

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (this “Agreement”) is made by and between plaintiff Gabriel F. Ayala (“Plaintiff” or “Class Representative”), individually and on behalf of the proposed class and the State of California pursuant to the California Private Attorneys General Act, and Defendants Cold Storage Manufacturing, Inc., Cold Storage Design & Build, Inc. (“Defendants”) (collectively, the “Parties”), by and through their respective counsel of record. The Parties hereby agree to the following Settlement, which if approved by the Court resolves the pending case *Ayala v. Cold Storage Manufacturing, Inc. et al.* (Case No. RG14725346) filed in the California Superior Court for the County of Alameda (the “Lawsuit”).

I. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- A. “Class” means the combined class members as proposed in the Lawsuit, consisting of the following employees:
 - 1. All non-exempt construction employees, including panel installers, refrigeration installers, electricians, plumbers, welders, and shop employees, excluding Crew Leaders, employed by Defendants at any time from July 8, 2011 to September 10, 2019.
- B. “Settlement Class Period” means the period of time from July 8, 2011 to September 10, 2019.
- C. “Class Counsel” means Mallison & Martinez.
- D. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts awarded to Class Counsel by the Court to compensate them for, respectively, their attorneys’ fees and litigation expenses incurred in connection with the Lawsuit, including their pre-filing investigation, their filing of the Lawsuit and all related litigation activities, this Settlement, and all post-Settlement compliance and approval procedures.
- E. “Class Member” is a member of the Class.
- F. “Class Notice” means the Notice of Proposed Settlement of Class Action Lawsuit, which will be submitted by Plaintiff along with the Motion for Preliminary Approval.
- G. “Class Notice Packet” means the Class Notice and Notice of Estimated Individual Settlement Payment form, which will be submitted by Plaintiff along with the Motion for Preliminary Approval (including Spanish-translated versions).

- H. “Class Representative Payment” means the special payment of up to \$7,500 made to Plaintiff Gabriel F. Ayala in his capacity as Class Representative to compensate him for initiating the Lawsuit, performing work in support of the Lawsuit, releasing claims broader than the class (including unique individual claims), and undertaking the risk of liability for attorneys’ fees and expenses in the event he was unsuccessful in the prosecution of the Lawsuit. Defendants will not object to any request for such payments.
- I. “Defense Counsel” means Elizabeth A. Brown of GBG LLP, formerly Grube Brown & Geidt LLP.
- J. “Court” means the California Superior Court for the County of Alameda.
- K. “Effective Date” of this Settlement Agreement shall mean seven (7) calendar days after *all* of the following conditions have been satisfied:
1. Execution of this Settlement Agreement by all Parties, Class Counsel and Defense Counsel.
 2. Submission of this Settlement Agreement to the Court, along with appropriate motions and requests for approval of this Settlement Agreement by the Court.
 3. Preliminary Approval of the settlement by the Court.
 4. Mailing of the Class Notice Packet to the Class Members in accordance with the Court’s Order of Preliminary Approval.
 5. Expiration of the date by which Class Members must submit a completed Election Not to Participate Form or Notice of Estimated Individual Settlement Payment form, as stated in the Class Notice.
 6. A Final Approval Hearing, entry of a written final order by the Court approving this Settlement Agreement and entry of final judgment with respect to the Lawsuit. In the event there are written objections made prior to the final fairness hearing or submitted at the final fairness hearing and accepted by the Court, or an appeal of the Court’s approval of the Settlement is taken, then the Effective Date shall be the later of the following events: (i) when the period for filing any appeal, writ or other appellate proceeding opposing the Settlement has elapsed following entry of the Court’s final order approving this Settlement (the “Final Approval Order”) and no appeal has been taken contesting the Final Approval Order; or (ii) if any appeal has been filed contesting this Settlement and/or the Final Approval Order, then the date which is thirty (30) days after any appeal opposing or contesting this Settlement and/or Final Approval Order has been dismissed finally and

conclusively with no right to pursue similar remedies or relief, or any appeal has been resolved to uphold the Final Approval Order.

- L. “Final Approval Hearing” means the hearing to be conducted by the Court to determine whether to approve finally and implement the terms of this Agreement.
- M. “Gross Settlement Amount” means the maximum amount of \$300,000.
- N. “Judgment” means the Order of Final Judgment and Dismissal with Prejudice entered by the Court. The Parties will draft and submit a proposed Judgment to the Court along with the Motion for Final Approval in the Lawsuit.
- O. “Final Approval Order” and “Order of Final Approval” mean an order finally and unconditionally granting final approval of this Settlement Agreement, enters final judgment with respect to the Lawsuit, and authorizes payments to the Settlement Administrator, the Participating Class Members, and Class Counsel as provided in this Settlement Agreement.
- P. “Pay Periods” means for each Class Member the pay periods during the Class Period in which the Class Member worked for Defendants in California.
- Q. “Net Settlement Amount” means the Gross Settlement Amount of \$300,000 to be paid by Defendants pursuant to this Settlement, less (i) the Class Representative Payment, as described herein and approved by the Court; (ii) the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment, as described herein and approved by the Court; (iii) the payment to the LWDA, as described herein and approved by the Court; (iv) the Settlement Administrator’s reasonable fees and expenses, as described herein and approved by the Court; and (v) any other fees or expenses (other than attorneys’ fees and expenses) incurred in implementing the terms and conditions of this Agreement and securing dismissal of the Lawsuit as awarded by the Court.
- R. “Participating Class Member” means a Class Member who does not submit a timely and valid Election Not to Participate Form.
- S. “Preliminary Approval of the Settlement” means the Court’s preliminary approval of the Settlement without material change.
- T. “Settlement” means the disposition of the Lawsuit and all related claims effectuated by this Agreement.
- U. “Settlement Administrator” means a third-party administrator mutually agreed to by the Parties and approved by the Court, which will perform the duties of: (a) using the data provided by Defendant to prepare the Individual Forms with the number of Pay Periods and estimated Settlement Payment for each Class Member; (b) mailing the Notice Packets to Class Members; (c) tracking returned Election Not to Participate forms and objections to the Notice of Estimated Individual

Settlement Payments; (d) sending cure letters to Class Members; (e) notifying the Parties of timely, untimely, and deficient Election Not to Participate forms and objections received; (f) calculating the amounts due to each Participating Class Member pursuant to the Settlement; (g) notifying the Parties of, and helping to resolve, any disputes with or regarding the Class Members; (h) providing Settlement Payments to Participating Class Members and issuing IRS Forms W-2 and 1099 to the applicable taxing authorities as needed; (i) utilizing the National Change of Address Database maintained by the United States Postal Service, mail-forwarding information, and/or skip tracing methods, as reasonable and described herein, to update the mailing list, and taking steps to send Notice Packets to Class Members' current mailing addresses; and (j) performing such other duties as are described herein or as the Parties may request..

- V. "Settlement Share" means each Class Member's share of the Net Settlement Amount as provided by this Agreement.

II. RECITALS

- A. Plaintiff Gabriel F. Ayala filed a complaint in this lawsuit in the California Superior Court for the County of Alameda (Case No. RG14725346) on May 14, 2014. Thereafter, Plaintiff Ayala filed a First Amended Complaint on July 8, 2015. The operative complaint alleges eleven causes of action against Defendants for: 1) Failure to pay minimum wages; 2) Failure to pay overtime wages; 3) Unlawful kickback payments; 4) Failure to reimburse business expenses; 5) Failure to provide timely and complete rest periods or pay additional wages in lieu thereof; 6) Failure to provide timely and complete meal periods or pay additional wages in lieu thereof; 7) Failure to timely pay wages of terminated or resigned employees and associated alleged waiting time penalties; 8) Knowing and intentional failure to comply with itemized employee wage statement provisions; 9) Violation of Unfair Competition Law; 10) Failure to pay vested vacation pay; and 10) Private Attorneys General Act penalties for violations for the California Labor Code (Labor Code § 2699 et seq.). The alleged time period at issue in *Ayala* is "four years prior to the filing of the First Amended Class Action Complaint" – i.e., the time period of July 8, 2011 to September 10, 2019.
- B. In connection with the Lawsuit, Defendants produced documents, including payroll and timekeeping records for Class Members during the Class Period. Class Counsel engaged in extensive review of these records.
- C. On August 11, 2016, the Parties participated in a mediation session with mediator Mark Peters, Esq. Although the Parties engaged in good-faith, arm's length negotiations which lasted well into the evening, they were unable to reach an agreement that day. However, the parties continued to engage in informal settlement discussions facilitated by Mark Peters.

- D. On May 2, 2019, the Parties participated in a second mediation session with mediator Mark Peters and subsequently, reached agreement on terms to resolve this Lawsuit. The Parties confirmed the principal terms of their class settlement in writing, with the understanding that they would be preparing and executing a more comprehensive written settlement agreement, with such additional terms and conditions stated herein. This Agreement replaces any other agreements, understandings, or representations between the Parties, and is fully admissible to prove the terms and conditions of the Settlement.
- E. Class Counsel has conducted a thorough investigation into the facts of the Lawsuit. Based on the foregoing discovery and their own independent investigation and evaluation, Class Counsel and the Class Representative are of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendants, risks of decertification should the matter proceed towards trial, and potential appellate issues.
- F. It is the mutual desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims raised in or related in any way to the Lawsuit. In order to achieve a full and complete release of the released persons, the Class, including Plaintiff and each Class Member, acknowledge that this Settlement is intended to include and resolve all claims arising from or related to the Lawsuit as more fully set forth in section III.G of this Agreement.
- G. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendants that the claims in the Lawsuit of Plaintiff or the Class have merit or that Defendants bears any liability to Plaintiff or the Class on those claims or any other claims, or as an admission by Plaintiff that Defendants' defenses in the Lawsuit have merit. Defendants deny each and all of the claims alleged by Plaintiff in the Lawsuit. Nevertheless, Defendants have taken into account the uncertainty and risks inherent in any litigation and have also concluded that further defense of the Lawsuit would be protracted and expensive. Defendants, therefore, have determined that it is desirable and beneficial that the Lawsuit be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

Based on these Recitals, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, and in consideration for settlement of the Lawsuit and the release of claims of the Class, Defendants agree to collectively pay the Gross Settlement Amount as defined in Section I.N. above. Any Class Representative Payment, Class Counsel Fees and Litigation Expenses payments, payments to the LWDA, Participating Class Members' Settlement Shares, and the Settlement Administrator's reasonable

fees and expenses in administering the Settlement shall be deducted from the Gross Settlement Amount. All of the Gross Settlement Amount will be disbursed pursuant to this Agreement, and none of it will revert to Defendants. The Gross Settlement Amount shall be paid into a Qualified Settlement Fund (“QSF”) created by the Settlement Administrator within thirty (30) days of the Court issuing an order granting preliminary approval of the Settlement. The Claims Administrator shall handle such monies pursuant to the terms of the Settlement.

B. Payments from the Gross Settlement Amount: Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount as follows:

1. **Maximum Amount Paid.** The Gross Settlement Amount is the maximum total amount that Defendants are obligated to pay for any and all purposes under this Agreement. All Parties and class members are wholly obligated to pay any taxes associated with this settlement including any withholding taxes. In no event will Defendants be obligated to pay any other additional amount for the Gross Settlement Amount unless the Gross Settlement Amount is not paid into the QSF created by the Settlement Administrator within forty-five (45) days of the Court issuing an order granting preliminary approval of class settlement, in which case the Gross Settlement Amount will begin to incur interest as set forth in Section III.B.2 herein.
2. **Timing of Provision of Settlement Shares and Other Payments.** Subject to the terms of the Settlement outlined herein, Defendants shall pay the entire Gross Settlement Amount into the QSF within thirty (30) days of the Court issuing an order granting preliminary approval of class settlement. Any late payment will accrue statutory interest on wages. Any payment of the Gross Settlement Amount made later than forty-five (45) days after the Court’s issuance of an order granting preliminary approval of class settlement will incur interest at the statutory interest rate for wages under California law. Any such interest accrued will be distributed pro rata to Participating Class Members, Class Counsel, or otherwise as the Court directs. Defendants shall have no power over transferred funds, or to alter this schedule, absent court order or as otherwise described in this agreement.
3. Settlement Administrator shall keep the Gross Settlement Amount in an interest-bearing account and the interest shall be distributed back to the Defendants.

C. Payments from the Gross Settlement Amount. Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount subject to timing as directed by counsel for the Parties and/or the court:

1. **To Class Representative:** In addition to the amounts determined to be due to Plaintiff as a Participating Class Member under this Settlement Agreement, the Class Representative/Plaintiff will apply to the Court for an award of up to Seven Thousand and Five Hundred Dollars (\$7,500) (“Class Representative Payment”), to be paid out of the Gross Settlement Amount. Defendants will not oppose a Class Representative Payment of up to \$7,500 for Plaintiff. The Settlement Administrator will pay the Class Representative Payment approved by the Court out of the Gross Settlement Amount. If the Court approves a Class Representative Payment of less than \$7,500 for Plaintiff, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Payroll tax withholding and deductions will not be taken from the Class Representative Payment and instead a Form 1099 will be issued to Plaintiff by the Settlement Administrator reflecting the Class Representative Payment.
2. **To Class Counsel:** In consideration for settling this matter and in exchange for the Settled Claims, Defendants will not oppose Class Counsel’s application to the Court for an award of not more than 33.33% of the Gross Settlement Amount plus any pro rata portion of interest, if any, as described in Section III.B.2 plus an additional amount for reasonable costs plus any pro rata portion of interest, if any, as described in Section III.B.2 as their Class Counsel Litigation Expenses Payment, and Defendants will not oppose their requests. The ultimate amount of any award for Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment is to be determined by the Court. Class Counsel will submit a request for fees and expenses to the Court for approval prior to the date of the hearing for final approval of the Settlement. The Parties agree that any reduction by the Court in the amount of attorneys’ fees approved for Class Counsel shall not be a basis for rendering the entire Settlement voidable or unenforceable. The Settlement Administrator will pay the amount approved by the Court out of the Gross Settlement Amount. If the Court approves a Class Counsel Fees Payment of less than 33.33%, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Payroll tax withholding and deductions will not be taken from the Class Counsel Fees and Expenses Payment and instead one or more Forms 1099 will be issued by the Settlement Administrator to Class Counsel with respect to those payments.
 - a. The parties agree that, over and above the total amount of the Court-approved award for the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment, Plaintiff and Defendants shall each bear their own fees and costs incurred by them or arising out of this Lawsuit; the negotiation, execution, or implementation of this Settlement; and/or the process of obtaining, administering or challenging an order granting preliminary approval or final order and judgment. The Parties will not seek reimbursement of any such

fees and/or costs from any party to this Settlement Agreement or the Released Parties. The Parties, however, may seek fees for enforcement of any settlement finally approved if there is a breach of this settlement agreement or court order relating to same by any other Party.

b. Any order, finding, ruling, holding or proceeding relating to any such applications for an award for the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment, or any separate appeal from any separate order, finding, ruling, holding, or proceeding relating to them or reversal or modification of them, shall not operate to terminate or cancel this Settlement or otherwise affect or delay the finality of the final order and judgment or this Settlement.

3. **To the Labor and Workforce Development Agency (LWDA).** The Parties agree that up to \$25,000.00 (“PAGA Settlement Amount”) of the Class Settlement Amount shall be allocated to the resolution of any Class Member claims arising under the California Labor Code Private Attorneys General Act of 2004 (California Labor Code sections 2698, et seq., “PAGA”) to be paid to the State of California. The Parties will apply to the Court for a payment out of the Gross Settlement Amount to the LWDA of up to \$25,000 (the “LWDA Payment”) as the LWDA’s share of the settlement of civil penalties paid under this Agreement pursuant to the State of California for its PAGA claim. If the Court approves an LWDA Payment of less than \$25,000, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. If the Court requires an LWDA Payment of greater than \$25,000, the parties agree any such modification up to 1/3 of the Gross Settlement Amount.

4. **To the Settlement Administrator.** The Parties agree to pay a Settlement Administrator approved by the Court for its reasonable fees and expenses related to administering this Settlement, including, but not limited to those duties enumerated within the definition of Settlement Administrator, defined above, printing, distributing, and tracking forms for this Settlement, calculating estimated amounts per Class Member, tax reporting, distributing all payments from the Gross Settlement Amount, and providing necessary reports and declarations, and other duties and responsibilities set forth herein to process this Settlement, as requested by the Parties. The amount paid to the Settlement Administrator for its reasonable fees and expenses will be paid out of the Gross Settlement Amount. Every effort will be undertaken to minimize this cost and the Settlement Administrator will ensure proper notice and administration of the fund.

D. **Responsibility for Taxes.** As to the portion of Participating Class Members’ settlement proceeds that constitute wages, Defendants will be separately

responsible for their share of the employer payroll taxes, including the employer FICA, FUTA, and SDI contributions.

E. **Settlement Share.** Subject to the terms and conditions of this Agreement, within ten (10) business days of the Effective Date the Settlement Administrator will pay a Settlement Share from the Net Settlement Amount to each Class Member who does not submit a timely and valid Election Not to Participate in Settlement.

1. **Calculation.** After deducting from the Gross Settlement Amount the Class Representative Payment, Class Counsel Fees and Litigation Expenses payments, payments to the LWDA, and the Settlement Administrator's fees and expenses, each Participating Class Member shall be eligible to receive a pro rata share of the balance of the Net Settlement Amount. The settlement payments will be reduced by any required legal deductions for each Participating Class Member. The Settlement Share for each Participating Class Member will be based on (a) that Participating Class Member's total number of pay periods in which the Class Member was employed by Defendants during the Class Period (b) divided by the aggregate number of pay periods for Defendants of all Participating Class Members during the Settlement Class Period (c) multiplied by the value of the Net Settlement Amount.
2. **Settlement Payment Allocation.** All Settlement Shares will be allocated as follows: 30% to settlement of wage claims, and 70% to settlement of claims for interest and statutory penalties. The portion allocated to wages shall be subject to all applicable withholdings and reported on an IRS form W-2 and the portion allocated to interest and penalties shall be reported on an IRS Form 1099 by the Settlement Administrator. After appropriate tax withholding from each Participating Class Member's Settlement Share, the net payment to be received by each Participating Class Member as required by law via a W-2 Form, the Settlement Administrator shall immediately pay over all such withheld funds to the appropriate state and federal taxing authorities. The Settlement Administrator shall provide each Participating Class Member with appropriate documentation setting forth the amount of any tax or other deductions in accordance with state and federal tax requirements.
3. **Tax Obligations.** Each Party and Participating Class Member will be responsible for his, her, or its own tax obligations. The Parties agree and understand that neither Defendants has made any representations regarding the tax obligations or consequences, if any, related to this Settlement. The Parties agree that each Defendant and each Participating Class Member is solely responsible for determining the tax consequences of payments made pursuant to this Settlement and for paying taxes, if any, which are determined to be owed by each of them or on such payments (including penalties and interest related thereto) by any taxing authority, whether state,

local, or federal. Neither Class Counsel nor Defendants' Counsel intend for anything contained in this Settlement to constitute legal advice regarding the taxability or tax treatment of any amount paid hereunder, nor shall anything in this Agreement be relied upon as such.

4. **No Determination of Eligibility for Employee Benefits.** Defendants will not use the settlement payments for determination of eligibility for, or calculation of, any employee benefits (e.g. vacations, holiday pay, retirement plans, etc.) of the Participating Class Members, and Defendants will not modify the Participating Class Members' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare plan sponsored by either Defendants, unless otherwise required by law.
 5. **No Reversion.** Participating Class Members are entitled to 100% of the Net Settlement Amount. Defendants maintain no reversionary right to any portion of the Net Settlement Amount.
 6. **Employer's Share of Payroll Taxes.** The Settlement Administrator will give Defendants an estimate of the employer's share of payroll taxes within five (5) calendar days of sending out the Class Notice. Upon calculation of each Participating Class Member's Settlement Share, and at least three (3) calendar days after Final Approval (if not sooner), the Settlement Administrator shall advise Defendants of the exact amount of the employer's share of payroll taxes. Defendants will provide that amount to the Settlement Administrator within ten (10) calendar days after Final Approval.
- F. **Procedure for Approving Settlement.** The Parties stipulate and agree to the following schedule and procedures for obtaining the Court's approval of the settlement, including seeking certification of those subclasses not previously certified by the Court for purposes of settlement, notifying the Class, and processing all benefits provided under this Settlement Agreement:
1. **Motion for Preliminary Approval of Settlement by the Court.**
 - a. Plaintiff will move the Court for (collectively, "Motion for Preliminary Approval):
 - (i) Conditional certification of the Class as a settlement class. Solely for settlement purposes, Plaintiff agrees to seek, and Defendants consents to, certification by the Court of the Class as defined in this Agreement.
 - (ii) Preliminary approval of the terms of this Settlement.

- (iii) Approval of the Class Notice Packet, settlement procedure, and appointment of the Settlement Administrator.
- (iv) Scheduling of a Final Approval Hearing on the question of whether the terms of this Settlement should be finally approved as fair, reasonable, and adequate as to Plaintiff and the Class Members.

Defendants will not oppose said motion, so long as the motion and supporting papers are consistent with the terms of this Settlement Agreement.

- b. The Parties have agreed to the certification of the class identified in Section I.A.3 for the sole purpose of effectuating this Settlement. The conditional certification of the class identified in Section I.A.3 shall be binding only with respect to the settlement of this Lawsuit. In the event that this Settlement Agreement is cancelled pursuant to its terms, or not approved by the Court, or should Judgment not become final, the certification of this class shall be vacated, the Lawsuit shall proceed as though these subclasses had never been certified, this Settlement Agreement shall be of no force or effect and the fact that the Parties were willing to stipulate to certification of these subclasses as part of the Settlement will have no bearing on, and will not be admissible for any reason, including but not limited to in connection with the issue of whether either or any subclass should be certified in a non-settlement context in this Lawsuit or any other action, and in any of those events Defendants expressly reserve the right to oppose class certification, as well as the right to seek decertification of the class identified in Section I.A.1. Nothing in this Settlement Agreement affects the validity of the Court's July 30, 2019 "Order Re Class Certification," or limits Defendants' rights to pursue writ relief.
- c. In the event that the terms or conditions of this Settlement, other than the terms pertaining to the Class Counsel Award and/or Class Representative Payment, are materially modified by any court, any party in its sole discretion to be exercised within fourteen (14) days after such a material modification may declare this Settlement null and void. For purposes of this subparagraph, material modifications include but are not limited to any modification to the definitions or numbers of the Class Members, Settlement Class Period, Released Parties, or Released Claims. For purposes of this subsection, any reduction by the Court of attorneys' fees awarded to Class Counsel do not constitute a material modification. Any Party may exercise his or its option to void this Settlement Agreement as provided above by giving notice, in writing, to counsel for all other Parties

and to the Court at any time prior to final approval of this Settlement Agreement by the Court. In the event that a Party exercises their right to declare this Settlement null and void under this section, the Parties agree that, in every material aspect, the *Ayala* action shall revert back to the procedural posture and conditions existing in the case prior to the Settlement, and the Parties will otherwise be restored to the *status quo ante* in their case, including reverting Defendants to their prior position of having an opportunity to seek writ relief of the Court's Class Certification order, assuming such writ relief is pursued in a timely fashion following the nullity of this Agreement. In those circumstances, the Settlement shall not be admissible or otherwise used in any subsequent proceedings, either in the Action, before the Court, or in any other forum.

- d. At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear and support the granting of the motion, so long as the motion and supporting papers are consistent with the terms of this Settlement Agreement. Class Counsel will draft and submit with the Motion for Preliminary Approval, a Proposed Order Granting Preliminary Approval of Settlement, and Setting Hearing for Final Approval of Settlement.

- 2. **Notice to Class Members.** If the Court enters an Order granting Preliminary Approval of the Settlement, every Class Member, who can be located with the assistance of the Settlement Administrator, will be provided with the Class Notice Packet (which will include the Class Notice completed to reflect the order granting Preliminary Approval of the Settlement and each Class Member's estimated Settlement Share based on his or her Class Data) as follows:

- a. Notice Packet. Plaintiff will prepare the **Class Notice**, Notice of Estimated Individual Settlement Payment form, and **Election Not to Participate in Settlement**, which Plaintiff will then submit to the Court for approval with the Motion for Preliminary Approval. The Notice will include, non-exclusively, information regarding the nature of the Lawsuit; a summary of the substance of the Settlement's terms; the Class definition; the procedure for submitting Elections Not to Participate in Settlement; the procedure for objecting to the Settlement or the calculated dates of employment, the date for the final approval hearing; and the formula used for the Individual Settlement Payments. The Notice of Estimated Individual Settlement Payment shall include the Class Member's estimated Individual Settlement Payment.
- b. Settlement Administrator. The parties agree that the Settlement Administrator shall have the authority to establish and maintain a

Qualified Settlement Fund, mail the Notice; process opt outs (“Elections Not to Participate in Settlement”) and objections; and disburse sums from the Qualified Settlement Fund.

- c. **Objections.** To object to the Settlement, a Class Member must file with the Court and serve a written objection (along with any supporting documents) on all parties, not later than 45 calendar days after the Notice is mailed. The written objection must set forth, in clear and concise terms, (1) the objector’s full name; (2) the objector’s address; (3) the last 4 digits of the objector’s Social Security number; and (4) the legal and factual arguments supporting the objection. Class Members who fail to make objections in this manner shall be deemed to have waived any and all objections and shall be foreclosed from making any objections, whether by appeal or otherwise, to the Settlement or this Settlement Agreement. Class Members who timely submit a written objection have the option to appear at the Final Approval Hearing, either in person or through their own counsel. To appear, Class Members must include a statement about the intent to appear at the Final Approval Hearing (“Notice of Intention to Appear”) in the objection. No Class Member shall be entitled to be heard at the Final Approval Hearing without permission of the Court unless the Class Member includes the Notice of Intention to Appear. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member will present to the Court in connection with the Final Approval Hearing.
- d. **Provision of Class Member Names to Settlement Administrator.** Within twenty-one (21) calendar days of Preliminary Approval of the Settlement, Defendants shall provide the Settlement Administrator and Class Counsel with the names, most recent known mailing address and telephone number, Social Security Number and the respective number of pay periods that each Class Member worked during the applicable Settlement Class Period in a readable Microsoft Office Excel spreadsheet (collectively “Class List and Data”). The Settlement Administrator will then have an opportunity to review the data provided and to calculate each Class Member’s estimated Settlement Share.
- e. **Mailing of Notice.** Within ten (10) calendar days after receipt of the Class List and Data, the Claims Administrator shall mail the Class Notice to Class Members via first-class regular U.S. Mail. Class Members will have 45 calendar days from the mailing of the Notice to submit Elections Not to Participate in Settlement, Notice of Estimated Individual Settlement Payments for purposes of

requesting adjustments to their calculated pay periods, or objections to the Settlement.

- f. Class List and Data Confirmation Checks. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database or any other similar services available, such as provided by Experian, to update and correct for any known or identifiable address changes. If a new address is obtained by a way of a returned Notice, then the Settlement Administrator shall promptly forward the original Notice to the updated address via first-class regular U.S. Mail indicating on the original Notice the date of such remailing. Where a Notice is returned as undeliverable, without a forwarding address, the Settlement Administrator will perform a computer/SSN and “skiptrace” search to obtain an updated address. If no current address is located, the Class Notice for that individual will be deemed undeliverable. The Parties agree to cooperate with the Settlement Administrator to locate a more recent address for Class Members, where necessary. If the procedures herein are followed, Defendants, Class Counsel and the Settlement Administrator shall be deemed to have satisfied their obligation to provide the Class Notice to the Class.
- g. Class Member Disputes. If a Class Member disagrees with the number of pay periods used to calculate his or her estimated Settlement Share, the Class Member must complete and send a completed Notice of Estimated Individual Settlement Payment Form to the Settlement Administrator, together with any supporting written documentation. Such documentation may consist of official records, pay stubs, weekly schedules or personal logs. To be considered, the Notice and supporting written documentation must be received by the Settlement Administrator no later than forty-five (45) calendar days after the postmark date of the Class Notice. The Settlement Administrator shall immediately notify Class Counsel and Defense Counsel of any such disputes by sharing with both Class Counsel and Defense Counsel the notice of dispute and any documentation submitted by a Class Member in support of his or her dispute. The Settlement Administrator shall make the final determination regarding the dispute based on the written documentation submitted by the Class Member and any materials submitted by Class Counsel and/or Defense Counsel within ten (10) calendar days of receipt of the notice of dispute and supporting written documentation, or no later than fifty-five (55) calendar days after the postmark date of the Class Notice. The Settlement Administrator shall inform Class Counsel, Defense Counsel, and the Class Member of the final determination by a telephone call,

followed by an email or regular U.S. Mail if no email for that Class Member is available.

- h. Certification of Opt-Outs. All Elections Not to Participate will be submitted to the Settlement Administrator, who will certify jointly to Class Counsel and Defendants' Counsel the Elections Not to Participate that were timely submitted.
- i. Expiration of Settlement Checks. Any checks issued by the Claims Administrator to Class Members shall be negotiable for not less than 180 calendar days from issuance.
- j. Declaration of Due Diligence. At least twenty-one (21) calendar days before the Final Approval Hearing, the Settlement Administrator shall prepare a declaration of due diligence and proof of mailing with regard to the mailing of the Class Notice, and any attempts by the Settlement Administrator to locate the members of the Class ("Due Diligence Declaration"), to Class Counsel and Defense Counsel for presentation to the Court. The Settlement Administrator will attach to the Due Diligence Declaration a report showing the name of each individual who submitted a timely and valid opt-out, objections, disputes and status of the disputes. The declaration will also include a verification of its settlement administration costs.
- k. The Parties and their counsel agree that they will not solicit or encourage individuals to opt out of the Settlement or to assert or pursue objections to the Settlement. However, if more than ten percent (10%) of the Class Members submit timely Exclusion Requests, Defendants shall have the exclusive right to void this Settlement at its option. Defendants shall make their election within twenty (20) calendar days after the Settlement Administrator notifies the Parties of the number of Exclusion Requests received, which the Settlement Administrator shall do within ten (10) calendar days after the Response Deadline. If Defendants exercise this right to rescind the Settlement, they shall pay all reasonable settlement administration costs incurred by the Settlement Administrator to that date.

3. Additional Briefing and Final Approval

- a. As soon as practicable following the Response Deadline, Plaintiff shall file with the Court a Motion for Final Approval of Class Settlement and a memorandum in support of their motion. Plaintiff's Motion for Final Approval of Class Settlement shall also include a request for the Court's approval of the Class

Representative General Release Payments and Class Counsel's attorneys' fees and costs. Plaintiff's counsel shall prepare the Motion for Final Approval of the Settlement and shall provide Defendant's counsel sufficient opportunity to review, comment on, and agree upon the motion before it is filed.

- b. At or before the Final Approval Hearing, the Parties shall present a proposed judgment for the Court's entry in accordance with the Settlement. After entry of the Final Judgment, the Court shall have continuing jurisdiction over the Action and the Settlement solely for purposes of enforcing the Settlement, addressing settlement administration matters, and addressing such post-judgment matters as may be appropriate under court rules or applicable law.
- c. Upon filing the Motion for Final Approval of Class Settlement, Plaintiff shall submit a Proposed Order in a mutually agreeable form:
 - (i) Approving the Settlement, adjudging the terms thereof to be fair, adequate, and reasonable, and directing consummation of its terms and provisions;
 - (ii) Granting Class Counsel's motion for attorneys' fees and reimbursement of costs;
 - (iii) Approving the Class Representative General Release Payments and the settlement administration costs;
 - (iv) Certifying the Class as proposed in the instant Settlement Agreement for settlement purposes only;
 - (v) Entering Final Judgment in accordance with the terms of the Settlement and dismissing with prejudice the Lawsuit.

- 4. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, Plaintiff and Participating Class Members who did not timely submit an objection to or Election Not to Participate in the Settlement, and Defendants, and their respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion for new trial, a motion for relief and any extraordinary writ, and the Judgment therefore will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. This paragraph does not preclude Plaintiff or Class Counsel from appealing from a refusal by the

Court to award the full Class Representative Payment, the Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment sought by them.

5. **Distribution to Class Members, Plaintiff and Class Counsel.** The occurrence of the Effective Date is a prerequisite to any distributions from the Gross Settlement Amount. If all other conditions necessary for the Effective Date have been satisfied, the Settlement Administrator will release the total amount of payments due to Plaintiff, the LWDA, and Participating Class Members within seven (7) calendar days of: (a) the last day on which to appeal an order granting final approval of the Settlement if timely objections are filed, or the resolution of any such appeal that does not alter the terms of the Settlement; or (b) if no timely objections are filed, the date upon which the Court enters an order granting final approval of the Settlement. At or after this time, Class Counsel will determine the date of distribution of fees and/or costs to Class Counsel and the Settlement Administrator based upon the progress of the proceedings.
6. **Uncashed or Returned Settlement Share Checks.** The Settlement Administrator will provide notice to Class Counsel and Defense Counsel of any settlement checks returned as undeliverable and any settlement checks remaining un-cashed for more than 180 calendar days after issuance. The Settlement Administrator shall have responsibility to attempt to locate the impacted Class Members and re-issue checks with an expiration date 180 days following the re-issuing of the checks. In any event any Class Member cannot be located within 180 days of the expiration of the initial settlement checks, funds represented by uncashed settlement check(s) will be distributed to a cy pres recipient as approved by the Court.
7. **Final Report by Settlement Administrator to Court.** Within seven (7) business days after final disbursement of all funds from the Gross Settlement Amount, the Settlement Administrator will serve on the Parties and file with the Court a declaration proving a final report on the disbursements of all funds from the Settlement Amount.

G. Release of Claims.

1. **Plaintiff.** In consideration of his awarded Class Representative Payment, his piece of the Settlement Shares, and the other terms and conditions of the Settlement, Plaintiff and his Counsel hereby fully and finally release Defendants, and each of their past or present officers, directors, members, shareholders, employees, agents, principals, heirs, representatives, accountants, attorneys, auditors, consultants, insurers and reinsurers and their respective successors and predecessors in interest, subsidiaries, affiliates, joint ventures, parents, and each of their respective company-sponsored employee benefit plans and all of their respective officers,

directors, employees, administrators, fiduciaries, trustees, and agents (the “Released Parties”) from any and all claims, causes of action, rights, demands, and liabilities, known or unknown, regarding his employment with Defendants arising on or before the date on which he signs this Agreement.

2. **Defendants.** Defendants hereby release Plaintiff from any and all known claims, actions, rights, obligations or causes of action of any kind whatsoever regarding Plaintiff’s employment they had or now have, arising on or before the date on which they sign this Agreement.
3. **Participating Class Members.** In consideration of their Settlement Share and other terms and conditions of this Agreement, each Class Member who does not submit a timely and valid Election Not to Participate in Settlement, shall, upon the Effective Date, be deemed to have released any and all claims against Defendants, and each of their past or present officers, directors, members, shareholders, employees, agents, principals, heirs, representatives, accountants, attorneys, auditors, consultants, insurers and reinsurers and their respective successors and predecessors in interest, subsidiaries, affiliates, joint ventures, parents, and each of their respective company-sponsored employee benefit plans and all of their respective officers, directors, employees, administrators, fiduciaries, trustees, and agents (the “Released Parties”) related to all claims pled in Plaintiff’s Lawsuit, as well as all claims arising from the same set of operative facts as those set forth in Plaintiff’s Lawsuit against Defendants. The Released Claims include all claims for allegedly unpaid wages, statutory penalties, civil penalties, interest, costs and attorneys’ fees.
4. **Class Members’ Released Claims Period.** The Released Claims are those that accrued during the Settlement Class Period.
5. **Waiver of Unknown Claims by Class Members:** Section 1542 of the California Civil Code provides that: “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.” With respect to the release set forth in Section G.3 above only, each participating Class Member waives all rights and benefits afforded by Section 1542 of the California Civil Code and any similar provision under federal, state, or local law, and each participating Class Member does so understanding the significance of that waiver. Participating Class Members may hereafter discover facts in addition to or different from those they now know or believe to be true with respect to the subject matter of the release set forth in Section G.3 above, but participating Class Members, upon the Settlement becoming Final, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever settled and released any and

all of the claims released pursuant to Section G.3 above, whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed upon any theory of law or equity now existing, including but not limited to any claims arising out of the Action, and any claims, actions, suits, or charges based on the California Labor Code, any applicable California Industrial Welfare Commission Wage Order, and any similar federal, California, and local statutes, regulations, ordinances, or laws.

6. **Plaintiff's Waiver of Objections to Settlement or Exclusion:** By signing this Agreement, Plaintiff agrees to be bound by this Settlement Agreement, and to not request to be excluded from the Settlement Agreement, and to not object to the Settlement. Any such request for exclusion or objection by Plaintiff shall therefore be void and of no force or effect.
7. **Release Language on Settlement Checks to Class Members:** Each check issued to a participating Class Member for his or her share of the Settlement Agreement shall contain a release on the back that states: "I understand and agree that I am releasing any and all claims described in the Notice of Class Action Settlement, which I received and read."

H. **Inadmissibility of Settlement.**

1. Whether or not the Settlement is finally approved, neither the Settlement Agreement, nor any of its terms, nor any documents, statements, reports, accounts, proceedings, activities, or conduct related to the Settlement Agreement, shall in any event be:
 - a. Construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendant or any of the other Released Parties, including but not limited to evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage; or
 - b. Disclosed, referred to or offered or received in evidence against Defendant or any of the other Released Parties, in any further proceeding in the Action, or any other civil, criminal, or administrative action or proceeding, except for purposes of settling the Action or enforcing any release of claims in this Settlement Agreement.

I. **Miscellaneous Terms.**

1. **No Admission of Liability.** Defendants deny each and all of the claims alleged by Plaintiff and Class Members in the Lawsuit. In addition, Defendants contend that they have complied with their obligations under Federal law and California state law. Neither this settlement, nor any document referred to or contemplated therein, nor any action taken to carry out this Settlement, is, may be construed as, or may be used as an admission, concession, or indication by or against Defendants of any fault, wrongdoing or liability whatsoever.
2. **Financial Representation by Defendants.** This Settlement is expressly conditioned on Cold Storage Design and Build's tax returns for the prior year being produced to Plaintiff's Counsel, for "attorneys' eyes only," within seven (7) days of the execution of the settlement agreement.
3. **Neutral Reference.** Defendants agree to provide a neutral employment reference for Plaintiff in the future, which shall only include positions held, and length of employment.
4. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement other than the representations, warranties, covenants, and inducements expressly stated in this Agreement. All prior or contemporaneous agreements, understandings, and statements, whether oral or written, whether express or implied, and whether by a Party or a Party's counsel, are merged herein.
5. **Attorney Authorization.** Class Counsel and Defendants' Counsel warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement.
6. **Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their successors-in-interest.
7. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

8. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
9. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Settlement reflects a fair, reasonable, and adequate settlement of the Lawsuit and have arrived at this Settlement and this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential and will so represent to the court. In addition, the mediator may execute a declaration supporting the Settlement and the reasonableness of this Settlement, and the Court may, in its discretion, contact the mediator to discuss the Settlement and whether or not the Settlement is fair and reasonable.
10. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
11. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the fifth business day after mailing by United States mail, addressed as follows:

To Plaintiff and the Class:

Stan S. Mallison, Esq.
Hector R. Martinez, Esq.
MALLISON & MARTINEZ
1939 Harrison Street, Suite 730
Oakland, California 94612
Telephone: (510) 832-9999
Facsimile: (510) 832-1101

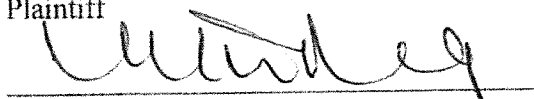
To Defendants:

GBG LLP
Elizabeth A. Brown, Esq.
601 Montgomery Street, Suite 1150
San Francisco, CA 94111
Telephone: (415) 603-5000
Facsimile: (415) 840-7210

IN WITNESS WHEREOF, the undersigned Settling Parties and their duly-authorized representatives accept and agree to the terms of this Agreement and hereby execute it voluntarily and with a full understanding of its consequences.


Gabriel F. Ayala
Plaintiff

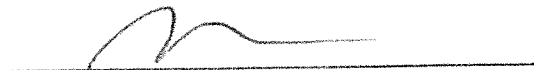
2/21/2020
Date


By: Peter Ng, President
Defendants

2/24/2020
Date

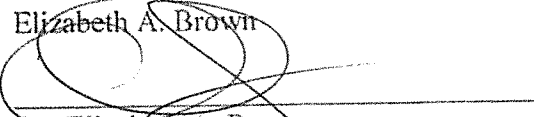
APPROVED AS TO CONTENT AND FORM,

MALLISON & MARTINEZ
Stan Mallison
Hector Martinez


By: Stan Mallison
Counsel for Plaintiff and the Class

2/21/2020
Date

GBG LLP
Elizabeth A. Brown


By: Elizabeth A. Brown
Counsel for Defendants

2-26-2020
Date