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similarly situated and similarly aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

RAFAEL JIMENEZ, individually and on
behalf of other persons similarly situated
and similarly aggrieved employees,

Plaintiffs,

v.

CARGO HS LLC, an active California
Limited Liability Company; and DOES 1
through 10,

Defendants.

Case No.: 21STCV15258

CLASS AND REPRESENTATIVE
ACTION

*[Assigned to Hon. Elihu M. Berle
in Dept. SS-6]*

**DECLARATION OF HAIK
HACOPIAN WITH EXHIBITS IN
SUPPORT OF PLAINTIFF’S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

[FILED CONCURRENTLY NOTICE
OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL;
DECLARATION OF ZORIK
MOORADIAN; DECLARATION OF
RAFAEL JIMENEZ; AND
[PROPOSED] ORDER]

Date: July 13, 2023

Time: 9:00 a.m.

Dept.: SS-6

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Vacations Worldwide/8:18-cv-00685-JVS-JPR (appointed as class counsel); Balaguer v. Eminent, Inc/19STCV16803 (appointed as class counsel); Gonzalez v. FMS Management/30-2019-01065563-CU-OE-CXC (appointed as class counsel); Ramos v. Liberty Container Corp./20STCV06560 (appointed as class counsel); Mendoza v. Savage Services Corporation/18STCV04798 (appointed as class counsel); Moreno v. DCX-Chol Enterprises/19STCV19105; Villacana v. Crothall Laundry Services/19STCV16330.

4. I am familiar with California wage and hour law including the laws governing the alleged violations and the Orders of the Industrial Welfare Commission, and the Private Attorneys General Act.

5. I know of no conflicts as to why I, or Mr. Mooradian, could not serve as Class Counsel in this matter and I am fully aware of the responsibilities I would owe as Class Counsel to the proposed class in this action. I also know of no conflicts that would preclude Mr. Jimenez from serving as a Class Representative in this matter.

6. As a result of my prior experience, including as class counsel in other wage and hour class actions, I am fully aware of the responsibilities I owe as Class Counsel to the proposed class in this action. Based on my experience as Class Counsel, I believe, in light of the criteria identified in *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801, that the proposed settlement is fair to the class, reasonable and more than adequate in view of (i) the strength of Plaintiff's claims and Defendant's defenses, (ii) the risk, expense, complexity and likely duration of further litigation, (iii) the risk and difficulty of obtaining class certification and maintaining class action status through trial, (iv) the total settlement amount of \$550,000 offered in settlement allowing for significant individual recoveries by employees, (v) the discovery conducted by the Parties in this case, (vi) my experience with similar settlements in wage and hour class actions that have received court approval, and (vii) the fact that the settlement was the result of arms' length negotiations between experienced counsel facilitated by Mr. Lou Marlin, a respected neutral mediator.

7. Defendant Cargo HS LLC (Cargo) is engaged in the business of aircraft cargo handling and operated facilities serving Los Angeles and San Francisco International Airports.

1 Non-exempt employees included workers who loaded and unloaded trucks or transferred
2 trucks from one warehouse to another. Cargo underwent a consolidation and expansion in
3 2021. During this time, Cargo switched timesheet tracking systems to an electronic
4 timekeeping system (AMG WebTime).

5 8. Plaintiff Jimenez was employed at Cargo's Los Angeles facility from April 2,
6 2020 through April 20, 2020. The class count as of March 3, 2023 (mediation date), per Cargo,
7 is approximately 364 employees. There are at least 346 employees covered by PAGA.
8 Plaintiff tallies 17,696 weekly pay periods from the data and 80,826 shifts. The average shift
9 length based on the time data is 7.9 hours and average rate of pay is \$23.00/hour. Plaintiff
10 estimates that two-thirds of the class was hired in 2021 or after.

11 9. The Parties have conducted investigation of the operative facts and applicable
12 law during the pendency of the case through informal discovery requests. Prior to mediation,
13 Plaintiff obtained copies of exemplar payroll correction forms, policies including employee
14 handbook, a 15% sample of electronic time and payroll data, as well as handwritten employee
15 timesheets. The electronic payroll file that Plaintiff had expertly analyzed reflected 9,336 lines
16 of data and the electronic timekeeping data reflected 21,602 lines of data.

17 10. On March 3, 2023, Plaintiff and Defendant participated in a full-day mediation
18 before Mr. Lou Marlin. The Parties were able to reach a resolution at the mediation and
19 entered into a Memorandum of Understanding ("MOU"). The Parties ultimately entered into
20 their Class Action and PAGA Settlement Agreement incorporating the MOU's terms and
21 which was based on the LASC model agreement for class and PAGA settlements, a true and
22 correct copy of which is attached as **Exhibit "A"**.

23 11. Attached hereto as **Exhibit "B"** is a redline version of the Parties' Class Action
24 and PAGA Settlement Agreement that tracks, as best as possible, the Parties' revisions to the
25 LASC model agreement.

26 12. If the Court approves this settlement, Defendant will pay the gross sum of
27 \$550,000 ("Gross Settlement Amount" or "GSA") which will be used to fund this Settlement
28 and make payments to Class Members, who will be paid on an all-in non-reversionary opt-

1 out basis. The Gross Settlement Amount excludes the employer share of taxes on the wage
2 component of the Settlement which will be separately funded by Defendant.

3 13. The Net Settlement Amount to be distributed to Settlement Class Members
4 calculates to \$309,166.67 after deductions from the Settlement Amount for: (1) \$183,333.33
5 (one-third of the GSA) for attorneys' fees, (2) \$15,000 for litigation costs, (3) \$7,500 for a
6 Service Award to Plaintiff, (4) \$10,000 in settlement administration costs, (5) a \$18,750
7 payment to the LWDA as its 75% share of the \$25,000 allocated to settlement of Plaintiff's
8 PAGA claims, and (6) a \$6,250 distribution to Aggrieved Employees for their 25% share of
9 the PAGA allocation. The approximate estimated simple average class settlement payment,
10 assuming maximum awards and participation by 350 individuals, calculates to \$883.33.
11 (\$309,166.67 ÷ 350). The approximate simple average net workweek value, assuming 16,986
12 workweeks, calculates to \$18.20 (\$309,166.67 ÷ 16,986), and gross value would be \$32.38
13 (\$550,000 ÷ 16,986). As the Class Period spans a period of 319 workweeks, at a net workweek
14 value of \$18.20, and assuming a class member was employed during the entire Class Period,
15 the potential maximum individual payment would calculate to \$5,805.80. The potential low
16 payment would calculate to a value of one workweek, or \$18.20.

17 14. I am unaware of any other cases or claims that would be impacted by this
18 Settlement. I am unaware of any other pending wage and hour lawsuits against Defendant
19 Cargo HS or lawsuits implicating wage and hour claims of the proposed settlement class here.
20 Defendant has not filed any Notice of Related Cases or informed my office of any overlapping
21 or related lawsuits, pending or otherwise. Moreover, a search for other PAGA notices filed
22 against Defendant Cargo HS LLC on the LWDA's online database shows only Plaintiff
23 Jimenez's PAGA notice. Attached hereto as **Exhibit "C"** is a true and correct copy of the
24 PAGA Notice communicated by my office on behalf of Plaintiff to Defendant and the LWDA
25 on April 21, 2021.

26 15. Plaintiff's requested incentive payment of \$7,500 is intended to recognize his
27 contributions on behalf of the Class and is fair in relation to the total settlement, his efforts,
28 and standing alone.

1 16. The Parties have agreed to an attorneys' fees award of \$183,333.33, which is
2 one-third of the Gross Settlement Amount of \$550,000, and payment of documented litigation
3 costs and expenses up to \$15,000. My office will submit detailed support for the request for a
4 fee award along with Plaintiff's motion for final approval of the settlement. For now, I submit
5 that the requested fee is fair compensation for undertaking a complex, risky, expensive, and
6 potentially time-consuming litigation involving this case on a purely contingent fee basis.
7 Here, my office has incurred substantial attorneys' fees independently conducting pre-filing
8 investigations, analyzing the claims, litigating the case, conducting legal research and
9 analysis, reviewing significant documentary and electronic records produced by Defendant,
10 performing data analysis of employee timekeeping data and payroll records, preparing for and
11 attending a full-day mediation, negotiating the settlement, preparing and amending the long-
12 form Class Action and PAGA Settlement Agreement, Class Notice, and preparing this Motion
13 for Preliminary Approval, and otherwise aggressively pursuing the interests of the putative
14 class.

15 17. I submit that the request for attorneys' fees is reasonable when viewed as an
16 overall percentage of the settlement as well as with reference to counsel's loadstar. In light of
17 the risks and significant work undertaken by my office, the results obtained for the class, and
18 the efficiency with which the Parties collaborated to conduct the litigation, the fee and cost
19 request is fair and reasonable.

20 18. Employee time was tracked through physical time sheets until an electronic
21 time system was implemented. Plaintiff contended that the physical time sheets were
22 unrepresentative of actual work time in that they were manipulated by managers to avoid
23 overtime and for shifts to reflect compliant meal breaks. Defendant countered that it required
24 that non-exempt employees hand write their exact clock in time for the day, meal break clock
25 out time, meal break clock in time, and clock out time for the day. That employees were also
26 required to provide their signatures next to each day's time entries attesting that the reported
27 time was accurate. As to the electronic time system, employees were required to clock in,
28 clock out for meal breaks, clock in from meal breaks, and clock out for the day.

1 19. Any potential claim for unpaid wages will be extremely individualized and
2 difficult to prove. The extent to which an employee worked off the clock and was not
3 compensated will likely depend on a specific shift, position, location, management, and other
4 circumstances that will not translate to certification. Any assessment will rely on morass of
5 individual inquiries that will require a determination as to whether Cargo caused any instance
6 of work off-the-clock or whether such was due to employee choice and without Cargo's
7 awareness. Also, individual inquiries will be necessary as to whether any adjustment that
8 reduced a time entry was proper, e.g. a forgotten clock out, or improper, e.g. a manager
9 adjusting a clock out to avoid employee overtime.

10 20. Generously assuming an average loss of 15 mins per shift, at the average hourly
11 rate of \$23.00 across the 80,826 total shifts, results in \$463,600 in potentially unpaid wages.
12 Although Defendant represented that there was no time rounding, Plaintiff's analysis revealed
13 656 net underpaid hours due to rounding translating to \$22,632 in wages owed. Ultimately, in
14 light of factual variations making certification highly unlikely, as well as issues of proof
15 bearing on merits, Plaintiff does not value an unpaid wage claim in excess of 30% of the
16 assessed exposure, or \$139,080.

17 21. Cargo has produced a memorandum to employees, dated March 1, 2020, that
18 reflects a meal break policy requiring "at least an uninterrupted, duty-free thirty (30) minute
19 meal break no later than the fifth (5th) hour of work." Cargo represented that employees were
20 instructed to log their meal breaks on both physical timesheets and the electronic system.
21 Plaintiff contends that although the written time sheets for Plaintiff largely show timely meal
22 breaks of sufficient duration, employees would be cleared for a meal break only upon a
23 loading/unloading job was completed. As such, 15-20 minute meal breaks would occur very
24 late into a shift.

25 22. Plaintiff's analysis of the electronic time data reflects recorded meal breaks for
26 86.7% of shifts in excess of five hours. As extrapolated to the class, where 95.7% of the total
27 80,626 shifts exceed five hours, the result is 66,896 total shifts reflecting a meal break. As far
28 as meal duration, only 2.3% would be of a duration of less than thirty minutes. The foregoing

1 reflects a high degree of compliance.

2 23. It will be very difficult for Plaintiff to prevail on a meal break claim in the face
3 of largely compliant objective findings. Plaintiff would have to craft some certification theory
4 that would enable him to establish that what appear to be compliant recorded meal breaks
5 were in fact manipulated to show compliance. Significant individualized inquiries would
6 entail in efforts to discern whether specific entries trigger a meal period violation or not. As
7 such, at a potential exposure value as derived from Plaintiff potentially being able to certify a
8 claim around half of the 66,896 shifts with recorded meals, the amount would come to
9 \$763,304. In light of the challenges in crafting a certifiable theory and prevailing on the merits,
10 Plaintiff does not value a meal break claim in excess of 50% of assessed exposure, or
11 \$384,652.

12 24. As to rest breaks, Plaintiff complained that there was no written policy and
13 Plaintiff's experience was that of non-receipt of any rest breaks. Defendant pointed out that
14 employees were made aware of rest break requirements and any instances of missed rest
15 breaks were a result of employee volition. Moreover, that certification of such a claim is highly
16 improbable due to the absence of written records (as rest breaks are not required to be
17 recorded) and a morass of factual inquiry necessary to assess the reasons why any individual
18 employee missed a rest break in specific instances. Plaintiff assesses potential maximum
19 exposure for 50% of the 80,120 shifts in excess of 3.5 hours entitling employees to rest breaks,
20 or \$921,380. In light of the challenges inherent in the claim, both on certification and merits,
21 Plaintiff does not assess the value of a rest break claim in excess of 40% of exposure, of
22 \$368,552.

23 25. Defendant represented that it is their practice to pay employees their final
24 paychecks by a physical check with all hours worked, vacation pay and sick pay and that they
25 would provide an employee's final paychecks through direct deposit at the employee's
26 request. Also, if vacation pay and sick pay cannot be processed on the employee's final day,
27 Defendant has always processed the checks within 72 hours after the employee's last day.

28 26. Based on the above, the claim for waiting time penalties would ultimately be

1 derivative of the claims for unpaid wages and meal and rest premiums and the weaknesses
2 described there would directly impact the viability of this claim. At 120 terminated employees
3 from April 21, 2018 to March 3, 2023, the maximum waiting time penalties would calculate
4 to \$662,400. (120 employees x \$23.00 x 8 hours x 30 days). In light of the above, however,
5 Plaintiff does not believe the value of a derivative waiting time claim exceeds 25% of the
6 assessed maximum, or \$165,600.

7 27. The regular wage statements were facially compliant with the requirements of
8 Labor Code Section 226. As with waiting time penalties, this claim is derivative of unpaid
9 wage, meal, and rest break violations. Although maximum exposure calculates to \$849,850
10 for the 277 employees during the wage statement penalty period for 8,637 pay periods from
11 April 21, 2020 to March 2, 2023, value may be assessed to 25% of the maximum exposure,
12 or \$212,462.50, due to this claim's reliance on the underlying claims and subject to
13 weaknesses described therein.

14 28. There are 14,471 weekly PAGA Pay Periods. Assuming Plaintiff is to identify
15 a predicate violation for every pay period across the unpaid wage, meal break, and rest break
16 claims and assessing a \$100 penalty for each and every pay period, results in \$1,447,100 in
17 maximum penalties. Applying an 80% reduction to maximum penalties, as consistent with
18 reported cases, results in a potential exposure of \$289,420. The intention of PAGA penalties
19 is not to serve a punitive or compensatory purpose but to sufficiently act as a deterrent to
20 future Labor Code violations. Moreover, a court may readily conclude that a lower penalty
21 assessment, or a nominal one, will suffice as this Defendant is a smaller employer, who should
22 not be penalized for opting for weekly pay periods, and who made beneficial changes (i.e.
23 electronic timekeeping) ostensibly in response to Plaintiff's notice and lawsuit. Plaintiff does
24 not believe that any six figure PAGA penalty recovery is very realistic in this case. In light of
25 the foregoing, and also because of potential defenses to the substantive claims that would bear
26 on PAGA liability as well and potential for rejection of all or part of the claim on trial
27 manageability grounds, the Parties' \$25,000 allocation for release of the PAGA claims reflects
28 a very fair compromise and is extremely reasonable.

29. The settlement is fair and adequate when compared to the total potential exposure and the risks inherent in Plaintiff's claims. Plaintiff considers the settlement to be significantly more than a "fraction" of potential recovery, particularly considering the various potential complications, dangers and pitfalls that proceeding would entail. This proposed settlement provides a fair and reasonable monetary recovery for the Settlement Class in the face of disputed claims and significant hurdles. The \$550,000 Gross Settlement Amount captures 43% of the \$1,270,446.50 assessed case value on viable class claims, which is extremely favorable given the significant risk factors described above.

Claim	Exposure	Discount Applied	Value
Unpaid Wages	\$463,600	70%	\$139,080
Meal Period	\$763,304	50%	\$384,652
Rest Period	\$921,380	60%	\$368,552
Waiting Time	\$662,400	75%	\$165,600
Wage Statement	\$849,850	75%	\$212,462.50
	\$3660,534		\$1,270,446.50

30. The parties had engaged in significant review and assessment of the asserted claims which included expert assistance. Defendant could have moved for summary adjudication on all or some of the claims. Moreover, preparation for class certification and trial remained for the Parties as well as the prospect of appeals in the wake of a disputed class certification ruling for Plaintiff and/or summary judgment ruling. As a result, the parties would incur considerably more attorneys' fees and costs through trial. This settlement avoids those risks and the accompanying expense.

31. To the extent any claims were certified, Defendant would certainly seek to decertify them. Absent settlement, there was a risk that there would never be a certified class.

32. I submit that the proposed settlement is within the range of possible approval for communication of a notice in conformity and consideration thereof by the Settlement Class. The Court will have the opportunity to again assess the reasonableness of the settlement after the Class has had the opportunity to opt-out or object.

33. The alternative method of resolution of the claims asserted here would be multiple individual lawsuits, challenging the same alleged wage and hour policies and practices of Defendant Cargo, and each seeking a small amount of damages. Such duplicative litigation would be extremely inefficient and costly for the courts and wasteful for judicial forums that would otherwise devote resources to other matters.

34. Attached hereto as “**Exhibit D**” is a true and correct copy of the administration quote for \$8,500 provided by the proposed settlement administrator, CPT Group, which is less than the \$10,000 maximum contemplated by the settlement.

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

Executed this 12th day of June 2023, in Calabasas, California.

/s/Haik Hacobian
Haik Hacobian, Declarant

EXHIBIT “A” – Settlement Agreement

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Rafael Jimenez (“Plaintiff”) and defendant CARGO HS LLC (“CARGO”). The Agreement refers to Plaintiff and CARGO collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against CARGO captioned *Rafael Jimenez, individually and on behalf of other persons similarly situated and similarly aggrieved employees v. Cargo HS LLC; and Does 1 through 10*, initiated on April 21, 2021 and pending in Superior Court of the State of California, County of Los Angeles, Case Number 21STCV15258.
- 1.2. “Administrator” means CPT Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means all hourly, non-exempt employees who are currently or have been employed by CARGO in the State of California at any time during the period of April 21, 2020 through March 3, 2023 (“PAGA Period”).
- 1.5. “Class” means all hourly, non-exempt employees who are currently or have been employed by CARGO in the State of California at any time during the period of April 21, 2017 through March 3, 2023 (“Class Period”).
- 1.6. “Class Counsel” means Zorik Mooradian, Esq. and Haik Hacopian, Esq. of Mooradian Law, APC.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in CARGO’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Release Period Workweeks and PAGA Pay Periods.
- 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English with a Spanish translation in the form, without material variation, attached as Exhibit “1” and incorporated by reference into this Agreement.
- 1.12. “Class Release Period” means the period from April 21, 2017 through the earlier of either (a) June 1, 2023 or (b) the date the Court grants Preliminary Approval.
- 1.13. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15. “Court” means the Superior Court of California, County of Los Angeles.
- 1.16. “CARGO” means named Defendant Cargo HS LLC.
- 1.17. “Defense Counsel” means Scott P. Jang, Esq. and Janet J. Hur, Esq. of Jackson Lewis P.C.
- 1.18. “Effective Date” means the date by when all of the following have occurred: (1) this Stipulation of Settlement has been executed by all Parties, Class Counsel, and Defense Counsel; (2) the Court has given preliminary approval to the Stipulation of Settlement; (3) the Class Notice has been given to Class Members, providing them with an opportunity to object to the terms of this Stipulation of Settlement or to opt-out of the Stipulation of Settlement; (4) the Court has held a formal fairness hearing and entered a final Order and Judgment certifying the Class for settlement purposes and approving the Stipulation of Settlement; (5) in the event there are no objections submitted, the day the Court entered a final Order and Judgment certifying the Class for settlement purposes and approving the Stipulation of Settlement; and (6) in the event there are objections submitted, sixty-five (65) calendar days have passed since the Court has entered a final Order and Judgment certifying the Class for settlement purposes and approving the Stipulation of Settlement or, if any appeal, writ, or other appellate proceeding opposing the Court’s final Order approving the Stipulation of Settlement has been filed, five (5) business days after any appeal, writ, or other appellate proceedings opposing the Stipulation of Settlement has been finally and conclusively dismissed with no right to pursue further remedies or relief.
- 1.19. “Final Approval” means the Court’s order granting final approval of the

Settlement.

- 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.22. “Gross Settlement Amount” means \$550,000.00 (Five Hundred Fifty Thousand Dollars and Zero Cents) which is the total amount CARGO agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.
- 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Release Period.
- 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Release Period.
- 1.25. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for CARGO for at least one day during the PAGA Release Period.
- 1.31. “PAGA Release Period” means the period from April 21, 2020 through the earlier of either (a) June 1, 2023 or (b) the date the Court grants Preliminary Approval.

- 1.32. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.33. "PAGA Notice" means Plaintiff's April 21, 2021 letter to CARGO HS LLC and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.34. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$6,250.00) and the 75% to LWDA (\$18,750.00) in settlement of PAGA claims.
- 1.35. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.36. "Plaintiff" means Plaintiff Rafael Jimenez, the named plaintiff in the Action.
- 1.37. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.
- 1.38. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39. "Released Class Claims" means the claims being released as described in Paragraph 5.2 below.
- 1.40. "Released PAGA Claims" means the claims being released as described in Paragraph 5.3 below.
- 1.41. "Released Parties" means: CARGO and each of its present and former parent companies, subsidiaries, divisions, concepts, related or affiliated companies, and its shareholders, owners, partners, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and CARGO's counsel of record in the Action.
- 1.42. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member. Class Members and Aggrieved Employees may not exclude themselves from the portion of the Settlement pertaining to the PAGA Payment and the Released PAGA Claims.
- 1.43. "Response Deadline" means 60 (sixty) days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 7 (seven) calendar days beyond the Response Deadline has expired.
- 1.44. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

- 1.45. “Workweek” means any week during which a Class Member worked for CARGO for at least one day, during the Class Release Period.

2. RECITALS.

- 2.1 On April 21, 2021, Plaintiff commenced this Action by filing a Complaint alleging causes of action against CARGO for: (1) Failure to Provide Meal Periods; (2) Failure to Provide Paid Rest Periods; (3) Failure to Pay Wages; (4) Failure to Timely Pay Wages at Termination/Separation; (5) Failure to Timely Pay Vacation Wages at Termination; (6) Failure to Provide Accurate Wage Statements; and (7) Violation of Unfair Business Practices Act – Bus. & Prof. Code §§ 17200, et seq. On November 23, 2021, Plaintiff filed a First Amended Complaint alleging an additional cause of action against CARGO HS LLC for PAGA Penalties. The First Amended Complaint is the operative complaint in the Action (the “Operative Complaint.”) CARGO denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.
- 2.2 Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to CARGO and the LWDA by sending the PAGA Notice.
- 2.3 On March 3, 2023, the Parties participated in an all-day mediation presided over by Mr. Lou Marlin, a respected neutral mediator, which led to a Memorandum of Understanding executed by the Parties on that date to settle his Action, the terms of which are fully incorporated within this Agreement to settle the Action.
- 2.4 Prior to mediation, Plaintiff obtained, through informal discovery, copies of relevant forms and policies including employee handbooks, a 15% sample of electronic time and payroll data, handwritten employee timesheets. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).
- 2.5 The Court has not granted class certification. The Parties agree to stipulate to class certification for purposes of Settlement only as to the Class described herein and related to the Released Class Claims.
- 2.6 The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, CARGO promises to pay \$550,000.00 (Five Hundred Fifty Thousand Dollars and No Cents) and no more as the Gross Settlement Amount and to separately pay any and all

employer payroll taxes owed on the Wage Portions of the Individual Class Payments. CARGO has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to CARGO.

- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$7,500.00 (Seven Thousand Five Hundred Dollars and No Cents) (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). CARGO will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than One-Third of the Gross Settlement Amount or 33 1/3%, which is currently estimated to be \$183,333.33 (One Hundred Eighty Three Thousand Three Hundred Thirty Three Dollars and 33 Cents) and a Class Counsel Litigation Expenses Payment of not more than \$15,000 (Fifteen Thousand Dollars and No Cents). CARGO will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will seek Court approval for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds CARGO harmless, and indemnifies CARGO, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed

\$10,000.00 (Ten Thousand Dollars and No Cents) except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$10,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1. Tax Allocation of Individual Class Payments. 20% (Twenty Percent) of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 80% (Eighty Percent) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion").^{vi} The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$25,000.00 (Twenty-Five Thousand Dollars and No Cents) to be paid from the Gross Settlement Amount, with 75% (\$18,750.00) allocated to the LWDA PAGA Payment and 25% (\$6,250.00) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$6,250.00) by the total number of PAGA Release Period Pay Periods worked by all Aggrieved Employees during the PAGA Release Period and (b) multiplying the result by each Aggrieved Employee's PAGA Release Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records as of March 3, 2023, CARGO estimates there are 364 Class Members who collectively worked a total of 16,177 Workweeks through March 3, 2023, and 346 of Aggrieved Employees who worked a total of 14,471 Pay Periods through March 3, 2023.
- 4.2. Class Data. Not later than 14 (fourteen) days after the Court grants Preliminary Approval of the Settlement, CARGO will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet or other readily accessible electronic format. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. CARGO has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which CARGO must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3. Funding of Gross Settlement Amount. CARGO shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay CARGO's share of payroll taxes by transmitting the funds to the Administrator no later than twenty-one (21) days after the Effective Date.
- 4.4. Payments from the Gross Settlement Amount. Within seven (7) days after CARGO funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
- 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

4.4.3.1. All Individual Class Payments and/or Individual PAGA Payments shall be deemed to be paid solely in the year in which such payments actually are received by the Class Members. It is expressly understood and agreed that the receipt of such Individual Class Payments and/or Individual PAGA Payments will not entitle any Class Member to additional compensation or benefits under any company bonus, contest, or other compensation or benefit plan or agreement in place during the period covered by the Settlement, nor will it entitle any Class Member to any increased retirement, 401K benefits or matching benefits, or deferred compensation benefits. It is the intent of this Settlement that the Individual Class Payments and/or Individual PAGA Payments provided for in this Settlement are the sole payments to be made by CARGO to the Class Members, and that the Class Members are not entitled to any new or additional compensation or benefits as a result of having received the individual settlement awards (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the period covered by this Settlement).

5. RELEASES OF CLAIMS. Effective on the date when CARGO fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

5.1 Plaintiff's Release. Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred on or before the Effective Date of this Settlement, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint and Plaintiff's PAGA Notice. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits,

unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences after the Effective Date of this Settlement. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

- 5.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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.

- 5.2 Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from any and all claims under state, federal, or local law, whether statutory or common law arising out of the claims expressly pleaded in the Action and all other claims, such as those under the California Labor Code, applicable Wage Orders, regulations, and/or other provisions of law, that could have been pleaded based on the facts pleaded in the Action for (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide all meal breaks; (4) failure to provide all rest breaks, (5) failure to provide accurate itemized wage statements, (6) failure to timely pay wages during employment and upon termination, (7) failure to maintain required records, (8) unfair business practices, and all claims for injunctive relief, liquidated damages, penalties, including all civil penalties under the Labor Code Private Attorneys General Act of 2004, interest, fees, and costs, and all other claims and allegations made that could have been made in the Action during the Class Release Period based on the facts and allegations in the Operative Complaint. Except as set forth this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Release Period.

- 5.3 Release by Non-Participating Class Members Who Are Aggrieved Employees: All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties, fees, and costs that were alleged, or reasonably could have been alleged, based on the PAGA Release Period facts stated in the Operative Complaint and the PAGA Notice including (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide all meal breaks; (4) failure to provide all rest

breaks, (5) failure to provide accurate itemized wage statements, (6) failure to timely pay wages during employment and upon termination, and (7) failure to maintain required records.

6. MOTION FOR PRELIMINARY APPROVAL. Plaintiff will prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary Approvals.

6.1 CARGO’s Declaration in Support of Preliminary Approval. Within fourteen (14) days of the full execution of this Agreement, CARGO will prepare and deliver to Class Counsel a signed Declaration from CARGO HS LLC and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator. In their Declarations, Defense Counsel and CARGO HS LLC shall aver that they are not aware of any other pending lawsuit or administrative complaint, charge, or proceeding asserting claims that will be extinguished or adversely affected by the Settlement.

6.2 Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval allowing Defendant at least five (5) business days to review, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, [and/or] the Administrator; (vi) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (vi) a redlined version of the parties’ Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, and /or the Administrator. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than thirty (30) days after the full execution of this Agreement; obtaining a

prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

- 6.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

7.1 Selection of Administrator. The Parties have jointly selected CPT Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, CPT Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

- 7.4 Notice to Class Members.

- 7.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.

- 7.4.2 Using best efforts to perform as soon as possible, and in no event later than fourteen (14) days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish translation, substantially in the form attached to this Agreement as Exhibit "1". The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used

to calculate these amounts. Before mailing the Class Notice, the Administrator shall update Class Member addresses using the National Change of Address database.

7.4.3 Not later than three (3) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

7.4.4 The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional seven (7) days beyond the sixty (60) days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

7.4.5 If the Administrator, CARGO or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than [14] days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

7.5 Requests for Exclusion (Opt-Outs).

7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than sixty (60) days after the Administrator mails the Class Notice (plus an additional seven (7) days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall

be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraph 5.2 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment.

7.5.5 Challenges to Calculation of Workweeks. Each Class Member shall have sixty (60) days after the Administrator mails the Class Notice (plus an additional seven (7) days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods, if not satisfactory to the challenging Class Member, will be submitted to the Court for resolution at the Final Approval Hearing. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.6 Objections to Settlement.

7.6.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

7.6.2 Participating Class Members may send written objections to the

Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than sixty (60) days after the Administrator's mailing of the Class Notice (plus an additional (7) days for Class Members whose Class Notice was re-mailed).

7.6.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

7.7 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

7.7.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

7.7.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than five (5) days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

7.7.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments ("Weekly Report"). The Weekly Reports must include provide the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

7.7.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make decisions consistent with the terms of this

Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator's decision shall be final and not appealable or otherwise susceptible to challenge. If the Administrator's decision is not satisfactory to the challenging Class Member, it will be submitted to the Court for resolution at the Final Approval Hearing.

7.7.5 Administrator's Declaration. Not later than fourteen (14) days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List, and any Workweek and/or Pay Period Challenges and their status. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

7.7.6 Final Report by Settlement Administrator. Within ten (10) days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least fifteen (15) days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. **CLASS SIZE ESTIMATES and ESCALATOR CLAUSE** Based on its records, CARGO estimates that, as of March 3, 2023, (1) there are 16,177 Total Workweeks during the Class Period and (2) there were 346 Aggrieved Employees who worked 14,471 Pay Periods during the PAGA Period. If the workweeks through June 1, 2023 exceeds 17,795 (which accounts for natural growth of the Class Period between March 3, 2023 and June 1, 2023), CARGO shall have the option of paying a proportional amount to the Gross Settlement to cover the additional workweeks (i.e., in other words, if the workweeks worked by the Class is 1% over 17,795, CARGO shall increase the Gross Settlement Amount by 1% to account for the additional workweeks). If CARGO does not exercise this option to cover workweeks beyond 17,795 total workweeks, (1) the Settlement Administrator shall calculate the date by which the total workweeks covered by the settlement reached no more than 17,795 total workweeks; and (2) the Parties will ask the Court during final settlement approval to limit the release secured from Class Members under Sections 5.2 and 5.3 of the Settlement Agreement to that date (and not June 1, 2023).

9. **CARGO'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion

identified in the Exclusion List exceeds 10% (ten percent) of the total of all Class Members, CARGO may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if CARGO withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, CARGO will remain responsible for paying all Settlement Administration Expenses incurred to that point. CARGO HS LLC must notify Class Counsel and the Court of its election to withdraw not later than five (5) days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

10. MOTION FOR FINAL APPROVAL. Not later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”).

10.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties’ obligations to perform under this Agreement will be suspended until such time as the appeal is

finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

11. **AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

12. **ADDITIONAL PROVISIONS.**

12.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by CARGO that any of the allegations in the Operative Complaint have merit or that CARGO has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that CARGO's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, CARGO reserves the right to contest certification of any class for any reasons, and CARGO reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest CARGO's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

12.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, CARGO and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal

government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, CARGO and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that “the matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s communications with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

- 12.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel’s ability to communicate with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.
- 12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and CARGO, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 12.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 12.8 No Tax Advice. Neither Plaintiff, Class Counsel, CARGO nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

- 12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by CARGO in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator’s obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from CARGO unless, prior to the Court’s discharge of the Administrator’s obligation, CARGO makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.
- 12.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.16 Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff: Zorik Mooradian, Esq. (zorik@mooradianlaw.com); Haik Hacopian, Esq. (haik@mooradianlaw.com), Mooradian Law, APC, 24007 Ventura Blvd., Suite 210,

Calabasas, CA 91302; tel (818) 487-1998; facsimile (888) 783-1030

To CARGO: Scott P. Jang, Esq. (Scott.Jang@jacksonlewis.com), Jackson Lewis P.C., 50 California Street, 9th Floor, San Francisco, CA 94111, tel (415) 394-9400

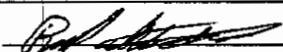
12.18 Dispute Resolution. Except as otherwise set forth herein, all disputes concerning the interpretation, calculation or payment of settlement claims, or other disputes regarding compliance with this Agreement shall be resolved as follows: (a) If Plaintiff, or Class Counsel, on behalf of Plaintiff or any Class Member, or Defense Counsel at any time believe that the other Party has breached or acted contrary to the Agreement, that Party shall notify the other Party in writing of the alleged violation. (b) Upon receiving notice of the alleged violation or dispute, the responding Party shall have ten (10) business days to correct the alleged violation and/or respond to the initiating Party with the reasons why the Party disputes all or part of the allegation. (c) If the responses does not address the violation to the initiating Party's satisfaction, the Parties shall negotiate in good faith for up to ten (10) business days to resolve their differences. (d) If the Parties are unable to resolve their differences after twenty (20) business days, either Party may file an appropriate motion for enforcement with the Court. The briefing of such motion should be in letter brief form and shall not exceed five (5) single-spaced pages (excluding exhibits). (e) Reasonable attorney's fees and costs for work done in resolving a dispute under this Section may be recovered by any party that prevails under the standards set forth within the meaning of applicable law.

12.19 Extensions of Time. Without further order of the Court, the Parties hereto may agree in writing to reasonable extensions of time to carry out any of the provisions of the Settlement.

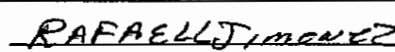
12.20 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.21 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Rafael Jimenez



For Plaintiff



For CARGO

Zorik Mooradian/Haik Hacopian

/s/Haik Hacopian

Counsel For Plaintiff

Counsel

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL

Rafael Jimenez, individually and on behalf of other persons similarly situated and similarly aggrieved employees v. Cargo HS LLC, Los Angeles Superior Court Case No. 21STCV15258

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class and representative action lawsuit ("Action") against CARGO HS LLC (hereafter referred to as "CARGO") for alleged wage and hour violations. The Action was filed by a former CARGO employee, Rafael Jimenez, ("Plaintiff") and seeks payment of (1) unpaid wages and other relief for a putative class of hourly, non-exempt employees who worked for CARGO during the period from April 21, 2017 through March 3, 2023 ("Class Members"); and (2) penalties and other relief under the California Labor Code Private Attorneys General Act of 2004 ("PAGA") for all hourly, non-exempt employees who worked for CARGO during the period from April 21, 2020 through March 3, 2023 ("Aggrieved Employees").

The proposed Settlement has two main parts: (1) a Class Settlement requiring CARGO to fund Individual Class Payments, and (2) a PAGA Settlement requiring CARGO to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency ("LWDA").

Based on CARGO's records, and the Parties' current assumptions, **your Individual Class Payment is estimated to be \$_____ (less withholding) and your Individual PAGA Payment is estimated to be \$_____**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to CARGO's records you are not eligible for an Individual PAGA Payment under the Settlement because you didn't work during the period of April 21, 2020 through March 3, 2023.

The above estimates are based on CARGO's records showing that **you worked _____ workweeks** during the Class Release Period (the period of April 21, 2017 through [the earlier of June 1, 2023 or the date of preliminary approval]) and **you worked _____ workweeks** during the PAGA Release Period (the period of April 21, 2020 through [the earlier of June 1, 2023 or the date of preliminary approval]). If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires CARGO to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against CARGO.

If you worked for CARGO during the Class Period (the period of April 21, 2017 through March 3, 2023) and/or the PAGA Period (the period April 21, 2020 through March 3, 2023), you have two basic options under the Settlement:

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert the claims against CARGO that are covered by this Settlement.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue wage claims during the Class Release Period you may have against CARGO, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

CARGO will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the claims against CARGO that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is _____	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. CARGO must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).

Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by _____	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the _____ Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on _____. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by _____	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Release Period and how many Pay Periods you worked at least one day during the PAGA Release Period, respectively. The number of Class Release Period Workweeks and number of PAGA Release Period Pay Periods you worked according to CARGO’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former CARGO employee. The Action accuses CARGO of violating California labor laws by failing to pay overtime wages; minimum wages; wages due upon termination including accrued vacation wages and failing to provide meal periods, rest breaks and accurate itemized wage statements. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action:

Zorik Mooradian, Esq. and Haik Hacopian, Esq. of Mooradian Law, APC (“Class Counsel.”)

CARGO strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether CARGO or Plaintiff is correct on the merits. In the meantime, Plaintiff and CARGO hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were

successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and CARGO have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, CARGO does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) CARGO has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. CARGO Will Pay \$550,000 as the Gross Settlement Amount (Gross Settlement). CARGO has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, CARGO will fund the Gross Settlement not more than 21 days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$ 183,333.33 (33 1/3% of the Gross Settlement) to Class Counsel for attorneys’ fees and up to \$15,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$7,500.00 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff’s Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$10,000 to the Administrator for services administering the Settlement.
 - D. Up to \$25,000 for PAGA Penalties, allocated 75% (\$18,750) to the LWDA PAGA Payment and 25% (\$6,250) in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Release Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Release Period Workweeks.

3. Taxes Owed on Payments to Class Members. Plaintiff and CARGO are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages (“Wage Portion”) and 80% to interest and penalties (“Non-Wage Portion.”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. (CARGO will separately pay employer payroll taxes it owes on the Wage Portion.) The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and CARGO have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

4. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name. (sco.ca.gov)

If the monies represented by your check is sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

5. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than _____, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the _____ Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against CARGO.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against CARGO based on facts alleged in the Action.

6. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and CARGO have agreed that, in either case, the Settlement will be void: CARGO will not pay any money and Class Members will not release any claims against CARGO.
7. Administrator. The Court has appointed a neutral company, CPT Group, Inc. (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re- mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
8. Participating Class Members’ Release. After the Judgment is final and CARGO has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against CARGO or related entities for claims based on the facts alleged in the Action and resolved by this Settlement for the period of April 21, 2017 through [the earlier of either (a) June 1, 2023 or (b) the date the Court grants Preliminary Approval].

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties (CARGO and each of its present and former parent companies, subsidiaries, divisions, concepts, related or affiliated companies, and its shareholders, owners, partners, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and CARGO’s counsel of record in the Action) from any and all claims under state, federal, or local law, whether statutory or common law arising out of the claims expressly pleaded in the Action and all other claims, such as those under the California Labor Code, applicable Wage Orders, regulations, and/or other provisions of law, that could have been pleaded based on the facts pleaded in the Action for (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide all meal breaks; (4) failure to provide all rest breaks, (5) failure to provide accurate itemized wage statements, (6) failure to timely pay wages during employment and upon termination, (7) failure to maintain required records, (8) unfair business practices, and all claims for injunctive relief, liquidated damages, penalties, including all civil penalties under the Labor Code Private Attorneys General Act of 2004, interest, fees, and costs, and all other claims and allegations made that could have been made in the Action during the Class Release Period based on the facts and allegations in the Operative Complaint. Except as set forth in Section 5.2 of the Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the

Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside this Action.

9. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and CARGO has paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims against CARGO, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against CARGO based on the facts alleged in the Action and resolved by this Settlement for the period of April 21, 2020 through [the earlier of either (a) June 1, 2023 or (b) the date the Court grants Preliminary Approval].

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties (CARGO and each of its present and former parent companies, subsidiaries, divisions, concepts, related or affiliated companies, and its shareholders, owners, partners, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and CARGO's counsel of record in the Action) from all claims for PAGA penalties (and associated fees and costs) that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice including (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide all meal breaks; (4) failure to provide all rest breaks, (5) failure to provide accurate itemized wage statements, (6) failure to timely pay wages during employment and upon termination, and (7) failure to maintain required records.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$6,250.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Release Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Release Period and the number of PAGA Pay Periods you worked during the PAGA Release Period, as recorded in CARGO's records, are stated in the first page of this

Notice. You have until ____ to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept CARGO's calculation of Workweeks and/or Pay Periods based on CARGO's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and CARGO's Counsel. If the Administrator's decision is not satisfactory to you, your challenge will be submitted to the Court for resolution at the Final Approval Hearing. You can't appeal or otherwise challenge the Court's final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as "Cargo HS Class Action Settlement", and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by _____, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and CARGO are asking the Court to approve. At least _____ days before the _____ Final Approval Hearing, Class

Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website at <https://www.cptgroup.com/case-list> or the Court's website at <https://www.lacourt.org/casesummary/ui/>.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is _____.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action as "Cargo HS Class Action Settlement" and include your name, current address, telephone number, and approximate dates of employment for CARGO and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on _____ at _____ (time) in Department SS-6 of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website at <https://www.cptgroup.com/case-list> beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything CARGO and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to CPT Group's website at <https://www.cptgroup.com/case-list>. You can also telephone or send an email to Class Counsel or the Administrator using the contact

information listed below, or consult the Superior Court website by going to (<http://www.lacourt.org/casesummary/ui/index.aspx>) and entering the Case Number for the Action, Case No. 21STCV15258. You can also make an appointment to personally review court documents in the Clerk's Office at the Stanley Mosk Courthouse by calling (213) 830-0800.

**DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION
ABOUT THE SETTLEMENT.**

Class Counsel:

Zorik Mooradian, Esq.
zorik@mooradianlw.com
Haik Hacopian, Esq.,
haik@mooradianlaw.com
MOORADIAN LAW, APC
24007 Ventura Blvd., Suite 210
Calabasas, CA 91302
Tel: 1-818-487-1998
Fax: 1-888-783-1030

Settlement Administrator:

CPT Group, Inc.
info@cptgroup.com
50 Corporate Park
Irvine, CA 92606
Tel: 1-800-542-0900
Fax: 1-888-783-1030

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, you should consult the Unclaimed Property Fund (sco.ca.gov) for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, OR
CARGO WITH INQUIRIES.**

The statements in this document are not findings by a court of law. These statements are not an expression of opinion or approval by a judge. This notice is based only on statements by the Parties to this Lawsuit. You received this notice to help you decide what steps, if any, to take about this Lawsuit.

**EXHIBIT “B” – Settlement Agreement
(Redline)**

~~[MODEL]~~ CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Rafael Jimenez (“Plaintiff”) and defendant CARGO HS LLC (“CARGO”). The Agreement refers to Plaintiff and CARGO collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against CARGO captioned Rafael Jimenez, individually and on behalf of other persons similarly situated and similarly aggrieved employees v. Cargo HS LLC; and Does 1 through 10, initiated on April 21, 2021 and pending in Superior Court of the State of California, County of Los Angeles, Case Number 21STCV15258.
- 1.2. “Administrator” means CPT Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means all hourly, non-exempt employees who are currently or have been employed by CARGO in the State of California at any time during the period of April 21, 2020 through March 3, 2023 (“PAGA Period”).
- 1.5. “Class” means all hourly, non-exempt employees who are currently or have been employed by CARGO in the State of California at any time during the Class Periodperiod of April 21, 2017 through March 3, 2023 (“Class Period”).
- 1.6. “Class Counsel” means Zorik Mooradian, Esq. and Haik Hacopian, Esq. of Mooradian Law, APC.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in CARGO’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Release Period Workweeks and PAGA Pay Periods.
- 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English ~~{with a Spanish translation, if applicable}~~ in the form, without material variation, attached as Exhibit ~~A-“1”~~ and incorporated by reference into this Agreement.
- 1.12. “Class Release Period” means the period from April 21, 2017 through the earlier of either (a) June 1, 2023 or (b) the date the Court grants Preliminary Approval. ⁱⁱ
- 1.13. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15. “Court” means the Superior Court of California, County of Los Angeles.
- 1.16. “CARGO” means named Defendant Cargo HS LLC.
- 1.17. “Defense Counsel” means Scott P. Jang, Esq. and Janet J. Hur, Esq. of Jackson Lewis P.C.
- ~~1.18.~~ “Effective Date” means the date by when ~~both~~ all of the following have occurred: (1) this Stipulation of Settlement has been executed by all Parties, Class Counsel, and Defense Counsel; (2) the Court has given preliminary approval to the Stipulation of Settlement; (3) the Class Notice has been given to Class Members, providing them with an opportunity to object to the terms of this Stipulation of Settlement or to opt-out of the Stipulation of Settlement; (4) the Court has held a formal fairness hearing and entered a final Order and Judgment certifying the Class for settlement purposes and approving the Stipulation of Settlement; (5) in the event there are no objections submitted, the day the Court entered a final Order and Judgment certifying the Class for settlement purposes and approving the Stipulation of Settlement; and (6) in the event there are objections submitted, sixty-five (65) calendar days have passed since the Court has entered a final Order and Judgment certifying the Class for settlement purposes and approving the Stipulation of Settlement or, if any appeal, writ, or other appellate proceeding opposing the Court’s final Order approving the Stipulation of Settlement has been filed, five (5) business days after any appeal, writ, or other appellate proceedings opposing the Stipulation of Settlement has been finally and conclusively dismissed with no right to pursue further remedies or relief.
- ~~1.19.~~ 1.18. (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if

~~no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.~~

~~1.20.~~1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.

~~1.21.~~1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.

~~1.22.~~1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

~~1.23.~~1.22. “Gross Settlement Amount” means \$550,000.00 (Five Hundred Fifty Thousand Dollars and Zero Cents) which is the total amount CARGO agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.

~~1.24.~~1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Release Period.

~~1.25.~~1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Release Period.

~~1.26.~~1.25. “Judgment” means the judgment entered by the Court based upon the Final Approval.

~~1.27.~~1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

~~1.28.~~1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

~~1.29.~~1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

~~1.30.~~1.29. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

~~1.31.~~1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for CARGO for at least one day during the PAGA Release Period.

~~1.32.~~1.31. “PAGA Release Period” means the period from April 21, 2020 through the earlier of either (a) June 1, 2023 or (b) the date the Court grants Preliminary Approval.

~~1.33.~~1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

~~1.34.~~1.33. “PAGA Notice” means Plaintiff’s April 21, 2021 letter to CARGO HS LLC and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

~~1.35.~~1.34. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$6,250.00) and the 75% to LWDA (\$18,750.00) in settlement of PAGA claims.

~~1.36.~~1.35. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

~~1.37.~~1.36. “Plaintiff” means Plaintiff Rafael Jimenez, the named plaintiff in the Action.

~~1.38.~~1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.

~~1.39.~~1.38. “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.

~~1.40.~~1.39. “Released Class Claims” means the claims being released as described in Paragraph ~~65~~.2 below.

~~1.41.~~1.40. “Released PAGA Claims” means the claims being released as described in Paragraph ~~65.23~~ below.

~~1.42.~~1.41. “Released Parties” means: CARGO and each of its present and former parent companies, subsidiaries, divisions, concepts, related or affiliated companies, and its shareholders, owners, partners, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and Defendant’s CARGO’s counsel of record in the Action~~former and present directors, officers, shareholders, owners, [members], attorneys, insurers, predecessors, successors, assigns [subsidiaries] [affiliates].~~

~~1.43.~~1.42. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member. Class Members and Aggrieved Employees may not exclude themselves from the portion of the Settlement pertaining to the PAGA Payment and the Released PAGA Claims.

~~1.44.~~1.43. “Response Deadline” means ~~[e.g., 60]~~ (sixty) days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which

Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional ~~14~~-7 (seven) calendar days beyond the Response Deadline has expired.

~~1.45~~-1.44. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

~~1.46~~-1.45. “Workweek” means any week during which a Class Member worked for CARGO for at least one day, during the Class Release Period.

2. RECITALS.

—2.1 On April 21, 2021, Plaintiff commenced this Action by filing a Complaint alleging causes of action against CARGO for: (1) Failure to Provide Meal Periods; (2) Failure to Provide Paid Rest Periods; (3) Failure to Pay Wages; (4) Failure to Timely Pay Wages at Termination/Separation; (5) Failure to Timely Pay Vacation Wages at Termination; (6) Failure to Provide Accurate Wage Statements; and (7) Violation of Unfair Business Practices Act – Bus. & Prof. Code §§ 17200, et seq. ~~[The Complaint is the operative complaint in the Action (the “Operative Complaint.”)]~~ ~~[On November 23, 2021, Plaintiff filed a {e.g., First Amended Complaint} alleging an additional causes of action against CARGO HS LLC for PAGA Penalties. The {e.g., First Amended} Complaint is the operative complaint in the Action (the “Operative Complaint.”)]~~ CARGO denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to CARGO and the LWDA by sending the PAGA Notice.

2.3. On March 3, 2023, ~~the~~ Parties participated in an all-day mediation presided over by Mr. Lou Marlin, a respected neutral mediator, which led to a Memorandum of Understanding executed by the Parties on that date to settle his Action, the terms of which are fully incorporated within this Agreement to settle the Action.

2.4. Prior to mediation, Plaintiff obtained, through informal discovery, copies of relevant forms and policies including employee handbooks, a 15% sample of electronic time and payroll data, handwritten employee timesheets. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

2.5. The Court has not granted class certification. The Parties agree to stipulate to class certification for purposes of Settlement only as to the Class described herein and related to the Released Class Claims.

2-5.2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, CARGO promises to pay \$550,000.00 (Five Hundred Fifty Thousand Dollars and No Cents) and no more as the Gross Settlement Amount ~~and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments.~~ CARGO has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.36.1 of this Agreement. ~~¶~~ The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to CARGO.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$7,500.00 (Seven Thousand Five Hundred Dollars and No Cents) (in addition to any Individual Class Payment ~~and any Individual PAGA Payment~~) the Class Representative is entitled to receive as a Participating Class Member). CARGO will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments ~~no later than~~ no later than ~~16 court~~ days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than One-Third of the Gross Settlement Amount or 33 1/3%, which is currently estimated to be \$183,333.33 (One Hundred Eighty Three Thousand Three Hundred Thirty Three Dollars and 33 Cents) and a Class Counsel Litigation Expenses Payment of not more than \$15,000 (Fifteen Thousand Dollars and No Cents). CARGO will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will ~~file a motion~~ seek Court approval for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than ~~16 court~~ days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released

Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds CARGO harmless, and indemnifies CARGO, from any dispute or controversy regarding any division or sharing of any of these Payments.

- 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$10,000.00 (Ten Thousand Dollars and No Cents) except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$10,000.00, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class-Period and (b) multiplying the result by each Participating Class Member's Workweeks.
- 3.2.4.1. Tax Allocation of Individual Class Payments. 20% (Twenty Percent) of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 80% (Eighty Percent) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for ~~fe.g.,~~ interest and penalties (the "Non-Wage Portion").^{vi} The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.
- 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.
- 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$25,000.00 (Twenty-Five Thousand Dollars and No Cents) to be paid from the Gross Settlement Amount, with 75% (\$18,750.00) allocated to the LWDA PAGA Payment and 25% (\$6,250.00) allocated to the Individual PAGA Payments.
- 3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$6,250.00) by the total number of PAGA Release Period Pay Periods worked by all Aggrieved Employees during the PAGA Release Period and (b) multiplying the result by each Aggrieved Employee's PAGA Release Period

Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

- 3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records as of March 3, 2023, CARGO estimates there are 364 Class Members who collectively worked a total of 16,177 Workweeks through March 3, 2023, and 346 of Aggrieved Employees who worked a total of 14,471 ~~of PAGA~~ Pay Periods through March 3, 2023.
- ~~4.2~~ Class Data. Not later than ~~[e.g., 14 (fourteen)]~~ days after the Court grants Preliminary Approval of the Settlement, CARGO will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet or other readily accessible electronic format. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. CARGO has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which CARGO must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3. Funding of Gross Settlement Amount. CARGO shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay CARGO's share of payroll taxes by transmitting the funds to the Administrator no later than ~~[14]~~twenty-one (21) days after the Effective Date.
- 4.4. Payments from the Gross Settlement Amount. Within seven (7) days after CARGO funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
- 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the

date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks ~~to~~ to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

~~for to a Court approved nonprofit organization or foundation consistent with Code of Civil Procedure Section 384, subd. (b) ("Cy Pres Recipient") ____]. The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient.~~

4.4.3.1. ~~The All Individual Class Payments and/or Individual PAGA Payments shall be deemed to be paid solely in the year in which such payments actually are received by the Class Members. It is expressly understood and agreed that the receipt of such Individual Class Payments and/or Individual PAGA Payments will not entitle any Class Member to additional compensation or benefits under any company bonus, contest, or other compensation or benefit plan or agreement in place during the period covered by the Settlement, nor will it entitle any Class Member to any increased retirement, 401K benefits or matching benefits, or deferred compensation benefits. It is the intent of this Settlement that the Individual Class Payments and/or Individual PAGA Payments provided for in this Settlement are the sole payments to be made by CARGO to the Class Members, and that the Class Members are not entitled to any new or additional compensation or benefits as a result of having received the individual settlement awards (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the period~~

covered by this Settlement.

~~payment of Individual Class Payments and Individual PAGA Payments shall not obligate XYZ to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.~~

5. **RELEASES OF CLAIMS.** Effective on the date when CARGO fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

5.1 Plaintiff's Release. Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences ~~[that occurred during the Class Period on or before the Effective Date of this Settlement],~~ including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint; and Plaintiff's PAGA Notice, ~~—[or ascertained during the Action and released under 6.2, below].—~~ (“Plaintiff's Release.”) Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences ~~outside the Class Period after the Effective Date of this Settlement.~~ Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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.

5.2 Release by Participating Class Members Who Are Not Aggrieved Employees: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from any and all claims under state, federal, or local law, whether statutory or common law arising out of the claims expressly pleaded in the Action and all other claims, such as those under the California Labor Code, applicable Wage Orders, regulations, and/or other provisions of law, that could have been pleaded based on the facts pleaded in the Action for (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide all meal breaks; (4) failure to provide all

rest breaks, (5) failure to provide accurate itemized wage statements, (6) failure to timely pay wages during employment and upon termination, (7) failure to maintain required records, (8) unfair business practices, and all claims for injunctive relief, liquidated damages, penalties, including all civil penalties under the Labor Code Private Attorneys General Act of 2004, interest, fees, and costs, and all other claims and allegations made that could have been made in the Action during the Class Release Period based on the facts and allegations in the Operative Complaint. (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint [and ascertained in the course of the Action] [including, e.g., “(a) any and all claims involving any alleged failure to pay minimum wage; etc.]. Except as set forth ~~in Section 6.3 of~~ this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Release Period.

5.3 Release by Non-Participating Class Members Who Are Aggrieved Employees:

All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties, fees, and costs that were alleged, or reasonably could have been alleged, based on the PAGA Release Period facts stated in the Operative Complaint~~[,] [and] the PAGA Notice [and ascertained in the course of the Action]~~[including, (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide all meal breaks; (4) failure to provide all rest breaks, (5) failure to provide accurate itemized wage statements, (6) failure to timely pay wages during employment and upon termination, and (7) failure to maintain required records; e.g., “(a) any and all claims involving any alleged failure to pay minimum wage; etc.].

6. **MOTION FOR PRELIMINARY APPROVAL.** ~~The Parties agree to jointly~~ Plaintiff will prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary Approvals.

6.1 CARGO’s Declaration in Support of Preliminary Approval. Within fourteen (14) days of the full execution of this Agreement, CARGO will prepare and deliver to Class Counsel a signed Declaration from CARGO HS LLC and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator ~~and Cy Pres Recipient~~. In their Declarations, Defense Counsel and CARGO HS LLC shall aver that they are not aware of any other pending ~~matter or action~~ lawsuit or administrative complaint, charge, or proceeding asserting claims that will be extinguished or adversely affected by the Settlement.

6.2 Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval allowing Defendant at least five (5) business days to review, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under

Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members ~~and/or the proposed Cy Pres~~; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, [and/or] the Administrator ~~and/or the proposed Cy Pres~~; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (vi) a redlined version of the parties’ Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, and /or the Administrator ~~and/or the Cy Pres Recipient~~. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than thirty (30) days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court’s Preliminary Approval to the Administrator.

6.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court’s concerns.

7. SETTLEMENT ADMINISTRATION.

7.1 Selection of Administrator. The Parties have jointly selected CPT Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, CPT Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no

interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

7.27.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.

7.37.4 Notice to Class Members.

7.3.17.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.

7.3.27.4.2 Using best efforts to perform as soon as possible, and in no event later than fourteen (14) days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice with Spanish translation, substantially in the form attached to this Agreement as Exhibit “1”. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing the Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

7.3.37.4.3 Not later than three (3) business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

7.3.47.4.4 The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional seven (7) days beyond the sixty (60) days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

7.4.5 ——— If the Administrator, CARGO or Class Counsel is contacted by or

otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than [14] days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

7.47.5 Requests for Exclusion (Opt-Outs).

7.4.17.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than sixty (60) days after the Administrator mails the Class Notice (plus an additional seven (7) days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

7.4.27.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

7.4.37.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 6.25.2 and 6.3 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.4.47.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph

6.45.3 of this Agreement and are eligible for an Individual PAGA Payment.

7.5.5 ~~_____~~ Challenges to Calculation of Workweeks. Each Class Member shall have sixty (60) days after the Administrator mails the Class Notice (plus an additional seven (7) days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods ~~shall be final and not appealable or otherwise susceptible to challenge, if not satisfactory to the challenging Class Member, will be submitted to the Court for resolution at the Final Approval Hearing.~~ The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.57.6 Objections to Settlement.

7.5.17.6.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

7.5.27.6.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than sixty (60) days after the Administrator's mailing of the Class Notice (plus an additional (7) days for Class Members whose Class Notice was re-mailed).

7.5.37.6.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

7.67.7 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

7.6.17.7.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary

Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

7.6.27.7.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than five (5) days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

7.6.37.7.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

7.6.47.7.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge. If the Administrator’s decision is not satisfactory to the challenging Class Member, it will be submitted to the Court for resolution at the Final Approval Hearing.

7.6.57.7.5 Administrator’s Declaration. Not later than fourteen (14) days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List, and any Workweek and/or Pay Period Challenges and their status. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the

Administrator's declaration(s) in Court.

7.7.6 Final Report by Settlement Administrator. Within ten (10) days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least fifteen (15) days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. **CLASS SIZE ESTIMATES and ESCALATOR CLAUSE** Based on its records, CARGO estimates that, as of ~~the date of this Settlement Agreement~~ March 3, 2023, (1) there are 16,177 Total Workweeks during the Class Period and (2) there were 346 Aggrieved Employees who worked 14,471 Pay Periods during the PAGA Period. If the workweeks through June 1, 2023 exceeds 17,795 (which accounts for natural growth of the Class Period between March 3, 2023 and June 1, 2023), CARGO shall have the option of paying a proportional amount to the Gross Settlement to cover the additional workweeks (i.e., in other words, if the workweeks worked by the Class is 1% over 17,795, CARGO shall increase the Gross Settlement Amount by 1% to account for the additional workweeks). If CARGO does not exercise this option to cover workweeks beyond 17,795 total workweeks, (1) the Settlement Administrator shall calculate the date by which the total workweeks covered by the settlement reached no more than 17,795 total workweeks; and (2) the Parties will ask the Court during final settlement approval to limit the release secured from Class Members under Sections 5.2 and 5.3 of the Settlement Agreement to that date (and not June 1, 2023).
9. **CARGO'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% (ten percent) of the total of all Class Members, CARGO may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if CARGO withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, CARGO will remain responsible for paying all Settlement Administration Expenses incurred to that point. CARGO HS LLC must notify Class Counsel and the Court of its election to withdraw not later than five (5) days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.
10. **MOTION FOR FINAL APPROVAL.** Not later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). ~~Plaintiff shall provide drafts of these documents to Defense Counsel not later than [seven] days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in~~

~~person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.~~

10.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

10.34 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph,

as long as the Gross Settlement Amount remains unchanged.

11. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

12. ADDITIONAL PROVISIONS.

12.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by CARGO that any of the allegations in the Operative Complaint have merit or that CARGO has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that CARGO's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, CARGO reserves the right to contest certification of any class for any reasons, and CARGO reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest CARGO's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

12.12.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, CARGO and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, CARGO and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

12.12.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in

accordance with Class Counsel's ethical obligations owed to Class Members.

12.312.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

12.412.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and CARGO, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

12.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

12.8 No Tax Advice. Neither Plaintiff, Class Counsel, CARGO nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party

on the basis that the Party was the drafter or participated in the drafting.

12.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

12.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by CARGO in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from CARGO unless, prior to the Court's discharge of the Administrator's obligation, CARGO makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.

~~12.14~~12.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

~~12.15~~12.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

~~12.16~~12.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff: Zorik Mooradian, Esq. (zorik@mooradianlaw.com); Haik Hacopian, Esq. (haik@mooradianlaw.com), Mooradian Law, APC, 24007 Ventura Blvd., Suite 210, Calabasas, CA 91302; tel (818) 487-1998; facsimile (888) 783-1030

To CARGO: Scott P. Jang, Esq. (Scott.Jang@jacksonlewis.com), Jackson Lewis P.C., 50 California Street, 9th Floor, San Francisco, CA 94111, tel (415) 394-9400

12.18 Dispute Resolution. Except as otherwise set forth herein, all disputes concerning the interpretation, calculation or payment of settlement claims, or other disputes regarding compliance with this Agreement shall be resolved as follows: (a) If Plaintiff, or Class Counsel, on behalf of Plaintiff or any Class Member, or Defense Counsel at any time believe that the other Party has breached or acted contrary to the Agreement, that Party shall notify the other Party in writing of the alleged violation. (b) Upon receiving notice of the alleged violation or dispute, the responding Party shall have ten (10) business days to correct the alleged violation and/or respond to the initiating Party

with the reasons why the Party disputes all or part of the allegation. (c) If the responses does not address the violation to the initiating Party's satisfaction, the Parties shall negotiate in good faith for up to ten (10) business days to resolve their differences. (d) If the Parties are unable to resolve their differences after twenty (20) business days, either Party may file an appropriate motion for enforcement with the Court. The briefing of such motion should be in letter brief form and shall not exceed five (5) single-spaced pages (excluding exhibits). (e) Reasonable attorney's fees and costs for work done in resolving a dispute under this Section may be recovered by any party that prevails under the standards set forth within the meaning of applicable law.

12.19 Extensions of Time. Without further order of the Court, the Parties hereto may agree in writing to reasonable extensions of time to carry out any of the provisions of the Settlement.

~~12.17~~12.20Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

~~12.18~~12.21Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

_____ _____ _____ For Plaintiff	_____ _____ _____ For <u>CARGO</u>
_____ _____ _____ Counsel For Plaintiff	_____ _____ _____ Counse <u>el</u> For

EXHIBIT “C” – PAGA NOTICE

MOORADIAN LAW, APC

24007 Ventura Blvd., Suite 210

Calabasas, California 91302

Mooradianlaw.com

Telephone 1-818-487-1998

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HAIK HACOPIAN

E-mail: haik@mooradianlaw.com

APRIL 21, 2021

VIA USPS CERTIFIED MAIL

Cargo HS LLC
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San Bruno, CA 94066
7019 0700 0002 2582 8397

Timothy Carrick
Agent for Service of Process for
Cargo HS LLC
1212 H El Camino Real
San Bruno, CA 94066
7019 0700 0002 2582 8403

VIA ONLINE SUBMISSION

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814
www.dir.ca.gov

Re: *California Wage & Hour Violations*
Cargo HS LLC

To Whom It May Concern:

This office represents Rafael Jimenez with respect to Private Attorneys General Act (“PAGA”) claims that he intends to pursue against Cargo HS LLC (hereinafter “CARGO”) based upon its illegal wage and hour practices in the State of California as to its non-exempt employees. This letter constitutes the notice required by California Labor Code Section 2699.3.

Facts

CARGO is engaged in the business of warehousing and storage. Mr. Jimenez worked as a non-exempt employee of CARGO at the Los Angeles International Airport (LAX). CARGO employs numerous non-exempt, hourly paid employees such as Mr. Jimenez. Unfortunately, CARGO has engaged in the following practices:

Failure to Pay Wages

CARGO implemented the policy and practice of failing to pay employees for all work performed. Notably, CARGO maintained an overtime policy which paid overtime rates only if an employee worked in excess of forty (40) hours a week and did not allow for daily overtime, seventh consecutive day overtime, and any double-time. Also, employees time worked was not properly recorded. Notably, no electronic time clock system was maintained. The foregoing practices resulted in underpayment of wages, including underpayment of overtime and double-time as applicable.

Meal Breaks

CARGO engages in the practice of not allowing mandated meal breaks and not compensating employees for any missed, late, or short meal breaks. CARGO failed to regularly provide the required meal break within five hours of work including non-provision of off-duty meal breaks lasting at least thirty (30) minutes. CARGO failed to correctly implement a system by which to pay premium wages to employees for any missed, late, or short meal period.

Rest Breaks

CARGO engages in the practice of not allowing mandated rest breaks and not compensating employees for any missed, late, or short rest breaks. Employees were not always afforded an opportunity to take rest breaks every four hours, or major fraction thereof, they worked. Significantly, employees did not receive premium pay for missed or improper rest breaks.

Waiting Time and Unpaid Vacation Wages

At the time of an employee's separation (whether it be by termination or resignation) CARGO has failed to provide the employee with all monies owed, including meal break premiums, rest break premiums, and unpaid wages for work performed, including overtime and double-time wages to the extent applicable, and accrued and unpaid vacation wages and other benefits.

Inaccurate Wage Statements

CARGO has adopted a custom and practice of failing to provide wage statements which reflect all hours worked during any pay period, whether or not employees received all wages entitled to, including applicable overtime and double-time wages, vacation wages paid, and meal and rest break premiums.

Additional Penalties

Mr. Jimenez and all other similarly aggrieved California employees intend to seek all penalties for the violations described above under the Labor Code sections that authorize such recovery.

Code Provisions Violated and Legal Theories

The specific provisions of the California Labor Code which CARGO has violated, and applicable legal theories which establish the violations, are as follows:

Labor Code Section 201: CARGO violated, and continues to violate, Labor Code Section 201 by failing to pay the employees it has discharged the complete and correct amount of all wages owing at the time of termination. The wages earned but not paid at termination include uncompensated work time, including overtime and double-time as applicable, and premium and vacation wages.

Labor Code Sections 202: CARGO violated, and continues to violate, Labor Code Section 202 by failing to pay employees who quit the correct amount of all wages, within 72 hours of the termination. As already stated, the wages earned but not paid at termination include the above.

Labor Code Section 203: CARGO violated, and continues to violate, Labor Code Section 203 by failing to pay 30 days of continuing wages to employees owed wages (explained above) whose employment ended.

Labor Code Section 204: CARGO violated, and continues to violate, Labor Code Section 204 by failing to pay wages to employees for all hours worked as explained above.

Labor Code Section 226: CARGO violated, and continues to violate, Labor Code Section 226(a) by failing to provide employees with accurate and legally compliant itemized wage statements.

Labor Code Section 226.7: CARGO violated, and continues to violate, Labor Code Section 226.7 by failing to provide meal periods and/or rest periods that are in accordance and in compliance with the IWC's applicable wage order.

Labor Code Section 227.3: CARGO violated, and continues to violate, Labor Code Section 227.3 by failing to promptly pay all vested vacation benefits to terminated employees.

Labor Code Section 510: CARGO violated, and continues to violate, Labor Code Section 510 by failing to pay minimum wage or overtime compensation required by law.

Labor Code Section 512: CARGO violated, and continues to violate, Labor Code Section 512 by not providing aggrieved employees with legally compliant meal periods.

Labor Code Section 1194: CARGO violated, and continues to violate, Labor Code Sections 1194 by failing to pay employees minimum wage and overtime compensation required by law.

Conclusion

Please inform us if you intend to investigate this matter. We look forward to prompt administrative action so that the identified unlawful practices can be rectified. In the absence of such action, we intend to file an appropriate action pursuant to Labor Code Section 2698 *et seq.* Should you require any additional information, do not hesitate to contact the undersigned.

Very truly yours,

MOORADIAN LAW, APC

/s/ Haik Hacopian

HAIK HACOPIAN

7019 0700 0002 2582 8397

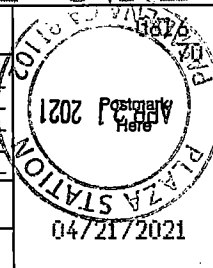
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San Bruno, CA 94066

OFFICIAL USE

Certified Mail Fee \$3.60
\$
Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$0.00
☐ Return Receipt (electronic) \$0.00
☐ Certified Mail Restricted Delivery \$0.00
☐ Adult Signature Required \$0.00
☐ Adult Signature Restricted Delivery \$0.00
Postage \$0.55
\$
Total Postage and Fees \$4.15
\$



Sent To Cargo HS, LLC
Street and Apt. No., or PO Box No. 1212 H. El Camino Real 342
City, State, ZIP+4® San Bruno, CA 94066
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7019 0700 0002 2582 8403

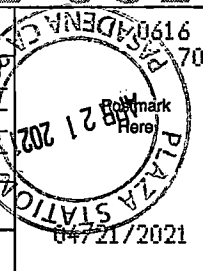
U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

San Bruno, CA 94066

OFFICIAL USE

Certified Mail Fee \$3.60
\$
Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$0.00
☐ Return Receipt (electronic) \$0.00
☐ Certified Mail Restricted Delivery \$0.00
☐ Adult Signature Required \$0.00
☐ Adult Signature Restricted Delivery \$0.00
Postage \$0.55
\$
Total Postage and Fees \$4.15
\$



Sent To Timothy Garrick, Agent for Service of Process HS
Street and Apt. No., or PO Box No. 1212 H. EL CAMINO REAL
City, State, ZIP+4® SAN BRUNO, CA 94066
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions



Haik Hacopian <haik.hacopian@gmail.com>

Thank you for submission of your PAGA Case.

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
To: "haik.hacopian@gmail.com" <haik.hacopian@gmail.com>

Fri, Apr 30, 2021 at 7:34 PM

4/30/2021

LWDA Case No. LWDA-CM-830970-21
Law Firm : Mooradian Law, APC
Plaintiff Name : Rafael Jimenez
Employer: Cargo HS LLC
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT “D” – Administration Quote

CASE NAME: JIMENEZ v CARGO HS

Date: April 27, 2023

Requesting Attorney: Haik Hacopian

Plaintiff or Defense: Plaintiff

Firm Name: Mooradian Law

Telephone: (818) 439-3121

Email: haik.hacopian@gmail.com

All-In Settlement

Class Size: 400

Opt-Out Rate: 1.5%

No. of Checks Issued: 394

Postage Total: \$627.65

Grand Total: \$15,065.00

DISCOUNTED FLAT FEE: \$8,500.00

The services and numbers reflected herein are an estimate provided by counsel. If the actual services and number are different, our cost estimate will change accordingly.

The attached Terms and Conditions are included as part of our cost proposal. By accepting our costs proposal for this matter, you are thereby agreeing to the Terms and Conditions.

CASE SETUP

Upon Intake of the Data, CPT will Scrub all Records to a Useable Format to Reduce Duplicates, Anomalies and Increase the Success Rate of Deliverability of the Class Notice. Class Members will be Assigned a Unique Mailing ID which will be Used Throughout Administration. The Notice will be Translated into Spanish.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Case Intake & Review	\$95.00	4	\$380.00
Programming: Data Base Setup	\$150.00	4	\$600.00
Spanish Translation	\$1,200.00	1	\$1,200.00
TOTAL			\$2,180.00

DIRECT MAIL NOTICE

To Ensure Mailing to the Most Current Address Possible, CPT will Perform an Address Update via NCOA. CPT will Mail a Full-Length Notice & 1-Page Exclusion Form in English and Spanish.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Format Documents	\$95.00	2	\$190.00
National Change of Address Search (NCOA)	\$135.00	1	\$135.00
Print & Mail Notice Packets	\$1.50	400	\$600.00
First-Class Postage (up to 2 oz.)*	\$0.81	400	\$324.00
TOTAL			\$1,249.00

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

PROCESS RETURNED UNDELIVERABLE MAIL

Based On CPT's Historical Data, 6% of the Notices will be Returned Undeliverable. Upon Receipt, CPT will Perform a Skip Trace in an Attempt to Obtain a Current Address; Thus, 91% of the Notice Packets are Remailled.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Clerical Staff	\$60.00	1	\$60.00
Update Undeliverable Mail Database	\$0.50	24	\$12.00
Skip Trace for Best Address	\$1.00	21	\$21.00
Print & Remail Notice Packets	\$1.50	19	\$28.50
First-Class Postage (up to 2 oz.)	\$0.81	19	\$15.39
TOTAL			\$136.89

OPT-OUT PROCESSING

CPT will Process and Validate all Opt-Outs and Other Responses from Class Members. Deficient Opt-Outs will Receive a Deficiency Notice by Mail and Provide an Opportunity to Cure. CPT will Scrub the Filed Opt-Outs to Eliminate Duplicates, Fraudulent, and Otherwise Invalid.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: De-duplication/Scrubbing	\$150.00	1	\$150.00
Project Manager: Validate Opt-Out Requests	\$95.00	1	\$95.00
Clerical Staff	\$60.00	1	\$60.00
Opt-Out & Change of Address Processing	\$2.00	6	\$12.00
Print & Mail Deficiency/Dispute Notices	\$1.50	1	\$1.50
First-Class Postage (up to 1 oz.)	\$0.60	1	\$0.60
Review & Process Deficiency Responses	\$10.00	1	\$10.00
TOTAL			\$329.10

TELEPHONE SUPPORT

CPT will Maintain a Toll-Free Phone Number with IVR Capabilities and Live Class Member Support Representatives During Normal Business Hours, Monday-Friday, 9:00 AM - 5:30 PM, PT. The Dedicated Case Phone Number will Remain Active Up to 120 Days After Disbursement.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Toll-Free Number Establish/Setup	\$150.00	2	\$300.00
Live Call Center Support Reps.	\$3.00	80	\$240.00
		TOTAL	\$540.00

SSN VERIFICATION

Verify SSN for Validity with IRS / IRS Backup Withholdings

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: SSN Selection	\$150.00	1	\$150.00
Department Manager: Analysis & Reporting	\$95.00	3	\$285.00
IRS SSN Verification	\$0.10	394	\$39.40
		TOTAL	\$474.40

DISTRIBUTION SERVICES

CPT will Establish and Manage the Qualified Settlement Fund (QSF) for up to One Year After Disbursement. Upon Approval, CPT will Perform all Necessary Calculations and Disburse Funds. CPT will Mail an 8.5"x11" MICR Check to Valid Class Members. CPT Uses a Payee Positive Pay System to Reconcile Checks Cashed and Conducts Monthly Account Reconciliations for the QSF.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: Calculation Totals	\$150.00	3	\$450.00
Project Supervisor: Review of Distribution	\$150.00	3	\$450.00
Project Manager: Correspondence w/Parties	\$95.00	2	\$190.00
Programming: Setup & Printing of Checks	\$150.00	3	\$450.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Print & Mail Notice, Checks & W2/1099	\$2.50	394	\$985.00
First-Class Postage (up to 1 oz.)*	\$0.60	394	\$236.40
		TOTAL	\$3,211.40

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

POST-DISTRIBUTION & TAX REPORTING

Any Check Returned Undeliverable is Skip Traced to Locate a Current Address and Remaild Accordingly. CPT will Process Requests for Check Reissues Continuously. CPT Prepares Annual Tax Reporting on Behalf of the QSF and Federal and State Taxes in Accordance with Current State and Federal Regulations. Upon the Conclusion of the Settlement, a Final Report and Declaration will be Provided to all Parties.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Supervisor: Account Reconciliation	\$150.00	10	\$1,500.00
Update Undeliverable Checks Database	\$0.50	32	\$16.00
Skip Trace for Best Address	\$1.00	32	\$32.00
Remail Undeliverable Checks	\$2.50	29	\$72.50
First-Class Postage (up to 1 oz.)	\$0.60	29	\$17.40
Re-Issue Checks as Required	\$5.00	20	\$100.00
First-Class Postage (up to 1 oz.)	\$0.60	20	\$12.00
Project Supervisor: Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming: Weekly & Final Reports	\$150.00	2	\$300.00
Project Supervisor: Final Declaration	\$150.00	2	\$300.00
Project Manager: Account Files Sent to Atty	\$95.00	2	\$190.00
CA Tax Preparation*	\$600.00	1	\$600.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
		TOTAL	\$4,789.90

*CPT will file Federal and California taxes in accordance to current state and federal regulations. Additional charges will apply if the Settlement/Order/parties require(s) multiple state tax filings.

SCO ESCHEATMENT PROCESSING

Escheatment Processing to the State Controller Unclaimed Property Division / Uncashed Check Rate 21%			
ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
UPEnterprise Reporting Services	\$0.15	83	\$12.45
Project Manager: SCO Fall Reporting	\$95.00	2	\$190.00
Project Supervisor: Review of SCO Reports	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Check Reissues for Winter/Spring QTR	\$5.00	8	\$40.00
First-Class Postage (up to 1 oz.)	\$0.60	8	\$4.80
Project Supervisor: June Remittance	\$150.00	1	\$150.00
Project Manager: June Remittance	\$95.00	2	\$190.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Add'l Account Recons	\$150.00	6	\$900.00
Add'l QSF Annual Tax Reporting	\$500.00	1	\$500.00
		TOTAL	\$2,154.31

GRAND TOTAL	\$15,065.00
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TERMS AND CONDITIONS

These Terms and Conditions are made a part of, and incorporated by reference into, any cost proposal or Bid presented by CPT Group, Inc. to Client

1. Definitions.

- a) **"Affiliate"** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with another party.
- b) **"Approved Bank"** means a financial institution insured by the Federal Deposit Insurance Corporation with capital exceeding \$1 billion.
- c) **"Case"** means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
- d) **"Claims Administrator"** means CPT Group, Inc., a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
- e) **"Client"** means collectively Plaintiff Counsel and Defense Counsel.
- f) **"Client Content"** means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, and objections, which contain Client Data.
- g) **"Client Data"** means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
- h) **"Class Member"** means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
- i) **"Confidential Information"** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
- j) **"Court Order"** means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.
- k) **"Defendant"** means the named party and/or parties in the Case against whom action is brought.
- l) **"Defense Counsel"** means the attorney of record for the defendant(s) in the Case.
- m) **"Intellectual Property Right"** means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
- n) **"Order"** means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
- o) **"Parties"** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
- p) **"Plaintiff"** means the named party and/or parties in the Case who are bringing the action.
- q) **"Plaintiff Counsel"** means the attorney of record for plaintiff Class Members in the Case.
- r) **"Products"** means any and all CPT Services, and work products resulting from Services.
- s) **"Qualified Settlement Fund"** means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.

- t) **"Service"** means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
- u) **"Software"** means any and all of CPT's proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
- v) **"Settlement"** means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
- w) **"Settlement Agreement"** means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
- x) **"Term"** means the term of the Agreement, as set forth in the Order.
- y) **"Transmission Methods"** means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
- z) **"Wire Information"** means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.

2. **Client Obligations.** Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect the Client Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.

3. **Security.** The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement and shall promptly inform the other Parties of such breaches.

4. **CPT Obligations.** Provided that Client complies with all provisions of Section "Client Obligations", CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Client.

5. **Mutual Obligations.**

- a) **Resources.** Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service.

15. Miscellaneous Provisions.

- a) Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.
- b) Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c) Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d) Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e) Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.
- f) Assignment. Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g) No Third-Party Beneficiaries. The representations, warranties, and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns and shall not be construed as conferring any rights on any other persons.
- h) Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this

Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third-party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.

- i) Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such applicable laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j) Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k) Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l) Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.
- m) Subcontractors. CPT shall notify Client of its use of any subcontractors to perform Client-specific Services. CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n) Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret, or construe its meaning, scope or intent.
- o) Waiver. No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power, or remedy.
- p) Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.