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14 **THE UNITED STATES DISTRICT COURT**  
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

17 MAYA PITARRO, individually and on  
18 behalf of others similarly situated,

19 Plaintiff,

20 v.

21 DSV AIR & SEA, INC., a Delaware  
22 corporation; UTI UNITED STATES,  
INC., a New York corporation; and  
23 DOES 1 through 50, inclusive,

24 Defendants.

Case No. C19-cv-00849-SK

**JOINT STIPULATION FOR CLASS  
ACTION SETTLEMENT AND RELEASE  
OF CLAIMS**

[Originally filed in San Francisco County  
Superior Court Action No. CGC-18-571672]

State Action filed: November 29, 2018

Removal Date: February 15, 2019

Trial Date: None

25  
26  
27 This Joint Stipulation for Class Action Settlement and Release of Claims (hereinafter,  
28 “Agreement”) is made by and between the Named Plaintiffs, MAYA PITARRO (“Plaintiff”) on

STIPULATION OF SETTLEMENT

1 her own behalf and on behalf of all members of the Settlement Class and the PAGA Group, as  
2 defined below, on the one hand, and Defendant DSV AIR & SEA, INC. (“DSV” or “Defendant”)  
3 (incorrectly named separately as DSV Air & Sea, Inc. and UTI United States, Inc.) on the other  
4 hand (collectively the “Parties”), in the above-captioned litigation originally filed in the Superior  
5 Court of California County of San Francisco, Case No. CGC-18-571672, subsequently removed  
6 to the United States District Court for the Northern District of California, Case No. C19-cv-  
7 00849-SK (the “Litigation”). This Agreement resolves all claims that were asserted or could  
8 have been asserted against Defendant pertaining to the claims in the Litigation.

9 **I. DEFINITIONS**

10 1. **Administrative Costs.** The term “Administrative Costs” shall refer to all  
11 administrative costs of settlement, including cost of Class Notice, claims administration, and any  
12 fees and costs incurred or charged by the Settlement Administrator in connection with the  
13 execution of its duties under this Agreement.

14 2. **Agreement.** The term “Agreement” shall refer to this Joint Stipulation for Class  
15 Action Settlement and Release of Claims.

16 3. **Class Counsel.** The term “Class Counsel” shall refer to the law firm of Matern  
17 Law Group, PC and all the lawyers of that firm, specifically including but not limited to Matthew  
18 J. Matern and Mikael H. Stahle, who are counsel for and acting on behalf of Named Plaintiff, the  
19 Settlement Class, and the PAGA Group.

20 4. **Class Notice.** The term “Class Notice” shall refer to the Notice of Class Action  
21 Settlement, substantially in the form attached hereto as “**Exhibit A**,” including a Spanish  
22 translation, which shall be subject to Court approval, and which the Settlement Administrator  
23 shall mail to each member of the Settlement Class and PAGA Group explaining the terms of this  
24 Agreement.

25 5. **Compensable Workweeks.** The term “Compensable Workweeks” shall refer to  
26 the total number of weeks during which a member of the Settlement Class or PAGA Group  
27 worked for Defendant as a non-exempt employee in the State of California during either the  
28 Settlement Period (i.e. for the Settlement Class) or the PAGA Period (i.e. for the PAGA Group),

1 based on Defendant's records.

2 6. **Court.** The term "Court" shall refer to the United States District Court for the  
3 Northern District of California.

4 7. **Defendant.** The term "Defendant" shall refer to DSV Air & Sea, Inc (incorrectly  
5 named separately as DSV Air & Sea, Inc. and UTI United States, Inc.).

6 8. **Effective Date.** The term "Effective Date" shall refer to the date of the Court's  
7 entry of Judgment in the Litigation, unless at least one Participating Settlement Class Member  
8 files a timely and valid Notice of Objection to the Agreement that is not withdrawn prior to  
9 Judgment, whereupon the Effective Date shall be the later of the following events: (a) if an appeal,  
10 review, or writ is not sought from the Judgment, the thirty-first (31st) day after service by the  
11 Court of notice of the entry of Judgment; or (b) if an appeal, review or writ is sought from the  
12 Judgment, the day after the appeal, review or writ is dismissed or denied, the Judgment is  
13 affirmed, or the Judgment is no longer subject to further judicial review.

14 9. **Final Approval.** The term "Final Approval" shall refer to the Court's final order  
15 approving this Agreement.

16 10. **Litigation.** The term "Litigation" shall refer to the action originally filed in the  
17 Superior Court of California County of San Francisco, Case No. CGC-18-571672, subsequently  
18 removed to the United States District Court for the Northern District of California, Case No. C19-  
19 cv-00849-SK.

20 11. **Named Plaintiff.** The term "Named Plaintiff" shall refer to Maya Pitarro.

21 12. **Net Settlement Amount.** The term "Net Settlement Amount" shall refer to the  
22 Settlement Amount less the amounts attributable to Administrative Costs, any award of  
23 reasonable attorneys' fees and litigation costs, any awarded enhancement to the Named Plaintiff,  
24 and the PAGA Allocation, as provided in Sections VIII, XII, XIII, XV, respectively.

25 13. **Net Settlement Payments.** The term "Net Settlement Payment(s)" shall refer to  
26 the pro-rata individual settlement payments made to the Participating Settlement Class Members  
27 from Net Settlement Amount based on their respective Compensable Workweeks, including  
28 wages, penalties and interest, and shall be supplemented by any portion of the requested

1 attorneys' fees and litigation costs, Administrative Costs, and/or enhancements to the Named  
2 Plaintiff which are not approved by the Court.

3 14. **Notice of Objection.** The term "Notice of Objection" shall refer to a written  
4 objection, signed by a Class Member or his or her authorized representative and timely sent to  
5 the Court, stating the Class Member's intent to object to the terms of the Agreement and the  
6 grounds therefor.

7 15. **PAGA Allocation.** The term "PAGA Allocation" shall refer to the Twenty-Five  
8 Thousand Dollars and Zero Cents (\$25,000.00) portion of the Settlement Amount intended to  
9 resolve any and all claims of the California Labor & Workforce Development Agency (LWDA)  
10 for civil penalties under California's Labor Code Private Attorneys General Act (PAGA).

11 16. **PAGA Distribution.** The term "PAGA Distribution" shall refer to the pro-rata  
12 individual settlement payments made to the PAGA Group from the PAGA Allocation based on  
13 their respective Compensable Workweeks.

14 17. **PAGA Group.** The term "PAGA Group" shall refer to all persons who are or  
15 were employed by Defendant as non-exempt employees in the State of California at any time  
16 during the PAGA Period.

17 18. **PAGA Period.** The term "PAGA Period" shall refer to the time period from  
18 September 24, 2017, through the date of Preliminary Approval.

19 19. **Participating Settlement Class Member.** The term "Participating Settlement  
20 Class Member" shall refer to each member of the Settlement Class who has not submitted a valid  
21 Request for Exclusion.

22 20. **Preliminary Approval.** The term "Preliminary Approval" shall refer to the order  
23 by the Court preliminarily approving of this Agreement.

24 21. **Request for Exclusion.** The term "Request for Exclusion" shall refer to a written  
25 request, signed by a member of the Settlement Class or their authorized representative, and timely  
26 sent to the Settlement Administrator as evidence of their intent to be excluded from, and not  
27 participate in, the Agreement.

28 22. **Response Deadline.** The term "Response Deadline" shall refer to the date sixty

1 (60) days after the Settlement Administrator mails the Class Notice to the members of the  
2 Settlement Class and the last date on which members of the Settlement Class may submit a  
3 Notice of Objection or Request for Exclusion.

4 23. **Settlement Administrator.** The term “Settlement Administrator” shall refer to  
5 Phoenix Settlement Administrators, which will be responsible for the administration of the  
6 Settlement Amount, as defined below, and all related matters.

7 24. **Settlement Amount.** The term “Settlement Amount” shall refer to the fund in the  
8 sum of One Million One Hundred Thousand Dollars and Zero Cents (\$1,100,000.00), which shall  
9 be paid by Defendant, and from which all Net Settlement Payments, Court approved attorneys’  
10 fees and litigation costs pursuant to Section XII, Administrative Costs pursuant to Section VIII,  
11 enhancements to Named Plaintiff pursuant to Section XIII, statutory penalties, interest, and taxes  
12 pursuant to Section XIV, and the PAGA Allocation pursuant to Section XV, shall be paid, except  
13 as provided herein. Under no circumstances shall Defendant be required to pay more than the  
14 Settlement Amount, inclusive of all amounts set forth in this Agreement or that may otherwise  
15 be required to consummate the Agreement. The Settlement Amount has been agreed to by  
16 Plaintiff and Defendant based on the aggregate agreed-upon settlement value of Settlement Class’  
17 and PAGA Group’s claims in the Litigation.

18 25. **Settlement Period.** The term “Settlement Period” shall refer to the time period  
19 from November 29, 2014, through February 29, 2020 or the date of Preliminary Approval,  
20 whichever is sooner.

21 26. **Settlement Class.** For settlement purposes only, the Parties agree to the  
22 certification of the following class pursuant to Federal Rule of Civil Procedure 23 defined as: All  
23 persons who are or were employed by Defendant as non-exempt employees in the State of  
24 California at any time during the Settlement Period (“Settlement Class”).

25 **II. BACKGROUND**

26 27. **Initial Filings:** On or about November 29, 2018, Plaintiff MAYA PITARRO filed  
27 a wage and hour class action complaint in the Superior Court of California for the County of San  
28 Francisco against Defendant, entitled *MAYA PITARRO, on behalf of herself and others similarly*

1 *situated, vs. DSV AIR & SEA, INC.; UTI UNITED STATES, INC.; and DOES 1-50, inclusive*  
2 (San Francisco County Superior Court, Case No. CGC-18-571672). On or about January 3, 2019,  
3 Plaintiff filed a First Amended Complaint, which additional claims against Defendant for civil  
4 penalties under PAGA. Defendant timely answered.

5 28. Removal: On or about February 15, 2019, Defendant timely removed the matter  
6 to the United States District Court for the Northern District of California, Case No. C19-cv-  
7 00849-SK, where it currently remains.

8 29. Investigation and Discovery. Class Counsel have conducted a thorough  
9 investigation of the facts in the Litigation and have diligently pursued an investigation of the  
10 Settlement Class' and PAGA Group's claims against Defendant. Plaintiff and Defendant have  
11 engaged in substantial investigation in connection with the Litigation, including formal discovery  
12 and an informal exchange of a large volume of information, including confidential information,  
13 regarding the claims asserted in the Litigation, the defenses available to Defendant, and other  
14 relevant issues. By way of example, Defendant has produced, and Class Counsel has reviewed  
15 and analyzed, relevant wage and hour policies, relevant meal period and rest break policies,  
16 payroll information, wage statements, and other documents related to the members of the  
17 Settlement Class' and PAGA Group's employment with Defendant.

18 30. Mediation. On or about December 2, 2019, the Parties held an all-day mediation  
19 with mediator Marc Feder, at the conclusion of which the Parties agreed to resolve the matter as  
20 stated herein. The terms of the Parties' agreement were outlined in a "Memorandum of  
21 Understanding." The Memorandum of Understanding was fully executed as of on December 4,  
22 2019.

23 31. No Admission of Liability. The Parties have entered into this Agreement in order  
24 to reduce the risks and costs of further litigation, and to avoid further business distractions.  
25 Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in  
26 the Litigation. Among other things, Defendant contends that it complied in good faith with  
27 California wage and hour laws and the California Business and Professions Code with respect to  
28 the members of the Settlement Class and PAGA Group, including, but not limited to: (a) paying

1 all minimum wages owed at the appropriate rate; (b) paying all overtime wages owed at the  
2 appropriate rate; (c) providing legally entitled meal periods; (d) providing all legally entitled rest  
3 periods; (e) reimbursing for all necessary business expenses incurred in the discharge of their  
4 duties; (f) paying all wages owed at the time of separation; (g) providing all legally entitled,  
5 accurate, itemized wage statements; and (h) accurately maintaining all legally required  
6 employment records. Defendant further contends that, for any purpose other than settlement, this  
7 action is not appropriate for class treatment.

8 32. Fair, Reasonable, and Adequate Settlement. Based on the investigation  
9 summarized above, Class Counsel are of the opinion that the settlement on the terms set forth in  
10 this Agreement is fair, reasonable, and adequate and is in the best interests of the members of the  
11 Settlement Class, PAGA Group, and the LWDA in light of all known facts and circumstances,  
12 the risk of significant delay, defenses asserted by Defendant, unresolved legal issues that could  
13 have a material impact on the outcome of the Litigation, and numerous potential appellate issues.  
14 The Parties recognize that the issues presented in the Litigation are likely only to be resolved  
15 after extensive and costly pretrial proceedings, including a dispute as to whether any of the claims  
16 asserted can be certified as a class action, and that further litigation will cause inconvenience,  
17 distraction, disruption, delay and expense disproportionate to the potential benefits of continued  
18 litigation. The Parties agree that they have taken into account the risk and uncertainty of the  
19 outcome inherent in any complex litigation of this nature.

20 33. This Agreement is intended to and does effectuate the full, final and complete  
21 resolution of all allegations and claims that were asserted, or could have been asserted, in the  
22 Litigation by the Named Plaintiff, members of the Settlement Class and PAGA Group, and the  
23 LWDA, as set forth in Section VII.

24 **III. JURISDICTION**

25 34. The Court has jurisdiction over the Parties and the subject matter of this Litigation.  
26 The Litigation includes claims that, while Defendant denies them in their entirety, would, if  
27 proven, authorize the Court to grant relief pursuant to the applicable statutes. After the Court has  
28 granted Final Approval of the Agreement and after the Court has ordered the entry of Judgment,

1 the Court shall retain jurisdiction of this action solely for the purpose of interpreting,  
2 implementing, and enforcing this Agreement consistent with the terms set forth herein.

3 **IV. STIPULATION OF CLASS CERTIFICATION**

4 35. The Parties stipulate to the certification of the Settlement Class for purposes of the  
5 Agreement only. This stipulation is contingent upon the Preliminary Approval, Final Approval,  
6 and provisional certification of the Settlement Class only for purposes of the Agreement. Should  
7 the Agreement not become final, for whatever reason, the fact that the Parties were willing to  
8 stipulate provisionally to class certification as part of the Agreement shall have no bearing on,  
9 and shall not be admissible in connection with, the issue of whether a class should be certified in  
10 a non-settlement context in the Litigation. Defendant expressly reserves the right to oppose class  
11 certification should this Agreement be modified or reversed on appeal or otherwise not become  
12 final.

13 **V. MOTION FOR PRELIMINARY APPROVAL**

14 36. For purposes of implementing this Agreement, the Parties shall request that the  
15 Court enter Preliminary Approval, preliminarily approving the Agreement, certifying the  
16 Settlement Class for settlement purposes only, approving the Class Notice, and setting a date for  
17 the Final Approval hearing. The requested Preliminary Approval shall provide for the Class  
18 Notice to be sent to the Settlement Class and PAGA Group as specified herein.

19 37. Class Counsel will prepare the Motion for Preliminary Approval. On the same  
20 date on which it is filed with the Court, Class Counsel shall concurrently submit this Agreement  
21 to the Labor & Workforce Development Agency (“LWDA”) in compliance with Labor Code §  
22 2698 *et seq.*, the Private Attorneys General Act (“PAGA”). Defendant shall not oppose Class  
23 Counsel’s Motion for Preliminary Approval provided such motion and supporting papers are  
24 consistent with the terms of this Agreement.

25 **VI. STATEMENT OF NO ADMISSION**

26 38. Defendant denies liability to the Named Plaintiff, the Settlement Class, the PAGA  
27 Group, and the LWDA upon any claim or cause of action. This Agreement does not constitute,  
28 and is not intended to constitute, an admission by Defendant as to the merits, validity, or accuracy



1 of any of the allegations or claims made against them in the Litigation.

2 39. Nothing in this Agreement, nor any action taken in the implementation thereof,  
3 nor any statements, discussions or communications, nor any materials prepared, exchanged,  
4 issued or used during the course of the negotiations leading to this Agreement, is intended by the  
5 Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be  
6 admissible in any way in the Litigation or any other judicial, arbitral, administrative, investigative  
7 or other forum or proceeding as evidence of any violation of any federal, state, or local law,  
8 statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.  
9 The Parties themselves agree not to introduce, use, or admit this Agreement, directly or indirectly,  
10 in the Litigation or any other judicial, arbitral, administrative, investigative or other forum or  
11 proceeding, as purported evidence of any violation of any federal, state, or local law, statute,  
12 ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity, or for  
13 any other purpose. Notwithstanding the foregoing, this Agreement may be used in any proceeding  
14 before the Court that has as its purpose the interpretation, implementation, or enforcement of this  
15 Agreement or any orders or judgments of the Court entered in connection with the Agreement.

16 40. None of the documents produced or created by Named Plaintiff, the Settlement  
17 Class, or the PAGA Group in connection with the settlement administration procedures  
18 constitute, or are not intended to constitute, an admission by Defendant of any violation of any  
19 federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation  
20 or duty at law or in equity.

21 41. The Parties agree this Agreement's stipulation to class certification pursuant to  
22 Federal Rule of Civil Procedure 23 is for settlement purposes only. Nothing in this Agreement  
23 will be construed as an admission or acknowledgement of any kind that any class should be  
24 certified or given collective treatment in the Litigation or in any other action or proceeding.  
25 Further, neither this Agreement nor the Court's actions with regard to this Agreement will be  
26 admissible in any court or other tribunal regarding the propriety of class certification or collective  
27 treatment. In the event that this Agreement is not approved by the Court or any appellate court,  
28 is terminated, or otherwise fails to be enforceable, Named Plaintiff will not be deemed to have

1 waived, limited or affected in any way any claims, rights or remedies in the Litigation, and  
2 Defendant will not be deemed to have waived, limited, or affected in any way any of its objections  
3 or defenses in the Litigation.

4 **VII. WAIVER, RELEASE, DISMISSAL, AND CONFIDENTIALITY**

5 42. **Release as to All PAGA Group And Participating Settlement Class Members.**

6 Upon the Effective Date, Named Plaintiff and all Participating Settlement Class Members, waive,  
7 release, discharge, and promise never to assert in any forum any and all claims against Defendant,  
8 and each of Defendant's past, present, and future parents, subsidiaries, affiliates, predecessors or  
9 successors in interest, or the officers, directors, shareholders, employees, attorneys, agents,  
10 assigns, insurers, re-insurers, of any of them, that were alleged in the Litigation or which could  
11 have been alleged based on the facts asserted in the Litigation. These claims include, but are not  
12 limited to: Failure to Failure to Pay Minimum Wages; Failure to Pay Overtime Wages; Failure to  
13 Provide Legally Compliant Meal Periods; Failure to Reimburse Necessary Business Expenses;  
14 Failure to Provide Legally Compliant Rest Periods; Failure to Timely Pay Wages Due At  
15 Separation; Failure to Provide Accurate Itemized Wage Statements; Failure to Maintain Accurate  
16 Employment Records; Violations of Business & Professions Code § 17200, *et seq.* based on the  
17 foregoing facts and claims; and any other applicable provisions of state or federal law, including  
18 the applicable Industrial Welfare Commission wage order(s). Additionally, all members of the  
19 PAGA Group who worked during the PAGA Period release all claims for civil penalties under  
20 PAGA and waive any right to serve as a PAGA representative in this Litigation, or any other  
21 action seeking to recover civil penalties under PAGA during the same PAGA Period.

22 43. **General Release by Named Plaintiff Only.** Upon the Effective Date, Named  
23 Plaintiff also releases Defendant, and each of Defendant's past, present, and future parents,  
24 subsidiaries, affiliates, predecessors or successors in interest, officers, directors, shareholders,  
25 employees, attorneys, agents, assigns, insurers, and re-insurers of any of them, from all claims,  
26 demands, rights, liabilities and causes of action of every nature and description whatsoever,  
27 known or unknown, asserted or that might have been asserted, whether in tort, contract, or for  
28 violation of any state or federal statute, rule or regulation arising out of, relating to, or in

1 connection with any act or omission by or on the part of Defendant (“General Release”).

2 44. With respect to the General Release, Named Plaintiff stipulates and agrees that,  
3 upon the Effective Date, Named Plaintiff shall be deemed to have expressly waived and  
4 relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of  
5 California Civil Code § 1542, or any other similar provision under federal or state law, which  
6 provides:

7 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**  
8 **THAT THE CREDITOR OR RELEASING PARTY DOES**  
9 **NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**  
10 **FAVOR AT THE TIME OF EXECUTING THE RELEASE**  
11 **AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE**  
12 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT**  
13 **WITH THE DEBTOR OR RELEASED PARTY.**

14 Accordingly, if the facts relating in any manner to this Agreement are found hereafter to be other  
15 than or different from the facts now believed to be true, the release of claims contained herein  
16 shall be effective as to all unknown claims.

17 45. **Publicity.** Named Plaintiff and her counsel agree that they have not and will not  
18 publish the Agreement, except through a website maintained by the Settlement Administrator  
19 pursuant to this Agreement. In response to any inquiries, Named Plaintiff will state that “the case  
20 has been resolved.” Class Counsel shall not report the Agreement in any medium or in any  
21 publication, shall not post or report anything regarding the Named Plaintiff, the Settlement Class,  
22 the PAGA Group, or the Agreement on their website which identify the Named Plaintiff or  
23 Defendant by name, and shall not contact any reporters or media regarding the Agreement.  
24 However, Named Plaintiff and Class Counsel are authorized to make limited disclosures through:  
25 (a) court filings, submission to, and communications with, the Court and California’s Labor &  
26 Workforce Development Agency for purposes of obtaining approval of the Agreement; and (b)  
27 responding to inquiries by the members of the Settlement Class and PAGA Group.

28 **VIII. SETTLEMENT ADMINISTRATOR**

46. Named Plaintiff and Defendant, through their respective counsel, have selected  
Phoenix Settlement Administrators as the Settlement Administrator to administer the Agreement.  
This includes but is not limited to distributing and responding to inquiries about the Class Notice,

1 maintaining a website for providing information about the Agreement to the Settlement Class and  
2 PAGA Group, determining the validity of any opt-outs, calculating all amounts to be paid from  
3 the Settlement Amount, and establishing and administering a qualified settlement fund. Charges  
4 and expenses of the Settlement Administrator, estimated to be Ten Thousand Dollars and Zero  
5 Cents (\$10,000.00), will be paid from the Settlement Amount. Any charges and expenses of the  
6 Settlement Administrator greater than the allocated Ten Thousand Dollars and Zero Cents  
7 (\$10,000.00) will come from the Settlement Amount. If the actual Settlement Administrator fees  
8 are less than the Parties' estimation, the difference between the actual and estimated Settlement  
9 Administrator fees will revert to the Participating Settlement Class Members.

10 **IX. NOTICE, OBJECTIONS, AND EXCLUSION RIGHTS**

11 47. As soon as practicable following the Court's entry of Preliminary Approval, but  
12 no later than thirty (30) calendar days after the Court's entry of Preliminary Approval, Defendant  
13 will provide to the Settlement Administrator the following information about each member of the  
14 Settlement Class and PAGA Group ("Class List"): (1) first and last name; (2) last known mailing  
15 address; (3) number of Compensable Workweeks during the Settlement Period; (4) number of  
16 Compensable Workweeks during the PAGA Period; and (5) social security number. Defendant  
17 further agrees to consult with the Settlement Administrator prior to the production date to ensure  
18 that the format will be acceptable to the Settlement Administrator.

19 48. **Class Notices.** The Settlement Administrator shall mail a notice to all members  
20 of the Settlement Class and PAGA Group within ten (10) business days of receiving the Class  
21 List from Defendant. Each notice will provide: (1) information regarding the nature of the  
22 Litigation; (2) a summary of the Agreement's principal terms; (3) the Settlement Class and PAGA  
23 Group definitions; (4) the total number of Compensable Workweeks that each member of the  
24 Settlement Class and PAGA Group worked during the Settlement Period and PAGA Period; (5)  
25 the formula for calculating Net Settlement Payments and PAGA Distributions for each member  
26 of the Settlement Class and PAGA Group; (6) the estimated Net Settlement Payment and PAGA  
27 Distribution for each member of the Settlement Class and PAGA Group; (7) the dates comprising  
28 the Settlement Period and PAGA Period; (8) instructions on how to submit a Request for

1 Exclusion or Notice of Objection; and (9) and the Response Deadline by which the members of  
2 the Settlement Class must postmark a Request for Exclusion or a Notice of Objection.

3       **49. Confirmation of Contact Information in the Class List.** The Settlement  
4 Administrator shall run all the addresses provided through the United States Postal Service  
5 NCOA database (which provides updated addresses for any individual who has moved in the  
6 previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain  
7 current address information, and shall mail the Class Notice to the Settlement Class and PAGA  
8 Group via first-class U.S. mail using the most current mailing address information available  
9 within ten (10) business days of the receipt of the Class List from Defendant. The Class Notice  
10 shall provide the Settlement Class and PAGA Group notice of all applicable dates and deadlines.

11       **50. Returned Notices.** Any Class Notices returned to the Settlement Administrator  
12 as non-deliverable on or before the response deadline will be sent promptly via regular first-class  
13 U.S. mail to the forwarding address affixed thereto and the Settlement Administrator will indicate  
14 the date of such re-mailing on the Class Notice. If no forwarding address is provided, the  
15 Settlement Administrator will promptly attempt to determine the correct address using a skip-  
16 trace, or other search using the name, address and/or social security number of the Settlement  
17 Class or PAGA Group member involved, and will then perform a single re-mailing.

18       **51. Objections.** In order for any member of the Settlement Class to object to this  
19 Agreement, or any term of it, the Settlement Class member making the objection must not submit  
20 a Request for Exclusion (i.e., must not opt out). Rather, a written objection (“Notice of  
21 Objection”) must be signed by the Settlement Class member or his or her authorized  
22 representative and sent to the Court by mail postmarked by no later than the Response Deadline.  
23 The Class Notice shall contain instructions on how to submit an objection. If the Settlement Class  
24 member timely submits a Notice of Objection by the Response Deadline, he or she may appear,  
25 personally or through an attorney, at his or her own expense, at the Final Approval hearing to  
26 present his or her objection directly to the Court. However, any attorney who will represent an  
27 individual objecting to this Agreement must file a notice of appearance with the Court and serve  
28 Class Counsel and Defense Counsel with such notice no later than the Response Deadline. If a

1 Settlement Class member objects to the Agreement, the Settlement Class member will be  
2 considered a Participating Settlement Class Member and if the Court approves this Agreement,  
3 the Participating Settlement Class Member will be bound by the terms of the Agreement and  
4 Final Approval in the same way and to the same extent as a Participating Settlement Class  
5 Member who does not object. The date of mailing of the Class Notice to the objecting Settlement  
6 Class member shall be conclusively determined according to the records of the Settlement  
7 Administrator. The Court retains final authority with respect to the consideration and  
8 admissibility of any Settlement Class member objections. The Parties shall not be responsible for  
9 any fees, costs, or expenses incurred by any Settlement Class member and/or his or her counsel  
10 related to any objections and/or appeals arising therefrom. Furthermore, Named Plaintiff waives  
11 any right to object to the Agreement, and hereby endorses the Agreement as fair, reasonable and  
12 adequate and in the best interests of the Settlement Class members.

13       **52. Opportunity to be Excluded.** In order for any Settlement Class member to  
14 validly exclude him or herself from the Agreement (i.e., to validly opt out), a written Request for  
15 Exclusion must be signed by the Settlement Class member or his or her authorized representative  
16 and sent to the Settlement Administrator, postmarked no later than the Response Deadline. The  
17 Class Notice shall contain instructions on how to opt out. The date of the initial mailing of the  
18 Class Notice and the date the signed Request for Exclusion was postmarked shall be conclusively  
19 determined according to the records of the Settlement Administrator. Any Settlement Class  
20 member who submits a valid Request for Exclusion will not be entitled to a Net Settlement  
21 Payment, will not be bound by the terms and conditions of the Agreement, and will not have any  
22 right to object, appeal, or comment thereon; provided, however, that a Settlement Class member's  
23 submission of a valid Request for Exclusion shall not affect his or her right, if any, to receive a  
24 proportionate share of the PAGA Distribution in accordance with Paragraph 53, below. In turn,  
25 any Settlement Class member who does not timely submit a Request for Exclusion will be  
26 deemed a Participating Settlement Class Member in accordance with this Agreement. Named  
27 Plaintiff waives any right to be excluded from the Agreement.

28 //

1        **X. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

2            53.        **Distribution of the Net Settlement Amount and PAGA Distribution.** The  
3 Participating Settlement Class Members and PAGA Group members will receive a lump-sum  
4 payment as good and valuable consideration for the waiver and release of claims set forth in  
5 Paragraph 42, above, in an amount determined by the Settlement Administrator in accordance  
6 with the provisions of this Agreement. The Settlement Administrator will determine the Net  
7 Settlement Payment for each Participating Settlement Class Member and the PAGA Distribution  
8 for each member of the PAGA Group according to the formula described in this paragraph:

9                    a.        **The Settlement Class.** The Net Settlement Amount shall be divided  
10                    among all Participating Settlement Class Members. Each Participating  
11                    Settlement Class Member shall receive a proportionate share that is  
12                    equal to (a) the number of Compensable Workweeks he or she worked  
13                    during the time period from November 29, 2014, through February 29,  
14                    2020 or the date of Preliminary Approval of the settlement, whichever  
15                    is sooner, divided by (b) the total number of Compensable Workweeks  
16                    worked by all Participating Settlement Class Members during the time  
17                    period from November 29, 2014, through February 29, 2020 or the date  
18                    of Preliminary Approval of the settlement, whichever is sooner;

19                    b.        **The PAGA Group.** Twenty-Five Percent (25%) of the PAGA  
20                    Allocation shall be divided among all members of the PAGA Group.  
21                    Each PAGA Group member shall receive a proportionate share that is  
22                    equal to (a) the number of Compensable Workweeks he or she worked  
23                    during the time period from September 24, 2017, through the date of  
24                    Preliminary Approval of the settlement, divided by (b) the total number  
25                    of Compensable Workweeks worked by all PAGA Group members  
26                    during the time period from September 24, 2017, through the date of  
27                    Preliminary Approval of the settlement.

28            54.        **Resolution of Disputes.** Any Settlement Class or PAGA Group member may

1 challenge the computation of his or her Compensable Workweeks by submitting a written dispute  
2 in conformity with the instructions contained in the Class Notice. Any such dispute must contain  
3 the amount of Compensable Workweeks that the Settlement Class or PAGA Group member  
4 contends to have worked, along with supporting documentation. Disputes must be mailed or  
5 faxed to the Settlement Administrator, postmarked or fax-stamped no later than the Response  
6 Deadline to be considered. Counsel for the Parties will make a good faith effort to resolve the  
7 dispute informally. If counsel for the Parties cannot agree, the dispute shall be determined by the  
8 Settlement Administrator, who shall examine all available written records in an attempt to resolve  
9 the dispute. Defendant's records shall be presumed accurate and control unless the Settlement  
10 Class or PAGA Group member provides satisfactory proof that Defendant's records are incorrect.  
11 In any event, the Settlement Administrator will make every reasonable effort to resolve any such  
12 disputes before Final Approval of this Agreement, and if any disputes cannot be resolved by that  
13 time, they will be resolved by the Court at the Final Approval hearing.

14       **55. Funding of Agreement and Time for Distribution.** Within twenty-one (21)  
15 calendar days of the Effective Date, Defendant will provide the Settlement Amount to the  
16 Settlement Administrator. In addition, Defendant will provide to the Settlement Administrator  
17 the employer's share of payroll taxes on the portion of all the Net Settlement Payments allocated  
18 to wages under the terms of this Agreement. Within thirty (30) calendar days of the Settlement  
19 Administrator's receipt of the Settlement Amount, the Settlement Administrator shall make all  
20 required distributions pursuant to any Final Approval of this Agreement by the Court including,  
21 to the extent ordered, all Net Settlement Payments, PAGA Distributions, Class Counsel's  
22 attorneys' fees and costs, and Plaintiff's enhancement payment. If a check is returned to the  
23 Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt  
24 to obtain a valid mailing address by performing a skip trace search and, if another address is  
25 identified, shall mail the check to the newly identified address.

26       **56. Cy Pres Charity.** Any Net Settlement Payments or PAGA Distributions  
27 remaining uncashed after one hundred and eighty (180) days shall be deemed unpaid residuals  
28 and shall be made payable as follows:



- 1 a. Twenty-five percent (25%) to the State Treasury for deposit in the Trial  
2 Court Improvement and Modernization Fund, established in California  
3 Government Code § 77209, and subject to appropriation in the annual  
4 Budget Act for the Judicial Council to provide grants to trial courts for  
5 new or expanded collaborative courts or grants for Sargent Shriver  
6 Civil Counsel;
- 7 b. Twenty-five percent (25%) to the State Treasury for deposit into the  
8 Equal Access Fund of the Judicial Branch, to be distributed in  
9 accordance with Business and Professions Code §§ 6216 through  
10 6223, inclusive, except that administrative costs shall not be paid to the  
11 State Bar or the Judicial Council from this sum; and
- 12 c. Fifty percent (50%) to Legal Aid at Work, a nonprofit organization that  
13 furthers the objectives and purposes underlying this Litigation and that  
14 provides civil legal services to the indigent.

15 **XI. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

16 57. The amounts paid under this Agreement do not represent a modification of any  
17 previously credited hours of service under any employee benefit plan, policy or bonus program  
18 sponsored by Defendant. Such amounts will not form the basis for additional contributions to,  
19 benefits under, or any other monetary entitlement under, benefit plans (self-insured or not)  
20 sponsored by Defendant, policies, or bonus programs. Any payments made under the terms of  
21 this Agreement shall not be applied retroactively, currently or on a going forward basis as salary,  
22 earnings, wages, or any other form of compensation for the purposes of Defendant's benefit plan,  
23 policy, or bonus program. Defendant retains the right to modify the language of their benefit  
24 plans, policies and bonus programs to effect this intent and to make clear that any amounts paid  
25 pursuant to this Agreement are not for "hours worked," "hours paid," "hours of service," or any  
26 similar measuring term as defined by applicable plans, policies and bonus programs for purpose  
27 of eligibility, vesting, benefit accrual or any other purpose, and that additional contributions or  
28 benefits are not required by this Agreement.

1 **XII. CLASS COUNSEL ATTORNEYS' FEES AND LITIGATION COSTS**

2 58. As part of the Agreement, Defendant agrees not to oppose an application by Class  
3 Counsel for reasonable attorneys' fees up to one-third (33.33%) of the Settlement Amount, which  
4 is Three Hundred Sixty-Six Thousand Six Hundred and Sixty-Six Dollars and Sixty-Seven Cents  
5 (\$366,666.67). This amount shall include all past and future attorneys' fees for which Named  
6 Plaintiff and Class Counsel could claim under any legal theory whatsoever in connection with  
7 this action. The "future" aspect of these amounts includes, without limitation, all time expended  
8 by Class Counsel in defending the Agreement and securing Final Approval (including any  
9 appeals therein). There will be no additional charge of any kind to either the Settlement Class or  
10 PAGA Group members or request for additional consideration from Defendant for such work.

11 59. As part of the Agreement, Defendant agrees not to oppose an application by Class  
12 Counsel for reasonable litigation costs up to Thirteen Thousand Dollars and Zero Cents  
13 (\$13,000.00). This amount shall include all past and future litigation costs for which Class  
14 Counsel could claim under any legal theory whatsoever in connection with this action. The  
15 "future" aspect of this amount includes, without limitation, all amounts expended by Class  
16 Counsel in defending the Agreement and securing Final Approval (including any appeals  
17 therein). There will be no additional charge of any kind to either the Settlement Class or PAGA  
18 Group members or request for additional consideration from Defendant for such work.

19 60. Should the Court approve a lesser amount of reasonable attorneys' fees or  
20 litigation costs than what is sought by Class Counsel, the unapproved portion shall revert into the  
21 Net Settlement Amount to be distributed to the Participating Settlement Class Members on a pro-  
22 rata basis. Any Court order awarding less than the amount of attorneys' fees or litigation costs  
23 sought by Class Counsel shall not be grounds to rescind the Agreement or otherwise void the  
24 settlement.

25 61. Any award of reasonable attorneys' fees and litigation costs awarded to Class  
26 Counsel by the Court shall be deducted from the Settlement Amount for the purpose of  
27 determining the Net Settlement Amount, and shall be reported on IRS Form 1099. The Settlement  
28 Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount of reasonable

1 attorneys' fees awarded by the Court.

2 **XIII. ENHANCEMENTS TO NAMED PLAINTIFF**

3 62. As part of the Agreement, Defendant agrees not to oppose an application by  
4 Named Plaintiff Maya Pitarro for a reasonable enhancement of up to Seven Thousand Five  
5 Hundred Dollars and Zero Cents (\$7,500.00) for her participation in and assistance with the  
6 Litigation, and in exchange for her General Release.

7 63. Should the Court approve an enhancement lesser amount Seven Thousand Five  
8 Hundred Dollars and Zero Cents (\$7,500.00) to Named Plaintiff, the unapproved portion shall  
9 revert into the Net Settlement Amount to be distributed to the Participating Settlement Class  
10 Members on a pro-rata basis. Any Court order awarding less than the amount sought by Named  
11 Plaintiff shall not be grounds to rescind the Agreement or otherwise void the settlement.

12 64. Any enhancements awarded to Named Plaintiff by the Court shall be deducted  
13 from the Settlement Amount for the purpose of determining the Net Settlement Amount, and shall  
14 be reported on IRS Form 1099. The Settlement Administrator shall issue to Named Plaintiff an  
15 IRS Form 1099 reflecting the amount of any enhancement awarded by the Court.

16 **XIV. TAXATION AND ALLOCATION**

17 65. The Parties agree that all employment taxes and other legally required  
18 withholdings will be withheld from payments to the Participating Settlement Class Members and  
19 Named Plaintiff based on the Parties stipulated allocation of the Net Settlement Amount as  
20 provided for in this Section.

21 66. The amount of federal income tax withholding will be based upon a flat  
22 withholding rate for supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-  
23 1(a)(2) as amended or supplemented. Income tax withholding will also be made pursuant to  
24 applicable state and/or local withholding codes or regulations.

25 67. For withholding tax characterization purposes and payment of taxes, the Net  
26 Settlement Payments shall be deemed and are allocated by the Parties as follows: (i) 80% as  
27 penalties and interest; and (ii) 20% wages.

28 68. W-2 Forms and/or 1099 Forms will be distributed at times and in the manner

1 required by the Internal Revenue Code of 1986 and consistent with this Agreement. If the Internal  
2 Revenue Code of 1986, the regulations promulgated thereunder, or other applicable tax law, is  
3 changed after the date of this Agreement, the processes set forth in this section may be modified  
4 in a manner to bring Defendant into compliance with any such changes.

5 **XV. PRIVATE ATTORNEYS GENERAL ACT ALLOCATION**

6 69. In order to implement the terms of this Agreement and to settle claims alleged  
7 under the Private Attorneys' General Act ("PAGA"), the Parties agree to allocate Twenty-Five  
8 Thousand Dollars and Zero Cents (\$25,000.00) of the Settlement Amount as civil penalties to the  
9 California Labor & Workforce Development Agency ("LWDA") (the "PAGA Allocation").  
10 Seventy-five percent (75%) of the PAGA Allocation (i.e. \$18,750.00) shall be paid by the  
11 Settlement Administrator directly to the LWDA. The remaining twenty-five percent (25%) of the  
12 PAGA Allocation (\$6,250.00) shall be paid by the Settlement Administrator to the PAGA Group,  
13 pursuant to Paragraph 53. A member of the PAGA Group who is also a Participating Settlement  
14 Class Member is eligible to receive his or her proportionate share of the PAGA Distribution, in  
15 addition to any Net Settlement Payment allocated to him or her under Paragraph 53.

16 **XVI. COURT APPROVAL**

17 70. This Agreement is contingent upon Final Approval by the Court and the entry of  
18 Judgment. Named Plaintiff and Defendant agrees to take all steps as may be reasonably necessary  
19 to secure both Preliminary Approval and Final Approval of the Agreement, to the extent not  
20 inconsistent with the terms of this Agreement, and will not take any action adverse to each other  
21 in obtaining Court approval, and, if necessary, appellate approval, of the Agreement in all  
22 respects. Named Plaintiff and Defendant expressly agree that they will not file any Notice of  
23 Objection to the terms of this Agreement or assist or encourage any person or entity to file any  
24 such Notices of Objection.

25 **XVII. MISCELLANEOUS PROVISIONS**

26 71. **Stay of Litigation.** Named Plaintiff and Defendant agree to the stay of all  
27 discovery in the Litigation, pending Final Approval of the Agreement by the Court.

28 72. **Interpretation of the Agreement.** This Agreement constitutes the entire

1 agreement between Named Plaintiff and Defendant. Except as expressly provided herein, this  
2 Agreement has not been executed in reliance upon any other written or oral representations or  
3 terms, and no such extrinsic oral or written representations or terms shall modify, vary or  
4 contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to  
5 be construed according to its terms and may not be varied or contradicted by extrinsic evidence.  
6 The Agreement will be interpreted and enforced under the laws of the State of California, both in  
7 its procedural and substantive aspects, without regard to its conflict of laws provisions. Any claim  
8 arising out of or relating to the Agreement, or the subject matter hereof, will be resolved solely  
9 and exclusively in the United States District Court for the Northern District of California, and  
10 Named Plaintiff and Defendant hereby consent to the personal jurisdiction of the Court over them  
11 solely in connection therewith. Named Plaintiff, on her own behalf and on behalf of the  
12 Settlement Class and PAGA Group, and Defendant participated in the negotiation and drafting  
13 of this Agreement and had available to them the advice and assistance of independent counsel.  
14 As such, neither Named Plaintiff nor Defendant may claim that any ambiguity in this Agreement  
15 or that this Agreement should be construed against the other.

16       73.     **Modification.** The terms and conditions of this Agreement constitute the  
17 exclusive and final understanding and expression of all agreements between Named Plaintiff and  
18 Defendant with respect to the Agreement. The Agreement may be modified only by a writing  
19 signed by the original signatories and approved by the Court.

20       74.     **Further Cooperation.** Named Plaintiff and Defendant and their respective  
21 attorneys shall proceed diligently to prepare and execute all documents, to seek the necessary  
22 approvals from the Court, and to do all things reasonably necessary or convenient to consummate  
23 the Agreement as expeditiously as possible.

24       75.     **Confidentiality of Documents.** After the Effective Date, Named Plaintiff, the  
25 Settlement Administrator, and Class Counsel shall maintain the confidentiality of all documents,  
26 deposition transcripts, declarations and other information obtained in the lawsuit, unless  
27 necessary for appeal or such documents are ordered to be disclosed by the Court or by a subpoena.

28       76.     **Counterparts.** The Agreement may be executed in one or more actual or non-

1 original counterparts, all of which will be considered one and the same instrument and all of  
2 which will be considered duplicate originals.

3 77. **Authority.** Each individual signing below warrants that he or she has the authority  
4 to execute this Agreement on behalf of the party for whom or which that individual signs.

5 78. **No Third-Party Beneficiaries.** Named Plaintiff, Settlement Class members,  
6 PAGA Group members, the LWDA, and Defendant are direct beneficiaries of this Agreement,  
7 but there are no third-party beneficiaries.

8 79. **Force Majeure.** The failure of any Party to perform any of its obligations under  
9 this Agreement within ninety (90) days after any deadline triggering such obligation shall not  
10 subject such Party to any liability or remedy beyond such obligation where such failure is  
11 occasioned in whole or in part by acts of god, fires, accidents, earthquakes, pandemics, other  
12 natural disasters, explosions, floods, wars, interruptions or delays in transportation, power  
13 outages, labor disputes or shortages, shortages of material or supplies, governmental laws,  
14 restrictions, rules or regulations, sabotage, terrorist acts, acts or failures to act of any third parties,  
15 or any other similar or different circumstances or causes beyond the reasonable control of such  
16 Party.

17 80. **Deadlines Falling on Weekends or Holidays.** To the extent that any deadline set  
18 forth in this Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be  
19 continued until the following business day.

20 81. **Severability.** In the event that any one or more of the provisions contained in this  
21 Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such  
22 invalidity, illegality, or unenforceability shall in no way effect any other provision if Defense  
23 Counsel and Class Counsel, on behalf of the Parties, the Settlement Class, and the PAGA Group,  
24 mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had  
25 never been included in this Agreement.

26 82. **Opt-Out Threshold.** If 10% of more of the members of the Settlement Class  
27 members exercise their rights to exclude themselves and opt out of the Agreement, Defendant  
28 may, in its sole discretion, unilaterally withdraw from and terminate the Agreement no later than

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five (5) days prior to the date of the Final Approval hearing. In the event of Defendant's withdrawal, no Party may use the fact that the Parties agreed to the Agreement for any reason.

Date: May 14<sup>th</sup>, 2020

MAYA PITARRO, on behalf of herself and all others similarly situated

By:   
MAYA PITARRO

Date: May \_\_\_\_\_, 2020

By: \_\_\_\_\_  
For: DSV AIR & SEA, INC.


Date: May \_\_\_\_\_, 2020

FISHER & PHILLIPS LLP

By: \_\_\_\_\_  
ANNIE LAU  
ANTHONY E. GUZMAN II  
Attorneys for Defendant  
DSV AIR & SEA, INC.

Date: May 15, 2020

MATERN LAW GROUP, PC

By:   
MATTHEW J. MATERN  
MIKAEL H. STAHL  
Attorneys for Plaintiff  
MAYA PITARRO

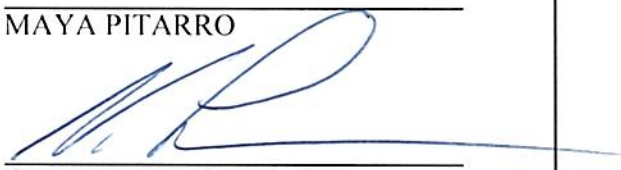
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five (5) days prior to the date of the Final Approval hearing. In the event of Defendant's withdrawal, no Party may use the fact that the Parties agreed to the Agreement for any reason.

Date: May\_\_\_\_, 2020

MAYA PITARRO, on behalf of herself and all others similarly situated

By: \_\_\_\_\_  
MAYA PITARRO



Date: May 15, 2020

By: \_\_\_\_\_  
For: DSV AIR & SEA, INC.

Date: May 15, 2020

FISHER & PHILLIPS LLP

By: \_\_\_\_\_  
ANNIE LAU  
ANTHONY E. GUZMAN II  
Attorneys for Defendant  
DSV AIR & SEA, INC.



Date: May\_\_\_\_, 2020

MATERN LAW GROUP, PC

By: \_\_\_\_\_  
MATTHEW J. MATERN  
MIKAEL H. STAHL  
Attorneys for Plaintiff  
MAYA PITARRO