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**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

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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
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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
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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
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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,
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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").

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2 Plaintiffs also seek to represent subclasses composed of and defined as follows:
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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.
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10 All Class Members who worked one (1) or more shifts in excess of
11 ten (10) hours.
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13 All Class Members who worked one (1) or more shifts in excess of
14 twelve (12) hours.
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16 All Class Members who worked one (1) or more shifts in excess of
17 fourteen (14) hours.
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19 All Class Members who worked one (1) or more shifts in excess of
20 fifteen (15) hours.
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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.
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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.
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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.

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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
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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.

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

1 trade practices.

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

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

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

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

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

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

23 158. Plaintiffs, by virtue of their employment with Defendants TEMCO LOGISTICS and/or
24 DOES and Defendants TEMCO LOGISTICS's and/or DOES' failure to comply with
25 temperature control guidelines and failure to provide meal and rest periods, overtime
26 compensation, all wages for all work performed at the statutory minimum agreed upon rate,
27 failure to reimburse for necessary business expenses, and all wages due during employment
28 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;
- 28

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

Bill Veatch

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

Case Name: YOVANIK FLORES and HUNG NGUYEN v. HOME EXPRESS
DELIVERY SERVICE, LLC DBA TEMCOLOGISTICS
Court: Superior Court of Alameda
Case Number: RG21096517

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the County of: San Diego, State of California.

I am over the age of 18 and not a party to the within action; my business address is:
2650 Camino Del Rio N. Suite 302, San Diego, CA 92108

On, April 14, 2023 I served the foregoing document(s) described as:

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

On interested parties in this action as follows:

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[XX] (BY E-MAIL) On April 14, 2022, I caused the documents to be sent to the persons at the electronic notification addresses of the parties named above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[XX] (DECLARATION) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Dated: April 14, 2023


Mathew Adame