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12 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF ALAMEDA**

14 ALEJANDRO OLIVERA, on behalf of
15 himself and all others similarly situated;

16 Plaintiffs,

17 v.

18 C & B DELIVERY SERVICE, a California
19 Corporation doing business as TEMCO
20 WAREHOUSES & DISTRIBUTION; HOME
21 EXPRESS DELIVERY SERVICE, LLC, a
22 California Limited Liability Company doing
23 business as TEMCO LOGISTICS, and DOES
24 1 through 10, inclusive,

25 Defendants.

Case No.: RG20062287

CLASS ACTION

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

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24 DISTRIBUTION and HOME EXPRESS
25 DELIVERY SERVICE, LLC dba TEMCO
26 LOGISTICS

1 This Joint Stipulation For Class and PAGA Representative Action Settlement and Release
2 of Claims is made by and between Plaintiffs, ERIK CONTRERAS, OMAR DOMINGUEZ,
3 IVAN LANDEROS, GUILLERMO MENDEZ, and ALEJANDRO OLIVERA on their own
4 behalf and on behalf of all members of the Settlement Class, as defined below, on the one hand,
5 and Defendants C & B DELIVERY SERVICE dba TEMCO WAREHOUSES &
6 DISTRIBUTION and HOME EXPRESS DELIVERY SERVICE, LLC dba TEMCO
7 LOGISTICS (“Defendants”) on the other hand (collectively the “Parties”).

8 **I. DEFINITIONS**

9 1. **Administrative Costs.** All administrative costs of settlement, including cost of
10 notice to the Settlement Class, claims administration, and any fees and costs incurred or charged
11 by the Settlement Administrator in connection with the execution of its duties under this
12 Settlement Agreement not to exceed \$15,000.

13 2. **Agreement.** The terms “Agreement” or “Settlement Agreement” are used
14 synonymously herein to mean this Joint Stipulation for Class and PAGA Representative Action
15 Settlement and Release of Claims.

16 3. **Class Counsel.** The term “Class Counsel” as used herein shall mean: the law firm
17 of HUNTER PYLE LAW and all the lawyers of that firm, specifically including but not limited
18 to Hunter Pyle and Katherine Fiester; and the law firm of AEGIS LAW FIRM, PC and all the
19 lawyers of that firm, specifically including but not limited to Samuel Wong, Jessica Campbell,
20 and Carolyn Bell.

21 4. **Class Notice.** The term “Class Notice” shall mean the Notice of Proposed Class
22 and PAGA Representative Action Settlement, as set forth in the form of **Exhibit A** attached
23 hereto, or as otherwise approved by the Court, which is to be mailed to Settlement Class
24 Members.

25 5. **Class Representatives.** The term “Class Representatives” as used herein shall
26 mean ERIK CONTRERAS, OMAR DOMINGUEZ, IVAN LANDEROS, GUILLERMO
27 MENDEZ, and ALEJANDRO OLIVERA collectively.

1 6. **Court.** The term “Court” as used herein shall mean the Superior Court of the
2 State of California for the County of Alameda.

3 7. **Effective Date.** The term “Effective Date” shall mean the later of the following:
4 (1) the date the Final Order is signed if no objections are filed to the Settlement; (2) if objections
5 are filed and overruled, and no appeal is taken of the Final Order, sixty-five (65) days after the
6 Final Order; or (3) if an appeal or other judicial review is taken from the Court’s overruling of
7 objections to the settlement, ten (10) days after the appeal is withdrawn or after an appellate
8 decision affirming the Final Order becomes final.

9 8. **Date of Final Approval.** The terms “Date of Final Approval” or “Final
10 Approval” as used herein mean the date the final formal judgment is entered by the Court
11 following the Final Fairness and Approval Hearing in accordance with the terms herein,
12 approving this Agreement.

13 9. **Defendants.** The term “Defendants” as used herein shall mean C & B Delivery
14 Service DBA Temco Warehouses & Distribution and Home Express Delivery Service, LLC DBA
15 Temco Logistics.

16 10. **Employer Payroll Taxes.** The term “Employer Payroll Taxes” shall mean any
17 taxes owed by Defendants under this agreement, including but not limited to employer-related
18 tax obligations on the wage portion of the Settlement Payment.

19 11. **Litigation.** The term “Litigation” as used herein shall mean the action, including
20 but not limited to, the complaint and the first amended complaint filed by Plaintiff Alejandro
21 Olivera on May 26, 2020 and August 25, 2020, respectively, in Alameda County Superior Court,
22 Case No. RG20062287 (the “Olivera Action”), and the complaint and first amended complaint
23 filed by Plaintiffs Guillermo Mendez, Erik Contreras, Omar Dominguez, and Ivan Landeros on
24 August 19, 2020 and August 26, 2020, respectively, in the Los Angeles Superior Court, Case No.
25 20STCV31975 (the “Mendez Action”), collectively.

26 12. **Net Settlement Amount.** The term “Net Settlement Amount” as used herein shall
27 mean the Gross Settlement Amount minus any award of attorneys’ fees and Litigation costs,
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1 Administrative Costs, service payments to the Class Representatives, and the PAGA Settlement
2 as provided for herein.

3 13. **Net Settlement Payment(s).** The term “Net Settlement Payment(s)” shall mean
4 each Participating Class Member’s respective share of the Net Settlement Amount. Net
5 Settlement Payments will be determined by the calculations provide for in this Agreement.

6 14. **Opt-Out Request.** The term “Opt-Out Request” shall mean a timely and valid
7 request for exclusion from the Settlement Class in accordance with the terms of the Class Notice
8 or as otherwise approved by the Court.

9 15. **PAGA:** The term “PAGA” shall mean the Private Attorneys General Act of 2004,
10 Labor Code § 2698, *et seq.*

11 16. **PAGA Employees.** The term “PAGA Employees” shall mean Settlement Class
12 Members whom Defendants employed as drivers and/or helpers at any time between June 27,
13 2020 and December 4, 2020 (singularly referred to as “PAGA Employee”).

14 17. **PAGA Settlement Period.** The term “PAGA Settlement Period” shall mean at
15 any time between June 27, 2020 and December 4, 2020.

16 18. **PAGA Settlement.** The term “PAGA Settlement” shall mean penalties paid
17 pursuant to California’s Private Attorneys General Act (“PAGA”) that amount to fifty thousand
18 dollars (\$50,000) under this Agreement.

19 19. **Participating Class Members.** The term “Participating Class Members” shall
20 mean Settlement Class Members who do not opt out of the Settlement Class.

21 20. **Released Claims.** The term “Released Claims” shall mean the Release of Claims
22 by Participating Class Members and Release of Claims by Class Representatives as described in
23 Paragraphs 41-42 herein.

24 21. **Settlement Administrator.** The term “Settlement Administrator” as used herein
25 shall mean Phoenix, which will be responsible for the administration of the Settlement Payment,
26 as defined below, and all related matters.

27 22. **Gross Settlement Amount.** The term “Gross Settlement Amount” as used herein
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1 shall mean a fund in the sum of one million and sixty-eight thousand, five hundred dollars and
2 zero cents (\$1,068,500), which shall be paid by Defendants and which shall represent full
3 payment for the Released Claims, and from which all: Net Settlement Payments, Court approved
4 attorneys' fees and Litigation costs, Administrative Costs, service payments to Class
5 Representatives, and the PAGA Settlement shall be paid, except as provided herein.

6 23. **Settlement Class.** For settlement purposes only, the Parties agree to the
7 certification of a class pursuant to California *Code of Civil Procedure* § 382 defined as:

8 Current and former drivers and helpers who were employed by Defendants
9 working out of Defendants' Pomona warehouse from May 25, 2020 through
10 December 4, 2020, or any of Defendants' other warehouses throughout
11 California at any time between May 26, 2016 through December 4, 2020.

12 24. **Settlement Class Member(s)** shall mean the individuals that make up the
13 Settlement Class.

14 25. **Settlement Period.** The term "Settlement Period" as used herein shall mean the
15 period from May 26, 2016, continuing through and including December 4, 2020.

16 **II. BACKGROUND**

17 26. On May 26, 2020, Plaintiff Alejandro Olivera filed a complaint in the Olivera
18 Action against Defendants in Alameda County Superior Court, Case No. RG20062287. The
19 complaint in the Olivera Action alleged the following claims: (1) failure to pay minimum wages
20 (Labor Code §§ 226.2, 1182.11-1182.13, 1194, 1194.2, 1197 & 1198; Wage Order No. 9); (2)
21 failure to pay overtime wages (Labor Code §§ 510 & 1194; Wage Order No. 9); (3) failure to
22 provide meal periods (Labor Code §§ 226.7 & 512; Wage Order No. 9); (4) failure to authorize
23 and permit rest periods (Labor Code §§ 226.2 & 226.7; Wage Order No. 9); (5) failure to furnish
24 adequate wage statements (Labor Code §§ 226, 226.2 & 226.3; Wage Order No. 9); (6) failure to
25 pay all wages due upon separation of employment (Labor Code §§ 201, 202, & 203); and (7)
26 unfair business practices (Business & Professions Code §§ 17200 *et seq.*). On August 25, 2020,
27 Plaintiff Olivera filed a First Amended Complaint, which added a claim for civil penalties under
28

1 PAGA.

2 27. On August 19, 2020, Plaintiffs Guillermo Mendez, Erik Contreras, Omar
3 Dominguez, and Ivan Landeros filed complaint in the Mendez Action against Defendants in Los
4 Angeles Superior Court, Case No. 20STCV31975. The complaint in the Mendez Action alleged
5 the following claims: (1) failure to pay minimum wages (Labor Code §§ 1182.12, 1194, 1194.2,
6 & 1197; IWC Wage Order); (2) failure to pay overtime wages (Labor Code §§ 510, 1194, &
7 1198; IWC Wage Order); (3) failure to provide meal periods (Labor Code §§ 226.7 & 512; IWC
8 Wage Order); (4) failure to permit rest breaks (Labor Code § 226.7; IWC Wage Order); (5) failure
9 to pay all wages to piece-rate workers for rest breaks (Labor Code § 226.2; IWC Wage Order);
10 (6) failure to reimburse business expenses (Labor Code §§ 2800, 2802); (7) failure to provide
11 accurate itemized wage statements (Labor Code § 226); (8) failure to pay all wages due upon
12 separation of employment (Labor Code §§ 201, 202, & 203; IWC Wage Order); and (9) violation
13 of Business and Professions Code §§ 17200, *et seq.* On August 19, 2020, Plaintiffs Guillermo
14 Mendez, Erik Contreras, Omar Dominguez, and Ivan Landeros filed a first amended complaint
15 in the Mendez Action, which named additional corporate defendants.

16 28. **Investigation and Discovery.** Class Counsel have conducted a thorough
17 investigation of the facts in the Litigation and have diligently pursued an investigation of
18 Settlement Class Members' claims against Defendants. Plaintiffs and Defendants have engaged
19 in substantial investigation in connection with the Litigation, including informal exchange of a
20 large volume of information, regarding the claims asserted in the Litigation, the defenses
21 available to Defendants, and other relevant issues.

22 29. Defendants have produced, and Class Counsel have reviewed and analyzed,
23 relevant wage and hour policies, relevant meal period and rest break policies, payroll information
24 for the Settlement Class Members, time records for the Settlement Class Members, and other
25 documents related to Settlement Class Members' employment with Defendants.

26 30. Class counsel retained a damages expert to conduct a damages analysis for the
27 Settlement Class.

1 31. Defendants represent that they have reviewed the pay records for the PAGA
2 Employees. As a result of that review, Defendants represent that between June 27, 2020 and
3 December 4, 2020 PAGA Employees worked a total of 356 pay periods.

4 32. **Mediation.** On November 4, 2020, the Parties held an all-day mediation with
5 mediator Michael Loeb. The Parties did not resolve the matter at mediation, but continued to
6 engage in negotiations with the assistance of Mr. Loeb. The Parties ultimately agreed to resolve
7 the matter by accepting a mediator’s proposal. The terms of the Parties’ agreement were outlined
8 in a “Memorandum of Understanding.”

9 33. **No Admission of Liability.** Defendants deny any liability or wrongdoing of any
10 kind associated with the claims alleged in the Litigation. Defendants contend that they have
11 complied at all times with the California Business & Professions Code, California Labor Code
12 and applicable wage orders, as well as any and all other state and federal wage and hour laws,
13 and that the claims alleged in the Litigation are not suitable for class treatment, except in the
14 context of a negotiated settlement. Nevertheless, Defendants have entered into this Settlement to
15 avoid the cost, risk and inconvenience of further litigation. Nothing contained in this Settlement,
16 nor the fact of this Settlement itself, shall be construed or deemed as an admission of liability, or
17 wrongdoing on the part of any of the Defendants, collectively or individually. Pursuant to
18 California Evidence Code sections 1152 and 1154, this Settlement shall be inadmissible in
19 evidence in any proceeding; except that the Settlement may be filed and used in this Litigation or
20 any related litigation as necessary to approve, interpret, or enforce this Settlement, or in any
21 subsequent action against or by Defendants to support a stay of such subsequent action, or to
22 establish a defense of *res judicata*, collateral estoppel, release, good faith settlement, judgment
23 bar, or reduction, or any other theory of claim preclusion or issue preclusion or similar defense
24 or counterclaim.

25 34. **Fair, Reasonable, and Adequate Settlement.** Class Counsel are of the opinion
26 that the Settlement on the terms set forth in this Agreement is fair, reasonable, and adequate and
27 is in the best interest of the Class in light of all known facts and circumstances, the risk of
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1 significant delay, defenses asserted by Defendants, unresolved legal issues that could have a
2 material impact on the outcome of the Litigation, and numerous potential appellate issues. The
3 Parties recognize that the issues presented in the Litigation are likely only to be resolved after
4 extensive and costly pretrial proceedings, including a dispute as to whether any of the claims
5 asserted can be certified as a class action, and that further litigation will cause inconvenience,
6 distraction, disruption, delay and expense disproportionate to the potential benefits of continued
7 litigation. The Parties agree that they have taken into account the risk and uncertainty of the
8 outcome inherent in any complex litigation of this nature.

9 35. This Agreement is intended to and does effectuate the full, final and complete
10 Agreement of all allegations and claims that were asserted, or could have been asserted based on
11 the facts and theories alleged, in the Litigation.

12 **III. JURISDICTION**

13 36. The Court has jurisdiction over the Parties and the subject matter of this Litigation.
14 The Litigation includes claims that, while Defendants deny them in their entirety, would, if
15 proven, authorize the Court to grant relief pursuant to the applicable statutes. After the Court has
16 granted Final Approval of the Agreement and after the Court has ordered the entry of Judgment,
17 pursuant to California Code of Civil Procedure Section 664.6 and California Rules of Court, Rule
18 3.769(h), the Court shall retain jurisdiction of this action solely for the purpose of interpreting,
19 implementing, and enforcing this Agreement consistent with the terms set forth herein.

20 **IV. STIPULATION OF CLASS CERTIFICATION**

21 37. The Parties stipulate to the certification of the Settlement Class for purposes of
22 this Settlement Agreement only. This Stipulation is contingent upon the Preliminary and Final
23 Approval and certification of the Settlement Class only for purposes of this Settlement
24 Agreement. Should the Settlement Agreement not become final, for whatever reason, the fact
25 that the Parties were willing to stipulate provisionally to class certification as part of the
26 Settlement Agreement shall have no bearing on, and shall not be admissible in connection with,
27 the issue of whether a class should be certified in a non-settlement context in the Litigation.

1 **V. MOTION FOR PRELIMINARY APPROVAL**

2 38. For purposes of implementing this Agreement, the Parties shall request that the
3 Court enter a Preliminary Approval Order, preliminarily approving the proposed settlement,
4 certifying the Class for settlement purposes only, approving notice, and setting a date for the Final
5 Settlement Hearing. The requested Preliminary Approval Order shall provide for notice of the
6 Settlement to be sent to Class Members as specified herein.

7 39. The date that the Court grants Preliminary Approval of this Agreement will be the
8 “Preliminary Approval Date.” Class Counsel shall submit this Agreement to the Labor &
9 Workforce Development Agency (“LWDA”) in compliance with PAGA prior to the filing of
10 Plaintiffs’ Motion for Preliminary Approval. Defendants shall not oppose Class Counsel’s motion
11 for preliminary approval of the Settlement, provided such motion and supporting papers are
12 consistent with the terms of this Agreement.

13 40. Within ten Court days of the Court granting Preliminary Approval, Plaintiffs will
14 file an amended complaint in the Litigation adding the named plaintiffs from the *Mendez* Action
15 and the claims brought on behalf of drivers and helpers in that case to the extent not already
16 encompassed by the Litigation. Plaintiffs in the *Mendez* Action will take appropriate steps to
17 dismiss the *Mendez* Action without prejudice within 10 business days of the Date of Final
18 Approval.

19 **VI. WAIVER, RELEASE, AND DISMISSAL**

20 41. **Release as to All Participating Class Members.** Upon the occurrence of the
21 Effective Date, and Defendants fully funding the Gross Settlement Amount, Class
22 Representatives and all Participating Class Members on behalf of themselves and each of their
23 heirs, representatives, successors, and assigns, shall fully, finally, irrevocably, unconditionally,
24 and forever release, and discharge Defendants from the Released Claims including all claims,
25 actions, causes of action, administrative claims, demands, debts, damages, penalties, costs,
26 interest, attorneys’ fees, obligations, judgments, expenses, or liabilities, in law or in equity,
27 contingent or absolute, based on the facts and theories alleged in the Litigation during the Class
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1 Period. The Released Claims include, (1) failure to pay minimum wages (Labor Code §§ 226.2,
2 1182.11-1182.13, 1194, 1194.2, 1197 & 1198; Wage Order No. 9); (2) failure to pay overtime
3 wages (Labor Code §§ 510 & 1194; Wage Order No. 9); (3) failure to provide meal periods
4 (Labor Code §§ 226.7 & 512; Wage Order No. 9); (4) failure to authorize and permit rest periods
5 (Labor Code §§ 226.2 & 226.7; Wage Order No. 9); (5) failure to furnish adequate wage
6 statements (Labor Code §§ 226, 226.2 & 226.3; Wage Order No. 9); (6) failure to pay all wages
7 due upon separation of employment (Labor Code §§ 201, 202, & 203); (7) failure to pay all wages
8 to piece-rate workers for rest breaks (Labor Code § 226.2; IWC Wage Order); (8) failure to
9 reimburse business expenses (Labor Code §§ 2800, 2802); (9) unfair business practices (Business
10 & Professions Code §§ 17200 *et seq.*); and (10) claims asserted under the PAGA, based on the
11 preceding claims.

12 **42. General Release by Class Representatives Only.** Upon the Effective Date and
13 Defendants fully funding the Gross Settlement Amount, the Class Representatives, on behalf of
14 themselves and each of their heirs, representatives, successors, and assigns, shall fully, finally,
15 irrevocably, unconditionally, and forever release, and discharge Defendants from any and all
16 claims, actions, causes of action, administrative claims, demands, debts, damages, penalties,
17 costs, interest, attorneys' fees, obligations, judgments, expenses, or liabilities, in law or in equity,
18 whether now known or unknown, contingent or absolute, against Defendants arising out of or in
19 any way connected with the work that each performed for Defendants including claims that were
20 asserted or could have been asserted in the Litigation, and any and all transactions, occurrences,
21 or matters between the parties occurring during the Class Period. Without limiting the generality
22 of the foregoing, this release shall include, but not be limited to, any and all claims under the (a)
23 Americans with Disabilities Act, as amended; (b) Title VII of the Civil Rights Act of 1964, as
24 amended; (c) the Civil Rights Act of 1991; (d) 42 U.S.C. § 1981, as amended; (e) age
25 discrimination claims under the Age Discrimination in Employment Act and the Older Workers
26 Benefit Protection Act; (f) the Fair Labor Standards Act, as amended; (g) the Equal Pay Act; (h)
27 the Employee Retirement Income Security Act, as amended; (i) the Consolidated Omnibus
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1 Budget Reconciliation Act; (j) the Rehabilitation Act of 1973; (k) the Family and Medical Leave
2 Act; (l) the Civil Rights Act of 1966; and (m) any and all other federal, state and local statutes,
3 ordinances, regulations, rules and other laws, and any and all claims based on constitutional,
4 statutory, common law or regulatory grounds as well as any other claims based on theories of
5 wrongful or constructive discharge, breach of contract or implied contract, fraud,
6 misrepresentation, promissory estoppel or intentional and/or negligent infliction of emotional
7 distress, or damages under any other federal, state or local statutes, ordinances, regulations, rules
8 or laws. This release is for any and all relief, no matter how denominated, including, but not
9 limited to, back pay, front pay, vacation pay, bonuses, compensatory damages, tortious damages,
10 liquidated damages, punitive damages, damages for pain and suffering, and attorney fees and
11 costs. The Class Representatives specifically acknowledge that each is aware of and familiar
12 with the provisions of California Civil Code § 1542, which provides as follows::

13 *“A general release does not extend to claims that the creditor or*
14 *releasing party does not know or suspect to exist in his or her favor at*
15 *the time of executing the release and that, if known by him or her,*
16 *would have materially affected his or her settlement with the debtor or*
17 *released party.”*

18 Plaintiffs’ general release provided herein is made with an express waiver and relinquishment of
19 any claim, right, or benefit under California Civil Code § 1542. The Class Representatives, being
20 aware of this section, hereby expressly waive and relinquish all rights and benefits they may have
21 under this section as well as any other statutes or common law principles of a similar effect. The
22 Class Representatives may hereafter discover facts in addition to or different from those which
23 are now known or believed to be true, but stipulate and agree that, upon the Effective Date and
24 Defendants fully funding the Gross Settlement Amount, they shall and hereby fully, finally and
25 forever settle and release any and all claims against Defendants, known or unknown, suspected
26 or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed, upon
27 any theory of law or equity and without regard to the subsequent discovery or existence of such
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1 different or additional facts.

2 **VII. SETTLEMENT ADMINISTRATOR**

3 43. Class Representatives and Defendants, through their respective counsel, have
4 selected Phoenix as the Settlement Administrator to administer the Agreement, which includes
5 but is not limited to distributing and responding to inquiries about the Notice of Proposed Class
6 Action Agreement, maintaining a website for providing information about the Settlement to Class
7 Members, determining the validity of any opt-outs, calculating all amounts to be paid from the
8 Gross Settlement Amount, and establishing and administering a qualified settlement fund.
9 Charges and expenses of the Settlement Administrator will be paid from the Gross Settlement
10 Amount. If the actual Administrative Costs are less than \$15,000, the difference between the
11 actual and estimated Administrative Costs will revert to the Net Settlement Amount to be
12 distributed among the Participating Class Members.

13 **VIII. NOTICE, OBJECTIONS AND EXCLUSION RIGHTS**

14 44. Within fourteen (14) calendar days after the Court’s Preliminary Approval order,
15 Defendants will provide to the Settlement Administrator the following information about each
16 Settlement Class Member and PAGA Employee (“Class List”): (1) name; (2) last known home
17 address; (3) number of workweeks during the Settlement Period; (4) number of pay periods
18 worked during the PAGA Settlement Period; (5) dates of employment, and (6) social security
19 number. Defendants further agree to consult with the Settlement Administrator prior to the
20 production date to ensure that the format will be acceptable to the Settlement Administrator.

21 45. **Class Notices.** The Settlement Administrator shall mail a Class Notice to all
22 Settlement Class Members within ten (10) calendar days of receiving the Class List from
23 Defendants. Each Class Notice will provide: (1) information regarding the nature of the
24 Litigation; (2) a summary of the Settlement’s principal terms; (3) the Settlement Class definition;
25 (4) the PAGA Employee definition (5) the total number of Workweeks each respective Settlement
26 Class Member worked for Defendants during the Settlement Class Period; (6) the total number
27 of pay periods PAGA Employee at any time during the PAGA Settlement Period; (7) each

1 Settlement Class Member's estimated Net Settlement Payment and the formula for calculating
2 Net Settlement Payments; (8) the dates which comprise the Settlement Class Period; (9) each
3 PAGA Employee's Individual PAGA Payment and the formula for calculating Individual PAGA
4 Payments; (10) the dates which comprise the PAGA Settlement Period; (11) instructions on how
5 to submit Requests for Exclusion or Notices of Objection; (12) the deadlines by which the
6 Settlement Class Member must postmark Request for Exclusions or Notices of Objection to the
7 Settlement ("Response Deadline"); and (13) how to seek correction of the computation of
8 Settlement Class Members' share of the Net Settlement Amount and PAGA Settlement.

9 46. **Confirmation of Contact Information in the Class List.** Prior to mailing the
10 Notices, the Settlement Administrator shall run the addresses of Settlement Class Members,
11 provided by Defendants, through the United States Postal Service NCOA database (which
12 provides updated addresses for any individual who has moved in the previous four years who has
13 notified the U.S. Postal Service of a forwarding address) to obtain current address information,
14 and shall mail the Class Notice to the members of the Settlement Class via first-class regular U.S.
15 Mail using the most current mailing address information available.

16 47. **Returned Notices.** Any Class Notices returned to the Settlement Administrator
17 as non-deliverable on or before the Response Deadline will be sent promptly via regular First-
18 Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will
19 indicate the date of such re-mailing on the Class Notice. If no forwarding address is provided, the
20 Settlement Administrator will promptly attempt to determine the correct address using a skip-
21 trace, or other search using the name, address and/or Social Security number of the Class Member
22 involved, and will then perform a single re-mailing.

23 48. **Disputes of Dates of Employment.** Settlement Class Members shall have 60 days
24 after the mailing of the Notice in which to dispute their dates of employment by submitting a
25 written, signed dispute along with supporting documents to the address provided on the Notice.
26 Class Counsel, after consulting with defense counsel, will make a recommendation as to a
27 resolution of the challenge. In the event that the Parties are unable to agree on a resolution, the
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1 matter will be submitted to the Court for a final determination.

2 49. **Objections.** In order for any Settlement Class Member to object to this
3 Agreement, or any term of it, the person making the objection must not submit a request for
4 exclusion (i.e., must not opt out). A Settlement Class Member making an objection, personally
5 or through an attorney, must submit his or her objection to the Settlement Administrator by mail
6 postmarked no later than sixty (60) days after the Notice of Proposed Class Action Agreement
7 was initially mailed to the Settlement Class Members. The objection should include a written
8 statement of the grounds for the objection, signed by the objecting Class Member or his or her
9 attorney, along with all supporting papers. The Settlement Administrator shall send any
10 objections it received to Defense Counsel and Class Counsel within three (3) business days of
11 receipt. Settlement Class Members may also appear personally or through an attorney, at their
12 own expense, at the Final Approval hearing to present his or her objection directly to the Court.
13 If a Settlement Class Member objects to the Agreement, and does not submit a valid Request to
14 be Excluded, the Settlement Class Member will remain a Settlement Class Member and if the
15 Court approves this Agreement, the Settlement Class Member will be bound by the terms of the
16 Agreement and Final Approval in the same way and to the same extent as a Settlement Class
17 Member who does not object. The date of mailing of the Notice to the objecting Settlement Class
18 Member shall be conclusively determined according to the records of the Settlement
19 Administrator. The Court retains final authority with respect to the consideration and
20 admissibility of any Settlement Class Member objections. Any Settlement Class Member who
21 submits an objection may also participate in the settlement. The Parties shall not be responsible
22 for any fees, costs, or expenses incurred by any Settlement Class Member and/or his or her
23 counsel related to any objections and/or appeals arising therefrom.

24 50. Class Representatives waive any right to object to the Agreement, and hereby
25 endorse the Agreement as fair, reasonable and adequate and in the best interests of the Settlement
26 Class.

27 51. **Opportunity to be Excluded.** In order for any Settlement Class Member to
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1 validly exclude themselves from the Settlement Class and the Agreement (i.e., to validly opt out),
2 a written request for exclusion ("Request to be Excluded") must be signed by the Settlement Class
3 Member or his or her authorized representative and must be sent to the Settlement Administrator,
4 postmarked by no later than sixty (60) days after the date the Settlement Administrator initially
5 mails the Notice to the Settlement Class Members. The Notice shall contain instructions on how
6 to opt out. The date of the initial mailing of the Notice, and the date the signed Request to be
7 Excluded was postmarked, shall be conclusively determined according to the records of the
8 Settlement Administrator. Any Settlement Class Member who timely and validly submits a
9 Request to be Excluded from the Settlement Class and the Agreement will not be entitled to any
10 portion of the Net Settlement Payments, will not be bound by the terms and conditions of the
11 Agreement, and will not have any right to object, appeal, or comment thereon, except as provided
12 below in Paragraph 55 regarding the PAGA Settlement.

13 52. **Effect of Opt-Out.** Class Members who validly and timely submit a Request to
14 be Excluded will not be entitled to any recovery under the Settlement for the portion of the
15 Settlement allocated to the Class as described in Paragraph 55, will not be bound by the
16 Settlement, and will not have any right to object, appeal, or comment thereon. PAGA Employees
17 who validly and timely opt out of the Settlement, will not be excluded from the PAGA Settlement.
18 They are still entitled to receive their share of the PAGA Settlement as set forth in the Settlement
19 in Paragraph 55 and will still be bound by the PAGA portion of the Settlement.

20 53. **Settlement Terms Bind All Class Members Who Do Not Opt Out.** Any
21 Settlement Class Member who does not timely file and mail a Request to be Excluded from the
22 Settlement Class will be deemed included in the Settlement Class in accordance with this
23 Agreement. Class Representatives waive any right to be excluded from the Settlement Class.

24 **IX. SETTLEMENT AMOUNT AND COMPUTATION AND DISTRIBUTION OF**
25 **PAYMENTS**

26 54. **Funding of Agreement.** On or before the earlier of September 1, 2021, or within
27 14 calendar days after the Date of Final Approval, Defendants will deposit one hundred thousand
28

1 dollars (\$100,000) into an interest-bearing trust account created by the Settlement Administrator
2 for the benefit of the Participating Class Members.

3 a. Defendants shall then deposit four hundred eighty four thousand two hundred
4 fifty dollars (\$484,250) into the interest-bearing trust account on or before
5 January 1, 2022.

6 b. Defendants shall then deposit an additional four hundred eighty four thousand
7 two hundred fifty dollars (\$484,250) into the interest-bearing trust account on
8 or before June 1, 2022.

9 55. **Distribution Formula.** The Settlement Administrator will determine the
10 payment for each Participating Class Member and/or PAGA Employee according to the following
11 formulas:

12 a. **Payment to Participating Class Members.** The Net Settlement Amount
13 shall be divided among all Participating Class Members. Each Participating
14 Class Member shall receive a proportionate share that is equal to (i) the
15 number of workweeks they worked during the time period from May 26,
16 2016, through December 4, 2020, or for Participating Class Members that
17 worked in the Pomona Warehouse, the number of workweeks they worked
18 during the time period from May 25, 2020 through December 4,
19 2020, divided by (ii) the total number of workweeks worked by Participating
20 Class Members that worked in the Pomona Warehouse from May 25, 2020
21 through December 4, 2020 and the workweeks of all other Participating
22 Class Members during the time period from May 26, 2016, through
23 December 4, 2020.

24 b. **PAGA Settlement.** From the \$50,000 allocated to PAGA penalties, one-
25 quarter (25%) (\$12,500) shall be distributed to the PAGA Employees, which
26 shall consist of all Settlement Class Members who were employed at any
27 time during the time period from June 27, 2020 through December 4, 2020.

1 Each PAGA Employee will receive a proportionate share of money allocated
2 to the PAGA Employees that is equal to (i) the number of pay periods they
3 worked during the time period from June 27, 2020 through December 4,
4 2020 divided by (ii) the total number of pay periods worked by all PAGA
5 Employees during the time period from June 27, 2020 through December 4,
6 2020. (“Individual PAGA Payment”). The remaining three-quarters (75%)
7 (\$37,500) of the PAGA Settlement shall be distributed to the LWDA.

8 **56. Time for Distribution.** The Settlement Administrator shall cause the Net
9 Settlement Payments, Court approved service payments to the Class Representatives, Court
10 approved attorney’s fees and Litigation costs, Administrative Costs, and PAGA Settlement
11 payments to be mailed no later than fifteen (15) calendar days following the date on which the
12 settlement is fully funded in accordance with Paragraph 54. If a check is returned to the Settlement
13 Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a
14 valid mailing address by performing a skip trace search and, if another address is identified, shall
15 mail the check to the newly identified address.

16 **57. Cy Pres Charity.** This is a “non-reversionary” settlement. Under no
17 circumstances will any of the settlement revert to Defendants. Participating Class Members will
18 not have to make a claim in order to receive a distribution. Distributions, in the form of Net
19 Settlement Payments, will be made directly to each Participating Class Member. Participating
20 Class Members shall have 180 days from the date checks are mailed by the Settlement
21 Administrator to cash the checks representing their Net Settlement Payments. At the conclusion
22 of the 180 day check cashing period, if any Net Settlement Payment checks remain uncashed or
23 an envelope mailed to a Participating Class Member is returned and no forwarding address can
24 be located for that individual after reasonable efforts have been made, then the total amount of
25 such Net Settlement Payment checks shall be donated to Legal Aid at Work.

26 **X. CLASS COUNSEL ATTORNEYS’ FEES AND LITIGATION COSTS**

27 58. Defendants agree not to oppose an application by Plaintiffs to the Court for Class
28

1 Counsel's fees in the amount of up to one-third (33.33%) of the Gross Settlement Amount, plus
2 attorneys' costs and expenses not to exceed reasonable actual costs incurred by Class Counsel,
3 upon proof provided to the Court.

4 59. Should the Court approve a lesser amount of Class Counsel attorneys' fees and
5 Litigation costs than what is sought by Class Counsel, the difference shall be added back to the
6 Net Settlement Amount to be distributed to the Participating Class Members. Any Court order
7 awarding less than the amount sought by Class Counsel shall not be grounds to rescind the
8 Settlement Agreement or otherwise void the Settlement.

9 60. The Settlement Administrator shall issue to Class Counsel an IRS Form 1099 for
10 Class Counsel's attorneys' fees and costs.

11 61. The "future" aspect of these amounts include, without limitation, all time and
12 expenses expended by Class Counsel in defending the Agreement and securing Final Approval
13 (including any appeals therein). There will be no additional charge of any kind to the members
14 of the Settlement Class for such work. This amount shall include all attorneys' fees, Litigation
15 costs and expenses for which Class Representatives and Class Counsel could claim under any
16 legal theory whatsoever. No later than fifteen (15) calendar days following the date on which the
17 settlement is fully funded in accordance with Paragraph 54, the Settlement Administrator shall
18 disburse payment from the Gross Settlement Amount for the amount of attorneys' fees and
19 Litigation costs approved by the Court to Class Counsel. Should the Court approve a lesser
20 percentage or amount of fees and/or Litigation costs than the amount that Class Counsel
21 ultimately seeks, then the unapproved portion or portions shall revert into the Net Settlement
22 Amount to be distributed between the Participating Class Members on a pro-rata basis.

23 **XI. SERVICE PAYMENTS TO CLASS REPRESENTATIVES**

24 62. Defendants shall not oppose an application by each Named Plaintiff to seek or
25 receive up to Seven Thousand Five Hundred Dollars and No Cents (\$7,500.00) for their
26 participation in and assistance with the Litigation, and in exchange for their General Release.
27 Any service payments awarded to Class Representatives by the Court shall be deducted from the
28

1 Gross Settlement Amount for the purpose of determining the Net Settlement Amount, and shall
2 be reported on IRS Form 1099. If the Court approves service payments of less than \$7,500 to
3 Class Representatives then the unapproved portion or portions shall revert into the Net Settlement
4 Amount to be distributed between the participating Settlement Class Members on a pro-rata basis.

5 **XII. TAXATION AND ALLOCATION**

6 63. The Parties agree that all employment taxes and other legally required
7 withholdings will be withheld from payments to the Participating Class Members and Class
8 Representatives based on the Parties stipulated allocation of the Net Settlement Amount as
9 provided for in this Paragraph.

10 64. Defendants' share of Employer Payroll Taxes will be paid by Defendants separate
11 from and in addition to the Gross Settlement Amount.

12 65. For withholding tax characterization purposes and payment of taxes, the Net
13 Settlement Payments shall be deemed and are allocated by the Parties as follows:

- 14 (i) 70% as penalties;
- 15 (ii) 10% as interest; and
- 16 (ii) 20% as wages.

17 66. For withholding tax characterization purposes and payment of taxes, the PAGA
18 Settlement shall be deemed and are allocated by the Parties as follows:

- 19 (i) 100% as penalties.

20 67. W-2 Forms shall be issued for the wage portion of the Settlement payment and
21 1099 Forms shall be issued for the penalties and interest payments.

22 **PRIVATE ATTORNEYS GENERAL ACT ALLOCATION**

23 68. In order to implement the terms of this Agreement and to settle claims alleged
24 under PAGA, the Parties agree to allocate Fifty Thousand Dollars and Zero Cents (\$50,000.00)
25 of the penalties portion of the Gross Settlement Amount to the LWDA as part of the PAGA
26 Settlement. Defendants, through the Settlement Administrator, agree to the establishment a
27 PAGA Settlement fund. Within fifteen (15) calendar days following the date on which the
28 settlement is funded in accordance with Paragraph 54, the Settlement Administrator shall disburse
the LWDA's portion of the PAGA Settlement to the LWDA.

1 **XIII. COURT APPROVAL**

2 69. This Agreement is contingent upon Final Approval by the Court and the entry of
3 judgment. Class Representatives and Defendants agree to take all steps as may be reasonably
4 necessary to secure both Preliminary Approval and Final Approval of the Agreement, to the
5 extent not inconsistent with the terms of this Agreement, and will not take any action adverse to
6 each other in obtaining Court approval, and, if necessary, appellate approval, of the Agreement
7 in all respects. Class Representatives and Defendants expressly agree that they will not file any
8 objection to the terms of this Stipulation of Agreement or assist or encourage any person or entity
9 to file any such objection.

10 **XIV. MISCELLANEOUS PROVISIONS**

11 70. **Stay of Litigation.** Class Representatives and Defendants agree to the stay of all
12 discovery in the Litigation, pending Final Approval of the Agreement by the Court.

13 71. **Captions.** Paragraph titles or captions contained herein are inserted as a matter
14 of convenience and for reference, and in no way define, limit, extend, or describe the scope of
15 this Agreement or any provision hereof.

16 72. **Appointment of Class Counsel.** For purposes of this Settlement Agreement and
17 subject to the Court's approval, Class Representatives and Defendants hereby stipulate to the
18 appointment of Class Counsel as counsel for the Class and the effectuation of the Settlement
19 Agreement.

20 73. **Settlement Administration Fees If Settlement Fails.** If for any reason this
21 Settlement is not approved and does not become "Final," any Settlement Administration Fees
22 incurred as a result of administration of the failed Settlement shall be borne equally 50 % by Class
23 Representatives and 50% by Defendants, unless otherwise specified in this Agreement.

24 74. **Interpretation of the Agreement.** This Agreement constitutes the entire
25 agreement between Class Representatives and Defendants. Except as expressly provided herein,
26 this Agreement has not been executed in reliance upon any other written or oral representations
27 or terms, and no such extrinsic oral or written representations or terms shall modify, vary or
28

1 contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to
2 be construed according to its terms and may not be varied or contradicted by extrinsic evidence.
3 The Agreement will be interpreted and enforced under the laws of the State of California, both in
4 its procedural and substantive aspects, without regard to its conflict of laws provisions. Any
5 claim arising out of or relating to the Agreement, or the subject matter hereof, will be resolved
6 solely and exclusively in the Superior Court of the State of California for the County of Alameda,
7 and Class Representatives and Defendants hereby consent to the personal jurisdiction of the Court
8 over them solely in connection therewith. Class Representatives, on their own behalf and on
9 behalf of the Settlement Class, and Defendants participated in the negotiation and drafting of this
10 Agreement and had available to them the advice and assistance of independent counsel. As such,
11 neither Class Representatives nor Defendants may claim that any ambiguity in this Agreement
12 should be construed against the other.

13 75. **Exclusive and Final Agreement.** This Agreement contains the entire agreement
14 between the Parties relating to the Settlement and transaction contemplated hereby, and all prior
15 and contemporaneous agreements, understandings, representations, and statements, whether oral
16 or written, and whether by a Party or such Party's legal counsel, are merged herein. No rights
17 hereunder may be waived or modified except in a writing signed by the original signatories.

18 76. **Further Cooperation.** Class Representatives and Defendants and their respective
19 attorneys shall proceed diligently to prepare and execute all documents, to seek the necessary
20 approvals from the Court, and to do all things reasonably necessary or convenient to consummate
21 the Agreement as expeditiously as possible.

22 77. **Counterparts.** The Agreement may be executed in one or more actual or non-
23 original counterparts, all of which will be considered one and the same instrument and all of
24 which will be considered duplicate originals.

25 78. **Authority.** Each individual signing below warrants that he or she has the authority
26 to execute this Agreement on behalf of the party for whom or which that individual signs.

27 79. **No Third Party Beneficiaries.** Class Representatives, members of the Settlement
28

1 Class, and Defendants are direct beneficiaries of this Agreement, but there are no third party
2 beneficiaries.

3 80. **Force Majeure.** The failure of any party to perform any of its obligations
4 hereunder shall not subject such party to any liability or remedy for damages, or otherwise, where
5 such failure is occasioned in whole or in part by acts of God, fires, accidents, earthquakes, other
6 natural disasters, explosions, floods, wars, interruptions or delays in transportation, power
7 outages, labor disputes or shortages, shortages of material or supplies, governmental laws,
8 restrictions, rules or regulations, sabotage, terrorist acts, acts or failures to act of any third parties,
9 or any other similar or different circumstances or causes beyond the reasonable control of such
10 party.

11 81. **Deadlines Falling on Weekends or Holidays.** To the extent that any deadline set
12 forth in this Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be
13 continued until the following business day.

14 82. **Severability.** In the event that any one or more of the provisions contained in this
15 Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such
16 invalidity, illegality, or unenforceability shall in no way effect any other provision if Defense
17 Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in
18 writing to proceed as if such invalid, illegal, or unenforceable provision had never been included
19 in this Agreement.

20 83. **Change in Gross Settlement Amount in the Event of a Change in Class Data.**
21 The Gross Settlement Amount is conditioned on representations made concerning the number of
22 employees that were employed within the Settlement Period. Specifically, Defendants have
23 represented that 313 individuals worked a total of 15,080 workweeks within the Settlement
24 Period. In the event these figures change and the number of Participating Class Members and/or
25 the number of workweeks worked by Participating Class Members, increases by more than 10%,
26 the Gross Settlement Amount will increase pro rata per additional Participating Class Member or
27 additional workweek, at Class Counsel's sole discretion. For example, if the number of
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1 Participating Class Members increases by 11% to 347, then Defendants shall pay an additional
2 11% of the Gross Settlement Amount, or an additional \$117,535.

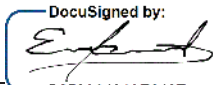
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4 Date: April 4/9/2021, 2021

Erik Contreras, on behalf of himself and all others similarly situated

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By:  _____
Erik Contreras B652A0484AE246E...

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Date: April _____, 2021

Omar Dominguez, on behalf of himself and all others similarly situated

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By: _____
Omar Dominguez

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Date: April _____, 2021

Ivan Landeros, on behalf of himself and all others similarly situated

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By: _____
Ivan Landeros

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Date: April _____, 2021

Guillermo Mendez, on behalf of himself and all others similarly situated

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19

By: _____
Guillermo Mendez

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Date: April 07, 2021

Alejandro Olivera, on behalf of himself and all others similarly situated

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By:  _____
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1 Participating Class Members increases by 11% to 347, then Defendants shall pay an additional
2 11% of the Gross Settlement Amount, or an additional \$117,535.

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4 Date: April _____, 2021

Erik Contreras, on behalf of himself and all
5 others similarly situated

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By: _____
Erik Contreras

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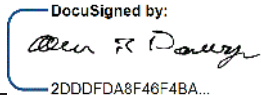
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Date: April 09 / _____, 2021

Omar Dominguez, on behalf of himself and
10 all others similarly situated

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By:  _____
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Omar Dominguez

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Date: April _____, 2021

Ivan Landeros, on behalf of himself and all
15 others similarly situated

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By: _____
Ivan Landeros

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Date: April _____, 2021

Guillermo Mendez, on behalf of himself and
20 all others similarly situated

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By: _____
Guillermo Mendez

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Date: April 07 / _____, 2021

Alejandro Olivera, on behalf of himself and
25 all others similarly situated

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By:  _____
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Alejandro Olivera

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1 Participating Class Members increases by 11% to 347, then Defendants shall pay an additional
2 11% of the Gross Settlement Amount, or an additional \$117,535.

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4 Date: April _____, 2021

Erik Contreras, on behalf of himself and all
others similarly situated

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By: _____
Erik Contreras

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9 Date: April _____, 2021

Omar Dominguez, on behalf of himself and
all others similarly situated

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By: _____
Omar Dominguez

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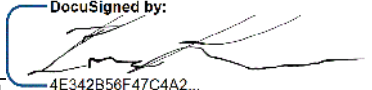
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14 Date: April 09/20~~20~~21

Ivan Landeros, on behalf of himself and all
others similarly situated

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By: _____
Ivan Landeros 

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19 Date: April _____, 2021

Guillermo Mendez, on behalf of himself and
all others similarly situated

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By: _____
Guillermo Mendez

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24 Date: April 07, 2021

Alejandro Olivera, on behalf of himself and
all others similarly situated

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By: _____
Alejandro Olivera 

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2 11% of the Gross Settlement Amount, or an additional \$117,535.

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4 Date: April _____, 2021

Erik Contreras, on behalf of himself and all others similarly situated

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By: _____
Erik Contreras

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9 Date: April _____, 2021

Omar Dominguez, on behalf of himself and all others similarly situated

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By: _____
Omar Dominguez

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14 Date: April _____, 2021

Ivan Landeros, on behalf of himself and all others similarly situated

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By: _____
Ivan Landeros

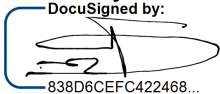
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18 Date: April 08/202021

Guillermo Mendez, on behalf of himself and all others similarly situated

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By:  _____
Guillermo Mendez

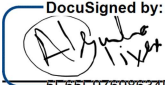
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22 Date: April 07, 2021

Alejandro Olivera, on behalf of himself and all others similarly situated

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By:  _____
Alejandro Olivera

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Date: April _____, 2021

C&B Delivery Service

By: _____
By:


Date: April _____, 2021

Home Express Delivery Service

By: _____
By:

Date: April 8, 2021

AEGIS LAW FIRM, PC

By: 
Samuel A. Wong
Jessica L. Campbell
Carolyn M. Bell
Attorneys for Plaintiffs Erik Contreras,
Oman Dominguez, Ivan Landeros, and
Guillermo Mendez

Date: April 7, 2021

HUNTER PYLE LAW

By: 
Hunter Pyle
Katherine Fiester
Attorneys for Plaintiff Alejandro Olivera

Date: April _____, 2021


FOLEY & LARDNER LLP

By: _____
Kamran Mirrafati

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Date: April 18, 2021

C&B Delivery Service

DocuSigned by:

By: Virginia Templeton
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Date: April 17, 2021

Home Express Delivery Service

DocuSigned by:

By: Lance Templeton
144AEF57FEF8440...

Date: April _____, 2021

AEGIS LAW FIRM, PC

By: _____
Samuel A. Wong
Jessica L. Campbell
Carolyn M. Bell
Attorneys for Plaintiffs Erik Contreras,
Oman Dominguez, Ivan Landeros, and
Guillermo Mendez

Date: April 7, 2021

HUNTER PYLE LAW

By: 
Hunter Pyle
Katherine Fiester
Attorneys for Plaintiff Alejandro Olivera

Date: April 12, 2021

FOLEY & LARDNER LLP


DocuSigned by:

By: Kamran Mirrafati
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EXHIBIT A

ALAMEDA COUNTY SUPERIOR COURT

NOTICE OF SETTLEMENT OF CLASS ACTION

Olivera, et al. v. C&B Delivery Service doing business as Temco Warehouses & Distribution, et al.

If you were employed by C & B Delivery Service doing business as Temco Warehouses & Distribution or Home Express Delivery Service, LLC doing business as Temco Logistics as a Driver and/or Helper in California, a class action settlement may affect your rights.

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. The Alameda County Superior Court has authorized this notice in the matter of *Olivera, et al. v. C&B Delivery Service doing business as Temco Warehouses & Distribution, et al.*, Case No. RG20062287 (the “**Litigation**”). This is not a solicitation from a lawyer.

- Erik Contreras, Omar Dominguez, Ivan Landeros, Guillermo Mendez, and Alejandro Olivera (called the “**Plaintiffs**” in this notice), were Drivers and/or Helpers employed by C & B Delivery Service doing business as Temco Warehouses & Distribution or Home Express Delivery Service, LLC doing business as Temco Logistics (“**Defendants**”). This class action lawsuit was filed against **Defendants** on May 26, 2020.
- Plaintiffs claim that Defendants failed to pay all minimum, overtime, and double time wages due, failed to provide meal periods and rest periods, failed to reimburse them for business expenses, failed to provide accurate wage statements, failed to timely pay all wages after the end of employment, committed unfair business practices, and are liable for civil penalties under the Private Attorneys General Act (“**PAGA**”).
- Defendants dispute Plaintiffs’ claims. Defendants expressly and specifically deny violating any laws.
- For settlement purposes only, the Court has conditionally certified the Litigation to be a class action on behalf of all current and former drivers and helpers who were employed by Defendants working out of Defendants’ Pomona warehouse from May 25, 2020 through December 4, 2020, or any of Defendants’ other warehouses throughout California at any time between May 26, 2016 through December 4, 2020. (the “**Settlement Class Members**”).
- Your legal rights may be affected by this Settlement whether you act or do not act. Your options are explained in this notice. Thus, please read this notice carefully and in its entirety.

To request to be excluded from, or object to, this Settlement, you must act before **[60 days from date of notice]**.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

(1) DO NOTHING	(1) Receive part of the Settlement. <i>If you do not do anything upon receipt of this notice, you will receive a sum of money based on your dates of employment with Defendants; you will give up your right to sue for alleged violations and related claims released by the Settlement; you will have no right to appeal; and you will forfeit your right to bring or participate in a similar action against Defendants for violations that occurred from May 26, 2016 through December 4, 2020.</i>
(2) OPT-OUT	(2) Opt-out or exclude yourself from the Settlement. <i>If you make a valid and timely written request to be excluded from the Settlement, you will not receive any money from the Class portion of the Settlement, and you will not give up any rights you may have, except as to the PAGA portion of the Settlement.</i>
(3) OBJECT	(3) Write to the Court about why you object to the Settlement. <i>If you object to the Settlement, you can write to the Court about why you don’t agree with the Settlement. You may also present oral objections to the Court at the Final Approval Hearing. The Court may or may not agree with your objection. If the Court approves the Settlement, you will still be bound by its terms.</i>

THIS LEGAL NOTICE AFFECTS YOUR RIGHTS. PLEASE READ IT CAREFULLY.

WHAT THIS NOTICE CONTAINS

I.	BACKGROUND OF THE CASE	Page 2
II.	SUMMARY OF THE PROPOSED SETTLEMENT	Page 3
A.	What Are the Terms of the Settlement?	Page 3
B.	Who is Included in the Settlement?	Page 3
C.	How are Settlement Payments Calculated?	Page 3
D.	Your Settlement Calculation	Page 4
E.	Release	Page 4
III.	LEGAL RIGHTS AND OPTIONS OF SETTLEMENT CLASS MEMBERS	Page 4
A.	Do Nothing and Receive a Settlement Payment	Page 4
B.	Exclude Yourself from the Settlement	Page 4
C.	Object to the Settlement	Page 5
IV.	FINAL SETTLEMENT APPROVAL HEARING	Page 5
V.	ADDITIONAL INFORMATION	Page 5

You are receiving this notice because the Alameda County Superior Court has granted preliminary approval of a class action settlement for settlement purposes only, and Defendants' records indicate that you may be a member of the Settlement Class. As such, you may be eligible for compensation from this Settlement.

As a Settlement Class Member, your interests are being represented at no expense to you by Hunter Pyle and Katherine Fiester of Hunter Pyle Law and Jessica Campbell, Samuel Wong, and Carolyn Bell of AEGIS Law Firm P.C. ("**Class Counsel**"). You may also hire your own lawyer at your own expense.

I. BACKGROUND OF THE CASE

On May 26, 2020, Plaintiff Olivera filed a complaint in Alameda County Superior Court ("**the Court**") on behalf of the Settlement Class Members. Plaintiff Olivera filed a First Amended Complaint on August 25, 2020. Plaintiffs filed the Operative Second Amended Complaint on [date Second Amended Complaint was filed] which alleges claims on behalf of the Settlement Class Members for: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to permit rest breaks; (5) failure to pay all wages to piece-rate workers for rest breaks; (6) failure to furnish adequate wage statements; (7) failure to reimburse business expenses; (8) failure to pay all wages due upon separation of employment; and (9) unfair business practices; and (10) claims asserted under the Private Attorney General Act, based on the preceding claims.

The Parties thoroughly investigated the case. Plaintiffs and Defendants were able to agree on a Settlement of the case. **Class Counsel believe the Settlement is fair, reasonable, and in the best interests of the Class.** Defendants expressly and specifically deny any liability or wrongdoing of any kind associated with the claims alleged in the Litigation. Defendants settled the Litigation in order to avoid costly, disruptive, and time-consuming litigation.

On [date of preliminary approval order], the Court gave preliminary approval of the Settlement and conditionally certified the Settlement Class for settlement purposes only. The Court was not asked to make and did not make any ruling as to whether any violations by Defendants had occurred.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. What Are the Terms of the Settlement?

Defendants have agreed to pay \$1,068,500 to settle the Litigation ("**Gross Settlement Amount**"). The Gross Settlement Amount includes attorneys' fees and costs, costs of settlement administration, PAGA penalties, and the enhancement payments to the Plaintiffs.

The "**Net Settlement Fund**" is the remainder of the Gross Settlement Amount after the deductions have been made for the following items: (1) up to \$356,166.67 (1/3 of the Gross Settlement Amount) for Class Counsel's attorneys' fees; (2) Class Counsel's actual litigation costs; (3) up to \$15,000 for the costs of settlement administration; (4) \$50,000 for the share of the PAGA Settlement; and (5) up to \$7,500 to each of the Plaintiffs for serving as a class representative.

B. Who is Included in the Settlement?

Included in the Settlement are all current and former drivers and helpers who were employed by Defendants working out of Defendants' Pomona warehouse from May 25, 2020 through December 4, 2020, or any of Defendants' other warehouses throughout California at any time between May 26, 2016 through December 4, 2020.

The PAGA Settlement includes Settlement Class Members whom Defendants employed as drivers and/or helpers at any time between June 27, 2020 and December 4, 2020 ("PAGA Employees").

C. How Are Settlement Payments Calculated?

Any Settlement Class Member who does not submit a written request to be excluded from the Settlement ("Participating Class Member") will have their payment(s) calculated as follows:

a. **Payment to Participating Class Members:** The Net Settlement Amount shall be divided among all Participating Class Members. Each Participating Class Member shall receive a proportionate share that is equal to (i) the number of workweeks they worked during the time period from May 26, 2016, through December 4, 2020, or for Participating Class Members that worked in the Pomona Warehouse, the number of workweeks they worked during the time period from May 25, 2020 through December 4, 2020, divided by (ii) the total number of workweeks worked by Participating Class Members that worked in the Pomona Warehouse from May 25, 2020 through December 4, 2020 and the workweeks of all other Participating Class Members during the time period from May 26, 2016, through December 4, 2020.

b. **PAGA Settlement:** From the \$50,000 allocated to PAGA penalties, one-quarter (25%) (\$12,500) shall be distributed to the PAGA Employees, which shall consist of all Settlement Class Members who were employed by Defendants at any time during the time period from June 27, 2020 through December 4, 2020. Each PAGA Employee will receive a proportionate share of money allocated to the PAGA Employees that is equal to (i) the number of pay periods they worked during the time period from June 27, 2020 through December 4, 2020 divided by (ii) the total number of pay periods worked by all PAGA Employees during the time period from June 27, 2020 through December 4, 2020. The remaining three-quarters (75%) (\$37,500) of the PAGA Settlement shall be distributed to the LWDA.

c. **Tax Treatment:** Twenty percent (20%) of each Net Settlement Payment will be designated as wages, for which you will receive a W-2 form. The remaining sixty-five percent (80%) of each Settlement Payment will be allocated to penalties and interest for which you will receive a 1099 form. One hundred percent (100%) of the PAGA Settlement will be allocated to penalties for which you will receive a 1099 form.

D. Your Settlement Calculation.

Your Settlement Payment is estimated to be \$[amount], based on the following dates of employment as reflected in Defendants' records:

- a. **Net Settlement Payment:** [insert start date(s) and end date(s) of employment from 5/26/2016 – December 4, 2020 and number of workweeks].
- b. **PAGA Settlement:** [insert start date(s) and end date(s) of employment from 6/27/2020 – December 4, 2020 and number of pay periods].

If you wish to dispute the number of workweeks or pay periods, you must bring the dispute to the attention of the Settlement Administrator [ADDRESS] in writing by [60 days from the date of notice]. In your written notice of dispute, please provide what you believe to be the correct information along with supporting documentation, if available, to show the changes you are seeking.

Your check will be void if you do not cash or deposit your check within 180 days following the issuance of the check. Whether or not you cash or deposit your check, if you do not submit a request for exclusion, you will be bound by the Settlement and will be deemed to have waived irrevocably any right or claim to your Settlement share and/or to appeal the approval of the Settlement. After the expiration of 180 days, the sum of any uncashed/undeposited checks shall be donated to Legal Aid at Work, a nonprofit organization which the Parties have selected, and the Court has approved, as a *cy pres* beneficiary.

E. Release of Claims Against Defendants.

Upon the Final Approval of the Settlement by the Court, Plaintiffs and all members of the Settlement Class who do not submit timely requests for exclusion (described below) will be deemed to have fully released and discharged Defendants

from all claims that were asserted in the Second Amended Complaint in the Litigation, from May 26, 2016, through December 4, 2020.

The released claims thus include: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to permit rest breaks; (5) failure to pay all wages to piece-rate workers for rest breaks; (6) failure to furnish adequate wage statements; (7) failure to reimburse business expenses; (8) failure to pay all wages due upon separation of employment; and (9) unfair business practices; and (10) claims asserted under the Private Attorney General Act, based on the preceding claims.

These claims are referred to in this Notice as the “**Released Claims**.” For more information regarding the scope of the release, please read the Settlement Agreement available at [\[insert URL\]](#).

III. LEGAL RIGHTS AND OPTIONS OF CLASS MEMBERS

A. **Option 1: Do Nothing and Receive a Settlement Payment.**

You do not need to do anything in order to receive a Settlement Payment. If you do nothing, you will automatically be included in the Settlement and will receive a Settlement Payment so long as the Settlement is approved and becomes Final. As set forth above, your Settlement Payment will be based upon whether or not you worked during the Settlement Class Period and, if so, the amount of workweeks you worked during the Class Period.

Please keep your address current! To assist the Court and the parties in maintaining accurate lists of Settlement Class Members, please mail notice of any change in your address to the Settlement Administrator (address below), or call [\[Administrator 800 #\]](#). *Please say that you are a part of the Olivera Settlement Class.*

B. **Option 2: Exclude Yourself from the Settlement.**

IMPORTANT: You will be bound by the terms of the Settlement unless you submit a timely and signed written request to be excluded from the Settlement (“Opt-Out”). To exclude yourself from the Settlement, you must mail your request for exclusion, postmarked no later than **[60 days after notice date]**, to:

**[SETTLEMENT ADMINISTRATOR]
[ADDRESS]**

Your request for exclusion must contain your full name and a statement that you wish to be excluded. Your request for exclusion must be returned by mail to the Settlement Administrator at the address above and must be postmarked on or before **[60 days after notice date]**. If you request exclusion, you will not be excluded from the PAGA Payment. If you request exclusion, you will still receive your share of the PAGA portion of the PAGA Settlement, if any, and will still be bound by the PAGA portion of the Settlement.

C. **Option 3: Object to the Settlement.**

Any Settlement Class Member who has not submitted a request for exclusion may object to the terms of the Settlement. You may object to the proposed settlement in writing and/or orally at the Final Approval Hearing. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing should: (1) clearly identify the case name and number (*Olivera, et al. v. C&B Delivery Service doing business as Temco Warehouses & Distribution, et al.*, Case No. RG20062287); and (2) be mailed to the Settlement Administrator postmarked on or before **[60 days after notice date]**. A Settlement Class Member may appear personally or through an attorney, at his or her own expense, at the Final Approval Hearing to present his or her objection directly to the Court.

CLASS COUNSEL

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YOU MAY OBJECT TO THE SETTLEMENT AND STILL RECEIVE YOUR SHARE OF THE NET SETTLEMENT AMOUNT. IF THE COURT APPROVES THE SETTLEMENT DESPITE YOUR OBJECTIONS, YOU WILL RECEIVE YOUR SHARE OF SETTLEMENT PROCEEDS.

NO MATTER WHICH OPTION YOU CHOOSE, DEFENDANTS WILL NOT RETALIATE AGAINST YOU.

IV. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing on [FINAL APPROVAL HEARING], at [TIME], in Department 23, 1221 Oak Street, Oakland, California 94612, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The hearing may be continued or rescheduled without further notice to Settlement Class Members. You can check whether the Final Approval Hearing has been continued or rescheduled by visiting [insert URL] or by visiting the Court's website (see instructions below).

You may attend the Final Approval Hearing but are not required to do so. Written objections will be considered at the Final Approval Hearing whether or not the person objecting appears at the hearing. If you object and wish to appear at the Final Approval Hearing, you may appear personally or through counsel hired at your own expense.

At no expense to you, Class Counsel will represent your interests as a Settlement Class Member. Or, you may hire your own lawyer at your own expense.

V. ADDITIONAL INFORMATION

This Notice is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you may read the detailed Settlement Agreement, which is available at [insert URL]. You may also access Plaintiffs' Motion for Preliminary Approval, and other important documents related to this case, at the above website. If you have any questions regarding this Notice, the Settlement, or the Litigation, you may contact Class Counsel.

The pleadings and other records in this Litigation, including the Settlement Agreement, also may be examined online on the Alameda County Superior Court's website at <https://publicrecords.alameda.courts.ca.gov/PRS/>. After arriving at the website, click the "Search By Case Number" link, then enter "RG20062287" as the case number and click "SEARCH." Images of every document filed in the case may be viewed through the Register of Actions 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.

DO NOT TELEPHONE THE COURT OR DEFENSE COUNSEL