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12 **UNITED STATES BANKRUPTCY COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**  
14 **SAN FRANCISCO DIVISION**

15 In re:

16 INTERNATIONAL LONGSHORE  
17 AND WAREHOUSE UNION,

18 Debtor.

19 Case No. 23-30662 (HLB)

20 Chapter 11

21 **MOTION FOR THE ENTRY OF AN**  
22 **ORDER AUTHORIZING AND**  
23 **APPROVING THE SETTLEMENT**  
24 **AGREEMENT PURSUANT TO RULE**  
25 **9019 OF THE FEDERAL RULES OF**  
26 **BANKRUPTCY PROCEDURE**

27 Hearing Date:

28 Date: February 22, 2024  
Time: 10:00 a.m. (Pacific Time)  
Place: Zoom / Telephonic  
Judge: Hon. Hannah L. Blumenstiel

29 The International Longshore and Warehouse Union (“ILWU” or the “Debtor”), the debtor  
30 and debtor in possession in the above-captioned case (the “Chapter 11 Case”), files this motion (the  
31 “Motion”) for the entry of an order pursuant to Rule 9019 of the Federal Rules of Bankruptcy Rules  
32 (the “Bankruptcy Rules”) approving the settlement and compromise reached between the Debtor,  
33 ILWU Coast Longshore Division (“CLD”), and Pacific Longshoremen’s Memorial Association, Inc.  
34 (“PLMA” and together with ILWU and CLD, the “Non-Profit Entities”), on the one hand, and ICTSI  
35 Oregon, Inc. (“ICTSI”), on the other hand, to resolve all disputes related to, or which could be

1 asserted in, this Chapter 11 Case, the ICTSI Litigation,<sup>1</sup> the facts asserted in the ICTSI Litigation,  
2 and the ICTSI Proof of Claim. The terms of the settlement are set forth more fully in the *Settlement*  
3 *Agreement* attached hereto as Exhibit A (the “Settlement Agreement”).<sup>2</sup>

4 This Motion is based on the following memorandum of points and authorities, the declaration  
5 of William E. Adams (the “Adams Declaration”) filed concurrently herewith, and any other evidence  
6 properly before the Court.<sup>3</sup>

7 **WHEREFORE**, the Debtor respectfully requests that the Court enter an order, substantially  
8 in the form attached hereto as Exhibit B, (a) approving the Settlement Agreement; (b) finding that  
9 the Settlement Agreement is fair and equitable and entered into in good faith; and (c) granting such  
10 other and further relief as is just and proper under the circumstances.

## 11 **MEMORANDUM OF POINTS AND AUTHORITIES**

### 12 **I. INTRODUCTION**

13 The Settlement Agreement documents the resolution of all disputes between the Non-Profit  
14 Entities, on the one hand, and ICTSI, on the other hand, related to, or which could be asserted in, the  
15 Chapter 11 Case, the ICTSI Litigation, the facts asserted in the ICTSI Litigation, and the ICTSI  
16 Proof of Claim. Notably, the Settlement Agreement resolves a decade-long dispute between the  
17 Debtor and ICTSI and will allow all Parties to close this tumultuous chapter. The Settlement  
18 Agreement requires the Parties to dismiss the litigation stayed in the Oregon Court, obviates the need  
19 for further discovery, and avoids a potentially protracted and costly contested confirmation hearing.  
20 The Settlement Agreement also contemplates the contemporaneous dismissal of this Chapter 11  
21 Case in order to conserve resources and fund the Settlement Payment.<sup>4</sup> As described below, the  
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23 <sup>1</sup> The district court proceeding pending in the United States District Court for the District of Oregon (the “Oregon  
24 Court”) under the caption *ICTSI Oregon, Inc. v. International Longshore and Warehouse Union*, Case No. 3:12-cv-  
1058-SI (the “ICTSI Litigation”).

25 <sup>2</sup> ILWU, CLD, PLMA, and ICTSI are referred to collectively as the “Parties” and each individually as a “Party” to the  
Settlement Agreement.

26 <sup>3</sup> ILWU understands that ICTSI supports approval of the Motion, but disagrees with several of the facts, statements,  
27 and conclusions contained herein and in the Adams Declaration. Rather than describing those disagreements, the  
parties agree that, if the Settlement Agreement is not approved and the parties must return to litigation, nothing  
28 stated by the Debtor in this Motion shall prejudice ICTSI in any way.

<sup>4</sup> The Debtor is filing a motion to dismiss contemporaneously herewith.

1 Settlement Agreement is reasonable, in the best interests of the estate, and the Court should approve  
2 it.

## 3 II. STATEMENT OF FACTS

### 4 A. The Non-Profit Entities

5 The Non-Profit Entities are related but separate legal entities. The Debtor was formed in  
6 1937 and is organized under the laws of the State of California as a labor organization within the  
7 meaning of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. § 152(5) (the  
8 "LMRA").<sup>5</sup> The primary function of the Debtor is to organize and represent workers. It does so by  
9 facilitating the organization of local unions and affiliates and assists them with the negotiation and  
10 administration of collective bargaining agreements. The Debtor's members are employed in a variety  
11 of industries, including longshore, warehousing and distribution, maritime, agriculture, tourism,  
12 retail, and various service industries. The local and affiliate unions are separate legal autonomous  
13 entities and are not debtors (or otherwise involved) in this Chapter 11 Case.

14 In the 1950s, CLD formed as a separate legal entity to represent the interests of longshore  
15 workers. Like the Debtor, CLD is a labor organization within the meaning of the LMRA. However,  
16 its sole focus is advancing the interests of longshore workers at west coast ports. In this regard, CLD  
17 maintains its own contractual relationship with certain ILWU local unions.

18 The PLMA is a non-profit corporation organized in 1957 to hold title to real estate for the  
19 benefit of the ILWU members. PLMA owns and operates property at 1188 Franklin Street, San  
20 Francisco. The Debtor, CLD, and PLMA are headquartered at the 1188 Franklin Street building,  
21 along with other various tenants.

### 22 B. ICTSI Oregon, Inc.

23 ICTSI is a former container terminal operator at the Port of Portland and a subsidiary of  
24 International Container Terminal Services, Inc. ICTSI is the largest creditor in this Chapter 11 Case.  
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<sup>5</sup> The Debtor is exempt from federal income tax under section 501(c)(5) of the Internal Revenue Code.

1 **C. The ICTSI Litigation**

2 The ICTSI Litigation commenced in June 2012 when the ILWU and Pacific Maritime  
3 Association filed a complaint against ICTSI alleging that ICTSI was not in compliance with the  
4 collective bargaining agreement covering ILWU longshore workers on the west coast. ICTSI  
5 thereafter asserted counterclaims against ILWU and International Longshore and Warehouse Union  
6 Local 8 (Portland, Oregon) (“Local 8”) seeking damages for alleged unlawful labor practices. In  
7 November 2019, a jury trial verdict was reached against the Debtor and Local 8, finding the Debtor  
8 and Local 8 had caused damages to ICTSI of approximately \$94 million.

9 On March 5, 2020, the Oregon Court found the maximum damages supported by the weight  
10 of the evidence admitted by the Oregon Court during the two-week trial was \$19,061,248, and  
11 ordered ICTSI to decide by March 19, 2020, whether it would accept that reduced amount of  
12 damages, or retry the amount of damages. After ICTSI rejected the reduced damages amount, a new  
13 trial on damages was scheduled to begin late February 2024, but has since been stayed by the  
14 commencement of the chapter 11 cases of the Debtor and Local 8 (pending in Oregon). ICTSI’s  
15 asserted damages in the new trial are the basis for the ICTSI Proof of Claim.

16 **D. The Chapter 11 Case**

17 On September 30, 2023 (the “Petition Date”), the Debtor filed a voluntary petition for relief  
18 under subchapter V of chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in  
19 the United States Bankruptcy Court Northern District of California (the “Bankruptcy Court”) to  
20 immediately address the ICTSI Litigation and emerge as a stronger labor organization. Since the  
21 Petition Date, the Debtor has remained in possession of its property and has continued to operate and  
22 manage itself as debtor in possession pursuant to section 1184 of the Bankruptcy Code.

23 Three days after filing the Chapter 11 Case, the Debtor filed its *Schedules of Assets and*  
24 *Liabilities* [Docket No. 32] and *Statements of Financial Affairs* [Docket No. 34] (collectively, the  
25 “Schedules”).<sup>6</sup> The Schedules disclose that as of the Petition Date, the Debtor had approximately  
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<sup>6</sup> The Debtor filed *Amended Schedules A/B* [Docket No. 82] on November 9, 2023.

1 \$9.5 million of cash-on-hand—the Debtor’s only material asset, generated by monthly *per capita*  
2 payments by local unions.

3 On November 2, 2023, the Debtor filed its first amended *Plan of Reorganization for Small*  
4 *Business Under Chapter 11* [Docket No. 60] (the “Plan”). Under the proposed Plan, all creditors  
5 with allowed administrative and priority claims against the Debtor will be paid on the effective date  
6 of the Plan or otherwise in the ordinary course of business. Creditors with general unsecured claims  
7 are divided into two classes. Holders of Class 3A Claims (ICTSI Litigation) will receive the GUC  
8 Fund (approximately \$6.1 million) on the effective date of the Plan in full and final satisfaction of  
9 such claims. Holders of Class 3B Claims (Non-ICTSI Litigation General Unsecured Claims) will  
10 have their claims reinstated on the effective date of the Plan and will be paid in full in the ordinary  
11 course of business from the Debtor’s working capital reserve (approximately \$1.28 million). Class  
12 3B Claims are not subject to the discharge. Subject to the Court’s calendar and availability, a hearing  
13 to consider confirmation of the Plan is scheduled for the week of March 25, 2024.

14 On December 8, 2023, ICTSI filed Proof of Claim No. 6 on the Claims Register asserting a  
15 general unsecured claim against the Debtor in the amount of \$209,172,004 based on its asserted  
16 unliquidated damages and pre-judgment interest related to the claims asserted in the ICTSI  
17 Litigation.

18 **E. ICTSI’s Anticipated Opposition and Discovery**

19 Shortly after the Petition Date, ICTSI filed its *Response and Reservation of Rights re*  
20 *Debtor’s First Day Motions* [Docket No. 28], which previewed the potential issues ICTSI intended  
21 to litigate, including (i) whether the Chapter 11 Case was commenced in bad faith, (ii) whether the  
22 debtor is eligible for relief under subchapter V of chapter 11 of the Bankruptcy Code, and (iii)  
23 whether claims against third parties exist. As a result of ICTSI’s anticipated opposition to the Plan,  
24 the Debtor and ICTSI negotiated the form of *Order Setting Schedule in Connection With Plan*  
25 *Confirmation Process and Related Deadlines* (the “Confirmation Scheduling Order”), which was  
26 entered by the Court at Docket No. 59. Pursuant to the Confirmation Scheduling Order (and  
27 subsequent orders providing extensions), the Parties have engaged in extensive discovery over the  
28 past three months. ICTSI served four sets of discovery requests on the Debtor; served notices of

1 deposition on three of the Debtor's titled officers and the Debtor's accounting manager; and served a  
2 notice of 30(b)(6) deposition on the Debtor. ICTSI also issued 30(b)(6) deposition subpoenas and  
3 document subpoenas on (1) the PLMA, (2) the CLD, (3) Haile Girma, Inc. (the Debtor's auditor),<sup>7</sup>  
4 (4) ILWU Local 13, and (5) ILWU Local 142. The Debtor served one set of requests for production  
5 of documents, and a notice of 30(b)(6) deposition on ICTSI. Additionally, the Parties scheduled  
6 eight depositions<sup>8</sup> for late January and early February, which have been postponed pending approval  
7 of the Settlement Agreement. The deadline for ICTSI to file an objection to the Plan is February 20,  
8 2024, and the Debtor anticipates that if the Settlement Agreement is not approved, confirmation of  
9 the Plan will be protracted and expensive.

10 **F. The Settlement Agreement**<sup>9</sup>

11 On January 5, 8, and 12, 2024, the Parties participated in mediation settlement conferences  
12 with the Honorable Neil W. Bason acting as the mediator (the "Mediator") and on January 16  
13 reached an agreement in principle to resolve all disputes related to, or which could be asserted in, the  
14 Chapter 11 Case, the ICTSI Litigation, the facts asserted in the ICTSI Litigation, and the ICTSI  
15 Proof of Claim. Following mediation, the Parties reached agreement on the terms of the settlement.

16 The discussion below is meant only as a summary of some of the key points of the  
17 Settlement Agreement. A copy of the complete Settlement Agreement is attached to this Motion.  
18 The Settlement Agreement was negotiated at length by and among the Parties and their counsel over  
19 a period of time. To the extent the summary in this Motion is inconsistent with the Settlement  
20 Agreement, the Settlement Agreement controls.

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25 <sup>7</sup> The Debtor understands that ICTSI only issued a 30(b)(6) deposition subpoena on Haile Girma, Inc.

26 <sup>8</sup> The eight depositions are of: William Adams (President of the Debtor), Rebecca Contreras (Debtor's accounting  
27 manager), 30(b)(6) deposition of the Debtor, Robert Olvera, Jr. (Vice President, Mainland of the Debtor), Edwin  
28 Ferris (Secretary-Treasurer of the Debtor), 30(b)(6) deposition of PLMA, 30(b)(6) deposition of CLD, and 30(b)(6)  
deposition of ICTSI.

<sup>9</sup> A capitalized term used but not defined in this section shall have the meaning ascribed to it in the Settlement  
Agreement.





1 In reviewing proposed settlements, the standard that courts applied under the former Bankruptcy Act  
2 also applies under the Bankruptcy Code. *See In re Carla Leather, Inc.*, 44 B.R. 457, 466 (Bankr.  
3 S.D.N.Y. 1984), *aff'd*, 50 B.R. 764 (S.D.N.Y. 1985). As stated by the U.S. Supreme Court in  
4 *Protective Committee of Indep. Stockholders of TMT Trailer Ferry v. Anderson*, 390 U.S. 414, 422  
5 (1968), to approve a proposed settlement, a court must have found that the settlement was “fair and  
6 equitable” based on an “educated estimate of the complexity, expense, and likely duration of . . .  
7 litigation, the possible difficulties of collecting on any judgment which might be obtained and all  
8 other factors relevant to a full and fair assessment of the wisdom of the proposed compromise.” *See*  
9 *also In re Carla Leather*, 44 B.R. at 466.

10 The Ninth Circuit has established the following factors to be considered in determining  
11 whether to approve a settlement:

- 12 (a) The probability of success in the litigation; (b) the difficulties, if  
13 any, to be encountered in the matter of collection; (c) the complexity  
14 of the litigation involved, and the expense, inconvenience and delay  
15 necessarily attending it; (d) the paramount interest of the creditors and  
16 a proper deference to their reasonable views in the premises.

17 *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988) (quoting *In re A & C Properties*, 784 F.2d 1377,  
18 1381 (9th Cir. 1986), *cert. denied sub nom*).

19 In deciding whether to approve a settlement a court should not substitute its own judgment  
20 for the judgment of a trustee or a debtor. *See Matter of Carla Leather, Inc.*, 44 B.R. 457, 465 (Bankr.  
21 S.D.N.Y. 1984). In approving a settlement, the Court need not conduct an exhaustive investigation  
22 of the claims sought to be compromised. *See e.g., In re Walsh Constr., Inc.*, 669 F.2d 1325, 1328  
23 (9th Cir. 1982). Rather, it is sufficient that the Court find that the settlement was negotiated in good  
24 faith and is reasonable, fair, and equitable. *See e.g., A & C Properties*, 784 F.2d at 1381; *In re*  
25 *Churchfield*, 277 B.R. 769, 774 (Bankr. E.D. Cal. 2002). Accordingly, a settlement need only “be in  
26 the best interests of the estate and ‘reasonable, given the particular circumstances of the case.’”  
27 *Goodwin v. Mickey Thompson Entm’t Group, Inc. (In re Mickey Thompson Entm’t Group, Inc.)*, 292  
28 B.R. 415, 420 (B.A.P. 9th Cir. 2003) (citations omitted). As a result, the Court is not required to  
decide the numerous questions of law and facts raised by the litigation. A “mini-trial” on the merits  
of the underlying cause of action is not required. *See In re Blair*, 538 F.2d 849, 851-52 (9th Cir.



1 1976); *In re Walsh Construction, Inc.*, 669 F.2d at 1328 (9th Cir. 1982); *Burton v. Ulrich (In re*  
2 *Schmitt)*, 215 B.R. 417, 423 (B.A.P. 9th Cir. 1997). Instead, the Court's responsibility is only to  
3 “canvass the issues to see whether the settlement ‘falls below the lower point in the range of  
4 reasonableness.’” *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983).

5 **B. The A & C Properties Factors Weigh in Favor of Approving the Settlement**

6 The four factors identified in *A & C Properties* support approval of the Settlement. The  
7 Settlement—which has been negotiated in good faith at arm’s length among the Parties—is  
8 reasonable, fair, equitable, and in the best interest of the estate.

9 1. The Probability of Success

10 This factor weighs in favor of the Settlement. Because the Settlement addresses several  
11 disputes, many of which are interrelated, the analysis of this factor with respect to any one of these  
12 disputes by itself should not be determinative. Rather, the analysis of this factor should be  
13 undertaken with respect to all the disputes resolved under the Settlement as a whole. Undertaken as  
14 such, the analysis of this factor leads to the conclusion that the Settlement is in the best interest of  
15 the Debtor, its estate, and its creditors.

16 At this juncture, ICTSI has an unliquidated claim in what would otherwise be a heavily  
17 contested confirmation hearing. ICTSI has previewed the potential issues it intends to litigate  
18 including but not limited to whether the estate has claims against third parties under theories of  
19 substantive consolidation, alter ego, indemnification, and contribution. While the Debtor believes it  
20 would ultimately succeed in confirming the Plan without material modification, there is uncertainty  
21 in any litigation and the potential for long and costly appeals.<sup>10</sup>

22 Each of the above legal theories are fact intensive and some may require the court to decide  
23 novel questions of law. For example, the Ninth Circuit has authorized the substantive consolidation  
24 of non-debtor *for profit* entities in truly exceptional cases, *In re Bonham*, 229 F.3d 750, 763-65 (9th  
25 Cir. 2000), but it has never ruled on the question of whether a bankruptcy court can substantively  
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28 <sup>10</sup> ILWU understands that ICTSI is similarly confident that it would prevail on its claims if they were ultimately litigated on the merits, though ICTSI also acknowledges the uncertainty and costs that would accompany such litigation.

1 consolidate a non-debtor *non-profit* third party with a debtor—which the Eighth Circuit in a well-  
2 reasoned case has held is prohibited. *See In re Archdiocese of Saint Paul and Minneapolis*, 888 F.3d  
3 944 (8th Cir. 2018). Additionally, should this Bankruptcy Court conclude that ICTSI’s claim needs  
4 to be liquidated in the ICTSI Litigation, there is a possibility that the damages award exceeds what  
5 the Debtor would be able to pay—especially after it expends its limited resources litigating before  
6 the Oregon Court. By contrast, the Settlement Agreement provides an expedient, final resolution to  
7 not only the issues in this Chapter 11 Case but also the ICTSI Litigation which has been pending  
8 before the Oregon Court for the past decade.

9           2.       The Difficulties of Collection

10           The second element of the test under *A & C Properties* also supports approval of the  
11 Settlement. Under the Plan, ICTSI is receiving all of the Debtor’s available cash. If the Parties were  
12 to proceed with a contested confirmation hearing, the funds available for the Class 3A Claims  
13 (ICTSI Litigation) would be substantially reduced due to professional fees.

14           3.       The Complexity, Expense, Inconvenience, and Delay of Further Litigation

15           The third prong of the test under *A & C Properties*—the complexity of litigation involved,  
16 and the expense, inconvenience, and delay in attending to it—supports approval of the Settlement  
17 Agreement as well. As discussed above regarding the probability of success, the consummation of  
18 the Settlement Agreement will avoid complex issues of fact and law. In addition, the Settlement  
19 Agreement avoids protracted and expensive litigation. Significant time, effort, and resources would  
20 be required to prepare witnesses for their depositions and a confirmation hearing, trial motions and  
21 confirmation briefing, and for a contested confirmation hearing. In addition, regardless of the  
22 outcome of the confirmation hearing, it is reasonable to expect that the party that suffers an adverse  
23 judgment would appeal any such judgment. As such, this facts weighs strongly in favor of approving  
24 the Settlement Agreement.

25           4.       The Settlement Agreement Serves the Interests of Creditors

26           Finally, as outlined in the Adams Declaration and explained above, the Debtor believes that  
27 the deal embodied in the Settlement Agreement serves the interests of creditors. ICTSI is receiving  
28 more than it would have received under treatment of the Plan. With the dismissal contemplated in

1 the Settlement Agreement, Holders of Class 3B Claims (Non-ICTSI Litigation General Unsecured  
2 Claims) will have their claims reinstated more quickly than if they had to wait for confirmation of a  
3 Plan. Accordingly, the Settlement Agreement serves the interests of creditors.

4 **IV. CONCLUSION**

5 For all of the foregoing reasons, the Debtor requests that the Bankruptcy Court approve the  
6 Settlement Agreement.

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8 Dated: February 1, 2024

PACHULSKI STANG ZIEHL & JONES LLP

9  
10 */s/ Jason H. Rosell*

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Debra I. Grassgreen

12 Jason H. Rosell

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*Counsel to the Debtor*

# **EXHIBIT A**

## **Settlement Agreement**

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Settlement Agreement”) is entered into as of January 31, 2024, by and among International Longshore and Warehouse Union (“ILWU”), ILWU Coast Longshore Division (“CLD”), and Pacific Longshoremen’s Memorial Association, Inc. (“PLMA”), on the one hand, and ICTSI Oregon, Inc. (“ICTSI”), on the other hand. ILWU, CLD, PLMA, and ICTSI are referred to in this Settlement Agreement collectively as the “Parties” and each is a “Party” to this Settlement Agreement.

**RECITALS**

A. On June 13, 2012, ILWU and Pacific Maritime Association filed a complaint against ICTSI, alleging that ICTSI was not in compliance with the Pacific Coast Longshore and Clerks’ Agreement, and ICTSI thereafter asserted counterclaims against ILWU and International Longshore and Warehouse Union Local 8 (Portland, Oregon) (“Local 8”) alleging violations of Section 303 of the Labor-Management Relations Act, in an action pending in the United States District Court for the District of Oregon (the “Oregon Court”) under the caption *ICTSI Oregon, Inc. v. International Longshore and Warehouse Union*, Case No. 3:12-cv-1058-SI (the “ICTSI Litigation”).

B. In the ICTSI Litigation, ICTSI asserted a counterclaim against ILWU and Local 8 seeking damages for alleged unfair labor practices, including work stoppages and slowdowns at the Port of Portland terminal.

C. On June 20, 2018, the Oregon Court approved the dismissal of ILWU and Pacific Maritime Association’s claims against ICTSI with prejudice.

D. In November 2019, a jury trial verdict was reached against ILWU and Local 8, finding that ILWU and Local 8 caused damages to ICTSI of \$93,635,000.

E. On March 5, 2020, the Oregon Court issued an *Opinion and Order*, finding that the maximum damages supported by the weight of the evidence admitted by the Oregon Court during the two-week trial was \$19,061,248 and ordering that ICTSI decide by March 19, 2020, whether it would accept the reduced amount of damages, or retry the amount of damages.

F. ICTSI rejected the Oregon Court’s reduced damages amount and a new trial on damages was scheduled to begin in February 2024.

G. On September 30, 2023, ILWU filed a voluntary petition under subchapter V of chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the Northern District of California (the “Bankruptcy Court”) docketed as *In re International Longshore and Warehouse Union*, Case No. 23-30662 (HLB) (the “ILWU Bankruptcy Case”).

H. On October 18, 2023, Local 8 filed a voluntary petition under subchapter V of chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Oregon docketed as *In re Local 8, International Longshoremen’s and Warehousemen’s Union*, Case No. 23-32366-pcm11 (the “Local 8 Bankruptcy Case”).

I. The ICTSI Litigation was stayed as a result of the filing of the ILWU and Local 8 Bankruptcy Cases.

J. On November 2, 2023, the ILWU filed an amended *Plan of Reorganization for Small Business under Chapter 11* [Docket No. 60] (the “ILWU Plan”).

K. On December 8, 2023, ICTSI filed a proof of claim in the ILWU Bankruptcy Case, asserting a claim for damages and pre-judgment interest related to the claims asserted in the ICTSI Litigation, docketed in the ILWU Bankruptcy Case as Claim No. 6-1 (the “ICTSI Proof of Claim”).

L. Absent the settlement set forth herein, ICTSI intends to oppose the ILWU Plan.

M. ICTSI asserts *inter alia* that the ILWU Plan should not be confirmed because ICTSI alleges that ILWU has claims and/or various theories of liability against CLD and PLMA, and ILWU has not assigned value for such claims or liability under the Plan. ICTSI also asserts that it has direct and timely claims against CLD in connection with the ICTSI Litigation.

N. ILWU, CLD, and PLMA dispute ICTSI’s arguments against confirmation of the ILWU Plan, or that ICTSI has any direct timely claims against CLD.

O. ICTSI, ILWU, CLD, and PLMA participated in mediation settlement conferences on January 5, 8, and 12, 2024, with the Honorable Neil W. Bason acting as a mediator and reached an agreement in principle to resolve all disputes related to, or which could be asserted in, the Bankruptcy Cases, the ICTSI Litigation, the facts asserted in the ICTSI Litigation, and the ICTSI Proof of Claim.

P. Without admitting the validity of the other Party’s position or any liability of the Non-Profit Entities (as defined below), which liability the Non-Profit Entities expressly deny, the Parties desire to resolve all disputes between them without further expense and litigation in accordance with the terms and conditions set forth in this Settlement Agreement (the “Settlement”).

## AGREEMENT

**NOW, THEREFORE**, in consideration of the mutual covenants of the Parties to be faithfully performed, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the Parties, intending to be legally bound, agrees as follows:

### 1. DEFINITIONS

In addition to the terms defined above and elsewhere in this Settlement Agreement, as used in this Settlement Agreement:

**1.1** “Approval Order” means an order, substantially in the form of Exhibit 1 to this Settlement Agreement, to be entered by the Bankruptcy Court in the ILWU Bankruptcy Case approving the Settlement.

- 1.2 “Dismissal Order” means an order, substantially in the form of Exhibit 2 to this Settlement Agreement, to be entered by the Bankruptcy Court dismissing the ILWU Bankruptcy Case.
- 1.3 “Effective Date” means the date on which ICTSI receives the Settlement Payment.
- 1.4 “Final Order” means an order of the Bankruptcy Court, the Oregon Court, or any other court having jurisdiction that remains in effect and has not been reversed, withdrawn, vacated, or stayed and as to which the time to appeal or seek review, rehearing, or writ of certiorari has expired or, if such appeal or review has been taken, it has been resolved and no longer remains pending.
- 1.5 “Non-Profit Entities” means the ILWU, CLD, and PLMA.
- 1.6 “Settlement Payment” means Twenty Million Five Hundred Thousand Dollars and No Cents (\$20,500,000.00).

## 2. PAYMENT AND OTHER TERMS.

- 2.1 **Settlement Payment.** Within seven (7) calendar days following the later of (i) the Approval Order becoming a Final Order and (ii) the Dismissal Order becoming a Final Order, the Non-Profit Entities shall collectively pay the Settlement Payment to ICTSI pursuant to wire transfer instructions to be provided by ICTSI.
- 2.2 **Dismissal with Prejudice of ICTSI Litigation.** On the Effective Date, ICTSI shall provide ILWU with an executed Request for Dismissal in the form of Exhibit 3 to this Settlement Agreement dismissing the ICTSI Litigation with prejudice with respect to ILWU, each Party to bear its own costs and fees.
- 2.3 **Covenant Not to Use Discovery Materials.** Each Party covenants not to use or disclose to any other person or entity for any purpose, and to cause its employees, attorneys, and anyone else to whom such Party has granted access to Discovery Material (as defined herein), not to use or disclose to any other person or entity for any purpose, any non-publicly available discovery produced or otherwise generated in connection with the ICTSI Litigation or the Bankruptcy Case, including, but not limited to, deposition transcripts, documents, and expert reports (the “Discovery Material”), including, but not limited to, any copies, abstracts, compilations, summaries, or any other format reproducing or capturing any of the Discovery Material, without the prior written consent of the other Parties. For the avoidance of doubt, nothing in this Section 2.3 shall limit, abridge, or waive the rights and obligations of any Party, or the protections with respect to any Discovery Material, granted or imposed pursuant to any protective order entered in the ICTSI Litigation or the Bankruptcy Cases. Notwithstanding the foregoing, nothing in this Section 2.3 shall restrict any Party from using or disclosing Discovery Material that such Party produced (*e.g.*, such Party’s audited financial statements).



### 3. RELEASES

**3.1 Non-Profit Entity Releasors' General Release.** Effective as of the Effective Date, each of ILWU, CLD, and PLMA on behalf of themselves, and each of their respective past, present, and future representatives, employees, officers, committees, directors, attorneys, insurers, agents, partners, heirs, legatees, executors, administrators, successors-in-interest, and assignees, as well as the predecessors and successors to each of the foregoing, both individually and collectively (the "Non-Profit Entity Releasors"), hereby fully and forever RELEASE, ACQUIT, and DISCHARGE ICTSI and its past, present, and future representatives, employees, shareholders, officers, directors, subsidiaries, affiliates, divisions, parent companies, attorneys, insurers, agents, partners, heirs, legatees, executors, administrators, successors-in-interest, indemnitees, joint tortfeasors, and assignees, as well as the predecessors and successors to each of the foregoing, both individually and collectively (the "ICTSI Releasees"), from and for any and all rights, claims, controversies, damages, expenses, costs, obligations, causes of action, counterclaims, cross-claims, rights of set-off and recoupment, suits, debts, sums of money, accounts, torts, breaches of duty, covenants, contracts, agreements, promises, judgments, executions, demands and liabilities of any nature whatsoever, in law or otherwise, whether known or unknown, that have ever existed, that now exist, or that may exist in the future, from the beginning of the world until the end of time that are based upon, related to, arising out of, or in any way connected to the Bankruptcy Cases, the ICTSI Litigation, the facts asserted or alleged or that could have been asserted or alleged in the ICTSI Litigation, or the ICTSI Proof of Claim.

**3.2 ICTSI Releasors' General Release.** Effective as of the Effective Date, ICTSI, on behalf of itself, and each of its past, present, and future representatives, employees, shareholders, officers, directors, subsidiaries, divisions, parent companies, attorneys, insurers, agents, partners, heirs, legatees, executors, administrators, successors-in-interest, and assignees, as well as the predecessors and successors to each of the foregoing, both individually and collectively (the "ICTSI Releasors"), hereby fully and forever RELEASE, ACQUIT, and DISCHARGE each of ILWU, CLD, and PLMA, and their past, present, and future respective representatives, employees, officers, directors, divisions, committees, affiliates, locals, members, attorneys, insurers, agents, successors-in-interest, indemnitees, joint tortfeasors, and assignees, as well as the predecessors and successors to each of the foregoing, both individually and collectively (the "Non-Profit Entity Releasees"), from and for any and all rights, claims, controversies, damages, expenses, costs, obligations, causes of action, counterclaims, cross-claims, rights of set-off and recoupment, suits, debts, sums of money, accounts, torts, breaches of duty, covenants, contracts, agreements, promises, judgments, executions, demands and liabilities of any nature whatsoever, in law or otherwise, whether known or unknown, that have ever existed, that now exist, or that may exist in the future, from the beginning of the world until the end of time that are based upon, related to, arising out of, or in any way connected to the Bankruptcy Cases, the ICTSI Litigation, the facts asserted or alleged or that could have been asserted or alleged in the ICTSI Litigation, or the

ICTSI Proof of Claim. Notwithstanding the above, Local 8 is not included within the definition of Non-Profit Entity Releasees.

**3.3 Waiver of California Civil Code Section 1542 and Similar Laws.** It is understood and agreed by the parties that all rights under section 1542 of the California Civil Code, or any similar law of any state or territory of the United States, ARE HEREBY EXPRESSLY WAIVED. Section 1542 states: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.” Each of ILWU, CLD, and PLMA on behalf of themselves and each of the Non-Profit Entity Releasees, and ICTSI, on behalf of itself and the ICTSI Releasees, hereby acknowledges that it has had the opportunity to consult with legal counsel before agreeing to the terms of this Release, and that it fully understands its meaning including the meaning and effect of the provisions relating to section 1542 of the California Civil Code.

**3.4 Release of Local 8.** ICTSI hereby agrees to execute the *Mutual Release Agreement*, in form attached hereto as Exhibit 4 (the “Local 8 Release Agreement”), upon Local 8’s execution (which execution shall be at the sole discretion of Local 8). The effectiveness of the Local 8 Release Agreement shall be governed by the terms of the Local 8 Release Agreement. For the avoidance of doubt, the approval of the Local 8 Release Agreement and/or dismissal of the Local 8 Bankruptcy Case is not a condition precedent to the effectiveness of this Agreement.

#### **4. REPRESENTATIONS, WARRANTIES AND COVENANTS.**

**4.1 Representations, Warranties and Covenants of the Parties.** Each of the Parties represent and warrant that they (i) hold and control and have not assigned or transferred to any other entity or person any of the rights and claims which are being released, altered or otherwise affected by this Settlement Agreement; and (ii) have all requisite power and authority to execute, deliver and perform this Settlement Agreement and the transactions contemplated herein and the execution, delivery and performance by them of this Settlement Agreement, subject only in the case of the ILWU to the approval of the Bankruptcy Court. The Parties further agree that the Settlement is a settlement of contested liabilities and is made in good faith.

#### **5. BANKRUPTCY COURT APPROVAL.**

**5.1 Approval.** This Settlement Agreement is subject to and conditioned upon the entry of the Approval Order by the Bankruptcy Court in the ILWU Bankruptcy Case.

**5.2 Best Efforts.** The Parties agree to support the entry of the Approval Order and to use their best efforts to cause the Bankruptcy Court to enter the Approval Order. The Parties further agree not to appeal the entry of the Approval Order or to take any steps that would delay the Approval Order becoming a Final Order or cause

any other person or entity to object to or otherwise oppose the entry of the Approval Order or to appeal the Approval Order or to delay the Approval Order becoming a Final Order.

**5.3 Dismissal of the ILWU Bankruptcy Case.** The Parties acknowledge and agree that dismissal of the ILWU Bankruptcy Case is critical to the implementation of the Settlement Agreement. The Non-Profit Entities represent and warrant to ICTSI, and ICTSI represents and warrants to the Non-Profit Entities, that they shall not object to or otherwise oppose or cause any other person or entity to object to or otherwise oppose the ILWU's request to dismiss the ILWU Bankruptcy Case, and the Non-Profit Entities and ICTSI shall not take any actions, or cause any other person or entity to take any actions, to prevent such a dismissal of the ILWU Bankruptcy Case.

**5.4 Professional Fees.** ICTSI shall not oppose or take any actions, or cause any other person or entity to oppose or take any actions to oppose any application for compensation filed by the ILWU's professionals to be paid by ILWU in the ILWU Bankruptcy Case.

## **6. NON-DISPARAGEMENT AND JOINT PRESS RELEASE**

**6.1 Mutual Non-Disparagement.** In consideration of the mutual covenants of the Parties in this Settlement Agreement, and other good and valuable consideration, (a) each of ICTSI and, by its signature below, ICTSI Parent, agrees and covenants that it shall not issue any written or oral statement (including through electronic mail distribution or online social media) that is disparaging, deleterious, or damaging to the integrity, reputation, or goodwill of one or more of ILWU, CLD, or PLMA, or their respective management, officers, members, or employees, each in their capacity as such, from and after the date hereof until the sixth anniversary of the Effective Date, and (b) each of ILWU, CLD, and PLMA agrees and covenants that it shall not: issue any written or oral statement (including through electronic mail distribution or online social media or in "The Dispatcher Newspaper") that is disparaging, deleterious, or damaging to the integrity, reputation, or goodwill of one or more of ICTSI or ICTSI Parent, or their respective management, officers, members, or employees, each in their capacity as such, from and after the date hereof until the sixth anniversary of the Effective Date. Notwithstanding the foregoing, the provisions of this non-disparagement clause shall not restrict any Party from (x) making truthful disclosures to any government entity or in any litigation or arbitration; (y) complying with any applicable law or regulation or a valid order of a court of competent jurisdiction or an authorized government agency, provided that such compliance does not exceed that required by the law, regulation or order; or (z) truthfully reporting the facts of the ICTSI Litigation, the ILWU Bankruptcy Case or the Settlement Agreement, including, without limitation, to their executive bodies as may be required by the constitutions and bylaws of any of the Parties. The Parties recognize that each Party is limited in its ability to control any individual who is not a signatory to this agreement. Accordingly, (aa) ICTSI and ICTSI Parent agree that the only persons whose

statements may be attributed to ILWU, CLD, or PLMA for purposes of the covenant contained in this Section 6.1 shall be any such Party's then current: Titled Officers, Coast Committeemen, ILWU Executive Board Members (in their capacity as such), directors, attorneys, and public relations employees, and (bb) ILWU, CLD, and PLMA each agree that the only persons whose statements may be attributed to ICTSI or ICTSI Parent for purposes of the covenant contained in this Section 6.1 shall be the then current members of ICTSI's or ICTSI Parent's respective Board of Directors and their then current executive officers and ICTSI's and ICTSI Parent's attorneys and public relations employees. The ILWU further agrees to inform ILWU locals and the International Transport Workers Federation of its entry into this Settlement Agreement and that it included this non-disparagement provision as a material term.

**6.2 Joint Press Release.** On or promptly after the ILWU files a motion before the Bankruptcy Court seeking entry of the Approval Order, each of the ILWU and ICTSI shall issue the joint press release in the form of Exhibit 5 to this Settlement Agreement.

## **7. MISCELLANEOUS**

**7.1 Entire Agreement, Amendments, and Waivers.** This Settlement Agreement constitutes and contains the entire agreement between the Parties and supersedes any and all prior negotiations, conversations, correspondence, and understandings respecting the Settlement. This Settlement Agreement may be amended or modified or one or more provisions hereof waived only by a written instrument signed by the Parties. No delay or omission by any Party in exercising any right or power arising from any default by the other Party shall be construed as a waiver of such default, nor shall any single or partial exercise thereof preclude any further exercise thereof or the exercise of any other right or power arising from any default by a Party. No waiver of any breach of any covenant or other condition shall be construed to be a waiver of or consent to any previous or subsequent breach of the same or of any other covenant or condition.

**7.2 Captions.** The captions to this Settlement Agreement are for convenience only and are to be of no force or effect in construing and interpreting the provisions of this Settlement Agreement.

**7.3 Jurisdiction, Governing Law.** This Settlement Agreement is made and entered into in the State of California and shall, in all respects, be interpreted, enforced and governed by the laws of the State of California, without regard to choice of law principles. The Parties further agree that any dispute arising out of this Settlement Agreement shall be adjudicated by a Court of competent jurisdiction.

**7.4 Notices.** Any notice required or permitted under this Settlement Agreement shall be given in writing and shall be sent to the following Parties via electronic mail with a copy sent by overnight mail or hand delivery:

To ILWU:

Lindsay Nicholas  
General Counsel  
International Longshore and Warehouse Union  
1188 Franklin Street, 4<sup>th</sup> Floor  
San Francisco, CA 94109  
Lindsay.Nicholas@ilwu.org

with a copy to:

Debra Grassgreen  
Alan Kornfeld  
Jason Rosell  
Pachulski Stang Ziehl & Jones  
One Sansome Street, 34<sup>th</sup> Floor, Suite 3430  
San Francisco, California 94104  
dgrassgreen@pszjlaw.com  
akornfeld@pszjlaw.com  
jrosell@pszjlaw.com

To CLD:

Kirsten Donovan  
General Counsel  
ILWU Coast Longshore Division  
1188 Franklin Street, 4<sup>th</sup> Floor  
San Francisco, CA 94109  
Kirsten.Donovan@ilwu.org

with a copy to:

Jane Kim  
Traci L. Shafroth  
Dara L. Silveira  
Keller Benvenuti Kim LLP  
425 Market Street, 26<sup>th</sup> Floor  
San Francisco, CA 94105  
jkim@kbkllp.com  
tshafroth@kbkllp.com  
dsilveira@kbkllp.com

To PLMA:

Stephen Finestone  
Jennifer Hayes

Finestone Hayes LLP  
456 Montgomery Street, 20<sup>th</sup> Floor  
San Francisco, CA 94104  
sfinestone@fhlawllp.com  
jhayes@fhlawllp.com

To ICTSI:

Elvis Ganda  
Chief Executive Officer  
ICTSI Oregon, Inc.  
5665 Meadows Road, Suite 110  
Lake Oswego, OR 97035  
eganda@ictsiousa.com

with a copy to:

Ori Katz  
Jennifer Nassiri  
Sheppard, Mullin, Richter & Hampton LLP  
Four Embarcadero Center, 17<sup>th</sup> Floor  
San Francisco, CA 94111  
okatz@sheppardmullin.com  
jnassiri@sheppardmullin.com

Jeffrey Eden  
Michael Garone  
Schwabe, Williamson & Wyatt, P.C.  
1211 SW Fifth Ave., Suite 1900  
Portland, OR 97204  
jeden@schwabe.com  
mgarone@schwabe.com

- 7.5 No Party Deemed Drafter.** The Parties shall jointly be deemed to be the drafters of this Settlement Agreement; the rule that any ambiguity in a contract shall be construed against the drafter of the contract shall not apply to this Settlement Agreement.
- 7.6 Voluntary Settlement.** The Parties acknowledge and agree that each of them is entering into this Settlement Agreement freely and voluntarily and not acting under any misapprehension as to the effect hereof, and has acted and does hereby act freely and voluntarily and not under any coercion or duress.
- 7.7 No Mistake of Fact or Law.** In entering into this Settlement Agreement, each Party assumes the risk of any mistake, and if it should subsequently discover that any understanding of the facts or of the law was incorrect, each Party understands and

expressly agrees that it shall not be entitled to set aside this Settlement Agreement by reason thereof, regardless of any mistake of fact or law.

- 7.8 Survival.** All covenants, agreements, representations, and warranties made in this Settlement Agreement will survive the execution and delivery hereof.
- 7.9 Counterparts.** This Settlement Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which constitute one and the same instrument. Any such counterpart, to the extent delivered by means of e-mail or a fax machine or by .pdf, .tif, .jpeg, or similar attachment to electronic mail (“**Electronic Delivery**”) shall be treated in all manner and respects as an original executed counterpart and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No Party shall raise the use of Electronic Delivery as a defense to the formation of a contract, and each Party forever waives such defense, except to the extent that such defense relates to the lack of authenticity.
- 7.10 Settlement of Disputed Claims.** The Parties acknowledge that the Settlement Payment was agreed upon as a compromise and final settlement of any and all disputed claims and that payment of the Settlement Payment is not, and may not be construed as, an admission of liability.
- 7.11 Taxes.** The Parties hereby agree that the Settlement Agreement is a settlement of various claims and objections to claims that have been or could be asserted by the Parties in the ILWU Bankruptcy Case and was made in good faith.
- 7.12 Limitations.** Notwithstanding the Releases referred to in Section 3 herein, nothing in this Settlement Agreement, including but not limited to the Releases, shall release any Party from its obligations under this Settlement Agreement or prevent any Party from taking action to enforce the terms of this Settlement Agreement.
- 7.13 Severability.** The invalidity or unenforceability of any provision of this Settlement Agreement shall not affect the validity or enforceability of any other provision. If any provision (or part of any provision) of this Settlement Agreement is found invalid, illegal or unenforceable, the rest of the Settlement Agreement shall remain in effect and shall be construed as if any such invalid, illegal, or unenforceable provision (or part of a provision) were excluded from the Settlement Agreement.
- 7.14 Binding Effect.** This Settlement Agreement and the terms, obligations, and rights in it shall be binding upon and shall inure to the benefit of the Parties and their respective parent companies, subsidiaries, heirs, legatees, trustees, affiliates, successors, and assigns.

*Remainder of Page Left Intentionally Blank*



IN WITNESS WHEREOF the Parties have caused this Settlement Agreement to be executed on the respective dates hereinafter set forth.

**INTERNATIONAL LONGSHORE AND WAREHOUSE UNION**

By: William E Adams  
William E. Adams

Its: President

Date: 1-31-2024

By: Edwin R. Ferris  
Edwin R. Ferris

Its: Secretary-Treasurer

Date: 1/31/24

**ILWU COAST LONGSHORE DIVISION**

By: Francisco Ponce De Leon, III  
Francisco Ponce De Leon, III

Its: Coast Committeeman

Date: 1/31/2024

By: Robert Olvera, Jr.  
Robert Olvera, Jr.

Its: Vice Chair, Coast Longshore Division

Date: 1/31/2024

By: Cameron Williams  
Cameron Williams

Its: Coast Committeeman

Date: 1/31/2024

**PACIFIC LONGSHOREMEN'S MEMORIAL ASSOCIATION, INC.**

By: Paul S. Kretz  
Paul S. Kretz

Its: Director

Date: 1-31-24

By: Melvin Mackay  
Melvin Mackay

Its: Director

Date: 1/31/2024

ICTSI OREGON, INC.

By: 

Its: CEO

Date: 1/31/2024

**ACKNOWLEDGED AND AGREED TO SOLELY FOR PURPOSES OF SECTION 6.1  
HEREOF (MUTUAL NON-DISPARAGEMENT) AND AS TO THE EFFECTIVENESS  
OF THE RELEASE GRANTED BY ICTSI ON BEHALF OF ICTSI PARENT IN  
SECTIONS 3.2 AND 3.3 HEREOF (ICTSI RELEASORS' GENERAL RELEASE):**

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**ICTSI OREGON, INC.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**ACKNOWLEDGED AND AGREED TO SOLELY FOR PURPOSES OF SECTION 6.1  
HEREOF (MUTUAL NON-DISPARAGEMENT) AND AS TO THE EFFECTIVENESS  
OF THE RELEASE GRANTED BY ICTSI ON BEHALF OF ICTSI PARENT IN  
SECTIONS 3.2 AND 3.3 HEREOF (ICTSI RELEASORS' GENERAL RELEASE):**

**INTERNATIONAL CONTAINER TERMINAL SERVICES, INC.**

By: \_\_\_\_\_  
Christian Martin R. Gonzalez

Its: \_\_\_\_\_  
Executive Vice President

Date: Jan 31 2024

### **Schedule of Exhibits**

Exhibit 1 Approval Order

Exhibit 2 Dismissal Order

Exhibit 3 Request for Dismissal of ICTSI Litigation with Prejudice

Exhibit 4 Form of Mutual Release Agreement between Local 8 and ICTSI

Exhibit 5 Joint Press Release

**Exhibit 1**  
**Form of Approval Order**

1 PACHULSKI STANG ZIEHL & JONES LLP  
Debra I. Grassgreen (CA Bar No. 169978)  
2 Jason H. Rosell (CA Bar No. 269126)  
One Sansome Street, Suite 3430  
3 San Francisco, California 94104  
Telephone: (415) 263-7000  
4 Facsimile: (415) 263-7010  
E-mail: dgrassgreen@pszjlaw.com  
5 jrosell@pszjlaw.com

6 *Counsel to the Debtor*

7 **UNITED STATES BANKRUPTCY COURT**  
8 **NORTHERN DISTRICT OF CALIFORNIA**  
9 **SAN FRANCISCO DIVISION**

10 In re:  
11 INTERNATIONAL LONGSHORE  
AND WAREHOUSE UNION,  
12  
13 Debtor.

Case No. 23-30662-HLB

Chapter 11

**ORDER APPROVING DEBTOR'S MOTION  
FOR ENTRY OF AN ORDER  
AUTHORIZING AND APPROVING THE  
SETTLEMENT AGREEMENT PURSUANT  
TO RULE 9019 OF THE FEDERAL RULES  
OF BANKRUPTCY PROCEDURE**

Hearing Held:

Date: [ ], 2024 at [XX:XX] [].m.

Place: Zoom / Telephonic

Judge: Hon. Hannah L. Blumenstiel

18 *The Debtor's Motion for Entry of an Order Authorizing and Approving the Settlement*  
19 *Agreement Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure* [Docket No. \_ ]  
20 (the "Motion")<sup>1</sup> filed by the International Longshore and Warehouse Union (the "Debtor"), the  
21 debtor and debtor-in-possession in the above-captioned bankruptcy case (the "Case"), came before  
22 the Court for hearing on \_\_\_\_\_, 2024 at XX:XX [].m. (Pacific Time). Appearances were as noted on  
23 the record. Based upon the Court's review of the Motion, the declarations and other pleadings filed  
24 in support of the Motion, the arguments of counsel at the hearing on the Motion, all pleadings and  
25 evidence of record in this Case; and the Court finding that: (a) the Court has jurisdiction over this  
26 matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. §  
27

28 <sup>1</sup> A capitalized term used but not defined herein shall have the meaning ascribed to it in the Motion.

1 157(b), (c) notice of the Motion and the hearing were sufficient and proper, and (d) the legal and  
2 factual bases set forth in the Motion establish just cause for the relief granted herein;

3 **IT IS HEREBY ORDERED THAT:**

- 4 1. The Motion is **GRANTED**.
- 5 2. Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, the Settlement  
6 Agreement attached hereto as **Exhibit 1** is approved.
- 7 3. All objections to the Motion or the requested relief therein, if any, that have not been  
8 withdrawn, waived, or settled, and all reservations of rights included therein, are overruled.
- 9 4. The Parties are authorized to take any actions as may be necessary or appropriate to  
10 implement, effectuate, and fully perform under the Settlement Agreement in accordance with this  
11 Order.
- 12 5. This Court shall retain jurisdiction to hear and determine all matters arising from or  
13 related to the implementation or interpretation of this Order.

14 **\*\* END OF ORDER \*\***

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**Exhibit 1 to Approval Order**

**Settlement Agreement**

[Intentionally Omitted]

**Exhibit 2**  
**Form of Dismissal Order**

1 PACHULSKI STANG ZIEHL & JONES LLP  
Debra I. Grassgreen (CA Bar No. 169978)  
2 Jason H. Rosell (CA Bar No. 269126)  
One Sansome Street, Suite 3430  
3 San Francisco, California 94104  
Telephone: (415) 263-7000  
4 Facsimile: (415) 263-7010  
E-mail: dgrassgreen@pszjlaw.com  
5 jrosell@pszjlaw.com

6 *Counsel to the Debtor*

7 **UNITED STATES BANKRUPTCY COURT**  
8 **NORTHERN DISTRICT OF CALIFORNIA**  
9 **SAN FRANCISCO DIVISION**

10 In re:

11 INTERNATIONAL LONGSHORE  
AND WAREHOUSE UNION,

12 Debtor.

Case No. 23-30662-HLB

Chapter 11

**ORDER DISMISSING THIS CHAPTER 11  
CASE PURSUANT TO SECTIONS 305(a)  
AND 1112(b) OF THE BANKRUPTCY  
CODE**

Hearing Date:

Date: [ ], 2024 at [XX:XX] [].m.

Place: Zoom / Telephonic

Judge: Hon. Hannah L. Blumenstiel

13  
14  
15  
16  
17 The Debtor's Motion for Entry of an Order Dismissing This Chapter 11 Case Pursuant to  
18 Sections 305(a) and 1112(b) of the Bankruptcy Code [Docket No. \_ ] (the "Motion")<sup>1</sup> filed by the  
19 International Longshore and Warehouse Union (the "Debtor"), the debtor and debtor-in-possession  
20 in the above-captioned bankruptcy case (the "Case"), came before the Court for hearing on \_\_\_\_\_,  
21 2024 at XX:XX [].m. (Pacific Time). Appearances were as noted on the record. Based upon the  
22 Court's review of the Motion, the declarations and other pleadings filed in support of the Motion, the  
23 arguments of counsel at the hearing on the Motion, all pleadings and evidence of record in this Case;  
24 and the Court finding that: (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§  
25 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (c) notice of the Motion  
26  
27  
28

<sup>1</sup> A capitalized term used but not defined herein shall have the meaning ascribed to it in the Motion.

1 and the hearing were sufficient and proper, and (d) the legal and factual bases set forth in the Motion  
2 establish just cause for the relief granted herein;

3 **IT IS HEREBY ORDERED THAT:**

- 4 1. The Motion is **GRANTED**.
- 5 2. Pursuant to sections 305(a) and 1112(b) of the Bankruptcy Code, the Case is hereby  
6 dismissed.
- 7 3. Notwithstanding section 349 of the Bankruptcy Code, all orders of the Court entered  
8 in the Chapter 11 Case shall remain in full force and effect despite the dismissal of the Case;  
9 *provided, however,* notwithstanding any order to the contrary, Debtor's professionals retained  
10 pursuant to section 327 of the Bankruptcy Code in this Case, including Pachulski Stang Ziehl &  
11 Jones LLP and Paladin Management Group, LLC, are excused from filing applications to be  
12 compensated in accordance with section 330 and 331 of the Bankruptcy Code. For the avoidance of  
13 doubt, upon entry of this Order, the Debtor is authorized to pay such professionals in the ordinary  
14 course of business without further order of the Court.
- 15 4. Notwithstanding the dismissal of the Case, the Court shall retain jurisdiction for the  
16 purpose of ruling on the Subchapter V Trustee Fee Claim, which shall be filed on or before thirty  
17 (30) calendar days after the entry of this Order.
- 18 5. This Court shall retain jurisdiction to hear and determine all matters arising from or  
19 related to the implementation or interpretation of this Order.

20 **\*\* END OF ORDER \*\***

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**Exhibit 3**

**Form of Request for Dismissal with Prejudice**

Julie R. Vacura, OSB #843692  
jvacura@lvklaw.com  
John C. Rake, OSB #105808  
jrake@lvklaw.com  
Brett Applegate, OSB #132944  
bapplegate@lvklaw.com  
Kelsey Benedick, OSB #173038  
kbenedick@lvklaw.com  
Tania Manners, OSB #140363  
tmanners@lvklaw.com  
Hopi Costello Ruplin, OSB #185940  
hruplin@lvklaw.com  
Larkins Vacura Kayser LLP  
121 SW Morrison St, Suite 700  
Portland, OR 97204  
Telephone: (503) 222-4424  
Fax: (503) 827-7600

*Attorneys for International Longshore  
and Warehouse Union and ILWU Local 8*

**UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON**

ICTSI OREGON, INC.,

Plaintiff,

v.

INTERNATIONAL LONGSHORE AND  
WAREHOUSE UNION and ILWU  
LOCAL 8,

Defendants.

Case No. 3:12-cv-01058-SI

**STIPULATION OF DISMISSAL WITH  
PREJUDICE**

Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), and the settlement between Plaintiff ICTSI Oregon, Inc. and Defendant International Longshore and Warehouse Union (together, the

STIPULATION OF DISMISSAL WITH PREJUDICE

Page 1

4892-4861-9169.4 42339.002

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“Parties”), the Parties stipulate to dismiss all claims with prejudice, with each Party to bear its own attorney fees and costs.

DATED: \_\_\_\_\_, 2024.

LARKINS VACURA KAYSER LLP

---

Julie R. Vacura, OSB #843692  
John C. Rake, OSB #105808  
Brett Applegate, OSB #132944  
Kelsey Benedick, OSB #173038  
Tania Manners, OSB #140363  
Hopi Costello Ruplin, OSB #185940

*Attorneys for International Longshore and  
Warehouse Union and ILWU Local 8*

DATED: \_\_\_\_\_, 2024.

SCHWABE, WILLIAMSON & WYATT

---

Jeffrey S. Eden, OSB #851903  
jeden@schwabe.com  
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Amanda T. Gamblin, OSB #021361  
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AMANDA T GAMBLIN, ATTORNEY AT LAW LLC  
4004 SE Francis Street  
Portland, OR 97202  
Telephone: (503) 329-1858

**Exhibit 4**

**Form of Mutual Release Agreement Between Local 8 and ICTSI**



## MUTUAL RELEASE AGREEMENT

This Mutual Release Agreement (“Agreement”) is entered into as of February \_\_, 2024, by and among International Longshore and Warehouse Union Local 8 (“Local 8”), on the one hand, and ICTSI Oregon, Inc. (“ICTSI”), on the other hand. Local 8 and ICTSI are referred to in this Agreement collectively as the “Parties” and each is a “Party” to this Agreement.

### RECITALS

A. On June 13, 2012, the International Longshore and Warehouse Union (“ILWU”) and Pacific Maritime Association filed a complaint against ICTSI, alleging that ICTSI was not in compliance with the Pacific Coast Longshore and Clerks’ Agreement, and ICTSI thereafter asserted counterclaims against ILWU and Local 8 alleging violations of Section 303 of the Labor-Management Relations Act, in an action pending in the United States District Court for the District of Oregon (the “Oregon Court”) under the caption *ICTSI Oregon, Inc. v. International Longshore and Warehouse Union*, Case No. 3:12-cv-1058-SI (the “ICTSI Litigation”).

B. In the ICTSI Litigation, ICTSI asserted a counterclaim against ILWU and Local 8 seeking damages for alleged unfair labor practices, including work stoppages and slowdowns at the Port of Portland terminal.

C. On June 20, 2018, the Oregon Court approved the dismissal of ILWU and Pacific Maritime Association’s claims against ICTSI with prejudice.

D. In November 2019, a jury trial verdict was reached against ILWU and Local 8, finding that ILWU and Local 8 caused damages to ICTSI of \$93,635,000.

E. On March 5, 2020, the Oregon Court issued an *Opinion and Order*, finding that the maximum damages supported by the weight of the evidence admitted by the Oregon Court during the two-week trial was \$19,061,248 and ordering that ICTSI decide by March 19, 2020, whether it would accept the reduced amount of damages, or retry the amount of damages.

F. ICTSI rejected the Oregon Court’s reduced damages amount and a new trial on damages was scheduled to begin in February 2024.

G. On September 30, 2023, ILWU filed a voluntary petition under subchapter V of chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the Northern District of California docketed as *In re International Longshore and Warehouse Union*, Case No. 23-30662 (HLB) (the “ILWU Bankruptcy Case”).

H. On October 18, 2023, Local 8 filed a voluntary petition under subchapter V of chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Oregon (the “Oregon Bankruptcy Court”) docketed as *In re Local 8, International Longshoremen’s and Warehousemen’s Union*, Case No. 23-32366-pcm11 (the “Local 8 Bankruptcy Case” and together with the ILWU Bankruptcy Case, the “Bankruptcy Cases”).

I. The ICTSI Litigation was stayed as a result of the filing of the ILWU and Local 8 Bankruptcy Cases.

J. On December 21, 2023, ICTSI filed a proof of claim in the Local 8 Bankruptcy Case, asserting a claim for damages and pre-judgment interest related to the claims asserted in the ICTSI Litigation, docketed in the Local 8 Bankruptcy Case as Claim No. 3-1 (the “ICTSI Proof of Claim”).

K. On January 16, 2024, Local 8 filed its *Debtor’s Plan of Reorganization for a Small Business Debtor Under Chapter 11 Dated 1/16/2024* [Docket No. 77] (the “Local 8 Plan”).

L. Absent the settlement set forth herein, ICTSI intends to oppose the Local 8 Plan.

M. ICTSI, ILWU, ILWU Coast Longshore Division (“CLD”), and Pacific Longshoremen’s Memorial Association, Inc. (“PLMA”) have entered into that certain *Settlement Agreement* (the “ILWU/CLD/PLMA Settlement Agreement”), pursuant to which the parties thereto have resolved the ICTSI Litigation and the ILWU Bankruptcy Case.

N. Without admitting the validity of the other Party’s position or any liability of Local 8, which liability Local 8 expressly denies, the Parties desire to resolve all disputes between them without further expense and litigation in accordance with the terms and conditions set forth in this Agreement (the “Settlement”).

## AGREEMENT

**NOW, THEREFORE**, in consideration of the mutual covenants of the Parties to be faithfully performed, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the Parties, intending to be legally bound, agrees as follows:

### 1. DEFINITIONS

In addition to the terms defined above and elsewhere in this Agreement, as used in this Agreement:

1.1 “Effective Date” means the later of (1) the date on which an order approving this Agreement has become a Final Order and (2) the effective date of ILWU/CLD/PLMA Settlement Agreement. For the avoidance of doubt, the effectiveness of the ILWU/CLD/PLMA Settlement Agreement is a condition precedent to the effectiveness of this Agreement.

1.2 “Final Order” means an order of the Oregon Bankruptcy Court, the Oregon Court, or any other court having jurisdiction that remains in effect and has not been reversed, withdrawn, vacated, or stayed and as to which the time to appeal or seek review, rehearing, or writ of certiorari has expired or, if such appeal or review has been taken, it has been resolved and no longer remains pending.

### 2. TERMS

2.1 **Dismissal with Prejudice of ICTSI Litigation.** On the Effective Date, ICTSI shall provide Local 8 with an executed Request for Dismissal in the form of Exhibit 1 to

this Agreement dismissing the ICTSI Litigation with prejudice with respect to Local 8, each Party to bear its own costs and fees.

- 2.2 Covenant Not to Use Discovery Materials.** Each Party covenants not to use or disclose to any other person or entity for any purpose, and to cause its employees, attorneys, and anyone else to whom such Party has granted access to Discovery Material (as defined herein), not to use or disclose to any other person or entity for any purpose, any non-publicly available discovery produced or otherwise generated in connection with the ICTSI Litigation or the Local 8 Bankruptcy Case, including, but not limited to, deposition transcripts, documents, and expert reports (the “Discovery Material”), including, but not limited to, any copies, abstracts, compilations, summaries, or any other format reproducing or capturing any of the Discovery Material, without the prior written consent of the other Parties. For the avoidance of doubt, nothing in this Section 2.2 shall limit, abridge, or waive the rights and obligations of any Party, or the protections with respect to any Discovery Material, granted or imposed pursuant to any protective order entered in the ICTSI Litigation or the Local 8 Bankruptcy Case. Notwithstanding the foregoing, nothing in this Section 2.2 shall restrict any Party from using or disclosing Discovery Material that such Party produced (e.g., such Party’s audited financial statements).

### 3. RELEASES

- 3.1 Local 8 Releasors’ General Release.** Effective as of the Effective Date, Local 8 on behalf of itself, and each of its respective past, present, and future representatives, employees, officers, committees, attorneys, insurers, agents, partners, heirs, legatees, executors, administrators, successors-in-interest, and assignees, as well as the predecessors and successors to each of the foregoing, both individually and collectively (the “Local 8 Releasors”), hereby fully and forever RELEASE, ACQUIT, and DISCHARGE ICTSI and its past, present, and future representatives, employees, shareholders, officers, directors, subsidiaries, affiliates, divisions, parent companies, attorneys, insurers, agents, partners, heirs, legatees, executors, administrators, successors-in-interest, indemnitees, joint tortfeasors, and assignees, as well as the predecessors and successors to each of the foregoing, both individually and collectively (the “ICTSI Releasees”), from and for any and all rights, claims, controversies, damages, expenses, costs, obligations, causes of action, counterclaims, cross-claims, rights of set-off and recoupment, suits, debts, sums of money, accounts, torts, breaches of duty, covenants, contracts, agreements, promises, judgments, executions, demands and liabilities of any nature whatsoever, in law or otherwise, whether known or unknown, that have ever existed, that now exist, or that may exist in the future, from the beginning of the world until the end of time that are based upon, related to, arising out of, or in any way connected to the Bankruptcy Cases, the ICTSI Litigation, the facts asserted or alleged or that could have been asserted or alleged in the ICTSI Litigation, or the ICTSI Proof of Claim.

- 3.2 ICTSI Releasors’ General Release.** Effective as of the Effective Date, ICTSI, on behalf of itself, and each of its past, present, and future representatives, employees,

shareholders, officers, directors, subsidiaries, divisions, parent companies, attorneys, insurers, agents, partners, heirs, legatees, executors, administrators, successors-in-interest, and assignees, as well as the predecessors and successors to each of the foregoing, both individually and collectively (the “ICTSI Releasers”), hereby fully and forever RELEASE, ACQUIT, and DISCHARGE Local 8 and its past, present, and future representatives, employees, officers, committees, affiliates, members, attorneys, insurers, agents, successors-in-interest, indemnitees, joint tortfeasors, and assignees, as well as the predecessors and successors to each of the foregoing, both individually and collectively (the “Local 8 Releasees”), from and for any and all rights, claims, controversies, damages, expenses, costs, obligations, causes of action, counterclaims, cross-claims, rights of set-off and recoupment, suits, debts, sums of money, accounts, torts, breaches of duty, covenants, contracts, agreements, promises, judgments, executions, demands and liabilities of any nature whatsoever, in law or otherwise, whether known or unknown, that have ever existed, that now exist, or that may exist in the future, from the beginning of the world until the end of time that are based upon, related to, arising out of, or in any way connected to the Bankruptcy Cases, the ICTSI Litigation, the facts asserted or alleged or that could have been asserted or alleged in the ICTSI Litigation, or the ICTSI Proof of Claim.

**3.3 Waiver of California Civil Code Section 1542 and Similar Laws.** It is understood and agreed by the parties that all rights under section 1542 of the California Civil Code, or any similar law of any state or territory of the United States, ARE HEREBY EXPRESSLY WAIVED. Section 1542 states: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.” Local 8 on behalf of itself and each of the Local 8 Releasers, and ICTSI, on behalf of itself and the ICTSI Releasers, hereby acknowledges that it has had the opportunity to consult with legal counsel before agreeing to the terms of this Release, and that it fully understands its meaning including the meaning and effect of the provisions relating to section 1542 of the California Civil Code.

#### **4. REPRESENTATIONS, WARRANTIES AND COVENANTS**

**4.1 Representations, Warranties and Covenants of the Parties.** Each of the Parties represent and warrant that they (i) hold and control and have not assigned or transferred to any other entity or person any of the rights and claims which are being released, altered or otherwise affected by this Agreement; and (ii) have all requisite power and authority to execute, deliver and perform this Agreement and the transactions contemplated herein and the execution, delivery and performance by them of this Agreement, subject only in the case of Local 8 to the approval of the the Oregon Bankruptcy Court. The Parties further agree that the Settlement is a settlement of contested liabilities and is made in good faith.

## 5. BANKRUPTCY COURT APPROVAL

- 5.1 Approval.** This Agreement is subject to and conditioned upon approval by the Oregon Bankruptcy Court in the Local 8 Bankruptcy Case.
- 5.2 Best Efforts.** The Parties agree to support the entry of an order approving this Agreement. The Parties further agree not to appeal the entry of such order or to take any steps that would delay such order becoming a Final Order or cause any other person or entity to object to or otherwise oppose the approval of this Agreement.
- 5.3 Professional Fees.** ICTSI shall not oppose or take any actions, or cause any other person or entity to oppose or take any actions to oppose any application for compensation filed by Local 8's professionals to be paid by Local 8 in the Oregon Bankruptcy Case.

## 6. NON-DISPARAGEMENT AND JOINT PRESS RELEASE

- 6.1 Mutual Non-Disparagement.** In consideration of the mutual covenants of the Parties in this Agreement, and other good and valuable consideration, (a) each of ICTSI and, by its signature below, ICTSI Parent, agrees and covenants that it shall not issue any written or oral statement (including through electronic mail distribution or online social media) that is disparaging, deleterious, or damaging to the integrity, reputation, or goodwill of Local 8 or its respective management, officers, members, or employees, each in their capacity as such, from and after the date hereof until the sixth anniversary of the Effective Date, and (b) Local 8 agrees and covenants that it shall not: issue any written or oral statement (including through electronic mail distribution or online social media) that is disparaging, deleterious, or damaging to the integrity, reputation, or goodwill of one or more of ICTSI or ICTSI Parent, or their respective management, officers, members, or employees, each in their capacity as such, from and after the date hereof until the sixth anniversary of the Effective Date. Notwithstanding the foregoing, the provisions of this non-disparagement clause shall not restrict any Party from (x) making truthful disclosures to any government entity or in any litigation or arbitration; (y) complying with any applicable law or regulation or a valid order of a court of competent jurisdiction or an authorized government agency, provided that such compliance does not exceed that required by the law, regulation or order; or (z) truthfully reporting the facts of the ICTSI Litigation, the Local 8 Bankruptcy Case or the Agreement, including, without limitation, to their executive bodies as may be required by the constitutions and bylaws of any of the Parties. The Parties recognize that each Party is limited in its ability to control any individual who is not a signatory to this agreement. Accordingly, (aa) ICTSI and ICTSI Parent agree that the only persons whose statements may be attributed to Local 8 for purposes of the covenant contained in this Section 6.1 shall be Local 8's then current Titled Officers, attorneys, and public relations employees, and (bb) Local 8 agrees that the only persons whose statements may be attributed to ICTSI or ICTSI Parent for purposes of the covenant contained in this Section 6.1 shall be the then current members of ICTSI's or ICTSI Parent's respective Board of Directors and their then

current executive officers and ICTSI's and ICTSI Parent's attorneys and public relations employees. For purposes of this Section 6.1, "Titled Officers" shall mean the President, Vice President, Secretary-Treasurer, Business Agents (in their capacity as such), and Labor Relations Committee members (in their capacity as such).

## 7. MISCELLANEOUS

- 7.1 Entire Agreement, Amendments, and Waivers.** This Agreement constitutes and contains the entire agreement between the Parties and supersedes any and all prior negotiations, conversations, correspondence, and understandings respecting the Settlement. This Agreement may be amended or modified or one or more provisions hereof waived only by a written instrument signed by the Parties. No delay or omission by any Party in exercising any right or power arising from any default by the other Party shall be construed as a waiver of such default, nor shall any single or partial exercise thereof preclude any further exercise thereof or the exercise of any other right or power arising from any default by a Party. No waiver of any breach of any covenant or other condition shall be construed to be a waiver of or consent to any previous or subsequent breach of the same or of any other covenant or condition.
- 7.2 Captions.** The captions to this Agreement are for convenience only and are to be of no force or effect in construing and interpreting the provisions of this Agreement.
- 7.3 Jurisdiction, Governing Law.** This Agreement is made and entered into in the State of Oregon and shall, in all respects, be interpreted, enforced and governed by the laws of the State of Oregon, without regard to choice of law principles. The Parties further agree that any dispute arising out of this Agreement shall be adjudicated by a Court of competent jurisdiction.
- 7.4 Notices.** Any notice required or permitted under this Agreement shall be given in writing and shall be sent to the following Parties via electronic mail with a copy sent by overnight mail or hand delivery:

To Local 8:

[insert]

with a copy to:

[insert]

To ICTSI:

Elvis Ganda  
Chief Executive Officer  
ICTSI Oregon, Inc.



5665 Meadows Road, Suite 110  
Lake Oswego, OR 97035  
eganda@ictsiousa.com

with a copy to:

Ori Katz  
Jennifer Nassiri  
Sheppard, Mullin, Richter & Hampton LLP  
Four Embarcadero Center, 17<sup>th</sup> Floor  
San Francisco, CA 94111  
okatz@sheppardmullin.com  
jnassiri@sheppardmullin.com

Jeffrey Eden  
Michael Garone  
Schwabe, Williamson & Wyatt, P.C.  
1211 SW Fifth Ave., Suite 1900  
Portland, OR 97204  
jeden@schwabe.com  
mgarone@schwabe.com

- 7.5 No Party Deemed Drafter.** The Parties shall jointly be deemed to be the drafters of this Agreement; the rule that any ambiguity in a contract shall be construed against the drafter of the contract shall not apply to this Agreement.
- 7.6 Voluntary Settlement.** The Parties acknowledge and agree that each of them is entering into this Agreement freely and voluntarily and not acting under any misapprehension as to the effect hereof, and has acted and does hereby act freely and voluntarily and not under any coercion or duress.
- 7.7 No Mistake of Fact or Law.** In entering into this Agreement, each Party assumes the risk of any mistake, and if it should subsequently discover that any understanding of the facts or of the law was incorrect, each Party understands and expressly agrees that it shall not be entitled to set aside this Agreement by reason thereof, regardless of any mistake of fact or law.
- 7.8 Survival.** All covenants, agreements, representations, and warranties made in this Agreement will survive the execution and delivery hereof.
- 7.9 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which constitute one and the same instrument. Any such counterpart, to the extent delivered by means of e-mail or a fax machine or by .pdf, .tif, .jpeg, or similar attachment to electronic mail ("**Electronic Delivery**") shall be treated in all manner and respects as an original executed counterpart and shall be considered to have the same binding legal effect

as if it were the original signed version thereof delivered in person. No Party shall raise the use of Electronic Delivery as a defense to the formation of a contract, and each Party forever waives such defense, except to the extent that such defense relates to the lack of authenticity.

- 7.10 Settlement of Disputed Claims.** The Parties acknowledge that the Settlement Payment was agreed upon as a compromise and final settlement of any and all disputed claims and that payment of the Settlement Payment is not, and may not be construed as, an admission of liability.
- 7.11 Taxes.** The Parties hereby agree that the Agreement is a settlement of various claims and objections to claims that have been or could be asserted by the Parties in the Local 8 Bankruptcy Case and was made in good faith.
- 7.12 Limitations.** Notwithstanding the Releases referred to in Section 3 herein, nothing in this Agreement, including but not limited to the Releases, shall release any Party from its obligations under this Agreement or prevent any Party from taking action to enforce the terms of this Agreement.
- 7.13 Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. If any provision (or part of any provision) of this Agreement is found invalid, illegal or unenforceable, the rest of the Agreement shall remain in effect and shall be construed as if any such invalid, illegal, or unenforceable provision (or part of a provision) were excluded from the Agreement.
- 7.14 Binding Effect.** This Agreement and the terms, obligations, and rights in it shall be binding upon and shall inure to the benefit of the Parties and their respective parent companies, subsidiaries, heirs, legatees, trustees, affiliates, successors, and assigns.

*Remainder of Page Left Intentionally Blank*



IN WITNESS WHEREOF the Parties have caused this Agreement to be executed on the respective dates hereinafter set forth.

**ILWU LOCAL 8**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**ICTSI OREGON, INC.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**ACKNOWLEDGED AND AGREED TO SOLELY FOR PURPOSES OF SECTION 6.1  
HEREOF (MUTUAL NON-DISPARAGEMENT) AND AS TO THE EFFECTIVENESS  
OF THE RELEASE GRANTED BY ICTSI ON BEHALF OF ICTSI PARENT IN  
SECTIONS 3.2 AND 3.3 HEREOF (ICTSI RELEASORS' GENERAL RELEASE):**

**INTERNATIONAL CONTAINER TERMINAL SERVICES, INC.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit 1**

**Form of Request for Dismissal with Prejudice**

Julie R. Vacura, OSB #843692  
jvacura@lvklaw.com  
John C. Rake, OSB #105808  
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*Attorneys for International Longshore  
and Warehouse Union and ILWU Local 8*

**UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON**

ICTSI OREGON, INC.,

Plaintiff,

v.

INTERNATIONAL LONGSHORE AND  
WAREHOUSE UNION and ILWU  
LOCAL 8,

Defendants.

Case No. 3:12-cv-01058-SI

**STIPULATION OF DISMISSAL WITH  
PREJUDICE**

Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), and the settlement between Plaintiff ICTSI Oregon, Inc. and Defendant ILWU Local 8 (together, the "Parties"), the Parties stipulate to dismiss

STIPULATION OF DISMISSAL WITH PREJUDICE

Page 1

4861-3035-0753.2 42339.002

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all claims with prejudice, with each Party to bear its own attorney fees and costs.

DATED: \_\_\_\_\_, 2024.

LARKINS VACURA KAYSER LLP

---

Julie R. Vacura, OSB #843692  
John C. Rake, OSB #105808  
Brett Applegate, OSB #132944  
Kelsey Benedick, OSB #173038  
Tania Manners, OSB #140363  
Hopi Costello Ruplin, OSB #185940

*Attorneys for International Longshore and  
Warehouse Union and ILWU Local 8*

DATED: \_\_\_\_\_, 2024.

SCHWABE, WILLIAMSON & WYATT

---

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Facsimile: (503) 796-2900

Amanda T. Gamblin, OSB #021361  
Email: amanda@gamblin-law.com  
AMANDA T GAMBLIN, ATTORNEY AT LAW LLC  
4004 SE Francis Street  
Portland, OR 97202  
Telephone: (503) 329-1858

**Exhibit 5**

**Form of Joint Press Release**

## ILWU / ICTSI – Joint Press Release

### **The International Longshore and Warehouse Union and ICTSI Oregon, Inc. Reach Settlement of Long-Running Litigation**

SAN FRANCISCO, CA – February [●], 2024 – The International Longshore and Warehouse Union (“ILWU”) and ICTSI Oregon, Inc. (“ICTSI”) today jointly announce that they have reached a settlement of all legal claims.

Specifically, the settlement finally resolves all ICTSI’s claims against ILWU relating to the decade-long litigation captioned *ICTSI Oregon, Inc. v. International Longshore and Warehouse Union, et al.*, Case No. 3:12-cv-1058-SI, pending in the United States District Court for the District of Oregon, in which a jury determined that ILWU and ILWU Local 8 engaged in unlawful labor practices. The litigation, which was set for a retrial on damages, was stayed by the commencement of ILWU’s and Local 8’s bankruptcy cases on September 30, 2023 and October 18, 2023, respectively. Pursuant to the settlement, ICTSI will receive payment of \$20.5 million.

The ILWU settlement arises from the parties’ participation in several days of mediation during ILWU’s chapter 11 bankruptcy case, which will be voluntarily dismissed as part of the terms of the settlement.

#### **Media Contact:**

Roy San Filippo  
International Longshore and Warehouse Union  
**Email:** Roy.SanFilippo@ilwu.org  
**Phone:** (415) 775-0533

Elvis Ganda  
ICTSI Oregon, Inc.  
**Email:** Contact@ictsiusa.com

# **EXHIBIT B**

## **Proposed Order**

1 PACHULSKI STANG ZIEHL & JONES LLP  
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2 Jason H. Rosell (CA Bar No. 269126)  
One Sansome Street, Suite 3430  
3 San Francisco, California 94104  
Telephone: (415) 263-7000  
4 Facsimile: (415) 263-7010  
E-mail: dgrassgreen@pszjlaw.com  
5 jrosell@pszjlaw.com

6 *Counsel to the Debtor*

7 **UNITED STATES BANKRUPTCY COURT**  
8 **NORTHERN DISTRICT OF CALIFORNIA**  
9 **SAN FRANCISCO DIVISION**

10 In re:

11 INTERNATIONAL LONGSHORE  
AND WAREHOUSE UNION,

12 Debtor.

Case No. 23-30662-HLB

Chapter 11

**ORDER APPROVING DEBTOR'S MOTION  
FOR ENTRY OF AN ORDER  
AUTHORIZING AND APPROVING THE  
SETTLEMENT AGREEMENT PURSUANT  
TO RULE 9019 OF THE FEDERAL RULES  
OF BANKRUPTCY PROCEDURE**

Hearing Held:

Date: February 22, 2024 at 10:00 a.m.

Place: Zoom / Telephonic

Judge: Hon. Hannah L. Blumenstiel

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17  
18 *The Debtor's Motion for Entry of an Order Authorizing and Approving the Settlement*  
19 *Agreement Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure* [Docket No. \_ ]  
20 (the "Motion")<sup>1</sup> filed by the International Longshore and Warehouse Union (the "Debtor"), the  
21 debtor and debtor-in-possession in the above-captioned bankruptcy case (the "Case"), came before  
22 the Court for hearing on February 22, 2024 at 10:00 a.m. (Pacific Time). Appearances were as noted  
23 on the record. Based upon the Court's review of the Motion, the declarations and other pleadings  
24 filed in support of the Motion, the arguments of counsel at the hearing on the Motion, all pleadings  
25 and evidence of record in this Case; and the Court finding that: (a) the Court has jurisdiction over  
26 this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28  
27

28  
<sup>1</sup> A capitalized term used but not defined herein shall have the meaning ascribed to it in the Motion.



1 U.S.C. § 157(b), (c) notice of the Motion and the hearing were sufficient and proper, and (d) the  
2 legal and factual bases set forth in the Motion establish just cause for the relief granted herein;

3 **IT IS HEREBY ORDERED THAT:**

4 1. The Motion is **GRANTED**.

5 2. Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, the Settlement  
6 Agreement attached hereto as **Exhibit 1** is approved.

7 3. All objections to the Motion or the requested relief therein, if any, that have not been  
8 withdrawn, waived, or settled, and all reservations of rights included therein, are overruled.

9 4. The Parties are authorized to take any actions as may be necessary or appropriate to  
10 implement, effectuate, and fully perform under the Settlement Agreement in accordance with this  
11 Order.

12 5. This Court shall retain jurisdiction to hear and determine all matters arising from or  
13 related to the implementation or interpretation of this Order.

14 **\*\* END OF ORDER \*\***

**Exhibit 1 to Approval Order**

**Settlement Agreement**

[Intentionally Omitted]