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10 Attorneys for Plaintiff

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

14 KEVIN KRAMER on behalf of himself, all others
15 similarly situated, and on behalf of the general
public,

16 Plaintiffs,

17 v.

18 XPO LOGISTICS, INC.; and DOES 1 – 100,

19 Defendants.

21 HECTOR IBANEZ on behalf of himself, all others
22 similarly situated, and on behalf of the general
public

23 Plaintiffs,

24 v.

25 XPO LAST MILE, INC.; and DOES 1 – 100,

26 Defendants.

Case No. 3:16-cv-07039-WHO
Consolidated with 3:17-cv-04009-JSC

[Assigned to the Honorable William H. Orrick]

**DECLARATION OF MATTHEW
BAINER, ESQ. IN SUPPORT OF
PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: September 4, 2019
Time: 2:00 p.m.
Ctrm.: 2

Action Filed: September 22, 2016
Date Removed: December 8, 2016
Trial Date: December 3, 2018

This Document Relates To:
Kramer, 3:16-cv-07039-WHO
Ibanez, 3:17-cv-04009-JSC

1 I, Matthew Bainer, declare as follows:

2 1. I am an attorney licensed to practice before all courts of the State of California. I am the
3 principal of The Bainer Law Firm (“Bainer Law”), counsel of record for Plaintiff Hector Ibanez in the
4 above-captioned action. I make this declaration in support of the Motion for Preliminary Approval of Class
5 Action Settlement. Unless the context indicates otherwise, I have personal knowledge of the facts stated in
6 this declaration and if called as a witness, I could and would testify competently thereto.

7 2. Plaintiff has conducted sufficient formal and informal investigation and discovery in the
8 Action in order to assess the merits and risks of the proceeding to trial with the claims brought herein, and
9 the adequacy and fairness of this Settlement in light thereof. Overall, Plaintiff’s Counsel performed an
10 extensive investigation into the claims at issue, including (1) determining the suitability of the putative class
11 representatives through interviews, background investigations, and analyses of employment files and related
12 records; (2) researching wage-and-hour class actions involving similar claims; (3) acquiring information
13 regarding putative Class Members’ potential claims, identifying additional witnesses, and obtaining documents
14 in support of Plaintiff’s eventual Motion for Class Certification; (4) obtaining and analyzing Defendant’s wage-
15 and-hour policies and procedures; (5) researching the latest case law developments bearing on the theories of
16 liability; (6) researching settlements in similar cases; (7) taking multiple depositions of both Defendant
17 representatives and percipient witnesses; (8) preparing valuation analyses of claims; (8) participating in two
18 full-day private mediation sessions and preparing related memoranda; (9) negotiating the terms of this
19 Settlement; (10) finalizing the Joint Stipulation of Class Action Settlement and Release; and (11) and drafting
20 preliminary approval papers. The document and data exchanges allowed Plaintiff’s Counsel to assess the
21 strengths and weaknesses of the claims against Defendant and the benefits of the proposed Settlement.

22 3. The parties participated in two full-day private mediation sessions with experienced class
23 action employment mediator Michael Dickstein, Esq., who specializes in mediating employment disputes,
24 including wage and hour class actions. As a result of the mediation, the parties were able to reach an
25 agreement on the principal terms of settlement. The parties continued to discuss and negotiate the remaining
26 details over the course of several months. At all times, the Parties’ negotiations were adversarial and non-

1 collusive. The Settlement therefore constitutes a fair, adequate, and reasonable compromise of the claims at
2 issue.

3 QUALIFICATIONS AND EXPERIENCE

4 4. Plaintiff's counsel herein has extensive experience in wage and hour class action
5 litigation. I have been selected as a Northern California Super Lawyer Rising Star for both 2015
6 and 2016. These recognitions are a selection by my peers based upon ethics, experience and
7 reputation and represent the top 2.5% of individuals under the age of 40 in our profession. I have
8 litigated numerous successful wage and hour class actions in California. I have been a member of
9 the Executive Committee of the Alameda County Bar Association's Labor & Employment Law
10 Section since 2010 and have been elected to serve as the Committee's Chair for 2019. Prior to
11 forming The Bainer Law Firm, I spent 12 years as the Senior Associate at one of the state's most
12 accomplished wage & hour class action firms. Notably, this work included an appointment as co-
13 class counsel on the matter of *Augustus v. ABM Security Services, Inc.*, which resulted in a \$90
14 million-dollar summary judgment verdict for the Plaintiff Class that was subsequently reviewed and
15 upheld by the California Supreme Court. *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th
16 257. I have also appeared as counsel-of-record in numerous appellate opinions, at both the State
17 and Federal level, for employees in the state of California on pertinent wage & hour and class
18 action matters, including:

- 19 a. *Dunbar v. Albertson's, Inc.* (2006) 141 Cal.App.4th 1422;
- 20 b. *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116;
- 21 c. *Augustus v. ABM Security Services, Inc.* (2014) 233 Cal. App. 4th 1065
- 22 d. *Bower v. Inter-Con Security Systems, Inc.* (2014) 232 Cal. App. 4th 1035;
- 23 e. *Davis v. Nordstrom, Inc.* (2014) 755 F.3d 1089
- 24 e. *Montano v. Wet Seal Retail, Inc.* (2015) 232 Cal. App. 4th 1214;

25 These cases were landmark decisions in establishing the standards for class certification for
26 wage & hour actions (*Dunbar*); the criteria required for final approval of class action settlements
(*Kullar*); defining the meaning of California's rest break requirements in relation to on-call work

1 status (Augustus); and establishing the standards for compelling wage & hour actions to arbitration
2 (Bower, Davis and Montano).

3 **CLASS ACTION EXPERIENCE**

4 5. I have previously served as class counsel in many wage & hour class action cases.
5 The following is a sample of matters wherein I have been approved as class counsel:

6 **Arteaga v. G4S Secure Solutions (USA), Inc.**

7 Alameda County Superior Court Case No. RG17859072

8 This wage and hour complex litigation matter involved the alleged failure to provide meal
9 periods, rest periods and owed wages to a class of Security Guards. The Bainer Law Firm served as
10 lead class counsel for this proposed class of employees. This action settled for \$5.6 million.

11 **Chaidez, et al. v. Odwalla, Inc.**

12 San Mateo County Superior Court Case No. CIV430598

13 This wage and hour complex litigation matter involved the alleged misclassification of
14 overtime non-exempt California Route Sales Representatives. This action settled for \$2.2 million.

15 **Christman, et al. v. Good Guys, Inc.**

16 San Diego County Superior Court Case No. GIS21939

17 This legal action alleged violations of California law for unpaid overtime wages and for
18 failure to provide rest and meal periods on behalf of multiple employee classifications. This action
19 settled for up to \$1.05 million.

20 **Collier v. Delaware North Companies**

21 United States District Court, Northern District of California, Case No. 5:17-cv-01938-R (KKx)

22 This class action was filed alleging violations of California law for failure to pay wages,
23 including unpaid overtime compensation, to a proposed class of Defendant's non-exempt airport
24 employees. The Bainer Law Firm served as class counsel in this matter. The case settled for
25 \$250,000.

26 **Dailey, et al. v. Performant Financial Corporation**

27 Alameda County Superior Court Case No. RG104 3644

28 This action was filed on behalf of the company's non-exempt employees seeking wages for

1 alleged violations of California law for unpaid overtime and denial of meal and/or rest periods.
2 After defeating the defendant's summary judgment motion and filing a motion for class
3 certification, this case settled for \$1.2 million.

4 **Davis, et al. v. American Commercial Security Service, Inc.**

5 San Francisco County Superior Court Case No. CGC-05-444421 (Consolidated with Los Angeles
6 County Superior Court Case No. BC336416)

7 This action was filed a claim against American Commercial Security Services, Inc. for
8 violations of California law for denial of meal and rest periods toward security guards. The action
9 achieved class certification status in 2009. Following summary judgment proceedings, a judgment
10 of over \$89 million was entered against the defendant. The judgment was ultimately upheld by the
11 California Supreme Court.

12 **Davis, et al. v. Universal Protection Security Systems, Inc., et al.**

13 San Francisco County Superior Court Case No. CGC-09-495528

14 This case was filed as a claim in 2009 against Universal Protection Security Systems, Inc. for
15 violations of California law for denial of meal and rest periods toward security guards. This case
16 settled in 2013 for \$4 million.

17 **Escow-Fulton, et al. v. Sports and Fitness Clubs of America dba 24 Hour Fitness USA, Inc.**

18 San Diego County Superior Court Case No. GIC881669; consolidated with Case No. GIC873193

19 This class action was filed against this health and fitness company on behalf of the
20 company's California "Group X" Instructors to recover regular and overtime pay, related penalties
21 and un-reimbursed expenses. The action achieved class certification status in 2009. In 2011, the
22 parties agreed to settle the class' expense reimbursement claims for \$10 million. The parties then
23 filed cross-motions for summary adjudication and on August 2, 2011, the court issued an Order
24 finding 24 Hour Fitness' session rate compensation scheme to be an invalid piece rate. The parties
25 then agreed to settle the class' unpaid wage claims for \$9 million, and the summary
26 adjudication order was vacated pursuant to settlement.

27 **Espinosa v. California College of San Diego, inc.**

28 United States Southern District of California Court Case No. 3:17-cv-00744-MMA (BLM)

v

1 This case was filed on behalf of a class of non-exempt employees of Defendant for allegedly
2 being denied lawful breaks and overtime pay. The Bainer Law Firm served as class counsel for the
3 proposed class. This case settled in 2017 for \$300,000.

4 **Grootboom v. Security Industry Specialists, Inc.**

5 Alameda County Superior Court Case No. RG09435440

6 This class action was filed on behalf of the company's California-based security guards to
7 recover unpaid wages and compensation for missed meal and rest periods in violation of California
8 law. This action settled in 2009 for \$775,000.

9 **Holm, et al. v. Borders, Inc.**

10 San Francisco County Superior Court Case No. CGC-05-445357

11 Plaintiff filed this action for the proposed class against this retail chain for violation of
12 California law for failure to pay Inventory and/or Sales Managers overtime wages. It also alleged
13 that the proposed class had been denied rest and meal periods. This matter settled in 2007 for \$3.5
14 million.

15 **Ingraham v. Orchard Supply Hardware, Corp.**

16 San Mateo County Superior Court Case No. 457004

17 This matter was filed on behalf of all company employees who were forced to maintain, as a
18 condition of employment, a company-issued uniform. This class action also seeks recovery of
19 unpaid wages, compensation for the improper denial of overtime pay and for missed meal and rest
20 periods. This matter resolved in 2008 on behalf of approximately 22,000 class members for \$1.75
21 million.

22 **Kullar v. Foot Locker, Inc.**

23 San Francisco County Superior Court Case No. CGC-05-447044

24 This action was brought against this sporting retailer on behalf of California employees who
25 were allegedly forced to purchase shoes of a distinctive color or design as a term and condition of
26 their employment and in violation of state law. The Court approved a \$2.0 million settlement that
27 resolved this action. After two separate appeals by an objector challenging the settlement, the Court
28 of Appeal affirmed the trial court's judgment.

1 **Kurihara v. Best Buy Co., Inc.**

2 United States District Court, Northern District of California, Case No. 3:06-CV-01884

3 Plaintiff filed an action against this retailer on behalf of employees who were allegedly
4 subject to security searches for which they were not compensated, in violation of California
5 law. Also alleged was that the company denied these employees rest and meal periods. In 2007, the
6 Court certified a class of over 16,000 Best Buy employees. The action settled for \$5 million in
7 2010.

8 **Mambuki, et al. v. Securitas Security Services USA, Inc.**

9 Santa Clara County Superior Court Case No. 1-05-CV-047499 (JCCP No. 4460)

10 Plaintiff filed a claim against this defendant for violations of California law (for denial of
11 meal and rest periods) on behalf of the company's California-based security guards. This
12 coordinated proceeding settled in 2008 for \$15 million.

13 **McFann, et al. v. Volt Telecommunications Group, Inc.**

14 Riverside County Superior Court Case No. RIC475410

15 (Los Angeles County Superior Court JCCP No. 4533)

16 This action was filed on behalf of company field technicians to recover reimbursement for
17 business-related expenses and for unpaid wages. The Court approved an Arbitration Award entered
18 pursuant to a \$3.45 million class-wide settlement in 2009.

19 **Menchykv. Beverages & More, Inc.**

20 Alameda County Superior Court Case No. RG05196918

21 Plaintiff filed this action for violations of California law for unpaid overtime wages and for
22 failure to provide meal and rest periods. Although a small putative class (98 class members), it
23 settled for \$1.2 million, representing one of the highest per-workweek settlements in California at
24 the time.

25 **Moore v. Albertsons Inc.**

26 United States District Court, Northern District of California, Case No. 3:04-CV-03731

27 This action was filed for violations of California's overtime laws on behalf of the company's
28 California Drug Managers. This action settled for \$2.35 million, again representing one of highest

1 per-workweek settlements in the state at the time.

2 **Nunez v. AC Square, Inc., et al.**

3 San Mateo County Superior Court Case No. CIV479622 (Consolidated with Case Nos. 464144 and
4 473571)

5 Plaintiff filed this class action on behalf of all California Technicians employed by AC
6 Square (during the applicable claims period) to recover unpaid wages including overtime pay, meal
7 and rest period compensation, related penalties and un-reimbursed expenses. This action settled for
8 \$800,000.

9 **Olvera v. AlSCO, Inc.**

10 United States Central District of California Court Case No. 5:17-cv-01500-RGK-KS

11 Plaintiff filed this class action on behalf of all Route Sales Drivers employed by Defendant to
12 recover unpaid wages including overtime pay, meal and rest period compensation, related penalties
13 and un-reimbursed expenses. The Bainer Law Firm served as class counsel in this matter This
14 action settled for \$550,000.

15 **Paz v. Zara USA, Inc.**

16 San Bernardino County Superior Court Case No. CIV-DS-1821561

17 This action was filed on behalf of company non-exempt retail employees to recover
18 reimbursement for business-related expenses and for unpaid wages. The Bainer Law Firm served as
19 class counsel on this action. The case settled for \$1.9 million.

20 **Schweinsburg v. Paragon Systems, Inc.**

21 United States District Court, Central District of California, Case No. 2:09-CV-08139

22 This class action was file in 2009 against Paragon Systems, Inc., for violations of California
23 law for denial of meal and rest periods toward non-exempt security guards. This case settled for the
24 policy limit of \$885,410.

25 **Torres, et al. v. ABC Security Services, Inc.**

26 Alameda County Superior Court Case No. G04158744

27 Plaintiff filed this litigation alleging violations of California law for denial of meal and rest
28 periods on behalf of the company's security guards. This action received class certification status in

1 2006 and settled for \$495,000.

2 **Torres, et al. v. Point 2 Point Global Security, Inc.**

3 Riverside County Superior Court Case No. RIC 1708613

4 Plaintiff filed this litigation alleging violations of California law for denial of meal and rest
5 periods on behalf of the company's security guards. The Bainer Law Firm served as Class Counsel
6 in this matter. This action settled for \$270,000.

7 **HOURLY RATE, LODESTAR, AND LITIGATION COSTS**

8 6. My current hourly rate is \$750. At the time of filing, my firm has a lodestar of \$262,320 in
9 fees and has incurred \$15,474.09 in costs.

10
11 I, Matthew R. Bainer, attest that all other signatures listed, and on whose behalf the filing is
12 submitted, concur in the filing's contents and have authorized the filing.

13
14
15
16 Dated: August 16, 2019

/s/ Matthew Bainer

Matthew Bainer, Esq.