 as alleged above, Defendants TEMCO LOGISTICS and/or DOES willfully violated the
22 provisions of Labor Code sections 226.7, 512, and IWC Wage Order No. 9.

23 93. As a result of the unlawful acts of Defendants TEMCO LOGISTICS and/or DOES,
24 Plaintiffs and the Class they seek to represent have been deprived of premium wages, in
25 amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest
26 and penalties thereon, attorneys' fees and costs, pursuant to Labor Code section 226.7, and
27 IWC Wage Order No. 9-2001. Plaintiffs and the Class they seek to represent did not
28

willfully waive their right to take meal periods through mutual consent with Defendants TEMCO LOGISTICS and/or DOES.

94. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described below.

**FOURTH CAUSE OF ACTION AGAINST TEMCO LOGISTICS AND/OR DOES:
Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; IWC Wage Order No. 9-2001(12); Cal. Code Regs. Title 8 § 11090)**

95. Plaintiffs and those similarly situated Class Members hereby incorporate by reference each and every other paragraph in this Complaint herein, as if fully plead.

96. Under IWC Wage Order No. 9, every employer shall authorize and permit all employees to take rest periods, “[t]he authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours worked or major fraction thereof.” IWC Wage Order 9-2001(12). The time spent on rest periods “shall be counted as hours worked for which there shall be no deduction from wages.” *Id.*

97. Under California Labor Code section 226.7, if the employer does not provide an employee a rest period in accordance with the above requirements, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

98. At all relevant times, Defendants and/or DOES maintained policies and practices that failed to authorize and/or permit rest period time based upon the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

99. Defendants TEMCO LOGISTICS and/or DOES have a policy and practice of not providing net ten-minute rest periods to employees. Defendants TEMCO LOGISTICS and/or DOES also do not provide rest periods every four hours or major fraction thereof.

100. Defendants TEMCO LOGISTICS and/or DOES have a consistent policy and/or practice of not providing rest periods to Plaintiffs and similarly situated Class Members and/or providing compensation in lieu thereof. Specifically, Plaintiffs and Class Members are required to work ten (10) to seventeen (17) hour shifts but never received first, second,

1 third, or fourth rest breaks.

2 101. Furthermore, Defendants TEMCO LOGISTICS and/or DOES breached the legal duty to
3 provide rest periods to employees by imposing a continuous and consistent policy of
4 requiring Plaintiffs and similarly situated Class Members to work through their rest periods
5 to satisfy the demanding workload duties imposed by Defendants TEMCO LOGISTICS
6 and/or DOES, thereby denying Plaintiffs and Class Members of the right to be completely
7 free from employer control under California law. Defendants TEMCO LOGISTICS and/or
8 DOES scheduled routes for Plaintiffs and Class Members with fifteen (15) to nineteen (19)
9 stops per route. Mr. Flores was suspended by Defendants TEMCO LOGISTICS and/or
10 DOES for finishing his route too late. Therefore, Plaintiffs and Class Members had to work
11 through their rest periods in order to complete their routes as quickly as possible.

12 102. Additionally, Plaintiff and Class Members were not free of all work duties and/or employer
13 control during rest periods or provided with a net ten-minute rest break.

14 103. In the alternative, Defendants TEMCO LOGISTICS' and/or DOES' business model was
15 such that Plaintiffs and Class Members were assigned too much work whereby Plaintiffs
16 and the Class had to work through their rest periods.

17 104. Throughout the statutory period, Defendants TEMCO LOGISTICS and/or DOES had a
18 pattern and practice of assigning too much work to be completed in too short of time
19 frames, resulting in Plaintiffs and those similarly situated not being able to take rest
20 periods.

21 105. As a result of the unlawful acts of Defendants TEMCO LOGISTICS and/or DOES,
22 Plaintiffs and the Class they seek to represent have been deprived of premium wages, in
23 amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest
24 and penalties thereon, attorneys' fees and costs, pursuant to Labor Code section 226.7, and
25 IWC Wage Order No. 9-2001.

26 106. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described
27 below.
28

**FIFTH CAUSE OF ACTION AGAINST TEMCO LOGISTICS AND/OR DOES:
Knowing and Intentional Failure to Comply with Itemized Employee Wage
Statement Provisions (Lab. Code §§ 226, 1174, 1175; IWC Wage Order No. 9; Cal.
Code Regs., Title 8, § 11090)**

107. Plaintiffs and those similarly situated Class Members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.
108. Labor Code section 226 subdivision (a) requires Defendants TEMCO LOGISTICS and/or DOES to, inter alia, itemize in wage statements and accurately report the total hours worked and total wages earned. Defendants TEMCO LOGISTICS and/or DOES have knowingly and intentionally failed to comply with Labor Code section 226, subdivision (a), on each and every wage statement provided to Plaintiffs YOVANIK FLORES, HUNG NGUYEN, and DIEGO BEDOYA MORENO and members of the proposed Class.
109. Labor Code section 1174 requires Defendants TEMCO LOGISTICS and/or DOES to maintain and preserve, in a centralized location, records showing the daily hours worked by and the wages paid to its employees. Defendants TEMCO LOGISTICS and/or DOES have knowingly and intentionally failed to comply with Labor Code section 1174. The failure of Defendants TEMCO LOGISTICS and/or DOES, and each of them, to comply with Labor Code section 1174 is unlawful pursuant to Labor Code section 1175.
110. Defendants TEMCO LOGISTICS and/or DOES failed to maintain accurate time records - as required by IWC Wage Order No. 9, and Cal. Code Regs., Title 8 section 11090 - showing, among other things, when the employee begins and ends each work period, the total daily hours worked in itemized wage statements, total wages, bonuses and/or incentives earned, and all deductions made.
111. Defendants TEMCO LOGISTICS and/or DOES have knowingly and intentionally failed to provide Plaintiff and the Class members with accurate itemized wage statements which show: “(1) gross wages earned, (2) total hours worked by the employee, . . . (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four

1 digits of his or her social security number or an employee identification number other than
2 a social security number, (8) the name and address of the legal entity that is the employer
3 and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section
4 1682, the name and address of the legal entity that secured the services of the employer,
5 and (9) all applicable hourly rates in effect during the pay period and the corresponding
6 number of hours worked at each hourly rate by the employee[.]” Labor Code section
7 226(a).

8 112. Defendants TEMCO LOGISTICS and/or DOES improperly state the name of the name of
9 the employing entity on employee wage statements. For instance, on the actual paycheck,
10 the employer is listed as Home Express Delivery Service LLC DBA Temco. On the wage
11 statement, the entity listed as the employer is Home Express Delivery Service LLC DBA:
12 Home Express Delivery Service. Thus, the name of the entity on the wage statement
13 contradicts the name of the entity on the paycheck. The name of the entity on the wage
14 statement also contradicts the entity’s name as it is registered with the California Secretary
15 of State. Per the Statement of Information registered and filed with the California Secretary
16 of State, the correct entity name is Home Express Delivery Service, LLC, which is different
17 from Home Express Delivery Service LLC and Home Express Delivery Service LLC DBA
18 Home Express Delivery Service. Plaintiffs and Class Members could not promptly and
19 easily determine the employer’s name from the wage statements alone.

20 113. Defendants TEMCO LOGISTICS and/or DOES knowingly and intentionally did not
21 include the gross wages earned on wage statements. Defendants TEMCO LOGISTICS
22 and/or DOES therefore knowingly and intentionally failed to itemize the gross wages
23 earned on Plaintiffs’ and Class Members’ wage statements.

24 114. In every pay period during the period of the relevant statute of limitations, Defendants
25 TEMCO LOGISTICS and/or DOES knowingly and intentionally did not itemize the total
26 hours worked on wage statements as *Labor Code* section 226, subsection (a), requires. In
27 every pay period during the period of the relevant statute of limitations, Defendants
28

1 TEMCO LOGISTICS and/or DOES knowingly and intentionally did not include the total
2 hours worked on wage statements. Defendants TEMCO LOGISTICS and/or DOES
3 therefore knowingly and intentionally failed to itemize the total hours worked on Plaintiffs'
4 and Class Members' wage statements.

5 115. Defendants TEMCO LOGISTICS' and/or DOES' wage statements do not itemize all
6 regular time and overtime hours, as part of the regular and overtime hours are itemized in
7 a category Defendants TEMCO LOGISTICS and/or DOES itemizes as "Rest and
8 Recovery." This mis-itemization results in the total hours, regular hours, and overtime
9 hours being incorrect on every wage statement for every aggrieved employee in violation
10 of subdivisions (a) and (e) of California Labor Code section 226.

11 116. Defendants TEMCO LOGISTICS and/or DOES have a continuous policy of not paying
12 Plaintiffs and similarly situated Class Members for all hours worked. Defendants TEMCO
13 LOGISTICS and/or DOES have not paid for all the time Plaintiffs and Class Members
14 worked, as outlined herein.

15 117. Throughout the statutory period, as a result of the knowing and intentional failure by
16 Defendants TEMCO LOGISTICS and/or DOES to comply with itemized employee wage
17 statement provisions, Plaintiffs and Class Members have been able to reconstruct only a
18 reasonable estimate of the hours worked and have, therefore, not received full
19 compensation.

20 118. As a direct result of Defendants TEMCO LOGISTICS and/or DOES unlawful acts,
21 Plaintiffs and the Class they intend to represent have been damaged and are entitled to
22 recovery of such amounts, plus interest thereon, attorneys' fees, and costs, pursuant to
23 Labor Code section 226.

24 119. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described
25 below.

26 **SIXTH CAUSE OF ACTION AGAINST TEMCO LOGISTICS AND/OR DOES:**
27 **Failure to Pay All Wages Due at the Time of Termination from Employment (Lab.**
28 **Code §§ 201-203)**

1 120. Plaintiffs and those similarly situated Class Members hereby incorporate by reference each
2 and every other paragraph in this Complaint herein as if fully plead.

3 121. Plaintiffs YOVANIK FLORES, HUNG NGUYEN, and DIEGO BEDOYA MORENO are
4 former employees of Defendants TEMCO LOGISTICS and/or DOES.

5 122. Whether Plaintiffs YOVANIK FLORES, HUNG NGUYEN, and DIEGO BEDOYA
6 MORENO voluntarily or involuntarily terminated their employment with Defendants
7 TEMCO LOGISTICS and/or DOES, Defendants TEMCO LOGISTICS and/or DOES did
8 not timely pay their straight time wages owed at the time of their termination.

9 123. Whether Plaintiffs YOVANIK FLORES, HUNG NGUYEN, and DIEGO BEDOYA
10 MORENO voluntarily or involuntarily terminated their employment with Defendants
11 TEMCO LOGISTICS and/or DOES, Defendants TEMCO LOGISTICS and/or DOES did
12 not timely pay their overtime wages owed at the time of their termination.

13 124. Whether Plaintiffs YOVANIK FLORES, HUNG NGUYEN, and DIEGO BEDOYA
14 MORENO voluntarily or involuntarily terminated their employment with Defendants
15 TEMCO LOGISTICS and/or DOES, Defendants TEMCO LOGISTICS and/or DOES did
16 not timely pay their meal and/or rest period premiums owed at the time of their termination.

17 125. Numerous members of the Class are no longer employed by Defendants TEMCO
18 LOGISTICS and/or DOES. They were either fired or quit Defendants TEMCO
19 LOGISTICS' and/or DOES' employ. Defendants TEMCO LOGISTICS and/or DOES did
20 not pay all timely wages owed at the time of their termination. Defendants TEMCO
21 LOGISTICS and/or DOES did not pay all premium wages owed at the time of their
22 termination.

23 126. Labor Code section 203 provides that, if an employer willfully fails to pay, without
24 abatement or reduction, in accordance with Labor Code sections 201, 201.5, 202 and 205.5,
25 any wages of an employee who is discharged or who quits, the wages of the employee shall
26 continue at the same rate, for up to thirty (30) days from the due date thereof, until paid or
27 until an action therefore is commenced.
28

1 127. Defendants TEMCO LOGISTICS and/or DOES failed to pay Plaintiffs YOVANIK
2 FLORES, HUNG NGUYEN, and DIEGO BEDOYA MORENO and the Class Members a
3 sum certain at the time of their termination, or within seventy-two (72) hours of their
4 resignation, and have failed to pay those sums for thirty (30) days thereafter. Pursuant to
5 the provisions of Labor Code section 203, Plaintiffs YOVANIK FLORES, HUNG
6 NGUYEN, and DIEGO BEDOYA MORENO and the Class Members are entitled to a
7 penalty in the amount of their daily wage, multiplied by thirty (30) days.

8 128. When Plaintiffs and those members of the Class who are former employees of Defendants
9 TEMCO LOGISTICS and/or DOES separated from Defendants TEMCO LOGISTICS's
10 and/or DOES' employ, Defendants TEMCO LOGISTICS and/or DOES willfully failed to
11 pay all straight time wages, overtime wages, meal period premiums, and/or rest period
12 premiums owed at the time of termination.

13 129. Defendants TEMCO LOGISTICS and/or DOES failure to pay said wages to Plaintiffs
14 YOVANIK FLORES, HUNG NGUYEN, and DIEGO BEDOYA MORENO and members
15 of the Class they seek to represent, was willful in that Defendants TEMCO LOGISTICS
16 and/or DOES and each of them knew the wages to be due, but failed to pay them.

17 130. As a consequence of Defendants TEMCO LOGISTICS' and/or DOES' willful conduct in
18 not paying wages owed at the time of separation from employment, Plaintiffs YOVANIK
19 FLORES, HUNG NGUYEN, and DIEGO BEDOYA MORENO and members of the
20 proposed Class are entitled to thirty (30) days' worth of wages as a penalty under Labor
21 Code section 203, together with interest thereon and attorneys' fees and costs.

22 131. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described
23 below.

24 **SEVENTH CAUSE OF ACTION AGAINST TEMCO LOGISTICS AND/OR DOES:**
25 **Failure to Indemnify Necessary Business Expenses (Lab. Code § 2802)**

26 132. Plaintiffs and those similarly situated Class Members hereby incorporate by reference each
27 and every other paragraph in this Complaint herein as if fully plead.

28 133. Defendants TEMCO LOGISTICS and/or DOES violated Labor Code section 2802 and the

IWC Wage Orders, by failing to pay and indemnify the Plaintiffs and the Class for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of Defendants TEMCO LOGISTICS and/or DOES.

134. As a result, Plaintiffs and the Class were damaged at least in the amounts of the expenses they paid, or which were deducted by Defendants TEMCO LOGISTICS and/or DOES from their wages.

135. Plaintiffs and the Class they represent are entitled to attorney's fees, expenses, and costs of suit pursuant to Labor Code section 2802(c) and interest pursuant to Labor Code section 2802(b).

**EIGHTH CAUSE OF ACTION AGAINST TEMCO LOGISTICS AND/OR DOES:
Violation of Temperature Control Guidelines (IWC Wage Order No. 9-2001(14); Cal. Code Regs., tit. 8 § 11090)**

136. Plaintiffs and those similarly situated Class Members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

137. IWC Wage Order Number 9-2001, section 14 provides, "The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed."

138. Section 14 continues, "If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort. Where the nature of the employment requires a temperature of less than 60° F., a heated room shall be provided to which employees may retire for warmth, and such room shall be maintained at not less than 68°."

139. Further, Section 14 states, "A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use."

140. Plaintiffs allege that Defendants TEMCO LOGISTICS and/or DOES did not comply with these provisions of IWC Wage Order 9-2001.

141. Defendants TEMCO LOGISTICS's and/or DOES' failure to comply with these provisions

1 is in violation of IWC Wage Order 9-2001, section 14.

2 **NINTH CAUSE OF ACTION AGAINST TEMCO LOGISTICS AND/OR DOES:**
3 **Failure to Timely Pay Wages Due and Payable During Employment**

4 142. Plaintiffs and those similarly situated Class Members hereby incorporate by reference each
5 and every other paragraph in this Complaint herein as if fully plead.

6 143. Section 204(a) of the California Labor Code required Defendants TEMCO LOGISTICS
7 and/or DOES to pay Plaintiffs and the Class Members all wages earned twice during each
8 calendar month.

9 144. California Labor Code section 204 subdivision (a) provides “[a]ll wages . . . earned by any
10 person in any employment are due and payable twice during each calendar month, on days
11 designated in advance by the employer as the regular paydays. Labor performed between
12 the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th
13 and 26th day of the month during which the labor was performed, and labor performed
14 between the 16th and the last day, inclusive, of any calendar month shall be paid for
15 between the 1st and 10th day of the following month.” For pay periods other than the 1st
16 through the 15th and the 16th through the final day of the month, wages must be paid within
17 seven (7) calendar days of the end of the payroll period in which the wages were earned.
18 Cal. Lab. Code Section 204(d).

19 145. During the relevant time period, Defendants TEMCO LOGISTICS and/or DOES
20 intentionally and willfully failed to pay Plaintiffs and the Class Members all regular-time
21 and overtime wages, that were earned and unpaid, twice during each calendar month.
22 Alternatively, Defendants TEMCO LOGISTICS and/or DOES failed to pay wages earned
23 within seven (7) calendar days of the end of the payroll period in which the wages were
24 earned.

25 146. Defendants TEMCO LOGISTICS’s and/or DOES’ failure to pay Plaintiffs and the Class
26 Members their wages, that were earned and unpaid, twice during each calendar month
27 and/or within seven (7) calendar days of the end of the payroll period in which the wages
28 were earned, is in violation of California Labor Code section 204.

**TENTH CAUSE OF ACTION AGAINST TEMCO LOGISTICS AND/OR DOES:
Violation of Unfair Competition Law (California Bus. & Prof. Code, § 17200, et seq.)**

147. Plaintiffs and those similarly situated Class Members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

148. Defendants TEMCO LOGISTICS and/or DOES failure to pay all straight time and overtime wages earned, failure to provide compliant meal and/or rest breaks and/or compensation in lieu thereof, failure to itemize and keep accurate records, and failure to pay all wages due at time of termination, as alleged herein, constitutes unlawful activity prohibited by California Business and Professions Code section 17200, et seq.

149. The actions of Defendants TEMCO LOGISTICS and/or DOES in failing to pay Plaintiff and members of the proposed Class in a lawful manner, as alleged herein, constitutes false, unfair, fraudulent and deceptive business practices, within the meaning of California Business and Professions Code section 17200, et seq.

150. Plaintiffs are entitled to an injunction and other equitable relief against such unlawful practices in order to prevent future damage, for which there is no adequate remedy at law, and to avoid a multiplicity of lawsuits. Plaintiffs bring this cause individually and as members of the general public actually harmed and as a representative of all others subject to Defendants TEMCO LOGISTICS and/or DOES unlawful acts and practices.

151. As a result of their unlawful acts, Defendants TEMCO LOGISTICS and/or DOES have reaped and continue to reap unfair benefits at the expense of Plaintiffs and the proposed Class they seek to represent. Defendants TEMCO LOGISTICS and/or DOES should be enjoined from this activity and made to disgorge these ill-gotten gains and restore Plaintiffs and the members of the proposed Class pursuant to Business and Professions Code section 17203. Plaintiffs are informed and believe, and thereon allege, that Defendants TEMCO LOGISTICS and/or DOES are unjustly enriched through their policy of not all wages owed to Plaintiffs and members of the proposed Class.

152. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and members of the proposed class are prejudiced by Defendants TEMCO LOGISTICS' and/or DOES' unfair

trade practices.

153. As a direct and proximate result of the unfair business practices of Defendants TEMCO LOGISTICS and/or DOES, and each of them, Plaintiffs, individually and on behalf of all employees similarly situated, are entitled to equitable and injunctive relief, including full restitution and/or disgorgement of all wages and premium pay which have been unlawfully withheld from Plaintiffs and members of the proposed Class as a result of the business acts and practices described herein and enjoining Defendants TEMCO LOGISTICS and/or DOES from engaging in the practices described herein.

154. The illegal conduct alleged herein is continuing, and there is no indication that Defendants TEMCO LOGISTICS and/or DOES will cease and desist from such activity in the future. Plaintiff alleges that if Defendants TEMCO LOGISTICS and/or DOES are not enjoined from the conduct set forth in this Complaint, they will continue the unlawful activity discussed herein.

155. Plaintiffs further request that the Court issue a preliminary and permanent injunction prohibiting Defendants TEMCO LOGISTICS and/or DOES from continuing to not pay Plaintiffs and the members of the proposed Class overtime wages as discussed herein.

156. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described below.

ELEVENTH CAUSE OF ACTION AGAINST TEMCO LOGISTICS AND/OR DOES: Violations of the Private Attorneys General Act of 2004 ("PAGA") (Labor Code §2698 et seq.)

157. Plaintiffs and those similarly situated Class Members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

158. Plaintiffs, by virtue of their employment with Defendants TEMCO LOGISTICS and/or DOES and Defendants TEMCO LOGISTICS's and/or DOES' failure to comply with temperature control guidelines and failure to provide meal and rest periods, overtime compensation, all wages for all work performed at the statutory minimum agreed upon rate, failure to reimburse for necessary business expenses, and all wages due during employment and at termination, are aggrieved employees with standing to bring an action under the

Private Attorney General Act (“PAGA”). Plaintiffs, as representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (DLSE). This includes each of the following, as set forth in Labor Code Section 2699.5, which provides that Section 2699.3(a) applies to any alleged violation of the following provisions: Sections 201 through 203, 204, 205.5, 221, 222, 223, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1199, and 2802.

159. Plaintiffs are informed and believe that Defendants TEMCO LOGISTICS and/or DOES have violated and continue to violate provisions of the California Labor Code and applicable Wage Orders related to temperature control, meal and rest periods, overtime compensation, wages for all work performed, and all wages due during employment and at termination.

160. Plaintiffs, as personal representatives of the general public, will and do seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the one-year period of filing this action, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with PAGA, with at least 75% of the penalties recovered being reimbursed to the State of California and the Labor and Workforce Development Agency (LWDA).

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays for judgment as follows:

1. That the Court determine that this action may be maintained as a class action;
2. For compensatory damages, in an amount according to proof at trial, with interest thereon;
3. For economic and/or special damages in an amount according to proof with interest thereon;
4. For unpaid straight time and overtime wages, in an amount according to proof at

- 1 trial, with interest thereon;
- 2 5. For compensation for all time worked;
- 3 6. For compensation for not being provided paid rest breaks;
- 4 7. For compensation for not being provided paid meal periods;
- 5 8. For reimbursement of necessary business expenses;
- 6 9. For damages and/or monies owed for failure to comply with itemized employee
- 7 wage statement provisions;
- 8 10. For all waiting time penalties owed;
- 9 11. That Defendants be found to have engaged in unfair competition in violation of
- 10 sections 17200 et seq. of the California Business and Professions Code;
- 11 12. That Defendants be ordered and enjoined to make restitution to the Class due to
- 12 their unfair competition, including disgorgement of their wrongfully withheld
- 13 wages pursuant to California Business and Professions Code sections 17203 and
- 14 17204;
- 15 13. That an order of specific performance of all penalties owed be issued under
- 16 Business and Professions Code sections 17202;
- 17 14. That Defendants be enjoined from continuing the illegal course of conduct, alleged
- 18 herein;
- 19 15. That Defendants further be enjoined to cease and desist from unfair competition in
- 20 violation of section 17200 et seq. of the California Business and Professions Code;
- 21 16. That Defendants be enjoined from further acts of restraint of trade or unfair
- 22 competition;
- 23 17. For penalties for each violation of the Labor Code Private Attorneys General Act
- 24 of 2004 (“PAGA”);
- 25 18. For attorneys’ fees;
- 26 19. For liquidated damages;
- 27 20. For interest accrued to date;
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- 21. For costs of suit and expenses incurred herein; and
- 22. For any such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial.

Dated: April 10, 2023

MARA LAW FIRM, PC



David Mara, Esq.
Jill Vecchi, Esq.

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

Exhibit 2

David Mara
Grace Campbell
Taylor Hanks
Jill Vecchi
Joann B. Gerrity
Matthew Crawford
Tony Roberts



2650 Camino Del Rio North
Suite 205, San Diego, CA 92108
Phone: (619) 234-2833
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MaraLawFirm.com

February 24, 2021

Via Upload to the LWDA Website and U.S. Certified Mail

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION 2699.3**

TO: California Labor and Workforce Development Agency; Home Express Delivery Service, LLC dba Temco Logistics

Yovanik Flores and Hung Nguyen, on behalf of themselves, others similarly situated, and the general public v. Home Express Delivery Service, LLC dba Temco Logistics

Factual Statement and Theories of Labor Code Violations

Yovanik Flores and Hung Nguyen were employed by Home Express Delivery Service, LLC dba Temco Logistics ("Temco") as non-exempt employees in California. Non-exempt employees, such as Mr. Flores and Mr. Nguyen, perform services for Temco throughout California, including in Alameda County. Mr. Flores' and Mr. Nguyen's employment with Temco ended on or about January 6, 2021.

Mr. Flores and Mr. Nguyen give notice of their intent to file a lawsuit for violations of the Private Attorneys General Act of 2004 ("PAGA") for Temco's failure to comply with California's wage and hour requirements on behalf of themselves and similarly aggrieved employees.

Temco is a premiere white glove solutions provider delivering and installing home goods. Temco provides final mile delivery and installation services. Temco performs residential, business, job site, and commercial deliveries. Temco employs non-exempt employees. Non-exempt employees, such as Mr. Flores and Mr. Nguyen, are employed by Temco in California to deliver and install appliances. Temco also employs workers in its warehouses in California as hourly, non-exempt employees. Aggrieved employees for purposes of this notice includes all non-exempt employees of Temco employed in California at any time between one year of uploading and serving this Notice to the Labor and Workforce Development Agency ("LWDA") through the date the Court issues a judgment.

Temco has a pattern and practice of employing non-exempt employees to work substantial daily hours. It is not uncommon for a non-exempt employee, such as technicians like Flores and Nguyen, to work up to sixteen hours in a day. Employees are not paid all overtime at the appropriate rate of time and a half or double time for all overtime hours. Temco also has a pattern and practice of

assigning too much work it wants done in an unreasonable amount of time that non-exempt employees are forced to forego taking meal and rest breaks in order to satisfy Temco's productivity demands. Due to Temco's failure to pay all wages for all hours worked, it also fails to pay aggrieved employees all wages twice monthly, in violation of California Labor Code section 204. Temco's failure to pay all straight time and overtime wages owed results in waiting time violations for all aggrieved employees whose employment with Temco has ceased at any time within a year of uploading and serving this Notice.

Temco also violates California's wage statement requirements under California Labor Code section 226. Specifically, Temco's wage statements do not itemize all regular time and overtime hours, as part of the regular and overtime hours are itemized in a category Temco itemizes as "Rest and Recovery." This mis-itemization results in the total hours, regular hours, and overtime hours being incorrect on every wage statement for every aggrieved employee in violation of subdivisions (a) and (e) of California Labor Code section 226.

I. Temco Fails to Pay All Straight Time Wages Owed

It is fundamental that an employer must pay its employees for all time worked. *California Labor Code* sections 218 and 218.5 provide a right of action for nonpayment of wages. *California Labor Code* section 222 prohibits the withholding of part of a wage. *California Labor Code* section 223 prohibits the payment of less than a statutory or contractual wage scale. *California Labor Code* section 1197 prohibits the payment of less than the minimum wage. *California Labor Code* section 1194 states that an employee receiving less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage. *California Labor Code* section 1194.2 states that an employee receiving less than the legal minimum wage is entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. *California Labor Code* section 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not have the effect of reducing the agreed upon wage.

Temco has a continuous policy of not paying Mr. Flores and Mr. Nguyen and similarly aggrieved employees for all hours worked. Mr. Flores and Mr. Nguyen worked as master technicians for a portion of the relevant time period. Temco pays master technicians, such as Mr. Flores and Mr. Nguyen, on a piece-rate basis. As such, Temco fails to pay non-exempt employees, such as Mr. Flores and Mr. Nguyen, for all hours worked. Temco requires employees, like Mr. Flores and Mr. Nguyen, to remain with their vehicles when and if they receive a meal period. Thus, aggrieved employees, Like Mr. Flores and Mr. Nguyen, are always under the control of Temco and must be compensated for the time that their records indicate an unpaid meal period was taken.

Temco also pays some technicians on a piece-rate basis, whereby they are paid based on the amount and type of installs they perform. These piece-rate pay structures fail to separately pay for rest period time or for the performance of other "non-productive" work, i.e., work that is not the specific task for which the piece-rate pay system is compensating them. Temco's piece-rate pay system fails to pay for pre- and post-shift duties. Under California law, Temco must provide employees with paid rest periods. Temco's piece-rate pay system also fails to pay for rest period

time.

Likewise, Mr. Flores, Mr. Nguyen, and the aggrieved employees are informed and believe and thereon allege that Temco breached the legal duty to pay full wages to Mr. Flores, Mr. Nguyen, and the aggrieved employees by deducting a portion of the wages earned by Mr. Flores, Mr. Nguyen, and the aggrieved employees when they work through their meal periods, are not relieved of all work duties during their meal periods, and/or when Temco recorded a meal period for Mr. Flores, Mr. Nguyen, and the aggrieved employees when no meal period was taken. Specifically, Mr. Flores, Mr. Nguyen, and the aggrieved employees worked through their meal periods to satisfy their demanding work duties imposed by Temco, thereby denying them the right to be completely free from employer control under California law.

Temco committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring Mr. Flores, Mr. Nguyen, and the aggrieved employees. Temco acted with malice or in conscious disregard of Mr. Flores', Mr. Nguyen's, and the aggrieved employees' rights.

These claims are for Mr. Flores, Mr. Nguyen, and all similarly situated non-exempt employees who worked for Temco in California.

Mr. Flores and Mr. Nguyen, as representatives of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (DLSE). This includes each of the following, as set forth in *Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 510 and 1194.

II. Temco Failed to Pay Overtime

It is fundamental that an employer must pay its employees for all time worked. *California Labor Code* section 510 states that eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.

California Labor Code section 510 dictates that any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

Temco failed to pay all overtime when Mr. Flores, Mr. Nguyen, and the aggrieved employees worked over eight (8) hours per day and when employees worked over forty (40) hours per week. Temco failed to pay Mr. Flores, Mr. Nguyen, and the aggrieved employees for all hours worked, including hours worked over eight (8) hours in a day and forty (40) hours in a week.

Temco has a pattern and practice of employing non-exempt employees to work substantial daily hours. It is not uncommon for a non-exempt employee, such as technicians like Flores and Nguyen,

to work up to sixteen hours in a day. Employees are not paid all overtime at the appropriate rate of time and a half or double time for all overtime hours worked in a pay period.

Mr. Flores, Mr. Nguyen, and the aggrieved employees have suffered, and continue to suffer, substantial unpaid wages, and lost interest on such wages, and expenses.

These claims are for Mr. Flores, Mr. Nguyen, and all similarly situated non-exempt employees who worked for Temco in California.

Mr. Flores and Mr. Nguyen, as representatives of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (DLSE) for violations of *California Labor Code* section 510.

III. Temco Failed to Provide Meal Periods

Under *California Labor Code* section 512 no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

In addition, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with another meal period of not less than thirty (30) minutes.

Temco breached the legal duty to provide meal periods to employees by imposing a continuous and consistent policy requiring Mr. Flores, Mr. Nguyen, and the aggrieved employees to work through their meal periods to satisfy the demanding workload duties imposed by Temco, thereby denying Mr. Flores, Mr. Nguyen, and the aggrieved employees of the right to be completely free from employer control under California law. Temco scheduled routes for Mr. Flores and Mr. Nguyen with fifteen (15) to nineteen (19) stops per route. Mr. Flores was suspended by Temco for finishing his route too late. Therefore, Mr. Flores and Mr. Nguyen had to work through their meal periods in order to complete their routes as quickly as possible.

Further, Temco did not provide Mr. Flores and Mr. Nguyen with full thirty-minute meal periods. Alternatively, Mr. Flores, Mr. Nguyen, and the aggrieved employees were not free of all work duties and/or employer control during meal periods.

Additionally, Temco instituted a consistent policy/practice of not providing second meal periods to Mr. Flores, Mr. Nguyen, and all aggrieved employees and/or providing compensation in lieu thereof. Specifically, Mr. Flores, Mr. Nguyen, and the aggrieved employees are required to work ten (10) to seventeen (17) hour shifts but never received second meal periods.

By failing to provide statutory first and/or second meal periods, and by failing to provide compensation for unprovided meal periods, as alleged above, Temco willfully violated the provisions of *Labor Code* sections 226.7 and 512.

These claims are for Mr. Flores, Mr. Nguyen, and all similarly situated non-exempt employees who worked for Temco in California.

Mr. Flores and Mr. Nguyen, as non-exempt employees who unlawfully were deprived of first and second meal periods, are aggrieved employees with standing to bring an action under the PAGA. Mr. Flores and Mr. Nguyen have satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *Labor Code* section 2699.5 for violations of *Labor Code* sections 226.7 and 512.

IV. Temco Failed to Provide Rest Periods

Temco has had a consistent policy and/or practice of not providing duty free ten (10) minute paid rest periods for every four (4) hours worked, or a major fraction thereof, to Mr. Flores, Mr. Nguyen, and the aggrieved employees.

Industrial Welfare Commission Order No. 9-2001 section 12(A) states “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Temco has had a consistent policy and/or practice of not providing rest periods to Mr. Flores, Mr. Nguyen, and all aggrieved employees and/or providing compensation in lieu thereof. Specifically, Mr. Flores, Mr. Nguyen, and the aggrieved employees are required to work ten (10) to seventeen (17) hour shifts but never received first, second, third, or fourth rest breaks.

Furthermore, Temco breached the legal duty to provide rest periods to employees by imposing a continuous and consistent policy of requiring Mr. Flores, Mr. Nguyen, and the aggrieved employees to work through their rest periods to satisfy the demanding workload duties imposed by Temco, thereby denying Mr. Flores, Mr. Nguyen, and the aggrieved employees of the right to be completely free from employer control under California law. Temco scheduled routes for Mr. Flores and Mr. Nguyen with fifteen (15) to nineteen (19) stops per route. Mr. Flores was suspended by Temco for finishing his route too late. Therefore, Mr. Flores and Mr. Nguyen had to work through their rest periods in order to complete their routes as quickly as possible.

Additionally, Mr. Flores, Mr. Nguyen, and the aggrieved employees were not free of all work duties and/or employer control during rest periods or provided with a net ten-minute rest break.

By failing to provide rest periods for every four (4) hours or major fraction thereof worked per day by non-exempt employees, and by failing to provide compensation for these unprovided rest periods, as alleged above, Temco willfully violated the provisions of *Labor Code* section 226.7 and Industrial Welfare Commission Order No. 9-2001 section 12(A).

These claims are for Mr. Flores, Mr. Nguyen, and all similarly situated non-exempt employees who worked for Temco in California.

Mr. Flores and Mr. Nguyen, as non-exempt employees who were unlawfully deprived of paid ten (10)-minute rest periods, are aggrieved employees with standing to bring an action under the PAGA. Mr. Flores and Mr. Nguyen have satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *Labor Code* section 2699.5 and Industrial Welfare Commission Order No. 9-2001 section 20 for violations of *Labor Code* section 226.7 and Industrial Welfare Commission Order No. 9-2001 section 12(A).

V. Temco Failed to Pay Wages Due at Termination and During Employment

Temco willfully failed to pay, in a timely manner, wages owed to the aggrieved employees who left Temco's employ or who were terminated.

The aggrieved employees who ended their employment with Temco during the last year were entitled to be promptly paid all lawful compensation, and other premiums, as required by *Labor Code* sections 201 through 203.

At all relevant times, *California Labor Code* sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable no later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

During the relevant time period, Temco intentionally and willfully failed to pay the aggrieved employees who are no longer employed by Temco their wages, that were earned and unpaid, within seventy-two (72) hours of their leaving Temco's employ. Temco has a continuous policy of not paying Mr. Flores, Mr. Nguyen, and similarly aggrieved employees for all hours worked, as outlined above.

Temco's failure to pay the aggrieved employees who are no longer employed by Temco their wages, that were earned and unpaid, within seventy-two (72) hours of their leaving Temco's employ, is in violation of *California Labor Code* sections 201 and 202.

California Labor Code section 203 provides that when an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

These claims are for Mr. Flores, Mr. Nguyen, and all similarly situated non-exempt employees who worked for Temco in California.

Mr. Flores and Mr. Nguyen, as representatives of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (“DLSE”). This includes each of the following, as set forth in *Labor Code* section 2699.5 for violations of sections 201 through 203.

VI. Temco Failed to Pay Employees Twice Per Month

Section 204(a) of the *California Labor Code* required Temco to pay Mr. Flores and Mr. Nguyen and the aggrieved employees all wages earned twice during each calendar month.

Labor Code section 204 subdivision (a) provides “[a]ll wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month shall be paid for between the 1st and 10th day of the following month.” For pay periods other than the 1st through the 15th and the 16th through the final day of the month, wages must be paid within seven (7) calendar days of the end of the payroll period in which the wages were earned. Cal. Lab. Code Section 204(d).

During the relevant time period, Temco intentionally and willfully failed to pay Mr. Flores, Mr. Nguyen, and the aggrieved employees all regular-time and overtime wages, that were earned and unpaid, twice during each calendar month. Alternatively, Temco failed to pay wages earned within seven (7) calendar days of the end of the payroll period in which the wages were earned.

Temco’s failure to pay Mr. Flores, Mr. Nguyen, and the aggrieved employees their wages, that were earned and unpaid, twice during each calendar month and/or within seven (7) calendar days of the end of the payroll period in which the wages were earned, is in violation of *California Labor Code* section 204.

These claims are for Mr. Flores, Mr. Nguyen, and all similarly situated non-exempt employees who worked for Temco in California.

Mr. Flores and Mr. Nguyen, as representatives of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (“DLSE”). This includes each of the following, as set forth in *Labor Code* section 2699.5 for violations of section 204.

VII. Temco’s Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions

Section 226(a) of the *California Labor Code* requires Temco to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Mr. Flores and Mr. Nguyen and the aggrieved employees.

California Labor Code section 226 subdivision (a) requires that Temco, at the time of each

payment of wages, “furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than the social security number, (8) the name and address of the legal entity that is the employer...(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate and the corresponding number of hours worked at each hourly rate by the employee...”

Labor Code section 226, subdivision (a) also requires that “deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California” to itemize in wage statements and to accurately report the total hours worked and total wages earned.

In addition, *Labor Code* section 204(b) requires that “all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.” An employer complies with section 226(a) “if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in the subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.”

Temco has knowingly and intentionally failed to comply with *Labor Code* section 226(a) on each and every wage statement provided to Mr. Flores, Mr. Nguyen, and the other aggrieved employees. Temco also improperly states the name of the employing entity on aggrieved employee wage statements. For instance, on the actual paycheck, the employer is listed as Home Express Delivery Service LLC DBA Temco. On the wage statement, the entity listed as the employer is Home Express Delivery Service LLC DBA: Home Express Delivery Service. Thus, the name of the entity on the wage statement contradicts the name of the entity on the paycheck. The name of the entity on the wage statement also contradicts the entity’s name as it is registered with the California Secretary of State. Per the Statement of Information registered and filed with the California Secretary of State, the correct entity name is Home Express Delivery Service, LLC, which is different from Home Express Delivery Service LLC and Home Express Delivery Service LLC DBA Home Express Delivery Service.

Temco knowingly and intentionally did not include the gross wages earned on wage statements. Temco therefore knowingly and intentionally failed to itemize the gross wages earned on Mr. Flores’, Mr. Nguyen’s, and the aggrieved employees’ wage statements.

In every pay period during the period of the relevant statute of limitations, Temco knowingly and intentionally did not itemize the total hours worked on wage statements as *Labor Code* section

226, subsection (a), requires. In every pay period during the period of the relevant statute of limitations, Temco knowingly and intentionally did not include the total hours worked on wage statements. Temco therefore knowingly and intentionally failed to itemize the total hours worked on Mr. Flores', Mr. Nguyen's, and the aggrieved employees' wage statements.

Temco's wage statements do not itemize all regular time and overtime hours, as part of the regular and overtime hours are itemized in a category Temco itemizes as "Rest and Recovery." This mis-itemization results in the total hours, regular hours, and overtime hours being incorrect on every wage statement for every aggrieved employee in violation of subdivisions (a) and (e) of California Labor Code section 226.

Temco has a continuous policy of not paying Mr. Flores, Mr. Nguyen, and similarly aggrieved employees for all hours worked. Temco has not paid for all the time Mr. Flores, Mr. Nguyen, and similarly aggrieved employees worked, as outlined above.

Throughout the statutory period, as a result of the knowing and intentional failure by Temco to comply with itemized employee wage statement provisions, Mr. Flores, Mr. Nguyen, and the aggrieved employees have been able to reconstruct only a reasonable estimate of the hours worked and have, therefore, not received full compensation.

These claims are for Mr. Flores, Mr. Nguyen, and all similarly situated non-exempt employees who worked for Temco in California.

Mr. Flores and Mr. Nguyen, as non-exempt employees who Temco failed to provide accurate and itemized wage statements, are aggrieved employees with standing to bring an action under the PAGA. Mr. Flores and Mr. Nguyen have satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *Labor Code* section 2699.5 for violations of *Labor Code* section 226.

VIII. Temco Underpaid Employees Every Pay Period

Section 558(a) of the *California Labor Code* subjects any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty for every pay period for which the employee was underpaid, which includes the underpaid wages related to each violation.

Every pay period, Temco failed to pay employees the legal minimum wage in violation of *California Labor Code* section 1197.1, and employees are entitled to underpaid wages pursuant to Section 558(a).

Temco has had a continuous policy of not paying Mr. Flores, Mr. Nguyen, and similarly aggrieved employees for all hours worked, as outlined above.

Every pay period, Temco failed to pay overtime when employees worked over eight (8) hours per day and when employees worked over 40 hours per week in violation of *California Labor Code*

section 510, and employees are entitled to underpaid overtime wages pursuant to Section 558(a).

Every pay period, Temco has had a consistent policy and/or practice of not providing meal periods to Mr. Flores, Mr. Nguyen, and all aggrieved employees and/or providing compensation in lieu thereof in violation of *California Labor Code* section 512, and employees are entitled to underpaid meal period premium wages pursuant to Section 558(a).

Every pay period, Temco has had a consistent policy and/or practice of not providing rest periods to Mr. Flores, Mr. Nguyen, and the aggrieved employees and/or providing compensation in lieu thereof, and employees are entitled to underpaid rest period premium wages pursuant to Section 558(a).

Mr. Flores, Mr. Nguyen, and the aggrieved employees have suffered, and continue to suffer, substantial unpaid wages, and lost interest on such wages, and expenses.

These claims are for Mr. Flores, Mr. Nguyen, and all similarly situated non-exempt employees who worked for Temco in California.

Mr. Flores and Mr. Nguyen, as non-exempt employees who unlawfully were underpaid every pay period during their employment, are aggrieved employees with standing to bring an action under the PAGA. Mr. Flores and Mr. Nguyen have satisfied all prerequisites to serve as representatives of the general public to enforce California's labor laws, and the penalty provisions identified in *Labor Code* section 558(a) for violations of *Labor Code* sections 510 and 512 and California's labor laws.

IX. Conclusion

If after 65 days from the date of this letter, the LWDA does not take action or declines to intervene, Mr. Flores and Mr. Nguyen will file a complaint alleging PAGA violations, as described above.

Respectfully submitted,
MARA LAW FIRM, PC



Jill Vecchi, Esq.

Attn: PAGA Administrator
**California Labor and Workforce
Development Agency**
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
Via Web Submission and Certified Mail

Attn: Amanda Garcia
CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017
*Agent for Service of Process for Defendant
Home Express Delivery Service, LLC dba
Temco Logistics
Via Certified Mail*

**Home Express Delivery Service, LLC dba
Temco**
230 Diamond Street
Laguna Beach, CA 92651
Via Certified Mail

Coley Hayes

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Thursday, February 25, 2021 8:35 AM
To: Coley Hayes
Subject: Thank you for submission of your PAGA Case.

2/25/2021

LWDA Case No. LWDA-CM-822747-21
Law Firm : Mara Law Firm, PC
Plaintiff Name : Yovanik Flores and Hung Nguyen
Employer: Home Express Delivery Service, LLC dba Temco Logistics Filing Fee : \$75.00 IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

Exhibit 3

David Mara
Grace Campbell
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Jill Vecchi
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Taylor Getman



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April 7, 2023

Via Upload to the LWDA Website and U.S. Certified Mail

**AMENDED NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION 2699.3**

TO: California Labor and Workforce Development Agency; Home Express Delivery Service,
LLC dba Temco Logistics

*Yovanik Flores, Hung Nguyen, and Diego Bedoya Moreno, on behalf of themselves, others
similarly situated, and the general public v. Home Express Delivery Service, LLC dba Temco
Logistics*

Factual Statement and Theories of Labor Code Violations

Yovanik Flores, Hung Nguyen, Diego Bedoya Moreno and were employed by Home Express Delivery Service, LLC dba Temco Logisitics ("Temco") as non-exempt employees in California. Non-exempt employees, such as Mr. Flores, Mr. Nguyen, and Mr. Moreno, perform services for Temco throughout California, including in Alameda and Los Angeles Counties. Mr. Flores' and Mr. Nguyen's employment with Temco ended on or about January 6, 2021. Mr. Moreno's employment with Temco ended on or about November 2021.

Mr. Flores, Mr. Nguyen, and Mr. Moreno give notice of their intent to file a lawsuit for violations of the Private Attorneys General Act of 2004 ("PAGA") for Temco's failure to comply with California's wage and hour requirements on behalf of themselves and similarly aggrieved employees.

Temco is a premiere white glove solutions provider delivering and installing home goods. Temco provides final mile delivery and installation services. Temco performs residential, business, job site, and commercial deliveries. Temco employs non-exempt employees. Non-exempt employees, such as Mr. Flores, Mr. Nguyen, and Mr. Moreno, are employed by Temco in California to deliver and install appliances. Temco also employs workers in its warehouses in California as hourly, non-exempt employees. Aggrieved employees for purposes of this notice includes all non-exempt employees of Temco employed in California at any time between one year of uploading and serving this Notice to the Labor and Workforce Development Agency ("LWDA") through the date the Court issues a judgment.

Temco has a pattern and practice of employing non-exempt employees to work substantial daily hours. It is not uncommon for a non-exempt employee, such as technicians like Flores, Nguyen, and Moreno, to work up to sixteen hours in a day. Employees are not paid all overtime at the appropriate rate of time and a half or double time for all overtime hours. Temco also has a pattern and practice of assigning too much work it wants done in an unreasonable amount of time that non-exempt employees are forced to forego taking meal and rest breaks in order to satisfy Temco's productivity demands. Due to Temco's failure to pay all wages for all hours worked, it also fails to pay aggrieved employees all wages twice monthly, in violation of California Labor Code section 204. Temco's failure to pay all straight time and overtime wages owed results in waiting time violations for all aggrieved employees whose employment with Temco has ceased at any time within a year of uploading and serving this Notice.

Temco also violates California's wage statement requirements under California Labor Code section 226. Specifically, Temco's wage statements do not itemize all regular time and overtime hours, as part of the regular and overtime hours are itemized in a category Temco itemizes as "Rest and Recovery." This mis-itemization results in the total hours, regular hours, and overtime hours being incorrect on every wage statement for every aggrieved employee in violation of subdivisions (a) and (e) of California Labor Code section 226.

I. Temco Fails to Pay All Straight Time Wages Owed

It is fundamental that an employer must pay its employees for all time worked. *California Labor Code* sections 218 and 218.5 provide a right of action for nonpayment of wages. *California Labor Code* section 222 prohibits the withholding of part of a wage. *California Labor Code* section 223 prohibits the payment of less than a statutory or contractual wage scale. *California Labor Code* section 1197 prohibits the payment of less than the minimum wage. *California Labor Code* section 1194 states that an employee receiving less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage. *California Labor Code* section 1194.2 states that an employee receiving less than the legal minimum wage is entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. *California Labor Code* section 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not have the effect of reducing the agreed upon wage.

Temco has a continuous policy of not paying Mr. Flores, Mr. Nguyen, and Mr. Moreno and similarly aggrieved employees for all hours worked. Mr. Flores and Mr. Nguyen worked as master technicians for a portion of the relevant time period. Temco pays master technicians, such as Mr. Flores and Mr. Nguyen, on a piece-rate basis. As such, Temco fails to pay non-exempt employees, such as Mr. Flores and Mr. Nguyen, for all hours worked. Temco requires employees, like Mr. Flores and Nguyen, to remain with their vehicles when and if they receive a meal period. Thus, aggrieved employees, like Mr. Flores and Mr. Nguyen, are always under the control of Temco and must be compensated for the time that their records indicate an unpaid meal period was taken.

Temco also pays some technicians on a piece-rate basis, whereby they are paid based on the amount and type of installs they perform. These piece-rate pay structures fail to separately pay for

rest period time or for the performance of other “non-productive” work, i.e., work that is not the specific task for which the piece-rate pay system is compensating them. Temco’s piece-rate pay system fails to pay for pre- and post-shift duties. Under California law, Temco must provide employees with paid rest periods. Temco’s piece-rate pay system also fails to pay for rest period time.

In addition, Plaintiffs and the aggrieved employees were required to work “off the clock” and uncompensated. For example, Plaintiffs and the aggrieved employees were required to load the trucks prior to starting the delivery route, and prior to clocking into work. Plaintiffs and the aggrieved employees were also required to unload the truck prior after the routes. Although some additional pay was provided to compensate for some of this time, not all time was compensated, leading to off the clock work that was uncompensated. Also, in those instances where Plaintiffs and the aggrieved employees clocked into work at the office, there was typically a line to clock in, which was off the clock and uncompensated.

Likewise, Mr. Flores, Mr. Nguyen, Mr. Moreno and the aggrieved employees are informed and believe and thereon allege that Temco breached the legal duty to pay full wages to Mr. Flores, Mr. Nguyen, Mr. Moreno, and the aggrieved employees by deducting a portion of the wages earned by Mr. Flores, Mr. Nguyen, and the aggrieved employees when they work through their meal periods, are not relieved of all work duties during their meal periods, and/or when Temco recorded a meal period for Mr. Flores, Mr. Nguyen, Mr. Moreno, and the aggrieved employees when no meal period was taken. Specifically, Mr. Flores, Mr. Nguyen, Mr. Moreno, and the aggrieved employees worked through their meal periods to satisfy their demanding work duties imposed by Temco, thereby denying them the right to be completely free from employer control under California law.

Temco committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring Mr. Flores, Mr. Nguyen, Mr. Moreno, and the aggrieved employees. Temco acted with malice or in conscious disregard of Mr. Flores’, Mr. Nguyen’s, Mr. Moreno’s, and the aggrieved employees’ rights.

These claims are for Mr. Flores, Mr. Nguyen, Mr. Moreno, and all similarly situated non-exempt employees who worked for Temco in California.

Mr. Flores, Mr. Nguyen, and Mr. Moreno, as representatives of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (DLSE). This includes each of the following, as set forth in *Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 510 and 1194.

II. Temco Failed to Pay Overtime

It is fundamental that an employer must pay its employees for all time worked. *California Labor Code* section 510 states that eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.

California Labor Code section 510 dictates that any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

Temco failed to pay all overtime when Mr. Flores, Mr. Nguyen, Mr. Moreno, and the aggrieved employees worked over eight (8) hours per day and when employees worked over forty (40) hours per week. Temco failed to pay Mr. Flores, Mr. Nguyen, Mr. Moreno, and the aggrieved employees for all hours worked, including hours worked over eight (8) hours in a day and forty (40) hours in a week.

Temco has a pattern and practice of employing non-exempt employees to work substantial daily hours. It is not uncommon for a non-exempt employee, such as technicians like Flores, Nguyen, and Moreno, to work up to sixteen hours in a day. Employees are not paid all overtime at the appropriate rate of time and a half or double time for all overtime hours worked in a pay period.

Mr. Flores, Mr. Nguyen, Mr. Moreno, and the aggrieved employees have suffered, and continue to suffer, substantial unpaid wages, and lost interest on such wages, and expenses.

These claims are for Mr. Flores, Mr. Nguyen, Mr. Moreno, and all similarly situated non-exempt employees who worked for Temco in California.

Mr. Flores, Mr. Nguyen, and Mr. Moreno, as representatives of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (DLSE) for violations of *California Labor Code* section 510.

III. Temco Failed to Provide Meal Periods

Under *California Labor Code* section 512 no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

In addition, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with another meal period of not less than thirty (30) minutes.

Temco breached the legal duty to provide meal periods to employees by imposing a continuous and consistent policy requiring Mr. Flores, Mr. Nguyen, Mr. Moreno, and the aggrieved employees to work through their meal periods to satisfy the demanding workload duties imposed by Temco, thereby denying Mr. Flores, Mr. Nguyen, Mr. Moreno, and the aggrieved employees of the right to be completely free from employer control under California law. Temco scheduled routes for

Mr. Flores and Mr. Nguyen with fifteen (15) to nineteen (19) stops per route. Mr. Flores was suspended by Temco for finishing his route too late. Therefore, Mr. Flores and Mr. Nguyen had to work through their meal periods in order to complete their routes as quickly as possible.

Further, Temco did not provide Mr. Flores, Mr. Nguyen, and Mr. Moreno with full thirty-minute meal periods. Alternatively, Mr. Flores, Mr. Nguyen, Mr. Moreno, and the aggrieved employees were not free of all work duties and/or employer control during meal periods.

Additionally, Temco instituted a consistent policy/practice of not providing second meal periods to Mr. Flores, Mr. Nguyen, Mr. Moreno, and all aggrieved employees and/or providing compensation in lieu thereof. Specifically, Mr. Flores, Mr. Nguyen, Mr. Moreno, and the aggrieved employees are required to work ten (10) to seventeen (17) hour shifts but never received second meal periods.

By failing to provide statutory first and/or second meal periods, and by failing to provide compensation for unprovided meal periods, as alleged above, Temco willfully violated the provisions of *Labor Code* sections 226.7 and 512.

These claims are for Mr. Flores, Mr. Nguyen, Mr. Moreno, and all similarly situated non-exempt employees who worked for Temco in California.

Mr. Flores, Mr. Nguyen, and Mr. Moreno, as non-exempt employees who unlawfully were deprived of first and second meal periods, are aggrieved employees with standing to bring an action under the PAGA. Mr. Flores, Mr. Nguyen, and Mr. Moreno have satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *Labor Code* section 2699.5 for violations of *Labor Code* sections 226.7 and 512.

IV. Temco Failed to Provide Rest Periods

Temco has had a consistent policy and/or practice of not providing duty free ten (10) minute paid rest periods for every four (4) hours worked, or a major fraction thereof, to Mr. Flores, Mr. Nguyen, Mr. Moreno, and the aggrieved employees.

Industrial Welfare Commission Order No. 9-2001 section 12(A) states “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Temco has had a consistent policy and/or practice of not providing rest periods to Mr. Flores, Mr. Nguyen, Mr. Moreno, and all aggrieved employees and/or providing compensation in lieu thereof. Specifically, Mr. Flores, Mr. Nguyen, Mr. Moreno, and the aggrieved employees are required to work ten (10) to seventeen (17) hour shifts but never received first, second, third, or fourth rest breaks.

Furthermore, Temco breached the legal duty to provide rest periods to employees by imposing a continuous and consistent policy of requiring Mr. Flores, Mr. Nguyen, Mr. Moreno, and the aggrieved employees to work through their rest periods to satisfy the demanding workload duties imposed by Temco, thereby denying Mr. Flores, Mr. Nguyen, Mr. Moreno, and the aggrieved employees of the right to be completely free from employer control under California law. Temco scheduled routes for Mr. Flores and Mr. Nguyen with fifteen (15) to nineteen (19) stops per route. Mr. Flores was suspended by Temco for finishing his route too late. Therefore, Mr. Flores and Mr. Nguyen had to work through their rest periods in order to complete their routes as quickly as possible.

Additionally, Mr. Flores, Mr. Nguyen, Mr. Moreno, and the aggrieved employees were not free of all work duties and/or employer control during rest periods or provided with a net ten-minute rest break.

By failing to provide rest periods for every four (4) hours or major fraction thereof worked per day by non-exempt employees, and by failing to provide compensation for these unprovided rest periods, as alleged above, Temco willfully violated the provisions of *Labor Code* section 226.7 and Industrial Welfare Commission Order No. 9-2001 section 12(A).

These claims are for Mr. Flores, Mr. Nguyen, Mr. Moreno, and all similarly situated non-exempt employees who worked for Temco in California.

Mr. Flores, Mr. Nguyen, and Mr. Moreno, as non-exempt employees who were unlawfully deprived of paid ten (10)-minute rest periods, are aggrieved employees with standing to bring an action under the PAGA. Mr. Flores, Mr. Nguyen, and Mr. Moreno have satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *Labor Code* section 2699.5 and Industrial Welfare Commission Order No. 9-2001 section 20 for violations of *Labor Code* section 226.7 and Industrial Welfare Commission Order No. 9-2001 section 12(A).

V. Temco Failed to Pay Wages Due at Termination and During Employment

Temco willfully failed to pay, in a timely manner, wages owed to the aggrieved employees who left Temco's employ or who were terminated.

The aggrieved employees who ended their employment with Temco during the last year were entitled to be promptly paid all lawful compensation, and other premiums, as required by *Labor Code* sections 201 through 203.

At all relevant times, *California Labor Code* sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable no later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

During the relevant time period, Temco intentionally and willfully failed to pay the aggrieved employees who are no longer employed by Temco their wages, that were earned and unpaid, within seventy-two (72) hours of their leaving Temco's employ. Temco has a continuous policy of not paying Mr. Flores, Mr. Nguyen, Mr. Moreno, and similarly aggrieved employees for all hours worked, as outlined above.

Temco's failure to pay the aggrieved employees who are no longer employed by Temco their wages, that were earned and unpaid, within seventy-two (72) hours of their leaving Temco's employ, is in violation of *California Labor Code* sections 201 and 202.

California Labor Code section 203 provides that when an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until action is commenced; but the wages shall not continue for more than thirty (30) days.

These claims are for Mr. Flores, Mr. Nguyen, Mr. Moreno, and all similarly situated non-exempt employees who worked for Temco in California.

Mr. Flores, Mr. Nguyen, and Mr. Moreno, as representatives of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each of the following, as set forth in *Labor Code* section 2699.5 for violations of sections 201 through 203.

VI. Temco Failed to Pay Employees Twice Per Month

Section 204(a) of the *California Labor Code* required Temco to pay Mr. Flores, Mr. Nguyen, Mr. Moreno, and the aggrieved employees all wages earned twice during each calendar month.

Labor Code section 204 subdivision (a) provides "[a]ll wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month shall be paid for between the 1st and 10th day of the following month." For pay periods other than the 1st through the 15th and the 16th through the final day of the month, wages must be paid within seven (7) calendar days of the end of the payroll period in which the wages were earned. Cal. Lab. Code Section 204(d).

During the relevant time period, Temco intentionally and willfully failed to pay Mr. Flores, Mr. Nguyen, Mr. Moreno, and the aggrieved employees all regular-time and overtime wages, that were earned and unpaid, twice during each calendar month. Alternatively, Temco failed to pay wages earned within seven (7) calendar days of the end of the payroll period in which the wages were earned.

Temco's failure to pay Mr. Flores, Mr. Nguyen, Mr. Moreno, and the aggrieved employees their

wages, that were earned and unpaid, twice during each calendar month and/or within seven (7) calendar days of the end of the payroll period in which the wages were earned, is in violation of *California Labor Code* section 204.

These claims are for Mr. Flores, Mr. Nguyen, Mr. Moreno, and all similarly situated non-exempt employees who worked for Temco in California.

Mr. Flores, Mr. Nguyen, and Mr. Moreno, as representatives of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (“DLSE”). This includes each of the following, as set forth in *Labor Code* section 2699.5 for violations of section 204.

VII. Temco’s Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions

Section 226(a) of the *California Labor Code* requires Temco to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Mr. Flores and Mr. Nguyen and the aggrieved employees.

California Labor Code section 226 subdivision (a) requires that Temco, at the time of each payment of wages, “furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than the social security number, (8) the name and address of the legal entity that is the employer...(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate and the corresponding number of hours worked at each hourly rate by the employee...”

Labor Code section 226, subdivision (a) also requires that “deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California” to itemize in wage statements and to accurately report the total hours worked and total wages earned.

In addition, *Labor Code* section 204(b) requires that “all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.” An employer complies with section 226(a) “if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in the subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.”

Temco has knowingly and intentionally failed to comply with *Labor Code* section 226(a) on each and every wage statement provided to Mr. Flores, Mr. Nguyen, Mr. Moreno, and the other aggrieved employees. Temco also improperly states the name of the employing entity on aggrieved employee wage statements. For instance, on the actual paycheck, the employer is listed as Home Express Delivery Service LLC DBA Temco. On the wage statement, the entity listed as the employer is Home Express Delivery Service LLC DBA: Home Express Delivery Service. Thus, the name of the entity on the wage statement contradicts the name of the entity on the paycheck. The name of the entity on the wage statement also contradicts the entity's name as it is registered with the California Secretary of State. Per the Statement of Information registered and filed with the California Secretary of State, the correct entity name is Home Express Delivery Service, LLC, which is different from Home Express Delivery Service LLC and Home Express Delivery Service LLC DBA Home Express Delivery Service.

Temco knowingly and intentionally did not include the gross wages earned on wage statements. Temco therefore knowingly and intentionally failed to itemize the gross wages earned on Mr. Flores', Mr. Nguyen's, Mr. Moreno's, and the aggrieved employees' wage statements.

In every pay period during the period of the relevant statute of limitations, Temco knowingly and intentionally did not itemize the total hours worked on wage statements as *Labor Code* section 226, subsection (a), requires. In every pay period during the period of the relevant statute of limitations, Temco knowingly and intentionally did not include the total hours worked on wage statements. Temco therefore knowingly and intentionally failed to itemize the total hours worked on Mr. Flores', Mr. Nguyen's, Mr. Moreno's, and the aggrieved employees' wage statements.

Temco's wage statements do not itemize all regular time and overtime hours, as part of the regular and overtime hours are itemized in a category Temco itemizes as "Rest and Recovery." This mis-itemization results in the total hours, regular hours, and overtime hours being incorrect on every wage statement for every aggrieved employee in violation of subdivisions (a) and (e) of California Labor Code section 226.

Temco has a continuous policy of not paying Mr. Flores, Mr. Nguyen, Mr. Moreno, and similarly aggrieved employees for all hours worked. Temco has not paid for all the time Mr. Flores, Mr. Nguyen, Mr. Moreno, and similarly aggrieved employees worked, as outlined above.

Throughout the statutory period, as a result of the knowing and intentional failure by Temco to comply with itemized employee wage statement provisions, Mr. Flores, Mr. Nguyen, Mr. Moreno, and the aggrieved employees have been able to reconstruct only a reasonable estimate of the hours worked and have, therefore, not received full compensation.

These claims are for Mr. Flores, Mr. Nguyen, Mr. Moreno, and all similarly situated non-exempt employees who worked for Temco in California.

Mr. Flores, Mr. Nguyen, and Mr. Moreno, as non-exempt employees who Temco failed to provide accurate and itemized wage statements, are aggrieved employees with standing to bring an action under the PAGA. Mr. Flores, Mr. Nguyen, and Mr. Moreno have satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty

provisions identified in *Labor Code* section 2699.5 for violations of *Labor Code* section 226.

VIII. Temco Underpaid Employees Every Pay Period

Section 558(a) of the *California Labor Code* subjects any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty for every pay period for which the employee was underpaid, which includes the underpaid wages related to each violation.

Every pay period, Temco failed to pay employees the legal minimum wage in violation of *California Labor Code* section 1197.1, and employees are entitled to underpaid wages pursuant to Section 558(a).

Temco has had a continuous policy of not paying Mr. Flores, Mr. Nguyen, Mr. Moreno, and similarly aggrieved employees for all hours worked, as outlined above.

Every pay period, Temco failed to pay overtime when employees worked over eight (8) hours per day and when employees worked over 40 hours per week in violation of *California Labor Code* section 510, and employees are entitled to underpaid overtime wages pursuant to Section 558(a).

Every pay period, Temco has had a consistent policy and/or practice of not providing meal periods to Mr. Flores, Mr. Nguyen, Mr. Moreno, and all aggrieved employees and/or providing compensation in lieu thereof in violation of *California Labor Code* section 512, and employees are entitled to underpaid meal period premium wages pursuant to Section 558(a).

Every pay period, Temco has had a consistent policy and/or practice of not providing rest periods to Mr. Flores, Mr. Nguyen, Mr. Moreno, and the aggrieved employees and/or providing compensation in lieu thereof, and employees are entitled to underpaid rest period premium wages pursuant to Section 558(a).

Mr. Flores, Mr. Nguyen, Mr. Moreno, and the aggrieved employees have suffered, and continue to suffer, substantial unpaid wages, and lost interest on such wages, and expenses.

These claims are for Mr. Flores, Mr. Nguyen, Mr. Moreno, and all similarly situated non-exempt employees who worked for Temco in California.

Mr. Flores, Mr. Nguyen, and Mr. Moreno, as non-exempt employees who unlawfully were underpaid every pay period during their employment, are aggrieved employees with standing to bring an action under the PAGA. Mr. Flores, Mr. Nguyen, and Mr. Moreno have satisfied all prerequisites to serve as representatives of the general public to enforce California's labor laws, and the penalty provisions identified in *Labor Code* section 558(a) for violations of *Labor Code* sections 510 and 512 and California's labor laws.

IX. Temco Failed to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Temco wrongfully required Plaintiffs and the aggrieved employees to pay expenses that they incurred in direct discharge of their duties for Temco without reimbursement, including the purchase tools, drills and bits, hand tools, tie-down straps, and certain clothing. Also, although drivers were provided with company telephones, helpers/assistants were not provided with company phones, and so they were required to use their personal cellular telephones for work, without reimbursement.

These claims are for Mr. Flores, Mr. Nguyen, Mr. Moreno, and all similarly situated non-exempt employees who worked for Temco in California.

Mr. Flores, Mr. Nguyen, and Mr. Moreno are aggrieved employee with standing to bring an action under the PAGA. Furthermore, Mr. Flores, Mr. Nguyen, and Mr. Moreno satisfy all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *Labor Code* section 2699.5 for violations of *Labor Code* section 2802(a).

X. Temco Violated the Temperature Control Guidelines Outlined in the Wage Order

IWC Wage Order Number 9-2001, section 14 provides, "The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed." Section 14 continues, "If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort. Where the nature of the employment requires a temperature of less than 60° F., a heated room shall be provided to which employees may retire for warmth, and such room shall be maintained at not less than 68°." Further, Section 14 states, "A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use."

Temco failed to comply with these guidelines.

These claims are for Mr. Flores, Mr. Nguyen, Mr. Moreno, and all similarly situated non-exempt employees who worked for Temco in California.

Mr. Flores, Mr. Nguyen, and Mr. Moreno are aggrieved employee with standing to bring an action under the PAGA. Furthermore, Mr. Flores, Mr. Nguyen, and Mr. Moreno satisfy all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *Labor Code* section 2699.5 and Industrial Welfare Commission Order No. 9-2001 section 14.

XI. Conclusion

If after 65 days from the date of this letter, the LWDA does not take action or declines to intervene, Mr. Flores, Mr. Nguyen, and Mr. Moreno will file a complaint alleging PAGA violations, as described above.

Respectfully submitted,
MARA LAW FIRM, PC



Jill Vecchi, Esq.

Attn: PAGA Administrator
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Via Web Submission and Certified Mail

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Coley Hayes

From: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Sent: Friday, April 7, 2023 11:58 AM
To: Coley Hayes
Subject: Thank you for your Amended PAGA Claim Notice Submission.

04/07/2023 11:56:54 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Amended PAGA Claim Notice

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm