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County of Alameda
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Chad Finke, Executive Officer / Clerk of the Court

By: D. Drew Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

SAUL LOPEZ, individually, 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

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

1. FAILURE TO PROVIDE MEAL PERIODS;
2. FAILURE TO PROVIDE REST PERIODS;
3. FAILURE TO PAY OVERTIME / DOUBLE TIME WAGES;
4. FAILURE TO PAY MINIMUM WAGES;
5. FAILURE TO PAY ALL WAGES DUE UPON SEPARATION;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;
7. FAILURE TO PAY ALL WAGES OWED;
8. VIOLATION OF UNFAIR COMPETITION ACT;
9. ENTERING INTO ILLEGAL CONTRACT OR AGREEMENT;
10. CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT (PAGA).

| **DEMAND FOR JURY TRIAL**

Plaintiffs SAUL LOPEZ and SAMUEL LOPEZ (“Plaintiffs”), by and through their undersigned attorneys, for this Class Action Complaint against Defendants HOME EXPRESS DELIVERY SERVICE, LLC, a California Limited Liability Company doing business as TEMCO LOGISTICS, and DOES 1 through 50 (hereinafter “Defendants”), respectfully allege the following:

NATURE OF THE ACTION

1. This is a class action for wage and labor violations arising out of, among other things, Defendants’ misclassification of employees; failure to pay minimum wages, pay overtime wages, provide meal and rest breaks, provide accurate itemized wage statements, and pay final wages timely upon termination of employment to Defendants employee drivers and crewmembers.

2. As more fully set forth herein, Defendants intentionally misclassified employees as independent contractors; failed to pay them for all time worked every pay period, specifically including required minimum wages and daily and/or weekly overtime; failed to furnish accurate itemized wage statements; and failed to provide off-duty and lawfully-compliant meal and rest periods of its California drivers and crewmembers in accordance with the California Labor Code §226.7 and Industrial Wage Order No. 9-2001, § 11(a) (“IWC No. 9”); failed to pay its drivers and crewmembers one hour of pay at their regular rate of compensation for each instance that Defendants failed to provide statutorily mandated rest periods and/or off-duty meal periods; and for penalties arising from Defendants’ issuing to its drivers and crewmembers inaccurate wage statements and failing to pay wages upon the termination of the workers’ employment.

3. Further, Defendants entered into contracts or agreements for labor or services with Plaintiffs and similarly-situated Class Members, where Defendants knew or should have known that the contracts or agreements did not include funds sufficient to allow the Plaintiffs and similarly-situated Class Members to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided.

4. Plaintiffs seek to represent the following Class:

All current and former employees of Defendants, employed in California, at any time beginning four

(4) years prior to the filing of the Complaint through the date notice is mailed to the Class (the “Class period”), and classified as an “independent contractor”, “independent contractor delivery driver”, and/or a “independent contractor delivery helper” (crewmember) for Defendants.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the entire action because the amount in controversy, exclusive of interest and costs, exceeds the jurisdictional minimum of the Court. The acts and omissions complained of in this action took place in the State of California, and at least one Defendant resides in the state of California. Venue is proper because this is a class action, the acts and/or omissions complained of took place, in whole or in part within the venue of this Court, and/or one or more Defendants resides within the venue of this court.

PARTIES

6. Plaintiffs were, at all relevant times, citizens of the State of California. Plaintiffs performed labor and services as delivery drivers and/or delivery helpers for Defendants and were misclassified as independent contractors.

7. Defendant HOME EXPRESS DELIVERY SERVICE, LLC, (Hereafter “Defendant” or “Temco”) is limited liability company registered in the State of California. Plaintiffs are informed and believe, and thereon allege, that Defendant Home Delivery Service, LLC., operates and does business as “Temco Logistics”.

8. Plaintiffs are currently ignorant of the true names and capacities, whether individual, corporate, associate, or otherwise, of the defendants sued herein under the fictitious names Does 1 through 50, inclusive, and therefore sue such defendants by such fictitious names. Plaintiffs will seek leave to amend this complaint to allege the true names and capacities of said fictitiously named defendants when their true names and capacities have been ascertained. Plaintiffs are informed and believe and thereon alleges that each of the fictitiously named defendants is legally responsible in some manner for the events and occurrences alleged herein, and for the damages suffered by the Class.

9. Plaintiffs are informed and believes and thereon allege that all defendants, including the fictitious Doe defendants, were at all relevant times acting as actual agents, conspirators, ostensible agents, partners and/or joint venturers and/or employees of all other defendants, and that all acts

1 alleged herein occurred within the course and scope of said agency, employment, partnership, and
2 joint venture, conspiracy or enterprise, and with the express and/or implied permission, knowledge,
3 consent authorization and ratification of their co-defendants; however, each of these allegations are
4 deemed “alternative” theories whenever not doing so would result in a contradiction with other
5 allegations.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 10. Defendant Temco and Defendants DOES 1 to 10 contracts with retail merchants to
8 provide delivery services and installations of appliances and merchandise, and removal and haul away
9 of old appliances from customers’ homes.

10 11. Defendants employed Plaintiffs and similarly-situated Class Members (sometimes
11 referred to as “Delivery Team Members”) to pick up the merchandise at Defendants’ warehouses
12 throughout California, deliver and install the new merchandise at the customers’ homes, and remove
13 and haul away the old appliances from the customers’ homes for disposal. Delivery Team Members
14 perform their work in two-person teams consisting of a driver and a helper.

15 12. Delivery Team Members perform work that is the Defendants’ usual course of
16 business.

17 13. Delivery Team Members performed deliveries within a specified “route” provided by
18 Defendants. These routes were exclusively local to the warehouse, and were performed entirely within
19 California in either a 24 or 26-ft 2-axel truck; accordingly, Delivery drivers did not require a
20 commercial driver’s license to perform their work. These routes almost always contained over 15
21 “stops”, which are deliveries and/or installations or haul-aways.

22 14. At all times during the liability period, Defendants employed Delivery Team Members
23 as “independent contractors”. Although Defendants view these delivery teams as “independent
24 contractors,” the work performed and conditions of employment were that of an “employee.” The
25 conditions and requirements of employment with Defendants are explained heretoforth.

26 15. Plaintiffs are further informed and believe, and thereon allege, that under California
27 law, including but not limited to Labor Code §2775, Defendants are their joint employers of Delivery
28 Team Members, as explained below.

1 16. Alternatively, Plaintiffs allege that Defendants are “client employers” under California
2 Labor Code §2810.3 and are thus responsible and liable to Plaintiffs for their wages, as explained
3 below.

4 17. Defendants had total control over the times and manner in which the Delivery Team
5 Members performed their work. By use of the ‘Mobil-Link’ app, Defendants would track Delivery
6 Team Members’ locations at all times, hold them to strict timeframes, and monitor their actions until
7 the route was completed. If, at any point, the Delivery Team Members’ location indicated that they
8 were behind schedule, Defendants would call them in an attempt to control and speed up their progress.

9 18. If Plaintiffs were ever unable to finish an assigned route, Defendants would penalize
10 them by either removing stripping them from upcoming routes, or by deducting a sum from their pay.
11 This occurred regardless of the reasons for incompleteness, which as explained further, were frequently
12 due to the unattainable work requirements Defendants set forth.

13 19. Due to the strict timeframes that Defendants held Delivery Team Members to, they
14 were unable to take rest or meal breaks. On several occasions where Delivery Team Members stopped
15 to take a meal break during their 14-to-16-hour workdays, Defendants would discipline and penalize
16 them by stripping their routes for the following day. Additionally, due to the calls that Defendants
17 would make whenever Plaintiffs were “behind schedule”, Plaintiffs were never afforded uninterrupted
18 rest or meal breaks.

19 20. Delivery Team Members were additionally unable to opt out of any specific routes, and
20 were forced to work whichever route and schedule Defendants gave them, almost always with only a
21 single business day of notice. If Delivery Team Members ever refused a route, Defendants would
22 penalize them, including instances where they would deduct \$500 from their pay.

23 21. Defendants further displayed their control over the manner of employment by requiring
24 that each truck performing assigned routes have at least two workers, a driver and a helper, who were
25 required to wear a uniform approved by Defendants. These drivers and helpers additionally needed to
26 undertake background checks and clearances by Defendants, prior to being approved to work on these
27 teams. Once these team members were cleared, they were given Temco badges, with some of them
28 being given badges marking them as “employee[s]”.

1 22. Prior to beginning their routes for the day, Delivery Team Members had to check in
2 with a Temco employee every day using their badge. When performing these routes, the workers were
3 given a specific order to perform the stops, and had strict timeframes for performance—monitored by
4 the aforementioned app. Defendants would admonish Delivery Team Members if they veered off the
5 course for any reason—including for meals—or if they were not meeting the time constraints.

6 23. Defendants also required that the trucks used by Delivery Team Members were either
7 24’ or 26’ long, white in color with a liftgate or ramp, be in proper working condition, clean, and a
8 like new condition.

9 24. Defendants also required Delivery Team Members to carry and use specific tools to
10 perform the installations.

11 25. During all relevant times of these allegations, Defendants had workers that they
12 classified as actual employees. There was little meaningful separation between Delivery Team
13 Members and those groups that Defendants classified as actual employees, aside from the workload.
14 Both groups drove the same routes, used the same loading and unloading docks, waited in the same
15 lines to pick up merchandise for deliveries, and, for part of the alleged timeframe, parked in the same
16 overnight lots. Additionally, Defendants’ customers with whom Delivery Team Members interacted
17 with frequently expected them to be and viewed them as Defendants’ employees.

18 26. Defendants Delivery Team Members were required to perform pre-trip inspections of
19 the delivery vehicles, wait at the warehouse for assignments, load trailers with cargo, attend meetings,
20 attempt to deliver merchandise even if the customer might not show, return to the warehouse and wait
21 in line to return undelivered merchandise and haulaways, clean out of the delivery vehicle and separate
22 trash, and return paperwork for review by office staff.

23 27. Defendants did not provide Plaintiffs with accurate itemized wage statements.

24 28. Delivery Team Members were paid on a piece-rate compensation basis, which deprived
25 Delivery Team Members of the lawful rate of pay, such as minimum wages and overtime wages.

26 29. Defendants knew or should have known that the compensation paid to Delivery Team
27 Members would not be sufficient pay for the work performed for all the hours worked, to pay for meal
28 and rest break premiums, and to comply with all requirements of the labor code. Defendants were

1 aware of the hours that these routes required Team Members to work, and were aware of the
2 compensation given.

3 30. At all times during the liability period, Delivery Team Members were assigned to and
4 required to work shifts lasting over three and one-half (3 ½) hours, and were not provided nor allowed
5 to take a ten (10) minute, uninterrupted rest break during each such shift over three and one-half (3 ½)
6 hour work period.

7 31. At all times during the liability period, Delivery Team Members were assigned to and
8 required to work for periods lasting in excess of five (5) hours and were not provided or allowed to
9 take a thirty (30) minute, uninterrupted, off-duty meal break. Moreover, Delivery Team Members
10 often worked and in excess of ten (10) hours without a second thirty (30) minute meal break.

11 32. At all times during the liability period, Delivery Team Members worked in excess of
12 eight (8) hours per work day or forty (40) hours per work week. Defendants failed to pay for hours
13 worked in excess of eight (8) hours per day. Defendants failed to pay current and former drivers and
14 crewmembers one-and-one-half times their regular rate of pay for hours worked in excess of eight (8)
15 hours per day or forty (40) hours per workweek. Defendants also failed to pay its employees at a rate
16 no less than twice the regular rate of pay for work in excess of twelve (12) hours in one day or for all
17 hours worked in excess of eight (8) hours on the seventh consecutive day of work in a workweek.

18 33. At all times during the liability period, Defendants failed to pay Delivery Team
19 Members for all hours worked. Thus, Defendants did not pay Plaintiffs and Class Members minimum
20 wages in accordance with law and, because Class Members worked shifts over eight (8) hours in
21 duration, Defendants does not pay them overtime wages in accordance with law.

22 34. Defendants' conduct, as alleged herein, has caused Plaintiffs and Class Members
23 damages including, but not limited to, loss of wages and compensation. Defendants is liable to
24 Plaintiffs and the Class for failing to pay minimum wages, failing to pay overtime wages, failing to
25 provide lawfully compliant rest and meal breaks, failing to pay the rest and meal break premiums,
26 failing to pay all wages owed on each pay period, failure to provide timely and accurate wage
27 statements, failure to pay all wages owed upon termination, and unfair competition.

28 35. Plaintiffs are members of, and seek to be the representatives for, the Class of similarly

1 situated employees who all have been exposed to, have suffered, and/or were permitted to work under,
2 Defendants' unlawful employment practices as alleged herein.

3 CLASS DEFINITIONS AND CLASS ALLEGATIONS

4 36. Plaintiffs brings this action on behalf of themselves, and on behalf of all others similarly
5 situated, and as a member of the Class defined as follows:

6 *All current and former employees of Defendants, employed in California, at any time beginning four*
7 *(4) years prior to the filing of the Complaint through the date notice is mailed to the Class (the*
8 *"Class period"), and classified as an "independent contractor delivery driver," and/or a*
9 *"independent contractor delivery helper" (crewmember) for Defendants.*

10 37. Further, Plaintiffs bring this action on behalf of themselves and all other similarly
11 situated persons in a Subclass of the Plaintiff Class, which is defined as follows:

12 *Plaintiff Subclass One ("Delivery Driver Subclass")*: *All members of the Plaintiff Class that drove*
13 *the delivery vehicles.*

14 38. Further, Plaintiffs bring this action on behalf of themselves and all other similarly
15 situated persons in a Subclass of the Plaintiff Class, which is defined as follows:

16 *Plaintiff Subclass Two ("Delivery Helper Subclass")*: *All members of the Plaintiff Class that were in*
17 *the trucks driven by the Delivery Drivers, whom assisted in deliveries, installations, haul away, and*
18 *any other task while under Defendants' control.*

19 39. Plaintiffs reserve the right to amend or otherwise alter the sub-class definitions
20 presented to the Court at the appropriate time, or to propose or eliminate sub-classes, in response to
21 facts learned through discovery, legal arguments advanced by Defendants or otherwise.

22 40. This action has been brought and may be properly maintained as a class action pursuant
23 to the provisions of Code of Civil Procedure § 382 (hereinafter "§ 382") and other applicable law.

24 41. **Numerosity of the Class:** Pursuant to § 382, members of the Class are so numerous
25 that their individual joinder is impracticable. Plaintiffs estimate, on information and belief, that there
26 are over two-hundred (200) current and former aggrieved employees of Defendants employed as
27 drivers and crewmembers in California during the Class period. The precise number of Class Members
28

1 and their addresses are known to Plaintiffs or will be known to Plaintiffs through discovery. Class
2 Members may be notified of the pendency of this action by mail, electronic mail, the Internet, or
3 published notice.

4 **42. Existence of Predominance of Common Questions of Fact and Law:** Pursuant to
5 §382, common questions of law and fact exist as to all members of the Class. These questions
6 predominate over any questions affecting only individual Class Members. These common legal and
7 factual questions include:

8 a. Whether Defendants willfully misclassified employees as “independent contractors,”
9 in violation of Labor Code § 226.8(a)(1).

10 b. Whether Plaintiffs and Class Members were not paid minimum wage for each hour
11 worked or part thereof during which they were required to perform acts at the direction and for the
12 benefit of Defendants;

13 c. Whether Plaintiffs and Class Members, as employees of Warehouse contractors, were
14 owed wages by Defendants operating as “Client Employers”.

15 d. Whether Defendants engaged in a pattern or practice of failing to pay Plaintiffs and
16 Class Members who worked as drivers and crewmembers in California for the total hours worked
17 during the Class period;

18 e. Whether Defendants violated Labor Code § 226.7 and/or § 512 and engaged in a pattern
19 or practice of failing to provide timely, off-duty thirty (30) minute meal periods to Plaintiffs and Class
20 Members who worked as drivers and crewmembers in California during the Class period;

21 f. Whether Defendants engaged in a pattern or practice of impeding Plaintiffs and the
22 Class Members who worked as drivers and crewmembers in California during the Class period from
23 taking statutory off-duty thirty (30) minute meal periods on a timely basis;

24 g. Whether Defendants engaged in a pattern or practice of failing to properly compensate
25 Plaintiffs and Class Members who worked as drivers and crewmembers in California during the Class
26 period for missed, untimely or on-duty meal periods as required by California law;

27 h. Whether Defendants violated California Industrial Welfare Commission (“IWC”) Order No. 9, § 11 by failing to provide Plaintiffs and the members of the Class who worked as drivers
28

1 and crewmembers in California during the Class period with timely off-duty thirty (30) minute meal
2 periods;

3 i. Whether Defendants engaged in unfair practice and violated California Business and
4 Professions Code § 17200 by failing to provide Plaintiffs and the members of the Class who worked
5 as drivers and crewmembers in California during the Class period with their statutory off-duty meal
6 periods on a timely basis;

7 j. Whether Defendants maintained accurate time records of off-duty thirty (30) minute
8 meal breaks taken by Plaintiffs and Class Members during the Class period in accordance with § 7 of
9 IWC Wage Order No. 9-2001;

10 k. Whether Defendants violated Labor Code § 226(a) by failing to issue accurate itemized
11 wage statements to Plaintiffs and Class Members;

12 l. Whether Defendants failed to compensate, and therefore violated IWC Wage Order
13 No. 9-2001 and Labor Code § 226.7 by failing to provide ten (10) minute, uninterrupted rest periods
14 as contemplated by California law for work periods in excess of three and one-half (3 ½) hours;

15 m. Whether Defendants engaged in a pattern or practice of failing to properly compensate
16 Plaintiffs and Class Members who worked as drivers and crewmembers in California during the Class
17 period for failing to provide ten (10) minute, uninterrupted rest periods as contemplated by California
18 law for work periods in excess of three and one-half (3 ½) hours;

19 n. Whether Defendants engaged in a pattern or practice of failing to pay appropriate
20 amounts of overtime pay to Plaintiffs and the Class Members for hours worked in excess of eight (8)
21 hours in a day;

22 o. Whether Defendants violated §510 of the Labor Code by failing to pay overtime pay
23 to Plaintiffs and the Class Members for hours worked in excess of eight (8) hours in a day or forty (40)
24 hours in a week;

25 p. Whether Defendants violated § 3 of Wage Order No. 9-2001 of the IWC by failing to
26 pay overtime to Plaintiffs and the Class Members for hours worked in excess of eight (8) hours in a
27 day or forty (40) hours in a week;

28 q. Whether Defendants violated Labor Code §§ 218.5, 204, 1197, and 1198 due to failure

1 to compensate Plaintiffs and the Class Members for those acts Defendants required Plaintiffs and Class
2 Members to perform for the benefit of Defendants.

3 r. Whether Defendants violated Labor Code § 2802 by failing to reimburse Plaintiffs and
4 Class Members for business expenses they incurred.

5 s. The nature and extent of class-wide injury and the measure of damages for the injury.

6 43. **Typicality:** Plaintiffs' claims are typical of the claims of the members of the subclasses
7 they represent because Plaintiffs, as an employee drivers and crewmembers of Defendants, were
8 exposed and subjected to the same unlawful business practices as other drivers and crewmembers
9 employed by Defendants during the liability period. Plaintiffs and the members of the subclasses they
10 represent sustained the same types of damages and losses.

11 44. **Adequacy:** Plaintiffs are adequate representatives of the Class they seek to represent
12 because their interests do not conflict with the interests of the members of the subclasses Plaintiffs
13 seek to represent. Plaintiffs have retained counsel competent and experienced in complex class action
14 litigation and Plaintiffs intend to prosecute this action vigorously. The interests of the members of
15 each Class will be fairly and adequately protected by Plaintiffs and their counsel.

16 45. **Superiority and Substantial Benefit:** The class action is superior to other available
17 means for the fair and efficient adjudication of Plaintiffs' and the Class Members' claims. The
18 damages suffered by each individual Class member may be limited. Damages of such magnitude are
19 small given the burden and expense of individual prosecution of the complex and extensive litigation
20 necessitated by Defendants' conduct. Further, it would be virtually impossible for the Class Members
21 to redress the wrongs done to them on an individual basis.

22 Even if members of the Class themselves could afford such individual litigation, the court
23 system could not. Individualized litigation increases the delay and expense to all parties and the court
24 system due to the complex legal and factual issues of the case. By contrast, the class action device
25 presents far fewer management difficulties and provides the benefits of single adjudication, economy
26 of scale, and comprehensive supervision by a single court.

27 46. The Class should also be certified because:

28 a. The prosecution of separate actions by individual members of the Class would create a

1 risk of inconsistent or varying adjudications with respect to individual Class Members which would
2 establish incompatible standards of conduct for Defendants;

3 b. The prosecution of separate actions by individual members of the Class would create a
4 risk of adjudication with respect to them, which would, as a practical matter, be dispositive of the
5 interests of the other Class Members not parties to the adjudications, or substantially impair or impede
6 their ability to protect their interests; and,

7 c. Defendants have acted or refused to act on grounds generally applicable to the Class,
8 and/or the general public, thereby making appropriate final and injunctive relief with respect to the
9 Class as a whole.

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PROVIDE MEAL PERIODS**

12 **(Violation of Labor Code §§ 512 and 226.7; IWC Wage Order No. 9-2001, § 11)**

13 **(All Plaintiffs Against All Defendants)**

14 47. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

15 48. California Labor Code §226.7 provides, “(a) No employer shall require any employee
16 to work during any meal or rest period mandated by an applicable order of the Industrial Welfare
17 Commission. (b) If an employer fails to provide an employee a meal period or rest period in accordance
18 with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee
19 one additional hour of pay at the employee s regular rate of compensation for each work day that the
meal or rest period is not provided.”

20 49. IWC Order No. 9-2001 §(10) provides, in pertinent part: “(A) No employer shall
21 employ any person for a work period of more than five (5) hours without a meal period of not less
22 than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s
23 work the meal period may be waived by mutual consent of the employer and the employee. (B) An
24 employer may not employ an employee for a work period of more than ten (10) hours per day without
25 providing the employee with a second meal period of not less than 30 minutes, except that if the total
26 hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of
27 the employer and the employee only if the first meal period was not waived (C) Unless the employee

1 is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty"
2 meal period and counted as time worked. An on-duty" meal period shall be permitted only when the
3 nature of the work prevents an employee from being relieved of all duty and when by written
4 agreement between the parties an on-the-job paid meal period is agreed to. The written agreement
5 shall state that the employee may, in writing, revoke the agreement at any time. (D) If an employer
6 fails to provide an employee a meal period in accordance with the applicable provisions of this order,
7 the employer shall pay the employee one (1) hour of pay at the employee's regular rate of
8 compensation for each workday that the meal period is not provided."

9 50. Section 512(a) of the California Labor Code provides, in pertinent part: "[a]n employer
10 may not employ an employee for a work period of more than five hours per day without providing the
11 employee with a meal period of not less than 30 minutes, except that if the total work period per day
12 of the employee is no more than six hours, the meal period may be waived by mutual consent of both
13 the employer and employee. An employer may not employ an employee for a work period of more
14 than 10 hours per day without providing the employee with a second meal period of not less than 30
15 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may
16 be waived by mutual consent of the employer and the employee only if the first meal period was not
17 waived." As alleged herein, Defendants failed to authorize and permit uninterrupted meal breaks
18 during the Class period. Plaintiffs and Class Members were routinely required to work without an
19 uninterrupted meal break at the direction of Defendants and/or with Defendants' knowledge and
acquiescence.

20 51. By its actions in requiring its employees to work through meal periods and/or its failure
21 to relieve drivers and crewmembers of their duties for their off-duty meal periods, Defendants has
22 violated California Labor Code § 226.7 and § 11 of IWC Wage Order No. 9-2001, and is liable to
23 Plaintiffs and the Class.

24 52. As a result of the unlawful acts of Defendants, Plaintiffs and the Class have been
25 deprived of timely off-duty meal periods, and are entitled to recovery under Labor Code § 226.7(b)
26 and § 11 of IWC Wage Order No. 9-2001, in the amount of one additional hour of pay at the
27 employee's regular rate of compensation for each work period during each day in which Defendants

1 failed to provide its drivers and crewmembers with timely statutory off-duty meal periods.

2 53. Plaintiffs further seek attorney's fees and costs pursuant to Labor Code §218.5.

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO PROVIDE REST PERIODS**

5 **(Violation of Labor Code §§ 226.7, 512, and 1194; IWC Wage Order No. 9-2001, § 12)**

6 **(All Plaintiffs Against All Defendants)**

7 54. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

8 55. IWC Order No.9-2001(11) provides, in pertinent part: "(A) Every employer shall
9 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
10 middle of each work period. The authorized rest period time shall be based on the total hours worked
11 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However,
12 a rest period need not be authorized for employees whose total daily work time is less than three and
13 one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there
14 shall be no deduction from wages. (B) If an employer fails to provide an employee a rest period in
15 accordance with the applicable provisions of this order, the employer shall pay the employee one (1)
16 hour of pay at the employee's regular rate of compensation for each workday that the rest period is
17 not provided."

18 56. IWC Order No. 9-2001(12)(B) further provides: "[i]f an employer fails to provide an
19 employee with a rest period in accordance with the applicable provisions of this order, the employer
20 shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each
21 workday that the rest period is not provided."

22 57. As alleged herein, Defendants failed to authorize and permit rest breaks during the
23 Class period. Plaintiffs and Class Members were routinely required to work through rest periods at the
24 direction of Defendants and/or with Defendants' knowledge and acquiescence.

25 58. By its actions in requiring its employees during the Class period to work through rest
26 periods, Defendants violated §12 of IWC Wage Order No. 9-2001 and California Labor Code §226.7,
27 and is liable to Plaintiffs and the Class.

28 59. Defendants' unlawful conduct alleged herein occurred in the course of employment of

1 Plaintiffs and all others similarly situated and such conduct has continued through the filing of this
2 complaint.

3 60. As a direct and proximate result of Defendants' unlawful action, Plaintiffs and the Class
4 have been deprived of timely rest periods and are entitled to recovery under Labor Code §226.7(b) in
5 the amount of one additional hour of pay at the employee's regular rate of compensation for each work
6 period during each day in which Defendants failed to provide employees with timely and/or paid rest
7 periods.

8 61. Plaintiffs further seek attorney's fees and costs pursuant to Labor Code §218.5.

9 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

10 **THIRD CAUSE OF ACTION**

11 **FAILURE TO PAY ALL OVERTIME AND DOUBLE TIME WAGES**

12 **(Violations of Labor Code §§ 510 and 1194; Wage Order No. 9-2001, § 3)**

13 **(All Plaintiffs Against All Defendants)**

14 62. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

15 63. Section 510 of the Labor Code provides, in pertinent part: "[a]ny work in excess of
16 eight hours in one workday and any work in excess of 40 hours in any one workweek and the first
17 eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate
18 of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of
19 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for
an employee."

20 64. Section 3(a)(1) of Wage Order No. 9-2001 also mandates that employers pay one and
21 one-half times the employees' regular rate of pay for employees who work more than eight (8) hours
22 in a day or forty (40) hours in a week, and two times their regular rate of pay for any work in excess
23 of twelve (12) hours in one day.

24 65. At all times relevant hereto, Plaintiffs and Class Members were non-exempt for
25 purposes of the overtime and double pay requirements set forth in the Labor Code and Wage Order
26 No. 9-2001. In addition, during the Class period, Plaintiffs and other members of the Class consistently
27 worked three to seven (7) days per week for nine (9) hours or more.

1 66. Plaintiffs seek to recover unpaid overtime and double-time compensation in an amount
2 to be determined at trial.

3 67. Plaintiffs further seek attorney's fees and costs pursuant to Labor Code §1194.

4 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

5 **FOURTH CAUSE OF ACTION**

6 **FAILURE TO PAY MINIMUM WAGES**

7 **(Violation of Labor Code §§ 510, 1194, 1194.2, and 1197; Wage Order No. 9-2001, § 4)**

8 **(All Plaintiffs Against All Defendants)**

9 68. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

10 69. Labor Code §1197 provides: "[t]he minimum wage for employees fixed by the
11 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
12 minimum so fixed is unlawful."

13 70. Labor Code §1194, subdivision (a) provides: "[n]otwithstanding any agreement to
14 work for a lesser wage, an employee receiving less than the legal minimum wage or the legal overtime
15 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of
16 the full amount of this minimum wage or overtime compensation, including interest thereon,
reasonable attorney's fees, and costs of suit."

17 71. Labor Code §1194.2 provides in pertinent part: "[i]n any action under Section [. . .]
18 1193.6 or Section 1194 to recover wages because of the payment of a wage less than the minimum
19 wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages
20 in an amount equal to the wages unlawfully unpaid and interest thereon."

21 72. Pursuant to IWC Wage Order No. 9-2001, at all times material hereto, "[h]ours
22 worked" includes "the time during which an employee is subject to the control of an employer, and
23 includes all the time the employee is suffered or permitted to work, whether or not required to do so."

24 73. Pursuant to §4 of IWC Wage Order No. 9-2001, Plaintiffs and Class Members were
25 entitled to receive not less than the minimum wage for all hours worked.

26 74. At all times relevant during the liability period, under the provisions of Wage Order
27 No. 9-2001, Plaintiffs and each Class member should have received not less than the minimum wage

1 in a sum according to proof for the time worked, but were not so compensated.

2 75. For all hours that Plaintiffs and the Class Members worked, they are entitled to not less
3 than the California minimum wage and, pursuant to Labor Code § 1194.2(a) liquidated damages in an
4 amount equal to the unpaid minimum wages and interest thereon. Pursuant to Labor Code §1194,
5 Plaintiffs and Class Members are also entitled to their attorneys' fees, costs, and interest according to
6 proof.

7 76. At all times relevant during the liability period, Defendants willfully failed and refused,
8 and continues to willfully fail and refuse, to pay Plaintiffs and Class Members the amounts owed.

9 77. Defendants' unlawful conduct alleged herein occurred in the course of employment of
10 Plaintiffs and all other similarly situated drivers and crewmembers, and Defendants has done so
11 continuously throughout the filing of this complaint.

12 78. Plaintiffs and the Class Members seek and are entitled to back pay, pre-judgment
13 interest, liquidated damages, statutory penalties, attorneys' fees, and costs, and, for Plaintiffs and the
14 Class of members no longer employed, waiting time penalties pursuant to Labor Code §§1194, 1194.2,
15 203.

16 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

17 **FIFTH CAUSE OF ACTION**

18 **FAILURE TO PAY ALL WAGES DUE AT SEPARATION**

19 **(Violation of Labor Code § 203)**

20 **(All Plaintiffs Against All Defendants)**

21 79. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

22 80. California Labor Code §§ 201 and 202 require Defendants to pay all compensation due
23 and owing to former drivers and crewmembers at or around the time employment is terminated.
24 Section 203 of the California Labor Code provides that if an employer willfully fails to pay
25 compensation promptly upon discharge or resignation, as required by §§ 201 and 202, then the
26 employer is liable for penalties in the form of continued compensation up to thirty (30) work days.

27 81. At all times relevant during the liability period, Plaintiffs and the other members of the
28 Class were employees of Defendants covered by Labor Code § 203.

1 82. Plaintiffs and the Class were not paid for their work performed in excess of eight (8)
2 hours per day, nor were they paid for their work time including, but not limited to: driving Defendants'
3 trucks to their assigned destinations, performing pre and post route duties, crewmembers keeping
4 drivers awake while drivers were driving, crewmembers cleaning tanks and using vacuums, and
5 drivers and crewmembers attending mandatory safety meetings.

6 83. Defendants willfully failed to pay Plaintiffs and other members of the Class who are
7 no longer employed by Defendants for their uncompensated hours, uncompensated overtime, and
8 missed, untimely or on-duty meal and rest periods upon their termination or separation from
9 employment with Defendants as required by California Labor Code §§ 201 and 202. As a result,
10 Defendants are liable to Plaintiffs and other members of the Class who are no longer employed by
11 Defendants for waiting time penalties amounting to thirty days wages for Plaintiffs and each such
12 Class member pursuant to California Labor Code § 203.

13 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

14 **SIXTH CAUSE OF ACTION**
15 **FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS**
16 **(Violation of Labor Code §§ 226 and 226.3)**
17 **(All Plaintiffs Against All Defendants)**

18 84. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

19 85. California Labor Code § 226(a) provides: “[e]very employer shall, semimonthly or at
20 the time of each payment of wages, furnish each of his or her employees, either as a detachable part
21 of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by
22 personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2)
23 total hours worked by the employee [. . .], (3) the number of piece-rate units earned and any applicable
24 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions
25 made on written orders of the employee may be aggregated and shown as one item, (5) net wages
26 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
27 employee and his or her social security number, [. . .], (8) the name and address of the legal entity that
28 is the employer, and (9) all applicable hourly rates in effect during the pay period and the

1 corresponding number of hours worked at each hourly rate by the employee...”

2 86. Labor Code § 226(e) provides that an employee is entitled to recover \$50 for the initial
3 pay period in which a violation of § 226 occurs and \$100 for each subsequent pay period, as well as
4 an award of costs and reasonable attorneys’ fees, for all pay periods in which the employer knowingly
5 and intentionally failed to provide accurate itemized statements to the employee causing the employee
6 to suffer injury.

7 87. Plaintiffs is informed, believes and thereon alleges that at all times relevant, Defendants
8 knowingly and intentionally failed to furnish and continues to knowingly and intentionally fail to
9 furnish Plaintiffs and each Class member with timely and accurate itemized statements showing the
10 gross wages earned by each of them, as required by Labor Code §226(a), in that the payments owed
11 to Plaintiffs and the members of the Class for unpaid minimum wages, unpaid overtime, and missed
12 meal and rest periods, were not included in gross wages earned by Plaintiffs and the Class.

13 88. Defendants’ failure to provide Plaintiffs and Class Members with accurate itemized
14 wage statements during the Class period has caused Plaintiffs and Class Members to incur economic
15 damages in that they were not aware that they were owed and not paid compensation for missed rest
16 periods and on-duty meal periods, for hours worked without pay, and for overtime worked without
17 pay. In addition, Defendants provided inaccurate information regarding hours worked, which masked
18 its underpayment of wages to Plaintiffs and the Class.

19 89. As a result of Defendants’ issuance of inaccurate itemized wage statements to Plaintiffs
20 and Class Members in violation of Labor Code § 226(a), Plaintiffs and the members of the Class are
21 each entitled to recover penalties pursuant to § 226(e) of the Labor Code.

22 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

23 **SEVENTH CAUSE OF ACTION**

24 **FAILURE TO PAY ALL WAGES OWED EVERY PAY PERIOD**

25 **(Violation of Labor Code § 204)**

26 **(All Plaintiffs Against All Defendants)**

27 90. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

28 91. California Labor Code § 204 establishes the fundamental right of all employees in the

1 State of California to be paid wages in a timely fashion for their work.

2 92. At all times relevant during the liability period, Defendants failed to pay Plaintiffs and
3 the Class the full amount of all owed wages when due as required by California Labor Code § 204.

4 93. Defendants failed to pay Plaintiffs and other similarly situated employees all wages
5 earned each pay period. Plaintiffs is informed, believes, and thereon alleges, that at all times relevant
6 during the liability period, Defendants maintained a policy or practice of not paying Plaintiffs and
7 other similarly situated employees: (i) minimum wages for all hours worked; (ii) overtime wages for
8 all overtime hours worked; and (iii) premium wages for all missed meal and rest periods.

9 94. As a result of Defendants' unlawful conduct, Plaintiffs and members of each Class have
10 suffered damages in an amount, subject to proof, to the extent they were not paid all wages each pay
11 period. The precise amount of unpaid wages is not presently known to Plaintiffs and Class Members,
12 but can be determined directly from Defendants' records or indirectly based on information from
13 Defendants' records.

14 95. Plaintiffs further seek statutory penalties pursuant to Labor Code §210, and attorney's
15 fees pursuant to Labor Code §218.5.

16 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

17 **EIGHTH CAUSE OF ACTION**

18 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION ACT**

19 **(Violation of California's Unfair Competition Law, Bus. & Prof. Code §§ 17200 *et seq.*)**

20 **(All Plaintiffs Against All Defendants)**

21 96. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

22 97. Section 17200 of the California Business and Professions Code (the "UCL") prohibits
23 any unlawful, unfair, or fraudulent business practices.

24 98. Through its action alleged herein, Defendants has engaged in unfair competition within
25 the meaning of the UCL. Defendants' conduct, as alleged herein, constitutes unlawful, unfair, and/or
26 fraudulent business practices under the UCL.

27 99. Defendants' unlawful conduct under the UCL includes, but is not limited to, violating
28 the statutes alleged herein. Defendants' unfair conduct under the UCL includes, but is not limited to,

1 failure to pay Class Members wages and compensation they earned through labor provided, and failing
2 to otherwise compensate Class Members as alleged herein. Defendants' fraudulent conduct includes,
3 but is not limited to, issuing wage statements containing false and/or misleading information about the
4 time the Class Members worked and the amount of wages or compensation due.

5 100. Additionally, there were numerous instances where Defendants poached Delivery
6 Team Members and employed them directly, due to their knowledge that Delivery Team Members
7 were not adequately compensated through this intentional misclassification scheme.

8 101. Plaintiffs have standing to assert this claim because she has suffered injury in fact and
9 has lost money as a result of Defendants' conduct.

10 102. Plaintiffs and the Class seek restitutionary disgorgement from Defendants, and an
11 injunction prohibiting it from engaging in the unlawful, unfair, and/or fraudulent conduct alleged
12 herein.

13 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

14 **NINTH CAUSE OF ACTION**

15 **ENTERING INTO ILLEGAL CONTRACT OR AGREEMENT**

16 **(Violation of Labor Code § 2810)**

17 **(All Plaintiffs Against all Defendants)**

18 103. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

19 104. California Labor Code § 2810 states:

20 (a) A person or entity shall not enter into a contract or agreement for labor
21 or services with a construction, farm labor, garment, janitorial, security
22 guard, or warehouse contractor, where the person or entity knows or should
23 know that the contract or agreement does not include funds sufficient to
24 allow the contractor to comply with all applicable local, state, and federal
25 laws or regulations governing the labor or services to be provided.

26 (g)(1) An employee aggrieved by a violation of subdivision (a) may file an
27 action for damages to recover the greater of all of the employee's actual
28 damages or two hundred fifty dollars (\$250) per employee per violation
for an initial violation and one thousand dollars (\$1,000) per employee for
each subsequent violation, and, upon prevailing in an action brought
pursuant to this section, may recover costs and reasonable attorney's fees.
An action under this section shall not be maintained unless it is pleaded
and proved that an employee was injured as a result of a violation of a labor
law or regulation in connection with the performance of the contract or
agreement.

(2) An employee aggrieved by a violation of subdivision (a) may also bring an action for injunctive relief and, upon prevailing, may recover costs and reasonable attorney's fees.

(h) The phrase "construction, farm labor, garment, janitorial, security guard, or warehouse contractor" includes any person, as defined in this code, whether or not licensed, who is acting in the capacity of a construction, farm labor, garment, janitorial, security guard, or warehouse contractor.

(i)(1) The term "knows" includes the knowledge, arising from familiarity with the normal facts and circumstances of the business activity engaged in, that the contract or agreement does not include funds sufficient to allow the contractor to comply with applicable laws.

(2) The phrase "should know" includes the knowledge of any additional facts or information that would make a reasonably prudent person undertake to inquire whether, taken together, the contract or agreement contains sufficient funds to allow the contractor to comply with applicable laws.

(3) A failure by a person or entity to request or obtain any information from the contractor that is required by any applicable statute or by the contract or agreement between them, constitutes knowledge of that information for purposes of this section.

105. California Labor Code § 2810.3(b) states: "A client employer shall share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor for... (1) The payment of wages."

106. Delivery Team Members are aggrieved employees pursuant to Labor Code §2810(g) and seek to recover damages set forth therein.

107. Alternatively, Defendants are liable to Delivery Team Members pursuant to Labor Code §2810.3.

108. On March 6, 2023, Plaintiffs supplied notice of these claims, as required by §2810.3.

109. The contracts between Defendants and warehouse contractors require warehouse contractors to pay for their own costs, including but not limited to: wages, gasoline, workers compensation insurance, administrative costs, tools, delivery trucks, vehicle insurance, and all other incidental costs.

110. These contracts require two employees per truck; a driver, and a delivery helper. Both employees perform the installations and deliveries, and also haul away any waste that results from their work.

1 111. Defendants, on average, paid Labor Contractors a sum ranging from \$500-700 per day
2 *per truck*.

3 112. Aggrieved employees performed local deliveries throughout California, and were
4 subject to a myriad of local minimum wage ordinances that were higher than the requirements imposed
5 by state law.

6 113. Plaintiffs are informed and believe, and thereon allege, that on average in 2021,
7 warehouse contractors had to spend approximately \$2,300.00 for their gas and car insurance expenses
8 alone. Additionally, warehouse contractors had to pay for truck rentals and/or truck purchases, a
9 myriad of insurance and workers compensation coverage, and other costs, in order to perform these
10 contracts.

11 114. In addition to these foreseeable expenses, warehouse contractors were also subject to
12 unforeseeable deductions from their pay from Defendants. If any customer made a “claim” (a
13 complaint for damage to the appliance or customers home as a result of any delivery or installation)
14 against warehouse contractors, Defendants would make deductions from the warehouse contractors’
15 payments. Defendants rarely, if ever, provided advanced notice of these claims to warehouse
16 contractors, and warehouse contractors had almost no mechanism for disputing the claims or
17 subsequent deductions: which could exceed sums of \$10,000.00. There is no clear procedure or policy
18 outlining these deductions, or how these deduction amounts were reached. Defendants’ “employees”
19 were not subjected to the same claim or deduction procedures.

20 115. Plaintiffs are informed and believe and thereon allege that drivers and delivery helpers
21 employed directly by Defendants, working within the same warehouses as Plaintiffs, earn
22 approximately \$300.00 per days’ work; resulting in around \$600.00 in wages per truck alone, a number
23 higher than the amount Defendants occasionally paid Labor Contractors per route.

24 116. Defendants operate within the same industry as aggrieved employees and Labor
25 Contractors, and further employ their own drivers and delivery helpers to perform the same or shorter
26 routes to those given to aggrieved employees. Accordingly, Defendants should be aware of the costs
27 that running such an operation entail. Defendants’ use of Labor Contractors for longer and more
28 strenuous routes, at a minimum, should come with recognition that the wages due to these employees

1 would be higher than the employees that Defendants pay themselves.

2 117. Throughout the state of California, for over a decade, Defendants have entered into
3 numerous contracts that are either identical to, or almost identical to, those between Defendants and
4 Labor Contractors. Defendants have further litigated and settled numerous allegations similar to those
5 contained herein. Despite this pattern and practice of behavior, Plaintiffs are informed and believe,
6 and thereon allege, that Defendants continue to enter into such contracts knowingly and with a
7 conscious disregard for the rights afforded to employees under California law.

8 118. Defendants violated Labor Code §2810 because they knew or should have known that
9 the contract or agreement with the warehouse contractors did not include funds sufficient to allow the
10 warehouse contractors to comply with all applicable local, state, and federal laws or regulations
11 governing the labor or services to be provided.

12 119. Defendants, as client employers of Plaintiffs and Class Members, are liable for all
13 unpaid wages pursuant to Labor Code § 2810.3(b). Plaintiffs are further entitled to recover the “greater
14 of all his or her actual damages or two hundred and fifty dollars (\$250) per employee per violation for
15 an initial violation and one thousand dollars (\$1,000) per employee for each subsequent violation, and
16 upon prevailing in an action brought pursuant to this section, may recover costs and reasonable
17 attorney’s fees.” Cal. Labor Code §2810(g)(1).

18 120. As a result of Defendants actions, Plaintiffs and Class Members were injured as set
19 forth fully in the preceding paragraphs of this Complaint and are hereby incorporated as if fully set
20 forth herein.

21 **TENTH CAUSE OF ACTION**

22 **CIVIL PENALTIES UNDER PRIVATE ATTORNEYS GENERAL ACT (“PAGA”)**

23 **(Labor Code §§ 2698 et seq.)**

24 **(All Plaintiffs Against all Defendants)**

25 121. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

26 122. On March 6, 2023, Plaintiff’s provided Defendant with notice of alleged violations
27 under California’s Private Attorneys General Act (“PAGA”), a copy of which is attached as Exhibit
28 A. These violations, outlined above, included claims of: (1) Intentional Misclassification of Employees

1 (Lab. Code §§226.8(a)(1); 2775(b)(1); (2) Failure To Provide Meal Periods (Labor Code §§226.7,
2 512); (3) Failure To Provide Rest Periods (Labor Code §226.7); (4) Failure To Provide Accurate
3 Itemized Wage Statements (Labor Code §226); (5) Failure To Pay Minimum Wages (§§1182.12,
4 1197, 1194.2); (6) Failure To Pay Overtime / Double Time Wages (Labor Code §510, 1194); (7)
5 Entering Into Illegal Contract Or Agreement (Labor Code §2810); and (8) Failure To Pay All Wages
6 Due Upon Separation (Labor Code §203). Defendants provided no notice of remedy in response to
7 Plaintiff's notice.

8 123. The notice was sent to the California Labor and Workforce Development Agency
9 ("LWDA") on March 6, 2023, outlining these same allegations. The LWDA did not take action to
10 investigate or intervene and has not responded to the Notice of PAGA violations. Therefore, by
11 operation of law, Plaintiffs are deemed Representatives of the LWDA and the State of California to
12 commence an enforcement action to recovery civil penalties and restitution of wages as permitted by
13 Labor Code §§2699.3 and 558(a)(1)-(3). All notice and exhaust provisions have been satisfied and the
14 filing of the First Amended Complaint is done as a matter of right pursuant to Labor Code
15 §2699.3(a)(2)(C).

16 124. Plaintiffs and other aggrieved employees may seek recovery of civil penalties pursuant
17 to Labor Code §§2699.3 and 558(a) which allow for recovery of civil penalties under the PAGA for
18 each violation where Plaintiffs and other aggrieved employees were not paid all wages due for hours
19 worked at the requisite minimum wage and/or overtime wages, were not provided a compliant meal
20 or rest period penalty.

21 125. Plaintiffs, by and through the claims outlined herein, are aggrieved employees with
22 standing to bring an action under the Private Attorney General Act ("PAGA"). Plaintiffs, as
23 representative of the people of the State of California, will seek any and all penalties otherwise capable
24 of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement
25 (DLSE). This includes each of the following, as set forth in Labor Code Section 2699.5, which
26 provides that Section 2699.3(a) applies to any alleged violation of the following provisions: Sections
27 201 through 203, 204, 226, 226.7, 226.8, 510, 512, 558, 1194, 1197, 1199, 2802, and 2810.

28 126. Plaintiffs are informed and believe that Defendants TEMCO LOGISTICS and/or

DOES have violated and continue to violate provisions of the California Labor Code and applicable Wage Orders related to misclassification, meal and rest periods, paystubs, overtime compensation, insufficient labor contracts, wages for all work performed, and all wages due during employment and at termination.

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

128. Defendants willfully failed to provide Plaintiffs and other aggrieved employees with accurate itemized wage statements as alleged above, then Labor Code §§2699.3 and 226.3 allow for recovery of civil penalties under the PAGA for each violation and aggrieved employee that was not provided a wage statement or an accurate statement setting forth all hours worked and applicable rates of pay.

129. Defendants willfully misclassified Plaintiffs and other aggrieved employees as independent contractors, in violation of Cal. Labor Code §226.8(a)(1). Labor Code §§2699.3 and 226.3 allows for recovery of civil penalties under the PAGA for each violation and aggrieved employee willfully misclassified by Defendants.

130. Defendants, by entering into contracts that provided insufficient consideration for subcontracting entities to comply with California wage and hour minimum requirements, as alleged herein, are liable under Labor Code §§ 2699.3 and 2699.5 for recovery of civil penalties under the PAGA for each violation and aggrieved employee harmed by Defendants' violation of the contracting law.

131. Civil penalties to be assessed will be in compliance with Labor Code §§2699(i), 2699.3(c) and 558(a) for each violation and for each aggrieved employee, in an amount according to proof and approved by the Court, and/or as set by statute.

132. In addition to recovery of civil penalties and distribution to the LWDA as required by

1 law, Plaintiffs will seek recovery of reasonable costs and attorney's fees, in an amount according to
2 proof.

3
4 **PRAYER**

5 WHEREFORE, Plaintiffs, on behalf of herself and all others similarly situated and also on
6 behalf of the general public, pray for judgment against Defendants as follows:

- 7 1. An order that this action may proceed and be maintained as a class action;
- 8 2. For all unpaid minimum wages and liquidated damages due to Plaintiffs and each Class
9 Member;
- 10 3. For all unpaid overtime wages due to Plaintiffs and each Class Member;
- 11 4. For one hour of wages due to Plaintiffs and each Class Member for each missed meal
12 period;
- 13 5. For one hour of wages due to Plaintiffs and each Class Member for each missed rest
14 period;
- 15 6. For waiting time penalties under Labor Code §203;
- 16 7. For statutory penalties under Labor Code §210;
- 17 8. For statutory penalties under Labor Code §226(e);
- 18 9. An order requiring Defendants to comply with Labor Code § 226(a) with respect to all
19 currently employed members of the Class;
- 20 10. For damages or penalties under Labor Code §2810;
- 21 11. For recovery of civil penalties as a Representative Action on behalf of the State of
22 California, the LWDA, and all aggrieved employees pursuant to PAGA.
- 23 12. For restitutionary disgorgement pursuant to the UCL;
- 24 13. An order enjoining Defendants from further unfair and unlawful business practices in
25 violation of Business & Professions Code §§ 17200 *et seq.*;
- 26 14. For prejudgment and post-judgment interest in the full amount permitted by law;
- 27 15. Reasonable attorneys' fees in accordance with the law including but not limited to
28 Labor Code §§218.5, 226, 1194, 2810(g)(1);

27.

16. Accounting of Defendants' records for the liability period;
17. General, special, and consequential damages, to the extent allowed by law;
18. Costs of suit; and
19. Such other relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

PLAINTIFFS herein demand trial by jury on all of the foregoing matters.

DATED: November 8, 2023


/s/ Allan Villanueva
Allan A. Villanueva
Attorney for PLAINTIFFS

EXHIBIT A

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VIA CERTIFIED MAIL

March 6, 2023

California Labor & Workforce Development Agency
Attn. PAGA Administrator
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San Francisco, CA 94102
(VIA ONLINE FILING)

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***Re: SAUL LOPEZ, SAMUEL LOPEZ v. HOME EXPRESS DELIVERY SERVICE LLC
Complaint under California Labor Code §2698 et seq. (Private Attorneys General
Act of 2004)***

To Whom It May Concern:

This office represents Messrs. Saul Lopez and Samuel Lopez (hereinafter “Named Employees”), former employees of Home Express Delivery Service LLC dba TEMCO Logistics (hereinafter “TEMCO”).

They are aggrieved employees and are making claims under Cal. Labor Code §2698 et seq. on their behalf and other current or former aggrieved employees (collectively “Aggrieved Employees”) of Defendant TEMCO.

The Aggrieved Employees were employed by TEMCO through an arrangement wherein TEMCO would enter into a contract or agreement with Labor Contractors who would provide the workers to TEMCO as more fully discussed below. The agreement was denominated “INDEPENDENT CONTRACTOR AGREEMENT.” TEMCO knew or should have known that this agreement did not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided.

The Claims by the Aggrieved Employees against TEMCO include:

1. Intentional Misclassification of Employees (Lab. Code §§226.8(a)(1); 2775(b)(1);
2. Failure To Provide Meal Periods (Labor Code §§226.7, 512);
3. Failure To Provide Rest Periods (Labor Code §226.7);
4. Failure To Provide Accurate Itemized Wage Statements (Labor Code §226);
5. Failure To Pay Minimum Wages (§§1182.12, 1197, 1194.2);
6. Failure To Pay Overtime / Double Time Wages (Labor Code §510, 1194);
7. Entering Into Illegal Contract Or Agreement (Labor Code §2810);
8. Failure To Pay All Wages Due Upon Separation (Labor Code §203)

TEMCO IS THE EMPLOYER OF THE AGGRIEVED EMPLOYEES

TEMCO enter into contracts or agreements with Labor Contractors for the Labor Contractors to provide employees to TEMCO to perform last-mile deliveries and installations of appliances for TEMCO throughout California. These employees were hired into one of two roles, either as a driver or delivery helper working as a team (together, “Delivery Team Members”). These Delivery Team Members are the Aggrieved Employees, and will be used interchangeably.

Delivery Team Members rode and transported appliances in the same light truck and performed installations together, hauled away the old appliances, and disposed of or recycled any old appliances or waste that resulted from their work. The deliveries were scheduled along a single “route,” with Delivery Team Members averaging around 15-20 deliveries per route, performing one route per day worked.

Delivery Team Members would pick up the appliances they were to deliver from a local TEMCO warehouse, perform the marked deliveries throughout their route, and then return to the same warehouse to unload and discard aforementioned waste. Additionally, they would receive their schedules, at most, a few days in advance, and had little control over the means or manner in which they performed their duties.

Despite TEMCO’s broad control over the Aggrieved Employees and Labor Contractors, TEMCO misclassified these them as “independent contractors.” TEMCO had total control over the time and manner in which the Delivery Team Members performed their work. TEMCO would, by use of the ‘Mobil-Link’ app, track Delivery Team Members’ locations at all times, hold them to strict timeframes, and monitor their actions until the route was completed. If, at any point, the Delivery Team Members’ location indicated that they were behind schedule, a TEMCO representative would call them in an attempt to control and speed up their progress. These Delivery Team Members were forced to work whichever routes and schedules TEMCO gave them, and never had a clear notice of when their work would be finished on any day, as the given routes could vary from 12 to 16 hours of work.

In performing their duties, Delivery Team Members were required to drive a specific length truck, and were required to carry and use specific tools, conforming to TEMCO’s specifications. Delivery Team Members were required to wear a uniform that conformed to TEMCO’s specifications and approved by TEMCO.

Delivery Team Members additionally had to submit their identification and qualifications to TEMCO and go through a screening and clearance procedure including a background check. Once approved, many Delivery Team Members were given “TEMCO employee” badges.

TEMCO also hired their own workers whom they classified as “employees” performing the same work and delivered similar routes as that of Delivery Team Members. Importantly, while TEMCO gave Aggrieved Employees some of these same routes, TEMCO frequently gave Aggrieved Employees longer routes with more average stops.

These longer routes also were frequently more strenuous than those provided to “employees”, and Aggrieved Employees almost always worked longer shifts accordingly. Despite this, there are no meaningful distinctions between the type of work that TEMCO’s actual employees perform when compared to the work of the Delivery Team Members. Both groups would wait in the same cargo lines, would report to the same warehouses, and would perform routes. TEMCO additionally, on numerous occasions, has recruited Delivery Team Members knowing that their own employees were paid higher wages and given benefits entitled to employees under California law.

WILLFUL MISCLASSIFICATION OF INDIVIDUAL AS INDEPENDENT CONTRACTOR (Labor Code §226.8)

Despite these clear similarities; TEMCO willfully and intentionally misclassified Delivery Team Members as independent contractors in violation of Cal. Lab. Code §226.8(a)(1). TEMCO has made this deliberate misclassification a pervasive pattern and practice throughout their operations within California, exposing them to significant penalties. Section 226.8(c) of the Labor Code provides a “civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.”

TEMCO employed the Delivery Team Members. TEMCO exercised control over the wages, hours, or working conditions, and suffered and permitted Delivery Team Members to work. TEMCO at all times subjected Delivery Team Members to TEMCO’s control. IWC Wage Order 9 §2, *Martinez v. Combs* 49 Cal.4th 35 (2010).

Moreover, they are presumed to be employees unless TEMCO can meet their burden of establishing that ALL of the following have been satisfied:

- (A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
- (B) The person performs work that is outside the usual course of the hiring entity’s business.
- (C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed. Labor Code §2775; *Dynamex Operations W. Inc. v. Superior Court* (2018) 4 Cal.5th 903;

TEMCO cannot possibly meet its burden. TEMCO controlled and directed the performance of Delivery Team Members. The Delivery Team Members performed the work that IS the usual course of TEMCO’s business. Finally, neither the Labor Contractors nor the Delivery Team Members engaged in their own trade, occupation or business of appliance delivery and installation. TEMCO required the Labor Contractors to establish and register corporations or limited liability companies so it would appear as if the Labor Contractors were in the business of appliance delivery

and installation. This arrangement was merely a ploy created by TEMCO in an effort to thwart labor laws.

Even under the business-to-business exemption from *Dynamex*, Team Members would be considered employees of TEMCO. Delivery Team Members and Labor Contractors are not free from TEMCO's control and direction, provide services directly to TEMCO's customers, have no power to negotiate their own rates, and cannot set their own hours and location of work. Cal. Labor Code §2776.

Because Delivery Team Members were employed by TEMCO, TEMCO shares all civil legal responsibility and liability for the payment of their wages, and TEMCO cannot shift to the labor contractor any legal duties or liabilities created by TEMCO's own acts. Cal. Labor Code §2810.3 et seq.

AGGRIEVED EMPLOYEES WHERE DEPRIVED OF THEIR MEAL AND REST BREAKS (Labor Code §§226.7, 510)

Labor Code §226.7 provides, in pertinent part:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

Labor Code §512 provides, in pertinent part:

(a) An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

(b) (1) Notwithstanding subdivision (a), the Industrial Welfare Commission may adopt a working condition order permitting a meal period to commence after six hours of work if the commission determines that the order is consistent with the health and welfare of the affected employees.

California law obligates employers to “provide a meal period to its employees. The employer satisfies this obligation if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them from doing so.” *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal. 4th 1004, 1036.

Due to the strict timeframes that TEMCO held Delivery Team Members to, they failed to provide the Aggrieved Employees legally-compliant meal breaks. On several occasions where Delivery Team Members stopped to take a meal break during their 12 to 16-hour workdays, TEMCO would discipline and penalize them by stripping their routes for the following day. Delivery Team Members were not provided or allowed to take a thirty (30) minute, uninterrupted, off-duty meal breaks. Moreover, Delivery Team Members often worked in excess of ten (10) hours without a second thirty (30) minute meal break. Cal. Labor Code § 226.7, 512(a); IWC Order No. 9 §(11)(A).

TEMCO similarly failed to provide Aggrieved Employees legally-compliant rest breaks. TEMCO failed to “relieve their employees of all duties and relinquish any control over how employees spend their break time.” *Augustus v. ABM Sec. Servs., Inc.* (2016) 2 Cal.5th 257, 260 (citing *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1038–1039).

Rather than being permitted to take their meal or rest breaks, Delivery Team Members were routinely required to work through meal and rest periods at the direction of TEMCO and/or with TEMCO’ knowledge and acquiescence, in violation of California Labor Code § 226.7(a). If Delivery Team Members ever chose to pull over for a break, a representative from TEMCO would call them asking why they were behind schedule, and pressured them to resume driving. These actions were all furthered by the constant GPS tracking of Team Members that TEMCO undertook.

**TEMCO FAILED TO KEEP ACCURATE PAYROLL RECORDS OF HOURS
WORKED DAILY AND WAGES PAID TO EMPLOYEES
(Labor Code §226, 1174)**

Section 1174 of the Labor Code provides:

Every person employing labor in this state shall:

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established

for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Section 226 of the Labor Codes states,

(a) An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment.

Section 6 of IWC Wage Order 9 states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

TEMCO kept no records whatsoever of the hours worked daily of the Aggrieved Employees, when the Aggrieved Employees begin and end each work period, when the meal periods are provide, or wages paid to the Aggrieved Employees.

Because of TEMCO's failure to comply with the statutory requirements to maintain accurate records, the Aggrieved Employee can merely testify and will testify as to the number of hours they worked, even though imprecise. They will testify that they were "suffered or permitted to work whether or not they were required to do so" from 12 to 16 hours per day. "In such a situation, imprecise evidence by the employee can provide a sufficient basis for damages." *Hernandez v. Mendoza* (1988) 199 Cal. App. 3d 721, 727.

The burden will then shift to TEMCO to "come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence." *Id.* TEMCO will not be able to satisfy its burden.

"Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. Labor Code §226.3

AGGRIEVED EMPLOYEES ARE OWED MINIMUM / OVERTIME WAGES (Labor Code §§510, 1194)

As aforementioned, TEMCO entered into a contract with Labor Contractors in order to fulfill their last-mile deliveries. These contracts required Labor Contractors to pay for all costs, including but not limited to wages, FICA contributions for Social Security and Medicare, contributions for unemployment and disability insurance, gasoline, workers compensation insurance, general liability insurance, administrative costs, tools, trucks, truck insurance, cargo insurance, fees, fines, licenses, and bonds, and claims for damages. These contracts required two employees, a driver and a delivery helper, per truck supplied by Labor Contractors. In return, TEMCO paid Labor Contractors a varying sum ranging from \$500-\$700 per truck per day.

Delivery Team Members were, at all times of their employment, deprived of the lawful rate of pay including minimum and overtime wages.

Labor Code §1197 provides, "The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity."

Labor Code §1182.12 and Wage Order 9 §4 set forth the minimum wage to be paid to the Aggrieved Employees.

Pursuant to Labor Code §510:

"Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day

of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

Section 3(A)(1) of Wage Order No. 9 also mandates that employers pay one and one-half times the employees’ regular rate of pay for employees who work more than eight (8) hours in a day or forty (40) hours in a week, and two times their regular rate of pay for any work in excess of twelve (12) hours in one day.

Section 4 of Wage Order No. 9 mandates that employers shall pay employees wages of at least \$14.00 per hour for 2021, and at least \$15.00 per hour for all hours worked in 2022. Additionally, Aggrieved employees frequently work in counties throughout the state that mandate higher minimum wages than those of the Wage orders, entitling aggrieved employees to these wages on these shifts.

For example, within the County of San Francisco, in which numerous Delivery Teams worked daily, the Minimum wage was \$16.07 per hour from July 1, 2021, \$16.32 per hour from July 1, 2022, and \$16.99 per hour from July 1, 2023, to the present.

At all times during the liability period, Delivery Team Members were suffered and permitted to work in excess of eight (8) hours per workday or forty (40) hours per work week. Delivery Team Members routinely worked in excess of eight hours per day, yet TEMCO failed to pay for hours worked in excess of eight (8) hours per day, and failed to pay one-and-one-half times their regular rate of pay for hours worked in excess of eight (8) hours per day or forty (40) hours per workweek.

TEMCO also failed to pay its employees at a rate no less than twice the regular rate of pay for work in excess of twelve (12) hours in one day or for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in a workweek.

At all times relevant hereto, Aggrieved Employees were non-exempt for purposes of the overtime and double pay requirements set forth in the Labor Code and Wage Order No. 9. They did not drive “commercial motor vehicles” as defined U.S. Transportation C.F.R. §390.5, as their vehicles had a gross weight rating of less than 26,000 lbs., and they did not drive in interstate commerce.

Yet, Aggrieved Employees were not paid the lawful minimum and overtime rates. For example, in 2022 many of them made deliveries in San Francisco County. They should have been paid the minimum wage of at least \$16.99 per hour, an overtime rate of \$25.49, and a double time rate of \$33.98. They regularly worked 12 to 16 hours per day. Thus, for a 12-hour day, each employee who did not receive a compliant rest or meal break should have been paid at least \$271.84. For a 14-hour and a 16-hour work day, each employee should have been paid \$305.82 and \$339.80.

However, the Aggrieved Employees were paid less than these amounts. TEMCO thus owes them minimum and/or overtime wages.

**TEMCO OWES AGGRIEVED EMPLOYEES ACTUAL DAMAGES OR \$250 PER
EMPLOYEE PER VIOLATION FOR ENTERING INTO ILLEGAL CONTRACTS
(Labor Code §2810)**

A person or entity shall not enter into a contract or agreement for labor or services with a construction, farm labor, garment, janitorial, security guard, or warehouse contractor, where the person or entity knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided.

An employee aggrieved by a violation of subdivision (a) may file an action for damages to recover the greater of all of the employee's actual damages or two hundred fifty dollars (\$250) per employee per violation for an initial violation and one thousand dollars (\$1,000) per employee for each subsequent violation, and, upon prevailing in an action brought pursuant to this section, may recover costs and reasonable attorney's fees. An action under this section shall not be maintained unless it is pleaded and proved that an employee was injured as a result of a violation of a labor law or regulation in connection with the performance of the contract or agreement.

Labor Code Labor Code §§2810(a); 2810(g)(1).

Based on the foregoing, TEMCO knew, or should have known, that the amount they paid the Labor Contractors could not fathomably “allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided.” These include payment for wages, FICA contributions for Social Security and Medicare, contributions for unemployment and disability insurance.

TEMCO contracted to pay Labor Contractors \$500 to \$700 per day per route. The Delivery Team Members (both driver and helper) should have been paid a total of \$543.63 for 12 hours, \$611.64 for 14 hours, and \$679.60 for 16 hours. However, you must add to these figures the FICA contributions for Social Security and Medicare of 7.65% of the wages, plus a daily amount of \$1.67 per employee for unemployment insurance contributions. The total employee wage liability would be \$586.89 for 12-hour workday, \$660.10 for 14-hour workday, and \$733.26 for 16-hour workday. Already, these figures exceed the \$500.00 to \$700.00 per day per route TEMCO paid the Labor Contractors.

But it does not end here. The Labor Contractors still had to bear payment for workers compensation insurance, general liability insurance, truck insurance, cargo insurance, gasoline, administrative costs, tools, trucks, fees, fines, licenses, and bonds, and claims for damages.

Regarding the claims for damages, TEMCO would make deductions from the payments to the Labor Contractors if any of their customers made a claim for damage to their home or appliance during installations. TEMCO rarely, if ever, gave advanced notice of these claims, and Labor Contractors frequently had little they could do to dispute the claim or subsequent deductions, which could result in significant sums being removed from their pay, sometimes exceeding \$10,000.00.

In further support that TEMCO knew or should have known that their contract or agreement with the Labor Contractors did not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided, TEMCO paid their workers classified as “employees” at least \$340.00 for a 15-hour shift at \$17.00 per hour. This amount does not include the meal and rest break premiums.

Any reasonable individual or entity in the same industry would realize that the contracts between TEMCO and the Labor Contractors provided insufficient funds to comport with all of California’s regulatory and labor statutes. Instead, TEMCO chose a business model that would violate labor law.

**TEMCO OWES AGGRIEVED EMPLOYEES WAITING TIME PENALTIES
(Labor Code §203)**

Finally, the Aggrieved Employees were NOT paid all wages due at the time of discharge from their employment, nor within 30 days of such termination. Thus, the Aggrieved Employees are entitled to waiting time penalties pursuant to Labor Code §203.

In sum, the aggrieved employees seek to bring a civil suit under Cal. Labor Code §2698 et seq. and seek all penalties allowed by law including but not limited to those set forth in Cal. Labor Code §226.3.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Allan A. Villanueva', with a long horizontal flourish extending to the right.

Allan A. Villanueva