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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

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

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

Plaintiffs,

v.

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

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

[Assigned to the Honorable William H. Orrick]

**DECLARATION OF DAVID MARA 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

I, DAVID MARA, declare the following:

1. I am President of Mara Law Firm, PC and counsel of record for Plaintiffs and the putative class in this matter. I am duly admitted to practice before all the courts of the state of California. The following facts are within my personal knowledge and, if called to testify, I could and would competently testify thereto.
2. I have been practicing law in California since 2004.
3. I extensively handle employment cases which involve violations of the California Labor Code and Industrial Welfare Commission Wage Orders, such as wage and hour class actions and cases alleging violations of the Private Attorneys General Act of 2004 ("PAGA").
4. I was co-class counsel in *Hohnbaum v. Brinker Restaurant Corp.*, San Diego Superior Court, Case No. GIC834348, which was the underlying case in the California Supreme Court's landmark decision in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, in which the California Supreme Court delineated the scope of employer obligations to provide, and employee rights to receive, meal and rest periods under California law.
5. I wrote an Amicus brief on behalf of Consumer Attorneys Of California ("CAOC") in the recent decision by the California Supreme Court in *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257 (rest breaks must be duty-free and time spent being on call during rest breaks is not considered duty-free).
6. My firm also wrote an Amicus brief on behalf of CAOC in the recent decision by the California Supreme Court in *Williams v. Superior Court* (2017) 3 Cal. 5th 531 (PAGA and wage and hour class action).
7. My firm has been granted class certification in both state and federal courts.
8. I am also Plaintiff's counsel in a host of other class actions involving violations of California's wage and hour laws, many of which involve the transportation industry. For example, I have been and am involved as counsel for plaintiffs in the following sampling of class action cases involving wage and hour violations under California law: *Davis v. Apria Healthcare Group*

(Case No. 37-2015-00007743); *Norona v. B&G Delivery System, Inc.* (Case No. RG1577005); *Perez v. City of San Diego* (Case No. 37-2014-00016621); *Cuellar-Ramirez v. US Foods, Inc.* (Case No. RG15770766); *Peron v. The Vons Companies, Inc.* (Case No. 15-cv-01567-L-JMA); *Hilderbrand v. LinkUs Enterprises, LLC* (Case No. DR150155); *Belton v. Pacific Pulmonary Services* (Case No. CGC-15-547564); *Medina v. Central Cal Transportation, Inc.* (Case No. RG15770011); *Eure v. Dotson v. Asbury Environmental Services* (Case No. RG16842620); *Spikes v. Bear Trucking, Inc.* (Case No. 16CECG02389); *Reynoso v. Benjamin's Transfer, Inc.* (Case No. FCS048845); *Montes v. Coram Specialty Infusion Services, Inc.* (Case No. 37-2016-00028950-CU-OE-CTL); *Rodriguez v. Delta Sierra Beverage, LLC* (Case No. 34-2017-00206727); *Clavel v. La Jolla Beach & Tennis Club, Inc.* (Case No. 37-2017-00004802-CU-OE-CTL); *Martin v. Sysco Central California, Inc.* (Case No. 9000052).

9. I devoted 645 hours to this case. The following is a summary of my tasks and the activities I performed in this litigation: prepared for and traveled to San Francisco, Orange County, and Los Angeles to take depositions of Defendant's witnesses; traveled to, prepared for, and attended mediation in San Francisco and Toronto, Canada; draft mediation damage and exposure models; analyze documents produced by Defendant relating to its policies, pay-structures, and time keeping; analyze and review contracts made between Defendant and contract carriers, as well as Defendant's contracts with its customers; analyze and review data produced by Defendant relating to contract carriers and the putative driver/helper class; interviewing putative Class Members; research and investigation in California's ever evolving wage and hour laws, class certification requirements, and misclassification laws; review and discuss Plaintiffs' responses to discovery; numerous conferences with Plaintiff, co-counsel, counsel in related matters and Defendant on numerous issues throughout the litigation, mediation, and settlement; investigation into Defendant's pay-structures and policies—that is, Defendant produced voluminous documents and information relating to the size and scope of the class within the Class Period; draft a living outline for Plaintiffs' motion for class certification; negotiate and review settlement agreement; review and edit preliminary approval

1 motion and draft declaration in support thereof; and conferences with associates. It is
 2 anticipated that I will attend the preliminary and final approval hearings; review and edit the
 3 final approval motion and draft a declaration in support thereof.

4 10. My hourly rate is \$700. Based on my hourly rate and the hours expended thus far (645), my
 5 fee is \$451,500.00, which was reasonable and necessary to the successful litigation of this
 6 matter.

7 11. Jamie Serb is an associate at the Mara Law Firm. Ms. Serb has been a member of the California
 8 Bar since 2013. She has gained extensive experience in wage and hour class litigation. Ms.
 9 Serb co-drafted an amicus brief on behalf of CAOC in the recent decision by the California
 10 Supreme Court in *Williams v. Superior Court* (2017) 3 Cal. 5th 531 (PAGA and wage and hour
 11 class action). She has been substantially involved in all phases of this litigation. Ms. Serb was
 12 also substantially involved in the following sampling of wage and hour class action and PAGA
 13 cases, of which our firm is the attorney of record: *Perez v. City of San Diego* (Case No. 37-
 14 2014-00016621); *Porras v. DBI Beverage, Inc.* (Case No. 114CV266154); *Hernandez v.*
 15 *Classic Distributing and Beverage Group, Inc.* (Case No. BC615317); *Huguez v. KKW*
 16 *Trucking, Inc.* (Case No. 34-2016-00190517); *Hilderbrand v. LinkUs Enterprises, LLC* (Case
 17 No. DR150155); *Parker v. Selland Auto Transport, Inc.* (Case No. 3:15-cv-05635-ECM);
 18 *Smith v. Werner Enterprises, Inc.* (Case No. 8:150cv0287); *Vega v. Advance Beverage Co.,*
 19 *Inc.* (Case No. BCV-16-100848); *Zamudio v. Ameripride Services, Inc.* (Case No.
 20 RG16809666); *Henricks v. Antonini Freight Express, Inc.* (Case No. STK-CV-UOE-2016-
 21 6999); *Payton v. Atech Logistics, Inc.* (Case No. SCV-258595); *Mendoza v. Bi-Rite Food*
 22 *Service, Inc.* (Case No. 17CIV02044); *Austin v. Canteen Vending; Compass Group, USA, Inc.*
 23 (Case No. RG16809670); *Timothy v. Coastal Transport Co., Inc.* (Case No. 37-2016-
 24 00023458-CU-OE-CTL); *Beach-Barrow v. The Hertz Corporation* (Case No. RG17848833);
 25 *Cruz v. Hertz Equipment Rental Corporation* (Case No. 16-cv-03889); *Caulfield v. ITS*
 26 *Logistics, LLC* (Case No. 37-2016-00044111-CU-OE-CTL); *Hobson v. Linde, LLC* (Case No.

CIVDS1613085); *Clavel v. La Jolla Beach & Tennis Club, Inc.* (Case No. 37-2017-00004802-CU-OE-CTL); *Helton v. Pepsi-Cola Sales and Distribution, Inc.* (Case No. 17-cv-1135); *Randall v. Professional Auto Transport, Inc.* (Case No. RG17847058); *McConville v. Renzenberger, Inc.* (Case No. 16-cv-00578); *Thomas, et al. v. TransitAmerica Services, Inc.* (Case No. 37-2014-00018867-CU-OE-CTL).

12. Ms. Serb devoted 489 hours to this case. The following is a summary of her tasks and activities performed in the litigation of this matter: meet and confer discussions with defense counsel; numerous discussions with co-counsel and counsel in related matters; discussions with Plaintiff and Class Members re their experiences working with Defendant; draft, review, file discovery dispute letters; review and analyze voluminous documents produced by Defendant; draft joint CMC statements, ex parte motions, and stipulations; review and analyze data produced by Defendant; prepare for, travel to, and attend/depose multiple depositions (of Defendant's witnesses and contract carriers) in Sacramento, Redding, San Francisco, Los Angeles, Orange County, and Atlanta, Georgia; draft, and edit the settlement agreement, and the Notice to the Class; draft and re-draft preliminary approval motion and supporting papers; attend the preliminary approval hearing; have discussions with the settlement administrator regarding its duties; review and proof Notice Packet papers from the settlement administrator; have discussions with Class Members regarding the Notice and settlement; review weekly status reports from the settlement administrator regarding Class participation; review and suggest edits to the Settlement Administrator's declaration; draft and re-draft final approval motion and supporting papers and attend the hearing thereon.

13. Ms. Serb's hourly rate is \$500. Based on her hourly rate and the hours expended (489), her lodestar fee is \$244,500.00, which was reasonable and necessary to the successful litigation of this matter.

14. Tony Roberts is an associate at the Mara Law Firm. Mr. Roberts has been a member of the California Bar since 2017. He is also an adjunct professor of law at the University of San Diego

School of Law. He has been substantially involved in all phases of this litigation. Mr. Roberts was also substantially involved in the following sampling of wage and hour class action and PAGA cases, of which our firm is the attorney of record: *Perez v. City of San Diego* (Case No. 37-2014-00016621); *Hilderbrand v. LinkUs Enterprises, LLC* (Case No. DR150155); *Hernandez v. Classic Distributing and Beverage Group, Inc.* (Case No. BC615317); *DeCaro v. LinkUs Enterprises, LLC* (Case No. DR170706); *Vega v. Advance Beverage Co., Inc.* (Case No. BCV-16-100848); *Zamudio v. Ameripride Services, Inc.* (Case No. RG16809666); *Payton v. Atech Logistics, Inc.* (Case No. SCV-258595); *Mendoza v. Bi-Rite Food Service, Inc.* (Case No. 17CIV02044); *Sanchez v. Exact Staff, Inc.* (Case No. CIVDS1702554); *Beach-Barrow v. The Hertz Corporation* (Case No. RG17848833); *Cruz v. Hertz Equipment Rental Corporation* (Case No. 16-cv-03889); *Hobson v. Linde, LLC* (Case No. CIVDS1613085); *Clavel v. La Jolla Beach & Tennis Club, Inc.* (Case No. 37-2017-00004802-CU-OE-CTL); *Helton v. Pepsi-Cola Sales and Distribution, Inc.* (Case No. 17-cv-1135); *Randall v. Professional Auto Transport, Inc.* (Case No. RG17847058); *McConville v. Renzenberger, Inc.* (Case No. 16-cv-00578); *Thomas, et al. v. TransitAmerica Services, Inc.* (Case No. 37-2014-00018867-CU-OE-CTL).

15. Mr. Roberts devoted 181 hours to this case. The following is a summary of his tasks and activities performed in the litigation of this matter: discussions with class members; draft stipulations; draft CMC statements; draft meet and confer correspondence; review and analyze thousands of documents; research, vet, and hire discovery expert; research and analyze various legal issues with respect to misclassification and certification. It is anticipated Mr. Roberts will also respond to class member inquiries re: status of settlement funds.

16. Mr. Robert's hourly rate is \$400. Based on his hourly rate and the hours expended (181), his lodestar fee is \$72,400.00, which was reasonable and necessary to the successful litigation of this matter.

17. Mr. Turley was a former partner of The Turley & Mara Law Firm through March 2019. Prior to leaving the firm (now called the Mara Law Firm), he devoted 167 hours to this case. The

1 following is a summary of his tasks and activities performed in the litigation of this matter:
2 pre-filing investigation; communicating with the class representative; interviewing and meeting
3 with putative Class Members; research and investigation in California's ever evolving wage
4 and hour laws regarding compensation, overtime, meal and rest periods, itemized wage
5 statements, waiting time penalties, misclassification, and California's Unfair Competition
6 Law; draft and file pleadings; prepare for, travel to, and attend mediation in San Francisco;
7 conferences with associates.

8 18. Mr. Turley's hourly rate is \$850. Based on his hourly rate and the hours expended (167), his
9 lodestar fee is \$226,950.00, which was reasonable and necessary to the successful litigation of
10 this matter.

11 19. My firm's total lodestar amount so far is \$995,350.00, based on 1,482 hours of attorney time,
12 all of which was reasonable and necessary to the successful litigation of this matter. This does
13 not count the anticipated time it will take to travel to and attend the preliminary and final
14 approval hearings. It also doesn't include anticipated time needed to draft the motion and
15 supporting documents for final approval, as well as anticipated time spent talking with class
16 members re: settlement status and the settlement administrator. This will likely add an
17 additional 30 hours of attorney time.

18 20. In addition, my firm has incurred \$78,969.87 in costs to date, and is requesting reimbursement
19 of these costs at final approval. This amount does not include the costs to be incurred traveling
20 to the preliminary and final approval hearings.

21 21. The proposed settlement is the product of serious, informed, non-collusive negotiations, has
22 no obvious defects, does not improperly grant preferential treatment to the class representative
23 or segments of the class and falls within the range of fair and reasonable settlements. I believe
24 that this non-reversionary settlement is in the best interests of the class as fair, reasonable, and
adequate. Therefore, I recommend approval of the settlement.

25 22. A true and correct copy of the Joint Stipulation and Settlement Agreement is attached hereto
26 as **Exhibit 1**, of which the Class Notice is attached as **Exhibit A**.

23. A true and correct copy of three settlement administration bids received by Counsel are attached hereto as **Exhibit 2**.
24. A true and correct copy of the Summary of Time and Costs for my firm and co-counsel's firm is attached hereto as **Exhibit 3**.
25. **Settlement Administration**: Counsel requested bids from ILYM Group, Inc. (\$50,189.79), Simpluris, Inc. (\$63,635.00) and CPT Group, Inc. (\$42,000.00). As CPT Group, Inc.'s ("CPT") bid was lowest, the Parties agreed to use CPT. This is an all-in settlement that does not require the class members to return claims forms to receive their settlement checks. However, class members for whom the CPT does not have a taxpayer identification number will be required to return a W9 Form with that information prior to disbursement. The class notice that CPT will mail via U.S. mail provides the contact information for all counsel in this matter, CPT's toll-free phone number for class member inquiries, as well as a website that will provide copies of the settlement documents, approval motions, and class notice for class member's review. The Administrator will also be required to contact those individuals that it does not have taxpayer identification numbers via phone and email, as well as send three reminder postcards for this information.
26. My firm has used CPT many times for the administration of class action settlements and has been pleased with their services. Over the past two years, CPT has been appointed as settlement administrator in the following class action settlements for my firm: *Caufield, et al. v. ITS Logistics, LLC* (San Diego County, 37-2016-00044111); *Seip v. Hi Way Safety Rentals, Inc., et al* (San Bernardino County, CIVDS1709710); *Scott v. Transdev Services, Inc.* (ND Cal., 3:17-cv-03826); *Helton v. Pepsi Cola Sales and Distribution, Inc., et al* (ND Cal., 3:17-cv-001135); *Clavel v. La Jolla Beach & Tennis Club* (San Diego County, 37-2017-00004802); *Hilderbrand v. LinkUs Enterprises, Inc.* (Humboldt County, DR150155 and DR170706); *Hernandez v. Classic Distributing and Beverage Group, Inc.* (Los Angeles County, BC615317); *Beach-Barrow v. The Hertz Corporation* (Alameda County, RG17848833); *Davidson v. Herc Rentals, Inc.* (Sacramento County, 34-2017-00219832); *Hobson v. Linde, LLC* (San Bernardino County, CIVDS1613085); *Lua, et al v. DDG Transport, Inc., et al*

(Tulare County, VCU266342); *Perez v. City of San Diego* (San Diego County, 37-2014-00016621); *Thomas, et al v. TransitAmerica Services, Inc.* (San Diego County, 37-2014-00018867); *Scott, et al v. Coastal Transport Co. Inc.* (San Diego County 37-2016-00020248); *Zamudio v. AmeriPride Services, Inc.* (Alameda County, RG16809666); *Parker v. Selland Auto Transport, Inc.* (Alameda County, RG15791932); *Padilla v. California Gas Transport, Inc.* (San Diego County, 37-2016-00012433); *Romero v. Compass Group USA, Inc.* (San Bernardino County, CIVDS1512026); *Henricks v. Antonini Freight Express* (San Joaquin County, STK-CV-UOE-2016-6999); *McLain v. Tiger Lines, LLC* (San Joaquin County, STK-CV-UOE-2016-0012987); *Huguez, et al v. KKW Trucking, Inc.* (Sacramento County, 34-2016-00190517); *Tugas v. Hill-Rom Company, Inc.* (ED Cal., 15-cv-02426); *Villamar v. Hansen & Adkins Auto Transport, Inc.* (San Diego County, 37-2015-00003182); *Davis v. Apria Healthcare Group, Inc.* (San Diego County, 37-2014-00004724); *Thompson v. Costco Wholesale Corporation* (SD Cal., 14-cv-2778); *Houston v. Big 5 Sporting Goods Corporation* (Los Angeles County, BC644923); *Zubia, et al v. Shamrock Foods Company* (CD Cal., 16-cv-03128); *Little v. Gate Gourmet, Inc.* (SD Cal., 16-cv-01084); *Rodriguez v. Delta Sierra Beverage, LLC* (Sacramento County, 34-2017-00206727); *Hunt v. VEP Healthcare, Inc.* (ND Cal., 16-cv-04790); *Roby v. Pan Pacific Petroleum, Inc.* (Kern County, BCV-16-101856); *Cuellar-Ramirez v. U.S. Foods, Inc.* (Alameda County, RG15770766); *Smith v. Roadrunner Management Services, Inc.* (Los Angeles County, BC630949); and *Eure v. Ryder Integrated Logistics, Inc.* (ED Cal., 16-cv-00324).

27. **Past Distributions:** Below are a sampling of some of my firm's past comparable class settlements (i.e. settlements involving the same or similar clients, claims, and/or issues):

a. ***Helton v. Pepsi Cola Sales and Distribution, Inc., et al*** (ND Cal., 3:17-cv-001135-EMC)

- **Claims:** Wage and hour class, PAGA, and FLSA collective action.
- **Total Settlement:** \$5,000,000.00 total settlement fund. Because this was a combined class/FLSA settlement, the payout fund (i.e. the money leftover after deduction of attorneys' fees, costs, LWDA payment, settlement administration fees, and plaintiff's general release payment) was divided into two separate funds – 80% as the state law fund and 20% as the federal law fund. The FLSA collective action members were required to submit a claim form to claim money

from the federal law fund. All participating class members were automatically paid from the state law fund.

- Attorneys' Fees and Costs: My firm was awarded 25% of the common fund - \$1,250,000.00 – in fees and \$42,716.30 in litigation costs.
- Administration Costs: CPT charged \$28,735.12 to administer this settlement.
- Notice: The Class Notice was sent to all class members, totaling 1,480 truck driver class members. There was one undeliverable notice packet, three opt-outs, and no objections.
- FLSA Claim Rate: 1,039 class members returned FLSA claim forms, claiming 86% of the funds allotted for the FLSA settlement; the class/PAGA settlement did not require use of claim forms and automatically paid out to participating class members.
- High/Average Payments: The highest FLSA payment to class members was \$1,053.26 and the highest class award was \$4,213.06. The average FLSA payment to class members was \$590.76 and the average class award was \$1,938.59.
- Cy Pres: At least \$101,705.41, the amount remaining unclaimed from the FLSA funds, will cy pres to the United Way. This amount may increase if some class members do not cash their settlement checks. As of the date of this filing, those checks have not yet expired.

b. *Romero v. Compass Group USA, Inc. (San Bernardino County, CIVDS1512026).*

- Claims: Wage and hour class and PAGA action.
- Total Settlement: \$4,000,000.00 total settlement fund. Class members automatically received their settlement shares and no claim forms were required.
- Attorneys' Fees: The Court awarded \$1,333,333.00 (1/3 of the gross settlement amount) in attorneys' fees and \$32,586.48 in litigation costs.
- Administration Costs: CPT charged \$23,000.00 to administer this settlement.
- Notice: The class notice was sent to all 1,532 class members. There were 18 undeliverable notices, no opt-outs and no objections.
- High/Average Payments: The highest payment was \$16,756.07 and the average payment to class members was \$1,635.88.
- Cy Pres: No cy pres – all uncashed check funds were sent to the State of California's Department of Industrial Relations' Unclaimed Wage Fund, earmarked for each class member who did not cash his or her check to claim at a future date.

c. *Lo Cascio v. Hertz Local Edition, et al (San Diego County, 37-2015-000020830).*

- Claims: Wage and hour class and PAGA action.
- Total Settlement: \$4,800,000.00 total settlement fund. Class members automatically received their settlement shares and no claim forms were required.
- Attorneys' Fees: The Court awarded \$1,598,400.00 (33.3% of the gross settlement amount) in attorneys' fees and \$51,084.82 in litigation costs.
- Administration Costs: Simpluris, Inc. charged \$48,499.00 to administer this settlement.

- Notice: The class notice was sent to all 3,287 class members. There were 21 undeliverable notices, no opt-outs, and no objections.
- High/Average Payments: The highest settlement award was \$4,626.61 and the average settlement award was \$902.98.
- Cy Pres: No cy pres – all uncashed check funds were sent to the State of California's Department of Industrial Relations' Unclaimed Wage Fund, earmarked for each class member who did not cash his or her check to claim at a future date.

d. *Little v. Gate Gourmet, Inc. (SD Cal., 16-cv-01084-L-AGS).*

- Claims: Wage and hour class, PAGA, and collective action.
- Total Settlement: \$4,500,000.00 total settlement fund. Class members automatically received their settlement shares and no claim forms were required.
- Attorneys' Fees: The Court awarded \$1,125,000.00 (25% of the gross settlement fund) in attorneys' fees and \$31,593.05 in litigation costs.
- Administration Costs: CPT charged \$49,000.00 to administer this settlement.
- Notice: The class notice was sent to all 8,469 class members. There were 95 undeliverable notices, two opt-outs, and no objections.
- High/Average Payments: The highest settlement award was \$1,616.03 and the average settlement award was \$384.07.
- Cy Pres: No cy pres – all uncashed check funds were sent to the State of California's Department of Industrial Relations' Unclaimed Wage Fund, earmarked for each class member who did not cash his or her check to claim at a future date.

e. *Porras v. DBI Beverage, Inc. (Santa Clara County, 1-14-CV-266154).*

- Claims: Wage and hour class action.
- Total Settlement: \$6,500,000.00 total settlement fund. Class members automatically received their settlement shares and no claim forms were required.
- Attorneys' Fees: The Court awarded \$1,975,325.80 (approx. 30% of the gross settlement amount) in attorneys' fees and \$82,061.12 in litigation costs.
- Administration Costs: CPT charged \$26,000.00 to administer this settlement.
- Notice: The class notice was sent to all 1,674 truck driver class members. There were 30 undeliverable notices, two opt-outs, and no objections.
- High/Average Payments: The highest settlement award was \$13,954.43 and the average settlement award was \$2,372.51.
- Cy Pres: No cy pres – all uncashed check funds were sent to the State of California's Unclaimed Property Division, earmarked for each class member who did not cash his or her check to claim at a future date.

<i>Case</i>	<i>Total</i>	<i>Class Size</i>	<i>Atty Fees</i>	<i>Atty Costs</i>	<i>Admin Costs</i>	<i>Avg. Payment</i>
<i>Helton</i>	\$5,000,000	1,480	\$1,250,000.00	\$42,716.30	\$28,735.12	\$2,529.35
<i>Romero</i>	\$4,000,000	1,532	\$1,333,333.00	\$32,586.48	\$23,000.00	\$1,635.88
<i>Cascio</i>	\$4,800,000	3,287	\$1,598,400.00	\$51,084.82	\$48,499.00	\$ 902.98

<i>Little</i>	\$4,500,000	8,469	\$1,125,000.00	\$31,593.05	\$49,000.00	\$ 384.07
<i>Porras</i>	\$6,500,000	1,674	\$1,975,325.80	\$82,061.12	\$26,000.00	\$2,372.51

28. XPO LM is a third-party logistics company that operates as a freight forwarder for its clients, such as retailers and distributors of furniture, appliances, and large electronics. XPO LM enters into delivery service agreements with contract carriers, which provide last mile delivery services. The contract carriers XPO LM contracts with for last mile services employ additional drivers and helpers – the putative class members involved in this matter - to fulfill these contracts. This lawsuit alleges that XPO LM is the lawful employer of these drivers and helpers and that XPO LM violated various California wage and hour laws.

29. This matter was initially filed by Kevin Kramer in the Alameda County Superior Court on September 22, 2016. XPO LM Answered the Complaint on December 7, 2016 and removed the action to the Northern District of California on December 8, 2016. On December 9, 2016, XPO LM filed a Notice of Related Cases, alerting the Parties to the *Carter* and *Garcia* matters. On January 10, 2017, the Parties in all three matters attended a Case Management Conference, wherein the Court ordered all counsel to define the putative classes in all three matters. This led to all parties stipulating to their respective classes and the Court entering the order thereon on February 15, 2017. On January 27, 2017, the Court also ordered the parties in all three matters to coordinate discovery efforts.

30. On May 23, 2017, Mr. Ibanez filed a class action complaint in San Bernardino County Superior Court. XPO LM removed the case on June 23, 2017 and subsequently transferred it to the Northern District Court on July 17, 2017. On July 28, 2017, the Parties stipulated to consolidating *Kramer* and *Ibanez*, which was approved by the Court on August 3, 2017. Mr. Kramer withdrew as Plaintiff and Class Representative in October 2017. On February 6, 2018, the Parties stipulated to extend the *Ibanez* Class Period to encompass the *Kramer* class period, which the Court approved on February 7, 2018.

31. Plaintiffs in this matter and in *Garcia* jointly propounded special interrogatories, requests for

1 admissions, and demands for production of documents to which XPO LM responded. Mr.
2 Ibanez propounded another set of demands for production, to which XPO LM also responded.
3 XPO LM produced hundreds of thousands of documents – the majority of which were
4 produced in a raw electronic format, requiring Plaintiff to hire an e-discovery expert to
5 incorporate the documents into Relativity for ease of access, review, and analysis. XPO LM
6 also provided Plaintiff with electronic records related to the Settlement Class Members,
7 requiring Plaintiff to consult with an IT professional to interpret thousands of lines of code and
8 run SQL searches and queries in the database provided.

9 32. Plaintiff deposed three XPO LM Rule 30(b)(6) witnesses – two of whom required travel to
10 Atlanta, Georgia. Additionally, Plaintiff attended and deposed multiple managers responsible
11 for various markets throughout California, as well as several contract carriers (i.e. individuals
12 who contracted directly with XPO LM and hired the drivers and helpers who are putative class
13 members in this matter).

14 33. Throughout the litigation, the Parties met and conferred regarding multiple discovery disputes.
15 Some of these disputes were resolved informally, others required filing discovery dispute briefs
16 with the Court. In addition, Plaintiff interviewed over one hundred putative class members
17 regarding their experiences with XPO LM. Plaintiff also obtained an expert for data analysis
18 in support of the upcoming class certification briefing, of which Plaintiff would have filed if
19 the Parties had been unable to reach the Settlement the Parties now ask the Court to
20 preliminarily approve.

21 34. The Parties attended two days of mediation in this matter, held on October 25, 2018 in San
22 Francisco and on November 13, 2018 in Toronto, Canada. In each of these sessions, the Parties
23 engaged in extensive, arm's-length negotiations mediated by respected wage and hour
24 mediator, Michael Dickstein. After considerable negotiation, the Parties were unable to reach
25 a settlement at mediation. However, the Parties continued to negotiate at arm's-length, with
26 Mr. Dickstein's assistance in the following months. On February 11, 2019, the Parties reached
27 an agreement in principle to settle the case, the terms of which were negotiated over the
28 following months and finalized in the Joint Stipulation and Settlement Agreement

- 1 (“Agreement”) the Parties now ask the Court to preliminarily approve.
- 2 35. Though the fee agreement provides that Class Counsel would pay such costs, Plaintiff would
- 3 nevertheless have had a cost bill entered against him leaving him ultimately liable for
- 4 potentially hundreds of thousands of dollars in the unexpected possibility that Class Counsel
- 5 did not meet their obligation to cover those costs.
- 6 36. Class Counsel will move the Court for a fee award in conjunction with final approval. Class
- 7 Counsel will file the moving papers in support of their attorney fee request 7 days before the
- 8 expiration of the Notice Period. Although the settlement agreement provides an amount not to
- 9 exceed 33 1/3% of the GSA for attorneys’ fees, Class Counsel intends to request only 25% of
- 10 the GSA as their fee award, which is in line with the federal benchmark for such awards. Class
- 11 Counsel will submit a fee motion, supporting their request for 25% of the GSA – which is
- 12 \$1,375,000.00 – including a lodestar crosscheck, hours, and hourly rates.
- 13 37. Plaintiff will only seek the amount of actual costs up to \$100,000.00. Should the actual costs
- 14 exceed \$100,000.00, Plaintiff will only seek reimbursement of costs up to \$100,000.00. If the
- 15 actual costs are less than the \$100,000.00 cap, the remainder will become part of the NSA
- 16 distributable to Participating Settlement Class Members. At present, Counsel have incurred
- 17 approximately \$95,474.09 in costs to litigate this matter.
- 18 38. After reviewing competing bids from ILYM Group, Inc., Simpluris, Inc., and CPT Group, Inc.,
- 19 the Parties have agreed to the appointment of CPT Group, Inc. (“CPT”) as the settlement
- 20 administrator. CPT provided the cheapest bid for this matter and is an experienced class
- 21 administration company that has acted as claims administrator in numerous wage and hour
- 22 cases. The Agreement allots an amount not to exceed \$75,000.00 to administer this Settlement,
- 23 which falls within the range of estimates Class Counsel has received in the past for settlements
- 24 of similar size and circumstances. CPT has provided an estimate that its expenses will not
- 25 exceed \$42,000.00, which was less than the Simplus bid (\$63,635.00) and the ILYM bid
- 26 (\$50,189.79).
- 27 39. These costs are reasonable, as CPT will mail notice packets to the class, maintain a website
- 28 which has information about the Settlement and links to the settlement documents, and keep

1 track of requests for exclusion from the Settlement. CPT will also call or email those class
2 members who have not submitted their taxpayer identification numbers and send out reminder
3 postcards to remind them to submit their taxpayer identification numbers. Should preliminary
4 and final approval be granted by the Court, CPT will work with XPO LM to facilitate the
5 funding of the GSA, disbursement of the court approved payments, and disbursement of the
6 NSA to Participating Settlement Class Members.

7 40. The Settlement Administration Costs will be paid out of the GSA. If CPT's actual expenses or
8 the amount awarded is less than the amount allotted in the Agreement, the difference shall
9 become part of the NSA and be available for distribution to Participating Settlement Class
10 Members.

11 41. The factors noted above are commonly considered at preliminary approval. The factors here,
12 in their respective levels of applicability, favor approval of the Settlement. Mr. Ibanez submits
13 and XPO LM disputes that this case was factually and legally strong. This matter was settled
14 after substantial discovery, which included written discovery that resulted in thousands of
15 pages of documents, thousands of lines of code, and numerous depositions. Thus, at the point
16 the Settlement was initially agreed to, no one was in a better position than Plaintiff's counsel
17 to understand the strengths and potential limitations of Mr. Ibanez's case and thus evaluate the
18 reasonableness of the amount offered in settlement.

19 42. Mr. Ibanez contends that XPO LM's failure to provide compliant meal and rest periods and
20 pay all wages owed are the predominant claims in the lawsuit. However, before reaching the
21 merits of these claims, Mr. Ibanez would first have to prove that XPO LM is his and the Class
22 Members' lawful employer and successfully certify the class.

23 43. All of the claims alleged in this matter are based on XPO LM's failure to classify Plaintiff and
24 the putative class members as employees. Based on deposition testimony and documents
25 produced in this matter, Plaintiff contends that XPO LM substantially controls the putative
26 class members and would meet the factors delineated in the *Borello* test in *S. G. Borello &*
27 *Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, as well as the "ABC
28 test" outlined in the recent California Supreme Court decision in *Dynamex Operations West,*

1 *Inc. v. Superior Court* (2018) 4 Cal.5th 903. XPO LM contends that Plaintiff and putative class
2 members are not its employees, but the employees of its contract carrier partners, who control
3 the putative class members' hiring, firing, schedules, and pay. While Plaintiff believes in the
4 strength of his arguments, he also recognizes the risk that the Court may determine Plaintiff
5 and the putative class were not employees of XPO LM. If the Court ruled in favor of XPO LM
6 on this issue, all of Plaintiff's claims would be extinguished, as they are all dependent upon
7 the Court agreeing that XPO LM is Plaintiff and class members' lawful employer.

8 44. While Plaintiff remains confident in the strength of his claims, he recognizes the risks of
9 continuing with further litigation. Namely, XPO LM relies on the fact that, for the unpaid
10 wages claim, the proposed class member drivers and helpers are paid differently, depending
11 on the arrangement with the various contract carriers. Based on this, XPO LM argues that
12 Plaintiffs could not show on a class-wide basis that the drivers and helpers were paid less than
13 minimum wage, because the foundational element, i.e., how and what the drivers and helpers
14 were paid, varied. XPO LM also argues that the issue of whether drivers and helpers were
15 provided meal and rest periods was not susceptible of common proof. In this regard, XPO LM
16 argues that, even if it were deemed the employer, it would be a co-employer with the contract
17 carriers, who were involved in hiring, firing, and paying the class member drivers and helpers.
18 Thus, XPO LM argues that the determination of whether drivers and helpers were provided
19 meal and rest periods would depend exclusively on XPO LM's policies or lack thereof, but
20 also on whether the various contract carriers provided meal and rest periods. Although Plaintiff
21 is confident the common questions that would be framed for certification would avoid these
22 problems, these variances could cast doubt on whether class treatment is appropriate and
23 therefore had to be factored for purposes of exploring class-wide settlement.

24 45. Plaintiff's meal and rest period claims are based on the fact that XPO LM does not have
25 policies or practices of providing meal and rest periods to the class member drivers and helpers.
26 From this failure to provide meal and rest periods, Plaintiff argued XPO LM owes Labor Code
27 § 226.7 premiums for each shift worked. Aside from its employment status argument, XPO
28 LM raises significant challenges to these claims that had to be considered. It argues that,

1 regardless of whether it had policies and practices for the provision of meal and rest periods,
2 liability would turn on whether the contract carriers, who were involved in initiating the hiring
3 process and furnishing wages to the drivers and helpers, had meal and rest period policies.
4 Thus, XPO LM argued that the question of liability turned on whether, despite the absence of
5 meal and rest period policies directly applicable to class members, drivers and helpers received
6 meal and rest periods pursuant to policies and practices communicated through their respective
7 contract carriers.

8 46. If the Court found this to be the gauge of whether the drivers and helpers received lawful meal
9 and rest periods, it would have a significant impact on both certification and liability, as
10 Plaintiffs would also have to show that drivers and helpers were not provided meal and rest
11 periods from their respective contract carriers. Although, Plaintiff argues that the question of
12 meal and rest period liability is not necessitated by a showing of contract carrier policies and
13 practices, due to Plaintiff's claims of XPO LM's extensive and pervasive control over the
14 drivers' and helpers' workday, XPO LM's arguments had to be strongly considered in
15 exploring class-wide settlement.

16 47. XPO LM also argued Plaintiff's claims were preempted under 49 U.S.C. § 31141, Federal
17 Motor Carrier Safety Administration (FMCSA) regulations, an issue that is currently pending
18 before the Ninth Circuit. If Defendant were successful on this issue, all of Plaintiff's claims
19 for meal and rest breaks would fail entirely. Given the uncertainty of how the Ninth Circuit
20 will rule, a significant discount had to be factored into evaluating class-wide settlement of the
21 meal and rest break claims.

22 48. Plaintiff's unpaid wages claim stems from the fact that the drivers and helpers at issue here are
23 not paid by the hour, but on a flat, or daily rate of pay. Plaintiff claims that, like a salary for
24 non-exempt workers, the flat rate pay system does not pay for overtime hours, i.e., hours
25 exceeding eight daily hours or forty weekly hours. See Labor Code section 515 (e); see also
26 *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 565 ("[T]he flat sum
27 compensates the worker for only nonovertime hours worked"). Thus, Plaintiff claims that, for
28 hours worked in excess of eight daily or forty weekly, drivers and helpers are owed minimum

1 wage.

2 49. In addition to its employment status argument, Defendant counters these claims by arguing
3 overtime hours and compensation does not apply to drivers and helpers. Thus, Defendant
4 argues, a fixed, flat rate of pay, which is commonplace in the trucking industry, pays for all
5 hours worked at the minimum wage so long as the fixed rates exceed minimum wage for all
6 hours worked. Defendant also argues that the foundational element of what the drivers and
7 helpers were paid in terms of a flat rate is dependent on the individualized inquiry into the
8 various contract carrier arrangements with drivers and helpers, which negatively impacts class
9 certification and/or maintaining class certification.

10 50. Defendant also had considerable arguments relating to the additional claims for waiting time
11 penalties, itemized wage statements, and PAGA. XPO LM argued that, even if it was
12 determined to be Plaintiff's employer, it would not be liable for waiting time penalties because
13 a "good faith dispute" exists over the payment of past wages. *See* Cal. Code Regs. Tit. 8 §
14 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201. Further, XPO LM
15 contends Plaintiff would have to prove it "willfully" failed to pay class members appropriate
16 wages due upon separation of employment, which XPO LM contends was not willful, as it was
17 not adjudged to be the employee's employer at the time of separation. *See* Cal. Lab. Code §
18 203(a). Likewise, XPO LM argued, since it has to be adjudged as the employer before it could
19 be held liable on the merits for any of Plaintiff's claims, it would not be held liable for
20 inaccurate wage statements, as it could not have knowingly or intentionally failed to provide
21 wage statements to individuals it did not consider employees of XPO LM. XPO LM further
22 argued any PAGA penalties awarded would almost certainly be reduced significantly, given
23 XPO LM had to be adjudged as the class members' employer, and made a good faith attempt
24 to comply with the law.

25 51. In light of the defenses and challenges discussed above, in considering the best interests of the
26 class, Plaintiff had to discount his exposure analysis. The total exposure for Plaintiff's core
27 claims were evaluated at approximately \$37,000,000. In discounting his exposure analysis,
28 Plaintiff had to consider the realistic potential of (1) proving XPO LM was his lawful employer

1 under *Dynamex* and/or *Borello*; (2) achieving and maintaining class certification; and (3)
2 recovering under each of his theories. Based on the above strengths and challenges and after
3 considerable litigation and expansive settlement negotiations, Plaintiff and his experienced
4 counsel concluded that the substantial sum of \$5,500,000 XPO LM will pay under the terms
5 of the proposed settlement was in the best interests of the class of drivers and helpers.

6
7 I declare under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct.

9
10 Dated: August 16, 2019

/s/ David Mara

David Mara, Esq.

EXHIBIT 1

JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to final approval by the Court, this Settlement Agreement is between Hector Ibanez ("Plaintiff"), and Defendants XPO Last Mile, Inc. and XPO Logistics, Inc. (collectively "Defendants" or "XPO LM"). Plaintiff and Defendants are collectively referred to in this Agreement as the "Parties."

I. DEFINITIONS

In addition to the other terms defined in this Agreement, the terms below have the following meaning:

- A. **Administration Costs:** The costs incurred by the Settlement Administrator to administer this Settlement, in an amount estimated not to exceed \$75,000.00. Plaintiff will obtain a bid from the Settlement Administrator regarding its fees for administering the Settlement. All Administration Costs shall be paid from the Gross Settlement Amount.
- B. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement:** The settlement agreement reflected in this document, titled "Joint Stipulation and Settlement Agreement."
- C. **Attorney Fee Award:** An amount, not to exceed 33 1/3% of the Gross Settlement Amount or \$1,833,150.00, awarded to Class Counsel and subject to the Court's approval. The Attorney Fee Award shall be paid from the Gross Settlement Amount and will not be opposed by Defendant.
- D. **Carter Matter:** The action entitled *Ron Carter, et al. v. XPO Last Mile, Inc., et al.*, case number 3:16-cv-01231-WHO. The putative class in *Carter* involved drivers who directly contracted with XPO Last Mile, Inc.
- E. **Carrier:** Any person or entity that entered into a Delivery Service Agreement with XPO LM or its predecessors, and performed delivery services within the State of California pursuant to that Delivery Service Agreement during the Class Period.
- F. **Class Counsel:** David Mara, Jamie Serb, and Tony Roberts of the Mara Law Firm, PC and Matthew Bainer from the Bainer Law Firm.
- G. **Class Notice or Notice Packet:** The Notice Packet contains the Notice of Class Action Settlement and IRS W-9 Form (or equivalent), substantially similar to the forms attached hereto as **Exhibit A**, subject to Court approval.

- H. **Class Period:** The Class Period shall be from September 22, 2012, to the date of preliminary approval of the Settlement.
- I. **Class Representative or Plaintiff:** Hector Ibanez. Plaintiff Kevin Kramer withdrew as a class representative in this matter. Accordingly, Mr. Kramer may only participate as a Class Member.
- J. **Class Representative General Release Payment:** The amount the Court awards to Plaintiff for his execution of general release of claims against Defendant that is broader than the release given by Participating Settlement Class Members, in an amount not to exceed \$10,000.00. This payment shall be paid from the Gross Settlement Amount, will not be opposed by Defendant, and is being offered in consideration for the Plaintiff's execution of a general release of claims against Defendant, a release that is broader than any Participating Settlement Class Member will provide in consideration for a settlement share.
- K. **Cost Award:** The amount that the Court orders Defendant to pay Class Counsel for payment of actual litigation costs, which shall not exceed \$100,000.00. The Cost Award will be paid from the Qualified Settlement Fund and will not be opposed by Defendant. The Cost Award is subject to Court approval. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Settlement Class Members.
- L. **Counsel for Defendant:** Fraser McAlpine and Adam Lounsbury of Jackson Lewis P.C.
- M. **Court:** The Northern District of California.
- N. **Cy Pres Amount:** The aggregate amount of Individual Settlement Shares that are not distributed because the Settlement Administrator does not have a Participating Settlement Member's Taxpayer Identification Number ("TIN").
- O. **Cy Pres Beneficiary:** The United Way of California. The United Way of California is an umbrella organization, supporting multiple local United Ways throughout the state that all serve the public by working towards financial stability of the citizens they support. Many of these local United Ways have specific programs aimed at promoting steady, gainful employment of Californians, something that meets the objectives of a lawsuit brought with the aim of enforcing employee rights, and supports silent class members through the variety of programs offered. For example, the United Way Bay Area, the local program covering the location in which Named Plaintiff worked, has programs such as "SparkPoint", which operates counseling centers throughout the Bay Area that offer job coaching and training, career development, and business development, providing Northern Californians with the skills needed to find and maintain a lifelong career. The United Way Bay Area also offers

programs like “Mayors Youth Jobs+”, which helps young adults find employment through internships, apprenticeships, trainings and other opportunities to allow future members of the workforce to obtain employment and post-secondary opportunities. Beyond just programs like these that support job seekers and employees in the Bay Area, the United Way also advocates at the policy level for an increase to the State minimum wage, something implicated explicitly in this lawsuit, and is in the interest of the plaintiff class.

- P. **Defendants:** XPO Logistics, Inc. and XPO Last Mile, Inc.
- Q. **Disbursement of the Settlement:** The date on which the Settlement Administrator shall disburse the Gross Settlement Amount as indicated herein. Under the terms of this Settlement Agreement, twenty-one (21) days after the Effective Final Settlement Date, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Participating Settlement Class Members; (2) the Attorney Fee Award and Cost Award to Class Counsel for attorneys’ fees and costs, as approved by the Court; (3) the Class Representative General Release Payment paid to the Class Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and to Participating Settlement Class Members, as approved by the Court.
- R. **Effective Final Settlement Date:** The effective date of this Settlement will be when (1) if no appeal has been filed, the deadline for appealing the Court’s order finally approving the Settlement; or (2) if an appeal has been filed, the final resolution of any appeal in favor of finally approving the Settlement.
- S. **First Amended Complaint:** As part of the Settlement, the Parties will file a stipulation allowing Plaintiff Ibanez to file a first amended complaint to consolidate the claims from the *Kramer* case and add a claim under PAGA prior to filing for preliminary approval of the Settlement. As part of the stipulation, Plaintiff will also request the Court deem the First Amended Complaint filed on September 22, 2016. The Parties stipulate that Defendants need not file a responsive pleading unless the Court declines to approve the Settlement, at which time, the parties shall confer and agree on a schedule for moving the case forward.
- T. **Final Judgment or Final Approval:** The final order entered by the Court finally approving this Settlement.
- U. **Funding of Settlement:** Defendants shall wire to the Settlement Administrator the Gross Settlement Amount within fourteen (14) days after the Effective Final Settlement Date.
- V. **Garcia Matter:** The action entitled *Ramon Garcia, et al v. Macy’s West Stores, et al.*, case number 4:16-cv-04440. The putative class in the *Garcia* Matter

involved drivers and helpers who delivered goods that were tendered to them at the Macy's warehouse located at 1200 Whipple Road, Union City, CA 94587.

- W. **Gross Settlement Amount or GSA:** The total value of the Settlement is Five Million, Five Hundred Thousand Dollars and Zero Cents (\$5,500,000.00). This is the total amount Defendants can be required to pay under this Settlement Agreement, which includes without limitation: (1) the Net Settlement Amount to be paid to Participating Settlement Class Members; (2) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative General Release Payment paid to the Class Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; (5) the PAGA Payment to the LWDA and to Participating Settlement Class Members, as approved by the Court. The employer's share of payroll taxes will be paid separate and apart from the GSA. No portion of the Gross Settlement Amount will revert to Defendants for any reason.
- X. **Ibanez Matter:** The lawsuit entitled *Hector Ibanez v. XPO Last Mile, Inc.*, case number 3:17-cv-04009 and consolidated with the *Kramer* Matter.
- Y. **Individual Settlement Share(s):** The amount payable to each Participating Settlement Class Member under the terms of this Settlement Agreement. Participating Settlement Class Members will be allocated an Individual Settlement Share and, those Participating Settlement Class Members for whom the administrator does not have a TIN, must provide their TIN to the Settlement Administrator before a distribution may occur. Each Participating Settlement Class Member for whom the Settlement Administrator has a TIN will automatically receive an Individual Settlement Share.
- Z. **Kramer Matter:** The lawsuit entitled *Kevin Kramer v. XPO Logistics, Inc.*, case number 3:16-cv-07039-WHO.
- AA. **LWDA:** California Labor and Workforce Development Agency.
- BB. **Net Settlement Amount or NSA:** The total amount of money available for paying Individual Settlement Shares to Participating Settlement Class Members, which is the GSA less the Attorney Fee Award, Cost Award, Class Representative General Release Payment, the portion of the PAGA Payment paid to the LWDA, and Administration Costs. In other words, the NSA is the portion of the GSA that will be distributed to Participating Settlement Class Members or the Cy Pres beneficiary, for those Participating Settlement Class Members who do not provide the administrator with a TIN. The payment of employee-side taxes on the portion of the settlement shares earmarked as wages shall be paid out of the Net Settlement Amount. Thus, the Individual Settlement Shares that are paid out of the Net Settlement Amount shall be reduced by the Participating Settlement Class Member's tax liability for the share.

- CC. **PAGA**: The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).
- DD. **PAGA Notice**: The letter filed with the LWDA and served on Defendants, notifying the LWDA and Defendants of Hector Ibanez's PAGA claims.
- EE. **PAGA Payment**: The PAGA Payment consists of \$550,000.00 of the Gross Settlement Amount allocated to satisfy the PAGA penalties claim as alleged in the in the First Amended Complaint. Seventy-five percent (75%) of the PAGA Payment (\$412,500.00) shall be paid to the LWDA, and twenty-five percent (25%) (\$137,500.00) of the PAGA Payment shall be part of the Net Settlement Amount distributed to Participating Settlement Class Members.
- FF. **Participating Settlement Class Members**: All Settlement Class Members who do not submit a valid and timely request to exclude themselves (or "Opt-Out") from this Settlement.
- GG. **Parties**: Plaintiff Hector Ibanez as an individual and as a Class Representative, and Defendants XPO Logistics, Inc. and XPO Last Mile, Inc.
- HH. **Preliminary Approval or Preliminary Approval Order**: The Court's order preliminarily approving the proposed Settlement.
- II. **Released Claims**: Participating Settlement Class Members will release all known and unknown claims arising from or related to facts and claims alleged in the Operative Complaint, and any claims that could have been raised therein based on the facts alleged in the Operative Complaint, whether known or not, including: (1) failure to pay all straight time wages (Labor Code §§ 510, 515, 1194); (2) failure to pay overtime (Labor Code §§ 218, 218.5, 222, 223, 224, 510, 1197, 1198); (3) failure to pay minimum wages (Labor Code §§ 1194, 1197, 1197.1); (4) failure to authorize and permit rest periods (Labor Code §§ 226.7); (5) failure to provide meal periods (Labor Code §§ 226.7, 512); (6) knowing and intentional failure to comply with itemized wage statement provisions (Labor Code §§ 226, 226.2); (7) failure to pay all wages due at the time of termination of employment (Labor Code §§ 201, 201.5, 202, 203, 205.5); (8) violation of the Unfair Competition Law (Bus. & Prof. Code §17200); (9) failure to reimburse business expenses (Labor Code § 2802); (10) penalties pursuant to the Private Attorneys' General Act of 2004 (Labor Code § 2698, *et seq.*); and (11) Industrial Welfare Commission Wage Orders. The release is for the benefit of the Released Parties and applies only to periods of time within the Class Period when the Participating Settlement Class Members meet the criteria for participating in this Settlement.
- JJ. **Released Parties**: XPO Logistics, Inc. and XPO Last Mile, Inc. and their past, present and/or future, direct and/or indirect, officers, directors, employees,

representatives, administrators, attorneys, agents, parent companies, subsidiaries and affiliated corporations and entities, consultants, shareholders, joint ventures, predecessors, successors, and/or assigns.

- KK. Opt-Out/Objection Response Deadline:** Sixty (60) calendar days from the initial mailing of the Notice.
- LL. Settlement Administrator:** The third party administrator agreed upon by Parties to administer this Settlement is CPT Group, Inc., which was selected based on the value of its services as compared to other settlement administrators.
- MM. Settlement Class:** All individuals who did not contract with XPO LM, and (1) are “Drivers” that performed delivery services within the state of California during the Class Period for a Carrier, or (2) are “Helpers” with a California address and were/are associated with any Carrier that performed delivery services within the state of California during the Class Period. This Settlement Class expressly excludes those drivers and helpers who delivered goods that were tendered to them at the Macy’s warehouse located at 1200 Whipple Road, Union City, CA 94587.
- NN. Settlement Class Member:** Each person eligible to participate in this Settlement who is a member of the Settlement Class.

II. RECITALS

- A.** The *Kramer* Matter was filed by Kevin Kramer in the Alameda County Superior Court on September 22, 2016. The complaint alleged causes of action on behalf of Plaintiff, in his individual and representative capacities, for failure to pay all straight and overtime wages; failure to provide meal and rest periods, failure to properly itemize wage statements, failure to pay for all wages owed at the time of termination and violation of the Unfair Competition Law.
- B.** Defendants Answered on December 7, 2016. In their Answer, Defendants affirmatively denied generally and specifically all claims raised in the complaint.
- C.** Defendants removed the *Kramer* Matter to the Northern District of California on December 8, 2016. The *Kramer* Matter was assigned to the Honorable William H. Orrick.
- D.** Defendants filed a Notice of Related Cases on December 9, 2016, alerting Plaintiffs to the *Carter* Matter and the *Garcia* Matter.
- E.** Counsel for the Parties, the *Carter* Matter, and the *Garcia* Matter attended a Case Management Conference on January 10, 2017. The Court ordered all

counsel to define the classes in the three matters, and subsequently entered the Parties' Stipulation and Order Defining the Respective Classes on February 15, 2017. On January 27, 2017, the Court also ordered the parties in all three matters to coordinate discovery efforts on the initial rounds of discovery requests.

- F. The *Ibanez* Matter was filed by Hector Ibanez in the San Bernardino County Superior Court on May 23, 2017. The complaint alleged causes of action on behalf of Plaintiff, in his individual and representative capacities, for failure to pay all straight and overtime wages; failure to provide meal and rest periods, failure to properly itemize wage statements, failure to pay for all wages owed at the time of termination and violation of the Unfair Competition Law.
- G. Defendant XPO Last Mile, Inc. removed the case to the Central District of California on June 23, 2017, and subsequently transferred the case to this Court on July 17, 2017.
- H. On July 18, 2017, the Parties attended another Case Management Conference. At this conference, the Court was informed of the *Ibanez* Matter. The Court set a briefing schedule on class certification and set pre-trial deadlines.
- I. On July 28, 2017, the Parties stipulated to consolidating the *Kramer* Matter and the *Ibanez* Matter, and the Court approved consolidating the cases on August 3, 2017.
- J. Plaintiffs from the *Kramer/Ibanez* Matter and the *Garcia* Matter jointly propounded one set of special interrogatories, requests for admissions, and demands for production of documents to which Defendants responded. Thereafter, Plaintiffs propounded another set of demands for production of documents to which Defendants also responded.
- K. Plaintiff Kramer withdrew as a Plaintiff and Class Representative in October 2017.
- L. Throughout the litigation, the Parties met and conferred regarding multiple discovery disputes. Plaintiffs in the *Carter* Matter, *Garcia* Matter, and the *Kramer/Ibanez* Matter and Defendants filed multiple discovery dispute briefs with the Court, requesting the Court's intervention.
- M. Plaintiff conducted multiple depositions throughout California and in Atlanta, Georgia, including Defendants' Rule 30(b)(6) witnesses, Defendants' Market Vice Presidents, and multiple managers.
- N. In addition, Plaintiff reviewed a substantial amount of records and data and documents relating to the size and scope of the class that permitted an evaluation of the class-wide claims.

- O. The parties attended two days of mediation with Michael Dickstein, the first of which was held in San Francisco on October 25, 2018, and the second was held in Toronto, Canada on November 13, 2018. The matter did not settle at the mediation. However, the parties continued to negotiate at arms-length, with the mediator's assistance, in the following months and, on February 11, 2019, the parties reached an agreement in principle to settle the case, the terms of which are reflected herein.
- P. **Benefits of Settlement to Settlement Class Members.** Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendants through trial and through any possible appeals. Plaintiff and Class Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel have conducted extensive settlement negotiations. Based on the foregoing, Plaintiff and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Settlement Class Members.
- Q. **Defendants' Reasons for Settlement.** Defendants recognize that the defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendants have been and, unless this Settlement is consummated, will continue to be devoted to the defense of the claims asserted by Plaintiff. Defendants, therefore, have agreed to settle in the manner and upon the terms set forth in this Agreement to resolve the Released Claims.
- R. **Defendants' Denial of Wrongdoing.** Defendants generally and specifically deny any and all liability or wrongdoing of any sort with regard to any of the claims alleged, make no concessions or admissions of liability of any sort, and contend that for any purpose other than settlement, the Action is not appropriate for class treatment. Defendants assert a number of defenses to the claims, and have denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendants or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. There has been no final determination by any court as to the merits of the claims asserted by Plaintiff against Defendants or as to whether a class or classes should be certified.
- S. **Plaintiff's Claims.** Plaintiff asserts that Defendants' defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession or indication by or against Plaintiff, Settlement Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Action. However, in the event

that this Settlement is finally approved by the Court, the Plaintiff, Settlement Class Members, and Class Counsel will not oppose Defendants' efforts to use this Agreement to demonstrate that Plaintiff and Participating Settlement Class Members have resolved and are forever barred from re-litigating the Released Claims.

III. SETTLEMENT TERMS AND CONDITIONS

- A. Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum amount, including payroll taxes, that Defendant is obligated to pay under this Settlement Agreement is Five Million Five Hundred Thousand Dollars and Zero Cents (\$5,500,000.00).
- B. Class Certification.** Solely for the purposes of effectuating this Settlement, the Parties stipulate and agree to class certification of the claims asserted on behalf of the Settlement Class Members. As such, the Parties stipulate and agree that in order for this Settlement to occur, the Court must certify the Settlement Class as defined in this Agreement.
- C. Conditional Nature of Stipulation to Class Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiff and Settlement Class Members for purposes of this Settlement only. If the Settlement does not, for any reason, become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with, the question of whether the Court should certify any claims in a non-settlement context in this Action or in any other lawsuit. If the Settlement does not become effective, Defendants reserve the right to contest class certification and liability.
- D. Appointment of Class Representative.** Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiff Hector Ibanez shall be appointed as the representative for the Class.
- E. Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court appoint Class Counsel to represent the Class.
- F. Individual Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Settlement Share from the Net Settlement Amount to each Participating Settlement Class Member for which the Settlement administrator has received a TIN.

1. Calculation.

- a. Individual Settlement Share Calculation.** Each Participating Settlement Class Member will receive a proportionate share of the

Net Settlement Amount that is equal to (i) the number of weeks he or she was active based on the Class Records provided by Defendants, divided by (ii) the total number of active weeks including all Participating Settlement Class Members based on the same Class Records, and then multiplied by the Net Settlement Amount. Therefore, the value of each Settlement Class Member's Individual Settlement Share ties directly to the amount of weeks that he or she was active during the Class Period.

- b. **Class Records.** The Parties recognize that the best available information from which to estimate Settlement Class Members' workweeks is based on the date the Settlement Class Member first appeared in Defendants' records ("Qualification Date"). The Qualification Date will be treated as the Settlement Class Members' start dates. The end date, will be the later of (1) the date when the Settlement Class Member last appears in Defendants' records (i.e., deactivated), or (2) the date of Preliminary Approval ("End Date"). The calendar weeks between the Qualification Date and the End Date, will be considered the number of active workweeks for purposes of calculating the Settlement Class Members' Individual Settlement Shares.

- 2. **Tax Withholdings.** Each Settlement Class Member's Individual Settlement Share will be apportioned as follows: 33.3% wages, 33.3% interest, and 33.4% penalties. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported on W-2 forms issued by the Settlement Administrator on behalf of the qualified settlement fund. Payment of all amounts will be made subject to backup withholding unless a duly executed W-9 form is received from the payee(s). The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported on IRS 1099 forms issued by the Settlement Administrator on behalf of the qualified settlement fund. Only the employee share of payroll tax withholdings shall be withheld from each Settlement Class Member's Individual Settlement Share.

G. Recipients of GSA Disbursement. Subject to the terms and conditions of this Agreement, the Settlement Administrator shall disburse the GSA as directed herein to the following:

- 1. **To the Named Plaintiff:** In addition to his Individual Settlement Share, and subject to the Court's approval, the named Plaintiff, Hector Ibanez, will receive up to Ten Thousand Dollars and Zero Cents (\$10,000.00) in consideration for providing Defendants with a General Release, a release that is broader than the claims released by Participating Settlement Class

Members. The Settlement Administrator will pay the Class Representative Enhancement/General Release Payment out of the Gross Settlement Amount. The General Release Payment will be reported on an IRS Form 1099 issued by the Settlement Administrator on behalf of the qualified settlement fund.

2. **To Class Counsel.** Class Counsel will apply to the Court for, and Defendants agree not to oppose, a total Attorney Fee Award not to exceed Thirty Three and One-Third percent (33 1/3%) or One Million Eight Hundred Thirty Three Thousand One Hundred Fifty Dollars and No Cents (\$1,833,150.00) of the GSA and a Cost Award not to exceed One Hundred Thousand Dollars (\$100,000.00). The Settlement Administrator will pay the court-approved amounts for the Attorney Fee Award and Cost Award out of the Gross Settlement Amount. Settlement Administrator may purchase an annuity to utilize US treasuries and bonds or other attorney fee deferral vehicles for Class Counsel. Payroll tax withholding and deductions will not be taken from the Attorney Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with respect to the Attorney Fee Award. In the event the Court does not approve the entirety of the application for the Attorney Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendants nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorney Fee Award and/or Cost Award, the difference shall become part of the NSA and be available for distribution to Participating Settlement Class Members.
3. **To the Responsible Tax Authorities.** The Settlement Administrator will calculate, withhold from and pay the amount of the Participating Settlement Class Members' portion of normal payroll withholding taxes out of each person's Individual Settlement Share. The Settlement Administrator will calculate the amount of the Participating Settlement Class Members' and Defendants' portion of payroll withholding taxes and report those amounts to the appropriate taxing authorities on behalf of the qualified settlement fund. The Settlement Administrator shall issue an invoice to Defendants in the amount of their share of taxes, and Defendants shall be responsible for paying that amount, in addition to the GSA.
4. **To the Settlement Administrator.** The Settlement Administrator will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court estimated not to exceed \$75,000.00. This will be paid out of the Gross Settlement Amount. If the actual amount of Administration Costs is less than the amount estimated and/or requested, the difference shall become part of the NSA and be available for distribution to Participating Settlement Class Members.

5. **To the LWDA.** Five Hundred Fifty Thousand Dollars and No Cents (\$550,000.00) of the GSA has been allocated to penalties under the Private Attorneys General Act of 2004 (“the PAGA Payment”). Seventy-five percent (75%) (\$412,500.00) of the PAGA Payment shall be paid to the LWDA, and twenty-five percent (25%) (\$137,500.00) of the PAGA Payment shall be part of the NSA distributed to Participating Settlement Class Members. The Settlement Administrator will pay to the LWDA the 75% portion of the PAGA Payment allocated to satisfy the PAGA penalties claim as alleged in the First Amended Complaint.
6. **To Settlement Class Members.** The Settlement Administrator will pay to Participating Settlement Class Members an amount equal to the Individual Settlement Share calculations, less the Settlement Class Member’s share of payroll taxes as calculated by the Settlement Administrator. All payments to Participating Settlement Class Members shall be made from the GSA.
7. **To the Cy Pres Beneficiary.** The Cy Pres Amount, which represents the portion of the Net Settlement Amount that is not distributed to the Participating Settlement Class Members due to the lack of a TIN.

H. Appointment of Settlement Administrator. Solely for the purposes of this Settlement, the Parties stipulate and agree that CPT Group, Inc. shall be retained to serve as Settlement Administrator.

1. **Duties of Settlement Administrator.** The Settlement Administrator shall be responsible for preparing, printing, and mailing the Notice to the Settlement Class Members; keeping track of any objections or requests for exclusion from Settlement Class Members; performing skip traces and re-mailing Notices and Individual Settlement Shares to Settlement Class Members; issuing reminder postcards to Participating Settlement Class Members for which it does not have a TIN; calling or emailing Participating Settlement Class Members for which it does not have a TIN in an effort collect TINs; calculating and remitting on behalf of the qualified settlement fund, any and all payroll tax deductions as required by law; calculating each Settlement Class Member’s Individual Settlement Share; creating and maintaining a settlement website; uploading case documents to the settlement website; processing inquiries from Settlement Class Members; providing weekly status reports to Defendants’ Counsel and Class Counsel, which is to include updates on any objections or requests for exclusion that have been received; providing a due diligence declaration for submission to the Court prior to the Final Approval hearing; mailing Individual Settlement Shares to Participating Settlement Class Members; calculating and mailing payment to the LWDA; distributing the Attorney Fee Award and Cost Award to Class Counsel; printing and providing Settlement Class Members and Plaintiff with W-2s and 1099 forms as required under this Agreement and applicable law; providing a due diligence declaration for submission to

the District Court upon the completion of the Settlement; depositing any funds remaining in the GSA as a result of uncashed checks to the California State Controller's Office – Unclaimed Property. The Settlement Administrator shall keep Defendants' Counsel and Class Counsel apprised of all distributions from the Gross Settlement Amount and respond to questions from Defendants' Counsel and Class Counsel. The Settlement Administrator will send a reminder postcard to Participating Settlement Class Members within ninety (90) days of the check's expiration, indicating that unless their uncashed check is redeemed or deposited within the next ninety (90) days, it will expire and become non-negotiable. The Settlement Administrator will provide a supplemental declaration regarding any uncashed check funds, as required by the Court.

2. **No Conflict.** The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

I. Procedure for Approving Settlement.

1. Motion for Preliminary Approval and Conditional Class Certification.

- a. Plaintiff will move for an order conditionally certifying the Class for settlement purposes only, giving Preliminary Approval of the Settlement, setting a date for the Final Approval hearing, and approving the Class Notice.
- b. At the Preliminary Approval hearing, Plaintiff will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class and Preliminary Approval of the Settlement; appointing the Class Representative, Class Counsel, and Settlement Administrator; approving the Class Notice; and setting the Final Approval hearing.
- c. **Effect of Denial of Preliminary Approval.** Should the Court decline to conditionally certify the Settlement Class or to Preliminarily Approve the Settlement, the Settlement will be null and void, and the Parties will have no further obligations under it. Provided, however, that the amounts of the Attorney Fee Award, Cost Award, Administration Costs, and Class Representative General Release Payment shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement, and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding relating to an application for the Attorney Fee

Award, Cost Award, Administration Costs, and Class Representative General Release Payment shall not operate to terminate or cancel this Settlement Agreement. Nothing in this Agreement shall limit Plaintiff's or Class Counsel's ability to appeal any decision by the Court to award less than the requested Attorney Fee Award, Cost Award, Administration Costs, and Class Representative General Release Payment.

2. **Class Action Fairness Act ("CAFA") Notice.** Pursuant to CAFA, within ten (10) business days after the Court issues an order granting Preliminary Approval of the Settlement, Defendants will mail CAFA Notices to the Attorney General of the United States, the Attorney General of the State of California, and the Attorney General of any other state where a Settlement Class Member resides, according to Defendants' records. Defendants will further file notice with the Court of its compliance with the CAFA notice procedures within ten (10) business days after mailing CAFA Notices to the aforementioned recipients. The Parties intend and believe that the CAFA Notice pursuant to the procedures described herein comply with the requirements of CAFA; will seek approval of these procedures for CAFA Notice in Plaintiff's Preliminary Approval Motion; and will request the Court to adjudicate the validity of the CAFA Notice in the Final Approval Motion and bar Plaintiffs' claim to void or avoid the Settlement under CAFA.
3. **Notice to Settlement Class Members.** After the Court enters its Preliminary Approval Order, every Settlement Class Member will be provided with the Class Notice in accordance with the following procedure:
 - a. **Class Database.** Within fourteen (14) days after entry of the Preliminary Approval Order, Defendants shall deliver to the Settlement Administrator an electronic database, which will list, to the extent available, for each Settlement Class Member: (1) first and last name; (2) last known mailing address; (3) social security number; (4) Qualification Date and Last Date; and (5) the total number of calendar weeks between the Qualification Date and the Last Date ("Database"). If any or all of this information is unavailable to Defendants, Defendants will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Settlement Administrator will conduct a skip trace for the address of all Settlement Class Members whose Last Date is prior to the Preliminary Approval Date. The Database shall be based on Defendants' business records. The Settlement Administrator shall maintain the Database and all data contained within the Database as private and confidential.

- b. Notice Content to Settlement Class Members for Whom the Settlement Administrator Has a TIN.** The Notice to these Settlement Class Members should comply with the Northern District Guidelines for Class Action Settlements, including the following information: (1) the contact information of Class Counsel; (2) a website address maintained by the Settlement Administrator with links to the Notice, Preliminary Approval Motion, Final Approval Motion, Attorney's Fees Motion, and any other important documents; (3) instructions on how to access the case docket on PACER or in person at the Court; (4) the date of the final approval hearing, clearly stating that the date may change without further notice to Settlement Class Members and that Settlement Class Members should check the settlement website for confirmation of the date; (5) be provided in Spanish and English; and (6) information explaining the case and the settlement; (7) the opt-out and objection procedures and consequences of choosing these procedures; (8) explanation of the Released Claims; and (9) an estimate of the Settlement Class Member's Individual Settlement Share as calculated by the Settlement Administrator.
- c. Notice Content to Settlement Class Members for Whom the Settlement Administrator Lacks a TIN.** The Notice to these Settlement Class Members should comply with the Northern District Guidelines for Class Action Settlements, including the following information: (1) the contact information of Class Counsel; (2) a website address maintained by the Settlement Administrator with links to the Notice, Preliminary Approval Motion, Final Approval Motion, Attorney's Fees Motion, and any other important documents; (3) instructions on how to access the case docket on PACER or in person at the Court; (4) the date of the final approval hearing, clearly stating that the date may change without further notice to Settlement Class Members and that Settlement Class Members should check the settlement website for confirmation of the date; (5) be provided in Spanish and English; and (6) information explaining the case and the settlement; (7) the opt-out and objection procedures and consequences of choosing these procedures; (8) explanation of the Released Claims; and (9) an estimate of the Settlement Class Member's Individual Settlement Share as calculated by the Settlement Administrator. The Notice to these Class Members shall also explain that, because the Settlement Administrator does not have their TIN, the Settlement Class Members will have to submit to the Settlement Administrator an IRS W-9 Form (or equivalent) within the time frames specified in this Agreement in order to receive their Individual Settlement Share. The W-9 Form

(or equivalent) will be included with the Notice Packet provided to these Settlement Class members.

- d. **Notice Mailing.** Within twenty one (21) days after entry of the Preliminary Approval Order, the Settlement Administrator will mail the Notice Packet to all identified Settlement Class Members via first-class regular U.S. Mail, using the mailing address information provided by Defendants and the results of the skip trace performed on all Settlement Class Members identified as terminated in Defendants' Database. Prior to mailing the Class Notice, the Settlement Administrator will use the National Change of Address Database to attempt to find current address for all identified Settlement Class Members.
- e. **Reminder Postcards.** Sixty (60) days after the Class Notice is mailed, the Settlement Administrator shall send a reminder postcard to those Participating Settlement Class Members for whom the Settlement Administrator has not received TIN. Ninety (90) days after the Class Notice is issued, the Settlement Administrator shall send a second reminder postcard to those Participating Settlement Class Members for whom the Settlement Administrator has not received a TIN. The second reminder shall disclose the amount due to the Participating Settlement Class Member, make a follow-up request for the Participating Settlement Class Member's TIN/SSN, and explain that the Participating Settlement Class Member risks forfeiture of their Individual Settlement Share to the Cy Pres beneficiary if their TIN/SSN is not provided to the Settlement Administrator by the Effective Final Settlement Date.
- f. **Returned and Undeliverable Notices.** If a Class Notice is returned because of an incorrect address, within five (5) business days from receipt of the returned Notice, the Settlement Administrator will conduct a search for a more current address for the Settlement Class Member and re-mail the Class Notice to the Settlement Class Member. The Settlement Administrator will use the National Change of Address Database and skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Settlement Class Member for whom a Class Notice is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Settlement Class Members for whom new addresses are found. If the Settlement Administrator is unable to locate a better address,

the Class Notice shall be re-mailed to the original address. If the Class Notice is re-mailed, the Settlement Administrator will note for its own records the date and address of each re-mailing.

g. Weekly Status Reports. The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendants' Counsel of the number of Notices mailed, the number of Notices returned as undeliverable, the number of Notices re-mailed, the number of requests for exclusion or objections received, and the number of IRS Form W-9s (or equivalent) received.

h. Settlement Administrator's Declaration. No later than thirty (30) calendar days before the Final Approval Hearing date or at the request of Counsel, the Settlement Administrator will circulate to the Parties a draft declaration of due diligence setting forth its compliance with its obligations under this Agreement, including the estimated average and high Individual Settlement Shares, the number of objectors, opt-out requests, outstanding requested TINs/SSNs and an estimated Cy Pres Amount should the Settlement Administrator not receive additional TINs/SSNs. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel no later than ten (10) calendar days before the Final Approval hearing. Before the Final Approval hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration. The Administrator will also provide a declaration regarding the settlement disbursement, Unclaimed Property Funds, and Cy Pres Amount.

4. Objections to Settlement. The Class Notice will describe the procedure for objecting to the Settlement in accordance with the Northern District of California's Guidelines for Class Action Settlements.

a. Timing. The objection must be submitted to the Court by mail, postmarked by the Opt-Out/Objection Response Deadline, or filed in person or online with the Court by the Opt-Out/Objection Response Deadline. The timeframe to submit an objection will not be increased for returned mailings.

b. Format. Any objections shall state: (a) the case name (*e.g. Ibanez, et al. v. XPO LM, Inc., et al.*) and case number (3:16-cv-07039-WHO); (b) the objecting person's or his/her attorney's full name, address, and telephone number; (c) the words "Notice of Objection" or "Formal Objection;" (d) describe, in clear and

concise terms, the legal and factual arguments supporting the objection; (e) list identifying witness(es) the objector may call to testify at the Final Approval hearing; (f) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing; and (g) state whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class. Any objection must comply with Federal Rules of Civil Procedure, Rule 23(e)(5).

- c. **Notice of Intent to Appear.** Settlement Class Members who timely submit valid objections to the Settlement may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector's own counsel. The Notice will request that the objector notify the Parties of the objector's intent to appear at the Final Approval Hearing by mailing or filing a Notice of Intent to Appear with the Court by the Opt-Out/Objection Response Deadline.

5. **Request for Exclusion from the Settlement ("Opt-Out").** The Notice will provide that Settlement Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator a written request for exclusion. The written request for exclusion must: (a) state the Settlement Class Member's name, address, telephone number, and social security number; (b) state the Settlement Class Member's intention to exclude himself from or opt-out of the Settlement (*e.g.* "I want to exclude myself from this settlement. I understand that I will not receive any money from this settlement. I also understand that I retain all rights to sue the Defendants for the claims asserted in this lawsuit."); (c) be addressed to the Settlement Administrator; (d) be signed by the Settlement Class Member or his or her lawful representative; and (e) be postmarked no later than the Opt-Out/Objection Response Deadline.

- a. **Effect of "Opt-Out".** Any Settlement Class Member who returns a timely, valid, and executed request for exclusion will not participate in or be bound by the Settlement and subsequent judgment and will not receive an Individual Settlement Share or any benefit of this Settlement.
- b. **Failure to "Opt-Out".** A Settlement Class Member who does not complete and mail a timely request for exclusion will automatically be included in the Settlement, will be allocated an Individual Settlement Share, and be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the subsequent judgment, regardless of whether he or she has objected to the Settlement.

- c. **Confirmation of Authenticity.** If there is a question about the authenticity of a signed request for exclusion, the Settlement Administrator may request additional proof of the Settlement Class Member's identity.
 - d. **Report.** No later than five (5) business days after the Opt-Out/Objection Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Notices mailed to Class Members, the number of Notices returned as undeliverable, the number of Notices re-mailed to Class Members, the number of re-mailed Notices returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid requests for exclusion, the number of Class Members who returned invalid requests for exclusion, and the estimated high and average Individual Settlement Share payment.
- 6. **No Solicitation of Objection or Requests for Exclusion.** Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Judgment.
- 7. **Challenges to Settlement Class Membership or an Individual Settlement Share.** If a Settlement Class Member challenges or otherwise disputes either their membership as a Settlement Class Member or the amount of their Individual Settlement Share, the Settlement Class Member must provide notice, in writing, to the Settlement Administrator before the Opt Out/Objection Response Deadline. Any such challenge shall include the reasons supporting the challenge, as well as any documentation supporting his or her contention that the Class Membership status or the Individual Settlement Share calculation is incorrect. In the absence of such evidence, the Class Database will be controlling. The Settlement Administrator will consult with the Parties about how to resolve the challenge, evaluate the information provided, and will make a final and unappealable decision as to the outcome of the challenge. If Settlement Class Membership status or the Individual Settlement Share calculation is adjusted following a challenge, then the Settlement Administrator shall notify the Settlement Class Member of the adjustment.
- 8. **Motion for Final Approval.**
 - a. Class Counsel will file unopposed motions and memorandums in support thereof for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: (1) the Attorney Fee Award; (2) the Cost Award; (3) Administrative

Costs; (4) the Class Representative General Release Payment; (5) PAGA Payment; and (6) Net Settlement Amount. Class Counsel will also move the Court for and order of Final Approval (and associated entry of Judgment) releasing and barring any Released Claims of the Class Members who do not opt out of the Settlement.

b. Denial or Appeal of Final Approval. If the Court does not grant Final Approval of the Settlement, or if the Court's Final Approval of the Settlement is reversed or materially modified on appellate review, then this Settlement will become null and void. If that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Agreement. Further, should this occur, the Parties agree they shall be equally responsible for the Settlement Administrator's Administration Costs through that date. An award by the Court of a lesser amount than sought by Plaintiff and Class Counsel for the Class Representative General Release Payment, Attorney Fee Award, Cost Award, will not constitute a material modification to the Settlement within the meaning of this paragraph.

c. Proposed Order and Judgment. Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving of the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the Action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters, and (3) addressing such post-Judgment matters as may be appropriate under Court rules and applicable law.

9. Waiver of Right to Appeal. Provided that the Judgment is consistent with the terms and conditions of this Agreement, if Class Members do not timely object to the Settlement, then the Parties and their respective counsel waive any and all rights to appeal from the Judgment, including, but not limited to, all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, and any extraordinary writ, and the Judgment will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceeding, or post-judgment proceeding.

10. Vacating, Reversing, or Modifying Judgment on Appeal. If, after a notice of appeal, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Judgment is not

fully affirmed on review by a higher court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the Gross Settlement Amount, an alteration in the calculation of the Net Settlement Amount, and any change to the calculation of the Individual Settlement Share.

11. Final Request for TIN. Within 14 days following entry of the Final Approval, the Settlement Administrator shall issue a final request postcard for a TIN to those Participating Settlement Members for which it does not have a TIN. This final request postcard shall state the amount due to the Participating Settlement Class Member, explain that the Participating Settlement Class Member will forfeit to the Cy Pres beneficiary their Individual Settlement Share if their TIN is not provided to the Settlement Administrator by the Effective Final Settlement Date.

12. Disbursement of Settlement Shares and Payments. Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Court's Final Approval Order and Judgment. The maximum amount Defendants can be required to pay under this Settlement for any purpose is the Gross Settlement Amount, with the exception that Defendants will be solely responsible for payment of any employer related taxes, which will be paid separate and apart from the Gross Settlement Amount. No person shall have any claim against Defendants, Defendants' Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.

- a. **Funding the Settlement:** Defendants shall wire to the Settlement Administrator the Gross Settlement Amount within fourteen (14) days after the Effective Final Settlement Date.
- b. **Qualified Settlement Fund ("QSF"):** The Parties agree that the Gross Settlement Amount is intended to become a "Qualified Settlement Fund" under Section 468B of the Code and Treasury Regulations § 1.4168B-1, 26 C.F.R. § 1.468B-1 *et seq.*, and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the GSA as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.
- c. **Disbursement:** Within twenty-one (21) business days after the Effective Final Settlement Date, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to

Participating Settlement Class Members for which the Settlement Administrator has received a Taxpayer Identification Number; (2) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative General Release Payment paid to the Class Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; (5) the LWDA's portion of the PAGA Payment to the LWDA, as approved by the Court.

13. Post-Distribution Accounting and Settlement Administrator's Final Report.

Within ten (10) days after the disbursement of all funds, the Settlement Administrator will circulate to the Parties a declaration providing a final report regarding the disbursements of all funds. This declaration will include, per the Northern District of California's Class Action Settlement Guidelines, an easy to read chart, which will provide the following information: (1) the total GSA; (2) the total number of Settlement Class Members; (3) the total number of Settlement Class Members to whom notice was sent and not returned as undeliverable; (4) the number and percentage of opt-outs from the Settlement; (5) the number and percentage of objections; (6) the average and median recovery per Participating Settlement Class Member; (7) the largest and smallest amounts paid to Participating Settlement Class Members; (8) the methods of notice and the methods of payment to Settlement Class Members; (9) the number and value of checks not cashed and sent to the Unclaimed Property Fund, if available; (10) the number of unanswered requests for TINs and the resulting value of the Cy Pres Amount (11) the administrative costs; (12) the attorneys' fees and costs; (13) the attorneys' fees in terms of percentage of the GSA; and (14) the lodestar multiplier, if any. Within twenty-one (21) days after distribution of the GSA, the Parties shall file this Post-Distribution Accounting. Within twenty-one (21) days after distribution of the GSA, the Settlement Administrator shall also post the Post-Distribution Accounting on the settlement website for Settlement Class Members to access. The Settlement Administrator will provide any supplemental declaration required by the Court.

14. Uncashed Checks & Cy Pres Payment.

Participating Settlement Class Members must cash or deposit their Individual Settlement Share checks within one hundred and eighty (180) calendar days after the checks are mailed to them. If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced. If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, deposit the

uncashed funds with the California State Controller's Office – Unclaimed Property ("Unclaimed Property Fund"), where the funds may be claimed at a later date. Likewise, if the Settlement Administrator has not received the requested outstanding TINs from Participating Settlement Class Members, the Settlement Administrator will, within two hundred (200) calendar days of mailing checks to Participating Settlement Class Members, deposit the Cy Pres Amount with the Cy Pres beneficiary.

15. Defendants' Legal Fees. Defendants will bear their own legal fees, costs, and expenses incurred in this Action, separate and apart from their obligation to pay the Gross Settlement Amount.

J. Release of Claims. As of the Effective Final Settlement Date, Settlement Class Members who do not submit a timely and valid request for exclusion release the Released Parties from the Released Claims. As of the Effective Final Settlement Date, Participating Settlement Class Members agree not to sue or otherwise make a claim against any of the Released Parties for any of the Released Claims.

K. Plaintiff's Release of Claims and General Release. As of the Effective Final Settlement Date, and in exchange for the Class Representative General Release Payment to the named Plaintiff in an amount not to exceed Ten Thousand Dollars and No Cents (\$10,000.00), Plaintiff shall give the following general release of claims for himself and his respective spouse, heirs, successors and assigns, forever release the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, from the beginning of time through the date of his signature on this Agreement, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating to the services provided to Defendants, termination of such services, or the remuneration received in connection with those services. Plaintiff's Release of Claims also includes a waiver of California Civil Code section 1542, which provides as follows:

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

This release excludes any release of any claims not permitted to be released by law.

L. Miscellaneous Terms

- 1. No Admission of Liability.** Defendants make no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendants reserve the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendants deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under the claims asserted in the Action, or that a class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendants of liability or wrongdoing. This Settlement and Plaintiff's and Defendants' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with this Settlement).
- 2. No Effect on Employee Benefits.** The Class Representative General Release Payment and/or Individual Settlement Shares paid to Plaintiff and Participating Settlement Class Members shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*e.g.*, vacation, holiday pay, retirement plans, etc.) of Plaintiffs or the Participating Settlement Class Members. The Parties agree that any Class Representative General Release Payment and/or Individual Settlement Share paid to Plaintiff or the Participating Settlement Class Members under the terms of this Agreement do not represent any modification of Plaintiff's or Participating Settlement Class Members' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendants. Further, any Class Representative General Release Payment shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Defendants.
- 3. Disclaimer of Liability.** Defendants shall have no responsibility for deciding the amount or validity of the Individual Settlement Shares or any other payments made pursuant to this Settlement, and shall not be liable under any circumstances for any errors in the administration of this Settlement, shall have no involvement in or responsibility for the determination or payment of taxes and required withholdings, if any, and shall have no liability for any errors made with respect to the calculation of any Individual Settlement Share. Settlement Class Members represent and understand that they shall be solely responsible for any and all tax obligations associated with their Individual Settlement Shares. All Individual Settlement Shares shall be deemed to be paid to Settlement Class

Members solely in the year in which such payments are actually received by the Settlement Class Members.

4. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
5. **Authorization to Enter Into Settlement Agreement.** Class Counsel and Defendants' Counsel warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.
6. **Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
7. **Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.
8. **Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.

9. **Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
10. **No Prior Assignment.** Plaintiff hereby represents, covenants, and warrants that he has not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.
11. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
12. **Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
13. **No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Class Members will assume any such tax obligations or consequences that may arise from this Agreement, and that Class Members shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Class Member, such Class Member assumes all responsibility for the payment of such taxes.
14. **Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.
15. **Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and

the validity and enforceability of the remaining provisions shall not be affected thereby.

16. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

17. Execution in Counterpart. This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

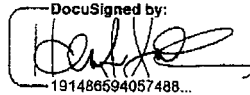
[Signatures on Next Page]

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: 8/15/2019, 2019

PLAINTIFF HECTOR IBANEZ

DocuSigned by:

191486594057488...

Dated: _____, 2019

**DEFENDANTS XPO LAST MILE, INC. AND
XPO LOGISTICS, INC.**

Christopher Signorello, Esq.
Senior Vice President, Litigation Counsel

Dated: _____, 2019

MARA LAW FIRM, PC

David Mara, Esq.
Jamie Serb, Esq.
Attorneys for Plaintiffs, on behalf of themselves and
all others similarly situated

Dated: _____, 2019

BAINER LAW FIRM

Matthew Bainer, Esq.
Attorneys for Plaintiffs, on behalf of themselves and
all others similarly situated

Dated: _____, 2019

JACKSON LEWIS P.C.

Fraser McAlpine, Esq.
Adam Lounsbury, Esq.
Attorneys for Defendants

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The Parties and their counsel execute this Agreement.

Dated: _____, 2019

PLAINTIFF HECTOR IBANEZ


Dated: _____, 2019

**DEFENDANTS XPO LAST MILE, INC. AND
XPO LOGISTICS, INC.**

Christopher Signorello, Esq.
Senior Vice President, Litigation Counsel

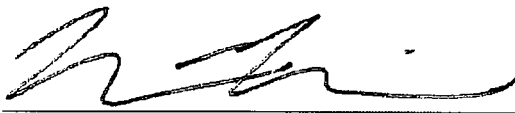
Dated: 8/16, 2019

MARA LAW FIRM, PC


David Mara, Esq.
Jamie Serb, Esq.
Attorneys for Plaintiffs, on behalf of themselves and
all others similarly situated

Dated: August 19, 2019

BAINER LAW FIRM


Matthew Bainer, Esq.
Attorneys for Plaintiffs, on behalf of themselves and
all others similarly situated

Dated: _____, 2019

JACKSON LEWIS P.C.

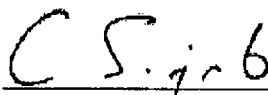
Fraser McAlpine, Esq.
Adam Lounsbury, Esq.
Attorneys for Defendants

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: _____, 2019 **PLAINTIFF HECTOR IBANEZ**

Dated: 08/15/2019, 2019 **DEFENDANTS XPO LAST MILE, INC. AND
XPO LOGISTICS, INC.**



Christopher Signorello, Esq.
Senior Vice President, Litigation Counsel

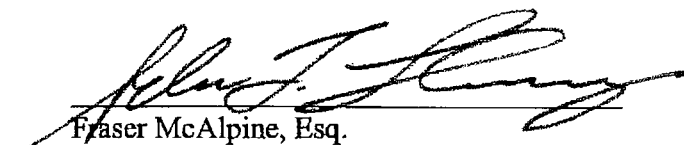
Dated: _____, 2019 **MARA LAW FIRM, PC**

David Mara, Esq.
Jamie Serb, Esq.
Attorneys for Plaintiffs, on behalf of themselves and
all others similarly situated

Dated: _____, 2019 **BAINER LAW FIRM**

Matthew Bainer, Esq.
Attorneys for Plaintiffs, on behalf of themselves and
all others similarly situated

Dated: Aug. 15, 2019 **JACKSON LEWIS P.C.**



Fraser McAlpine, Esq.
Adam Lounsbury, Esq.
Attorneys for Defendants

EXHIBIT A

(CLASS NOTICE)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Hector Ibanez, individually and on behalf of others similarly situated v. XPO Last Mile, Inc.

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

NOTICE OF CLASS ACTION SETTLEMENT

**YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED CLASS ACTION SETTLEMENT.
PLEASE READ THIS NOTICE CAREFULLY.**

A court authorized this notice. This is not a solicitation. This is not a lawsuit against you and you are not being sued. However, your legal rights are affected by whether you act or do not act.

TO: All individuals who did not contract with XPO LM, and (1) are “Drivers” that performed delivery services within the state of California during the Class Period for a Carrier, or (2) are “Helpers” with a California address and were/are associated with any Carrier that performed delivery services within the state of California during the Class Period (any time between September 22, 2012 and [Preliminary Approval Date]). (This excludes drivers and helpers who delivered goods that were tendered to them at the Macy’s warehouse located at 1200 Whipple Road, Union City, CA 94587).

The Northern District Court has granted preliminary approval to a proposed settlement (“Settlement”) of the above-captioned action (“Class Action”). Because your rights may be affected by this Settlement, it is important that you read this Notice of Class Action Settlement (“Notice”) carefully. The Court has certified the following class for settlement purposes (referred to as “Class” or “Class Members”):

All individuals who did not contract with XPO LM, and (1) are “Drivers” that performed delivery services within the state of California during the Class Period for a Carrier, or (2) are “Helpers” with a California address and were/are associated with any Carrier that performed delivery services within the state of California during the Class Period. (This Class expressly excludes those drivers and helpers who delivered goods that were tendered to them at the Macy’s warehouse located at 1200 Whipple Road, Union City, CA 94587).

This Notice provides a brief description of the claims alleged in this lawsuit, the key terms of the Settlement, and your rights and options under the Settlement. **PLEASE READ THIS NOTICE CAREFULLY.**

INFORMATION CONTAINED IN THIS NOTICE:

1. Why Have I Received This Notice?.....	Page 2
2. What Is This Case About?	Page 2
3. Am I a Class Member?	Page 2
4. How Do I Access Documents Filed in the Case?	Page 2
5. How Does This Class Action Settlement Work?.....	Page 2
6. Who Are the Attorneys Representing the Parties?	Page 3
7. What Are My Options?.....	Page 3
8. How Do I Opt Out or Exclude Myself From This Settlement?	Page 4
9. How Do I Object to the Settlement?	Page 4
10. How Does This Settlement Affect My Rights?	Page 5
11. How Much Can I Expect to Receive From This Settlement?.....	Page 5
12. How Will the Attorneys for the Class and the Class Representative Be Paid?	Page 6

1. ***Why Have I Received This Notice?***

You are receiving this notice because XPO Last Mile, Inc.'s ("XPO LM") records indicate that you may be a Class Member (a "Driver" that performed delivery services within the state of California during the Class Period for a Carrier, or (2) a "Helper" with a California address and was associated with any Carrier that performed delivery services within the state of California during the Class Period). The proposed settlement will resolve all Class Members' Released Claims, as described below, from September 22, 2012 through [date of Preliminary Approval]. This timeframe is called the "Class Period".

A court hearing was held on [the date of Preliminary Approval], in the United States District Court of the Northern District of California. At this hearing, the Court reviewed the settlement and preliminarily approved of the terms and conditions of the settlement. The Court also conditionally certified the Class for settlement purposes only and ordered that you receive this Notice.

The Court will hold another hearing, called the Final Approval Hearing, to determine whether the settlement should be approved. The hearing will take place on [the date of final approval hearing], 2019 at [time a.m./p.m.], before the Honorable William Orrick in Courtroom 2, located at 450 Golden Gate Avenue, San Francisco, California 94102. **The date and time of the Final Approval Hearing may change without further notice to the Class. Please be advised that you should check the settlement website [www.address.com] or the Court's PACER website to confirm that the date and time has not changed.**

2. ***What Is This Case About?***

A lawsuit was initially filed with the Court on September 22, 2016 in the Alameda County Superior Court (Case Number RG16832150) and was entitled *Kevin Kramer v. XPO Logistics, Inc.* The lawsuit sought damages, restitution, penalties, interests, costs and attorney's fees and other relief based on the following alleged claims: 1) failure to pay all straight time wages; 2) failure to pay overtime; 3) failure to provide meal breaks; 4) failure to provide rest breaks; 5) pay stub violations; 6) waiting time penalties; and 7) violation of the Unfair Competition Law.

Another lawsuit was filed with the Court on May 23, 2017 in the San Bernardino County Superior Court (Case Number May 23, 2017) and was entitled *Hector Ibanez v. XPO Last Mile, Inc.* The lawsuit sought the same outcomes and alleged the same claims as the *Kramer* lawsuit, in addition to a claim for reimbursement of business expenses. The *Kramer* and *Ibanez* lawsuits were removed to federal court and consolidated to create this lawsuit. As part of preliminary approval, the complaint was amended to add a cause of action under the Labor Code Private Attorneys General Act of 2004 ("PAGA").

The Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiff or Defendants; instead, both sides agreed to resolve this lawsuit with no decision of who is right or wrong. By agreeing to resolve the lawsuit, all parties avoid the risks and cost of a trial. XPO LM expressly denies that it did anything wrong or that it violated the law and further denies any liability whatsoever to Plaintiff or to the Class.

3. ***Am I A Class Member?***

You are a Class Member if you are a “Driver” that performed delivery services within the state of California during the Class Period for a Carrier, or (2) a “Helper” with a California address and was associated with any Carrier that performed delivery services within the state of California during the Class Period.

4. *How Do I Access Court Documents Filed in the Case?*

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at [\[www.address.com\]](#), by contacting class counsel at the phone numbers listed in Section 6, by accessing the Court docket in this case, for a fee, through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

5. *How Does This Class Action Settlement Work?*

Plaintiff filed this lawsuit on behalf of himself and all other similarly situated workers at any time between September 22, 2012 and [\[date of Preliminary Approval\]](#). Plaintiff and these other workers comprise a “Class” and are “Class Members.” The settlement of this Action resolves the Released Claims of all Class Members, except for those who exclude themselves from the Class by requesting to be excluded in the manner set forth below.

Class Counsel have extensively investigated and researched the facts and circumstances underlying the issues raised in this lawsuit, and the applicable law. Class Counsel recognizes the expense and length of continued litigation necessary to take the case through trial and possible appeals. Class Counsel has also taken into account the uncertainty and the risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Class Counsel is also aware of the burdens of proof necessary to establish liability for the alleged violations of law, XPO LM’s defenses, and of the difficulties in establishing damages for the Plaintiffs. Class Counsel also has taken into account the extensive settlement negotiations conducted by the Parties. Based on the foregoing, Class Counsel believe the settlement is fair, adequate, and reasonable and in the best interest of the Class. The Court must also review the terms of the settlement and determine if it is fair, adequate, and reasonable and in the best interests of the Class before any payments can be made under the settlement.

6. *Who Are the Attorneys Representing the Parties?*

Attorneys for Plaintiff and Class Counsel	Attorneys for XPO LM
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<p>MARA LAW FIRM, PC David Mara Jamie Serb 2650 Camino Del Rio North San Diego, California 92108 Telephone: (619) 234-2833 Facsimile: (619) 234-4048</p> <p>THE BAINER LAW FIRM Matthew Bainer 1901 Harrison Street, Suite 1100 Oakland, California 94612 Telephone: (510) 922-1802 Facsimile: (510) 844-7701</p>	<p>JACKSON LEWIS, PC Fraser McAlpine 50 California Street, 9th Floor San Francisco, California 94111 Telephone: (415) 394-9400 Facsimile: (415) 394-9401</p> <p>JACKSON LEWIS, PC Adam Lounsbury 701 East Byrd Street, 17th Floor Richmond, VA 23219 Telephone: (804) 649-0404 Facsimile: (804) 649-0403</p>
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The Court has decided that David Mara and Jamie Serb of Mara Law Firm, PC and Matthew Bainer of Bainer Law Firm are qualified to represent you and all other Class Members simultaneously. You do not need to hire your own attorney because Class Counsel is working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

7. *What Are My Options?*

This notice informs you of the proposed settlement and of your options under the settlement. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below, and provided in greater detail in the following sections.

Important Note: Defendants will not retaliate against you in any way for either participating or not participating in this Settlement.

- DO NOTHING:** If you do nothing and the Court grants final approval of the Settlement, you will become part of this lawsuit and may receive a payment from the Settlement. You will be bound to the release of the Released Claims as defined in the Settlement Agreement and the Final Judgment. You will also give up your right to pursue the Released Claims as defined in Section No. 10 below.
- OPT OUT:** If you do not want to participate as a Class Member, you may “opt out,” which will remove you from the Class and this Action. If the Court grants final approval of the settlement, you will **not** receive a Settlement payment and you will **not** give up the right to sue Defendants and the Released Parties for the Released Claims as defined in Section No. 9 below.
- OBJECT:** You may file a legal objection to the proposed settlement. If you would like to object, you may not opt out of this case.

The procedures for opting out and objecting are set forth below in the sections entitled “How Do I Opt Out or Exclude Myself From This Settlement” and “How Do I Object To The Settlement?”

8. *How Do I Opt Out Or Exclude Myself From This Settlement?*

If you do not want to take part in the Settlement, you must submit a written request for exclusion (also called “opt-out”) to the Settlement Administrator. By requesting exclusion or opting-out of the Settlement, you will not receive any money from the Settlement, but you will retain all of your rights to sue XPO LM and the Released Parties for any of the Released Claims.

The written request for exclusion must: (a) state your name, address, telephone number; and social security number; (b) state your intention to exclude yourself from or opt-out of the Settlement (example: “I want to exclude myself from this settlement. I understand that I will not receive any money from this settlement. I also understand that I retain all rights to sue the Defendants for the claims asserted in the lawsuit”); (c) be addressed to the Settlement Administrator at [address]; (d) be signed by you or your lawful representative; and (e) be postmarked no later than [the Response Deadline]. The Settlement Administrator may contact you for further information to help them identify you.

When the Court grants Final Approval of the Settlement and enters a Judgment in the case, the Judgment will bind all Class Members to the Settlement terms who do not request exclusion from the Settlement.

9. *How Do I Object To The Settlement?*

If you are a Class Member who does not opt out of the Settlement, you can ask the Court to deny approval by filing an objection postmarked no later than [the Response Deadline]. You cannot ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

Any objection to the proposed settlement must be in writing. If you file a timely written objection, postmarked no later than [the Response Deadline], you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney.

All written objections and supporting papers must (a) clearly identify the case name and number (*Ibanez, et al. v. XPO Last Mile, Inc., et al*, Case Number 3:16-cv-07039-WHO), (b) include the objecting person’s or his/her attorney’s full name, address, and telephone number; (c) the words “Notice of Objection” or “Formal Objection”; (d) describe in clear and concise terms, the legal and factual arguments supporting the objection; (e) list identifying witness(es) the objector may call to testify at the Final Approval Hearing; (f) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval Hearing; (g) state whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class; (h) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California 94102, or by filing them in person at any location of the United States District Court for the Northern District of California, and (i) be filed or postmarked on or before [the Response Deadline]. Any objection must comply with Federal Rules of Civil Procedure, Rule 23(e)(5).

If the Court rejects or denies the objection, you will receive a Settlement payment and will be bound by the terms of the Settlement.

10. How Does This Settlement Affect My Rights? What are the Released Claims?

If the proposed settlement is approved by the Court at the Final Approval Hearing, a Judgment will be entered by the Court. All Class Members who do not opt out of the Settlement will be bound by the Court's Judgment and will release XPO LM and the Released Parties¹ from the Released Claims. The Released Claims are as follows:

Class Members participating in the Settlement will release all known and unknown claims arising from or related to facts and claims alleged in the Operative Complaint, and any claims that could have been raised therein based on the facts alleged in the Operative Complaint, whether known or not, including: (1) failure to pay all straight time wages (Labor Code §§ 510, 515, 1194); (2) failure to pay overtime (Labor Code §§ 218, 218.5, 222, 223, 224, 510, 1197, 1198); (3) failure to pay minimum wages (Labor Code §§ 1194, 1197, 1197.1); (4) failure to authorize and permit rest periods (Labor Code §§ 226.7); (5) failure to provide meal periods (Labor Code §§ 226.7, 512); (6) knowing and intentional failure to comply with itemized wage statement provisions (Labor Code §§ 226, 226.2); (7) failure to pay all wages due at the time of termination of employment (Labor Code §§ 201, 201.5, 202, 203, 205.5); (8) violation of the Unfair Competition Law (Bus. & Prof. Code §17200); (9) failure to reimburse business expenses (Labor Code § 2802); (10) penalties pursuant to the Private Attorneys' General Act of 2004 (Labor Code § 2698, et seq.); and (11) Industrial Welfare Commission Wage Orders. The release is for the benefit of the Released Parties and applies only to periods of time within the Class Period when the Class Members participating in the Settlement meet the criteria for participating in this Settlement.

11. How Much Can I Expect to Receive From This Settlement?

The total maximum amount that XPO LM will be required to pay under this Settlement shall be \$5,500,000.00 ("Gross Settlement Amount" or "GSA").

A. Deductions from the Settlement

The "Net Settlement Amount" or "NSA" means the portion of the Gross Settlement Amount remaining after deducting the following: (1) the Class Representative General Release Payment in an amount not to exceed \$10,000.00; (2) attorneys' fees not to exceed \$1,375,000.00 (25% of the GSA); (3) litigation costs incurred in this matter, estimated not to exceed \$100,000.00; (4) Administration Costs estimated not to exceed \$75,000.00; and (5) the PAGA payment to the LWDA of \$412,500.00 (75% of the \$550,000.00 allocated to PAGA penalties; the remaining 25%, or \$137,500.00, to be distributed to Participating Settlement Class Members). All of these payments are subject to court approval.

B. How Class Member Settlement Payments are Calculated

The NSA, currently estimated at \$3,527,500.00, will be proportionately distributed to Class Members who have not opted out of the Settlement. Class Members' Settlement payments will be calculated by: (i) calculating the number of work weeks each Class Member was active in California; (2) dividing that number by the total number of work weeks all participating Class Members were active in California; and (3) multiplying the result by the NSA. Therefore, the value of each Class Member's settlement payment ties directly to the amount of weeks he or she was active in XPO LM's records during the Class Period.

¹ "Release Parties" includes: XPO Logistics, Inc. and XPO Last Mile, Inc. and its past, present and/or future, direct and/or indirect, officers, directors, employees, representatives, administrators, attorneys, agents, parent companies, subsidiaries and affiliated corporations and entities, consultants, shareholders, joint ventures, predecessors, successors, and/or assigns.

XPO LM's work week calculations are based on the date the Class Member first appeared in XPO LM's records (the "Qualification Date"). The Qualification Date will be treated as the Class Members' start dates. The end date, will be the later of (1) the date when the Class Member was removed from XPO LM's system (i.e., deactivated), or (2) [insert date of Preliminary Approval], the date of Preliminary Approval ("End Date"). The calendar weeks between the Qualification Date and the End Date, will be considered the number of active work weeks for purposes of calculating the Class Members' individual settlement payments.

C. Your Estimated Settlement Payment

Although your exact settlement payment cannot be precisely calculated until after the time during which individuals may object or seek exclusion from the Settlement concludes, based upon the calculation above, your approximate settlement payment, is as follows: \$[insert estimated gross settlement payment], less taxes. This is based on the information available to XPO LM, which shows you were active in California for [insert number of work weeks] work weeks during the Class Period.

D. Tax Treatment of Your Settlement Payment

One-third (33.3 %) of each Class Member's settlement payment is intended to settle each Class Member's claims for unpaid wages (the "Wage Portion"). The Wage Portion will be reduced by applicable employee payroll tax withholdings and deductions. XPO LM's share of legally required employer payroll taxes for the Wage Portion will be paid separate and apart from this Settlement. The Settlement Administrator will issue an IRS Form W-2 to each Class Member participating in the settlement with respect to the Wage Portion of his/her settlement payment.

The remaining two-thirds of each Class Member's settlement payment is intended to settle each Class Member's claims for interest (33.3%) and penalties (33.4%) ("Non-Wage Portion"). The Non-Wage Portion will not be reduced by payroll tax withholding and deductions. The Settlement Administrator will issue to each Class Member participating in the settlement an IRS Form 1099 with respect to the Non-Wage Portion of his/her settlement payment.

E. What Happens If You Don't Cash Your Check?

It is strongly recommended that upon receipt of your settlement payment check, you immediately cash it or cash it before the 180-day void date shown on each check. If any checks remain uncashed or not deposited by the expiration of the 180-day period, the Settlement Administrator will pay over the amount represented by the check to the California State Controller's Office – Unclaimed Property, and you will have your settlement payment available to you per the applicable claim procedure to request that money from the State of California.

12. *How Will the Attorneys for the Class and the Class Representative Be Paid?*

Class Counsel - the attorneys for Plaintiff and the Class - will be paid from the Gross Settlement Amount. Subject to the Court's approval, Class Counsel shall be paid an amount not to exceed 25% of the Gross Settlement Amount (\$1,375,000.00) for attorney fees and an additional amount in actual litigation costs incurred in litigating this matter, not to exceed \$100,000.00.

Plaintiff Ibanez will also be paid, subject to the Court's approval, an amount not to exceed \$10,000.00, as a general release payment for the initiation of and prosecution of this case, the risks undertaken for the payment of costs in the event this case had been lost, and a general release of all claims.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact Class Counsel listed above, or the Settlement Administrator at the telephone number listed below, toll free. Please refer to the Ibanez v. XPO LM class action settlement.

PLEASE DO NOT TELEPHONE THE COURT OR COURT'S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.

(CLASS NOTICE – TIN NEEDED)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Hector Ibanez, individually and on behalf of others similarly situated v. XPO Last Mile, Inc.
Case No. 3:17-cv-04009 consolidated with 3:16-cv-07039-WHO

NOTICE OF CLASS ACTION SETTLEMENT

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PLEASE READ THIS NOTICE CAREFULLY.**

A court authorized this notice. This is not a solicitation. This is not a lawsuit against you and you are not being sued. However, your legal rights are affected by whether you act or do not act.

TO: All individuals who did not contract with XPO LM, and (1) are “Drivers” that performed delivery services within the state of California during the Class Period for a Carrier, or (2) are “Helpers” with a California address and were/are associated with any Carrier that performed delivery services within the state of California during the Class Period (any time between September 22, 2012 and [Preliminary Approval Date]). (This excludes drivers and helpers who delivered goods that were tendered to them at the Macy’s warehouse located at 1200 Whipple Road, Union City, CA 94587).

The Northern District Court has granted preliminary approval to a proposed settlement (“Settlement”) of the above-captioned action (“Class Action”). Because your rights may be affected by this Settlement, it is important that you read this Notice of Class Action Settlement (“Notice”) carefully. The Court has certified the following class for settlement purposes (referred to as “Class” or “Class Members”):

All individuals who did not contract with XPO LM, and (1) are “Drivers” that performed delivery services within the state of California during the Class Period for a Carrier, or (2) are “Helpers” with a California address and were/are associated with any Carrier that performed delivery services within the state of California during the Class Period. (This Class expressly excludes those drivers and helpers who delivered goods that were tendered to them at the Macy’s warehouse located at 1200 Whipple Road, Union City, CA 94587).

This Notice provides a brief description of the claims alleged in this lawsuit, the key terms of the Settlement, and your rights and options under the Settlement. **PLEASE READ THIS NOTICE CAREFULLY.**

INFORMATION CONTAINED IN THIS NOTICE:

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1. *Why Have I Received This Notice?*

You are receiving this notice because XPO Last Mile, Inc.'s ("XPO LM") records indicate that you may be a Class Member (a "Driver" that performed delivery services within the state of California during the Class Period for a Carrier, or (2) a "Helper" with a California address and was associated with any Carrier that performed delivery services within the state of California during the Class Period). The proposed settlement will resolve all Class Members' Released Claims, as described below, from September 22, 2012 through [date of Preliminary Approval]. This timeframe is called the "Class Period".

A court hearing was held on [the date of Preliminary Approval], in the United States District Court of the Northern District of California. At this hearing, the Court reviewed the settlement and preliminarily approved of the terms and conditions of the settlement. The Court also conditionally certified the Class for settlement purposes only and ordered that you receive this Notice.

The Court will hold another hearing, called the Final Approval Hearing, to determine whether the settlement should be approved. The hearing will take place on [the date of final approval hearing], 2019 at [time a.m./p.m.], before the Honorable William Orrick in Courtroom 2, located at 450 Golden Gate Avenue, San Francisco, California 94102. **The date and time of the Final Approval Hearing may change without further notice to the Class. Please be advised that you should check the settlement website [www.address.com] or the Court's PACER website to confirm that the date and time has not changed.**

2. *What Is This Case About?*

A lawsuit was initially filed with the Court on September 22, 2016 in the Alameda County Superior Court (Case Number RG16832150) and was entitled *Kevin Kramer v. XPO Logistics, Inc.* The lawsuit sought damages, restitution, penalties, interests, costs and attorney's fees and other relief based on the following alleged claims: 1) failure to pay all straight time wages; 2) failure to pay overtime; 3) failure to provide meal breaks; 4) failure to provide rest breaks; 5) pay stub violations; 6) waiting time penalties; and 7) violation of the Unfair Competition Law.

Another lawsuit was filed with the Court on May 23, 2017 in the San Bernardino County Superior Court (Case Number May 23, 2017) and was entitled *Hector Ibanez v. XPO Last Mile, Inc.* The lawsuit sought the same outcomes and alleged the same claims as the *Kramer* lawsuit, in addition to a claim for reimbursement of business expenses. The *Kramer* and *Ibanez* lawsuits were removed to federal court and consolidated to create this lawsuit. As part of preliminary approval, the complaint was amended to add a cause of action under the Labor Code Private Attorneys General Act of 2004 ("PAGA").

The Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiff or Defendants; instead, both sides agreed to resolve this lawsuit with no decision of who is right or wrong. By agreeing to resolve the lawsuit, all parties avoid the risks and cost of a trial. XPO LM expressly denies that it did anything wrong or that it violated the law and further denies any liability whatsoever to Plaintiff or to the Class.

3. *Am I A Class Member?*

You are a Class Member if you are a "Driver" that performed delivery services within the state of California during the Class Period for a Carrier, or (2) a "Helper" with a California address and was associated with any Carrier that performed delivery services within the state of California during the Class Period.

4. How Do I Access Court Documents Filed in the Case?

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at www.address.com, by contacting class counsel at the phone numbers listed in Section 6, by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

5. How Does This Class Action Settlement Work?

Plaintiff filed this lawsuit on behalf of himself and all other similarly situated workers at any time between September 22, 2012 and [\[date of Preliminary Approval\]](#). Plaintiff and these other workers comprise a "Class" and are "Class Members." The settlement of this Action resolves the Released Claims of all Class Members, except for those who exclude themselves from the Class by requesting to be excluded in the manner set forth below.

Class Counsel have extensively investigated and researched the facts and circumstances underlying the issues raised in this lawsuit, and the applicable law. Class Counsel recognizes the expense and length of continued litigation necessary to take the case through trial and possible appeals. Class Counsel has also taken into account the uncertainty and the risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Class Counsel is also aware of the burdens of proof necessary to establish liability for the alleged violations of law, XPO LM's defenses, and of the difficulties in establishing damages for the Plaintiffs. Class Counsel also has taken into account the extensive settlement negotiations conducted by the Parties. Based on the foregoing, Class Counsel believe the settlement is fair, adequate, and reasonable and in the best interest of the Class. The Court must also review the terms of the settlement and determine if it is fair, adequate, and reasonable and in the best interests of the Class before any payments can be made under the settlement.

6. Who Are the Attorneys Representing the Parties?

Attorneys for Plaintiff and Class Counsel	Attorneys for XPO LM
<p>MARA LAW FIRM, PC David Mara Jamie Serb 2650 Camino Del Rio North San Diego, California 92108 Telephone: (619) 234-2833 Facsimile: (619) 234-4048</p> <p>THE BAINER LAW FIRM Matthew Bainer 1901 Harrison Street, Suite 1100 Oakland, California 94612 Telephone: (510) 922-1802 Facsimile: (510) 844-7701</p>	<p>JACKSON LEWIS, PC Fraser McAlpine 50 California Street, 9th Floor San Francisco, California 94111 Telephone: (415) 394-9400 Facsimile: (415) 394-9401</p> <p>JACKSON LEWIS, PC Adam Lounsbury 701 East Byrd Street, 17th Floor Richmond, VA 23219 Telephone: (804) 649-0404 Facsimile: (804) 649-0403</p>

The Court has decided that David Mara and Jamie Serb of Mara Law Firm, PC and Matthew Bainer of Bainer Law Firm are qualified to represent you and all other Class Members simultaneously. You do not need to hire your own attorney because Class Counsel is working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

7. *What Are My Options?*

This notice informs you of the proposed settlement and of your options under the settlement. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below, and provided in greater detail in the following sections.

Important Note: Defendants will not retaliate against you in any way for either participating or not participating in this Settlement.

- **SUBMIT W9 FORM:** The Settlement Administrator does not have your taxpayer identification number (“TIN”) and you **must** submit your TIN to receive a Settlement payment from this Settlement. Fill out the enclosed IRS W-9 Form and return it to the Settlement Administrator. If you have questions about how to fill out this form, please call the Settlement Administrator at [phone number].
- **DO NOTHING:** If you do not opt out or object to the lawsuit and the Court grants final approval of the Settlement, you will become part of this lawsuit and will be allocated a payment from the Settlement. You will be bound to the release of the Released Claims as defined in the Settlement Agreement and the Final Judgment. You will also give up your right to pursue the Released Claims as defined in Section No. 10 below. **NOTE: If you do not submit your TIN, you will not receive your Settlement payment and will still be bound by the release of the Released Claims as defined in the Settlement Agreement and the Final Judgment.**
- **OPT OUT:** If you do not want to participate as a Class Member, you may “opt out,” which will remove you from the Class and this Action. If the Court grants final approval of the settlement, you will **not** receive a Settlement payment and you will **not** give up the right to sue Defendants and the Released Parties for the Released Claims as defined in Section No. 9 below.
- **OBJECT:** You may file a legal objection to the proposed settlement. If you would like to object, you may not opt out of this case.

The procedures for submitting the IRS W9 Form, opting out, and objecting are set forth below in the following sections entitled “How Do I Submit My Taxpayer Identification Number to Receive a Settlement Payment?,” “How Do I Opt Out or Exclude Myself From This Settlement,” and “How Do I Object To The Settlement?”

8. *How Do I Submit My Taxpayer Identification Number to Receive a Settlement Payment?*

The Settlement Administrator does **not** have your Taxpayer Identification Number (“TIN”) on file. In most circumstances, this number is your Social Security Number. This information is **required** to issue you a Settlement payment, for income tax reporting purposes. You **must** submit to the Settlement Administrator the enclosed IRS Form W9 in order to receive your Settlement payment. If you have any questions about how to fill out the IRS Form W9, please contact the Settlement Administrator at [phone number].

Fill in the requested information enclosed in the IRS Form W9, sign, and mail/fax it to the Settlement Administrator:

XPO Settlement Administrator
c/o CPT Group, Inc.
50 Corporate Park
Irvine, CA 92606
Fax: 949-419-3446

If you do **not** submit the enclosed IRS Form W9 and the Settlement Administrator does **not** have a TIN on file for you, the Settlement Administrator will **not** mail you a Settlement check. Your Settlement payment will become forfeit and will be deposited with the *cy pres* beneficiary, The United Way of California, within 200 days of mailing Settlement checks (a date which is currently not known).

9. How Do I Opt Out Or Exclude Myself From This Settlement?

If you do not want to take part in the Settlement, you must submit a written request for exclusion (also called “opt-out”) to the Settlement Administrator. By requesting exclusion or opting-out of the Settlement, you will not receive any money from the Settlement, but you will retain all of your rights to sue XPO LM and the Released Parties for any of the Released Claims.

The written request for exclusion must: (a) state your name, address, telephone number; and social security number; (b) state your intention to exclude yourself from or opt-out of the Settlement (example: “I want to exclude myself from this settlement. I understand that I will not receive any money from this settlement. I also understand that I retain all rights to sue the Defendants for the claims asserted in the lawsuit”); (c) be addressed to the Settlement Administrator at [address]; (d) be signed by you or your lawful representative; and (e) be postmarked no later than [the Response Deadline]. The Settlement Administrator may contact you for further information to help them identify you.

When the Court grants Final Approval of the Settlement and enters a Judgment in the case, the Judgment will bind all Class Members to the Settlement terms who do not request exclusion from the Settlement.

10. How Do I Object To The Settlement?

If you are a Class Member who does not opt out of the Settlement, you can ask the Court to deny approval by filing an objection postmarked no later than [the Response Deadline]. You cannot ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

Any objection to the proposed settlement must be in writing. If you file a timely written objection, postmarked no later than [the Response Deadline], you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney.

All written objections and supporting papers must (a) clearly identify the case name and number (*Ibanez, et al. v. XPO Last Mile, Inc., et al*, Case Number 3:16-cv-07039-WHO), (b) include the objecting person’s or his/her attorney’s full name, address, and telephone number; (c) the words “Notice of Objection” or “Formal Objection”;

(d) describe in clear and concise terms, the legal and factual arguments supporting the objection; (e) list identifying witness(es) the objector may call to testify at the Final Approval Hearing; (f) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval Hearing; (g) state whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class; (h) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California 94102, or by filing them in person at any location of the United States District Court for the Northern District of California, and (i) be filed or postmarked on or before **[the Response Deadline]**. Any objection must comply with Federal Rules of Civil Procedure, Rule 23(e)(5).

If the Court rejects or denies the objection, you will receive a Settlement payment and will be bound by the terms of the Settlement.

11. How Does This Settlement Affect My Rights? What are the Released Claims?

If the proposed settlement is approved by the Court at the Final Approval Hearing, a Judgment will be entered by the Court. All Class Members who do not opt out of the Settlement will be bound by the Court's Judgment and will release XPO LM and the Released Parties¹ from the Released Claims. The Released Claims are as follows:

Class Members participating in the Settlement will release all known and unknown claims arising from or related to facts and claims alleged in the Operative Complaint, and any claims that could have been raised therein based on the facts alleged in the Operative Complaint, whether known or not, including: (1) failure to pay all straight time wages (Labor Code §§ 510, 515, 1194); (2) failure to pay overtime (Labor Code §§ 218, 218.5, 222, 223, 224, 510, 1197, 1198); (3) failure to pay minimum wages (Labor Code §§ 1194, 1197, 1197.1); (4) failure to authorize and permit rest periods (Labor Code §§ 226.7); (5) failure to provide meal periods (Labor Code §§ 226.7, 512); (6) knowing and intentional failure to comply with itemized wage statement provisions (Labor Code §§ 226, 226.2); (7) failure to pay all wages due at the time of termination of employment (Labor Code §§ 201, 201.5, 202, 203, 205.5); (8) violation of the Unfair Competition Law (Bus. & Prof. Code § 17200); (9) failure to reimburse business expenses (Labor Code § 2802); (10) penalties pursuant to the Private Attorneys' General Act of 2004 (Labor Code § 2698, et seq.); and (11) Industrial Welfare Commission Wage Orders. The release is for the benefit of the Released Parties and applies only to periods of time within the Class Period when the Class Members participating in the Settlement meet the criteria for participating in this Settlement.

12. How Much Can I Expect to Receive From This Settlement?

The total maximum amount that XPO LM will be required to pay under this Settlement shall be \$5,500,000.00 ("Gross Settlement Amount" or "GSA").

A. Deductions from the Settlement

The "Net Settlement Amount" or "NSA" means the portion of the Gross Settlement Amount remaining after deducting the following: (1) the Class Representative General Release Payment in an amount not to exceed \$10,000.00; (2) attorneys' fees not to exceed \$1,375,000.00 (25% of the GSA); (3) litigation costs incurred in this matter, estimated not to exceed \$100,000.00; (4) Administration Costs estimated not to exceed \$75,000.00; and (5) the PAGA payment to the LWDA of \$412,500.00 (75% of the \$550,000.00 allocated to PAGA penalties; the

¹ "Release Parties" includes: XPO Logistics, Inc. and XPO Last Mile, Inc. and its past, present and/or future, direct and/or indirect, officers, directors, employees, representatives, administrators, attorneys, agents, parent companies, subsidiaries and affiliated corporations and entities, consultants, shareholders, joint ventures, predecessors, successors, and/or assigns.

remaining 25%, or \$137,500.00, to be distributed to Participating Settlement Class Members). All of these payments are subject to court approval.

B. How Class Member Settlement Payments are Calculated

The NSA, currently estimated at \$3,527,500.00, will be proportionately distributed to Class Members who have not opted out of the Settlement. Class Members' Settlement payments will be calculated by: (i) calculating the number of work weeks each Class Member was active in California; (2) dividing that number by the total number of work weeks all participating Class Members were active in California; and (3) multiplying the result by the NSA. Therefore, the value of each Class Member's settlement payment ties directly to the amount of weeks he or she was active during the Class Period according to the records available to XPO LM.

XPO LM's work week calculations are based on the date the Class Member first appeared in XPO LM's records (the "Qualification Date"). The Qualification Date will be treated as the Class Members' start dates. The end date, will be the later of (1) the date when the Class Member was removed from XPO LM's system (i.e., deactivated), or (2) [insert date of Preliminary Approval], the date of Preliminary Approval ("End Date"). The calendar weeks between the Qualification Date and the End Date, will be considered the number of active work weeks for purposes of calculating the Class Members' individual settlement payments.

C. Your Estimated Settlement Payment

Although your exact settlement payment cannot be precisely calculated until after the time during which individuals may object or seek exclusion from the Settlement concludes, based upon the calculation above, your approximate settlement payment, is as follows: \$[insert estimated gross settlement payment], less taxes. This is based on the information available to XPO LM, which shows you were active in California for [insert number of work weeks] work weeks during the Class Period. **To receive this payment, you must submit the enclosed IRS Form W9. See Section 8 for more information.**

D. Tax Treatment of Your Settlement Payment

One-third (33.3 %) of each Class Member's settlement payment is intended to settle each Class Member's claims for unpaid wages (the "Wage Portion"). The Wage Portion will be reduced by applicable employee payroll tax withholdings and deductions. XPO LM's share of legally required employer payroll taxes for the Wage Portion will be paid separate and apart from this Settlement. The Settlement Administrator will issue an IRS Form W-2 to each Class Member participating in the settlement with respect to the Wage Portion of his/her settlement payment.

The remaining two-thirds of each Class Member's settlement payment is intended to settle each Class Member's claims for interest (33.3%) and penalties (33.4%) ("Non-Wage Portion"). The Non-Wage Portion will not be reduced by payroll tax withholding and deductions. The Settlement Administrator will issue to each Class Member participating in the settlement an IRS Form 1099 with respect to the Non-Wage Portion of his/her settlement payment.

E. What Happens If You Don't Submit the Enclosed IRS Form W9?

It is strongly encouraged that you submit the enclosed IRS Form W9. If you do not submit this form, within 200 days of the date settlement checks are mailed to Class Members, your settlement check will be deposited with The United Way of California. If you have any questions about this, please contact the Settlement Administrator at [phone number].

F. What Happens If You Don't Cash Your Check?

It is strongly recommended that upon receipt of your settlement payment check, you immediately cash it or cash it before the 180-day void date shown on each check. If any checks remain uncashed or not deposited by the expiration of the 180-day period, the Settlement Administrator will pay over the amount represented by the check to the California State Controller's Office – Unclaimed Property, and you will have your settlement payment available to you per the applicable claim procedure to request that money from the State of California.

13. *How Will the Attorneys for the Class and the Class Representative Be Paid?*

Class Counsel - the attorneys for Plaintiff and the Class - will be paid from the Gross Settlement Amount. Subject to the Court's approval, Class Counsel shall be paid an amount not to exceed 25% of the Gross Settlement Amount (\$1,375,000.00) for attorney fees and an additional amount in actual litigation costs incurred in litigating this matter, not to exceed \$100,000.00.

Plaintiff Ibanez will also be paid, subject to the Court's approval, an amount not to exceed \$10,000.00, as a general release payment for the initiation of and prosecution of this case, the risks undertaken for the payment of costs in the event this case had been lost, and a general release of all claims.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact Class Counsel listed above, or the Settlement Administrator at the telephone number listed below, toll free. Please refer to the Ibanez v. XPO LM class action settlement.

PLEASE DO NOT TELEPHONE THE COURT OR COURT'S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.

IRS FORM W9

IRS W-9 FORM

To timely receive payment, please complete the substitute IRS Form W-9 form below.

Sign and mail/fax this form on or before [Response Deadline]

XPO Settlement Administrator
c/o CPT Group, Inc.
50 Corporate Park
Irvine, CA 92606
Fax: 949-419-3446

Taxpayer Identification Number Certification - Substitute IRS Form W-9

Enter your Social Security Number (SSN) or Employer Identification Number (EIN):

SSN: _ _ _ - _ - _ _ _ _ OR EIN: _ _ - _ _ _ _ _ _ _ _

Check Appropriate box: ☐ Individual/Sole Prop. ☐ Other _____

Print name as shown on your income tax return if different from Payee: _____

Under penalties of perjury, I certify that:

1. The taxpayer identification number shown on this form is my correct taxpayer identification number, and
2. I am a U.S. person (including a U.S. resident alien). Please Check one: ☐ Yes ☐ No

Signature: _____

EXHIBIT 2



Class Action Administrators

www.cptgroup.comContact Name: Matthew D. Weiss
Henry Arjad**Corporate Headquarters**

50 Corporate Park, Irvine CA 92606

Matt@cptgroup.com

Direct Number: (949) 428-1020

Headquarters: (800) 542-0900

Fax Number: (949) 428-1011

Case Name: XPODate: **July 31, 2019****All-In Settlement**Requesting Attorney: **Jamie Serb*** Class Members: **4,500**Plaintiff or Defense: **Plaintiff**** Opt-Out Rate: **1%**Firm Name: **Mara Law Firm**Opt-Outs Received: **45**Telephone: **(619) 234-2833**Postage Total: **\$11,822.25**Email: jserb@maralawfirm.comGrand Total: **\$50,069.80******* DISCOUNTED FLAT FEE: \$42,000.00**

* This number is an estimate provided by counsel. If the actual number is different, our cost estimate will change accordingly.

** For ease of comparison, in the event competing estimates use an alternate filing rate to calculate estimated cost, please advise us so that we may modify the estimate accordingly.

*** This price is valid for administration of a maximum of 45 opt-out's filed. Any additional opt-out's filed above 45 will be billed at the rate of \$8.00 per member.

Case Setup**Case Setup / Data Management / Create a Unified Mailing List / TFN Establish & Setup**

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Project Manager	\$75.00	6	\$450.00
System Programming/Data Base Setup	\$140.00	6	\$840.00
Toll-Free Number Establish/Setup*	\$150.00	2	\$300.00
Spanish Translation	\$0.25	2000	\$500.00
Total			\$2,090.00

* Up to 120 days after disbursement

Notification Procedures**National Change of Address (NCOA) / Class Notice & Information Sheet Mailed in English & Spanish / Self-Address Stamped Envelope (SASE) / Postage (up to 2 oz.)**

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
NCOA	\$150.00	1	\$150.00
Project Manager-Opt-Out/Notice Format	\$95.00	2	\$190.00
Merged Data	\$0.10	4,500	\$450.00
Mailing of Notice Pack	\$0.85	4,500	\$3,825.00
Estimated Postage (up to 2 oz.)*	\$0.65	4,500	\$2,925.00
Postage for SASE	\$0.48	4,500	\$2,160.00
Outbound Calls Setup/Establish/Monitor	\$250.00	1	\$250.00
Live Outbound Calls	\$1.50	2,250	\$3,375.00
Reminder Postcards - 60 days (1st attempt)	\$0.30	4,050	\$1,215.00
Postage for Postcard	\$0.35	4,050	\$1,417.50
Reminder Postcards - 90 days (2nd attempt)	\$0.30	2,925	\$877.50
Postage for Postcard	\$0.35	2,925	\$1,023.75
Reminder Postcards - 120 days (3rd attempt)	\$0.30	1,575	\$472.50
Postage for Postcard	\$0.35	1,575	\$551.25
Total			\$18,882.50

*Additional charges will apply if the postage exceeds 2 oz. The final rate will be determined at the time of mailing.

Returned Mail**Notices Returned as Undeliverable / Skip Traces / Remail Notice Packets / Postage**

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Update Undeliverable	\$0.25	450	\$112.50
Skip Traces	\$0.75	360	\$270.00
Remail Packs	\$0.95	450	\$427.50
Estimated Postage	\$0.65	450	\$292.50
Clerical Staff	\$50.00	4	\$200.00
Total			\$1,302.50

Opt-Out Processing**Process Opt-Outs, Deficiencies & Other Requests from Class Members / Call Center Support**

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming of Opt-Out Data Base	\$125.00	4	\$500.00
Opt-Out Processing	\$10.00	45	\$450.00
Clerical Staff	\$50.00	1	\$50.00
Deficiency/Dispute Letters	\$15.00	3	\$45.00
Estimated Postage	\$0.55	3	\$1.65
Project Manager	\$75.00	1	\$75.00
Call Center Support	\$2.00	675	\$1,350.00
Total			\$2,471.65

SSN Verification**Verify SSN for Validity with IRS / Send Deficiency Letters to "No-Match" Class Members**

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming for SSN Selection	\$150.00	1	\$150.00
Project Manager	\$75.00	3	\$225.00
SSN Verification	\$0.08	4,455	\$356.40
Follow up on Mis-Matches	\$5.00	45	\$225.00
Estimated Postage	\$0.55	45	\$24.75
Total			\$981.15

Disbursement**Calculations / Data Management / Create & Manage QSF / Print & Mail Checks, 1099/W-2**

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming Database-Calculate Totals	\$140.00	3	\$420.00
Project Supervisor Review of Distribution	\$75.00	9	\$675.00
Project Manager-Correspond w/ Attorney	\$75.00	5	\$375.00
Obtain EIN, Setup QSF/Bank Account	\$100.00	3	\$300.00
Programming/Setup & Printing of Checks	\$125.00	5	\$625.00
Print Mail Checks, W-2/1099 (8x10 sheet)	\$1.75	4,455	\$7,796.25
Postage	\$0.48	4,455	\$2,138.40
Check Reminder Postcards	\$0.30	2,896	\$868.80
Postage for Reminder Postcard	\$0.35	2,896	\$1,013.60
Total			\$14,212.05

Post-Disbursement & Tax Reporting**Account Recons / Skip Trace / Reissue Checks / Annual Tax Reporting / Final Reporting & Declaration**

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Re-Issue Checks as Required	\$5.00	45	\$225.00
Project Supervisor -Account Recons	\$100.00	12	\$1,200.00
Skip Trace	\$1.00	356	\$356.00
Remail Undeliverable Checks	\$2.50	356	\$890.00
Postage	\$0.55	356	\$195.80
Project Supervisor-Reconcile Uncashed Chk	\$75.00	1	\$75.00
Programming- Final Reports	\$125.00	2	\$250.00
Project Manager - Acnt Files Sent to Atty	\$125.00	2	\$250.00
Project Supervisor - Final Declaration	\$125.00	2	\$250.00
CA Tax Preparation*	\$600.00	1	\$600.00
Annual Tax Reporting to IRS*	\$750.00	1	\$750.00
QSF Annual Tax Reporting	\$500.00	2	\$1,000.00
Unclaimed Funds w/No SSN Sent to Cy Pres	No Fee	1	No Fee
Total			\$6,041.80

*CPT will file Federal and California taxes in accordance to current state and federal regulations. Additional charges will apply if the Settlement/Order/parties require(s) multiple state tax filings.

Escheatment Processing to the State Controller Unclaimed Property Division - Obtained SSNs			
Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Uncashed checks (25%)	\$2.00	1,114	\$2,228.00
UPEnterprise Reporting Services	\$0.15	1,114	\$167.10
Project Manager - Fall Reporting	\$95.00	4	\$380.00
Project Supervisor-Fall Reporting	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.50	1	\$8.50
Check Reissues - Winter/Spring QTR	\$5.00	111	\$555.00
1st Class Postage for Reissues	\$0.55	111	\$61.05
Project Manager - June Remittance	\$95.00	4	\$380.00
Project Supervisor- June Remittance	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.50	1	\$8.50
Total			\$4,088.15
Grand Total:			\$50,069.80

These Terms and Conditions are made a part of and incorporated by reference into the CPT Group, Inc. Terms and Conditions Agreement by and between Client and CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606 ("CPT").

1. Definitions.

- a) **"Affiliate"** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with, another party.
- b) **"Approved Bank"** means a financial institution insured by the Federal Deposit Insurance Corporation with capital exceeding \$1 billion.
- c) **"Case"** means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
- d) **"Claims Administrator"** means CPT Group, Inc. a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
- e) **"Client"** means collectively Plaintiff Counsel and Defense Counsel.
- f) **"Client Content"** means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, objections, and the like which contain Client Data.
- g) **"Client Data"** means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
- h) **"Class Member"** means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
- i) **"Confidential Information"** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
- j) **"Court Order"** means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.
- k) **"Defendant"** means the named party and/or parties in the Case against whom action is brought.
- l) **"Defense Counsel"** means the attorney of record for the defendant(s) in the Case.
- m) **"Intellectual Property Right"** means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
- n) **"Order"** means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
- o) **"Parties"** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
- p) **"Plaintiff"** means the named party and/or parties in the Case who are bringing the action.
- q) **"Plaintiff Counsel"** means the attorney of record for plaintiff Class Members in the Case.
- r) **"Products"** means any and all CPT Services, and work product resulting from Services.
- s) **"Qualified Settlement Fund"** means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds

are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.

- t) **"Service"** means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
 - u) **"Software"** means any and all of CPT's proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
 - v) **"Settlement"** means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
 - w) **"Settlement Agreement"** means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
 - x) **"Term"** means the term of the Agreement, as set forth in the Order.
 - y) **"Transmission Methods"** means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
 - z) **"Wire Information"** means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.
2. Client Obligations. Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement, and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect the Client Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.
3. Security. The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement, and shall promptly inform the other Parties of such breaches.
4. CPT Obligations. Provided that Client complies with all provisions of Section "Client Obligations", CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Client.
5. Mutual Obligations.
- a) Resources. Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service. If there

- b) Incident Notification. Each party will promptly inform the other parties in the event of a breach of Client Data in their possession, and shall utilize best efforts to assist the other parties to mitigate the effects of such incident.
6. Qualified Settlement Fund Account. At Client's request, CPT shall be authorized to establish one or more bank accounts at an Approved Bank. The amounts held at the Approved Bank under this Agreement are at the sole risk of Client. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
7. Fees and Payment. Pricing stated within the proposal is good for 90 Days. All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the Client data and /or notice documents. Client will be invoiced for any remaining fees according to the applicable Order. Pricing stated within any proposal from CPT to Client is for illustrative purposes only, and is only binding upon an Order executed by CPT and Client. Payment of fees will be due within 30 days after the date of the invoice, except where this Agreement expressly prescribes other payment dates. All fees set forth in an Order are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation.
8. Term and Termination.
- a) Term. The Term is set forth in the Order. The Agreement may be renewed by mutual written agreement of the parties.
- b) Termination for Cause. Either party may immediately terminate this Agreement if the other party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
- c) Bankruptcy Events. A party may immediately terminate this Agreement if the other party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
- d) Effect of Termination. Immediately following termination of this Agreement, upon Client's written request, Client may retrieve Client Data via Client's secure FTP site in the same format in which the Client Data was originally inputted into the Software, at no additional charge. Alternatively, Client Data can be returned in a mutually agreed format at a scope and price to be agreed. CPT will maintain a copy of Client Data and Client Content for no more than two (2) years following the date of the final check cashing deadline for Class Members under the Settlement Agreement, after which time any Client Data and Client Content not retrieved will be destroyed.
- e) Final Payment. If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination", Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.
9. Confidentiality. Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement.
- a. Compelled Disclosure. If receiving party is compelled to disclose any Confidential Information by judicial or administrative process or by
- other law, the receiving party shall (i) promptly notify the other party, (ii) reasonably cooperate with the other party in such party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each party is advised by its counsel in writing is legally required to be disclosed.
- b. Remedies. If either party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.
10. Intellectual Property. As between the parties, CPT will and does retain all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. Client retains all ownership rights to Client Data.
11. Indemnification. Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, "Covered CPT Parties") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "Damages") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Client Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
12. Warranties. Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.
13. Liability.
- a. Liability Cap. EXCEPT FOR A PARTY'S WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL CLAIMS ADMINISTRATOR FEES PAID OR PAYABLE BY CLIENT TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
- b. Exclusion of Consequential Damages. NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
14. Communications. CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.
15. Miscellaneous Provisions.
- a. Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and

the general laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.

- b. Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c. Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d. Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e. Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.
- f. Assignment. Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g. No Third Party Beneficiaries. The representations, warranties and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns, and shall not be construed as conferring any rights on any other persons.
- h. Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT

from using the Statistical Data for any other or operating purposes, provided that CPT does not share with any third party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.

- i. Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such applicable laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce, and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j. Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k. Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l. Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.
- m. Subcontractors. CPT shall notify Client of its use of any subcontractors to perform Client-specific Services. CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n. Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret or construe its meaning, scope or intent.
- o. Waiver. No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power or remedy.
- p. Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: XPO

Requesting Attorneys Name:	Jamie Serb
E-Mail:	jserb@maralawfirm.com
ILYM Contact:	Sean Hartranft
E-Mail:	Sean@ilymgroupclassaction.com
Contact Number:	949.690.2564

ESTIMATE FOR ADMINISTRATION SOLUTIONS

ASSUMPTIONS	
Total Number of Class Members	4,500
Estimated Mail Returned as Undeliverable	10%
NCOA	Yes
Certified Spanish Translations	Yes
Case Duration (Year(s))	1

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	10	\$1,500.00
Programming of Class Database	Hourly	\$175.00	10	\$1,750.00

*ILYM assumes that data will be in a standard format. Client will be notified immediately if not in

standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.

Subtotal \$3,250.00

PROJECT MANAGEMENT & NOTICING				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	14	\$1,680.00
Staff Hours for Processing Returned Mail	Hourly	\$70.00	8	\$560.00
Staff Hours for Processing Opt-Out	Hourly	\$70.00	4	\$280.00
Report Processing	Hourly	\$70.00	12	\$840.00
NCOA	Flat Rate	\$750.00	1	\$750.00
Certified Spanish Translation	Flat Rate	\$1,250.00	1	\$1,250.00
Toll-Free Call Center	Flat Rate	\$1,500.00	1	\$1,500.00
Weekly Reports	Flat Rate	\$600.00	1	Waived

Subtotal \$6,860.00

CALL CENTER SUPPORT				
Outbound Calls	Per Call	\$1.00	4,250	\$4,250.00
Long Distance Minutes	Per Minute	\$0.18	6,375	\$1,147.50

Subtotal \$5,397.50

Activity	Rate Type	Unit Cost	Volume	Amount
NOTIFICATION/MAILING				
Fulfillment of Notice, Information Sheet, Pre-Paid Return Envelope, English & Spanish	Per Piece	\$1.00	4,500	\$4,500.00
USPS First Class 1oz Postage	Per Piece	\$0.55	4,500	\$2,475.00
Re-Mails (Forward/Skip trace Undeliverables)	Per Piece	\$1.50	900	\$1,350.00
BRM (Postage for Pre-Paid Return Envelope)	Per Piece	\$1.31	TBD	TBD
1st Reminder Postcard, Includes First Class Postage	Per Piece	\$0.85	2,025	\$1,721.25
2nd Reminder Postcard, Includes First Class Postage	Per Piece	\$0.85	1,418	\$1,204.88
3rd Reminder Postcard, Includes First Class Postage	Per Piece	\$0.85	992	\$843.41
Storage, Photocopies, Deliveries	Flat Fee	\$250.00	1	\$250.00

Subtotal \$12,344.54

DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	12	\$1,800.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	12	\$1,500.00
Check Stub & Release - (W-2/1099)	Per Check	\$1.00	4,500	\$4,500.00
USPS First Class 1oz Postage	Per Piece	\$0.55	4,500	\$2,475.00
Reminder Postcard, Includes Postage	Per Piece	\$0.85	215	\$182.75
Re-Mails (Forward/Skip trace Undeliverables up to 10%)	Per Piece	\$1.20	900	\$1,080.00
Preparation of Taxes	Hourly	\$120.00	55	\$6,600.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

*Additional Bank fees may apply

Subtotal \$19,637.75

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	10	\$1,000.00
Project Manager Final Reporting	Hourly	\$120.00	10	\$1,200.00
Declaration	Hourly	\$125.00	4	\$500.00

Subtotal \$2,700.00

TOTAL CASE ESTIMATE: \$50,189.79

Terms and Conditions

Provisions: The Case Estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/ size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the settlement agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of ILYM Group. All notifications are mailed out in English verbiage only unless specified otherwise. Additional costs will apply if translation for an additional language(s) are required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if the Settlement Agreement requires multiple state tax filing. **Pricing is good for 30 days.**

Mailing and Data Conversion: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive spreadsheet. ILYM Group cannot be liable for any errors or omissions arising due to additional work required for preparation of the original database. A minimum of five (5) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days if a National Change of Address update is requested.

Payment Terms: All postage charges and 50% of the final administration charges are due at the start of the case and will be billed immediately upon receipt of the data and/or Notice Documents. ILYM Group, Inc. bills are due upon receipt unless otherwise negotiated and agreed to with Counsel/Client. In the event settlement terms provide that ILYM Group, Inc. is to be paid out of the Settlement Fund, ILYM Group, Inc. will request that Counsel endeavor to make alternate payment arrangements for ILYM Group, Inc. charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by Defendant/Plaintiff, or no later than the time of disbursement.

Inclusion: ILYM Group, Inc.'s general policy is to not accept Claims via facsimile. However, in the event that facsimile filing of claims must be accepted, ILYM Group will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, ILYM Group, Inc. will require disclaimer language regarding facsimile transmissions. ILYM Group, Inc. shall not be responsible for any issues caused by the U.S.P.S. ILYM Group, Inc. shall not make payments to any claimants without verified valid Social Security Numbers. All responses are held in strict confidentiality.

Tax Reporting Requirements:

ILYM Group will file the necessary tax returns including the QSF federal and state returns. Payroll tax returns will be filed if necessary. To comply with the Employment Development Department's payroll tax filing requirements we will need the following information:

1. Defendant's EDD account number
2. Defendant's current unemployment rate. They should have this information in a recent EDD letter DE 2088 titled Notice of Contributions Rates.
3. Hire and dismissal dates of the class members so we can properly account for the periods that the wages relate to for each class member.
4. Power of Attorney form DE 48 from the defendant. This form is needed so we can report the unemployment, SDI and ETT taxes on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to the defendant's EDD account.
5. The Defendant's are responsible for reporting the SDI portion of the settlement payments on the class member's W-2. Ilym will file these forms on the defendant's behalf, if requested, for an additional fee. This will be an additional W-2 being issued for each class member because the SDI payments are to be reported under the defendant's EDD account and not the QSF's account. The Power of attorney form DE 48 will be needed in order for us to report the SDI payments on the defendant's behalf.



Class Action Settlement Administration

3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Estimate #:	10439V2	Prepared By:	Michael Sutherland
Estimate Date:	3/28/2019	Direct Dial #	321-223-5067
Estimate Expiration Date:	6/26/2019	Email:	msutherland@simpluris.com

Plaintiff Attorney

Attorney/Client: **Jamie Serb**
Firm: Mara Law Firm
Email: jamie.serb@maralawfirm.com

Defense Attorney

Attorney/Client:
Firm:
Email:

Case Name: XPO: Opt Out Settlement

Anticipated Total Cost	\$65,126
Professional Courtesy applied	\$1,491
Capped Fee*	\$63,635

Terms:

1) Capped Fees assume that Simpluris will receive data in a Single Excel file with no substantial change in class size or response rate.

Total Possible Class Size:	4,500	Undeliverable Rate:	20%
Response Rate:	40%	Call Rate:	10%
Length of Response Period:	30-90	Fund Distribution:	Simpluris
Mailing Document Language:	English/Spanish	Redistribution:	No
Reminder Post Card	Yes	States	CA
Unclaimed Funds	State Controller		

Case Setup

Data Compilation - Develop Case Specific Response Tracking - Error Reports			
Category	Unit Value	# of Units	Total
Project Manager - Case Setup	\$75.00	6	\$450.00
Translation	\$0.25	2,000	\$500.00
Website_ Static for posting all documents	\$250.00	1	\$250.00
Database Manager - Initial Data Analysis	\$140.00	6	\$840.00
Total			\$2,040.00

Notification

Mailing Notice Pack- 7 pg Notice, Informational Sheet with BRE - Double Sided - English/Spanish			
Category	Unit Value	# of Units	Total
Mailing Notice Pack	\$1.10	4,500	\$4,950.00
Postage	\$0.44	4,500	\$1,980.00
NCOA/CASS/LACS	\$0.05	4,500	\$225.00
Undeliverable Processing	\$0.25	900	\$225.00
Skip Trace RUM	\$1.50	900	\$1,350.00
Remail	\$1.35	765	\$1,032.75
Postage	\$0.55	765	\$420.75
Reminder post card-CCD	\$0.60	2,250	\$1,350.00
Pre paid Postage	\$0.60	1,800	\$1,080.00
Clerical	\$50.00	5	\$250.00
Total			\$12,863.50

Call Center

Establish Case Specific Toll Free Number			
Category	Unit Value	# of Units	Total
Customer Service Reps/Call Center Support	\$75.00	10	\$750.00
Outbound Calls to PCM-Fill out Information	\$5.00	4500	\$22,500.00
800 # Charges	\$0.10	600	\$60.00
Total			\$23,310.00



Class Action Settlement Administration

 3194-C Airport Loop Drive
 Costa Mesa, CA 92626
 800-779-2104 www.simpluris.com

Claims Administration

Process Mail, Opt-Outs or Objections

Category	Unit Value	# of Units	Total
Database Manager	\$125.00	3	\$375.00
Resolving Mismatched TINs	\$75.00	7	\$525.00
Dispute/Dificiencies-Send One Cure Letter	\$2.00	16	\$31.50
Opt Out Processing	\$2.00	32	\$63.00
Information sheet processing	\$2.50	1800	\$4,500.00
Data Entry	\$50.00	18	\$900.00
Claims Administrator	\$75.00	6	\$450.00
Project Manager	\$125.00	4	\$500.00
Declaration of Settlement Administration	\$300.00	1	\$300.00
Weekly Reporting to Counsel	WAIVED	12 Wks of Reporting	\$0.00
Total			\$7,644.50

Distribution

Setup a Disbursement Account

Print & Mail Checks to Class Members-1099's/W-2s-- File Reports with Appropriate Federal & State Taxing Authorities

Account Management & Reconciliation. State Controller

Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$140.00	4	\$560.00
Disbursement Manager - Data Validation	\$75.00	2	\$150.00
Setup Banking Account/QSF	\$300.00	1	\$300.00
Print & Mail-Check,PC, /1099s/W-2s	\$2.00	4500	\$9,000.00
Postage	\$0.44	4500	\$1,980.00
Process Returned Checks	\$0.50	45	\$22.50
Skip Trace Search Undeliverable Checks	\$5.00	45	\$225.00
Remail Checks	\$4.00	45	\$180.00
QSF Account Reconciliation	\$250.00	1	\$250.00
Individual Federal/State Tax Reporting	\$500.00	1	\$500.00
QSF Reporting/Declaration	\$500.00	1	\$500.00
QSF Annual Tax Preparation Fee	\$1,000.00	1	\$1,000.00
Reissuing Checks/Mailing	\$5.00	45	\$225.00
Reissuing W2s/1099s	\$5.00	45	\$225.00
Disbursement Agent	\$75.00	3	\$225.00
Responding to IRS, State, Agency Inquiries	\$75.00	2	\$150.00
Uncashed Checks to State Controller	\$2,500.00	1	\$2,500.00
Disbursement Manager	\$125.00	3	\$375.00
Total			\$18,367.50



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Case Wrap Up

Send Final Reports to Counsel

Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$125.00	3	\$375.00
Clerical-Clean Up Any Misc	\$50.00	3	\$150.00
Project Manager-Wrap-up Final Issues	\$125.00	3	\$375.00
Total			\$900.00

Total Case Costs

\$65,125.50



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All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions:

1. **Services.** Simpluris agrees to provide Client those services set forth in the Bid (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Bid. However, Client such fees for Services are estimated based on the requirements provided by Client and actual fees charged by Simpluris may be greater or less than such estimate and Client will be responsible for the payment of all such fees.
2. **Billing and Payment.** Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Bid. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees for the Services, regardless of any court decisions, and/or actions by the parties, including disapproval or withdrawal of a settlement.
3. **Retention of Documents.** Unless directed otherwise in writing by the Client, Simpluris will destroy all undeliverable mail (except for undeliverable checks) on the date that it is processed and retained in Simpluris' system. Simpluris will maintain records to establish that the subject mail is undeliverable. Simpluris will retain undeliverable checks until the Qualified Settlement Fund is closed. Simpluris will also retain all other class member and putative class member correspondence (including without limitation, claims forms and opt out forms) for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later. Lastly, Simpluris will retain bank & tax documents for such period of time as it determines is required to maintain compliance with various federal and state requirements.
4. **Limitation of Liability; Disclaimer of Warranties.** Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. Simpluris' only obligation will be to correct any non-conformance with the foregoing warranty. In no event will Simpluris be liable for any lost profits/opportunities, business interruption or delay or, special, consequential, or incidental damages incurred by Client relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise. Under no circumstances will Simpluris be liable to Client for any claims, losses, costs, penalties, fines, judgment or damages, including court costs and reasonable attorney's fees (collectively, "Losses"), whether direct or indirect, arising out of, related to, or in connection with Services in an amount in excess of the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.
5. **Force Majeure.** To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented by reason of any act of God or because of any other matter beyond Simpluris' reasonable control, then such performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.
6. **Rights in Data.** Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.
7. **Electronic Communications.** During the provision of the Services the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.
8. **Notice.** Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.
9. **Waiver.** Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.
10. **Termination.** Client may terminate the Services at anytime upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris in respect of Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 90 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice, if the Client is not current in payment of fees.
11. **Jurisdiction.** The parties hereto irrevocably and unconditionally submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding in such Court.
12. **Survival.** Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 4 - Limitation of Liability; Disclaimer of Warranties, Section 6 - Rights in Data, and Section 12- Jurisdiction, 14 - Confidentiality, and Section 15 - Indemnification.
13. **Entire Agreement.** These Terms and Conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.
14. **Confidentiality.** Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.
15. **Indemnification.** Client will indemnify and hold Simpluris (and the officers, employees, affiliates and agents harmless against any Losses incurred by Simpluris, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by Simpluris in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by Simpluris pursuant to Client's instructions.
16. **Severability.** If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
17. **Database Administration.** Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.

Simpluris Security Summary – White Paper

Simpluris is committed to the security and overall protection of not only our data and information but our client's data and information, as well. As a demonstration of our commitment, we maintain SOC 2 Certification which requires strict adherence to policies and procedures surrounding information security, including processing and storage of confidential customer data. Simpluris supports a comprehensive, written Information Security Program that complies with all applicable laws and regulations (e.g. HIPAA, Gramm-Leach-Bliley Act, MA 201 CMR 17.00) and is designed to (a) ensure the security, privacy and confidentiality of Client and Class Member Information, (b) protect against any reasonably anticipated threats or hazards to the security or integrity of Client or Class Member Information, and (c) protect against unauthorized access to, use, deletion, or modification of Class Member Information. Simpluris has designated specific employees to be responsible for the administration of its Information Security Program. Also, Simpluris regularly and routinely monitors, tests, and updates our Information Security Program.

Simpluris uses Client and Class Member Information only for the purposes for which its' clients provide it, as described in any Agreements or Court Orders governing the provision of Simpluris' services in any particular case. Simpluris maintains a process for identifying, assessing, and mitigating the risks to Class Member Information in each relevant area of Simpluris' operations. At Simpluris, we continuously evaluate the effectiveness of the safeguards for controlling these risks to data and bank accounts. Simpluris restricts access to Class Member Information only to those employees, agents, or subcontractors who need to know the information to perform their jobs. Simpluris performs background checks of all its employees that will have access to Sensitive Personal Information, including a review of their references, employment eligibility, education, and criminal history to ensure they do not pose a risk to the security of Client or Class Member Information.

Simpluris adheres to the following industry best practices to safeguard its systems which process, store or transmit Client and Class Member Information:

- Identity and Access Management;
- Complex passwords are routinely and regularly changed;
- Role-based access control systems to limit individual employee access to network applications and systems based on their particular job role and function;
- Data Loss Prevention and Intrusion Prevention System software at multiple layers to prevent from internal and external threats of data leaks, malicious activity, and policy violations
- Encryption of Class Member Information if transmitted over public or wireless networks (e.g., via email, FTP, the Internet, etc.);
- Implementation of a Secure File Transfer system (using SSL encryption) for transmitting documents back and forth to clients;
- Encryption of servers, portable media, laptops, desktops, smartphones, mobile devices, and new technologies that store Class Member Information;
- Complex password authentication for remote access to Company's networks;
- Upon hire and annually after that, training of all employees with access to Class Member Information, (including any agents, and subcontractors with access to Class Member Information) about their obligations to implement the Information Security Program;
- Strict disciplinary measures for employees who violate the Information Security Program;
- Preventing terminated employees from accessing Class Member Information;
- Appropriately configured and updated firewall, antivirus, and spyware software;
- Prompt application of vendor-recommended security patches and updates to systems and other applications to avoid any adverse impact on Class Member Information;
- Separation of Duties;
- Infrastructure and Physical Security;
- Business Continuity Planning;
- Disaster Recovery Planning

EXHIBIT 3

SUMMARY OF TIME AND COSTS*Hector Ibanez v. XPO Last Mile, Inc., et al.*

U.S.N.D. Case No. 3:16-cv-07039-WHO; 3:17-cv-04009-JSC

Hours: 1,831.76
 Lodestar Fees: \$ 1,257,670.00
 Costs: \$ 94,443.96

As of 8/16/2019

FIRM/ ATTORNEYS	YEAR ADMITTED	HOURS	HOURLY RATE	TOTAL
MARA LAW FIRM, PC				
David Mara	2004 (15)	645	\$700	\$451,500.00
Jamie Serb	2013 (6)	489	\$500	\$244,500.00
Tony Roberts	2017 (2)	181	\$400	\$ 72,400.00
William Turley	1986 (33)	167	\$850	\$226,950.00
MARA LAW FIRM, PC TOTAL:		1,482		\$995,350.00

FIRM/ ATTORNEYS	YEAR ADMITTED	HOURS	HOURLY RATE	TOTAL
BAINER LAW FIRM				
Matthew Bainer	2002 (17)	349.76	\$750	\$262,320.00
BAINER LAW FIRM TOTAL:		349.76		\$262,320.00

TOTAL HOURS & LODESTAR FEE**:	1,831.76		\$1,257,670.00
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****This does NOT include the anticipated attorney time to prepare for/travel to/attend final approval and any supplemental hearings, administrator declarations, work with defense counsel and administrator re: funding, distribution, tax forms, transmittal instruments - process, answer class member questions, etc.**

LITIGATION EXPENSES	
MARA LAW FIRM, PC	\$ 78,969.87
BAINER LAW FIRM	\$ 15,474.09
TOTAL COSTS	\$ 94,443.96