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Attorneys for Plaintiffs, the Certified Class,
and the Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN

ALFONSO GARIBAY HERNANDEZ, an
individual, and ERIK VALENZUELA, an
individual, for themselves and all members of the
certified class, and on behalf of aggrieved
employees pursuant to the Private Attorneys
General Act ("PAGA"),

Plaintiffs,

v.

UNITED STATES COLD STORAGE OF
CALIFORNIA, a California corporation; and
DOES 1 through 100, inclusive,

Defendants.

Case No. S-1500-CV-282297-SPC

[Assigned for all purposes to the Honorable
Thomas S. Clark, Dept. 17]

CLASS ACTION

[PROPOSED] JUDGMENT

[Filed Concurrently with Notice of Motion;
Memorandum of Points and Authorities;
Declarations of Kitty K. Szeto, Alfonso
Garibay Hernandez, Erik Valenzuela, and
Jennifer M. Keough; and [Proposed] Order]

Date: July 17, 2019
Time: 8:30 a.m.
Dept.: 17

Reservation ID #35183

1 Plaintiff Alfonso Garibay Hernandez and Erik Valenzuela's ("Plaintiffs") Unopposed Motion
2 for Final Approval of Class Action Settlement came on hearing on July 17, 2019 at approximately 8:30
3 a.m. On July 17, 2019, the Court entered an order granting final approval. Therefore, the Court enters
4 judgment as follows:

5
6 **IT IS HEREBY ADJUDGED AND DECREED** that:

7
8 1. This Judgment incorporates by reference the definitions in the Joint Stipulation of
9 Settlement and Release ("the Agreement"), a copy of which is attached hereto as **Exhibit "1."**

10
11 2. Pursuant to California Rules of Court, rule 3.769(h), the Court hereby enters judgment
12 consistent with, and as expressly set forth in the parties' fully executed Agreement for the Participating
13 Settlement Class Members pursuant to California Rules of Court, rule 3.771(a). This Judgment and the
14 Agreement does not bind the following nine (9) individuals who submitted a timely and valid Opt Out
15 Form: Frank Barrientos, Adriana Chavero Chavez, Stanley Moya, Amenda Takemoto, Nadine Luis,
16 Gonzalo Chavez Villanueva, Margaret Burton, Zachary Scott, and Alejandro Ornelas.

17
18 3. Each Participating Settlement Class Member's individual monetary recovery is awarded
19 pursuant to the formula contained in the Agreement.

20
21 4. Each Participating Settlement Class Member has released the Released Claims against
22 the Released Parties pursuant to the Agreement.

23
24 5. \$612,500.00 is awarded to the Parris Law Firm as reasonable attorneys' fees.

25
26 6. \$55,012.87 is awarded to the Parris Law Firm as necessary litigation costs and expenses.

1 7. The Court hereby retains continuing jurisdiction over the enforcement and
2 administration of the Agreement pursuant to Code of Civil Procedure section 664.6 and California
3 Rules of Court, rule 3.769(h).

4
5 **IT IS SO ORDERED.**

6
7 Dated: _____

8 Honorable Thomas S. Clark
9 Kern County Superior Court

EXHIBIT 1

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Attorneys for Plaintiffs and the Settlement Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN

ALFONSO GARIBAY HERNANDEZ, an
individual, and ERIK VALENZUELA, an
individual, for themselves and all members of
the putative class, and on behalf of aggrieved
employees pursuant to the Private Attorneys
General Act ("PAGA"),

Plaintiffs,

v.

UNITED STATES COLD STORAGE OF
CALIFORNIA, a California corporation, and
DOES 1 through 100, inclusive,

Defendants.

Case No. S-1500-CV-282297-SPC

[Assigned for all Purposes to the Honorable
Thomas S. Clark, Dept. 17]

CLASS ACTION

**JOINT STIPULATION OF SETTLEMENT
AND RELEASE**

Date:

Time:

Dept.:

Complaint Filed: June 24, 2014
FAC Filed: August 9, 2016
SAC Filed: April 11, 2017
Trial Date: May 20, 2019

JOINT STIPULATION OF SETTLEMENT AND RELEASE

This Stipulation of Settlement and Release (“Settlement Agreement”) is made by and between Plaintiffs ALFONSO GARIBAY HERNANDEZ and ERIK VALENZUELA (“Plaintiffs”), on behalf of themselves, their agents, representatives, assigns, heirs, executors, beneficiaries, trustees, and the “Settlement Class” defined below; and Defendant UNITED STATES COLD STORAGE OF CALIFORNIA on behalf of itself, its parents, subsidiaries, agents, affiliates, directors, officers, employees, and attorneys (collectively, “Defendant”). Defendant, Plaintiffs, and the Settlement Class are referred to herein as the “Parties.” This Settlement Agreement is intended to fully, finally, and forever compromise, release, resolve, discharge, and settle the released claims subject to the terms and conditions set forth in this Settlement Agreement. This Settlement Agreement provides for the settlement of claims on behalf of the Settlement Class, as described further herein. Upon final approval of this Settlement Agreement by the Court, and any related motions, the instant action shall be closed, with the court retaining jurisdiction over the parties to enforce the terms of the judgment pursuant to California Rules of Court rule 3.769.

I. THE INSTANT ACTION**Section 1.1 Background and Procedural History**

On June 24, 2014, Plaintiff Alfonso Garibay Hernandez filed a wage and hour putative class action and a claim for penalties under the Private Attorneys General Act of 2004 in the Kern County Superior Court, Case No. S-1500-CV-282297-SPC, against Defendant, which subsequently was amended on or about August 9, 2016, removing two causes of action, and amended a second time on April 11, 2017, adding Plaintiff Erik Valenzuela, as a class representative (the “Lawsuit”). The operative complaint at issue sets forth the following claims: (1) violation of California Labor Code section 226.7 (unpaid meal period premiums, failure to provide meal periods); (2) violation of California Labor Code section 226.7 (unpaid rest period premiums, failure to provide rest periods); (3) violation of California Labor Code sections 201, 202, and 203 (final wages not timely paid during employment and upon termination, and waiting time penalties); (4) violation of California Labor Code section 204 (wages not timely paid during

1 employment); (5) violation of California Labor Code section 226(a) (non-compliant wage
2 statements, failure to maintain or provide accurate itemized wage statements); (6) violation of
3 California Labor Code section 1174(d) (failure to keep requisite payroll records); (7) violation of
4 California Labor Code section 2698 *et seq.* (California Labor Code Private Attorneys General Act
5 of 2004); and (8) violation of California Business and Professions Code sections 17200, *et seq.*

6 Defendant denies all of Plaintiff's' claims and allegations alleged in this Lawsuit.
7 Defendant expressly denies any and all charges of wrongdoing or liability arising out of the acts,
8 omissions, facts, matters, transactions, or occurrences alleged, or that could have been alleged, in
9 the Lawsuit. Defendant contends that it has complied with applicable state and federal laws,
10 including but not limited to providing adequate meal and rest periods to its non-exempt hourly
11 employees, issuing accurate, itemized wage statements, keeping accurate and required time and
12 pay records, and timely paying its non-exempt employees all wages owed during employment and
13 upon termination. Defendant also denies that it owes Plaintiffs and/or the Settlement Class any
14 additional wages, damages, penalties, interest, or any other remedies. Defendant further denies
15 that the asserted claims are appropriate for class action treatment under California Code of Civil
16 Procedure section 382, except pursuant to a settlement, due to the intractable management
17 problems and issues of individualized proof that would have been associated with a class action
18 and a class-wide trial.

19 **Section 1.2 Parties' Statements and Recognition of the Benefits of the Settlement**

20 Class Counsel has investigated the facts of the Lawsuit and Plaintiffs' and Settlement Class
21 Members' claims, through formal discovery, informal disclosures between the Parties, and other
22 investigations undertaken by Plaintiffs' Counsel. Furthermore, on September 7, 2018, the Parties
23 engaged in extensive arms-length negotiations and exchanges of data, documents, and information
24 in mediation with mediator Paul Grossman. At mediation and a subsequent meeting on January
25 10, 2019, the Parties reached a settlement agreement with the assistance of Paul Grossman, the
26 terms of which are set forth herein. As a result, Class Counsel concluded that the Settlement
27 Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in
28 light of all known facts and circumstances, including the likely damages, risk of significant delay,

1 risk that the Lawsuit would not proceed on a class action basis, defenses asserted by Defendant,
2 and numerous potential appellate issues.

3 Defendant denies each and all of the claims in this Lawsuit. Nevertheless, Defendant has
4 concluded that further conduct of the Lawsuit would be protracted and expensive. Defendant,
5 therefore, has determined that it is desirable and beneficial that the Lawsuit be settled in a manner
6 and upon the terms and conditions set forth in the Settlement Agreement. Neither this Settlement
7 Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out
8 this Settlement Agreement is, may be construed as, or may be used as, an admission, concession,
9 or indication by or against Defendant of any fault, wrongdoing or liability whatsoever.

10 **II. TERMS OF THE SETTLEMENT AGREEMENT**

11 IT IS HEREBY STIPULATED AND AGREED by and among Plaintiffs (for themselves
12 and the Settlement Class) and Defendant, by and through their respective undersigned attorneys,
13 that: subject to final approval by the Court, the Lawsuit will be finally and fully compromised,
14 released, resolved, discharged, and settled, and will be dismissed in its entirety with prejudice,
15 subject to the terms and conditions of this Settlement Agreement, as follows:

16 **Section 2.1 Definitions**

17 As used in this Settlement Agreement, the following terms have the meanings specified
18 below:

19 “Administrative Costs” means the estimated reasonable cost by the Claims Administrator,
20 including for providing Notice, various efforts to locate class members, administering payment of
21 claims on behalf of the Settlement Class, and administering payments to Plaintiffs and Class
22 Counsel by the Claims Administrator.

23 “Applicable Period” shall mean the period from June 24, 2010, through the date of
24 preliminary approval of the settlement.

25 “Attorneys’ Fees and Costs” refers to the fees and costs amount to be paid to Class
26 Counsel under Section 2.4(a) of this Settlement Agreement.

27 “Claims Administrator” means a qualified class action administrator mutually agreed to by
28 the Parties, which is the entity that will be selected by Defendant and Plaintiffs to provide notice

of this proposed class action settlement to the Settlement Class and to perform other related functions to administer the settlement contemplated by this Settlement Agreement as described herein.

“Class Counsel” means the attorneys representing Plaintiffs in this Lawsuit: R. Rex Parris, Esq., Kitty K. Szeto, Esq., and John M. Bickford, Esq. of Parris Law Firm, 43364 10th Street West, Lancaster, California 93534.

“Court” shall mean the California Superior Court for the County of Kern, where the Action is pending, and any Court-appointed referee or agent of the Court or other judicial entity with jurisdiction over this matter.

“Defendant” means United States Cold Storage of California, Inc.

“Effective Settlement Date”

(a) “Effective Settlement Date” means the later of the time when either:

(i) Entry of a final order by the Court approving this Settlement Agreement and entering final disposition with respect to the Action. Except that, in the event there are written objections made prior to the formal fairness hearing, or an appeal of the Court’s approval of the settlement taken, then the Effective Date shall be the later of the following events: when the period for filing any appeal, writ, or other appellate proceeding opposing the settlement has elapsed and the issues are fully and finally resolved without remand, and without any further appeal, writ, or other appellate proceeding having been filed; or any appeal, writ, or other appellate proceeding opposing the settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or any appeal, writ, or other appellate proceeding has upheld the Court’s final order with no right to pursue further remedies or relief. The occurrence of the Effective Date is a prerequisite to any distributions from the Settlement Fund;

(ii) 30 days after Notice is provided by Plaintiffs to Defendant that the Court entered the order on the final approval of the settlement if there are no objections.

(b) In the event that the Court does not execute and file an Order of Final Approval; that any such Order of Final Approval does not become final for any reason, or

1 is modified in any material respect (other than a modification, reduction, or denial of Class
2 Counsel's application for Attorneys' Fees and Costs or a modification, reduction, or denial
3 of the application for Plaintiffs' Service Award); that the Effective Date does not occur; or
4 that any of the conditions set forth above do not occur, this Settlement Agreement shall be
5 deemed null and void and shall be of no force or effect whatsoever, and shall not be
6 referred to or utilized for any purpose whatsoever.

7 "Employee Payroll Taxes" means the employee portion of all applicable tax withholdings
8 including, but not limited to, FICA, FUTA, and other employment related taxes and withholding
9 of federal, state, and local income taxes.

10 "Final Fairness Hearing" means the hearing to be conducted by the Court, or any other
11 court taking jurisdiction of this matter, to determine whether to finally approve the settlement of
12 the Action.

13 "General Release" means a release of all known and unknown claims against Defendant
14 and Released Parties, with the exception of worker's compensation claim(s), which shall be
15 effective when the Court enters an order granting final approval of this Settlement Agreement.
16 Plaintiffs will warrant that, at this time, they are unaware of any worker's compensation claims
17 other than those that may currently be pending.

18 "Gross Settlement Fund" or "Gross Settlement Amount" refers to One Million Seven
19 Hundred and Fifty Thousand Dollars (\$1,750,000.00), which is the total and maximum amount
20 Defendant will be required to pay under this Settlement with the sole exception that Defendant
21 shall separately remit its share of the employer's payroll taxes. The Gross Settlement Fund will be
22 distributed in accordance with Section 2.4 of this Agreement.

23 "Lawsuit" or "Action" means *Hernandez v. United States Cold Storage of California*, Case
24 No. S-1500-CV-282297-SPC, pending in the California Superior Court for the County of Kern.

25 "Motion for Preliminary Approval" refers to the motion for preliminary approval of the
26 settlement described herein, including any and all supporting papers.

27 "Net Settlement Fund", "Net Settlement Amount", and "NSA" shall be the Gross
28 Settlement Amount less all Administrative Costs performed by a settlement administrator to be

1 agreed upon by the Parties, Attorneys' Fees and Costs for counsel for Plaintiffs, PAGA Payment
2 to the California Labor & Workforce Development Agency ("LWDA"), and the Service Award, as
3 approved by the Court. The Net Settlement Amount shall be available for Settlement Payments to
4 the Participating Settlement Class Members.

5 "Notice of Settlement" refers to the official notice of settlement of class action, materially
6 in the form attached hereto and incorporated by reference as Exhibit "A".

7 "Notice Period" refers to the time period of sixty (60) days from the first mailing date
8 postmarked on the first Notice of Settlement mailed by the Claims Administrator.

9 "Opt-Out Date" refers to the expiration of the Notice Period, by which time Settlement
10 Class Members who do not wish to be part of the settlement and who are permitted to opt out of
11 this Settlement must have timely and properly opted-out of the Settlement Class as described
12 herein.

13 "Opt-Out Form" refers to the official form to be mailed to the class, providing them with
14 the ability to Opt-Out of the settlement and attached hereto and incorporated by reference as
15 Exhibit "B".

16 "Order Granting Preliminary Approval" refers to the Court order or statement of decision
17 granting preliminary approval to this Settlement Agreement.

18 "Order of Final Approval" and "Final Approval" mean an order that finally and
19 unconditionally authorizes payments to the Claims Administrator, Participating Settlement Class
20 Members, Plaintiffs, California's Labor and Workforce Development Agency, and Class Counsel
21 as provided in this Agreement, and fully and finally extinguishes the Released Claims of the
22 Participating Settlement Class Members and Plaintiffs as set forth herein, which the Parties shall
23 submit in a mutually agreed upon form.

24 "PAGA Amount" means the portion of the Net Settlement Amount to be paid to
25 California's Labor and Workforce Development Agency and the members of the PAGA
26 Settlement Class on a 75%/25% respective ratio, divided by the total number of employees in the
27 PAGA Settlement Class.

28 "PAGA Payment" means the funds allocated for the settlement and full release of any and

all claims for civil penalties that could have been made in this Action by Plaintiffs and/or any of the Settlement Class Members under the California Private Attorneys General Act of 2004 (“PAGA”), Cal. Labor Code §§ 2698, et seq.

“PAGA Settlement Amount” means the 25% portion of the PAGA Amount to be paid to the members of the PAGA Settlement Class (\$2,500.00) whose payments will be determined on a pro rata basis based on the number of workweeks worked by the employees participating in the PAGA Settlement Class.

“PAGA Settlement Class” means all current or former employees of Defendant who were employed between June 24, 2013, through the date of preliminary approval of this Settlement. The “PAGA Settlement Class” shall not include any person who submits a timely and valid opt-out / request for exclusion form as provided in this Agreement.

“PAGA Settlement Fund” means Ten Thousand Dollars (\$10,000.00) from the Net Settlement Amount to be designated for PAGA penalties of which Seven Thousand Five Hundred Dollars (\$7,500.00) will be paid to the LWDA.

“Participating Settlement Class Member(s)” or “Verified Settlement Class Member(s)” means Plaintiffs and all Settlement Class Members who do not submit a timely and valid opt-out / request for exclusion form, pursuant to Section 2.6 of this Settlement Agreement.

“Plaintiff” or “Plaintiffs” mean Plaintiffs Alfonso Garibay Hernandez, and Erik Valenzuela.

“Released Claims” means the claims released pursuant to Section 2.5 of this Settlement Agreement.

“Released Parties” means Defendant, including all of Defendant’s past, present, and future direct or indirect predecessors, successors, subsidiaries, investors, parent companies, holding companies, affiliates, sister and affiliated companies, divisions, assigns, and other related entities, as well as their successors, predecessors, shareholders, subsidiaries, investors, parent, sister and affiliated companies, owners, officers, directors, partners, members, managers, assigns, agents, employees, principals, heirs, administrators, attorneys, vendors, accountants, auditors, consultants, fiduciaries, beneficiaries, subrogees, executors, privies, trustees, insurers, reinsurers, employee

benefit plans, and representatives of each of them, both individually and in their official or corporate capacities, past or present, as well as all persons acting by, through, under, or in concert with any of these persons or entities.

“Service Award” means a Court-approved sum to be paid to the Plaintiffs in accordance with Section 2.4(f).

“Settlement” means the disposition of the Action pursuant to this Agreement.

“Settlement Class” means all of United States Cold Storage of California’s employees in one or more of the PAGA Settlement Class, Wage Statement Class, Warehousemen Class 1, and/or Warehousemen Class 2.

“Settlement Class Member” means the individuals in the Settlement Class.

“Settlement Payment(s)” means the amounts to be paid to individual Verified Settlement Class Members pursuant to the terms and conditions of this Settlement Agreement.

“Wage Statement Class” means all current and former employees employed by United States Cold Storage of California, Inc., within the State of California at any time from June 24, 2013 to the date of preliminary approval of this settlement.

“Warehousemen Class 1” means all current and former warehousemen who worked for United States Cold Storage of California, Inc., within the State of California at any time between June 24, 2010, and December 31, 2013, and were subject to United States Cold Storage of California, Inc.’s 2005, 2010, and/or 2013 meal period and rest break policies.

“Warehousemen Class 2” means all current and former warehousemen who worked for United States Cold Storage of California, Inc., within the State of California at any time between January 1, 2014, and the date of preliminary approval of this Settlement and were subject to United States Cold Storage of California, Inc.’s 2014 meal period and rest break policies.

Section 2.2 Settlement of the Lawsuit

It is agreed by and among the Plaintiffs, the Participating Settlement Class Members, and Defendant that the Lawsuit, including any and all allegations in the Complaint and any and all claims, allegations, requests for damages, remedies sought, or causes of action alleged in the Complaint, or that could have been alleged based on the pleadings, shall be settled, compromised,

and released as between the Plaintiffs, the Participating Settlement Class Members, and Defendant, subject to the terms and conditions set forth in this Settlement Agreement and the approval of the Court, including through any Court-appointed referee or agent of the Court or other judicial entity with jurisdiction over this matter. Plaintiffs will provide Defendant with drafts of the motion for preliminary approval and supporting papers before filing mutually-agreeable documents with the Court.

Section 2.3 Cancellation of Settlement Agreement

(a) Should the settlement, or any terms therein, be modified, vacated, altered, or become otherwise subject to challenge by law, including, but not limited to, any law that became effective after the execution of this Memorandum of Settlement, so that this agreement is not approved by the Court in its entirety and therefore the intent of the parties cannot be accomplished after jointly taken efforts to enforce it have been exhausted, Defendant shall have the option to revoke the settlement agreement at their sole discretion.

(b) In the event that the members of the Settlement Class holding ten percent (10%) or more of the amount to actually be distributed to the Settlement Class submit timely and valid requests to opt-out of this Settlement or are otherwise deemed by the Court not to be bound by this Settlement, Defendant may, at its election, rescind the Settlement Agreement and all actions taken in its furtherance will be thereby null and void. Defendant must exercise this right of rescission in writing within fourteen (14) calendar days after the later of the end of the Response Period or the date that the Claims Administrator notifies the Parties in writing that the members of the Settlement Class holding ten percent (10%) or more of the amount to actually be distributed to the Settlement Class have opted out.

Section 2.4 Gross Settlement Fund Distribution

Gross Settlement Fund

In consideration for settlement of the Action and the release of all Released Claims of the Participating Settlement Class Members, Defendant agrees to pay the sum of One Million Seven Hundred and Fifty Thousand Dollars (\$1,750,000.00) (“Gross Settlement Fund” or “Gross Settlement Amount”) for Administrative Costs, Service Award, Settlement Payments, Attorneys’

1 Fees and Costs, and the PAGA Payment in connection with the Settlement Class Members' claims
2 under PAGA. The Settlement Fund is to be allocated to the Claims Administrator, Class Counsel,
3 Plaintiffs, Participating Settlement Class Members, and the LWDA as described herein. The
4 Settlement Fund is the maximum total amount Defendant is required to pay for any and all
5 purposes under this Settlement Agreement, and in connection with the termination of this Lawsuit
6 with the sole exception that Defendant shall remit its share of the employer's payroll taxes, as
7 provided herein, in addition to the Gross Settlement Fund.

8 **Attorneys' Fees and Costs**

9 (a) The Settlement Amount is in consideration for settling this Action and in exchange
10 for the release of all Released Claims by the Participating Settlement Class Members and
11 Plaintiffs and the General Release of all claims by Plaintiffs, as set forth in Sections 2.4 and 2.5 of
12 this Settlement Agreement. Class Counsel will apply for an award of attorneys' fees in an amount
13 up to, but not to exceed, Six Hundred Twelve Thousand and Five Hundred Dollars (\$612,500.00),
14 which is thirty-five percent (35%) of the Gross Settlement Fund, and up to Sixty Thousand Dollars
15 (\$60,000.00) in actual and documented costs, all of which shall be paid exclusively from the Gross
16 Settlement Fund, and will compensate Class Counsel for the work already performed in the Action
17 and the work remaining to be performed in documenting the Settlement, securing Court approval
18 of the Settlement, working with the Claims Administrator to administer the Settlement, obtaining
19 dismissal of the Action with prejudice, and defending against any appeals, as well as all associated
20 expenses. Any reduction in the fees or costs shall be distributed to the Verified Settlement Class
21 Members.

22 (b) Class Counsel, Plaintiffs, and Participating Settlement Class Members, will not
23 apply to the Court for any payment of attorneys' fees and costs that are in addition to or in excess
24 of the foregoing. The Parties agree that, over and above the Court-approved Attorneys' Fees and
25 Costs awarded in this Lawsuit under this Settlement Agreement, each of the Parties, including all
26 Participating Settlement Class Members, shall bear their own fees and costs, including, but not
27 limited to, those related to the investigation, filing, prosecution, or settlement of the Lawsuit; the
28

negotiation, execution, or implementation of this Settlement Agreement; and/or the process of obtaining, administering, or challenging a Certification Order and/or Final Approval.

(c) In the event that the Court denies, modifies, or reduces Class Counsel's request for Attorneys' Fees and Costs, then Plaintiffs, Class Counsel, and the Participating Settlement Class Members may not seek modification or cancellation of this Agreement and will not seek, request, or demand an increase in the Settlement Amount.

(d) If Class Counsel appeals the Court's ruling on their application for Attorneys' Fees and Costs, the ruling of the appellate court (regardless of its substance) shall not constitute a material alteration of a term of this Settlement Agreement.

(e) All claims for attorneys' fees or costs or expenses that Class Counsel, Plaintiffs, and the Settlement Class Members may possess against Defendant have been compromised, released, and resolved in this Settlement Agreement and shall not be affected by any appeal that Class Counsel may file.

Plaintiffs' Service Award

(a) In addition to the Settlement Payment determined to be due to the Plaintiffs as Participating Settlement Class Member under this Settlement Agreement, Class Counsel and Plaintiff Alfonso Garibay Hernandez may petition the Court for a Service Award for Plaintiff Alfonso Garibay Hernandez, in the total amount of no more than Fifteen Thousand Dollars (\$15,000.00), and Class Counsel and Plaintiff Erik Valenzuela may petition the Court for a Service Award for Plaintiff Erik Valenzuela, in the total amount of no more than Ten Thousand Dollars (\$10,000.00). Any such petition shall be filed concurrently with Class Counsel's application for Attorneys' Fees and Costs. Any Service Award approved by the Court in conjunction with the Settlement shall be paid solely from the Gross Settlement Fund and shall reduce the amount of the Net Settlement Fund payable to the Participating Settlement Class Members.

(b) The Service Award shall be distributed by the Claims Administrator in accordance with Section 2.10 of this Settlement Agreement and shall be reported by the Claims Administrator to state and federal taxing authorities as non-wage income on IRS Form 1099.

1 Plaintiffs will be solely responsible for correctly characterizing his Service Award for tax purposes
2 and are solely responsible for paying any taxes owing on the Service Award. Plaintiffs agree to
3 assume responsibility of remitting to the Internal Revenue Service and any other relevant taxing
4 authority the amounts required by law, if any, to be withheld by Defendant or the Claims
5 Administrator from their respective Service Award. In addition, Plaintiffs shall hold Defendant
6 harmless and indemnify and defend Defendant and Released Parties for all taxes, interest,
7 penalties, and costs incurred by Defendant or the Released Parties by any reason of any claims
8 relating to their non-withholding of taxes from the Service Award.

9 (c) In the event that the Court denies, modifies, or reduces Plaintiffs' request
10 for a Service Award, Plaintiffs may not seek modification or cancellation of this Settlement
11 Agreement and will not seek, request, or demand an increase in the Settlement Amount.

12 (d) Plaintiffs shall receive the Service Award payment and any other payments
13 under this Settlement Agreement at the earliest possible moment after the Effective Date. Such
14 Service Award is also contingent upon Plaintiffs agreeing to the terms herein which include a
15 General Release as to any and all claims, demands, rights, liabilities, and causes of action of every
16 nature and description whatsoever, known or unknown, asserted or that might have been asserted,
17 whether in tort, contract, or for violation of any state or federal statute, rule, or regulation, or
18 common law arising out of, relating to, or in connection with any act or omission by or on the part
19 of Defendant or any of the Released Parties committed or omitted prior to the execution of this
20 Agreement, with the exception of worker's compensation claim(s). Plaintiffs will warrant that, at
21 this time, they are unaware of any worker's compensation claims other than those that may be
22 currently pending. This General Release includes any unknown claims Plaintiffs do not know or
23 suspect to exist in his favor at the time of this General Release, which, if known by them, might
24 have affected this settlement with, and release of, the Released Parties or might have affected their
25 decision not to object to this Settlement or this Release. To the extent the foregoing releases are
26 releases to which Section 1542 of the California Civil Code or similar provisions of other
27 applicable law may apply, Plaintiffs expressly waive any and all rights and benefits conferred
28

upon them by the provisions of Section 1542 of the California Civil Code or similar provisions of applicable law which are as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The significance of this release and waiver of Civil Code Section 1542 has been explained to Plaintiffs by their counsel.

Claims Administration Expenses

The Administrator's fees shall be paid out of the Gross Settlement Amount. Any savings shall be distributed to the Verified Settlement Class Members from the Net Settlement Fund. These costs include without limitation the mailing of notice, establishing a toll-free telephone number, tracking requests for exclusion, disbursement of the Gross Settlement Fund, and other duties set forth below in Section 2.4. No fewer than ten (10) court days prior to the Final Approval Hearing, the Claims Administrator shall provide the Court and all counsel for the Parties with a statement detailing these Administrative Costs. The Parties agree to cooperate in the settlement administration process and to make all efforts to control and to minimize the costs and expenses incurred in the administration of this Settlement.

PAGA Payment

Ten Thousand Dollars (\$10,000.00) of the Settlement Fund shall be allocated for the settlement and full release of any and all claims for civil penalties that could have been made in this Action by the Participating Settlement Class Members under PAGA, Cal. Labor Code §§ 2698, et seq. ("PAGA Payment"). Pursuant to California Labor Code § 2699, subd. (i), 75% of the PAGA Payment, totaling to Seven Thousand Five Hundred Dollars (\$7,500.00), shall be paid to the LWDA, and 25% of the PAGA Payment, totaling Two Thousand Five Hundred Dollars (\$2,500.00) shall be distributed to Verified Settlement Class Members as part of the Net

1 Settlement Amount. The Administrator, within twenty-five (25) calendar days of the Effective
2 Settlement Date, shall deliver to the LWDA a payment in the amount of Seven Thousand Five
3 Hundred Dollars (\$7,500.00).

4 If Plaintiffs' Counsel's attorney's fees, reimbursement costs, the Enhancement payment to
5 Plaintiffs, and/or the PAGA penalty payment to the LWDA are reduced, the difference between
6 the amounts set forth in this Agreement and the reduced amounts awarded will be re-allocated to
7 the Net Settlement Amount.

8 **Distributions to Participating Settlement Class Members**

9 (e) Individual Settlement Payments. Individual Settlement Payments will be
10 paid from the Net Settlement Fund and shall be paid pursuant to the settlement formula set forth
11 herein. Individual Settlement Payments shall be mailed by regular First-Class U.S. Mail to
12 Participating Settlement Class Members' last known mailing address within fifteen (15) calendar
13 days after Defendant provides funds to the Claims Administrator for disbursement under this
14 Agreement. Verified Settlement Class Members will receive a share of the Net Settlement Amount
15 ("NSA"), less applicable withholdings, based on the settlement formula set forth herein which
16 takes into account the total workweeks each Participating Settlement Class Member worked
17 within the PAGA Settlement Class, Wage Statement Class, Warehousemen Class 1, and/or
18 Warehousemen Class 2. Settlement Class Members are not required to submit claim forms for
19 their share of the Net Settlement Amount. To the extent that the Notice Packet and/or the
20 individual Settlement Payment checks are undeliverable, or to the extent that the individual
21 Settlement Payment checks are uncashed 180 days after the date listed on the check ("180-day
22 period"), the amount of those checks, plus any interest that has accrued on the sum, will be paid to
23 the State of California Unclaimed Property Fund to be held in the name of and for the benefit of
24 such class members under California's escheatment laws at the applicable time, and all tax
25 documents issued to Participating Settlement Class Members who did not cash their check as
26 referenced herein will be reversed by the Settlement Administrator. Individuals will be entitled to
27 payment from the Net Settlement Fund, as described below.

(f) Calculation of Individual Settlement Payments. The calculation of individual Settlement Payments to individual Participating Settlement Class Members will first require the Claims Administrator to calculate the amount of the Net Settlement Fund allocable to each settlement class fund, which shall be calculated and defined as follows:

(i) “PAGA Settlement Class Fund”: \$2,500.00 of the Net Settlement Fund will first be allocated to the PAGA Settlement Fund;

(ii) “Wage Statement Class Fund”: Five percent (5%) of the remaining balance of the Net Settlement Fund after reduction of \$2,500.00 for the PAGA Settlement Class Fund;

(iii) “Warehousemen Class 1 Fund”: Fifty-five percent (55%) of the remaining balance of the Net Settlement Fund after reduction of \$2,500.00 for the PAGA Settlement Class Fund; and

(iv) “Warehousemen Class 2 Fund”: Forty percent (40%) of the remaining balance of the Net Settlement Fund after reduction of \$2,500.00 for the PAGA Settlement Class Fund.

(g) Once the amount of the Net Settlement Fund allocable to each settlement class fund is determined, the Claims Administrator will calculate the number of workweeks for each individual Participating Settlement Class Member in the PAGA Settlement Class, Wage Statement Class, Warehousemen Class 1, and Warehousemen Class 2, based on information to be provided by Defendant. The number of workweeks for each individual in the PAGA Settlement Class, Wage Statement Class, Warehousemen Class 1, and Warehousemen Class 2, will be calculated by the Claims Administrator and defined as follows:

i) “PAGA Settlement Class Workweeks”: The calculation of the number of workweeks worked for the PAGA Settlement Class Members shall be the difference between the later of the PAGA Settlement Class Member’s first date of employment or June 24, 2013, and the earlier of the last day of work or the Date of Preliminary Approval, divided by seven (7) and rounded up to the nearest integer.

ii) “Wage Statement Class Workweeks”: The calculation of the

number of workweeks worked for the Wage Statement Settlement Class Members shall be the summation of 1) the difference between the later of the Wage Statement Class Member's first date of employment or June 24, 2013, and the earlier of the last day of work or the Date of Preliminary Approval, divided by seven (7) and rounded up to the nearest integer, and 2) if employed by Defendant in California at any time from June 24, 2013, to November 15, 2013, the difference between the later of the Wage Statement Class Member's first date of employment on June 24, 2013, and November 15, 2013, divided by seven (7), rounded up to the nearest integer, and multiplied by 14.

iii) "Warehousemen Class 1 Workweeks": The calculation of the number of workweeks worked for the Warehousemen Class 1 Settlement Class Members shall be the difference between the later of the Warehousemen Class 1 Member's first date of employment or June 24, 2010, and the earlier of the last day of work or December 31, 2013, divided by seven (7) and rounded up to the nearest integer.

iv) "Warehousemen Class 2 Workweeks": The calculation of the number of workweeks worked for the Warehousemen Class 2 Settlement Class Members shall be the difference between the later of the Warehousemen Class 2 Member's first date of employment or January 1, 2014, and the earlier of the last day of work or the Date of Preliminary Approval, divided by seven (7) and rounded up to the nearest integer.

Workweeks are calculated within each respective settlement class independent of any other class and shall not include periods of work outside each settlement class' defined period.

An illustrative example for the calculation workweeks is as follows: A qualifying member of the Warehousemen Class 1's first day of work was January 1, 2008, and last day of work was July 08, 2011. The Warehousemen Class 1 member had 450 days from the earlier of the first date of employment or June 24, 2010, to the later of the last date of employment or December 31, 2013. In this case there are 450 days from June 24, 2010, and July 08, 2011, which when divided by seven (7) would equate to approximately 64.29 workweeks ($450 \div 7 \approx 64.29$), which would be rounded up to 65 workweeks for this employee.

(h) Any person who opts out of the Settlement is not a Participating Settlement Class Member and is not entitled to Settlement Payments, and their workweeks will not be included in the denominator utilized to calculate each Participating Class Member's share of the Net Settlement Fund. Defendant's first and last days of work for each individual constructing the workweek data will be presumed to be correct, unless a particular Settlement Class Member timely proves otherwise to the Claims Administrator by credible written evidence. All workweek disputes will be resolved and decided by the Claims Administrator, and the Claims Administrator's decision on all workweek disputes will be final and non-appealable.

(i) The Claims Administrator will then calculate the total workweeks in each respective settlement class – PAGA Settlement Class, Wage Statement Class, Warehouseman Class 1, and Warehouseman Class 2.

(j) The Claims Administrator will then determine the amount to be paid to each eligible Settlement Class Member as follows:

i) PAGA Settlement Class Individual Payment: Multiplying \$2,500.00 by a fraction, the numerator of which is the individual Participating Settlement Class Member's PAGA Settlement Class Workweeks, and the denominator of which is the total number of PAGA Settlement Class Workweeks worked by all Participating Settlement Class Members.

ii) Wage Statement Class Individual Payment: Multiplying five percent (5%) of the difference between the Net Settlement Fund and \$2,500.00 by a fraction, the numerator of which is the individual Participating Settlement Class Member's Wage Statement Class Workweeks, and the denominator of which is the total number of Wage Statement Class Workweeks worked by all Participating Settlement Class Members.

iii) Warehousemen Class 1 Individual Payment: Multiplying fifty-five percent (55%) of the difference between the Net Settlement Fund and \$2,500.00 by a fraction, the numerator of which is the individual Participating Settlement Class Member's Warehousemen Class 1 Workweeks, and the denominator of which is the total number of Warehousemen Class 1 Workweeks worked by all Participating Settlement Class

Members.

iv) Warehousemen Class 2 Individual Payment: Multiplying forty-five percent (45%) of the difference between the Net Settlement Fund and \$2,500.00 by a fraction, the numerator of which is the individual Participating Settlement Class Member's Warehousemen Class 2 Workweeks, and the denominator of which is the total number of Warehousemen Class 2 Workweeks worked by all Participating Settlement Class Members.

(k) If an individual Participating Settlement Class Member is in two or more of the settlement classes (i.e. PAGA Settlement Class, Wage Statement Class, Warehousemen Class 1, and Warehousemen Class 2), then that individual Participating Settlement Class Member's Settlement Payment applicable to each class shall be combined into one payment, if practicable.

(l) The Parties intend that the Net Settlement Amount shall be sufficient to pay all valid claims of Verified Settlement Class Members in accordance with the formula set forth above. Accordingly, if for any reason the total value of payments to Verified Settlement Class Members exceeds this amount, then individual Settlement Payments to each Verified Settlement Class Member will be adjusted on a pro-rata basis so that the total payout to Verified Settlement Class Members does not exceed the Net Settlement Amount.

(m) The Claims Administrator will calculate the net individual Settlement Payments within thirty (30) days of the close of the Notice Period. The Claims Administrator will provide a copy of its calculations, without any name identifying data, for Defendant's counsel and Class Counsel to review before payments are made to Participating Settlement Class Members. The Parties may dispute the calculations only with respect to mathematical errors or an incorrect application of the above method of allocation. Such a dispute must be raised in writing within seven (7) days after the Claims Administrator provides the calculations in writing to Defendant and Class Counsel.

Allocation and Taxability of Settlement Distributions

(n) For tax purposes, each Participating Settlement Class Member's pro-rata portion of the PAGA Settlement Amount will be treated by the Parties as additional, non-wage

penalties and interest, not subject to payroll withholdings, and shall be reported on an IRS Form 1099.

(o) For tax purposes, thirty-three percent (33%) of each Settlement Payment not including the pro-rata portion of the PAGA Settlement Amount, will be treated by the Parties as wages reported on IRS Form W-2, and Claims Administrator shall pay over all such withheld funds to the appropriate state and federal taxing authorities. The Defendant's share of the employer's payroll taxes allocated to the wage portion of the Individual Settlement Payments shall be paid separately by Defendant up to a maximum wage allocation of thirty-three percent (33%).

(p) For tax purposes, the remaining sixty-seven percent (67%) of each Settlement Payment not including the pro-rata portion of the PAGA Settlement Amount, will be treated by the Parties as additional, non-wage penalties and interest, not subject to payroll withholdings, and shall be reported on an IRS Form 1099.

(q) Neither the terms of this Settlement Agreement nor any Settlement Payments paid to any Participating Settlement Class Member shall have any effect on the eligibility or calculation of employee benefits for any Participating Settlement Class Member. Neither this Settlement Agreement, nor any of its attachments, should be interpreted to contain or constitute representations or advice regarding any U.S. federal or state tax issue. Settlement Class Members will be specifically informed that neither Defendant nor Class Counsel make any representations regarding the tax implications of any amounts paid under this Settlement Agreement and that if any Settlement Class Member has any questions regarding those implications, they can and should consult a tax expert.

(r) The Claims Administrator shall provide each Participating Settlement Class Member who is entitled to a Settlement Payment with a W-2 form reflecting the wages and the taxes withheld from those wages and with a Form 1099 reflecting the non-wage damages, penalties, and/or interest paid. The Claims Administrator shall utilize the most recent W-4 or withholding instruction provided to Defendants, unless none is available in which case Defendant shall assume a tax filing status of single with zero (-0-) dependents to calculate withholdings. The Claims Administrator shall provide each Participating Settlement Class Member who is entitled to

a Settlement Payment with appropriate documentation setting forth the amount of any tax or other payment withheld and employer contribution made, in accordance with state and federal tax requirements. Participating Settlement Class Members shall be solely and exclusively responsible for remitting to state and/or federal taxing authorities any applicable other taxes due and shall hold Defendant and the Released Parties harmless for any taxes, penalties, interest, liabilities, costs, and expenses caused by any such taxing authority relating in any way to the Participating Settlement Class Members' tax treatment of payments made to them pursuant to this Settlement Agreement or failure to timely or properly pay any taxes owed on their respective Settlement Payments.

Appointment and Duties of Claims Administrator

Subject to the approval of the Court, the Parties will mutually agree on the appointment of a qualified professional class action claims administration firm as the Claims Administrator for the purpose of administering the settlement process, including preparing and mailing (and emailing to the extent Defendant is able to provide email addresses) Notice Forms, providing live call agents during business hours, and responding to Settlement Class Member inquiries. The Administrative Costs shall be deducted from the Gross Settlement Fund. In the event the Settlement Agreement is voided or canceled by Defendant pursuant to Section 2.3, Defendant shall remain liable for payment of all Administrative Costs incurred.

The Duties of the Claims Administrator Shall Include Without Limitation

(s) Finalizing and printing the Notice of Settlement and Request for Exclusion / Opt-Out Forms attached to this Settlement Agreement as Exhibits, as modified by the Court and/or by mutual agreement of the Parties, and translating Notice of Settlement and Request for Exclusion / Opt-Out Forms into Spanish.

(t) Handling all mailings and emails to the Settlement Class Members pursuant to Section 2.8;

(u) Performing an address search and/or trace for returned or undeliverable mailings as set forth in Section 2.8;

(v) Recording and tracking responses to the mailing to the Settlement Class Members and the dates thereof (including recording the postmark date and identity of any

1 Settlement Class Members who request exclusion or object and promptly forwarding such
2 information to Defendant's counsel and Class Counsel using numbers instead of providing
3 identifying information);

4 (w) Establishing a toll-free telephone number for Settlement Class Members to
5 call during business hours to ask questions regarding the Settlement;

6 (x) Responding to inquiries made by the Settlement Class Members;

7 (y) Calculating and mailing Settlement Payments;

8 (z) Settling disputes from Settlement Class Members regarding amounts or
9 Compensable Weeks, with the involvement and assistance of Defendant's counsel and Class
10 Counsel;

11 (aa) Distributing back to Defendant the amount of Defendant's share of the
12 employer's payroll taxes for any and all uncashed checks of Verified Settlement Class Members;

13 (bb) Distributing the amount of any and all uncashed checks, along with any
14 interest that has accrued on the sum, to the State of California Unclaimed Property Fund to be held
15 in the name of and for the benefit of such class members under California escheatment laws;

16 (cc) Posting any final judgment in the Action on any website associated with
17 this Settlement;

18 (dd) Preparing and filing any required tax forms associated with the Claims
19 Administrator's duties hereunder; and

20 (ee) Other related tasks as mutually agreed to by the Parties and required by
21 statute.

22 The Claims Administrator shall keep Defendant's counsel and Class Counsel timely
23 apprised of the performance of all Claims Administrator responsibilities by weekly emails.

24 All disputes relating to the Claims Administrator's performance of its duties will be
25 referred to the Court, if necessary, which will have continuing jurisdiction over the Parties to
26 enforce the terms of the judgment.

27 At least twenty-one (21) days before the Final Fairness Hearing, the Claims Administrator
28 shall prepare a declaration of compliance and due diligence and proof of mailing with regard to the

mailing and emailing of the Notice of Settlement, and any attempts by the Claims Administrator to locate Settlement Class Members, its receipt of timely and valid requests for exclusion, and its inability to deliver the Notice of Settlement to Settlement Class Members due to invalid addresses (“Due Diligence Declaration”), to Class Counsel and Defendant’s counsel for presentation to the Court. Class Counsel shall be responsible for filing the Due Diligence Declaration with the Court.

Section 2.5 Release of Claims by the Settlement Class

Upon the Effective Date, all Participating Settlement Class Members, including their heirs, assigns, estates, and representatives, shall be deemed to fully forever, irrevocably, and unconditionally release and discharge Defendant and the Released Parties from any and all claims, debts, liabilities, demands, obligations, guarantees, liens, promises, penalties, costs, expenses, interest, restitution, attorneys’ fees and costs, losses, damages, liquidated damages, punitive damages, equitable relief, complaints, actions or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, against Defendant or the Released Parties or any of them, under any state, municipal, or federal law, statute, ordinance, regulation, order, or common law principle or theory, arising out of or related to the Second Amended Complaint, including without limitation: (1) violation of California Labor Code section 226.7 (unpaid meal period premiums, failure to provide meal periods); (2) violation of California Labor Code section 226.7 (unpaid rest period premiums, failure to provide rest periods); (3) violation of California Labor Code sections 201, 202, and 203 (final wages not timely paid during employment and upon termination, and waiting time penalties); (4) violation of California Labor Code section 204 (wages not timely paid during employment); (5) violation of California Labor Code section 226, subd. (a) (non-compliant wage statements, failure to maintain or provide accurate itemized wage statements); (6) violation of California Labor Code section 1174, subd. (d) (failure to keep requisite payroll records); (7) violation of California Labor Code sections 2698, et seq. (California Labor Code Private Attorney General Act of 2004); (8) violation of California Business and Professions Code sections 17200, et seq.; and (9) any other claims alleged in the Second Amended Complaint (“Released Claims”). Released Claims include any unknown claims that the Participating Settlement Class Members do not know or suspect to exist in his or her favor, which

1 if known by him or her, might have affected this Settlement Agreement with Defendant and the
2 release of the Released Parties. However, Released Claims only include all claims alleged in the
3 Second Amended Complaint or that could have been set forth based on the facts and
4 circumstances alleged in the Second Amended Complaint to the fullest extent permitted by law.

5 The Parties intend and agree that this Settlement Agreement shall be binding on all
6 Participating Settlement Class Members, whether or not they actually receive a payment pursuant
7 to this Settlement Agreement. This Settlement Agreement shall constitute, and may be pleaded as,
8 a complete and total defense to any Released Claims raised in the future.

9 Plaintiffs and Participating Settlement Class Members promise not to file a lawsuit in any
10 court alleging any Released Claims, or to participate as a party or a class member in any
11 administrative or other legal proceedings, in any forum, against Defendant or the Released Parties,
12 for any claims released under this Settlement Agreement. In consideration for the promises made
13 by Defendant in this Settlement Agreement, Plaintiffs and each Participating Settlement Class
14 Member agree never to institute any suit, complaint, proceeding, grievance, or action of any kind
15 at law, in equity, or otherwise in any court of the United States, or of any state or municipality, or
16 with any administrative agency, arbitration, or other legal forum, against Defendant or the
17 Released Parties for any claim included in the Released Claims. Plaintiffs and each Participating
18 Settlement Class Member also agrees that he or she will not join, participate in, or consent to opt-
19 in to any actions alleging that he or she is similarly situated to any other employee with respect to
20 any such Released Claims. If Plaintiffs or any Participating Settlement Class Member are joined
21 in any class or collective lawsuits for any Released Claims, he or she will receive no further
22 compensation of any kind for such released claim or claims.

23 Plaintiffs, Participating Settlement Class Members, and Class Counsel shall, and hereby
24 do, fully and finally release and forever discharge Defendant and Released Parties of and from any
25 and all claims, demands, damages, actions and/or causes of action of whatever kind or nature,
26 including claims for attorneys' fees or costs, whether known or unknown, existing or claimed to
27 exist, in any way set forth in or arising out of any: (i) dispute or claim between or among any
28 Participating Settlement Class Members, and/or Class Counsel, including over any claim to any

monetary part of the Settlement and/or to Class Counsel's fees, costs or expenses; and/or (ii) any dispute between the Participating Settlement Class Members, Class Counsel, and/or any governmental authority with respect to this Settlement Agreement or any payments made hereunder. This Settlement Agreement shall constitute, and may be pleaded by Defendant and the Released Parties as, a complete and total defense to any such dispute or claim.

Section 2.6 Opt-Out/Request for Exclusion Procedure

Settlement Class Members, except the Plaintiffs who shall not be permitted to opt-out of this Settlement Agreement, shall be entitled to "opt out" of this Settlement Agreement. The Notice Materials shall provide instructions to Settlement Class Members who wish to "opt out." To be valid, an individual requesting exclusion must timely submit an Opt-Out Form attached hereto as Exhibit B and such form must be returned by U.S. Mail to the Claims Administrator at the specified address and must be postmarked no later than the last day of the Notice Period. The Claims Administrator will notify any Settlement Class Member from whom it receives a request for exclusion that is not timely and/or valid. Any disputes regarding the timeliness, validity, or effectiveness of a request for exclusion shall be decided by the Claims Administrator consistent with the terms of this Settlement Agreement, with the Parties' input, if appropriate. The date of the postmark on the mailing envelope for any request for exclusion shall be the exclusive means used to determine whether the request for exclusion has been timely submitted.

Any Settlement Class Member who does not properly and timely submit a request for exclusion in the manner and by the deadline specified in Section 2.6 will be a Participating Settlement Class Member who is barred from opting out of the Settlement and is bound by all terms and conditions of the Settlement and this Settlement Agreement, including the releases of claims pursuant to Section 2.5 of this Settlement Agreement, if the Settlement is approved by the Court, and will be bound by any Final Approval Order, regardless of whether he or she has objected to the Settlement.

A Settlement Class Member who properly and timely submits a request for exclusion in the manner and by the deadline specified above in Section 2.6; will not be bound the Settlement Agreement; will be barred from participating in or objecting to the Settlement; will not receive any

benefit from the Settlement; will remain free to contest any claim as to that individual that would have been barred by this Settlement Agreement; and nothing in this settlement or Settlement Agreement will constitute or be construed as a waiver of any defense Defendant or the Released Parties have or could assert against such a claim.

Section 2.7 Procedures for Objecting to the Settlement

The Class Notice shall provide that Participating Settlement Class Members and persons purporting to act on behalf of Participating Settlement Class Members who wish to object to the Settlement Agreement must file with the Claims Administrator a written statement objecting to the Settlement Agreement postmarked no later than the last day of the Notice Period. Settlement Class Members who opt-out may not file and serve an objection or otherwise object to this Settlement Agreement. The postmark date of the filing and service of an objection shall be deemed the exclusive means for determining that the objection is timely. An objection must be signed and state the Participating Settlement Class Member's name, current address and telephone number, and the basis for the objection. The notice of objection must be signed by the Participating Settlement Class Member.

No Participating Settlement Class Member or person purporting to act on behalf of Participating Settlement Class Members shall be entitled to be heard at the Final Approval Hearing (whether individually or through counsel) or to object to the Settlement, and no written objections or briefs submitted by any such individuals or persons purporting to act on behalf of them shall be received or considered by the Court at the Final Approval Hearing, unless the individual's objection and supporting materials have been timely filed and served as set forth above in Section 2.6 within the Notice Period. Any Participating Settlement Class Member who fails to file and serve a timely and complete objection in the manner specified above in Section 2.6 shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

If a Settlement Class Member timely submits both an objection and a request for exclusion ("opt out" under Section 2.6), the request for exclusion shall supersede the objection, and the objection shall therefore be waived.

1 Counsel for the Parties shall file any responses to any objections at least seven (7) calendar
2 days before the Final Approval Hearing.

3 Defendant shall not be responsible for the fees, costs, or expenses incurred by Plaintiffs,
4 Class Counsel, or the Participating Settlement Class Members arising from or related to
5 Participating Settlement Class Members who submit objections or otherwise purport to object to
6 the Settlement Agreement or related to any appeals thereof.

7 The Parties agree not to encourage any Class Members to object to or opt out of the
8 settlement.

9 **Section 2.8 Preparation and Mailing of Notice to the Class**

10 Persons in the Settlement Class, from the date of mailing of the settlement notice to them,
11 shall have sixty (60) days to do nothing, opt out, or object. The Parties agree that the Claims
12 Administrator shall update address information before transmitting notice, and will trace returned
13 mail that does not have a forwarding address, and re-mail Notice packets accordingly. Within
14 fifteen (15) days after preliminary approval of the settlement by the Court, on an Excel
15 spreadsheet form, counsel for Defendant shall provide the last known name, address, telephone
16 number if known, social security number, and first and last date of working for each Settlement
17 Class Member to the Claims Administrator, as well as whether each Settlement Class Member was
18 employed a warehousemen in California for Defendant. Notice of Settlement will be in English
19 and Spanish. Class Counsel and Plaintiffs will not be provided identifying or contact information
20 or social security numbers for any Settlement Class Members in connection with this Settlement
21 or Settlement Agreement. The data provided to the Claims Administrator will remain confidential
22 and will not be disclosed to anyone, except as required to applicable tax authorities, pursuant to
23 the express written consent of Defendant, or by order of the Court. The data provided under this
24 Section 2.8 shall be used only for the purpose of administering this Settlement.

25 The Notice of Class Action Settlement and Hearing Date for Court Approval (“Notice of
26 Settlement”), materially in the form attached hereto as Exhibit “A” and as approved by the Court,
27 shall be sent by the Claims Administrator to the Settlement Class Members, by First-Class Mail
28 (in English and Spanish) to those addresses provided, as soon as practicable but in any event

1 within fourteen (14) days after receipt of their contact information from Defendant. The Notice of
2 Settlement shall set forth a brief description of the Action, provide the definition of the Settlement
3 Class, inform Settlement Class Members of the nature and scope of the settlement and release of
4 claims, set forth the requested Attorneys' Fees and Costs, disclose the Service Award to Plaintiffs,
5 inform Settlement Class Members of their opportunity to be heard at the Final Fairness Hearing,
6 inform Settlement Class Members of their right to submit an objection to any term of the
7 settlement, to submit a claim, and/or to request exclusion from or to opt-out of the settlement and
8 the procedures for doing so, and explain the res judicata effects of not doing so. The Notice of
9 Settlement also will include or attach the respective Settlement Class Member's estimated PAGA
10 Settlement Class Workweeks, Wage Statement Class Workweeks, Warehousemen Class 1
11 Workweeks, and Warehouseman Class 2 Workweeks, if any, based on the data and information
12 provided by Defendant, and instruct the Settlement Class Member to submit any disputes to the
13 Claims Administrator within twenty-one (21) days. The Claims Administrator will consult Class
14 Counsel and Counsel for Defendant regarding any such dispute(s), but will remain the ultimate
15 arbiter and make the final decision regarding any such dispute(s). Also, the Notice of Settlement
16 will set forth contact numbers for Class Counsel and counsel for Defendant, but will direct class
17 members to call the toll-free number established by the Claims Administrator to answer any
18 questions that Settlement Class Members may have.

19 The Claims Administrator will attempt to locate any Settlement Class Member whose
20 Notice of Settlement is returned by the Post Office by performing a National Change of Address
21 ("NCOA") search, and if needed, by conducting one skip trace search regarding any returned
22 Notice of Settlement.

23 If an envelope or email has not been returned within twenty-one (21) days of the mailing, it
24 shall be conclusively presumed that the Settlement Class Member received the Notice of
25 Settlement.

26 **Section 2.9 Final Fairness Hearing**

27 The Parties will request the Court to conduct a Fairness Hearing on or about the date set
28 forth in the Order of Preliminary Approval and to determine if the Settlement is fair, reasonable,

and adequate, and if so, to enter a final order and judgment granting Final Approval of Settlement, which will (a) approve the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions; (b) approve in whole or in part Class Counsel's application for an award of Attorneys' Fees and Costs; (c) approve in whole or in part the Plaintiffs' Service Award; (d) permanently bar and enjoin all Participating Settlement Class Members from prosecuting any Released Claims against Defendant and/or any Released Parties.

Section 2.10 Funding the Gross Settlement Amount and Distribution of Payments

Defendant shall deposit the following with the Claims Administrator ten (10) days after the Effective Settlement Date: the Gross Settlement Amount and Defendant's share of the applicable payroll taxes. Within fifteen (15) calendar days after such payment is received by the Claims Administrator, all Court-approved payments will be made by the Claims Administrator to Participating Settlement Class Members, Plaintiffs, Class Counsel (provided that Class Counsel has provided a completed W-9 to the Claims Administrator), and the LWDA. The approval and denial of a Settlement Payment to any Settlement Class Member under the terms of this Settlement Agreement will be conclusive and binding. All payments called for under this Section 2.10 except the Defendant's share of the applicable payroll taxes shall be made solely from the Gross Settlement Fund.

Section 2.11 Attorneys' Fees in Actions on Released Claims

The Parties agree that in any proceeding, claim, or action brought subsequent to Final Approval that: (i) challenges the validity of or arises out of this Settlement Agreement; and/or (ii) seeks to allege against Defendant or the Released Parties any of the Released Claims, this Settlement Agreement, and/or any related order of the Court shall constitute, and may be pleaded as, a complete and total defense to any such dispute or claim. The prevailing party in any such proceeding, claim, or action shall be entitled to an award of its reasonable attorneys' fees and costs.

Section 2.12 Duties of the Parties Prior to Court Approval

Once finalized, the Parties shall promptly submit this Settlement Agreement to the Court

for preliminary approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly upon execution of this Settlement Agreement, Plaintiffs will prepare, send to Defendant's counsel for comment, and then when it is mutually-agreeable, file a Motion for Preliminary Approval seeking the following:

(a) Approval of the proposed settlement as fair, reasonable, and adequate as to Settlement Class Members;

(b) Approval as to form and content of the proposed Notice of Settlement;

(c) Approval of the plan of allocation of the Gross Settlement Fund;

(d) Directing the mailing of the Notice of Settlement by First Class Mail, and by email where Defendant's records make it possible, to Settlement Class Members by the Claims Administrator;

(e) Appointing Class Counsel, Plaintiffs as Class Representatives, and a qualified class action administrator mutually agreed to by the Parties as Claims Administrator;

(f) Preliminarily approving this Settlement Agreement; and

(g) Scheduling a Final Fairness Hearing on the question of whether the proposed settlement should be finally approved.

(h) Prior to the Final Fairness Hearing by the Court of the settlement provided for in this Settlement Agreement, Class Counsel (in conjunction with Defendant's counsel) will submit a proposed final order:

i) Approving the settlement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions; and

ii) Approving Class Counsel's application for an award of Attorneys' Fees and Costs in whole or in part. These amounts for Attorneys' Fees and Costs shall be paid from the Settlement Fund; and

iii) Seeking judgment to be entered in this Action that dismisses the Action with prejudice.

Section 2.13 Communications

Except for disclosures that are authorized by Defendant, that are required by law for

Defendant to make, or that are necessary to prepare the Motion for Preliminary Approval, the terms of this Settlement shall remain confidential until they are presented to the Court in connection with the Motion for Preliminary Approval.

Following preliminary approval, the Parties and their counsel will direct inquiries from Settlement Class Members to the Claims Administrator to ensure consistent and accurate communication with Settlement Class Members. The Parties will make no efforts to solicit requests for exclusion or opt-outs or objections to this Settlement.

Section 2.14 Continuing Jurisdiction of the Court

The Parties agree that the Court shall retain jurisdiction over the Parties, and over this Settlement Agreement, in order to: (i) monitor and enforce compliance with this Settlement Agreement, Order of Final Approval, and/or any related order of this Court; and/or (ii) resolve any disputes over this Settlement Agreement or the administration of the benefits of this Settlement Agreement, including disputes over entitlement to payments sought by Class Counsel.

Section 2.15 Voiding the Settlement Agreement

If any of the conditions set forth in the preceding paragraphs are not met and materially satisfied, this Settlement Agreement shall, at the option of either Party, be ineffective, void, and of no further force and effect and shall not be used nor be admissible in any subsequent proceedings either in this Court or in any other Court or forum. The Parties may exercise their option, only on the terms provided herein, to void this settlement by giving notice, in writing, to the other Party and to the Court at any time prior to the Effective Date. In such an event, (1) nothing in this Settlement Agreement shall be construed as a determination, admission, or concession of any issue in the Action, and nothing in this Settlement Agreement may be offered into evidence in any trial on the merits of the claims asserted in the complaints filed in the Action or in any subsequent pleading; (2) the Parties expressly reserve their rights with respect to the prosecution and defense of the Action as if this Settlement Agreement never existed; and (3) the Party or Parties who exercised the option to void the Settlement Agreement shall be responsible for any costs for Notice or claims administration incurred by the Claims Administrator through that date, provided that such costs shall be recoverable in the event that the Party who incurred them is a prevailing

1 party in the Action.

2 **Section 2.16 Parties' Authority**

3 The signatories hereto hereby represent that they are fully authorized to enter into this
4 Settlement Agreement and to bind the Parties hereto to the terms and conditions hereof.

5 **Section 2.17 Mutual Full Cooperation**

6 The Parties agree to fully cooperate with each other to accomplish the terms of this
7 Settlement Agreement, including without limitation to execute such documents and to take such
8 other action as may reasonably be necessary to implement the terms of this Settlement Agreement.
9 The Parties to this Settlement Agreement shall use their best efforts, including all efforts
10 contemplated by this Settlement Agreement and any other efforts that may become necessary by
11 order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth
12 herein. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall,
13 with the assistance and cooperation of Defendant and its counsel, take all necessary steps to secure
14 the Court's Final Approval of this Settlement Agreement. Class Counsel will also notify counsel
15 for Defendant if Class Counsel are subpoenaed or receive any other request for documents or
16 information regarding any other action filed or potential action against the Released Parties that
17 covers or includes any Settlement Class Members.

18 **Section 2.18 No Prior Assignments**

19 The Parties hereto represent, covenant, and warrant that they have not directly or
20 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any
21 person or entity any portion of any liability, claim, demand, action, cause of action, or rights
22 herein released and discharged except as set forth herein.

23 **Section 2.19 No Admission**

24 Nothing contained herein, nor the negotiation, consummation, or performance of this
25 Settlement Agreement, is to be construed or deemed an admission of liability, culpability,
26 negligence, or wrongdoing on the part of Defendant and/or any of the Released Parties, and they
27 expressly deny liability or wrongdoing. Defendant further denies, for any purpose other than
28 settling this Lawsuit, that this Lawsuit is appropriate for class, or representative treatment. This

Settlement Agreement is not, shall not be deemed to be, and may not be used as, an admission or evidence of the appropriateness of this or similar claims for class action certification or administration other than for the purposes of administering this Settlement Agreement. Each of the Parties hereto has entered into this Settlement Agreement with the sole purpose and intention to avoid further disputes and litigation with the attendant inconvenience and expenses. In the event this Settlement Agreement is not approved by the Court or otherwise does not become final, Defendant does not waive any defenses or rights, including without limitation that this case is not suitable for class treatment. This Settlement Agreement is a settlement document and shall, pursuant to Federal Rule of Evidence 408 and any and all analogous state laws including, but not limited to, California Evidence Code section 1152, be inadmissible in evidence in any proceeding, except an action or proceeding to approve, interpret, or enforce this Settlement Agreement.

Whether or not the Settlement is finally approved, neither the Settlement, nor any of its terms, nor any document, statement, proceeding, or conduct related to this Settlement Agreement including without limitation the motions for preliminary and final approval of the settlement and any documents submitted in support of such motions, nor any reports or accounts thereof, shall in any event be disclosed, referred to, or offered or received in evidence against any of the Parties, in any further proceeding in this Action, or any other civil, criminal, or administrative action or proceeding except for purposes of settling this Action or enforcing the Released Claims contained herein pursuant to the terms of this Settlement Agreement.

Section 2.20 Enforcement Actions

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

Section 2.21 Notices

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:

To Plaintiffs and the Settlement Class:

R. Rex Parris, Esq.
Kitty K. Szeto, Esq.
John M. Bickford, Esq.
PARRIS LAW FIRM
43364 10th Street West
Lancaster, California 93534

To Defendant:

Howard A. Sagaser, Esq.
Ian B. Wieland, Esq.
Marcia A. Ross, Esq.
Christopher M. Rusca, Esq.
SAGASER, WATKINS & WIELAND PC
5260 North Palm Avenue, Suite 400
Fresno, California 93704

Section 2.22 Construction

The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms-length negotiations between the Parties and that this Settlement Agreement 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 Agreement.

Section 2.23 Captions and Interpretations

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 Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

Section 2.24 Modification

This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by Defendant and the Plaintiffs hereto. This Settlement Agreement may not be

discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

Section 2.25 Integration Clause

This Settlement Agreement 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 relating to this Settlement and the transaction contemplated hereby, 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.

Section 2.26 Binding on Assigns

The provisions of this Settlement Agreement shall run in perpetuity. This Settlement Agreement shall be binding upon the Parties hereto and their spouses, heirs, administrators, representatives, executors, successors and assigns, and shall inure to the benefit of Defendant and the Released Parties, and their predecessors, successors, affiliates, subsidiaries, parent companies, partners, current and past employees, officers, directors, shareholders, insurers, agents, legal representatives, and benefit plans, each of which is entitled to enforce this Settlement Agreement.

Section 2.27 Signatories

It is agreed that because the members of the Settlement Class are so numerous, it is impossible or impractical to have each member of the Settlement Class execute this Settlement Agreement. It is agreed that this Settlement Agreement may be executed on behalf of the Settlement Class by Class Counsel and Plaintiffs; and shall have the same force and effect as if executed by each member of the Settlement Class, who will be notified of the Settlement by the Notice of Settlement.

Section 2.28 Incorporation of Exhibits

All exhibits attached hereto are incorporated by reference and are a material part of this Settlement Agreement. Any notice, order, judgment, or other exhibit that requires approval of the Court must be approved without material alteration from its current form in order for this Settlement Agreement to become effective.

Section 2.29 Reasonableness of Settlement Agreement

1 The Parties jointly warrant that this is a fair, reasonable, and adequate settlement and have
2 arrived at this settlement through arms-length negotiations, involving an experienced and well-
3 regarded mediator, taking into account all relevant factors, present and potential.

4 **Section 2.30 California Law and Interpretation**

5 All terms of this Settlement Agreement and its exhibits will be governed and interpreted by
6 and according to the laws of the State of California, without giving effect to any conflict of law
7 principles or choice of law principles. If the Court determines that the Release of Claims in
8 Section 2.5 above is unenforceable, for whatever reason, this entire Settlement Agreement will
9 become null and void ab initio.

10 **Section 2.31 Counterparts**

11 This Settlement Agreement may be executed in counterparts, scanned copy signature,
12 and/or by facsimile signature ("counterpart"), and when each party has signed and delivered at
13 least one such counterpart, each counterpart shall be deemed an original, and, when taken together
14 with other signed counterparts, shall constitute one fully-executed Settlement Agreement, which
15 shall be binding upon and effective as to all Parties.

16 **Section 2.32 Confidential Documents**

17 Plaintiffs and Class Counsel agree that none of the documents and information provided to
18 them in discovery or at any other time during this Action shall be used for any purposes other than
19 prosecution of this Action. Class Counsel shall not refer to, rely upon, or otherwise utilize any
20 documents or information obtained during this Action to prosecute a separate action against
21 Defendant and/or any Released Parties; however, nothing in this Section will be construed as a
22 restraint on the right of any counsel to practice or a limitation on the rights that any Settlement
23 Class Member or Class Counsel may have under any applicable federal, state, or local law to
24 separately obtain documents or information from Defendant.

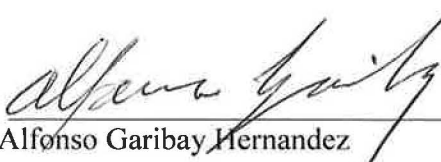
25 **Section 2.33 Entire Agreement**

26 After this Settlement Agreement is fully executed by the Parties, it will constitute the entire
27 agreement of the Parties. No oral representations, warranties, inducements, or writings have been
28 made by any Party concerning this Settlement Agreement, other than those expressly stated herein.

IN WITNESS WHEREOF, Plaintiffs and Defendant and their respective undersigned counsel have executed this Settlement Agreement as of the date(s) indicated on the lines below.

Dated: ^{February} January 13, 2019

PLAINTIFF ALFONSO GARIBAY
HERNANDEZ

By: 
Alfonso Garibay Hernandez

Dated: January __, 2019

PLAINTIFF ERIK VALENZUELA

By: _____
Erik Valenzuela

Dated: January __, 2019

DEFENDANT UNITED STATES COLD
STORAGE OF CALIFORNIA

By: _____
Rod Noll
United States Cold Storage of California

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IN WITNESS WHEREOF, Plaintiffs and Defendant and their respective undersigned
counsel have executed this Settlement Agreement as of the date(s) indicated on the lines below.

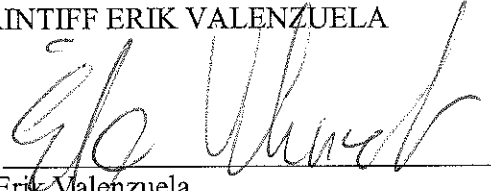
Dated: January __, 2019

PLAINTIFF ALFONSO GARIBAY
HERNANDEZ

By: _____
Alfonso Garibay Hernandez

Dated: ~~January~~ ^{February} 12, 2019

PLAINTIFF ERIK VALENZUELA

By: 
Erik Valenzuela

Dated: January __, 2019

DEFENDANT UNITED STATES COLD
STORAGE OF CALIFORNIA

By: _____
Rod Noll
United States Cold Storage of California

1 IN WITNESS WHEREOF, Plaintiffs and Defendant and their respective undersigned
2 counsel have executed this Settlement Agreement as of the date(s) indicated on the lines below.
3

4 Dated: January __, 2019

PLAINTIFF ALFONSO GARIBAY
HERNANDEZ

7 By: _____
8 Alfonso Garibay Hernandez

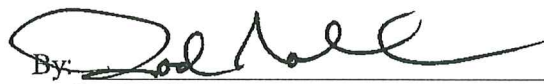
9
10 Dated: January __, 2019

PLAINTIFF ERIK VALENZUELA

12 By: _____
13 Erik Valenzuela

14
15 Dated: January 31, 2019

DEFENDANT UNITED STATES COLD
STORAGE OF CALIFORNIA

17 By: 
18 Rod Noll
19 United States Cold Storage of California
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SAGASER, WATKINS & WIELAND PC

ATTORNEYS AT LAW
5260 North Palm Avenue, Suite 400
Fresno, California 93704
Telephone: (559) 421-7000

1 APPROVED AS TO FORM AND CONTENT ON BEHALF OF THE NAMED PLAINTIFFS
2 AND AS A SUBSTANTIVE RECOMMENDATION TO THE COURT ON BEHALF OF THE
3 SETTLEMENT CLASS:

4
5 Dated: ^{FEBRUARY} January 21, 2019

PARRIS LAW FIRM

By: 

R. Rex Parris

Kitty K. Szeto

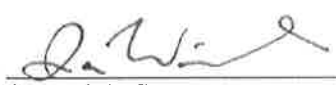
John M. Bickford

Attorneys for Plaintiffs and the
Settlement Class

10 APPROVED AS TO FORM AND CONTENT:

11 Dated: January 31, 2019

SAGASER, WATKINS & WIELAND, PC

By: 

Howard A. Sagaser

Ian B. Wieland

Marcia A. Ross

Christopher M. Rusca

Attorneys for Defendant,

United States Cold Storage of California

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Exhibit “A”

**NOTICE OF CLASS ACTION SETTLEMENT
AND HEARING DATE FOR COURT APPROVAL**

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 COUNTY OF KERN

3 ALFONSO GARIBAY HERNANDEZ, an
4 individual, and ERIK VALENZUELA, an
5 individual, for themselves and all members of
6 the putative class, and on behalf of aggrieved
employees pursuant to the Private Attorneys
General Act ("PAGA"),

7 Plaintiff,

8 v.

9 UNITED STATES COLD STORAGE OF
10 CALIFORNIA, a California corporation, and
DOES 1 through 100, inclusive,

11 Defendants.
12

Case No. S-1500-CV-282297-SPC

[Assigned for all Purposes to the Honorable
Thomas S. Clark, Dept. 17]

CLASS ACTION

**NOTICE OF CLASS ACTION
SETTLEMENT AND HEARING DATE
FOR COURT APPROVAL**

Date:

Time:

Dept.:

Complaint Filed: June 24, 2014
FAC Filed: August 9, 2016
SAC Filed: April 11, 2017
Trial Date: May 20, 2019

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14 *A court approved this notice. This is not an advertisement.*
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21 **[This Section is Intentionally Left Blank]**
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**NOTICE OF CLASS ACTION SETTLEMENT
AND HEARING DATE FOR COURT APPROVAL**

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USCS'S RECORDS INDICATE YOU WORKED FOR USCS IN CALIFORNIA:

- AS A RESULT, ASSUMING EVERY CLASS MEMBER PARTICIPATES IN THE SETTLEMENT, YOUR ESTIMATED INDIVIDUAL SETTLEMENT PAYMENT WILL BE APPROXIMATELY \$.**

USCS **will not** fire, punish, retaliate, or otherwise discriminate against any employee because he or she chooses to participate in this settlement, chooses not to participate, or objects to the settlement.

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PLEASE READ THIS NOTICE

WHAT INFORMATION IS IN THIS NOTICE

1.	Why It Is Important To Read This Notice:	2
2.	What The Case Is About:	2
3.	What Is The Class Action Settlement?	3
4.	Why Did Defendant Join in This Notice?	3
5.	Who Is The Plaintiff in This Class Action?	3
6.	Who Are The Attorneys Representing The Parties?	3
7.	What Do I Need To Do To Get Money From This Settlement?	3
8.	How Do I Remove Myself From This Settlement?	4
9.	What If I Disagree With The Terms Of The Settlement?.....	4
10.	How Does The Settlement Affect My Rights?	5
11.	How Much Can I Expect To Receive?	6
12.	How Will the Attorneys for the Class and Class Representative Be Paid?	7

1. Why It Is Important To Read This Notice:

The Superior Court of the State of California in and for the County of Kern (the “Court”) has granted Preliminary Approval to a proposed settlement (the “Settlement”) of a class action lawsuit regarding wage and hour claims of persons who were employed by USCS in California (1) from June 24, 2013, through [Date of Preliminary Approval], and/or (2) as a warehousemen from June 24, 2010, through [Date of Preliminary Approval]. Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

USCS’s records show that you were employed by USCS in California (1) between June 24, 2013, and [Date of Preliminary Approval] and/or (2) as a warehouseman between June 24, 2010, and [Date of Preliminary Approval]. Therefore, you are a “Class Member” in this Lawsuit.

The purpose of this Notice is to provide you with a brief description of the class action lawsuit, what investigation of the claims has taken place, and, finally, to inform you of the terms of the proposed Settlement and to discuss your rights and options in connection with the lawsuit and the Settlement.

2. What The Case Is About:

Two former USCS employees filed an action against USCS alleging that it failed to properly provide adequate meal and rest periods, timely pay wages during and at the termination of employment, provided wage statements which did not comply with California law, did not keep requisite payroll records, and violated other California wage and hour laws. Specifically, the former employees sought damages, restitution, attorneys’ fees, and penalties on the basis of potential wage and hour violations, including without limitation, violation of California Labor Code section 226.7 for unpaid meal period premiums, violation of California Labor Code section 226.7 for unpaid rest period premiums, violation of California Labor Code sections 201 and 202 for failure to pay final wages timely, violation of California Labor Code section 226(a) for non-

compliant wage statements, violation of California labor Code section 1174(d) for failure to keep requisite payroll records, violation of California Labor Code sections 2698 et seq. for various violations of the California Labor Code under the Private Attorneys General Act of 2004 (“PAGA”), and Violation of California Business and Professions Code sections 17200 et seq.

USCS denies Plaintiffs’ allegations and asserts that it has no liability for any of Plaintiffs’ or the Class Members’ claims under any statute, wage order, common law, or equitable theory.

Notwithstanding USCS’s denial of liability, it has chosen to resolve the matter based upon the terms and conditions set forth in the settlement agreement now before the Court for approval.

3. What Is The Class Action Settlement?

The Court must approve the terms of the class action settlement described below as fair and reasonable to the class. The settlement will affect all members of the class. This Notice will explain the terms of the settlement and the amount of money you may get.

4. Why Did Defendant Join in This Notice?

The Defendant does not admit to any of the claims alleged in the lawsuit and denies all allegations including, that it owes money for rest breaks, meal periods, waiting time penalties, that it failed to provide accurate wage statements or keep requisite payroll records, or any derivative claims for any of the above under Business & Professions Code sections 17200 et seq. and Labor Code sections 2698 et seq. The Defendant is settling the class action lawsuit as a compromise. The Defendant reserves the right to object to any claim if for any reason the settlement fails. The Court file has the settlement documents with more information on the lawsuit.

5. Who Are The Plaintiffs in This Class Action?

Plaintiffs Alfonso Garibay Hernandez and Erik Valenzuela are the Class Representative in this class action lawsuit. They are acting on behalf of themselves and on behalf of all employees that worked for Defendant in California at any time from June 23, 2013, to [Date of Preliminary Approval], and/or as warehousemen in California at any time from June 23, 2010, to [Date of Preliminary Approval].

6. Who Are The Attorneys Representing The Parties?

Attorneys for Plaintiffs & the Class	Attorneys for Defendant
PARRIS LAW FIRM R. Rex Parris Kitty K. Szeto John M. Bickford 43364 10th Street West Lancaster, California 93534 Telephone: (661) 949-2595	SAGASER, WATKINS & WIELAND PC Howard Sagaser Ian B. Wieland Christopher M. Rusca Amanda M. Kjar 5260 North Palm Avenue, Suite 400 Fresno, California 93704 Telephone: (559) 421-7000

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If you do not wish to take part in the settlement, you must fill out and submit an Opt Out Form to the Claims Administrator with a postmark no later than [insert 60 days from mailing].

[Name of Claims Administer]

[Address of Claims Administrator]

[Address of Claims Administrator]

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1 If the settlement is approved and you choose not to exclude yourself from the settlement, you will
2 be forever barred from asserting any of the claims arising out of or relating to the lawsuit against
3 Defendant (“Released Claims”¹) and all of its related entities and businesses, former and present
4 officers, officials, directors, administrators, attorneys, shareholders, respective agents, general
5 agents, insurers, reinsurers, payroll companies, representatives, owners, stockholders,
6 policyholders, partners, employees, trustees, heirs, successors, predecessors, assigns and
7 subsidiaries. (“Released Parties”).²

11. *How Much Can I Expect To Receive?*

8 Defendant will pay a Class Settlement Amount of One Million Seven Hundred Fifty Thousand
9 Dollars (\$1,750,000.00) (“Gross Settlement Fund”) to cover: (1) settlement payments to
10 Settlement Class Members; (2) the costs of administering the settlement; (3) Class Representative
11 Enhancement to the Plaintiffs; (4) payment of \$7,500.00 to the California Labor and Workforce
12 Development Agency (“LWDA”); and (5) the Class Counsel Award. Defendant shall remit its
13 share of the employer’s payroll taxes separate from the Gross Settlement Fund. All wages paid to
14 Settlement Class Members shall be reflected on such Settlement Class Members’ W- 2 forms.

14 ¹ “Released Claims” means any and all claims, debts, liabilities, demands, obligations, guarantees,
15 liens, promises, penalties, costs, expenses, interest, restitution, attorneys’ fees and costs, losses,
16 damages, liquidated damages, punitive damages, equitable relief, complaints, actions or causes of
17 action of whatever kind or nature, whether known or unknown, contingent or accrued, against
18 Defendant or the Released Parties or any of them, under any state, municipal, or federal law,
19 statute, ordinance, regulation, order, or common law principle or theory, arising out of or related to
20 the Second Amended Complaint, including without limitation: (1) violation of California Labor
21 Code section 226.7 (unpaid meal period premiums, failure to provide meal periods); (2) violation
22 of California Labor Code section 226.7 (unpaid rest period premiums, failure to provide rest
23 periods); (3) violation of California Labor Code sections 201, 202, and 203 (final wages not timely
24 paid during employment and upon termination, and waiting time penalties); (4) violation of
25 California Labor Code section 204 (wages not timely paid during employment); (5) violation of
26 California Labor Code section 226(a) (non-compliant wage statements, failure to maintain or
27 provide accurate itemized wage statements); (6) violation of California Labor Code section
28 1174(d) (failure to keep requisite payroll records); (7) violation of California Labor Code sections
2698, et seq. (California Labor Code Private Attorney General Act of 2004); (8) violation of
California Business and Professions Code sections 17200, et seq; and (9) any other claims alleged
in the Second Amended Complaint

² “Released Parties” means Defendant, including all of Defendant’s past, present, and future direct
or indirect predecessors, successors, subsidiaries, investors, parent companies, holding companies,
affiliates, sister and affiliated companies, divisions, assigns, and other related entities, as well as
their successors, predecessors, shareholders, subsidiaries, investors, parent, sister and affiliated
companies, owners, officers, directors, partners, members, managers, assigns, agents, employees,
principals, heirs, administrators, attorneys, vendors, accountants, auditors, consultants, fiduciaries,
beneficiaries, subrogees, executors, privies, trustees, insurers, reinsurers, employee benefit plans,
and representatives of each of them, both individually and in their official or corporate capacities,
past or present, as well as all persons acting by, through, under, or in concert with any of these
persons or entities..

After deducting the Class Representative Enhancements, Class Counsel's awarded attorneys' fees and expenses, payment to the LWDA, and the Claims Administrator's fees and expenses, the balance of the Gross Settlement Fund (the "Net Settlement Fund") will be available for payment to Settlement Class Members depending upon the Settlement Class Member's membership in one or more of the four (4) classes. The Net Settlement Fund will be apportioned among Settlement Class Members as follows:

PAGA Settlement Class Fund:	The first \$2,500.00 of the Net Settlement Fund will first be allocated to the PAGA Settlement Class Fund
Wage Statement Class Fund:	Five percent (5%) of the remaining balance of the Net Settlement Fund after deducting \$2,500.00 for the PAGA Settlement Class Fund;
Warehousemen Class 1 Fund:	Fifty-five percent (55%) of the remaining balance of the Net Settlement Fund after deducting \$2,500.00 for the PAGA Settlement Class Fund; and
Warehousemen Class 2 Fund:	Forty percent (40%) of the remaining balance of the Net Settlement Fund after deducting \$2,500.00 for the PAGA Settlement Class Fund.

If a Class Member does not opt out, they shall be considered a "Settlement Class Member," and the settlement payments for each Settlement Class Member shall be determined on a pro rata basis based on the number of workweeks the Settlement Class Member worked during the applicable class period with workweeks defined in the aforementioned four (4) classes, as follows:

PAGA Settlement Class Workweeks: The calculation of the number of workweeks worked for the PAGA Settlement Class Members shall be the difference between the later of the PAGA Settlement Class Member's first date of employment or June 24, 2013, and the earlier of the last day of work or [Date of Preliminary Approval] divided by seven (7) and rounded up to the nearest integer.

Wage Statement Class Workweeks: The calculation of the number of workweeks worked for the Wage Statement Settlement Class Members shall be the summation of 1) the difference between the later of the Wage Statement Class Member's first date of employment or June 24, 2013, and [Date of Preliminary Approval] divided by seven (7) and rounded up to the nearest integer, and 2) if employed by Defendant in California at any time from June 24, 2013, to November 15, 2013, the difference between the later of the Wage Statement Class Member's first date of employment or June 24, 2013, and November 15, 2013, divided by seven (7), rounded up to the nearest integer, and multiplied by 14.

Warehousemen Class 1 Workweeks: The calculation of the number of workweeks worked for the Warehousemen Class 1 Settlement Class Members shall be the difference between the later of the Warehousemen Class 1 Member's first date of employment or June 24,

2010, and the earlier of the last day of work or December 31, 2013 divided by seven (7) and rounded up to the nearest integer.

Warehousemen Class 2 Workweeks: The calculation of the number of workweeks worked for the Warehousemen Class 2 Settlement Class Members shall be the difference between the later of the Warehousemen Class 2 Member's first date of employment or January 1, 2014, and the earlier of the last day of work or [Date of Preliminary Approval], divided by seven (7) and rounded up to the nearest integer.

An "Individual Settlement Payment" for each Settlement Class Member shall be determined as follows:

PAGA Settlement Class Individual Payment: Multiplying \$2,500.00 by a fraction, the numerator of which is the individual Participating Settlement Class Member's PAGA Settlement Class Workweeks, and the denominator of which is the total number of PAGA Settlement Class Workweeks worked by all Participating Settlement Class Members.

Wage Statement Class Individual Payment: Multiplying five percent (5%) of the difference between the Net Settlement Fund and \$2,500.00 by a fraction, the numerator of which is the individual Participating Settlement Class Member's Wage Statement Class Workweeks, and the denominator of which is the total number of Wage Statement Class Workweeks worked by all Participating Settlement Class Members.

Warehousemen Class 1 Individual Payment: Multiplying fifty-five percent (55%) of the difference between the Net Settlement Fund and \$2,500.00 by a fraction, the numerator of which is the individual Participating Settlement Class Member's Warehousemen Class 1 Workweeks, and the denominator of which is the total number of Warehousemen Class 1 Workweeks worked by all Participating Settlement Class Members.

Warehousemen Class 2 Individual Payment: Multiplying forty-five percent (45%) of the difference between the Net Settlement Fund and \$2,500.00 by a fraction, the numerator of which is the individual Participating Settlement Class Member's Warehousemen Class 2 Workweeks, and the denominator of which is the total number of Warehousemen Class 2 Workweeks worked by all Participating Settlement Class Members.

If a Settlement Class Member is entitled to two or more individual settlement payments, then that individual's settlement amount in those classes will be added together.

If for any reason the total value of payments to Settlement Class Members exceeds the Net Settlement Fund, then payments to each Settlement Class Member will be adjusted on a pro rata basis so that the total payout to Settlement Class Members does not exceed the Net Settlement Fund.

Employee taxes will be withheld from the wages portion only, in accordance with the most recent W-4 or withholding instructions provided to Defendant, unless none is available, in which case Defendant shall assume a tax filing status of single with zero (-0-) dependents to calculate withholdings. Defendant's employer contributions of all federal, state, and local taxes (including,

**NOTICE OF CLASS ACTION SETTLEMENT
AND HEARING DATE FOR COURT APPROVAL**

1 but not limited to, FICA, FUTA, and SDI) in regard to the wage portion of the Individual
2 Settlement Payments shall be paid by Defendant in addition to the Gross Settlement Fund. To the
3 extent necessary to ensure the payment of all such tax obligations on the Individual Settlement
4 Payments, the Individual Settlement Payments will be reduced by any such required tax
5 obligations for wages for each Settlement Class Member. All wages paid to Settlement Class
6 Members shall be reflected on their individual W-2 forms. All remaining portions of any
Individual Settlement Payments made to Settlement Class Members shall, if required by
applicable state and/or federal law, be reported on a federal form 1099 that shall be provided to the
Individual Class Members.

7 Each Participating Settlement Class Member's Settlement Payment will be allocated as follows:

8 100% of the portion of the Participating Settlement Class Member's Settlement Payment
9 related to the PAGA Settlement Class payment shall be for the satisfaction of claims for
interest and penalties;

10 33% of the total amount of the Participating Settlement Class Member's Settlement
11 Payment not including the PAGA Settlement Class payment will be for the satisfaction of
12 claims for unpaid wages (subject to required wage withholdings and deductions); and

13 67% of the total amount Participating Settlement Class Member's Settlement Payment not
14 including the PAGA Settlement Class payment will be for the satisfaction of claims for
interest and penalties.

15 The Net Settlement Fund is estimated to be _____.

16 **For calculations related to the PAGA Settlement Class, Defendant's records indicate that**
17 **you worked for Defendant in California for a total of _____ workweeks from June 24, 2013,**
18 **to [Date of Preliminary Approval].**

19 **For calculations related to the Wage Statement Settlement Class, Defendant's records**
20 **indicate that you worked for Defendant in California a total of _____ workweeks from June**
21 **24, 2013, through November 15, 2013, and a total of _____ workweeks from November 16,**
22 **2013, to [Date of Preliminary Approval].**

23 **For calculations related to the Warehousemen Class 1 Settlement Class, Defendant's records**
24 **indicate that you worked for Defendant as a warehouseman in California for a total of**
25 **_____ workweeks from June 24, 2010, to December 31, 2013.**

26 **For calculations related to the Warehousemen Class 2 Settlement Class, Defendant's records**
27 **indicate that you worked for Defendant as a warehouseman in California for a total of**
28 **_____ workweeks from January 01, 2014, to [Date of Preliminary Approval].**

Based on the preceding information, your estimated settlement payment is
\$_____.

**NOTICE OF CLASS ACTION SETTLEMENT
AND HEARING DATE FOR COURT APPROVAL**

1 If you dispute the number of workweeks stated above, Defendant's records will control
2 unless you are able to provide documentation to the Claims Administrator that establishes
3 otherwise and that Defendant's records are mistaken. If there is a dispute about whether
4 Defendant's information or yours is accurate send in the Yellow Form. If the dispute cannot
5 be resolved informally, the dispute will be resolved by the Claims Administrator.

6 The Final Approval or Final Fairness Hearing will be on [FINAL APPROVAL HEARING
7 DATE]. You are welcome to attend and be heard by the Court. The Court may change the
8 date/time of the hearing, so you should consult the Court's website
9 <https://www.kern.courts.ca.gov/> as the date approaches, if you want to appear. It is
10 unnecessary to file an objection with the Court to be heard on matters unrelated to an
11 objection. If you exclude yourself from the Settlement, you may not be heard at the Final
12 Approval Hearing.

13 **12. How Will the Attorneys for the Class and Class Representatives Be Paid?**

14 The attorneys for the Representative Plaintiffs and the Class will be paid from the Gross
15 Settlement Fund. The actual amount awarded will be determined by the Court, but will not exceed
16 \$612,500.00, plus actual expenses and costs in the amount of up to \$60,000.00. Additionally,
17 Plaintiff Alfonso Garibay Hernandez will seek reimbursement for his services as Class
18 Representative in an amount not to exceed \$15,000.00, and Plaintiff Erik Valenzuela will seek
19 reimbursement for his services as Class Representative in an amount not to exceed \$10,000.00.

20 IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may call Class
21 Counsel at Parris Law Firm, John M. Bickford, 43364 10th Street West, Lancaster, California
22 93534, (661) 949-2595, or the Claims Administrator at the telephone number listed below, toll
23 free.

24 *Alfonso Garibay Hernandez, et al. v. United States Cold Storage of California, Inc.*
25 Claims Administrator
26 c/o

27 [CLAIMS ADMINISTRATOR]

28 [ADDRESS]

[ADDRESS]

Phone: [PHONE NUMBER]

**PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS
SETTLEMENT OR THE CLAIMS PROCESS.**

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Spanish on Reverse

Exhibit “B”

**NOTICE OF CLASS ACTION SETTLEMENT
AND HEARING DATE FOR COURT APPROVAL**

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Alfonso Garibay Hernandez, et al. v. United States Cold Storage, of California, Inc.
Kern County Superior Court Case No. S-1500-CV-282297-SPC

Phone: [PHONE NUMBER]

TO BE EXCLUDED FROM THE SETTLEMENT, THIS OPT OUT FORM MUST BE SIGNED AND MAILED TO THE SETTLEMENT ADMINISTRATOR VIA U.S. MAIL POSTMARKED ON OR BEFORE [60 DAYS FROM MAILING]

Home Telephone Number

If you do not want to participate in this lawsuit and Settlement, you may “opt out” of the Settlement. If you opt out of this lawsuit and the Settlement, (a) you will have no right to receive any benefit under the Settlement in this case; (b) you will not be bound by the terms of the Settlement; and (c) you will have no right to object to the Settlement and be heard at the Fairness Hearing.

To opt out, you must sign and return this Opt Out Form to the Settlement Administrator at the address listed above. To be timely, your Opt Out Form must be postmarked **on or before [60 days from mailing]**.

By signing this Opt Out Form, I hereby opt out of this lawsuit and Settlement. By signing this Opt Out Form, I understand that I will have no right to receive any money under the Settlement in this case, and I will have no right to object to the Settlement and be heard at the Fairness Hearing. Additionally, if I submit both a qualifying Settlement Claim Form and an Opt Out Form, the Settlement Claim Form shall be accepted, the Opt Out Form will be disregarded, the claim will be paid to me and I will become bound by the Judgment.

Dated: ____/____/____

Signature

**NOTICE OF CLASS ACTION SETTLEMENT
AND HEARING DATE FOR COURT APPROVAL**

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I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 43364 10th Street West, Lancaster, California 93534

[PROPOSED] JUDGMENT

***** Please See Attached List *****

_____ I deposited such envelope in the mail at Lancaster, California. The envelope was mailed with postage thereon fully prepaid.

BY PERSONAL SERVICE

BY FACSIMILE

BY OVERNIGHT MAIL

Executed on June 24, 2019 at Lancaster, California.

Kitty K. Szeto

ATTACHMENT TO PROOF OF SERVICE

HERNANDEZ, ALFONSO V. UNITED STATES COLD STORAGE OF CALIFORNIA, ET AL.
KERN COUNTY CASE NO. S-1500-CV282297-SPC

Chris Rusca, Esq.
SAGASER, WATKINS & WIELAND PC
5260 N. Palm Avenue, Suite 400
Fresno, California 93704
Telephone: (559) 421-7000
Facsimile: (559) 473-1483
chris@sw2law.com

/Attorneys for Defendants United States
Cold Storage of California and United
States Cold Storage, Inc.

California Labor and Workforce Development Agency /LWDA
1515 Clay Street, Ste. 801
Oakland, California 94612
Telephone: (916) 653-9900
<https://dir.tfaforms.net/209>