

**CANADA CARTAGE UNPAID OVERTIME CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Made as of June 3, 2021

Between

MARC-OLIVER BAROCH

(the “**Plaintiff**”)

and

**CANADA CARTAGE DIVERSIFIED GP INC., DIRECT GENERAL PARTNER
CORPORATION and CANADA CARTAGE SYSTEM, LIMITED**

(the “**Defendants**”)

**CANADA CARTAGE UNPAID OVERTIME CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

TABLE OF CONTENTS

RECITALS	1
SECTION 1 – DEFINITIONS.....	2
SECTION 2 – SETTLEMENT APPROVAL.....	6
2.1 Best Efforts	6
2.2 Motion Seeking Approval of Amended Class Period.....	6
2.3 Motion Seeking Approval of Notice.....	6
2.4 Motion Seeking Approval of the Settlement, Distribution Protocol and Class Counsel Fees	6
2.5 Pre-Motion Confidentiality.....	6
SECTION 3 – SETTLEMENT BENEFITS	7
3.1 Payment of Settlement Amount.....	7
3.2 Taxes and Interest	8
SECTION 4 – TERMINATION OF SETTLEMENT AGREEMENT.....	9
4.1 Right of Termination.....	9
4.2 If Settlement Agreement is Terminated.....	9
4.3 Survival of Provisions After Termination.....	10
SECTION 5 – RELEASES AND DISMISSALS.....	10
5.1 Release of Releasees	10
5.2 Dismissal of the Proceeding.....	11
SECTION 6 – EFFECT OF SETTLEMENT.....	11
6.1 No Admission of Liability	11
6.2 Agreement Not Evidence.....	12
SECTION 7 – NOTICE TO CLASS	12
7.1 Notices Required.....	12
7.2 Form and Distribution of Notices	12
SECTION 8 – ADMINISTRATION AND IMPLEMENTATION	14
8.1 Mechanics of Administration.....	14
SECTION 9 – DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST	15
9.1 Distribution Protocol.....	15
9.2 Court Approval of Distribution Protocol	15

SECTION 10 – CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES	15
10.1 Responsibility for Fees, Disbursements and Taxes	15
10.2 Court Approval of Class Counsel Fees and Disbursements	16
SECTION 11 – MISCELLANEOUS	16
11.1 Motions for Directions.....	16
11.2 Headings, etc.....	16
11.3 Computation of Time.....	16
11.4 Ongoing Jurisdiction.....	17
11.5 Governing Law	17
11.6 Entire Agreement.....	17
11.7 Amendments	17
11.8 Binding Effect.....	17
11.9 Counterparts.....	18
11.10 Negotiated Agreement	18
11.11 Language.....	18
11.12 Transaction.....	18
11.13 Recitals.....	19
11.14 Schedules	19
11.15 Acknowledgements.....	19
11.16 Authorized Signatures.....	19
11.17 Notice.....	19
11.18 Date of Execution	20

**CANADA CARTAGE UNPAID OVERTIME CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

RECITALS

- A. WHEREAS the Plaintiff was an employee of the defendant, Canada Cartage System Limited Partnership, or one of its affiliates, from March 27, 2006 to June 29, 2013;
- B. WHEREAS the Proceeding was commenced by the Plaintiff, and the Plaintiff claims entitlement to unpaid overtime compensation;
- C. WHEREAS by Order of the Honourable Justice Belobaba, the Proceeding was, after a contested motion, certified as a class proceeding on the Certification Date;
- D. WHEREAS by Order of the Honourable Justice Belobaba, the Class definition was amended on consent after argument on a contested jurisdiction motion;
- E. WHEREAS the Parties made extensive documentary productions in accordance with the Order of the Honorable Justice Belobaba;
- F. WHEREAS the Parties attended a one-day mediation with Stephen Goudge on November 6, 2017 but were unable to reach an agreement to resolve the Proceeding;
- G. WHEREAS the Defendants produced 100,000 documents and Parties conducted multiple examinations for discovery over the course of eight days;
- H. WHEREAS the Parties subsequently attended a one-day mediation with Joel Wiesenfeld on July 16, 2020 but were unable to reach an agreement to resolve the Proceeding;
- I. WHEREAS the Plaintiff brought a motion for summary judgment, which was scheduled to be heard on May 25-27, 2021;
- J. WHEREAS the Parties exchanged motion records, including supplementary, reply, and sur-reply records;
- K. WHEREAS the Defendants conducted cross-examinations of certain of the Plaintiff's fact-witness affiants;

L. WHEREAS the Parties subsequently reached an agreement to resolve the Proceeding and entered into Minutes of Settlement;

M. WHEREAS the Minutes of Settlement contemplated the Parties executing this Settlement Agreement;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed that, subject to the approval of the Court, the Proceeding be settled on the following terms and conditions:

SECTION 1 – DEFINITIONS

For the purposes of this Settlement Agreement only, including the recitals and schedules hereto:

(1) **Administration Expenses** means all fees, disbursements (including disbursements to experts for advising on and/or implementing this Settlement Agreement and the Distribution Protocol), expenses, costs, taxes and any other amounts incurred or payable by the Plaintiff, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices and translation costs of the notices, but excluding Class Counsel Fees and Class Counsel Disbursements. Subject to Section 3.1(4), the Defendants and the Releasees shall not have any responsibility for any of the Administration Expenses.

(2) **Administration Form** means the form provided for in Section 8.1(2) of this Settlement Agreement.

(3) **ASPE** means Accounting Standards for Private Enterprises in accordance with the Chartered Professional Accountants of Canada.

(4) **Canada Cartage** means Canada Cartage System Limited Partnership, Direct Limited Partnership, Sonar Limited Partnership or any of the Defendants.

(5) **Certification Date** means January 30, 2015.

(6) **Certification Order** means the Order of the Honourable Justice Belobaba dated March 29, 2016.

(7) **Claim Fund** means the Settlement Amount remaining after deductions in respect of Administration Expenses, Class Counsel Disbursements, Class Counsel Fees, and LFA Fees to be paid out to Class Members pursuant to the Distribution Protocol.

(8) **Claims Administrator** means, RicePoint Administration Inc. and its affiliates, the firm proposed by Class Counsel and appointed by the Court to administer the Claims Fund in accordance with the provisions of this Settlement Agreement and the Distribution Protocol, and any employees of such firm.

(9) **Class** means “All persons who, at any time between March 1, 2006 and January 30, 2015, inclusive, were employed by Canada Cartage and who were entitled to receive overtime compensation pursuant to the Canada Labour Code, R.S.C. 1985, c. L-2 and its regulations, and whose terms and conditions of employment were, for any part of the Class Period, not governed by a collective agreement between Canada Cartage and a union” and who have not opted-out of this Proceeding.

(10) **Class Counsel** means Lax O’Sullivan Lisus Gottlieb LLP (“LOLG LLP”).

(11) **Class Counsel Disbursements** include the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Proceeding.

(12) **Class Counsel Fees** means the fees of Class Counsel, and any applicable taxes or charges thereon, including any amounts payable as a result of the Settlement Agreement by Class Counsel or the Class Members to any other body or Person.

(13) **Class Member** means a member of the Class.

(14) **Class Period** means March 1, 2006 to January 30, 2015.

(15) **LFA** means the Litigation Funding Agreement entered into between the Plaintiff and Augusta Pool 1 Canada Limited dated December 1, 2020.

(16) **LFA Fees** means fees from the Settlement Amount equal to the amount of financial support paid to the Plaintiff under the LFA, plus a funder administration fee and 10% of the Settlement Amount to which Augusta Pool 1 Canada Limited is entitled under the LFA.

- (17) **Counsel for the Defendants** means Torys LLP.
- (18) **Court** means the Ontario Superior Court of Justice.
- (19) **Date of Execution** means the date on which the Parties execute this Settlement Agreement.
- (20) **Defendants** means Canada Cartage Diversified GP Inc., Direct General Partner Corporation, and Canada Cartage System, Limited.
- (21) **Distribution Protocol** means the plan for distributing the Claim Fund described in general terms in Section 9.1 of this Settlement Agreement, and as approved by the Court.
- (22) **Effective Date** means the date of a Final Order from the Court approving this Settlement Agreement.
- (23) **Extended Class Period** means March 1, 2006 to January 30, 2015 and up to and including June 3, 2021.
- (24) **Final Order** means a final order, judgment or equivalent decree entered by the Court approving this Settlement Agreement in accordance with its terms, once the time to appeal such order has expired without any appeal being taken, if an appeal lies, or if the order is appealed, once there has been affirmation of the order upon a final disposition of all appeals.
- (25) **Holdback Fund** means 20% of the Claim Fund to be paid out to Class Members pursuant to the Distribution Protocol once the period for Class Members to claim or be paid from the Holdback Fund as described in Section 9.1(1)(g) has expired.
- (26) **Minutes of Settlement** means the agreement reached by the Parties, the terms of which were stipulated in the Minutes of Settlement dated April 22, 2021, a copy of which is attached to this Settlement Agreement as **Schedule “A”**.
- (27) **Party and Parties** means the Defendants, the Plaintiff, and, where necessary, the Class Members.
- (28) **Person** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee,

executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.

(29) ***Plaintiff*** means Marc-Oliver Baroch.

(30) ***Proceeding*** means the action commenced in the Court bearing Court File No. CV-13-492525-00CP.

(31) ***Released Matters*** means, up to and including the date of the execution of this Settlement Agreement, any and all actions, causes of action, suits, debts, claims and demands, howsoever arising, by the Releasors as the result of, relating to, or arising from the matters raised in the Proceeding in respect of the Extended Class Period or which could have been raised in the Proceeding in respect of the Extended Class Period, whether known or unknown, or by reason of any cause, matter or thing whatsoever and in particular, but without limiting the generality of the foregoing, from any and all claims up to the date of execution of this Settlement Agreement which were advanced in the Proceeding in respect of the Extended Class Period or could have been advanced in the Proceeding in respect of the Extended Class Period.

(32) ***Releasees*** means the Defendants and their predecessors, successors, assigns, parents, subsidiaries and affiliates, and together with all of their respective officers, directors, employees, servants and agents and their successors and assigns and all related entities, including but not limited to 1958472 Ontario Inc., Canada Cartage Diversified GP Inc., Direct General Partner Corporation, CCD Limited Partnership, Canada Cartage System Limited Partnership, Direct Limited Partnership, Mel Hall Transport Limited and Sonar Limited Partnership along with all of their respective parents, subsidiaries and affiliates, and together with all of their respective officers, directors, employees, servants and agents and their successors and assigns.

(33) ***Releasors*** means the Class Members in the Proceeding, for themselves, their heirs, executors, successors and assigns.

(34) ***Settlement Agreement*** means this agreement, including the recitals and schedules.

(35) ***Settlement Amount*** means CAD\$22,250,000.

(36) **Trust Account** means a guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, S.C. 1991, c. 46) held at a Canadian financial institution under the control of LOLG LLP or the Claims Administrator, once appointed, for the benefit of the Class Members or the Defendants, as provided for in this Settlement Agreement.

SECTION 2– SETTLEMENT APPROVAL

2.1 Best Efforts

The Parties shall use their best efforts to implement the terms and conditions of this Settlement Agreement and the settlement.

2.2 Motion Seeking Approval of Amended Class Period

At the time of the motion seeking approval of the Settlement Agreement, the plaintiff shall also seek an order varying the defined class period in the Certification Order to cover the Extended Class Period.

2.3 Motion Seeking Approval of Notice

The Plaintiff shall seek an order from the Court approving the notices described in Section 7.1(1) as soon as reasonably practicable after the Date of Execution, and will do so by way of motion if required.

2.4 Motion Seeking Approval of the Settlement, Distribution Protocol and Class Counsel Fees

The Plaintiff shall file a motion before the Court for an order approving this Settlement Agreement following the last to occur of:

- (a) the order referred to in Section 2.3 has been granted; and
- (b) the notices described in Section 7.1(1) have been published.

2.5 Pre-Motion Confidentiality

Until the motion material required to obtain the notice order referred to in Section 2.3 is filed or provided to the Court, the Parties shall keep all of the terms of the Settlement Agreement confidential, including over social media, and shall not disclose them without the prior consent

of Counsel for the Defendants and Class Counsel, as the case may be, except as required for the purposes of retaining a Claims Administrator, financial reporting, the preparation of financial records (including tax returns and financial statements), as necessary to give effect to its terms, as otherwise required by law or requested by regulatory authorities, or in the case of the Defendants, to pursue strategic financing activities and communicate with its bankers, financial advisors, agents, parties conducting due diligence, and the like, provided that any such parties are subject to written confidentiality agreements with the Defendants. Notwithstanding anything to the contrary contained in the immediately preceding sentence, the Defendants shall be permitted to make such disclosures within its consolidated financial statements as are needed to ensure compliance with the requirements of ASPE, the basis upon which such consolidated financial statements are prepared.

SECTION 3 – SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

(1) Absent an agreement by the Defendants to do so earlier, the Defendants shall pay the Settlement Amount to LOLG LLP, for deposit into the Trust Account on a day that is no later than thirty (35) days following the date on the Final Order, subject to any outstanding appeals that might affect the Settlement Amount, with the parties acting reasonably and in good faith. Subject to Section 4.2(c), the Defendants shall have no reversionary interest in, or reversionary claim to, the Settlement Amount.

(2) Payment of the Settlement Amount shall be made by wire transfer. Prior to the Settlement Amount becoming due, LOLG LLP will provide, in writing, the following information necessary to complete the wire transfer: name of bank, address of bank, ABA number, SWIFT number, name of beneficiary, beneficiary's bank account number, beneficiary's address, and bank contact details.

(3) The Settlement Amount shall be provided in full satisfaction of the Released Matters against the Releasees.

(4) The Settlement Amount shall be inclusive of all amounts, including, without limitation, taxes (including the withholdings and remittances of both employee and employer portions of CPP, EI, EHT, provincial statutory workers compensation schemes, income tax and any other

statutory amounts), interest, costs, Administration Expenses, Class Counsel Fees and Class Counsel Disbursements.

(5) The Defendants shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement, the Proceeding in respect of the Extended Class Period, or any other actions related to the Released Matters, including in respect of any amount for employees' deductions and withholdings, including employer remittances, relating to payments made to Class Members in accordance with this Settlement Agreement.

(6) Once a Claims Administrator has been appointed, LOLG LLP shall transfer control of the Trust Account to the Claims Administrator.

(7) LOLG LLP and the Claims Administrator shall maintain the Trust Account as provided for in this Settlement Agreement.

(8) LOLG LLP and the Claims Administrator shall not pay out all or any part of the monies in the Trust Account, except in accordance with the Settlement Agreement, the Distribution Protocol, or an order of the Court obtained after notice to the Parties.

3.2 Taxes and Interest

(1) Except as hereinafter provided, all interest earned on the Settlement Amount in the Trust Account shall accrue to the benefit of the Class and shall become and remain part of the Trust Account.

(2) Subject to Section 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be paid from the Trust Account. LOLG LLP or the Claims Administrator, as appropriate, shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Trust Account.

(3) The Defendants shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned on the Settlement

Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Defendants who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by LOLG LLP or the Claims Administrator.

SECTION 4 – TERMINATION OF SETTLEMENT AGREEMENT

4.1 Right of Termination

- (1) In the event that:
 - (a) the Court declines to approve this Settlement Agreement;
 - (b) the Court issues a settlement approval order that is materially inconsistent with the terms of the Settlement Agreement; or
 - (c) any order approving this Settlement Agreement made by the Court does not become a Final Order

The Plaintiff and the Defendants shall each have the right to terminate this Settlement Agreement by delivering a written notice pursuant to Section 11.17, within thirty (30) days following an event described above.

(2) In addition, if the Settlement Amount is not paid in accordance with Section 3.1(1), the Plaintiff shall have the right to terminate this Settlement Agreement, at his sole discretion, by delivering a written notice pursuant to Section 11.17.

(3) Except as provided for in Section 4.3, if the Settlement Agreement is terminated, the Settlement Agreement and Distribution Protocol shall be null and void and have no further force or effect, and shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason.

4.2 If Settlement Agreement is Terminated

If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:

- (a) no motion to approve this Settlement Agreement, which has not been decided, shall proceed;
- (b) the Parties will cooperate in seeking to have any issued order approving this Settlement Agreement set aside and declared null and void and of no force or effect, and any Party shall be estopped from asserting otherwise; and
- (c) the Settlement Amount will be returned to the Defendants in full.

4.3 Survival of Provisions After Termination

If this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the provisions of Sections 3.1(8), 3.2(3), 4.1(3), 4.2, 4.3, 6.1, 6.2, 7.1(2) and 7.2(4), and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of Sections 3.1(8), 3.2(3), 4.1(3), 4.2, 4.3, 6.1, 6.2, 7.1(2) and 7.2(4) within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 5 – RELEASES AND DISMISSALS

5.1 Release of Releasees

(1) The Releasors covenant, represent and warrant that, as of the date of the execution of the Settlement Agreement, they have no further claims against the Releasees for, or arising out of, the Released Matters. In the event that the Releasors have made or should make any claims or demands or commence or threaten to commence any actions, claims or proceedings or make any complaints against the Releasees arising out of the Released Matters, this Release may be raised as an estoppel and complete bar to any such claim, demand, action, proceeding or complaint.

(2) The Releasors acknowledge and agree that the gross sum of the Settlement Amount to be paid by the Defendants in respect of the Settlement is inclusive of all amounts owing by the Releasees or otherwise to be paid by the Releasees in respect of the Settlement Amount or the administration of the Settlement, including in respect of all overtime pay, vacation pay, holiday pay and any other statutory amounts, costs (including fees and disbursements), taxes and interest.

(3) The Releasors agree and undertake that they will not make any claim or commence or maintain any proceeding, complaint, action or claim against any Person in which any claim could arise against the Releasees for contribution or indemnity or any other relief over in respect of any of the actions, causes of action, claims, debts, suits or demands of any nature or kind that has been released by this Release. In the event that the Releasors make any claim or commence any proceeding in respect of the Released Matters against any person or entity which might make a claim, whether for contribution or indemnity or declaratory or other relief, from the Releasees or any of them, or which might result in a claim, whether for contribution or indemnity or declaratory or other relief, being made against the Releasees or any of them, this Release may be raised as an estoppel and complete bar to any such claim, demand, action, proceeding or complaint.

(4) This release is conditional upon the Court's approval of the Settlement Agreement. In the event that that the Settlement Agreement is not approved by the Court, the Releasors will not be bound by the terms of this Release.

5.2 Dismissal of the Proceeding

Upon the Effective Date, the Proceeding shall be dismissed with prejudice and without costs as against the Defendants.

SECTION 6 – EFFECT OF SETTLEMENT

6.1 No Admission of Liability

(1) Nothing in the Settlement Agreement amounts to an admission of liability by the Defendants or any of the Releasees.

(2) The Plaintiff, the Defendants, and all Releasees expressly reserve all of their rights if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason.

(3) Regardless of whether this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be

deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Releasees, or of the truth of any of the claims or allegations contained in the Proceeding.

6.2 Agreement Not Evidence

The Parties agree that, regardless of whether it is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve, enforce, or some combination thereof this Settlement Agreement, to defend against the assertion of Released Matters, as necessary in any insurance-related proceeding, or as otherwise required by law.

SECTION 7– NOTICE TO CLASS

7.1 Notices Required

(1) The Class shall be given a single notice of the hearing at which the Court will be asked to approve the Settlement Agreement, Distribution Protocol, and Class Counsel Fees and Class Counsel Disbursements.

(2) If following notice being given in accordance with Section 7.1(1), this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect, the Class shall be given notice of such event.

7.2 Form and Distribution of Notices

(1) The notices shall be in a form agreed upon by the Parties and approved by the Court or, if the Parties cannot agree on the form of the notices, the notices shall be in a form ordered by the Court.

(2) The notices shall be disseminated by Class Counsel or the Claims Administrator:

- (a) direct mailings to the Class Members using regular mail and e-mail (where available);

- (b) publication on <http://www.canadacartageclassaction.com/>; and
 - (c) such other means as may be reasonably necessary after consultation with the Claims Administrator to ensure that Class Members receive actual notice.
- (3) The Defendants shall provide to Class Counsel and the Claims Administrator a list of Class Members listing the individuals' first name, middle name, last name, last known mailing address, last known phone number, last known e-mail addresses, and whether or not the Class Member is a former or current employee of the Defendants or of Canada Cartage System Limited Partnership, Sonar Limited Partnership, or Direct Limited Partnership.
- (4) Class Counsel may disclose all information provided by the Defendants pursuant to Section 7.2(3) to the Claims Administrator, to the extent reasonably necessary for the purposes enumerated in Sections 7.2, 8.1 and 9.1. If this Settlement Agreement is terminated, no record of the information so provided shall be retained by Class Counsel or the Claims Administrator in any form whatsoever.
- (5) The information required under Section 7.2(3) shall be delivered to Class Counsel no later than thirty (30) days following the Date of Execution or at a time mutually agreed upon by the Parties.
- (6) Within 10 business days of the Court approving the notices, a copy of the Long-Form Notice, in English and French, shall be posted by Canada Cartage in a prominent location on the main page of its employee-accessible intranet site;
- (7) The Claims Administrator will take the following steps to bring the notices to the attention of Class Members:
- (a) Within 10 business days of the Court approving the notices, a copy of the long-form notice, in English and French, shall be posted on www.canadacartageclassaction.com;
 - (b) Within 10 business days of the Court approving the notices, the Claims Administrator will issue and cause to be disseminated a press release that incorporates the English Short-Form Notice;

(c) Within 30 days of the Court approving the notices, or as soon thereafter as is possible, the Claims Administrator shall use reasonable efforts to cause the Short-Form Notice to be published by way of an advertisement in each of the following publications:

- (i) Truck News / Truck West newspapers;
- (ii) Today's Trucking magazine;
- (iii) magazine Transport Routier (in French);
- (iv) Road Today magazine; and
- (v) Pro-Trucker magazine.

SECTION 8– ADMINISTRATION AND IMPLEMENTATION

8.1 Mechanics of Administration

(1) The mechanics of the implementation and administration of this Settlement Agreement shall be in accordance with the Distribution Protocol, as approved by the Court, a copy of which is attached as Schedule “B” to this Settlement Agreement.

(2) The Defendants agree to cooperate and to assist Class Counsel and the Claims Administrator in facilitating the distribution of the Claims Fund and to provide the information requested to execute the Settlement Agreement and Distribution Protocol as set out herein or in the Distribution Protocol.

SECTION 9 – DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST

9.1 Distribution Protocol

(1) Class Counsel, with the Defendants' approval, will prepare and implement the Distribution Protocol. The Distribution Protocol attached at Schedule B describes in general terms the plan for distributing the Claims Fund. The Defendants and Class Counsel agree that the Distribution Protocol can be amended from time to time on consent of the parties to this Settlement Agreement.

(2) Class Counsel's preparation of the Distribution Protocol and representation of the Class generally does not in any way extend to tax inquiries or tax advice relating to this Settlement Agreement, settlement payments to Class Members, or the Distribution Protocol. None of (i) the Releasees or any of the Defendants or (ii) Class Counsel will be providing tax advice to the Class or any Class Member. Class Members will be advised to seek independent tax advice.

9.2 Court Approval of Distribution Protocol

Class Counsel will seek the Court's approval of the Distribution Protocol contemporaneous with seeking approval of this Settlement Agreement.

SECTION 10– CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES

10.1 Responsibility for Fees, Disbursements and Taxes

(1) The Defendants and the Releasees shall not be liable for any Class Counsel Fees, Class Counsel Disbursements, or taxes of any of the lawyers, experts, advisors, agents, or representatives retained by Class Counsel, the Plaintiff or the Class Members, or any lien of any Person on any payment to any Class Member from the Settlement Amount.

(2) The Defendants recognize that Class Counsel Fees and Class Counsel Disbursements payable are a matter between Class Counsel and the Class, subject to approval by the Court. The Defendants agree that they will not object to or oppose Class Counsel's request for approval of Class Counsel Fees so long as it does not exceed the maximum payable under the retainer agreement with Class Counsel. The Defendants further agree that they shall not, unless otherwise

directed by the Court, make any submissions to the Court on Class Counsel's request for approval of Class Counsel Fees.

10.2 Court Approval of Class Counsel Fees and Disbursements

Class Counsel will seek the Court's approval to pay Class Counsel Disbursements, LFA Fees, and Class Counsel Fees contemporaneous with seeking approval of this Settlement Agreement. Class Counsel Disbursements, LFA Fees, and Class Counsel Fees shall be reimbursed and paid solely out of the Trust Account after the Effective Date. Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date. No other Class Counsel Disbursements, LFA Fees, or Class Counsel Fees shall be paid from the Trust Account prior to the Effective Date.

SECTION 11 – MISCELLANEOUS

11.1 Motions for Directions

- (1) Class Counsel or the Defendants may apply to the Court as may be required for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.
- (2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

11.2 Headings, etc.

In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms "this Settlement Agreement," "hereof," "hereunder," "herein," and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

11.3 Computation of Time

In the computation of time in this Settlement Agreement, except where a contrary intention appears,

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

11.4 Ongoing Jurisdiction

The Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement, and the Plaintiff, Class Members and Defendants attorn to the jurisdiction of the Court for such purposes.

11.5 Governing Law

This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

11.6 Entire Agreement

This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

11.7 Amendments

This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment must be approved by the Court.

11.8 Binding Effect

This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Class Members, the Defendants, the Releasers, the Releasees and all of their successors and

assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiff shall be binding upon all Releasors and each and every covenant and agreement made herein by the Defendants shall be binding upon all of the Releasees.

11.9 Counterparts

This Settlement Agreement may be executed in counterparts, each of which will be deemed an original and all of which, when taken together, will be deemed to constitute one and the same agreement, and a facsimile or electronic signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

11.10 Negotiated Agreement

This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

11.11 Language

The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais. Nevertheless, if required to by the Court, Class Counsel, a translation firm selected by Class Counsel, or some combination thereof shall prepare a French translation of the Settlement Agreement, the cost of which shall form part of the Administration Expenses and shall be paid from the Settlement Amount. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

11.12 Transaction

The present Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Quebec*.

11.13 Recitals

The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

11.14 Schedules

The schedules form part of this Settlement Agreement.

11.15 Acknowledgements

Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of the Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

11.16 Authorized Signatures

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified above their respective signatures and their law firms.

11.17 Notice

Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiff and for Class Counsel in the Proceeding:

Jonathan Liss, Rahool Agarwal, Michael Currie
Lax O'Sullivan Liss Gottlieb LLP
Suite 2750, 145 King Street West
Toronto, ON M5H 1J8
Tel: 416.598.1744
Fax: 416.598.3730
Email: jlisus@lolg.ca
ragarwal@lolg.ca
mcurrie@lolg.ca

For the Defendants:

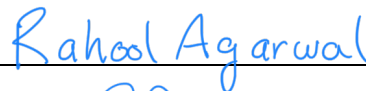
Linda Plumpton, Lisa Talbot,
Sarah Whitmore, Irfan Kara, and Stacey
Reisman
Torys LLP
79 Wellington Street West, 30th Floor
Box 270, TD South Tower
Toronto, ON M5K 1N2
Tel: 416.865.0040
Fax: 416.865.7380
Email: lplumpton@torys.com
ltalbot@torys.com
swhitmore@torys.com
ikara@torys.com
sreisman@torys.com

11.18 Date of Execution


The Parties have executed this Settlement Agreement as of the date on the cover page.

MARC-OLIVER BAROCH, on his own behalf and on behalf of the Class, by his counsel

Name of Authorized Signatory:



Signature of Authorized Signatory:



Lax O'Sullivan Liss Gottlieb LLP
Class Counsel

CANADA CARTAGE DIVERSIFIED GP INC., DIRECT GENERAL PARTNER CORPORATION and CANADA CARTAGE SYSTEM, LIMITED, by their counsel

Name of Authorized Signatory:

LINDA PLUMPTON

Signature of Authorized Signatory:



Torys LLP
Counsel for the Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

MARC-OLIVER BAROCH

Plaintiff

- and -

CANADA CARTAGE DIVERSIFIED GP INC., DIRECT GENERAL
PARTNER CORPORATION and CANADA CARTAGE SYSTEM, LIMITED

Defendants

MINUTES OF SETTLEMENT

The Parties, Marc-Oliver Baroch, as representative plaintiff (the “Plaintiff”), and Canada Cartage Diversified GP Inc., Direct General Partner Corporation and Canada Cartage System, Limited (collectively the “Defendants”) agree to settle this action, with court file no. CV-13-492525-00CP (the “Action”), fully and finally on the following terms:

1. The Defendants agree to pay the gross sum of CDN\$22,250,000 (the “Settlement Amount”), inclusive of all amounts owing by the Defendants to the Class for the time period covering the class period of March 1, 2006 to January 30, 2015 and up to and including the date of the execution of the settlement agreement (the “Extended Class Period”). The Settlement Amount is inclusive of costs related to the administration of this settlement, including costs of any notice program and related translation costs, class counsel fees and disbursements (including in respect of the notice and approval hearings and any related appeals in respect of this settlement), and any employment withholdings including in respect of Canada Pension Plan and Employment Insurance contributions, taxes, penalties, and interest.
2. For clarity, these Minutes of Settlement, including in particular the Extended Class Period, only applies to individuals who are members of the Class pursuant to the Justice Belobaba’s Order dated March 29, 2016 (the “Certification Order”). Individuals who became employed by the Defendants, Canada Cartage System Limited Partnership, Sonar Limited Partnership, or Direct Limited Partnership after the end of the original Class Period, and therefore are not members of the Class, are not subject to these Minutes of Settlement.

3. The parties agree to negotiate a comprehensive settlement agreement in good faith, with a view to executing such agreement by May 15, 2021. The settlement agreement will be consistent with the terms of these Minutes of Settlement, and will provide, among other things, for the following:
 - (a) the Plaintiff's agreement to seek, and the Defendants' agreement to consent to, an order varying the defined class period in the Certification Order to cover the Extended Class Period;
 - (b) the method of distribution of the Settlement Amount to the Class;
 - (c) the payment of the Settlement Amount on a date that is no later than 30 days after final approval by the Ontario Superior Court ("Court") of this settlement;
 - (d) notice of this settlement to the Class;
 - (e) dismissal of this Action as against the Defendants;
 - (f) execution by the Plaintiff on behalf of the Class of, and an order in favour of the Defendants and the Class members' employers, Canada Cartage System Limited Partnership, Sonar Limited Partnership, and Direct Limited Partnership, for a full and final release and bar against all claims, including claims over, in the customary form, including individual claims, by the Class, known and unknown, relating to all matters raised or that could have been raised in the Action in respect of the Extended Class Period up to and including the date of the execution of the settlement agreement;
 - (g) review and approval by the Defendants acting reasonably of all materials filed with the Court, and all public statements made by or on behalf of the Class or by class counsel, in relation to this settlement;
 - (h) an agreement that the Defendants will take no position on class counsel fees, which will remain subject to approval by the Court; and
 - (i) an agreement that this settlement and the terms to be set out in the settlement agreement are conditional upon final approval by the Court, and in the event that the settlement agreement is not finally approved by the Court neither party will be bound by the terms of these Minutes of Settlement or the settlement agreement.
4. The Parties and their counsel agree to keep this settlement strictly confidential and not to comment on it, including over social media, until the settlement agreement is filed with the Court.
5. The Defendants agree to provide reasonable cooperation to class counsel by providing all information in its possession that is reasonably and proportionately required for the administration of this settlement and the distribution of the claims, including by providing contact information and necessary payroll records for the Class members.

6. It is understood and agreed that nothing in this settlement constitutes an admission of liability or obligation on the part of the Defendants and any liability is, in fact, denied.
7. The parties agree that these minutes of settlement bind the Class, the Plaintiff and the Defendants when signed by class counsel and by counsel for the Defendants.

April 22, 2021
Date

For the Class

By: 

Title: Class Counsel (Rahool Agarwal)

April 26, 2021
Date

For the Defendants

By: 

Title: President and CEO

MARC-OLIVER BAROCH v. CANADA CARTAGE DIVERSIFIED GP INC., et al.

PROPOSED ADMINISTRATION AND DISTRIBUTION PROTOCOL

TABLE OF CONTENTS

A. DEFINITIONS	2
B. GENERAL PRINCIPLES OF THE ADMINISTRATION.....	4
C. THE CLAIMS ADMINISTRATOR’S DUTIES AND RESPONSIBILITIES	5
D. DIVISION OF CLAIM FUND	6
E. CALCULATION OF CLASS MEMBERS’ ALLOTMENT FACTOR.....	7
F. EXTRAPOLATION PROTOCOL.....	9
G. THE ADMINISTRATION PROCESS	9
(a) Step 1: Calculation of Total Payment	9
(b) Step 2: Notification Letters	9
(c) Step 3 – First Distribution	10
(d) Step 4 – Second Distribution	10
(e) Step 5 – Remittance.....	10
(f) Step 6 – Report	11
H. CLASS COUNSEL.....	11
I. RESIDUAL DISCRETION.....	11
J. RESIDUAL DISTRIBUTION	11
I. CONFIDENTIALITY.....	11
Schedule A – Weighing of CHS’ Models for Payroll Master Spreadsheet Employees	12

A. DEFINITIONS

1. For the purpose of this Administration and Distribution Protocol the following definitions will apply:
 - (a) **“Canada Cartage”** means Canada Cartage System Limited Partnership, Direct Limited Partnership and Sonar Limited Partnership.
 - (b) **“CHS”** means Cohen Steger Hamilton & Co., who is the damages quantification expert retained by Class Counsel.
 - (c) **“Claims Administrator”** means the entity appointed by the Court to administer the Settlement Agreement and the Distribution Protocol in accordance with this Protocol as approved by the Court, and any employees of such firm.
 - (d) **“Claim Fund”** means the portion of the Settlement Amount remaining after the payments contemplated by the Settlement Agreement and Orders of the Courts (which payments will include approved Class Counsel Fees and disbursements, and administrative expenses).
 - (e) **“Class Counsel”** means Lax O’Sullivan Lisus Gottlieb LLP.
 - (f) **“Class Members”** means all persons who, at any time during the Class Period, were employed by Canada Cartage and who were entitled to receive overtime compensation pursuant to the *Canada Labour Code*, R.S.C. 1985, c. L-2 and its regulations and whose terms and conditions of employment were, for any part of the Class Period, not governed by a collective agreement between Canada Cartage and a union and who have not opted-out of this proceeding.
 - (g) **“Class Period”** means March 1, 2006 to January 30, 2015.
 - (h) **“Court”** means the Ontario Superior Court of Justice.
 - (i) **“Current Employee Class Members”** means Class Members who continue to be employed by Canada Cartage or any of the Defendants.
 - (j) **“Defendants”** mean Canada Cartage Diversified GP Inc., Direct General Partner Corporation, and Canada Cartage System, Limited.

- (k) **“Extended Class Period”** means from January 31, 2015 up to and including the date of the execution of the settlement agreement.
- (l) **“First Distribution”** means the distribution of the first 80% of the Claim Fund.
- (m) **“Former Employee Class Members”** means Class Members who were employed but are no longer employed by Canada Cartage or any of the Defendants prior to the date of the execution of the Settlement Agreement.
- (n) **“HRSDC”** means Human Resources and Skills Development Canada, a department of the Government of Canada responsible for the administration of federal labour standards at the time of the Class Period, now known as Employment and Social Development Canada.
- (o) **“Limitations Adjustment Factor”** means the percentage set out in the below table for each time period:

Before Nov. 8, 2011 (Payroll for the week ending Nov. 5, 2011)	40%
Nov. 8, 2011 (Payroll for the week ending Nov. 12, 2011) to Jan. 30, 2015 (Payroll for the week ending Jan. 24, 2015)	100%
Jan. 31, 2015 (Payroll for the week ending Feb. 7, 2015) to Feb. 28, 2019 (Payroll for the week ending Feb. 23, 2019)	15%
Mar. 1, 2019 (Payroll for the week ending Feb. 23, 2019) to June 3, 2021	100%

- (p) **“Notification Letters”** means letters provided to each Class Member describing their Payment, and the hourly rate and dates or periods of employment within the Class Period and, if applicable, Extended Class Period used to calculate their Payment.
- (q) **“Payment”** means the final determined proportionate amount of the Claim Fund sent to an individual Class Member.
- (r) **“Relative Share”** means the proportion of the Claim Fund for a particular Category that an individual Class Member will be entitled to.

- (s) **“Second Distribution”** means the distribution of the remaining 20% of the Claim Fund.
- (t) **“Settlement Agreement”** means the settlement agreement as approved by the Court.
- (u) **“Settlement Amount”** means the twenty-two and a quarter (22.25) million dollars (CAD) paid by the Defendants to the Class.
- (v) **“Survey”** means a procedure undertaken by HRSDC to determine the prevailing industry practice in a geographical area, which might affect the overtime thresholds for certain drivers at Canada Cartage.
- (w) **“Time Records”** means the Payroll Master Spreadsheets and/or timesheets that have already been produced in the litigation and that indicate how much recorded time Class Members worked for Canada Cartage or any the Defendants during the Class Period and, if applicable, the Extended Class Period.

B. GENERAL PRINCIPLES OF THE ADMINISTRATION

2. This Administration and Distribution Protocol is intended to govern the administration process to distribute the Claim Fund recovered in *Marc-Oliver Baroch v. Canada Cartage Diversified GP Inc. et al.* (the **“Action”**). This protocol is reasonably designed and intended to result in payment to the highest possible proportion of Class Members. To this end, the Claims Administrator and Class Counsel will make reasonable efforts to distribute the Claim Fund to Class Members without the need for Class Members to do anything, except to update their address and confirm their identity if the address retained in the records of Canada Cartage or the Defendants is outdated.
3. This Administration and Distribution Protocol is further designed and intended to calculate, as accurately as possible, given the available Time Records, the amount of actual outstanding overtime pay for each Class Member and allocate the Claim Fund proportionately.
4. Throughout this Action, the parties advanced various positions and arguments about the interpretation of the *Canada Labour Code*, the regulations, limitations period issues, and the burdens of proving exemptions under the *Code*. This Administration and Distribution Protocol is intended to reflect the likelihood of success on various legal positions taken as well as the likelihood that success on

that legal position would lead to an aggregate assessment of damages that would include recovery on that legal position.

5. This Administration and Distribution Protocol incorporates the strengths and weaknesses of the various legal positions noted in paragraph 4, and accounts for the differing overtime pay thresholds applying to Class Members, with the goal of calculating and distributing a reasonably fair, accurate, and just Payment to Class Members. Where records of hours of work are unavailable, then pro-rata distributions are made.

C. THE CLAIMS ADMINISTRATOR'S DUTIES AND RESPONSIBILITIES

6. The Claims Administrator shall administer this Administration and Distribution Protocol in accordance with the provisions of the Orders of the Court, the Settlement Agreement, and the ongoing authority and supervision of the Court.
7. The Claims Administrator's duties and responsibilities shall include the following:
 - (a) providing notice(s) to the Class Members as may be required;
 - (b) receiving information from the Defendants relating to Class Members' identifying information and dates of employment in each of the six Categories listed below in paragraph 8;
 - (c) developing, in consultation with CHS, the algorithm(s)/formula(s)/etc. for calculating Class Members' Payments pursuant to this protocol;
 - (d) developing, implementing, and operating the administration process including a bilingual administration website;
 - (e) making timely calculations, with CHS' assistance, of Class Members' Payments and notifying Class Members of their Payments, and their dates of employment within the Class Period and Extended Class Period;
 - (f) arranging payment to Class Members in a timely fashion;
 - (g) reporting the results of the administration process and the intended distributions to Class Counsel in a timely fashion;
 - (h) performing such recalculation of the distributions as may be required by Class Counsel or if ordered by the Court;
 - (i) maintaining the administration information so as to permit Class Counsel

to audit the administration at the discretion of Class Counsel or if ordered by the Court;

- (j) dedicating sufficient personnel to respond to Class Members' inquiries in English or French, as the Class Member elects;
- (k) calculating the withholding of both employee and employer portions of CPP, EI, EHT, income tax, provincial statutory workers compensation schemes, and any other statutory amounts remitting same;
- (l) preparing and distributing T4A forms to Class Members;
- (m) arranging payments of Class Counsel fees and disbursements and administration expenses, as ordered or approved by the Court;
- (n) reporting to Class Counsel the process and administration expenses;
- (o) holding the Claim Fund in an interest-bearing trust account at a Canadian Schedule 1 bank in Canada and making all payments from the Net Proceeds from that account as authorized;
- (p) cash management and audit control; and
- (q) preparing and submitting reports and records as directed by Class Counsel or the Court.

D. DIVISION OF CLAIM FUND

8. The Claim Fund will be divided into six Categories reflecting the Defendants' and/or Canada Cartage's various payroll systems and records as follows:

Category	Share of Claim Fund
Payroll Master Spreadsheet employees (Ontario/Quebec drivers and hourly non-drivers)	80%
Warehouse employees	2%
Calgary drivers	7.5%
Western hourly non-drivers	3.5%
Salaried employees	6.5%

Others	0.5%
Total	100%

9. The first five Categories are intended to reflect all the payroll systems and locations where Class Members were employed that are known to Class Counsel.
10. The “Others” Category is intended to set aside certain Settlement Amounts if it is subsequently discovered that there are Class Members who are not in the other five Categories. If no such Class Members exist, the Share of the Claim Fund allocated for the “Others” Category will be distributed to Class Members in the other five Categories during the Second Distribution.

E. CALCULATION OF CLASS MEMBERS’ ALLOTMENT FACTOR

11. To calculate the Payment for each Class Member, the Class Administrator, working with CHS, will first determine each Class Member’s Periodic Allotment Factor (described below) for each Time Period that a Class Member worked for the Canada Cartage or any of Defendants. The Periodic Allotment Factor is then multiplied by the applicable Limitations Adjustment Factor to generate the **“Limitations-Adjusted Allotment Factor”**.
12. The Class Administrator and CHS will determine what Time Periods to use for the computations – weekly, bi-weekly, annually, or, where there is a change in the computation method during a year, by splitting a year into multiple sub-years reflecting the portion of the year that a particular computation method applies to – based on which Time Periods best reflect the payroll practices followed and records available and simplify the computation of the Periodic Allotment Factors.
13. For each Category, each Class Member’s Periodic Allotment Factor will be calculated as follows:
 - (a) Payroll Master Spreadsheet Employees
 - The Periodic Allotment Factor will be calculated using a weighted average of CHS’ models of underpaid overtime, as set out in Schedule A attached.
 - CHS’ models take into account various factors, such as the eligible overtime pay thresholds for different Canada Cartage employment positions, whether HRSDC conducted a Survey for a particular location, etc.

- For Time Periods where data does not exist, an extrapolated Allotment Factor will be calculated as set out in the Extrapolation Protocol below.
- (b) Warehouse employees
- The Periodic Allotment Factor shall be equal to the pay that the Class Member received for that Time Period.
 - For Time Periods where data does not exist, an extrapolated Allotment Factor will be calculated as set out in the Extrapolation Protocol below.
- (c) Calgary drivers
- The Periodic Allotment Factor shall be the number of hours worked multiplied by the wage rate including all premiums in that Time Period.
 - For Time Periods where data does not exist, an extrapolated Allotment Factor will be calculated as set out in the Extrapolation Protocol below.
- (d) Western hourly non-drivers
- The Periodic Allotment Factor will be calculated by analyzing the underpaid overtime identified in the Defendants' expert, Deloitte's, analysis of Western hourly non-drivers.
 - For Time Periods where data does not exist, an extrapolated Allotment Factor will be calculated as set out in the Extrapolation Protocol below.
- (e) Salaried employees
- The Periodic Allotment Factor shall be equal to the pay that the Class Member received in that Time Period.
 - For Time Periods where data does not exist, an extrapolated Allotment Factor will be calculated as set out in the Extrapolation Protocol below.
14. After the above assessments take place, the Periodic Allotment Factor is multiplied by the applicable Limitation Adjustment Factor to generate the Limitations-Adjusted Periodic Allotment Factor.
15. The sum of each Class Member's Limitations-Adjusted Periodic Allotment Factors in each Category is then divided by the total sum of Limitations-Adjusted Periodic Allotment Factors in the Category to calculate each Class Member's

Relative Share of that Category's Share of the Claim Fund.

16. If a Class Member is in multiple Categories, then a Relative Share will be computed for each Category based on the Time Periods employed in each Category.

F. EXTRAPOLATION PROTOCOL

17. Where there is insufficient data, including for the Extended Class Period, the Claims Administrator will, working with CHS, develop extrapolation methods based on the available data to calculate a Periodic Allotment Factor for affected Class Members.

G. THE ADMINISTRATION PROCESS

18. Generally, the Claims Administration Process will be as follows:

(a) Step 1: Calculation of Total Payment

The estimated Relative Share for each Category that Class Members are entitled to will be calculated by following the above process. The Relative Share for each Category is then multiplied by the Share of the Settlement Amount allotted to that Category to calculate the Payment.

If a Class Member is in multiple Categories, then the Payment for each category should be added together to calculate a Total Payment.

A Class Member is required to have a Payment totalling at least \$50 to be eligible for a distribution. Any calculated Payments to Class Members less than \$50 will be held back to the Second Distribution. If the Claims Administrator's and/or CHS' calculation for the Second Distribution finds that the Payment for certain Class Members is above \$50, then those Class Members will receive said Payment in the Second Distribution. Any Payments of less than \$50 will remain in the Claim Fund to be distributed to Class Members whose Relative Share is above \$50.

(b) Step 2: Notification Letters

The Claims Administrator will prepare Notification Letters individualized for each Class Member describing: (i) the Class Member's dates or periods of employment within the Class Period and, if applicable, the Extended Class Period grounding their membership in each Category, (ii) the Total

Payment that each Class Member is estimated to receive, and (iii) where applicable, the process for Class Members to follow to identify any errors in the Class Member's his/her dates or periods of employment within the Class Period and, if applicable, the Extended Class Period.

Class Members will receive Notification Letters from the Claims Administrator via direct mail at the address in the Defendants' records.

The Claims Administrator will also cause a template Notification Letter to be posted on the website accessible to the general public with respect to the Class Action.

(c) **Step 3 – First Distribution**

Class Members will be provided with cheques consisting of 80% of their Payment, less employee and employer portions of CPP, EI, EHT, income tax, provincial statutory workers compensation schemes, and any other statutory withholding amounts.

(d) **Step 4 – Second Distribution**

Within a set time after the First Distribution, the Claims Administrator will process the Second Distribution and distribute cheques to Class Members consisting of the remaining 20% of their Payment, less employee and employer portions of CPP, EI, EHT, income tax, provincial statutory workers compensation schemes, and any other statutory withholding amounts. The Payment of the Second Distribution may be adjusted to account for, among other things, any errors identified following the First Distribution and/or redistributing of Payments less than \$50.

(e) **Step 5 – Remittance**

The Claims Administrator, identifying Canada Cartage System Limited Partnership, Direct Limited Partnership, Sonar Limited Partnership or any of the Defendants (as applicable) as the employer, will remit Canada Pension Plan, Employment Insurance, Employer Health Tax, income tax, provincial statutory workers compensation schemes contributions and any other statutory withholding amounts and provide T4A forms to Class Members.

(f) **Step 6 – Report**

The Claims Administrator will provide a report on the results of the Administration and Distribution to Class Counsel, who will report to the Court.

H. CLASS COUNSEL

19. Class Counsel shall oversee the process and provide advice and assistance regarding this Administration Protocol and Distribution Protocol.

I. RESIDUAL DISCRETION

20. Notwithstanding the foregoing, if, during the Administration Process, Class Counsel have reasonable and material concerns that the Administration and Distribution Protocol is producing an unjust result on the whole or to any material segment of the Class Members or that a modification is required or recommended, they shall move to the Court for approval of a reasonable modification to this Administration and Distribution Protocol or for further directions with respect to the distribution of the Claim Fund.
21. In arriving at a determination that an unjust result is occurring or that a modification is required or recommended, and in considering what modification may be required, Class Counsel shall seek comments or input from the Defendants, CHS, and the Claims Administrator.

J. RESIDUAL DISTRIBUTION

22. If there remains any amount of the Claim Fund after the First Distribution and Second Distribution have been made in accordance with the provisions of this Administration and Distribution Protocol (as modified, if applicable), Class Counsel will make an application to the Court to determine how such funds shall be distributed. In preparing a proposal in respect of how to distribute any excess monies, Class Counsel will consider all relevant factors, including the utility and efficacy of a *cy prè*s distribution, if appropriate.

I. CONFIDENTIALITY

23. All information received from the Defendants or the Class Members is collected, used, and retained by the Claims Administrator pursuant to, *inter alia*, the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 for the purposes of administering their Claims.

Schedule A – Weighing of CHS’ Models for Payroll Master Spreadsheet Employees

CHS has created and calculated detailed models for Class Members’ underpaid overtime and will be adjusting them to implement the different assumptions set out below:

Legal issue/dispute	Date range	Overtime Thresholds, Canada Cartage’s Recordkeeping, and HRSDC factors	Weight
Shunter overtime threshold		8/40	30%
		9/45	70%
City distance threshold	Before June 27, 2010	16 km	20%
		Survey	60%
		160 km	20%
	After June 27, 2010	Survey	80%
		160 km	20%
“Unknown” trips		All unknown trips treated as city	20%
		All unknown trips treated as highway	80%
Shunter wage rate	June 3, 2012 to December 29, 2012	Original wage rate	50%
		Reduced wage rate	50%
	After December 30, 2012	Original wage rate	15%
		Reduced wage rate	85%

A Periodic Allotment Factor can be calculated by taking a weighted average of the different models based on these percentages.

For non-drivers (i.e. entries without TCC codes), these CHS models use a formula that calculates a Periodic Allotment Factor based on an 8 hour per day, 40 hour per week overtime threshold and including the entirety of the employee’s underpaid overtime based on the weekly formula, along with 20% of any additional underpaid hours calculated using the daily formula.