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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF SAN BERNARDINO**

LEO AVALOS, individually, and on behalf of
 all others similarly situated,

Plaintiff,

vs.

CARGO SOLUTION EXPRESS, INC., a
 California corporation dba CARGO
 SOLUTIONS EXPRESS, INC.; and DOES 1
 through 10, inclusive,

Defendants

Case No.: CIVSB2214152

CLASS ACTION

Assigned to Honorable Joseph T. Ortiz

**JOINT STIPULATION OF CLASS ACTION
 AND PAGA SETTLEMENT**

Complaint filed: July 8, 2022
 Trial date: Not set

JOINT STIPULATION OF CLASS ACTION SETTLEMENT

This Joint Stipulation of Class Action and PAGA Settlement (“Joint Stipulation of Settlement” or “Settlement” or “Agreement”) is made and entered into by and between Plaintiff LEO AVALOS, individually, and on behalf of all others similarly situated, (“Plaintiff” or “Class Representative”), and Defendant CARGO SOLUTION EXPRESS, INC. (“Defendant”). Plaintiff and Defendant are sometimes referred to individually as a “Party” or collectively referred to herein as “the Parties.” THE PARTIES STIPULATE AND AGREE as follows:

DEFINITIONS

1. For purposes of this Settlement, “Complaint” refers to the First Amended Complaint filed in the Action.

2. For purposes of this Settlement, “Action” refers to the above-captioned action entitled *Avalos v. Cargo Solution Express*, Case No. CIVSB2214152.

3. For purposes of this Settlement, the “Class Period” is July 8, 2018 through the date the court preliminary approves the Settlement, or October 21, 2023, whichever is sooner.

4. For purposes of this Settlement, the “Class” or “Class Members” consist of: All non-exempt employees of Defendant who worked for Defendant in California during the Class Period. The “Settlement Class” or “Settlement Class Members” are those Class Members who do not submit timely and compliant exclusion requests to the Settlement Administrator.

5. For purposes of this Settlement, “Class Counsel” means MOON LAW GROUP, PC

6. For purposes of this Settlement, “Covered Workweeks” means the number of weeks a Class Member worked at Defendant’s locations in California during the Class Period.

7. For purposes of this Settlement, “Response Deadline” means the date sixty (60) days after the Settlement Administrator initially mails the Notice to Settlement Class Members (“Notice”) and the last date on which Class Members may submit a request for exclusion or written objection to the Settlement. In the case of a re-mailed Notice, the Response Deadline will be the later of sixty (60) calendar days after the initial mailing or fourteen (14) calendar days from re-mailing. The Response Deadline may be extended only as expressly described herein.

1 8. For purposes of the Settlement, “Defendant’s Counsel” means THE LAW OFFICE OF
2 MANDEEP S. RUPAL

3 9. For purposes of this Settlement, “PAGA” means the Labor Code Private Attorneys General
4 Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*).

5 10. For purposes of this Settlement, “PAGA Allocation” means the portion of the Gross
6 Settlement Amount that the Parties have agreed to allocate to the resolution of the Released PAGA
7 Claims. The Parties have agreed that the PAGA Allocation will be \$50,000 from the Gross Settlement
8 Amount. Pursuant to PAGA, Seventy-Five Percent (75%), or \$37,500, of the PAGA Allocation will be
9 paid to the Labor and Workforce Development Agency (“LWDA”) (“PAGA Penalty Payment”), and
10 Twenty-Five Percent (25%), or \$12,500, of the PAGA Allocation will be paid to the PAGA Employees
11 (“PAGA Settlement Payment”).

12 11. For purposes of this Settlement, “PAGA Period” means the period from July 8, 2021
13 through the date the court preliminary approves the Settlement, or October 21, 2023, whichever is
14 sooner.

15 12. For purposes of this Settlement, “PAGA Employee” means all Class Members that worked
16 during the PAGA Period. It is stipulated by the Parties that, for purposes of this Settlement, all PAGA
17 Employees are “aggrieved employees” as defined pursuant to PAGA.

18 13. For purposes of this Settlement, “PAGA Pay Periods” means the number of pay periods
19 each PAGA Employee worked during the PAGA Period.

20 14. For purposes of this Settlement, “PAGA Representative” means Plaintiff.

21 15. For purposes of this Settlement, “Released PAGA Claims” means all claims for penalties
22 and any other available relief pursuant to PAGA, to the extent asserted in Plaintiff’s administrative
23 exhaustion letter submitted to the LWDA in this Action on July 3, 2022, arising during the PAGA
24 Period.

25 16. For purposes of this Settlement, “Settlement Payments” means all of the payments to
26 Settlement Class Members (“Settlement Class Payments”) and all of the payments to PAGA Employees
27 (“PAGA Settlement Payments”).

STIPULATED BACKGROUND

17. On July 8, 2022, Plaintiff filed a putative Class Action alleging the following labeled causes of action: (1) Failure to Pay Minimum Wage Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, 1197, and the Industrial Welfare Commission Wage Orders]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194, 1198, and the Industrial Welfare Commission Wage Orders]; (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512, and the Industrial Welfare Commission Wage Orders]; (4) Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7, and the Industrial Welfare Commission Wage Orders]; (5) Failure to Indemnify Necessary Business Expenses [Cal. Lab. Code § 2802]; (6) Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203]; (7) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226, and the Industrial Welfare Commission Wage Orders]; and (8) Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, *et seq.*]. (The “Action.”) In the Complaint, Plaintiff sought to represent all persons that worked for Defendant in California as an hourly-paid, non-exempt employee at any time during the period beginning four years before the filing of the initial complaint and ending when Notice to the Class is sent.

18. On September 7, 2022, Plaintiff satisfied the administrative exhaustion requirement that is a prerequisite to filing a claim for Civil Penalties under PAGA. After satisfying the administrative exhaustion requirement, Plaintiff filed an amended complaint to add a single cause of action for Civil Penalties under PAGA on or about September 9, 2022.

19. Solely for purposes of settling the Action, the Parties and their respective counsel stipulate and agree that the requisites for establishing class certification with respect to the Class Members have been met and are met. More specifically for settlement purposes only, the Parties stipulate and agree that:

- (a) The Class is ascertainable and so numerous as to make it impracticable to join all Class Members.
- (b) There are common questions of law and fact including, but not limited to, the following:

- 1) Whether or not Defendant properly paid all wages, including minimum and overtime wages, to the Class;
- 2) Whether or not Defendant provided legally-compliant meal periods to the Class;
- 3) Whether or not Defendant provided legally-compliant rest periods to the Class;
- 4) Whether or not Defendant indemnified necessary business expenses incurred by the Class Members;
- 5) Whether or not Defendant paid proper compensation timely upon separation of employment to Class Members whose employment ended during the Class Period;
- 6) Whether or not Defendant paid proper compensation timely throughout Class Members' employment;
- 7) Whether or not Defendant provided accurate and complete itemized wage statements to the Class;
- 8) Whether or not waiting-time penalties are available to Class Members who are no longer employed by Defendant for violation of California Labor Code § 203;
- 9) Whether or not Defendant maintained adequate and requisite records for Class Members;
- 10) Whether or not Defendant paid proper meal period premiums and/or rest period premiums to the Class; and,
- 11) Whether or not Defendant engaged in unlawful or unfair business practices affecting the Class in violation of California Business and Professions Code §§ 17200-17208.

(c) Plaintiff's claims are typical of the claims of the Class Members.

(d) Plaintiff and Class Counsel will fairly and adequately protect the interests of the

1 Class.

2 (e) The prosecution of separate actions by individual members of the Class would
3 create the risk of inconsistent or varying adjudications, which would establish
4 incompatible standards of conduct.

5 (f) With respect to the Class, questions of law and fact common to the members of
6 the Class predominate over any questions affecting any individual member in
7 such Class, and that a class action is superior to other available means for the fair
8 and efficient adjudication of the controversy.

9 20. Should, for whatever reason, the Settlement not become effective, the fact that the Parties
10 were willing to stipulate to class certification as part of the Settlement shall have no bearing on, and
11 shall not be admissible in connection with, the issue of whether the Class Members and/or the Class
12 Claims should be certified in a non-Settlement context in this Action or in any other lawsuit. Defendant
13 expressly reserves its right to oppose claim or class certification in this or any other action should this
14 Settlement not become effective.

15 21. Defendant denies any liability or wrongdoing of any kind whatsoever associated with the
16 claims alleged or which could have been alleged in the Complaint, and Defendant further denies that, for
17 any purpose other than settling this lawsuit, that the Action is appropriate for class or representative
18 treatment. With respect to Plaintiff's claims, Defendant contends, among other things, that Plaintiff and
19 the Class Members have been paid all wages, including minimum wages and overtime, have been
20 provided meal periods or they have been made available as required, have been provided rest periods or
21 they have been authorized and permitted as required, have been reimbursed for all necessary business
22 expenses, have been paid timely and proper wages upon separation of employment and during
23 employment, and have been provided with accurate and complete itemized wage statements. Defendant
24 contends, among other things, that it has complied at all times with the California Labor Code and the
25 applicable Wage Orders of the Industrial Welfare Commission. Furthermore, with respect to all claims,
26 Defendant contends that it has complied at all times with the California Business and Professions Code.

27 22. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge
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1 all disputes and claims arising from or related to the Complaint.

2 23. Class Counsel has conducted a thorough investigation into the facts of this Action, including
3 an extensive review of relevant documents, and has diligently pursued an investigation of the claims of
4 the Class against Defendant. Based on its own independent investigation and evaluation, Class Counsel
5 is of the opinion that the Settlement with Defendant for the consideration and on the terms set forth in
6 this Joint Stipulation of Settlement is fair, reasonable, and adequate and is in the best interest of the
7 Class in light of all known facts and circumstances, including the risk of significant delay, the risk the
8 Class will not be certified by the Court, defenses asserted by Defendant, and numerous potential
9 appellate issues. Defendant and Defendant's Counsel also agree that the Settlement is fair, adequate and
10 reasonable and in the best interest of the Class.

11 24. The Parties agree to cooperate and take all steps necessary and appropriate to obtain
12 preliminary and final approval of this Settlement.

13 25. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to
14 implement and complete the Settlement, pending the Final Approval hearing to be conducted by the
15 Court.

16 **PRIMARY TERMS OF SETTLEMENT**

17 26. NOW THEREFORE, in consideration of the mutual covenants, promises and agreements
18 set forth herein, the Parties agree, subject to the Court's approval, as follows:

19 (a) It is agreed by and among Plaintiff (on behalf of himself and the Class) and
20 Defendant that this Action and any claims, damages, or causes of action arising
21 out of the disputes which are the subject of this Action, be settled and
22 compromised as between the Class and Defendant, subject to the terms and
23 conditions set forth in this Settlement and the approval of the Court.

24 (b) Effective Date: The terms of settlement embodied in this Settlement shall
25 become effective when all of the following events have occurred: (i) this Joint
26 Stipulation of Settlement has been executed by all Parties and their respective
27 counsel; (ii) the Court has given preliminary approval to the Settlement; (iii) the
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1 Notice has been given to the Class, providing them with an opportunity to
2 dispute information contained in the Notice, to opt out of the Settlement, or to
3 object to the Settlement; (iv) the Court has held a final approval hearing and
4 entered a final order and judgment certifying the Class and approving this
5 Settlement; and (v) the later of the following events: (a) the day the Court grants
6 final approval of the Settlement if there are no objections to the settlement; (b)
7 sixty-five (65) days following notice of entry of the Court's final order
8 approving the Settlement if there are any objections by any Class Member; (c) or
9 if any appeal, writ or other appellate proceeding opposing this Settlement has
10 been filed within sixty-five (65) days following notice of entry of the Court's
11 final order approving the Settlement, then twenty (20) days after when any
12 appeal, writ or other appellate proceeding opposing the Settlement has been
13 resolved finally and conclusively with no right to pursue further remedies or
14 relief. In this regard, it is the intention of the Parties that the Settlement shall not
15 become effective until the Court's order approving the Settlement is completely
16 final, and there is no further recourse by an appellant or objector who seeks to
17 contest the Settlement.

18 (c) Gross Settlement Amount: Defendant's maximum total payment under the
19 Settlement, including all attorney's fees and costs, the Service Payment to the
20 named Plaintiff, the costs of settlement administration, the PAGA Allocation,
21 and any other payments provided by this Settlement, is \$750,000.00 ("Gross
22 Settlement Amount"), subject to the Escalator Clause and except that, to the
23 extent that any portions of the Settlement Class Payments constitute wages,
24 Defendant will be separately responsible for any employer-side payroll taxes
25 required by law, including the employer FICA, FUTA, and SDI contributions.

26 (d) Escalator Clause: Defendant estimates that, as of August 22, 2023, the Class Members
27 worked 19,800 workweeks, and the Parties agree that in the event the 19,800 estimate
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1 turns out to be understated by more than ten (10) percent, Defendant shall increase the
2 Gross Settlement Amount by the percentage that that actual number of workweeks
3 exceeds the original estimated amount (the "Escalator Clause"). Specifically, if the
4 number of workweeks in the Class Period is 21,780 or more, the gross settlement
5 amount shall be increased by the percentage that the actual number of workweeks
6 exceeds 21,780. Should the number of work weeks increase by more than 10%,
7 Defendant will have the option to either a) increase the gross settlement proportionately
8 or b) shorten the release period so that there is no increase in the settlement amount.

9 (e) The Gross Settlement Amount will not be reduced for any reason.

10 (f) Non-reversionary Settlement: No portion of the Gross Settlement Amount will
11 revert to Defendant.

12 (g) No Claims Required: Class Members will not be required to submit a claim to
13 receive their Settlement payment.

14 (h) Net Settlement Amount: The Net Settlement Amount shall be calculated by
15 deducting from the Gross Settlement Amount (\$750,000.00) the following sums,
16 subject to approval by the Court: (1) attorney's fees (not to exceed 33 1/3% of
17 the Gross Settlement Amount, or \$250,000.00); (2) reasonable litigation costs
18 (not to exceed \$20,000.00); (3) the Service Payment (not to exceed \$7,500.00 to
19 the named Plaintiff); (4) the PAGA Allocation to the LWDA (\$37,500.00); and
20 (5) costs of settlement administration (estimated not to exceed \$10,000.00).

21 Settlement Class Payments will be calculated by the Settlement Administrator
22 and paid out of the Net Settlement Amount as set forth below.

23 (i) Payroll Taxes and Required Withholdings: To the extent that any portions of the
24 Settlement Class Payments constitute wages, Defendant will be separately
25 responsible for any **employer-side** payroll taxes required by law, including the
26 employer FICA, FUTA, and SDI contributions. The Settlement Administrator
27 will calculate and submit the Defendant's employer share of payroll taxes after
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1 advising Defendant of the total amount owed, in aggregate, as employer-side
2 payroll taxes and receiving a lump sum payment from Defendant in that amount
3 when the Gross Settlement Amount is delivered to the Settlement Administrator.

4 (j) Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
5 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND
6 EACH PARTY TO THIS AGREEMENT OTHER THAN THE
7 ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES
8 AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND
9 NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
10 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER
11 ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
12 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE
13 CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE
14 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR
15 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING
16 PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN,
17 INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE
18 (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
19 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT
20 BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR
21 ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS
22 NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
23 DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER
24 PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON
25 THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR
26 ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
27 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH
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1 ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
2 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
3 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX
4 TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION,
5 INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
6 AGREEMENT.

7 (k) Settlement Class Payments (Excludes PAGA Payments): Settlement Class
8 Payments will be paid out of the Net Settlement Amount. Each Settlement Class
9 Member will be paid a pro-rata share of the Net Settlement Amount as calculated
10 by the Settlement Administrator. The pro-rata share will be determined by
11 comparing the individual Settlement Class Member's Covered Workweeks
12 employed during the Class Period in California to the total Covered Workweeks
13 of all the Settlement Class Members during the Class Period as follows:
14
$$\text{[Workweeks worked by a Settlement Class Member]} \div \text{[Sum of all Covered}$$

15
$$\text{Workweeks worked by all Settlement Class Members]} \times \text{[Net Settlement}$$

16
$$\text{Amount]} = \text{individual Settlement Payment for a Settlement Class Member.}$$

17 Settlement Class Payments in the appropriate amounts will be distributed by the
18 Settlement Administrator by mail to the Settlement Class Members. Uncashed,
19 unclaimed or abandoned checks, shall be transmitted by the Settlement
20 Administrator to the California Controller's Office, as set forth below.

21 (l) PAGA Payments: PAGA Settlement Payments will be paid out of the PAGA
22 Allocation deducted from the Gross Settlement Amount after the PAGA Penalty
23 Amount (75 percent of the PAGA Allocation) is paid to the LWDA. Each
24 PAGA Employee will be paid a pro-rata share of the PAGA Settlement
25 Payment, as calculated by the Settlement Administrator. Class Members who
26 are PAGA Employees will not be permitted to exclude themselves from this
27 portion of the Settlement. Each PAGA Employee's pro-rata share will be
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determined by comparing the individual PAGA Employees' PAGA Pay Periods during the PAGA Period to the total PAGA Pay Periods of all the PAGA Employees during the PAGA Period as follows: [PAGA Pay Periods worked by a PAGA Employee] ÷ [Sum of all PAGA Pay Periods worked by all PAGA Employees] × [PAGA Settlement Payment] = individual PAGA Employee's portion of the PAGA Settlement Payment. PAGA Settlement Payments to PAGA Employees in the appropriate amounts will be distributed by the Settlement Administrator by mail to the PAGA Employees at the same time Settlement Class Payments issue to the Settlement Class. Uncashed, unclaimed or abandoned checks, shall be transmitted by the Settlement Administrator to the California Controller's Office, as set forth below. The Settlement Administrator will send the PAGA Penalty Payment to the LWDA at the same time the Settlement Administrator send Settlement Payments to the Settlement Class and PAGA Settlement Payments to the PAGA Employees.

(m) Allocation of Settlement Payments: The Parties have agreed that Settlement Class Payments will be allocated as follows: 45% to interest, 45% to penalties, and 10% to wages. The PAGA Settlement Payments will be entirely allocated to penalties. Appropriate federal, state and local withholding taxes will be taken out of the wage allocations, and each Settlement Class Member will receive an IRS Form W-2 with respect to this portion of the Settlement Class Payment. The Settlement Class Member's share of payroll taxes and other required withholdings will be remitted by the Settlement Administrator to the appropriate taxing authorities as set forth above, along with Defendant's employer portion of FICA and FUTA contributions, based on the payment of claims to the Settlement Class Members. IRS Forms 1099 will be issued by the Settlement Administrator to each Settlement Class Member and/or PAGA Employee reflecting the payments for penalties and interest. Settlement Class Members

1 and PAGA Employees are responsible to pay appropriate taxes due on the
2 Settlement Class Payments and PAGA Settlement Payments they receive. To
3 the extent required by law, IRS Forms 1099 and W-2 will be issued to each
4 Settlement Class Member and PAGA Employee with respect to such payments.

5 (n) Settlement Payments Do Not Give Rise to Additional Benefits: All Settlement
6 Payments to individual Settlement Class Members and PAGA Employees shall
7 be deemed to be paid to such Settlement Class Member or PAGA Employee
8 solely in the year in which such payments actually are received by the Settlement
9 Class Member or PAGA Employee. It is expressly understood and agreed that
10 the receipt of such Settlement Payments will not entitle any Settlement Class
11 Member or PAGA Employee to additional wages, compensation or benefits
12 under any company bonus, contest or other compensation or benefit plan or
13 agreement in place during the period covered by the Settlement up to and
14 including the date the Settlement becomes effective, nor will it entitle any
15 Settlement Class Member or PAGA Employee to any increased retirement,
16 401(k) benefits or matching benefits or deferred compensation benefits. It is the
17 intent of all Parties that the Settlement Payments provided for in this Settlement
18 are the sole payments to be made by Defendant to the Settlement Class Members
19 and PAGA Employees, and that the Settlement Class Members and PAGA
20 Employees are not entitled to any new or additional compensation or benefits as
21 a result of having received the Settlement Payments (notwithstanding any
22 contrary language or agreement in any benefit or compensation plan document
23 that might have been in effect during the period covered by this Settlement).

24 (o) Attorneys' Fees and Costs: Subject to approval by the Court, Defendant will not
25 object to Class Counsel's application for attorney's fees not to exceed 33 1/3%
26 of the Gross Settlement Amount (\$250,000.00) and reimbursement of litigation
27 costs and expenses not to exceed \$20,000.00.

- (p) Service Payment: Subject to Court approval, and in exchange for a general release, Defendant will not object to Class Counsel's application for an additional payment of up to \$7,500.00 to Plaintiff for service as a Class Representative ("Service Payment"). It is understood that the Service Payment is in addition to the individual Settlement Payment to which the Plaintiff and Class Representative is entitled along with the other Settlement Class Members.
- (q) The Settlement Administrator will issue an IRS Form 1099 for the Service Payment to the Plaintiff. The Plaintiff will be individually responsible for correctly characterizing this compensation on personal income tax returns for tax purposes and for paying any taxes on the amounts received. Should the Court approve a Service Payment in an amount less than that set forth above, the difference between the lesser amount(s) approved by the Court and the Service Payment amount(s) set forth above shall be added to the Net Settlement Amount. Plaintiff agrees not to opt out or object to the Service Payment as the Class Representative.
- (r) Settlement Administrator: The Settlement Administrator will be Phoenix Settlement Administrators, or such Settlement Administrator as may be mutually agreeable to the Parties and approved by the Court. Settlement Administration Costs are estimated not to exceed \$10,000. The costs of the Settlement Administrator for work done shall be paid regardless of the outcome of this Settlement. If the Settlement does not become final and effective, the cost of the Settlement Administrator will be shared equally by Plaintiff and Defendant.
- (s) Funding of Settlement Account: Defendant will fund the settlement account within fourteen (14) days after the Effective Date.
- (t) Mailing of Settlement Payments: The Settlement Administrator shall cause the Settlement Payments to be mailed to the Class Members within seven (7) calendar days of the receipt of funding.

- 1 (u) Notice of Settlement: Each Class Member will be mailed a notice setting forth
2 the material terms of the proposed Settlement, along with instructions about how
3 to object or request exclusion from the proposed class action Settlement
4 (“Notice”). For each Class Member, there will be pre-printed information on the
5 mailed Notice, based on Defendant’s records, stating the Class Member’s
6 Covered Workweeks during the Class Period, PAGA Workweeks during the
7 PAGA Period, and the estimated total Settlement Payment under the Settlement,
8 including the Settlement Class Payment and the PAGA Settlement Payment. As
9 discussed below, the PAGA Settlement Payment will be distributed irrespective
10 of any exclusion request. The pre-printed information based on Defendant’s
11 records shall be presumed to be correct. A Class Member may dispute the pre-
12 printed information on the Notice as to his or her Covered Workweeks during
13 the Class Period or PAGA Workweeks during the PAGA Period. Class
14 Members must submit any dispute regarding the information on the Notice as to
15 his or her Covered Workweeks or PAGA Workweeks within the Response
16 Deadline. Unless a disputing Class Member submits documentary evidence in
17 support of his or her dispute, the records of the Defendant will be determinative.
- 18 (v) Settlement Notice Language: The Notice will be issued in English and Spanish.
19 If there is any ambiguity between the English and Spanish translation, the
20 English version will be controlling.
- 21 (w) Class Members Cannot Exclude Themselves from the Released PAGA Claims:
22 Class Members submitting a Request for Exclusion will nevertheless receive
23 their pro-rata share of the PAGA Settlement Payment. If the Court approves the
24 compromise of the PAGA Claim, all Class Members are bound by the Court’s
25 resolution of that Claim. Plaintiff shall serve a notice of settlement on the
26 California Labor and Workforce Development Agency at or before the time
27 Plaintiff files the motion for preliminary approval.

(x) Resolution of Workweek Disputes: If a Class Member disputes the accuracy of Defendant's records used to calculate Covered Workweeks or PAGA Workweeks, and the Parties' counsel cannot resolve the dispute informally, the matter will be referred to the Settlement Administrator. The Settlement Administrator will review Defendant's records and any information or documents submitted by the Class Member and issue a non-appealable decision regarding the dispute. The Class Member must submit information or documents supporting his or her position to the Settlement Administrator prior to the expiration of the Response Deadline. Information or documents submitted after the expiration of the Response Deadline will not be considered by the Settlement Administrator, unless otherwise agreed to by the Parties.

(y) Right of Class Member to Request Exclusion from the Settlement: Any Class Member may request to be excluded from the Settlement Class by mailing a "Request for Exclusion" from the Settlement within the Response Deadline, stating, as follows or in substantially similar terms:

"I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE AVALOS V. CARGO SOLUTION EXPRESS, INC. CLASS ACTION LAWSUIT, SAN BERNARDINO COUNTY SUPERIOR COURT CASE NO. CIVSB2214152. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OTHER THAN MY SHARE OF THE PAGA PAYMENT."

Any Request for Exclusion must include the name, address, telephone number, last four digits of the Class Member's Social Security Number, and the signature of the Class Member requesting exclusion. Any such request must be made in accordance with the terms of the Notice, and the Notice will advise Class Members of these requirements. Any Class Member who timely requests exclusion in compliance with these requirements (i) shall not have any rights under this Settlement other than a right to receive a pro-rata share of the PAGA Settlement Payment if the Class Member is also PAGA Employee; (ii) shall not

1 be entitled to receive any Settlement Payments under this Settlement other than
2 as stated herein; and (iii) shall not be bound by this Settlement or the Court's
3 Order and Final Judgment other than as it applies to the PAGA Claim.

4 (z) Right of Settlement Class Member to Object to The Settlement: Any Settlement
5 Class Member may object to the Settlement. To object, the Settlement Class
6 Member may (1) appear at the Final Approval Hearing, remotely or in person, to
7 explain any objection, (2) have an attorney object for the Settlement Class
8 Member, or (3) submit a simple written brief or statement of objection to the
9 Settlement Administrator. If any Settlement Class Member chooses to submit a
10 written objection, the written objection should contain sufficient information to
11 confirm the identity of the objector and the basis of the objection, including (1)
12 the full name of the Settlement Class Member; (2) the signature of the
13 Settlement Class Member; (3) the grounds for the objection; and (4) be
14 postmarked within the Response Deadline to permit adequate time for
15 processing and review by the Parties of the written statement or objection. Class
16 Counsel shall ensure that any written objections are transmitted to the Court for
17 the Court's review (either by Class Counsel or as an attachment to a declaration
18 from the Settlement Administrator). Regardless of the form, an objection alone
19 will not satisfy the requirement that a Settlement Class Member must either
20 make a timely complaint in intervention before final judgment or by filing a
21 motion to set aside and vacate the class judgment under Code of Civil Procedure
22 §663, to have standing to appeal entry of judgment approving this Settlement, as
23 is required under the California Supreme Court decision of *Hernandez v.*
24 *Restoration Hardware*, 4 Cal. 5th 260 (2018). A Settlement Class Member who
25 does not object prior to or at the Final Approval Hearing, will be deemed to have
26 waived any objections and will be foreclosed from making any objections
27 (whether at the Final Approval Hearing, by appeal, or otherwise) to the
28

Settlement. If the objecting Settlement Class Member does not formally intervene in the action or move to set aside any judgment and/or the Court rejects the Settlement Class Member's objection, the Settlement Class Member will still be bound by the terms of this Agreement and the Settlement. Class Counsel and Defendant's Counsel may, at least five (5) calendar days (or some other number of days as the Court shall specify) before the final approval hearing, file responses to any written objections submitted to the Court. Class counsel will not represent any Class Members with respect to any objections to the Settlement.

THE SETTLEMENT ADMINISTRATOR'S PRIMARY DUTIES

27. Subject to the Court's approval, and subject to reconsideration by the Parties after a competitive bidding process, the Parties have agreed to appoint Phoenix Settlement Administrators to perform the customary duties of Settlement Administrator. The Settlement Administrator will mail the Notice, both in English and Spanish, to the Class Members.

28. The Settlement Administrator will independently review the Covered Workweeks and PAGA Workweeks attributed to each Class Member and PAGA Employee and will calculate the estimated amounts due to each Class Member and the actual amounts due to each Settlement Class Member and PAGA Employee in accordance with this Settlement. The Settlement Administrator shall report, in summary or narrative form, the substance of its findings. The Settlement Administrator shall be granted reasonable access to Defendant's records in order to perform its duties. The Settlement Administrator will provide Defendant's counsel and Class Counsel a weekly report which certifies: (i) the number of Class Members who have submitted valid Requests for Exclusion; (ii) the number of any deficient Requests for Exclusion and (iii) whether a Class Member has submitted a challenge to information contained in their Notice Packet. Additionally, the Settlement Administrator will provide to counsel for both Parties any updated reports regarding the administration of the Settlement Agreement as needed or requested.

29. In accordance with the terms of this Settlement, and upon receipt of Gross Settlement

1 Amount from Defendant, the Settlement Administrator will issue and send out the Settlement Payment
2 checks to the Settlement Class Members and the PAGA Settlement Payments to the PAGA Employees.
3 Tax treatment of the Class Settlement Payments and PAGA Settlement Payments will be as set forth
4 herein, and in accordance with state and federal tax laws. The Settlement Administrator will also issue a
5 payment to Class Counsel and itself for Court-approved services performed in connection with the
6 settlement.

7 30. All disputes relating to the Settlement Administrator's performance of its duties shall be
8 referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions
9 of this Settlement until all payments and obligations contemplated by this Settlement have been fully
10 carried out.

11 **ATTORNEY'S FEES AND COSTS**

12 31. In consideration for resolving this matter and in exchange for the release of all claims by the
13 Settlement Class Members, including Plaintiff, and subject to approval by the Court, Defendant will not
14 object to Class Counsel's application for attorney's fees not to exceed 33 1/3% of the Gross Settlement
15 Amount (\$250,000.00 of \$750,000.00) and litigation costs not to exceed \$20,000.00. The amounts set
16 forth above will cover all work performed and all fees and costs incurred to date, and all work to be
17 performed and all fees and costs to be incurred in connection with the approval by the Court of this
18 Settlement and administration of the Settlement. Should Class Counsel request a lesser amount and/or
19 the Court approve a lesser amount(s) of attorney's fees and/or attorneys' costs, the difference between
20 the lesser amount(s) and the maximum amount set forth above shall be added to the Net Settlement
21 Amount. The Parties agree that there is no prevailing party, and the Class and Class Counsel shall not
22 be entitled to any fees or costs other than those awarded out of and deducted from the Gross Settlement
23 Amount. As with the Class Settlement Payments to the Settlement Class, the attorney's fees and costs
24 approved by the Court shall be distributed by the Settlement Administrator to Class Counsel within
25 seven (7) calendar days of the receipt of settlement funds by the Settlement Administrator. In the event
26 that the Court awards less than 25% of the Gross Settlement Amount for attorney's fees, Class Counsel
27 shall retain the right to appeal that portion of any Final Approval Order and Judgment.

THE NOTICE PROCESS

32. A Notice in approximately the form attached hereto as Exhibit “A,” and as approved by the Court, shall be sent by the Settlement Administrator to the Class Members by first class mail. The Notice shall be translated into Spanish so that Spanish and English language versions of the Notice are included in the mailing.

- (a) Within seven (7) calendar days from the date of preliminary approval of this Settlement by the Court, Defendant shall provide to the Settlement Administrator a class database containing the following information for each Class Member: (1) name; (2) last known address; (3) last four digits of his, her, or their social security number; and (4) dates of employment at Defendant’s locations in California. This database shall be based on Defendant’s payroll and other business records and shall be provided in a reasonable format to the Settlement Administrator. Defendant agrees to consult with the Settlement Administrator prior to the production date to ensure that the format will be acceptable to the Settlement Administrator. The Settlement Administrator will run a check of the Class Members’ addresses against those on file with the U.S. Postal Service’s National Change of Address List; this check will be performed only once per Class Member by the Settlement Administrator. Absent mutual written agreement of counsel for the Parties or Court order, the Settlement Administrator will keep this database confidential and secure and use it only for the purposes described herein and will return this database to Defendant upon final approval of the settlement or destroy electronic records containing the database after the Settlement is final and all payments are distributed as required under this Agreement.
- (b) Within fourteen (14) calendar days after the Class database is provided to the Settlement Administrator, the Settlement Administrator will mail the Notices to the Class Members by First Class United States mail.

- (c) Notices returned to the Settlement Administrator as non-deliverable on or before the initial Response Deadline shall be resent to the forwarding address, if any, on the returned envelope. A returned Notice will be forwarded by the Settlement Administrator any time that a forwarding address is provided with the returned mail. If there is no forwarding address, the Settlement Administrator will do a computer search for a new address using the last four digits of the Class Member's social security number or other information. In any instance where a Notice is re-mailed, that Class Member will have until the extended Response Deadline as described above to submit objections or request exclusion. A letter prepared by the Settlement Administrator will be included in the re-mailed Notice in that instance, stating the extended Response Deadline. Upon completion of these steps by the Settlement Administrator, Defendant and the Settlement Administrator shall be deemed to have satisfied their obligations to provide the Notice to the affected Class Member. The affected Class Member shall remain a member of the Settlement Class and shall be bound by all the terms of the Settlement and the Court's Order and Final Judgment.
- (d) Class Counsel shall provide to the Court, at least five (5) calendar days prior to the final approval hearing, or such other date as set by the Court, a declaration by the Settlement Administrator of due diligence and confirming mailing of the Notices.

DISPOSITION OF SETTLEMENT PAYMENTS AND UNCASHED CHECKS

33. As set forth above, each Settlement Class Member will have until the expiration of the applicable Response Deadline to submit to the Settlement Administrator any challenge or dispute to the Settlement Class Member's Covered Workweek information on the Notice. No disputes will be honored if they are submitted after the Response Deadline unless the Parties mutually agree to accept the untimely dispute. Each Settlement Class Member is responsible to maintain a copy of any documents sent to the Settlement Administrator and a record of proof of mailing.

34. The Settlement Administrator shall cause the Settlement Payments to be mailed to the Settlement Class Members and PAGA Employees as provided herein. Settlement Class Payments and PAGA Settlement Payments may be combined into one check. Settlement Payment checks shall remain valid and negotiable for 180 calendar days from the date of their issuance. Settlement Payment checks will automatically be cancelled by the Settlement Administrator if they are not cashed by the Settlement Class Member within that time, and the Settlement Class Member's relevant claims will remain released by the Settlement. Settlement Payment checks which have expired will not be reissued.

35. Funds from uncashed or abandoned Settlement Class Payment checks or PAGA Settlement Checks, based on a 180-day void date, shall be transmitted by the Settlement Administrator to the California State Controller's Office for Unclaimed Property in the name of each Settlement Class Member and/or PAGA Employee who failed to cash their Settlement Payment check prior to the void date.

36. Upon completion of its calculation of Settlement Class Payments and PAGA Settlement Payments, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a report listing the amounts of all payments to be made to Class Members (to be identified anonymously by employee number or other identifier). A Declaration attesting to completion of all payment obligations will be provided to Class Counsel and Defendant's Counsel and filed with the Court by Class Counsel.

RELEASE BY THE PLAINTIFF AND BY THE CLASS AND PAGA EMPLOYEES

37. Release by Class and PAGA Employees. Upon the final approval by the Court of this Settlement and Defendant's payment of all sums due pursuant to this Settlement, and except as to such rights or claims as may be created by this Settlement, the Class Representatives, the Class and each Class Member who has not submitted a valid and timely request for exclusion as to claims other than the PAGA claim, and each PAGA Employee, regardless of whether they have requested exclusion from the Settlement of Class claims, will release claims as follows:

- (a) **Identity of Released Parties.** The released parties are Defendant, and each of its former and present direct and/or indirect owners, dba's, affiliates, parents,

1 subsidiaries, co-employers, brother and sister corporations, divisions, related
2 companies, successors and predecessors, and current and former employees,
3 officers, directors, shareholders, members, owners, trustees, attorneys,
4 accountants, consultants, fiduciaries, beneficiaries, subrogees, executors,
5 partners, privies, agents, employees, servants, stockholders, insurers, co-insurers,
6 representatives, administrators, employee benefit plans, and assigns of said
7 entities (collectively "Releasees").

8 (b) **Date Release Becomes Active.** The Released Claims and Released PAGA
9 Claims will be released upon the later of (1) the Settlement's Effective Date, or
10 (2) the satisfaction of Defendant's obligation to provide to the Settlement
11 Administrator a sum in the amount required to satisfy all required payments and
12 distributions pursuant to this Settlement and the Order and Judgment of final
13 approval. Class Members will not release the Released Claims or Released
14 PAGA Claims until both the Effective Date of the Settlement has occurred, and
15 Defendant has paid all amounts owing under the Settlement.

16 (c) **Claims Released by Settlement Class Members.** Each and every Class
17 Member, on behalf of himself or herself and his or her heirs and assigns, unless
18 he or she has submitted a timely and valid Request for Exclusion (which will not
19 effectuate an opt-out from the release of Released PAGA Claims), hereby
20 releases Releasees from the following claims for the entire Class Period:

- 21 1) any and all claims, demands, rights, liabilities, and/or causes of action of
22 any nature and description whatsoever, known or unknown, in law or
23 equity, stated in the Complaint, or that could have been stated in the
24 Action based on the facts, theories, and/or claims alleged therein,
25 including but not limited to all wage and hour claims (including all
26 claims under the California Labor Code and federal law) for unpaid
27 wages, minimum wage, overtime, off-the-clock work, meal periods, rest

1 periods, unreimbursed business expenses, wage statement violations,
2 interest, civil or statutory penalties, and attorneys' fees and costs, waiting
3 time penalties, expense reimbursements, withholding from wages and
4 the related provisions of the Labor Code including but limited to Labor
5 Code §§ 201-204, 210, 216, 218.6, 2802, 226, 226.2, 226.3, 226.7, 510,
6 512, 512.5, 558, 1174, 1194, 1194.2, 1197, 1198, 2699, derivative claims
7 under California Business & Professions Code §§ 17200 et seq., and all
8 claims under the applicable Industrial Welfare Commission Wage Order
9 ("Released Claims");

- 10 (d) **Claims Released by the Class, Including PAGA Employees.** All Class
11 Members, including all PAGA Employees, release the Released PAGA Claims,
12 regardless of whether they have requested exclusion from the Settlement as to
13 Class claims.
- 14 (e) **PAGA Release.** Upon Court approval of the Settlement, Defendant shall be
15 entitled to a release from the State of California and the Labor and Workforce
16 Development Agency, as well as from the Aggrieved Employees, of all claims
17 for Civil Penalties pursuant to Labor Code section 2698 et seq. (PAGA), that
18 were pled or reasonably could have been pled based on the factual allegations in
19 operative Complaint in the Action and the LWDA letter, including specifically,
20 claims for PAGA penalties arising out of or based on alleged: failure to pay
21 minimum wages, failure to pay overtime wages, failure to pay for off-the-clock
22 work, failure to provide compliant meal periods, failure to provide compliant rest
23 periods, failure to provide timely wages, failure to provide timely wages upon
24 separation, failure to provide accurate itemized wage statements, failure to
25 reimburse for business expenses, and/or failure to maintain accurate payroll
26 records. This release includes all claims for civil penalties arising under the
27 California Labor Code, including but not limited to Labor Code sections 200,

201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 432, 510, 512, 558, 1102.5, 1174, 1174(3), 1174.5, 1194, 1197, 1197.1, 1197.5, 1198, 1198.5, 1199, 2802 and the applicable Wage Orders of the Industrial Welfare Commission. The release shall include the Defendant and all of its parent, subsidiary, affiliated and related companies and entities, as well as its/their officers, directors, investors, owners, shareholders, employees, partners, members, agents, and attorneys, and any entities or partnerships with which they are affiliated, past or present.

1) **Date PAGA Release becomes Active.** The Parties agree that upon the Effective Date, the LWDA, the Aggrieved Employees, and Plaintiff shall be deemed to have, and by operation of the court's Approval Order and Judgment shall have, released the Defendant and any Releasees, as further defined in this long form settlement agreement, from any claim for civil penalties arising out of the Released Claims or specifically enumerated herein.

(f) The Class and PAGA Employees, including Plaintiff and Class Representative, acknowledge and agree that: (1) Class Claims for overtime compensation, minimum wages, wages for all hours worked, statutory and civil penalties, and/or any other payments and/or penalties in the Action are disputed; and (2) the payments set forth herein constitute full payment of any amounts allegedly due. The Class and PAGA Employees, including Plaintiff and Class Representative, thus shall be deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the Parties hereto. That section provides in pertinent part as follows: An employer shall not require the execution of any release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made.

1 38. Release by Plaintiff and Class Representative. Upon the final approval by the Court of this
2 Settlement and Defendant's payment of all sums due pursuant to this Settlement, and except as to such
3 rights or claims as may be created by this Settlement, the Plaintiff and Class Representative, will release
4 claims as follows:

5 (a) The Plaintiff and Class Representative hereby fully and finally releases and
6 discharges the Releasees (defined above) from any and all of the released claims
7 (defined above) and from any and all other claims, charges, complaints, liens,
8 demands, agreements, contracts, covenants, actions, suits, causes of action,
9 penalties, wages, obligations, debts, expenses, damages, attorneys' fees, costs,
10 judgments, orders, and liabilities of whatever kind or nature in law, equity, or
11 otherwise, known or unknown, suspected or unsuspected, that the Plaintiff and
12 Class Representative had, now has, or may hereafter claim to have against the
13 Released Parties arising out of, or relating in any way to, the Plaintiff and Class
14 Representative's hiring by, employment with, separation of employment with, or
15 any other transactions, occurrences, acts or omissions or any loss, damage or
16 injury whatsoever, known or unknown, suspected or unsuspected, resulting from
17 any act or omission by or on the part of any Released Party (the "Class
18 Representative's Released Claims"), arising or accruing from the beginning of
19 time up through the Final Approval Order Date ("Class Representative's
20 Released Period"). The Class Representative's Released Claims include, but are
21 not limited to, claims arising from or dependent on the California Labor Code;
22 the Wage Orders of the California Industrial Welfare Commission; California
23 Business and Professions Code section 17200 et seq.; the California Fair
24 Employment and Housing Act, Cal. Gov't Code § 12900 et seq.; the California
25 Healthy Workplaces, Healthy Families Act, Cal. Labor Code § 245 et seq., the
26 California common law of contract and tort; Title VII of the Civil Rights Act of
27 1964; the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.; the

Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.; the Fair Labor Standards Act, 29 U.S.C. § 201 et seq., the Portal to Portal Act, 29 U.S.C. § 251 et seq., and the Families First Coronavirus Response Act.

(b) The Plaintiff and Class Representative also acknowledges that he has read Section 1542 of the Civil Code of the State of California, which provides as follows:

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.

39. The Plaintiff and Class Representative further warrants that he understands that Section 1542 gives him the right not to release existing claims of which he is not now aware unless he voluntarily chooses to waive this right. Having been so apprised, Plaintiff and Class Representative shall nevertheless voluntarily waive the rights described in Section 1542 and elects to assume all risks and to release the claims set forth herein, that now exist in his favor, whether known or unknown.

EMPLOYMENT BY DEFENDANT

40. Employment of Plaintiff by Defendant is not consideration for, or a condition of, this Settlement.

DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

41. The Parties shall submit this Joint Stipulation of Class Action Settlement to the Court in support of Plaintiff's unopposed motion for preliminary approval for determination by the Court as to its fairness, adequacy, and reasonableness. Upon execution of this Joint Stipulation of Class Action and PAGA Settlement, the Parties shall apply to the Court for the entry of an order:

(a) Scheduling a preliminary approval hearing and later final approval and fairness hearing on the question of whether the proposed Settlement, including payment of attorney's fees and costs, and the Class Representatives' service payment, should be finally approved as fair, reasonable, and adequate as to the members of

the Class;

(b) Conditionally certifying a Class for settlement purposes only;

(c) Approving as to form and content the proposed Notice;

(d) Directing the mailing of the Notice by the Settlement Administrator;

(e) Preliminarily approving the Settlement subject only to the objections of Class Members and final review by the Court;

(f) Conditionally appointing Plaintiff and Class Counsel as representatives of the proposed Class Members; and,

(g) Appointing Phoenix Settlement Administrators. as the Settlement Administrator.

DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

42. In conjunction with the hearing of a motion for final approval by the Court of the Settlement provided for in this Joint Stipulation of Settlement, Class Counsel will submit to the Court a proposed final order and judgment containing provisions sufficient to accomplish the following:

(a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;

(b) Approving Class Counsel's application for an award of attorney's fees and costs;

(c) Approving the Service Payment to the Class Representatives;

(d) Adjudging the Settlement Administrator has fulfilled its initial notice and reporting duties under the Settlement.

(e) Adjudging Plaintiff and Class Counsel may adequately represent the Final Settlement Class for the purpose of entering into and implementing the Agreement;

(f) Entering a final judgment in the action;

(g) Adjudging that notwithstanding the submission of a timely request for exclusion, Class Members are still bound by the settlement and release of the Released PAGA Claims or remedies under the Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), as requests to be excluded from the Settlement do

not apply to the Released PAGA Claims, and further affirming that the State's claims for civil penalties pursuant to PAGA are also extinguished;

NULLIFICATION AND TERMINATION

43. This Settlement will be null and void if any of the following occur: (a) the Court should for any reason fail to certify a Class for settlement purposes; (b) the Court should for any reason fail to preliminarily or finally approve of this Settlement in the form agreed to by the Parties, other than adjustments made to the attorney's fees and costs or granting of Service Payments; (c) the Court should for any reason fail to enter the final judgment; (d) the final judgment is reversed, modified, or declared or rendered void; or (e) the Settlement does not become final for any other reason.

44. If 20% or more of the Class Members opt out of this Settlement, then Defendant in its sole discretion may terminate, nullify and void this Settlement. The Settlement Administrator shall provide Defendant's Counsel with the information necessary to effectuate this provision on a regular basis, but no less frequently than on a weekly basis. To terminate this Settlement under this paragraph, Defendant's Counsel must give Plaintiff's Counsel written notice, by facsimile, e-mail, or mail, no later than 30 calendar days after the Response Deadline. If this option is exercised by Defendant, Defendant shall be solely responsible for the costs incurred by the Settlement Administrator for the settlement administration.

45. In the event this Settlement is nullified or terminated as provided above: (i) this Settlement shall be considered null and void, (ii) neither this Settlement nor any of the related negotiations or proceedings shall have any force or effect and no Party shall be bound by any of its terms, and (iii) all Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court.

PARTIES' AUTHORITY

46. The signatories hereto hereby represent that they are fully authorized to enter into this Settlement and bind the Parties hereto to the terms and conditions thereof.

MUTUAL FULL COOPERATION

47. The Parties agree to fully cooperate with each other to accomplish the terms of this

1 Settlement including, but not limited to, execution of such documents and taking such other action as
2 reasonably may be necessary to implement the terms of this Settlement. The Parties to this Settlement
3 shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts
4 that may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the
5 terms set forth herein. As soon as practicable after execution of this Settlement, Class Counsel shall,
6 with the assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to
7 secure the Court's preliminary and final approval of this Settlement.

8 **NO PRIOR ASSIGNMENTS**

9 48. The Parties and their respective counsel represent, covenant, and warrant that they have not
10 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
11 any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein
12 released and discharged except as set forth herein, and that they are not on notice of any liens as to the
13 Gross Settlement Amount or any right to attorneys' fees or costs.

14 **NO ADMISSION OF LIABILITY**

15 49. Nothing contained herein, nor the consummation of this Settlement, is to be construed or
16 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant.
17 Defendant denies all the claims and contentions alleged by the Plaintiff in this case. Defendant does not
18 admit, and specifically denies, that it has violated any federal, state, or local law; violated any
19 regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations
20 or legal requirements; breached any contract; violated or breached any duty; engaged in any
21 misrepresentation or deception; or engaged in any other unlawful conduct with respect to its current or
22 former employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the
23 negotiations connected with it, will be construed as an admission or concession by Defendant of any
24 such violations or failures to comply with any applicable law. Defendant has entered into this
25 Settlement solely with the intention to avoid further disputes and litigation with the attendant
26 inconvenience and expenses. Except as necessary in a proceeding to enforce the terms of this Settlement
27 Agreement, this Settlement Agreement and its terms and provisions will not be offered or received as

evidence in any action or proceeding to establish any liability or admission on the part of Defendant or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.

ENFORCEMENT ACTIONS

50. In the event that one or more of the Parties to this Settlement institutes any legal action or other proceeding against any other party or parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover from the unsuccessful party or parties reasonable attorney's fees and costs, including expert witness fees incurred in connection with any enforcement actions.

NOTICES

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

Class Counsel:

Kane Moon
Enzo Nabiev
MOON LAW GROUP, PC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
kmoon@moonlawgroup.com
enabiev@moonlawgroup.com

Counsel for Defendant:

Mandeep S. Rupal
Alexander W. Richter
LAW OFFICE OF MANDEEP S. RUPAL
4740 Green River Rd, Ste 207
Corona, CA 92878
alex@rupallaw.com
mrupal@rupallaw.com

CONSTRUCTION

52. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negotiations between the Parties, including, but not limited to, an all-day mediation on August 22, 2023, with experienced employment law mediator Steve Serratore, Esq., and this Settlement shall not be construed in favor of or against any Party by reason of the extent to which

any Party or his, her or its counsel participated in the drafting of this Settlement.

CAPTIONS AND INTERPRETATIONS

53. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision hereof. Each term of this Settlement is contractual and not merely a recital.

MODIFICATION

54. This Settlement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

CONFIDENTIALITY

55. Confidentiality Agreement. The Parties and their counsel agree that none of them will issue any marketing materials, press release, social media post, internet or website announcement, or otherwise initiate any contact with the press, respond to any press inquiry or have any communication with the press regarding the Settlement or the terms of this settlement. Class Counsel will not communicate with other wage-hour plaintiffs' counsel about this settlement, nor utilize it in any way in their marketing or advertising materials or website, prior to Preliminary Approval. Plaintiff will not discuss the Settlement with anyone other than his counsel, tax advisors or spouses, except as required or authorized by law. Additionally, Class Counsel agree that the fact that the Actions were filed and/or settled will not be included in any filing or court submission in any other case or controversy unless required to do so by applicable law or done in submissions to courts or arbitrators in connection with establishing adequacy as class counsel or relevant experience in wage and hour lawsuits.

INTEGRATION CLAUSE

56. This Settlement contains the entire agreement between the Parties relating to the Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing. The Parties expressly recognize California Civil Code Section 1625 and California Code of Civil Procedure Section 1856(a),

1 which provide that a written agreement is to be construed according to its terms and may not be varied
2 or contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written
3 representations or terms will modify, vary or contradict the terms of this Agreement.

4 **AMENDMENT**

5 57. Amendment or Modification. This Settlement Agreement may be amended or modified
6 only by a written instrument mutually signed by counsel for all Parties or their successors-in-interest.

7 **WAIVER OF APPEALS**

8 58. The Parties agree to waive appeals and to stipulate to class certification for purposes of
9 implementing this Settlement only, with the exception that Class Counsel retains the right to appeal the
10 amount awarded as attorney's fees in the event that the Court awards less than twenty-five percent of the
11 Gross Settlement Amount as attorney's fees.

12 **BINDING ON ASSIGNS**

13 59. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their
14 respective heirs, trustees, executors, administrators, successors and assigns.

15 **CLASS COUNSEL SIGNATORIES**

16 60. It is agreed that because the members of the Class are so numerous, it is impossible or
17 impractical to have each member of the Class execute this Settlement. The Notice will advise all Class
18 Members of the binding nature of the Released Claims and Released PAGA Claims, and the release
19 shall have the same force and effect as if this Settlement were executed by each member of the Class.

20 **COUNTERPARTS**

21 61. This Settlement may be executed in counterparts and by electronic or facsimile signatures,
22 and when each Party has signed and delivered at least one such counterpart, each counterpart shall be
23 deemed an original, and, when taken together with other signed counterparts, shall constitute one
24 Settlement, which shall be binding upon and effective as to all Parties.

25 **FINAL JUDGMENT**

26 62. The Parties agree that, upon final approval of the Settlement, final judgment of this Action
27 will be made and entered in its entirety at or following the final approval hearing. The final judgment
28

1 may be included in the Order granting Final Approval of the Settlement.

2 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint
3 Stipulation of Class Action Settlement between Plaintiff and Defendant as set forth below:

4 IT IS SO STIPULATED.

5 **Plaintiff & Class Representative:**

6 Dated: 9/27/2023

By: _____

Leo Avalos

DocuSigned by:

Leo Avalos

25F7EAGBC702482...

8 **Plaintiff's Counsel:**

9 Dated: 9/29/2023

MOON LAW GROUP, PC

11 By: _____

Kane Moon
Enzo Nabiev

13 Attorneys for Plaintiff

16 **Defendant:**

17 Dated:

CARGO SOLUTION EXPRESS, INC.

19 By: _____

Baldev S.Kang,
Chief Financial Officer

22 **Defendant's Counsel:**

LAW OFFICE OF MANDEEP S. RUPAL

23 Dated:

24 By: _____

Mandeep S. Rupal
Attorneys for Defendant

1 may be included in the Order granting Final Approval of the Settlement.

2 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint
3 Stipulation of Class Action Settlement between Plaintiff and Defendant as set forth below:

4 IT IS SO STIPULATED.

5 **Plaintiff & Class Representative:**

6 Dated: By: _____
7 Leo Avalos

8 **Plaintiff's Counsel:**

9 Dated: MOON LAW GROUP, PC
10
11 By: _____
12 Kane Moon
13 Enzo Nabiev
14 Attorneys for Plaintiff
15

16 **Defendant:**

17 Dated: 10/3/2023 CARGO SOLUTION EXPRESS, INC.
18
19 By: _____
20 DocuSigned by:
Baldev S.Kang,
Chief Financial Officer

21 **Defendant's Counsel:**

22 LAW OFFICE OF MANDEEP S. RUPAL
23 Dated: _____
24 10/4/2023 By: _____
25 DocuSigned by:
Mandeep Rupal
Mandeep S. Rupal
26 Attorneys for Defendant
27
28