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9 Attorneys for Plaintiff Maria Herrera

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12

13 MARIA HERRERA, as an individual
and on behalf of all others similarly
14 situated, and as an aggrieved employee
on behalf of herself and other aggrieved
15 employees,

16 Plaintiff,

17 v.

18 FEDERAL EXPRESS
CORPORATION, a corporation; and
19 DOES 1 through 50, inclusive,

20 Defendants.
21

Case No.: 5:17-cv-02137-MWF-SHK

[Hon. Michael W. Fitzgerald,
Courtroom 5A]

**DECLARATION OF KENNETH H.
YOON IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL
OF CLASS ACTION
SETTLEMENT**

Date: July 8, 2019
Time: 10:00 a.m.
Place: Courtroom 5A

Date Filed: September 12, 2017

1 4. I also supervised co-counsel in performing legal research and
2 preparation of discovery, taking and defending depositions, preparing motions and
3 pleadings, and preparing mediation documents.

4 **LITIGATION HISTORY OF THE CASE**

5 5. This case has a litigation history spanning two years. During this
6 time, substantial investigation, legal analysis, and document analysis has been
7 performed by the Parties permitting each side to assess the relative merits of the
8 claims and defenses thereto. This litigation resolved only after substantial and
9 investigation into the merits of the case.

10 **Pleadings**

11 6. Plaintiff was formerly employed by FedEx as a courier delivery
12 driver. She commenced the instant putative class action in the California Superior
13 Court for the County of San Bernardino on September 12, 2017. Plaintiff's
14 original complaint asserted the following violations of California's Labor Code
15 and Business & Professions Code on behalf of a class of other non-exempt
16 delivery drivers: (1) failure to pay all meal period wages and rest break wages, (2)
17 failure to pay all minimum and overtime wages, (3) failure to reimburse all
18 necessary work-related expenses, (4) failure to pay all wages due and owing upon
19 termination of employment, (5) failure to provide accurate wage statements, and
20 (6) engaging in unfair business practices pursuant to Business and Professions
21 Code §17200 *et seq.* (Unfair Competition Law ("UCL")). (DE 1-1, pp. 5-17.)
22 Defendant removed the action to the District Court for the Central District of
23 California on October 19, 2017. (DE 1.)

24 7. On December 7, 2017, Plaintiff filed a companion representative
25 action in the California Superior Court for the County of San Bernardino pursuant
26 to the Private Attorneys General Act of 2004 (California Labor Code section 2698
27 *et seq.* ("PAGA")). The Parties stayed the action by stipulation pending resolution
28 of the instant action. For purposes of the settlement and the approval process,

1 Plaintiff intends to file an amended complaint – subject to Court approval –
2 adding her PAGA claim to the instant action.

3 **Discovery and Investigation**

4 8. The Parties engaged in extensive discovery leading up to and
5 throughout the briefing on Plaintiff’s motion for class certification, including
6 written requests for production and interrogatories, the depositions of Plaintiff and
7 Defendants’ corporate designees per Federal Rule of Civil Procedure 30(b)(6), the
8 depositions of class member declarants, and the deposition of Plaintiff’s expert.
9 The discovery conducted to date yielded hundreds of pages of policy documents
10 and thousands of lines of timekeeping and payroll data that Plaintiff analyzed
11 through her retained expert, amongst other categories of data. The discovery
12 process necessitated several informal discovery conferences as well as formal
13 motion practice to compel further discovery responses.

14 9. The discovery conducted in this action required an extensive amount
15 of time and resources expended by all counsel of record. Plaintiff propounded
16 three sets of interrogatories and four sets of requests for production of documents,
17 which yielded thousands pages of documents and data that Plaintiff analyzed
18 through his retained expert for purposes of class certification. Plaintiff’s counsel
19 conducted 15 depositions, including of Defendant’s three witnesses designated per
20 Federal Rule 30(b)(6), and Defendant’s class member and employee declarants –
21 which required the preparation and service of numerous subpoenas. Plaintiff’s
22 counsel also defended Plaintiff’s deposition and the deposition of Plaintiff’s
23 expert, Dr. Brian Kriegler.

24 10. The discovery process necessitated several informal discovery
25 conferences with the Court with Magistrate Shashi H. Kewalramani, and formal
26 motion practice to compel further discovery responses.
27
28

1 **Class Certification Briefing**

2 11. On November 19, 2019, Plaintiff filed her motion for class
3 certification seeking to certify the class of non-exempt delivery drivers. The class
4 definition broadly covered two categories of drivers: couriers (the vast majority of
5 the class) and ramp transport drivers (“RTD”).

6 12. The Parties completed briefing on the motion for class certification
7 on February 4, 2019; the motion was scheduled to be heard on February 25, 2019.

8 **Settlement**

9 13. The Parties participated in an all-day mediation session with Ms.
10 Frank on February 14, 2019, which ended with a mediator’s proposal. Upon the
11 Parties request, the Court continued the hearing on Plaintiff’s motion for class
12 certification, and the Parties thereafter accepted the mediator’s proposal on
13 February 27, 2019. The Parties have since executed a formal Settlement
14 Agreement. A true and correct copy of the long-form settlement agreement is
15 attached hereto as **Exhibit A**.

16 **ESTIMATE OF CLAIMS**

17 14. Plaintiff’s claim for rest break premiums is premised upon the
18 allegations that Defendant (1) failed to affirmatively relieve employees of duty
19 during rest breaks and instead required employees to take rest breaks “when they
20 determine they can,” and (2) required employees to remain on-call during rest
21 breaks by monitoring their electronic scanning and communication devices
22 (“PowerPad”). Plaintiff also advances a meal period and rest break claim on the
23 theory that Defendant fails to provide employees a reasonable opportunity to take
24 rest breaks or encourages employees to forgo rest breaks by the use of unrealistic
25 performance metrics. Plaintiff estimated damages for these claims at one premium
26 per workweek worked by courier Class Members (based upon Defendant’s
27 records and documents produced by Defendant, Plaintiff estimated 1,347,000
28

1 workweeks and an average rate of pay of \$23.26 hours) for a total amount of
2 approximately \$31.3 million.

3 15. Plaintiff's overtime wage claims are premised upon Plaintiff's
4 allegation that Defendant's electronic timekeeping system permits managers to
5 insert a recorded meal period at any time during an employee's shift, without
6 regard to whether or not the employee was actually working during that time
7 according to Defendant's own records of package scan activity (called "Gap
8 Reports"). Thus, Defendants failed to compensate its employees for all hours
9 worked. *Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 587 (2000). Based upon
10 Plaintiff's expert analysis, Defendant's records indicate that 21.4% (15 employees
11 out of a sample of 70) of courier Class Members worked through recorded meal
12 periods. However, the number of times this occurred for each employee within the
13 21.4% was low. Thus, Plaintiff estimates damages in an amount less than
14 \$500,000.00 (2,056 persons x 20 violations x \$23.26 hourly rate x 0.5 hours =
15 \$478,351.20).

16 16. Plaintiff's claim for reimbursements is premised upon the allegation
17 that Defendant does not reimburse employees for the use of personal mobile
18 telephones for work-related calls. Plaintiff estimated damages for reimbursements
19 in the amount of \$3.00 per workweek worked by all Class Members (Plaintiff
20 estimated 1,567,000 workweeks for the Class) for a total amount of \$4.7 million.

21 17. Thus, Plaintiff estimates damages for the actual loss in the amount of
22 approximately \$36.5 million given the high number of workweeks and the large
23 class size at issue in this case. However, Plaintiff believes a discount of this figure
24 is warranted in light of the fact that her claims are largely dependent upon the
25 theory that Defendant encouraged employees to forgo breaks – a standard
26 articulated in *Brinker Restaurant Corporation v. Superior Court*, 53 Cal. 4th
27 1004 (2012) for which there is a dearth of case law and which Plaintiff
28 understands the Trier of Fact could easily determine for or against her.

1 **WORK PERFORMED BY PLAINTIFF**

2 18. I can testify that Ms. Herrera was actively involved in this case
3 during the entire litigation. My co-counsel and I met with Ms. Herrera in person
4 on several occasions pre-filing, to update her on the case, and to prepare her for
5 deposition. Ms. Herrera spent time searching for documents, contacting Class
6 Counsel to discuss the status of the case approximately once every two weeks,
7 preparing and appearing for deposition, and poring over the details of the
8 settlement agreement. Ms. Herrera has been the name and face for this litigation
9 from the outset. Thousands of people know she started this case by virtue of the
10 class notice, and quick internet search for Herrera v. Federal Express yields
11 several search results. Plaintiff put her name on a public record at the risk of
12 possible future adverse employment consequences by future or potential
13 employers who might choose to not hire her because he took the lead in this
14 lawsuit. This was a significant risk that he has borne for the class who will reap
15 the benefits of this case without having to face this risk personally themselves. In
16 fact, although Plaintiff was ultimately able to find another job, she was
17 unemployed for quite some time and experienced a great deal of financial
18 hardship during this action as a result.

19 **SETTLEMENT ADMINISTRATION COSTS**

20 19. Settlement Administration Costs to Phoenix Settlement
21 Administrators are estimated to be \$45,750.00.

22 **EXPERIENCE OF COUNSEL**

23 20. Attorneys for Plaintiffs are an experienced team of lawyers with
24 substantial complex litigation experience at both the trial court and appellate level.
25 Plaintiffs' counsel has been approved as class counsel in other wage-and-hour
26 class actions, including actions that have been granted final approval.

27 21. I am one of Class Counsel in this matter. My qualifications are as
28 follows: I received my J.D. from Loyola Law School in 1998. During law

1 school, I interned for the Honorable Harvey Schneider, Superior Court Judge, as
2 well as the Honorable Terry J. Hatter, Jr., United States District Court Judge. I
3 have received an AV-Premier rating by Martindale-Hubbell. I was named to the
4 Daily Journal's 2014 list of the "Top 75 Labor and Employment Lawyers" in
5 California. I was recently recognized by California Super Lawyers Magazine for
6 2016 - 2019, after having been recognized by as a Rising Star by that publication
7 for the years 2005-2007, and 2009-2010.

8 22. I obtained my undergraduate degree from UCLA in Economics in
9 1995. As part of my undergraduate coursework, I obtained formal education in
10 mathematics, computer programming, statistics, and sufficient accounting
11 coursework to sit for the CPA exam. My formal education is critical in my
12 present ability to litigate successfully wage and hour litigation, especially with
13 formulations of damages estimates, with analysis of computer systems and
14 algorithms for purposes of identifying class-wide issues. Further, my formal
15 education with computer systems and databases provides the background to
16 intelligently understand the databases that maintain so much of the relevant
17 information in wage and hour litigation. I believe that my formal education in
18 mathematics, statistics and computer science provides the background knowledge
19 to litigate wage and hour class action with better understanding than counsel
20 without such background. I believe that without this type of inherent knowledge
21 (knowledge not based on reliance on expert consultants), I could not have as
22 effectively represented Plaintiffs and the Class nor my other clients in other wage
23 and hour litigation. Based on my hiring experience, I believe that attorneys with
24 even a modest background in mathematics comprise less than 10% of lawyers in
25 general.

26 23. My firm's primary focus is employment law. I have handled a
27 number of wage-and-hour matters, including class actions. I have a practice that
28 encompasses cases in the California Superior Courts and Courts of Appeal and the

1 United States District Courts for the Central, Northern and Eastern Districts of
2 California and before the United States Court of Appeals for the Ninth Circuit.

3 24. I have been preliminarily approved as class counsel in a number of
4 class actions. I have been appointed class counsel after contested certification
5 motions in several actions. The following matters in which I have been approved
6 as class counsel have been granted final approval: *Briggs v. Custom Building*
7 *Products, Inc.*, Los Angeles Superior Court Case No. BC 343656; *Rangel v.*
8 *United Title Company, et al.*, Los Angeles Superior Court Case No. BC 347222;
9 *Bernandez, et al. v. Roscoe's House of Chicken N Waffles*, Los Angeles Superior
10 Court Case No. BC 351467; *Campbell v. Applebee's International, Inc., et al.*,
11 San Diego Superior Court Case No. 37-2007-00064259-CU-OE-CTL; *CVS*
12 *Pharmacy Wage and Hour Cases*, Judicial Council Coordination Proceeding No.
13 4539; *McBride v. Ensign United States Drilling (California), Inc.*, Los Angeles
14 Superior Court Case No. BC 400742; *Javier, et al. v. Davita Inc., et al.*, Los
15 Angeles Superior Court Case No. BC 400811, *Napoto v. DHL Express (USA),*
16 *Inc., et al.*, Northern District of California Case No 2009-CV-09-01551-JL;
17 *Lugliani v. Kinder Morgan Energy Partners, L.P., et al.*, Central District of
18 California Case No. SACV 10-1303-JAK(VBKx). I argued and was one of the
19 counsel of record in two wage and hour matters that have resulted in influential
20 9th Circuit opinions: *Abdullah v. U.S. Security Associates, Inc.*, 731 F.3d 952 (9th
21 Cir. 2013), and *Urbino v. Orkin Services of California, Inc.*, 726 F.3d 1118 (9th
22 Cir. 2013). I also argued and was one of the counsel of record on *Nieto v. Fresno*
23 *Beverage Co., Inc.*, 33 Cal. App. 5th 274 (2019). I recently tried a wage and hour
24 class action to verdict: *Hamilton v. Wal-Mart Stores, Inc.*, Case No. 5:17-cv-
25 01415 (C.D. Cal. April. 12, 2019) (jury awards class \$6M in meal break suit)

26 25. Also associated with my firm and serving as Class Counsel in this
27 action is Stephanie E. Yasuda and Brian G. Lee. Both assisted as needed in
28 various aspects of this action. I directly supervise all attorneys work product to

EXHIBIT A

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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
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15 MARIA HERRERA, as an individual
16 and on behalf of all others similarly
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18 Plaintiff,

19 v.

20 FEDERAL EXPRESS
CORPORATION, a corporation; and
DOES 1 through 50, inclusive,

21 Defendants.
22

Case No.: 5:17-cv-02137-MWF-SHK

[Hon. Michael W. Fitzgerald,
Courtroom 5A]

**JOINT STIPULATION OF
SETTLEMENT AND RELEASE**

Date Filed: September 12, 2017
Trial Date: October 29, 2019

23 This Joint Stipulation of Settlement and Release is made and entered into
24 between Plaintiff Maria Herrera (“Plaintiff” or “Class Representative”) and Defendant
25 Federal Express Corporation (“Defendant” or “FedEx”) (collectively, the “Parties”).

26 **1. THE CONDITIONAL NATURE OF THIS STIPULATION.**

27 1.1 This Settlement and all associated exhibits or attachments are made for the
28 sole purpose of settling the above-captioned lawsuit, which is entitled *Maria Herrera v.*

1 *Federal Express Corporation*, Case No. 5:17-cv-02137-MWF-SHK, and the related
2 representative state court Action under the California Private Attorneys General Act
3 (“PAGA”), entitled *Maria Herrera v. Federal Express Corporation*, Case No.
4 CIVDS1724219. This Settlement is made in compromise of disputed claims. Because
5 the Parties desire to settle this Action (as defined in Section 2.1) on a class-wide basis
6 pursuant to Federal Rule of Civil Procedure 23, this Settlement must receive
7 preliminary and final approval by the United States District Court for the Central
8 District of California (“Court”). Accordingly, the settling Parties enter into this
9 Settlement on a conditional basis.

10 1.2 Subject to the obligation(s) of mutual full cooperation set forth herein,
11 either Party may terminate this Settlement if the Court declines to enter the Preliminary
12 Approval Order, the Final Approval Order, or final judgment in substantially the form
13 submitted by the Parties, or if the Settlement as agreed does not become final because
14 of appellate court action, or if the court presiding over the PAGA Action fails to dismiss
15 that action with prejudice, or if the Court does not approve the settlement of the PAGA
16 claims and associated PAGA Payment, as defined in Section 2.24, regardless of
17 whether it approves the settlement of the other claims. The terminating Party shall give
18 to the other Party (through its counsel) written notice of its decision to terminate no
19 later than ten (10) calendar days after receiving notice that one of the enumerated events
20 has occurred. Termination shall have the following effects:

- 21 1) The Settlement Agreement shall be terminated and shall have no
22 force or effect, and no Party shall be bound by any of its terms.
- 23 2) In the event the Settlement is terminated, Defendant shall have no
24 obligation to make any payments to any party, class member or
25 attorney.
- 26 3) The Preliminary Approval Order, Final Approval Order and final
27 judgment, including any order of class certification, shall be vacated.

1 styled Action, and the related PAGA state court Action, upon all procedural and factual
2 grounds, including, without limitation, the ability to challenge class treatment on any
3 grounds, as well as asserting any and all other potential defenses or privileges. The
4 Class Representative and Class Counsel (as defined in Sections 2.7 and 2.4,
5 respectively) agree that Defendant retains and reserves these rights, and agree not to
6 argue or present any argument, and hereby waive any argument that, based on this
7 Agreement, Defendant cannot challenge claims and allegations, in either the above-
8 styled Action or the related PAGA state court Action, upon any procedural or factual
9 grounds, including, without limitation, challenging class treatment on any grounds or
10 asserting any and all other potential defenses or privileges.

11 **2. DEFINITIONS.**

12 The following terms, when used in this Settlement Agreement, have the
13 following meanings:

14 2.1 “Action” or “Instant Action” means the above stated action *Maria Herrera*
15 *v. Federal Express Corporation*, Case No. 5:17-cv-02137-MWF-SHK, currently
16 pending in United States District Court for the Central District of California..

17 2.2 “Claim Amount” means an individual Class Member’s potential allocation
18 of the Net Settlement Amount, as defined in Section 2.19.

19 2.3 “Class” means all Defendant’s current and former non-exempt delivery
20 drivers who worked in California at any time during the Class Period.

21 2.4 “Class Counsel” means Kenneth H. Yoon, Stephanie E. Yasuda, and Brian
22 G. Lee of Yoon Law, APC, and G. Samuel Cleaver of the Law Offices of G. Samuel
23 Cleaver.

24 2.5 “Class Member” means each person eligible to participate in this
25 Settlement who is a member of the Class defined above. There are approximately
26 11,100 Class Members.

27 2.6 “Class Period” means September 12, 2013 to the Preliminary Approval
28 Date.

1 2.7 “Class Representative” is Plaintiff Maria Herrera.

2 2.8 “Class Representative’s Released Claims” means any and all claims,
3 obligations, demands, actions, rights, causes of action, and liabilities, against the
4 Released Parties (as defined below), of whatever kind and nature, character, and
5 description, whether in law or equity, whether sounding in tort, contract, federal, state
6 and/or local law, statute, ordinance, regulation, common law, or other source of law,
7 whether known or unknown, and whether anticipated or unanticipated, including
8 unknown claims covered by California Civil Code § 1542, as quoted in Section 6.13.1,
9 infra, by the Class Representative, arising from the beginning of time to the date of
10 signing of this Settlement, for any type of relief that can be released as a matter of law,
11 including, without limitation, claims for wages, damages, unpaid costs, penalties
12 (including civil and waiting time penalties), liquidated damages, punitive damages,
13 interest, attorneys’ fees, litigation costs, and restitution or equitable relief. The Class
14 Representative’s Released Claims exclude claims for workers’ compensation or
15 unemployment insurance benefits, or any claims which cannot be released as a matter
16 of law.

17 2.9 “Complaint” means the Third Amended Class Action Complaint for
18 Damages and Injunctive Relief to be filed with this Court by Plaintiff pursuant to the
19 terms of Section 6.1 of this Settlement and attached hereto as Exhibit ___, and
20 incorporated herein by reference.

21 2.10 “Court” means the United States District Court for the Central District of
22 California.

23 2.11 “Data Dispute Form” shall mean the document substantially in the form
24 attached hereto as Exhibit 2.

25 2.12 “Data Dispute Deadline” shall mean forty-five (45) calendar days from the
26 initial mailing of the Notice Packet.

27 2.13 “Defendant’s Counsel” means David S. Wilson, III, Lead Counsel, Federal
28 Express Corporation.

1 2.14 “Enhancement Payment” means the amount approved by the Court to be
2 paid to the Class Representative, not to exceed \$20,000.00, in addition to her Claim
3 Amount as a Qualified Claimant, in recognition of her efforts in coming forward as a
4 Class Representative. The Enhancement Payment shall be considered non-wages for
5 which an appropriate IRS Form 1099 will be issued to the Class Representative.

6 2.15 “Final Approval Date” means the latest of the following dates: (i) if no
7 Class Member intervenes or files an objection to the Settlement on or prior to the Court
8 entering an order granting final approval of the Settlement, then the date the Court
9 enters an order granting final approval of the Settlement, including the settlement of the
10 PAGA claims and associated PAGA Payment; or (ii) if there is an objection to the
11 Settlement by a Class Member, or a Class Member intervenes, on or prior to the date
12 the Court enters an order granting final approval of the Settlement, then on the date of
13 final resolution of that objection or any appeal brought by that objector or any
14 intervenor, resulting in final judicial approval of the Settlement, including the
15 settlement of the PAGA claims and associated PAGA Payment.

16 2.16 “Final Approval and Fairness Hearing” means the hearing set by the Court
17 to (a) review the Settlement and determine whether the Court should give final approval
18 to this Settlement, (b) consider any timely objections made pursuant to Section 6.4.5 of
19 this settlement, and all responses by the Parties, (c) consider the request for attorneys’
20 fees and expenses submitted by Class Counsel, (d) consider the Settlement
21 Administrator’s Settlement Administration Costs, (e) consider the Class
22 Representative’s application for an Enhancement Payment, and (f) consider the PAGA
23 Payment.

24 2.17 “Final Judgment” shall mean the order granting final approval of the
25 Settlement and judgment entered by the Court.

26 2.18 “Gross Settlement Amount” is the sum of Five Million U.S. Dollars
27 (\$5,000,000.00), which represents the total amount payable in this Settlement by
28 Defendant, and includes without limitation the Settlement Administration Costs,

1 attorneys' fees, litigation costs, the Class Representative Enhancement Payment, and
2 the PAGA Payment. The Gross Settlement Amount is exclusive of the employer's share
3 of payroll taxes.

4 2.19 "Net Settlement Amount" is the remaining portion of the Gross Settlement
5 Amount available for distribution to Qualified Claimants after deduction of Court
6 approved attorneys' fees and litigation costs, Settlement Administration Costs, the
7 Enhancement Payment to the Class Representative, and the PAGA Payment.

8 2.20 "Notice of Settlement" means the document substantially in the form
9 attached hereto as Exhibit 1.

10 2.21 "Notice Packet" means the Notice of Settlement and Data Dispute Form.

11 2.22 "PAGA Action" means the representative action, related to the Instant
12 Action, entitled *Maria Herrera v. Federal Express Corporation*, Case No.
13 CIVDS1724219, currently pending in the California Superior Court for the County of
14 San Bernardino.

15 2.23 "PAGA Complaint" means the operative complaint for damages in the
16 PAGA Action.

17 2.24 "PAGA Payment" means Fifty Thousand U.S. Dollars (\$50,000.00) of the
18 Gross Settlement Amount to be allocated to claims under the Private Attorneys General
19 Act of 2004, which includes Thirty Seven Thousand Five Hundred U.S. Dollars
20 (\$37,500.00) being awarded to the State of California, subject to Court approval, and
21 Twelve Thousand Five Hundred U.S. Dollars (\$12,500.00) being awarded to Qualified
22 Claimants by including that sum in the Net Settlement Amount, subject to Court
23 approval.

24 2.25 "Plaintiff" is Maria Herrera.

25 2.26 "Preliminary Approval Date" means the date the Court approves the
26 Settlement, and the exhibits thereto, and enters an order providing for notice to the
27 Class, an opportunity to opt out of the Class, an opportunity to submit timely objections
28 to the Settlement (excluding the PAGA settlement), a procedure for submitting Data

1 Dispute Forms, and setting a hearing on the fairness of the terms of settlement,
2 including approval of attorneys' fees and costs.

3 2.27 "Procedural Order" means the document substantially in the form attached
4 hereto as Exhibit 3.

5 2.28 "QSF" or "Qualified Settlement Fund" means the Qualified Settlement
6 Fund set up by the Settlement Administrator for the benefit of the Qualified Claimants
7 and from which the settlement payments shall be made.

8 2.29 "Qualified Claimant" means any and all Class Members who do not submit
9 a timely and correctly completed request for exclusion, as set forth in Section 6.4.4.

10 2.30 "Released Claims" means all claims, including those covered by a limited
11 California Civil Code Section 1542 waiver described in Section 6.13.1, *infra*, arising at
12 any time during the Class Period that are or were asserted in the operative Third
13 Amended Complaint, or claims which were or reasonably could have been alleged in
14 the Third Amended Complaint arising out of the same operative facts. The *res judicata*
15 effect of the Judgement will be the same as that of the Agreement. The definition of
16 Released Claims shall not be limited in any way by the possibility that Plaintiff or Class
17 Members may discover new facts or legal theories or legal arguments not alleged in the
18 Third Amended Complaint but which might serve as an alternative basis for pursuing
19 the same claims, causes of action, or legal theories of relief falling within the definition
20 of Released Claims.

21 2.31 "Releasees" means Defendant and any related entities and all of its
22 respective former, present, and future owners, parents, subsidiaries, affiliates, divisions,
23 related entities, joint venturers, partners, corporations in common control, co-
24 employers, service providers, predecessors, successors, and assigns, and past, present,
25 and future officers, directors, employees, partners, shareholders, agents, associates,
26 representatives, attorneys, insurers, and any other successors, assigns, or legal
27 representatives of any of them.

28

1 2.32 “Settlement Administration Costs” means the fees and expenses
2 reasonably incurred by the Settlement Administrator as a result of the procedures and
3 processes expressly required by this Settlement, and shall include all costs of
4 administering the Settlement, including, but not limited to, all tax document
5 preparation, custodial fees, and accounting fees incurred by the Settlement
6 Administrator; all costs and fees associated with preparing, issuing and mailing any and
7 all notices of settlement and other settlement correspondence to Class Members and/or
8 Qualified Claimants; all costs and fees associated with communicating with Class
9 Members, Class Counsel, and Defendant’s Counsel regarding settlement; all costs and
10 fees associated with computing, processing, reviewing, and paying the Claim Amounts,
11 and resolving disputed claims; all costs and fees associated with calculating tax
12 withholdings and payroll taxes, working with Defendant so that related payment to
13 federal and state tax authorities can be made, and printing tax forms relating to
14 payments made under the settlement; all costs and fees associated with preparing any
15 tax returns and any other filings required by any governmental taxing authority or
16 agency; all costs and fees associated with preparing any other notices, reports, or filings
17 to be prepared in the course of administering Claim Amounts; and any other costs and
18 fees incurred and/or charged by the Settlement Administrator in connection with the
19 execution of its duties under this Stipulation.

20 2.33 “Settlement Administrator” means and refers to Phoenix Settlement
21 Administrators, the entity that will be responsible for the administration of the
22 Settlement and related matters as described in this Settlement.

23 **3. DESCRIPTION OF THE LITIGATION.**

24 3.1 Plaintiff, a former courier employee of Defendant, brought this Action
25 asserting the following violations: (1) violation of Labor Code §§ 226.7 and 512
26 regarding unpaid meal and rest period premium wages; (2) violation of Labor Code §§
27 510 and 1194 regarding unpaid overtime and minimum wages; (3) violation of Labor
28 Code § 2802 regarding failure to reimburse necessary work-related expenses; (4)

1 violation of Labor Code § 226 regarding inaccurate recordkeeping; (5) violation of
2 Labor Code §§201 to 204 regarding waiting time penalties, and (6) violation of
3 Business & Professions Code §17200 *et seq.* regarding unfair business practices.
4 Plaintiff thereafter brought a related representative action alleging violation of the
5 Private Attorneys General Act of 2004 (Labor Code § 2698 *et seq.* (“PAGA”)) based on
6 the same alleged wrongdoing asserted in the Complaint and Defendant’s alleged failure
7 to timely pay wages during employment.

8 3.2 Through discovery, Defendant provided Class Counsel with copies of all
9 applicable versions of their personnel and payroll policies, contact information for the
10 putative class, and records reflecting Class Members’ hours worked and wages paid,
11 amongst numerous other documents. Class Counsel also conducted the depositions of
12 nine of Defendant’s declarants as well as Defendant’s witnesses designated per Federal
13 Rule of Civil Procedure 30(b)(6) in Los Angeles, CA and Memphis, TN. Defendant
14 deposed Plaintiff.

15 3.3 The Parties participated in a full-day mediation before Lynn Frank, Esq. on
16 February 14, 2019, which ended in a mediator’s proposal. The Parties accepted the
17 proposal on February 28, 2019.

18 3.4 The agreed-upon settlement was reached after evaluating the Parties’
19 theories of potential exposure for the underlying claims. The Parties also assessed
20 appropriate discounts to the potential liability based on Defendant’s contentions and
21 defenses.

22 3.5 The Parties agree that the above-described investigation and evaluation, as
23 well as discovery and the information exchanged during the settlement negotiations, are
24 more than sufficient to assess the merits of the respective Parties’ positions and to
25 compromise the issues on a fair and equitable basis.

26 **4. BENEFITS OF THE SETTLEMENT TO THE PROPOSED CLASS.**

27 4.1 Based on their own independent investigations and evaluations, Class
28 Counsel are of the opinion that the settlement with Defendant for the consideration and

1 terms set forth below, in view of the Class Representative's and average Class
2 Members' claims and the risk of loss, is fair, reasonable, and adequate in light of all
3 known facts and circumstances, and is in the best interests of the Class. Class Counsel
4 are also of the opinion that the total consideration and payment set forth in this
5 Settlement is adequate in light of the uncertainties surrounding the risk of further
6 litigation and the defenses that Defendant has asserted and could assert.

7 4.2 Class Counsel has weighed the monetary benefit under the Settlement to
8 the Class against the expenses and length of continued proceedings that would be
9 necessary to prosecute the Action against Defendant through trial and possible appeals.
10 Class Counsel have also taken into account the uncertain outcome and risk of any
11 litigation, especially in complex actions such as class actions, as well as the difficulties
12 and delay inherent in such litigation. Therefore, Class Counsel has determined that the
13 Settlement is in the best interests of the Class.

14 **5. POSITION OF DEFENDANT.**

15 5.1 Defendant denies any liability or wrongdoing of any kind associated with
16 the claims alleged in the Action and PAGA Action, and further denies that, for any
17 purpose other than settling this matter, this Action is appropriate for class treatment.
18 Defendant maintains, among other things, it has complied with Federal and California
19 law in all aspects. Nothing in this Settlement shall be construed or deemed as an
20 admission of liability, culpability, negligence, or wrongdoing on the part of Defendant.

21 5.2 There has been no final determination by any court as to the merits of the
22 claims asserted by Plaintiff against Defendant, nor has there been any final
23 determination as to whether a class should be certified, other than for settlement
24 purposes only. Defendant will stipulate to the certification of class claims for
25 settlement purposes only. Defendant disputes that certification is proper for the
26 purposes of litigating the class claims proposed in or flowing from the Third Amended
27 Complaint.

28 **6. OPERATIVE TERMS OF SETTLEMENT.**

1 The Parties to this Action agree as follows:

2 6.1 Third Amended Class Action Complaint. To resolve all of the claims
3 asserted by Plaintiff, the Parties stipulate to permit Plaintiff to file an amended
4 complaint, which is the Third Amended Class Action Complaint, and which asserts
5 Plaintiff's PAGA claims. The Court must approve this amendment and the Parties'
6 settlement of the PAGA claims, and associated PAGA Payment, or the Settlement is
7 void.

8 6.1.1 Cooperation. The Parties will cooperate in obtaining, through
9 written stipulation or unopposed motion if a motion is required, an order from the Court
10 approving the Settlement. The Parties agree to use their best efforts to expedite the
11 preparation and submission of the Settlement and related documents. The Parties further
12 agree to fully cooperate in the drafting and/or filing of any further required documents
13 or filings, shall take all steps that may be requested by the Court or that are otherwise
14 necessary for the approval and implementation of this Settlement, and shall otherwise
15 use their respective best efforts to obtain Court approval of this Settlement.

16 6.2 Preliminary Approval.

17 6.2.1 The Parties will seek to obtain the Court's preliminary approval of
18 the settlement. Plaintiff's counsel will prepare and file the motion documents and
19 Defendant agrees not to oppose them, including the motion for preliminary approval.
20 The Parties will submit this Settlement to the Court for preliminary approval of its
21 terms and for approval of the steps to be taken to obtain its final approval. The Parties
22 will request that the Court's preliminary approval of this Settlement be embodied in a
23 Procedural Order, a proposed form of which is attached as Exhibit 3. The Parties agree
24 to request that the Court enter an order approving the certification of a provisional
25 settlement class after the preliminary approval hearing.

26 6.3 Notice to Class Members. The Settlement Administrator shall disseminate
27 the Notice Packet in the manner described below, with the Settlement Administration
28 Costs being paid from the Gross Settlement Amount.

1 6.3.1 No later than ten (10) calendar days after the entry of the Procedural
2 Order, for each Class Member Defendant shall provide the Settlement Administrator
3 with the name, last known mailing address, last known telephone number, Social
4 Security Number, the dates the Class Member was actively employed as a Class
5 Member of Defendant in California during the Class Period, and whether the Class
6 Member's employment with Defendant ended. Any workweeks during which a Class
7 Member was employed by Defendant but not actively employed as a Class Member (for
8 example, while classified as exempt, while on a leave of absence, etc.) shall be
9 excluded. This class data, as well as any other class data provided to the Settlement
10 Administrator, shall be confidential. Except as provided for in this Agreement, the
11 Settlement Administrator shall not provide the class data to Class Counsel or Plaintiff
12 or any third party, or use the class data or any information contained therein for any
13 purpose other than to administer this Settlement. No later than ten (10) calendar days
14 after receipt of such address information, the Settlement Administrator will perform a
15 national change of address ("NCOA") search, update the addresses per the results of the
16 NCOA search, and then mail the Notice of Settlement and Data Dispute Form,
17 substantially in the forms attached as Exhibits 1 and 2, respectively, to each Class
18 Member by first-class mail, postage prepaid.

19 6.3.2 In the event that a Notice Packet sent by mail is returned as
20 undeliverable, the Settlement Administrator will make reasonable efforts to obtain a
21 valid mailing address by using the social security number of the class member and
22 standard skip tracing devices to conduct a search for a correct mailing address and by
23 contacting Class Counsel and Defendant through Defendant's Counsel. The Settlement
24 Administrator shall make one (1) attempt to re-mail the Notice Packet within fourteen
25 (14) calendar days from the date of the return of the Notice Packet. Following each
26 search that results in a corrected address, the Settlement Administrator shall promptly
27 resend the original Notice Packet to the Class Member by first-class mail, postage
28 prepaid. Following each search that results in no corrected address, the Settlement

1 Administrator shall resend the Notice Packet to the Class Member, postage prepaid, to
2 the original address; only one (1) such re-mailing to the same address shall ever occur,
3 per address. In any event, such efforts must be completed no less than fourteen (14)
4 days before the date of the Final Approval and Fairness Hearing.

5 6.3.3 Class Counsel shall cooperate in good faith with the Settlement
6 Administrator's reasonable efforts to obtain valid mailing addresses for Class Members.
7 Defendant shall cooperate in good faith with the Settlement Administrator's reasonable
8 efforts to obtain valid mailing addresses for Class Members to the extent they were
9 active employees of Defendant at the time of the Procedural Order or are active
10 employees at the time of any request made by the Settlement Administrator.

11 6.3.4 All costs of mailing of the Notice Packet, whether foreseen or not,
12 shall be paid from the Gross Settlement Amount, including the cost of searching for
13 Class Members' addresses as provided in Section 6.3.2. All other reasonable costs of
14 the Settlement Administrator shall also be paid from the Gross Settlement Amount.

15 6.3.5 No later than fourteen (14) calendar days prior to the date of the
16 Final Approval and Fairness Hearing, the Settlement Administrator shall file a
17 declaration under penalty of perjury advising the Court that the requirements of
18 Sections 6.3.1 and 6.3.2 of this Settlement have been fulfilled.

19 6.3.6 Compliance with these procedures shall constitute due and sufficient
20 notice to Class Members of this Settlement and shall satisfy the requirement of due
21 process. Nothing else shall be required of, or done by, the Parties, Class Counsel, and
22 Defendant's Counsel to provide notice of the proposed Settlement.

23 6.4 Responses to Notice

24 6.4.1 The Notice Packet shall provide Class Members with information as
25 to how they may challenge the information in the Data Dispute Form. Class Members
26 will have until the Data Dispute Deadline within which to complete and postmark their
27 Data Dispute Form for return to the Settlement Administrator. Except as provided by
28

1 Section 6.4.2 and 6.4.3, no Data Dispute Forms will be honored if postmarked after the
2 Data Dispute Deadline.

3 6.4.2 For Class Members who are re-mailed the Notice Packet due to it
4 being undeliverable, the deadline by which to submit a Data Dispute Form, file an
5 objection, or submit a request for exclusion will be the later of (i) fourteen (14) calendar
6 days from the date the Notice Packet was re-mailed, or (ii) the Data Dispute Deadline.

7 6.4.3 If a Data Dispute Form is timely submitted, but is deficient or
8 incomplete, the Settlement Administrator will return the Data Dispute Form (or, if
9 deemed necessary, a new Data Dispute Form) to the Class Member within five (5)
10 business days of receipt of the Data Dispute Form with a deficiency notice explaining
11 the deficiencies and stating that the Class Member will have ten (10) calendar days
12 from the date of the deficiency notice to correct the deficiencies and resubmit the Data
13 Dispute Form. Neither the Parties nor any of their counsel shall discourage any Class
14 Member from submitting a Data Dispute Form.

15 6.4.4 Class Members, with the exception of the Class Representative, may
16 opt-out of the settlement. Class Members who wish to exercise this option must submit
17 a request for exclusion to the Settlement Administrator as provided in this section. The
18 request for exclusion must (a) be in writing; (b) state the name, address and telephone
19 number of the Class Member; (c) state either the Class Member's approximate years of
20 employment with Defendant or the employee identification number given to the Class
21 Member by Defendant; (d) request exclusion from the Class saying words to the effect
22 of "I wish to opt out of the Class in: Herrera v. Federal Express Corporation"; (e) be
23 sent via U.S. Mail post-marked no later than the Data Dispute Deadline; and (f) be
24 signed and dated with return address or contact information. No request for exclusion
25 may be made on behalf of a group of members of the Class. The date of the postmark
26 on the return-mailing envelope shall be the exclusive means used to determine whether
27 a request for exclusion has been timely submitted. By submitting such a Request for
28 Exclusion, a Class Member shall be deemed to have exercised his or her option to opt

1 out of the class action lawsuit. Any member of the Class who requests exclusion from
2 the Settlement will not be entitled to any share of the settlement, will not be bound by
3 the Settlement, and will not have any right to object, appeal or comment thereon.
4 Members of the Class who fail to submit a valid and timely request for exclusion shall
5 be bound by all terms of the Settlement and the Final Judgment entered in this Action,
6 regardless of whether they otherwise have requested exclusion from the Settlement. No
7 later than fourteen (14) days before the Final Approval and Fairness Hearing, the
8 Settlement Administrator shall file a declaration under penalty of perjury providing the
9 Court with a complete list of all members of the Class who have timely requested
10 exclusion from the Settlement.

11 6.4.5 Any person who does not request exclusion but who wishes to
12 object or otherwise be heard concerning this Settlement must provide the Settlement
13 Administrator with written notice of his or her intent to object to this Settlement,
14 although no Class Member has the right to object to the settlement of the PAGA claims.
15 To be considered timely, the notice must be sent to the Settlement Administrator via
16 U.S. Mail and postmarked no later than the Data Dispute Deadline. The notice must set
17 forth any and all objections to this Settlement and include any supporting papers and
18 arguments. Any person who fails to submit such a timely written notice shall be barred
19 from making any statement objecting to this Settlement, and shall forever waive his or
20 her objection, except by special permission of the Court, but may still attend the hearing
21 to obtain such special permission. The Settlement Administrator shall promptly forward
22 all objections to the Parties and have them filed with the Court within ten (10) calendar
23 days of the Data Dispute Deadline with any later received objections filed with the
24 Court promptly upon receipt and in any case no later than five (5) business days before
25 the Final Approval and Fairness Hearing. Either of the Parties may file a responsive
26 document to any notice of intent to object with the Court no later than five business (5)
27 days before the Final Approval and Fairness Hearing. Any person who objects to the
28 Settlement shall be bound by the order of the Court.

1 6.4.6 If any individual whose name does not appear on the updated class
2 list provided to the Settlement Administrator believes that he or she is a member of the
3 Class, he or she shall have the opportunity to dispute his or her exclusion from the
4 Class. If an individual believes he or she is a member of the Class, he or she must notify
5 the Settlement Administrator in writing no later than the Data Dispute Deadline. The
6 Parties will meet and confer regarding any such individuals in an attempt to reach an
7 agreement as to whether any such individual should be regarded as a member of the
8 Class. If the Parties so agree, the Settlement Administrator will mail a Notice Packet to
9 the individual, and treat the individual as a member of the Class for all other purposes.
10 Such an individual will have all of the same rights as any other member of the Class
11 under this agreement.

12 6.4.7 If five percent (5%) or more of the total number of Class Members
13 submit timely and valid requests for exclusion, then Defendant shall have the option to
14 void the Settlement. Defendant must exercise this option within fourteen (14) calendar
15 days of receiving a report from the Settlement Administrator showing the total number
16 of timely and valid requests for exclusion exceeding 5% of Class Members. If
17 Defendant chooses to exercise this option, the effect will be precisely the same as if
18 final approval did not occur, as discussed herein. As a condition to exercise of this
19 option, Defendant must pay the Settlement Administration Costs incurred as of the date
20 of this exercise, notwithstanding other allocation of Settlement Administration Costs set
21 forth in this Settlement.

22 6.4.8 Neither the Parties nor their respective counsel will solicit or
23 otherwise encourage any Class Member, directly or indirectly, to request exclusion
24 from the Settlement or object to the Settlement.

25 6.5 Data Dispute Procedures

26 6.5.1 Any Qualified Claimant who disputes the number of workweeks
27 listed on the Data Dispute Form shall complete the Data Dispute Form and provide the
28 completed form together with any supporting information or documentation to the

1 Settlement Administrator by the Data Dispute Deadline. A Data Dispute Form will be
2 deemed submitted (a) when postmarked, if it is mailed by first-class, registered, or
3 certified mail, postage prepaid, addressed in accordance with the instructions on the
4 form, or (b) if otherwise submitted, when it is actually received at the address
5 designated on the form. If a Qualified Claimant does not timely dispute the information
6 contained in the Data Dispute Form, the information contained in the Data Dispute
7 Form mailed to the Qualified Claimant shall govern the calculation of his or her
8 entitlement under the Settlement.

9 6.5.2 Defendant shall review and respond to each submitted Data Dispute
10 Form disputing the number of workweeks within ten (10) calendar days of receipt, and
11 shall transmit a copy of its response to the Settlement Administrator. Defendant's
12 response shall state whether Defendant agrees with or disputes the information provided
13 in the Data Dispute Form.

14 (a) If Defendant agrees with all of the information provided in the
15 Data Dispute Form disputing the number of workweeks, the information and
16 documentation provided by the Qualified Claimant and attached to the Data Dispute
17 Form shall govern the calculation of the entitlement under the Settlement of the person
18 whose employment information is listed in the Data Dispute Form.

19 (b) If Defendant disagrees with any of the information provided
20 in a Data Dispute Form disputing the number of workweeks, it shall follow the
21 procedure set forth in Section 6.5.3 of this Settlement.

22 6.5.3 In the event that Defendant disagrees with the information provided
23 in a Data Dispute Form disputing the dates of employment, Defendant's Counsel will
24 promptly advise Class Counsel in writing of the dispute and provide Class Counsel with
25 copies of all information relevant to the dispute. Copies of all Data Dispute Forms and
26 correspondence with the person(s) submitting Data Dispute Forms shall be made
27 available to Class Counsel upon request. Defendant's Counsel and Class Counsel shall
28 attempt in good faith to resolve any such dispute within ten (10) calendar days of Class

1 Counsel's receipt of Defendant's Counsel's notice of a dispute as to the Data Dispute
2 Form. Class Counsel shall have full discretion on behalf of the Qualified Claimants to
3 resolve such disputes with Defendant's Counsel, except that any and all payments
4 relating to the disputed entitlement must be from the Net Settlement Amount.

5 6.5.4 In the event the Parties are unable to resolve any dispute under this
6 section, the Court shall review all information, material and documents provided by the
7 claimant, Class Counsel, and/or Defendant's Counsel, and make a decision regarding
8 the dispute. This decision shall be final and unappealable.

9 6.6 Application for Attorneys' Fees and Expenses. Class Counsel shall apply
10 to the Court for an award of fees from the Gross Settlement Amount in an amount not
11 to exceed \$1,666,666.67 (thirty three and one-third percent of the Gross Settlement
12 Amount) and actual costs. Defendant agrees not to oppose Class Counsel's application
13 for fees and expenses provided the application is made consistent with this section. To
14 the extent the Court awards less than this amount, the remainder shall be distributed to
15 the Qualified Claimants. Furthermore, in the event the Court reduces or does not
16 approve the Application for Attorney's Fees and Expenses, Plaintiff and Class Counsel
17 shall not have the right to revoke the Settlement, or to appeal such order, and the
18 Settlement will remain binding.

19 6.7 Application for Enhancement Payment.

20 6.8 Class Counsel, on behalf of Plaintiff, shall apply to the Court for an
21 Enhancement Payment from the Gross Settlement Amount, per the Court's direction, or
22 no later than the same day Plaintiff files her anticipated Motion for Final Approval of
23 Class Action Settlement. To the extent the Court awards less than the requested
24 amount, the remainder shall be distributed to the Qualified Claimants.

25 6.8.1 Any request for an Enhancement Payment may be supported by a
26 declaration from the Class Representative seeking payment and outlining the burdens
27 and obligations assumed in connection with her role as a Class Representative.

28

1 Defendant agrees not to oppose Class Representative's application for the Enhancement
2 Payment provided the application is made consistent with this Agreement.

3 6.8.2 Plaintiff shall be solely and legally responsible to pay any and all
4 applicable taxes on her Class Representative Service Award and hold harmless
5 Defendant from any claim or liability for taxes, penalties, or interest arising as a result
6 of the Class Representative Service Award.

7 6.8.3 In the event the Court reduces or does not approve the requested
8 Class Representative Service Award, Plaintiff shall not have the right to revoke the
9 Settlement, and it will remain binding.

10 6.9 Final Approval and Fairness Hearing.

11 6.9.1 On the date set forth in the Notice Packet, the Court shall hold the
12 Final Approval and Fairness Hearing where objections, if any, may be heard.

13 6.10 Final Judgment. If the Court approves this Settlement, including the
14 settlement of the PAGA claims and the associated PAGA Payment, at the Final
15 Approval and Fairness Hearing, the Parties request that the Court enter the Final
16 Judgment after the Gross Settlement Amount is fully funded.

17 6.11 Allocation of the Net Settlement Amount

18 6.11.1 Each Class Member's Claim Amount shall be determined based on
19 the number of workweeks that the Class Member was a member of the Class during the
20 Class Period divided by the total number of workweeks that every Class Member was a
21 member of the Class during the Class Period multiplied by the Net Settlement Amount.
22 When applying this formula, Class Members whose employment with Defendant
23 terminated during the Class Period shall be credited an additional four workweeks to
24 compensate them for their waiting time claims. Workweeks shall be all weeks within
25 which a Class Member was considered actively employed by Defendant as a Class
26 Member for any length of time. There are no partial or fractional workweeks. Thus, any
27 weeks during which a Class Member was employed by Defendant but not actively
28 employed (for example, while classified as exempt, while on a leave of absence, etc.)

1 are not included as workweeks. The calculation of a Class Member's workweeks and a
2 determination as to whether a Class Member was actively employed in a particular pay
3 period shall be construed from Defendant's records.

4 6.11.2 The number of workweeks through February 1, 2019 is estimated to
5 be 1,600,000. The number of workweeks may increase through preliminary approval
6 by ten percent (10%) without penalty. If the number of workweeks increases by more
7 than 10%, then the amount of the settlement will increase proportionately per
8 workweek added.

9 6.11.3 The minimum Claim Amount shall be \$10.00. Thus, in the event
10 the calculation above (Section 6.11.1) results in a Claim Amount that falls below
11 \$10.00, the Class Member's Claim Amount will be increased to the \$10.00 minimum
12 and all other Class Member's Claim Amounts adjusted to account for this floor.

13 6.11.4 There will be no reversion of any of the Gross Settlement Amount
14 or Net Settlement Amount to Defendant. For any Class Member that requests exclusion
15 from the Class, his or her Claim Amount will be added to the Net Settlement Amount
16 and distributed to Qualified Claimants on a proportional basis. All Qualified Claimants
17 will receive their Claim Amount, such that 100% of the Net Settlement Amount will be
18 paid.

19 6.11.5 The Parties recognize that the Claim Amounts to be paid to Class
20 Members reflect settlement of a dispute over claimed wages, business expenses,
21 interest, premiums and penalties. All Claim Amounts to Qualified Claimants are
22 allocated as follows:

23 (a) Twenty percent (20%) of the Claim Amounts shall be
24 allocated for payment of disputed wages to Qualified Claimants. For this portion of the
25 Claim Amounts, Qualified Claimants shall receive a W-2 form.

26 (b) Eighty percent (80%) of the Claim Amounts shall be allocated
27 for disputed business expenses, penalties, and interest. This portion of the Claim
28

1 Amounts consists of other income, not wages, for which the Qualified Claimants shall
2 receive a 1099 form as and if required by law.

3 6.11.6 The Employer's Share of Payroll Taxes will be paid separately
4 from the Gross Settlement Amount.

5 (a) The Settlement Administrator will prepare W-2's as part of
6 this Settlement. Pursuant to its duties and undertakings set forth in Section 2.32, the
7 Settlement Administrator shall work with Defendant to ensure that all monies and
8 information needed to remit and report the applicable portions of the payroll tax
9 payment to the appropriate taxing authorities are provided on a timely basis. Defendant
10 agrees to reasonably cooperate with the Settlement Administrator to the extent
11 necessary to determine the amount of the payroll tax payment required under this
12 section. Defendant and Defendant's counsel will not be responsible for any errors or
13 omissions in the Settlement Administrator's calculations of the withholdings.

14 (b) Other than the withholding and reporting requirements set
15 forth in Sections 2.32 and 6.11.5(a), Qualified Claimants shall be solely responsible for
16 the reporting and payment of their share of any federal, state and/or municipal income
17 or other taxes on payments made pursuant to this Settlement. No Party has made any
18 representation to any of the other Parties as to the taxability of any payments pursuant
19 to this Settlement, including the payments to Class Members, the payments to Class
20 Counsel, the payments to the Class Representative, the payroll tax liability of
21 Defendant, or the allocation of Settlement proceeds to wage and non-wage income as
22 provided in Section 6.11.5, or otherwise as to tax implications of any provision of this
23 Settlement.

24 6.12 Distribution of Settlement Proceeds

25 6.12.1 Within fourteen (14) calendar days after the Final Approval Date, or
26 the date the PAGA Action is dismissed with prejudice by the state court, whichever
27 occurs later, Defendant shall electronically wire the entire Gross Settlement Amount
28 and employer's share of payroll taxes to the Claims Administrator, who shall deposit it

1 in a non-interest-bearing account at a federally-insured bank that is mutually acceptable
2 to the Parties and the Settlement Administrator, and that is Federal Deposit Insurance
3 Corporation-insured for the full amount deposited. The final and complete delivery by
4 Defendant to the Settlement Administrator of the Gross Settlement Amount and
5 employer's share of payroll taxes shall constitute full and complete discharge of the
6 entire obligation of Defendant under this Settlement, except that Defendant is also
7 responsible for any retroactive tax increase assessed on the amounts allocated to wages,
8 upon an accounting provided by the Claims Administrator. No Released Party shall
9 have any further obligation or liability to Class Counsel, Class Representative, or
10 Qualified Claimants.

11 6.12.2 Within fourteen (14) calendar days after wire receipt of the entire
12 Gross Settlement Amount and employer's share of payroll taxes, the Claims
13 Administrator shall promptly deduct and pay (and, if available, electronically wire)
14 from the Gross Settlement Amount (1) all Court-awarded attorney's fees and costs; (2)
15 the Enhancement Payment; (3) Settlement Administration Costs; and (4) the PAGA
16 Payment. Following deduction of the amount of such payments, the Settlement
17 Administrator shall deposit the remaining amount into the QSF and calculate and make
18 payments to the Qualified Claimants in accordance with this Agreement. Defendant
19 and Defendant's Counsel will not be liable for any errors or omissions in the Settlement
20 Administrator's calculation of each Qualified Claimant's Individual Settlement
21 Payment.

22 (a) The Settlement Administrator shall wire the Court-approved
23 attorneys' fees and costs to Class Counsel. Class Counsel shall provide the Settlement
24 Administrator with the pertinent taxpayer identification number and wire instructions
25 within two (2) business days after the Final Approval Date, if not earlier.

26 (b) The Settlement Administrator shall send a check by mail for
27 the Court-approved Enhancement Payment to the Class Representative, care of Class
28 Counsel.

1 6.12.3 Within fourteen (14) calendar days after wire receipt of the entire
2 Gross Settlement Amount and employer's share of payroll taxes, as defined herein, the
3 Settlement Administrator shall issue Claim Amounts to Qualified Claimants in the form
4 of a check, which shall become null and void if not deposited within ninety (90) days of
5 issuance. After ninety (90) days of issuance, funds from undeposited checks will be
6 held by the Settlement Administrator; if the Class Member to whom the undeposited
7 check is issued does not contact Class Counsel or the Settlement Administrator
8 concerning his or her settlement payment within one-hundred eighty (180) days of
9 issuance of the payment, the amount of that Class Member's Claim Amount that has
10 remained undeposited as of that time, plus any interest that has accrued on that sum
11 from the date of entry of the initial judgment in this Action, shall be transmitted to the
12 California State Controller (hereafter "*Cy Pres* Designee").

13 6.12.4 The failure by a Class Member to claim or deposit any check issued
14 by the Settlement Administrator shall have no effect on that Class Member's release of
15 all Released Claims as set forth herein.

16 6.12.5 No person shall have any claim against the Settlement
17 Administrator, Defendant or any of the Released Parties, the Class Representative, the
18 Class Members, or Class Counsel based on distribution or payments made substantially
19 in accordance with this Settlement, or further orders of this Court. The Settlement
20 Administrator, however, shall be licensed and bonded in an amount sufficient to cover
21 any claims against it.

22 6.12.6 The Class Representative Enhancement Payment and Individual
23 Settlement Payments to the Class Representative and settlement Class Members shall
24 not be deemed pensionable earnings and shall not have any effect on the eligibility for,
25 or calculation of, any of the employee benefits (e.g., vacations, holiday pay, retirement
26 plans, etc.) of the respective Class Representative and the settlement Class Members.
27 The Parties agree that any Class Representative Enhancement Payment and Individual
28 Settlement Payments paid to the Class Representative and the settlement Class

1 Members under the terms of this Agreement do not represent any modification of the
2 Class Representative's and the settlement Class Members' previously credited hours of
3 service, or other eligibility criteria, under any employee pension benefit plan or
4 employee welfare benefit plan sponsored by Defendant. Further, any Class
5 Representative Service Award and Individual Settlement Payments hereunder shall not
6 be considered "compensation" in any year for purposes of determining eligibility for, or
7 benefit accrual within, an employee pension benefit plan or employee welfare benefit
8 plan sponsored by Defendant.

9 6.13 Release of Claims

10 6.13.1 Upon full and final payment by Defendant of the Gross Settlement
11 Amount consistent with Section 6.12.1, the Class Representative and each Class
12 Member, who did not opt out of the Settlement, shall be deemed to have fully, finally,
13 and forever released the Releasees from all Released Claims, as defined in Section 2.30,
14 supra. Such release includes a limited California Civil Code Section 1542 ("Section
15 1542") waiver. Section 1542 states: "A general release does not extend to claims that
16 the creditor or releasing party does not know or suspect to exist in his or her favor at the
17 time of executing the release and that, if known by him or her, would have materially
18 affected his or her settlement with the debtor or released party." The Class
19 Representative's and the Class Members' limited Section 1542 waiver releases all
20 claims, known or unknown, within the definition of Released Claims, irrespective of the
21 factual or legal basis for such claims. However, to be clear, the scope of the Section
22 1542 waiver is limited to the Released Claims. This limited 1542 waiver was a
23 specifically negotiated term, and was specifically taken into consideration in arriving at
24 the Gross Settlement Amount.

25 6.13.2 In addition, upon full and final payment by Defendant of the Gross
26 Settlement Amount consistent with Section 6.12.1, and conditioned upon the Court
27 approving a Class Representative Service Award in any amount, the Class
28 Representative shall be deemed to have fully, finally, and forever released the Released

1 Parties from the Class Representative’s Released Claims, and the Class Representative
2 shall be deemed to have expressly waived and relinquished, to the fullest extent
3 permitted by the law, the provisions, rights, and benefits she may otherwise have had
4 pursuant to Section 1542, as quoted in the preceding paragraph.

5 6.14 Miscellaneous Provisions

6 6.14.1 Unless otherwise specifically provided herein, all notices, demands,
7 or other communications given hereunder shall be in writing and shall be deemed to
8 have been duly given as of the third business day after mailing by United States
9 certified mail, return receipt requested, addressed as follows:

10
11 To the Plaintiff and the Class:
12 Kenneth H. Yoon, Esq.
13 Stephanie E. Yasuda, Esq.
14 YOON LAW, APC
15 One Wilshire Boulevard, Suite 2200
16 Los Angeles, CA 90017

17
18 G. Samuel Cleaver
19 LAW OFFICES OF G. SAMUEL CLEAVER
20 5670 Wilshire Boulevard, 18th Floor
21 Los Angeles, CA 90036

22
23 To Defendant:
24 David S. Wilson, III
25 Jane M. Flynn
26 FEDERAL EXPRESS CORPORATION
27 2601 Main Street, Suite 340
28 Irvine, CA 92614

6.14.2 The Parties hereto agree that the terms and conditions of this
Settlement are the result of lengthy, intensive, arm’s-length negotiations between the
Parties and that this Settlement shall not be construed in favor of or against any Party
by reason of the extent to which any Party or its counsel participated in the drafting of
this settlement.

6.14.3 The Class Representative, by signing this Settlement, is bound
by the terms herein and further agrees not to request to be excluded from the Settlement
and not to object to any terms of this Settlement. Any such request for exclusion or
objection shall therefore be void and of no force or effect. Defendant, Class Counsel,

1 and the Class Representative waive their rights to file an appeal, writ, or any challenge
2 whatsoever to the terms of this Settlement.

3 6.14.4 Neither Class Counsel nor any other attorneys acting for, or
4 purporting to act for, the Class, Class Members, or the Class Representative, may
5 recover or seek to recover any amounts for fees, costs, or disbursements from the
6 Releasees or the settlement except as expressly provided herein.

7 6.14.5 Plaintiff, Defendant, and their respective counsel will not
8 make any public disclosure of the Settlement until after the Settlement is preliminarily
9 approved by the Court. Plaintiff and Class Counsel agree not to disclose or publicize the
10 Settlement, including the fact of the Settlement, its terms or contents, and the
11 negotiations underlying the Settlement, in any manner or form, directly or indirectly, to
12 any person or entity, except potential class members and as shall be contractually
13 required to effectuate the terms of the Settlement as set forth herein. In response to
14 inquiries from third parties, Class Counsel may respond only that “The Parties have
15 reached an agreeable solution.” Class Counsel will take all steps necessary to ensure
16 that Plaintiff is aware of, and will encourage her to adhere to, the restriction against any
17 public disclosure of the Settlement until after the Settlement is preliminarily approved
18 by the Court.

19 6.14.6 This settlement may not be changed, altered, or modified,
20 except in writing signed by the Parties hereto and approved by the Court. This
21 settlement may not be discharged except by performance in accordance with its terms
22 or by a writing used by the Parties hereto.

23 6.14.7 This Agreement, including exhibits, constitutes the full,
24 complete and entire understanding, agreement and arrangement between the Class
25 Representative and Qualified Claimants on the one hand and Defendant on the other
26 hand with respect to the settlement of the Action and Released Claims against
27 Defendant. Except those set forth expressly in the Agreement, there are no other
28

1 agreements, covenants, promises, representations or arrangements between the Parties
2 with respect to the settlement of the Action and the Released Claims against Defendant.

3 6.14.8 This settlement shall be binding upon and inure to the benefit
4 of the Parties hereto and their respective heirs, trustees, executors, Settlement
5 Administrators, successors, and assigns.

6 6.14.9 This settlement shall become effective upon its execution by
7 the Parties. The Class Representative, Class Counsel, Defendant and Defendant's
8 Counsel may execute this settlement in counterparts, and execution of counterparts shall
9 have the same force and effect as if each had signed the same instrument.

10 6.14.10 In the event that one or more of the Settling Parties to this
11 Settlement institutes any legal action, arbitration, or other proceeding to enforce the
12 provisions of this Settlement or to declare rights and/or obligations under this
13 Settlement, the successful Party or Parties shall be entitled to recover from the
14 unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert
15 witness fees incurred in connection with any enforcement actions. Notwithstanding the
16 entry of Final Judgment, the Court shall retain jurisdiction of this matter for purposes of
17 interpreting and enforcing the terms of this Agreement and the Judgment.

18 6.14.11 This Settlement and the exhibits hereto shall be considered to
19 have been negotiated, executed, and delivered, and to have been wholly performed, in
20 the State of California, and the rights and obligations of the Parties to the settlement
21 shall be construed and enforced in accordance with, and governed by, the substantive
22 laws of the State of California without giving effect to that State's choice of law
23 principles.

24 6.14.12 Paragraph titles or captions contained in the Settlement are
25 inserted as a matter of convenience and for reference, and in no way define, limit,
26 extend, or describe the scope of this Settlement, or any provision thereof.
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1 6.14.13 Class Counsel will provide an opportunity for Defendant’s
2 Counsel to review the Motions for Preliminary and Final Approval prior to filing with
3 the Court, including furnishing any drafts at least seven (7) days before filing.

4 6.14.14 Plaintiff and Class counsel represent that they do not currently
5 intend to pursue any claims against Defendant, including, but not limited to, any and all
6 claims relating to or arising from Plaintiff’s employment with Defendant, and that Class
7 Counsel is not currently aware of any facts or legal theories upon which any claims or
8 causes of action could be brought against Defendant by Plaintiff, excepting those facts
9 or legal theories alleged in the Second Amended Complaint and PAGA Complaint. The
10 Parties further acknowledge, understand, and agree that this representation is essential
11 to the Agreement and that this Agreement would not have been entered into were it not
12 for this representation.

13 6.14.15 Plaintiff has claimed and continues to claim that the Released
14 Claims have merit and give rise to liability on the part of Defendant. Defendant claims
15 that the Released Claims have no merit and do not give rise to liability. This
16 Agreement is a compromise of disputed claims. Nothing contained in this Agreement
17 and no documents referred to herein and no action taken to carry out this Agreement
18 may be construed or used as an admission by or against Defendant or Plaintiff or Class
19 Counsel as to the merits or lack thereof of the claims asserted.

20 6.14.16 With respect to all of the documents produced by Defendant
21 in this litigation, Plaintiff’s attorneys acknowledge that they continue to be bound by
22 the Parties’ Stipulated Protective Order and that these documents must be kept
23 confidential and otherwise handled in accordance with the terms of the Protective
24 Order.

25 6.14.17 Dismissal of State PAGA Case: Within 10 days of the Court
26 granting final approval of the settlement, Plaintiff Herrera will request dismissal of the
27
28

1 *Herrera v. Federal Express Corporation*, San Bernardino County Superior Court Case
2 No. CIVDS1724219.

3 6.14.18 IRS Circular 230 Disclaimer. Each Party to this Agreement
4 (for purposes of this section, the “acknowledging party” and each Party to this
5 Agreement other than the acknowledging party, an “other party”) acknowledges and
6 agrees that:

- 7 a. No provision of this Agreement, and no written communication
8 or disclosure between or among the Parties or their attorneys and
9 other advisers, is or was intended to be, nor shall any such
10 communication or disclosure constitute or be construed or be relied
11 upon as, tax advice within the meaning of United States Treasury
12 Department circular 230 (31 CFR part 10, as amended);
- 13 b. The acknowledging party (a) has relied exclusively upon his, her
14 or its own, independent legal and tax counsel for advice (including
15 tax advice) in connection with this Agreement; (b) has not entered
16 into this Agreement based upon the recommendation of any other
17 Party or any attorney or advisor to any other Party; (c) is not entitled
18 to rely upon any communication or disclosure by any attorney or
19 adviser to any other Party to avoid any tax penalty that may be
20 imposed on the acknowledging party; and
21
22 (3) no attorney or adviser to any other Party has imposed any
23 limitation that protects the confidentiality of any such attorney’s or
24 adviser’s tax strategies (regardless of whether such limitation is
25 legally binding) upon disclosure by the acknowledging party of the
26 tax treatment or tax structure of any transaction, including any
27 transaction contemplated by this Agreement.
28

1 IN WITNESS WHEREOF, this settlement is executed by the Parties and
2 their duly authorized attorneys, as of the day and year herein set forth.

3
4 Dated: May 20, 2019

5 By:  Maria Estela Herrera (May 20, 2019)
6 Maria Herrera
7 Plaintiff

8
9 Dated: _____

10 By: _____
11 Federal Express Corporation
12 By: _____
13 Its: _____
14 Defendant

15 APPROVED AS TO FORM AND CONTENT:

16
17 YOON LAW, APC

18 Dated: _____

19 By: _____
20 KENNETH H. YOON
21 STEPHANIE E. YASUDA
22 Attorneys for Plaintiff

23
24 LAW OFFICES OF G. SAMUEL CLEAVER

25 Dated: _____

26 By: _____
27 G. SAMUEL CLEAVER
28 Attorneys for Plaintiff

FEDERAL EXPRESS CORPORATION

1 IN WITNESS WHEREOF, this settlement is executed by the Parties and
2 their duly authorized attorneys, as of the day and year herein set forth.

3
4 Dated: _____

By: _____

Maria Herrera
Plaintiff

5
6
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8 Dated: 5/30/19

By: David S. Wilson 11

Federal Express Corporation

By: David S. Wilson, II

Its: In-house counsel

Defendant

9
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11
12 APPROVED AS TO FORM AND CONTENT:

13
14 YOON LAW, APC

15
16
17 Dated: _____

By: _____

KENNETH H. YOON
STEPHANIE E. YASUDA
Attorneys for Plaintiff

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21 LAW OFFICES OF G. SAMUEL CLEAVER

22
23
24 Dated: _____

By: _____

G. SAMUEL CLEAVER
Attorneys for Plaintiff

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28 FEDERAL EXPRESS CORPORATION

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IN WITNESS WHEREOF, this settlement is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

Dated: _____

By: _____

Maria Herrera
Plaintiff

Dated: _____

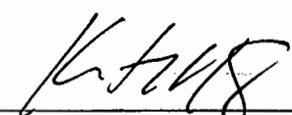
By: _____

Federal Express Corporation
By: _____
Its: _____
Defendant

APPROVED AS TO FORM AND CONTENT:

YOON LAW, APC

Dated: 5/19/19

By: 

KENNETH H. YOON
STEPHANIE E. YASUDA
Attorneys for Plaintiff

LAW OFFICES OF G. SAMUEL CLEAVER

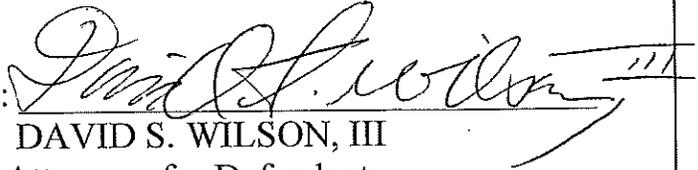
Dated: May 18, 2019

By: 

G. SAMUEL CLEAVER
Attorneys for Plaintiff

FEDERAL EXPRESS CORPORATION

1 Dated: 5/30/19

By: 
DAVID S. WILSON, III
Attorneys for Defendant

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EXHIBIT 1

NOTICE TO CLASS MEMBERS OF PENDENCY OF CLASS ACTION SETTLEMENT AND NOTICE OF FINAL APPROVAL HEARING ON PROPOSED SETTLEMENT

Maria Herrera v. Federal Express Corporation

United States District Court, Central District of California, Case No. 5:17-cv-02137-MWF-SHK

To: All of Defendant’s current and former non-exempt delivery drivers who worked in California at any time from September 12, 2013 to <<CLASS PERIOD END DATA>>.

PLEASE READ THIS NOTICE CAREFULLY. THIS MAY AFFECT YOUR LEGAL RIGHTS.

The purpose of this Notice (“Notice”) is to inform you of the proposed settlement (“Settlement”) in the above-entitled action (“Action”) and your rights under it. You have received this Notice because Federal Express Corporation’s (“Defendant” or “FedEx”) records indicate that you are a Class Member and eligible to participate in the Settlement described in this Notice. “Class Member” is defined in the Settlement as all of Defendant’s current and former non-exempt delivery drivers who worked in California at any time from September 12, 2013 to <<CLASS PERIOD END DATE>>.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	You will be paid your Claim Amount and you will give up any rights to bring the same claims against Defendant. California law protects employees from retaliation based on their decision to participate in a class action settlement.
DISPUTE/CHALLENGE THE NUMBER OF WORKWEEKS	Dispute/Challenge the number of workweeks listed in your Data Dispute Form. The Settlement Administrator may accept or reject your dispute. Receive your Claim Amount and give up any rights to sue for the same claims.
EXCLUDE YOURSELF	If you do not want to participate in the Settlement and receive your share of the settlement money, you may opt out of any connection with this Action and retain any rights you may have against Defendant, as explained below.
OBJECT	If you do not exclude yourself, you may object to the Settlement of the non-PAGA claims, as described below, by submitting an objection explaining why you do not agree with the Settlement. The Court may or may not agree with your objection.

HOW MUCH CAN I GET?	Look at the shaded box at the top of the enclosed Data Dispute Form.
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THE FOLLOWING RECITATIONS DO NOT CONSTITUTE THE FINDINGS OF THE COURT NOR SHOULD THEY BE UNDERSTOOD TO BE AN EXPRESSION OF THE COURT'S VIEWS ON THE MERITS OF ANY CLAIM OR DEFENSE RAISED BY THE PARTIES.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

1. Why Did I Get This Notice?

Defendant's records indicate that you were a current or former non-exempt delivery driver for Defendant who worked in California at any time from September 12, 2013 to <<CLASS PERIOD END DATE>> ("Class Member").

The United States District Court for the Central District of California (the "Court") preliminarily approved the Settlement on behalf of the Class. The Court has not entered judgment and has not determined that there is any merit to Plaintiff's claims or that Defendant engaged in any wrongdoing in this Action. The Court still has to decide whether to grant final approval of the Settlement. If the Court grants final approval of the Settlement, and after any objections and appeals are resolved, a Settlement Administrator appointed by the Court will make the payments that the Settlement allows.

Plaintiff and Defendant, and their respective counsel, have concluded that the Settlement is fair and in the best interests of the Class Members considering the risks and uncertainties to each side of continued litigation. Because the Settlement will affect your legal rights, the Court ordered that this Notice be sent to you. This Notice will provide you with a brief description of the Action; inform you of the terms of the Settlement; and advise you of your legal rights.

2. What Is The Lawsuit About?

A former employee ("Plaintiff") has sued Federal Express Corporation on behalf of herself and others similarly situated for the following claims:

(1) Violation Of Labor Code §§ 226.7 AND 512 (meal and rest breaks), (2) Violation Of Labor Code §§ 1194 AND 510 (overtime and minimum wage), (3) Violation Of Labor Code § 2802 (unreimbursed business related expenses), (4) Violation Of Labor Code § 226 (inaccurate paystubs), (5) Violation Of Labor Code §§ 201-204 (late payment of wages), Business and Professions Code §§ 17200 *et seq.* (unfair business practices) based upon violation of (1)-(3) and violation of Labor Code §§ 2698 *et seq.* (Private Attorneys General Act ["PAGA"]) based upon violation of (1)-(5).¹

This Settlement was reached after Plaintiff's filed her motion for class certification and Defendant opposed it, but before the Court ruled on the motion.

¹ Plaintiff's private attorney general act claims are also asserted in a related state court lawsuit entitled *Maria Herrera v. Federal Express Corporation*, Case No. CIVDS1724219, pending in the California Superior Court for the County of San Bernardino.

3. What Is Defendant's Position?

Defendant denies Plaintiff's claims and believes that it does not have any liability to the Class under the claims asserted in the Action, and that, but for the Settlement, the Action should not be certified to proceed as a class action (which means the case should not go to a trial for the Class, but rather be limited to a trial by Plaintiff for herself alone). Nonetheless, this Settlement is entered into solely for the purpose of compromising highly-disputed claims. Nothing in this Settlement is intended or will be construed as an admission of liability or wrongdoing by Defendant or an admission by Plaintiff that she would have lost her claim or that any defense made by Defendant would have won.

4. Who Are The Attorneys Representing the Parties?

Attorneys for Plaintiff and the Class ("Class Counsel")

YOON LAW, APC
Kenneth H. Yoon
Stephanie E. Yasuda
Brian G. Lee
One Wilshire Boulevard, Suite 2200
Los Angeles, California 90017
Telephone: (213) 612-0988
kyoon@yoonlaw.com
syasuda@yoonlaw.com
blee@yoonlaw.com

LAW OFFICES OF G. SAMUEL CLEAVER

G. SAMUEL CLEAVER (SBN 245717)
5670 Wilshire Boulevard, 18th Floor
Los Angeles, California 90036
Telephone: (213) 568-4088
sam@gscleaverlaw.com

Attorneys for Federal Express Corporation ("Defendant's Counsel")

FEDERAL EXPRESS CORPORATION
David S. Wilson, III
Jane M. Flynn
2601 Main Street, Suite 340
Irvine, CA 92614
Telephone: 949.862.4656
dswilson@fedex.com
jane.flynn@fedex.com

5. Do I Need to Hire an Attorney?

You do not need to hire your own attorney for this Settlement. You are already represented by Class Counsel (see Section 4). However, you may hire your own attorney at your own expense if you choose to do so. If you hire an attorney, your attorney must file a Notice of Appearance with the above-entitled Court no later than **<<DATA DISPUTE DEADLINE>>**. You will be responsible for any attorneys' fees and costs charged by your own attorney.

6. Why Is There a Settlement?

Questions?
Call **XXX-XXX-XXXX**

3

Plaintiff and Defendant have determined that it is in their mutual best interest to settle this Action due to the uncertainties of trial, benefits of settlement, associated costs of continued litigation, likely appeals, and inconvenience and interference with personnel matters and business operations. The Settlement was reached through lengthy negotiations between the parties and after a mediation held with a neutral, independent, third-party mediator, Lynn Frank.

The Court did not decide in favor of Plaintiff or Defendant. After a thorough investigation into the facts of this lawsuit, Defendant and Plaintiff agreed to the Settlement. The Class claims against Defendant were settled because Class Counsel and Plaintiff (the “Class Representative”) believe that the amount of the Settlement is fair and reasonable in light of the strengths and weaknesses of the Class claims and other factors.

7. How Do I Know If I Am Part of the Settlement?

You are a Class Member if you were a current or former non-exempt delivery driver of Defendant who worked in California at any time from September 12, 2013 to <<CLASS PERIOD END DATE>>.

8. What Does the Settlement Provide?

Settlement Amount

Defendant has agreed to pay a total of \$5,000,000 (“Gross Settlement Amount”) to settle this Action. The Gross Settlement Amount, includes without limitation, all payments to those Class Members who decide to participate in the Settlement (“Qualified Claimants”), Settlement Administration Costs, attorneys’ fees, litigation costs, the Class Representative Enhancement Payment, and the PAGA Payment and any other fees and expenses (other than attorneys’ fees and expenses) incurred in implementing the terms and conditions of this Agreement and securing the Final Approval Order and Final Judgment to be entered by the Court.

The “Net Settlement Amount” means the Gross Settlement Amount less all the items described immediately above except for the payments to be paid to the Qualified Claimants.

Distribution of the Gross Settlement Amount

Subject to the terms and conditions of the Settlement approved by the Court, the Settlement Administrator will make the following payments from the Gross Settlement Amount as follows:

First, the Settlement Administrator will pay any Enhancement Payment to Plaintiff, as awarded by the Court. Class Counsel will apply to the Court for an amount not to exceed \$20,000 for Plaintiff Maria Herrera, in recognition of Plaintiff’s efforts and risks (financial, professional, and emotional) taken in pursuing this Action. The Court will determine the actual amount awarded to the Plaintiff.

Second, the Settlement Administrator will pay Class Counsel’s attorneys’ fees and litigation costs as awarded by the Court. Class Counsel will apply to the Court for a total award of

attorneys' fees of up to one-third of the Gross Settlement Amount (for a total of up to \$1,666,666.67) for their Class Counsel attorneys' fees payment and an award of actual litigation costs (not to exceed \$__,000.00). The Court will determine the actual amounts awarded.

Third, the Settlement Administrator will pay itself for all reasonably incurred administration costs, including the cost of preparing and mailing this Notice and processing payments under the Settlement Agreement. The Court will determine the actual amount awarded. The amount shall not exceed \$45,750.00.

Fourth, the Settlement Administrator will pay any other fees and/or expenses (other than attorneys' fees and expenses) incurred in implementing the terms and conditions of the Settlement and securing a judgment.

Fifth, of the \$50,000 of the Gross Settlement Amount allocated to the settlement of the PAGA claims, the Settlement Administrator will pay seventy-five percent (75%), or \$37,500, to the State of California as required by the Labor Code.

Sixth, the Settlement Administrator will distribute the Net Settlement Amount on a proportional basis as payments to each Qualified Claimant pursuant to a formula described in Section 10.

9 What Can I Get From the Settlement?

Each Qualified Claimant will be paid a payment from the Net Settlement Amount. The amount of each Qualified Claimant's payment shall be treated as follows. Twenty percent (20%) of each payment shall be allocated for payment of disputed wages to Qualified Claimants. For this portion Qualified Claimants shall receive a W-2 form. Eighty percent (80%) of each payment shall be allocated for disputed business expenses, penalties and interest. This portion consists of other income, not wages, for which the Qualified Claimants shall receive a 1099 form as and if required by law.

You will be solely responsible for the reporting and payment of any federal, state, and/or local income or other tax withholdings, if any, on your payment.

Unless you choose to opt out by timely submitting a valid request for exclusion by <<DATA DISPUTE DEADLINE>>, you will receive your payment after the Court approves the Settlement.

Your estimated payment is identified in the enclosed Data Dispute Form. The estimated amount will be finalized based on the total number of Class Members who participate (who do not opt out).

If you disagree with Defendant's records regarding the number of workweeks during the Class Period (September 12, 2013 to <<CLASS PERIOD END DATE>>) and wish to challenge it, you must follow the instructions on the enclosed Data Dispute Form.

Please Note: Failure to provide documentation in support of your challenge to the number of your workweeks during the Class Period may result in rejection of said challenge.

Your challenge must be postmarked no later than <<DATA DISPUTE DEADLINE>>. The date of the postmark on the envelope shall be the exclusive means used to determine whether the challenge has been timely submitted. If you do not timely challenge the employment information contained on the Data Dispute Form, said information shall govern the calculation of your payment under the Settlement. You may contact the Settlement Administrator whose contact information is at Section 14.

If a challenge is timely submitted but is deficient or incomplete, the Settlement Administrator will send to you within five (5) business days of receipt of the challenge a deficiency notice explaining the deficiencies and stating that you will have ten (10) calendar days from the date of the deficiency notice to correct the deficiencies and resubmit the challenge.

In the event of a dispute regarding the number of your workweeks during the Class Period, the Settlement Administrator will contact you and Defendant and will work in good faith to resolve it. Defendant will review its payroll and personnel records to verify the correct number of workweeks. Defendant's records will have a rebuttable presumption of correctness. After consultation with Class Counsel, you, and Defendant, the Settlement Administrator will make a recommendation of your number of workweeks and that determination will be submitted to the Court for a final determination, which shall be final and binding on Plaintiff, Defendant, and you, and will be non-appealable.

10. How Was My Share Calculated?

Each Class Member's Claim Amount shall be determined based on the number of workweeks that the Class Member was a member of the Class during the Class Period divided by the total number of workweeks that every Class Member was a member of the Class during the Class Period multiplied by the Net Settlement Amount. When applying this formula, Class Members whose employment with Defendant terminated during the Class Period shall be credited an additional four workweeks to compensate them for their waiting time claims. Workweeks shall be all weeks within which a Class Member was considered actively employed by Defendant as a Class Member for any length of time. There are no partial or fractional workweeks. Thus, any weeks during which a Class Member was employed by Defendant, but not actively employed (for example, while classified as exempt, while on a leave of absence, etc.) are not included as workweeks. The calculation of a Class Member's workweeks and a determination as to whether a Class Member was actively employed in a particular week shall be construed from Defendant's records. A workweek is calculated by counting the days between two dates and dividing that figure by seven, and then rounding up to the nearest whole number.

The minimum payment shall be \$10.00. Thus, in the event the calculation above results in a payment that falls below \$10.00, the Qualified Claimant's payment will be increased to the \$10.00 minimum and all other Qualified Claimant's payments adjusted to account for this floor.

There will be no reversion of any of the Gross Settlement Amount or Net Settlement Amount to Defendant.

11 *How Can I Get Payment?*

If you take no further action as a Class Member, you will be considered a Qualified Claimant, you will be represented by Class Counsel, and will have the right to receive your payment if the Settlement is approved by the Court (including the settlement of the PAGA claims), the Final Approval Date occurs, and the related private attorneys general act case is dismissed.² As a Qualified Claimant, you will not be separately charged for the services of Class Counsel. As a Qualified Claimant, you will be bound by the terms of the Settlement which will result in a release of your claims as described below in Paragraph 13 under “**Released Claims.**”

12. *When Would I Get My Payment?*

The Court will hold the Final Approval Hearing to decide whether to approve the Settlement on <<date>> at <<time>> before the Honorable Michael W. Fitzgerald, United States District Court Judge for the Central District of California, in Courtroom 5A, 5th Floor of the United States Courthouse, 350 West 1st Street, Los Angeles, CA, 90012.

Within twenty-eight (28) calendar days of the Final Approval Date or the dismissal of the related state court Private Attorneys General Act case, whichever occurs later, the Settlement Administrator shall issue payments to Qualified Claimants in the form of a check, which shall become null and void if not deposited within ninety (90) days of issuance.

After ninety (90) days from issuance, funds from undeposited checks will be held by the Settlement Administrator; if the Class Member to whom the undeposited check is issued does not contact Class Counsel or the Settlement Administrator concerning his or her settlement payment within one-hundred eighty (180) days of issuance of the payment, the amount of that Class Member’s Claim Amount that has remained undeposited as of that time, plus any interest that has accrued on that sum from the date of entry of the initial judgment in this Action, shall be transmitted to the California State Controller, to be held and disposed of by it under California’s Unclaimed Property Law. The failure by a Qualified Claimant to claim or deposit any check issued by the Settlement Administrator shall have no effect on that Qualified Claimant’s release of all Qualified Claimant’s Released Claims as set forth herein.

² “Final Approval Date” means the latest of the following dates: (i) if no Class Member intervenes or files an objection to the Settlement on or prior to the Court entering an order granting final approval of the Settlement, then the date the Court enters an order granting final approval of the Settlement, including the settlement of the PAGA claims; or (ii) if there is an objection to the Settlement by a Class Member, or a Class Member intervenes, on or prior to the date the Court enters an order granting final approval of the Settlement, then on the date of final resolution of that objection or any appeal brought by that objector or any intervenor, resulting in final judicial approval of the Settlement, including the settlement of the PAGA claims.

13. What Rights Do I Give Up If I Participate or Do Nothing?

Unless you exclude yourself from the Settlement, you will be part of the Class, and you will be bound by the terms of the Settlement, including the Released Claims described below. That means that you will be unable to sue, or to continue to sue, or be part of any other lawsuit about the Released Claims. It also means that all of the Court's orders will apply to you and legally bind you.

Released Claims

Upon the Final Approval Date, unless you submit a valid and timely request for exclusion, you shall be deemed to have fully, finally, and forever released Defendant and any related entities and all of its respective former, present, and future owners, parents, subsidiaries, affiliates, divisions, related entities, joint venturers, partners, corporations in common control, co-employers, service providers, predecessors, successors, and assigns, and past, present, and future officers, directors, employees, partners, shareholders, agents, associates, representatives, attorneys, insurers, and any other successors, assigns, or legal representatives of any of them ("Releasees"), from all claims, including those covered by a limited California Civil Code Section 1542 waiver described below, arising at any time during the Class Period that are or were asserted in the operative Third Amended Complaint, or claims which were or reasonably could have been alleged in the Third Amended Complaint arising out of the same operative facts. The *res judicata* effect of the Judgement will be the same as that of the Agreement. The definition of Released Claims shall not be limited in any way by the possibility that Plaintiff or Class Members may discover new facts or legal theories or legal arguments not alleged in the Third Amended Complaint but which might serve as an alternative basis for pursuing the same claims, causes of action, or legal theories of relief falling within the definition of Released Claims.

Section 1542 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 her settlement with the debtor or released party." The Class Members' limited Section 1542 waiver releases all claims, known or unknown, within the definition of Released Claims, irrespective of the factual or legal basis for such claims. However, to be clear, the scope of the Section 1542 waiver is limited to the Released Claims.

14. How Do I Exclude Myself from the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself (generally called "opting out") by submitting a written opt-out request to the Settlement Administrator. Your request for exclusion must (a) be in writing; (b) state the name, address and telephone number of the Class Member; (c) state either the Class Member's approximate years of employment with Defendant or the employee identification number given to the Class Member by Defendant; (d) request exclusion from the Class saying words to the effect of "I wish to opt out of the Class in: *Herrera v. Federal Express Corporation*"; (e) be sent via U.S. Mail post-marked no later than

<<Data Dispute Deadline>>; and (f) be signed and dated with return address or contact information.

You must sign the request for exclusion personally and may not have someone sign for you, nor may you submit a request for exclusion on behalf of a group. Mail requests to:

Settlement Administrator
c/o<< _____ >>
<<Address>>
Phone: (*) ***-******

If you submit a timely request for exclusion, then upon its receipt you shall no longer be a member of the Class, you shall be barred from participating in any portion of the Settlement, you may not object to the Settlement, and you shall receive no benefits from the Settlement. If you wish, you may pursue, at your own expense, any claims you may have against Defendant. If you do not submit a complete and timely written request for exclusion, you will be included in the Class, and be bound by the terms of the Settlement (including the Released Claims described in Section 13 above), whether or not you disputed or challenged your employment information and/or filed an objection to the Settlement.

The date of the postmark on the return-mailing envelope shall be the exclusive means used to determine whether a request for exclusion has been timely submitted.

Do not submit both an objection and request for exclusion. If you submit both, the request for exclusion will be controlling, and you will be excluded from the Settlement Class.

16. How Do I Object to the Settlement and Appear at the Final Approval and Fairness Hearing?

If you do not submit a timely and valid request for exclusion but wish to object or otherwise be heard concerning this Settlement, you must provide the Settlement Administrator with written notice of your intent to object or comment to this Settlement, or attend the Final Approval Hearing in person and request special permission from the Court to object. To be considered timely, the notice must be sent to the Settlement Administrator via U.S. Mail and postmarked no later than <<DATA DISPUTE DEADLINE>>.

The date of the postmark on the envelope shall be the exclusive means used to determine whether the objection has been timely submitted.

The notice must set forth any and all objections to this Settlement and include any supporting papers and arguments. Either of the Parties may file a responsive document to any notice of intent to object with the Court. Any person who objects to the Settlement shall be bound by the Order of the Court.

Regardless of whether you timely file and serve a valid written objection, you may appear at the Final Approval Hearing on <<date>> at <<time>> before the Honorable Michael W. Fitzgerald,

Questions?
Call XXX-XXX-XXXX

United States District Court Judge for the Central District of California, in Courtroom 5A, 5th Floor of the United States Courthouse, 350 West 1st Street, Los Angeles, CA, 90012. You have the right to appear at the Final Approval Hearing in person or through your own attorney (at your own expense).

At the Final Approval Hearing, the Court will determine whether the Settlement is fair, reasonable, and adequate; and if there are objections, the Court will consider them. The Court will also be asked to approve requests including, but not limited to, Class Counsel's request for attorneys' fees and litigation costs, the Class Representative's Enhancement Payment, and the Settlement Administration Costs. The hearing may be continued without further notice to Class Members.

You do not have to attend the hearing, but you may do so at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you sent your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

If you object to the Settlement, you will still remain a Qualified Claimant of the Settlement Class, and if the Court approves the Settlement, you will be bound by all the terms of the Settlement including the Qualified Claimants' Released Claims against the Releasees.

Do not file an objection if you only dispute the accuracy of the number of workweeks you worked during the Class Period identified in this Notice. The procedure for disputing that information is set forth in the Data Dispute Form. **Do not** file an objection if you decided to exercise your right to opt out of the Settlement as described above, because you are not permitted to object if you opt out.

If the court approves the Settlement despite any objections, you will receive your payment and will be bound by the terms of the Settlement (including the Released Claims described in Section 13 above).

17. How Do I Get Additional Information?

As a Qualified Claimant, if you move or change your address, and you want to continue to receive information and/or your payment at your new address, you must send notice of your change of address to the Settlement Administrator.

This Notice is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you should consult the Joint Stipulation of Settlement and Release. This as well as all the court records may be examined by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cacd.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Central District of California at 255 East Temple Street, Suite TS-134, Los Angeles, CA 90012 during regular business hours (Mon. – Fri., 9:00 a.m. to 4:00 p.m.).

18. Important Deadlines

Questions?
Call XXX-XXX-XXXX

10

The deadline to submit any of the following is <<**DATA DISPUTE DEADLINE**>>:

- Challenge (along with documentation) of number of workweeks;
- Request for exclusion from participating in Settlement; or
- Notice of objection to Settlement.

PLEASE DO NOT WRITE OR TELEPHONE THE COURT OR THE OFFICE OF THE
CLERK FOR INFORMATION REGARDING THIS SETTLEMENT

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EXHIBIT 2

DATA DISPUTE FORM

Maria Herrera v. Federal Express Corporation

United States District Court, Central District of California, Case No. 5:17-cv-02137-MWF-SHK

Your Estimated Claim Amount is <<EST. CLAIM AMOUNT>>

The purpose of this form is to confirm the information the Settlement Administrator has on file for you. **IF YOU DO NOT DISPUTE THE BELOW INFORMATION, NO RESPONSE OR FURTHER ACTION IS REQUIRED BY YOU.** Your payment under the Settlement will be calculated using the below information.

If you feel that any of the information listed below is incorrect, you must provide all of the requested information, including attaching supporting documentation, and return this Data Dispute Form postmarked no later than **<<DATA DISPUTE DEADLINE>>**, to:

Settlement Administrator
<<ADDRESS>>
<<CITY, STATE ZIP>>

If you miss the deadline, your Claim Amount will be calculated using the below information.

A. PLEASE VERIFY YOUR NAME AND ADDRESS:

<<Barcode>> Claim #: MIM-<<Claim>>-<<CD>> <<MailRec>>
<<First1>> <<Last1>>
<<c/o>>
<<Address1>> <<Address2>>
<<City>>,<<ST>> <<ZIP>> <<Country>>

Name/Address Corrections (if any):

B. EMPLOYMENT INFORMATION:

Federal Express Corporation's ("Defendant's") records indicate that you were actively employed as a non-exempt delivery driver in California at any time from September 12, 2013 to <<CLASS PERIOD END DATE>> ("Class Period"). Defendant's records show the following:

Number of workweeks of active employment during Class Period in California <<NUMBER OF WORK WEEKS >>

If you disagree with the above information, please provide here the number of workweeks you believe is accurate and attach documentation in support of this information. (Please Note: Failure to provide documentation may result in rejection.) _

C. YOUR ESTIMATED CLAIM AMOUNT:

Your estimated Claim Amount is listed at the top of this Data Dispute Form and is based on the information in Section B above. This estimated amount is calculated based on the Net Settlement Amount as described in the Joint Stipulation of Settlement and Release.

D. ACKNOWLEDGEMENTS AND DECLARATION UNDER PENALTY OF PERJURY:

I have received the Class Notice and submit this Data Dispute Form under the terms of the proposed Settlement described. I acknowledge I am giving up the Released Claims against the Releasees as described in the Class Notice. I understand the full terms of the proposed Settlement are on file with the Court.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the information I provided above is true.

Questions? Call <<SETTLEMENT ADMIN PH NO>>

Dated

Signature

Full Name (Print): _____

Last Four Social Security Number: XXX -XX - _____

(Failure to sign and fill in each of the above information will result in the rejection of your dispute.)

Email Address (for confirmation of receipt of this Data Dispute Form): _____

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Questions? Call <<SETTLEMENT ADMIN PH NO>>

EXHIBIT 3

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MARIA HERRERA, as an individual
and on behalf of all others similarly
situated,

Plaintiff,

v.

FEDERAL EXPRESS
CORPORATION, a corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 5:17-cv-02137-MWF-SHK

[Hon. Michael W. Fitzgerald,
Courtroom 5A]

**[PROPOSED] ORDER OF
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date Filed: September 12, 2017
Trial Date: October 29, 2019

**ORDER OF PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT**

WHEREAS, Plaintiff Maria Herrera (“Plaintiff” or “Class Representative”),
individually and on behalf of all others similarly situated, has filed an unopposed
Motion for Preliminary Approval of Class Action Settlement (“Motion for
Preliminary Approval”) requesting an order preliminarily approving the settlement
of the above-entitled action (“Action”) in accordance with the Joint Stipulation of
Settlement and Release (“Settlement”), entered into by Plaintiff and Defendant
Federal Express Corporation (“Defendant”). (Plaintiff and Defendant shall
sometimes be collectively referred to herein as the “Parties”).

The Court having considered all papers filed and proceedings herein and

1 otherwise being fully informed of the premises and good cause appearing
2 therefore,

3 NOW, THEREFORE, IT IS HEREBY ORDERED ADJUDGED, AND
4 DECREED THAT:

5 1. This Order Preliminarily Approving Settlement incorporates by
6 reference the definitions in the Settlement and all terms defined therein shall have
7 the same meaning in this Order.

8 2. The Settlement is hereby PRELIMINARILY APPROVED as it
9 appears to the Court on a preliminary basis that (a) the Settlement is fair, adequate
10 and reasonable; (b) the Gross Settlement Amount and Net Settlement Amount are
11 fair, adequate and reasonable when balanced against the probable outcome of
12 further litigation relating to liability and damages issues; (c) extensive and costly
13 investigation and research have been conducted such that the Parties' respective
14 counsel at this time are able to reasonably evaluate their respective positions;
15 (d) settlement at this time will avoid substantial additional costs by all Parties, as
16 well as avoid the delay and risks that would be presented by the further
17 prosecution of the Action; and (e) the Settlement has been reached as the result of
18 intensive, serious and non-collusive, arms-length negotiations.

19 3. The Court finds preliminarily, and for purposes of proceeding
20 pursuant to Fed. R. Civ. P. Rule 23(e), that Class Members are ascertainable and
21 sufficiently numerous that joinder of all Class Members is impracticable, there are
22 questions of law and fact common to the Class that predominate over any
23 questions affecting only individual Class Members, the Plaintiff's claims are
24 typical of those in the Class, class certification is a superior method for
25 implementing the Settlement and adjudicating this Action in a fair and efficient
26 manner, the Class Representative can fairly and adequately protect the Class's
27 interests, and Class Counsel are qualified to serve as counsel for the Plaintiff in
28

1 her individual and representative capacity and for the Class.

2 4. Accordingly, solely for purposes of effectuating this Settlement, this
3 Court hereby conditionally certifies the “Class” and preliminarily approves the
4 Settlement.

5 5. The Court hereby appoints as Class Counsel Kenneth H. Yoon,
6 Stephanie E. Yasuda and Brian Lee of Yoon Law, APC, and G. Samuel Cleaver of
7 Law Offices Of G. Samuel Cleaver. Class Counsel is authorized to act on behalf
8 of the Class Members with respect to all acts or consents required by, or which
9 may be given pursuant to, the Settlement, and such other acts that are reasonably
10 necessary to consummate the Settlement. Any Class Member may enter an
11 appearance through counsel of such individual’s own choosing and at such
12 individual’s own expense. Any Class Member who does not enter an appearance
13 or appear on his or her own will be represented by Class Counsel.
14

15 6. The Court hereby preliminarily appoints and designates Plaintiff as
16 the Class Representative of the Class.

17 7. Should, for whatever reason, the Settlement not become final, the fact
18 that the Parties were willing to stipulate to certification of the Class as part of the
19 Settlement shall have no bearing on, nor be admissible in connection with, the
20 issue of whether a class should remain certified in a non-settlement context.

21 8. The Court hereby preliminarily approves the definition and
22 disposition of the Gross Settlement Amount and Net Settlement Amount and
23 related matters provided for in the Settlement.

24 9. The Court finds on a preliminary basis that the Settlement appears to
25 be within the range of reasonableness of a settlement that could ultimately be
26 given final approval by this Court. The Court has reviewed the monetary recovery
27 that is being granted as part of the Settlement and recognizes its significant value
28 to the Class.

1 10. The Court hereby preliminarily approves Class Counsel attorneys’
2 fees in the amount of \$1,666,666.67, actual litigation expenses (not to exceed
3 \$____,000), Enhancement Payment to Plaintiff Maria Herrera in the amount of
4 \$20,000, and actual Settlement Administration Costs (no more than \$45,750).

5 11. The Court hereby approves, as to form and content, the Notice of
6 Settlement to be distributed to Class Members attached as Exhibit 1 to the
7 Settlement. The Court finds that distribution of the Notice of Settlement,
8 substantially in the manner and form set forth in the Settlement and this Order,
9 meets the requirements of due process, is the best notice practicable under the
10 circumstances, and shall constitute due and sufficient notice to all persons entitled
11 thereto.

12 12. The Court hereby appoints Phoenix Settlement Administrators as
13 Settlement Administrator for the purposes of this Settlement and hereby directs (a)
14 Defendant to provide to the Settlement Administrator within ten (10) calendar
15 days of this Order, with respect to each Class Member, the name, last known
16 mailing address, last known telephone number, Social Security Number, dates the
17 Class Member was actively employed as a Class Member in California during the
18 Class Period, and whether the Class Member’s employment with Defendant
19 ended, and (b) the Settlement Administrator to mail or cause to be mailed to Class
20 Members the Notice Packet, by first class mail within ten (10) days of receipt of
21 this information and using the procedures set forth in the Settlement. Class
22 Members who wish to participate in and be bound by the Settlement do not need
23 to do anything.

24 13. All costs of mailing of the Notice Packets, whether foreseen or not,
25 shall be paid from the Gross Settlement Amount, including the cost of searching
26 for Class Members’ addresses as provided in the Settlement. All other reasonable
27 costs of the Settlement Administrator shall also be paid from the Gross Settlement
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1 Amount as provided in the Settlement.

2 14. A “Final Approval and Fairness Hearing” shall be held before this
3 Court on _____, 2019, at ____:____ a.m./p.m. to determine all necessary
4 matters concerning the terms of the Settlement.

5 15. Pending the Final Approval and Fairness Hearing, all proceedings in
6 this Action, other than proceedings necessary to carry out or enforce the terms of
7 the Settlement and this Order, are hereby stayed.

8 16. If any Class Member decides to participate in the Settlement and
9 become a Qualified Claimant but disagrees with Defendant’s records as to his or
10 her employment information during the Class Period as reflected in the Data
11 Dispute Form, the Qualified Claimant shall have an opportunity to challenge the
12 information by following the instructions that are set forth in the Settlement and
13 Notice Packet and within the required time period described therein. In the event
14 of a challenge, it shall be resolved pursuant to the procedures set out in the Notice
15 of Settlement.
16

17 17. Any Class Member may choose to opt out of and be excluded from
18 the Class by following the instructions for submitting a request for exclusion from
19 the Class that are set forth in the Settlement and Notice of Settlement within the
20 required time period described therein. Any such person who chooses to opt out
21 of and be excluded from the Class will not be entitled to any recovery under the
22 Settlement and will not be bound by the Settlement or have any right to object,
23 appeal or comment thereon. Each Class Member who has not requested
24 exclusion/opted out shall be a Qualified Claimant and bound by all determinations
25 of the Court, the Settlement and the Final Judgment entered by the Court.

26 18. Any Qualified Claimant, with the exception of the Class
27 Representative, may object to or submit comments on the Settlement (excluding
28 the settlement of the claims pursuant to the Private Attorneys General Act of

1 2004) by following the instructions for filing and serving objections or comments
2 that are set forth in the Settlement and Notice of Settlement within the required
3 time period described therein. The Court shall retain final authority with respect
4 to the consideration and admissibility of any objections. Any Qualified Claimant
5 who objects to the Settlement shall be bound by the order of the Court.

6 19. The Settlement is not a concession or admission, and shall not be
7 used against the Releasees as an admission or indication with respect to any claim
8 of any fault or omission by the Releasees. Whether or not the Settlement is finally
9 approved, neither the Settlement, nor any document, statement, proceeding or
10 conduct related to the Settlement, nor any reports or accounts thereof, shall in any
11 event be: (a) construed as, offered or admitted in evidence as, received as or
12 deemed to be evidence for any purpose adverse to the Releasees, including, but
13 not limited to, evidence of a presumption, concession, indication or admission by
14 the Releasees of any liability, fault, wrongdoing, omission, concession or damage;
15 or (b) disclosed, referred to, offered or received in evidence against any of the
16 Releasees in any further proceeding in the Action, or in any other action or
17 proceeding, except for purposes of enforcing the Settlement once it receives final
18 approval.

19 20. Jurisdiction is hereby retained over this Action, the Parties to the
20 Action, and each of the Class Members for all matters relating to this Action and
21 this Settlement, including (without limitation) all matters relating to the
22 administration, interpretation, effectuation, and/or enforcement of the Settlement
23 and this Order.

24 21. In the event the Settlement is not finally approved or is terminated,
25 canceled or fails to become effective for any reason, this Order shall be rendered
26 null and void and vacated, and the Parties shall revert to their respective positions
27 as of before entering into the Settlement.
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22. The Court reserves the right to adjourn or continue the date of the Final Approval and Fairness Hearing and all dates provided for in the Settlement without further notice to Class Members, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

23. Plaintiff shall electronically file and serve her Third Amended Complaint within seven (7) days of the entry of this order;

24. The Answer previously filed by Defendant to Plaintiffs' First Amended Class Action Complaint for Damages shall be deemed as the Answer to Plaintiff's Third Amended Class Action Complaint for Damages if no other responsive pleading is filed by Defendant within 30 days after service of the Third Amended Complaint for Damages.

IT IS SO ORDERED.

Dated: _____, 2019

HON. MICHAEL W. FITZGERALD
United States District Court Judge

1341429

EXHIBIT 4

1 KENNETH H. YOON (State Bar No. 198443)
kyoon@yoonlaw.com
2 STEPHANIE E. YASUDA (State Bar No. 265480)
syasuda@yoonlaw.com
3 BRIAN G. LEE (State Bar No. 300990)
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4 **YOON LAW, APC**
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5 Los Angeles, California 90017
Telephone: (213) 612-0988
6 Facsimile: (213) 947-1211

7 G. SAMUEL CLEAVER (SBN 245717)
sam@gsclaverlaw.com
8 **LAW OFFICES OF G. SAMUEL CLEAVER**
5670 Wilshire Boulevard, 18th Floor
9 Los Angeles, California 90036
Telephone: (323) 648-6676

10 Attorneys for Plaintiff Maria Herrera

11
12 **UNITED STATES DISTRICT COURT**
13
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 MARIA HERRERA, as an individual
and on behalf of all others similarly
16 situated, and as an aggrieved employee
on behalf of herself and other aggrieved
17 employees,

18 Plaintiff,

v.

19 FEDERAL EXPRESS
CORPORATION, a corporation; and
20 DOES 1 through 50, inclusive,

21 Defendants.

Case No.: 5:17-cv-02137-MWF-SHK

[Hon. Michael W. Fitzgerald,
Courtroom 5A]

17 ~~SECOND-THIRD~~ AMENDED
18 **CLASS ACTION COMPLAINT**
19 **AND REPRESENTATIVE**
20 **ACTION COMPLAINT FOR**
21 **DAMAGES AND PENALTIES**
22 **FOR:**

(1) VIOLATION OF LABOR CODE
SECTIONS 226.7 AND 512;

(2) VIOLATION OF LABOR CODE
SECTIONS 1194 AND 510;

(3) VIOLATION OF LABOR CODE
SECTION 2802;

(4) VIOLATION OF LABOR CODE
SECTION 226;

(5) VIOLATION OF LABOR CODE
SECTIONS 201-204;

(6) BUSINESS AND PROFESSIONS

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28 ~~SECOND-THIRD~~ AMENDED CLASS ACTION COMPLAINT FOR DAMAGES

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CODE SECTION 17200 *et seq.*
~~(6)~~(7) VIOLATION OF LABOR
CODE SECTION 2698 *et seq.*
(PAGA)
DEMAND FOR JURY TRIAL

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SECOND-THIRD AMENDED CLASS ACTION COMPLAINT FOR DAMAGES

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1 Plaintiff Maria Herrera (“Plaintiff”) hereby submits her Third Amended
2 Class Action and Representative Action Complaint for Damages and Penalties
3 against Defendant Federal Express Corporation, an entity unknown, and DOES 1
4 through 50, inclusive (collectively, “Defendants”), on behalf of ~~themselves and~~
5 ~~the Class of herself and~~ other similarly situated current and former employees of
6 Defendants for meal period and rest break premiums, overtime and minimum
7 wages, reimbursements for work-related expenses, and penalties as follows:

8 INTRODUCTION

9 1. This class action and representative action is brought pursuant to
10 Labor Code §§ 201-204, 226, 226.7, 227.3, 510, 512, 1194, 2698 et seq. (the
11 Private Attorneys General Act of 2004 (“PAGA”)), 2802, Industrial Welfare
12 Commission (“IWC”) Wage Order No. 9-2001 (codified as California Code of
13 Regulations, title 8, § 11010), and Business and Professions Code § 17200 *et seq.*
14 (Unfair Competition Law (“UCL”).

15 2. This Complaint challenges Defendants’ systemic illegal employment
16 practices resulting in violations of the stated provisions of the Labor Code and
17 corresponding IWC Wage Order against the putative class of employees.

18 3. Plaintiff ~~iss~~ are informed and believes and thereon alleges
19 Defendants joint and severally acted intentionally and with deliberate
20 indifference and conscious disregard to the rights of all employees in (1) failing
21 to pay all meal period wages and rest break wages, (2) failing to pay all overtime
22 wages and minimum wages, (3) failing to reimburse all necessary work-related
23 expenses, (4) failing to timely pay all wages due and owing upon termination of
24 employment, (5) failing to provide accurate wage statements, and (6) engaging in
25 unfair business practices.

26 JURISDICTION AND VENUE

27 4. This class action is brought pursuant to Rule 23 of the Federal Rules
28 of Civil Procedure. The monetary damages sought by Plaintiff~~s~~ exceed the

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1 minimal jurisdictional limits of the District Court and will be established
2 according to proof at trial.

3 **5.** This Court has determined it possess jurisdiction over the subject
4 matter of this action pursuant to 28 U.S.C. § 1332(d).

5 **6.** This Court has jurisdiction over the violations of Labor Code §§
6 201-204, 226, 226.7, 227.3, 510, 512, 1194, PAGA, 2802, IWC Wage Order No.
7 9-2001, and the UCL.

8 **7.** This Court has jurisdiction over all Defendants because, upon
9 information and belief, each party has sufficient minimum contacts in California,
10 or otherwise intentionally avails itself of California law so as to render the
11 exercise of jurisdiction over it by the California courts consistent with traditional
12 notions of fair play and substantial justice.

13 **8.** Venue is proper in this Court because, upon information and belief,
14 the named Defendants transact business and/or have offices in this county, and
15 the acts and omissions alleged herein took place in this county.

16 **PARTIES**

17 **9.** Plaintiff ~~_Maria Herrera_~~ is an individual residing in the State of
18 California. Plaintiff ~~Herrera~~ was formerly employed by Defendants and
19 classified by Defendants as a non-exempt employee during the statutory period.

20 **10.** Defendant Federal Express Corporation is a corporation licensed to
21 do business and actually doing business in the State of California, with a
22 principal business office located in Irvine, California.

23 **11.** Plaintiff~~s~~ does not know the true names or capacities, whether
24 individual, partner or corporate, of Defendants sued herein as DOES 1 through
25 50, inclusive, and for that reason, said Defendants are sued under such fictitious
26 names, and Plaintiff~~s~~ prays for leave to amend this complaint when the true
27 names and capacities are known. Plaintiff ~~iss-are~~ informed and believes~~s~~ and
28 thereon alleges that each of Defendants designated as a DOE was responsible in

1 some way for the matters alleged herein and proximately caused Plaintiff~~s~~ and
2 members of the general public and the Class to be subject to the illegal
3 employment practices, wrongs and injuries complained of herein.

4 **12.** At all times herein mentioned, Defendants, and each of them, were
5 agents, partners, joint venturers, representatives, servants, employees, successors-
6 in-interest, co-conspirators and assigns, each of the other, and at all times
7 relevant hereto were acting within the course and scope of their authority as such
8 agents, partners, joint venturers, representatives, servants, employees, successors,
9 co-conspirators and assigns, and that all acts or omissions alleged herein were
10 duly committed with ratification, knowledge, permission, encouragement,
11 authorization and consent of each Defendant designated herein.

12 **13.** As such, and based upon all the facts and circumstances incident to
13 Defendants' business in California, Defendants are subject to Labor Code §§
14 201-204, 226, 226.7, 227.3, 510, 512, 1194, PAGA, 2802, IWC Wage Order No.
15 9-2001, and the UCL.

16 **CLASS ACTION ALLEGATIONS**

17 **14. Definition:** Plaintiff~~s~~ seek~~s~~s class certification pursuant to Federal
18 Rule 23 of a class of all non-exempt delivery drivers employed by Defendants
19 who worked in California during the period from September 12, 2013, to the
20 present, including the following Subclasses:

21 (a) **Meal Period Subclass:** all Defendants' non-exempt courier
22 delivery drivers who worked one or more shifts in excess of
23 six (6) hours in California during the period from September
24 12, 2013, to the present;

25 **As an alternative to Subclass (a):** all Defendants' non-exempt
26 courier delivery drivers who worked one or more shifts in
27 excess of six (6) hours in California without receiving a 30-
28 minute break during which they were relieved of all duties,

1 during the period from September 12, 2013, to the present;

2 **(b) Rest Break Subclass:** all Defendants' non-exempt courier
3 delivery drivers who worked one or more shifts of three and
4 one-half (3.5) hours or more in California during the period
5 from September 12, 2013, to the present;

6 **As an alternative to Subclass (b):** all Defendants' non-exempt
7 courier delivery drivers who worked one or more shifts of
8 three and one-half (3.5) hours or more in California without
9 receiving a paid 10-minute break during which they were
10 relieved of all duties, during the period from September 12,
11 2013, to the present;

12 **(c) Overtime Subclass:** all Defendants' non-exempt courier
13 delivery drivers who worked one or more shifts in excess of
14 eight (8) hours in a day or forty (40) hours in a workweek in
15 California during the period from September 12, 2013, to the
16 present;

17 **As an alternative to Subclass (c):** all Defendants' non-exempt
18 courier delivery drivers who worked one or more shifts in
19 excess of eight (8) hours in a day or forty (40) hours in a
20 workweek in California and were not properly paid all
21 overtime wages during the period from September 12, 2013,
22 to the present;

23 **(d) Minimum Wage Subclass** all Defendants' non-exempt
24 courier delivery drivers who worked in California and were
25 not properly paid all minimum wages during the period from
26 September 12, 2013, to the present;

27 **(e) Reimbursement Subclass:** all Defendants' non-exempt
28 delivery drivers who worked in California and incurred

1 business expenses that were not reimbursed during the period
2 of September 12, 2013, to the present;

3 (f) **Wage Statement Subclass:** all Defendants' non-exempt
4 courier delivery drivers who worked in California and
5 received an itemized wage statement during the period of
6 September 12, 2014, to the present;

7 (g) **Terminated Employee Subclass:** all Defendants' non-
8 exempt courier delivery drivers who worked in California and
9 who were not properly paid all wages on termination or within
10 72 hours thereof during the period of September 12, 2014, to
11 the present;

12 **15. Numerosity:** The members of the Class are so numerous that
13 joinder of all members would be impractical, if not impossible. The identities of
14 the members of the Class are readily ascertainable by review of Defendants'
15 records, including payroll records.

16 **16. Adequacy of Representation:** Plaintiffs~~s~~ is fully prepared to
17 take all necessary steps to represent fairly and adequately the interests of the
18 Class defined above. Plaintiffs's attorneys are ready, willing and able to fully
19 and adequately represent the Class and Plaintiffs~~s~~. Plaintiffs's attorneys have
20 prosecuted and settled wage-and-hour class actions in the past and currently have
21 a number of wage-and-hour class actions pending in California courts.

22 **17.** Defendants uniformly administered a corporate policy, practice
23 and/or procedure of (1) failing to pay all meal period wages and rest break wages,
24 (2) failing to pay all overtime wages and minimum wages, (3) failing to
25 reimburse all necessary work-related expenses, (4) failing to pay all wages due
26 and owing upon termination of employment, (5) failing to provide accurate wage
27 statements, and (6) engaging in unfair business practices. ~~Plaintiffs~~Plaintiff
28 allege this corporate conduct is accomplished with the advance knowledge and

1 designed intent to willfully withhold appropriate wages for work performed
2 members of the Class.

3 **18. Common Question of Law and Fact:** There are predominant
4 common questions of law and fact and a community of interest amongst Plaintiffs
5 and the claims of the Class concerning whether Defendants' policies and
6 practices regularly denied Class Members meal and rest break wages, overtime
7 and minimum wages, reimbursement for necessary work-related expenses, and
8 accurate wage statements.

9 **19. Typicality:** The claims of Plaintiffs are typical of the claims of all
10 members of the Class. Plaintiffs ~~are~~ is a members of the Class and has ~~ve~~
11 suffered the alleged violations of Labor Code §§ 201-204, 226, 226.7, 227.3, 510,
12 512, 1194, 2802, IWC Wage Order No. 9-2001, and the UCL.

13 **20.** The Labor Code upon which Plaintiffs bases ~~their~~ her claims is
14 broadly remedial in nature. These laws and labor standards serve an important
15 public interest in establishing minimum working conditions and standards in
16 California. These laws and labor standards protect the average working
17 employee from exploitation by employers who may seek to take advantage of
18 superior economic and bargaining power in setting onerous terms and conditions
19 of employment.

20 **21.** The nature of this action and the format of laws available to
21 Plaintiffs and members of the Class identified herein make the class action format
22 a particularly efficient and appropriate procedure to redress the wrongs alleged
23 herein. If each employee were required to file an individual lawsuit, the
24 corporate Defendants would necessarily gain an unconscionable advantage since
25 it would be able to exploit and overwhelm the limited resources of each
26 individual plaintiff with their vastly superior financial and legal resources.
27 Requiring each Class Member to pursue an individual remedy would also
28 discourage the assertion of lawful claims by employees who would be disinclined

1 to file an action against their former and/or current employer for real and
2 justifiable fear of retaliation and permanent damage to their careers at subsequent
3 employment.

4 **22.** The prosecution of separate actions by the individual Class
5 Members, even if possible, would create a substantial risk of (a) inconsistent or
6 varying adjudications with respect to individual Class Members against the
7 Defendants and which would establish potentially incompatible standards of
8 conduct for the Defendants, and/or (b) adjudications with respect to individual
9 Class Members which would, as a practical matter, be dispositive of the interest
10 of the other Class Members not parties to the adjudications or which would
11 substantially impair or impede the ability of the Class Members to protect their
12 interests. Further, the claims of the individual members of the Classes are not
13 sufficiently large to warrant vigorous individual prosecution considering all of
14 the concomitant costs and expenses.

15 **23.** Such a pattern, practice and uniform administration of corporate
16 policy regarding illegal employee compensation described herein is unlawful and
17 creates an entitlement to recovery by the Plaintiff~~s~~ and the Class identified
18 herein, in a civil action, for the unpaid balance of the full amount of meal period
19 and rest break premiums, overtime wages and minimum wages, and
20 reimbursement for necessary work-related expenses, and penalties, including
21 interest thereon, attorneys' fees and costs of suit, as well as consequential
22 damages.

23 **24.** Proof of a common business practice or factual pattern, which
24 Plaintiff~~s~~ experienced and ~~are-is~~ representative of, will establish the right of each
25 Class Member to recovery on the causes of action alleged herein.

26 **25.** The Class is commonly entitled to a specific fund with respect to the
27 compensation illegally and unfairly retained by Defendants. This action is
28 brought for the benefit of the entirety of all Class and will result in the creation of

1 a common fund.

2 **FIRST CAUSE OF ACTION**

3 **VIOLATION OF LABOR CODE SECTION 226.7**

4 **REGARDING MEAL PERIOD AND REST BREAK WAGES**

5 **(AGAINST ALL DEFENDANTS BY PLAINTIFFSPLAINTIFF ON**
6 **BEHALF OF THE CLASS AND SUBCLASSES (a), (b), (c), (d), (h), and (g))**

7 **26.** Plaintiffs re-alleges and incorporates by reference paragraphs 1
8 through 25 as though fully set forth herein.

9 **27.** In accordance with the mandates of the California Labor Code and
10 the applicable IWC Wage Order, PlaintiffsPlaintiff and the Class and Subclasses
11 (a), (b), (c), (d), (h), and (g) had the right to take a 10-minute rest break for every
12 four (4) hours worked or major fraction thereof, and a 30-minute meal period for
13 every five (5) hours worked.

14 **28.** As a pattern and practice, Defendants regularly did not provide
15 employees with their meal periods and rest breaks and did not provide proper
16 compensation for this failure.

17 **29.** Defendants' policy of failing to provide Plaintiffs and the Class and
18 Subclasses (a), (b), (c), (d), (h), and (g) with legally mandated meal periods and
19 rest breaks is a violation of California law.

20 **30.** Defendants willfully failed to pay employees whom they did provide
21 the opportunity to take meal periods and rest breaks the premium compensation
22 set out in Labor Code § 226.7 and the applicable IWC Wage Order, and Plaintiff
23 and the Class and Subclasses (a), (b), (c), (d), (h), and (g) are owed wages for
24 meal period and rest break premiums as set forth above.

25 **31.** Such a pattern, practice and uniform administration of corporate
26 policy as described herein is unlawful and creates an entitlement to recovery by
27 the Plaintiffs and the Class and Subclasses (a), (b), (c), (d), (h), and (g) identified
28 herein, in a civil action, for the balance of the unpaid premium compensation

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1 pursuant to Labor Code § 226.7 and the applicable IWC Wage Order, including
2 interest thereon.

3 **32.** Defendants’ willful failure to provide Plaintiffs and the Class and
4 Subclasses (a), (b), (c), (d), (h), and (g) the wages due and owing them upon
5 separation from employment results in continuation of wages up to thirty (30)
6 days from the time the wages were due. Therefore, PlaintiffsPlaintiff and Class
7 Members who have separated from employment are entitled to compensation
8 pursuant to Labor Code § 203.

9 **SECOND CAUSE OF ACTION**

10 **VIOLATION OF LABOR CODE SECTION 1194**

11 **REGARDING OVERTIME AND MINIMUM WAGES**

12 **(AGAINST ALL DEFENDANTS BY PLAINTIFFSPLAINTIFF ON**
13 **BEHALF OF THE CLASS AND SUBCLASSES (a), (b), (c), (d), (g) and (h))**

14 **33.** Plaintiffs re-alleges and incorporates by reference paragraphs 1
15 through 32 as though fully set forth herein.

16 **34.** At all times relevant herein, Defendants were required to
17 compensate their non-exempt employees minimum wages for all hours worked
18 and overtime wages for all hours worked over eight (8) hours in a day or forty
19 (40) hours in a workweek.

20 **35.** As a pattern and practice, Defendants regularly failed to compensate
21 its employees for all hours worked, resulting in a failure to pay all minimum
22 wages and, where applicable, overtime wages.

23 **36.** This resulted in PlaintiffsPlaintiff and the Class and Subclasses (a),
24 (b), (c), (d), (g) and (h) receiving total wages in an amount less than minimum
25 wage and, when applicable, deprived PlaintiffsPlaintiff and the Class and
26 Subclasses (a), (b), (c), (d), (g) and (h) of overtime wages.

27 **37.** Such a pattern, practice and uniform administration of corporate
28 policy regarding illegal employee compensation as described herein is unlawful

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1 and creates an entitlement to recovery by PlaintiffsPlaintiff and the Class and
2 Subclasses (a), (b), (c), (d), (g) and (h) in a civil action, for the unpaid balance of
3 the full amount of minimum and overtime wages owing, including liquidated
4 damages, interest, attorneys’ fees, and costs of suit according to the mandate of
5 California Labor Code § 1194.

6 **38.** Defendants’ willful failure to provide PlaintiffsPlaintiff and the
7 Class and Subclasses (a), (b), (c), (d), (g) and (h) the wages due and owing them
8 upon separation from employment results in continuation of wages up to thirty
9 (30) days from the time the wages were due. Therefore, PlaintiffsPlaintiff and
10 Class Members who have separated from employment are entitled to
11 compensation pursuant to Labor Code § 203.

12 **THIRD CAUSE OF ACTION**

13 **VIOLATION OF LABOR CODE SECTION 2802**

14 **REGARDING BUSINESS EXPENSES**

15 **(AGAINST ALL DEFENDANTS BY PLAINTIFFSPLAINTIFF ON**

16 **BEHALF OF THE CLASS AND SUBCLASSES (f), (g), and (h))**

17 **39.** Plaintiffs re-alleges and incorporates by reference paragraphs 1
18 through 38 as though fully set for herein.

19 **40.** At all times relevant herein, Defendants were required to indemnify
20 their employees for all necessary expenditures or losses incurred in direct
21 consequence of the discharge of the employees’ duties, or of the employees’
22 obedience to the directions of the employer pursuant to California Labor Code §
23 2802.

24 **41.** In violation of Labor Code § 2802, Defendants failed to reimburse
25 PlaintiffsPlaintiff and the Class and Subclasses (f), (g) and (h) for all necessary
26 work-related expenses, including, but not limited to, all costs associated with the
27 use of personal cell phones for work-related calls or text messages.

28 **42.** Such a pattern, practice and uniform administration of corporate

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1 policy as described herein is unlawful and creates an entitlement to recovery by
2 the PlaintiffsPlaintiff and the Class and Subclasses (f), (g) and (h) in a civil
3 action, for all damages and/or penalties pursuant to Labor Code § 2802, including
4 interest thereon, penalties, reasonable attorneys’ fees, and costs of suit according
5 to the mandate of California Labor Code § 2802.

6 **43.** Defendants’ willful failure to provide PlaintiffsPlaintiff and the
7 Class and Subclasses (f), (g) and (h) the wages due and owing them upon
8 separation from employment results in continuation of wages up to thirty (30)
9 days from the time the wages were due. Therefore, PlaintiffsPlaintiff and Class
10 Members who have separated from employment are entitled to compensation
11 pursuant to Labor Code § 203.

12 **FOURTH CAUSE OF ACTION**

13 **VIOLATION OF LABOR CODE SECTION 226**

14 **REGARDING RECORD KEEPING**

15 **(AGAINST ALL DEFENDANTS BY PLAINTIFFSPLAINTIFF ON**

16 **BEHALF OF THE CLASS AND SUBCLASSES (c), (d), (e), (g))**

17 **44.** Plaintiffs re-alleges and incorporates by reference paragraphs 1
18 through 43 as though fully set forth herein.

19 **45.** In violation of Labor Code § 226, Defendants failed in their
20 affirmative obligation to keep *accurate* records regarding the rates of pay for
21 their California employees. For example, as a result of Defendants’ various
22 Labor Code violations, Defendants failed to keep accurate records of
23 PlaintiffsPlaintiff and the Class and Subclasses (c), (d), (e) and (g)’s gross wages
24 earned, total hours worked, net wages earned, and all applicable hourly rates and
25 the number of hours worked at each hourly rate, and in addition, the correct name
26 and address of the employer.

27 **46.** Such a pattern, practice and uniform administration of corporate
28 policy as described herein is unlawful and creates an entitlement to recovery by

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1 the Plaintiff and the Class and Subclasses (c), (d), (e) and (g) identified herein, in
2 a civil action, for all damages and/or penalties pursuant to Labor Code § 226,
3 including interest thereon, penalties, reasonable attorneys’ fees, and costs of suit
4 according to the mandate of California Labor Code § 226.

5 **FIFTH CAUSE OF ACTION**

6 **VIOLATION OF LABOR CODE SECTION 203**

7 **REGARDING WAITING TIME PENALTIES**

8 **(AGAINST ALL DEFENDANTS BY PLAINTIFFS PLAINTIFF ON**
9 **BEHALF OF THE CLASS AND SUBCLASSES (a), (b), (d) (e), (f), (g), and**
10 **(h))**

11 **47.** Plaintiffs re-alleges and incorporates by reference paragraphs 1
12 through 46 as though fully set for herein.

13 **48.** At all times relevant herein, Defendants were required to pay their
14 employees all wages owed in a timely fashion at the end of employment pursuant
15 to California Labor Code §§ 201 to 204.

16 **49.** As a result of Defendants’ alleged Labor Code violations alleged
17 above, Defendants regularly failed to pay Plaintiffs Plaintiff and the Class and
18 Subclasses (a), (b), (d) (e), (f), (g), and (h) their final wages pursuant to Labor
19 Code §§ 201 to 204 and accordingly owe waiting time penalties pursuant to
20 Labor Code § 203.

21 **50.**—The conduct of Defendants and their agents and employees as
22 described herein was willfully done in violation of Plaintiffs Plaintiff and the
23 Class and Subclasses (a), (b), (d) (e), (f), (g), and (h)’s rights, and done by
24 managerial employees of Defendants.

25 **50.**

26 **51.** Defendants’ willful failure to provide Plaintiff and the Class and
27 Subclasses (a), (b), (d) (e), (f), (g), and (h) the wages due and owing them upon
28 separation from employment results in a continuation of wages up to thirty (30)

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1 days from the time the wages were due. Therefore, Plaintiff and Class Members
2 who have separated from employment are entitled to compensation pursuant to
3 Labor Code § 203.

4 ~~51. Defendants’ willful failure to provide PlaintiffsPlaintiff and~~
5 ~~the Class and Subclasses (a), (b), (d) (e), (f), (g), and (h) the wages due and~~
6 ~~owing them upon separation from employment results in a continuation of wages~~
7 ~~up to thirty (30) days from the time the wages were due. Therefore,~~
8 ~~PlaintiffsPlaintiff and Class Members who have separated from employment are~~
9 ~~entitled to compensation pursuant to Labor Code § 203.~~

10 **SIXTH CAUSE OF ACTION**

11 **FOR VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION**

12 **17200 et seq.**

13 **(AGAINST ALL DEFENDANTS BY PLAINTIFF ON BEHALF OF**
14 **ALL CLASSES AND SUBCLASSES)**

15 **52.** Plaintiffs re-alleges and incorporates by reference paragraphs 1
16 through 51 as though fully set for herein.

17 **53.** Defendants, and each of them, have engaged and continue to engage
18 in unfair and unlawful business practices in California by practicing, employing
19 and utilizing the employment practices outlined above, inclusive, to wit, by
20 knowingly denying employees: (1) all meal period wages and rest break
21 premiums, (2) all overtime wages and minimum wages, (3) reimbursements for
22 all necessary work-related expenses, (4) accurate wage statements, and (5) all
23 wages due and owing upon termination of employment.

24 **54.** Defendants’ utilization of such business practices constitutes unfair,
25 unlawful competition and provides an unfair advantage over Defendants’
26 competitors.

27 **55.** The acts complained of herein occurred within the last four years
28 preceding the filing of the complaint in this action.

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1 56. Defendants have engaged in unlawful, deceptive and unfair business
2 practices, as proscribed by California Business and Professions Code § 17200 *et*
3 *seq.*, including those set forth above, thereby depriving PlaintiffsPlaintiff and the
4 Class and Subclasses the minimum working condition standards and conditions
5 due to them under the California laws and IWC Wage Orders as specifically
6 described therein.

7 57. PlaintiffsPlaintiff seeks, on ~~their~~ her own ~~behaves~~behalf, and on
8 behalf of other members of the Class and Subclasses who are similarly situated,
9 full restitution of monies, as necessary and according to proof, to restore any and
10 all monies withheld, acquired and/or converted by the Defendants by means of
11 the unfair practices complained of herein.

12 SEVENTH CAUSE OF ACTION
13 FOR VIOLATION OF PAGA
14 (AGAINST ALL DEFENDANTS BY PLAINTIFF ON BEHALF OF ALL
15 AGGRIEVED EMPLOYEES)

16 58. Plaintiff re-alleges and incorporates by reference paragraphs 1
17 through 57 as though fully set forth herein.

18 59. PAGA expressly establishes that any provision of the California
19 Labor Code which provides for a civil penalty to be assessed and collected by the
20 LWDA, or any of its departments, divisions, commissions, boards, agencies or
21 employees for a violation of the California Labor Code, may be recovered
22 through a civil action brought by an aggrieved employee on behalf of himself or
23 herself, and other current or former employees.

24 60. Plaintiff seeks to recover all applicable and available PAGA
25 remedies pursuant to Labor Code § 2699, as well as attorneys' fees, costs, and/or
26 other damages as permitted by PAGA through a representative action pursuant to
27 the PAGA and the California Supreme Court in *Arias v. Superior Court* (2009)
28 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor does she, seek class

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1 certification of the PAGA claims under Code of Civil Procedure § 382.

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2 61. On October 2, 2017, Plaintiff provided written notice to the LWDA
3 and Defendants of the specific provisions of the Labor Code she contends were
4 violated, and the theories supporting her contentions. To date, she has not
5 received a response.

6 62. Plaintiff and the other non-exempt employees are “aggrieved
7 employees” as defined by California Labor Code § 2699(c) in that they are all
8 current or former employees of Defendants, and one or more of the alleged
9 violations was committed against them.

10 **Failure to Pay Minimum and Overtime Wages**

11 63. At all times relevant herein, Defendants were required to
12 compensate their non-exempt employees minimum wages for all hours worked
13 and overtime wages for all hours worked in excess of eight (8) hours in a
14 workday and forty (40) hours in a workweek, pursuant to the mandate of Labor
15 Code §§ 510, 1194, 1197, 1197.1, and 1198.

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16 64. As a pattern and practice, Defendants failed to compensate Plaintiff
17 and other similarly-situated current and former employees for all hours worked,
18 including for the time spent working off-the-clock, and the time spent working
19 through recorded meal periods. Plaintiff asserts these policies and practices
20 resulted in a failure to pay all minimum wages and, where applicable, overtime
21 wages.

22 **Failure to Provide Meal Periods and Rest Breaks**

23 65. In accordance with the mandates of the California Labor Code and
24 the applicable IWC Wage Order, Plaintiff and other aggrieved employees had the
25 right to take a 10-minute rest break for every four (4) hours worked or major
26 fraction thereof, and a 30-minute meal period for every five (5) hours worked.

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27 66. As a pattern and practice, Defendants regularly failed to provide
28 Plaintiff and other aggrieved employees their duty-free meal periods and rest

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1 breaks and did not provide proper compensation for this failure. Specifically,
2 Plaintiff asserts she and other aggrieved employees were not provided a
3 reasonable opportunity to take all meal periods and rest breaks, and were
4 expressly told to eat “on-the-go.”

5 **Failure to Reimburse Necessary Work-Related Expenses**

6 67. At all times relevant herein, Defendants were required to indemnify
7 their employees for all necessary expenditures or losses incurred in direct
8 consequence of the discharge of the employees’ duties, or of the employees’
9 obedience to the directions of the employer pursuant to California Labor Code §
10 2802.

11 68. In violation of Labor Code § 2802, Defendants failed to reimburse
12 Plaintiff and other aggrieved employees for all necessary work-related expenses,
13 including, but not limited to, expenses incurred in the use of their personal
14 mobile telephones for business purposes.

15 **Failure to Timely Pay Wages During Employment**

16 69. At all times relevant herein, Defendants were required to pay their
17 employees within a specified time period pursuant to the mandate of Labor Code
18 § 204.

19 70. As a pattern and practice, Defendants regularly failed to pay Plaintiff
20 and other similarly-situated current and former employees all wages due and
21 owing them within the required time period.

22 **Failure to Timely Pay Wages Upon Termination**

23 71. At all times relevant herein, Defendants were required to pay their
24 employees all wages owed in a timely fashion at the end of employment pursuant
25 to California Labor Code §§ 201 to 204.

26 72. As a result of Defendants’ Labor Code violations alleged above,
27 Defendants failed to pay Plaintiff and the other similarly-situated former
28 employees their final wages pursuant to Labor Code §§ 201 to 204 and

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1 accordingly owe waiting time penalties pursuant to Labor Code § 203.

2 **Failure to Provide Complete and Accurate Wage Statements**

3 73. At all times relevant herein, Defendants were required to keep
4 accurate records regarding their California employees pursuant to the mandate of
5 Labor Code §§ 226 and 1174(d).

6 74. As a result of Defendants' various Labor Code violations,
7 Defendants failed to keep accurate records regarding Plaintiff and other similarly-
8 situated current and former employees. For example, Defendants failed in their
9 affirmative obligation to keep accurate records regarding Plaintiff and other
10 similarly-situated current and former employees' gross wages earned, total hours
11 worked, net wages earned, and all applicable hourly rates and the number of
12 hours worked at each hourly rate.

13 **Damages**

14 75. Pursuant to California Labor Code § 2699, Plaintiff, individually and
15 on behalf of other current and former aggrieved employees, requests and is
16 entitled to recover from Defendants, and each of them, unpaid wages, civil
17 penalties, interest, attorneys' fees and costs pursuant, as well as all statutory
18 penalties against Defendants, and each of them, including but not limited to:

19 76. Penalties under California Labor Code § 2699 in the amount of a
20 hundred dollars (\$100) for each aggrieved employee per pay period for the initial
21 violation, and two hundred dollars (\$200) for each aggrieved employee per pay
22 period for each subsequent violation;

23 77. Penalties under California Code of Regulations Title 8 § 11090 in the
24 amount of fifty dollars (\$50) for each aggrieved employee per pay period for the
25 initial violation, and one hundred dollars (\$100) for each aggrieved employee per
26 pay period for each subsequent violation;

27 78. Penalties under California Labor Code § 210 in the amount of a
28 hundred dollars (\$100) for each aggrieved employee per pay period for the initial

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1 violation, and two hundred dollars (\$200) for each aggrieved employee per pay
2 period for each subsequent violation, plus 25% of the amount unlawfully
3 withheld;

4 79. Penalties under Labor Code § 226.3 in the amount of two hundred
5 fifty dollars (\$250) per employee per initial violation and one thousand dollars
6 (\$1,000) per employee for each subsequent violation;

7 80. Penalties under Labor Code § 558 in the amount of fifty dollars
8 (\$50) for each aggrieved employee per pay period for the initial violation, and
9 one hundred dollars (\$100) for each aggrieved employee per pay period for each
10 subsequent violation;

11 81. Penalties under Labor Code § 1197.1 in the amount of a hundred
12 dollars (\$100) for each aggrieved employee per pay period for the initial
13 violation, and two hundred fifty dollars (\$250) for each aggrieved employee per
14 pay period for each subsequent violation;

15 82. An amount sufficient to recover unpaid wages under Labor Code §
16 558;

17 83. An amount sufficient to recover unpaid wages under Labor Code §
18 1197.1;

19 84. Any and all additional penalties and sums as provided by the Labor
20 Code and/or other statutes; and

21 85. Attorneys' fees and costs pursuant to Labor Code §§ 210, 1194,
22 2699, 2802, and any other applicable statute.

23 57.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs prays for judgment for ~~herself~~themselves and all
26 others on whose behalf this suit is brought against Defendants, jointly and
27 severally, as follows:

- 28 1. For an order certifying the proposed Class;

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- 1 2. For an order appointing Plaintiffs as the representatives of the Class
- 2 as described herein;
- 3 3. For an order appointing counsel for Plaintiffs as counsel for the
- 4 Class;
- 5 4. Upon the First Cause of Action, for all meal period and rest break
- 6 wages owed, and for costs;
- 7 5. Upon the Second Cause of Action, for all minimum wages owed and
- 8 overtime wages owed, and for costs and attorney’s fees;
- 9 6. Upon the Third Cause of Action, for damages or penalties pursuant
- 10 to statute as set forth in California Labor Code § 2802, and for costs
- 11 and attorneys’ fees;
- 12 7. Upon the Fourth Cause of Action, for damages or penalties pursuant
- 13 to statute as set forth in California Labor Code § 226, and for costs
- 14 and attorneys’ fees;
- 15 8. Upon the Fifth Cause of Action, for all minimum wages owed and
- 16 overtime wages owed, and for waiting time wages according to
- 17 proof pursuant to California Labor Code §203 and for costs and
- 18 attorneys’ fees;
- 19 9. Upon the Sixth Cause of Action, for restitution to Plaintiff and other
- 20 similarly affected members of the general public of all funds
- 21 unlawfully acquired by Defendants by means of any acts or practices
- 22 declared by this Court to be in violation of Business and Professions
- 23 Code § 17200 *et seq.*;
- 24 9-10. Upon the Seventh Cause of Action, for civil penalties and wages
- 25 pursuant to statute as set forth in Labor Code § 2698 *et seq.*, for
- 26 Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 210,
- 27 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197.1, 1198, 2800,
- 28 and 2802; and

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~~10.11.~~ On all causes of action for attorneys' fees, interest, and costs as provided by California Labor Code §§ 218.6, 226, 1194, 2699, 2802, and Code of Civil Procedure § 1021.5, and for such other and further relief the Court may deem just and proper.

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1 Dated: ~~May 20, 2019~~~~May 20, 2019~~~~April 19, 2019~~ YOON LAW, APC

2

3 By: /s/ Kenneth Yoon
4 Kenneth H. Yoon
5 Stephanie E. Yasuda
6 Brian G. Lee
7 Attorneys for Plaintiff Maria Herrera

8 **DEMAND FOR JURY TRIAL**

9 Plaintiffs, for ~~herself~~~~themselves~~ and the Class and Subclasses, hereby
10 demands a jury trial as provided by California law.

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11 Dated: ~~May 20, 2019~~~~May 20, 2019~~~~April 19, 2019~~ YOON LAW, APC

12

13 By: /s/ Kenneth Yoon
14 Kenneth H. Yoon
15 Stephanie E. Yasuda
16 Brian G. Lee
17 Attorneys for Plaintiff Maria Herrera

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