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Kane Moon (SBN 249834)
Enzo Nabiev (SBN 332118)
Sandy Pham (SBN 352753)
MOON LAW GROUP, PC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
E-mail: kmoon@moonlawgroup.com
E-mail: enabiev@moonlawgroup.com
E-mail: spham@moonlawgroup.com

Attorneys for Plaintiff Leo Avalos

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
CIVIL DIVISION

MAY 23 2024

By: Stephanie Reed
Stephanie Reed, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE 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

*Assigned for All Purposes to the Honorable
Joseph T. Ortiz, Dept S-17*

**[PROPOSED] ORDER AND JUDGMENT
GRANTING PLAINTIFF'S MOTION
FOR FINAL APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT**

*[Filed with the Plaintiff's Notice of Motion,
Motion for Final Approval, Declaration of
Kane Moon, Declaration of Mayra Gonzalez
on behalf of the Settlement Administrator
and Declaration of Plaintiff Leo Avalos]*

FINAL APPROVAL HEARING

Date: May 23, 2024

Time: 1:30 p.m.

Dept: S-17

**[PROPOSED] ORDER AND JUDGMENT GRANTING PLAINTIFF'S MOTION FOR FINAL APPROVAL OF
CLASS AND PAGA ACTION SETTLEMENT**

1 The Court has before it the unopposed Motion for Final Approval of Class and PAGA
2 Action Settlement ("Motion") of Plaintiff Leo Avalos ("Plaintiff"). This Court issued an Order
3 Granting Plaintiff's Motion for Preliminary Approval of Class and PAGA Action Settlement on
4 January 16, 2024. Plaintiff now seeks an Order and Judgment Granting Final Approval of the same
5 Joint Stipulation of Class and PAGA Action Settlement ("Settlement") between Plaintiff and
6 Defendant Cargo Solution Express, Inc. ("Defendant"), attached to the Declaration of Kane Moon in
7 Support of Plaintiff's Motion for Final Approval of Class and PAGA Action Settlement as Exhibit 1.

8 Having reviewed the Motion, the supporting Declaration of Kane Moon and Exhibits
9 therein ("Moon Decl."), the supporting Declaration of Mayra Gonzalez on behalf of the
10 Settlement Administrator ("Gonzalez Decl."), the supporting Declaration of Plaintiff Leo
11 Avalos ("Avalos Decl."), the Joint Stipulation re: Class Action and PAGA Settlement
12 ("Settlement"), the records and files in the action, the absence of any written objections or
13 requests for exclusion from the Settlement, and good cause appearing,

14 **THE COURT HEREBY ORDERS AS FOLLOWS:**

15 The Court, for purposes of this Final Order and Judgment, refers to all defined terms as
16 set forth in the Settlement.

17 1. The Court has jurisdiction over all claims asserted in the action, Plaintiff, all
18 Settlement Class Members, all PAGA Employees, and Defendant.

19 2. The Settlement appears to have been made and entered into in good faith and
20 hereby approves the Settlement, subject to any limitations on the requested fees and
21 enhancements as set forth below.

22 3. For purposes of effectuating the Settlement, the following Class is hereby
23 certified: [a]ll non-exempt employees of Defendant who worked for Defendant in California
24 from July 8, 2018 through October 21, 2023. (Settlement, ¶¶ 3, 4).

25 4. For purposes of effectuating the Settlement, the following PAGA Employee is
26 hereby certified: [a]ll non-exempt employees of Defendant who worked for Defendant in
27 California from July 8, 2021 through October 21, 2023. (Settlement, ¶¶ 11, 12).

28 5. The Parties shall bear their own respective attorney's fees and costs, except as

1 otherwise provided for in the Settlement and approved by the Court.

2 6. No Class Members have objected to the terms of the Settlement. (Gonzalez Decl.,
3 ¶ 9). No Class Members have requested exclusion from the Settlement. (Gonzalez Decl., ¶ 8).
4 No Class Members have disputed the number of Workweeks. (Gonzalez Decl., ¶ 10).

5 7. Plaintiffs, all Settlement Class Members, and all PAGA Employees shall have,
6 by operation of this Final Order and Judgment, fully, finally and forever released, relinquished,
7 and discharged all Released Parties from all Released Class Claims and Released PAGA Claims
8 upon Defendant's payment of all sums due pursuant to the Settlement, and except as to such
9 rights or claims as may be created by the Settlement, as stated in the Settlement and reproduced
10 here:

11 a. **Identity of Released Parties.** The released parties are Defendant, and each of its
12 former and present direct and/or indirect owners, dba's, affiliates, parents,
13 subsidiaries, co-employers, brother and sister corporations, divisions, related
14 companies, successors and predecessors, and current and former employees,
15 officers, directors, shareholders, members, owners, trustees, attorneys, accountants,
16 consultants, fiduciaries, beneficiaries, subrogees, executors, partners, privies,
17 agents, employees, servants, stockholders, insurers, co-insurers, representatives,
18 administrators, employee benefit plans, and assigns of said entities (collectively
19 "**Releasees**") (Settlement, ¶ 37(a)).

20 b. **Date Release Becomes Effective.** The Released Claims and Released PAGA
21 Claims will be released upon the later of (1) the Settlement's Effective Date, or (2)
22 the satisfaction of Defendant's obligation to provide to the Settlement
23 Administrator a sum in the amount required to satisfy all required payments and
24 distributions pursuant to this Settlement and the Order and Judgment of final
25 approval. Class Members will not release the Released Claims or Released PAGA
26 Claims until both the Effective Date of the Settlement has occurred, and Defendant
27 has paid all amounts owing under the Settlement. (Settlement, ¶ 37(b)).

28 c. **Claims Released by Settlement Class Members:** Each and every Class Member,

1 on behalf of himself or herself and his or her heirs and assigns, unless he or she
2 has submitted a timely and valid Request for Exclusion (which will not effectuate
3 an opt-out from the release of Released PAGA Claims), hereby releases
4 Releasees from the following claims for the entire Class Period:

5 i. any and all claims, demands, rights, liabilities, and/or causes of action of any
6 nature and description whatsoever, known or unknown, in law or equity,
7 stated in the operative Complaint in the Action, or that could have been stated
8 in the Action based on the facts, theories, and/or claims alleged therein,
9 including but not limited to all wage and hour claims (including all claims
10 under the California Labor Code and federal law) for unpaid wages, minimum
11 wage, overtime, off-the-clock work, meal periods, rest periods, unreimbursed
12 business expenses, wage statement violations, interest, civil or statutory
13 penalties, and attorneys' fees and costs, waiting time penalties, expense
14 reimbursements, withholding from wages and the related provisions of the
15 Labor Code including but limited to Labor Code §§ 201-204, 210, 216, 218.6,
16 2802, 226, 226.2, 226.3, 226.7, 510, 512, 512.5, 558, 1174, 1194, 1194.2,
17 1197, 1198, 2699, derivative claims under California Business & Professions
18 Code §§ 17200 *et seq.*, and all claims under the applicable Industrial Welfare
19 Commission Wage Order ("Released Claims"). (Settlement, ¶¶ 37(c),
20 37(c)(1)).

21 d. **Claims Released by the Class, Including PAGA Employees:** All Class
22 Members, including all PAGA Employees, release the Released PAGA claims,
23 regardless of whether they have requested exclusion from the Settlement as to
24 Class claims. (Settlement, ¶ 37(d)).

25 e. **PAGA Release:** Defendant shall be entitled to a release from the State of
26 California and the Labor and Workforce Development Agency ("LWDA"), as
27 well as from the Aggrieved Employees, of all claims for Civil Penalties pursuant
28 to Labor Code section 2698 *et seq.* (PAGA), that were pled or reasonably could

1 have been pled based on the factual allegations in operative Complaint in the
2 Action and the LWDA letter, including specifically, claims for PAGA penalties
3 arising out of or based on alleged: failure to pay minimum wages, failure to pay
4 overtime wages, failure to pay for off-the-clock work, failure to provide
5 compliant meal periods, failure to provide compliant rest periods, failure to
6 provide timely wages, failure to provide timely wages upon separation, failure to
7 provide accurate itemized wage statements, failure to reimburse for business
8 expenses, and/or failure to maintain accurate payroll records. This release
9 includes all claims for civil penalties arising under the California Labor Code,
10 including but not limited to Labor Code sections 200, 201, 202, 203, 204, 210,
11 218.5, 218.6, 226, 226.2, 226.3, 226.7, 432, 510, 512, 558, 1102.5, 1174, 1174(3),
12 1174.5, 1194, 1197, 1197.1, 1197.5, 1198, 1198.5, 1199, 2802 and the applicable
13 Wage Orders of the Industrial Welfare Commission, ("Released PAGA
14 Claims"). The release shall include the Defendant and all of its parent,
15 subsidiary, affiliated and related companies and entities, as well as its/their
16 officers, directors, investors, owners, shareholders, employees, partners,
17 members, agents, and attorneys, and any entities or partnerships with which they
18 are affiliated, past or present. (Settlement, ¶ 37(e)).

19 **i. Date PAGA Release Becomes Active:** Upon the Effective Date, the
20 LWDA, the Aggrieved Employees, and Plaintiff shall be deemed to have,
21 and by operation of the Court's Approval Order and Judgment shall have,
22 released the Defendant and any Releases, as further defined in the
23 Settlement, from any claim for civil penalties arising out of the Released
24 Claims or specifically enumerated therein. (Settlement, ¶ 37(e)(1)).

25 **f. Allocation of Settlement Payments:** Settlement Class Payments shall be
26 allocated 10% to wages, 45% to penalties, and 45% to interest; and PAGA
27 Settlement Payments shall be allocated entirely to civil penalties. (Settlement,
28 ¶ 26(m)). The Parties agreed to this allocation based on their review of the data

1 and believed this allocation was appropriate because it would result in a greater
2 recovery for participating Class Members. (Moon Decl., ¶ 19). The Settlement
3 does not require Class Members to submit a claim to receive their Settlement
4 Payment. (Settlement, ¶ 26(g)).

5 8. The Gross Settlement Amount, Net Settlement Amount, and methodology used
6 to calculate and pay the Settlement Class Payments and PAGA Settlement Payments are fair
7 and reasonable. The Settlement Administrator is authorized to pay the Settlement Class
8 Payments and PAGA Settlement Payments to the Settlement Class Members and PAGA
9 Employees in accordance with the terms of the Settlement.

10 9. Defendant shall pay the total of \$750,000.00 to resolve this litigation. (Settlement,
11 ¶ 26(c)). Defendant will fund the settlement account within fourteen (14) days after the Effective
12 Date. (Settlement, ¶ 26(s)). The Settlement Administrator shall cause the Settlement Payments to
13 be mailed to the Class Members within seven (7) calendar days of the receipt of funding.
14 (Settlement, ¶ 26(t)). Thereafter, Settlement Allocation shall be distributed to Settlement Class
15 Members and effectuated pursuant to the terms of the Settlement.

16 10. From the Gross Settlement Amount, Defendant shall pay 75% (or a total of
17 \$37,500.00) of the penalties awarded under the terms of the Settlement pursuant to the Labor
18 Code Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.*, and
19 25% (or a total of \$12,500.00) to individual PAGA Employees. (Settlement, ¶ 10).

20 11. The Court hereby confirms the appointment of Plaintiff Leo Avalos as the Class
21 Representative for this matter. From the Gross Settlement Amount, Plaintiff is awarded \$7,500
22 for his service as a class representative and for his agreement to release claims. (Settlement, ¶
23 26(p)).

24 12. The Court hereby confirms Kane Moon, Enzo Nabiev, and Sandy Pham of Moon
25 Law Group, PC, as Class Counsel. The Court finds that the Class Counsel fees are reasonable
26 in light of the benefit provided to the Class. From the Gross Settlement Amount, Class Counsel
27 is awarded \$250,000.00 for their reasonable attorney's fees. (Settlement, ¶ 26(o)). Class Counsel
28 is further awarded \$18,952.75 for their reasonable litigation costs incurred in the action.

1 (Settlement, ¶ 26(o); Moon Decl., ¶¶ 13, 41, Exhibit 4). As with the Class Settlement Payments to
2 the Settlement Class Members, the attorney's fees and costs approved by the Court shall be
3 distributed by the Settlement Administrator to Class Counsel within fourteen (14) calendar days
4 of the receipt of settlement funds by the Settlement Administrator.

5 13. The Court approves Settlement Administration Costs in the amount of \$9,192,97.
6 (Gonzalez Decl., ¶¶ 12, 16, Exhibit B; Moon Decl., ¶¶ 14, 18, Exhibit 5) From the Gross Settlement
7 Amount, Defendant shall pay such costs to the designated Administrator, Phoenix Settlement
8 Administrators.

9 14. The Notice provided to the Class conforms with the requirements of *California*
10 *Rules of Court* 3.766 and 3.769, and constitutes the best notice practicable under the
11 circumstances, by providing individual notice to all Class Members who could be identified
12 through reasonable effort, as well as due and adequate notice of the proceedings and of the
13 matters set forth therein to the Class Members. The Notice fully satisfies the requirements of
14 Due Process.

15 15. The Parties are ordered to have notice of this Final Order and Judgment sent to
16 all Settlement Class Members and PAGA Employees in accordance with *California Rules of*
17 *Court* 3.771 (b), along with Settlement Class Payments and PAGA Settlement Payments issued
18 via First Class U.S. mail to their last known addresses and to the EWDV, pursuant to Labor
19 Code § 2699(1)(3).

20 16. The Court shall retain jurisdiction with respect to all matters related to the
21 administration and consummation of the Settlement, and any and all claims asserted in, arising
22 out of, or related to the subject matter of the lawsuit, including, but not limited to, all matters
23 related to the Settlement and the determination of all controversies relating thereto.

24 17. This Judgment is intended to be a final disposition of the above-captioned action
25 in its entirety and is immediately appealable.

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1 Plaintiff's Motion is hereby granted, and the Court directs that Judgment shall be entered
2 in accordance with the terms of this Order. The Court sets a Non-Appearence Hearing (Case
3 Review) Re: Distribution on 2/4, 2025 at 0830 in Department S-17. Class Counsel
4 is ordered to file a final report and declaration regarding distribution no later than
5 _____.

6 **IT IS SO ORDERED.**

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8 DATE: May 23, 2024

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Hon. Honorable Joseph T. Ortiz
Judge of the San Bernardino County Superior Court

JOSEPH T. ORTIZ