

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“**Agreement**”) is made by and between Plaintiffs Evangelos Andrikos, Bryant Burns, Michael Olvera, Paul Ruiz, and Jerry Vrbanovic (“**Plaintiffs**”), on the one hand, and Defendants Pacific Maritime Association and Pacific Maritime Association, Inc., (“**PMA**”); APM Terminals Pacific LLC; APS Stevedoring, LLC, Benicia Port Terminal Company; Ceres Terminals Incorporated; Crescent City Marine Ways & Drydock Company, Inc.; Eagle Marine Services, Ltd.; Everport Terminal Services, Inc.; Harbor Industrial Services Corporation; Innovative Terminal Services Inc.; International Transportation Service, Inc.; Kinder Morgan Bulk Terminals LLC; LBCT LLC; Marine Terminals Corporation; Marine Terminals Corporation Of Los Angeles; Matson Navigation Company, Inc.; Matson Terminals, Inc.; Metropolitan Stevedore Company; Ocean Terminal Services, Inc.; Pacific Crane Maintenance Company LP; Pacific Ro-Ro Stevedoring, LLC; Pasha Stevedoring & Terminals LP; Port Maintenance Group; SSA Marine, Inc.; SSA Terminals, LLC; Terminal Equipment Services, Inc.; Total Terminals International, LLC; Transpac Terminal Services, LLC; Trapac, LLC; Yusen Terminals, Inc. (“**Member Company Defendants**”) (PMA and the Member Company Defendants are referred to collectively herein as “**Defendants**”), on the other hand (Plaintiffs and Defendants are collectively referred to as the “**Parties**”).

I. DEFINITIONS

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

- A. “**Action**” means the civil action entitled *Evangelos Andrikos et al. v. APM Terminals Pacific LLC et al.*, Case No. 2:19-cv-10421-GW-JC,

currently pending in the United States District Court, Central District of California (the “**Action**”).

- B. “**Claims Administrator**” means the CPT Group, Inc. or any other third-party class action settlement claims administrator mutually agreed upon by the Parties and approved by the Court for the purposes of administering this settlement. The Parties each represent that they do not have any financial interest in the Claims Administrator or otherwise have a relationship with the Claims Administrator that could create a conflict of interest.
- C. “**Claims Administration Costs**” means the costs payable from the Maximum Settlement Amount to the Claims Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, calculating estimated settlement amounts per Settlement Class Member, performing the required tax reporting on the settlement payments, issuance of applicable IRS Form(s) 1099, distributing the Class Notice, calculating and distributing the Net Settlement Amount and Class Counsel’s Fees and Expenses, providing necessary reports and declarations, and other duties and responsibilities set forth herein to process this Settlement, and as requested by the Parties. The Claims Administration Costs shall be paid from the Maximum Settlement Amount, including, if necessary, any such costs in excess of the amount represented by the Claims Administrator as being the maximum costs necessary to administer the settlement. The Claims Administration Costs are currently estimated to be approximately \$75,000.00. To the extent actual Claims Administrations Costs are greater than

\$75,000.00, such excess amount shall be paid from the Maximum Settlement Amount.

- D. **“Class Counsel”** means Daniel P. Stevens and Heather K. McMillan of Stevens & McMillan.
- E. **“Class Counsel Fees Payment”** and **“Class Counsel Litigation Expenses Payment”** mean the amounts awarded to Class Counsel by the District Court to compensate them for, respectively, their attorneys’ fees and litigation expenses incurred in connection with the Action, including their pre-filing investigation, their filing of the Action and all related litigation activities, this Settlement, and all post-Settlement compliance and approval procedures. Class Counsel shall request attorneys’ fees not in excess of twenty-five (25%) of the Maximum Settlement Amount minus PAGA settlement amount, which is \$2,350,000.00, subject to Court approval. Class Counsel Litigation Expenses shall mean and include the additional reimbursement of any costs and expenses associated with Class Counsel’s litigation and settlement of the Action, up to \$102,000, subject to Court approval. Any portion of the Class Counsel Fees and Litigation Expenses Payment not awarded to Class Counsel by the District Court shall be added to the Net Settlement Amount.
- F. **“Class Data”** means, for each individual Settlement Class Member, the Settlement Class Member’s name; last-known mailing address, and, to the extent reasonably accessible from PMA’s available records, telephone number; Social Security Number; and Shifts Worked as that term is defined in Paragraph III.D. (as determined by Defendants’ available records). The Class Data shall be provided to the Claims Administrator in an Excel spreadsheet format.

- G. **“Class Notice”** means the Class Notice, a template of which will be submitted by Plaintiffs in the form attached as Exhibit A, subject to approval by the District Court.
- H. **“Class Period”** means the period from August 22, 2015 through and including the date on which the District Court grants final approval of the class settlement.
- I. **“Class Representatives’ Enhancement Award”** means the amount that the Court authorizes to be paid to Plaintiffs, in addition to Plaintiffs’ Individual Settlement Payments, in recognition of Plaintiffs’ efforts and risks in assisting with the prosecution of the Lawsuits and in return for executing a broader release with Defendants. Class Counsel will seek up to \$25,000.00 as a service award for each Class Representative, for a total of \$125,000.00, subject to approval by the District Court. Any portion of the Class Representatives’ Enhancement Award not awarded to the Class Representatives by the District Court shall be added to the Net Settlement Amount.
- J. **“Defendants’ Counsel”** means Douglas R. Hart, Clifford D. Sethness, and Eric Meckley of Morgan, Lewis & Bockius LLP.
- K. **“District Court”** means the U.S. District Court for the Central District of California.
- L. **“Effective Date”** means the latter of: (a) if any timely objections are filed, the 31st day after the Court enters a Final Judgment after or coincident with an order granting final approval of the Class Action Settlement Agreement; provided no appeals or any other appellate or post- final-approval challenges by any person or entity (“Post Final Approval Order Challenges”) have been filed; (b) if any Post Final Approval Order Challenges are filed, the 31st day after the date on

which review of any and all such Post Final Approval Order Challenges is final, provided that their resolution does not alter or disturb the terms and effectiveness of the Class Action Settlement Agreement; or (c) if no objections are filed, the 31st day after the date the Court enters Final Judgment provided that no appeals or other challenges to that Final Judgment are made.

- M. **“Employer Payroll Taxes”** means employer-funded payroll taxes and contributions imposed on the portion of the Net Settlement Amount payable to Settlement Class Members that is attributable and allocated to the resolution of claims for wages under the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, and any similar state taxes and contributions required of employers, such as for unemployment insurance.
- N. **“Final Approval Hearing”** means the hearing to be conducted by the District Court to determine whether to grant final approval of the Class Settlement and finally implement the terms of this Agreement.
- O. **“Individual PAGA Payment”** means the share of the \$25,000 amount allocated to the alleged “aggrieved employees” out of the total PAGA Payment that each PAGA Settlement Group Member or Prior Opt Out will receive based on the number of PAGA Shifts Worked during the PAGA Settlement Group Period, without regard to whether the Settlement Class Action Member submits a timely opt-out request.
- P. **“Judgment”** means the Order of Final Judgment and Dismissal with Prejudice entered by the District Court. Plaintiffs will draft and submit a proposed Judgment to the Court along with their Motion for Final Approval.

- Q. **“LWDA”** means the California Labor and Workforce Development Agency.
- R. **“Maximum Settlement Amount”** means the maximum settlement amount of Nine Million, Five Hundred Thousand Dollars and Zero Cents (\$9,500,000.00) which is the total amount that Defendants could be required to pay pursuant to the terms of the Agreement and which includes all monetary payments to Participating Settlement Class Members, Claims Administration Costs to the Claims Administrator, the Class Counsel Fees Payment, any Class Representatives’ Enhancement Awards approved by the Court, the PAGA Payment (including the Individual PAGA Payments to the PAGA Settlement Group Members and the PAGA payment to the LWDA), and the Class Counsel Litigation Expenses Payment approved by the District Court. In no event will Defendants be liable to pay more than the Maximum Settlement Amount, except for the amount of Employer Payroll Taxes as calculated by the Claims Administrator.
- S. **“Net Settlement Amount”** means the Maximum Settlement Amount to be paid by Defendants pursuant to this Settlement minus: (i) the amount of the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment approved by the District Court; (ii) the Claims Administration Costs; (iii) the PAGA Payment, (iv) Class Representatives’ Enhancement Awards, 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 Action as approved by the District Court. The Net Settlement Amount shall be allocated among the Participating

Settlement Class Members using the *pro rata* Shifts Worked formula set out in paragraph III.D.

- T. **“Non-Participating Settlement Class Member”** means a Settlement Class Member who submits a valid and timely written opt-out request. However, Settlement Class Members who are also PAGA Settlement Group Members will still be bound by the terms of the PAGA Release even if they otherwise submit a valid and timely written opt-out request.
- U. **“Notice of Objection”** means a Settlement Class Member’s valid and timely written objection to the Settlement Agreement. For the Notice of Objection to be valid, it must include: (a) the objector’s full name, signature, address, and telephone number, (b) a written statement of all grounds for the objection, accompanied by any factual and/or legal support for such objection; (c) copies of any documents, papers, or information upon which the objection is based; and (d) a statement whether the objector intends to appear at the Final Approval Hearing and/or any other hearing scheduled by the Court to address the propriety of the settlement. Any Settlement Class Member who does not file a valid and timely written objection to the Settlement, or who fails otherwise to comply with the specific requirements of this section, shall be foreclosed from objecting to the Settlement and seeking any adjudication or review of the Settlement, by appeal or otherwise.
- V. **“PAGA”** refers to the California Private Attorneys General Act of 2004, Labor Code § 2699, *et seq.*
- W. **“PAGA Payment”** means the payment in the amount of \$75,000 to be made to the LWDA as its 75% share of the \$100,000 amount paid for PAGA penalties under the Settlement and the payment in the amount of \$25,000 to be paid to PAGA Settlement Group Members and Prior

Opt Outs as their 25% share of the amount paid for PAGA penalties under the Settlement.

- X. **“PAGA Release”** means any and all claims and/or causes of action for civil penalties pursuant to PAGA against Released Parties that were or could have been pled based on any and all of the facts alleged in the Complaint, First Amended Complaint, Second Amended Complaint, and the LWDA notice for civil penalties under Labor Code sections 201, 202, 203, 204, 222, 223, 226(a), 226(e), 510, 1194, and 2802, with the limitation that the scope of the PAGA Release is coterminous with the scope of the factual allegations pled in support of the PAGA claim asserted in the Second Amended Complaint and as described in the facts alleged in Plaintiff’s LWDA letter. Regardless of whether any Settlement Class Member submits a timely opt out, they and Prior Opt Outs will still be bound by the PAGA Release if they are PAGA Settlement Group Members. The period of the PAGA release will encompass the period from August 22, 2018 through Final Approval.
- Y. **“PAGA Settlement Group Members”** means all Settlement Class Members and Prior Opt Outs who are employed or were employed by the Member Company Defendants during the PAGA Settlement Group Period. PAGA Settlement Group Members will be paid an Individual PAGA Payment, regardless of whether they have filed a valid and timely opt-out.
- Z. **“PAGA Settlement Group Period”** means the period from August 22, 2018 through Final Approval. The PAGA Settlement Group Period is included in the Class Period.

- AA. **“Participating Settlement Class Member”** means a Settlement Class Member who does not submit a valid and timely written opt out request but does not include any Prior Opt Outs.
- BB. **“Preliminary Approval of the Settlement”** means the District Court’s preliminary approval of the Settlement without material change.
- CC. **“Released Claims”** means that upon Final Approval, Participating Settlement Class Members shall be deemed to have fully, finally, and forever released the Defendants and the Released Parties from any and all claims and/or causes of action pled based upon or arising from the factual allegations of the Complaint, First Amended Complaint, Second Amended Complaint, and/or LWDA notice related to the operation or use of the dispatch halls in California, including any claims for or related to (i) uncompensated/off-the-clock Waiting Time, (ii) uncompensated/off-the-clock Travel Time, (iii) Mileage Reimbursement, (iv) uncompensated/off-the-clock Reporting Time and Reporting Time Pay, (v) any Wage Statement claims that are derivative of the aforementioned claims (i) through (iv), and (vi) Waiting Time Penalties under Labor Code § 203 as a result of the alleged failure to pay wages as alleged in the Action, and also any claims for litigation costs, restitution and equitable relief, or other additional injuries, losses or damages that reasonably arise from or reasonably relate to the claims described above, under any applicable law or legal theory; and claims for PAGA Penalties (Cal. Labor Code §§ 2698 *et seq.*) based on or related to each such alleged violation, any derivative claims under the Fair Labor Standards Act (“FLSA”) or any applicable California Industrial Welfare Commission Wage Order; related common law claims for conversion, other alleged tortious conduct, breach of

contract, and misrepresentation; and any other derivative claims under California law including claims for statutory or civil penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation and other costs, expenses, restitution, and equitable and declaratory relief. For further clarity, the Released Claims include the following claims in Plaintiffs' Second Amended Complaint: (1) First Cause of Action for Failure to Pay Wages and Overtime Wages in violation of Labor Code §§ 204, 222, 223, 510, 1194, IWC Wage Order Nos. 1-16, (2) Second Cause of Action for Failure to Pay Reporting Time Pay in violation of IWC Wage Order Nos. 1-16, (3) Third Cause of Action Failure to Pay Expenses in violation of Labor Code § 2802, to the extent such claim is based on Plaintiffs' mileage reimbursement theory of liability related to their dispatch hall Travel Time claim, (4) Fourth Cause of Action for Failure to Provide Accurate and Complete Itemized Wage Statements in violation of Labor Code § 226, to the extent it is derivative of any of Plaintiffs' First through Third Causes of Action, (5) Fifth Cause of Action for Waiting Time Penalties in violation of Labor Code §§ 201, 202 as a result of the alleged failure to pay wages as alleged in the Action, (6) Sixth Cause of Action for Unfair Competition in violation of Business & Professions Code § 17200, to the extent it is derivative of Plaintiffs' First through Third Causes of Action, and (8) Eighth Cause of Action under PAGA for civil penalties for the dispatch-hall related claims, including any claims for or related to (i) uncompensated/off-the-clock Waiting Time, (ii) uncompensated/off-the-clock Travel Time, (iii) Mileage Reimbursement, (iv) uncompensated/off-the-clock Reporting Time and Reporting Time Pay, (v) any Wage Statement claims that are derivative

of the aforementioned claims (i) through (iv), and (vi) Waiting Time Penalties under Labor Code § 203 as a result of the alleged failure to pay wages as alleged in the Action.

DD. **“Released Claims Period”** means the period from August 22, 2015 through and including the final approval of the settlement by the District Court.

EE. **“Released Parties”** means Defendants Pacific Maritime Association; Pacific Maritime Association, Inc., APM Terminals Pacific LLC; APS Stevedoring, LLC, Benicia Port Terminal Company; Ceres Terminals Incorporated; Crescent City Marine Ways & Drydock Company, Inc.; Eagle Marine Services, Ltd.; Everport Terminal Services, Inc.; Harbor Industrial Services Corporation; Innovative Terminal Services Inc.; International Transportation Service, Inc.; Kinder Morgan Bulk Terminals LLC; LBCT LLC; Marine Terminals Corporation; Marine Terminals Corporation Of Los Angeles; Matson Navigation Company, Inc.; Matson Terminals, Inc.; Metropolitan Stevedore Company; Ocean Terminal Services, Inc.; Pacific Crane Maintenance Company LP; Pacific Ro-Ro Stevedoring, LLC; Pasha Stevedoring & Terminals LP; Port Maintenance Group; SSA Marine, Inc.; SSA Terminals, LLC; Terminal Equipment Services, Inc.; Total Terminals International, LLC; Transpac Terminal Services, LLC; Trapac, LLC; Yusen Terminals, Inc. and each and every one of their respective affiliated and related entities, predecessors, owners, members, successors, shareholders, divisions, and each of these parties’ and entities’ respective past and present officers, directors, employees, partners, members, shareholders, insurers, agents, attorneys, and any other successors, assigns, or legal representatives.

- FF. **“Response Deadline”** means the last day by which Settlement Class Members must postmark to the Claims Administrator: any dispute regarding the number of Shifts Worked identified on the Class Notice; any written opt out requests; or any Notices of Objection (which must also be filed with the Court and served on the Parties). The Response Deadline shall be forty-five (45) calendar days from the initial mailing of the Class Notice by the Claims Administrator, unless the 45th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next business day. The Response Deadline shall be extended fourteen (14) calendar days for any Settlement Class Member who is re-mailed a Class Notice by the Claims Administrator in accordance with the Notice Procedure, unless the 14th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next business day. The Response Deadline also may be extended by express written agreement between Class Counsel and Defendants’ Counsel. Under no circumstances, however, shall the Claims Administrator have the authority to extend the deadline for Settlement Class Members to submit an opt out request or a Notice of Objection to the settlement.
- GG. **“Settlement”** means the disposition of the Released Claims effectuated by this Agreement.
- HH. **“Settlement Class”** means all registered longshore workers, casual longshore workers, and registered marine clerks presently or formerly employed by any of the Defendants during the Class Period and who worked during that time at any Port in California, excluding any Prior Opt Outs.

- II. **“Settlement Class Member”** means all members of the Settlement Class.
- JJ. **“Settlement Share”** means each Settlement Class Member’s respective share of the Net Settlement Amount as provided by this Agreement.
- KK. **“Shifts Worked”** means, excluding PAGA Shifts Worked, the *pro rata* formula that will be based upon the number of shifts that each Participating Settlement Class Member performed work in California as a registered longshore worker for the Member Company Defendants during the Class Period and upon the number of shifts that each Participating Settlement Class Member performed work in California as a casual longshore worker for the Member Company Defendants during the Class Period, as more fully described in paragraph III.D.
- LL. **“Prior Opt Outs”** means any person who previously had opted out of the class or sub-classes certified by the Court in this Action.

II. RECITALS

- A. In the operative First Amended Complaint, Plaintiffs alleged the following claims against Defendants: (1) Failure to Pay Wages and Overtime Wages, (2) Failure to Pay Reporting Time Pay, (3) Failure to Pay Expenses, (4) Failure to Provide Accurate and Complete Itemized Wage Statements, (5) Waiting Time Penalties, (6) Unfair Competition, and (7) Meal and Rest Period Violations.
- B. Defendants deny all material allegations in the operative First Amended Complaint and have asserted numerous affirmative and other defenses. Notwithstanding, in the interest of avoiding the time, expense, litigation risks, and operational distraction of further litigation, Defendants desire to fully and finally settle all actual or potential claims alleged by the Settlement Class Members arising out of the Released Claims.

- C. Plaintiffs sought to certify a class action. On or about January 20, 2022, the District Court certified a class comprising all current and former hourly employees who performed work for any or all of the Defendants at any of the ports in California and were paid on an hourly basis during the Released Claims Period (defined as August 22, 2015 to the present). Dkt. No. 130. The Court also granted class certification to the following Subclasses: Dispatch Hall Waiting Time Subclass, Travel Time Subclass, Mileage Reimbursement Subclass, Wage Statement Subclass, TWIC Card Expense Subclass, Unfair Competition Subclass, and Terminated Employee Waiting Time Subclass. However, the Court denied certification on Plaintiffs' putative Reporting Time claim.
- D. In connection with the Action, Defendants produced a voluminous amount of documents and data, including but not limited to, earnings data and tenure for Settlement Class Members during the Released Claims Period. Class Counsel engaged in extensive review and analysis of these records. Defendants deposed the named Plaintiffs and several of Plaintiffs' putative class member declarants in connection with litigating Plaintiffs' motion for class certification. Plaintiffs deposed Defendants via Rule 30(b)(6) over multiple days of deposition of the witness designated by Defendants. After extensive class and merits discovery, Defendants moved for partial summary judgment on Plaintiffs' dispatch hall and travel time subclass claims, which the District Court granted in full on September 8, 2022. Dkt. Nos. 149 and 152.
- E. Following numerous years of litigation and extensive motion practice and discovery, the Parties engaged in extensive settlement discussions, including three mediations before the following highly qualified

mediators: Michael Dickstein, Todd A. Smith, Esq. and, most recently, Hon. Stephen G. Larson (ret.). The Parties mediated with Judge Larson (ret.) most recently on September 28, 2022. At the conclusion of that mediation session the parties were not able to reach a settlement. Following the mediation, Judge Larson issued a mediator's proposal, whose terms are consistent with the terms of this Agreement, including the economic terms, which was subsequently accepted by the Parties on or around October 7, 2022. These mediators' supervision of the mediations was critical to managing the Parties' expectations and providing a useful and neutral analysis of the issues and risks posed to each side. The settlement discussions before, during, and after the mediation were adversarial, non-collusive, and conducted at arms' length. Counsel on both sides recognized the substantial risk of an adverse result in the Action and agreed to settle all matters covered by this Agreement pursuant to the terms and conditions of this Agreement. This Agreement is the full embodiment of the Parties' Settlement, supersedes and replaces any other agreements, understandings, or representations between the Parties, and constitutes the entirety of and is fully admissible to prove the terms and conditions of the Settlement.

- F. On or about December 23, 2022, in order to effectuate the settlement and release of Plaintiffs' claims under PAGA for civil penalties, Plaintiffs through Class Counsel filed with and submitted to the California LWDA and served on the Defendants a letter setting forth the facts and theories supporting their claim for civil penalties under PAGA against the Defendants. Following the conclusion of the 65-day waiting period under PAGA, the Parties will stipulate to the filing of, and seek Court approval for, Plaintiffs' Second Amended Complaint

that asserts all of the putative class claims alleged in the First Amended Complaint as well as a claim for civil penalties under PAGA related to and based upon the claims encompassed in this Settlement. As the Parties wish to conserve judicial resources and avoid the unnecessary and costly motion practice associated with amendment of Plaintiffs' operative pleading, the Parties agree that the time for Defendants to answer or otherwise respond to the Second Amended Complaint shall be held in abeyance pending the settlement approval process and Defendants shall not be required to respond to the Second Amended Complaint. The Parties further agree that Defendants do not waive any defenses to the Second Amended Complaint and reserve all rights and arguments on the legal, procedural and factual merits to the Second Amended Complaint.

- G. Class Counsel has conducted a thorough investigation into the facts of the Action. Based on the foregoing described discovery and the confirmatory measures detailed in this Agreement, and their own independent investigation and evaluation, Class Counsel are of the opinion that the Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class Members in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendants, and potential appellate issues.
- H. It is the mutual desire of the Parties to fully, finally, and forever settle, compromise, and discharge the Released Claims. All Parties and their counsel acknowledge that this Settlement is intended to include and resolve all of the Released Claims in this Agreement without regard to and notwithstanding any judicial, quasi-judicial, legislative, quasi-legislative, executive, administrative or regulatory development,

issuance, or action occurring after the date of Execution of this Agreement pursuant to paragraph III.M.20 herein.

- I. The Parties expressly acknowledge that this Settlement is entered into solely for the purpose of compromising significantly disputed claims and that nothing herein is, or may be, construed or interpreted as an admission of liability or wrongdoing by Defendants, or an admission that the claims in the Action have any merit, which Defendants deny. If, for any reason, the Settlement Agreement is not approved pursuant to the terms agreed upon by the Parties, it will be of no force or effect, and the Parties shall be returned to their original respective positions.
- J. The terms and conditions agreed upon by the Parties have resulted in their executing this Class Action Settlement Agreement.

Based on these Recitals, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Maximum Settlement Amount.** Subject to the terms and conditions of this Agreement, Defendants will pay in care of the Settlement Administrator pursuant to this Agreement the Maximum Settlement Amount of Nine Million, Five Hundred Thousand Dollars and Zero Cents (\$9,500,000.00). All of the Maximum Settlement Amount will be disbursed pursuant to this Agreement and will be disbursed only by the Claims Administrator pursuant to the terms of the Agreement, and none of it will revert to Defendants.
- B. **Payments from the Maximum Settlement Amount.** Subject to the terms and conditions of this Agreement, within twenty-one (21) calendar days following the Effective Date, the Settlement Administrator will make the following payments:

1. **To Class Counsel:** Class Counsel will apply to the District Court for an award of not more than twenty-five (25%) of the Maximum Settlement Amount minus the PAGA settlement amount, which is \$2,350,000.00 as their Class Counsel Fees Payment and an additional amount not more than \$102,000.00 as their Class Counsel Litigation Expenses Payment, and Defendants will not oppose their request. If the District Court approves a Class Counsel Fees Payment or a Class Counsel Litigation Expenses Payment of less than \$2,350,000.00 in fees or less than \$102,000.00 in expenses, respectively, the remainder will be retained in the Net Settlement Amount for distribution to Participating Settlement Class Members. The Claims Administrator shall issue one or more IRS Form(s) 1099 to Class Counsel, and any other associated counsel, with respect to those payments. In consideration of its awarded attorneys' fees and costs and expenses, Plaintiffs' Counsel waive any and all claims to any further attorneys' fees and expenses in connection with or related to the Released Claims. Class counsel, and any other associated counsel representing Plaintiffs, agree to complete and return to counsel for Defendants applicable IRS W-9 forms as a condition precedent to receiving any payments under this Agreement.
2. **To the Class Representatives:** Defendants agree not to oppose or object to Plaintiffs' application to the Court for Class Representatives' Enhancement Awards of up to \$25,000.00 each. The Class Representatives' Enhancement Awards shall be in addition to said Plaintiffs' Individual Settlement Payments as

Settlement Class Members. Any amount requested by Plaintiffs for the Class Representatives' Enhancement Awards but not approved by the Court shall return to the Net Settlement Fund and be distributed to Participating Settlement Class Members.

3. **To the Claims Administrator:** The Claims Administrator will pay out of the Maximum Settlement to itself the Claims Administration Costs as approved by the District Court, which are currently estimated to be approximately \$75,000.00. The Claims Administrator and Parties will make reasonable efforts to minimize the Claims Administration Costs while ensuring proper notice and administration of the fund. The Parties hereby acknowledge that reasonable and necessary Claims Administration Costs may increase above the current estimate and that any such additional Claims Administration Costs shall be taken out of the Maximum Settlement Amount.
4. **Payment to the LWDA.** The Claims Administrator will pay out of the Maximum Settlement the LWDA the amount of \$75,000, which represents the LWDA's 75% share of the \$100,000 paid for settlement of PAGA penalties under the Settlement.
5. **Responsibility for Taxes.** Except as otherwise provided herein, the Parties are each separately responsible for paying any taxes resulting to them from the Settlement to the appropriate tax authorities.

- C. **Payments from the Net Settlement Amount:** Within twenty-one (21) calendar days following the Effective Date, the Claims Administrator will pay each Participating Settlement Class Member his or her Settlement Share based upon his or her respective Shifts Worked.

Settlement checks not cashed within 180 days will be voided and the funds will be sent to the California State Controller's Office's Unclaimed Property Division. There will be no designated *cy pres* recipient or reversion of funds to Defendants. Failure by any Participating Settlement Class Member to cash any check within 180 days shall in no way affect the binding nature of the settlement or the binding nature of the Released Claims as to any Participating Settlement Class Member.

- D. **Calculation.** The Settlement Payment for each Participating Settlement Class Member will be calculated using a *pro rata* formula computed by adding: 1. the total number of shifts that the Participating Settlement Class Member performed work in California as a registered longshore worker for the Member Company Defendants during the Class Period; plus 2. the total number of shifts that the Participating Class Member performed work in California as a Casual longshore worker for the Member Company Defendants during the Class Period, times one and a half (together, "Shifts Worked"). Specifically, applying the above formula using Defendants' available records, Defendants will calculate the total number of Shifts Worked for each Participating Settlement Class Member. Defendants will provide each Participating Settlement Class Member's Shifts Worked to the Claims Administrator. The Claims Administrator will sum up all Participating Settlement Class Members' Shifts Worked to arrive at the total number of Shifts Worked for the entire Settlement Class. Each Participating Settlement Class Member's Settlement Share will be calculated by, first, multiplying the Net Settlement Amount by that Settlement Class

Member's Shifts Worked and, second, dividing that value by the total number of Shifts Worked for the entire Participating Settlement Class.

1. **Tax Allocation of Settlement Payments.** For withholding tax characterization purposes and payment of taxes, the Net Settlement Payments shall be deemed and are allocated by the Parties as follows ("Net Settlement Allocation"): (i) 60% as a compromise resolution of claims for penalties, interest, and any portion of expenses that would be treated as non-taxable; and (ii) 40% as a compromise resolution of claims for wages, including any amount for expenses that would need to be treated as wages. The 40% portion of Settlement Payments subject to required withholdings and deductions by the Settlement Administrator shall be reported on W-2 Forms, which will be distributed at times and in the manner as currently required by the Internal Revenue Code of 1986, the regulations promulgated thereunder, or other applicable tax law (together, the "Code") and consistent with this Agreement. If the Code is changed after the date of this Agreement, the processes set forth in this section shall be modified in a manner to bring Defendants into compliance with any such changes.
2. **Non-Wage Payments.** The Parties recognize and agree that, as set forth in the immediately preceding subsection, a certain portion of amounts paid to Participating Settlement Class Members pursuant to the Settlement represent the compromise of claims for alleged business expenses, penalties, interest and other non-wage amounts, and as a result all such payments shall reported by the Claims Administrator on an IRS Form 1099.

3. **Effect of Non-Participating (Opt-out) Settlement Class Members.** Non-Participating Settlement Class Members are not entitled to and will receive no payments pursuant to this Agreement (except for an Individual PAGA Payment, as described in subsection 7, below), and their election not to participate in the Settlement will reduce neither the Maximum Settlement Amount nor the Net Settlement Amount. The respective Settlement Shares of Non-Participating Settlement Class Members will be reallocated on a pro-rata basis to the Participating Settlement Class Members. If more than ten percent (10%) of the Settlement Class Members opt out or otherwise elect not to participate in the Settlement, then the Defendants shall have the right in their sole discretion to rescind and void this Agreement within ten (10) non-holiday weekdays after the date on which the Claims Administrator provides the Parties with the final statement of the number of Settlement Class Members who have validly and timely opted out or otherwise elected not to participate in the Settlement.
4. **Uncashed Settlement Share Checks.** A Participating Settlement Class Member must cash his or her Initial Settlement Distribution check within one hundred and eighty (180) days following the postmarked date from the Claims Administrator's mailing of the check. If a check is returned to the Claims Administrator, then the Claims Administrator will make all reasonable efforts to re-mail it to the Participating Settlement Class Member at his or her correct/updated/current address. If the check is not cashed within ten (10) days after re-mailing to

the Participating Settlement Class Member, the Claims Administrator will send the Participating Settlement Class Member a letter informing him or her that unless the check is cashed by the deadline specified herein, it will expire and become void and non-negotiable. If the check remains uncashed by the expiration of one hundred and eighty (180) days following the postmarked date from the Claims Administrator's mailing of the check, then the amount of the uncashed check will be sent to the California State Controller's Office's Unclaimed Property Division. There will be no designated *cy pres* recipient or reversion of funds to Defendants.

5. **Responsibility for Taxes and Indemnification.** Except for employer payroll taxes, which will be paid by Defendants in an amount as determined by the Settlement Administrator, Participating Settlement Class Members shall be solely responsible for the payment of any federal, state, or local taxes arising out of the payment of monies paid under this Agreement. Participating Settlement Class Members agree to hold Defendants harmless from any and all claims, demands, rights, damages, costs or expenses resulting from any liability or claim of liability for any amount assessed by or due any federal, state, or local government or agency thereof, arising from their failure to pay taxes, including but not limited to, federal, state, and local withholding and income taxes and social security taxes, with respect to payments made by Defendants as set out in this Agreement. This clause is not intended nor does it purport to give Plaintiffs or Settlement Class Members advice or

counseling concerning federal, state, or local tax responsibilities or liabilities.

6. **PAGA Payment.** A total amount of \$100,000 from the Maximum Settlement Amount will be allocated as the PAGA Payment to be paid as and for the compromise resolution of claims for civil penalties under PAGA. Seventy-five percent (75%) of this amount will be paid to the LWDA and the remaining twenty-five (25%) shall be paid to PAGA Settlement Group Members. Any portion of the overall PAGA Payment not approved by the Court shall be added to the Net Settlement Amount and any additional amount ordered by the Court to be paid to the LWDA shall be paid from the Maximum Settlement Amount; in no event shall Defendants be required to pay in excess of the Maximum Settlement Amount.

7. **Individual PAGA Payment.** Individual PAGA Payments to PAGA Settlement Group Members will be calculated based on the number of Shifts Worked during the PAGA Settlement Group Period ("PAGA Shifts Worked") and paid on a *pro rata* basis. Settlement checks for Individual PAGA Payments will be issued separately from settlement checks for Participating Settlement Class Members' Settlement Shares.

E. **Appointment of Settlement Administrator.** Class Counsel will ask the District Court to approve the CPT Group, Inc. as a qualified administrator to serve as the Claims Administrator, which, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Claims Administrator's duties will include preparing, printing, and

mailing the Class Notice to all Settlement Class Members by both U.S. mail and email; conducting a National Change of Address search on any Class Notice returned by the U.S. Postal Service as non-deliverable, and re-mailing the Class Notice to the Settlement Class Member's new address; receiving and reviewing for validity completed opt out request and Notices of Objection; providing the Parties with weekly status reports about the delivery of Class Notice and receipt of any disputes to the Shifts Worked identified in Settlement Class Member's Class Notice, receipt of any written opt outs and receipt of Notices of Objection; calculating the total number of Shifts Worked for the entire Settlement Class and determining Settlement Class Members' respective Settlement Shares; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports required under this Settlement (including, but not limited to, IRS Form(s) 1099); distributing any remaining funds as directed by the District Court; and otherwise administering the Settlement pursuant to this Agreement. The Claims Administrator will have the final authority to resolve all disputes concerning the calculation of a Participating Settlement Class Member's Settlement Share, subject to the dollar limitations set forth in this Agreement.

1. All Claims Administration Costs, including the cost of printing and mailing the Class Notice, will be paid out of the Maximum Settlement Amount.
2. **Claims Administration Costs if Settlement Not Approved by Court or Becomes Void.** If an objection to the Settlement Agreement is filed with the Court, regardless of the ultimate outcome of any appeals taken, or if the Settlement is voided or

rescinded, any costs incurred by the Claims Administrator shall be paid equally by the Parties (half by Defendants and half by Class Counsel), unless otherwise ordered by the District Court. Notwithstanding the above, if Defendants exercise their unilateral right to void and withdraw from the Settlement at any time before the Effective Date, Defendants shall be responsible for all Claim Administration Costs through the date of such withdrawal.

F. Procedure for Approving Settlement.

1. Motion for Preliminary Approval of Settlement by the District Court.

- a. Plaintiffs through Class Counsel will move the District Court for an order granting Preliminary Approval of the Settlement, and the Class Notice Form.
- b. Plaintiffs through Class Counsel will draft and submit with the Motion for Preliminary Approval a proposed Order Granting Preliminary Approval of Settlement; Approval of Notice to Class; proposed Second Amended Complaint with accompanying LWDA letter; and Setting Hearing for Final Approval of Settlement.
- c. Class Counsel will be responsible for drafting all documents necessary to obtain preliminary approval. Class Counsel will provide copies of all documents to be filed with the Court to Defendants at least ten (10) business days before the documents are filed, for review and comment by Defendants. Defendants shall provide to Class Counsel any and all comments regarding the motion

and proposed order at least one (1) business day prior to the filing date of such documents.

- d. At or around the same time as they submit this Settlement Agreement to the Court for preliminary approval, Class Counsel shall submit a copy of this Settlement Agreement to the LWDA, as required by California Labor Code § 2699(1)(2). Within ten (10) days following the Effective Date, Class Counsel shall submit a copy of the Final Approval Order and Final Judgment entered by the Court to the LWDA, as required by California Labor Code § 2699(1)(3). Within ten (10) days following the filing of the Motion for Preliminary Approval, Plaintiffs shall serve a CAFA Notice upon the Attorney General of the State of California and the United States Attorney General. The CAFA Notice shall provide notice of the proposed Settlement in compliance with the requirements of the federal Class Action Fairness Act, 28 U.S.C. § 1711 et seq.
- e. Should the District Court decline to preliminarily approve all of the material provisions of the Settlement (including but not limited to the scope of Released Claims to be granted by Participating Settlement Class Members or the binding effect of the Settlement on Participating Settlement Class Members), the Settlement will be null and void and the Parties will have no further obligations under it.

- 2. **Notice to Settlement Class Members.** After the District Court enters its order granting Preliminary Approval of the Settlement,

Settlement Class Members will be provided with the Class Notice as follows:

- a. Using best efforts to provide it as soon as possible, and in no event later than thirty (30) calendar days after the District Court enters its Order Granting Preliminary Approval of the Settlement, Defendants will provide to the Claims Administrator a spreadsheet in Excel format containing, for each Settlement Class Member, his or her Class Data.
- b. Using best efforts to mail it as soon as possible, and in no event later than twenty-one (21) calendar days after receiving the Class Data from Defendants, the Claims Administrator will mail the Class Notice to all Settlement Class Members via first-class regular U.S. Mail using the mailing address information provided by Defendants, unless modified by any updated address information that the Claims Administrator obtains in the course of administration of the Settlement.
- c. Prior to mailing, the Claims Administrator shall perform a search based on the National Change of Address Database or any other similar services available, such as provided by Experian, for information to update and correct for any known or identifiable address changes. If a Class Notice is returned because of an incorrect address on or before the Response Deadline, the Settlement Administrator will promptly, and not more than fourteen (14) days from receipt of the returned Class Notice, use a skip trace search

to identify a more current address for the Settlement Class Member and re-mail the Class Notice to the Settlement Class Member. The Settlement Administrator will use the Class Data and otherwise work with Defendants to find a current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, as agreed to with Class Counsel and according to the following deadlines, to trace the mailing address of any Settlement Class Member for whom a Class Notice is returned by the U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Settlement Class Members for whom new addresses are found. Those Settlement Class Members who receive a re-mailed Class Notice, whether by skip-trace or by request, shall have between the later of (a) an additional fourteen (14) days from the postmarked date of the re-mailed notice to postmark an opt out request or Notice of Objection to the Settlement. If the Class Notice is re-mailed, the Settlement Administrator will note for its own records and notify Class Counsel and Defendants' Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties. Class Counsel will be entitled to receive from the Settlement Administrator

any updated address information about a Settlement Class Member as the Settlement Administrator obtains such information.

The Claims Administrator will also email each Notice using Settlement Class Member email addresses to the extent known to Defendants. The Claims Administrator will have no duty to resend any emails that are undeliverable but may choose to resend any email that it determines was sent to an incorrect address.

- d. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendants' Counsel of any opt out requests and Notice of Objections to the Settlement that it receives. The costs of this notice program will be considered part of the administration fees and costs of the settlement to be paid from the Maximum Settlement Consideration to the third-party administrator.
- e. Not later than the date by which the Plaintiffs files their motion for final approval of the Settlement, the Settlement Administrator will serve on the Parties and file with the Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

- 3. **Dispute As to Work Period Information on Class Notice.** The Settlement Class Members will have forty-five (45) days after

the date on which the Claims Administrator mails the Class Notice to dispute the Shifts Worked listed on the Class Notice.

- a. Settlement Class Members will have the opportunity to dispute the Shifts Worked pre-printed on their individualized Class Notice by submitting to the Claims Administrator a writing explaining why they believe they should be credited with a different number of Shifts Worked along with any supporting documentation. In the event of such a dispute, Defendants will review their records to verify the correct information to the best of their abilities. Defendants' records will have a rebuttable presumption of correctness. After consultation with Class Counsel, the Settlement Class Member and Defendants, the Settlement Administrator will make a determination as to the disputed Shifts Worked and that determination will be final, binding on the Parties and the Settlement Class Member, and non-appealable.
- b. In the event that a written dispute is submitted timely but is deficient in one or more respects, the Claims Administrator will notify the Settlement Class Member within fourteen (14) days of the deficiencies and stating that the Settlement Class Member will have fourteen (14) days from the date of the deficiency notice to correct any deficiencies and resubmit the dispute. The envelope containing the resubmitted challenge must be postmarked within fourteen (14) days of the date of the deficiency

notice to be considered timely, absent a showing of good cause.

4. **Objections to Settlement; Requests to Opt Out.** Settlement Class Members may submit: (1) objections to the Settlement; or (2) opt out requests pursuant to the following procedures:

- a. **Objections to Settlement.** The Class Notice will provide that Settlement Class Members who wish to comment on or object to the Settlement must file with the District Court and serve on counsel for the Parties not later than forty-five (45) days after the Settlement Administrator mails the Class Notice a written objection to the Settlement setting forth the grounds for the comment or objection, as described above in this Agreement. The date of fax or the postmark on the return mailing envelope shall be the exclusive means to determine whether an opt out request has been timely submitted. The statement will also indicate whether the Settlement Class Member intends to appear and object at the Final Approval Hearing; failure to do so will constitute a waiver of the right to appear at the hearing. A Settlement Class Member who does not file and serve a written objection in the manner and by the deadline specified above will be deemed to have waived any objections and will be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement. Settlement Class Members who opt out of the Settlement will have no ability to object to the Settlement.

- b. **Request to Opt-Out of the Settlement.** The Class Notice also will provide that Settlement Class Members who wish to exclude themselves from the Settlement (except for the PAGA Release) must mail to the Claims Administrator not later than forty-five (45) days after the Claims Administrator mails the Class Notice a written and signed request to not to participate in Settlement, i.e., to opt out of the Settlement. The date of fax or the postmark on the return mailing envelope shall be the exclusive means to determine whether an opt out has been timely submitted. If a question is raised about the authenticity of a signed opt out, the Claims Administrator will have the right to demand additional proof of the Settlement Class Member's identity. A Non-Participating Settlement Class Member will not participate in or be bound by the Settlement or the Judgment, except that Non-Participating Settlement Class Members are still bound by and subject to the PAGA Release. Defendants will remain free to contest any claim brought by the Settlement Class Member that would have been barred by this Agreement, and nothing in this Agreement will constitute or be construed as a waiver of any defense Defendants have or could assert against such a claim nor will any person who properly elects not to participate be bound in any way by this proceeding. A Settlement Class Member who does not complete and mail a timely and valid request to opt out of the Settlement in the manner and by the deadline

specified in this Agreement will automatically become a Participating Settlement Class Member and be bound by all terms and conditions of the Settlement, including its release of claims, if the Settlement is approved by the District Court, and by the Judgment, regardless of whether he or she has objected to the Settlement.

- c. **Settlement Binds All Settlement Class Members Who Do Not Opt-Out.** Any Settlement Class Member who does not affirmatively opt-out of the Settlement Agreement by submitting a timely and valid written opt out request shall be bound by all of its terms, including those pertaining to the Released Claims, as well as any Judgment that may be entered by the Court if it grants final approval to the Settlement.
- d. **Report.** Not later than fourteen (14) days after the deadline for submission of opt out requests and Notices of Objection, the Claims Administrator will provide the Parties with a complete and accurate list of all Participating Settlement Class Members and Non-Participating Settlement Class Members.

- 5. **No Solicitation of Comment, Objection, Election Not to Participate.** Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Settlement Class Member to object to the Settlement, submit an opt out request, or appeal from the Judgment.

- 6. **Plaintiffs' Waiver of Right to Be Excluded and Object.** Plaintiffs agree to sign this Settlement Agreement and, by

signing this Settlement Agreement, are hereby bound by the terms herein. For good and valuable consideration, and by their signatures below, Plaintiffs further agree that they shall not request to be excluded from the Settlement Agreement, nor object to any terms of it. Any such request for exclusion or objection by Plaintiffs shall be void and of no force or effect. Efforts by Plaintiffs to circumvent the terms of this paragraph shall be void and of no force or effect.

7. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, Plaintiffs and Participating Settlement Class Members who did not timely submit an objection to the Settlement, and Class Counsel hereby waive any and all rights to appeal from the Judgment or to make any Post Final Approval Order Challenges, 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 under Rule 60, Federal Rules of Civil Procedure 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, post-judgment proceedings, or Post Final Approval Order Challenges. This paragraph does not preclude Plaintiffs or Class Counsel from appeal from a refusal by the District Court to award the requested Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment sought by them.

8. **Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, application, or any Post Final Approval Order Challenges the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement (including, but not limited to, the scope of release to be granted by Participating Settlement Class Members or the binding effect of the Settlement on Participating Settlement Class Members), and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then either Plaintiffs or Defendants will have the right to void the Settlement, which said Party or Parties must do by giving written notice to the other Parties, the reviewing court, and the District Court not later than thirty (30) days after the reviewing court's decision vacating, reversing, or materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the District Court's award of the Class Counsel Fees Payment or Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this paragraph, provided that Defendants' obligation to make payments under this Settlement will remain limited by the Maximum Settlement Amount.

G. **Final Settlement Approval Hearing and Entry of Judgment.** Upon expiration of the deadlines to postmark opt out requests and objections to the Settlement Agreement, and with the Court's permission, a Final Approval/Settlement Fairness Hearing shall be conducted to determine

the Final Approval of the Settlement Agreement along with the amounts properly payable for (a) individual Settlement Shares; (b) the Class Counsel's Fees and Litigation Expenses; (c) the PAGA Payment; (d) all Claims Administration Costs; and (e) the Class Representatives' Enhancement Awards. Class Counsel will be responsible for drafting all documents necessary to obtain final approval. Class Counsel will also be responsible for drafting the attorneys' fees and costs application to be heard at the final approval hearing. Class Counsel will provide a copy of the motion for final approval and proposed order and judgment to Defendants at least five (5) business days before the documents are filed, for review and comment by Defendants. Defendants shall provide to Class Counsel any and all comments regarding the motion and proposed order and judgment at least one (1) day prior to the filing date of such documents.

- H. **Judgment and Continued Jurisdiction.** Upon final approval of the Settlement by the Court, the Parties shall present the Judgment to the Court for its approval, which shall include a dismissal with prejudice of the Released Claims. After entry of the Judgment, the Court shall have continuing jurisdiction related to the Released Claims solely for purposes of addressing: (a) the interpretation and enforcement of the terms of the Settlement, (b) Settlement administration matters, and (c) such post-Judgment matters as may be appropriate under court rules or as set forth in this Agreement.
- I. **Tax Liability.** Defendants makes no representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiffs and Participating Settlement Class Members are not relying on any statement, representation, or calculation by Defendants or by the

Claims Administrator in this regard. Plaintiffs and Participating Settlement Class Members understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on the payments described herein. Class members will be solely responsible for the reporting and payment of taxes owed by them pursuant to this Agreement (including any penalties incurred). Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY

ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

- J. **Final Report by Settlement Administrator to Court.** Within ten days after final disbursement (and redistribution of any uncashed checks, if applicable) of all funds from the Maximum Settlement Amount, the Claims Administrator will serve on the Parties and file with the Court a declaration providing a final report on the disbursements of all funds from the Maximum Settlement Amount.
- K. **Release of Claims.** As of the date of the Judgment, all Participating Settlement Class Members hereby fully and finally release the Released Parties from all of the Released Claims. With respect to the *Released Claims only*, Participating Settlement Class Members are releasing all rights under section 1542 of the California Civil Code, and any other statute, law or Rule of similar effect, which provides:

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.

L. **Confidentiality.** No comments of any kind regarding the Settlement, the settlement-related documents, related communications, or the settlement negotiations may be made at any time to the press/media or otherwise, or otherwise publicized, circulated, or posted in any manner, unless the Parties expressly agreed in writing, with the exception that Class Counsel may provide links to the notice and a synopsis of the settlement on their respective websites. Notwithstanding the foregoing, Defendants shall have the right to disclose the settlement and its terms for accounting or public filing purposes, or to otherwise comply with any public reporting duties. This provision does not preclude Class Counsel from referencing the Settlement pursuant to court order. Any communication about the Settlement by Class Counsel to Settlement Class Members prior to the court approved mailing will be limited to a statement that a settlement has been reached and the details will be communicated in a forthcoming Court-approved notice. Nothing set forth herein, however, shall prohibit the Parties from providing this Agreement to the Court in connection with the Parties' efforts to seek the Court's approval of this Settlement.

M. **Miscellaneous Terms.**

1. **No Effect on Other Remuneration.** The Settlement Shares will not result in any additional payments beyond those provided by this Agreement to Plaintiffs or Participating Settlement Class Members, and Plaintiffs and Participating Settlement Class Members will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement.

2. **Revocation of Settlement Agreement by Defendants.**

Defendants shall have, in their sole discretion, the right to void and withdraw from the Settlement Agreement if at any time prior to final approval: (a) ten percent (10%) or more of all Settlement Class Members opt out of the Settlement; or (b) the Settlement is construed in such a fashion that Defendants would be required to pay more than the Maximum Settlement Amount; or (c) the Court does not certify the Settlement Class, or does not certify a settlement class releasing the claims set forth herein or otherwise makes an order inconsistent with any of the material terms of this Settlement; or (d) any pending litigation or litigation filed prior to final approval of the Settlement results in a final judgment that in any way prevents this Settlement from resolving all claims covered by this Settlement; or (e) Plaintiffs or Class Counsel materially breach the Settlement; or (f) the Court does not approve the full scope of Released Claims or the Released Claims Period as defined above. In the event Defendants void and withdraw from the Settlement pursuant to any of subsections (a) through (f) above, then Defendants agree to work expeditiously with Plaintiffs to prepare and execute an updated settlement agreement consistent with the material terms of this Agreement for prompt submission to the Court for review and approval. Plaintiffs do not have the right to withdraw from the settlement if the Court does not award or reduces the amount of attorneys' fees sought in the motions for preliminary or final approval.

3. **Nullification of Settlement Agreement.** In the event that: (a) the Court does not finally approve the Settlement as provided herein; or (b) the Settlement does not become final for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, shall be null and void. Any order or judgment entered by the Court in furtherance of this Settlement Agreement shall likewise be treated as void from the beginning.
4. **Invalidity of Any Provision.** Before declaring any provision of this Settlement Agreement invalid, the District Court shall first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.
5. **No Prior Assignments.** The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.
6. **No Admission of Liability or Class Certification for Other Purposes.**
 - a. Defendants deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under the claims asserted in the Actions, or that, but for this Settlement, a class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed

claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendants, or an admission by Plaintiffs that any of their claims was non-meritorious or any defense asserted by Defendants was meritorious. This Settlement and the fact that Plaintiffs and Defendants were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with the Settlement).

- b. Defendants have agreed to the certification of the Settlement Class, including certification of Plaintiffs' Reporting Time claim that encompasses all ports in California, for the sole purpose of effectuating this Settlement. Should the Settlement be voided by Defendants pursuant to this Agreement, or not approved by the District Court, or should the Judgment not become Final, the fact that the Parties were willing to stipulate to Settlement Class certification as part of the Settlement will have no bearing on, and will not be admissible in connection with, the issue of whether a class should be certified in a non-settlement context in this Action or any other action, and in any of those events Defendants expressly reserve the right to further challenge and oppose class certification.
- c. Whether or not the Judgment becomes Final, neither the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or the

Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendants or 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 (ii) disclosed, referred to or offered in evidence against any of the Released Parties, in any further proceeding in the Actions, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement.

- d. This section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all proceedings to enforce any or all terms of this Agreement, or in defense of any claims released or barred by this Agreement.
- e. In the event that the Settlement is not approved or otherwise voided, Defendants expressly reserve all rights to challenge certification of a class and/or collective, or Plaintiffs’ ability to maintain a representative action, for all purposes, and in the event the Settlement is not approved or otherwise voided, the Second Amended Complaint shall be withdrawn and the prior complaint, the First Amended Complaint, shall again be the operative complaint in the Action.

7. **Waiver.** No waiver of any condition or covenant contained in this Agreement or failure to exercise a right or remedy by any of the Parties hereto shall be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.
8. **Integrated Agreement.** This Settlement Agreement represents the full, exclusive and final embodiment of the Parties' agreement as to the terms of their settlement. The Parties represent that they have not entered into any additional, other or separate oral or written agreements, understandings, terms or "side deals" to this Settlement Agreement. The Parties expressly recognize California Civil Code Section 1625, which provides that a written agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written representations or terms exist nor shall any assertion to the contrary modify, vary or contradict the terms of this Agreement, which are full, exclusive and final.
9. **Invalidity of Any Provision.** Before declaring any provision of this Settlement Agreement invalid, the District Court shall first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable. Any provisions of this Settlement Agreement determined to be unlawful should be severed and the rest of the Settlement Agreement otherwise enforced. Invalidity or unenforceability of

a particular provision shall not render the remainder of the Settlement Agreement invalid or unenforceable.

10. **Attorney Authorization.** Class Counsel and Defendants' Counsel warrant and represent that they are authorized by Plaintiffs 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.
11. **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.
12. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
13. **Retention of Jurisdiction.** The Parties request and stipulate that the District Court may retain jurisdiction to enforce and issue such orders as are reasonable and necessary to carry out the terms of the Agreement.
14. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. No term of this Agreement will be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

15. **Fair, Adequate and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Agreement.
16. **Representation By Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Agreement, and that this Agreement has been executed with the consent and advice of counsel. Further, Plaintiffs and Class Counsel expressly warrant and represent that there are no liens on the Settlement Agreement.
17. **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.
18. **Cooperation and Execution of Necessary Documents.** All Parties and their counsel shall cooperate in good faith to obtain final approval of the Class Settlement and fully and finally implement the terms of this Agreement, including to execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement. No Party or their counsel shall assert or rely on any judicial, quasi-judicial, legislative, quasi-legislative, executive, administrative or regulatory

development, issuance, or action occurring after the date of Execution of this Agreement pursuant to paragraph III.M.20 herein as a basis to void or withdraw from this Settlement Agreement.

19. **Notice.** All notices, demands or other communications between the Parties in relation to this Agreement will be in writing and shall be transmitted by email, deemed delivered on the date of transmission and addressed as follows:

To Plaintiffs and the Class:

STEVENS & McMILLAN

Daniel P. Stevens

Heather K. McMillan

335 Centennial Way

Tustin, CA 92780

Tel.: +1.714.730.1000

Fax. +1.714.730.1067

ken@scmlaw.com

heather@scmclaw.com

To Defendants:

MORGAN, LEWIS & BOCKIUS LLP

Douglas R. Hart

Clifford D. Sethness

300 South Grand Avenue

Twenty-Second Floor

Los Angeles, CA 90071-3132

Tel.: +1.213.612.2500

Fax: +1.213.612.2501

douglas.hart@morganlewis.com

clifford.sethness@morganlewis.com

MORGAN, LEWIS & BOCKIUS LLP

Eric Meckley

One Market Street, Spear Tower

San Francisco, CA 94105

Tel.: +1.415.442.1000

Fax: +1.415.442.1001

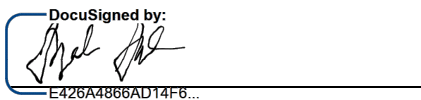
eric.meckley@morganlewis.com

20. **Execution.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures will be accepted if the

original signature is provided within seven days. DocuSign can be utilized for signature. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement. Counsel for Defendants is authorized to execute this Agreement on behalf of each and every one of the named Defendants in this action.

IV. EXECUTION BY PARTIES

The Parties and their counsel hereby execute this Agreement.

Dated: May 11, 2023	Plaintiff Evangelos Andrikos 
Dated: _____	Plaintiff Bryant Burns _____
Dated: _____	Plaintiff Michael Olvera _____
Dated: _____	Plaintiff Paul Ruiz _____
Dated: _____	Plaintiff Jerry Vrbancovic _____
Dated: _____	STEVENS & McMILLAN By: _____ Daniel Stevens Heather McMillan

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IV. EXECUTION BY PARTIES

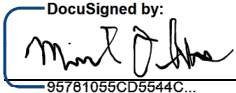
The Parties and their counsel hereby execute this Agreement.

Dated: _____	Plaintiff Evangelos Andrikos _____
Dated: May 11, 2023 _____	Plaintiff Bryant Burns DocuSigned by: <i>Bryant Burns</i> AAF3CF3D0C04408...
Dated: _____	Plaintiff Michael Olvera _____
Dated: _____	Plaintiff Paul Ruiz _____
Dated: _____	Plaintiff Jerry Vrbanovic _____
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Dated: <u>May 11, 2023</u>	Plaintiff Michael Olvera  95781055CD5544C...
Dated: _____	Plaintiff Paul Ruiz _____
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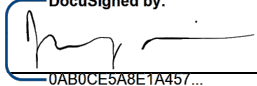
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Dated: _____	Plaintiff Evangelos Andrikos _____
Dated: _____	Plaintiff Bryant Burns _____
Dated: _____	Plaintiff Michael Olvera _____
Dated: May 11, 2023	Plaintiff Paul Ruiz DocuSigned by:  8FE3D906ADCF473...
Dated: _____	Plaintiff Jerry Vrbanovic _____
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Dated: _____	Plaintiff Paul Ruiz _____
Dated: May 11, 2023	Plaintiff Jerry Vrbanovic DocuSigned by:  0AB0CE5A8E1A457...
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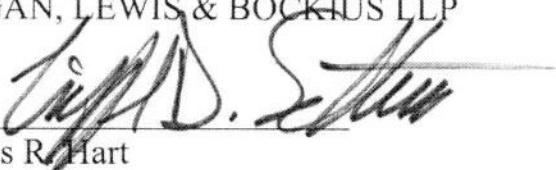
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Dated: _____	Plaintiff Bryant Burns _____
Dated: _____	Plaintiff Michael Olvera _____
Dated: _____	Plaintiff Paul Ruiz _____
Dated: _____	Plaintiff Jerry Vrbanovic _____
Dated: <u>5/11/23</u>	STEVENS & McMILLAN By:  Daniel Stevens Heather McMillan

Dated: May 11, 2023

Defendants Crescent City Marine Ways & Drydock Company, Inc.; Eagle Marine Services, Ltd.; Everport Terminal Services, Inc.; Harbor Industrial Services Corporation; Innovative Terminal Services Inc.; International Transportation Service, Inc.; Kinder Morgan Bulk Terminals LLC; LBCT LLC; Marine Terminals Corporation; Marine Terminals Corporation Of Los Angeles; Matson Navigation Company, Inc.; Matson Terminals, Inc.; Metropolitan Stevedore Company; Ocean Terminal Services, Inc.; Pacific Crane Maintenance Company LP; Pacific Ro-Ro Stevedoring, LLC; Pasha Stevedoring & Terminals LP; Port Maintenance Group; SSA Marine, Inc.; SSA Terminals, LLC; Terminal Equipment Services, Inc.; Total Terminals International, LLC; Transpac Terminal Services, LLC; Trapac, LLC; Yusen Terminals, Inc.; Pacific Maritime Association; Pacific Maritime Association, Inc.

MORGAN, LEWIS & BOCKIUS LLP

By: 

Douglas R. Hart
Clifford D. Sethness
Eric Meckley