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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 MATTHEW BAINER IN
SUPPORT OF MOTION FOR ATTORNEYS'
FEES, COSTS, AND CLASS
REPRESENTATIVE ENHANCEMENT
AWARD**

Date: April 1, 2020

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

DECLARATION OF MATTHEW BAINER

I, Matthew Bainer, declare as follows:

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

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

3. The parties participated in two full-day private mediation sessions with experienced class action employment mediator Michael Dickstein, Esq., who specializes in mediating employment disputes, including wage and hour class actions. As a result of the mediation, the parties were able to reach an agreement on the principal terms of settlement. The parties continued to discuss and negotiate

the remaining details over the course of several months. At all times, the Parties' negotiations were adversarial and non-collusive. The Settlement therefore constitutes a fair, adequate, and reasonable compromise of the claims at issue.

QUALIFICATIONS AND EXPERIENCE

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

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

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

actions to arbitration (Bower, Davis and Montano).

CLASS ACTION EXPERIENCE

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

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

Alameda County Superior Court Case No. RG17859072

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

Chaidez, et al. v. Odwalla, Inc.

San Mateo County Superior Court Case No. CIV430598

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

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

San Diego County Superior Court Case No. GIS21939

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

Corey v. Family Dollar, Inc.

San Bernardino County Superior Court Case No. CIVDS1706711

This class action sought compensation for violations of California law for unpaid overtime wages and for failure to provide rest and meal periods on behalf of multiple classes of retail employees. The Bainer Law Firm served as class counsel in this matter. This action settled for up to \$1.5 million.

Collier v. Delaware North Companies

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

This class action was filed alleging violations of California law for failure to pay wages,

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including unpaid overtime compensation, to a proposed class of Defendant's non-exempt airport employees. The Bainer Law Firm served as class counsel in this matter. The case settled for \$250,000.

Dailey, et al. v. Performant Financial Corporation

Alameda County Superior Court Case No. RG104 3644

This action was filed on behalf of the company's non-exempt employees seeking wages for alleged violations of California law for unpaid overtime and denial of meal and/or rest periods. After defeating the defendant's summary judgment motion and filing a motion for class certification, this case settled for \$1.2 million.

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

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

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

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

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

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

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

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

This class action was filed against this health and fitness company on behalf of the company's California "Group X" Instructors to recover regular and overtime pay, related penalties and un-reimbursed expenses. The action achieved class certification status in 2009. In 2011, the parties agreed to settle the class' expense reimbursement claims for \$10 million. The

parties then filed cross-motions for summary adjudication and on August 2, 2011, the court issued an Order finding 24 Hour Fitness' session rate compensation scheme to be an invalid piece rate. The parties then agreed to settle the class' unpaid wage claims for \$9 million, and the summary adjudication order was vacated pursuant to settlement.

Espinosa v. California College of San Diego, Inc.

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

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

Garcia v. HMS Host, Inc.

United States District Court, Northern District of California, Case No. 17-cv-03069-RS

This class action was filed alleging violations of California law for failure to pay wages, including unpaid overtime compensation, to a proposed class of Defendant's non-exempt airport employees. The Bainer Law Firm served as class counsel in this matter. The case settled for \$2,200,000.

Grootboom v. Security Industry Specialists, Inc.

Alameda County Superior Court Case No. RG09435440

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

Hoffman v. G&K Services, Inc.

United States District Court, Northern District of California, Case No. 5:17-cv-04465-LHK

This class action was filed alleging violations of California law for failure to pay wages, including unpaid overtime compensation, to a proposed class of Defendant's Route Sales Representative Drivers. The Bainer Law Firm served as class counsel in this matter. The case settled for \$650,000.

Holm, et al. v. Borders, Inc.

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

Plaintiff filed this action for the proposed class against this retail chain for violation of

California law for failure to pay Inventory and/or Sales Managers overtime wages. It also alleged that the proposed class had been denied rest and meal periods. This matter settled in 2007 for \$3.5 million.

Ingraham v. Orchard Supply Hardware, Corp.

San Mateo County Superior Court Case No. 457004

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

Kullar v. Foot Locker, Inc.

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

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

Kurihara v. Best Buy Co., Inc.

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

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

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

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

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

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

2 Riverside County Superior Court Case No. RIC475410

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

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

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

8 Alameda County Superior Court Case No. RG05196918

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

13 **Moore v. Albertsons Inc.**

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

15 This action was filed for violations of California's overtime laws on behalf of the
16 company's California Drug Managers. This action settled for \$2.35 million, again representing
17 one of highest per-workweek settlements in the state at the time.

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

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

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

25 **Olvera v. AlSCO, Inc.**

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

27 Plaintiff filed this class action on behalf of all Route Sales Drivers employed by
28 Defendant to recover unpaid wages including overtime pay, meal and rest period compensation,
related penalties and un-reimbursed expenses. The Bainer Law Firm served as class counsel in

1 this matter This action settled for \$550,000.

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

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

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

7 **Sapien v. UniFirst Corporation**

8 Santa Clara County Superior Court Case No. 17-cv-313758

9 Plaintiff filed this class action on behalf of a class of Route Sales Drivers employed by
10 Defendant to recover unpaid wages including overtime pay, meal and rest period compensation,
11 related penalties and un-reimbursed expenses. The Bainer Law Firm served as class counsel in
12 this matter This action settled for \$925,000.00.

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

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

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

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

18 Alameda County Superior Court Case No. G04158744

19 Plaintiff filed this litigation alleging violations of California law for denial of meal and
20 rest periods on behalf of the company's security guards. This action received class certification
21 status in 2006 and settled for \$495,000.

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

23 Riverside County Superior Court Case No. RIC 1708613

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

27 **ATTORNEYS' FEES AND COSTS**

28 11. I have reviewed my contemporaneous billing records for this case. My hourly

billable rate has been set at \$750, which is consistent with the amounts consistently approved by federal and state courts over the past several years. To date, I have spent 333.3 hours on the prosecution of this action for a billing total of \$249,975. The following chart sets forth a summary of the billable time by category and total hours worked on this matter to date:

Category	Hours	Fees
Administrative	4.5	\$3,375.00
ADR	38.8	\$29,100.00
Case Management	7.1	\$5,325.00
Correspondences	8.3	\$6,225.00
Discovery	160	\$120,000.00
Evidentiary Research	8.8	\$6,600.00
Legal Research	23.2	\$17,400.00
Motions	27	\$20,250.00
Pleadings	24.5	\$18,375.00
Settlement	16.6	\$12,450.00
Teleconferences	14.5	\$10,875.00

12. I have reviewed my expense records for this case. To date, my firm has incurred at total of \$15,518.15 in expenses on the prosecution of this action. The following chart sets forth a summary of my firm's expenses by category and total amount incurred:

Category	Fees
Courier Fees	\$76.50
Filing Fees	\$1,703.31
Parking	\$626.59
Travel: Airfare	\$5,485.84
Travel: Meals and Lodging	\$6,821.88

Travel: Rental Cars	\$617.49
Travel: Taxis	\$186.54

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 27th day of January, 2020, at Oakland, California.

/s/ Matthew R. Bainer

Matthew Bainer