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Superior Court of California,
County of Alameda

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By: Suzanne Pesko,
Deputy Clerk

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Attorneys for PLAINTIFFS
SAUL LOPEZ and SAMUEL LOPEZ

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

SAUL LOPEZ and SAMUEL LOPEZ,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

HOME EXPRESS DELIVERY SERVICE,
LLC, a California Limited Liability
Company doing business as TEMCO
LOGISTICS; and DOES 1 to 100,

Defendants.

Case No. 23CV031371

**SECOND SUPPLEMENTAL
DECLARATION OF ALLAN A.
VILLANUEVA IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT AND
CERTIFICATION OF SETTLEMENT
CLASS**

Hearing Date: November 21, 2023

Time: 3:00 p.m.

Dept.: 23

Honorable Brad Seligman

RESERVATION NUMBER: 0678331107881

Complaint Filed: April 17, 2023

1
2 I, ALLAN A. VILLANUEVA, declare as follows:

3 1. I am the counsel of record for Plaintiffs SAUL LOPEZ and SAMUEL LOPEZ
4 (“Plaintiffs”) in this matter. As such, I am fully familiar with the facts, pleadings and history of this
5 matter. The following facts are within my own personal knowledge, except for those facts based on
6 information and belief, and if called as a witness, I could testify competently to the matters stated
7 herein.

8 2. This SECOND SUPPLEMENTAL declaration is being submitted in support of
9 Plaintiffs’ MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT
10 AND CERTIFICATION OF SETTLEMENT CLASS, and to address the concerns of the Court in its
11 November 7, 2023, order.

12 3. Attached herewith as **Exhibit A** is a true and correct copy of the executed
13 AMENDED JOINT STIPULATION OF SETTLEMENT FOR CLASS ACTION AND
14 REPRESENTATIVE ACTION; RELEASE OF CLAIMS (“Amended Agreement” or “Amended
15 Settlement”) to which the NOTICE OF CLASS ACTION SETTLEMENT (“Notice”) is attached as
16 Exhibit A. This Declaration incorporates by reference the definitions in the Settlement, and all terms
17 defined therein shall have the same meaning as set forth in the Settlement.

18 4. The Amended Agreement provides “Defendant shall pay the employer’s share of
19 payroll taxes separately from and in addition to the Gross Settlement Amount.” (Amended
20 Agreement ¶¶1.14, 5.8; Notice ¶6).

21 5. The Amended Agreement does not require any release to be printed on the individual
22 checks, and does not require release of FLSA as stated in paragraph 5.13 in the *previous* Agreement.

23 6. The PAGA release conforms with the claims identified in the PAGA notice
24 (Amended Agreement ¶1.27; Notice ¶8).

25 7. Ten percent of the Court-approved attorney’s fees will be held in the settlement
26 administrator’s trust fund until completion of the distribution process and Court approval of the final
27 accounting (Amended Agreement ¶5.4.2).

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8. The estimated litigation costs will not exceed \$5,000.00 (Notice ¶6.D).
9. The Amended Agreement provides, “You may appear at the Final Approval Hearing whether or not you filed a written objection or a notice of intention to appear.” (Notice ¶7.F).
10. The Amended Agreement provides for 45 days to opt out (Amended Agreement ¶4.1).
11. The Notice states that the case is pending in Alameda County Superior Court (Notice ¶9).

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

Dated: November 14, 2023

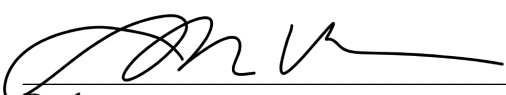

Declarant

EXHIBIT A

**LAW OFFICE OF
ALLAN A. VILLANUEVA**
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Attorneys for Plaintiffs and the Class

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Attorneys for Home Express Delivery Service,
Inc.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

SAUL LOPEZ and SAMUEL LOPEZ,

Plaintiffs,

v.

HOME EXPRESS DELIVERY SERVICE,
LLC, a California Limited Liability
Company doing business as TEMCO
LOGISTICS; and DOES 1-100,

Defendants.

Case No. 23CV031371

Hon. Brad Seligman,

**AMENDED JOINT STIPULATION OF
SETTLEMENT FOR CLASS ACTION
AND REPRESENTATIVE ACTION;
RELEASE OF CLAIMS**

Action Filed: April 17, 2023
Trial: N/A

AMENDED JOINT STIPULATION OF SETTLEMENT FOR CLASS ACTION AND REPRESENTATIVE
ACTION; RELEASE OF CLAIMS

1 This Joint Stipulation of Settlement and Release of Claims, which includes the Recitals
2 and all Exhibits attached hereto (collectively, the “Agreement”), is entered into by and between:
3 (1) Plaintiffs (as hereinafter defined), the Class Members (as hereinafter defined), and Plaintiffs’
4 Counsel (as hereinafter defined), on the one hand, and (2) Defendant (as hereinafter defined), on
5 the other hand.

6 This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge,
7 and settle the Action (as hereinafter defined) and the Released Class Claims (as hereinafter
8 defined), upon and subject to the terms and conditions hereof, as follows:

9 **1. DEFINITIONS**

10 As used herein, for the purposes of this Agreement only, the following terms shall be
11 defined as set forth below:

12 1.1. “**Action**” means all operative and the most recent complaints filed in the
13 case titled *Saul Lopez and Samuel Lopez v. Home Express Delivery Service, LLC (dba Temco*
14 *Logistics)*, Superior Court of the State of California, for the County of Alameda, No.
15 23CV031371, originally filed on April 17, 2023. The Action also includes the allegations set
16 forth in the letter to the California Labor Workforce Development Agency (“LWDA”), which are
17 incorporated into the First Amended Complaint.

18 1.2. “**Aggrieved Employees**” means all current and former employees and/or
19 workers of Labor Contractors that performed work for Defendant (including those classified as
20 an “independent contractor delivery driver” and/or a “independent contractor delivery helper”) in
21 the State of California during the PAGA Period; but excluding individual owners and operators
22 of Labor Contractors and individuals that have previously executed a full release of claims with
23 Defendant.

24 1.3. “**Attorneys’ Fees**” means the attorneys’ fees payment from the Gross
25 Settlement Amount and approved by the Court for recoverable fees associated with the litigation
26 and resolution of the Action. It is agreed by the Parties that Plaintiffs’ Counsel shall request
27 attorneys’ fees not to exceed 33.33% of the Gross Settlement Amount, supported by adequate

1 documentation showing the amount of fees sought. Defendant has agreed not to oppose
2 Plaintiffs' Counsel's request for attorneys' fees, if made as set forth above. However, if
3 Defendant's counsel is asked by the Court to provide information regarding the fees requested by
4 Plaintiffs' Counsel, Defendant's counsel, as officers of the Court, will provide truthful answers.

5 1.4. **"Class Members"** refers to all current and former employees and/or
6 workers of Labor Contractors that performed work for Defendant (including those classified as
7 an "independent contractor delivery driver" and/or a "independent contractor delivery helper") in
8 the State of California during the Class Period and who do not submit a timely and valid Request
9 for Exclusion; but excluding individual owners and operators of Labor Contractors and
10 individuals that have previously executed a full release of claims with Defendant.

11 1.5. **"Class Period"** refers to the period from April 17, 2019, through the date
12 of a Preliminary Approval Order entered by the Court.

13 1.6. **"Class Representatives,"** or **"Plaintiffs,"** means the named Plaintiffs in
14 the Action, Plaintiffs Saul Lopez and Samuel Lopez.

15 1.7. **"Class Representative Incentive Payment"** means the amounts to be
16 paid to the Class Representatives as set forth in this Agreement from the Gross Settlement
17 Amount in addition to Individual Settlement Payments, subject to Court approval, in recognition
18 of efforts and work in prosecuting the Action on behalf of Class Members. In exchange for the
19 Class Representative Incentive Payment made to each of the Class Representatives, they shall
20 release all claims they have or could have asserted against Defendant, and waive the protection
21 of California Civil Code § 1542.

22 1.8. **"Costs"** means the Class Members' litigation costs to be paid from the
23 Gross Settlement Amount and approved by the Court for costs associated with the litigation and
24 resolution of the Action, including, but not limited to, all recoverable costs that Class Members
25 incur for the prosecution and litigation of the Action. Plaintiffs' Counsel shall submit adequate
26 documentation to support the amount of costs sought. Defendant has agreed not to oppose
27 Plaintiffs' Counsel's request for costs if made as set forth above.

1.9. **“Defendant”** means Home Express Delivery Service, Inc, and its predecessor Home Express Delivery Service, LLC (doing business as Temco Logistics).

1.10. **“Defendant’s Counsel”** refers to Kamran Mirrafati of Seyfarth Shaw LLP. For purposes of providing any notices required under this Agreement, Defendant’s Counsel shall be notified by email at kmirrafati@seyfarth.com.

1.11. **“Effective Date”** means the date that all of the following have occurred:

(A) the Court has granted the motion for final approval of the settlement and approved amounts for Attorneys’ Fees, Costs, Class Representative Incentive Payments, Settlement Administration Costs, the Individual Settlement Payments, all PAGA Payments, the Released Class Claims, and all other material terms of this Agreement, no objections having been made, and has entered the Final Judgment consistent with this Agreement; or,

(B) If objections have been made to the motion for final approval the rulings on such motions and the Final Judgment have become Final. “Final” means the later of:

(1) The time for seeking rehearing or reconsideration and/or appellate review has expired and no timely requests for such review have been made; or

(2) If rehearing, reconsideration, or appellate review is sought, after any and all avenues of rehearing, reconsideration, and appellate review have been exhausted by the Parties and no further rehearing, reconsideration, or appellate review is permitted, and the time for seeking such review has expired.

1.12. **“Final Fairness Hearing”** or **“Final Approval”** refers to the hearing at which the Court will make a final determination whether the terms of the Agreement are fair, reasonable, and adequate for the Class Members and meet all applicable requirements for Final Approval.

1.13. **“Final Judgment”** means the Final Judgment entered by the Court consistent with this Agreement.

1.14. **“Gross Settlement Amount”** means the entire settlement amount not to exceed \$1 million, in full and complete settlement of the Action, to be paid by Defendant pursuant to this Agreement. The Gross Settlement Amount is fully inclusive of all Individual Settlement Payments, , the Class Representative Incentive Payments, the portion of PAGA Payment going to the LWDA, Settlement Administration Costs, Attorneys’ Fees, and Costs. Defendant shall pay the employer’s share of payroll taxes separately from and in addition to the Gross Settlement Amount. The Gross Settlement Amount has been agreed to by Plaintiffs and Defendant based upon the aggregation of the agreed-upon settlement value of all Class Member claims.

The Gross Settlement Amount is a material term of this Agreement. To the extent Defendant is required to pay more than the Gross Settlement Amount, and its share of payroll taxes, Defendant shall retain the right, in the exercise of its sole discretion, to nullify the Settlement or Agreement.

1.15. **“Individual Settlement Payment”** means the portion of the Net Settlement Amount allocated to Class Members who do not submit a timely and valid Request for Exclusion. There shall be no need to submit a Claim Form to receive an Individual Settlement Payment.

The Individual Settlement Payment shall constitute wages, interest, meal and rest period premium pay, statutory penalties pursuant to the California Labor Code, and civil penalties pursuant to PAGA. Given that the bulk of potential exposure in the Action consists of penalties, interest, and expenses, 90% of each Individual Settlement Payment shall be allocated as penalties, interest, and expenses. The remaining 10% of each Individual Settlement Payment shall be allocated as wages and meal and rest period premium pay.

Each Class Member who does not submit a timely and valid Request for Exclusion shall be entitled to a share of the Individual Settlement Payment, determined by his or her total number of Work Weeks divided by the total number of Work Weeks by all Class Members who do not submit a timely and valid Request for Exclusion, then multiplied by the

1 Net Settlement Amount. For instance, if a Class Member had 10 Work Weeks during the Class
2 Period and there were 100 total Work Weeks for all Class Members during the Class Period, the
3 Class Member would receive 10% of the Net Settlement Amount. Each Class Member's total
4 number of Work Weeks shall be determined based on Defendant's records for the Class Period,
5 which consist solely of dates that particular Labor Contractors performed services for Defendant
6 and the Class Members that worked for such Labor Contractors during that time.

7 1.16. **"Net Settlement Amount"** means the portion of the Gross Settlement
8 Amount remaining for payments to Class Members, after deductions for approved Class
9 Representative Incentive Payments, the portion of the PAGA Payment going to the LWDA,
10 Settlement Administration Costs, Attorneys' Fees, and Costs. The entire Net Settlement Amount
11 shall be distributed to the Class Members. There shall be no reversion to Defendant.

12 1.17. **"Labor Contractor(s)"** refers to independent contractor entities and/or
13 sole proprietors who provided services to Defendant pursuant to an Independent Contractor
14 Agreement.

15 1.18. **"Notice of Settlement"** refers to the notice to be distributed to all of the
16 Class Members after the Court issues a Preliminary Approval Order. The Notice of Settlement
17 will be in both English and Spanish languages and shall be substantially in the form attached as
18 **Exhibit A** to this Agreement and accompany the Objection Form and Request for Exclusion.

19 1.19. **"Objection Form"** refers to a form that each Class Member must timely
20 complete and submit to the Settlement Administrator in order to preserve his or her right to
21 object to the Settlement. The Objection Form will be in both English and Spanish languages and
22 be sent to the Class Members along with the Notice of Settlement. Each Class Member must
23 follow the procedures set forth in the Notice of Settlement to submit a timely and valid objection.

24 1.20. **"PAGA Payment"** means the amount allocated to civil penalties for
25 claims asserted under the California Private Attorneys General Act of 2004, California Labor
26 Code Section 2968, *et seq.* ("PAGA"). The sum of \$50,000 is allocated to the PAGA Payment,
27 of which \$37,500 will be paid to the LWDA consistent with California Labor Code §§ 2699(i)

1 and (j), and the remaining \$12,500 will become part of the Net Settlement Amount. The Class
2 Member shall be entitled to a pro-rata share of the \$12,500.00 PAGA payment based on the total
3 number of Work Weeks worked during the PAGA Period divided by the total number of Work
4 Weeks worked during the PAGA Period by all Class Members who do not submit a timely and
5 valid Request for Exclusion.

6 1.21. “**PAGA Period**” refers to period from March 6, 2022, through the date
7 Plaintiffs file their motion for preliminary approval of the class action settlement.

8 1.22. “**Parties**” means Plaintiffs, the Class Members, and Defendant,
9 collectively.

10 1.23. “**Plaintiffs**” refers to the named Class Representatives.

11 1.24. “**Plaintiffs’ Counsel**” or “**Class Counsel**” refer to Allan A. Villanueva
12 and Parham Golestanian of Law Offices of Allan A. Villanueva. For purposes of providing any
13 notices required under this Agreement, Plaintiffs’ Counsel shall be notified by email at
14 all@allanvillanuevalaw.com for Allan A. Villanueva and pg@allanvillanuevalaw.com for
15 Parham Golestanian.

16 1.25. “**Preliminary Approval Order**” refers to the order issued and entered by
17 the Court following a Motion for Preliminary Approval of the Settlement and this Agreement.

18 1.26. “**Released Class Claims**” shall mean any and all claims that were pled or
19 could have been pled based on the factual allegations in the operative or prior complaints in the
20 Actions, arising during the Class Period, including, but not limited to, any claim for the
21 following: failure to provide meal or rest periods, failure to pay premiums for non-compliant
22 meal or rest periods, or to pay such premiums at the regular rate, failure to pay minimum wage,
23 failure to pay overtime wages or overtime wages at the regular rate of pay, regular rate
24 violations, failure to pay timely wages during employment, failure to pay accrued wages upon
25 termination of employment, failure to furnish accurate and itemized wage statements, and failure
26 to maintain accurate records arising under California Labor Code §§ 201, 202, 203, 204, 210,
27 226, 226.3, 226.7, 226.8, 510, 512, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 2802, 2775,

2810.3; entering into an illegal contract or agreement under California Labor Code 2810, the California Unfair Competition Law, Business and Professions Code §§ 17200 *et seq.*, and the California Industrial Welfare Commission Wage Orders. The Released Class Claims as described above shall include any remedies for any of the claims described herein, including, damages, penalties of any nature, restitution, declaratory relief, equitable or injunctive relief, interest, attorneys' fees and costs.

1.27. **"Released PAGA Claims"** shall mean any and all PAGA claims for civil penalties that are premised upon the California Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 226.8, 510, 512, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 2802, 2775, 2810, 2810.3 or claims covered by the PAGA letter to the LWDA. The Released PAGA Claims shall be released by Plaintiff, the LWDA, and all Aggrieved Employees, without any option to submit any Request for Exclusion.

1.28. **"Released Parties"** refers to Defendant Home Express Delivery Service, Inc. (dba Temco Logistics), and all of their current or former subsidiaries (including but not limited to Home Express Delivery Service, LLC), parents, affiliates, vendors, independent contractors (including but not limited to the Labor Contractors), predecessors, insurers, agents, employees, successors, assigns, officers, directors, managing agents, attorneys, human resources representatives, payroll representatives, executors, and shareholders, including their respective pension, profit sharing, savings, health, and other employee benefits plans of any nature, the successors of such plans, and those plans' respective current or former trustees and administrators, agents, employees, and fiduciaries and any individual or entity that could be jointly liable with Defendant for the claims asserted in this Action.

1.29. **"Request for Exclusion"** refers to a form that each Class Member must timely complete and submit to the Settlement Administrator in order to be excluded from the Settlement. The Request for Exclusion will be in both English and Spanish languages and be sent to the Class Members along with the Notice of Settlement.

1 1.30. “**Settlement**,” “**Settlement Agreement**” or “**Agreement**” refers to this
2 Agreement to settle all of the claims asserted, or that could have been asserted based on the facts
3 alleged, in the Action and the LWDA letter for PAGA claims.

4 1.31. “**Settlement Administration Costs**” refer to the costs payable from the
5 Gross Settlement Amount to the Settlement Administrator for administering this Settlement,
6 including, but not limited to: (1) Printing, distributing, and tracking Notice of Settlement and
7 resending Notice of Settlement pursuant to the terms of this Agreement; (2) Establishing a
8 separate employer identification number and a Qualified Settlement Fund, tax reporting, making
9 tax payments, providing required 1099 and W-2 forms; (3) Calculating and distributing the
10 Individual Settlement Payments, Class Representative Incentive Payments, Attorneys’ Fees and
11 Costs, and PAGA payments going to the LWDA; (4) Documenting and determining which class
12 members have filed a timely and valid Request for Exclusion or Objection Form. This shall also
13 include resolving any disputes regarding the submission of timely and valid Requests for
14 Exclusion and Objection Forms, after consultation with Plaintiffs’ Counsel and Defendant’s
15 Counsel; (5) Depositing the funds from undeliverable or uncashed checks into the State of
16 California State Bar Justice Gap Fund; (6) Providing necessary reports and declarations, as
17 requested by the Parties or the Court, including weekly reports on the number of Class Members
18 who have timely submitted Requests for Exclusion and Objection Forms, as well as on whether
19 any Class Member submitted a challenge to the information in their Notice of Settlement; and (7)
20 The Settlement Administration Costs shall be paid from the Gross Settlement Amount, including,
21 if necessary, any such costs in excess of the amount estimated by the Settlement Administrator.

22 1.32. “**Settlement Administrator**” refers to Simpluris, Inc., a third-party class
23 action settlement administrator chosen by the Parties and subsequently approved by the Court for
24 the purposes of administering this settlement. The Parties each represent that they do not have
25 any financial interest in the Settlement Administrator or otherwise have a relationship with the
26 Settlement Administrator that could create a conflict of interest.

1.33. “**Settlement Class List**” means a list of all Class Members that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator within 30 calendar days after Preliminary Approval of this Settlement by the Superior Court. The Parties acknowledge that Defendant’s records consist solely of dates that particular Labor Contractors performed services for Defendant and the particular Class Members that worked for such Labor Contractors during that time and that these records do not reflect the actual workweeks, nor does it often reflect the mailing addresses of the particular Class Members. For purposes of this Agreement, the Data List in Defendant’s records shall be considered the official information to be used for this Settlement.

1.34. “**Work Weeks**” means a full or partial week in which a Class Member may have worked during the Class Period based on Defendant’s records. Defendant will compile and provide to the Settlement Administrator within 30 calendar days after Preliminary Approval Order of this Settlement the number of Work Weeks for each Class Member.

2. PROCEDURAL HISTORY AND RECITALS

2.1. **The Original Complaint.** On April 17, 2023, Plaintiffs, on behalf of a proposed class, filed a class action lawsuit against Defendant in the Superior Court of the State of California, for the County of Alameda, Case No. 23CV031371, alleging claims for violations of the California Labor Code.

2.1.1 **The First Amended Complaint:** Prior to the filing of the motion for preliminary approval of the class action, Plaintiffs, on behalf of themselves and all other Class Members, filed a First Amended Complaint (“FAC”) against Defendant. The FAC alleges ten causes of action: (1) “Failure to Provide Meal Period Breaks”; (2) “Failure to Provide Rest Period Breaks”; (3) “Failure to Pay Overtime”; (4) “Failure to Pay Minimum Wages”; (5) “Failure to Make Payment Due Upon Separation”; (6) “Failure to Provide Accurate Itemized Wage Statements”; (7) “Failure to Pay All Wages Owed.” (8) “Unlawful, Unfair and Fraudulent Business Practices”; (9) Entering into Illegal Contract or Agreement”; and (10) “Private Attorneys General Act of 2004.”

1 **2.2. The Parties Have Engaged In Extensive Amount of Discovery.**
2 Plaintiffs propounded Special Interrogatories and Requests for Production of Documents.
3 Plaintiffs reviewed extensive records of ten Labor Contractors. These records include payments
4 to workers, manifests, invoices paid by Defendant, expense reports, and tax records.

5 **2.3. The Settlement Is The Result Of Arm's Length Negotiations.** Based
6 on the foregoing investigation and evaluation, Class Counsel is of the opinion that the terms set
7 forth in this Agreement are fair, reasonable, adequate, and in the best interests of the Class
8 Members. The terms of the Settlement also reflect extensive exchange of information and data
9 between the Parties, which allowed Class Counsel to fully evaluate the potential risks in pursuing
10 the underlying claims on the merits. This Agreement was reached after extensive arm's-length
11 negotiations, and it was negotiated in light of all known facts and circumstances, including the
12 risks of significant delay and uncertainty associated with litigation, the risk that the Actions
13 would not be permitted to proceed on a class or representative basis, various defenses asserted by
14 Defendant including claims for indemnification against the Labor Contractors, and numerous
15 potential appellate issues.

16 **2.4. Defendant's Denials.** Defendant denies and continues to deny all of the
17 allegations made by Plaintiffs in the Action and denies and continues to deny that it is liable or
18 owes damages, penalties, interest, attorneys' fees, costs, or other compensation or remedies to
19 anyone with respect to the alleged facts or claims asserted in the Action. Defendant denies any
20 liability or wrongdoing of any kind in connection with Plaintiffs' claims, and contends that,
21 during all relevant times, it complied with all respects of the applicable California law.
22 Nonetheless, without admitting or conceding any liability or damages whatsoever, and without
23 admitting that class certification is appropriate except for settlement purposes alone, Defendant
24 has agreed to settle the Action on the terms and conditions set forth in this Agreement, to avoid
25 the burden, expense, and uncertainty of continuing with litigation of the Action.

26 Plaintiffs and the Class Members agree that all of the claims for wage and hour and
27 payroll practice violations in the Action are disputed, and that the payments set forth herein

1 constitute payment in full of any and all amounts allegedly due to them. In light of the
2 foregoing, Plaintiffs and each and every Class Member shall be deemed to have acknowledged
3 and agreed that California Labor Code section 206.5 is not applicable to the Parties hereto. That
4 section provides in pertinent part as follows:

5 An employer shall not require the execution of a release of a claim or right
6 on account of wages due, or to become due, or made as an advance on
7 wages to be earned, unless payment of those wages has been made.

8 The Parties understand and agree that this Agreement and all exhibits thereto are
9 settlement documents and shall be inadmissible for any purpose in any proceeding, except an
10 action or proceeding to approve, interpret, or enforce the terms of this Agreement. The Parties
11 agree that, to the extent permitted by law, this Agreement may be pleaded as a full and complete
12 defense to, and may be used as the basis for an injunction against any action, suit, or other
13 proceeding that may be instituted, prosecuted, or attempted in breach of this Agreement.

14 2.5. **The Parties' Intent.** It is the desire of the Parties to fully, finally, and
15 forever settle, compromise, and discharge any and all claims, rights, demands, charges, penalties,
16 complaints, causes of action, obligations, or liability of any and every kind that were or could
17 have been asserted in the Action or the PAGA letter to the LWDA, to the extent that such claims
18 arise out of the alleged facts, circumstances, and occurrences underlying the allegations as set
19 forth in the claims filed in the Action.

20 2.6. **Certification Of Class Members.** By this Agreement, Defendant does
21 not waive its argument that the class should be decertified, if this Agreement does not receive
22 final approval from the Court. Defendant agrees to continued class certification for settlement
23 purposes only. Defendant does not waive, and instead expressly reserves, its right to challenge
24 the propriety of class certification or representative treatment for any other purpose should the
25 Court not approve the Settlement or this Agreement.

26 2.7. **The Parties' Agreement To Cooperate.** The Parties agree to cooperate
27 and to take all steps necessary and appropriate to effectuate all aspects of this Agreement, to

1 obtain a Preliminary Approval Order and Final Approval Order of this Settlement, and to dismiss
2 the Actions and claims of Class Members with prejudice upon Final Approval.

3 **NOW THEREFORE**, in consideration of the covenants and agreements set forth herein,
4 and of the release and dismissal of all Released Class Claims, the Parties stipulate and agree to
5 the terms and provisions of this Settlement and Agreement, subject to the approval of the Court.

6 **3. NOTICE TO CLASS MEMBERS**

7 3.1. **Settlement Administrator.** The Parties will request that the Court
8 appoint Simpluris, Inc. as Settlement Administrator. The Parties agree that settlement
9 administration costs shall not exceed \$25,000.00 based on a written bid received from the
10 Settlement Administrator. All disputes relating to the Settlement Administrator's performance of
11 its duties, after good-faith efforts by the Parties to first resolve such disputes, will be referred to
12 the Court, if necessary, which will have continuing jurisdiction over this Agreement until all
13 payments and obligations contemplated by this Agreement have been fully completed.

14 3.2. **Class Data For Settlement Administrator.** Within 30 calendar days of
15 the entry of a Preliminary Approval Order, Defendant shall provide to the Settlement
16 Administrator the Settlement Class List, containing the names of the Class Members, and if
17 available, any of the following: (1) the most current, known mailing address of each Class
18 Member; (2) the telephone number of each Class Member; and (3) the total number of Work
19 Weeks by each Class Member during the Class Period.

20 The contact information is being provided confidentially, and the Settlement
21 Administrator shall treat the information as private and confidential and take all necessary
22 precautions to maintain the confidentiality of contact information of the Class Member. This
23 information is to be used only to carry out the Settlement Administrator's duties as specified in
24 this Settlement Agreement. The Settlement Administrator shall return the class data to
25 Defendant or confirm its destruction upon completion of the Settlement Administrator's duties in
26 administering the Settlement.

1 **3.3. Mailing Of Notice Of Settlement, Request For Exclusion, And**
2 **Objection Form.** The Settlement Administrator shall mail the Notice of Settlement, Request for
3 Exclusion, and Objection Form, to Class Members within 15 calendar days of the receipt of the
4 Settlement Class List. The Settlement Administrator shall send the Notice of Settlement,
5 Request for Exclusion, and Objection Form to Class Members via First Class U.S. Mail, using
6 the most current, known mailing address for each Class Member based on information provided
7 by Defendant. Upon receipt of the Settlement Class List, the Settlement Administrator shall
8 perform a search based on the National Change of Address Database maintained by the United
9 States Postal Service to update and correct any known or identifiable address changes. The
10 Notice of Settlement, Request for Exclusion, and the Objection Form shall be substantially in the
11 form attached as **Exhibit A** to this Agreement.

12 **3.4. Notice of Settlement:** The Notice of Settlement that will be mailed to
13 each Class Member will advise each Class Member of the Action. The Notice of Settlement will
14 also advise Class Members of their right, as well as the procedures, to submit a timely and valid
15 Request for Exclusion and Objection Form. The Notice of Settlement will advise Class
16 Members that they will receive an Individual Settlement Payment as long as they do not submit a
17 timely and valid Request for Exclusion, as described below. The Notice of Settlement will also
18 inform the Class Members that they will be bound by the applicable Released Class Claims, if
19 they do not submit a timely and valid Request for Exclusion.

20 **3.5. Non-Delivered Notice Of Settlement:** Any mailing returned to the
21 Settlement Administrator as undeliverable shall be sent within five calendar days via First Class
22 U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the
23 Settlement Administrator shall attempt to determine the correct address using a computer-based
24 skip-trace search, and it shall then perform a single re-mailing via First Class U.S. Mail within
25 five calendar days.

26 **3.6. Proof Of Mailing.** At least five calendar days prior to the Fairness
27 Hearing, the Settlement Administrator shall provide a declaration of due diligence and proof of

mailing with regard to mailing of the Notice of Settlement to Class Counsel and Defendant's Counsel, which they shall in turn provide to the Court.

4. CLASS MEMBERS' OPTIONS TO RESPOND

4.1. Class Members' Consideration Period. Class Members shall be provided 30 calendar days to exercise any rights with regard to the Settlement, following the postmark date of the initial mailing of the Notice of Settlement, Request for Exclusion, and Objection Form. Except as specifically provided herein, no Class Member responses of any kind that are postmarked more than 30 calendar days after the initial mailing of Notice of Settlement or 30 days after the date of any re-mailing of the Notice of Settlement, whichever is later, shall be considered.

4.2. Request for Exclusion and Opt Out Rights. Class Members shall be given the opportunity to opt out of the Settlement.

4.2.1 Opt Out Procedures. Class Members may opt out of the Settlement by mailing to the Settlement Administrator a Request for Exclusion. Any such Request for Exclusion must be postmarked not more than 45 calendar days after the postmark date of the initial mailing of the Notice of Settlement, or 45 calendar days after the date of any re-mailing of the Notice of Settlement by the Settlement Administrator, whichever is later. A valid Request for Exclusion must: (a) state the case name and number of the *Lopez* Class and PAGA Action; (b) provide the Class Members; (b) provide the Class Member's name (and former names, if any), current address, current telephone number, and last four digits of his or her Social Security number; and (c) clearly state that the Class Member wishes to be excluded from the Class Settlement. Any Request for Exclusion that does not include all of the required information or that is not submitted in a timely manner will be deemed null, void, and ineffective. If there is a dispute regarding the timeliness or validity of a Request for Exclusion, the Settlement Administrator shall make the determination, after consultation with Class Counsel and Defense Counsel.

1 4.2.2 **Effect of Opt Out.** Any Class Member who opts out of the Class
2 Settlement may not object to the Class Settlement, shall not receive any Individual Settlement
3 Payment, and shall not be bound by the applicable Released Class Claims provisions in this
4 Agreement. If a Class Member submits both a Request for Exclusion and an Objection, the
5 Class Member's Request for Exclusion will be valid and be deemed to invalidate the Objection.

6 4.3. **Objection Rights.** Only Class Members who do not opt out of the
7 Settlement shall be entitled to object to the terms of the Settlement.

8 4.3.1 **Objection Procedures.** Class Members' objections to the
9 Settlement or this Agreement must be made using the procedures set forth in the Notice of
10 Settlement and the Objection Form. Any objection must be sent to the Settlement Administrator
11 and postmarked no later than 45 calendar days after the first postmark date of mailing the Notice
12 of Settlement, or 45 calendar days after the date of any re-mailing of the Notice of Settlement by
13 the Settlement Administrator, whichever is later. An objection shall be deemed to be submitted
14 as of the postmarked date. The written objection must contain: (i) the case name and number of
15 the *Lopez* Class and PAGA Action; (ii) the objector's full name, signature, address, telephone
16 number, and last four digits of the Social Security Number of the Class Member submitting the
17 Notice of Objection; (iii) a written statement of all grounds for the objection accompanied by any
18 legal support for such objection; (iv) copies of any papers, briefs, or other documents upon
19 which the objection is based; and (v) a statement whether the objector intends to appear at the
20 Final Approval Hearing. If the objector is represented by counsel, statement shall include the
21 name, address, and telephone number of their counsel. Class Members who submit an objection
22 remain bound by this Agreement, including the applicable Released Class Claims provisions.
23 Class Members who submit a timely and valid Objection Form may be subject to appear for a
24 deposition, if requested by Defendant.

25 4.3.2 **Waiver Of Objection Rights.** Class Members who fail to make
26 objections in the manner specified in the Notice of Settlement shall be deemed to have waived
27

any objections and shall be foreclosed from making any objection, whether by appeal or otherwise, to this Agreement.

4.4. Defendant's Rights To Withdraw. Defendant has the right, at its sole option, to withdraw from this Settlement or Agreement if six or more of the Class Members submit a timely and valid Request for Exclusion. Defendant also has the right to withdraw from this Settlement or Agreement if three or more Class Members file timely and valid objections. These rights to withdraw are material terms of the Agreement and Defendant has the right, at its sole option, to withdraw from this Agreement if either of these material terms is not approved by the Court. If Defendant exercises this right to withdraw, it will be responsible for all Settlement Administration Costs incurred by the Administrator.

4.5. Proof Of Class Members' Responses. By not later than 60 calendar days after the initial mailing of the Notice of Settlement, Request for Exclusion, and Objection Form, the Settlement Administrator will prepare and submit a declaration attesting to (by number of relevant individuals), its mailing of the Notice of Settlement, its inability to deliver any mailing due to invalid addresses, and its receipt of valid Requests for Exclusion and Objections Forms, and any other information that the Parties request be included. Five calendar days prior to the Fairness Hearing, the Settlement Administrator will prepare a supplemental declaration to submit to the Court, to indicate the number of valid timely claims, objections, and opt out Requests for Exclusion.

4.6. Binding Effect Of Settlement. Although some Class Members might not receive the Notice of Settlement, the Request for Exclusion, or the Objection Form as provided under this Settlement and Agreement, due to inability to locate their current address following the procedures set forth in this Agreement, such individuals shall nonetheless be bound by all of the terms of this Settlement and Agreement and the Final Approval Order and Final Judgment.

Incentive Payments and shall indemnify and hold harmless Defendant from any claim or liability for taxes, penalties, or interest arising as a result of the payment.

5.3. **Attorneys' Fees.** Class Counsel intends to request—and Defendant agrees not to oppose—that the Court approve Attorneys' Fees in an amount up to 33.33% of the Gross Settlement Amount (or \$333,000.00), supported by adequate documentation by Class Counsel to support the amount of fees sought. Defendant shall have no liability for any other attorneys' fees.

5.4. **Costs.** Class Counsel intends to request—and Defendant agrees not to oppose—that the Court approve Costs, supported by adequate documentation to support the amount of costs sought. Defendant shall have no liability for any other costs.

5.4.1 **Approval Of Attorneys' Fees And Costs Not Material.** The Court's approval of Attorneys' Fees and/or Costs is not a material term of the Settlement or this Agreement. If the Court does not approve or approves only a lesser amount than that requested by Class Counsel for Attorneys' Fees and/or Costs, the other terms of the Settlement and this Agreement shall still apply. The Court's refusal to approve the Attorneys' Fees and/or Costs requested by Class Counsel does not give the Class Representative, the Class Members, or Class Counsel any basis to abrogate the Settlement or this Agreement. Any amount of Attorneys' Fees and/or Costs requested by Class Counsel but unapproved by the Court shall be allocated to the Net Settlement Amount.

5.4.2 **Timing Of Payment Of Attorneys' Fees And Costs.** The Settlement Administrator shall pay to Class Counsel ninety percent of any approved Attorneys' Fees and all Costs within 15 calendar days after the Funding of the Gross Settlement Amount. The Settlement Administration shall hold the ten percent balance of the approved Attorney's Fees in its trust fund and shall pay the ten percent within 15 calendar days after completion of the distribution process and the Court approves the final accounting. The Settlement Administrator shall issue an Internal Revenue Service Form 1099 to Class Counsel for any Attorneys' Fees and Costs payment, based on the allocation communicated by Class Counsel. Class Counsel shall be

solely and legally responsible for paying all applicable taxes on any Attorneys' Fees and Costs payments and shall indemnify and hold harmless Defendant from any claim or liability for taxes, penalties, or interest arising as a result of the payment.

5.5. Settlement Administration Costs. Class Counsel intends to request—and Defendant agrees not to oppose—that the Court approve Settlement Administration Costs of up to \$25,000.00. Any amount of Settlement Administration Costs requested by Class Counsel but unapproved by the Court shall be allocated to the Net Settlement Amount. Upon completion of administration of the Settlement, the Settlement Administrator shall provide written certification of such completion to Class Counsel and Defendant's Counsel. The Parties agree to cooperate in the settlement administration process and to make all reasonable efforts to control and to minimize settlement administration costs.

5.5.1 Approval Of Settlement Administration Costs Not Material. The Court's approval of Settlement Administration Costs is not a material term of the Settlement or this Agreement. If the Court does not approve or approves only a lesser amount than that requested by Class Counsel for Settlement Administration Costs, the other terms of the Settlement and this Agreement shall still apply. The Court's refusal to approve the Settlement Administration Costs requested by Class Counsel does not give the Class Representative, the Class Members, or Class Counsel any basis to abrogate the Settlement or this Agreement. Any amount of Settlement Administration Costs requested by Class Counsel but unapproved by the Court shall be allocated to the Net Settlement Amount.

5.6. PAGA Payment. The Parties will seek approval for a PAGA Payment of \$50,000 to be paid from the Gross Settlement Amount. Seventy-five percent of the PAGA Payment (or \$37,500) will be paid to the LWDA consistent with California Labor Code §§ 2699(i) and (j) no later than 30 calendar days after the Funding of the Gross Settlement Amount. The remaining 25% allocated to the PAGA Payment (or \$12,500) shall be part of the Net Settlement Amount available for distribution to Class Members as part of their Individual Settlement Payment under the terms of this Agreement.

5.6.1 Reduction Or Increase Of PAGA Payment Not Material. The Court's reduction or increase of the PAGA Payment is not a material term of the Settlement or this Agreement. If the Court approves only a lesser or greater amount than that requested by Class Counsel for the PAGA Payment, the other terms of the Settlement and this Agreement shall apply. The Court's reduction or increase of the PAGA Payment requested by Class Counsel does not give the Class Representative or Class Counsel any basis to abrogate the Settlement or this Agreement.

5.7. **Allocation Of Net Settlement Amount.** The Individual Settlement Payment shall constitute wages, interest, meal period premium pay, expense reimbursement, statutory penalties pursuant to the California Labor Code, and civil penalties pursuant to PAGA. Given that the bulk of potential exposure in the Action consists of penalties, interest, and expenses, 90% of each Individual Settlement Payment shall be allocated as penalties, interest, and expenses. The remaining 10% of each Individual Settlement Payment shall be allocated as wages and meal period premium pay. For example, if a Class Member receives an Individual Settlement Payment of \$10,000, then \$9,000 shall be allocated as penalties, interest, and expenses, without any payroll tax deductions. The remaining \$1,000 shall be allocated as wages and meal period premium pay, subject to payroll tax deductions.

5.8. **Payment Of Employer's Share Of Payroll Taxes.** As provided in this Agreement, 10% of the Individual Settlement Payment to each Class Member shall be allocated as wages and meal period premium pay, subject to payroll tax deductions. The Class Members' share of the payroll tax deductions shall be subtracted from their Individual Settlement Payment by the Settlement Administrator and the amount subtracted for payroll tax deductions shall be sent to the appropriate state and federal tax authorities. The employer's share of payroll tax deductions shall be collected by the Settlement Administrator from the Defendant and shall be sent to the appropriate state and federal tax authorities.

1 **5.9. Individual Settlement Payments.** Class Members who do not submit a
2 timely and valid Request for Exclusion shall be entitled to receive a portion of the Individual
3 Settlement Payment, in accordance with the formula set forth below.

4 **5.10. Calculation of Each Class Member's Share of the Individual**
5 **Settlement Payment.** Each Class Member will be eligible to receive a portion of the Individual
6 Settlement Payment in accordance with the following formula:

7 Each Class Member's potential share of the Individual Settlement
8 Payment will be calculated by his or her total number of Work
9 Weeks divided by the total number of Work Weeks by all Class
10 Members who do not submit a timely and valid Request for
11 Exclusion, then multiplied by the Net Settlement Amount—*i.e.*,
individual Weeks Worked ÷ total Weeks Worked by Class
Members who do not submit a timely and valid Request for
Exclusion x Net Settlement Amount.

12 **5.11. Allocation Of Individual Settlement Payment For Tax Purposes.** Each
13 Class Member's Individual Settlement Payment will be characterized as 90% Form 1099 income
14 and 10% W-2 income, to reflect that 90% of the payment will account for penalties, interest, and
15 expenses that are not subject to payroll deductions, while 10% will account for unpaid wages and
16 meal period premiums that are subject to payroll deductions. In accordance with applicable tax
17 laws, required tax withholdings and payroll deductions will be taken from each Individual
18 Settlement Payment for the portion allocated to Form W-2 income and remitted to the
19 appropriate taxing authorities. The Settlement Administrator shall issue any necessary IRS Form
20 1099 and Form W-2 statements to Class Members for their respective Individual Settlement
21 Payments. The Settlement Administrator shall setup its own tax payer identification number and
22 Qualified Settlement Fund for purposes of making the Individual Settlement Payments required
23 under this Agreement. Class Members shall be solely and legally responsible for paying all other
24 applicable taxes on their respective Individual Settlement Payments and shall indemnify and hold
25 harmless Defendant from any claim or liability for taxes, penalties, or interest arising as a result
26 of the payments.

1 **5.12. Allocation Of Individual Settlement Payment Not Material.** The
2 Court's approval of the allocation of the Individual Settlement Payment for Form 1099 income
3 and Form W-2 income is not a material term of the Settlement or this Agreement. If the Court
4 does not approve or approves a different allocation of the Individual Settlement Payments, the
5 other terms of the Settlement and this Agreement shall apply. The Court's refusal to approve the
6 allocation for the Individual Settlement Payments requested by the Parties does not give the
7 Parties any basis to abrogate the Settlement or this Agreement.

8 **5.13. Settlement Checks.** The settlement checks shall be for the amount of
9 each Class Member's Individual Settlement Payment.

10 **5.13.1 Timing of Individual Settlement Payments.** The Settlement
11 Administrator shall issue the checks constituting the Individual Settlement Payments no later
12 than 15 calendar days after the funding of the Gross Settlement Amount.

13 **5.14. Non-Reversionary Settlement For Undeliverable Or Uncashed**
14 **Checks.** This Settlement shall be a non-reversionary Settlement. Any settlement checks
15 distributing Individual Settlement Payments returned to the Settlement Administrator as
16 undeliverable shall be sent within five calendar days via First Class U.S. Mail to the forwarding
17 address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall
18 attempt to determine the correct address using a single computer skip-trace search, and it shall
19 then perform a re-mailing within five calendar days. The amount of any Individual Settlement
20 Payments that remain undeliverable or uncashed 90 calendar days after the postmarked date of
21 the initial mailing of these payments will be deposited by the Settlement Administrator into the
22 State of California State Bar Justice Gap Fund. No part of the Net Settlement Amount shall be
23 returned to Defendant.

24 **5.15. Tax Payment Considerations.** Neither Class Counsel nor Defendant's
25 Counsel intend anything contained in this Settlement or Agreement to constitute advice
26 regarding taxes or taxability, nor shall anything in this Settlement or Agreement be relied upon
27

as such within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended) or otherwise.

5.15.1 No Tax Advice Or Liability. Each Class Member agrees to indemnify, and to hold harmless, Defendant from any liability for taxes, fees, costs, or assessments resulting from his or her failure to timely pay taxes, interest, fees, or penalties owed.

5.16. No Impact On Employee Benefit Plans. None of the payments made pursuant to the Settlement and this Agreement shall be considered for purposes of determining eligibility for, vesting or participation in, or contributions to any benefit plan, including, without limitation, all plans subject to the Employee Retirement and Income Security Act of 1974 (“ERISA”). Any distribution of payments to Plaintiffs or Class Members shall not be considered as a payment of wages or compensation under the terms of any applicable benefit plan and shall not affect participation in, eligibility for, vesting in, the amount of any past or future contribution to, or level of benefits under any applicable benefit plan. Any amounts paid will not impact or modify any previously credited hours of service or compensation taken into account under any benefit plan sponsored or contributed to by Defendant or any jointly-trusted benefit plan. For purposes of this Agreement, “benefit plan” means each and every “employee benefit plan,” as defined in 29 U.S.C. § 1002(3), and, even if not thereby included, any 401(k) plan, bonus, pension, stock option, stock purchase, stock appreciation, welfare, profit sharing, retirement, disability, vacation, severance, hospitalization, insurance, incentive, deferred compensation, or any other similar benefit plan, practice, program, or policy.

6. RELEASES

6.1. Release By Class Members. Upon the Effective Date, the Class Members, Plaintiffs and their heirs, executors, administrators, attorneys, agents and assigns, fully and finally release and forever discharge the Released Parties from any and all Released Class Claims during the Class Period. As a result of this release, the Class Members will be unable to bring a claim or seek recovery for any alleged violations of the Released Class Claims that took place during the Class Period

1 **6.2. Release By The State Of California And The Aggrieved Employees.**

2 Upon the Effective Date, Plaintiffs, on behalf of themselves, the State of California, and the
3 Aggrieved Employees fully and finally release and forever discharge the Released Parties from
4 any and all Released PAGA Claims during the PAGA Period. As a result of this release,
5 Plaintiffs, the State of California, and the Aggrieved Employees will not be able to bring a claim
6 or seek civil penalties based on the Released PAGA Claims that took place during the PAGA
7 Period.

8 **6.3. Additional Release By Class Representatives.** In addition to the above
9 Released Class Claims and the Released PAGA Claims, the Class Representatives also generally
10 release any and all claims against each of the Released Parties as of the Effective Date. This
11 general release includes any and all claims arising from the employment relationship with
12 Defendant, including, without limitation, claims for wrongful termination, violations of public
13 policy, emotional distress, discrimination, harassment, or retaliation pursuant to Title VII of the
14 Civil Rights Act of 1964, 42 U.S.C. §§ 2000 *et seq.* or the California Fair Employment and
15 Housing Act, Cal. Gov't Code §§ 12900 *et seq.* This general release by the Class
16 Representatives also includes a waiver of California Civil Code § 1542. The Class
17 Representatives expressly waive all rights provided by California Civil Code § 1542, or other
18 similar statutes, that the Class Representatives may have against each of the Released Parties.
19 California Civil Code Section 1542 states:

20 A general release does not extend to claims that the creditor or
21 releasing party does not know or suspect to exist in his or her favor
22 at the time of executing the release and that, if known by him or
23 her, would have materially affected his or her settlement with the
24 debtor or released party.

25 **6.3.1 Class Representative Acknowledgments.** The Class
26 Representatives acknowledge that they have read this Agreement in its entirety, including the
27 above language from the California Civil Code § 1542, and that they fully understand this
28 Agreement. By executing this Agreement, as of the Effective Date, Class Representatives

expressly waive any benefits and rights granted pursuant to California Civil Code § 1542 or any statute, rule, or principle of common law or equity, in any jurisdiction, that is similar, comparable, or equivalent, in whole or in part, to California Civil Code § 1542. The Class Representatives acknowledge and agree that this knowing and voluntary waiver is an essential and material term of this Agreement, and the Agreement would not have been entered into without such a waiver.

6.4. Injunction From Pursuing Released Class Claims. As part of the preliminary approval of the Settlement, Plaintiffs, Class Members, the State of California, and the Aggrieved Employees shall be enjoined from filing, initiating, or continuing to prosecute any actions, claims, complaints, or proceedings in any court, or with the California Divisions of Labor Standards Enforcement (“DLSE”), or with the LWDA, or the United States Department of Labor (“DOL”), or with any other entity regarding the claims released in the Agreement. This Settlement is conditioned upon the release by Plaintiffs, the Class Members and Aggrieved Employees as described herein, and upon covenants by these individuals that they will not participate in any actions, lawsuits, proceedings, complaints, or charges brought by the DLSE, LWDA, DOL, or by any other agency, persons, or entity in any court or before any administrative body related to the claims released in this Agreement. In the event that any court or administrative agency does not order injunctive relief, Defendant shall have the right to file a motion for summary judgment or any other pleading or paper to enforce the terms of this Agreement. The Class Members and Class Counsel will not oppose, contest or interfere with efforts by Defendant to oppose any attempt to bring such Released Class Claims against Defendant.

6.5. **Class Members' Acknowledgment.** The Class Members acknowledge that they may hereafter discover facts or law different from, or in addition to, the facts or law they know or believe to exist with respect to the Released Class Claims. The Class Members also acknowledge that Defendant may be considering business options that could impact their wages or employment, outside of the obligations provided in this Agreement. The Class

Members nonetheless agree that this Agreement and the Released Class Claims contained in it shall be and remain effective in all respects notwithstanding such different or additional facts or law regarding such Released Class Claims. These releases do not include any claims that cannot be waived as a matter of law, but the Class Members agree that they will not accept any monetary recovery or benefit from any proceedings relating to any such claims.

7. SETTLEMENT APPROVAL PROCEDURE

7.1. Amendment of the Complaint. In the motion for preliminary approval of the class action settlement, Plaintiffs and their counsel shall seek leave of Court to file a First Amended Complaint substantially in the form attached as **Exhibit B** in the Superior Court of Alameda County in the *Lopez* Class Action. This amendment will seek to add claims under the Private Attorneys General Act (PAGA) for: (1) Failure to Provide Meal Periods, (2) Failure to Provide Rest Periods, (3) Failure to Pay Overtime, (4) Failure to Pay Minimum Wages, (5) Failure to Pay Wages Due Upon Separation, (6) Failure to Provide Accurate Itemized Wage Statements, and (7) Failure to Pay all Wages Owed. Defense Counsel shall have reasonable time to review the draft of Exhibit B and suggest revisions to the draft. Defense Counsel and Class Counsel shall ensure that the amended complaint contains adequate factual and legal bases to effectuate the Released Class Claims and Released PAGA Claims in this Agreement. Plaintiffs agree to take all reasonable steps to satisfy any and all procedural requirements set forth by the California Superior Court to effectuate the terms of the Settlement, including timely seeking preliminary approval of the Settlement.

7.2. Preliminary Approval Hearing. The Parties shall submit to the Court a Joint Motion for Preliminary Approval of Settlement. This motion shall seek an order to preliminarily approve the proposed Settlement according to the terms in this Agreement and provide for the Notice of Settlement, the Request for Exclusion, and Objection Form, to be sent to Class Members as specified in this Agreement. This motion shall include the bases for the Gross Settlement Amount and why the amount is reasonable in light of the facts and controlling authorities pertaining to the claims alleged in the Action. The motion shall also be accompanied

1 by signed declarations by Class Counsel and Defendant's Counsel, discussing the risks of
2 continued litigation and the decision that the best interests of both Parties are served by the terms
3 of this Agreement.

4 **7.2.1 Effect Of Failure To Obtain Preliminary Approval.** If this
5 Settlement or Agreement or a substantially similar settlement mutually agreed to by the Parties is
6 not preliminarily approved, the Action shall proceed as if no settlement had been attempted,
7 unless the Parties jointly agree to seek reconsideration of the ruling or Court approval of a
8 renegotiated settlement. Defendant retains the right to contest whether any aspect of the Action
9 should be maintained as a class or representative action, or to contest the merits of the claims
10 being asserted by the Class Representatives or Class Members in the Action.

11 **7.3. Final Approval.** The Parties shall submit to the Court a Joint Motion for
12 Final Approval Order in advance of the final approval hearing. The motion shall request the
13 entry of a Final Approval Order and Final Judgment, which shall include findings and orders: (a)
14 approving the Settlement and the Agreement; (b) adjudging the terms to be fair, reasonable, and
15 adequate; (c) reciting the release terms in full; (d) directing that the Settlement terms and
16 provisions be carried out; and (e) retaining jurisdiction to oversee administration and
17 enforcement of the terms of this Agreement and the Court's orders.

18 **7.4. Motion For Attorneys' Fees And Costs.** Concurrently with the Joint
19 Motion for Final Approval Order, Class Counsel shall file a motion for Court approval of
20 Attorneys' Fees in an amount up to 33.33% of the Gross Settlement Amount (or \$333,000),
21 supported by adequate documentation by Class Counsel to support the amount of fees sought.
22 Class Counsel shall also file a motion for Court approval of Costs, supported by adequate
23 documentation to support the amount of costs sought. Defendant will not oppose the motion,
24 provided it is consistent with this paragraph. Defendant will not be required to support such a
25 motion.

1 **7.5. Entry Of Judgment.** At the final approval hearing, the Parties shall
2 request that the Court issue Judgment in accordance with this Agreement and without further
3 fees or costs to any party except as expressly set forth in this Agreement.

4 **7.5.1 Effect Of Failure To Obtain Final Judgment.** In the event the
5 Court fails to enter final judgment in accordance with this Agreement, or such final judgment is
6 vacated or reversed, the Action shall proceed as if no settlement had been attempted, unless the
7 Parties jointly agree to seek reconsideration or appellate review of the ruling or Court approval
8 of a renegotiated settlement. Defendant retains the right to contest whether any aspect of the
9 Action should be maintained as a class or representative action, or to contest the merits of the
10 claims being asserted by the Class Representatives or Class Members in the Action.

11 **7.6. Waiver Of Appeal Rights.** By accepting this Settlement, and upon final
12 approval of the settlement being granted, the Class Representatives and Class Counsel hereby
13 waive any and all rights they may have to appeal any judgment, ruling, or order made by the
14 Court, including, without limitation, any order granting final approval of this Settlement or
15 dismissing the Action with prejudice. This includes all rights to any post-judgment proceeding
16 and appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion for
17 new trial, a motion for relief, and any extraordinary writ, and the Judgment therefore will
18 become non-appealable at the time it is entered. The waiver of appeal does not include any
19 waiver of the right to oppose any appeal, appellate proceedings, or post-judgment proceedings.
20 If an appeal is taken from the Judgment, the time for consummation of the Settlement (including
21 making payments under the Settlement) will be suspended until such time as their appeal is
22 finally resolved and the Judgment becomes final.

23 **8. MISCELLANEOUS**

24 **8.1. No Representation By Class Counsel Of Other Plaintiffs.** Plaintiffs'
25 Counsel represents and warrants that they currently do not represent any Class Member with
26 respect to any claims other than those raised in the Action or the PGA letter to the LWDA.
27 However, this will not be construed or applied as a bar or limitation on the ability of Plaintiffs'

1 Counsel to represent a Class Member on any claim in the future that is not covered by this
2 Agreement.

3 **8.2. Class Counsel's Representation.** Class Counsel agree and represent that
4 they will not engage in any conduct to undermine the terms of the Agreement, including any
5 solicitation efforts to persuade any Class Member from opting out of or objecting to the
6 Settlement. Class Counsel further agree and represent that they do not represent any Class
7 Members other than Plaintiffs and will not actively solicit any other Class Members to pursue
8 claims that have been released in this Settlement on an individual, collective, class or
9 representative basis. Class Counsel also warrant and represent that they have access to any of the
10 Plaintiffs who will be executing this Agreement, and that they will obtain their signatures within
11 15 days after Class Counsel and Defense Counsel sign this Agreement. The Parties agree that
12 verifiable electronic signatures are sufficient. However, if the Court orders wet signatures, the
13 Parties will follow the Court's Order.

14 **8.3. Interim Stay Of Proceedings.** The Parties agree to refrain from further
15 litigation in the Action, except such proceedings necessary to implement and to obtain a
16 Preliminary Approval Order and Final Approval Order of the terms of the Agreement. If the
17 Settlement is not finally approved, the Parties agree that they will revert to their positions in the
18 lawsuits prior to the time the Settlement was reached, and no agreements set forth in this
19 Agreement will be admissible in any future proceeding in this or any other action.

20 **8.4. Certification Of Class Action And Representative Action For**
21 **Settlement Purposes Only.** The Parties agree to stipulate to class action and representative
22 action certification for purposes of the settlement only. If, for any reason, the settlement is not
23 approved, the stipulation to certification will be void, and Defendant shall have the full
24 opportunity to file any motion to challenge class certification or any motion to challenge the
25 manageability of PAGA claims. The Parties further agree that certification for purposes of the
26 settlement is not an admission that class action or representative action certification is proper
27 under the standards applied to contested certification motions and that this Agreement will not be

1 admissible in this or any other proceeding as evidence that either (i) a class or representative
2 action should be certified or (ii) Defendant is liable to Plaintiffs or any Class Member, other than
3 according to the terms of the Agreement.

4 **8.5. Parties' Authority.** The signatories hereto represent that they are fully
5 authorized to enter into this Agreement and are fully authorized to bind the Parties to all terms
6 stated herein. It is agreed that Class Members are so numerous that it is impossible or
7 impractical to have each Class Member execute this Agreement. It is agreed that this Agreement
8 may be executed on behalf of Class Members by Class Representatives and Class Counsel.

9 **8.6. Entire Agreement.** This Agreement, which includes the Definitions,
10 Recitals, and all Exhibits attached hereto, constitutes the entire agreement among the Parties with
11 regard to the subject matter contained herein, and all prior and contemporaneous negotiations
12 and understandings between the Parties shall be deemed merged into this Agreement.

13 **8.7. Arm's Length Transaction; Materiality Of Terms.** The Parties have
14 arrived at this Agreement as a result of arm's length negotiations. Except as otherwise stated in
15 this Agreement, all terms and conditions of this Agreement in the exact form set forth in this
16 Agreement are material to this Agreement and have been relied upon by the Parties in entering
17 into this Agreement.

18 **8.8. Counterparts.** This Agreement may be executed in counterparts, and
19 when each Party has signed and delivered at least one such counterpart, each counterpart shall be
20 deemed an original, and when taken together with other signed counterparts, shall constitute one
21 signed Agreement, which shall be binding upon and effective as to all Parties.

22 **8.9. Electronic Or Scanned Signatures.** Any party may sign and deliver this
23 Agreement by signing on the designated signature block and transmitting that signature page via
24 an attachment to an e-mail to counsel for the other party. Any signature made and transmitted as
25 an attachment to an e-mail for the purpose of executing this Agreement shall be deemed an
26 original signature for purposes of this Agreement and shall be binding upon the party who
27 transmits the signature page.

8.10. **Binding Effect.** This Agreement shall be binding upon the Parties and, with respect to the Class Representatives, Class Members, their spouses, children, representatives, heirs, administrators, executors, beneficiaries, conservators, attorneys, and assigns.

8.11. **Waivers And Modifications To Be In Writing.** No waiver, modification, or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid or binding, unless in writing, signed by or on behalf of all Parties by Plaintiffs' Counsel and Defendant's Counsel, and then only to the extent set forth in such written waiver, modification, or amendment, subject to any required Court approval. Any failure by any Party to insist upon the strict performance by the other Party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement. The time periods and dates provided in this Agreement with respect to giving of notices and hearings are subject to Court approval and modification by the Court or by written stipulation of Class Counsel and Defendant's Counsel.

8.12. **Construction.** The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this Agreement, and the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any party by virtue of draftsmanship.

8.13. Exhibits Incorporated By Reference. The terms of this Agreement include the terms set forth in any attached exhibit, which are incorporated by this reference as though fully set forth herein. Any exhibit to this Agreement is an integral part of the Settlement.

8.14. **Captions.** The captions or headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.

8.15. **Invalidity Of Any Provision.** Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to render all provisions of this Agreement valid and enforceable.

8.16. **Further Acts And Cooperation Between The Parties.** The Parties shall cooperate fully with each other and shall use their best efforts to obtain the Court's approval of this Agreement and all of its terms. Each of the Parties, upon the request of another, agrees to perform such further acts and to execute and to deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.

8.17. **No Prior Assignments Or Undisclosed Liens.** The Class Representatives and Class Counsel represent and warrant that they have not assigned, transferred, conveyed, or otherwise disposed of, or purported to assign, transfer, convey, or otherwise dispose of, any Released Class Claims or the attorneys' fees and costs to be paid pursuant to this Agreement. The Class Representatives and Class Counsel further represent and warrant that there are not any liens or claims against any of the amounts to be paid by Defendant pursuant to this Agreement. The Class Representatives and Class Counsel agree to defend, to indemnify, and to hold Defendant harmless from any liability, losses, claims, damages, costs, or expenses, including reasonable attorneys' fees, resulting from a breach of these representations or from any lien or assignment.

8.18. **Waiver Of Right To Object By The Class Representatives.** The Class Representatives agree to sign this Agreement, and by signing this Agreement, the Class Representatives are thereby bound by the terms of this Agreement. The Class Representatives further agree that they shall not object to any of the terms of this Agreement.

8.19. **No Solicitation Of Objections.** The Parties further represent and warrant that they have not and will not solicit, encourage, or assist in any fashion any effort by any entity or person to object to or to seek exclusion from the Settlement set forth in this Agreement.

8.20. **Discovery Of Confidential Documents And Information.** Class Counsel agree that they will destroy all confidential documents and information provided to them by Defendant within 60 calendar days after the completion of the administration of the Settlement. Class Counsel further agrees that none of the documents and information provided to them by Defendant shall be used for any purpose other than prosecution of this Action or the defense or prosecution of a malpractice action.

8.21. **No Initiated Publicity** Class Counsel shall not take any action or initiate to publicize, or cause to be publicized, directly or indirectly, the discussions resulting in or the existence of this settlement or its terms, in any type of mass media, including, but not limited to, speeches, press conferences, press releases, interviews, television or radio broadcasts, blogs, websites, newspapers, Internet posting, Facebook, Instagram, Twitter or any other social media, or information furnished to legal news media, including but not limited to *Bloomberg Law*, *Law 360*, and the *Daily Journal*. Class Counsel shall not refer to Defendant by name in its public marketing materials, law firm websites, or posting with any other organizations, such as the California Employment Lawyers Association (“CELA”). Class Counsel further agrees and warrants that if they were contacted by media outlets regarding this case, they will simply state that the lawsuit exists and has been resolved. Nothing in this section shall prevent Class Counsel from referencing this settlement to a court as evidence of their experience in connection with motions for class certification, approval of settlements, fee motions, and the like. Further, nothing in this section shall prevent the Settlement Administrators from posting the Class Notice approved by the Court on their website for Class Members’ reference.

8.22. **Continuing Jurisdiction.** The Court shall retain jurisdiction over the implementation of this Agreement as well as any and all matters arising out of, or related to, the implementation of this Agreement and Settlement. The Court shall not have jurisdiction to modify the terms of the Agreement without the consent of all of the Parties.

8.23. **Disputes.** If the Parties have a dispute with regard to the language of this Agreement, they agree to first attempt to resolve the dispute informally through good faith

1 negotiations, but if those efforts are unsuccessful, they agree to mediate any such dispute. The
2 Parties will split the costs of the mediator, and all parties will bear their own fees and costs.

3 8.24. **Governing Law.** This Settlement and Agreement was made and entered
4 into in the State of California. All terms of this Agreement shall be governed by and interpreted
5 according to the procedural and substantive laws of the State of California.

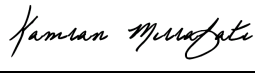
6 8.25. **Papers to Be Filed With the Court.** All papers to be filed with the Court
7 by Defendant or Class Counsel in connection with this Agreement shall be submitted to the other
8 Party at least two business days prior to filing. The other Party shall have no right to object to
9 the papers unless they do not conform to the terms and conditions of this Agreement.

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11 **[SIGNATURES ON FOLLOWING PAGE]**
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SO AGREED AND STIPULATED:

Dated: 11/14/2023, 2023

SEYFARTH SHAW LLP

By: 

Kamran Mirrafati
Attorneys for Defendant
HOME EXPRESS DELIVERY SERVICE, INC.

Dated: 11/14/2023, 2023

HOME EXPRESS DELIVERY SERVICE, INC.

By: 
Craig Erickson

Dated: _____, 2023

PLAINTIFF SAMUEL LOPEZ

Samuel Lopez

Dated: November 14, 2023

LAW OFFICE OF ALLAN A. VILLANUEVA

By: 
Allan A. Villanueva
Parham Golestanian
Attorneys for Plaintiffs and Class Members

1
2 **SO AGREED AND STIPULATED:**

3 Dated: _____, 2023

SEYFARTH SHAW LLP

4
5 By: _____

6 Kamran Mirrafati
7 Attorneys for Defendant
8 HOME EXPRESS DELIVERY SERVICE, INC.

9 Dated: _____, 2023

HOME EXPRESS DELIVERY SERVICE, INC.

10 By: _____

11 Craig Erickson

12
13 Dated: 11/14/2023, 2023

PLAINTIFF SAMUEL LOPEZ

14 Samuel Lopez
15 Samuel lopez (Nov 14, 2023 17:46 PST)

16 Samuel Lopez

17 Dated: November 14, 2023

LAW OFFICE OF ALLAN A. VILLANUEVA

18
19 By: _____

20 Allan A. Villanueva
21 Parham Golestanian
22 Attorneys for Plaintiffs and Class Members
23
24
25
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EXHIBIT A

**NOTICE OF CLASS ACTION SETTLEMENT TO CERTAIN
PERSONS WHO WORKED FOR A LABOR CONTRACTOR THAT
PERFORMED WORK FOR HOME EXPRESS DELIVERY SERVICE,
LLC (or HOME EXPRESS DELIVERY SERVICE, LLC) doing
business as TEMCO LOGISTICS (including those classified as an
“independent contractor delivery driver” and/or a “independent
contractor delivery helper”) IN THE STATE OF CALIFORNIA
DURING THE PERIOD(S) SPECIFIED BELOW**

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

SAUL LOPEZ and SAMUEL LOPEZ, individually and on behalf of all others similarly situated, Plaintiffs, v. HOME EXPRESS DELIVERY SERVICE, LLC, a California Limited Liability Company doing business as TEMCO LOGISTICS; and DOES 1 to 100, Defendants.	Case No. 23CV031371 NOTICE OF CLASS ACTION SETTLEMENT AND FINAL APPROVAL HEARING Date: Time: Dept.: 23 Judge: Hon. Brad Seligman
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Please read this entire notice carefully. It may affect your legal right to a monetary settlement related to your work performed for Defendant HOME EXPRESS DELIVERY SERVICE, INC. (or HOME EXPRESS DELIVERY SERVICE, LLC) doing business as TEMCO LOGISTICS during the time frame specified below. This is a court-ordered notice. This notice is not a solicitation from a lawyer and you are not being sued.

If you worked for a Labor Contractor that performed work for Defendant HOME EXPRESS DELIVERY SERVICE, INC. (or HOME EXPRESS DELIVERY SERVICE, LLC), doing business as TEMCO LOGISTICS (including those classified as an “independent contractor delivery driver” and/or a “independent contractor delivery helper”) in the State of California **between April 17, 2019, and [INSERT PRELIMINARY APPROVAL DATE] (“the Class Period”)**, you are receiving this notice because you are eligible for a payment from a class action settlement. Defendant’s records estimate that you performed work for Defendant for a total of [insert individual # of workweeks] weeks during the Class Period and [insert individual # of workweeks] weeks **between March 6, 2022, and [INSERT PRELIMINARY APPROVAL DATE] (the “PAGA Period”)**.

Based upon the estimated number of workweeks that you performed work for Defendant during the time frame specified below, it is estimated that your payment under this settlement will be \$[insert individual class dollar amount] as a Settlement Share, prior to any applicable taxes and deductions, and \$[insert individual PAGA dollar amount] as a PAGA Share. This amount is only an estimate and the final amount(s) may change based on the court’s final approval of the settlement.

Please note that the dates listed above only reflect the qualifying dates for this Settlement and do not necessarily reflect all of your work dates especially because you were not directly employed by Defendant and the records used to determine your approximate workweeks may not be accurate. If you believe Defendant's records are incorrect and want to correct the information above, you must notify the Settlement Administrator and provide documentation or other requested information in support for the correct work dates. You will need to indicate and explain such disagreement under penalty of perjury, on or before [INSERT DATE]. However, the Settlement Administrator is authorized to issue a final, non-appealable decision with regard to the number of compensable workweeks worked by the Class Member; and/or the Claim Amount to which any Class Member may eventually be entitled to receive.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

Do Nothing	You will be considered a Settlement Class Member and will be part of the Settlement as explained more fully below. After final approval by the Court, the payment of your Settlement Share (and, if you are also an Aggrieved Employee, your PAGA Share) will be mailed to you at the same address as this Notice, and you will release the Released Class Claims and Released PAGA Claims against the Released Parties covered by the Settlement.
Exclude Yourself	Receive no payment of a Settlement Share and retain any and all rights you may have against Defendant and Releasees as to the Released Claims. Note: If you are also an Aggrieved Employee, regardless of whether you choose to exclude yourself from the Settlement Class, you will receive a PAGA Share of the Settlement and will release the Released PAGA Claims after final approval of the Settlement by the Court.
Object	Write to the Settlement Administrator about why you don't agree with the Settlement. The Court may or may not agree with your objection. Objecting to the Settlement will not exclude you from the Settlement.
Go to Hearing	Appear at the Final Approval Hearing to speak to the Court about the fairness of the Settlement.

1. Why did I get this Notice?

You have received this notice because the records show that you may be a member of the Class and may be eligible to receive Settlement funds.

This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get your settlement payment.

2. What is this Lawsuit about?

This Settlement resolves a lawsuit filed by Saul Lopez and Samuel Lopez ("Plaintiffs" or "Class Representatives"), entitled "*SAUL LOPEZ and SAMUEL LOPEZ, individually and on behalf of all others similarly situated, Plaintiffs, v. HOME EXPRESS DELIVERY SERVICE, LLC, a California Limited Liability Company doing business as TEMCO LOGISTICS; and DOES 1 to 100, Defendants.*," Superior Court of the State of California, County of Alameda, Case No. 23CV031371 ("the Lawsuit"). Plaintiffs filed the Lawsuit on April 17, 2023, and amended the Complaint on November 13, 2023, alleging individual, class action and PAGA representative action seeking wages, premiums and penalties for Defendant's failure to: provide meal and rest periods; to pay minimum and/or overtime wages; to pay wages due upon separation; to provide accurate wage statements; and to pay all wages owed every pay period. Plaintiff also alleged that Defendant entered into agreements with Labor Contractors knowing that the Labor Contractors would not be able to comply with the applicable laws governing the labor or services to be provided. Finally, Plaintiff alleged that the above actions constitute unfair competition.

Defendant denies any liability and wrongdoing of any kind associated with the claims alleged in the Lawsuit, and further denies that the Lawsuit is appropriate for class treatment for any purpose other than this Settlement. Defendant contends, among other things, that they have complied at all times with the California Labor Code and the California Business and Professions Code. Plaintiff believes that the Lawsuit is meritorious and that class certification is appropriate.

There was ongoing investigation and information exchanged by Plaintiffs and Defendant ("the Parties"). The Parties participated in extensive settlement discussions, resulting in the Parties reaching an agreement to settle on October 16, 2023. The Parties entered into a Class Action Settlement which was preliminarily approved by the Court on [INSERT PRELIMINARY APPROVAL DATE].

The Class Representatives and Class Counsel support this Settlement. Among the reasons for their support are the complete defenses to liability available to Defendant, the inherent risks of trial, and the delays and expenses associated with ongoing litigation. Based on its own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement for the consideration and on the terms set forth in the Class Action Settlement is fair, reasonable, and adequate and is in the best interest of the Class Members in light of all known facts and circumstances.

3. How do I know if I am part of the settlement?

You are part of the settlement if you were a Class Member or Aggrieved Employee.

CLASS MEMBER: The Settlement resolves Plaintiffs' alleged wage and hour claims against Defendant with respect to "All current and former employees and/or workers of Labor Contractors who also performed work for Defendant (including those classified as an "independent contractor delivery driver" and/or a "independent contractor delivery helper") in the State of California during the Class Period and who do not submit a timely and valid Request for Exclusion ("Class Member").

AGGRIEVED EMPLOYEES: This Settlement also resolves Plaintiffs' alleged claims for civil penalties against Defendant under the Private Attorneys General Act of 2004 (Cal. Labor Code § 2698, et seq.) (the "PAGA"), for the alleged violations of the California Labor Code with respect to Class Members, with respect to "all current and former employees and/or workers of Labor Contractors that

performed work for Defendant (including those classified as an “independent contractor delivery driver” and/or a “independent contractor delivery helper”) in the State of California during the PAGA Period (“Aggrieved Employee”).

4. Who are the lawyers representing the parties?

Class Counsel:

Allan A. Villanueva
Parham Golestanian
LAW OFFICE OF ALLAN A. VILLANUEVA
6101 Bollinger Canyon Road, Suite 326
San Ramon, CA 94583
Telephone: (925)365-1680
Email: allan@allanvillanuevalaw.com
Email: pg@allanvillanuevalaw.com

Counsel for Defendant HOME EXPRESS DELIVERY SERVICE, INC.

Kamran Mirrafati
SEYFARTH SHAW LLP
2029 Century Park East, Suite 3500
Los Angeles, California 90067-3021
Telephone: (310) 277-7200
Facsimile: (310) 201-5219
Email: kmirrafati@seyfarth.com

5. Who is the Settlement Administrator?
--

Simpluris, Inc.
3194-C Airport Loop Drive
Costa Mesa, CA 92626
1 (800) 779 - 2104

6. What are the terms of the class settlement?

The Settlement in this Lawsuit has six components: (a) Settlement Administration Costs, (b) any Court-approved Class Representative Incentive Payment, (c) Court-approved attorneys’ fees and litigation costs to Class Counsel, (d) the PAGA Penalty Payment to the LWDA, and (e) payment to all Class Members of their Individual Settlement Share and/or PAGA Share, and (f) all applicable taxes and withholding amounts (except the employer’s share of FICA, FUTA, UI and ETT contributions) on the Settlement Shares. All of these components are included in the Gross Settlement Amount.

A. The Gross Settlement Amount.

Defendant agrees to pay a Gross Settlement Amount of \$1,000,000.00. The Gross Settlement Amount will be used to pay (a) Settlement Administration Costs, (b) any Court-approved Class Representative Incentive Payment, (c) Court-approved attorneys' fees and litigation costs to Class Counsel, (d) the PAGA Penalty Payment to LWDA, (e) each Class Member's Individual Settlement Share and/or PAGA Share, and (f) all applicable taxes and withholding amounts (except the employer's share of FICA, FUTA, UI and ETT contributions) on the Settlement Shares.

B. Settlement Administration Costs.

All costs of administering the Settlement ("Settlement Administration Costs") will not exceed \$25,000.00.

C. Incentive Payments to Class Representatives.

Subject to Court approval, the Class Representative Saul Lopez will receive a Class Representative Service Fee of \$10,000.00, and Class Representative Samuel Lopez will receive a Class Representative Service Fee of \$10,000.00 for the services they rendered in obtaining the Settlement for the benefit of the Class, and the financial risks undertaken by the Plaintiffs in pursuing this matter on behalf of the Class.

D. Attorneys' Fees and Costs.

Upon Final Approval of the Settlement, the Court will award attorney's fees and litigation expenses to the Class Counsel, at the Court's discretion and in an amount to be determined by the Court, for the services of Class Counsel on behalf of the Class in this Lawsuit. The Attorney's Fees Award will not exceed One-Third (33 1/3%) of the Gross Settlement Amount, plus Class Counsel's actual litigation expenses in prosecuting this Lawsuit, which will not exceed \$5,000.00.

E. Payment to the LWDA.

The Parties agree, subject to Court approval, to allocate \$50,000.00 of the Gross Settlement Amount to the settlement of the PAGA claims alleged in the Lawsuit, which the Parties believe in good faith is a fair and reasonable apportionment. Seventy-Five Percent (75%) or \$37,500.00 shall be paid to the State of California Labor and Workforce and Development Agency ("LWDA"), and Twenty-Five Percent (25%) or \$12,500.00 shall be paid to Class Members based on the number of workweeks worked during the PAGA Period ("PAGA Share").

F. Calculation of Settlement Amounts Payable to the Class Members.

A Class Member's Settlement Share of the Net Settlement Fund will be calculated based on the number of workweeks worked during the Class Period, and an Aggrieved Employee's PAGA Share of the Net Settlement Fund will be calculated based on the number of workweeks worked during the PAGA Period.

G. Taxes and withholding amounts

Ten Percent (10%) of the Settlement Share to be paid to each Class Member will be subject to taxes and withholdings. Defendant will pay the employer's share of taxes and withholdings separate and outside the Gross Settlement Amount

NO MONEY WILL GO BACK TO DEFENDANT UNDER THE TERMS OF THIS SETTLEMENT

7. What are my rights as a settlement class member?
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A. How do I get a payment?

A check in the amount of your Settlement Share and PAGA Share stated on the first page of this Notice will be mailed to you, if you do not exclude yourself from the settlement by opting out.

B. When would I get my payment?

The Court will hold a Final Approval Hearing on [INSERT DATE] to decide whether to approve the settlement. If the Court approves the settlement and there are no objections or appeals, the payment will be mailed within Fifteen (15) business days from the date the Court approves the settlement.

C. What happens to the money that is not claimed?

The expiration date of the settlement checks will be ninety (90) days from the date the settlement checks are mailed. The amount of any settlement checks not cashed by Class Members within ninety (90) calendar days of the date of mailing of the settlement checks shall be deposited by the Settlement Administrator into the State of California State Bar Justice Gap Fund.

D. What if I do nothing?

A check in the amount of your Settlement Share and/or PAGA Share on the first page of this Notice will be sent to you even if you do nothing. You will be bound by the terms of the Settlement and/or by any other final disposition of this Lawsuit. Specifically, you will be bound by the terms of the Release, as described below, and therefore be barred from pursuing any of the Released Claims against Defendant, and all other related entities or persons, or any other claims that were or might have been asserted in this Lawsuit, or that are based upon, arise out of, or relate to any claim or allegation raised in this Lawsuit.

E. How do I exclude myself from the Settlement?

To exclude yourself from the settlement you must send a letter by first class U.S. mail to the Claims Administrator which must: (1) state your name, address, telephone number, and the last four digits of your Social Security number, (2) state the case name and number as follows: Lopez v. Home Express Delivery Service, LLC, Case No. 23CV031371, (3) state that you request exclusion from or "opt out" of the Settlement, (4) be dated, and (5) be signed by you. To be valid, your request for exclusion must be postmarked no later than [INSERT DATE] and mailed to:

Simpluris, Inc.
3194-C Airport Loop Drive

If you ask to be excluded, you will not get any settlement payment, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. Any person who files a complete and timely Request for Exclusion shall, upon receipt, no longer be a member of the Class, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement. Any such person, at his/her own expense, may pursue any claims he/she may have against the Released Parties. However, there are deadlines to pursuing such claims, known as statutes of limitation. Please consult an attorney of your choice to ensure you are not forever barred from pursuing your individual claim if you decide to opt out of this Settlement.

F. How do I object to the Settlement?

You may object to the terms of the Settlement before Final Approval. If you choose to object to the Settlement, you may represent yourself or hire your own attorney. You must file a written objection and any notice of intention to appear at the Final Approval Hearing described below. You must file these documents, along with any briefs, exhibits, and/or other material that you wish the Court to consider, with the Clerk of the Court, Superior Court of California for the County of Alameda. In addition, you must send copies of your written objection at the time of your filing to Class Counsel and Defense Counsel identified above.

Any written objections should state each specific reason for your objection and any legal support for each objection. Your objection must also state your full name, address, and the dates of your work with Defendant. To be valid and effective, any objections to the proposed Settlement must be filed with the Clerk of the Court and served upon each of the above-listed attorneys no later than [INSERT DATE].

If the Court rejects your objection, you will be bound by the terms of the Settlement and you will receive your Individual Settlement Amount.

You may appear at the Final Approval Hearing whether or not you filed a written objection or a notice of intention to appear.

G. What should I do if I believe that I worked more workweeks than are shown on the Claim Form?

If you honestly believe that the dates you worked with Defendant as a Class Member are incorrect, you may send a letter to the Settlement Administrator with supporting documents that you believe show that the length of work, which authorizes the Settlement Administrator to review your records and related documents to determine such information. Any such dispute must be sent to the address below and postmarked by [INSERT DATE]. The Settlement Administrator will have authority to make a decision, which will be final and cannot be appealed.

*Simpluris, Inc.
3194-C Airport Loop Drive
Costa Mesa, CA 92626*

8. What am I releasing by being part of the settlement?
--

All Class Members who do not exclude themselves, hereby forever completely release and discharge Defendant Home Express Delivery Service, Inc. (dba Temco Logistics) and all of their current or former subsidiaries (including but not limited to Home Express Delivery Service, LLC), parents, affiliates, vendors, independent contractors (including but not limited to the Labor Contractors), predecessors, insurers, agents, employees, successors, assigns, officers, directors, managing agents, attorneys, human resources representatives, payroll representatives, executors, and shareholders, including their respective pension, profit sharing, savings, health, and other employee benefits plans of any nature, the successors of such plans, and those plans' respective current or former trustees and administrators, agents, employees, and fiduciaries, and any individual or entity that could be jointly liable with Defendant for the claims asserted in this Action (collectively the "Released Parties") from all Released Class Claims and Released PAGA Claims.

"Released Class Claims" shall mean any and all claims that were pled or could have been pled based on the factual allegations in the operative or prior complaints in the Actions, arising during the Class Period, including, but not limited to, any claim for the following: failure to provide meal or rest periods, failure to pay premiums for non-compliant meal or rest periods, or to pay such premiums at the regular rate, failure to pay minimum wage, failure to pay overtime wages or overtime wages at the regular rate of pay, regular rate violations, failure to pay timely wages during employment, failure to pay accrued wages upon termination of employment, failure to furnish accurate and itemized wage statements, failure to provide any required form of sick leave or sick pay, and failure to maintain accurate records arising under California Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 226.8, 510, 512, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 2775, 2802, 2810.3; entering into an illegal contract or agreement under California Labor Code 2810, the California Unfair Competition Law, Business and Professions Code §§ 17200 et seq., and the California Industrial Welfare Commission Wage Orders. The Released Class Claims as described above shall include any remedies for any of the claims described herein, including, damages, penalties of any nature, restitution, declaratory relief, equitable or injunctive relief, interest, attorneys' fees and costs.

"Released PAGA Claims" shall mean any and all PAGA claims for civil penalties that are premised upon the California Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 226.8, 510, 512, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 2775, 2802, 2810, 2810.3 or claims covered by the PAGA letter to the LWDA. The Released PAGA Claims shall be released by Plaintiff, the LWDA, and all Aggrieved Employees, without any option to submit any Request for Exclusion.

Plaintiffs and the Class Members agree that all of the claims for wage and hour and payroll practice violations in the Action are disputed, and that the payments set forth herein constitute payment in full of any and all amounts allegedly due to them. In light of the foregoing, Plaintiffs and each and every Class Member shall be deemed to have acknowledged and agreed that California Labor Code section 206.5 is not applicable to the Parties hereto. That section provides in pertinent part as follows:

An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made.

9. The Court's Final Approval Hearing.

The Superior Court of California, County of Alameda, will hold a hearing in Department 23, located at 1221 Oak Street, Oakland, CA 94612, Judge Brad Seligman, presiding, on [INSERT DATE] at [INSERT TIME] to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees and reimbursement of costs and expenses and the Service Award to be paid to Plaintiffs. The hearing may be continued without further notice to the Settlement Class. It is not necessary for you to appear at this hearing unless you object to the proposed Settlement and you have timely filed an objection with the Court.

10. How do I get more information?

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you should consult the complete Settlement, which is on file with the Clerk of the Court. 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 "23CV031371", 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 "23CV031371", select "Search," and click the link to the case name. You will see the Register of Actions and more.

Please put your full name and address on all correspondence to Class Counsel and to the Settlement Administrator. If you move after receiving this notice, or if it was incorrectly addressed, please immediately provide your correct address to the Settlement Administrator.

THIS NOTICE IS APPROVED BY THE ALAMEDA COUNTY SUPERIOR COURT

PLEASE DO NOT CALL THE COURT ABOUT THIS FORM

REQUEST FOR EXCLUSION FROM CLASS (“OPT-OUT”) FORM

Lopez v. Home Express Delivery Service, LLC
Alameda County Superior Court, Case No. 23CV031371

YOU MUST COMPLETE THIS FORM IF YOU DO NOT WISH TO BE PART OF THE CLASS ACTION SETTLEMENT, AND SEND THE SIGNED FORM NO LATER THAN _____ TO:

**Simpluris, Inc.
3194-C Airport Loop Drive
Costa Mesa, CA 92626.**

By signing and returning this form, I confirm that I do not want to be included in the Settlement of the class action lawsuit referenced above.

I understand that by opting out, I am giving up my right to receive any payments under the settlement.

By opting out, I understand that I retain the right to file my own individual lawsuit against Home Express Delivery Service, Inc. formerly Home Express Delivery Service, LLC doing business as Temco Logistics.

By providing the following information, I affirm that I want to opt-out of this class:

_____	_____	_____
First Name	Middle Initial	Last Name

_____	_____	_____
Former Name (if any): First	Middle Initial	Last Name

Current Mailing Address City State Zip

_____	_____
Home Phone Number	Work/Other Phone Number

Last 4 digits of your Social Security Number

_____	_____
(Sign Here)	(Date)

NOTICE OF OBJECTION TO CLASS ACTION SETTLEMENT

Lopez v. Home Express Delivery Service, LLC
Alameda County Superior Court, Case No. 23CV031371

INSTRUCTIONS

IF YOU WISH TO OBJECT TO THE SETTLEMENT DESCRIBED IN THE ACCOMPANYING NOTICE, PLEASE COMPLETE THIS FORM.

You have a right to object to the Settlement, or any of its terms. In order to object, you must not have submitted a Request for Exclusion Form. If you choose to object, you must complete this form and send the signed form no later than _____ to:

Simpluris, Inc.
3194-C Airport Loop Drive
Costa Mesa, CA 92626.

First Name	Middle Initial	Last Name
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Former Name (if any): First	Middle Initial	Last Name
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Current Mailing Address City State Zip

Home Phone Number	Work/Other Phone Number
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Last 4 digits of your Social Security Number

Dates you performed work for Home Express Delivery Services, LLC dba Temco Logistics

DO YOU INTEND TO APPEAR AT THE FINAL APPROVAL HEARING? (CIRCLE: YES / NO)

DESCRIBE THE BASIS OF YOUR OBJECTION IN THE SPACE PROVIDED BELOW.
YOU MAY ENCLOSE ADDITIONAL PAGES.

I HEREBY CONFIRM THAT I WANT TO OBJECT TO THE SETTLEMENT FOR THE REASONS STATED HEREIN.

(Sign Here)	(Date)
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