CLASS AND REPRESENTATIVE ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class and Representative Action Settlement Agreement and Release ("Agreement") encompasses two (2) separately filed actions, *Randolph v. Amazon.com, LLC, et. al.,* (Super. Ct. San Diego County, 2017, No. 37-2017-00011078-CU-OE-CTL) ("Randolph Matter"); and *Thomas v. NEA Delivery, LLC, et al.,* (Super. Ct. Alameda County, 2017, RG17855208) ("Thomas Matter") (collectively the Matters are referred to as "The Lawsuits").

This Agreement is entered into between Plaintiffs RICK RANDOLPH and VERONICA THOMAS ("THOMAS"), individually, and on behalf of all others similarly situated ("Plaintiffs" or "Representative Plaintiffs"), on one hand, and Defendants AMAZON LOGISTICS, INC. and AMAZON.COM, LLC (collectively "Amazon"); NEA DELIVERY, LLC D/B/A FIRST DELIVERY & LOGISTICS, LLC ("NEA"); and AVITUS, INC. D/B/A AVITUS GROUP ("Avitus"), on the other hand.

This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge and settle the "Released Claims" (as defined below) on a class and representative action basis pertaining to the "Released Parties" (as defined below) upon and subject to the terms and conditions contained herein. This Agreement, which is contingent upon Final Court approval, contains the essential terms of the Parties' agreement. The Representative Plaintiffs and Class Counsel believe, and the Parties have agreed, that the settlement set forth in this Agreement confers substantial benefits upon the Class Members.

I. DEFINITIONS

1. Actions

"Actions," "Lawsuits," or "Matters" mean the civil actions filed by Plaintiffs entitled *Randolph v. Amazon.com, LLC, et. al.,* (Super. Ct. San Diego County, Mar. 27, 2017, Case No.

37-2017-00011078-CU-OE-CTL), and *Thomas v. NEA Delivery, LLC, et al.,* (Super. Ct. Alameda County, Apr. 3, 2017, Case No. RG17855208).

2. Class Counsel

"Class Counsel" means Cohelan Khoury & Singer, Law Offices of Ronald A. Marron APLC, and Law Offices of Todd M. Friedman, P.C. who, subject to Court approval, shall act as counsel for the Settlement Class.

3. Class Counsel Award

"Class Counsel Award" means attorneys' fees for Class Counsel's litigation and resolution of these Lawsuits, and Class Counsel's expenses and legal costs incurred in connection with this Lawsuit.

4. Class Information

"Class Information" or "Class Data" means information regarding Settlement Class Members that Defendants will compile from their records and provide to the Settlement Administrator in a Microsoft Excel spreadsheet, including each Settlement Class Member's full name; last known address; social security number; dates of employment; and the total number of workweeks during which Class Members made deliveries during the Class Period.

5. Class Members or Settlement Class Members

"Class Members" or "Settlement Class Members" means all persons who are employed or have been employed as a W-2 hourly non-exempt employee by NEA Delivery, LLC who provided services as Delivery Drivers pursuant to a contract between NEA and Amazon to deliver goods to Amazon customers in the State of California during the Class Period.

6. "Class Period"

"Class Period" means the period from October 17, 2014 to May 29, 2019, which is the period that NEA made deliveries pursuant to a contract with Amazon.

7. **Class Representatives**

"Class Representatives" means Plaintiffs Rick Randolph and Veronica Thomas.

8. **Class Representatives' Enhancement Award**

"Class Representatives' Enhancement Award" means the amount that the Court authorizes to be paid to Plaintiffs, in addition to Plaintiffs' Individual Settlement Payments, in recognition of Plaintiffs' efforts and risks in assisting with the prosecution of the Lawsuits and in return for executing a general release with Defendants.

9. **Class Representatives' Released Claims**

"Class Representatives' Released Claims" means all known and unknown claims against the Released Parties, including any Released Claims as well as other wage and hour claims, claims under California Business & Professions Code section 17200, claims under the Labor Code, including, but not limited to, claims under the Private Attorneys General Act ("PAGA"), claims under the Fair Labor Standards Act ("FLSA"), and all claims for indemnity or reimbursement of business expenses, overtime compensation, minimum wages, penalties, liquidated damages, and interest, and all other claims under state, federal, and local laws, including, without limitation, Title VII of the Civil Rights Act of 1964, the Family and Medical Leave Act, the Americans with Disabilities Act, the Fair Credit Reporting Act, the Employee Retirement Income Security Act of 1974, and all of their implementing regulations and interpretive guidelines, as well as the common law, including laws related to discrimination, harassment, or retaliation, whether known or unknown, and whether anticipated or unanticipated, arising from or relating to Class Representatives' relationship, or termination of relationship, with any Released Party through the date of Final Approval for any type of relief. Class Representatives further covenant that they will not become a member of any other legal actions against the Releasees, as that term is defined, asserting any of Class Representatives' Released Claims, and will opt out of any such actions if

necessary. For the avoidance of doubt, this is a complete and general release to the maximum extent by law.

With respect to Class Representatives' Released Claims, Class Representatives waive their rights under California Civil Code section 1542 which states:

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

10. Complaint

"Complaint" means the operative complaints filed in the Randolph and Thomas Actions.

11. Court

"Court" means the Superior Court for the County of San Diego.

12. Defendants

"Defendants" means Defendants AMAZON LOGISTICS, INC.; AMAZON.COM, LLC; NEA DELIVERY, LLC D/B/A FIRST DELIVERY & LOGISTICS, LLC; and AVITUS, INC. D/B/A AVITUS GROUP.

13. Effective Date

"Effective Date" means the date on which the Court's order granting Final Approval of this Settlement Agreement becomes final. Such order becomes final upon the following events: (i) sixty five (65) days after the Court issues the Final Approval Order granting approval of this Settlement Agreement if no objections to the settlement are filed; or (ii) if an appeal is filed and is finally disposed of by ruling, dismissal, denial, or otherwise, the day after the last date for filing a request for further review of the Court of Appeal's decision passes and no further review is

requested; (iii) if an appeal is filed and there is a final disposition by ruling, dismissal, denial, or otherwise by the Court of Appeal, and further review of the Court of Appeal's decision is requested, the day after the request for review is denied with prejudice and/or no further review of the order can be requested; or (iv) if review is accepted, the day after the California Supreme Court affirms the judgment or order approving the Settlement.

14. Eligible Workweek

"Eligible Workweek" means any workweek in which a Class Member was employed by NEA and according to NEA's or Amazon's data made deliveries to Amazon customers in California during the period from October 17, 2014 through May 29, 2019.

15. Final Approval Hearing

"Final Approval Hearing" means the final hearing held to ascertain the fairness, reasonableness, and adequacy of the Settlement.

16. Final Judgment

"Final Judgment" means a judgment issued by the Court approving this Agreement as binding upon the Parties, in a form substantially similar to Exhibit 3 hereto. The Final Judgment shall constitute a judgment respecting the Parties within the meaning and for purposes of California Code of Civil Procedure sections 577, 581d, and 904.1(a), and on the PAGA claims for purposes of enforcing the rule announced in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009).

17. Individual Settlement Payment

"Individual Settlement Payment" means the amount paid from the Net Settlement Amount to a Participating Class Member. Any Class Member who timely submits a Request for Exclusion pursuant to the procedures set forth herein is not a Participating Class Member and is not eligible to receive an Individual Settlement Payment.

18. LWDA

"LWDA" means the California Labor and Workforce Development Agency.

19. Net Settlement Amount

"Net Settlement Amount" means the Total Settlement Amount less Court-approved Class Counsel Award, Class Representatives' Enhancement Award, PAGA Payment, and Settlement Administration Costs. The Net Settlement Amount is the total amount that will be paid to Participating Class Members, in the form of Individual Settlement Payments.

20. Notice of Class Action Settlement

"Notice of Class Action Settlement" means the notice approved by the Parties and subject to Court approval, substantially in the form of Exhibit 1 hereto, explaining the terms of this Agreement and the settlement process, which the Settlement Administrator will mail to each Settlement Class Member.

21. PAGA

"PAGA" refers to the Labor Code Private Attorneys General Act of 2004, Labor Code § 2699 et seq.

22. PAGA Payment

"PAGA Payment" means the payment in the amount of $56,250 to be made to the LWDA as its 75% share of the $75,000 amount paid for PAGA penalties under the Settlement.

23. Participating Class Members

"Participating Class Members" means those Class Members who do not file a valid and timely Request for Exclusion.

24. Parties

"Parties" means Plaintiffs and Defendants, collectively.

25. Plaintiffs

"Plaintiffs" means Plaintiffs Thomas and Randolph.

26. Preliminary Approval Date

"Preliminary Approval Date" means the date on which the Court issues an order granting preliminary approval of the proposed Settlement.

27. Qualified Settlement Fund

"Qualified Settlement Fund" or "QSF" means the account established by the Settlement Administrator which the Parties agree will at all times be treated as a "qualified settlement fund" within the meaning of Treas. Reg. §1.468B-1, *et seq.* The Parties agree the Settlement Administrator shall, in establishing the account, make any such elections as necessary or advisable to carry out the "relation back election" (as defined in Treas. Reg. §1.468B-1(j)(2)(i)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Settlement Administrator to timely and properly prepare and deliver the necessary documentation for signature by all necessary Parties, and to cause the appropriate filing to occur. The Parties further agree and acknowledge that, for purposes of Section 468B of the Internal Revenue Code of 1986, as amended (the "Code") and the Treasury Regulations promulgated thereunder, only the Defendants shall be treated as a "transferor" (within the meaning of such term under Treasury Regulations §1.468B-1(d)(1)) with respect to the Qualified Settlement Fund.

28. Released Claims

"Released Claims" shall mean any and all claims and/or causes of action under any state, local or federal law or administrative order by Settlement Class Members against Released Parties that were or could have been pled based on the allegations of the original and amended Complaints and the LWDA notices, whether known or unknown, including but not limited to, any claim for: (1) Failure To Pay Regular Pay/Min. Wages in Violation of Labor Code §§ 223, 510, 558.1, 1194, 1194.2, 1197 & IWC Wage Order 9-2001, § 4; (2) Failure To Pay Overtime Premium Pay in

Violation of Labor Code §§ 510, 558, 558.1, 1194, 1194.2 & IWC Wage Order 9-2001, § 3; (3) Failure To Provide Meal Periods or Compensation in Lieu Thereof in Violation of Labor Code §§ 204, 223, 218.5, 218.6, 226.7, 512, 558.1 and IWC Wage Order 9-2001, § 11; (4) Failure to Provide Rest Periods or Compensation in Lieu Thereof in Violation of Labor Code §§ 204, 223, 218.5, 218.6, 226.7, 512, 558.1 and IWC Wage Order 9-2001, § 12; (5) Failure To Reimburse For Necessary Expenditures in Violation of Labor Code §§ 510, 558.1, 2802 and IWC Wage Order 9-2001, §§ 8-9; (6) Failure to Provide Accurate Itemized Wage Statements and Failure to Maintain Records in Violation of Labor Code §§ 226(a), 226.3, 558.1, 1174; (7) Failure to Timely Pay Wages in Violation of Labor Code §§ 201-204, 210, 2926, 2927; (8) Failure to Comply with Client Employer Obligations for Subcontractors in Violation of Labor Code §§ 2810 and 2810.3, *et seq.*; (9) Unlawful and Deceptive Business Practices in Violation of Business & Professions Code §§ 17200, *et seq.*; and claims for PAGA Penalties (Cal. Labor Code §§ 2698 *et seq.*) based on such alleged violations, any derivative claims under the Fair Labor Standards Act ("FLSA") or any applicable California Industrial Welfare Commission Wage Order; related common law claims for conversion, other alleged tortious conduct, breach of contract, and misrepresentation; and any other derivative claims under California law including claims for statutory or civil penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation and other costs, expenses, restitution, and equitable and declaratory relief. The period of the Released Claims will extend up to the date of Preliminary Approval, or 30 days from the execution of this agreement

29. Released Parties

"Released Parties" or "Releasees" means Defendants and any of their former, present and/or future, direct and/or indirect, parents, companies, subsidiaries, affiliates, divisions, officers, directors, managers, owners, members, heirs, employees, partners, shareholders, attorneys, agents,

fiduciaries, insurers, investors, predecessors, successors, assigns, executors, administrators, beneficiaries, legal representatives, or trustees.

30. Request for Exclusion

"Request for Exclusion" means a letter setting forth a Class Member's name, present address, and a statement electing to be excluded from the Settlement. Specific details of how to submit a "Request for Exclusion" will be provided by the Class Notice.

31. Response Deadline

"Response Deadline" means the date sixty (60) days after the Settlement Administrator mails the Notice of Class Action Settlement to Settlement Class Members, which is the last date on which Settlement Class Members may: (a) submit a Request for Exclusion; (b) file and serve objections to the settlement; or (c) dispute the information contained in the Notice of Class Action Settlement.

32. Settlement

"Settlement" or "Settlement Agreement" means this Class and Representative Settlement Agreement and Release.

33. Settlement Administrator

"Settlement Administrator" meansCPT Group, Inc., the third-party Settlement Administrator mutually agreed to by the Parties and appointed by the Court upon Class Counsel's motion for preliminary approval of this Settlement.

34. Settlement Administrator Costs

"Settlement Administrator Costs" means the amount to be paid to the Settlement Administrator from the Total Settlement Amount for administration of this Settlement. References herein to actions and responsibilities of the Settlement Administrator shall be to those actions and responsibilities it shall take as set forth in the Agreement.

35. Total Settlement Amount

"Total Settlement Amount" means the total maximum amount payable under the terms of this Agreement by Defendants, which is the gross sum of $3,200,000 and includes, without limitation: the Individual Settlement Payments to Participating Class Members; payment of Settlement Administration Costs as approved by the Court; any Class Representatives' Enhancement Awards to Plaintiffs Rick Randolph and Veronica Thomas as approved by the Court; a payment to Class Counsel of attorneys' fees and reasonable litigation costs which shall be determined by motion with the Court; and the PAGA Payment. Payment of the amount necessary to cover the employer's portion of payroll taxes associated with the 25% portion of the Individual Settlement Payments allocated to wages shall be made by Defendants, separate and apart from the Total Settlement Amount. The Settlement Administrator will make all required tax deductions and payments using a Qualified Settlement Fund. As set forth herein, the Settlement Administrator will issue all of the above-referenced payments from the Qualified Settlement Fund in accordance with the applicable provisions of this Stipulation.

II. RECITALS

1. Class Certification.

The Parties stipulate to class certification for purposes of settlement only. If the Court does not grant either preliminary or final approval of this Settlement, the Parties agree that this stipulation regarding class certification will become null and void.

2. Defendants.

On October 17, 2014, NEA, a delivery service provider, began making deliveries in California pursuant to a contract with Amazon Logistics, Inc. NEA contracted with Avitus, a professional employer organization, to provide certain outsourced human resources services such as payroll processing, payroll tax administration, and securing workers compensation insurance.

NEA made deliveries for Amazon until May 29, 2019. As such, no Settlement Class Members have worked as NEA drivers making Amazon customer deliveries since May 29, 2019.

3. Procedural History.

On March 27, 2017, Plaintiff Randolph filed the Randolph Matter in San Diego Superior Court. The Randolph matter is a representative PAGA action and alleges the following claims for PAGA penalties against NEA and Amazon.com, LLC for: (1) Failure to Pay Regular Pay/Minimum Wages, (2) Failure to Pay Overtime Premium Pay, (3) Failure to provide Meal Periods, (4) Failure to Provide Rest Periods, (5) Failure to Reimburse, (6) Failure to Provide Accurate Wage Statements/Maintain Accurate Payroll Records, and (7) Failure to Timely Pay Wages Owed. The Complaint was subsequently amended to add a PAGA claim for Client-Employer/Subcontractor violations.

On April 3, 2017, Plaintiff Thomas filed the Thomas Matter in Alameda Superior Court. The Thomas Matter alleges class and PAGA claims against NEA and Avitus for: (1) Failure to Pay Minimum Wages and Liquidated Damages- LC 1194 and 1197, (2) Failure to Pay Overtime- LC 510, 1194, 1198, and Wage Order 9, (3) Failure to Provide Rest Periods- LC 226.7 and Wage Order 9, (4) Failure to Provide Meal Periods – LC 226, 512, and Wage Order 9, (5) Wage Statement Claims – LC 226; (6) Violation of LC 558, (7) Unlawful, Unfair, and/or Fraudulent Business Practices–B&P 17200, (8) Waiting Time Pay – LC 201-203 and 558.

The Parties in the Randolph Matter attended an unsuccessful mediation in December 2018. However, on September 18, 2019, all Parties attended an all-day mediation with Tripper S. Ortman, Esq., and arms-length settlement negotiations between counsel for the Parties resulted in this Settlement.

Before the mediation and negotiations, Defendants produced extensive documentation including time and pay data, delivery data, policy documents, class size information, and

information regarding the hourly rates and payment structures. Additionally, counsel in the Randolph Matter deposed corporate representatives from Amazon, and Randolph was deposed by Defendants. In short, Defendants provided discovery sufficient to enable the Representative Plaintiffs and Class Counsel to rigorously evaluate the strengths and risks of the case and perform an analysis of the potential damages arising from the claims made in this case.

Defendants deny any liability or wrongdoing of any kind associated with the claims asserted in the Actions, dispute the damages and penalties claimed by Plaintiffs, and further contend that, for any purpose other than settlement, Plaintiffs' claims are not appropriate for class or representative treatment. This Settlement is a compromise of disputed claims. Nothing contained in this Settlement, no documents referred to herein, and no action taken to carry out this Settlement, shall be construed or used as an admission by or against Defendants as to the merits or lack thereof of the claims asserted in the Actions. Defendants contend, among other things, that, at all times, they have complied with all applicable state, federal and local laws related to the Settlement Class Members' employment. Amazon specifically denies that it employed any of the Class Members at issue. Amazon further denies any joint employer relationship with NEA. Avitus denies that it employed any of the Class Members for wage-hour purposes. Nevertheless, Defendants have entered into this Settlement to avoid the cost, risk and inconvenience of further litigation. Nothing contained in this Settlement, nor the fact of this Settlement itself, shall be construed or deemed as an admission of liability, or wrongdoing on the part of any of the Defendants collectively or individually, or an admission that class or representative action treatment would be allowed outside the settlement context. Pursuant to California Evidence Code sections 1152 and 1154, this Settlement shall be inadmissible in evidence in any proceeding; except that the Settlement may be filed and used in this litigation or any related litigation as necessary to approve, interpret, or enforce this Settlement, or in any subsequent action against or

by Defendants to support a stay of such subsequent action, or to establish a defense of res judicata, collateral estoppel, release, good faith settlement, judgment bar, or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

The Class Representatives are represented by Class Counsel. Class Counsel investigated the facts relevant to the Lawsuit, including reviewing documents and information provided by Defendants. Based on their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement with Defendants is fair, reasonable and adequate, and in the best interest of the Settlement Class in light of all known facts and circumstances, including the risks of significant delay, defenses asserted by Defendants, uncertainties regarding a class trial, and numerous potential appellate issues. Although Defendants deny any liability, Defendants are agreeing to this Settlement to avoid the cost, distraction, and risks of further litigation. Accordingly, the Parties and their counsel desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Actions on the terms set forth herein.

4. Benefits of Settlement to Class Members.

Plaintiffs and Class Counsel recognize the expense and length of continued proceedings necessary to litigate their disputes through trial and through any possible appeals. Plaintiffs have taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in litigation. Plaintiffs and Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Actions, both generally and in response to Defendants' defenses thereto, and the difficulties in establishing damages for the Settlement Class Members. Plaintiffs and Class Counsel have considered Defendants' agreement to enter into a settlement that confers substantial relief upon the members of the Settlement Class. Based on the foregoing, Class Counsel have concluded that settlement for the consideration and

on the terms set forth in this Settlement Agreement, is fair, reasonable, and adequate and is in the best interest of the putative class in light of all known facts and circumstances, including the risk of delay, defenses asserted by Defendants, numerous potential appellate issues, and other risks inherent in litigation.

5. Defendants' Reasons for Settlement.

Defendants have concluded that any further defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of Defendants' time, energy, and resources have been and, unless this Settlement is completed, will continue to be devoted to, the defense of the claims asserted by Plaintiffs and Settlement Class Members. Defendants have also taken into account the risks of further litigation in reaching their decision to enter into this Settlement. Even though Defendants continue to contend that they are not liable or jointly and severally liable for any of the claims set forth by Plaintiffs in the Actions, Defendants have agreed, nonetheless, to settle in the manner and upon the terms set forth in this Agreement to put to rest the claims in the Actions. Defendants contend that they have complied with all applicable state, federal, and local laws.

6. Settlement of Disputed Claims.

This Agreement is a compromise of disputed claims. Defendants have claimed and continue to claim that the Released Claims have no merit and do not give rise to liability. Settlement Class Members have claimed and continue to claim that the Released Claims have merit and give rise to liability on the part of Defendants. Nothing contained in this Agreement, no documents referred to herein, and no action taken to carry out this Agreement, may be construed or used as an admission by or against the Settlement Class Members or Class Counsel as to the merits or lack thereof of the claims asserted in this Lawsuit.

III. TERMS OF AGREEMENT

1. **Release as To All Participating Class Members.**

As of the Effective Date, the Participating Class Members, including Plaintiffs, release the Released Parties from the Released Claims for the Class Period.

2. **Release of Claims by Plaintiffs**

As of the Effective Date, Plaintiffs release the Released Parties from all of the Class Representatives' Released Claims. Plaintiffs' releases set forth herein include a waiver of all rights under California Civil Code §1542, which provides:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

Plaintiffs may hereafter discover claims or facts in addition to, or different from, those which they now know or believe to exist, but Plaintiffs expressly agrees to fully, finally and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, which exist or may exist on behalf of or against the other at the time of execution of this Agreement, including, but not limited to, any and all claims relating to or arising from Plaintiffs' employment with NEA and alleged employment with the other Defendants.

3. **Tax Treatment.**

All individual Settlement Payments shall be allocated as follows: 25% wages and expenses and 75% penalties and interest. The 25% portion of Settlement Payments subject to required withholdings and deductions by the Settlement Administrator shall be reported on Form W-2 (and such other state or local tax reporting forms as may be required by law) with respect to the year of payment as wage income to the Settlement Class Member by the Settlement Administrator on behalf of the Qualified Settlement Fund. The Settlement Administrator shall issue I.R.S. Form 1099 if required for the remaining payments. Defendants shall solely be responsible for paying the

employer's share of payroll taxes on the amounts allocated as wages and expenses, which amount shall be paid separately from the Total Settlement Amount. Plaintiffs and any Class Member who receives any Individual Settlement Payment should consult with their tax advisors concerning the tax consequences of the Individual Settlement Payments they receive under the Settlement.

4. Circular 230 Disclaimer.

Each Party to this Agreement (for purposes of this section, the "acknowledging party" and each Party to this Agreement other than the acknowledging party, an "other party") acknowledges and agrees that (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party; and (3) no attorney or adviser to any other party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

5. Transfer and Amendment of Complaints.

In order to effectuate the settlement of these Actions and for purposes of this Settlement only, the Parties will stipulate to have the Thomas Action stayed and will request leave from the

Randolph Court for Plaintiffs to file a Third Amended Complaint in the Randolph Action (attached hereto as Exhibit 2), which will add Thomas as a named Plaintiff and will combine the class and representative claims from the Thomas Action and the Randolph Action. If the Settlement is approved, Plaintiffs' Counsel will promptly dismiss the Thomas Action with prejudice. Defendants will not be required to respond to the Third Amended Complaint in the Randolph Action unless the Court does not approve this Settlement or there is no Final Judgment. If the Court does not approve this Settlement or there is no Final Judgment, Defendants will have forty-five (45) days thereafter to respond to Plaintiffs' Third Amended Complaint.

6. Preliminary Approval of Settlement.

Plaintiffs will move the Court to grant preliminary approval of this Settlement, certifying the Settlement Class for settlement purposes only and setting a date for a final approval hearing. Class Counsel shall be responsible for preparing the Motion for Preliminary Approval, supporting declarations, and exhibits thereto, for preliminary approval by the Court. Plaintiffs shall obtain a hearing on a date agreed upon by all counsel, before the Court to request the Preliminary Approval of the Settlement, and the entry of a Preliminary Approval Order: (i) preliminarily approving the proposed Settlement; (ii) allowing the filing of the proposed Third Amended Complaint; and (iii) setting a date for Final Approval. Class Counsel agrees to provide Counsel for Defendants with drafts of the Motion for Preliminary Approval and any other documents they intend to submit in support of their Motion for Preliminary Approval in advance of the filing of such documents at least seven days before filing to allow Counsel for Defendants a reasonable time to review and comment on such papers and further agrees to reasonably incorporate the comments from Counsel for Defendants. All Parties agree to work diligently and cooperatively to have this Settlement presented to the Court for preliminary approval.

7. **Settlement Administrator.**

Within thirty (30) days of the Court granting Preliminary Approval of this Agreement, Defendants shall provide the Settlement Administrator with the Class Information for purposes of mailing the Notice of Class Action Settlement to the Settlement Class Members. The Settlement Administrator shall maintain the Class Information as private and confidential and shall not disclose such data to any persons or entities other than Counsel for Defendants, except that relevant information can be provided to Class Counsel if necessary for Class Counsel to respond to inquiries or requests from Class Members. The Class Information is being supplied solely for purposes of the administration of the Settlement set forth in this Stipulation and cannot be used by the Settlement Administrator or Class Counsel for any other purpose. The Parties agree that the Class Information will not be used to solicit Class Members to file any claim, charge or complaint of any kind whatsoever against any of the Defendants and will only be used to administer the Settlement under the terms provided herein.

No later than three (3) days after receipt of the Class Information, the Settlement Administrator shall notify counsel for the Parties that the list has been received and state the number of Settlement Class Members on the list.

a. Notice by First Class U.S. Mail.

Upon receipt of the Class Information, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. Within thirty (30) days of preliminary approval of this Settlement, the Settlement Administrator will mail copies of the Notice of Class Action Settlement to all Settlement Class Members via regular First-Class U.S. Mail. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Settlement Class Member, including performing a skip-trace to identify any updated addresses. The address identified by the Settlement

Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class Member. The form of the proposed Notice of Class Action Settlement will be agreed to by the parties, and subject to Court approval and modification as necessary to fulfill the Parties desire to resolve the case.

b. Undeliverable Notices.

Any Notice of Class Action Settlement returned to the Settlement Administrator as undeliverable on or before the Response Deadline shall be re-mailed once to the forwarding address affixed thereto. If no forwarding address is affixed, the Settlement Administrator shall promptly attempt to determine a correct address by use of skip-tracing, or other search using the name, address and/or social security number of the Settlement Class Member whose notice was undeliverable, and shall then re-mail all returned, undelivered mail within ten (10) days of receiving notice that a notice was undeliverable. Settlement Class Members who receive a re-mailed Notice of Class Action Settlement shall have their Response Deadline extended twenty (20) days from the original Response Deadline.

c. Disputes Regarding Individual Settlement Payments.

Settlement Class Members who disagree with the number of work weeks stated on their Notice of Class Action Settlement derived from the Class Information may provide documentation and/or an explanation to show contrary information by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine a Participating Class Member's eligibility for, and the amounts of, any Individual Settlement Payment under the terms of this Agreement. The Settlement Administrator's determination of the eligibility for and amount of any Individual Settlement Payment will be binding upon the Settlement Class Members and the Parties. In the absence of circumstances indicating fraud, manipulation or destruction, Defendants' records

will be given a rebuttable presumption of accuracy.

d. Disputes Regarding Administration of Settlement.

Any disputes not resolved by the Settlement Administrator concerning the administration of the Settlement will be resolved by the Court under the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties will confer in good faith to attempt to resolve the dispute without involving the Court.

e. Exclusions.

The Notice of Class Action Settlement shall state that Settlement Class Members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name and address of the Settlement Class Member requesting exclusion; (2) contain a statement expressing that the Settlement Class Member elects to be excluded from the Settlement; (3) be signed by the Settlement Class Member; and (4) be postmarked by the Response Deadline and returned to the Settlement Administrator at the specified address. The date of the postmark on the return mailing envelope on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class Member who requests to be excluded from the Settlement Class will not be entitled to any recovery under the Settlement and will not be bound by the terms of the Settlement or have any right to object to or appeal the settlement. Settlement Class Members who fail to submit a valid and timely Request for Exclusion on or before the Response Deadline shall be bound by all terms of the Settlement and any Final Judgment entered in this Action.

No later than seven (7) days after the Response Deadline, the Settlement Administrator will provide counsel for the Parties with a complete list of all members of the Settlement Class who have timely submitted a Request for Exclusion.

f. Objections.

The Notice of Class Action Settlement shall state that Settlement Class Members who wish to object to the Settlement may do so in person at the Final Approval Hearing and/or in writing. Any written objection ("Notice of Objection") must be mailed to the Settlement Administrator by the Response Deadline. The date of mailing on the envelope shall be deemed the exclusive means for determining that a Notice of Objection was timely received. The Notice of Objection must be signed by the Settlement Class Member and state: (1) the full name and address of the objecting Settlement Class Member; (2) the basis for the objection; and (3) whether the Settlement Class Member intends to appear at the final approval hearing. Class Counsel will ensure that any Notice of Objection received by the Settlement Administrator by the Response Deadline is filed with the Court along with the Motion for Final Approval. Any of the Parties may file a response to any objection before the Final Approval Hearing. Any attorney who will represent an individual objecting to this Settlement who has not filed a written objection must file a notice of appearance with the Court and serve Class Counsel and counsel for Defendants with this notice no later than the Response Period Deadline. Any Class Member who fails to submit a timely written objection or to present an objection in person at the Final Approval Hearing shall be deemed to have waived any objections and shall be foreclosed from making any objection to the Settlement whether by appeal or otherwise.

8. No Solicitation of Settlement Objections or Exclusions.

The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to submit either written objections to the Settlement or Requests for Exclusion, or to appeal from the Court's Final Judgment.

9. Funding of the Qualified Settlement Fund.

No later than seven (7) calendar days after the Effective Date, the Settlement Administrator shall send Defendants' Counsel electronic wiring instructions for paying the Total Settlement Amount ($3,200,000) into the QSF. The Settlement Administrator will also inform Defendants of the amount to be sent to the QSF to pay for the employer's share of payroll taxes. No later than fourteen (14) days after the Effective Date, Defendants shall fund the QSF.

10. Net Settlement Amount.

The Net Settlement Amount will be determined by the Settlement Administrator by subtracting the Class Counsel Award, Class Representatives' Enhancement Awards, PAGA Payment, and Settlement Administrator Costs from the Total Settlement Amount. The anticipated Net Settlement Amount is $1,987,083.34. The Parties estimate the amount of the Net Settlement Amount to be calculated as follows:

Total Settlement Amount:	$3,200,000.00
Requested Class Rep. Enhancement Award:	$20,000 ($10,000 each)
Requested Class Counsel Fees:	$1,066,666.67
Requested Class Counsel Costs:	$40,000.00
PAGA Payment to LWDA:	$56,250.00
Settlement Administrator Costs:	$30,000.00
Net Settlement Amount	$1,987,083.34

This is a non-reversionary Settlement in which Defendants will pay the entire Total Settlement Amount. No portion of the Total Settlement Amount will revert to Defendants. The employers' share of payroll taxes and other required withholdings from Individual Settlement Payments, including but not limited to Defendants' FICA and FUTA contributions, if applicable,

shall be paid separately from, and in addition to, the Total Settlement Amount. Any award of less than the amounts requested for enhancements, administrative costs, litigation costs, or attorneys' fees will be returned to the Net Settlement Amount and distributed to the Settlement Class.

a. Individual Settlement Payments.

Individual Settlement Payments will be paid from the Net Settlement Fund and shall be paid pursuant to the settlement formula as follows: (i) First, using the Class Information, the Settlement Administrator will compute the total number of eligible workweeks of all participating Class Members collectively during the Class Period; this sum shall be known as the workweek total; (ii) Second, the Settlement Administrator will divide the Net Settlement Amount by the workweek total to determine the settlement value for each eligible workweek (the "Workweek Value"); and (iii) Third, the Settlement Administrator will multiply the number of eligible workweeks of a Settlement Class Member during the Class Period by the Workweek Value to determine that Settlement Class Member's Individual Settlement Payment.

Twenty-five percent (25%) of the Settlement Payment to each Settlement Class Member shall be deemed payment for settlement of claims for wages and expenses and will be subject to appropriate deductions and withholdings calculated and made by the Settlement Administrator. Seventy-five percent (75%) of the Settlement Payment to each Settlement Class Member shall be deemed payment for settlement of claims for penalties and interest and other non-wage payments not subject to withholdings.

The portion of Individual Settlement Payments subject to required withholdings and deductions by the Settlement Administrator shall be reported on Form W-2 (and such other state or local tax reporting forms as may be required by law) with respect to the year of payment as wage income to the Settlement Class Member by the Settlement Administrator on behalf of the Qualified Settlement Fund. The Settlement Administrator shall issue I.R.S. Form 1099 if required

for the portion of the Individual Settlement Payments allocated for settlement of claims for penalties and interest.

Settlement Class Members and Class Counsel shall be solely responsible for the reporting and payment of their share of any federal, state, and/or local income tax or other tax or any other withholdings, if any, on any of the payments made pursuant to this Settlement. Defendants make no representation, and it is understood and agreed that Defendants have made no representation, as to the taxability to any Settlement Class Members of any portion of the Settlement Payments, the payment of any attorneys' fees and expenses to Class Counsel, or the payment of the Class Representatives' Enhancement Awards to the Class Representatives. The Notice will advise each Class Member to seek his/her own personal tax advice prior to acting in response to the Notice, and Defendants, the Class Representatives, and Class Counsel agree that each Class Member will have an adequate opportunity to seek tax advice prior to acting in response to the Notice.

The Settlement Administrator will report each payment made from the Qualified Settlement Fund to state and federal government authorities, including the Internal Revenue Service, to the extent required by law.

Individual Settlement Payments shall be mailed by regular First-Class U.S. Mail to each Participating Class Member's last known mailing address within fifteen (15) days after Defendants fully fund the settlement.

11. Unclaimed Settlement Payment(s).

After one hundred and eighty (180) days of the mailing of the Individual Settlement Payment checks, funds attributable to unclaimed, undeliverable, or expired Individual Settlement Payment checks ("Unclaimed Settlement Payments") shall be deposited to the State of California Unclaimed Property Fund in the name of each Settlement Class Member who did not cash his or her Individual Settlement Payment check.

As part of the administration, one hundred (100) days before the Individual Settlement Payment checks expire, the Settlement Administrator shall mail reminder postcards to those Settlement Class Members whose settlement checks were not returned undeliverable and who have not cashed their checks.

12. Class Representatives' Enhancement Awards.

Defendants agree not to oppose or object to Plaintiffs' application to the Court for Class Representatives' Enhancement Awards of up to $10,000 each. The Class Representatives' Enhancement Awards shall be paid to Plaintiffs from the Total Settlement Amount no later than fifteen (15) days after Defendants fully funds the settlement. The Class Representatives' Enhancement Awards shall be in addition to the Plaintiffs' Individual Settlement Payments as Settlement Class Members. Any amount requested by Plaintiffs for the Class Representatives' Enhancement Awards and not granted by the Court shall return to the Net Settlement Fund and be distributed to Participating Class Members as provided in this Agreement.

13. Class Counsel Award.

Defendants agree not to oppose or object to any application or motion by Class Counsel for attorneys' fees in the amount of up to thirty-three and one-third percent (33.33%) of the Total Settlement Amount. Defendants further agree not to oppose any application or motion by Class Counsel for the reimbursement of reasonable litigation costs and expenses associated with Class Counsel's prosecution of this matter, to be paid from the Total Settlement Amount, not to exceed $1,066,666.67. Class Counsel shall be paid the Class Counsel Award no later than seven (7) days after Defendants fully fund the settlement. Any amount requested by Class Counsel for the Class Counsel Award and not granted by the Court shall return to the Net Settlement Fund and be distributed to Participating Class Members as provided in this Agreement.

14. Settlement Administrator Costs.

The Parties agree to allocate up to $30,000.00 of the Total Settlement Amount for Settlement Administrator Costs. The Settlement Administrator shall have the authority and obligation to make payments, credits and disbursements to Settlement Class Members in the manner set forth herein, calculated in accordance with the methodology set out in this Agreement and orders of the Court. The Parties agree to cooperate in the Settlement administration process and to make reasonable efforts to control and minimize the cost and expenses incurred in administration of the Settlement. The Settlement Administrator shall be paid the Settlement Administrator Costs no later than seven (7) days after Defendants fully fund the settlement.

In the event an appeal is filed from the Court's Final Judgment, or any other appellate review is sought, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review, but any fees incurred by the Settlement Administrator prior to it being notified of the filing of an appeal from the Court's Final Judgment or any other appellate review, shall be paid to the Settlement Administrator by Defendants within thirty (30) days of said notification.

a. Responsibilities of the Settlement Administrator.

In addition to establishing the Qualified Settlement Fund, the Settlement Administrator shall be responsible for the following: creating a plan of settlement administration and settlement fund distribution; using the data provided by Defendants to calculate each Class Member's approximate Individual Settlement Payment; ascertaining the identity and whereabouts of the Class Members and mailing and e-mailing the Class Notice and E-mail Notice out to them; communicating with Class Members as necessary; printing and mailing the Notice of Class Action Settlement and tax forms to the Participating Class Members as directed by the Court; receiving and reporting requests for exclusion and objections; processing and mailing payments to Plaintiffs, Class Counsel, and Participating Class Members; notifying the Parties of, and resolving any

disputes regarding, the calculation of Class Members' Individual Settlement Amounts; complying with all tax reporting notice and filing requirements; carrying out all other duties related to the Qualified Settlement Fund's documentation and filing; providing declaration(s) as necessary in support of preliminary and/or final approval of this Settlement; providing status reports as needed, among other administrative duties; and other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities.

15. Payment to the LWDA.

A total amount of $75,000 from the Total Settlement Amount will be allocated as the PAGA Payment to be paid as penalties under PAGA. Seventy-five percent (75%) of this amount will be the PAGA Payment to paid to the LWDA and the remaining twenty-five (25%) shall remain in the Net Settlement Fund for distribution to Participating Class Members. Any portion of the PAGA Payment not approved by the Court shall be added to the Net Settlement Amount and any additional amount ordered by the Court to be paid to the LWDA shall be paid from the Total Settlement Amount; in no event shall Defendants be required to pay in excess of the Total Settlement Amount.

16. Final Approval Hearing and Entry of Final Judgment.

Upon expiration of the Response Deadline, with the Court's permission, a final approval hearing shall be conducted to determine final approval of the Settlement along with the amount properly payable for: (i) the Class Counsel Award; (ii) the Class Representatives' Enhancement Awards; (iii) Individual Settlement Payments; (iv) PAGA Payment and (v) Settlement Administrator Costs.

17. Final Approval Order.

Plaintiffs will request, and Defendants will concur in said request, that the Court enter,

after the Final Approval Hearing, a Final Approval Order and a Final Judgment. Plaintiffs will request that the Final Approval Order certify the Settlement Class; find that this Agreement is fair, just, adequate, and in the best interests of the Class; and require the Parties to carry out the provisions of this Agreement. The Parties shall jointly prepare the proposed Final Approval Order. Plaintiffs shall be responsible for preparing the Motion for Final Approval, and any Motion Requesting Attorneys' Fees, Costs, and Class Representatives' Enhancement Awards, supporting declarations, and exhibits thereto, for final approval by the Court. Class Counsel agrees to provide Counsel for Defendants with drafts of all documents they intend to submit in support of their Motion for Final Approval and application for attorneys' fees and costs in advance of the filing of such documents at least seven days in advance of filing to allow Counsel for Defendants a reasonable time to review and comment on such papers and further agrees to reasonably incorporate the comments from Counsel for Defendants. The Parties must meet and confer and make all reasonable efforts to agree on any modifications to this Agreement that will result in entry of the Final Approval Order.

18. Nullification of Settlement Agreement.

In the event: (i) the Court denies preliminary approval of the Settlement; (ii) the Court denies final approval of the Settlement; (iii) the Court refuses to enter a Final Judgment as provided herein; or (iv) the Settlement does not become final for any other reason, this Settlement Agreement shall be null and void and any order or judgement entered by the Court in furtherance of this Settlement shall be treated as void from the beginning.

To the extent that more than 50 Settlement Class Members submit valid Requests for Exclusion, Defendants have the option to nullify this settlement within ten (10) days of notification by the Settlement Administrator after the Response Deadline of the total number of Requests for Exclusion, via a written notice to Plaintiffs' counsel. If Defendants exercise this option, the

Settlement will become void and unenforceable in its entirety and the Parties shall be returned to their status as if this Agreement had not been executed, except that any fees already incurred by the Settlement Administrator shall be paid by the specific Defendant terminating the Settlement.

19. Release of Claims by Settlement Class Members.

Upon the Effective Date, Plaintiffs and all Participating Class Members, as well as their spouses, heirs, executors, administrators, trustees and/or permitted assigns, hereby do and shall be deemed to have fully, finally and forever released, settled, compromised, relinquished and discharged any and all of the Released Parties of and from any and all Released Claims. These releases will take effect whether or not a Participating Class Member receives his or her Individual Settlement Payment or cashes and deposits any check for the Individual Settlement Payment.

20. Class Certification.

The Parties are agreeing to class certification for settlement purposes only. This Agreement shall not constitute, in this or any other proceeding, an admission of any kind by Defendants, including without limitation, that certification of a class for trial or any other purpose is appropriate or proper or that Plaintiffs can establish any of the requisite elements for class or representative treatment of any of the claims in these Actions.

If, for any reason, the Settlement is not approved, this Agreement will be void and the Parties will be restored to their respective positions as if they had not entered into the Agreement. The Parties further agree that this Agreement will not be admissible in this or any other proceeding as evidence that either (i) a class action should be certified or not decertified, or that this matter may proceed as a representative action; or (ii) Defendants are liable to Plaintiffs or any Settlement Class Member other than according to the Settlement's terms. In the event that the Settlement is not approved or otherwise voided, Defendants expressly reserve all rights

to challenge certification of a class, or Plaintiffs' ability to maintain a representative action, for all purposes.

21. Increase in Class Members and/or Work Weeks.

Defendants have represented that the Settlement Class is estimated to contain approximately 3,810 people and 67,390 workweeks. Upon receipt of the Class Data, the Claims Administrator shall confirm to Plaintiffs that the Class Data is consistent with these representations. If the actual number of workweeks is more than 70,760, *i.e.* 5% above the 67,390 weeks as represented by Defendants, Defendants shall have the option to increase the Total Settlement Amount pro rata for each additional workweek above 70,760, using the following formula: actual number of workweeks minus 70,760 divided by 70,760 times the Total Settlement Amount. In the event the number of Settlement Class Members increases beyond the current estimated size to the point that it will result in an increase of the cost of settlement administration beyond the amount provided in this Agreement, Defendants shall separately bear the increased cost of claims administration outside of the Total Settlement Amount. If Defendants choose not to pay the additional pro rata amount and the actual number of or workweeks is greater than 5% above, or does not remit payment of the increased cost of claims administration pursuant to this paragraph Plaintiffs may rescind the Settlement on behalf of the Class. If Plaintiffs exercise this option, the Settlement will become void and unenforceable in its entirety and the Parties shall be returned to their status as if this Agreement had not been executed.

22. Confidentiality Provision

The Parties agree to keep the Settlement confidential up to and until the Court grants preliminary approval of the Settlement, except as required to seek preliminary approval from the Court, including filing the Agreement with the Court. Thereafter, the parties will agree to make no comments to the media or otherwise publicize the terms of the settlement, except that in

response to media inquiries the Parties may refer the inquirer to the Settlement documents filed in Court. To the extent there are questions, the Parties will confer as to appropriate statements, if any, to be made. All Plaintiffs have been advised to keep this matter confidential.

23. No Effect on Employee Benefits.

Amounts paid to Plaintiffs or other Settlement Class Members pursuant to this Agreement shall be deemed not to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of Plaintiffs or Settlement Class Members.

24. No Admission by Defendants.

Defendants deny any and all claims alleged in these Actions and deny all wrongdoing whatsoever. This Agreement is not a concession or admission and shall not be used against Defendants as an admission or indication with respect to any claim of any fault, concession, or omission by Defendants.

25. Representation.

All of the Parties have been represented by counsel throughout all negotiations which preceded the execution of this Settlement, and all Parties have been advised by counsel prior to entering into this Settlement.

Class Counsel represent that they do not currently represent any current or former delivery drivers who worked for NEA in connection with any other filed or anticipated claims, charges, grievances, or complaints against Defendants. Class Counsel also represent that Class Counsel have not used any information obtained in the Actions to solicit or assist any other persons or attorneys to commence a claim or proceeding against Defendants.

26. Exhibits and Headings.

The terms of this Agreement include the terms set forth in any attached Exhibits, which are

incorporated by this reference as though fully set forth herein. Any Exhibits to this Agreement are an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

27. Interim Stay of Proceedings.

Upon full execution of this Agreement, the Parties agree that based upon Code of Civil Procedure §583.310 ("the 5-year rule"), the Actions shall be stayed in their entirety except for the proceedings necessary to implement and complete the Settlement.

28. Amendment or Modification.

This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest.

29. Entire Agreement.

This Agreement and any attached Exhibits constitute the entire Agreement among these Parties, and no oral or written representations, warranties, or inducements have been made to any Party concerning this Agreement or its Exhibits other than the representations, warranties, and covenants contained and memorialized in the Agreement and its Exhibits. The Parties are entering in to this Agreement based solely on the representations and warranties herein and not based on any promises, representation, and/or warranties not found herein.

30. Authorization to Enter into Settlement Agreement.

Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate actions required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation

of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement. The persons signing this Agreement on behalf of each Defendant represent and warrant that they are authorized to sign this Agreement on behalf of that Defendant. Plaintiffs represent and warrant that they are authorized to sign this Agreement and that they have not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

31. Binding on Successors and Assigns.

This Agreement shall be binding upon, and inure to the benefit of, the successors **or** assigns of the Parties hereto, as previously defined.

32. California Law Governs.

All terms of this Agreement and the Exhibits hereto shall be governed by and interpreted according to the laws of the State of California.

33. Counterparts.

This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

34. Jurisdiction of the Court.

Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the settlement embodied in this Agreement and all orders and judgments entered in connection therewith.

35. 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 define all provisions of this Agreement valid and enforceable.

WHEREFORE, Plaintiffs, on behalf of themselves and the Settlement Class Members, and Defendants have executed this Agreement as of the dates set forth below.

IT IS SO AGREED:

Dated: 2/28/2020

By: Rick Randolph
RICK RANDOLPH

Dated: February 13 2020

By: Veronica Thomas
VERONICA THOMAS

Dated: _____

AMAZON LOGISTICS, INC. and AMAZON.COM, LLC

By: _____

Print Name: _____

Title: _____

Dated: _____

NEA DELIVERY, LLC, D/B/A FIRST DELIVERY & LOGISTICS, LLC

By: _____

Print Name: _____

Title: _____

Dated: _____

AVITUS, INC. D/B/A AVITUS GROUP

By: _____

35. 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 define all provisions of this Agreement valid and enforceable.

WHEREFORE, Plaintiffs, on behalf of themselves and the Settlement Class Members, and Defendants have executed this Agreement as of the dates set forth below.

IT IS SO AGREED:

Dated: _____

By: _____
RICK RANDOLPH

Dated: February 13 2020

By: Veronica Thomas
VERONICA THOMAS

Dated: March 6, 2020

AMAZON LOGISTICS, INC. and AMAZON.COM, LLC

By: DocuSigned by: Zane Brown
DDF214FDD377494...

Print Name: Zane Brown

Title: Vice President and Associate General Counsel

Dated: _____

NEA DELIVERY, LLC, D/B/A FIRST DELIVERY & LOGISTICS, LLC

By: _____

Print Name: _____

Title: _____

Dated: _____

AVITUS, INC. D/B/A AVITUS GROUP

By: _____

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IT IS SO AGREED:

Dated: _____

By: _____
RICK RANDOLPH

Dated: February 13 2020

By: Veronica Thomas
VERONICA THOMAS

Dated: _____

AMAZON LOGISTICS, INC. and AMAZON.COM, LLC

By: _____

Print Name: _____

Title: _____

Dated: 3/3/2020

NEA DELIVERY, LLC, D/B/A FIRST DELIVERY & LOGISTICS, LLC

By: _____

Print Name: Nicholas Bulcao

Title: CEO through April 2018

Dated: _____

AVITUS, INC. D/B/A AVITUS GROUP

By: _____

35. **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 define all provisions of this Agreement valid and enforceable.

WHEREFORE, Plaintiffs, on behalf of themselves and the Settlement Class Members, and Defendants have executed this Agreement as of the dates set forth below.

IT IS SO AGREED:

Dated: _____

By: _____
RICK RANDOLPH

Dated: February 13 2020

By: Veronica Thomas
VERONICA THOMAS

Dated: _____

AMAZON LOGISTICS, INC. and AMAZON.COM, LLC

By: _____

Print Name: _____

Title: _____

Dated: _____

NEA DELIVERY, LLC, D/B/A FIRST DELIVERY & LOGISTICS, LLC

By: _____

Print Name: _____

Title: _____

Dated: _____

AVITUS, INC. D/B/A AVITUS GROUP

By: _____

Print Name:_____

Title:_____

APPROVED AS TO FORM AND CONTENT:

Dated: February 28, 2020

COHELAN KHOURY & SINGER

By:_____
J. Jason Hill,
Attorneys for Plaintiff Rick Randolph and the Proposed Class

Dated: 3/4/2020

LAW OFFICES OF RONALD A. MARRON

By:_____
Ronald A. Marron
Attorneys for Plaintiff Rick Randolph and the Proposed Class

Dated: February 13 2020

LAW OFFICES OF TODD M. FRIEDMAN

By:_____
Todd M. Friedman
Attorneys for Plaintiff Veronica Thomas and the Proposed Class

Dated: _____

MORGAN, LEWIS & BOCKIUS LLP

By:_____
John S. Battenfeld
Brian D. Fahy
Tuyet T. Nguyen
Attorneys for Defendants AMAZON LOGISTICS, INC. and AMAZON.COM, LLC

Print Name:_____

Title:_____

APPROVED AS TO FORM AND CONTENT:

Dated: February 28, 2020

COHELAN KHOURY & SINGER

By:_____
J. Jason Hill,
Attorneys for Plaintiff Rick Randolph and the Proposed Class

Dated: _____

LAW OFFICES OF RONALD A. MARRON

By:_____
Ronald A. Marron
Attorneys for Plaintiff Rick Randolph and the Proposed Class

Dated: February 13 2020

LAW OFFICES OF TODD M. FRIEDMAN

By:_____
Todd M. Friedman
Attorneys for Plaintiff Veronica Thomas and the Proposed Class

Dated: 3-19-2020

MORGAN, LEWIS & BOCKIUS LLP

By:_____
John S. Battenfeld
Brian D. Fahy
Tuyet T. Nguyen
Attorneys for Defendants AMAZON LOGISTICS, INC. and AMAZON.COM, LLC

Dated: March 3, 2020

WILSON TURNER KOSMO LLP

By:_____
Robin A. Wofford
Emily J. Fox
Attorneys for Defendant NEA DELIVERY, LLC, D/B/A FIRST DELIVERY & LOGISTICS, LLC

Dated: _____

CLARK HILL PLC

By:_____
Rafael G. Nendel-Flores
Attorneys for Defendant AVITUS, INC. D/B/A AVITUS GROUP

Dated: _____

WILSON TURNER KOSMO LLP

By: _____
Robin A. Wofford
Emily J. Fox
Attorneys for Defendant NEA DELIVERY, LLC, D/B/A FIRST DELIVERY & LOGISTICS, LLC

Dated: 3-19-20

CLARK HILL PLC

By: _____
Rafael G. Nendel-Flores
Attorneys for Defendant AVITUS, INC. D/B/A AVITUS GROUP

EXHIBIT 1

Superior Court of California, County of County of San Diego
Consolidated Lawsuits Of

Randolph v. Amazon.com, LLC, et. al., (Super. Ct. San Diego County, 2017, No. 37-2017-00011078-CU-OE-CTL) ("Randolph Matter"); and *Thomas v. NEA Delivery, LLC, et al.*, (Super. Ct. Alameda County, 2017, RG17855208) ("Thomas Matter")

A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected whether you act or don't act.

NOTICE OF SETTLEMENT OF CLASS AND REPRESENTATIVE ACTION

To: All persons who worked for NEA Delivery, LLC D/B/A First Delivery & Logistics, LLC ("NEA") to deliver packages to Amazon customers in the state of California at any time from October 17, 2014 to May 29, 2019 (the "Settlement Class" or "Settlement Class Members").

Two actions, brought on NEA drivers' behalves by Rick Randolph and Veronica Thomas ("Plaintiffs") against NEA; Avitus, Inc., D/B/A Avitus Group ("Avitus"); and Amazon Logistics, Inc. and Amazon.com LLC (together "Amazon") (collectively "Defendants"), have been settled for $3,200,000.00. If the Court approves this Settlement then Settlement Class Members will receive payments based on the number of weeks each Class Member made deliveries to Amazon customers in California during the Class Period. You are receiving this Notice because based on NEA's records, you are a Class Member.

If you are a Settlement Class Member, as described above, you are eligible for a payment from the Settlement described in this Notice without the need to return a claim form.

PLEASE READ THIS NOTICE CAREFULLY.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	To receive your settlement payment, you do not need to do anything. Your payment will be automatically mailed to you if the Court grants final approval of the Settlement. [*You must, however, keep a current address on file with the Settlement Administrator to ensure receipt of your check*.]
EXCLUDE YOURSELF	If you ask to be excluded and money is later awarded, you won't share in that. But, you keep any rights as an individual to sue NEA, Avitus, and/or Amazon separately about the same legal claims that are being settled. You may exclude yourself from the settlement by submitting a written Request for Exclusion according to the instructions contained in this Notice. **The deadline to submit a Request for Exclusion is [60 calendar days from date of mailing].**
OBJECT	Object to the Settlement if you think the Settlement is not fair by sending your written objection to the Settlement Administrator and, if you wish, appear at the Final Approval Hearing. If you submit a Request for Exclusion from the

	Settlement, you cannot also object to it. **The deadline to submit an objection is [60 calendar days from date of mailing].**

- **YOUR RIGHTS AND OPTIONS – AND THE DEADLINES TO EXERCISE THEM – ARE EXPLAINED IN THIS NOTICE.**

- **DEFENDANTS SUPPORT THE SETTLEMENT AND WILL NOT RETALIATE IN ANY MANNER AGAINST ANY CLASS MEMBER WHO REMAINS IN THE CLASS AND RECEIVES A SETTLEMENT PAYMENT.**

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BASIC INFORMATION

1. Why was this notice issued

A Court authorized this notice because you have a right to know about a proposed Settlement of two combined class and representative action lawsuits, and about all of your options, before the Court decides whether to approve it. This notice explains the lawsuits, the Settlement, your legal rights, the payments that are available, who is eligible to receive them, and how to get them.

The Court in charge of the case is the Superior Court of the State of California, County of San Diego, and the cases are known as *Randolph v. Amazon.com, LLC, et al.,* Case No. 37-2017-00011078-CU-OE-CTL) ("Randolph Matter"); and *Thomas v. NEA Delivery, LLC, et al.,* Case No. RG17855208) ("Thomas Matter") (the "Lawsuits").

2. What are these lawsuits about?

On March 27, 2017, Rick Randolph filed a representative action under California's Private Attorneys General Act of 2004 ("PAGA"), on behalf of drivers employed by NEA in California to deliver packages to Amazon customers. The *Randolph* Matter alleges that NEA and Amazon did not pay delivery drivers all overtime and minimum wages they earned; did not provide them required meal periods; did not offer them required paid rest periods; did not reimburse them for all of their expenses; did not provide them with accurate wage statements; and did not timely pay them all wages earned when they left the company. On April 3, 2017, Veronica Thomas filed a class action complaint against NEA and Avitus based on similar allegations as those made in the *Randolph* Matter. The *Randolph* Matter and the *Thomas* Matter have been combined as one lawsuit in the San Diego court for purposes of settlement as a class and representative action as to all Defendants.

Defendants deny all of the claims in the Lawsuits. Amazon and Avitus specifically deny that either of them was a joint employer or employer of any Class Members, who were employed by NEA. However, Defendants have agreed to settle the Lawsuits to avoid continued litigation. The Settlement is not an admission of any wrongdoing by Defendants or an indication that any law was violated.

3. What is a class action?

In a class action lawsuit, one or more people called Class Representatives (in this case, Rick Randolph and Veronica Thomas) sue on behalf of others who may have similar claims, who are called a class or class members.

4. Why is there a Settlement?

The Court did not decide in favor of Plaintiffs Rick Randolph or Veronica Thomas, nor did the Court decide in favor of Defendants. Instead, both sides agreed to a no-fault settlement of the Lawsuits ("Settlement"). That way, they avoid the cost of further litigation including a trial, and the people affected will get compensation from the Settlement.

5. Who are the Parties in these Lawsuits?

Rick Randolph and Veronica Thomas were each delivery drivers for NEA during a portion of the relevant time period or Class Period.

NEA, Avitus and Amazon are the Defendants.

6. Who are the Attorneys representing the Plaintiffs and the Class?

COHELAN KHOURY & SINGER Isam C. Khoury J. Jason Hill 605 "C" Street, Suite 200 San Diego, CA 92101-5305 Telephone: (619) 595-3001	**LAW OFFICES OF RONALD A. MARRON, APLC** Ronald A. Marron 651 Arroyo Drive San Diego, CA 92103 Telephone: (619) 696-9006	**LAW OFFICES OF TODD M. FRIEDMAN, P.C**. Adrian R. Bacon, Esq. 21550 Oxnard St., Suite 780 Woodland Hills, CA 91367 Telephone: (877) 206-4741

THE TERMS OF THE SETTLEMENT

7. What is the Settlement Amount?

The proposed Settlement provides for a maximum payment of $3,200,000.00 to fully and finally resolve all claims in the Lawsuit (referred to as the "Total Settlement Amount"). Class Counsel will apply to the Court for attorneys' fees of up to $1,066,666.67 (33.33% of the Total Settlement Amount); litigation costs estimated at $40,000; a Class Representative service payment of up to $10,000 each for Randolph and Thomas for their work and effort in prosecuting this case, risks taken for the payment of costs in the event of loss, and a general release of all claims; settlement administration expenses to CPT Group Inc., estimated at $30,000, and a payment in the sum of $56,250 (75% of 75,000) to the California Labor Workforce and Development Agency. The exact amount of the attorneys' fees, litigation costs, Class Representative service payments, and settlement administration expenses will be determined by the Court at the Final Approval hearing if the Settlement is approved.

Following the Court-approved deductions, the remaining portion of the Settlement, the Net Settlement Amount ("NSA"), is estimated to be $1,987,083.00. The NSA will be apportioned and paid out entirely, *automatically,* to all Class Members. No portion of the NSA will revert to Defendants under any circumstances.

8. How will the Settlement Payments be calculated and how much will my award be?

Class Members will receive their pro-rata share of the NSA based on the number of weeks they worked for NEA as delivery drivers to deliver packages to Amazon customers in the state of California at any time during the time period of October 17, 2014 to May 29, 2019, when NEA ended its California delivery operations.

Here's how it works – the NSA will be entirely distributed to the members of the Class. The NSA allocated to each individual Class Member will be based on the individual Class Member's total number of weeks worked during the Class Period, in relation to the total number of weeks worked by all Class Members, estimated to be 67,390. Weeks will be calculated by the Settlement Administrator according to NEA's records. It is estimated that Class Members will be paid approximately **$_____** per week worked during the Class Period, less applicable tax withholdings, although the actual amount that is paid may be lower or higher than the amount estimated.

Based on NEA's records, you worked _____work weeks as a driver during the Class Period. If you wish to dispute your number of work weeks during the Class Period noted above, you must notify the Settlement Administrator in writing, no later than sixty (60) days after the mailing of this notice. Please provide any proof you may have that you worked as a driver for NEA for a different number of weeks during the Class Period.

Settlement Awards shall be subject to applicable withholding taxes on that portion of the payment allocated to wages. Settlement Award payments will be allocated 25% to wages for which an IRS W-2 form will be issued, and 75% to penalties and interest for which an IRS 1099 form will be issued. You will be responsible for the tax

consequences of your Settlement Share, for filing your own returns and reporting all income received to state and federal taxing authorities, and for payment of any other applicable taxes due.

HOW TO GET A PAYMENT

9. How can I get my Settlement Payment?

If the Settlement is approved, you do not need to do anything to receive your Settlement payment check ("Settlement Award or Settlement Payment"). If the Court approves the Settlement at a final approval hearing, your Settlement Award will be mailed to the address on file with the Settlement Administrator. **It is your responsibility to keep the Settlement Administrator informed of any change in your address, as your Settlement Award will be mailed to the last known address it has on file for you** if the Court approves the settlement.

10. When can I expect to receive my Settlement Award?

If the Court approves the settlement, and there are no pending objections, your share of the Settlement will be paid approximately 90 days after the Court grants final approval of the Settlement. ***Your share of the Settlement will be mailed to the address on file for you.*** Again, if this address is not correct, or if you move after you receive this Notice, you should notify the Settlement Administrator by mail or by calling the Settlement Administrator at 800-_____.

11. What am I giving up to get a Settlement Payment?

Class Members will be giving up or "releasing" the claims described below:

Release of Claims: After the Court has approved the Settlement, each Settlement Class Member ("Releasor") will be bound by the approval and judgment and thereby releases all Defendants and any of their parent, subsidiary, predecessor and affiliated entities or related entities, their current and former directors, officers, managers, servants, accountants, attorneys, advisors, shareholders, members, insurers, representatives, issuers and assigns, employees, agents, vendors, customers and anyone acting on their behalves ("Releasees") from any and all claims, whether known or unknown that were or could have been pled based on the allegations of the original and amended Complaints and the LWDA notices, whether known or unknown, including but not limited to, any claim for: (1) Failure To Pay Regular Pay/Min. Wages in Violation of Labor Code §§ 223, 510, 558.1, 1194, 1194.2, 1197 & IWC Wage Order 9-2001, § 4; (2) Failure To Pay Overtime Premium Pay in Violation of Labor Code §§ 510, 558, 558.1, 1194, 1194.2 & IWC Wage Order 9-2001, § 3; (3) Failure To Provide Meal Periods or Compensation in Lieu Thereof in Violation of Labor Code §§ 204, 223, 218.5, 218.6, 226.7, 512, 558.1 and IWC Wage Order 9-2001, § 11; (4) Failure to Provide Rest Periods or Compensation in Lieu Thereof in Violation of Labor Code §§ 204, 223, 218.5, 218.6, 226.7, 512, 558.1 and IWC Wage Order 9-2001, § 12; (5) Failure To Reimburse For Necessary Expenditures in Violation of Labor Code §§ 510, 558.1, 2802 and IWC Wage Order 9-2001, §§ 8-9; (6) Failure to Provide Accurate Itemized Wage Statements and Failure to Maintain Records in Violation of Labor Code §§ 226(a), 226.3, 558.1, 1174; (7) Failure to Timely Pay Wages in Violation of Labor Code §§ 201-204, 210, 2926, 2927; (8) Failure to Comply with Client Employer Obligations for Subcontractors in Violation of Labor Code §§ 2810 and 2810.3, *et seq.*; (9) Unlawful and Deceptive Business Practices in Violation of Business & Professions Code §§ 17200, *et seq.*; and claims for PAGA Penalties (Cal. Labor Code §§ 2698 *et seq.*) based on such alleged violations, any derivative claims under the Fair Labor Standards Act ("FLSA") or any applicable California Industrial Welfare Commission Wage Order; related common law claims for conversion, other alleged tortious conduct, breach of contract, and misrepresentation; and any other derivative claims under California law including claims for statutory or civil penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation and other costs, expenses, restitution, and equitable and declaratory relief. The period of the Released Claims will extend up to April 19, 2020, although

Class Members should have no potential claims based on alleged violations after May 29, 2019, when NEA stopped providing delivery services to Amazon.

EXCLUDING YOURSELF FROM THE SETTLEMENT

12. Can I exclude myself from the Settlement?

If you wish to pursue your own separate lawsuit or arbitration against Defendants for the claims asserted in the Lawsuits, or if you otherwise wish not to participate in the Settlement for whatever reason, you could exclude yourself from this case (that is, "opt out" of the Settlement). To opt out and exclude yourself from the Class and this Settlement, you must provide a signed and dated letter to the Administrator requesting to be excluded from the Class. The letter must state in substance:

> "I have read and understand the Notice of Settlement of Class and Representative Action and I wish to exclude myself from the Settlement described in the Notice."

Your letter requesting to exclude yourself must include the case name: *Randolph v. Amazon.com, LLC, et. al.*, San Diego Superior Court Case No. 37-2017-00011078-CU-OE-CTL, your full name, current address, telephone number and the last four digits of your Social Security Number. It must be addressed to the Administrator at Randolph v. Amazon.com, LLC, et. al. Class Action Settlement Administrator, c/o CPT Group, P. O. Box _____, Irvine, CA 9___, postmarked on or before _____, 2020. *[60 days from mailing of Notice Packet]* Requests for exclusion postmarked after this date may be disregarded.

13. If I don't exclude myself, can I sue Defendants for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Defendants for the claims that this Settlement resolves. ***If you have a separate arbitration or lawsuit already against any of the Defendants, you should speak to your lawyer in that case immediately***. You may need to exclude yourself from this Class and this case by the above deadline in order to continue your separate arbitration or lawsuit.

14. If I exclude myself, can I get money from this Settlement?

No. If you request to be excluded from the Settlement, you will not receive a Settlement Payment. You also will not be able to object to the Settlement as explained below. The Settlement Payment you would have been entitled to receive will be redistributed to Participating Class Members. No portion of the Settlement monies will go back to Defendants as a result of any person requesting to be excluded from the Settlement.

OBJECTING TO THE SETTLEMENT

15. How do I tell the Court that I don't like the Settlement?

If you don't think the Settlement is fair, and you don't request to be excluded from the Settlement, you can object to the Settlement and tell the Court that you don't agree with the Settlement or some part of it before the Court decides whether to grant final approval of the Settlement.

To object, you must submit a timely written objection to the Administrator. Your objection must state that you object to the proposed Settlement of the case entitled *Randolph v. Amazon.com, LLC, et. al.,* (Super. Ct. San Diego County, 2017, No. 37-2017-00011078-CU-OE-CTL. Be sure to include your name, address, telephone number, and signature, and the specific reasons you object to the Settlement. You must mail your written objection to the Administrator at Randolph v. Amazon.com, LLC, et. al. Class Action Settlement Administrator,

c/o CPT Group, P. O. Box _____, Irvine, CA 9___, postmarked on or before _____, 2020. *[60 days from mailing of Notice Packet]* Requests for exclusion postmarked after this date may be disregarded.

If you have questions regarding this Settlement, you should contact attorneys for Plaintiffs and the Class (see Paragraph 6) or the Settlement Administrator. Please **DO NOT** contact attorneys for Defendants or any of the Defendants' managers and supervisors, etc.

THE COURT'S FINAL FAIRNESS HEARING

16. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval hearing in Department 74 of the Superior Court of California, County of San Diego located at the Downtown Courthouse, 330 West Broadway, California 92101 on _____, 202__, at ___ a.m. At this hearing the Court will determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and litigation costs, the Class Representatives' service payment, and the Settlement Administrator's fees and expenses. The Court may reschedule the Final Approval hearing without further notice to Class Members. However, any Class Member who has submitted an objection and indicated an intention to speak at the Final Approval Hearing will be notified by Class Counsel of any rescheduling of the date and time of the Final Fairness hearing.

17. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Judge may have. But you are welcome to come at your own expense to support or object to the settlement. If you send an objection, you don't have to come to Court to object but you can if you wish to. As long as you mailed your written objection on time, the Court will consider it. You may also hire and if required pay your own lawyer to attend if you so desire.

18. May I speak at the hearing?

You may appear at the Final Approval Hearing and ask the Court for permission to speak, however, to be sure that any objection will be considered by the Court, you must submit a timely objection, or a notice of intent to appear at the hearing. To do so, please timely submit the objection or notice of intent to appear to the Settlement Administrator listed in section 15 no later than [45 *days after mailing of postcard*.] Any notice of intent to appear should include a description of any arguments you intend to make.

GETTING MORE INFORMATION

19. Who may I contact if I have questions about the settlement?

This Notice is only a summary of the class action Lawsuits and proposed Settlement. For more information, you may personally inspect the files and the Settlement Agreement at the Superior Court of California, County of San Diego located at the Downtown Courthouse, 330 West Broadway, California 92101, during regular Court hours. You may also contact Class Counsel Cohelan Khoury & Singer if you need more information or have questions. You may also contact the Settlement Administrator by calling toll free 1-_____, or you can write to Settlement Administrator, at _____ [**insert address**].

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, DEFENDANTS OR ANY OF THEIR MANAGERS, SUPERVISORS, OR ATTORNEYS FOR INFORMATION.

ADDITIONAL IMPORTANT INFORMATION

A. **It is your responsibility to ensure that the Settlement Administrator** has your current mailing address and telephone number on file, as this will be the address to which your Settlement Award will be sent if the Settlement is approved.

B. **Settlement Award checks <u>should be cashed</u> promptly upon receipt**. Proceeds of checks which remain uncashed after 180 days from the date of issuance will be forwarded to the State of California Unclaimed Property Fund in the name of each Settlement Class Member who did not cash his or her Individual Settlement Payment check. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT 2

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Counsel for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

RICK RANDOLPH and VERONICA THOMAS, on behalf of themselves, all others similarly situated and aggrieved s, and the general public,

Plaintiffs,

v.

AMAZON.COM, LLC; AMAZON LOGISTICS, INC.; NEA DELIVERY, LLC, D/B/A FIRST DELIVERY & LOGISTICS, LLC; AVITUS, INC. D/B/A AVITUS, GROUP; and DOES 1 through 100, inclusive,

Defendants.

Case No. 37-2017-00011078-CU-OE-CTL
ASSIGNED FOR ALL PURPOSES TO:
The Honorable Ronald L. Styn
Department 74

***THIRD AMENDED* CLASS AND PAGA REPRESENTATIVE ACTION COMPLAINT FOR CIVIL PENALTIES UNDER CALIFORNIA'S PRIVATE ATTORNEYS GENERAL ACT OF 2004 ("PAGA") FOR:**

1. **FAILURE TO PAY MINIMUM WAGES AND LIQUIDATED DAMAGES (Labor Code §§ 1194, 1197, and Wage Order 9);**
2. **FAILURE TO PAY OVERTIME (Labor Code §§ 510, 1194, 1198, and Wage Order 9);**

3. **FAILURE TO PROVIDE REST PERIODS (Labor Code § 226.7 and Wage Order 9);**
4. **FAILURE TO PROVIDE MEAL PERIODS (Labor Code §§ 226.7, 512, and Wage Order 9);**
5. **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS (Labor Code § 226);**
6. **FAILURE TO REIMBURSE BUSINESS EXPENSES (Labor Code § 2802);**
7. **VIOLATION OF CALIFORNIA LABOR CODE § 558;**
8. **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.;**
9. **CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO PAY REGULAR PAY/MIN. WAGES (Labor Code §§ 2698, *et seq*.)**
10. **CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO PAY OVERTIME WAGES (Labor Code §§ 2698, *et seq*.)**
11. **CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO PROVIDE REST PERIOD PREMIUM PAY (Labor Code §§ 2698, *et seq*.)**
12. **CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO PROVIDE MEAL PERIOD PREMIUM PAY (Labor Code §§ 2698, *et seq*.)**
13. **CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO REIMBURSE EXPENSES (Labor Code §§ 2698, *et seq*.)**
14. **CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS AND MAINTAIN ACCURATE RECORDS (Labor Code §§ 2698, *et seq*.)**
15. **CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO TIMELY PAY WAGES OWED (Labor Code §§ 2698, *et seq*.)**
16. **CIVIL PENALTIES UNDER THE PAGA FOR VIOLATION OF CLIENT-EMPLOYER/SUBCONTRACTOR OBLIGATIONS (Labor Code §§ 2698, *et seq*.)**

DEMAND FOR JURY TRIAL

Complaint Filed: March 27, 2017
Trial date: Not set

Plaintiffs Rick Randolph and Veronica Thomas, on behalf of themselves and others similarly situated, as representatives of the State of California's Labor and Workforce Development Agency ("LWDA") and/or the Department of Labor Standards Enforcement ("DLSE"), and as representatives for other aggrieved current and former employees, allege against Defendants Amazon.com, LLC; Amazon Logistics, Inc.; NEA Delivery, LLC, d/b/a First Delivery Service; Avitus, Inc., d/b/a Avitus Group; and DOES 1 through 100, inclusive (collectively hereinafter, "Joint Employer Defendants"), the following facts, based upon their own personal knowledge, or where there is no personal knowledge, upon information, belief, and the investigation of their counsel, as follows:

I. INTRODUCTION

1. Plaintiffs bring this wage and hour Class Action against Joint Employer Defendants, and each of them, pursuant to Code of Civil Procedure section 382. Plaintiffs bring this action on behalf of themselves and for the benefit of all other persons who worked in the State of California as Delivery Associates, Delivery Drivers, and/or similar positions for Joint Employer Defendants (hereinafter, "Delivery Drivers") and who were covered by Wage Order 9 and were not paid wages pursuant to California law prior and subsequent to the date this action was filed. All allegations in this wage and hour Class Action Complaint are based upon information and belief, except for those allegations which pertain to the Plaintiffs named herein and their counsel. Plaintiffs' information and beliefs are based upon, inter alia, the investigation conducted to date by Plaintiffs and their counsel. Each allegation in this wage and hour Class Action Complaint either has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

2. On information and belief, for at least four years prior to the filing of this action and through to the present, Joint Employer Defendants employed Plaintiffs and the putative Class Members in San Diego County, and other counties in the State of California, and maintained and enforced against Plaintiffs and the putative Class Members the systemic policies, practices, and/or customs complained of herein. Plaintiffs seek relief on behalf of themselves and the members of the Plaintiff Class, as a result of systemic employment policies, practices, and procedures more specifically described below, which violate the California Labor Code, and the orders and standards promulgated by the California Department of Industrial Relations, Industrial Welfare Commission, and Division of Labor Standards Enforcement, and which have

resulted in the failure of Joint Employer Defendants to pay Plaintiffs and members of the Plaintiff Class all wages owed to them. Said employment policies, practices, and procedures are generally described as follows:

a. Joint Employer Defendants failed to properly pay Plaintiffs and Class Members for all time worked, including at least the state-mandated minimum wages, including, but not limited to, time spent working on the clock but deducted, through both manual adjustments and automated timekeeping parameters, and other uncompensated time for which Plaintiffs and Class Members were clocked in and subject to their employers' direction and control;

b. Joint Employer Defendants failed to pay all wages due and owing to their non-exempt Delivery Drivers, including Plaintiffs and Class Members, in violation of the California Labor Code and Industrial Welfare Commission Wage Order 9 ("Wage Order");

c. Joint Employer Defendants required, suffered, employed, and/or permitted Plaintiffs and Class Members to work in excess of regular work hours without the required overtime and/or double time compensation;

d. Joint Employer Defendants failed to provide Plaintiffs and Class Members with rest periods and/or failed to properly compensate Plaintiffs and Class Members one hour of pay in lieu of providing proper rest periods, as required by Labor Code section 226.7 and Wage Order 9;

e. Joint Employer Defendants failed to provide Plaintiffs and Class Members with duty-free meal periods of at least thirty minutes and/or failed to properly compensate Plaintiffs and Class Members one hour of pay in lieu of providing proper meal periods, as required by Labor Code sections 226.7 and 512, and Wage Order 9;

f. Joint Employer Defendants failed to indemnify reasonable and necessary business expenses of Plaintiffs and Class Members in accordance with the requirements of Labor Code section 2802;

g. Joint Employer Defendants failed to issue accurate itemized wage statements to their non-exempt Delivery Drivers, including Plaintiffs and Class Members, in violation of, *inter alia*, Labor Code section 226 and Wage Order 9;

h. Joint Employer Defendants failed to pay Plaintiffs and members of the Terminated Subclass all wages due upon termination of their employment, in violation of Labor Code sections 201-203; and,

i. Violating Business and Professions Code sections 17200, *et seq*. as further set forth below.

3. Plaintiffs also allege that Joint Employer Defendants, and each of them, had the clear ability to pay such wages as are/were due and owing to the Plaintiffs and members of the Plaintiff Class, but intentionally did not pay such wages, in conscious disregard of the rights of Plaintiffs and the members of the Plaintiff Class to timely payment of their wages.

4. This action seeks relief for the un-remediated violations of California law including, *inter alia*:

a. Damages and/or restitution, as appropriate, to Plaintiffs and to the Class Members, for non-payment of the wages due them and interest thereon;

b. Damages and/or restitution, as appropriate, to Plaintiffs and to the Class Members, for non-payment of meal and rest period wages, including premium wages;

c. Damages and/or penalties for Plaintiffs and Class Members who were not issued accurate itemized wage statements in conformity with California law.

d. Damages and/or penalties for Plaintiffs and Class Members who voluntarily quit, or were laid off and/or terminated, but who were not paid all wages due and owing in conformity with California law;

e. Implementation of other equitable and injunctive relief, including, *inter alia*, an injunction prohibiting Joint Employer Defendants, and each of them, from continuing to:

i. fail to pay all wages due in accordance with the Cal. Labor Code and Wage Order 9;

iii. fail to issue accurate itemized wage statements in accordance with the Cal. Labor Code and Wage Order 9; and,

iv. fail to pay all compensation due to their non-exempt Delivery Drivers at the time of the termination of their employment in accordance with the Cal. Labor Code; and,

f. Attorney fees and costs as provided by statute and/or applicable case law including, without limitation, Labor Code sections 226 and 1194, and Code of Civil Procedure section 1021.5; and such other relief as the Court deems just and proper.

5. During all, or a portion, of the one-year period prior to Plaintiff Rick Randolph filing notice of his claims with California's Labor and Workforce Development Agency ("LWDA") (LWDA Case No. LWDA-CM-191741-16) on December 19, 2016 (the "applicable statutory period"), Joint Employer Defendants willfully, knowingly, and systematically denied Plaintiffs and other aggrieved current and former non-exempt employees, as defined herein, regular pay and minimum wages for regular hours worked; proper overtime premium pay for overtime hours worked; lawful duty-free, uninterrupted thirty-minute meal periods when the nature of work performed did not prevent lawful duty-free meal periods, or where the nature of work that prevented duty-free meal periods was attributable solely to the Joint Employer Defendants' own insufficient staffing models; lawful duty-free, uninterrupted ten-minute rest periods; corresponding premium pay for unlawful meal and rest periods; reimbursement for necessary expenditures incurred; timely payment of wages earned each pay period and upon cessation of employment; and accurate itemized wage statements and payroll records, all of which, individually and cumulatively, resulted in liability for payment of all civil penalties recoverable by California's Department of Labor Standards Enforcement ("DLSE") and/or LWDA, and/or through an action by the California Labor Commissioner. Plaintiff Veronica Thomas similarly gave notice to the LWDA on or about March 31, 2017 (LWDA Case No. LWDA-CM-222411-17).

6. Plaintiffs also bring this action as a Representative Action on behalf of themselves and all other aggrieved current and former Delivery Drivers seeking civil penalties for the State of California in a representative capacity, as provided by California's Private Attorneys General Act of 2004 ("PAGA"), Cal. Labor Code sections 2698, *et seq*., to the extent permitted by law. True and correct copies of the Notices dated December 19, 2016 and March 23, 2017 showing compliance with California Labor Code section 2699.3 are attached hereto as **Exhibits 1** and **2** respectively, and demonstrate that Plaintiffs are aggrieved employees with standing to bring a representative action on behalf of the State of California's Labor and Workforce Development Agency and as private attorney generals. No notice of cure by the Joint Employer Defendants was provided, and no notice of investigation was received from the LWDA in the statutorily

prescribed time period since the mailing of the Notices. Accordingly, Plaintiffs file this action as a "Representative Action" as provided by California's Code of Civil Procedure, and as specifically permitted and authorized by Cal. Labor Code section 2699.3. To date, there has been no cure by the Joint Employer Defendants.

7. On March 23, 2017, Plaintiff Randolph amended his December 19, 2016 notice to include that Plaintiff Randolph will seek civil penalties against the Joint Employer Defendants under Cal. Labor Code sections 2810-2810.3 for "client employer" and "labor contractor" liability for failure to pay wages. A true and correct copy of the Amended Notice correspondence dated March 23, 2017 showing compliance with California Labor Code section 2699.3 is attached hereto as **Exhibit 2** (the enclosure to the Amended notice is being omitted as it is submitted as a separate exhibit herein). No notice of cure by the Joint Employer Defendants of the additional claims was provided, and no notice of investigation was received from the LWDA in the statutorily prescribed time period since the mailing of the Amended Notice. Accordingly, Plaintiff Randolph also seeks civil penalties for the claims contained in the amended notice. To date, there has been no cure by the Joint Employer Defendants in regard to Labor Code sections 2810-2810.3.

II. JURISDICTION AND VENUE

8. Pursuant to Article VI, section 10 of the California Constitution, subject matter jurisdiction is proper in the Superior Court of California, County of San Diego.

9. This Court also has jurisdiction over this action for civil penalties, attorneys' fees, and costs pursuant to California Labor Code sections 2698, *et seq*.

10. The amount in controversy under this Complaint exceeds the jurisdictional minimal jurisdictional limit of this Court, and the claims asserted in this Complaint are within the subject-matter jurisdiction of this Court.

11. This Court has personal jurisdiction over the Joint Employer Defendants because they are associations, corporations, limited liability companies, business entities, and/or persons that are based in, authorized, and/or registered to conduct, and in fact do conduct, substantial business, and employ, or employed, individuals in the State of California, County of San Diego.

12. The Joint Employer Defendants and other out-of-state participants can be brought before this

Court pursuant to California's "long-arm" jurisdictional statute, Cal. Civ. Proc. Code section 410.10, as a result of the Joint Employer Defendants' substantial, continuous, and systematic contacts with this State, and because the Joint Employer Defendants have purposely availed themselves of the benefits, laws, and privileges of conducting business within the State of California.

13. Pursuant to California Code of Civil Procedure sections 395 and 395.5, venue as to the Joint Employer Defendants is proper in this Court because all material acts, obligations, and/or liabilities upon which this Complaint is based upon originated and/or occurred substantially in the County of San Diego and because the Joint Employer Defendants conduct substantial business, hold significant contacts, own and/or operate business facilities, and employ, or employed, persons (including Plaintiffs and those they seek to represent) within the County of San Diego and surrounding California counties. Venue is further proper because the Joint Employer Defendants are within jurisdiction of this Court for service of process purposes. The unlawful acts and conduct alleged herein have a direct effect on Plaintiffs and those similarly situated aggrieved employees within the State of California, and within the County of San Diego.

14. Based on information and belief, Plaintiffs allege that this entire action arises solely under California statutes and law, including California's Labor Code, Code of Civil Procedure, and Industrial Welfare Commission Wage Orders (Wage Order No. 9-2001).

III. PARTIES

15. Plaintiff Rick Randolph ("Randolph"), a natural person, is, and at all times mentioned herein was, a resident and citizen of the State of California. During the applicable statutory period, Plaintiff Randolph was jointly employed by Joint Employer Defendants as a Delivery Associate (Delivery Driver), providing package pick-up and delivery services exclusively for NEA Delivery's contractor, Amazon.com, in the State of California.

16. Plaintiff Veronica Thomas Randolph ("Thomas"), a natural person, is, and at all times mentioned herein was, a resident and citizen of the State of California. During the applicable statutory period, Plaintiff Thomas was jointly employed by Joint Employer Defendants as a Delivery Associate (Delivery Driver), providing package pick-up and delivery services exclusively for NEA Delivery's contractor, Amazon.com, in the State of California.

17. Defendant Amazon.com, LLC ("Amazon"), is an active Delaware limited liability company

authorized to and conducting business in the State of California (Entity No. 201227310095) with its principal place of business located in Seattle, Washington. Amazon.com, LLC is the largest internet-based retailer in the United States and is a publicly traded company (NASDAQ: AMZN). At all times, Amazon acted as a joint employer and/or client employer under California law for a variety of local delivery driver companies operating in the State of California, and engaged in actual direct control and monitoring of delivery driver activities though use of electronic devices.

18. Defendant NEA Delivery, LLC ("NEA Delivery") is an active courier, delivery, and logistics limited liability company (NAICS Code: 4921) authorized to conduct business in the State of California (Entity No. 201428910192), with its Registered Agent for Service of Process listed with California's Secretary of State as Nicholas Stephen Bulcao located at 605 Hidden Valley Rd., Suite 280, Carlsbad, California 92011. NEA Delivery does business as First Delivery Service, First Delivery Services, Inc., and/or First Delivery & Logistics, providing courier delivery services for customers and businesses, such as Amazon, primarily within California and Arizona.

19. The true names and capabilities, whether individual, corporate, associate, or otherwise, of the Doe Defendants 1 through 100 ("Doe Defendants"), are currently unknown to Plaintiffs, and Plaintiffs therefore sue these Doe Defendants by such fictitious names pursuant to California Code of Civil Procedure section 474. Plaintiffs will seek leave to amend this Complaint to show their true names and capacities when the same has been ascertained.

20. Plaintiffs are informed and believe, and based thereon allege, that each of the Joint Employer Defendants (including the Doe Defendants) were, or are, in some way or manner, responsible and liable to Plaintiffs and other similarly-situated and aggrieved Delivery Drivers for the events, happenings, and circumstances hereinafter set forth in the body of this Complaint, and directly and proximately caused Plaintiffs and Delivery Drivers to be subject to the unlawful employment and business practices and resulting damages and civil penalties. Plaintiffs are informed and believe, and based thereon allege, that said Joint Employer Defendants are further responsible payment of PAGA civil penalties on alternative theories of liability, including, but not limited to, joint employment and/or doctrines related to ostensible agency which may be discovered as litigation proceeds.

21. Plaintiffs are informed and believe, and based thereon allege, that the Joint Employer

Defendants (including the Doe Defendants), and each of them, were, and are, an owner, co-owner, agent, representative, partner, and/or alter ego of its co-Joint Employer Defendants, or otherwise acted, and continue to act, on behalf of each and every remaining Joint Employer Defendant and, in doing the things hereinafter alleged, were, at all times material hereto, acting within the course and scope of their authorities as an owner, co-owner, agent, representative, partner, and/or alter ego of its co-Joint Employer Defendants, with the full knowledge, permission, consent, and authorization of each and every remaining Joint Employer Defendant, each co-Defendant having ratified or promoted the acts of the other co-Joint Employer Defendants, such that each of them are jointly and severally liable to Plaintiffs and similarly-situated and aggrieved Delivery Drivers. Plaintiffs are further informed and believe, and based thereon allege, that at all material times alleged herein, the Joint Employer Defendants (including the Doe Defendants), and each of them, were members of, and engaged in, a joint enterprise, partnership, and/or common enterprise, and acting within the course and scope of, and in pursuance of, said joint venture, partnership, and/or common enterprise.

22. Plaintiffs are informed and believe, and based thereon allege, that at all material times herein mentioned, the Joint Employer Defendants (including the Doe Defendants), and each of them, aided and abetted the acts and omissions of each and every one of the other Joint Employer Defendants, thereby becoming directly and proximately responsible for civil penalties as alleged herein.

23. Plaintiffs are informed and believe, and based thereon allege, that each Joint Employer Defendant (including the Doe Defendants), directly or indirectly, or through agents or other persons, employed Plaintiffs and other similarly-situated and aggrieved Delivery Drivers, and exercised control over their wages, hours, and working conditions. Plaintiffs are further informed and believe, and based thereon allege, that each Joint Employer Defendant (including the Doe Defendants) acted in all respects pertinent to this action as the agent of the other Joint Employer Defendants, carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Joint Employer Defendant is legally attributable to the other Joint Employer Defendants. The Joint Employer Defendants, and each of them, jointly managed, operated, and controlled all aspects of the manner and means of employee work and were joint employers of Plaintiffs and other similarly-situated and aggrieved Delivery Drivers under California law, and liable for civil penalties arising from illicit wage and hour practices alleged herein.

IV. GENERAL ALLEGATIONS

24. During all, or a portion, of the applicable Class Period and PAGA statutory periods, Plaintiffs and each of the similarly-situated and aggrieved Delivery Drivers they seek to represent were jointly employed by Joint Employer Defendants in the State of California, providing delivery services for NEA Delivery's contractors and/or customers, including, but not limited to, Amazon.com. Plaintiffs and other similarly-situated and aggrieved Delivery Drivers suffered legally cognizable harm due to the Joint Employer Defendants' unlawful employment policies and practices, as alleged herein, and have standing to bring this case as representatives for other similarly-situated and aggrieved current and former employees.

25. From approximately February 6, 2016 until his voluntary resignation on or about December 8, 2016, Plaintiff Rick Randolph was jointly employed by Defendants as a full-time local Delivery Driver in the State of California.

26. Plaintiff Veronica Thomas was jointly employed by Joint Employer Defendants from June 2016 to March 2, 2017.

27. Like other hourly paid Delivery Drivers subject to the same payment and working conditions, policies, practices, and procedures, Plaintiffs were assigned to accounts to provide package pick-up and delivery services for Amazon out of a hub/terminal warehouse. The warehouse for Plaintiff Randolph was located at 2777 Loker Ave. W., Suite B, in Carlsbad, California 92010. At all times, Plaintiffs were subject to both the control of their direct employer, NEA Delivery, and to the contracting principles who, as Plaintiffs allege, are secondary employers or "joint employers" under California law who had power to direct and control work duties and activities, as defined under applicable Industrial Welfare Commission Wage Order No. 9.

28. Plaintiffs, like all other similarly-situated and aggrieved employees in the State of California, were trained and provided direct and explicit control documentation by Defendants as to exactly how to perform their job, as shown by **Exhibit 4**, a true and correct copy of which is attached and is expressly incorporated by this reference to be included as part of all preceding and foregoing allegations of this Complaint. All aspects of Plaintiffs' job functions and duties revolved around compliance with the Joint Employer Defendants' explicit direction and control.

29. In the separate, but not necessarily mutually exclusive alternative theory of liability, the Joint

Employer Defendants, and each of them, violated labor contracting laws pursuant to Labor Code sections 2810-2810.3, such that they were, at all times, and in addition to a "joint employer," also a "client employer" such that it is liable for the failures on the part of any "labor contractors" who failed to pay wages due in violation of California law. Appropriate Notice has been provided to the Joint Employer Defendants pursuant to Labor Code section 2810.3(d) and such notice is attached hereto as **Exhibit 3** (the enclosures to the notice are being omitted as they are submitted as separate exhibits herein), and expressly incorporated into this Complaint by this reference.

Failure to Provide Regular Pay/Minimum Wages and Overtime Premium Pay

30. Throughout the applicable statutory periods, the Joint Employer Defendants, and each of them, routinely denied Plaintiffs and other similarly-situated and aggrieved Delivery Drivers regular pay - and, consequently, mandatory minimum wages under federal and state law - for regular hours worked, as well as overtime premium pay for overtime hours worked.

31. During their employment with NEA Delivery, Plaintiffs regularly worked full-time - typically, approximately ten to twelve or more hours per day (including overtime), five days per week.

32. During at least a portion of their employment, Plaintiffs and other Delivery Drivers tracked their start and ending work hours by clocking in and out on a computer at the warehouse with their own codes, and also wrote their shift times in a binder. However, at all relevant times, management had the ability to alter, and actually has altered, employees' clock-in/clock-out times on an employer computer system in order to pay employees less than they are entitled to.

33. Moreover, Plaintiffs and other Delivery Drivers were not always compensated for all pre- or post-delivery job duties they were required to engage in during their employment with NEA Delivery. For instance, Plaintiffs and other Delivery Drivers have been denied compensation for pre-delivery duties such as locating packages, loading and inspecting vehicles, and waiting for paperwork or vehicles; as well as post-delivery duties after clocking out such as attending meetings and training, returning undelivered packages, filling out paperwork, contacting customers, and "rescuing" other Delivery Drivers.

34. Furthermore, Plaintiffs and other Delivery Drivers' compensation structures are so confusing and subject to frequent modification that they have effectively been precluded from determining exactly how much they were entitled to be paid each pay period during the applicable statutory period, thereby

making them especially susceptible to underpayment of wages. For example, Plaintiff Randolph was generally paid a set amount each day (typically between $115 and $140 per day), at least at times during the statutory periods, regardless of the actual number of hours worked. Yet Plaintiffs' (and other employees') wage statements suggest otherwise by including hourly rates, several different overtime rates which vary between pay periods, numerous double-time overtime rates which also vary often, multiple fluctuating non-discretionary bonus rates, sick pay rates, and more. Employees were told they were supposed to be paid per route, but to this day are still not sure exactly how they were, or were supposed to be, compensated during the applicable statutory period. Notably, the Joint Employer Defendants have admitted in writing that the way Delivery Drivers' pay stubs are broken down is confusing.

35. Consequently, Plaintiffs and other similarly-situated and aggrieved Delivery Drivers were not properly compensated regular pay for all regular hours worked, and in many instances were not even compensated mandatory minimum wages under federal and California law.

36. In addition, despite regularly working more than eight hours in a workday and/or forty hours in a workweek, Plaintiffs and other Delivery Drivers were, and many still are, routinely denied proper overtime premium compensation for overtime hours worked, including without limitation, overtime resulting from denied duty-free meal and rest periods, as discussed in further detail below.[1] Instead, Plaintiffs and other Delivery Drivers were apparently paid a daily rate, at least during a portion of the applicable statutory periods, regardless of the number of regular or overtime hours worked.

37. The confusion surrounding such pay structures is only compounded by the fact that overtime rates on Plaintiffs' wage statements do not equal 1.5 times, or double, the delineated hourly rates.

38. Finally, the Joint Employer Defendants have altered and falsified employee time records in order to avoid paying proper overtime wages, and so that the appearance of violating laws which limit the number of hours per week drivers are permitted to work can be bypassed, or at least concealed.

Failure to Provide Lawful Duty-free Meal and Rest Periods, as well as Corresponding Premium Pay

39. Throughout the applicable statutory periods, the Joint Employer Defendants, and each of them, frequently denied Plaintiffs and other similarly-situated and aggrieved Delivery Drivers lawful unpaid

[1] *See Madera Police officers Assn. v. City of Madera* (1984) 36 Cal. 3d 403, 413-14 ("[T]he mealtimes of the employees were work in excess of the eight-hour day, and their right to overtime compensation, mandated by the city regulations, vested upon performance.").

duty-free, thirty-minute meal periods within the first five hours of work for shifts lasting more than six hours, and/or second duty-free meal periods for shifts lasting ten or more hours in a single workday. Similarly, the Joint Employer Defendants also frequently denied Plaintiffs and other similarly-situated and aggrieved Delivery Drivers lawful paid duty-free ten-minute rest periods for every four hours worked, or major fraction thereof, for shifts lasting more than three and one-half hours in a single workday.

40. Specifically, the Joint Employer Defendants, and each of them, denied Plaintiffs and other Delivery Drivers mandated lawful uninterrupted meal and rest periods throughout the statutory period by, *inter alia,* scheduling them for numerous time-consuming deliveries and lengthy delivery routes that prevented them from completing their daily deliveries if duty-free meal and rest periods were taken. Because Plaintiffs and other Delivery Drivers were required to complete all daily deliveries and other work-related duties before ending their shifts, they typically had no time to take uninterrupted duty-free meal and rest periods if they were to complete their required duties. If Plaintiffs ever failed to complete all scheduled daily deliveries, or had too many mis-deliveries or concessions, they would be subject to potential discipline up to and including termination, contract cancellation/deactivation, and/or non-renewal of contracts. Consequently, Plaintiffs and the similarly-situated and aggrieved Delivery Drivers they seek to represent were routinely discouraged and prevented from taking uninterrupted meal and rest periods in order to complete all scheduled deliveries and job duties, as well as avoid the imposition of potential disciplinary measures.

41. Even on the rare occasion that Plaintiffs were provided meal and/or rest periods of some sort, they were typically "on duty" and subject to management control and continuance of work-related duties.

42. If meal periods were not recorded as taken on time (which were logged by outside persons after Delivery Drivers called a certain phone number during the applicable statutory periods), management could simply alter, and has altered, meal period start and stop times to give the appearance that laws surrounding meal periods are being followed, and/or to avoid paying meal period premium pay.

43. Because a package is time stamped when scanned, records of these time stamps can be compared to logged meal periods to determine if meal periods were actually taken as recorded by management, or at all.

44. To the best of their recollection, Plaintiffs never signed any on-duty meal period agreement

or off-duty meal period waiver. And even if they did, such agreements were not voluntary, in that they were a condition of employment and non-negotiable.

45. The nature of their work did not, and does not, prevent Plaintiffs or other similarly-situated and aggrieved Delivery Drivers from taking lawful uninterrupted duty-free meal and rest periods. To the contrary, any inability to take duty-free uninterrupted meal and rest periods during the applicable statutory periods is attributable solely to the Joint Employer Defendants' own insufficient staffing models rather than the general nature of the work performed by Plaintiffs and Delivery Drivers. As such, any duty-free meal period waivers or on-duty meal period agreements entered into with Plaintiffs or other similarly-situated and aggrieved Delivery Drivers, if any, are unenforceable.

46. Relatedly, throughout the applicable statutory periods, the Joint Employer Defendants regularly denied Plaintiffs and other similarly-situated and aggrieved Delivery Drivers proper premium pay at the rate of one hour of their regular pay rates for each workday they were deprived of an unpaid duty-free, thirty-minute meal period.

47. Likewise, the Joint Employer Defendants also regularly denied Plaintiffs and other similarly-situated and aggrieved Delivery Drivers proper premium pay at the rate of one hour of their regular pay rates for each workday they were deprived of lawful uninterrupted paid rest periods.

Failure to Reimburse for Necessary Expenditures Incurred

48. During the applicable statutory periods, the Joint Employer Defendants, and each of them, denied Plaintiffs and other similarly-situated and aggrieved Delivery Drivers reimbursement for necessary expenditures incurred as a direct consequence and requirement of performing their job duties.

49. While working for the Joint Employer Defendants, Plaintiffs and other similarly-situated and aggrieved Delivery Drivers were required to, and did, personally pay for several expenses that are necessary to their performance and work-related duties, without reimbursement.

50. For instance, as part of its work uniform, Defendant Amazon required Plaintiffs and other Delivery Drivers to wear a company shirt with the Amazon logo affixed; black, navy blue, or dark grey pants; dark shoes; and other related items. However, the Joint Employer Defendants usually only provided some of these work uniform items, such as company shirts, requiring Plaintiffs and other Delivery Drivers to personally pay for the other necessary work uniform-related items (such as pants and shoes, which wear

out quickly due to the walking rigors of the job). In addition, the Joint Employer Defendants would typically only provide Delivery Drivers a meager one or two shirts, despite them typically working five or more days per week, thereby requiring Plaintiffs and other Delivery Drivers to either personally pay for additional shirts, or be forced to wear dirty clothing (a potential violation of NEA Delivery and Amazon company policies).

51. In addition, Plaintiffs and other Delivery Drivers were also required to carry and use their personal cell phones for work-related duties throughout the applicable statutory periods, including, but not limited to, responding to employer text messages almost daily; scheduling purposes; receiving orders to re-deliver packages; and maintaining communication with dispatch, management, the warehouse, and customers - all without reimbursement of any kind.

52. In fact, Plaintiffs and other Delivery Drivers were required to call the TOC (Transportation Operations Center), dispatch, and the customer before any package is marked as UTA (Unable to Access) or UTL (Unable to Locate), as well as for all possible returns, missing packages, miss-sorts, etc. The use of Delivery Drivers' personal cell phones is especially necessary due to frequent malfunctioning and reception issues surrounding the devices provided by the Joint Employer Defendants.

Failure to Provide Accurate Wage Statements and Maintain Accurate Payroll Records

53. Throughout the applicable statutory periods, the Joint Employer Defendants, and each of them, routinely failed to provide Plaintiffs and other similarly-situated and aggrieved Delivery Drivers accurate itemized wage statements.

54. During their employment, Plaintiffs and other Delivery Drivers were paid every two weeks.

55. As a result of the Joint Employer Defendants' unlawful employment practices, as alleged herein, the paystubs/wage statements provided to Plaintiffs and other similarly-situated and aggrieved Delivery Drivers failed to accurately list all employers (i.e., the Joint Employer Defendants), total regular and overtime hours worked, total regular and overtime pay, premium wages for denied lawful meal and rest periods,[2] and reimbursement for necessary expenditures incurred. Consequently, the wage statements Plaintiffs and other similarly-situated and aggrieved Delivery Drivers were provided during the applicable

[2] Premium pay for denied meal periods and rest breaks is considered a "wage" rather than a penalty. *See Murphy v. Kenneth Cole Prods., Inc*. (2007) 40 Cal. 4th 1094.

statutory period inaccurately reflected their actual gross wages and/or net wages earned each pay period. Because of these inaccurate wage statements, Plaintiffs and other similarly-situated and aggrieved Delivery Drivers were never aware of what their true wages should have been and how they were calculated, and suffered injury as a result.

56. Similarly, the Joint Employer Defendants, and each of them, also failed to maintain accurate payroll records during the applicable statutory periods showing total hours worked daily by, and the wages paid to, Plaintiffs and similarly-situated and aggrieved Delivery Drivers. Specifically, the Joint Employer Defendants' payroll records pertaining to Plaintiffs and other Delivery Drivers failed to accurately reflect all regular hours worked, overtime hours worked, regular hourly pay rates, overtime premium pay rates, actual gross wages and net wages earned, meal periods, premium wages owed for denied lawful meal and rest periods, and necessary expenditures incurred and/or reimbursements made relating thereto, among others. As a result of this failure to maintain accurate payroll records, Plaintiffs and other similarly-situated and aggrieved Delivery Drivers have effectively been precluded from monitoring their number of hours worked during the applicable statutory periods.

Failure to Timely Pay Wages Owed Each Pay Period and Upon Cessation of Employment

57. As alleged above, throughout the applicable statutory periods, Plaintiffs and other similarly-situated and aggrieved Delivery Drivers were not always provided all earned compensation owed them each and every pay period because the Joint Employer Defendants frequently failed to provide them proper regular and minimum wages and overtime premium pay earned, premium wages for denied lawful duty-free meal and rest periods, and reimbursement for necessary expenditures incurred.

58. Similarly, and consequently, Plaintiffs (and other Delivery Drivers no longer working for the Joint Employer Defendants) were not paid, let alone timely paid, all wages owed for services rendered upon cessation of employment with the Joint Employer Defendants.

V. CLASS ACTION ALLEGATIONS

60. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

61. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a class action, pursuant to California Code of Civil Procedure section 382. The class which Plaintiffs seek to represent is composed of and defined as follows:

Plaintiff Class:
All persons who are employed or have been employed as a W-2 hourly non-exempt employee by NEA Delivery, LLC who provided services as Delivery Drivers pursuant to a contract between NEA and Amazon to deliver goods to Amazon customers in the State of California during the Class Period. ("Class Period" means the period from October 17, 2014 to May 29, 2019, which is the period that NEA made deliveries pursuant to a contract with Amazon.)

62. Plaintiffs will also seek to certify the following subclass, defined as follows:

Terminated Subclass:
All members of the Plaintiff Class whose employment ended during the Class Period.

62. Excluded from the Plaintiff Class and Terminated Subclass are any of Joint Employer Defendants' leads, supervisors, managers, shift leaders, crew leaders, or any other employees in a managerial or supervisory position that were involved in enforcing or effectuating the unlawful conduct alleged herein.

63. The Class Period is the period from October 17, 2014 to May 29, 2019, which is the period that NEA made deliveries pursuant to a contract with Amazon .

A. Numerosity

64. The Plaintiff Class is so numerous that the individual joinder of all members is impracticable. While the exact number and identification of Plaintiff Class Members are unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery directed to Joint Employer Defendants, Plaintiffs are informed and believe that the Plaintiff Class includes potentially hundreds of members, working at dozens of locations across California.

B. Commonality

65. Common questions of law and fact exist as to all members of the Plaintiff Class which predominate over any questions affecting only individual members of the Plaintiff Class. These common legal and factual questions, which do not vary from Plaintiff Class Member to Plaintiff Class Member, and which may be determined without reference to the individual circumstances of any Class Member, include, but are not limited to, the following:

a. Whether Plaintiffs and members of the proposed Plaintiff Class are subject to and entitled to the benefits of California wage and hour statutes;

b. Whether Joint Employer Defendants violated the applicable Labor Code and Wage

Orders by not paying all minimum, regular, overtime, double-time, meal period, and rest period wages owed to Plaintiffs and to the Plaintiff Class;

c. Whether Joint Employer Defendants had a standard policy and/or practice of failing to pay for all time worked by Plaintiffs and members of the Plaintiff Class;

d. Whether Joint Employer Defendants had a standard policy and/or practice of denying Plaintiffs and members of the Plaintiff Class proper meal and rest breaks;

e. Whether Joint Employer Defendants maintained accurate records of the hours worked by Plaintiffs and members of the Plaintiff Class;

f. Whether Joint Employer Defendants had a standard policy and/or practice of failing to reimburse necessary business expenses of Plaintiffs and members of the Plaintiff Class, in violation of Labor Code section 2802;

g. Whether Joint Employer Defendants had a standard policy and/or practice of failing to provide Plaintiffs and members of the Plaintiff Class with accurate and proper wage statements upon payment of wages, in violation of Labor Code section 226;

h. Whether Plaintiffs and members of the Plaintiff Class sustained damages, and if so, the proper measure of such damages, as well as interest, penalties, costs, attorneys' fees, and equitable relief;

i. Whether Joint Employer Defendants' conduct as alleged herein violates the Unfair Business Practices Act of California, Bus. & Prof. Code sections 17200, *et seq*.

C. Typicality

66. The claims of the named Plaintiffs are typical of the claims of the members of the proposed Plaintiff Class. Plaintiffs and other Plaintiff Class Members sustained losses, injuries, and damages arising from Joint Employer Defendants' common policies, practices, procedures, protocols, routines, and rules which were applied to other Plaintiff Class Members as well as to Plaintiffs. Plaintiffs seek recovery for the same type of losses, injuries, and damages as were suffered by other members of the proposed Plaintiff Class.

D. Adequacy of Representation

67. Plaintiffs are adequate representatives of the proposed Plaintiff Class because they are

members of the Plaintiff Class and their interests do not conflict with the interests of the members they seek to represent. Plaintiffs have retained competent counsel, experienced in the prosecution of complex class actions, and together Plaintiffs and their counsel intend to prosecute this action vigorously for the benefit of the class. The interests of the Plaintiff Class Members will fairly and adequately be protected by Plaintiffs and their attorneys.

E. Superiority of Class Action

68. A class action is superior to other available methods for the fair and efficient adjudication of this litigation since individual litigation of the claims of all Plaintiff Class Members is impracticable. It would be unduly burdensome to the courts if these matters were to proceed on an individual basis, because this would potentially result in hundreds of individual, repetitive lawsuits. Individual litigation presents the potential for inconsistent or contradictory judgments, and the prospect of a "race to the courthouse," and an inequitable allocation of recovery among those with equally meritorious claims. By contrast, the class action device presents far fewer management difficulties and provides the benefit of a single adjudication, economics of scale, and comprehensive supervision by a single court.

69. The various claims asserted in this action are additionally or alternatively certifiable under the provisions of California Code of Civil Procedure section 382 because:

a. The prosecution of separate actions by numerous individual Plaintiff Class Members would create a risk or varying adjudications with respect to individual Plaintiff Class Members, thus establishing incompatible standards of conduct for Joint Employer Defendants; and

b. The prosecution of separate actions by individual Plaintiff Class Members would also create the risk of adjudications with respect to them that, as a practical matter, would be dispositive of the interest of the other Plaintiff Class Members who are not a party to such adjudications and would substantially impair or impede the ability of such non-party class members to protect their interests.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Minimum Wages And Liquidated Damages
Labor Code §§ 558, 1194, 1194.2, 1197, & 1198, and Wage Order 9
(By Plaintiffs Individually and on Behalf of the Plaintiff Class Against All

Joint Employer Defendants)

70. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

71. At all times relevant to this complaint, Joint Employer Defendants, and each of them, failed, and have continued to fail, to pay Plaintiffs and each Class Member all wages due, including minimum wages, as required by law.

72. As a direct and proximate result of the acts and/or omissions of each Joint Employer Defendant, Plaintiffs and each Class Member has reported to work as required and has not been compensated for all working time while under the control of the employer. Accordingly, Plaintiffs and each Class Member has been deprived of wages due, including minimum wages, in amounts to be determined at trial.

73. The applicable minimum wages fixed by the commission for Plaintiffs and the Class Members is found in Wage Order 9.

74. Pursuant to California Labor Code sections 1194 and 1194.2, as a result of Joint Employer Defendants' failure to pay Plaintiffs and the Class Members all wages due, Plaintiffs and the Class Members are entitled to each recover the unpaid wages and liquidated damages in an amount equal to the wages unlawfully unpaid, plus interest, fees and costs thereon.

SECOND CAUSE OF ACTION
Overtime And Double Time Wages
Labor Code §§ 218.6, 558, & 1194, and Wage Order 9
(By Plaintiffs Individually and on Behalf of the Plaintiff Class Against All Joint Employer Defendants)

75. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

76. At all times relevant, Joint Employer Defendants, and each of them, have failed to properly calculate and pay Plaintiffs and the Class Members the required overtime or double time premium wages in accordance with the applicable statutes and Wage Order 9, in amounts to be proven at trial.

77. As a result of each Joint Employer Defendants' failures, Plaintiffs and the Class Members are entitled to each recover the unpaid overtime and double time wages due, plus interest, attorney's fees, and costs.

THIRD CAUSE OF ACTION
Rest Periods
Labor Code §§226.7, 558 & 1198, and Wage Order 9
(By Plaintiffs Individually and on Behalf of the Plaintiff Class Against All Joint Employer Defendants)

78. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

79. Wage Order 9, section 12(A) provides, in pertinent part: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof [...] Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages."

80. Labor Code section 226.7 requires that Joint Employer Defendants provide Plaintiffs and each Class Member all rest periods specified in the applicable Wage Orders and provides that Plaintiffs and each Class Member is entitled to be paid one additional hour of pay per day at their regular rate of compensation as additional wages for the denied rest periods.

81. Plaintiffs and each Class Member suffered a loss equal to his/her applicable hourly wage rate times the total number of times he/she was not authorized and permitted to take the legally-required rest periods and has therefore not been paid all of the wages due. Accordingly, Plaintiffs and each Class Member are entitled to recover the unpaid wages in an amount to be proven at trial.

FOURTH CAUSE OF ACTION
Meal Periods
Labor Code §§ 226.7, 512, 558, & 1198, and Wage Order 9
(By Plaintiffs Individually and on Behalf of the Plaintiff Class Against All Joint Employer Defendants)

82. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

83. Joint Employer Defendants violated the applicable statues, as well as Wage Order 9. Wage Order 9 provides, in pertinent part: "No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee." Labor Code section 512 contains parallel language.

84. Labor Code section 226.7 requires that Joint Employer Defendants provide Plaintiffs and each Class Member all meal periods specified in the applicable Wage Order and that Plaintiffs and each Class Member was to be paid one additional hour of pay per day at his/her regular rate of compensation as additional wages for meal periods that were not properly provided.

85. Plaintiffs and each Class Member have suffered a loss equal to his/her applicable hourly

wage rate times the total number of times he/she was not authorized and permitted to take the legally-required meal periods and have therefore not been paid all of the wages due. Accordingly, Plaintiffs and each Class Member are entitled to recover the unpaid wages in an amount to be proven at trial.

FIFTH CAUSE OF ACTION
Itemized Wage Statement (Check Stubs) Penalties
Labor Code §§ 226 and 558
(By Plaintiffs Individually and on Behalf of the Plaintiff Class Against All Joint Employer Defendants)

86. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

87. At all times relevant, each Joint Employer Defendant violated Labor Code section 226(a) by falsely or failing to provide accurate, itemized wage statements, because the statements failed to accurately report one or more of the following:

a. total hours worked;

b. applicable rates of pay;

c. deductions withheld; and

d. gross and net wages earned.

88. Pursuant to Labor Code sections 226(e) and (h), Plaintiffs and each Class Member are entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars ($4,000). Plaintiffs and each class member are further entitled to an award of costs and reasonable attorney's fees.

89. Plaintiffs and members of the Plaintiff Class were injured by Joint Employer Defendants' failure to provide accurate wage statements because, among other things, they were unable to determine the proper amount of wages actually owed to them, and whether they had received full compensation therefor.

90. Plaintiffs and members of the Plaintiff Class request recovery of Labor Code section 226(e) penalties according to proof, as well as interest, attorney's fees and costs pursuant to Labor Code section 226(e), and all other damages, attorneys' fees, costs, expenses and interest permitted by statute.

SIXTH CAUSE OF ACTION
Unreimbursed Business Expenses
Labor Code §§ 2800 and 2802
(By Plaintiffs Individually and on Behalf of the Plaintiff Class Against All Joint Employer Defendants)

91. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

92. While acting on the direct instruction of Joint Employer Defendants and discharging their duties for them, Plaintiffs and the Class Members incurred work-related expenses.

93. Such expenses included, *inter alia*, work uniform-related items and personal cell phone use/expenses. Plaintiffs necessarily incurred these substantial expenses and losses as a direct result of performing their job duties for Joint Employer Defendants.

94. Joint Employer Defendants have failed to indemnify or in any manner reimburse Plaintiffs for these expenditures and losses. By requiring Plaintiffs to pay expenses and cover losses that they incurred in direct consequence of the discharge of their duties for Joint Employer Defendants and/or in obedience to Joint Employer Defendants' direction, Joint Employer Defendants have violated Cal. Labor Code section 2802.

95. As a direct and proximate result of Joint Employer Defendants' conduct, Plaintiffs have suffered substantial losses according to proof, as well as pre-judgment interest, costs, and attorney fees for the prosecution of this action.

96. The conduct of Joint Employer Defendants and their agents and managerial employees as described herein was willful, and in violation of the rights of Plaintiffs and the Class Members.

SEVENTH CAUSE OF ACTION
Penalties Under California Labor Code § 558
(By Plaintiffs Individually and on Behalf of the Plaintiff Class Against All Joint Employer Defendants)

97. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

98. California Labor Code Section 558 provides:

> (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:
>
> > (l) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
> >
> > (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
> >
> > (3) Wages recovered pursuant to this section shall be paid to the affected employee.

99. At all times relevant, Joint Employer Defendants, and each of them, have routinely and systematically committed numerous violations of IWC Wage Order 9, as detailed above, including but not limited to failure to pay Plaintiffs and each Class Member all wages due, including minimum wages, overtime or double time premium wages as required by law, and failing to provide full and compliant duty-free meal and rest breaks.

100. Pursuant to Labor Code section 558, Plaintiffs are entitled to recover a penalty of $50.00 for the initial failure to compensate employees for all hours worked, at the applicable rates, or failure to pay meal and rest period penalties for Joint Employer Defendants' failure to provide full, duty-free meal and/or rest breaks; and $100.00 for each subsequent failure by Joint Employer Defendants.

101. As a proximate result of Joint Employer Defendants' failure to pay overtime and/or double time wages as alleged above, Plaintiffs are entitled to recover from Joint Employer Defendants penalties pursuant to Section 558 in excess of $100,000.00 or such greater amount as may be established according to proof at trial, for an award of interest, including prejudgment interest, at the legal rate, and for costs of suit.

EIGHTH CAUSE OF ACTION
Restitution
Unlawful Competition in Violation of Business and Professions Code §§ 17200, *et seq*.
(By Plaintiffs Individually and on Behalf of the Plaintiff Class Against All Joint Employer Defendants)

102. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

103. Section 17200 of the California Business and Professions Code prohibits any unlawful, unfair or fraudulent business act or practice.

104. Plaintiffs bring this cause of action in a representative capacity on behalf of the general public and the persons affected by the unlawful and unfair conduct described herein. Plaintiff and members of the proposed Plaintiff Class have suffered and continue to suffer injury in fact and deprivation of wages and monies as a result of Joint Employer Defendants' actions.

105. The actions of Joint Employer Defendants, as herein alleged, amount to conduct which is unlawful and a violation of law. As such, said conduct constitutes unfair business practices, in violation of Business and Professions Code sections 17200, *et seq.*

106. Joint Employer Defendants' conduct as herein alleged has damaged Plaintiffs and the

members of the Plaintiff Class by denying them wages due and payable, and by failing to provide expense reimbursement and proper wage statements. Joint Employer Defendants' actions are thus substantially injurious to Plaintiffs and the members of the Plaintiff Class, causing them injury in fact and loss of money.

107. As a result of such conduct, Joint Employer Defendants have unlawfully and unfairly obtained monies owed to Plaintiffs and the members of the Plaintiff Class.

108. All members of the Plaintiff Class can be identified by reference to payroll and related records in the possession of the Joint Employer Defendants. The amount of wages due to Plaintiffs and members of the Plaintiff Class can be readily determined from Joint Employer Defendants' records. The members of the proposed Plaintiff Class are entitled to restitution of monies due and obtained by Joint Employer Defendants during the Class Period as a result of Joint Employer Defendants' unlawful and unfair conduct.

109. During the Class Period, Joint Employer Defendants committed, and continue to commit, acts of unfair competition as defined by Business and Professions Code sections 17200, *et seq*. by, among other things, engaging in the acts and practices described above.

110. Joint Employer Defendants' course of conduct, acts, and practices in violation of the California laws, as mentioned in each paragraph above, constitute distinct, separate and independent violations of Business and Professions Code sections 17200, *et seq*.

111. The harm to Plaintiffs and the members of the Plaintiff Class of being wrongfully denied lawfully earned but unpaid wages outweighs the utility, if any, of Joint Employer Defendants' policies and practices and, therefore, Joint Employer Defendants' actions described herein constitute an unfair business practice or act within the meaning of Business and Professions Code sections 17200, *et seq*.

112. Joint Employer Defendants' conduct described herein threatens an incipient violation of California's wage and hour laws, and/or violates the policy or spirit of such laws, or otherwise significantly threatens or harms competition.

113. Joint Employer Defendants' course of conduct described herein further violates *Business and Professions Code sections 17200, et seq.* in that it is fraudulent, improper, and/or unfair.

114. The unlawful, unfair, and fraudulent business practices and acts of Joint Employer Defendants as described herein above have injured Plaintiffs and members of the Plaintiff Class in that they

were wrongfully denied the timely and full payment of wages owed to them.

115. Joint Employer Defendants have been unjustly enriched as a direct result of their unlawful business practices alleged in this complaint and will continue to benefit from those practices and have an unfair competitive advantage if allowed to retain the unpaid wages.

NINTH CAUSE OF ACTION
Civil Penalties Under the PAGA for Failure to Provide Regular Pay/Min. Wages
Labor Code §§ 1194, 1197, 2698, *et seq*.; Cal. Code Regs. tit. 8, § 11090
(By Plaintiffs and Other Aggrieved Current and Former Employees)

121. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

122. California's Private Attorneys General Act of 2004 ("PAGA") provides that:

> [A]n aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action pursuant to the procedures specified in Section 2699.3 filed on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs. Nothing in this part shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part.

Cal. Labor Code § 2699(g)(1).

123. Plaintiffs are each an "aggrieved employee" under the PAGA, as they were employed by the Joint Employer Defendants, and each of them, during the applicable statutory period, and suffered one or more of the California Labor Code violations alleged herein. Accordingly, Plaintiffs seek to recover, on behalf of themselves and all other aggrieved Delivery Drivers, as defined above, the civil penalties provided by the PAGA, plus reasonable attorneys' fees and costs.

124. Specifically, Plaintiffs seek to recover civil penalties pursuant to the PAGA that arise from the policies, practices, and business acts of the Joint Employer Defendants to the extent provided by law as a Representative Action, including reasonable attorneys' fees and costs.

125. Plaintiffs, by virtue of the Notices dated December 19, 2016 and March 31, 2017 attached hereto as **Exhibits 1 and 2**, satisfied all prerequisites to serve as representatives of the general public to enforce California's labor laws, including without limitation, the penalty provisions identified in California Labor Code section 2699.5. Because the LWDA took no steps within the applicable time period required to intervene, and because Joint Employer Defendants took no corrective actions to remedy the allegations set

forth above, Plaintiffs, as representatives of the people of the State of California, will seek, and hereby do seek, any and all civil penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement. To date, there has been no cure by the Joint Employer Defendants.

126. Any civil penalties recovered herein will be distributed in accordance with PAGA, with at least 75% of the penalties recovered, other than those which are to be paid to the affected employees under the applicable statute, being reimbursed to the State of California and the LWDA. *See* Cal. Labor Code § 2699(i).

127. Plaintiffs seek civil penalties against the Joint Employer Defendants, and each of them, jointly and severally, for failure to provide Plaintiffs and other aggrieved Delivery Drivers proper regular pay/minimum wages for regular hours worked during the applicable statutory period.

128. California Labor Code section 1194(a) provides:

> Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum or overtime compensation, including interest thereon, reasonable attorneys' fees and costs of suit.

129. California Labor Code section 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.

130. Pursuant to California Labor Code section 1198, the Industrial Welfare Commission ("IWC") provides the maximum hours of work and standard conditions of labor for California employees.

131. Section 4 of IWC Wage Order No. 9-2001 provides in pertinent part:

> (A) Every employer shall pay to each employee wages not less than nine dollars ($9.00) per hour for all hours worked, effective July 1, 2014, and not less than ten dollars ($10.00) per hour for all hours worked, effective January 1, 2016 . . . .
>
> (B) Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.

132. Section 2(H) of IWC Wage Order No. 9-2001 defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is

suffered or permitted to work, whether or not required to do so."

133. Plaintiffs and the other aggrieved Delivery Drivers they seek to represent did not enter into legally binding agreements with the Joint Employer Defendants agreeing to work for a lesser wage.

134. The Joint Employer Defendants' conduct, as alleged herein, violates the aforementioned regulations because throughout the applicable statutory period, the Joint Employer Defendants failed to properly compensate Plaintiffs and other aggrieved Delivery Drivers for all regular hours worked.

135. As a direct and proximate result of the Joint Employer Defendants' unlawful conduct, as alleged herein, Plaintiffs and other aggrieved Delivery Drivers have been deprived, and continue to be deprived, of earned regular pay and mandated minimum wages for regular hours worked.

136. As such, the Joint Employer Defendants are liable, jointly and severally, for PAGA penalties resulting from their failure to provide Plaintiffs and other aggrieved Delivery Drivers proper regular pay/minimum wages for regular hours worked. Accordingly, Plaintiffs are entitled to recover, and hereby seek through this Representative Action, all civil penalties provided by California Labor Code sections 1197.1 and 2699.5, as well as attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1).

TENTH CAUSE OF ACTION
Civil Penalties Under the PAGA for Failure to Provide Overtime Premium Pay
Labor Code §§ 510, 2698, *et seq.*; Cal. Code Regs. tit. 8, § 11090
(By Plaintiffs and Other Aggrieved Current and Former Employees)

121. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

122. Plaintiffs seek civil penalties against the Joint Employer Defendants, and each of them, jointly and severally, for failure to provide Plaintiffs and other similarly aggrieved Delivery Drivers proper overtime premium pay for overtime hours worked during the applicable statutory period.

123. California Labor Code section 510 provides:

> 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. . . .

124. Pursuant to California Labor Code section 1198, the Industrial Welfare Commission ("IWC") provides the maximum hours of work and standard conditions of labor for California employees.

125. Section 3(A) of IWC Wage Order No. 9-2001 provides in pertinent part:

> . . . employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 1 /2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:
>
> > (a) One and one-half (11/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and
> >
> > (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.
> >
> > (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

126. Section 2(H) of IWC Wage Order No. 9-2001 defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

127. The Joint Employer Defendants' conduct, as alleged herein, violates the aforementioned regulations because the Joint Employer Defendants failed to properly compensate Plaintiffs and similarly-situated Delivery Drivers applicable overtime premium pay for overtime hours worked in excess of eight hours per workday, forty hours per workweek, and/or hours worked on the seventh consecutive day in a workweek.

128. As a direct and proximate result of the Joint Employer Defendants' unlawful acts, as alleged in detail herein, Plaintiffs and other Delivery Drivers have been deprived, and continue to be deprived, of proper overtime premium pay for overtime hours worked.

129. As such, the Joint Employer Defendants are liable, jointly and severally, for PAGA penalties resulting from their failure to provide Plaintiffs and similarly-situated aggrieved Delivery Drivers proper overtime premium pay for overtime hours worked. Accordingly, Plaintiffs are entitled to recover, and

hereby seek through this Representative Action, all civil penalties provided by California Labor Code section 2699.5, as well as attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1).

ELEVENTH CAUSE OF ACTION
Civil Penalties Under the PAGA for Failure to Provide Rest Periods and Rest Period Premium Pay
Labor Code §§ 226.7, 2698, *et seq.*; Cal. Code Regs. tit. 8, § 11090
(By Plaintiffs and Other Aggrieved Current and Former Employees)

130. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

131. Plaintiffs seek civil penalties against the Joint Employer Defendants, and each of them, jointly and severally, for failure to provide Plaintiffs and other aggrieved Delivery Drivers lawful paid off-duty rest periods, as well as corresponding premium pay for denied rest periods, during the applicable statutory period.

132. California Labor Code section 226.7 provides in pertinent part:

> (a) 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 . . . .
>
> (b) 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 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.

133. Pursuant to California Labor Code section 1198, the Industrial Welfare Commission provides the maximum hours of work and standard conditions of labor for California employees.

134. Sections 12(A) and 12(B) of IWC Wage Order No. 9-2001 provide:

> (A) Every employer shall authorize and permit all employees to take rest periods, which in so far as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1 /2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
>
> (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

135. Premium pay for denied meal and rest periods is considered a "wage" rather than a penalty. *See Murphy, supra*, 40 Cal. 4th at 1114.

136. The Joint Employer Defendants' conduct throughout the applicable statutory period, as alleged in detail herein, violates the aforementioned regulations because the Joint Employer Defendants failed to properly provide Plaintiffs and other aggrieved Delivery Drivers lawful uninterrupted off-duty ten-minute rest periods per four hours of work, or major fraction thereof, free from management control, as well as the corresponding required premium pay for denied rest periods.

137. As alleged in more detail above, the Joint Employer Defendants denied Plaintiffs and other aggrieved Delivery Drivers lawful paid off-duty rest periods during the applicable statutory period by, *inter alia*, scheduling them for numerous time-consuming deliveries and lengthy delivery routes, and requiring them to complete all daily deliveries and other work-related duties, which typically left them no time to take uninterrupted rest periods in order to complete their required duties. Even when they were provided rest periods of some form during the applicable statutory period, those rest periods were typically on duty, subject to management control and continuance of work-related duties.

138. Relatedly, despite failing to provide Plaintiffs and other aggrieved Delivery Drivers lawful paid off-duty rest periods, the Joint Employer Defendants also regularly denied Plaintiffs and other aggrieved Delivery Drivers proper premium compensation at the rate of one hour of pay at their regular rates of compensation for each workday they were denied an off-duty paid ten-minute rest period.

139. As such, the Joint Employer Defendants are liable, jointly and severally, for PAGA penalties resulting from their failure to provide Plaintiffs and other aggrieved Delivery Drivers lawful rest periods and the corresponding rest period premium pay. Accordingly, Plaintiffs are entitled to recover, and hereby seeks through this Representative Action, all civil penalties provided by California Labor Code sections 226.7 and 512, as well as attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1).

TWELFTH CAUSE OF ACTION

Civil Penalties Under the PAGA for Failure to Provide Meal Periods and/or Meal Period Premium Pay

Labor Code §§ 226.7, 512, 2698, *et seq.*; Cal. Code Regs. tit. 8, § 11090

(By Plaintiffs and Other Aggrieved Current and Former Employees)

140. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

141. Plaintiffs seek civil penalties against the Joint Employer Defendants, and each of them, jointly and severally, for failure to provide Plaintiffs and other aggrieved Delivery Drivers lawful off-duty unpaid meal periods, as well as corresponding premium pay for denied meal periods, during the applicable

statutory period.

142. California Labor Code section 512(a) provides:

> (a) An employer may 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 may 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.

143. California Labor Code section 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 . . . .
>
> (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 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.

144. Pursuant to California Labor Code section 1198, the Industrial Welfare Commission provides the maximum hours of work and standard conditions of labor for California employees.

145. Section 11 of IWC Wage Order No. 9-2001 provides in pertinent part:

> (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
>
> (B) An employer may not employ an employee for a work period of more than ten (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.
>
> (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
>
> (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

146. Premium pay for denied lawful meal and rest periods is considered a "wage" rather than a penalty. *See Murphy, supra*, 40 Cal. 4th at 1114.

147. The Joint Employer Defendants' conduct throughout the applicable statutory period, as alleged in detail herein, violates the aforementioned regulations because the Joint Employer Defendants failed to properly provide Plaintiffs and other aggrieved Delivery Drivers lawful unpaid off-duty thirty-minute meal periods, free from management control, as well as the corresponding required premium pay wages for denied meal periods.

148. As alleged in more detail above, the Joint Employer Defendants denied Plaintiffs and other aggrieved Delivery Drivers lawful off-duty meal periods throughout the applicable statutory period by, *inter alia*, scheduling them for numerous time-consuming deliveries and lengthy delivery routes, and requiring them to complete all daily deliveries and other work-related duties, which typically left them no time to take lawful uninterrupted off-duty meal periods in order to complete their required duties. Even when they were provided meal periods of some form during the applicable statutory period, those meal periods were typically on-duty, subject to management control, and continuance of work-related duties.

149. Upon information and belief, Plaintiffs and other aggrieved Delivery Drivers did not enter into legally binding written agreements with the Joint Employer Defendants agreeing to "on-duty" meal periods, or waiving "off-duty" meal periods. Nor does the nature of their work prevent Plaintiffs or other aggrieved Delivery Drivers from being relieved of all duties during meal periods, as off-duty meal periods could be provided without affecting, damaging, or destroying the performance of their work. To the contrary, any inability to take uninterrupted off-duty meal periods was, and is, attributable solely to the Joint Employer Defendants' own insufficient staffing models, rather than the general nature of the work performed by Plaintiffs and other aggrieved Delivery Drivers.

150. Plaintiffs are informed and believe, and based thereon allege, that all other aggrieved Delivery Drivers have substantially similar job responsibilities.

151. Relatedly, despite failing to provide Plaintiffs and other aggrieved Delivery Drivers lawful uninterrupted off-duty meal periods during the applicable statutory period, the Joint Employer Defendants also regularly denied Plaintiffs and other aggrieved Delivery Drivers proper premium pay at the rate of one hour of pay at their regular pay rates for each workday they were denied an unpaid off-duty thirty-minute

meal period.

152. As such, the Joint Employer Defendants are liable, jointly and severally, for PAGA penalties resulting from their failure to provide Plaintiffs and other aggrieved Delivery Drivers lawful meal periods and the corresponding meal period premium pay. Accordingly, Plaintiffs are entitled to recover, and hereby seek through this Representative Action, all civil penalties provided by California Labor Code sections 226.7 and512 as well as attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1).

THIRTEENTH CAUSE OF ACTION
Civil Penalties Under the PAGA for Failure to Reimburse for Necessary Expenditures Incurred Labor Code §§ 2802, 2698, *et seq*.; Cal. Code Regs. tit. 8, § 11090
(By Plaintiffs and Other Aggrieved Current and Former Employees)

153. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

154. Plaintiffs seek civil penalties against the Joint Employer Defendants, and each of them, jointly and severally, for failure to reimburse Plaintiffs and other aggrieved Delivery Drivers for necessary expenditures incurred during the applicable statutory period.

155. California Labor Code section 2802 provides:

> (a) An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.
>
> (b) All awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.
>
> (c) For purposes of this section, the term "necessary expenditures or losses" shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section.

156. California Labor Code section 2804 mandates that this statutory right cannot be waived.

157. Section 9 of IWC Wage Order No. 9 provides in pertinent part:

> (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term "uniform" includes wearing apparel and accessories of distinctive design or color.
>
> (B) When tools or equipment are required by the employer or are necessary to the

> performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. This subsection (B) shall not apply to apprentices regularly indentured under the State Division of Apprenticeship Standards.

158. California Labor Code section 2699(f) provides in pertinent part:

> For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . .
>
> (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation.

159. Aggrieved employees are entitled to pursue civil penalties under the PAGA for violations of California Labor Code section 2802. *See* Cal. Lab. Code § 2699.5.

160. Because there is no established civil penalty for violations of California Labor Code section 2802, California Labor Code section 2699(f)(2) provides the appropriate civil penalties because the Joint Employer Defendants employed more than one employee during the applicable statutory period, and still employ more than one person.

161. As alleged in more detail above, the Joint Employer Defendants violated the above statutes throughout the applicable statutory period by regularly denying Plaintiffs and other aggrieved Delivery Drivers reimbursement for necessary expenditures incurred in direct consequence of discharging their duties and/or obeying the directions of the Joint Employer Defendants, including, *inter alia*, work uniform-related items and personal cell phone use/expenses.

162. As a direct and proximate result of the Joint Employer Defendants' failure to provide reimbursement for necessary expenditures incurred throughout the applicable statutory period, Plaintiffs and other aggrieved Delivery Drivers suffered, and continue to suffer, substantial losses related to such unreimbursed expenditures, including, but not limited to, the use and enjoyment of monies owed, lost interest on monies owed, and attorneys' fees and costs incurred to enforce their rights.

163. In failing to provide Plaintiffs and other aggrieved Delivery Drivers reimbursement for necessary expenditures incurred, the Joint Employer Defendants derived, and continue to derive, an unjust and inequitable economic benefit at the expense of Plaintiffs and other aggrieved Delivery Drivers.

164. As such, the Joint Employer Defendants are liable, jointly and severally, for PAGA penalties resulting from their failure to reimburse Plaintiffs and other aggrieved Delivery Drivers for necessary expenditures incurred. Accordingly, Plaintiffs are entitled to recover, and hereby seek through this Representative Action, all civil penalties provided by California Labor Code sections 2802, 2699(f)(2), and 2699.5, as well as attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1).

FOURTEENTH CAUSE OF ACTION
Civil Penalties Under the PAGA for Failure to Provide Accurate Wage Statements and Maintain Accurate Payroll Records
Labor Code §§ 226(a), 226.3, 1174, 1174.5, 2698, *et seq.*; Cal. Code Regs. tit. 8, § 11090
(By Plaintiffs and Other Aggrieved Current and Former Employees)

165. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

166. Plaintiffs seek civil penalties against the Joint Employer Defendants, and each of them, jointly and severally, for failure to provide Plaintiff and other aggrieved Delivery Drivers accurate itemized wage statements during the applicable statutory period.

167. California Labor Code section 226(a) provides in pertinent part:

> (a) Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when 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 for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (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 . . . .

168. Similarly, Section 7(B) of IWC Wage Order No. 9-2001 provides:

> (B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security

number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

169. As alleged in detail herein, the Joint Employer Defendants violated the above statutes by failing to provide Plaintiffs and other aggrieved Delivery Drivers accurate itemized wage statements during the applicable statutory period, which accurately accounted for all hours worked and wages owed. The wage statements provided to Plaintiffs and other aggrieved Delivery Drivers failed to accurately reflect all regular and overtime hours worked, regular and overtime hourly pay rates, and/or actual gross wages and net wages earned, for the reasons detailed herein. Additionally, the Joint Employer Defendants also failed to account for premium wages owed as a result of denying Plaintiffs and other aggrieved Delivery Drivers lawful meal and rest periods, and for necessary expenditures incurred, as alleged above.

170. California Labor Code section 226.3 provides:

> 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. The civil penalties provided for in this section are in addition to any other penalty provided by law. In enforcing this section, the Labor Commissioner shall take into consideration whether the violation was inadvertent, and in his or her discretion, may decide not to penalize an employer for a first violation when that violation was due to a clerical error or inadvertent mistake.

171. Plaintiffs also seek civil penalties against the Joint Employer Defendants, and each of them, jointly and severally, for failure to maintain accurate payroll records during the applicable statutory period.

172. California Labor Code section 1174 provides in pertinent part:

> Every person employing labor in this state shall . . . .
> (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.

173. Similarly, Sections 7(A) and (C) of IWC Wage Order No. 9-2001 provide:

> (A) Every employer shall keep accurate information with respect to each employee including the following:
>
> (1) Full name, home address, occupation and social security number.
>
> (2) Birth date, if under 18 years, and designation as a minor.
>
> (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.
>
> . . .
>
> (C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

174. California Labor Code section 1174.5 provides:

> Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174 . . . shall be subject to a civil penalty of five hundred dollars ($500).

175. As alleged in detail herein, the Joint Employer Defendants violated the above statutes by failing to maintain accurate payroll records showing the hours worked daily by, and the wages paid to, Plaintiffs and other aggrieved Delivery Drivers. The Joint Employer Defendants' payroll records pertaining to Plaintiffs and other aggrieved Delivery Drivers during the applicable statutory period fail to accurately reflect all regular and overtime hours worked, regular and overtime hourly rates, actual gross wages and net wages earned, meal periods, premium wages owed for denied lawful meal and rest periods, and necessary expenditures incurred.

176. As such, the Joint Employer Defendants are liable, jointly and severally, for PAGA penalties resulting from their failure to provide Plaintiffs and other aggrieved Delivery Drivers accurate itemized wages statements, as well as their failure to maintain accurate payroll records, during the applicable statutory period. Accordingly, Plaintiffs are entitled to recover, and hereby seek through this Representative Action, all civil penalties provided by California Labor Code sections 226, 226.3, 1174, and 1174.5, as well as

attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1).

FIFTEENTH CAUSE OF ACTION
Civil Penalties Under the PAGA for Failure to Timely Pay Wages Owed
Labor Code §§ 201-204, 210, 2926, 2927, 2698, *et seq.*; Cal. Code Regs. tit. 8, § 11090
(By Plaintiffs and Other Aggrieved Current and Former Employees)

177. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

178. Plaintiffs seek civil penalties against the Joint Employer Defendants, and each of them, jointly and severally, for failure to timely pay Plaintiffs and other aggrieved Delivery Drivers all wages owed during the applicable statutory period.

179. Pursuant to California Labor Code section 2926, "[a]n employee who is not employed for a specified term and who is dismissed by his employer is entitled to compensation for services rendered up to the time of such dismissal."

180. Pursuant to California Labor Code section 2927, "[a]n employee who is not employed for a specified term and who quits the service of his employer is entitled to compensation for services rendered up to the time of such quitting."

181. Pursuant to California Labor Code section 201, "[i]f an employer discharges an employee the wages earned and unpaid at the time of discharge are due and payable immediately."

182. California Labor Code section 202 provides:

> If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

183. California Labor Code section 203(a) provides:

> If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or who refuses to receive the payment when fully tendered to him or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.

184. California Labor Code section 204 provides:

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.

185. California Labor Code section 210 provides:

(a) In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows:

(1) For any initial violation, one hundred dollars ($100) for each failure to pay each employee.

(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

(b) The penalty shall be recovered by the Labor Commissioner as part of a hearing held to recover unpaid wages and penalties pursuant to this chapter or in an independent civil action. The action shall be brought in the name of the people of the State of California and the Labor Commissioner and the attorneys thereof may proceed and act for and on behalf of the people in bringing these actions. Twelve and one-half percent of the penalty recovered shall be paid into a fund within the Labor and Workforce Development Agency dedicated to educating employers about state labor laws, and the remainder shall be paid into the State Treasury to the credit of the General Fund.

186. Section 20 of IWC Order No. 9 provides in pertinent part:

(A) In addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty of:

(1) Initial Violation — $50.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to the amount which is sufficient to recover unpaid wages.

(2) Subsequent Violations — $100.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to an amount which is sufficient to recover unpaid wages.

(3) The affected employee shall receive payment of all wages recovered.

187. The Joint Employer Defendants violated the above statutes by failing to promptly pay Plaintiffs and other aggrieved Delivery Drivers all earned wages due each pay period, as well as immediately upon termination and/or within 72 hours upon resignation.

188. During the applicable statutory period, the Joint Employer Defendants violated, and continue to violate, California Labor Code section 204 and Section 20 of IWC Wage Order No. 9 by failing to compensate Plaintiffs and other aggrieved Delivery Drivers regular pay/minimum wages for regular hours worked, overtime premium wages for overtime hours worked, premium pay for denied off-duty meal and rest periods (wages), reimbursement for incurred necessary expenditures, and other wages due to Plaintiffs and other aggrieved Delivery Drivers each pay period, as alleged in more detail herein.

189. Further, the Joint Employer Defendants violated, and continue to violate, California Labor Code sections 210, 202, 2926, and 2927 by failing to compensate former employees (including Plaintiffs and other aggrieved Delivery Drivers no longer working for the Joint Employer Defendants) for services rendered up to the time of dismissal or quitting.

190. As such, the Joint Employer Defendants are liable, jointly and severally, for PAGA penalties resulting from their failure to timely pay Plaintiffs and other aggrieved Delivery Drivers all wages owed each and every pay period, and upon cessation of employment. Accordingly, Plaintiffs are entitled to recover, and hereby seek through this Representative Action, all civil penalties provided by California Labor Code section 210 and IWC Order No. 9, section 20, as well as attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1).

SIXTEENTH CAUSE OF ACTION
Civil Penalties Under the PAGA for Violation of Client-Employer/Subcontractor Obligations Labor Code §§ 2698, *et seq*. and 2810
(By Plaintiffs and Other Aggrieved Current and Former Employees)

191. Plaintiffs incorporate all preceding paragraphs as though fully set forth herein.

192. While Plaintiffs contend that under the circumstances of joint control the Delivery Drivers are deemed jointly employed by Defendants who provided, directed and controlled all major aspects of job duties, procedures and responsibilities, including assignments of position, direct supervision of job and work performed and following policies implemented and directed by all the Joint Employer Defendants, in the alternative to being subject to joint employment, Plaintiffs allege that the Joint Employer Defendants, and each them, entered into subcontracting labor arrangements that each and the other knew or should have known provided insufficient consideration for the subcontracting entities with NEA Delivery, LLC and DOES 1-100 and did not provide them with the ability to (1) pay for all hours worked, (2) pay minimum

wages and/or overtime wages as required by law and alleged above, (3) failure to pay meal and rest period premiums, (4) failure to pay for all reasonable and necessary work expenditures, (5) failure to provide wage statements or accurate wage statements, and (6) comply with all timing requirements for pay, both to current and former employees .

193. Plaintiffs fully complied with Labor Code section 2810.3 Notice requirements as shown in **Exhibit 3** attached hereto, which was sent on March 23, 2017, and therefore has exhausted all such requirements to proceed under Labor Code sections 2810, *et seq*. Based on information and belief, Plaintiffs allege that none of the Joint Employer Defendants are entitled to any exemption or exclusion from coverage under the statute and that in fact, the labor contracting protections are directly applicable to delivery drivers in a subcontractor or labor contracting setting.

194. Labor Code section 2810(a) provides that "[a] person entity may not enter into a contract or agreement for labor or services with …[a] 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."

195. Based on information and belief, Plaintiffs allege that the Joint Employer Defendants failed to comply with Labor Code section 2810(a) and that at no time did the Joint Employer Defendants in their contracts or agreements make any effort to comply with the facts and requirements to be entitled to any presumption that the contracts and/or agreements complied with safe harbor provisions of Labor Code section 2810(b) or the conditions necessary as required by Labor Code sections 2810(d)(1)-(10).

196. As a direct and proximate result of the Joint Employer Defendants' collective failure to comply with the Labor Contracting statute, Plaintiffs and other aggrieved Delivery Drivers suffered loss of wages and were not reimbursed expenses in an amount according to proof.

197. Further, as permitted by Labor Code section 2810(g)(1), Plaintiffs and other similar Delivery Drivers are aggrieved employees and are entitled, after notice, to file an action to recover the "greater of all his or her actual damages or two hundred and 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 recovers costs and reasonable attorney's fees."

198. As such, the Joint Employer Defendants are liable, jointly and severally, for PAGA penalties resulting from their failure to pay Plaintiffs and other aggrieved Delivery Drivers all wages. Accordingly, Plaintiffs are entitled to recover, and hereby seeks through this Representative Action, all civil penalties provided by California Labor Code section 2810, as well as attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1).

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves, and on behalf of the members of the Plaintiff Class, pray for judgment against Joint Employer Defendants as follows:

A. For an order certifying the proposed Plaintiff Class;

B. For the attorneys appearing on the above caption to be named class counsel and for the named Plaintiffs to be appointed class representative;

C. For compensatory damages in an amount according to proof with interest thereon;

D. For economic and/or special damages in an amount according to proof with interest thereon;

E. For payment of unpaid wages in accordance with California labor law;

F. For payment of penalties in accordance with California law;

G. For Joint Employer Defendants to be found to have engaged in unfair competition in violation of California Business and Professions Code sections 17200, *et seq.;*

H. For Joint Employer Defendants to be ordered and enjoined to make restitution to Plaintiffs and the Plaintiff Class and disgorgement of profits from their unlawful business practices and accounting, pursuant to California Business and Professions Code sections 17203 and 17204;

I. For maintenance of this claim as a Representative Action under the PAGA, and providing Plaintiffs and their counsel with all enforcement capability as if this action had been instituted by the Department of Labor Standards Enforcement ("DLSE"), Workforce and Development Agency ("LWDA"), and/or Labor Commissioner;

J. For recovery of all civil penalties for unpaid hourly and overtime wages for the applicable statutory period as permitted by Cal. Labor Code section 2699.3, in amounts according to proof;

K. For recovery of all civil penalties during the applicable limitations periods for non-compliant

meal and rest periods and failure to pay one-hour "premiums" to Plaintiffs and other aggrieved employees as permitted by Cal. Labor Code sections 2699.3, 226.7, and 512, in an amount according to proof;

L. For recovery of civil penalties as permitted by Cal. Labor Code sections 2699(f)(2) and 2699.5 for failing to reimburse necessary business expenses, predicated upon violations of Labor Code section 2802, in an amount according to proof;

M. For recovery of civil penalties as permitted by Cal. Labor Code sections 226(a) and 226.3 for failing to provide accurate itemized wage statements, in an amount according to proof;

N. For recovery of civil penalties pursuant to Cal. Labor Code section 2699(f)(2) where a statutory civil penalty is not provided, for failing to comply with Labor Code sections 201-204 and 1197, in an amount according to proof;

O. For recovery of civil penalties pursuant to Cal. Labor Code section 210, in an amount according to proof;

P. For recovery of civil penalties pursuant to Cal. Labor sections 2810, *et seq*., and Cal. Labor Code section 2699(f)(2) where a statutory civil penalty is not provided, in an amount according to proof;

Q. Pre-Judgment and Post-Judgment interest, to the extent, and if, permitted by law; and

R. Attorneys' fees and costs of suit, including expert fees and costs pursuant to Cal. Labor Code section 2699(g)(1), as well as any other applicable law, including without limitation California Civil Code section 1021.5;

S. Any such other relief as this Court deems necessary, just, equitable, and proper under the circumstances.

Dated: July 9, 2020

COHELAN KHOURY & SINGER
LAW OFFICES OF RONALD A. MARRON, APLC

By:____ _____

Michael D. Singer
J. Jason Hill
Counsel for Plaintiffs

VIII. DEMAND FOR JURY TRIAL

Plaintiffs hereby request a jury trial on all causes of action, claims, and issues so triable.

Dated: July 9, 2020

COHELAN KHOURY & SINGER
LAW OFFICES OF RONALD A. MARRON, APLC

By: _____

Michael D. Singer
J. Jason Hill
Counsel for Plaintiffs

EXHIBIT 1

LAW OFFICES OF
RONALD A. MARRON
A PROFESSIONAL LAW CORPORATION

651 Arroyo Drive
San Diego, CA 92103

Tel: 619.696.9006
Fax: 619.564.6665

December 19, 2016

NOTICE VIA: ONLINE SUBMISSION

PAYMENT VIA: CERTIFIED U.S. MAIL (receipt acknowledgment with signature requested)

Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102

VIA: CERTIFIED U.S. MAIL (receipt acknowledgment with signature requested)

NEA Delivery, LLC
c/o Nicholas Stephen Bulcao
Registered Agent for Service of Process
6005 Hidden Valley Rd., Ste. 280
Carlsbad, California 92011

Amazon.com, LLC
c/o CSC – Lawyers Incorporating Service
Registered Agent for Service of Process
2710 Gateway Oaks Dr., Ste. 150N
Sacramento, CA 95833

RE: ***Randolph, et al. v. NEA Delivery, LLC, et al.***

Dear PAGA Administrator:

The Law Offices of Ronald A. Marron, APLC has been retained to represent Rick Randolph, Megan Weedon, and Carolina Chavez (collectively, "our clients") in their potential action against NEA Delivery, LLC d/b/a First Delivery & Logistics and Amazon.com, LLC (collectively, "Defendants"), individually and on behalf of all other similarly aggrieved currently and formerly employed Delivery Associates ("Delivery Drivers"). Pursuant to Cal. Labor Code § 2699.3, this letter constitutes written notice of Defendants' Labor Code violations, and of our clients' intent to recover statutory penalties under California's Private Attorneys General Act of 2004 ("PAGA"), Cal. Lab. Code §§ 2698, *et seq.* A copy of this letter is also being sent via certified U.S. mail to each Defendant at the addresses listed above.

NEA Delivery, LLC d/b/a First Delivery & Logistics (hereinafter, "FD&L") is a courier, delivery, and logistics limited liability company authorized to conduct business in the state of California (Cal. Entity No.: 201428910192). FD&L provides courier delivery services for customers and businesses, such as Amazon.com.

Amazon.com, Inc.—the largest internet-based retailer in the United States—is a publicly traded American electronic commerce and cloud computing company (NASDAQ: AMZN) incorporated under the laws of the state of Delaware, with its company headquarters located in Seattle, Washington. Amazon.com, Inc. is licensed to do business, and does business, in the state of California under the name Amazon.com LLC (Cal. Entity No.: 201227310095) (hereinafter collectively referred to as "Amazon").

Each of our clients were employed with FD&L as full-time Delivery Associates during the applicable statutory period, providing courier/delivery services exclusively for Amazon out of Amazon's Transportation Operations Center (TOC) or warehouse located at 2777 Loker Ave. W., Carlsbad, California 92010.

Amazon's Willful Misclassification as "Independent Contractors"

Although any person rendering service for another is generally presumed to be an employee (*see* Cal. Labor Code § 3357), Amazon willfully and knowingly misclassified our clients and other Delivery Drivers as "independent contractors" in violation of Cal. Labor Code § 226.8. However, our clients were actually joint employees of both FD&L and Amazon rather than "independent contractors" because, *inter alia*: both Defendants, including Amazon, had, and have, control or the right to control Delivery Drivers' work and the manner and means in which it is to be performed; retain pervasive control over the business operation as a whole; have the power to discipline and terminate/deactivate Delivery Drivers; exercise control over their work hours and pay structures; provide training and resources needed to perform Defendants' work; and because our clients and Delivery Drivers perform work that is part of the regular business of both FD&L and Amazon.

Concerning the level of control over Delivery Drivers' work, Amazon (in conjunction with FD&L) determines the routes/locations Delivery Drivers are assigned to, as well as the workload and number of deliveries to be completed each work day. Delivery Drivers are told when to arrive, load, and depart (which are determined solely by Amazon, and fluctuate often), and must deliver each package within a specific window of time negotiated by Amazon and its customers. Delivery Drivers work out of an assigned Amazon hub/terminal or TOC, to which they are required to report to before commencing their daily delivery duties, and return after completing deliveries. Delivery Drivers such as our clients must also adhere to both FD&L and Amazon's verbal and written company policies and procedures (including, but not limited to, FD&L's "Employee Handbook" and Amazon's "Delivery Associate Participation Guide"), such as those policies and procedures related to, *inter alia*: customer service and interaction; driving and delivery standards; parking; work safety; work uniforms and personal appearance; progressive discipline; concessions (refunds, free replacements, or account credits linked to a delivery error such as packages which are delivered but not received (DNR) by the customer); and much more. And, all Delivery Drivers must meet FD&L and Amazon's safety and training requirements. Indeed, Amazon even requires Delivery Drivers to abide by specific step-by-step instructions and use precise written scripts when contacting customers concerning situations in which a Delivery Driver is unable to locate (UTL) or access (UTA) a customer's residence, or when there is no secure locations (NSL) to effectuate a delivery, among other situations. Amazon also prohibits Delivery Drivers from texting customers, and requires Delivery Drivers to

leave Amazon's "We Missed You" cards at customers' residence to alert them where a package was left, when there is no secure location to leave a package, or when a business is closed (BC) which would prevent a delivery. Amazon also dictates when a customer's doorbell can be rang, and provides Delivery Drivers with Visor cards which specify exactly whom to call for various common situations. Amazon further requires all Delivery Drivers to complete debriefing at the end of each shift, including on topics related to undelivered packages, concessions, etc. Moreover, Defendants require Delivery Drivers, including our clients, to comply with strict Amazon uniform requirements, which include, among other items, an Amazon company shirt affixed with the Amazon logo; an Amazon hat; black, navy blue, or dark grey slacks and shoes; a safety vest; and an ID badge. The Amazon shirt logo is required to show at all times while making deliveries, and if a sweater or jacket is worn, it must either be open to show the Amazon logo or worn over the jacket/sweater. Only Amazon hats or beanies are permitted (no other logo is allowed). Amazon even requires that specific keychain lanyards be used as part of the uniform standard, which must be attached to the vehicle's keys and the Delivery Driver's belt loop at all times, even while driving. Any Delivery Driver not in compliance with this uniform code will not be allowed to go on route or subject to discipline. Delivery Drivers are also required to drive company-issued vehicles affixed with the Amazon logo decal for delivery services. Amazon also provides Delivery Drivers with parking passes for its facility. Finally, FD&L and Amazon both have the power to, and actually do, train, discipline, and fire Delivery Drivers (or terminate/deactivate their contracts), including for mis-deliveries, concessions, driving standard violations, uniform policy violations, and much more. Amazon even has the power to override FD&L regarding disciplinary decisions and the level of infraction (tier), and consequently the disciplinary measure, to be applied. Indeed, our clients and other Delivery Drivers deal with Amazon supervisorial employees, as well as Amazon field auditors, on a regular basis and routinely have to comply with their orders and directions, including without limitation orders to re-attempt delivery of undelivered packages. In addition to orders made expressly to Delivery Drivers, Amazon also impliedly controls their work by delegating duties or orders to dispatchers at the warehouse who in turn relay those orders to our clients and other Delivery Drivers in the field.

Regarding control over work hours and schedules, although Amazon does not expressly dictate working hours, it (in conjunction with FD&L) structures our clients and Delivery Drivers workloads to ensure that they work at least 10 to 12 hours or more each workday, and also sets their delivery routes and deadlines. Failure to comply with these imposed schedules and deadlines subjects our clients and other similarly situated Delivery Drivers to potential disciplinary measures, up to and including termination, contract cancellation/deactivation, and/or non-renewal of contracts. Amazon also determines the number of Delivery Drivers needed from FD&L to cover its routes. During Amazon corporate audits, Delivery Drivers are provided little, if any work, due to the absence of routes. In essence, Delivery Drivers' work schedules revolve around Amazon's delivery schedules.

Concerning control over wages and compensation, Amazon improperly classifies its Delivery Drivers as "independent contractors" rather than employees in order to avoid the wage and hour regulations and protections afforded to employees and keep costs down—forcing FD&L to bear sole responsibility for maintaining compliance with all state and federal employment laws. Delivery Drivers' compensation structures are dependent upon the value of contracts between Amazon and FD&L, as well as the amount of work/deliveries Amazon needs to complete. Amazon also unilaterally determines, among other things, customer delivery fees, charges (i.e., waiting time charges), discount rates, refunds and guarantees, tariffs, and liability and cargo insurance limits.

In regards to training, both FD&L and Amazon provide Delivery Drivers, including our clients, with training (i.e., for safety, mobile delivery software systems, accident prevention, etc.). In addition to company training, Defendants also provide Delivery Drivers with the tools necessary to perform their work-related job duties, including, but not limited to: distribution hubs/terminals and Transportation Operations Centers to work out of; parking; marked Amazon vehicles; handheld scanners and software (i.e., TC55, DORA, Rabbit, etc.) preloaded with package and customer information; dispatch ID badges; certain work uniform-related items (i.e., Amazon shirts, hats, safety vests, and lanyards); delivery management system software, GPS tools, and turn by turn directions; route and delivery schedules; customer payment systems; shipping package options; and many other resources. To compliment these tools, Amazon also provides its customers with access to online delivery management services; messenger system services; customer service and support call centers; online and telephone payment and processing services; online shipment tracking and monitoring services; shipment status notifications; and more.

Finally, our clients and Delivery Drivers' work is part of the regular business of both FD&L and Amazon (courier delivery and logistics services), both of which retained pervasive control over the joint business operation as a whole, and jointly benefitted financially therefrom. Despite these heavy restrictions and the significant level of control exercised over our clients and similarly-situated Delivery Drivers, Amazon nevertheless knowingly and willfully misclassified our clients and other Delivery Drivers as "independent contractors" rather than employees in order to avoid the costs associated with the rights afforded to employees under federal and California law—all to Defendants' (mainly, Amazon's) joint benefit.

Accordingly, Amazon is liable to our clients for civil penalties, attorneys' fees, and costs of suit for willfully misclassifying our clients and other Deliver Drivers as "independent contractors" rather than employees. *See* Cal. Labor Code §§ 226.8 and 3357; Cal. Civ. Proc. Code § 1021.5.

Defendants' Failure to Pay Regular Pay/Minimum Wage and Overtime Premium Pay

Throughout their employment with FD&L and Amazon, our clients regularly worked full-time—typically, approximately 10 to 12 or more hours per work day, including overtime, five days per week. Our clients and other Delivery Drivers clock in and out on a computer at the warehouse with their own code, and also log their shift times through writing in a binder. However, our clients and other Delivery Drivers were not, and are not, always properly paid for all hours worked. For instance, many Delivery Drivers were, and some still are, required to engage in uncompensated pre-delivery duties such as locating packages, loading and inspecting vehicles, and waiting for paperwork or vehicles; as well as uncompensated post-delivery duties after clocking out (i.e., meetings, training, filling out paperwork, contacting customers, and/or "rescuing" other Delivery Drivers). Moreover, management has the ability to change or alter, and actually has altered, employees' clock-in/clock-out times in the computer system in order to pay employees less than they are entitled to. In addition, our clients and other Delivery Drivers' compensation structures are so confusing and subject to frequent modification, that they have effectively been precluded from determining exactly how much they are supposed to be paid each pay period, making them especially susceptible to underpayment of wages. Indeed, our clients were each generally paid a set amount each day (typically between $115 and $140 per day), at least at times, regardless of the actual number of hours worked. Yet our clients' wage statements suggest otherwise by including hourly rates, several different overtime rates which vary each pay period, numerous double-time overtime rates which also vary often, multiple fluctuating non-discretionary bonus rates, sick pay rates, and more. Our clients have even been told they were supposed to be paid per route, but to this day are still not sure exactly how they are compensated. Indeed, FD&L has

admitted in writing that the way Delivery Drivers' pay stubs are broken down is confusing. Consequently, our clients and similarly situated Delivery Drivers were not properly compensated regular pay for all hours worked, and in many instances were not even compensated mandated minimum wages under federal and California law, which will become more developed as litigation and discovery progresses.

In addition, despite regularly working more than 8 hours in a workday and/or 40 hours in a workweek, our clients and other Delivery Drivers were, and many still are, routinely denied proper overtime premium compensation for all overtime hours worked, including without limitation, overtime resulting from denied meal and rest periods, as discussed in further detail below. *See Madera Police Officers Assn. v. City of Madera* (1984) 36 Cal. 3d 403, 413-14 ("[T]he mealtimes of the employees were work in excess of the eight-hour day, and their right to overtime compensation, mandated by the city regulations, vested upon performance."). Instead, our clients and other Delivery Drivers are apparently paid a daily rate regardless of the number of overtime hours worked. The confusion of such pay structures, as illustrated above, is only compounded by the fact that overtime rates on our clients' wage statements do not equal 1.5 times the delineated hourly rate. Further, management has altered/falsified time records in order to avoid paying overtime wages, and so the appearance of violating laws which limit the number of hours per week drivers can work would be bypassed, or at least concealed.

Accordingly, Defendants are jointly liable to our clients for the unpaid balance of the full amount of regular pay/minimum wages owed pursuant to Cal. Labor Code §§ 1194(a), 1194.2, 1197, and 1198, in addition to interest, attorneys' fees, costs of suit, and civil penalties pursuant to Cal. Labor Code §§ 1197.1, 218.5, and 218.6; Cal. Civ. Proc. Code §§ 1021.5 and 3289. *See also*, Industrial Wage Commission ("IWC") Wage Order No. 9-2001 § 4. Moreover, by failing to provide proper overtime premium compensation for overtime hours worked, Defendants are further liable to our clients for the full amount of overtime premium pay owed, plus interest, reasonable attorneys' fees, costs of suit, and civil penalties. *See* Cal. Lab. Code §§ 510, 558, 1194, 1198, 218.6, and 218.6; IWC Wage Order No. 9-2001 § 3. *See also* Cal. Civ. Proc. Code §§ 1021.5 and 3289.

Defendants' Failure to Provide Lawful Meal and Rest Periods and Corresponding Premium Pay

Throughout their employment, our clients and other Delivery Drivers were regularly denied a lawful uninterrupted thirty-minute meal period for work periods of more than 5 hours in a day, and a second uninterrupted meal period for work periods of more than 10 hours in a day—in violation of Cal. Labor Code §§ 512 and 1198, as well as Section 11 of IWC Wage Order No. 9-2001. Likewise, our clients and other Delivery Drivers were also denied one hour of premium pay at their regular hourly pay rates for each workday a lawful meal period was not provided, in violation of Cal. Labor Code § 226.7 and IWC Wage Order No. 9-2001 § 11. In addition to lawful meal periods, our clients and other Delivery Drivers were also regularly denied lawful uninterrupted ten-minute rest breaks for every 4 hours worked, as well as one hour of premium pay at their regular hourly pay rates for each workday a lawful rest break was not provided, in violation of Cal. Labor Code §§ 226.7 and 1198, as well as IWC Wage Order No. 9-2001 § 12.

Specifically, Defendants denied our clients and other Delivery Drivers mandated lawful uninterrupted meal and rest periods by, *inter alia*, scheduling them for numerous time-consuming deliveries and lengthy delivery routes that prevented them from completing their daily deliveries if meal and rest periods were taken. If our clients or other Delivery Drivers failed to complete all scheduled daily deliveries, or had too many mis-deliveries or concessions, they would be subject to discipline up to and including termination, contract cancellation/deactivation, and/or non-renewal of contracts. Thus, our clients and other

Delivery Drivers were routinely discouraged and prevented from taking uninterrupted meal and rest periods in order to complete their scheduled deliveries and avoid such potential disciplinary measures. Even on the rare occasion that our clients were provided meal and/or rest periods of some sort, they were typically on-duty and subject to management control and continuance of work-related duties. If meal periods are not recorded as taken on time (which are logged by outside persons after Delivery Drivers call a certain phone number), management can simply alter, and has altered, lunch period start and stop times to give the appearance that laws surrounding meal periods are being followed, and/or to avoid paying meal period premium pay. Because a package is time stamped when scanned, records of these time stamps can be compared to logged meal periods to determine if meal periods were actually taken as recorded by management, or at all. To the best of their recollection, our clients never signed any on-duty meal period agreement or off-duty meal period waiver. And if they did, such agreements were not voluntary, in that they were a condition of employment and non-negotiable; nor enforceable, in that the nature of work did not prevent our clients or other Delivery Drivers from being provided uninterrupted meal periods. Indeed, any circumstances that would have prevented uninterrupted meal periods was due solely to insufficient staffing models, rather than the general nature of the work, thereby implicating further potential violations of Cal. Labor Code §§ 2810, *et seq.*

Accordingly, Defendants are jointly liable to our clients for premium pay for denied meal and rest periods, civil penalties, reasonable attorneys' fees and costs, and interest pursuant to Cal. Labor Code §§ 226.7, 558, 218.5, 218.6, as well as IWC Wage Order No. 9-2001 §§ 11 and 12, as made applicable through Cal. Labor Code § 1198; *See also* Cal. Civ. Proc. Code §§ 1021.5 and 3289. Defendants are further jointly liable for civil penalties in connection with their failure to actually provide lawful off-duty meal and rest periods throughout the statutory period, in violation of Cal. Labor Code § 512 and IWC Wage Order No. 9-2001 §§ 11(A), 12(A)—entirely separate from the failure to pay the premium pay wages associated with denied meal and rest periods. Indeed, PAGA civil penalties are available for violations of an IWC Wage Order. *See Bright v. 99cents Only Stores* (2010) 189 Cal. App. 4th 1472, 1480; *Home Depot U.S.A., Inc. v. Super. Ct.* (2010) 191 Cal. App. 4th 210, 223. The *Bright* and *Home Depot* cases also hold that PAGA's more costly default penalties apply to violations of the seating provisions (and similar provisions) of a Wage Order, because the Wage Order's own penalty provision applies only to the underpayment of wages. *See* IWC Wage Order No. 9-2001 § 20.

Defendants' Failure to Reimburse for Necessary Expenditures Incurred

While working for Defendants, our clients and other Delivery Drivers were also required to, and did, personally pay for several expenses that are necessary to their performance and work-related duties, without reimbursement. For instance, as part of its work uniform policy, Defendants required our clients and other Delivery Drivers to wear a company shirt with the Amazon logo affixed; black, navy blue, or dark grey pants; dark shoes; and other related items, but only usually provided Amazon company shirts and a safety vest (and at times, an Amazon hat), thereby requiring Delivery Drivers to personally pay for the other necessary work uniform-related items (such as pants and shoes, which wear out quickly due to the walking rigors of his job). *See* IWC Wage Order No. 9-2001 § 9 (Uniforms and Equipment). In addition, Defendants would typically only provide Delivery Drivers a meager one or two shirts, despite Delivery Drivers typically working five or more days per week, thereby requiring Delivery Drivers to personally pay for additional ones or wear dirty clothing (a possible violation of Amazon's policies). Our clients and other Delivery Drivers were, and are, also required to carry and use their personal cell phones for work-related duties including, but not limited to, responding to employer text messages almost daily; scheduling purposes; receiving orders to re-deliver packages; and maintaining communication with dispatch, management, the

warehouse, and customers—all without any reimbursement of *any* kind. In fact, Delivery Drivers are required to call the TOC, dispatch, and the customer before any package is marked as UTA or UTL, as well as for all possible returns, missing packages, miss-sorts, etc. The use of Delivery Drivers' personal cell phones is especially necessary due to frequent malfunctioning and reception issues surrounding the devices provided by Defendants.

Accordingly, Defendants are jointly liable to our clients under Cal. Labor Code §§ 2802, 2804, and 510, as well as IWC Wage Order No. 9-2001 § 9, for failing to reimburse our clients and similarly situated Delivery Drivers for all necessary expenditures incurred in direct consequence of the discharge of work duties and/or obedience to employer directions, including attorneys' fees and costs incurred to enforce their rights. *See* Cal. Labor Code §§ 2802(c), 218.5, and 218.6; Cal. Civ. Proc. Code §§ 1021.5 and 3289.

Defendants' Failure to Provide Accurate Wage Statements and Maintain Accurate Payroll Records

Our clients and other Delivery Drivers are paid every two weeks. California law requires employers to provide employees with written accurate itemized wage statements each pay period, showing, among other things, gross wages earned, net wages earned, total hours worked, applicable hourly rates, and deductions. Cal. Labor Code § 226(a); IWC Wage Order No. 9-2001 § 7(B). Similarly, California employers must also maintain accurate payroll records for no less than 3 years showing the hours worked daily by, and the wages paid to, all employees, as well as time records showing when each employee begins and ends each workday, and any on-duty meal periods taken. Cal. Labor Code § 1174(d); IWC Wage Order 9-2001 § 7(A). However, as a result of Defendants' unlawful employment practices, as alleged herein, the paystubs/wage statements provided to our clients and other Delivery Drivers failed to accurately list all employers (i.e., Amazon), total hours worked, overtime pay, and premium wages for denied lawful meal and rest periods.[1] Consequently, the wage statements/paystubs our clients and other Delivery Drivers received fail to accurately reflect actual gross wages and actual net wages earned. Because of these inaccurate paystubs, our clients were never aware of what all true wages should have been and how they were calculated, and suffered injury as a result. *See* Cal. Lab. Code § 226(e)(2). Similarly, Defendants also failed to promptly pay all wages owed each pay period, and also failed to pay our clients and other Delivery Drivers no longer employed by Defendants all wages owed upon cessation of employment for the same reasons. As such, Defendants are jointly liable to our clients for violations of Cal. Labor Code §§ 226 and 226.3, as well as waiting time penalties for formerly employed Delivery Drivers, including our clients, at their average daily wages for up to 30 days under Cal. Labor Code § 203, in addition to attorneys' fees, costs of suit, and interest. Cal. Civ. Proc. Code §§ 1021.5 and 3289. Likewise, because Defendants' payroll records are inaccurate, they are also jointly liable to our clients for failing to maintain accurate payroll records in violation of Cal. Labor Code §§ 1174 and 1174.5, and IWC Wage Order No. 9-2001 § 7. *See also* Cal. Civ. Proc. Code §§ 1021.5 and 3289.

Defendants' Failure to Promptly Pay Wages Owed

Because Defendants failed, and continue to fail, to provide compensation for all wages earned, overtime premium pay, and premium wages for denied meal and rest periods, our clients and other similarly situated Delivery Drivers were not provided all earned compensation owed them each and every pay period. Likewise, and for these same reasons, Delivery Drivers no longer working for Defendants were not

[1] Premium pay for denied meal periods and rest breaks is considered a "wage" rather than a penalty. *See Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094 (2007).

promptly paid all wages upon cessation of employment, despite California law requiring an employer to pay an employee within 72 hours all compensation for services rendered up to the time of quitting, and an employee who is terminated immediately. Cal. Lab. Code §§ 201-210, and 2696-2697. As such, Defendants are further jointly liable to our clients for waiting time penalties for failing to timely pay all wages upon cessation of employment, at the average daily wage for up to 30 days, plus interest, reasonable attorneys' fees and costs of suit. *See* Cal. Lab. Code §§ 203, 218.5, and 218.6; Cal. Civ. Proc. Code §§ 1021.5 and 3289.

Conclusion

In sum, Defendants' unlawful employment practices, as described in detail above, implicate violations of numerous California Labor Code sections, as well as IWC Wage Order 9-2001. Pursuant to Cal. Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198, it is unlawful for a California employer to suffer or permit an employee to work without paying wages for all hours worked, as required by IWC Wage Order 9-2001. *See also* IWC Wage Order 9-2001 § 4. The payment for premium pay for overtime hours worked is mandated by Cal. Labor Code §§ 510, 558, 1174.5, and 1194, as well as IWC Wage Order 9-2001 § 3. Meal and rest periods are governed by Cal. Labor Code §§ 226.7, 512, 218.5, 218.6, and 1198, as well as IWC Wage Order 9-2001 §§ 11 and 12. Cal. Labor Code §§ 226, 226.3, 1174, and 1174.5 require that employers provide employees with accurate itemized wage statements, and maintain accurate payroll records. *See also* IWC Wage Order 9-2001 ¶ 7. The prompt payment of wages owed is governed by Cal. Labor Code §§ 200-206, 210, 2926, and 2927. Further, employers are required to reimburse/indemnify employees for necessary expenditures incurred under Cal. Labor Code §§ 510, 2802, 2804, and IWC Wage Order 9-2001. The knowing and willful misclassification of employees as independent contracts is general governed by Cal. Labor Code §§ 226.8 and 3357. In addition to the above, Defendants' employment practices implicate potential violations of numerous other California Labor Code sections, including, but not limited to, the following: Cal. Labor Code §§ 206; 206.5; 219; 221; 223; 227.3; 432; 432.5; 512; 554; 1198.5; 2441; 2800; 2804; 2810, *et seq.*; and 2698, *et seq.*

Accordingly, our clients respectfully requests that the Labor and Workforce Development Agency ("LWDA") initiate enforcement with respect to the aforementioned violations. If the LWDA declines to pursue enforcement, our clients will pursue these claims for statutory penalties on behalf of themselves and all other current and former employees (Delivery Drivers) similarly situated. If you have any questions or concerns regarding the above, please do not hesitate to contact our offices. Thank you for your time and consideration of this matter.

Sincerely,

/s/ William B. Richards, Jr.

William B. Richards, Jr.
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(∆ Of Counsel)

March 23, 2017

AMENDED NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE SECTION 2699.3

NOTICE VIA ONLINE SUBMISSION (https://dir.tfaforms.net/135)

California Labor and Workforce Development Agency ("LWDA")

NOTICE VIA CERTIFIED U.S. MAIL (Return Receipt requested)

NEA Delivery, LLC
c/o Nicholas Stephen Bulcao
Registered Agent for Service of Process
605 Hidden Valley Rd., Ste. 280
Carlsbad, CA 92011

Amazon.com LLC
c/o CSC – Lawyers Incorporating Service
Registered Agent for Service of Process
2710 Gateway Oaks Dr., Ste. 150N
Sacramento, CA 95833

Re: Rick Randolph, on behalf of him and all "aggrieved" hourly paid California-based employees of AMAZON.COM LLC, a Delaware Limited Liability Company; NEA DELIVERY, LLC, a California Limited Liability Company

***AMENDED* Notice pursuant to California Labor Code sections 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA")**

LWDA Case No. LWDA-CM-191741-16

Dear PAGA Administrator:

Our office, along with the Law Offices of Ronald A. Marron, APLC, has been retained to represent Rick Randolph (hereinafter "Claimant"), who is a former joint employee of AMAZON.COM LLC, a Delaware Limited Liability Company, and NEA DELIVERY, LLC, a California Limited Liability Company (hereinafter "Employers"), in connection with a representative action under California's Private Attorneys General Act of 2004 ("PAGA"), Cal. Labor Code §§ 2698, *et seq.*, regarding violations of applicable employment laws.

Please allow this to serve as an Amendment to the initial PAGA Notice submitted on December 19, 2016, LWDA Case No. LWDA-CM-191741-16. Specifically, in addition to the

allegations, facts, and theories set forth in the prior PAGA Notice Letter (attached and incorporated herein), Claimant also seeks to pursue recovery of civil penalties against the Employers under Cal. Labor Code §§ 2810-2810.3 for "client employer" and "labor contractor" liability for failure to pay wages.

***Amended* Factual and Legal Basis for PAGA Violations for Recovery of Civil Penalties**

In addition to the facts and theories outlined in the prior PAGA Notice of December 19, 2016, Claimant contends and alleges that both Employers in this case violated Cal. Labor Code §§ 2810-2810.3, and failed to pay wages due. The sections provide, in pertinent part:

> 2810. (a) 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.
>
> .....
>
> (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.
>
> .....
>
> (j) For the purposes of this section, "warehouse" means a facility the primary operation of which is the storage or distribution of general merchandise, refrigerated goods, or other products.

Section 2810.3 (a) provides in pertinent part:

> (1) (A) "Client employer" means a business entity, regardless of its form, that obtains or is provided workers to perform labor within its usual course of business from a labor contractor.
>
> .....
>
> (2) "Labor" has the same meaning provided by Section 200.
>
> (3) "Labor contractor" means an individual or entity that supplies, either with or without a contract, a client employer with workers to perform labor within the client employer's usual course of business.
>
> .....
>
> (b) 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 both of the following:
>
> (1) The payment of wages.
>
> (2) Failure to secure valid workers' compensation coverage as required by Section 3700.....
>
> .....

(d) At least 30 days prior to filing a civil action against a client employer for violations covered by this section, a worker or his or her representative shall notify the client employer of violations under subdivision (b).

.....

(m) A waiver of this section is contrary to public policy, and is void and unenforceable.

.....

(p) This section shall not be interpreted to impose liability on the following:

(1) A client employer that is not a motor carrier of property based solely on the employer's use of a third-party motor carrier of property with interstate or intrastate operating authority to ship or receive freight.

(2) A client employer that is a motor carrier of property subcontracting with, or otherwise engaging, another motor carrier of property to provide transportation services using its own employees and commercial motor vehicles, as defined in Section 34601 of the Vehicle Code.

(3) A client employer that is not a household goods carrier based solely on the employer's use of a third-party household goods carrier permitted by the Public Utilities Commission pursuant to Chapter 7 (commencing with Section 5101) of Division 2 of the Public Utilities Code to move household goods.

(4) A client employer that is a household goods carrier permitted by the Public Utilities Commission pursuant to Chapter 7 (commencing with Section 5101) of Division 2 of the Public Utilities Code subcontracting with, or otherwise engaging, another permitted household goods carrier to provide transportation of household goods using its own employees and motor vehicles, as defined in Section 5108 of the Public Utilities Code.

(5) A client employer that is a cable operator as defined by Section 5830 of the Public Utilities Code, a direct-to-home satellite service provider, or a telephone corporation as defined by Section 234 of the Public Utilities Code, based upon its contracting with a company to build, install, maintain, or perform repair work utilizing the employees and vehicles of the contractor if the name of the contractor is visible on employee uniforms and vehicles.

(6) A motor club holding a certificate of authority issued pursuant to Chapter 2 (commencing with Section 12160) of Part 5 of Division 2 of the Insurance Code when it contracts with third parties to provide motor club services utilizing the employees and vehicles of the third-party contractor if the name of the contractor is visible on the contractor's vehicles.

Furthermore, Wage Order 9, applicable to Claimant, provides:

(G) "Employer" means any person as defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person.

(P) "Transportation Industry" means any industry, business, or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air, or water, and all operations and services in connection therewith; and also

includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles

The DLSE Guidelines provide (http://www.dir.ca.gov/dlse/WhichIWCOrderClassifications.pdf):

"A business is classified according to the main purpose of the business except in IWC Order 5 (see section below on Incidental Housekeeping Activities). Large businesses may conduct a variety of operations and it may appear initially that different industry orders could apply. However, when those operations are part of the main business, only one order will apply.

Example:
A business's main purpose is operating a warehouse and incidental thereto employs a separate sales staff to sell goods. IWC Order 9 covers this operation even though sales are covered under IWC Order 7 because the main purpose of the business is to operate a warehouse."

Here is a list of examples of covered industries and occupations under Wage Order 9 by DLSE:

- Courier service…
- Moving and storage warehousing (of commodities moved)
- Parcel delivery service
- Storage and moving warehouse (of commodities moved)
- Transportation companies
- Warehousing and storage (of commodities moved)

The DLSE also provides the following:

Note: Many kinds of industries employ people to operate and maintain vehicles and warehouses; transportation companies under Order 9 have that as their main purpose. A hotel employee who drives a van is under Order 5; a mechanic employed by a retail chain is under Order 7; a mini-storage facility not connected with a transportation firm is under Order 5; the building of vehicles, including ships, is under Order 1; a farm employee who delivers farm products to the first point of distribution is under Order 14, but a trucking company which is in the business of trucking mostly farm products is under Order 9; employees who balance and align tires are under Order 9, if their employer is in the business of providing that service but under Order 7 if their employer is basically in the business of selling tires.

Here, at all times relevant within the applicable limitations period, Claimant was, as an alternative to being jointly employed by Amazon.com LLC and NEA Delivery, LLC, a warehouse associate and local parcel delivery driver operating in the State of California, and for purposes of this allegation, contends that Amazon.com LLC was the "client employer" and NEA Delivery LLC was a "labor contractor" for warehouse employees engaged for courier and parcel delivery services directed and controlled by Amazon.com LLC.

During Claimant's tenure with the "client employer" and "labor contractor," wages were not paid, including meal and rest period premiums, and overtime pay, and labor was sometimes provided off-the-clock without payment of the required minimum wage. Claimant is informed and believes that Amazon.com LLC, as "client employer," failed to comply with all material aspects of Cal. Labor Code §§ 2810-2810.3 and is liable for unpaid wages and civil penalties of its labor contractors, including, without limitation, NEA Delivery, LLC.

Based on information and belief, Claimant does not qualify for any exemption from the Labor Contracting Act as outlined by Cal. Labor Code § 2810.3(p)(1)-(6) and was at all times a person for whom the Labor Contracting statute was intended to protect by the California Legislature. For himself and other aggrieved employees of labor contractors for whom Amazon.com LLC was the "client employer," Claimant will seek recovery of PAGA civil penalties pursuant to Cal. Labor Code § 2699 in an amount assessed per violation for each aggrieved employee for each workweek within the applicable limitations period. Further, to the extent permitted by the PAGA, Claimant will seek, and Employers are liable for, the civil penalty for "underpaid wages" as specifically authorized by Cal. Labor Code section 558(a). PAGA specifically authorizes recovery of civil penalties through a representative action, inclusive of penalties in Cal. Labor Code § 558, which states:

> (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:
>
> (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
>
> (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
>
> (3) Wages recovered pursuant to this section shall be paid to the affected employee.

Claimant intends to file and/or amend a PAGA Representative Action in an appropriate California Superior Court alleging the aforementioned violations within 65 days of this Amended Notice. Claimant awaits notice from the LWDA as to whether it intends to pursue the matter, or whether the Employers will elect to cure remedies.

Sincerely,
COHELAN KHOURY & SINGER
LAW OFFICES OF RONALD A. MARRON

J. Jason Hill, Esq.

Enclosure: PAGA Notice Dated December 19, 2016

cc: Via Email Only

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J. JASON HILL†
JANINE R. MENHENNET

(† Also admitted in Illinois)
(Δ Of Counsel)

March 23, 2017

NOTICE VIA CERTIFIED U.S. MAIL (Return Receipt requested)

NEA Delivery, LLC
c/o Nicholas Stephen Bulcao
Registered Agent for Service of Process
605 Hidden Valley Rd., Ste. 280
Carlsbad, CA 92011

Amazon.com LLC
c/o CSC – Lawyers Incorporating Service
Registered Agent for Service of Process
2710 Gateway Oaks Dr., Ste. 150N
Sacramento, CA 95833

Dear Employers of Rick Randolph:

Our office, along with the Law Offices of Ronald A. Marron, APLC, has been retained to represent Rick Randolph (hereinafter "Claimant"), who is a former joint employee of AMAZON.COM LLC, a Delaware Limited Liability Company, and NEA DELIVERY, LLC, a California Limited Liability Company (hereinafter "Employers"), in connection with a representative action under California's Private Attorneys General Act of 2004 ("PAGA"), Cal. Labor Code §§ 2698, *et seq.*, regarding violations of applicable employment laws.

Please allow this to serve as required notice to inform you that our client, Rick Randolph, was engaged by a "client employer" and/or "labor contractor" who failed to comply with Cal. Labor Code section 2810.3(b)(1) and/or (b)(2) in the failure to pay all wages due.

The specific factual basis for the claim is set forth in the attached notices to the California Labor and Workforce Development Agency (LWDA Case No. LWDA-CM-191741-16) and are expressly incorporated herein by this reference.

Please contact the undersigned with any questions.

Sincerely,
COHELAN KHOURY & SINGER
LAW OFFICES OF RONALD A. MARRON

J. Jason Hill, Esq.

Enclosures: PAGA Notice Dated December 19, 2016
Amended PAGA Notice Dated March 23, 2017

cc: Via Email Only

LAW OFFICES OF RONALD A. MARRON, APLC
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EXHIBIT 4

amazonlogistics learning

Delivery Associate Participant Guide

amazonlogistics learning

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Delivery Associate Course Agenda

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Kick-off
Terminology
Delivery Process Overview
Safety
8 Keys to a Perfect Delivery
Label Deep Dive
Containerization
Device Overview
Different Delivery Situations
Navigating Your Route
Package Obstacle Course
Returning to the Station
Knowledge Check

Safety – Job Aid

Yard Safety

The yard is a busy place that has a high chance to have a lot of safety risks and equipment damage.

What is a yard?

The yard is where delivery vehicles transition from driving to the loading docks to where trucks are parked.

Example:

Trucks are loaded, and are backing in and driving out for delivery. There are also DAs walking to their trucks. Vehicles and personnel must be visible to each other.

How can I be safe in the yard?

- All Delivery Associates shall enter and exit the yard, facility, and dock using designated entrances, exits, and walkways.
- An ANSI Class 2 reflective vest is required to be worn when entering the truck yard.
- Observe posted speed limits, traffic patterns, stop signs, crosswalks, and other traffic rules.
- Vehicles are to be operated with the headlights and flashers on at all times.
- Maintain a safe following distance. Adjust the following distance as yard traffic or weather conditions dictate. Never "tailgate" or "bunch" units. Slow down when approaching crosswalks or blind corners.
- Do not impede access to any emergency equipment (i.e., fire hydrants, risers, etc.).
- Seat belts must be worn at all times in vehicles.
- Always remove ignition keys and doors locked when departing vehicle.
- Maintain three points of contact when entering and exiting your vehicle. Look before you step.
- Back up slowly and cautiously; never back up from the blind side.
- Only authorized vehicles are permitted within the yard.
- Employees, vendors, and contractors must park in designated areas.
- When in the yard, do not wear hoods or any item(s) that interfere with peripheral vision. Safety glasses or goggles, rain gear, and cold-weather gear may be worn during inclement weather.
- Smoking is only permitted in designated areas.

Safe Lifting

Good body mechanics protects your body; especially your back, neck, shoulders, wrists and knees from pain and injury.

- Plan your lift
- Wide stance
- Use legs – bend knees
- Get help when needed and coordinate lifting*
- Keep back straight
- Tighten Stomach
- Weight close to body
- Avoid twisting

Texting

No Texting

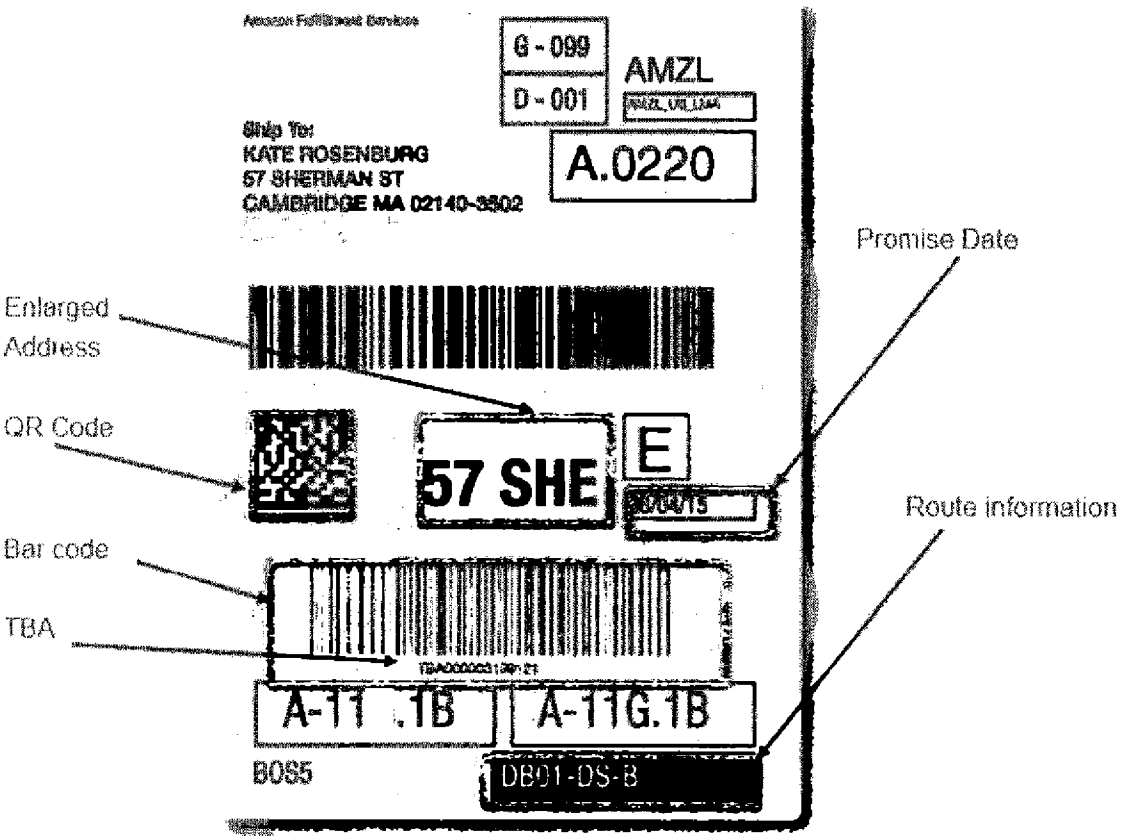
Texting the customer from any device is not allowed. To reach a customer, call the customer using your TC55. If you have any questions about your route or packages call TOC.

Securing Your Vehicle

At EVERY stop

- ❑ The keychain lanyards that will now be required part of the uniform standard. You must ensure that the key chain is attached to the vehicles keys, and your belt loop at all times, even while operating the vehicle.

Label Deep Dive – Shipping Label



Label Deep Dive – Exception Codes

Exception Codes		
Uable to **L**ocate	UTL-DATE	The address cannont be found
Unable to **A**ccess	UTA-DATE	Missing gate code and is not listed in Rabbit
Business **C**losed	BC-DATE, Business Hours + Days	Business is not open
No **S**ecure **L**ocation	NSL-DATE	No safe place for the package
Out of **T**ime	OOT-DATE	Shift has ended
DaMaged	DM-DATE	Package is visibly damaged
ReJecteD	RJD-DATE	Customer doesn't want the package
Customer rejected **F**uture **D**elivery **D**ate	FDD-DATE, DATE of re-attempt	Customer requested that the package delivered the next day
MiSSort	MSS-DATE	An extra shipment not assigned to the route

Marking the Delivery Attempt Label - Sample

1st Delivery Attempt	2nd Delivery Attempt	3rd Delivery Attempt
NSL 11/18		

8 Keys to a Perfect Delivery - Job Aid

Overview

Concessions cost Amazon hundreds of thousands of dollars each month. Avoiding concessions by following the Keys to Perfect Delivery will make our customers and your managers happy about your performance as a Delivery Associate.

What is a concession?

A concession is a refund, free replacement, or account credit linked to a delivery error.

Example:

You deliver a package to Larry's home and leave the package by his front door. You mark in Rabbit – Delivered – Front Door and continue on your route. Larry gets a text at work telling him his package is waiting for him at home. Larry gets home and there is no package. Larry, then calls Amazon customer care and reports the missing package.

This is considered, Delivered, Not Received (DNR), and reported to your Delivery Service Provider (DSP).

Follow the 8 Keys to a Perfect Delivery

1. Make sure you are at the correct address: Don't risk a concession
2. Knock on the door and ring the bell between 8am – 8pm
3. Deliver to the customer's front door when it is permitted and secure
4. Scan the package at the point of delivery (not from your vehicle)
5. When delivering to the customer directly, verify the customer's name
6. Be courteous and respectful to customers and other carriers
7. Follow the customer's delivery instructions when secure and safe
8. Never deliver to a USPS mailbox or Post Office

Device Overview – Job Aid

Overview

The TC55 device is a vital piece of equipment for you during every step of delivering a package. Rabbit is the software application that runs the TC55.

What are the TC55 and Rabbit?

The TC55 device is the hand-held device and Rabbit is the software that will log your mileage, keep track of the status of every one of your packages, and navigate for you throughout your route.

Example:

Suppose you have 120 packages to deliver on your route. Rather than giving you a list of packages and addresses your Dispatcher will give you a TC55 with Rabbit installed on it.

The device will:

- Tell you how to get to your first stop and which packages get delivered there.
- Keep track of all packages delivered and the reasons that any undelivered packages could not be delivered.

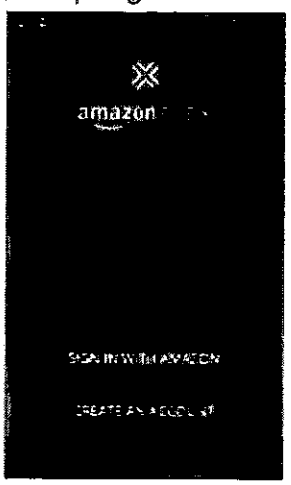
How will I use the TC55 and Rabbit successfully?

Here are some of the TC55's basic functions:

- Turn on the device

- Sign In
  - Enter your email address
  - Enter your Password

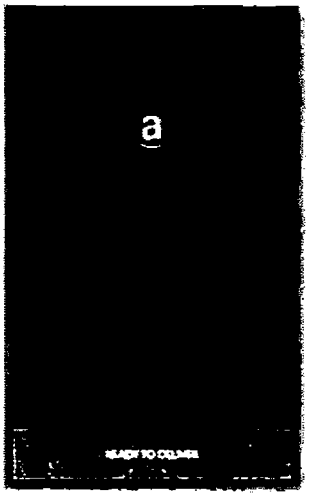
- Open App
  - Tap the **Rabbit App** Icon
  - Tap Sign In with Amazon



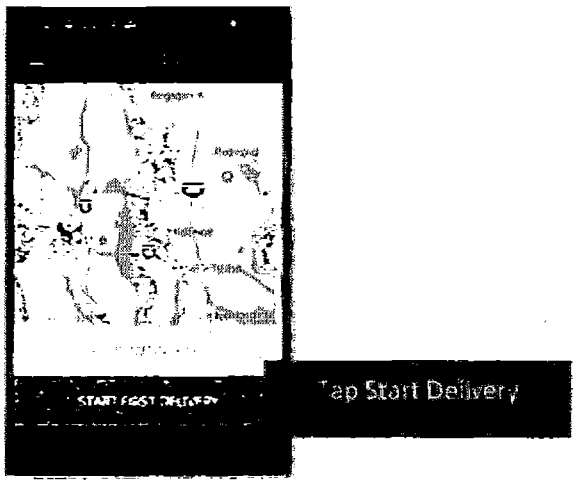
- Menu
  - Tap **Menu** located in upper left hand corner anytime to

- Tap Sign In

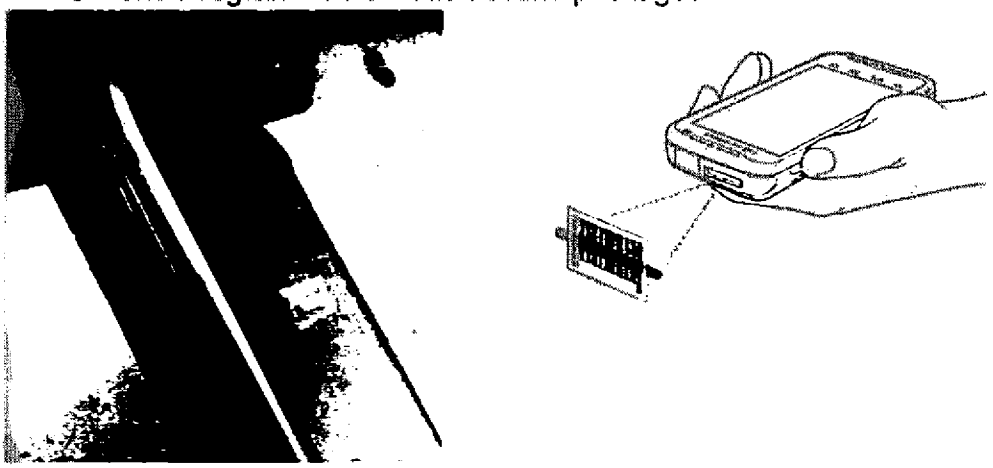
access settings, help or to provide feedback



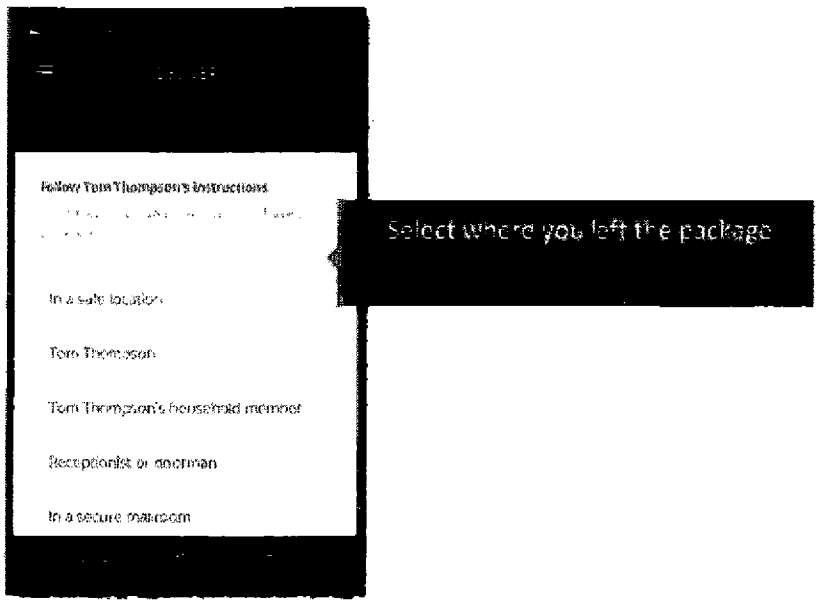
- Keeping the TC55 safe:
  - Place the TC55 in the vehicle holster to keep it from rolling around while you are driving, and to keep it visible for navigation.
  - Place the TC55 on belt holster when out of the vehicle so it is not dropped, and "Delivered" status can be marked at the location.
- Start navigation
  - Use the **Start First Delivery** button



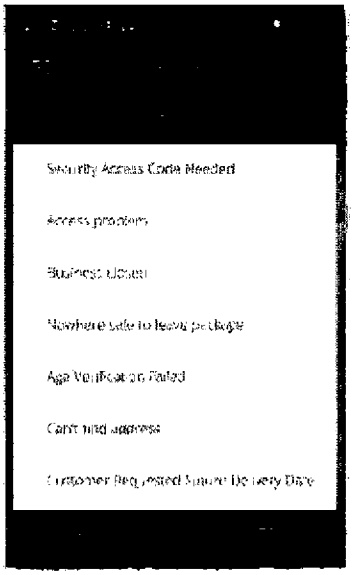
- Scan Packages
  - The Programmable Button scans packages.



- Select Delivery Location – Customer, Front Desk, Unattended Options



- Unable to Deliver – Select the correct reason for not delivering



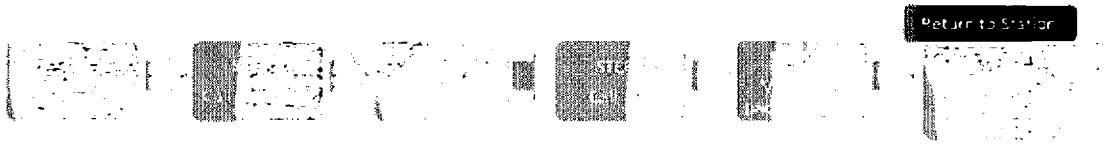
Bottom line:

- Always call your dispatcher if you have a problem with the TC55.
- If you are having problems with the route or with your packages, call TOC.

Different Delivery Situations – Job Aid

Unable to Locate Residence Workflow

Unable to Access Residence Workflow



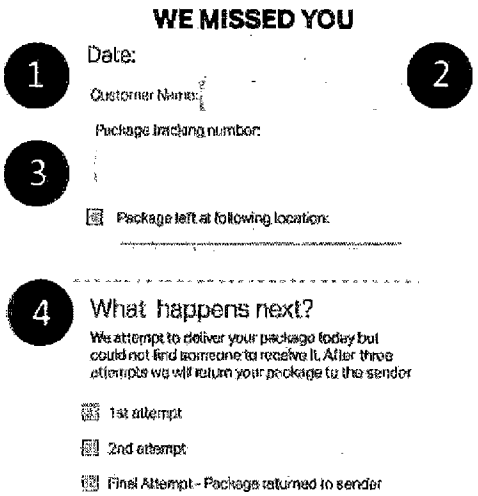
No Secure Location Workflow

We Missed You Cards

When leaving the package in a secure location write the following on the We Missed You card to alert the customer where you left their package.

The following information should be written on the card:

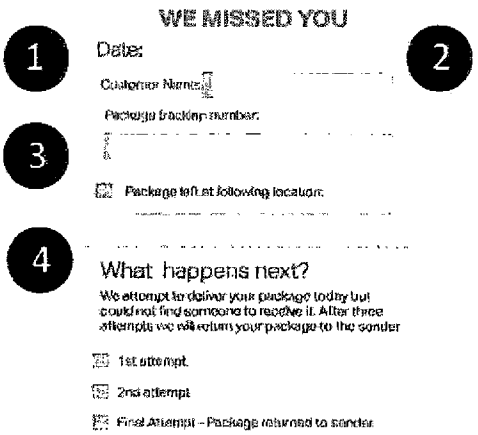
1. Date
2. Customer name
3. Tracking number
4. Package left at the following location: (write details about the location of the package)



When there is no secure location to leave the package, write the following on the We Missed You card:

The following information should be written on the card:

1. Date
2. Customer name
3. Tracking number
4. What happens next? (mark the attempt box)



1st Delivery Attempt	2nd Delivery Attempt	3rd Delivery Attempt

On the Delivery Attempt Label place write the code NSL, the date.

When a business is closed, write the following on the card:

The following information should be written on the card:

1. Date
2. Customer name
3. Tracking number
4. What happens next? (mark the attempt box)

1st Delivery Attempt	2nd Delivery Attempt	3rd Delivery Attempt

On the Delivery Attempt Label place write the code BC, the date and the business hours.

Who to Call When – Visor Card

Overview

One way to work more efficiently is to know when to ask for help and whom to call. The visor card lists whom to call for some common types of situations. Another common need is getting access information from customers, and knowing what to do if you cannot get information.

How can the visor card help?

- To find whom to call in certain common situations:
- A script you should use when you calling the customer

Who to call when

Contact	When to Call
Customer	• Unable to locate customer's residence: ***See Unable to Locate Script***
	• Unable to access customer's residence: ***See Unable to Access Script***
	• No Secure Location: ***See No Secure Location Script***
TOC	• Unable to Access
	• Unable to Locate
	• No Secure Location
	• Geo Code Problems
	• Missorts (extra package)
Dispatcher	• TC55 or Rabbit Troubleshooting
	• Vehicle Issues
	• Running behind

UNABLE TO LOCATE SCRIPT:

What do you or say when you call the customer because you are unable to locate the residence?

1. Call the customer only between 8am and 8pm.
    a. When the customer answers, say: **"Hello this is *Your Name* with an Amazon Delivery for *Customer Name*. I'm currently at *Your Location* and I'm having issues locating your address. Can you please assist me with directions?"**

    IMPORTANT: If the customer provides directions, add it into Rabbit for future deliveries.

    b. If the customer refuses for any reason, say: "That's not a problem, would you like for me to return the package to the center? Otherwise, I will continue to locate the address through our dispatch team. Thank you for your time."
    c. If the customer does not know directions, say: **"That's not a problem. I will continue to locate the address through our dispatch team. Thank you for your time"**
2. If the customer does not pick up the phone, **do not leave a voice message.**
    a. Call your TOC for assistance. They may be able to provide you with additional information.
    b. Ask someone for directions.
3. If you still cannot locate the address:
    a. Mark as **Unable to Deliver > Can't Find Address** in Rabbit.
    b. Write **UTL and the date** in the appropriate label attempt box.
    c. Return the package to the station at the end of your route.

Note: If the customer is requesting additional assistance refer them to Customer Service Line **1-877-252-2701**

UNABLE TO ACCESS SCRIPT:

What do you do or say when you call the customer because you are unable to access the customer's residence?

1. Call the customer only between 8am and 8pm.
    a. When the customer answers, say: **"Hello this is *Your Name*, with an Amazon Delivery for *Customer Name*. I'm currently having issues getting to your door because I don't have the code. Can you please assist me with gaining access?"**

    IMPORTANT: If the customer provides the access code, add it into Rabbit for future deliveries.

    b. If the customer refuses for any reason, say: **"That's not a problem, would you like for me to return the package to the center? Otherwise, I can attempt to gain access and reattempt delivery tomorrow. Thank you for your time."**
    c. If the customer does not know the access code, say: **"That's not a problem. I will attempt to gain access and reattempt delivery tomorrow."**

2. If the customer does not pick up the phone, **do not leave a voice message.**
    a. Look to see if there is a Leasing Office onsite. You may be able to leave the package there.
    b. Call TOC for assistance. They may be able to help you gain access.
3. If you still cannot access the property:
    a. Mark as **Unable to Deliver > Security Access Code Needed** in Rabbit.
    b. Write **UTA and the date** on the Attempted Delivery label.
    c. Return the package to the station at the end of your route.

Note: If the customer is requesting additional assistance refer them to Customer Service Line **1-877-252-2701**

NO SECURE LOCATION SCRIPT:

What do you do or say when call the customer because you cannot find a secure location for the package?

1. Call the customer only between 8am and 8pm.
    a. When the customer answers, say: **"Hello this is *Your Name* with an Amazon Delivery for *Customer Name*. I'm currently at *Your Location* and I'm having issues finding a secure location for your package. Is there a place I can leave your package that is secure?"**

    IMPORTANT: If the customer provides a secure location, add it into Rabbit for future deliveries.

    b. If the customer does have a secure location, say: **"That's not a problem. I we will attempt again tomorrow (for residence) or next business day (for commercial building)."**
2. If the customer does not pick up the phone, **do not leave a voice message.**
3. Call TOC for assistance. They may be able to provide you with additional information.
4. If there is no secure location:
    a. Mark as **Unable to Deliver > Nowhere Safe to leave the package** in Rabbit.
    b. Write **NSL and the date** on the Attempted Delivery label.
    c. Return the package to the station at the end of your route.

Note: If the customer is requesting additional assistance refer them to Customer Service Line **1-877-252-2701**

What should I do if....	
I can't find the customer's location?	1. Call the customer and ask for a cross street. 2. Call TOC and provide him/her with the TBA # and address.
I don't have an access code?	Call the customer and reference your visor card. If the customer does not answer, call TOC.
I am not going to make all of my deliveries in time?	Call your dispatcher to arrange for help.

Returning to the Station - Job Aid

Overview

Returning to the station, and debriefing, can be a very quick process. But you have to have all your information and equipment ready.

What is debriefing?

Debriefing is when you check out with an AMZL Shift Manger at the end of day to give them statuses of all of your returns. You will visit your DSP BEFORE going to debrief with the AMZL Shift Leader.

How can I sequence debriefing successfully?

Here are some great ways to help yourself successfully perform your debrief:

- Check in with your dispatcher to discuss Return To Station (RTS) issues
- Things to Bring:
    - TC55
    - Any return packages
        - Scan and place into re-inject rack

Notes Pages

Directions:

Use these pages for making any notes you need.

Notes:

REDACTED

[redacted]

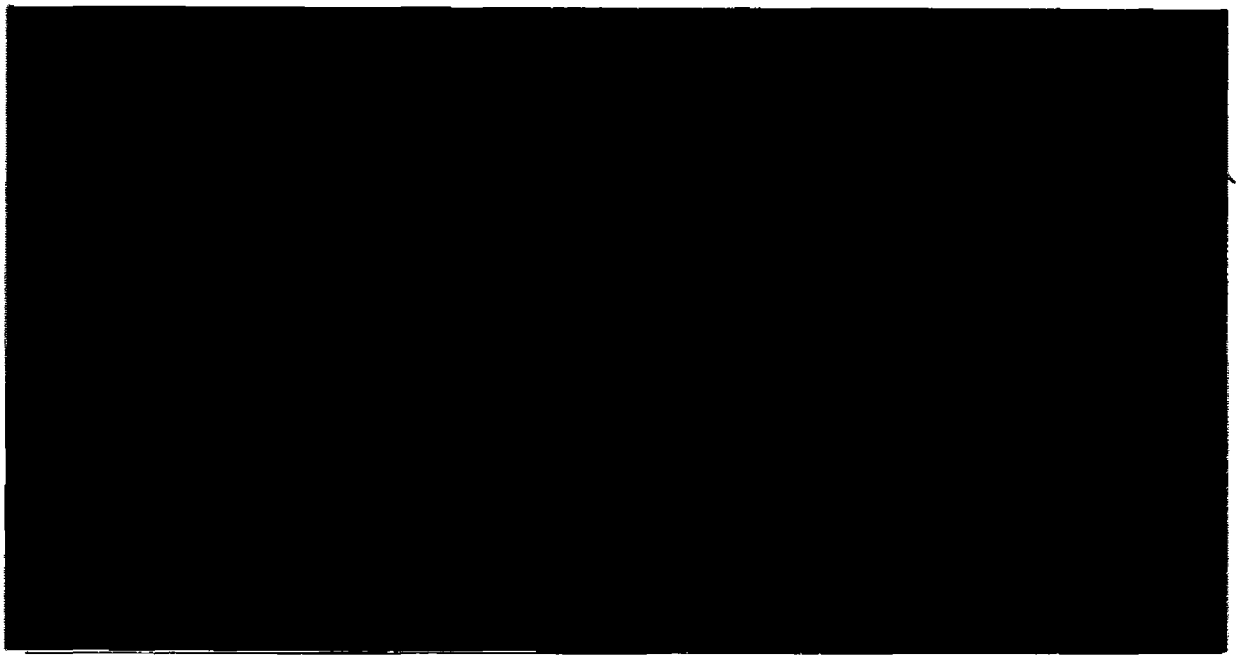


EXHIBIT 3

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[Additional counsel listed on following page]
Counsel for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

RICK RANDOLPH, on behalf of himself, all other aggrieved persons, and the general public, Plaintiff, v. AMAZON.COM, LLC, a Delaware Limited Liability Company; NEA DELIVERY, LLC, a California Limited Liability Company; and DOES 1 through 100, inclusive, Defendants.	Case No. 37-2017-00011078-CU-OE-CTL ASSIGNED FOR ALL PURPOSES TO: The Honorable Ronald L. Styn Department 74 **CLASS ACTION** **[PROPOSED] JUDGMENT** Complaint Filed: March 27, 2017 Trial date: May 3, 2019

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Counsel for Plaintiff

Having, read and considered all matters related to the fully-executed Class and Representative Action Settlement Agreement and Release ("Agreement") filed with this Court on _____, 2020, and having issued an Order Granting Final Approval of the Class Action Settlement on _____, 20__ ("Final Approval Order"), Judgment is to be entered as follows:

This document shall constitute a judgment for purposes of California Rules of Court, Rule 3.769(h). In accordance with, and for the reasons stated in the Final Approval Order, judgment shall be entered within the meaning and for purposes of Code of Civil Procedure sections 577 and 904.1(a)(1), and Rules 3.769(h) and 8.104 of the California Rules of Court. Named Plaintiffs/Class Representatives and all Settlement Class Members shall take nothing from Defendants except as expressly set forth in the Agreement and Final Approval Order.

IT IS SO ORDERED.

Dated: _____

_____
Honorable Ronald L. Styn
Judge of the Superior Court of California