

STIPULATED SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

The Parties to this Stipulated Settlement Agreement and Release of Claims (the “Agreement” or “Settlement Agreement”) are Plaintiff Andrea Otanez Verdugo (“Plaintiff”), for herself and acting on behalf of the Settlement Class (as defined below), the State of California, and the Private Attorneys General Act (“PAGA”) Representative Group (as defined below), on the one hand, and defendant Capstone Logistics, LLC (“Defendant” or “Capstone”) on the other, with respect to the civil action pending between Plaintiff and Defendant (collectively at times the “Parties”) entitled *Andrea Otanez Verdugo v. Capstone Logistics, LLC*, in arbitration before the Honorable Hunter H. Hughes (the “Arbitration” or “Action”)¹.

RECITALS

A. WHEREAS, Plaintiff has filed the pending action entitled *Andrea Otanez Verdugo v. Capstone Logistics, LLC*, in arbitration, and the parties have agreed to select the Honorable Hunter H. Hughes (the “Arbitrator”) to preside;

B. WHEREAS, Plaintiff alleges and will assert through a Complaint that Defendant: (1) failed to provide required meal periods; (2) failed to provide required rest breaks; (3) failed to pay overtime wages; (4) failed to provide minimum wages; (5) failed to timely pay wages during employment; (6) failed to timely pay wages upon separation of employment; (7) failed to provide accurate itemized wage statements; (8) failed to reimburse or indemnify employees for necessary business expenditures; (9) failed to maintain records; (10) owes penalties under the California Private Attorneys General Act (Cal. Labor Code § 2698, *et seq.*); and (11) violated the California Business and Professions Code §§ 17200, *et seq.*;

C. WHEREAS, Plaintiff seeks to represent classes of similarly-situated current and former non-exempt employees who have been employed by Defendant in California, and defined below as the Settlement Class and the PAGA Representative Group;

D. WHEREAS, Defendant denies that it has violated the law and contends that the facts do not justify class, collective, or representative action treatment under the governing legal standards;

E. WHEREAS, the Parties attended a mediation with mediator Lisa Klerman on June 28, 2022, and thereafter reached a PAGA and Class Settlement through arms-length negotiations; and

F. WHEREAS, the Parties desire to settle, fully and finally, all claims that Plaintiff, the Settlement Class, and the PAGA Representative Group might have against Defendant, from August 1, 2019, through the date of the Arbitrator’s approval of the PAGA Settlement and preliminary approval of the Class Settlement reflected in this Agreement (by way of the entry of an arbitration award), which were asserted in the complaint filed in the Action, or which could

¹ Plaintiff previously filed a lawsuit entitled *Andrea Otanze Verdugo v. Capstone Logistics, LLC*, Los Angeles County Superior Court, Case No. 22STCV09270, which was removed to the Central District of California, Case No. 2:22-cv-03141, and subsequently compelled to arbitration and dismissed without prejudice.

have been asserted based on the allegations in the Action, including without limitation, any and all claims for missed meal periods, missed rest breaks, unpaid wages, miscalculation of wages, unpaid minimum wage, miscalculation of overtime, unpaid overtime, inaccurate or incomplete wage statements, untimely payment of wages, failure to reimburse for expenses, damages, and penalties under the California Labor Code, Business & Professions Code (including Section 17200 *et seq.*), and related PAGA claims, including claims for restitution and other equitable relief, liquidated damages, punitive damages, or penalties, and any other benefit claimed on account of the allegations asserted or that could have been asserted in the complaint filed in the Action.

NOW, THEREFORE, in consideration of the terms, conditions, and promises set forth herein, it is agreed as follows:

TERMS OF SETTLEMENT

1. Requirement Of Arbitrator And Court Approval

This Settlement Agreement is conditioned upon [i] approval by the Arbitrator presiding over the Action and [ii] subsequent confirmation by a state or federal court within the State of California. The Parties agree that, in the event that Arbitrator approval or Court confirmation is denied, this Agreement shall be null and void, but that the Parties agree to work together, in good faith, to do everything necessary to obtain approval of the Settlement and to cure any issues that may have caused the Arbitrator or Court initially to deny approval or confirmation of the Settlement Agreement.

2. Class Certification For Settlement Purposes Only

Upon preliminary approval of this Agreement, the Settlement Class shall be certified for Settlement purposes only and for no other purpose (with Defendant maintaining its defenses to certification for all other purposes). Defendant contends that the facts do not justify class, collective, or representative action treatment under the governing legal standards. For purposes of settling this action only, the Parties conditionally have agreed that the requirements for establishing class certification have been met with respect to the Settlement Class. If the Arbitrator does not grant either preliminary or final approval of the Settlement, or the Court does not confirm any award granting preliminary or final approval the fact that the Parties were willing to stipulate to class certification for purposes of this Agreement shall not have any bearing on, or be admissible in connection with, the issue of whether any class should be certified in a non-settlement context. It is not, and it should not be construed as, any admission of fact or law in this matter or any other matter that class, collective, or representative action certification is appropriate. If the Effective Date does not occur, this Agreement shall be deemed null and void, shall be of no force or effect whatsoever, and shall not be referred to or used for any purpose whatsoever, and Defendant shall retain the right to challenge the propriety of class certification for any purpose.

3. Effective Date

The Effective Date shall be the date that the Arbitrator enters an Award approving the PAGA Settlement and preliminarily approving the Class Settlement as set forth in this Settlement Agreement.

4. Class Period

The Class Period shall be August 1, 2019, through the Effective Date.

5. The Settlement Class

The Settlement Class shall consist of the following two classes:

(a) The Non-Exempt Settlement Class shall consist of all current and former employees who have worked for Capstone within the State of California in a non-exempt position at any time during the Class Period.

(b) The Waiting Time Settlement Class shall consist of all non-exempt former employees who worked for Capstone within the State of California during the Class Period but were no longer employed as of the Effective Date.

The Non-Exempt Settlement Class and the Waiting Time Settlement Class are together referred to as the "Settlement Class." Excluded from the Settlement Class are the following individuals who have asserted separate, individual claims against Defendant and/or who currently have individual actions pending against Defendant: Corey J. Devine, the plaintiff in *Devine v. Capstone Logistics, LLC, et al.*, Case No. 20STCV39030 (L.A. Cnty. Super. Ct.); Ivan Escobar, the plaintiff in *Escobar v. Capstone Logistics, LLC, et al.*, Case No. STK-CV-UOE-2020-0009429 (San Joaquin Cnty. Super. Ct.); Angel Barba, the plaintiff in *Barba v. Capstone Logistics, LLC, et al.*, Case No. RG21100895 (Alameda Cnty. Super. Ct.); Efren Cabanillas Ontiveros, the plaintiff in *Ontiveros v. Capstone Logistics LLC*, Case No. 5:23-cv-02216-DSF-MAR (C.D. Cal.); Maria Barrera, an individual who notified the Labor & Workforce Development Agency of alleged California Labor Code violations relative to her employment with Defendant in a letter dated November 2, 2023; and Antonia Vargas, an individual who notified the Labor & Workforce Development Agency of alleged California Labor Code violations relative to her employment with Defendant in a letter dated November 2, 2023. The Parties agree to exclude these six individuals from the Settlement Class so that these individuals can continue to pursue their respective individual claims against Defendant and so that any order granting final approval of the Settlement will not serve to bar individual claims from being asserted against Defendant by any of these six individuals except as provided herein.

6. Class Counsel

For purposes of settling this action only, the Parties agree to the designation of Potter Handy, LLP as Class Counsel for the Settlement Class (collectively, "Class Counsel"). If the Arbitrator or Court does not grant either preliminary or final approval of this Settlement, then the Parties will revert to their previous positions and Defendant will not stipulate to appointment of Class Counsel.

7. Class Counsel's Evaluation

Based on Class Counsel's investigation and evaluation, Class Counsel is of the opinion that the terms set forth in this Agreement are fair, reasonable, adequate, and in the best interest of the Class Members. Class Counsel diligently and effectively investigated Plaintiff's claims, drafted the complaint, and interviewed witnesses. Class Counsel concluded that the Settlement reflected in this Agreement is in the best interests of the Class. After reviewing Defendant's policies, participating in private mediation, and evaluating the risks, Class Counsel concluded that further litigation might result in Plaintiff or the Class not recovering anything at all and such possibilities were a significant factor in their determination that this Agreement is fair, reasonable, and adequate.

8. Class Representative

For purposes of settling this action only, the Parties agree to the appointment of Plaintiff as class representative of the Settlement Class (the "Class Representative"). Defendant agrees not to contest an enhancement payment of Twenty Thousand Dollars and Zero Cents (\$20,000.00) or less (the "Service Award") for the Class Representative. The Class Representative will be issued an IRS Form 1099 for the Service Award. The Class Representative's right to receive a Service Award is contingent on her acceptance of the release and other terms and conditions below. The Class Representative agrees she shall not opt out or request exclusion from the Settlement.

9. PAGA Representative Group

The PAGA Representative Group shall consist of all current and former employees who have worked for Capstone within the State of California in a non-exempt position at any time during the Class Period. Members of the Settlement Class and members of the PAGA Representative Group are referred to herein as "Settlement Participants."

10. Gross Settlement Fund

The Parties have settled the Action for a maximum amount of \$1,400,000 (the "Gross Settlement Fund"). The Gross Settlement Fund includes all potential monies to be paid by Defendant in connection with the Settlement, including, without limitation, all Service Awards, attorneys' fees and costs, all interest, liquidated and/or multiple damages, penalties, all costs including costs of administration of the Settlement by a third-party claims administrator, and all employer-side payroll taxes.

11. PAGA Settlement Amount

Forty thousand dollars (\$40,000) (the "PAGA Settlement Amount") of the Gross Settlement Fund shall be allocated to the Settlement of PAGA claims of the PAGA Representative Group. Pursuant to the PAGA, 75% of the PAGA Settlement Amount, or \$30,000, shall be paid to the Labor & Workforce Development Agency (the "LWDA Payment") and the remaining 25% (\$10,000) shall be the Net PAGA Settlement Amount paid to the PAGA Representative Group.

12. Attorneys' Fees And Costs

Class Counsel will request that the Arbitrator approve an award of total attorneys' fees not to exceed one-fourth of the Gross Settlement Fund and costs not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000). The attorneys' fees and costs shall be paid from the Gross Settlement Fund. To the extent that the Arbitrator approves less than the amount of attorneys' fees or costs requested by Class Counsel, any reduced amount shall be allocated to the Gross Settlement Fund. An IRS Form 1099 shall be issued for the attorneys' fees/costs.

13. Class Administration

The Claims Administrator agreed upon by the Parties is ILYM Group, Inc. (the "Claims Administrator"). The cost of administration of the Settlement by the Claims Administrator including the Claims Administrator's fee (the "Settlement Administration Costs") will be paid out of the Gross Settlement Fund. The Claims Administrator, in concert with the Parties and their counsel, shall be responsible for administering the Settlement Agreement. The Parties agree that settlement administration costs shall not exceed \$45,000.00, based on a written bid received from the Settlement Administrator. All disputes relating to the Settlement Administrator's performance of its duties, after good-faith efforts by the Parties to first resolve such disputes, will be referred to the Arbitrator and/or Court, if necessary, which will have continuing jurisdiction over this Agreement until all payments and obligations contemplated by this Agreement have been fully completed.

14. Notice, Claims, Opt-Outs, And Objections

- a. Data to the Claims Administrator. No later than twenty-one (21) days after the Arbitrator grants and the Superior Court confirms the Arbitrator's award granting preliminary approval of the Class Settlement, Defendant shall provide the Claims Administrator with information regarding the Settlement Class as outlined in this paragraph in electronic format. Defendant shall provide to the Claims Administrator a database that contains the name, last-known residence phone number, last-known residence mailing address, and social security number of each person within the Settlement Class (the "Database"). Defendant shall also provide the Claims Administrator with the number of workweeks each person worked during the Class Period for Defendant as a non-exempt employee in California, from August 1, 2019, through the end of the Class Period. The Claims Administrator will keep this data confidential and will not use the information for any purpose other than administration of this Settlement Agreement. Defendant shall cooperate with and provide additional reasonably available information to the Claims Administrator necessary for the purpose of giving notice to the Settlement Class Members, allocating and distributing the Settlement amounts, and otherwise administering this Settlement Agreement.
- b. Mailing of Notice of Class Action Settlement and Request for Exclusion. The Parties' proposed Class Notice and Request for Exclusion Form is attached hereto as **Exhibit A**. The Settlement Administrator shall mail the Notice of Class Action Settlement and Request for Exclusion Form to Settlement Class Members within

21 calendar days of receiving the Settlement Class Member data from Defendant. The Settlement Administrator shall send the Notice of Class Action Settlement and Request for Exclusion Form to Settlement Class Members via First Class U.S. Mail, using the most current, known mailing address for each Settlement Class Member based on information provided by Defendant. Upon receipt of this information from Defendant, the Settlement Administrator shall perform a search based on the National Change of Address Database maintained by the United States Postal Service to update and correct any known or identifiable address changes.

- c. Re-mailing of Returned Notices. Any mailing returned to the Settlement Administrator as undeliverable shall be sent within three (3) business days via First Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall perform one skip trace only on returned mail and shall send a second notice mailing to a second address for anyone identified with a second address by the skip trace. Following this procedure, the Settlement Administrator shall perform a single re-mailing via First Class U.S. Mail within three (3) business days.
- d. Proof of Mailing. At least five (5) calendar days prior to the Final Settlement Approval Hearing, the Settlement Administrator shall provide a declaration of due diligence and proof of mailing with regard to mailing of the Notice of Class Action Settlement to Class Counsel and Defendant's Counsel, which they shall in turn provide to the Arbitrator.
- e. Opt Out Rights. Settlement Class Members shall be given the opportunity to exclude themselves or opt out of the Settlement Class. They shall not be permitted to opt out of the PAGA Representative Group.
- f. Settlement Class Members' Consideration Period. To exclude himself or herself from the Settlement of Class Claims, a Settlement Class Member must submit a Request for Exclusion Form to the Claims Administrator. The Request for Exclusion Form must include the Settlement Class Member's full name (and former names, if any), current address, and current telephone number, and the Request for Exclusion Form must be signed and dated by the Settlement Class Member. All Requests for Exclusion must be postmarked within forty-five (45) calendar days from the first date of mailing or first date of remailing of the Class Notice.
- g. Opt Out Procedures. Any Request for Exclusion that does not include all of the required information or that is not submitted in a timely manner will be deemed null, void, and ineffective. If there is a dispute regarding the timeliness or validity of a Request for Exclusion, the Settlement Administrator shall make the determination, after consultation with Class Counsel and Defendant's Counsel. Requests for Exclusion from Settlement Class Members must be postmarked for mail with the U.S. Postal Service. Requests for Exclusion sent by facsimile, email, or other forms of electronic transmission will not be considered.

- h. Effect of Opt Out. Any Settlement Class Member who opts out of the Settlement may not object to the Settlement, shall not receive any portion of the Net Class Settlement Fund as part of his or her Individual Settlement Payment, and shall not be bound by the Class Claims Released provisions in Paragraph 20 of this Agreement. If a Settlement Class Member submits both a Request for Exclusion and an Objection, the Settlement Class Member's Objection will be valid and be deemed to invalidate the Request for Exclusion. Each Settlement Class Member who does not opt out of the Settlement shall be bound by the applicable Released Claims provisions in this Agreement, including the Class Claims Released provisions in Paragraph 20.
- i. Objection Rights. Because the Settlement Class will be certified by the Arbitrator, only Settlement Class Members who do not opt out of the Settlement shall be entitled to object to the terms of the Settlement.
- j. Objection Procedures. Settlement Class Members' objections to the Settlement or this Agreement must be made using the procedures set forth in the Notice of Class Action Settlement. Any Objection must be sent to the Settlement Administrator and must be postmarked no later than forty-five (45) days after the first date of mailing or first date of remailing of the Notice of Class Action Settlement. The Objection must be in writing and must contain: (1) the name of the lawsuit *Andrea Otanez Verdugo v. Capstone Logistics, LLC*; (2) the full name and current address of the Settlement Class Member making the Objection; and (3) the specific reason(s) for the Objection. Settlement Class Members who submit an Objection remain bound by this Agreement.
- k. Obligations of Individuals Who Submit an Objection. Settlement Class Members who timely submit an Objection may be subject to deposition if Plaintiff or Defendant chooses to take their deposition and receives permission from the Arbitrator to do so. Any Settlement Class Member who timely submits an Objection and refuses to be available for an approved deposition shall be deemed to have withdrawn his or her Objection. Only Settlement Class Members who timely submit a valid Objection shall have the right to appear at the Final Fairness Hearing, and may do so either in person or through counsel, but must state their intent to do so at the time they submit their written Objection. Settlement Class Members may withdraw their Objection at any time.
- l. Waiver of Objection Rights. Settlement Class Members who make an Objection that materially deviates from the manner specified in the Notice of Class Action Settlement shall be deemed to have waived their Objection and shall be foreclosed from opposing this Settlement or making any Objection, whether by appeal or otherwise, to this Agreement.
- m. Binding Effect of Settlement. Although some Settlement Class Members might not receive the Notice of Class Action Settlement, as provided under this Settlement and Agreement, due to inability to locate their current address following the procedures set forth in this Agreement or other reason, such

individuals shall nonetheless be bound by all of the terms of this Settlement and Agreement and the Final Order and Dismissal with Prejudice.

- n. Solicitation of Opt-Outs. All Parties and their respective counsel are proponents of the Settlement Agreement and believe the same is fair, adequate and reasonable. It is therefore agreed that neither of the Parties nor their respective counsel will encourage persons to opt out of the Settlement, or exclude themselves from the Settlement Class, except to the extent that failure to do so would cause Class Counsel to violate their obligations as counsel to any Settlement Class Member.

15. Settlement Account

The Claims Administrator shall open and administer an interest-bearing account at a federally-insured bank that is mutually acceptable to the Parties and the Claims Administrator (the "Settlement Account"). The Claims Administrator shall: (i) open and administer the Settlement Account in such a manner as to qualify and maintain the qualification of the Settlement Account as a Qualified Settlement Fund; (ii) satisfy all tax reporting, return, and filing requirements with respect to the Settlement Account and any interest or other income earned by the Settlement Account; and (iii) satisfy out of the Settlement Account all taxes with respect to the interest or other income earned by the Settlement Account. Fees, expenses, and costs incurred in connection with the opening and administration of the Settlement Account shall be treated as Settlement Administration Costs. No funds other than those described in this Settlement Agreement shall be added to or comingled with the Settlement Account.

16. Funding Of Settlement

Within sixty (60) days of entry of an order by the State Court confirming the Arbitrator's Award granting approval of the class or PAGA Settlement, Defendant, through the Claims Administrator, will deposit into an account the money to fund such Settlement. This money will be used to pay all Settlement payments, required taxes, attorneys' fees and costs, the Service Award, the costs of administration, and any other amounts required by the Settlement.

17. Calculation of Class Settlement Payments

The Net Class Settlement Fund shall be defined as the Gross Settlement Fund less any Service Awards, Class Counsel's attorneys' fees and costs, the PAGA Settlement Amount, Settlement Administration Costs, and employer-side payroll taxes owed in connection with such Settlement Payment. The Net Class Settlement Fund shall be allocated among the Settlement Class as follows:

- (a) Non-Exempt Settlement Class: Seventy percent (70%) of the Net Class Settlement Fund multiplied by the ratio of (a) the number of total hours worked as a non-exempt employee in California during the Class Period by each Settlement Class Member to (b) the total number of non-exempt hours worked by all Settlement Class Members in California during the Class Period.

(b) Waiting Time Settlement Class: Thirty percent (30%) of the Net Class Settlement Fund multiplied by the ratio of (a) one to (b) the total number of Waiting Time Settlement Class Members.

18. Calculation of PAGA Settlement Payments

The Net PAGA Settlement Amount (\$10,000) shall be allocated among the PAGA Representative Group as follows: the Net PAGA Settlement Amount multiplied by the ratio of (a) the number of total weeks worked as a non-exempt employee in California during the Class Period by each member of the PAGA Representative Group to (b) the total number of non-exempt weeks worked by all members of the PAGA Representative Group in California during the Class Period.

19. Individual Settlement Payments

- a. Settlement Payments. If practicable, the Settlement Payments to each Settlement Participant shall be distributed as one payment ("Individual Settlement Payment") and shall be equal to the portion of the Net Class Settlement Fund allocated to that person as calculated in Paragraph 17, plus the portion of the Net PAGA Settlement Amount allocated to that person in Paragraph 18, less applicable withholdings as described below. For avoidance of doubt, for Class Members who opt out of the Settlement of Class Claims, the Individual Settlement Payment shall be equal to the portion of the Net PAGA Settlement Amount allocated to that person in Paragraph 18, less applicable withholdings as described below.
- b. Allocation of Individual Settlement Payments for Withholding. Each Individual Settlement Payment will be characterized as 70% Form 1099 income and 30% Form W-2 income, to reflect that 70% of the payment will account for penalties and interest and 30% will account for unpaid wages. In accordance with applicable tax laws, required tax withholdings and payroll deductions will be taken from each Individual Settlement Payment for the portion allocated to Form W-2 income and remitted to the appropriate taxing authorities. The Settlement Administrator shall issue any necessary IRS Form 1099 and Form W-2 statements to Settlement Participants for their respective Individual Settlement Payments. Settlement Participants shall be solely and legally responsible for paying all other applicable taxes on their respective Individual Settlement Payments and shall indemnify and hold Defendant harmless from any claim or liability for taxes, penalties, or interest arising as a result of the payments. The Parties agree that, pursuant to applicable law, all payments for wages shall be subject to payroll tax withholdings and a Form W-2, while all payments for penalties shall not be subject to payroll tax withholdings and will be recorded on a Form 1099.
- c. Undeliverable or Uncashed Checks. Any Settlement checks distributing Individual Settlement Payments returned to the Settlement Administrator as undeliverable shall be sent within five (5) calendar days via First Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall perform one skip trace only on returned mail

and shall send a second notice mailing to a second address for anyone identified with a second address by the skip trace, and it shall then perform a re-mailing within five (5) calendar days. The amount of any Individual Settlement payments that remain undeliverable or uncashed 180 calendar days after the postmarked date of the initial mailing of the Individual Settlement Payments will be sent to the California State Controller's Office to be held as "Unclaimed Property" in the name of the Settlement Participant. The Settlement Administrator shall notify Class Counsel and Defendant's Counsel of any undeliverable checks.

- d. Tax Payment Considerations. Class Counsel, Defendant's Counsel, Defendant, and the Settlement Administrator are not giving any tax advice in connection with the Settlement or any payments to be made pursuant to this Agreement.
- e. No Impact On Contributions To Employee Benefit Plans. None of the payments made pursuant to the Settlement and this Agreement shall be considered to alter the terms or to grant any rights to additional payments under any employee benefit plans. None of the payments made pursuant to the Settlement and this Agreement shall be considered for purposes of determining eligibility for, vesting or participation in, or contributions to any benefit plan, including, without limitation, all plans subject to the Employee Retirement and Income Security Act of 1974 ("ERISA"). Any distribution of payments to the Class Representative or Settlement Participants shall not be considered as a payment of wages or compensation under the terms of any applicable benefit plan and shall not affect participation in, eligibility for, vesting in, the amount of any past or future contribution to, or level of benefits under any applicable benefit plan. Any amounts paid will not impact or modify any previously credited hours of service or compensation taken into account under any bonus or incentive plan, benefit plan sponsored or contributed to by Defendant or any jointly-trusted benefit plan, or for purposes of calculating the regular rate of pay. For purposes of this Agreement, "benefit plan" means each and every "employee benefit plan," as defined in 29 U.S.C. Section 1002(3), and, even if not thereby included, any 401(k) plan, bonus, pension, stock option, stock purchase, stock appreciation, welfare, profit sharing, retirement, disability, vacation, severance, hospitalization, insurance, incentive, deferred compensation, or any other similar benefit plan, practice, program, or policy.

20. Class Claims Released

Upon final approval of the class Settlement, each member of the Settlement Class who did not submit a timely and valid Request for Exclusion shall be considered to have released forever Defendant, and each of its past, present, and future agents, employees, servants, officers, directors, business partners, clients, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations, and/or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers, affiliates, alter-egos, and affiliated organizations, and all of their respective past, present and future employees, directors, officers, agents, attorneys, stockholders, fiduciaries, parents, subsidiaries, and assigns, and each of them (collectively, with Defendant, the "Released

Parties”), from any and all claims that were asserted in the operative complaint filed in the Action or any claims that could have been asserted based on or arising out of the allegations or facts alleged, irrespective of the theory of recovery (“The Released Claims”). This release shall apply to all Released Claims arising at any point prior to the end of the Class Period. Settlement Class Members who have not submitted a timely and valid Request for Exclusion may hereafter discover facts in addition to or different from those they now know or believe to be true; however, upon final approval, all Settlement Class Members who have not submitted a timely and valid Request for Exclusion Form shall be barred from pursuing against any of the Released Parties and 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 Released Claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed, without regard to the subsequent discovery or existence of such different or additional facts.

21. PAGA Claims Released

Upon approval of the PAGA Settlement, each member of the PAGA Representative Group and the LWDA shall fully release and forever discharge the Released Parties, from any and all PAGA claims that are asserted in, arise from, or reasonably relate to the factual allegations and legal assertions made in the operative complaint and amended PAGA notice. The PAGA Released Claims are all PAGA claims that were asserted in the complaints filed in the Action or any PAGA claims that could have been asserted based on or arising out of the allegations or facts alleged, irrespective of the theory of recovery, including all PAGA claims for civil penalties relating to, based upon, or arising out of the Released Parties’ alleged failure to pay all wages due, provide minimum wages or pay for all hours worked, failure to pay straight time, overtime, or double-time compensation, failure to properly calculate the regular rate of pay, failure to provide meal and/or rest breaks, failure to pay proper meal or rest period premiums, failure to keep accurate records, failure to provide and maintain accurate itemized wage statements, failure to keep accurate employee payroll records, failure to timely pay wages due during or at separation of employment, and failure to reimburse all business-related expenses (collectively, the “PAGA Released Claims”), against the Released Parties. Upon approval, Plaintiff, each member of the PAGA Representative Group, and the LWDA will be forever barred from pursuing against the Released Parties and 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 PAGA Released Claims alleged or that could have been alleged in, or are reasonably related to, the Action, whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed, without regard to the subsequent discovery or existence of different or additional facts. This release shall apply to all PAGA Released Claims arising at any point prior to the end of the Class Period.

22. Additional Release by Class Representative

In addition to the above releases applicable to the Settlement Participants, the Class Representative also generally releases any and all claims against Defendant and each of the Released Parties. This general release includes any and all claims arising from the employment relationship with Defendant or any of the Released Parties, including, without limitation, claims for wrongful termination, discrimination, harassment, or retaliation pursuant to Title VII of the

Civil Rights Act of 1964, 42 U.S.C. Section 2000, *et seq.*, the California Fair Employment and Housing Act, Cal. Gov't Code Section 12900, *et seq.*, or the California Labor Code. This general release by the Class Representative also includes a waiver of California Civil Code Section 1542. The Class Representative expressly waives all rights provided by California Civil Code Section 1542, or other similar statutes, that the Class Representative may have against Defendant and each of the Released Parties. California Civil Code Section 1542 states:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

23. Dispute Resolution

The Claims Administrator shall be bound by the terms of this Settlement Agreement. In the event that an issue arises that the Claims Administrator must resolve that is not specifically addressed in the Settlement Agreement or is ambiguously addressed, the Claims Administrator shall confer with counsel for both of the Parties to resolve the question or issue. If a Settlement Participant seeks to dispute the calculation of his or her dates of employment or work weeks, the Claims Administrator shall have the initial responsibility for resolving such dispute. In resolving such dispute, Defendant's employment records shall be presumed to be accurate and correct, and shall be final and binding, unless the information submitted by the Settlement Participant (e.g., pay stubs, employment records, etc.) proves otherwise. In the event the Claims Administrator cannot resolve a dispute based on a review of the available information, the Claims Administrator shall request a conference call between the Claims Administrator, Class Counsel, and Defendant's counsel to discuss and resolve the dispute. After such call, the Claims Administrator shall resolve the dispute, and such resolution shall be final and binding on the Settlement Participant. In advance of the conference call, the Claims Administrator shall email copies of all available information to all counsel.

24. No Tax Or Legal Advice

The Parties understand and agree that Defendant is not providing tax or legal advice, or making representations regarding tax obligations or consequences, if any, related to this Agreement, that Settlement Participants will assume any such tax obligations or consequences that may arise from this Agreement, and that Settlement Participants shall not seek any indemnification from Defendant in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Settlement Participant, such Settlement Participant assumes all responsibility for the payment of any such taxes and agrees to indemnify, defend, and hold Defendant harmless for the payment of such taxes, any failure to withhold, and any penalties associated therewith.

25. Tolerance Of Opt-Outs

If either (i) 10% or more of the Class Members, or, (ii) a number of Class Members whose share of the Class Settlement Proceeds is 10% or more elect not to participate in the

Settlement, or both (i) and (ii), Defendant may, at its election, rescind the Settlement and all actions taken in its furtherance of it will be thereby null and void. Defendant must exercise this right of rescission, in writing, to Class Counsel, within 30 calendar days after the Claims Administrator notifies the Parties of the total number of opt-outs. If the option to rescind is exercised, then Defendant shall be solely responsible for all costs of the claims administration accrued to that point. Defendant also has the right to withdraw from the Settlement if the Arbitrator does not execute the proposed order granting Preliminary Approval of the Class Settlement or approval of the PAGA Settlement, does not certify the Settlement Class, and/or does not certify a class releasing the claims set forth herein, or otherwise makes an order inconsistent with any of the terms of this Agreement, or if a state court does not confirm the Arbitrator's preliminary or final award approving the Class Settlement or award approving the PAGA Settlement. In the event that Defendant exercises its right to withdraw, Defendant shall be solely responsible for all costs of the Claims Administrator accrued to that point. Further, this Agreement may not be used or introduced in further litigation.

26. Escalator Provision

In the event that the final class list submitted to the Claims Administrator contains 15% more class members than 12,542, the sum total of all Settlement Class Members in the Memorandum of Understanding ("MOU"), then the Gross Settlement Amount shall be increased proportionally for each such Class Member. For example, if the total of all settlement members is 19% higher, then the Gross Settlement Amount shall be increased by 4%.

27. Stay Upon Appeal

In the event of a timely appeal from the state court's confirmation of the award approving the PAGA Settlement or approving the Class Settlement, the respective judgment shall be stayed, and Defendant shall not be obligated to fund any portion of the Gross Settlement Amount or take any other actions required by this Stipulation until all appeal rights have been exhausted by operation of law. Subject to the prior provisions of this Agreement, the parties agree to a 180-day stay of the case, including pending motions and discovery, in the event of a timely appeal from the confirmation order approving the PAGA Settlement or Class Settlement and judgment.

28. Non-Admission Of Liability

This Agreement is entered into in compromise of disputed claims. Plaintiff and her attorneys acknowledge and agree that the execution of this Agreement and the payment of consideration hereunder are not and shall not be construed in any way as an admission of wrongdoing or liability on the part of Defendant or any other person or business entity affiliated with Defendant, and that Defendant denies all allegations of wrongdoing alleged by Plaintiff. The Parties intend, by their actions pursuant to this Agreement, merely to avoid the expense, delay, uncertainty, and burden of litigation.

Neither this Agreement nor any of its terms nor the Settlement itself shall 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 other of the 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 in evidence against any of the Released Parties in any further proceeding in the Action, or any other civil, criminal, or administrative action or proceeding except for the purposes of effectuating the Settlement pursuant to this Agreement or for Defendant to establish that a Settlement Participant has resolved any of his or her claims released through this Agreement.

29. Advice of Counsel

The Parties to this Settlement Agreement are represented by competent counsel, and they have had an opportunity to consult with competent counsel. The Class Representatives, Defendant, and their respective legal counsel believe it is in their best interests to enter into this Settlement Agreement at this time. The Class Representative and Class Counsel, acting in the best interests of the Settlement Participants, wish to resolve this matter in a fair and cost-effective manner that benefits the Settlement Participants without the expense, delay, diversion, and risk of protracted and complex litigation. The Parties to this Settlement Agreement agree that it reflects a good faith compromise of their claims, based upon their assessment of the mutual risks and costs of further litigation.

30. Predecessors And Successors

This Agreement shall be binding upon the Parties, and their heirs, representatives, executors, administrators, predecessors and successors, insurers, and assignees, and shall inure to the benefit of each and all of the Released Parties, and to their heirs, representatives, executors, administrators, successors, and assignees.

31. Confidentiality/No Publicity

Plaintiff, Class Counsel, Defendant and Defendant's Counsel agree to maintain confidentiality as to the amount of the Settlement, and all terms of the Settlement, except as to spouses, tax, or financial advisors, attorneys, taxing agencies, or as otherwise required by law, and except as necessary to obtain the Arbitrator's approval of this Settlement, until after the Arbitrator approves the PAGA Settlement or preliminarily approves the Class Settlement by the Arbitrator by way of an arbitration award. Plaintiff and her counsel will not contact the media about the Settlement or respond to any inquiries by the media regarding the Settlement, other than to state that the matter was amicably settled and the Arbitrator did not find the Defendant liable. Plaintiff and her counsel also will not post any information about the Settlement on social media or their firms' websites.

32. No Publicity Or Disparagement

Plaintiff agrees not to make any disparaging or defamatory comments concerning Defendant, its employees or agents, services, methods of doing business, or employment or hiring practices, except as protected by the law. Plaintiff further agrees not to encourage or assist in any litigation against Defendant or any of the Released Parties, except insofar as Plaintiff's testimony is a factual disclosure or testimony protected by the law. Nothing in this agreement shall be interpreted as preventing the disclosure of factual information regarding an act of sexual

assault, sexual harassment, or workplace harassment or discrimination, failure to prevent an act of workplace harassment or discrimination, or an act of retaliation against a person for reporting or opposing harassment or discrimination.

33. 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 fifth calendar day after mailing by First Class U.S. Mail, addressed as follows:

To Class Counsel for Plaintiff:

James M. Treglio
Potter Handy, LLP
100 Pine Street, Suite 1250
San Francisco, CA 94102

To Counsel for Defendant:

Gerald L. Maatman, Jr.
Jennifer A. Riley
Duane Morris LLP
190 S. LaSalle St., Ste. 3700
Chicago, IL 60603-3433

34. Motion For Preliminary Approval of Settlement

Plaintiff shall prepare and file a Motion for Approval of Proposed Settlement within twenty (20) days after execution of this Settlement Agreement and shall submit the proposed Order & Award attached as **Exhibit B** containing the following material terms:

- a. Approving the Settlement Agreement, subject only to the objections of Settlement Class Members and final review of the Class Settlement by the Arbitrator;
- b. Certifying the Settlement Class for settlement purposes only, appointing Class Counsel, appointing the Class Representative, and appointing the Claims Administrator;
- c. Approving as to form and content the Class Notice;
- d. Directing the distribution of the notice packet by first class mail to Settlement Class Members;
- e. Approving settlement administration services to be provided by the Settlement Administrator;
- f. Preliminarily approving the proposed Service Award to Plaintiff as Class Representative;
- g. Preliminarily approving the application for payment of reasonable attorneys' fees and costs to Class Counsel; and

- h. Scheduling a final approval hearing on the question of whether the proposed Class Settlement should be finally approved as fair, reasonable, and adequate as to Settlement Class members.

Defendant and its counsel will cooperate with Plaintiff's counsel as reasonably necessary in the preparation of the Motion for Approval.

35. Final Approval Hearing

No later than 10 days in advance of the final approval hearing, Class Counsel shall file and serve a motion for final approval of the Class Settlement. Plaintiff will provide Defendant with a copy of the proposed motion for final approval and proposed order granting final approval for Defendant's input and consent prior to filing. The Parties shall present the proposed order granting final approval of the Class Settlement and entering final judgment (the "Final Judgment"), to the Arbitrator for approval and entry. After entry of the Final Judgment, the Arbitrator shall have continuing jurisdiction over the litigation solely for purposes of: (i) enforcing this Settlement Agreement; (ii) addressing settlement administration matters; and (iii) addressing such post-Final Judgment matters as may be appropriate under court rules or applicable law.

If the Arbitrator declines to approve this Agreement in any material respect, except for approval of the award of Class Counsel's attorneys' fees and costs, the Service Awards, or claims administration costs, or fails to approve and enter the Final Judgment, Defendant shall have no obligation to make any payment under this Agreement, and in the event that Defendant has made any payment, such monies shall be returned promptly to Defendant. Any settlement administration costs already reasonably incurred by the Claims Administrator will be shared by the Parties, with Defendant paying a one-half share and Class Counsel paying the other one-half share.

36. Confirmation Of Arbitration Award

The venue for the arbitration proceeding in which the Parties will seek settlement approval from the Arbitrator shall be in Tuolumne County, California. The Parties agree that the hearing at which they will present their request for final settlement approval will take place on a mutually agreeable date to be determined by the Arbitrator and the Parties and that any participant may attend virtually. Upon final approval of the Settlement Agreement, the Parties will request that the Arbitrator enter an Award providing final approval of the Settlement.

After the Arbitrator issues any Award providing preliminary and/or final approval of the PAGA or Class Settlement, the Parties shall seek confirmation of the Arbitrator's Award(s) in the Superior Court of California, County of Tuolumne.

37. No Future Bar On Enforcement of Class and Collective Action Waiver

Defendant and Plaintiff (on behalf of herself and the Settlement Participants) agree that, for purposes of this proceeding only, they will waive enforcement of any "Waiver of Class and

Collective Claims” provisions or similar terms to which they have agreed, and they agree that, for purposes of this proceeding only, the Arbitrator shall have authority to preside over the present class and representative action arbitration and jurisdiction to consider the Parties’ motions for preliminary and final approval. Defendant and Plaintiff (on behalf of herself and the Settlement Participants) further agree that, by seeking approval of this Settlement on a class-wide and representative action basis in the present arbitration, no Party shall be deemed to have waived his, her, or its right to enforce any “Waiver of Class and Collective Claims” or similar provision in any future action, nor shall any Party be estopped from or otherwise barred from enforcing the “Waiver of Class and Collective Claims” or similar provision in any future action.

38. Miscellaneous

a. The language of all parts in this Agreement shall be construed as a whole, according to its fair meaning, and not strictly for or against either party.

b. Should any provision in this Agreement be declared or determined to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby, and the illegal or invalid part, term, or provision shall be deemed not to be part of this Agreement, and all remaining provisions shall remain valid and enforceable.

c. This Agreement constitutes a single, integrated contract setting forth the entire agreement between the Parties and fully supersedes any and all prior agreements and understandings between the Parties pertaining to the subject matter of this Agreement.

d. The headings used herein are for reference only and shall not affect the construction of this Agreement.

e. This Agreement is made and entered into in the State of California and shall in all respects be interpreted and governed under the law of that State.

f. This Agreement may be executed in one or more counterparts, by facsimile or original signature, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Dated: _____

**DEFENDANT CAPSTONE LOGISTICS,
LLC**



MARK SEYMOUR
CHIEF FINANCIAL OFFICER

**PLAINTIFF ANDREA OTANEZ
VERDUGO**

ANDREA OTANEZ VERDUGO

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readysign

ANDREA OTANEZ VERDUGO

Approved as to form and content:

DUANE MORRIS LLP



Gerald L. Maatman, Jr.
Attorney for Defendant
CAPSTONE LOGISTICS, LLC

POTTERY HANDY, LLP

James M. Treglio

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readysign

James M. Treglio
Attorney for Plaintiff
ANDREA OTANEZ VERDUGO