

2011

Mariposa Express, Inc. v. United Shipping Solutions, LLC, Et Al : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

<p>MARIPOSA EXPRESS, INC., ET AL.,</p> <p>Plaintiffs,</p> <p>v.</p> <p>UNITED SHIPPING SOLUTIONS, LLC, ET AL.</p> <p>Defendants.</p>	<p>Case No. 20110829</p>
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BRIEF OF APPELLANT

Appeal from District Court's Order Granting Motion to Compel Arbitration and Dismiss in the Third Judicial District Court in and for Salt Lake County, The Honorable William Barrett presiding.

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IN THE UTAH COURT OF APPEALS

MARIPOSA EXPRESS, INC., ET AL., Plaintiffs, v. UNITED SHIPPING SOLUTIONS, LLC, ET AL. Defendants.	Case No. 20110829
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STATEMENT OF JURISDICTION

The Utah Court of Appeal has jurisdiction in this matter pursuant to Utah Code Annotated §78A-4-103(2)(j) (2009) whereby the Utah Court of Appeals has jurisdiction over cases transferred to the Utah Court of Appeals from the Utah Supreme Court. In this case, the Utah Supreme Court had original jurisdiction pursuant to Utah Code Annotated §78A-3-102(3)(j) (2009), and transferred the case to the Utah Court of Appeals on September 21, 2011.

STATEMENT OF ISSUE AND STANDARD OF REVIEW

Issue

Whether the District Court erred as a matter of law in holding that the dispute between the parties was subject to a mandatory arbitration provision when the arbitration provision at issue does not apply to all disputes arising out of the agreement between the parties, the disputes in this case fall outside of the three categories of disputes that the parties agreed to submit to arbitration, and the Appellants' causes of action concern subject matter outside the scope of the arbitration provision?

Standard of Review

Whether a district court correctly interpreted the scope of an arbitration clause is a question of law and reviewed for correctness. Peterson & Simpson v. IHC Health Services, Inc., 2009 UT 54, ¶18 (Utah 2009). In reviewing a motion to dismiss, the court "must accept the factual allegations in the complaint as true and consider all reasonable inferences to be drawn from those facts in a light most favorable to the plaintiff." Acord v. Union Pacific R. Co., 821 P.2d 1194, 1197 (Utah App. 1991)

Preservation for Appeal

This issue was preserved in Mariposa's Opposition to Defendants' Motion to Compel Arbitration and to Dismiss, filed on August 11, 2011, and during the hearing on the Motion to Compel Arbitration and to Dismiss, held on August 19, 2011. (R. 568-677, 702).

STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

This is an appeal from a September 6, 2011, order of the district court dismissing the Complaint of Appellants (the “Mariposa Franchisees”) and compelling the parties into mandatory arbitration. (R. 703-705).

On July 1, 2011, the Mariposa Franchisees filed their Complaint in the district court. (R. 1-130).¹ On August 1, 2011, Appellees (“USS”) filed a Motion to Compel Arbitration and Dismiss, Or, Alternatively, to Stay Proceedings Pending Arbitration. (R. 136-139). After the matter was fully briefed, an expedited hearing on the Motion to Compel Arbitration and Dismiss was held on August 19, 2011. (R. 702). At the end of the hearing, the district court stated:

Well, to be quite honest with everybody, I didn’t read all this stuff, I flipped through it. My concern was basically this settlement agreement and that’s what I was interested in. And I can – I can appreciate what the plaintiffs are saying, but I agree with you, [Defendants’ counsel], I think this is broad enough to allow for the kinds of information they think they need to see.”

(R. 807:28). The district court then dismissed the case and ordered the parties to engage in arbitration. (R. 703-705, 807:28). Because it considered the motion as one to dismiss and did not consider any documents outside of the pleadings, the district court made no findings of fact. (R. 807:28). The Mariposa Franchisees filed their Notice of Appeal on September 16, 2011. (R. 706-712).

¹ For the Court’s convenience, a copy of the Mariposa Franchisees’ Complaint (R. 1-19) (the “Complaint”), without exhibits, has been attached as Exhibit A to the Addendum.

B. FACTUAL BACKGROUND

i. THE INITIAL DISPUTE.

The Mariposa Franchisees and USS were parties to written franchise agreements under which the Mariposa Franchisees resold small parcel shipping services obtained from USS. (R. 4; Complaint at ¶¶24-25). Specifically, the Mariposa Franchisees resold small parcel shipping services that USS had negotiated from DHL Express (USA), Inc. (“DHL”). (R. 4-5; Complaint at ¶27). However, on November 10, 2008, DHL publicly announced that it would discontinue its domestic shipping services on January 30, 2009. (R. 5; Complaint at ¶29). The vast majority of the business of the Mariposa Franchisees consisted of reselling those services that DHL had discontinued. (R. 5; Complaint at ¶30). As a result, the Mariposa Franchisees’ small parcel shipping businesses were destroyed. (R. 5; Complaint at ¶31). Furthermore, under the non-competition provisions of their franchise agreements with USS, the Mariposa Franchisees were unable to contract with another transportation services business that could offer replacement services or products. (R. 5; Complaint at ¶32).

The Mariposa Franchisees therefore filed a declaratory judgment against USS in the Third District Court for Salt Lake County, State of Utah, Case No. 080925107, (the “Initial Lawsuit”) seeking, among other things, discharge from all remaining obligations under their respective franchise agreement, including all post-termination obligations. (R. 5; Complaint at ¶33). USS counterclaimed, alleging, among other things, that the Mariposa Group had failed to make payments required under the franchise agreements and were in breach of other provisions. (R. 5; Complaint at ¶33). USS also filed a lawsuit against DHL in Utah State Court, entitled USS Logistics, LLC et al. v. DHL Express (USA), Inc., Case No. 080926254 (the “DHL Lawsuit”). (R. 5-6; Complaint at ¶35). DHL filed a counterclaim against USS seeking payment for services rendered on behalf of USS and the Mariposa Group. Id.

ii. THE SETTLEMENT AGREEMENT.

Ultimately, the Mariposa Franchisees and USS entered into a settlement agreement that resulted in the Initial Lawsuit being dismissed (the “Agreement”). (R. 6; Complaint at ¶36).² Pursuant to the Agreement, the Mariposa Franchisees were required to make a settlement payment to USS. (R. 6, 26-27; Complaint at ¶39; Agreement at ¶4). In addition, the Mariposa Franchisees were obligated to pay USS for all outstanding amounts owed for freight services obtained through USS. (R. 6, 22; Complaint at ¶37; Agreement at ¶1). The amount owed for freight services was to be agreed upon by the parties pursuant to procedures and deadlines set forth in the Agreement. (R. 22-23; Agreement at ¶1.a). If there was any dispute regarding the amounts due for freight, the parties agreed to resolve it through binding arbitration. (R. 24; Agreement at ¶1.c). The Mariposa Franchisees fulfilled their obligations with respect to the settlement payment and the freight services payment. (R. 6; Complaint at ¶¶38-39).

Pursuant to Paragraph 3 of the Agreement, the Mariposa Franchisees were also obligated to indemnify USS for any amounts that USS was “determined to owe DHL through judgment or settlement for DHL services” provided to the Mariposa Franchisees. (R. 6, 25; Complaint at ¶42; Agreement at ¶3). However, because the DHL Lawsuit was still pending, liability for the amounts owed for DHL services, if any, was deferred until the DHL Lawsuit was resolved. (R. 25; Agreement at ¶¶3, 3.a). If USS desired to settle the DHL Lawsuit, it was required to provide the Mariposa Franchisees with sufficient information to calculate the amount due for DHL services. (R. 7, 25; Complaint at ¶44-45; Agreement at ¶3.a). If the Mariposa Franchisees disputed that amount, USS would still have the right to settle the DHL Lawsuit and the amount due from the Mariposa Franchisees would be resolved through arbitration. (R. 7, 24-25; Complaint at ¶¶46-47; Agreement at ¶¶1.c, 3.a). Similarly, if there was a judgment in the DHL Lawsuit that USS owed DHL for services provided to the Mariposa Franchisees, any disputes concerning the amount due would be resolved through arbitration. (R. 25; Agreement at

² For the Court’s convenience, a copy of the settlement agreement (R. 21-54) (the “Agreement”), without exhibits, has been attached as Exhibit B to the Addendum.

¶3.a).

iii. THE DHL LAWSUIT IS SETTLED AND USS SEEKS INDEMNIFICATION UNDER PARAGRAPH 3 OF THE AGREEMENT.

In the fall of 2010, USS and DHL settled the DHL Lawsuit. (R. 8; Complaint at ¶49). As a result of the settlement, the parties dismissed their claims against each other and no judgment was entered against USS. (R. 8; Complaint at ¶49-50). However, USS never informed the Mariposa Franchisees that it was entering into a settlement with DHL. (R. 8; Complaint at ¶52). Nor did USS provide the Mariposa Franchisees with the information required to calculate the amount owed for DHL services prior to entering into the settlement with DHL. (R. 8, Complaint at ¶51). As a result, the Mariposa Franchisees did not dispute the amount owed for DHL services prior to USS entering into its settlement with DHL.

Instead, several months after it had settled the case with DHL, USS sent a letter to the Mariposa Franchisees claiming that Paragraph 3's indemnification provision had been triggered. (R. 8, 97-99; Complaint at ¶53). Specifically, the letter claimed that, because summary judgment had been entered against USS prior to the settlement, USS's recovery in the settlement had been offset by the amounts owed for DHL services provided to the Mariposa Franchisees. (R. 8, 97-98; Complaint at ¶54). However, the memorandum decision granting summary judgment expressly stated that the amount of USS's liability was disputed and would have to be determined at trial. (R. 10, 112-113; Complaint at ¶¶68-69). Moreover, because USS and DHL settled the case and dismissed their claims, the amount of USS's liability to DHL was never determined at trial or reduced to a final judgment. (R. 10; Complaint at ¶¶70). In addition, the letter did not provide a copy of the settlement agreement with DHL, any details regarding the amount of the alleged offset, or the amount that USS had been determined to owe on behalf of each of the Mariposa Franchisees. (R. 8, 97-99; Complaint at ¶¶55-56).

The letter further claimed that Mariposa Franchisees were required to raise any dispute regarding the amounts owed for DHL services under the same deadlines and

procedures used in determining the amount owed for freight services. (R. 9, 98; Complaint at ¶59). Lastly, the letter provided the Mariposa Franchisees with access to USS's corporate payment screen and open franchise invoices for their respective franchises (the "CAMS Data") and requested that the Mariposa Franchisees calculate how much they owed USS. (R. 98; Complaint at ¶58).

When the Mariposa Franchisees requested additional information regarding the details of the settlement, USS still failed to provide a copy of the settlement agreement, details of the alleged offset, or the amount that it had been determined to owe on behalf of each of the Mariposa Franchisees. (R. 10, 103-104; Complaint at ¶¶65-67). Instead, USS claimed that the Mariposa Franchisees' request did not constitute a dispute under the Agreement and that the Mariposa Franchisees were deemed to have not disputed the amounts contained in the CAMS Data because they had failed to meet the deadlines and procedures used in determining the amount owed for freight services. (R. 104).

When they were unable to obtain a copy of USS's settlement agreement with DHL from USS and details of the alleged offset, the Mariposa Franchisees filed the underlying lawsuit in this appeal. (R. 10; Complaint at ¶71). The lawsuit did not dispute the amounts contained in the CAMS Data. Instead, the Mariposa Franchisees' First Cause of Action sought a declaratory judgment that the Agreement required USS to provide the Mariposa Franchisees with a settlement agreement showing the amounts, if any, that USS had been determined to pay to DHL on behalf of the Mariposa Franchisees. (R. 12; Complaint at ¶84). In addition, the Mariposa Franchisees sought an injunction ordering USS to provide the Mariposa Franchisees with a copy of the settlement agreement with DHL. Id. The Complaint's Second Cause of Action sought a declaratory judgment that the deadlines for determining the freight amounts owed were inapplicable to determining the amounts owed for DHL services. (R. 13; Complaint at ¶93). The Complaint's Third Cause of Action sought a declaratory judgment that the arbitration provisions of the Agreement were not applicable to the current circumstances. (R. 15; Complaint at ¶106). And the Mariposa Franchisees' Fourth and Fifth Causes of Action sought a declaratory judgment that they were not in default under the Agreement, as well as an injunction

preventing USS from acting as though he Mariposa Franchisees were in default. (R. 16-17; Complaint at ¶¶114, 122).

SUMMARY OF THE ARGUMENT

The district court erred in dismissing the Complaint and compelling arbitration because the Mariposa Franchisees never agreed to arbitrate the disputes that form the basis of the Complaint. A party cannot be required to submit to arbitration any dispute that he has not agreed to so submit. MacDonald Redhawk Investors v. Ridges at Redhawk, 2006 UT App 491, ¶3, 153 P.3d 787 (Utah App. 2006). In this case, the district court never identified which arbitration provision in the Agreement was applicable or why the causes of action in the Complaint fell within the scope of the arbitration provision. As a result, the district court failed to discern that disputes before it were not subject to arbitration because (1) the parties only agreed to arbitrate three specific categories of disputes and the disputes contained in the Complaint do not fall into these three categories; and (2) the causes of action in the Complaint do not involve any dispute of the amounts contained in the CAMS Data or a judgment.

First, while the district court may have believed that the parties had agreed to arbitrate all disputes arising from the Agreement, the plain language of the Agreement only requires the parties to resolve three categories of disputes through arbitration. The first category of disputes includes any dispute regarding freight payments. However, the Complaint does not fall into the first category of disputes because it does not involve freight payments – the Mariposa Franchisees have already fulfilled all of their obligations with respect to freight payments. The second category of disputes is conditional. It only includes dispute over the amounts contained in the CAMS Data if the CAMS Data has been provided to the Mariposa Franchisees prior to USS entering into a settlement with DHL. However, USS did not provide the Mariposa Franchisees with CAMS Data prior

to entering into its settlement with DHL. As a result, the Complaint does not fall into this second category of disputes. And the third and final category includes any dispute over the amounts contained in a judgment entered against USS. However, no judgment was entered in the DHL Lawsuit – USS and DHL entered into a settlement agreement and dismissed their claims against each other. As a result, the Complaint does not fall into this third category of disputes. The Agreement requires that all other disputes, including a default by the Mariposa Franchisees, be resolved through an action commenced in the Third District Court for the State of Utah. As a result, the disputes in the Complaint do not fall within the scope of the arbitration provision.

Second, the disputes raised in the Complaint do not fall within the limited subject matter covered by the arbitration provision. The parties only agreed to arbitrate disputes over freight, or the accuracy of the amounts contained in the CAMS Data or a judgment. In furtherance of this intent, the Agreement requires that a forensic accountant, who is to determine the amounts owed for any disputed invoices, conduct the arbitration. The parties did not intend that arbitration resolve any legal disputes between them with respect to liability or their obligations under the Agreement. However, none of the causes of action in the Complaint involve a dispute over the amounts contained in the CAMS Data or a judgment. Instead, the Complaint seeks production of the settlement agreement between USS and DHL, as well as declaratory judgments regarding the parties' liability and obligations under the indemnification provision of Paragraph 3 of the Agreement. As a result, the causes of action in the Complaint fall outside the subject matter of the arbitration provision.

ARGUMENT

The district court erred in dismissing the Complaint and compelling arbitration because the Mariposa Franchisees never agreed to arbitrate the disputes that form the basis of the Complaint. “For a dispute to be subject to arbitration, an agreement to arbitrate must exist that binds the party whose submission to arbitration is sought, and the dispute to be arbitrated must fall within the scope of the agreement.” Bybee v. Abdulla, 2008 UT 35, 189 P.3d 40, ¶26 (Utah 2008) (citation omitted). A party cannot be required to submit to arbitration any dispute that he has not agreed to so submit. MacDonald Redhawk Investors v. Ridges at Redhawk, 2006 UT App 491, ¶3, 153 P.3d 787 (Utah App. 2006).³ Therefore, “while there is a presumption in favor of arbitration, that presumption applies only when arbitration is a bargained-for remedy of the parties as evidenced by direct and specific evidence of a contract to arbitrate.” Bybee at ¶26. See also Ellsworth v. American Arbitration Ass'n, 2006 UT 77, ¶14, 148 P.3d 983, 988 (Utah 2006) (holding that the “minimum threshold for ... enforcement [of an arbitration agreement is] direct and specific evidence of an agreement between the parties.”). Direct and specific evidence requires non-inferential evidence. Ellsworth at ¶14.

In determining whether a controversy is subject to arbitration, the agreement defines the scope of the controversy to be arbitrated. Miller v. USAA Cas. Ins. Co., 44P.3d 663, 673, ¶33 (Utah 2002). “This requires an interpretation of the agreement for a

³ See also Miller v. USAA Cas. Ins. Co., 44 P.3d 663, 673, ¶33 (Utah 2002) (“a court may only compel arbitration of issues that are within the ‘scope of the matters covered by the agreement.’”); Amalgamated Transit Union, Local 382 v. Utah Transit Authority, 99 P.3d 379, 383, ¶16 (Utah App. 2004) (“if an issue is raised concerning the existence of an arbitration agreement or the scope of the matters covered by the agreement, the court shall determine those issues and order or deny arbitration accordingly”); McCoy v. Blue Cross and Blue Shield of Utah, 980 P.2d 694, 697, ¶11 (Utah App. 1999) (“Parties are required to arbitrate only those disputes they have agreed to submit to arbitration ... [t]hus, a court deciding a motion to compel arbitration must first determine whether the parties agreed to arbitrate, and if so, whether the agreement encompasses the claims asserted”).

finding as to which claims are subject to arbitration.” Peterson & Simpson v. IHC Health Services, Inc., 2009 UT 54, ¶25 (Utah 2009). As with any contract, the court must determine what the parties have agreed upon by looking first to the plain language within the four corners of the document. ID., at ¶13. This is done as a matter of law unless there is an ambiguity in the plain language of the agreement. Id.

In this case, the district court never made any conclusions of law regarding the scope of the Agreement’s arbitration provision or why the Complaint was subject to the arbitration provision. Under the plain meaning of the Agreement, the disputes were not subject to arbitration because (1) the parties only agreed to arbitrate three specific categories of disputes and the disputes raised in the Complaint do not fall into these three categories; and (3) the causes of action in the Complaint do not involve any dispute of the amounts contained in the CAMS Data or a judgment.

A. THE ARBITRATION PROVISION ONLY APPLIES TO THREE SPECIFIC CATEGORIES OF DISPUTES.

The Agreement does not contain a general arbitration provision requiring arbitration of any and all controversies that may arise from the Agreement. Instead, the Agreement only requires the parties to arbitrate three categories of disputes. However, the district court never made any conclusions of law regarding the scope of the arbitration provision or why the parties dispute fell within the scope of the arbitration provision. Not only did the district court fail to perceive that the arbitration provision had a limited scope and was therefore only applicable to three categories of disputes, it failed to identify which category the Complaint fell into. In determining whether this Complaint’s disputes fall within the three categories, the procedural posture of this case is important. Specifically, the district court did not rely on any evidence outside of the pleadings and did not enter any findings of fact when it granted USS’s motion to dismiss. (R. 807:28). Therefore this Court “must accept the factual allegations in the complaint as true and

consider all reasonable inferences to be drawn from those facts in a light most favorable to the plaintiff.” Acord v. Union Pacific R. Co., 821 P.2d 1194, 1197 (Utah App. 1991).

i. THE COMPLAINT DOES NOT FALL INTO THE FIRST CATEGORY OF DISPUTES BECAUSE IT DOES NOT DISPUTE FREIGHT PAYMENTS.

The Agreement only contains one provision that expressly requires the parties to engage in binding arbitration. That provision of the Agreement, Paragraph 1.c, states as follows:

The Parties agree that any dispute regarding the Freight Payments will be fully and finally resolved exclusively by binding arbitration, as set forth in this provision.

(R. 25; Agreement at ¶1.c). The Agreement further defines “Freight Payments” as “all outstanding amounts [the Mariposa Franchisees] owe to USS for all freight services ... provided to the Mariposa Franchisees and/or their customers (the “Freight Payments”) as of the date of this Agreement and which have not been paid in full by the Mariposa Franchisees or their customers to USS or the carriers.” (R. 22; Agreement at ¶1). Under its plain language, Paragraph 1.c only create one category of subject to arbitration – any dispute regarding the amounts owed by Mariposa Franchisees for freight services provided to the Mariposa Franchisees and their customers. However, as alleged in the Complaint, the Mariposa Franchisees fulfilled all of their obligations with respect to the Freight Payments. (R. 6; Complaint at ¶38). Instead, the parties’ dispute arises from whether the Mariposa Franchisees are required to indemnify USS under Paragraph 3 of the Agreement and what amount, if any, is owed under that indemnification provision. (R. 11; Complaint at ¶¶79-80). As a result, the dispute in this case does not fall within the first category of disputes that the parties agreed to arbitrate.

- ii. THE COMPLAINT DOES NOT FALL INTO THE SECOND CATEGORY OF DISPUTES BECAUSE USS DID NOT PROVIDE THE MARIPOSA FRANCHISEES WITH THE CAMS DATA PRIOR TO SETTLING WITH DHL.

Paragraph 3.a of the Agreement details two other circumstances under which the parties must engage in arbitration pursuant to Paragraph 1.c. The second category is stated as follows:

The parties agree that, if DHL and the USS parties desire to resolve the DHL Lawsuit through a settlement, **the USS Parties shall provide the Mariposa Franchisees with access to the CAMS Data** (of the same type and nature set forth in Paragraph 1 above) necessary to show the DHL Services provided to the Mariposa Franchisees and/or their customers. **If the Mariposa Franchisees do not agree with the amount** identified by the USS Parties, the USS Parties shall nevertheless have the right to proceed with settlement and **any dispute between the USS Parties and the Mariposa Franchisees concerning these amounts shall be resolved in accordance with the dispute resolution procedure set forth in Paragraph 1.c above.**

(R. 25; Agreement at ¶3.a) (emphasis added). The Agreement further defines CAMS Data as “copies of the corporate payment screen and open franchise invoices for their respective franchises, showing the amounts USS believes each Mariposa Franchisee owes for Freight Services provided to each respective Mariposa Franchisee and/or his, her, or its customers.” (R. 22; Agreement at ¶1.a). As a result, a dispute only falls into the second category of disputes if certain specific circumstances have occurred. First, USS must desire to resolve the DHL Lawsuit through settlement. Second, USS must provide the Mariposa Franchisees with the CAMS Data before entering into a settlement with DHL. Third, the Mariposa Franchisees must disagree with the amounts identified by USS through the CAMS Data. Fourth, USS must proceed with the settlement. The key factors in determining whether a dispute falls into this second category is whether USS provides the Mariposa Franchisees with the CAMS Data prior to settling with DHL. Significantly, Paragraph 3.a does not prohibit USS from settling with DHL if it fails to first provide the Mariposa Franchisees with the CAMS Data. Instead, Paragraph 3.a.

requires USS to forfeit any right to arbitration if it fails to provide the CAMS Data to the Mariposa Franchisees before settling with DHL.

In this case, USS did, in fact, settle the DHL Lawsuit. However, it never informed the Mariposa Franchisees that it was entering into a settlement with DHL. (R. 8; Complaint at ¶52). And, most significantly, USS failed to provide the Mariposa Franchisees with the CAMS Data prior to entering into the settlement with DHL. (R. 8, Complaint at ¶51). And, because USS never provided that information, the Mariposa Franchisees never disagreed with the amounts identified through the CAMS Data prior to USS settling the DHL Lawsuit. The first time that USS provided the Mariposa Franchisees with access to the CAMS Data was through its February 16, 2011 letter, several months after the DHL Lawsuit has been settled. (R. 8; Complaint at ¶53). And USS has subsequently claimed that the Mariposa Franchisees have not disputed the CAMS Data. (R. 104). As a result, this case does not fall into the second category of disputes that are subject to arbitration.

iii. THE COMPLAINT DOES NOT FALL INTO THE THIRD CATEGORY OF DISPUTES BECAUSE NO JUDGMENT WAS ENTERED IN THE DHL LAWSUIT.

Lastly, Paragraph 3.a identifies the third and final category of disputes that the parties agreed to arbitrate:

Likewise, **if** the USS Parties are determined to owe DHL, **through a judgment**, any amount for services provided to the Mariposa Franchisees and/or their customers, any dispute between the USS Parties and the Mariposa Franchisees concerning such amounts shall be resolve [sic] in accordance with the dispute resolution procedure set forth in Paragraph 1.c above.

(R. 25, ¶3.a) (emphasis added). A dispute only falls into this third dispute if specific conditions have been met. First, a judgment that USS is determined to owe DHL an amount for services provided to the Mariposa Franchisees must be entered. Second, there

must be a dispute between the Mariposa Franchisees and USS concerning the amount set forth in the judgment.

In this case, USS and DHL settled the DHL Lawsuit and dismissed their claims. (R. 8; Complaint at ¶¶49-50). As a result, no judgment was entered against USS, let alone a judgment determining the amounts that that USS owed DHL for services rendered to the Mariposa Franchisees. (R. 10; Complaint at ¶¶70). As a result, the dispute in this case does not fall into the third category of disputes that the parties agreed to arbitrate.

iv. THERE ARE NO OTHER CATEGORIES OF DISPUTE THAT ARE SUBJECT TO ARBITRATION.

The Agreement does not contain any other provisions requiring the parties to arbitrate or follow the dispute resolution procedure set forth in Paragraph 1.c. Indeed, the Agreement expressly states that, in the event that the Mariposa Franchisees default on their obligations under the Agreement, “the USS Parties may commence an action against him, her, or it in the Third District of Utah.” (R. 27; Complaint at ¶5). As a result, the scope of the Agreement’s arbitration provision is limited to the three categories of disputes identified in Paragraphs 1.c and 3.a. However, the district court did not reach any conclusion on which category, if any, the Complaint fell into. And, as explained above, the disputes raised by Complaint cannot fall into the three categories of disputes defined by Paragraphs 1.c and 3.a. As a result, the Complaint fell outside the scope of the Agreement’s arbitration provision and the district court erred in dismissing the Complaint and compelling arbitration.

B. THE MARIPOSA FRANCHISEES’ CAUSES OF ACTION DO NOT CONCERN THE SUBJECT MATTER COVERED BY THE ARBITRATION PROVISION BECAUSE THEY DO NOT INVOLVE ANY DISPUTE OF THE AMOUNTS IDENTIFIED IN THE CAMS DATA OR A JUDGMENT.

The subject matter of the disputes to be resolved through arbitration under Paragraphs 1.c and 3.a is limited. Accordingly, even if the conditions for the two

categories of arbitration specified in Paragraph 3.a had occurred, the disputes that form the basis of Plaintiffs' Complaint would still fall outside the subject matter of the arbitration.

Under the plain language of Paragraph 3.a, the dispute resolution procedures of Paragraph 1.c only apply if there is a dispute regarding the amount of the DHL services provided to the Mariposa Franchisees. (R. 25; Agreement at ¶3.a). If USS provided the Mariposa Franchisees with CAMS Data prior to entering into a settlement with DHL, any dispute regarding "the amount identified by the USS Parties" through the CAMS Data would be subject to arbitration. Id. (emphasis added). Similarly, if a judgment was entered against USS, any dispute regarding the "amount for services provided to the Mariposa Franchisees" that had been determined as owing to DHL would be subject to arbitration. Id. (emphasis added). As a result, the subject matter of the arbitration is limited to resolving disputes concerning the accuracy of the amounts identified through the CAMS Data or in a judgment.

Indeed, the parties' intention that the subject matter of Paragraph 3.a's arbitration provision would be limited to disputes over the amounts identified in the CAMS Data or a judgment is supported by viewing the contract as a whole. When interpreting a contract, the court must "determine what the parties intended by examining the entire contract and all of its parts in relation to each other, giving an objective and reasonable construction to the contract as a whole." G.G.A., Inc. v. Leventis, 773 P.2d 841, 845 (Utah App. 1989). Furthermore, "a contract should be interpreted so as to harmonize all of its terms and provisions, and all of its terms should be given effect if possible." Id. In this case, Paragraph 1.c requires that the arbitrator be "one forensic accountant, who shall review the parties' documentation and establish the amount owed to USS, if any, on any disputed invoices." (R. 24; Agreement at §1(c)(i)) (emphasis added). Therefore, under the plain language of the contract when viewed as a whole, it is evident that the parties did not intend the arbitration provision to resolve disputes over legal liability, contract

interpretation, or the parties' obligations. Instead, the arbitration provision was intended to provide the parties with an accounting if there were any disputes over the accuracy of the invoices contained in the CAMS Data.

As a result, the parties never intended that the Agreement's arbitration provision apply to the causes of action alleged in the Complaint. None of the Complaint's causes of action involve a dispute regarding the accuracy of the amounts identified in the CAMS Data or a judgment. Instead, the Mariposa Franchisee filed the Complaint so they could determine their liability under the indemnification provision of Paragraph 3, as well as clarification of their obligations under Paragraph 3. The indemnification provision of Paragraph 3 states as follows:

By entering into the Agreement, the respective Mariposa Franchisees agree to **indemnify** and hold USS harmless for any and all amounts **the USS Parties are determined to owe DHL through judgment or settlement** for DHL services provided to the respective Mariposa Franchisees and/or their customers and which the respective Mariposa Franchisees or their customers have not already paid to USS or DHL (regardless of whether that determination is by judgment or through settlement, and regardless of whether the amount is determined through set-off amounts that may reduce any judgment in favor of the USS Parties and against DHL).

(R. 25; Agreement at ¶3) (emphasis added). Because no judgment had been entered, the only way for the Mariposa Franchisees to verify whether they have any liability under this indemnification provision is to obtain a copy of the settlement agreement between USS and DHL. However, despite the Mariposa Franchisees repeated requests, USS failed to provide the Mariposa Franchisees with a copy of that settlement agreement. (R. 10; Complaint at ¶79). As a result, the Mariposa Franchisees could not determine their liability, if any, under the indemnification provision of Paragraph 3 of the Agreement. (R. 12; Complaint at ¶80). In response, the Mariposa Franchisees filed their First Cause of Action, requesting that the district court enter a declaratory judgment that Paragraph 3 requires USS to produce the settlement agreement containing the amounts, if any, that

USS was determined to owe on behalf of each Mariposa Franchisee. (R. 12; Complaint at ¶84). In addition, the Mariposa Franchisees' First Cause of Action sought an injunction requiring USS to provide the Mariposa Franchisees with a copy of its settlement agreement with DHL. Id. This First Cause of Action does not involve any dispute of the amounts identified in the CAMS Data or a judgment.

Similarly, the Mariposa Franchisees' Second Cause of Action was in response to the USS's claim that the deadlines and procedures set forth in Paragraph 1.a of the Agreement also applied to Paragraph 3. Therefore the Second Cause of Action requests that the district court interpret the Agreement and enter a declaratory judgment that the procedures set forth in Paragraph 1.a are not applicable to Paragraph 3. (R. 13; Complaint at ¶93). It does not involve any dispute of the amounts identified in the CAMS Data or a judgment.

The Mariposa Franchisees' Third Cause of Action requests that the Court interpret the Agreement and enter a declaratory judgment that the arbitration provisions of Paragraph 1.c and 3.a do not apply to disputes involving liability under the indemnification provision of Paragraph 3. (R. 15; Complaint at ¶106). And lastly, the Fourth and Fifth Causes of Action seek a declaratory judgment that the Mariposa Franchisee are not in default under the Agreement and an injunction against USS to prevent it from proceeding as if the Mariposa Franchisees were in default. (R. 15; Complaint at ¶106). Again, none of these causes of action involved any dispute of the amounts in the CAMS Data or a judgment.

In summary, the arbitration provision only encompasses disputes involving the accuracy of the amounts in the CAMS Data or a judgment against USS. Its scope does not extend to the subject matter of any other dispute between the parties. None of the causes of action alleged in the Complaint dispute the amounts identified in the CAMS Data or a judgment. Indeed, USS itself has claimed that the Mariposa Franchisees failed to dispute the amounts identified in the CAMS Data. (R. 104). As a result, none of the

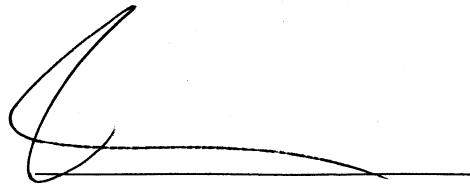
Complaint's causes of action fall within the scope of the Agreement's arbitration provision.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that the district court's September 06, 2011, Order granting USS's Motion to Dismiss and Compel Arbitration be reversed and the case be remanded.

RESPECTFULLY SUBMITTED this 28th day of February, 2012.

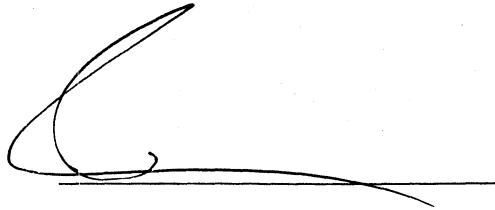
Nadesan Beck P.C.

A handwritten signature in black ink, consisting of a large, stylized 'K' followed by a horizontal line.

Karthik Nadesan
Attorney for Appellants

CERTIFICATE OF COMPLIANCE

I hereby certify that the word count of this brief as determined using Microsoft Word for Mac word processing program is 6241 in compliance with the Utah Rules of Appellate Procedure Rule 24(f).

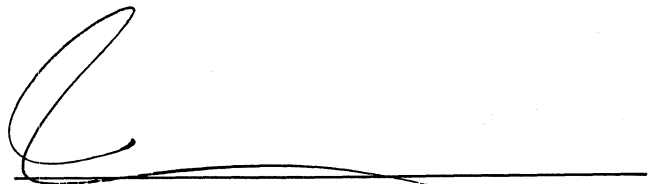


Karthik Nadesan
Ivan LePendu
Attorney for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2012, a true and correct copy of the foregoing **BRIEF OF APPELLANT** was sent by U.S Post to the following:

David J. Jordan
Cameron Sabin
Joseph Loosle
Stoel Rives
201 South Main Street, Suite 1100
Salt Lake City, Utah 84111



ADDENDUM

EXHIBIT A



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Ivan LePendou (11191)
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Attorney for Plaintiffs

FILED DISTRICT COURT
Third Judicial District

JUL 01 2011

SALT LAKE COUNTY

By _____

XN
Deputy Clerk

**IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH**

560
MARIPOSA EXPRESS, INC.; COLD
SPRING INVESTMENTS, LLC; COLD
SPRING INVESTMENTS NO.1, LIMITED
PARTNERSHIP; COLD SPRINGS
INVESTMENTS NO.2, LIMITED
PARTNERSHIP; NEWBURYPORT
CAPITAL, LLC; HANNAH ENTERPRISES,
INC.; USS HOLDINGS, LLC; USS
COLUMBIA, LLC; METRO MAR
VENTURES LLC; MICHAEL JONES LLC;
STRILING LLC; MICHAELSON
VENTURES INC.; USS O'BRIEN, INC.;
USS HIGHLAND PARK, INC.; SHARON
MCWILLIAMS; GEORGE AMMIRATO;
WILLIAM DEMET; ROBERT HARRIS;
MICHAEL JONES; TED MICHAELSON;
JIM O'BRIEN; and STEFAN
TRIANDAFILOU,

Plaintiffs,

v.

UNITED SHIPPING SOLUTIONS, LLC;
USS LOGISTICS LLC; ROBERT ROSS;
CHARLES DERR, and JESSE MOORE

Defendants.

COMPLAINT

Case No. 110915908

Judge Barrett

Plaintiffs through counsel, complain against Defendants as follows:

PARTIES, JURISDICTION, & VENUE

1. Plaintiff Mariposa Express, Inc. is a corporation existing by virtue of the laws of the State of California with a principal place of business at 4419 Little Brook Court, Fair Oaks, CA 95628, whose principal is plaintiff Sharon McWilliams.

2. Plaintiff Cold Spring Investments, LLC is a limited liability company existing by virtue of the laws of the State of Maryland with a principal place of business at 15920 Tournament Drive, Gaithersburg, MD 20877, whose principal is plaintiff Stefan Triandafilou.

3. Plaintiff Cold Spring Investments No.1, Limited Partnership is a limited partnership existing by virtue of the laws of the State of Maryland with a principal place of business at 15920 Tournament Drive, Gaithersburg, MD 20877, whose principals is plaintiff Stefan Triandafilou.

4. Plaintiff Cold Spring Investments No.2, Limited Partnership is a limited partnership existing by virtue of the laws of the State of Maryland with a principal place of business at 15920 Tournament Drive, Gaithersburg, MD 20877, whose principal is plaintiff Stefan Triandafilou.

5. Plaintiff Newburyport Capital, LLC is a limited liability company existing by virtue of the laws of the State of Maryland with a principal place of business at 15920 Tournament Drive, Gaithersburg, MD 20877, whose principal is plaintiff Stefan Triandafilou.

6. Plaintiff Hannah Enterprises, Inc. is a corporation existing by virtue of the laws of the State of Massachusetts with a principal place of business at 76 Alexander Place, Westfield, MA 01085, whose principal is plaintiff George Ammirato.

7. Plaintiff Metro Mar Ventures LLC is a limited liability company existing by virtue of the laws of the State of Nevada with a principal place of business at 628 Mirabay Boulevard, Apollo Beach, FL 33572, whose principal is plaintiff Robert Harris.

8. Plaintiff Michael Jones, LLC is a limited liability company existing by virtue of the laws of the Commonwealth of Virginia with a principal place of business at 5114 Greenwich Road, Virginia Beach, VA 23462, whose principal is plaintiff Mike Jones.

9. Plaintiff USS O'Brien, Inc. is a corporation existing by virtue of the laws of the State of Illinois with a principal place of business at 117 East Palatine, Suite 205, Palatine, IL 60067, whose principal is plaintiff Jim O'Brien.

10. Plaintiff USS Highland Park, Inc. is a corporation existing by virtue of the laws of the State of Illinois with a principal place of business at 117 East Palatine, Suite 205, Palatine, IL 60067, whose principal is plaintiff Jim O'Brien.

11. Plaintiff USS Holdings, LLC is a limited liability company existing by virtue of the laws of the State of South Carolina with a principal place of business at 110 Laurens Road, Greenville, SC 29607, whose principal is plaintiff William Demet.

12. Plaintiff USS Columbia, LLC is a limited liability company existing by virtue of the laws of the State of South Carolina with a principal place of business at 110 Laurens Road, Greenville, SC 29607, whose principal is plaintiff William Demet.

13. Plaintiff Stirling LLC is a limited liability company existing by virtue of the laws of the State of Texas with a principal place of business at 10900 NW Freeway, Ste. 219, Houston, TX 77092, whose principal is plaintiff Ted Michaelson.

14. Plaintiff Michaelson Ventures Inc. is a corporation existing by virtue of the laws of the State of Texas with a principal place of business at 10900 NW Freeway, Ste. 219, Houston, TX 77092, whose principal is plaintiff Ted Michaelson.

15. Defendant United Shipping Solutions, LLC is a Utah limited liability company with a principal business address of 6985 Union Park Center, Suite 565, Salt Lake City, UT 84047.

16. Defendant USS Logistics, LLC is a Utah limited liability company with a principal business address of 6985 Union Park Center, Suite 565, Salt Lake City, UT 84047.

17. Upon information and belief, USS Logistics, LLC is a subsidiary or sister company of United Shipping Solutions, LLC, with common ownership and governance.

18. Upon information and belief, Defendant Robert Ross is a resident of Salt Lake County.

19. Upon information and belief, Defendant Charles Derr is a resident of Salt Lake County.

20. Upon information and belief, Defendant Jesse Moore is a resident of Salt Lake County.

21. This Court has subject matter jurisdiction over this action pursuant to Utah Code Ann. § 78A-5-102(1).

22. Venue is proper in this Court pursuant to Utah Code Ann. §§ 78B-3-304.

GENERAL ALLEGATIONS

23. Plaintiffs reallege and incorporate the preceding paragraphs of this Complaint.

24. Defendants United Shipping Solutions, LLC, USS Logistics, LLC, Robert Ross, Charles Derr, and Jesse Moore (collectively, "USS") are resellers of transportation services.

25. Each non-real person plaintiff or its predecessor in interest entered into a written franchise agreement with USS, to resell transportation services under the name "United Shipping Solutions."

26. Each real person plaintiff acted as a guarantor of the franchise agreements and was subject to the non-competition provisions of the franchise agreements.

27. At the time of the execution of each franchise agreement, USS had an agreement with DHL Express (USA), Inc. ("DHL") to resell that company's transportation services.

Accordingly, Plaintiffs entered into their franchise agreements with USS expecting to resell DHL transportation services.

28. Until November 10, 2008, Plaintiffs had been reselling the transportation services of DHL.

29. However, on November 10, 2008, DHL publicly announced that it would discontinue its domestic shipping services on January 30, 2009.

30. The vast majority of the business of Plaintiffs was reselling those services that DHL cancelled. Some Plaintiffs' businesses consisted almost entirely of reselling domestic shipping services.

31. The inability to resell domestic shipping services destroyed each Plaintiff's small parcel shipping business.

32. Furthermore, under the non-competition provisions of the franchise agreements, Plaintiffs were unable to contract independently with a transportation services business that offered services or products that were the same as or substantially similar to those that were offered by USS.

33. Plaintiffs therefore filed a declaratory judgment against USS in the Third District Court for Salt Lake County, State of Utah, Case No. 080925107, (the "Initial Lawsuit") seeking, among other things, discharge from all remaining obligations under their respective franchise agreement, including all post-termination obligations.

34. USS counterclaimed against Plaintiffs, alleging, among other things, that Plaintiffs had failed to make payments required under the franchise agreements and were in breach of other provisions of the franchise agreements.

35. Both parties also filed independent lawsuits against DHL. Plaintiffs filed a lawsuit against DHL in New York Supreme Court, entitled *Avail Shipping et al. v. DHL Express (USA), Inc.* ("Plaintiff's DHL Lawsuit"). USS filed a lawsuit against DHL in Utah

State Court, entitled *USS Logistics, LLC et al. v. DHL Express (USA), Inc.*, Case No. 080926254 (“USS’s DHL Lawsuit”). DHL filed a counterclaim against USS in USS’s DHL Lawsuit seeking payment for services rendered to USS on behalf of Plaintiffs and other franchisees of USS.

36. Ultimately, Plaintiffs and USS entered into a settlement agreement that resulted in the Initial Lawsuit being dismissed (the “Settlement Agreement”). A true and correct copy of the Settlement Agreement is attached hereto as Exhibit A.

37. Pursuant to Paragraph 1 of the Settlement Agreement, Plaintiffs were obligated to pay to USS all outstanding amounts owed to USS for freight services that had not yet been paid by Plaintiffs.

38. Plaintiffs have either fulfilled or are current with all their obligations under Paragraph 1 of the Settlement Agreement.

39. Pursuant to Paragraph 4 of the Settlement Agreement, Plaintiffs were obligated to pay USS the sum of four hundred thousand dollars.

40. Plaintiffs have either fulfilled or are current all of their obligations under Paragraph 4 of the Settlement Agreement.

41. As of this date, Plaintiffs have either fulfilled or are current with all of their obligations under the Settlement Agreement.

42. Pursuant to Paragraph 3 of the Settlement Agreement, Plaintiffs agreed to “indemnify and hold USS harmless or any and all amounts the USS Parties are determined to owe DHL through judgment or settlement for DHL services provided to the respective Mariposa Franchisees and/or their customers and which the respective Mariposa Franchisees or their customers have not already paid to USS or DHL (regardless of whether that determination is by judgment or through settlement, and regardless of whether the amount is determined

through set-off amounts that may reduce any judgment in favor of the USS Parties and against DHL).”

43. Plaintiffs further agreed “to pay to USS all royalties, Wasatch Billing fees, and late fees charged by DHL resulting from non-payment by the respective Mariposa Franchisees, on the shipments the USS Parties are determined to owe to DHL.” See Settlement Agreement at ¶3.

44. Pursuant to the Settlement Agreement, “if DHL and the USS Parties desire to resolve [USS’s DHL Lawsuit] through a settlement, the USS Parties shall provide the Mariposa Franchisees with access to the CAMS Data (of the same type and nature set forth in Paragraph 1 above) necessary to show the DHL Services provided to the Mariposa Franchisees and/or their customers.” See Id. at ¶3(a).

45. Paragraph 1 of the Settlement Agreement defines CAMS Data as “copies of the corporate payment screen and open franchise invoices ... showing the amounts USS believes each Mariposa Franchisee owes for Freight Services provided to each respective Mariposa Franchisee and/or his, her or its customers.” See Id. at ¶1(a).

46. The Settlement Agreement further states that if Plaintiffs “do not agree with the amount identified by the USS Parties, the USS Parties shall nevertheless have the right to proceed with the settlement and any dispute between the USS Parties and the Mariposa Franchisees concerning these amounts shall be resolved in accordance with the dispute resolution procedure set forth in Paragraph 1.c above.” See Id. at ¶3(a).

47. Paragraph 1 of the Settlement Agreement that any dispute “will be fully and finally resolved exclusively by binding arbitration ... before one forensic accountant, who shall review the parties’ documentation and establish the amount owed to USS, if any, on any disputed invoices.” See Id. at ¶1(c). A party shall be deemed a “prevailing party” and entitled

to its reasonable attorneys' fees and costs, "if the arbitrator determines that the disputed amount is closer to the amount claimed to be due by that party than by the other party." Id.

48. Pursuant to Paragraph 3, once the amounts owed to USS have been determined, each Plaintiff is required to execute a promissory note agreeing to pay the amount owed over twenty-four months with interest. See Id. at ¶3(b).

49. In approximately the fall of 2010, USS reached an agreement with DHL under which USS dismissed USS's DHL Lawsuit and DHL dismissed its counterclaims against USS.

50. As a result, no judgment was entered against USS in USS's DHL Lawsuit.

51. Contrary to the requirements of Paragraph 3 of the Settlement Agreement, USS failed to provide Plaintiffs with the CAMS Data before entering into its settlement with DHL.

52. In fact, USS did not even notify Plaintiffs that it was entering into a settlement with DHL.

53. On February 16, 2011, counsel for USS sent a letter to Plaintiffs' New York counsel. A true and correct copy of the letter is attached here as Exhibit B.

54. In the letter, USS claimed that, in the settlement with DHL, USS "received payment in an amount that was offset by the amounts owing to DHL for shipping services provided to USS and its franchisees."

55. However, USS did not provide any information regarding the amount of the alleged offset and its relation to the amounts initially sought by DHL in its counterclaim.

56. In addition, USS did not identify the amounts that it had been determined to owe DHL on behalf of each individual Plaintiff.

57. Lastly, USS did not provide Plaintiffs with the CAMS Data required under Paragraph 3 of the Settlement Agreement.

58. Instead, the letter from USS instructed Plaintiffs to determine the amounts they owed USS for DHL services by accessing USS's internet-based "Customer Account Management System" (the "CAMS database").

59. USS also claimed that the determination of the amount owed by Plaintiffs was governed by procedures stated in Paragraph 1(a) of the Settlement Agreement.

60. When Plaintiffs accessed the CAMS database, they realized that it contained errors with respect to royalties due to USS and adjustments credited to Plaintiffs for "Problem Shipments" (e.g., late shipments with DHL or freight carriers where service guarantees were not met; DHL shipments where DHL charged USS for packages that were never actually shipped; shipments billed to the wrong account; damaged DHL or freight shipments; shipments where the incorrect cost was charged to the franchisee and/or the customer; shipments that were weighed incorrectly; and shipments that incurred improper fees).

61. More significantly, the CAMS database contained the same invoice amounts that it had contained in early 2009. The database had not been updated to reflect the actual amount of the alleged offset and/or the amounts that the settlement determined USS to owe on behalf of each Plaintiff.

62. Accordingly, on March 7, 2011, counsel for Plaintiffs responded to USS and requested that USS specifically state the amount that it had been determined to owe DHL under the terms of its settlement with DHL. A true and correct copy of the letter is attached hereto as Exhibit C.

63. Plaintiffs further requested that USS identify the specific amounts that USS had been determined to owe on behalf of each Plaintiff.

64. Lastly, Plaintiffs informed USS that Paragraph 1(a) was not applicable in determining the amount Plaintiffs owed USS pursuant to Paragraph 3.

65. On March 9, counsel for USS sent a response letter to Plaintiffs' counsel. A true and correct copy of the letter is attached as Exhibit D.

66. In the letter, USS claimed that Plaintiffs owed all amounts contained in the CAMS database because Plaintiffs had failed to contest those amounts pursuant to procedures contained in Paragraph 1(a) of the Settlement Agreement.

67. In addition, USS's counsel claimed that a Memorandum Decision holding USS "liable for all amounts owed to DHL for shipping services provided by DHL to USS's franchisees for which payment was not made ... plainly provides [Plaintiffs] with sufficient information for them to fulfill their obligations" under the Settlement Agreement. A true and correct copy of the Memorandum Decision is attached hereto as Exhibit E.

68. However, the Memorandum Decision specifically stated that the amount of USS's liability was to be determined at trial. See Memorandum Decision at 7.

69. Indeed, the Memorandum Decision noted that USS disputed the amounts invoiced and claimed by DHL for the shipping services provided to Plaintiffs. Id. at 8.

70. Furthermore, because the parties settled, the amount of USS's liability to DHL for the shipping services was never determined at trial or reduced to a judgment against USS.

71. As of this date, USS has failed to provide Plaintiffs with any determination showing the amounts "the USS Parties are determined to owe DHL through judgment or settlement for DHL services provided to the respective Mariposa Franchisees and/or their customers and which the respective Mariposa Franchisees or their customers have not already paid to USS or DHL."

72. On April 7, 2011, counsel for USS had a telephone conversation with counsel for Plaintiffs. In the conversation, counsel for USS stated that USS would take aggressive action against Plaintiffs if Plaintiffs did not sign promissory notes pursuant to Paragraph 3(b) of the Settlement Agreement.

73. On June 1, 2011, counsel for USS sent demand letters to Plaintiffs' counsel. The letters did not address any of Plaintiff's concerns. Instead, letters cited the amounts owed by each Plaintiff according to the CAMS database. In conclusion, the letter stated that "[t]his is our final attempt to resolve this matter without litigation." A true and correct copy of one of the letters is attached as Exhibit F.

74. On June 14, 2011, counsel for USS sent a letter to Plaintiffs' counsel requiring them to hold any settlement or judgment received in the Plaintiff's DHL Lawsuit in escrow pursuant to Paragraph 3(c) of the Settlement Agreement. A true and correct copy of the letter is attached as Exhibit G.

75. As a result, if Plaintiffs receive a settlement or judgment in Plaintiff's DHL Lawsuit, an amounts contained in the CAMS database must be held in escrow until such time as USS provides a determination showing the amount that USS paid DHL on behalf of Plaintiffs.

FIRST CAUSE OF ACTION

(DECLARATORY JUDGMENT – USS REQUIRED TO PROVIDE DETERMINATION OF AMOUNTS PAID TO DHL ON BEHALF OF PLAINTIFFS)

76. Plaintiffs reallege and incorporate the preceding paragraphs of this Complaint.

77. USS has claimed that the amounts owed by Plaintiffs under Paragraph 3 of the Settlement Agreement, if any, can be determined from the CAMS database.

78. However, the CAMS database had not been updated to reflect the actual amount of the alleged offset, if any, that the settlement determined USS to owe on behalf of each Plaintiff.

79. As of this date, USS has failed to provide Plaintiffs with any determination showing the amounts "the USS Parties are determined to owe DHL through judgment or settlement for DHL services provided to the respective Mariposa Franchisees and/or their

customers and which the respective Mariposa Franchisees or their customers have not already paid to USS or DHL.”

80. As a result, Plaintiffs are unable to determine what amounts, if any, they owe USS pursuant to Paragraph 3 of the Settlement Agreement.

81. USS has claimed that it will take aggressive action and file litigation if Plaintiffs do not sign promissory notes agreeing to pay all of the amounts contained in the CAMS database.

82. Accordingly, the dispute over the amounts owed under Paragraph 3 of the Settlement Agreement has sharpened into an imminent clash of legal rights and obligations between Plaintiffs and USS.

83. In addition, any settlement or judgment in Plaintiff's DHL Lawsuit will be held in escrow until such time as USS provides a determination showing the amount that USS paid DHL on behalf of Plaintiffs. If USS continues to refuse to provide the determination, Plaintiff's settlement or judgment may be held in escrow indefinitely.

84. Therefore, pursuant to Utah Code Ann. §§78B-6-408 and 78B-6-409, Plaintiffs seek a declaratory judgment holding that Paragraph 3 of the Settlement Agreement requires USS to produce the settlement agreement or judgment containing the amounts, if any, that USS was determined to have paid DHL on behalf of each Plaintiff. In addition, Plaintiffs seek an injunction requiring USS to provide the settlement agreement or judgment containing the amounts, if any, that USS was determined to have paid DHL on behalf of each Plaintiff or, in the alternative, releasing any settlement or judgment in Plaintiff's DHL Lawsuit from escrow.

SECOND CAUSE OF ACTION

(DECLARATORY JUDGMENT – PROCEDURES UNDER PARAGRAPH 1(a) OF THE SETTLEMENT AGREEMENT INAPPLICABLE)

85. Plaintiffs reallege and incorporate the preceding paragraphs of this Complaint.

86. USS has claimed that the amounts owed by Plaintiffs under Paragraph 3 of the Settlement Agreement, if any, are to be determined using the procedures defined in Paragraph 1(a) of the Settlement Agreement.

87. USS has further claimed that, because Plaintiffs did not contest the amounts contained in the CAMS database pursuant to Paragraph 1(a) of the Settlement Agreement, they owe all amounts contained in the CAMS database.

88. However, Paragraph 3 of the Settlement Agreement does not contain any provisions requiring Plaintiffs to follow the procedures defined in Paragraph 1(a) of the Settlement Agreement.

89. Plaintiffs have clearly informed USS that they have not received sufficient information to determine the amounts they owe and that they therefore dispute the amounts contained in the CAMS database.

90. Therefore the amounts Plaintiffs owe under Paragraph 3 of the Settlement Agreement have not yet been determined.

91. USS has claimed that it will take aggressive action and file litigation if Plaintiffs do not sign promissory notes agreeing to pay all of the amounts contained in the CAMS database.

92. Accordingly, the applicability of Paragraph 1(a) of the Settlement Agreement has sharpened into an imminent clash of legal rights and obligations between Plaintiffs and USS.

93. Therefore, pursuant to Utah Code Ann. §§78B-6-408 and 78B-6-409, Plaintiffs seek a declaratory judgment holding that the procedures of Paragraph 1(a) of the Settlement

Agreement are inapplicable to the determination of the amounts owed by Plaintiffs under Paragraph 3 of the Settlement Agreement.

THIRD CAUSE OF ACTION

(DECLARATORY JUDGMENT – PROCEDURES UNDER PARAGRAPH 1(c) OF THE SETTLEMENT AGREEMENT NOT YET APPLICABLE)

94. Plaintiffs reallege and incorporate the preceding paragraphs of this Complaint.

95. USS has claimed that the amounts owed by Plaintiffs under Paragraph 3 of the Settlement Agreement, if any, can be determined from the CAMS database.

96. However, the CAMS database had not been updated to reflect the actual amount of the alleged offset, if any, that the settlement determined USS to owe on behalf of each Plaintiff.

97. As of this date, USS has failed to provide Plaintiffs with any determination showing the amounts “the USS Parties are determined to owe DHL through judgment or settlement for DHL services provided to the respective Mariposa Franchisees and/or their customers and which the respective Mariposa Franchisees or their customers have not already paid to USS or DHL.”

98. As a result, Plaintiffs are unable to determine what amounts, if any, they owe USS pursuant to Paragraph 3 of the Settlement Agreement.

99. In addition, the CAMS database contains errors with respect to royalties due to USS and adjustments credited to Plaintiffs for “Problem Shipments.”

100. However, Plaintiffs cannot contest the amounts contained in the CAMS database until and unless they know the amounts that USS was determined to owe DHL on behalf of each Plaintiff.

101. Paragraph 3(a) and Paragraph 1(c) state that any dispute regarding the amount owed to USS “will be fully and finally resolved exclusively by binding arbitration ... before one forensic accountant, who shall review the parties’ documentation and establish the amount owed to USS, if any, on any disputed invoices.” A party shall be deemed a “prevailing party” and entitled to its reasonable attorneys’ fees and costs, “if the arbitrator determines that the disputed amount is closer to the amount claimed to be due by that party than by the other party.”

102. However, Plaintiffs cannot even calculate the amount due to USS or dispute the amount USS claims it is owed without access to the determination of the amounts USS owed DHL on behalf of Plaintiff.

103. Therefore the dispute resolution procedure outlined under Paragraphs 3(a) and 1(c) of the Settlement Agreement is not yet applicable.

104. USS has claimed that it will take aggressive action and file litigation if Plaintiffs do not sign promissory notes agreeing to pay all of the amounts contained in the CAMS database.

105. Accordingly, the applicability of Paragraph 1(a) of the Settlement Agreement has sharpened into an imminent clash of legal rights and obligations between Plaintiffs and USS.

106. Therefore, pursuant to Utah Code Ann. §§78B-6-408 and 78B-6-409, Plaintiffs seek a declaratory judgment holding that the procedures of Paragraphs 3(a) and 1(c) of the Settlement Agreement are not yet applicable.

FOURTH CAUSE OF ACTION

(DECLARATORY JUDGMENT – PLAINTIFFS ARE NOT IN DEFAULT)

107. Plaintiffs reallege and incorporate the preceding paragraphs of this Complaint.

108. USS has claimed that Plaintiffs are in default under the Settlement Agreement because they have not signed promissory notes pursuant to Paragraph 3(b) of the Settlement Agreement.

109. However, Plaintiffs have not signed the promissory notes because they are unable to determine what amounts, if any, they owe USS pursuant to Paragraph 3 of the Settlement Agreement.

110. As of this date, USS has failed to provide Plaintiffs with the information necessary to make such a determination.

111. Therefore Plaintiffs are not in default under the Settlement Agreement.

112. USS has claimed that it will take aggressive action and file litigation if Plaintiffs do not sign promissory notes agreeing to pay all of the amounts contained in the CAMS database.

113. Accordingly, the issue of whether Plaintiffs are in default under the Settlement Agreement has sharpened into an imminent clash of legal rights and obligations between Plaintiffs and USS.

114. Therefore, pursuant to Utah Code Ann. §§78B-6-408 and 78B-6-409, Plaintiffs seek a declaratory judgment holding that Plaintiffs are not in default of the Settlement Agreement.

FIFTH CAUSE OF ACTION

(INJUNCTIVE RELIEF)

115. Plaintiffs reallege and incorporate the preceding paragraphs of this Complaint.

116. Pursuant to Paragraphs 5 and 6 of the Settlement Agreement, USS is authorized to file Verified Confessions of Judgment and Stipulated Final Judgments against Plaintiffs in the Third Judicial District of Utah upon and after a default by Plaintiffs.

117. USS has claimed that Plaintiffs are in default under the Settlement Agreement because they have not signed promissory notes pursuant to Paragraph 3(b) of the Settlement Agreement.

118. However, Plaintiffs have not signed the promissory notes because they are unable to determine what amounts, if any, they owe USS pursuant to Paragraph 3 of the Settlement Agreement.

119. As of this date, USS has failed to provide Plaintiffs with the information necessary to make such a determination.

120. Accordingly, Plaintiffs are not in default under the Settlement Agreement.

121. USS has claimed that it will take aggressive action and file litigation if Plaintiffs do not sign promissory notes agreeing to pay all of the amounts contained in the CAMS database.

122. Therefore Plaintiffs seek an order from this Court enjoining USS from filing Verified Confessions of Judgment and Stipulated Final Judgments against Plaintiffs in the Third Judicial District of Utah.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays for judgment in its favor and against defendant as follows:

1. As to the first cause of action, for a declaratory judgment holding that Paragraph 3 of the Settlement Agreement requires USS to produce the settlement agreement or judgment containing the amounts, if any, that USS was determined to have paid DHL on behalf of each Plaintiff. In addition, for an injunction ordering USS to produce the settlement agreement or judgment containing the amounts, if any, that USS was determined to have paid DHL on behalf of each Plaintiff or, in the alternative, releasing any settlement or judgment in the Plaintiff's

DHL Lawsuit from escrow.

2. As to the second cause of action, for a declaratory judgment holding that the procedures of Paragraph 1(a) of the Settlement Agreement are inapplicable to the determination of the amounts owed by Plaintiffs under Paragraph 3 of the Settlement Agreement.

3. As to the third cause of action, for a declaratory judgment holding that the procedures of Paragraphs 3(a) and 1(c) of the Settlement Agreement are not yet applicable.

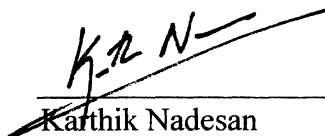
4. As to the fourth cause of action, for a declaratory judgment holding that Plaintiffs are not in default of the Settlement Agreement.

5. As to the fifth cause of action, for an order from this Court enjoining USS from filing Verified Confessions of Judgment and Stipulated Final Judgments against Plaintiffs in the Third Judicial District of Utah.

6. For such other and further relief as the Court deems just and equitable under the circumstances.

DATED this 30th day of June, 2011.

Nadesan Beck P.C.



Karthik Nadesan
Attorney for Plaintiffs

Plaintiffs' Addresses:

George Ammirato
Hannah Enterprises, Inc.
7D Pasco Dr.
East Windsor, CT 06088

Bill Demet
USS Holdings, LLC
USS Columbia, LLC

110 Laurens Road
Greenville, SC 29607

Bobby Harris
Metro Mar Ventures LLC
628 Mirabay Blvd
Apollo Beach, FL 33572
Mike Jones
Michael Jones, LLC
5114 Greenwich Rd
Virginia Beach, VA 23462

Sharon McWilliams
Mariposa Express, Inc.
4419 Little Brook Court
Fair Oaks, CA 95628

Ted Michaelson
Stirling LLC
Michaelson Ventures Inc.
20214 Silverwood Trl
Cypress, TX 77433

Jim O' Brien
USS O'Brien, Inc.
USS Highland Park, Inc.
117 E. Palatine, Suite 205
Palatine, IL 60067

Stefan Triandafilou
Cold Spring Investments, LLC
Cold Spring Investments No.1, LP
Cold Springs Investments No.2, LP
Newburyport Capital, LLC
15920 Tournament Drive
Gaithersburg, MD 20877

EXHIBIT B

**SETTLEMENT, MUTUAL RELEASE
AND
TERMINATION OF FRANCHISE AGREEMENT**

This Settlement, Mutual Release and Termination of Franchise Agreement (this "Agreement") is entered into this 15th day of September, 2009 (the "Effective Date"), by and among United Shipping Solutions, LLC ("USS"); USS Logistics LLC ("USSL"); Robert Ross; Charles Derr; and Jesse Moore (collectively the "USS Parties"), on the one hand, and Mariposa Express, Inc.; Cold Spring Investments, LLC; Cold Spring Investments No. 1, Limited Partnership; Cold Spring Investments No. 2, Limited Partnership; Newburyport Capital, LLC; United Shipping Solutions of NY, Inc.; Outforce, LLC; KBS LLC; United Shipping Solutions, LLC; M.K. Logistics Management LLC; Hannah Enterprises, Inc.; Metro Mar Ventures LLC; Buckeye Shipping and Freight, Inc.; Michael Jones, LLC; USS O'Brien, Inc.; USS Highland Park, Inc.; United Shipping Solutions, Inc.; USS Holdings, LLC; USS Columbia, LLC; Stirling LLC; Michaelson Ventures Inc.; The Double A & O Group, Inc.; Global Express Shipping, Inc.; Extreme Group, Inc.; Sharon McWilliams; Stefan Triandafilou; Greg Christensen; Steve Lowy; Eric Sweeney; John Tolbert; Robert Platschek; Bruce M. Mazzochi; Chris Kulawik; Robert Harris; Jason O'Rourke; Mike Jones; Jacob Grunfeld; Bryan Smetanka; George Ammirato; Ted Michaelson; Dawni Arias; Ted Autry; Christian Naser; Gregg Shanberg; Jim O'Brien; Marc L. Casaccia; Jeffrey Corte; and William Demet (collectively the "Mariposa Franchisees"), on the other hand. The parties are sometimes hereinafter collectively referred to as the "Parties". Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Franchise Agreement (as hereinafter defined).

RECITALS

WHEREAS, to obtain franchises with USS, the Mariposa Franchisees each executed one or more franchise agreements, guarantee agreements, and/or other franchise-related documents with USS (the "Franchise Documents");

WHEREAS, the Franchise Documents contain obligations, including confidentiality obligations;

WHEREAS, on December 3, 2008, the Mariposa Franchisees filed and later amended a complaint against the USS Parties in Third District Court, State of Utah, entitled *Mariposa Express, Inc. et al. v. United Shipping Solutions, LLC et al.*, Case No. 080925107 (the "Lawsuit"), alleging, among other things, that the Mariposa Franchisees are entitled to be relieved of their obligations under the Franchise Documents;

WHEREAS, in the Lawsuit, USS and USSL have asserted a counterclaim or third-party complaint against certain of the Mariposa Franchisees alleging, among other things, that the Mariposa Franchisees have violated the Franchise Documents, improperly competed against the USS Parties, interfered with the USS Parties' contractual and economic relations, and failed to pay USS for services received by the Mariposa Franchisees and/or their customers (the "Shipping Services");

WHEREAS, the Mariposa Franchisees also have filed a complaint against DHL Express (USA), Inc. ("DHL") in New York Supreme Court, entitled *Avail Shipping et al. v. DHL Express (USA), Inc.* (the "Franchisee Lawsuit"), alleging, among other things, that DHL breached its contractual obligation to provide shipping services to the Mariposa Franchisees;

WHEREAS, DHL has filed a complaint against USSL in the United States District Court for the Southern District of Florida, entitled *DHL Express (USA), Inc. v. USS Logistics, LLC*, Case No. 08-62071-CIV (the "DHL Lawsuit"), alleging, among other things, that USSL has failed to pay DHL for shipping services provided to USSL and its franchisees and/or customers;

WHEREAS, the Parties now desire, in accordance with the terms and conditions contained in this Agreement, to settle the Lawsuit, to terminate the Mariposa Franchisees' obligations under the Franchise Documents, and to release each other with respect to any claims, liabilities or obligations owed by any party to any other party, except as set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows.

AGREEMENT

1. Payment for Freight Services. At the times and in the amounts provided below, the Mariposa Franchisees hereby agree to pay to USS in full all outstanding amounts they owe to USS for all freight services (including all royalties, Wasatch Billing fees, and late fees charged by carriers resulting from non-payment by the Mariposa Franchisees (collectively the "Freight Services") provided to the Mariposa Franchisees and/or their customers (the "Freight Payments") as of the date of this Agreement and which have not been paid in full by the Mariposa Franchisees or their customers to USS or the carriers. The obligations of the respective Mariposa Franchisees for Freight Services are not intended to be joint and several and no Mariposa Franchisee will be required to pay for Freight Services that they would not have been obligated to pay under the Franchise Documents. The Freight Payments shall be paid in the form of a cashier's check made payable to "United Shipping Solutions, L.L.C." and delivered to the following address or such other address as will be designated in writing by the USS Parties:

United Shipping Solutions, L.L.C
6985 Union Park Center, Suite 565
Midvale, Utah 84047

a. Process for determining payment amount. Within fifteen (15) days following execution of this Agreement, USS will provide to the Mariposa Franchisees copies of the corporate payment screen and open franchise invoices for their respective franchises, showing the amounts USS believes each Mariposa Franchisee owes for Freight Services provided to each respective Mariposa Franchisee and/or his, her or its customers. (the "CAMS Data"). The Mariposa Franchisees can email reasonable requests for additional information to USS at mariposa@myusshipit.com. It is

anticipated that such requests will not include information other than USS check numbers for freight payments or USS customer invoices. In addition, the Mariposa Franchisees may, within 10 days of receiving the CAMS Data, submit a single e-mail from each Mariposa Franchisee containing a spreadsheet, broken down by carrier, for each bill of lading or invoice about which a Mariposa Franchisee requests additional carrier information. With respect to the spreadsheet, USS will contact its carriers to obtain verification of shipping charges, the fact of payment, the identity of the payor and, if available, the check number through which payment was made. The Parties expressly understand and agree this is not a process for verifying every freight shipment, but only for resolving those over which there is a reasonable basis for dispute. USS will notify each Mariposa Franchisee by email (at the email addresses listed in Exhibit A), with a copy to the Mariposa Franchisees' counsel, when the CAMS Data is available to review and will provide information necessary to access the CAMS Data. Within twenty (20) days after receiving access to the CAMS Data, each Mariposa Franchisee will notify USS in writing (by email or overnight express mail) whether he, she or it agrees with the freight amount showing in the CAMS Data to be owing by each Mariposa Franchisee (the "Franchisee Notice"). If a Mariposa Franchisee agrees that the freight amount identified by USS is correct, that Mariposa Franchisee will, within ten (10) days of the Franchisee Notice, pay to USS one-third of that amount as set forth above. All remaining amounts owing for Freight Services will be paid as set forth in Paragraph 1.b below. If a Mariposa Franchisee does not agree with the Freight Services amount identified by USS in the CAMS Data then, that Mariposa Franchisee will pay to USS, within ten (10) days of the Franchisee Notice, one-third of any undisputed amounts for Freight Services, with the remainder of any undisputed amount for Freight Services paid as set forth in Paragraph 1.b below. In addition, and contemporaneous with the Franchisee Notice, for all disputed Freight Service amounts, the Mariposa Franchisee disputing such amounts must provide to USS, by email or overnight express mail, documentation and information sufficient to demonstrate the reason for disputing such amounts and setting forth the amount the Mariposa Franchisee reasonably believes he, she or it owes to USS (the "Franchisee Freight Documentation"). If after receiving the Franchisee Freight Documentation, USS disputes the amount a Mariposa Franchisee claims to owe to USS for Freight Services, and USS and such Mariposa Franchisee are unable to resolve the dispute within ten (10) days, then USS shall provide that Mariposa Franchisee with written notice (by email or overnight express mail) that USS disputes the freight amount contained in the Franchisee Freight Documentation (the "Dispute Notice"). Notwithstanding the forgoing, Buckeye Shipping & Freight Inc. and Global Express Shipping, Inc. will pay the amount due for Freight Services, or the undisputed portion of the amount in their respective Freight Notices, as the case may be, pursuant to a promissory note as provided for in Paragraph 1.b. below.

b. Payment of Remaining Freight Amounts. With regard to any amounts for Freight Services that the Mariposa Franchisees either agree to pay (and which are not paid pursuant to Paragraph 1.a above) or which are determined to be owing to USS pursuant to Paragraph 1.c below, each Mariposa Franchisee shall execute a promissory note ("Promissory Note #1) in the form attached hereto as Exhibit B. In Promissory Note #1, such franchisees shall agree to pay all unpaid Freight Services owing to USS by

making monthly installment payments calculated by amortizing the remaining balance (and in the case of Buckeye Shipping & Freight Inc. and Global Express Shipping, Inc. all monies due for the Freight Services) owing over twenty-four months with interest at 10% per annum. USS will provide by e-mail or overnight mail to each Mariposa Franchisee a Promissory Note # 1 indicating the amount due for unpaid Freight Services (as agreed by the Parties or determined pursuant to 1.c, below) and an amortization schedule consistent with these terms. Each Mariposa Plaintiff will have 10 calendar days to sign and return Promissory Note #1. The Mariposa Franchisees each agree that the failure to sign and return Promissory Note #1 in accordance with this paragraph 1.b constitutes a Default under paragraph 6 below. For undisputed amounts, the first monthly installment payment shall be due on the first day of the first month following the payment made pursuant to 1.a above (the "Installment Payment Commencement Date"). For all amounts that are disputed, the first monthly installment payment shall be due on the first day of the first month following the resolution of the dispute, whether such dispute is resolved informally with the USS Parties or pursuant to Paragraph 1.c below (the "Installment Payment Commencement Date"). The Mariposa Franchisees' respective payment obligations under this provision shall be secured as set forth in Paragraph 5 below.

c. Dispute Resolution Procedure. The Parties agree that any dispute regarding the Freight Payments will be fully and finally resolved exclusively by binding arbitration, as set forth in this provision.

i. If USS and any Mariposa Franchisee are unable to resolve any dispute regarding the amount owed by a Mariposa Franchisee under Section 1.a above, within ten (10) days after USS has delivered the Dispute Notice to such franchisee, the parties shall submit the matter to binding arbitration before one forensic accountant, who shall review the parties' documentation and establish the amount owed to USS, if any, on any disputed invoices. The accountant will be selected by USS and the Mariposa Franchisee within twenty (20) days following delivery of the Dispute Notice.

ii. The Parties agree that any arbitration under this Paragraph 1 shall be conducted within forty (40) days following delivery of the Dispute Notice.

iii. Following the entry of an arbitration award, the Mariposa Franchisee shall pay to USS one-third of all amounts determined to be owing within ten (10) days and pay the remainder in accordance with Paragraph 1.b above.

iv. The Parties agree that the prevailing party in any arbitration conducted pursuant to this Paragraph 1 shall be entitled to recover his, her or its reasonable attorneys' fees and costs incurred in the arbitration. The Parties agree that a party shall be deemed a "prevailing party" if the arbitrator determines that the disputed amount is closer to the amount claimed to be due by that party than by the other party.

2. Shipments to USS's Accounts. The Mariposa Franchisees agree not to bill shipments or allow shipments to be billed to USS or its carrier accounts. The Mariposa Franchisees further agree to take all measures necessary to ensure that their customers are notified not to bill shipments or allow shipments to be billed to USS or its carrier accounts and to pay for any such shipments that have occurred or will occur.

3. Indemnification by the Mariposa Franchisees for DHL Services. By entering into this Agreement, the respective Mariposa Franchisees agree to indemnify and hold USS harmless for any and all amounts the USS Parties are determined to owe DHL through judgment or settlement for DHL services provided to the respective Mariposa Franchisees and/or their customers and which the respective Mariposa Franchisees or their customers have not already paid to USS or DHL (regardless of whether that determination is by judgment or through settlement, and regardless of whether the amount is determined through set-off amounts that may reduce any judgment in favor of the USS Parties and against DHL). The respective Mariposa Franchisees further agree to pay to USS all royalties, Wasatch Billing fees, and late fees charged by DHL resulting from non-payment by the respective Mariposa Franchisees, on the shipments the USS Parties are determined to owe to DHL. The obligations of the respective Mariposa Franchisees for DHL services are not intended to be joint and several Documents. The Parties agree that the Mariposa Franchisees shall not be required to make payment to USS under this provision until such time as the Franchisee Lawsuit is resolved either through a final, non-appealable judgment (for or against the Mariposa Franchisees) or through settlement.

a. The Parties agree that, if DHL and the USS Parties desire to resolve the DHL Lawsuit through a settlement, the USS Parties shall provide the Mariposa Franchisees with access to the CAMS Data (of the same type and nature set forth in Paragraph 1 above) necessary to show the DHL Services provided to the Mariposa Franchisees and/or their customers. If the Mariposa Franchisees do not agree with the amount identified by the USS Parties, the USS Parties shall nevertheless have the right to proceed with the settlement and any dispute between the USS Parties and the Mariposa Franchisees concerning these amounts shall be resolved in accordance with the dispute resolution procedure set forth in Paragraph 1.c above. Likewise, if the USS Parties are determined to owe DHL, through a judgment, any amount for services provided to the Mariposa Franchisees and/or their customers, any dispute between the USS Parties and the Mariposa Franchisees concerning such amounts shall be resolved in accordance with the dispute resolution procedure set forth in Paragraph 1.c above. In the event of such a dispute, the USS Parties shall provide the Mariposa Franchisees with access to the CAMS Data (of the same type and nature set forth in Paragraph 1 above) necessary to show the DHL Services provided to the Mariposa Franchisees and/or their customers.

b. With regard to any amounts owing to USS pursuant to this Paragraph 3, each Mariposa Franchisee shall execute a promissory note ("Promissory Note #2) in the form attached hereto as Exhibit C. In Promissory Note #2, each Mariposa Franchisee shall agree to pay all unpaid amounts owing to USS for DHL services as set forth in this Paragraph 3 by making monthly installment payments calculated by amortizing the amount owed over twenty-four months with interest at 10% per annum. USS will provide by e-mail or overnight mail to each Mariposa Franchisee a Promissory Note # 2 indicating the amount due for unpaid DHL Services under this paragraph 3 (as agreed by

the Parties or determined pursuant to 1.c, above) and an amortization schedule consistent with these terms. Each Mariposa Plaintiff will have 10 calendar days to sign and return Promissory Note #2. The Mariposa Franchisees each agree that the failure to sign and return Promissory Note #2 in accordance with this paragraph 3.b constitutes a Default under paragraph 6 below. The first monthly installment payment shall be due on the first day of the first month following either entry of a final, non-appealable judgment for or against the Mariposa Franchisees in the Franchisee Lawsuit or a settlement between the Mariposa Franchisees and DHL of the Franchisee Lawsuit (the "DHL Installment Payment Commencement Date"). The Mariposa Franchisees' respective payment obligations under this provision shall be secured as set forth in Paragraph 3.c and Paragraph 5 below.

c. The Mariposa Franchisees agree that their obligations to the USS Parties under this Agreement and any associated agreement are secured by any interest the Mariposa Franchisees have or may have in the Franchisee Lawsuit, including the claims they have or may have against DHL and any future recovery they may receive from DHL by virtue of the Franchisee Lawsuit. In connection with this security interest, each Mariposa Franchisee agrees to execute a security agreement, in the form attached hereto as Exhibit E, and agree that the USS Parties shall have the right to file in the appropriate jurisdiction for each such Mariposa Franchisee a UCC-1 financing statement perfecting such security interest. This security interest shall be subordinate to any monies due to the Mariposa Franchisees' counsel for attorneys' fees and costs associated with the Franchisee Lawsuit. The Mariposa Franchisees further agree that, so long as payments are or may become owing from the Mariposa Franchisees to the USS Parties, the Mariposa Franchisees shall require that any settlement payment made by DHL be made payable to the Mariposa Franchisees' counsel in the Franchisee Lawsuit and that the Mariposa Franchisees hereby direct said counsel to pay to the USS Parties any monies due under this Agreement and any associated agreements, including Promissory Note #1, Promissory Note #2, and Promissory Note #3, after first deducting any monies due to said counsel for attorneys' fees and costs in connection with the Franchisee Lawsuit. If the Franchisee Lawsuit is resolved (whether through settlement or judgment) before the amount owing to DHL by the USS Parties, if any, for DHL services provided to the Mariposa Franchisees and/or their customers (together with the associated royalties, Wasatch Billing fees, and DHL late fees) has been determined, the Mariposa Franchisees agree that their counsel shall pay from the proceeds of any such settlement or judgment all outstanding amounts owing to the USS Parties under Promissory Note #1 and Promissory Note #3, and shall place in escrow an amount equal to the outstanding amount showing in USS's CAMS system for DHL services provided to the Mariposa Franchisees and/or their customers (including all royalties, Wasatch Billing fees, and DHL late fees related to such services). With respect to these obligations, the Parties agree that the USS Parties are intended third-party beneficiaries.

4. Additional Settlement Payment. The Mariposa Franchisees further agree to pay to the USS Parties the sum of FOUR HUNDRED THOUSAND DOLLARS (\$400,000) (the "Settlement Payment"), which sum shall be divided between the Mariposa Franchisees as set forth in Exhibit F attached hereto.

a. Timing of Settlement Payment.

i. Within ten (10) days of execution of this Agreement, the Mariposa Franchisees agree to pay to the USS Parties the sum of TWO HUNDRED THOUSAND EIGHTY-THREE DOLLARS AND THIRTY-FOUR CENTS (\$200,083.34) in the form of one or more cashier's checks made payable to "United Shipping Solutions, L.L.C." and delivered to the USS Parties at the address set forth in Paragraph 1 above or by wire transfer to the USS Parties' counsel. This payment reflects the payments as set forth in the schedule attached hereto as Exhibit F.

ii. Concurrent with execution of this Agreement, the remaining Mariposa Franchisees who will not be paying their prorata share of the Settlement Payment in full within ten (10) days of execution of this Agreement as set forth in the schedule attached as Exhibit F, shall, upon execution of this Agreement, execute and deliver to the USS Parties a promissory note in the form attached hereto as Exhibit D ("Promissory Note #3") for the balance of their prorata share of the Settlement Payment. In Promissory Note #3, each Mariposa Franchisee who has not paid his, her or its share of the Settlement Payment within ten (10) days of execution of this Agreement shall agree to pay to the USS Parties their proportionate share of ONE HUNDRED NINETY-NINE THOUSAND NINE HUNDRED SIXTEEN DOLLARS AND SIXTY-SIX CENTS (\$199,916.66), the remaining amount of the Settlement Payment, (the "Debt"), as reflected on Exhibit F, by making monthly installment payments to the USS Parties, beginning on the fifteenth day of the first month following execution of this Agreement by the Parties. The full balance, together with all accrued interest and fees shall be paid within twenty-four (24) months of the Execution Date. Interest under Promissory Note #3 shall accrue at the rate of 10% per annum. Any payments under Promissory Note #3 shall be made in the form of a cashier's check made payable to "United Shipping Solutions, L.L.C." and delivered to the USS Parties at the address set forth in Paragraph 1 above.

5. Stipulation and Confession of Judgment. Contemporaneous with execution of this Agreement, each Mariposa Franchisee shall fully execute and deliver to the USS Parties, as security for his, her or its repayment of their respective obligations under this Agreement, Promissory Note #1, Promissory Note #2, and Promissory Note #3, a Verified Confession of Judgment and Stipulated Final Judgment (the "Judgment") in the form reflected in Exhibits G and H attached hereto (together the "Judgment Documents") in an amount equal to all unpaid amounts owing to USS for Freight Services identified by USS in the CAMS Data and the Debt (for franchisees who have executed Promissory Notes), plus interest accrued from the date of this Agreement. In the Judgment Documents, each Mariposa Franchisee shall confess to the entry of the Judgment against him, her or it and stipulates that, upon and after a Default, as provided for in Paragraph 6 below, of any of their respective payment or indemnity obligations under this Agreement, Promissory Note #1, Promissory Note #2 and Promissory Note #3, the USS Parties may commence an action against him, her or it in Third Judicial District of Utah (the "Court"), file the Verified Confession of Judgment, and recover for any amount still owing to the USS Parties under this Agreement, Promissory Note #1, Promissory Note #2 or Promissory Note #3,

together with interest and reasonable attorneys' fees and costs associated with the USS Parties' attempts to enforce its rights. As set forth in the Judgment Documents, in the event of Default, any amounts owing on Default shall be established by the filing of an affidavit by the USS Parties stating the total amount owed, including interest as provided in Promissory Note #1, Promissory Note # 2, or Promissory Note #3 from the date of this Agreement, and reasonable attorneys' fees and costs. The Parties agree that upon the uncured Default, the USS Parties can file, and the Court may enter, judgment as set forth in the Judgment Documents and the affidavit. The Mariposa Franchisees consent to jurisdiction in the Court. Each Mariposa Franchisee consents to service of process concerning the Judgment Documents by mail to his, her or its current mailing address. Each Mariposa Franchisee agrees that such service shall be sent to the mailing addresses set forth in Exhibit A with a copy of said notice to be sent to counsel for the Mariposa Franchisees. Each Mariposa Franchisee further agrees to provide written notice to the USS Parties of any change in mailing address within fourteen (14) business days of a change in such address.

6. Default. In the event that any Mariposa Franchisee fails to timely perform his, her or its obligations as set forth in this Agreement, Promissory Note #1, Promissory Note #2 or Promissory Note #3, and does not cure such failure within ten (10) business days of receiving a notice of said default and an opportunity to cure such default, such uncured failure shall constitute a "Default" under this Agreement, Promissory Note #1, Promissory Note #2, and Promissory Note #3. By way of example only, if a Mariposa Franchisee fails to make payments for Freight Services at the time, in the amount, and in the manner provided above and does not cure such failure within ten (10) business days of the aforesaid notice, such failure shall constitute a Default under this Agreement. The aforesaid notice of default shall be sent to the Mariposa Franchisee at the address indicated in Exhibit A by email or overnight mail with a copy via email or overnight mail to counsel for the Mariposa Franchisee.

Upon a Default, the USS Parties may file the Judgment Documents (relating to any Mariposa Franchisee that is in default) with the Court and pursue any and all legal action, as necessary, to enforce and execute upon any judgment entered by the Court. As set forth in the Judgment Documents, in the event of Default, any amounts owing on Default shall be established by the filing of an affidavit by the USS Parties stating the total amount owed, including interest as provided in Promissory Note #1, Promissory Note # 2, or Promissory Note #3 from the date of this Agreement, and reasonable attorneys' fees and costs. The Parties agree that upon the uncured Default, the USS Parties can file, and the Court may enter, judgment as set forth in the Judgment Documents and the affidavit. The Mariposa Franchisees agree that, upon Default, they shall have no further right to cure the Default after the expiration of the cure period and may only oppose the entry of judgment on the grounds that no Default occurred. All other defenses in equity or at law are waived by the Mariposa Franchisees.

7. Payment by Stefan Triandafilou. In addition to any payments set forth above, Stefan Triandafilou will pay to the USS Parties the sum of FIFTY-SEVEN THOUSAND TWO DOLLARS AND FIFTEEN CENTS (\$57,002.15) (which represents the amount reflected on the November 7, 2008 invoices from USS for shipping services provided to Mr. Triandafilou and/or his entities or customers), with one-half of this amount payable at the time of execution of this Agreement and the remaining one-half payable within thirty (30) days of the date of the execution of this Agreement. Both payments shall be made in the form of a cashier's check

made payable to "United Shipping Solutions, L.L.C." and delivered to the USS Parties at the address set forth in Section 1 above.

8. Dismissal of Claims. Within ten (10) days after execution of this Agreement and all related notes, confessions of judgment, and other ancillary documents by the Mariposa Franchisees the Parties shall cause their respective counsel to execute and file a Stipulation of Dismissal With Prejudice and an Order of Dismissal With Prejudice in the forms attached hereto as Exhibits I and J. The Parties shall cause their counsel to file the executed Stipulation of Dismissal With Prejudice and the Order of Dismissal With Prejudice of all of the claims against each other. Prior to filing the dismissal papers, the Parties agree that they shall jointly move and stipulate to vacate the court's contempt findings relative to the Motion for Order to Show Cause filed by USS and USSSL in the Lawsuit.

9. Return of Franchise Information and Materials. Within fifteen (15) days of execution of this Agreement, the Mariposa Franchisees shall return to USS any and all information and materials in their possession that they obtained from the USS Parties and relating to the USS franchise system or franchises within that system, including, but not limited to, manuals, marketing materials, reports, training materials, franchisee updates, or other documents concerning the USS franchise system or any of its current or former franchises. Pursuant to this provision, the Mariposa Franchisees are also obligated to return to the USS Parties all copies of any due diligence materials they may have received through any purchase negotiations with the USS Parties. The Mariposa Franchisees agree that they will not retain copies of the information or materials that are subject to this provision.

10. Confidentiality Obligation. The Mariposa Franchisees agree that they will not disclose or use any trade secret, confidential, or proprietary information obtained from the USS Parties for any purpose.

11. Termination of Franchise Obligations. With the exception of their confidentiality and trademark use obligations under the Franchise Documents, and concurrent with the execution of this Agreement, the Parties agree that the Mariposa Franchisees' obligations under the Franchise Documents are terminated. The Parties agree that nothing in this provision or this Agreement prohibits the Mariposa Franchisees from continuing to use the USS marks in connection with and to the extent necessary to prosecute the Franchisee Lawsuit. Further, this Termination shall not be effective as to Stefan Triandafilou or any entities associated with him until he has fulfilled his payment obligation set forth in Paragraph 7 above.

12. Attorneys' Fees and Costs. The Parties agree that, except as set forth in this Agreement, they shall bear their own costs and attorneys' fees incurred in connection with the Lawsuit.

13. Notice to the Mariposa Franchisees' Counsel. Notices to the Mariposa Franchisees' counsel pursuant to Paragraphs 1, 5 and 6 above shall be sent to the following:

Michael Einbinder
Einbinder & Dunn, LLP
104 West 40th Street

New York, New York 10018
me@cd-lawfirm.com

14. General Release by USS. Except as otherwise set forth in this Agreement, the USS Parties do hereby fully, finally, and forever generally **RELEASE, SURRENDER, REMISE, ACQUIT, AND FOREVER DISCHARGE** the Mariposa Franchisees and any parent, direct or indirect subsidiary, division, affiliate thereof, and any entity in which they are a shareholder, member or partner, and its and their respective officers, members, directors, agents, employees, representatives, successors or assigns from any and all claims, disputes, demands, actions, liabilities, damages, suits (whether at law or in equity), promises, accounts, costs, expenses, setoffs, contributions, attorneys' fees and/or causes of action of whatever kind or character, whether past, present, future, KNOWN OR UNKNOWN, liquidated or unliquidated, accrued or unaccrued, or which may hereinafter accrue as a result of the discovery of new and/or additional facts, which the USS Parties have, have had, may now have or might claim to have arising out of the Franchise Documents or the transactions contemplated thereby based upon the acts or omissions of Mariposa Franchisees prior to the date of this Agreement. This release does not extend to any other current or former franchisees of USS. The Parties agree that this Release shall not be effective as to Stefan Triandafilou or any entities associated with him until he has fulfilled his payment obligation set forth in Paragraph 7 above.

15. General Release by Mariposa Franchisees. Except as otherwise set forth in this Agreement, the Mariposa Franchisees do hereby fully, finally, and forever generally **RELEASE, SURRENDER, REMISE, ACQUIT, AND FOREVER DISCHARGE** the USS Parties and any parent, direct or indirect subsidiary, division, affiliate thereof, and any entity in which they are a shareholder, member or partner, and its and their respective officers, members, directors, agents, employees, representatives, successors or assigns, including but not limited to RJC Investments, LLC, Wasatch Billing, LLC, Ship Advisor, LLC, Charles K. Derr, Jesse J. Moore and Robert Ross, and all other persons, firms or corporations who have acted in agreement or in concert with any of them or with Mariposa Franchisees (collectively, the "USS Released Parties") from any and all claims, disputes, demands, actions, liabilities, damages, suits (whether at law or in equity), promises, accounts, costs, expenses, setoffs, contributions, attorneys' fees and/or causes of action of whatever kind or character, whether past, present, future, KNOWN OR UNKNOWN, liquidated or unliquidated, accrued or unaccrued, or which may hereinafter accrue as a result of the discovery of new and/or additional facts which the Mariposa Franchisees have, have had, may now have or might claim to have arising out of the Franchise Documents or the transactions contemplated thereby based upon the acts or omissions of the USS Released Parties prior to the date of this Agreement. The Mariposa Franchisees intend this Agreement to acquit and forever fully discharge the USS Released Parties.

16. Release of Unknown Claims. The Parties expressly waive any and all rights that any of them may have under any applicable statute, doctrine or principle of law restricting the right of any person to release claims arising under the Franchise Documents that such person does not know or suspect to exist at the time of executing a release, which claims, if known, may have materially affected such person's decision to give such release. In connection with such waiver and relinquishment, each of the parties acknowledges that he, she or it is aware that additional claims that are currently unknown or unsuspected may be discovered, or that additional or different facts from those that he, she or it now knows or believes to be true may be

revealed, with respect to the matters released herein. Nevertheless, it is the joint intention of the Parties that this Agreement shall settle each and every claim, dispute and controversy, known or unknown, fixed or contingent, that the Parties have or may have against each other or that the Mariposa Franchisees have or may have against the USS Released Parties with respect to the matters released herein, except as otherwise provided in this Agreement. In furtherance of such intention, the releases herein given by the Parties shall remain in effect as full and complete releases of the released matters, notwithstanding the discovery or existence of any such additional or different claims or facts relative thereto.

17. Scope of Releases. The Mariposa Franchisees and the USS Parties understand and expressly agree that, as described above, the releases set forth in this Agreement extend to all claims of every nature and kind, known or unknown, suspected or unsuspected, past, present, or future, whether known by any party or whether or not any party believes it may have any claims, and that any and all rights granted to the Mariposa Franchisees or USS, as applicable, under Section 1542 of the California Civil Code or any analogous state law or federal law or regulations, are hereby expressly WAIVED, to the extent such laws or regulations are applicable. Section 1542 of the California Civil Code reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

18. Exceptions to Releases. The execution of this Agreement is not intended to, and will not, release the Mariposa Franchisees from the obligations set forth in this Agreement or any associated agreement, including Promissory Note #1, Promissory Note #2, Promissory Note #3, the Security Agreement, or the Judgment Documents.

19. Authority to Release and Settle. Each party hereby expressly represents and warrants that: (i) it is duly authorized to execute and deliver this Agreement; (ii) this Agreement and the releases and other transactions contemplated hereby have been duly authorized by all necessary corporate, limited liability company or other applicable action of such party; (iii) it is the lawful owner of all claims, liabilities or obligations herein released; (iv) it has full power and express authority to terminate the Franchise Documents and to settle and release such claims, liabilities or obligations as set forth in this Agreement; (v) it has not made any assignment or transfer of such claims, liabilities or obligations, including but not limited to, assignment or transfer by subrogation or by operation of law; (vi) it knows of no person or entity that intends to assert such a claim, liability or obligation by, through, under, or on behalf of such party; (vii) it is not relying upon any statements, understandings, representations, expectations, promises, or agreements other than those expressly set forth in this Agreement; (viii) it is represented and has been advised by counsel in connection with this Agreement, which such party executes wholly voluntarily and of its own choice, volition, judgment, belief and knowledge, after consultation with such counsel and not under coercion or duress; and (ix) it has made its own investigation of the facts and is relying solely upon its own knowledge and the advice of its counsel. The parties agree and stipulate that each party is relying upon these representations and warranties, and solely upon these representations and warranties, in entering into this Agreement. These representations and warranties shall survive the execution of this Agreement.

20. Mariposa Franchisees' Representations and Warranties. The Parties expressly represent and warrant that (i) execution hereof is free and voluntary; (ii) no inducements, threats, representations or influences of any kind were made or exerted by or on behalf of any other party; (iii) prior to the execution hereof, the Parties were given the opportunity, if desired, to consult with counsel; and (iv) termination of the Franchise Documents was initiated by the Mariposa Franchisees.

21. Nondisparagement. The Mariposa Franchisees covenant and agree not to disparage, defame or slander the USS Parties.

22. Further Assurances. The Parties agree that they shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered to the other parties, releases, notes and other documents as each party shall reasonably request in order to further evidence the releases and obligations described in this Agreement. The Parties further agree that the releases contracted herein shall be broadly and comprehensively construed.

23. Entire Agreement Clause. This Agreement, together with the associated agreements, recitals, schedules and exhibits hereto and thereto, which are incorporated herein by reference, contain and constitute the entire agreement and understanding of the parties and supersede as of the execution date all prior negotiations, discussions, undertakings or agreements of any sort whatsoever, whether oral or written, with regard to the subject matter herein or therein.

24. Covenant Not to Assume Additional Claims. Each party agrees and covenants not to take assignment of or otherwise assume from a third party any right and/or interest in and to any claim or claims against any other party arising from any matter released hereby.

25. Successors. This Agreement inures to the benefit of and binds the Parties and their respective heirs, executors, administrators, officers, agents, directors, legal and personal representatives, successors and permitted assigns.

26. Interpretation. The Parties agree that this Agreement shall not be presumptively interpreted for or against any party by reason of that party having drafted or negotiated, or failed to draft or negotiate, all or any portion of any provision of this Agreement. The use of the term "including" or words of similar meaning in this Agreement will be deemed to include the phrase "without limitation" or similar words that show the intent of the parties to identify, by way of a non-exhaustive list, certain examples of the subject being addressed.

27. Severability. If any portion of this Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable, then that portion shall be deemed to have been severed out of this Agreement and the parties acknowledge that the balance of this Agreement shall be valid and enforceable.

28. Headings. The descriptive headings of the several sections of this are inserted for convenience of reference only and do not constitute a part of this Release Agreement.

29. Applicable Law. This Agreement shall be construed and interpreted according to the internal laws and decisions of the State of Utah, excluding any choice of law rules that may direct the application of the laws of another jurisdiction.

30. Amendments in Writing. This Agreement may only be amended or modified by a written instrument that has been executed by the parties and that unequivocally indicates the parties' intention to modify this Agreement. No waiver of any breach of this Agreement shall be construed as an implied amendment or agreement to amend or modify any provision of this Agreement.

31. Multiple Counterparts. This Agreement may be executed in multiple counterparts, any and all of which may contain the signatures of less than all the parties and all of which shall be construed together as a single document. Each counterpart shall be fully effective as an original when all of the parties have executed this Agreement. Such counterparts may also be executed by telefaxed signature.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first written above.

UNITED SHIPPING SOLUTIONS, LLC:

By: 

Its: 

USS LOGISTICS, LLC:

By: 

Its: 


ROBERT ROSS


CHARLES DERR


JESSE MOORE

GREG CHRISTENSEN

(Individually and re Cold Spring Investments, LLC;
Cold Spring Investments No. 1, Limited Partnership; and
Cold Spring Investments No. 2, Limited Partnership)

**UNITED SHIPPING SOLUTIONS OF NY,
INC.:**

By: _____
Its: _____

STEVE LOWY

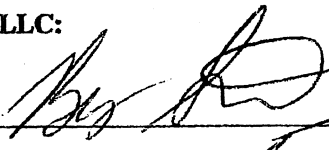
OUTFORCE, LLC:

By: _____
Its: _____

ERIC SWEENEY

JOHN TOLBERT

KBS LLC:

By: 
Its: _____

BRYAN SMETANKA

GREG CHRISTENSEN

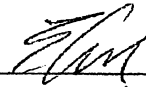
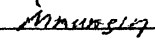
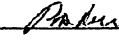
(Individually and re Cold Spring Investments, LLC;
Cold Spring Investments No. 1, Limited Partnership; and
Cold Spring Investments No. 2, Limited Partnership)

**UNITED SHIPPING SOLUTIONS OF NY,
INC.:**

By: _____
Its: _____

STEVE LOWY

OUTFORCE, LLC:

By:  _____
Its:   _____


ERIC SWEENEY


JOHN TOLBERT

KBS LLC:

By: _____
Its: _____

BRYAN SMETANKA

GREG CHRISTENSEN

(Individually and re Cold Spring Investments, LLC;
Cold Spring Investments No. 1, Limited Partnership; and
Cold Spring Investments No. 2, Limited Partnership)

**UNITED SHIPPING SOLUTIONS OF NY,
INC.:**

By: 

Its: President


STEVE LOWY

OUTFORCE, LLC:

By: _____

Its: _____

ERIC SWEENEY

JOHN TOLBERT

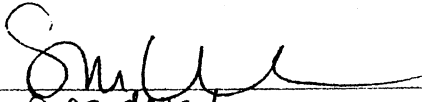
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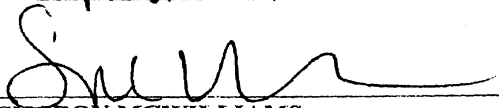
By: _____

Its: _____

BRYAN SMETANKA

MARIPOSA EXPRESS, INC.:

By: 
Its: President


SHARON MCWILLIAMS

COLD SPRING INVESTMENTS, LLC:

By: _____
Its: _____

**COLD SPRING INVESTMENTS NO. 1,
LIMITED PARTNERSHIP:**

By: _____
Its: _____

**COLD SPRING INVESTMENTS NO. 2,
LIMITED PARTNERSHIP:**

By: _____
Its: _____

NEWBURYPORT CAPITAL, LLC:

By: _____
Its: _____

STEFAN TRIANDAFILOU

MARIPOSA EXPRESS, INC.:

By: _____
Its: _____

SHARON MCWILLIAMS

COLD SPRING INVESTMENTS, LLC:

By: _____
Its: President

**COLD SPRING INVESTMENTS NO. 1,
LIMITED PARTNERSHIP:**

By: _____
Its: President

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LIMITED PARTNERSHIP:**

By: _____
Its: President

NEWBURYPORT CAPITAL, LLC:

By: _____
Its: President

STEFAN TRIANDAFILOU

BUCKEYE SHIPPING AND FREIGHT, INC.:

By: Jason O'Rourke
Its: President

Jason O'Rourke
JASON O'ROURKE

MICHAEL JONES, LLC:

By: _____
Its: _____

MIKE JONES

USS O'BRIEN, INC.:

By: _____
Its: _____

USS HIGHLAND PARK, INC.:

By: _____
Its: _____


JIM O'BRIEN

UNITED SHIPPING SOLUTIONS, INC.:

By: _____
Its: _____


JACOB GRUNFELD

USS HOLDINGS, LLC:

By:  _____
Its: _____

USS COLUMBIA, LLC:

By:  _____
Its: _____

 _____
WILLIAM DEMET

STIRLING LLC:

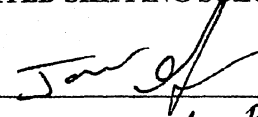
By: _____
Its: _____

MICHAELSON VENTURES INC.:

By: _____
Its: _____

TED MICHAELSON

UNITED SHIPPING SOLUTIONS, INC.:

By: 
Its: PRESIDENT


JACOB GRUNFELD

USS HOLDINGS, LLC:

By: _____
Its: _____

USS COLUMBIA, LLC:

By: _____
Its: _____

WILLIAM DEMET

STIRLING LLC:

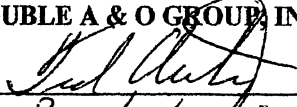
By: _____
Its: _____

MICHAELSON VENTURES INC.:

By: _____
Its: _____

TED MICHAELSON

THE DOUBLE A & O GROUP, INC.:

By: 
Its: President


DAWNI ARIAS


TED AUTRY

GLOBAL EXPRESS SHIPPING, INC.:

By: _____
Its: _____

CHRISTIAN NESER

GREGG SHANBERG

EXTREME GROUP, INC.:

By: _____
Its: _____

MARC L. CASACCIA

JEFFREY CORTE

THE DOUBLE A & O GROUP, INC.:

By: _____
Its: _____

DAWNI ARIAS

TED AUTRY

GLOBAL EXPRESS SHIPPING, INC.:

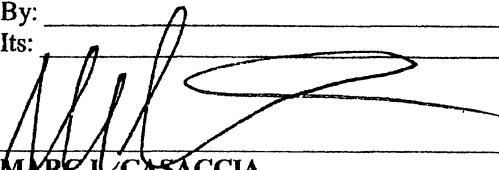
By: _____
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CHRISTIAN NESER

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Its: _____

CHRISTIAN NESER

GREGG SHANBERG

EXTREME GROUP, INC.:

By: *Jeffrey Corte*
Its: CEO

MARC L. CASACCIA

Jeffrey Corte
JEFFREY CORTE

BUCKEYE SHIPPING AND FREIGHT, INC.:

By: _____
Its: _____

JASON O'ROURKE

MICHAEL JONES, LLC:

By: Michael W. Jones
Its: President

Michael W. Jones
MIKE JONES

USS O'BRIEN, INC.:

By: _____
Its: _____

USS HIGHLAND PARK, INC.:

By: _____
Its: _____

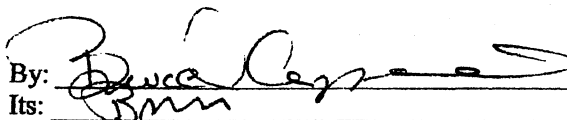

JIM O'BRIEN

UNITED SHIPPING SOLUTIONS, LLC:

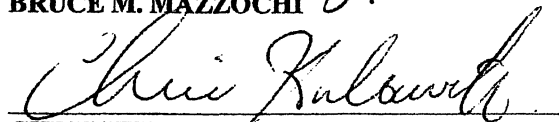
By: _____
Its: _____

ROBERT PLATSCHEK

M.K. LOGISTICS MANAGEMENT LLC:

By: 
Its: 


BRUCE M. MAZZOCHI


CHRIS KULAWIK

HANNAH ENTERPRISES, INC.:

By: _____
Its: _____

GEORGE AMMIRATO

METRO MAR VENTURES LLC:

By: _____
Its: _____

ROBERT HARRIS

Greg Christensen

GREG CHRISTENSEN

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ROBERT PLATSCHEK

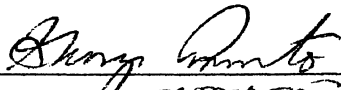
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CHRIS KULAWIK

HANNAH ENTERPRISES, INC.:

By: 
Its: PRESIDENT


GEORGE AMMIRATO

METRO MAR VENTURES LLC:

By: _____
Its: _____

ROBERT HARRIS

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Its: _____

MIKE JONES

USS O'BRIEN, INC.:

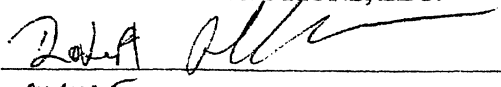
By: _____
Its: _____

USS HIGHLAND PARK, INC.:

By: _____
Its: _____

JIM O'BRIEN

UNITED SHIPPING SOLUTIONS, LLC:

By: 
Its: owner


ROBERT PLATSCHEK

M.K. LOGISTICS MANAGEMENT LLC:

By: _____
Its: _____

BRUCE M. MAZZOCHI

CHRIS KULAWIK

HANNAH ENTERPRISES, INC.:

By: _____
Its: _____

GEORGE AMMIRATO

METRO MAR VENTURES LLC:

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Its: _____

ROBERT HARRIS

THE DOUBLE A & O GROUP, INC.:

By: _____
Its: _____

DAWNI ARIAS

TED AUTRY

GLOBAL EXPRESS SHIPPING, INC.:

By: _____
Its: _____
CEO

CHRISTIAN NESER

GREGG SHANBERG

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By: _____
Its: _____

GEORGE AMMIRATO

METRO MAR VENTURES LLC:

By: Robert Harris
Its: President


ROBERT HARRIS

UNITED SHIPPING SOLUTIONS, INC.:

By: _____
Its: _____

JACOB GRUNFELD

USS HOLDINGS, LLC:

By: _____
Its: _____

USS COLUMBIA, LLC:

By: _____
Its: _____

WILLIAM DEMET

STIRLING LLC:

By: Ted Michaelson
Its: owner/member

MICHAELSON VENTURES INC.:

By: Ted Michaelson
Its: President

Ted Michaelson
TED MICHAELSON