

Allan A. Villanueva, SBN 163480
Parham Golestanian, SBN 345822
LAW OFFICE OF ALLAN A. VILLANUEVA
6101 Bollinger Canyon Road, Suite 379C
San Ramon, CA 94583
Telephone: (925) 365-1680
Fax: (650) 479-3086
Email: allan@allanvillanuevalaw.com
pg@allanvillanuevalaw.com

Attorneys for PLAINTIFFS
SAUL LOPEZ and SAMUEL LOPEZ

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

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By: Anita Dhir,
Deputy Clerk

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

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

Hearing Date: November 7, 2023

Time: 3:00 p.m.

Dept.: 23

Honorable Brad Seligman

RESERVATION NUMBER: 0678331107881

Complaint Filed: April 17, 2023

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

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

7 2. This declaration is being submitted in support of Plaintiffs’ MOTION FOR
8 PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND CERTIFICATION OF
9 SETTLEMENT CLASS.

10 3. Currently, the putative members of the class are “All current and former employees
11 and/or workers of Labor Contractors that performed work for Defendant (including those classified
12 as an “independent contractor delivery driver” and/or a “independent contractor delivery helper”) in
13 the State of California during the Class Period and who do not submit a timely and valid Request for
14 Exclusion; but excluding individual owners and operators of Labor Contractors and individuals that
15 have previously executed a full release of claims with Defendant.”

16 4. Plaintiffs move for an order provisionally certifying for settlement purposes only the
17 following Settlement Class:

18 “All current and former employees and/or workers of Labor Contractors that
19 performed work for Defendant (including those classified as an “independent
20 contractor delivery driver” and/or a “independent contractor delivery helper”) in
21 the State of California during the Class Period and who do not submit a timely
22 and valid Request for Exclusion; but excluding individual owners and operators
23 of Labor Contractors and individuals that have previously executed a full release
24 of claims with Defendant; (Agreement at § 1.4)

25
26 5. Attached herewith as **Exhibit A** is a true and correct copy of the fully executed
27 JOINT STIPULATION OF SETTLEMENT FOR CLASS ACTION AND REPRESENTATIVE
28

1 ACTION; RELEASE OF CLAIMS (“Agreement” or “Settlement”) along with exhibits thereto. This
2 Declaration incorporates by reference the definitions in the Settlement, and all terms defined therein
3 shall have the same meaning as set forth in the Settlement.

4 6. The “Gross Settlement Amount” means the entire settlement amount not to exceed \$1
5 million, in full and complete settlement of the Action, to be paid by Defendant pursuant to this
6 Agreement. The Gross Settlement Amount is fully inclusive of all Individual Settlement Payments,
7 the Defendant’s share of any applicable payroll and/or unemployment taxes, the Class
8 Representative Incentive Payments, the portion of PAGA Payment going to the LWDA, Settlement
9 Administration Costs, Attorneys’ Fees, and Costs. The Gross Settlement Amount has been agreed to
10 by Plaintiffs and Defendant based upon the aggregation of the agreed-upon settlement value of all
11 Class Member claims. (Agreement at §1.14)

12 7. This class action was filed by Plaintiffs SAUL LOPEZ and SAMUEL LOPEZ on
13 April 17, 2023. They represent about 929 putative class members who were employed by about 159
14 labor contractors to perform work for Defendant during the Claim Period, April 17, 2019, to the date
15 the Preliminary Approval Order is entered by the Court. (Agreement at §§ 1.5)

16 8. Plaintiffs are current or former employees and/or workers of labor contractors that
17 performed work for Defendant (including those classified as an “independent contractor delivery
18 driver” and/or a “independent contractor delivery helper”) in the State of California. Plaintiffs and
19 Settlement Class Members deliver and install products such as dishwashers, washer and dryers, and
20 refrigerators purchased by Defendant’s customers.

21 9. Plaintiffs alleged that Defendant violated California Labor Code §2810 and other
22 provisions of the California Labor Code, primarily by entering into inadequately-funded contracts
23 with the labor contractors that employed the putative class members to provide delivery and
24 installation of appliances purchased by Defendant’s customers.

25 10. The following facts are based on information and belief. Defendant entered into one-
26 year contracts or agreements with approximately 159 labor contractors during the Claim Period
27 (April 17, 2019, to the date of preliminary approval) for labor contractors to provide the labor and
28 services, including the necessary trucks, equipment and workers, namely drivers and drivers’ helpers

1 to deliver to Defendant's customers' homes, businesses and other sites, the appliances purchased by
2 Defendant's customers. The contracts automatically renewed for additional one-year terms unless
3 terminated by either party with 15-days notice). There were about 907 delivery drivers and/or
4 delivery helpers that provided services to Defendant under the contracts during the Claim Period.

5 11. Further, the contracts required the labor contractors to bear the costs of providing
6 specific length and color and in like-new condition delivery trucks with liftgates or ramps, complete
7 set of tools, including hammers, pliers, wrenches, putty knives or chisels, drills, nut drivers, two
8 appliance hand trucks/ dollies, uniforms for all workers and uniforms that are pre-approved in
9 writing by Defendant, commercial general liability, workers' compensation, business automobile
10 liability and cargo insurance. The labor contractors were also required to pay for all fees, fines,
11 licenses, bonds and all of the workers' wages and taxes, including State and Federal social security
12 and Medicare taxes, and unemployment and disability insurance.

13 12. Moreover, in exchange, Defendant paid the labor contractors up to \$650.00 per
14 route¹, which Plaintiffs claim was wholly insufficient to pay all of the foregoing costs and expenses.

15 13. Further based on the information and belief, Defendant entered into contracts or
16 agreements with labor contractors for the labor Contractors to provide workers to Defendant to
17 perform last-mile deliveries and installations of appliances for Defendant throughout California.
18 These workers were hired into one of two roles, either as a driver or delivery helper working as a
19 team (together, "Delivery Team Members").

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

24 ¹ The labor contractors were paid according to a schedule set forth in the contract. For example, \$32.75 is paid
25 for deliveries, \$3.50 for hauling away old appliance, and \$55.00 for installation of wall oven. Several
26 deliveries, haul aways, and installations could be done per route. The labor contractor was paid either the
27 higher of a guaranteed amount for a route, i.e., between \$550.00 or \$650.00, or the actual amount billed by
28 the contractor. Sometimes the billing fell below the minimum guaranteed amount, which is a strong evidence
that fewer deliveries, haul away, and installations were done, and consequently fewer hours worked on that
route.

1 route per day worked.

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

7 16. Despite Defendant's broad control over the labor contractors, Defendant misclassified
8 them as "independent contractors." Defendant had total control over the time and manner in which
9 the Delivery Team Members performed their work. Defendant would, by use of the 'Mobil-Link'
10 app, track Delivery Team Members' locations at all times, hold them to strict timeframes, and
11 monitor their actions until the route was completed. If, at any point, the Delivery Team Members'
12 location indicated that they were behind schedule, a representative of Defendant would call them in
13 an attempt to control and speed up their progress. These Delivery Team Members were forced to
14 work whichever routes and schedules Defendant gave them, and never had a clear notice of when
15 their work would be finished on any day, as the given routes could vary from 10, 12 and up to 16
16 hours of work, and which prevented class members from taking legally compliant meal and rest
breaks.

17 17. In performing their duties, Delivery Team Members were required to drive a specific
18 length truck, and were required to carry and use specific tools, conforming to Defendant's
19 specifications. Delivery Team Members were required to wear a uniform that conformed to
20 Defendant's specifications and approved by Defendant.

21 18. Delivery Team Members additionally had to submit their identification and
22 qualifications to Defendant and go through a screening and clearance procedure including a
23 background check. Once approved, many Delivery Team Members were given "TEMCO employee"
24 badges.

25 19. Defendant also directly hired drivers and delivery helpers whom they classified as
26 "employees" performing the same work and delivered similar routes as that of Delivery Team
27 Members. There were no meaningful distinctions between the type of work that Defendant's actual
28

1 employees performed when compared to the work of the Delivery Team Members. Both groups
2 would wait in the same cargo lines, would report to the same warehouses, and would perform routes.
3 Defendant additionally, on numerous occasions, has recruited Delivery Team Members knowing that
4 their own employees were paid higher wages and given benefits to which employees were entitled
5 under California law.

6 20. Plaintiffs alleged that Defendant knew or should have known that the contract or
7 agreement with its labor contractors did not include funds sufficient to allow the contractors to
8 comply with all applicable local, state, and federal laws or regulations governing the labor or
9 services to be provided. Plaintiffs alleged that Defendant was the employer and/or “client employer”
10 under Labor Code §2810.3 of the Plaintiffs and the putative class because Defendant misclassified
11 the putative class members as independent contractors, and exercised control over the manner and
12 method of the performance of their work. Thus, Plaintiffs alleged that Defendant did not pay them
13 and the putative class the minimum and/or overtime wages, did not provide legally required off-duty
14 meal and rest periods, did not pay the meal and rest period premiums, and did not provide accurate
15 wage statements, and did not pay wages when due or upon termination, which practices constituted
16 unfair business practices under Business & Professions Code §17200.

17 21. Plaintiffs also claim that the foregoing violations give rise to civil penalties under the
18 Private Attorneys General Act codified in California Labor Code §2698 et seq. On March 6, 2023,
19 Plaintiffs’ Counsel sent a letter to the California Labor Workforce Development Agency (the
20 “LWDA”) asserting entitlement to penalties under PAGA based upon the Labor Code violations
21 alleged in the Complaint. The LWDA failed to respond within the required time as to whether it
22 intended to investigate the allegations in Plaintiffs’ letter, thereby authorizing Plaintiffs to pursue
23 PAGA penalties in this Action. However, Plaintiffs have not amended their complaint to allege a
24 PAGA violation. Plaintiffs seek leave of court to file a First Amended Complaint, a copy of which is
25 attached as an Exhibit B to the Agreement. (Agreement §7.1)

26 22. For about five months from May to September, the Parties engaged in arm's-length
27 settlement negotiations and discussions and after Plaintiffs have conducted significant investigation,
28 analysis and discovery. This included review of documents such as payments to workers, delivery

1 manifests, billing sheets, invoices paid by Defendant, expense reports, and tax records. The
2 investigation included interviewing at least eleven delivery drivers and delivery helpers of labor
3 contractors, and another twenty delivery drivers and delivery helpers who were direct employees of
4 Defendant. The Parties were able to reach a settlement, the terms of which were memorialized in the
5 Agreement, which is now being presented to this Court for preliminary approval.

6 23. Plaintiffs and Class Counsel believe that the Settlement is fair, reasonable and
7 adequate, and should be preliminarily approved by this Court. All claims arise from the contention
8 that Defendant entered into contracts or agreements with labor contractors to provide delivery and
9 installation of appliances to Defendant's customers' premises, which agreements Defendant knew or
10 should have known did not include sufficient funds to allow the contractor to comply with labor
11 laws. Alternatively, Plaintiffs alleged that Defendant was the employer and/or "client employer" of
12 the Plaintiffs and the putative class because Defendant exercised control over the manner and
13 method of the performance of work of the members of the putative class. Thus, Plaintiffs alleged that
14 Defendant did not pay them and the putative class the minimum and/or overtime wages, did not
15 provide legally required off-duty meal and rest periods, did not pay the meal and rest period
16 premiums, and did not provide accurate wage statements, and did not pay wages when due or upon
17 termination, which practices constituted unfair business practices under Business & Professions
18 Code §17200, and for which corresponding penalties under PAGA are owed.

19 24. Plaintiffs and Defendant stipulate and agree that the requisites for establishing class
20 certification with respect to the Settlement Class have been and are met. (Agreement §8.4)

21 25. Plaintiffs estimate the class-wide *statutory damages* based on Labor Code §2810(g)
22 **\$907,000.00** calculated as follows: \$250 per violation (i.e., per contract) x 4 contracts over the Claim
23 Period x 907 workers.

24 26. Plaintiffs estimate the actual damages of the class as follows based on the
25 assumptions that each person who worked during the work week missed either a meal or rest break
26 each day during the work week, and worked at least one hour of overtime 3 times per week. The
27 California minimum wage rates for 2019 was \$12 per hour; for 2020, \$13 per hour; for 2021, \$14
28 per hour; and 2022, \$15 per hour.

Thus, the estimated total missed meal and/or rest period premium owed is **\$2,716,875.00**.

2019 10,062.5 work weeks x 5 days/ week x \$12/ hour = \$603,750.00

2020 10,062.5 work weeks x 5 days/ week x \$13/ hour = \$654,062.50

2021 10,062.5 work weeks x 5 days/ week x \$14/ hour = \$704,375.00

2022 10,062.5 work weeks x 5 days/week x \$15/ hour = \$754,687.50

The estimated total overtime wages owed is **\$2,445,187.50**.

2019 10,062.5 work weeks x 3 days/ week x \$12/ hour x 1.5 = \$543,375.00

2020 10,062.5 work weeks x 3 days/ week x \$13/ hour x 1.5 = \$588,656.25

2021 10,062.5 work weeks x 3 days/ week x \$14/ hour x 1.5 = \$633,937.50

2022 10,062.5 work weeks x 3 days/week x \$15/ hour x 1.5 = \$679,218.75

The estimated total liquidated damages owed under Labor Code §1194.2 is **\$1,630,125.00**.

2019 10,062.5 work weeks x 3 days/ week x \$12/ hour = \$362,250.00

2020 10,062.5 work weeks x 3 days/ week x \$13/ hour = \$392,437.50

2021 10,062.5 work weeks x 3 days/ week x \$14/ hour = \$422,625.00

2022 10,062.5 work weeks x 3 days/week x \$15/ hour = \$452,812.50

Plaintiffs are unable to provide an estimate of the amounts of penalties due under Labor Code §210, or waiting time penalties due under Labor Code §203. Such estimates would be spurious because Defendant does not know when a putative class member was separated from employment, and does not know the number of employees not fully paid on paydays.

27. Plaintiffs estimate the PAGA penalties owed is **\$114,800.00**, calculated as follows:

Failure to pay overtime wages (\$50 per violation per employee per pay period; Labor Code §558): \$57,400.00 (2,296 work weeks / 2 [since two work weeks equals one pay period] x \$50.00);

Failure to provide meal and/or rest breaks. (\$50 for each meal and/or rest break violation per employee per pay period; Labor Code §558): \$57,400.00 (2,296 work weeks / 2 [since two work weeks equals one pay period] x \$50.00).

28. Consequently, the settlement represents a reasonable percentage of the total liability for overtime wages, meal and rest break premiums, and PAGA penalties, assuming these amounts could be proven at trial. Moreover, the Court has discretion to reduce the PAGA penalties “if, based

1 on the facts and circumstances of the particular case, to do otherwise would result in an award that is
2 unjust, arbitrary and oppressive, or confiscatory.” Labor Code §2699(e)(2). Given the amount of the
3 settlement as compared to the potential value of claims in this case, the settlement is fair and
4 reasonable.

5 29. Regardless of these calculations, Plaintiffs recognize the significant risks that their
6 claims may be rejected or not be certified on a class-wide basis, including Defendant’s arguments
7 that Plaintiffs’ claims are not typical of other class members; that the labor contractors were paid
8 sufficient funds for them to comply with the labor laws; that liability and damages would require
9 individualized inquiry not proper for class treatment; that Defendant was not the employer of the
10 Plaintiffs and the putative class that performed work for the Defendant; that Defendant neither
11 controlled the wages of these workers nor the performance of their work; that it was the labor
12 contractors that controlled the wages and performance of the work of these workers; that it was the
13 duty and responsibility of the labor contractors to monitor the workers’ time, to keep accurate time
14 records, to provide meal and rest breaks, to pay the meal and rest period premiums when the breaks
15 were not provided, and to pay minimum and overtime wages. Additionally, Plaintiffs’ wage and
16 hour claims fall under a joint-employment theory of liability, which counsel believes pose novel
17 legal theories with a heightened risk of failing at trial.

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

28 31. Plaintiffs and Class Counsel believe that this Agreement is in the best interests of

1 Class Members. Specifically, Plaintiffs and Class Counsel have concluded, based upon their
2 investigation and discovery after performing a thorough study of the law and facts relating to the
3 claims that were asserted in the Action or could have been asserted, and taking into account the
4 sharply disputed factual and legal issues involved in this Action, the various risks attending further
5 prosecution to trial and judgment, the uncertainties of complex litigation, and the strong likelihood
6 of further appeals as litigation continues, that the settlement is fair, adequate and reasonable and is in
7 the best interests of Plaintiffs and the Class. Plaintiffs, on their own behalf and on behalf of the Class
8 Members, have agreed to settle the Action on the terms set forth in this Agreement. (Agreement
9 §2.3)

10 32. A number of defenses asserted presented serious threats to the claims of Plaintiffs and
11 the other Class Members. For example, Defendant's argument that Plaintiffs' claims are not typical
12 of other class members, that the labor contractors were paid sufficient funds for them to comply with
13 the labor laws, and that liability and damages would require individualized inquiry not proper for
14 class treatment.

15 33. If successful, these defenses could eliminate or substantially reduce any recovery to
16 the Class. While Plaintiffs believe that these defenses could be overcome, Defendant maintains these
17 defenses have merit, and based on contradictory evidence presents a serious risk to recovery.

18 34. There was also a significant risk that, if the Litigation was not settled, Plaintiffs
19 would be unable to obtain class certification and thereby not recover on behalf of any other
20 employees. Defendant would contest class certification by arguing that the question of whether a
21 particular employee was provided a rest or meal break, or worked more than eight hours per day or
22 over 40 per week requires an individual case-by-case analysis and is based upon the particular labor
23 contractor, route, location worked and which entity paid the employee. While other cases have
24 approved class certification in similar wage and hour overtime claims, class certification in this
25 action would have been hotly disputed and was by no means a foregone conclusion.

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

1 not submit a timely and valid Request for Exclusion, then multiplied by the Net Settlement Amount.
2 For instance, if a Class Member had 10 Work Weeks during the Class Period and there were 100
3 total Work Weeks for all Class Members during the Class Period, the Class Member would receive
4 10% of the Net Settlement Amount. Each Class Member's total number of Work Weeks shall be
5 determined based on Defendant's records for the Class Period, which consist solely of dates that
6 particular Labor Contractors performed services for Defendant and the Class Members that worked
7 for such Labor Contractors during that time. (Agreement §1.15)

8 36. Payments to the Settlement Class Members will be proportionally allocated based on
9 the number of Work Weeks during the Class Period, as reflected in Defendant's records. Each Class
10 Member's Settlement Share shall be calculated by dividing the total number of Compensable
11 Workweeks for all Class Members into the Net Settlement Fund in order to calculate a minimum
12 Workweek Rate. (Agreement §6.2.5)

13 37. The Individual Settlement Payment shall constitute wages, interest, meal and rest
14 period premium pay, statutory penalties pursuant to the California Labor Code, and civil penalties
15 pursuant to PAGA. Given that the bulk of potential exposure in the Action consists of penalties,
16 interest, and expenses, 90% of each Individual Settlement Payment shall be allocated as penalties,
17 interest, and expenses. The remaining 10% of each Individual Settlement Payment shall be allocated
18 as wages and meal and rest period premium pay. (Agreement §1.15)

19 38. Each Class Member's Individual Settlement Payment will be characterized as 90%
20 Form 1099 income and 10% W-2 income, to reflect that 90% of the payment will account for
21 penalties, interest, and expenses that are not subject to payroll deductions, while 10% will account
22 for unpaid wages and meal period premiums that are subject to payroll deductions. In accordance
23 with applicable tax laws, required tax withholdings and payroll deductions will be taken from each
24 Individual Settlement Payment for the portion allocated to Form W-2 income and remitted to the
25 appropriate taxing authorities. The Settlement Administrator shall issue any necessary IRS Form
26 1099 and Form W-2 statements to Class Members for their respective Individual Settlement
27 Payments. (Agreement §5.11)

28 39. The PAGA Penalty shall be Fifty Thousand Dollars (\$50,000.00), which shall be paid

1 as follows: \$37,500.00 to the Labor and Workforce Development Agency, and \$12,500.00 to Class
2 Members. (Agreement §6.2.4)

3 40. The Parties have agreed on Simpluris, Inc. to serve as Settlement Administrator.
4 (Agreement §1.32) The Settlement Administrator shall provide notice to the Class and perform other
5 duties relating to the administration of the Settlement, including, but not limited to, payment of
6 claims submitted by Class Members. The charges of and costs incurred by the Settlement
7 Administrator, estimated to be approximately Twenty Thousand Dollars (\$20,000), upon order of the
8 Court, shall be paid from the Gross Settlement Amount ("Settlement Administration Costs").
9 (Agreement at §§1.31)

10 41. Class Counsel shall apply for a sum not to exceed one-third (33 1/3%) of the Gross
11 Settlement Amount for attorneys' fees to compensate Class Counsel for all of the work already
12 performed by Class Counsel in this case and all of the work remaining to be performed by Class
13 Counsel in documenting the Settlement, securing Court approval of the Settlement, administering the
14 Settlement, making sure that the Settlement is fairly administered and implemented, and obtaining
15 final judgment in the action. (Agreement at §§1.3, 5.3) Class Counsel will also be allowed to apply
16 separately for reimbursement of their incurred litigation expenses, which Class Counsel estimates to
17 be no more than Two Thousand Dollars (\$2,000). (Agreement at §§1.8, 5.4)

18 42. Plaintiffs shall apply for Class Representatives' Service Fees of up to Twenty
19 Thousand Dollars (\$20,000.00), \$10,000.00 for Saul Lopez and \$10,000.00 for Samuel Lopez.
(Agreement at §5.2)

20 43. This is a non-reversionary settlement and it is the intention of the Parties that the
21 entire Gross Settlement Amount will be paid out, leaving no residue. Any settlement checks
22 distributing Individual Settlement Payments returned to the Settlement Administrator as
23 undeliverable shall be sent within five calendar days via First Class U.S. Mail to the forwarding
24 address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall
25 attempt to determine the correct address using a single computer skip-trace search, and it shall then
26 perform a re-mailing within five calendar days. The amount of any Individual Settlement Payments
27 that remain undeliverable or uncashed 90 calendar days after the postmarked date of the initial
28

1 mailing of these payments will be deposited by the Settlement Administrator into the State of
2 California State Bar Justice Gap Fund. No part of the Net Settlement Amount shall be returned to
3 Defendant. (Agreement §5.14) The Notice Packet, which consists of Notice of Settlement, Request
4 for Exclusion and Objection Form, a copy of which is attached as an exhibit to the Agreement,
5 drafted jointly and agreed upon by the Parties through their respective counsel and to be approved by
6 the Court, includes all relevant information.

7 44. The Notice will include, among other information: (i) information regarding the
8 Lawsuit; (ii) the impact on the rights of the Class Members if they do not opt out of the Settlement;
9 (iii) information to the Class Members regarding how to opt out and how to object to the Settlement;
10 (iv) the estimated settlement payment for each of the Class Members; (iii) the amount of attorneys'
11 fees and litigation expenses to be sought; (v) the amount of Class Representatives' Service Fee; and
12 (vi) the administration fees to be paid to the Settlement Administrator. The Notice Packet will also
13 be translated into Spanish, the language spoken by a majority of the putative class members.
14 (Agreement §3.3)

15 45. The Notice explains that the Class Members have thirty (30) days from the date that
16 the Notice Packet is mailed to them to request exclusion or to submit an objection by mailing such
17 objection or request for exclusion to the Settlement Administrator. The Class Members shall also be
18 given the opportunity to object to the terms of the Agreement and/or requests for attorneys' fees and
19 costs and to participate at the final fairness and approval hearing, in accordance with the instructions
20 set forth in the Notice. (Agreement §§4.1 – 4.3)

21 46. This notice program was designed to reach all potential Class Members and advise
22 them of all pertinent information concerning the Settlement. The mailing and distribution of the
23 Notice satisfies the requirements of due process, and is the best notice practicable under the
24 circumstances and constitutes due and sufficient notice to all persons entitled thereto. The proposed
25 Notice is accurate and informative. The Notice provides information on the terms and provisions of
26 the Settlement; the benefits that settlement provides for Class Members; the date, time and place of
27 the final settlement approval hearing; and the procedure and deadlines for submitting comments,
28

1 objections and requests for exclusion in compliance with Rules of Court 3.766 and 3.769(f).

2 47. I am experienced in prosecuting wage and hour lawsuits and can adequately represent
3 the Class. I am an experienced employment law counsel, whose practice is devoted to employment
4 law. Eighty percent of my practice is in wage and hour law. I have represented hundreds of
5 employees in wage and hour claims.

6 48. I have obtained Labor Commissioner Awards after hearing. In other words, I am
7 knowledgeable of the facts and law required to prove such claims. For example, I obtained a Labor
8 Commissioner award in excess of \$124,000.00 for nine healthcare employees in a meal and rest
9 period claim covering a period of only one year in *Trowbridge et al. v. Elwyn and Elwyn California*,
10 DLSE Case Nos.07-80423 et al.; an award of over \$360,000.00 for two caregivers in an overtime
11 wage claim in *Guillermo dela Cruz; Veneranda dela Cruz v. Mahindra Rai dba Delgado Adult*
12 *Residential Home*, DLSE Case Numbers 23-34690, 23-34691, awards totalling over \$2.5M for seven
13 caregivers in overtime wages claims, which was upheld on appeal in *Cardinal Care Management,*
14 *LLC v. Afable* (2020) 47 Cal.App.5th 1011, a confidential seven figure settlement for fewer than 20
15 caregivers in a wage and hour lawsuit.

16 49. I have been lead counsel in class action cases including, *Balingit v. Family Housing*
17 *and Adult Resources, Inc.*, San Mateo Superior Court Case No. 16CIV01640, *Cevallos v. Tupaz*
18 *Homes LLC et al.*, Santa Clara Superior Court Case No. Case No. 19CV348681; *Baayon v. Joe's*
19 *Union LP et al.* San Francisco Superior Court Case No. CGC22600071, *Ramos v. Cardinal Care*
20 *Management, LLC et al.*, Contra Costa Superior Court Case No. C18-2010; *Faustino v. Pacwest*
21 *Solutions, Inc. et al.* Alameda County Superior Court Case No. RG17850643; PAGA action in
22 *Paleria v. The Carewell Company et al.*, Solano County Superior Court Case No. CGC-21-590019;
23 and PAGA actions in *Barton v. North Beach Restaurant, Inc. et al.*, San Francisco Superior Court
24 Case No. CGC-21-590019; and *Apilado v. Jojoli, Inc. et al.*, Alameda Superior Court Case No.
25 RG16825337.

26 50. I also vindicated important employee rights in *Manuel v. Superior Court (BrightView*
27 *Landscape Services Inc.)* (2022) 82 Cal.App.5th 719 (Employer cannot inquire on the immigration
28 status of an employee in proceedings or discovery to enforce state labor, employment, civil rights

1 and employee housing laws); *Cardinal Care Management, LLC et al. v. Edgardo Afable et al.*
2 (2020) 47 Cal.App.5th 1011 (Court of appeal upheld the dismissal of appeals from Labor
3 Commissioner awards of overtime wages and penalties; the employer did not establish financial
4 inability to post the required deposit in the amount of the award. Court also upheld award of
5 attorney's fees following dismissal even though there was no trial de novo on the merits); *Capili v.*
6 *The Finish Line, Inc.* (2015) 116 F.Supp.3d 1000, affirmed in *Capili v. The Finish Line* (9th Cir.
7 2017) 699 F. App'x 620 (affirming the invalidity of The Finish Line, Inc.'s Arbitration Agreement);
8 *Tiri v. Lucky Chances, Inc.* (2014) 226 Cal. App. 4th 231 (upholding the validity of the clause in the
9 Arbitration Agreement delegating to the arbitrator questions of enforceability of the Arbitration
10 Agreement).

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

13 Dated: October 16, 2023

14 
15 Declarant

EXHIBIT A

**LAW OFFICE OF
ALLAN A. VILLANUEVA**
Allan V. Villanueva (SBN 163480)
all@allanvillanuevalaw.com
Parham Golestanian (SBN 345822)
pg@allanvillanuevalaw.com
6101 Bollinger Canyon Road, Suite 379C
San Ramon, California 94583
Telephone: (925) 365-1680
Facsimile: (650) 479-3086

Attorneys for Plaintiffs and the Class

SEYFARTH SHAW LLP
Kamran Mirrafati (SBN 233827)
kmirrafati@seyfarth.com
2029 Century Park East, Suite 3500
Los Angeles, California 90067-3021
Telephone: (310) 277-7200
Facsimile: (310) 201-5219

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,

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

Action Filed:
Trial:

April 17, 2023
N/A

**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 Defendant’s share of any applicable payroll and/or unemployment taxes, the Class Representative Incentive Payments, the portion of PAGA Payment going to the LWDA, Settlement Administration Costs, Attorneys’ Fees, and Costs. 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, 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 Net Settlement Amount. For instance, if a Class Member had 10 Work Weeks during the Class Period and there were 100 total Work Weeks for all Class Members during the Class Period, the

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

5 1.16. **"Net Settlement Amount"** means the portion of the Gross Settlement
6 Amount remaining for payments to Class Members, after deductions for approved Class
7 Representative Incentive Payments, the portion of the PAGA Payment going to the LWDA,
8 Settlement Administration Costs, Attorneys' Fees, and Costs. The entire Net Settlement Amount
9 shall be distributed to the Class Members. There shall be no reversion to Defendant.

10 1.17. **"Labor Contractor(s)"** refers to independent contractor entities and/or
11 sole proprietors who provided services to Defendant pursuant to an Independent Contractor
12 Agreement.

13 1.18. **"Notice of Settlement"** refers to the notice to be distributed to all of the
14 Class Members after the Court issues a Preliminary Approval Order. The Notice of Settlement
15 will be in both English and Spanish languages and shall be substantially in the form attached as
16 **Exhibit A** to this Agreement and accompany the Objection Form and Request for Exclusion.

17 1.19. **"Objection Form"** refers to a form that each Class Member must timely
18 complete and submit to the Settlement Administrator in order to preserve his or her right to
19 object to the Settlement. The Objection Form will be in both English and Spanish languages and
20 be sent to the Class Members along with the Notice of Settlement. Each Class Member must
21 follow the procedures set forth in the Notice of Settlement to submit a timely and valid objection.

22 1.20. **"PAGA Payment"** means the amount allocated to civil penalties for
23 claims asserted under the California Private Attorneys General Act of 2004, California Labor
24 Code Section 2968, *et seq.* ("PAGA"). The sum of \$50,000 is allocated to the PAGA Payment,
25 of which \$37,500 will be paid to the LWDA consistent with California Labor Code §§ 2699(i)
26 and (j), and the remaining \$12,500 will become part of the Net Settlement Amount. The Class
27 Member shall be entitled to a pro-rata share of the \$12,500.00 PAGA payment based on the total

number of Work Weeks worked during the PAGA Period divided by the total number of Work Weeks worked during the PAGA Period by all Class Members who do not submit a timely and valid Request for Exclusion.

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

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

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

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

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

1.26. **“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, 227.3, 233, 246, 246.5, 248.2, 248.5, 510, 512, 1174, 1182, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 2802; entering into an illegal contract or agreement under California Labor Code 2810, the California

1 Unfair Competition Law, Business and Professions Code §§ 17200 *et seq.*, and the California
2 Industrial Welfare Commission Wage Orders. The Released Class Claims as described above
3 shall include any remedies for any of the claims described herein, including, damages, penalties
4 of any nature, restitution, declaratory relief, equitable or injunctive relief, interest, attorneys' fees
5 and costs.

6 1.27. **"Released PAGA Claims"** shall mean any and all PAGA claims for civil
7 penalties that are premised upon the California Labor Code §§ 201, 202, 203, 204, 226, 226.3,
8 226.7, 227.3, 233, 246, 246.5, 248.2, 248.5, 510, 512, 1174, 1182, 1194, 1194.2, 1197, 1197.1,
9 1197.5, 1198, 2802, 2810 or claims covered by the Released Class Claims. The Released PAGA
10 Claims shall be released by Plaintiff, the LWDA, and all Aggrieved Employees, without any
11 option to submit any Request for Exclusion.

12 1.28. **"Released Parties"** refers to Defendant Home Express Delivery Service,
13 Inc. (dba Temco Logistics), and all of their current or former subsidiaries (including but not
14 limited to Home Express Delivery Service, LLC), parents, affiliates, vendors, independent
15 contractors (including but not limited to the Labor Contractors), predecessors, insurers, agents,
16 employees, successors, assigns, officers, directors, managing agents, attorneys, human resources
17 representatives, payroll representatives, executors, and shareholders, including their respective
18 pension, profit sharing, savings, health, and other employee benefits plans of any nature, the
19 successors of such plans, and those plans' respective current or former trustees and
20 administrators, agents, employees, and fiduciaries and any individual or entity that could be
21 jointly liable with Defendant for the claims asserted in this Action.

22 1.29. **"Request for Exclusion"** refers to a form that each Class Member must
23 timely complete and submit to the Settlement Administrator in order to be excluded from the
24 Settlement. The Request for Exclusion will be in both English and Spanish languages and be
25 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.”

Plaintiffs propounded Special Interrogatories and Requests for Production of Documents. Plaintiffs reviewed extensive records of ten Labor Contractors. These records include payments to workers, manifests, invoices paid by Defendant, expense reports, and tax records.

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

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

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

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 30 calendar days after the postmark date of the initial mailing of the Notice of Settlement, or 30 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 30 calendar days after the first postmark date of mailing the Notice
12 of Settlement, or 30 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.

1 **5. COMPUTATION AND DISTRIBUTION OF SETTLEMENT PROCEEDS**

2 **5.1. Funding Of Gross Settlement Amount.** Defendant shall deposit into an
3 interest bearing escrow account with the Settlement Administrator the Gross Settlement Amount,
4 within 30 calendar days after the Effective Date.

5 **5.2. Class Representative Incentive Payment.** Class Counsel intends to
6 request—and Defendant agrees not to oppose—that the Court approve a Class Representative
7 Incentive Payment of up to \$10,000 for each of the Class Representatives, for their service as
8 Class Representative, and such payments shall not be subject to payroll taxes or withholdings.
9 Any Class Representative Incentive Payment is in addition to the Class Representative's
10 Individual Settlement Payment. In exchange for the Class Representative Incentive Payment,
11 each Class Representative will release all claims that they had or could assert against Defendant,
12 and waive the protection of California Civil Code § 1542.

13 **5.2.1 Class Representative Incentive Payment Not Material.** The
14 Court's approval of a Class Representative Incentive Payment is not a material term of the
15 Settlement or this Agreement. If the Court does not approve or approves only a lesser amount
16 than that requested by Class Counsel for a Class Representative Incentive Payment, the other
17 terms of the Settlement and this Agreement shall apply. The Court's refusal to approve the Class
18 Representative Incentive Payment requested by Class Counsel does not give the Class
19 Representatives or Class Counsel any basis to abrogate the Settlement or this Agreement. Any
20 amount of a Class Representative Incentive Payment requested by Class Counsel but unapproved
21 by the Court shall be allocated to the Net Settlement Amount.

22 **5.2.2 Timing Of Class Representative Incentive Payment.** The
23 Settlement Administrator shall pay to the Class Representative any approved Class
24 Representative Incentive Payments 15 calendar days after the funding of the Gross Settlement
25 Amount. The Settlement Administrator shall issue an IRS Form 1099 to the Class
26 Representative for any Class Representative Incentive Payments. The Class Representative shall
27 be solely and legally responsible for paying all applicable taxes on any Class Representative

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

3 **5.3. Attorneys' Fees.** Class Counsel intends to request—and Defendant
4 agrees not to oppose—that the Court approve Attorneys' Fees in an amount up to 33.33% of the
5 Gross Settlement Amount (or \$333,000.00), supported by adequate documentation by Class
6 Counsel to support the amount of fees sought. Defendant shall have no liability for any other
7 attorneys' fees.

8 **5.4. Costs.** Class Counsel intends to request —and Defendant agrees not to
9 oppose—that the Court approve Costs, supported by adequate documentation to support the
10 amount of costs sought. Defendant shall have no liability for any other costs.

11 **5.4.1 Approval Of Attorneys' Fees And Costs Not Material.** The
12 Court's approval of Attorneys' Fees and/or Costs is not a material term of the Settlement or this
13 Agreement. If the Court does not approve or approves only a lesser amount than that requested
14 by Class Counsel for Attorneys' Fees and/or Costs, the other terms of the Settlement and this
15 Agreement shall still apply. The Court's refusal to approve the Attorneys' Fees and/or Costs
16 requested by Class Counsel does not give the Class Representative, the Class Members, or Class
17 Counsel any basis to abrogate the Settlement or this Agreement. Any amount of Attorneys' Fees
18 and/or Costs requested by Class Counsel but unapproved by the Court shall be allocated to the
19 Net Settlement Amount.

20 **5.4.2 Timing Of Payment Of Attorneys' Fees And Costs.** The
21 Settlement Administrator shall pay to Class Counsel any approved Attorneys' Fees and Costs
22 15 calendar days after the Funding of the Gross Settlement Amount. The Settlement
23 Administrator shall issue an Internal Revenue Service Form 1099 to Class Counsel for any
24 Attorneys' Fees and Costs payment, based on the allocation communicated by Class Counsel.
25 Class Counsel shall be solely and legally responsible for paying all applicable taxes on any
26 Attorneys' Fees and Costs payments and shall indemnify and hold harmless Defendant from any
27 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

1 Class Counsel for the PAGA Payment, the other terms of the Settlement and this Agreement
2 shall apply. The Court's reduction or increase of the PAGA Payment requested by Class
3 Counsel does not give the Class Representative or Class Counsel any basis to abrogate the
4 Settlement or this Agreement.

5 **5.7. Allocation Of Net Settlement Amount.** The Individual Settlement
6 Payment shall constitute wages, interest, meal period premium pay, expense reimbursement,
7 statutory penalties pursuant to the California Labor Code, and civil penalties pursuant to PAGA.
8 Given that the bulk of potential exposure in the Action consists of penalties, interest, and
9 expenses, 90% of each Individual Settlement Payment shall be allocated as penalties, interest,
10 and expenses. The remaining 10% of each Individual Settlement Payment shall be allocated as
11 wages and meal period premium pay. For example, if a Class Member receives an Individual
12 Settlement Payment of \$10,000, then \$9,000 shall be allocated as penalties, interest, and
13 expenses, without any payroll tax deductions. The remaining \$1,000 shall be allocated as wages
14 and meal period premium pay, subject to payroll tax deductions.

15 **5.8. Payment Of Employer's Share Of Payroll Taxes.** As provided in this
16 Agreement, 10% of the Individual Settlement Payment to each Class Member shall be allocated
17 as wages and meal period premium pay, subject to payroll tax deductions. The Class Members'
18 share of the payroll tax deductions shall be subtracted from their Individual Settlement Payment
19 by the Settlement Administrator and the amount subtracted for payroll tax deductions shall be
20 sent to the appropriate state and federal tax authorities. The employer's share of payroll tax
21 deductions shall be deducted by the Settlement Administrator from the Gross Settlement
22 Amount.

23 **5.9. Individual Settlement Payments.** Class Members who do not submit a
24 timely and valid Request for Exclusion shall be entitled to receive a portion of the Individual
25 Settlement Payment, in accordance with the formula set forth below.
26
27

Settlement Payment. Each Class Member will be eligible to receive a portion of the Individual Settlement Payment in accordance with the following formula:

5.11. Allocation Of Individual Settlement Payment For Tax Purposes. Each

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

5.12. **Allocation Of Individual Settlement Payment Not Material.** The Court's approval of the allocation of the Individual Settlement Payment for Form 1099 income and Form W-2 income is not a material term of the Settlement or this Agreement. If the Court does not approve or approves a different allocation of the Individual Settlement Payments, the

1 other terms of the Settlement and this Agreement shall apply. The Court's refusal to approve the
2 allocation for the Individual Settlement Payments requested by the Parties does not give the
3 Parties any basis to abrogate the Settlement or this Agreement.

4 **5.13. Settlement Checks.** The settlement checks shall be for the amount of
5 each Class Member's Individual Settlement Payment. This check will include language
6 indicating that endorsing and cashing the check will constitute a release of claims under the
7 California Labor Code, California Private Attorney General Act, California Unfair Competition
8 Law, and the Fair Labor Standards Act ("FLSA"), as stated in all of the claims asserted, or that
9 could have been asserted based on the facts alleged, in the Action and the LWDA letter for
10 PAGA claims. The language to be included will be substantially similar to the following:

11 My signature or cashing of this check constitutes a full and
12 complete release of Home Express Delivery Service, Inc. (dba
13 Temco Logistics), and all of its current or former subsidiary or
14 affiliated entities, vendors, independent contractors (including but
15 not limited to the employer you directly worked with while
16 performing services to Temco Logistics), and their current or
17 former officers, directors and employees for any and all claims
18 asserted or that could have been asserted based on the facts alleged
19 in the lawsuit entitled *Lopez v. Home Express Delivery Service, LLC*, pending in the Superior Court of the State of California, for
20 the County of Alameda, designated as Case No. 23CV031371,
21 including the claims brought under the California Labor Code,
22 California Private Attorney General Act, California Unfair
23 Competition Law, and the Fair Labor Standards Act, arising during
24 my employment at any time between April 17, 2019 and the date
25 of the Preliminary Approval Order of the Settlement of the lawsuit.

26 **5.13.1 Timing of Individual Settlement Payments.** The Settlement
27 Administrator shall issue the checks constituting the Individual Settlement Payments no later
28 than 15 calendar days after the funding of the Gross Settlement Amount.

29 **5.14. Non-Reversionary Settlement For Undeliverable Or Uncashed**
30 **Checks.** This Settlement shall be a non-reversionary Settlement. Any settlement checks
31 distributing Individual Settlement Payments returned to the Settlement Administrator as
32 undeliverable shall be sent within five calendar days via First Class U.S. Mail to the forwarding
33 address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall

attempt to determine the correct address using a single computer skip-trace search, and it shall then perform a re-mailing within five calendar days. The amount of any Individual Settlement Payments that remain undeliverable or uncashed 90 calendar days after the postmarked date of the initial mailing of these payments will be deposited by the Settlement Administrator into the State of California State Bar Justice Gap Fund. No part of the Net Settlement Amount shall be returned to Defendant.

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

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

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

1 similar statutes, that the Class Representatives may have against each of the Released Parties.
2 California Civil Code Section 1542 states:

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

6.3.1 **Class Representative Acknowledgments.** The Class
Representatives acknowledge that they have read this Agreement in its entirety, including the
above language from the California Civil Code § 1542, and that they fully understand this
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

1 agree to take all reasonable steps to satisfy any and all procedural requirements set forth by the
2 California Superior Court to effectuate the terms of the Settlement, including timely seeking
3 preliminary approval of the Settlement.

4 **7.2. Preliminary Approval Hearing.** The Parties shall submit to the Court a
5 Joint Motion for Preliminary Approval of Settlement. This motion shall seek an order to
6 preliminarily approve the proposed Settlement according to the terms in this Agreement and
7 provide for the Notice of Settlement, the Request for Exclusion, and Objection Form, to be sent
8 to Class Members as specified in this Agreement. This motion shall include the bases for the
9 Gross Settlement Amount and why the amount is reasonable in light of the facts and controlling
10 authorities pertaining to the claims alleged in the Action. The motion shall also be accompanied
11 by signed declarations by Class Counsel and Defendant's Counsel, discussing the risks of
12 continued litigation and the decision that the best interests of both Parties are served by the terms
13 of this Agreement.

14 **7.2.1 Effect Of Failure To Obtain Preliminary Approval.** If this
15 Settlement or Agreement or a substantially similar settlement mutually agreed to by the Parties is
16 not preliminarily approved, the Action shall proceed as if no settlement had been attempted,
17 unless the Parties jointly agree to seek reconsideration of the ruling or Court approval of a
18 renegotiated settlement. Defendant retains the right to contest whether any aspect of the Action
19 should be maintained as a class or representative action, or to contest the merits of the claims
20 being asserted by the Class Representatives or Class Members in the Action.

21 **7.3. Final Approval.** The Parties shall submit to the Court a Joint Motion for
22 Final Approval Order in advance of the final approval hearing. The motion shall request the
23 entry of a Final Approval Order and Final Judgment, which shall include findings and orders: (a)
24 approving the Settlement and the Agreement; (b) adjudging the terms to be fair, reasonable, and
25 adequate; (c) reciting the release terms in full; (d) directing that the Settlement terms and
26 provisions be carried out; and (e) retaining jurisdiction to oversee administration and
27 enforcement of the terms of this Agreement and the Court's orders.

1 **7.4. Motion For Attorneys' Fees And Costs.** Concurrently with the Joint
2 Motion for Final Approval Order, Class Counsel shall file a motion for Court approval of
3 Attorneys' Fees in an amount up to 33.33% of the Gross Settlement Amount (or \$333,000),
4 supported by adequate documentation by Class Counsel to support the amount of fees sought.
5 Class Counsel shall also file a motion for Court approval of Costs, supported by adequate
6 documentation to support the amount of costs sought. Defendant will not oppose the motion,
7 provided it is consistent with this paragraph. Defendant will not be required to support such a
8 motion.

9 **7.5. Entry Of Judgment.** At the final approval hearing, the Parties shall
10 request that the Court issue Judgment in accordance with this Agreement and without further
11 fees or costs to any party except as expressly set forth in this Agreement.

12 **7.5.1 Effect Of Failure To Obtain Final Judgment.** In the event the
13 Court fails to enter final judgment in accordance with this Agreement, or such final judgment is
14 vacated or reversed, the Action shall proceed as if no settlement had been attempted, unless the
15 Parties jointly agree to seek reconsideration or appellate review of the ruling or Court approval
16 of a renegotiated settlement. Defendant retains the right to contest whether any aspect of the
17 Action should be maintained as a class or representative action, or to contest the merits of the
18 claims being asserted by the Class Representatives or Class Members in the Action.

19 **7.6. Waiver Of Appeal Rights.** By accepting this Settlement, and upon final
20 approval of the settlement being granted, the Class Representatives and Class Counsel hereby
21 waive any and all rights they may have to appeal any judgment, ruling, or order made by the
22 Court, including, without limitation, any order granting final approval of this Settlement or
23 dismissing the Action with prejudice. This includes all rights to any post-judgment proceeding
24 and appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion for
25 new trial, a motion for relief, and any extraordinary writ, and the Judgment therefore will
26 become non-appealable at the time it is entered. The waiver of appeal does not include any
27 waiver of the right to oppose any appeal, appellate proceedings, or post-judgment proceedings.

1 If an appeal is taken from the Judgment, the time for consummation of the Settlement (including
2 making payments under the Settlement) will be suspended until such time as their appeal is
3 finally resolved and the Judgment becomes final.

4 **8. MISCELLANEOUS**

5 **8.1. No Representation By Class Counsel Of Other Plaintiffs.** Plaintiffs'
6 Counsel represents and warrants that they currently do not represent any Class Member with
7 respect to any claims other than those raised in the Action or the PGA letter to the LWDA.
8 However, this will not be construed or applied as a bar or limitation on the ability of Plaintiffs'
9 Counsel to represent a Class Member on any claim in the future that is not covered by this
10 Agreement.

11 **8.2. Class Counsel's Representation.** Class Counsel agree and represent that
12 they will not engage in any conduct to undermine the terms of the Agreement, including any
13 solicitation efforts to persuade any Class Member from opting out of or objecting to the
14 Settlement. Class Counsel further agree and represent that they do not represent any Class
15 Members other than Plaintiffs and will not actively solicit any other Class Members to pursue
16 claims that have been released in this Settlement on an individual, collective, class or
17 representative basis. Class Counsel also warrant and represent that they have access to any of the
18 Plaintiffs who will be executing this Agreement, and that they will obtain their signatures within
19 15 days after Class Counsel and Defense Counsel sign this Agreement. The Parties agree that
20 verifiable electronic signatures are sufficient. However, if the Court orders wet signatures, the
21 Parties will follow the Court's Order.

22 **8.3. Interim Stay Of Proceedings.** The Parties agree to refrain from further
23 litigation in the Action, except such proceedings necessary to implement and to obtain a
24 Preliminary Approval Order and Final Approval Order of the terms of the Agreement. If the
25 Settlement is not finally approved, the Parties agree that they will revert to their positions in the
26 lawsuits prior to the time the Settlement was reached, and no agreements set forth in this
27 Agreement will be admissible in any future proceeding in this or any other action.

1 **8.4. Certification Of Class Action And Representative Action For**
2 **Settlement Purposes Only.** The Parties agree to stipulate to class action and representative
3 action certification for purposes of the settlement only. If, for any reason, the settlement is not
4 approved, the stipulation to certification will be void, and Defendant shall have the full
5 opportunity to file any motion to challenge class certification or any motion to challenge the
6 manageability of PAGA claims. The Parties further agree that certification for purposes of the
7 settlement is not an admission that class action or representative action certification is proper
8 under the standards applied to contested certification motions and that this Agreement will not be
9 admissible in this or any other proceeding as evidence that either (i) a class or representative
10 action should be certified or (ii) Defendant is liable to Plaintiffs or any Class Member, other than
11 according to the terms of the Agreement.

12 **8.5. Parties' Authority.** The signatories hereto represent that they are fully
13 authorized to enter into this Agreement and are fully authorized to bind the Parties to all terms
14 stated herein. It is agreed that Class Members are so numerous that it is impossible or
15 impractical to have each Class Member execute this Agreement. It is agreed that this Agreement
16 may be executed on behalf of Class Members by Class Representatives and Class Counsel.

17 **8.6. Entire Agreement.** This Agreement, which includes the Definitions,
18 Recitals, and all Exhibits attached hereto, constitutes the entire agreement among the Parties with
19 regard to the subject matter contained herein, and all prior and contemporaneous negotiations
20 and understandings between the Parties shall be deemed merged into this Agreement.

21 **8.7. Arm's Length Transaction; Materiality Of Terms.** The Parties have
22 arrived at this Agreement as a result of arm's length negotiations. Except as otherwise stated in
23 this Agreement, all terms and conditions of this Agreement in the exact form set forth in this
24 Agreement are material to this Agreement and have been relied upon by the Parties in entering
25 into this Agreement.

26 **8.8. Counterparts.** This Agreement may be executed in counterparts, and
27 when each Party has signed and delivered at least one such counterpart, each counterpart shall be

1 deemed an original, and when taken together with other signed counterparts, shall constitute one
2 signed Agreement, which shall be binding upon and effective as to all Parties.

3 **8.9. Electronic Or Scanned Signatures.** Any party may sign and deliver this
4 Agreement by signing on the designated signature block and transmitting that signature page via
5 an attachment to an e-mail to counsel for the other party. Any signature made and transmitted as
6 an attachment to an e-mail for the purpose of executing this Agreement shall be deemed an
7 original signature for purposes of this Agreement and shall be binding upon the party who
8 transmits the signature page.

9 **8.10. Binding Effect.** This Agreement shall be binding upon the Parties and,
10 with respect to the Class Representatives, Class Members, their spouses, children,
11 representatives, heirs, administrators, executors, beneficiaries, conservators, attorneys, and
12 assigns.

13 **8.11. Waivers And Modifications To Be In Writing.** No waiver,
14 modification, or amendment of the terms of this Agreement, whether purportedly made before or
15 after the Court's approval of this Agreement, shall be valid or binding, unless in writing, signed
16 by or on behalf of all Parties by Plaintiffs' Counsel and Defendant's Counsel, and then only to
17 the extent set forth in such written waiver, modification, or amendment, subject to any required
18 Court approval. Any failure by any Party to insist upon the strict performance by the other Party
19 of any of the provisions of this Agreement shall not be deemed a waiver of future performance of
20 the same provisions or of any of the other provisions of this Agreement, and such Party,
21 notwithstanding such failure, shall have the right thereafter to insist upon the specific
22 performance of any and all of the provisions of this Agreement. The time periods and dates
23 provided in this Agreement with respect to giving of notices and hearings are subject to Court
24 approval and modification by the Court or by written stipulation of Class Counsel and
25 Defendant's Counsel.

26 **8.12. Construction.** The determination of the terms and conditions of this
27 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.

1 **8.18. Waiver Of Right To Object By The Class Representatives.** The Class
2 Representatives agree to sign this Agreement, and by signing this Agreement, the Class
3 Representatives are thereby bound by the terms of this Agreement. The Class Representatives
4 further agree that they shall not object to any of the terms of this Agreement.

5 **8.19. No Solicitation Of Objections.** The Parties further represent and warrant
6 that they have not and will not solicit, encourage, or assist in any fashion any effort by any entity
7 or person to object to or to seek exclusion from the Settlement set forth in this Agreement.

8 **8.20. Discovery Of Confidential Documents And Information.** Class
9 Counsel agree that they will destroy all confidential documents and information provided to
10 them by Defendant within 60 calendar days after the completion of the administration of the
11 Settlement. Class Counsel further agrees that none of the documents and information provided
12 to them by Defendant shall be used for any purpose other than prosecution of this Action or the
13 defense or prosecution of a malpractice action.

14 **8.21. No Initiated Publicity** Class Counsel shall not take any action or initiate
15 to publicize, or cause to be publicized, directly or indirectly, the discussions resulting in or the
16 existence of this settlement or its terms, in any type of mass media, including, but not limited to,
17 speeches, press conferences, press releases, interviews, television or radio broadcasts, blogs,
18 websites, newspapers, Internet posting, Facebook, Instagram, Twitter or any other social media,
19 or information furnished to legal news media, including but not limited to *Bloomberg Law*, *Law*
20 *360*, and the *Daily Journal*. Class Counsel shall not refer to Defendant by name in its public
21 marketing materials, law firm websites, or posting with any other organizations, such as the
22 California Employment Lawyers Association (“CELA”). Class Counsel further agrees and
23 warrants that if they were contacted by media outlets regarding this case, they will simply state
24 that the lawsuit exists and has been resolved. Nothing in this section shall prevent Class Counsel
25 from referencing this settlement to a court as evidence of their experience in connection with
26 motions for class certification, approval of settlements, fee motions, and the like. Further,
27

1 nothing in this section shall prevent the Settlement Administrators from posting the Class Notice
2 approved by the Court on their website for Class Members' reference.

3 **8.22. Continuing Jurisdiction.** The Court shall retain jurisdiction over the
4 implementation of this Agreement as well as any and all matters arising out of, or related to, the
5 implementation of this Agreement and Settlement. The Court shall not have jurisdiction to
6 modify the terms of the Agreement without the consent of all of the Parties.

7 **8.23. Disputes.** If the Parties have a dispute with regard to the language of this
8 Agreement, they agree to first attempt to resolve the dispute informally through good faith
9 negotiations, but if those efforts are unsuccessful, they agree to mediate any such dispute. The
10 Parties will split the costs of the mediator, and all parties will bear their own fees and costs.

11 **8.24. Governing Law.** This Settlement and Agreement was made and entered
12 into in the State of California. All terms of this Agreement shall be governed by and interpreted
13 according to the procedural and substantive laws of the State of California.

14 **8.25. Papers to Be Filed With the Court.** All papers to be filed with the Court
15 by Defendant or Class Counsel in connection with this Agreement shall be submitted to the other
16 Party at least two business days prior to filing. The other Party shall have no right to object to
17 the papers unless they do not conform to the terms and conditions of this Agreement.

18
19 **[SIGNATURES ON FOLLOWING PAGE]**
20
21
22
23
24
25
26
27
28

SO AGREED AND STIPULATED:

Dated: _____, 2023

SEYFARTH SHAW LLP

By: _____

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

Dated: _____, 2023

HOME EXPRESS DELIVERY SERVICE, INC.

By: _____

Craig Erickson

Dated: 10/14/2023, 2023

PLAINTIFF SAMUEL LOPEZ



Samuel Lopez

Dated: October 14, 2023,
2023

LAW OFFICE OF ALLAN A. VILLANUEVA

By: _____

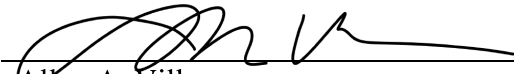

Allan A. Villanueva
Parham Golestanian
Attorneys for Plaintiffs and Class Members

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
--	--

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 _____, 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 _____. 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 379C
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.

C. 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 \$10,000.00.

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. The taxes and withholdings shall be paid from 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?

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
Costa Mesa, CA 92626*

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.

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, 227.3, 233, 246, 246.5, 248.2, 248.5, 510, 512, 1174, 1182, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 2802; 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, 227.3, 233, 246, 246.5, 248.2, 248.5, 510, 512, 1174, 1182, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 2802, 2810 or claims covered by the Released Class Claims. 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 Santa Clara, 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
------------	----------------	-----------

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

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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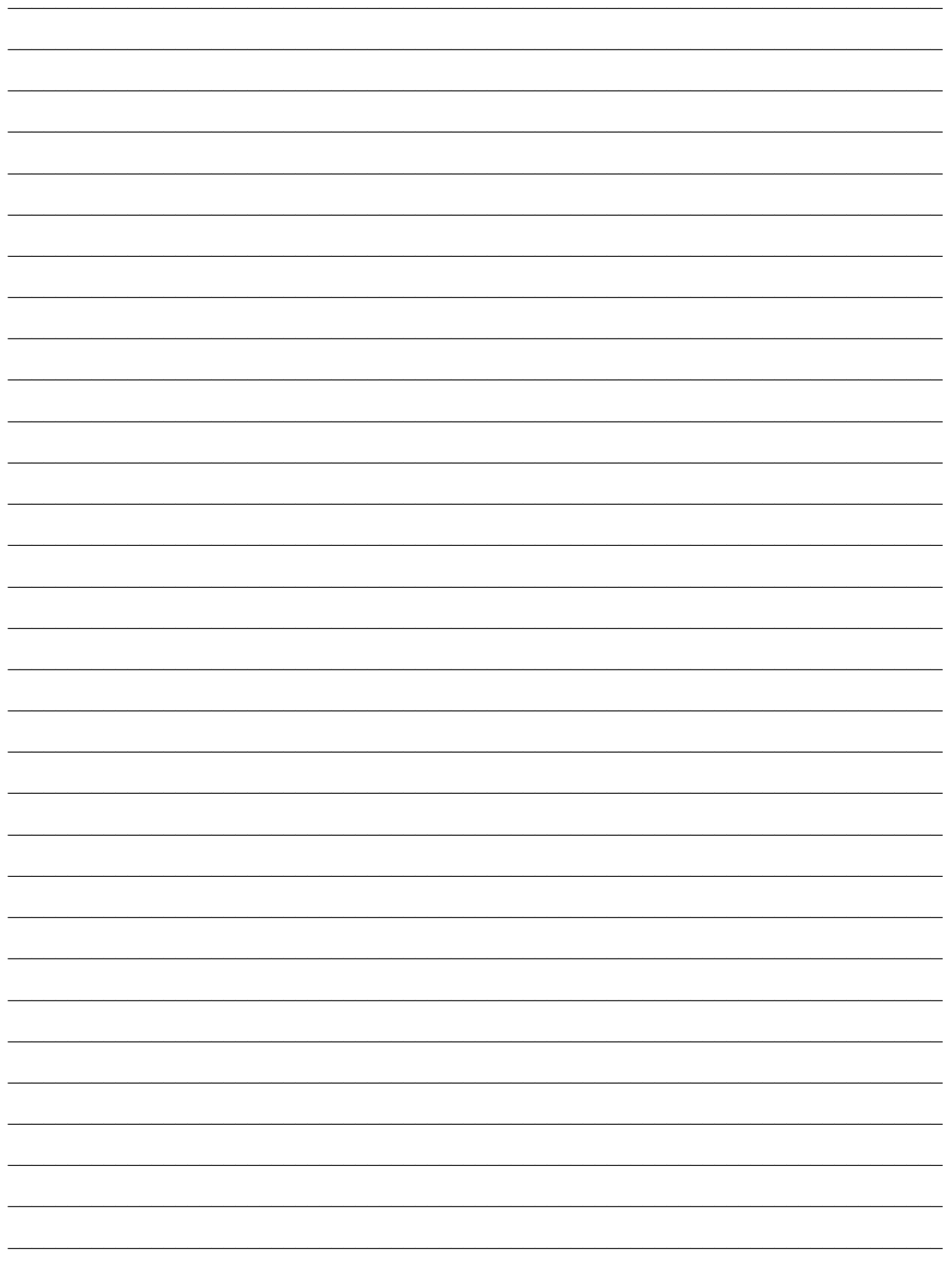


EXHIBIT B

Allan A. Villanueva, SBN 163480
Parham Golestanian, SBN
Law Office of Allan A. Villanueva
6101 Bollinger Canyon Road, Suite 379C
San Ramon, CA 94583
Telephone (925) 365-1680
Facsimile (650) 479-3086
allan@allanvillanuevalaw.com
pg@allanvillanuevalaw.com

Attorneys for PLAINTIFFS
SAUL LOPEZ and SAMUEL LOPEZ

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: October 14, 2023

/s/ Allan Villanueva

Allan A. Villanueva

Attorney for PLAINTIFFS

EXHIBIT A

TEL (925) 365-1680
FAX (650) 479-3086
ALLAN@ALLANVILLANUEVALAW.COM

LAW OFFICE OF
ALLAN A. VILLANUEVA
6101 BOLLINGER CANYON ROAD
SUITE 379C
SAN RAMON, CALIFORNIA 94583

MEMBER OF THE BARS
CALIFORNIA TEXAS HAWAII

VIA CERTIFIED MAIL

March 6, 2023

California Labor & Workforce Development Agency
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
(VIA ONLINE FILING)

Jennifer Hsiao, Esq.
Lewis Brisbois Bisgaard & Smith LLP
633 West 5th Street, Suite 4000
Los Angeles, CA 90071
Jennifer.Hsiao@lewisbrisbois.com

Craig J. Erickson, Esq.
Temco Logistics, LLC
25361 Commercentre Dr., Ste 250
Lake Forest, CA 92630-8858
craig.Erickson@temcologistics.com

***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