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 Appearing *Pro Hac Vice*

Attorneys for Defendant XPO LAST MILE,  
 INC.

**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*

**STIPULATION AND [PROPOSED]  
 ORDER TO AMEND THE SETTLEMENT  
 AGREEMENT TO INCREASE  
 LITIGATION COSTS AND RESET FINAL  
 APPROVAL HEARING DATE**

Action Filed: September 22, 2016  
 Date Removed: December 8, 2016  
 Judge: Hon. William H. Orrick

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

1 The Parties in the consolidated cases captioned *Kramer v. XPO Logistics, Inc.*, No. 16-cv-  
2 07039-WHO (“*Kramer*”) and *Ibanez v. XPO Last Mile, Inc.*, No. 17-cv-04009-JSC (“*Ibanez*”),  
3 submit the following stipulation amending the Settlement Agreement to increase the recoverable  
4 litigation costs, proposing a new administrative timeline, and requesting a new final approval  
5 hearing date:

6 WHEREAS, on September 6, 2019, the Court granted the Parties’ Motion for Preliminary  
7 Approval of Class Action Settlement and scheduled the Final Approval hearing date for January  
8 15, 2020 at 2:00 p.m.

9 WHEREAS, by September 20, 2019, in accordance with the terms of the Settlement  
10 Agreement, Defendant sent the Class Data to CPT Group, Inc. (“CPT”), the Settlement  
11 Administrator in this matter.

12 WHEREAS, thereafter, CPT identified duplicate records out of the 3,844 records and began  
13 working with Defendant to find a solution to consolidate the records. As a result, CPT was unable  
14 to meet its targeted Class Notice mailing date of September 27, 2019.

15 WHEREAS, on September 27, 2019, XPO LM submitted the newly consolidated data to  
16 CPT, having identified 499 entries that were consolidated, resulting in a reduced total of 3,348  
17 Class Member records. This data contained Class Members’ names, identification numbers (i.e.  
18 Driver’s License numbers or unique identifiers assigned by XPO LM), last known and any known  
19 previous addresses, any known email addresses, known Social Security Numbers, as well as the  
20 dates the Class Member was “active” and “terminated” (if applicable) in XPO LM’s data. XPO LM  
21 confirmed this was the best data available to it and would not be able to provide any further  
22 information.

23 WHEREAS, on September 30, 2019, CPT alerted the Parties that it was running a skip-  
24 trace on 694 Class Members to find current addresses prior to mailing. This skip-trace could be  
25 performed on these Class Members because CPT had the Social Security Numbers of these Class  
26 Members in the Class Data.

27 WHEREAS, over the course of multiple discussions between CPT, XPO LM, and Class  
28 Counsel, it was discovered that 2,369 Class Member records had duplicate addresses within the

1 Class Data – meaning at least one address within the Class Data was repeated for another Class  
2 Member. Of these 2,369 records, only 193 had Social Security Numbers that CPT could use to run  
3 an additional skip-trace and find an updated address; 1,189 had no other potential addresses  
4 provided within the data and only showed an address that was duplicative of other Class Members;  
5 and the remaining records had other potential addresses, which were also duplicative of other Class  
6 Member addresses. It was also discovered that several of the records listed the Class Member’s  
7 Contract Carrier’s address as their last known address in the Class Data. The inaccuracies and  
8 incompleteness in the data could result in these Class Members potentially not receiving the Class  
9 Notice and not knowing they needed to provide CPT with their Social Security Numbers. As Social  
10 Security Numbers were not known for the majority of these Class Members, CPT could not perform  
11 a skip-trace on these individuals.

12 WHEREAS, after considerable investigation, Class Counsel identified a process to search  
13 for Class Members’ last known address and telephone number, which can be found using the Class  
14 Data provided by XPO LM (including the Contract Carrier’s address). This search can be done  
15 through a TransUnion system called “TLOxp.” A TLOxp is a “deep skip trace” that filters current  
16 public and proprietary records to locate individuals, such as the Class Members here. A sample  
17 search yielded 100% accurate results – i.e. the search was performed on a small sample of Class  
18 Members, resulting in identifying updated addresses for those Class Members. This TLOxp search  
19 will increase the number of Class Members who receive the Class Notice.

20 WHEREAS, the cost to perform this search will not exceed \$30,000.00, but would require  
21 an increase in the allowable litigation costs to be reimbursed to Class Counsel. Currently, the  
22 Settlement Agreement allows litigation costs not to exceed \$100,000.00 to be reimbursed to Class  
23 Counsel. At preliminary approval, Class Counsel’s costs totaled \$94,443.96.

24 WHEREAS, the TLOxp search would require approximately two weeks to complete and  
25 CPT would need an additional two weeks to prepare the data and Class Notice mailing. Therefore,  
26 in accordance with these requirements and the Settlement Agreement terms, the proposed  
27 administration timeline is as follows (assuming Court approval of this stipulation on November 20,  
28 2019 for point of reference):

Complete TLOxp Search	<b>December 4, 2019</b> (within 2 weeks of the Court's Order on this Stipulation)
Class Notice Mailing	<b>December 18, 2019</b> (within 2 weeks of receipt of the updated Class Data from the TLOxp Search)
Attorney Fee Motion Filing Deadline	<b>January 27, 2020</b> (21 days before the expiration of the Objection/Opt-Out/Dispute Deadline)
Objection/Opt-Out/Dispute Deadline	<b>February 17, 2020</b> (60 days after the Class Notice Mailing)
1 <sup>st</sup> Reminder Postcard re: Submitting TINs	<b>February 17, 2020</b> (60 days after the Class Notice Mailing)
2 <sup>nd</sup> Reminder Postcard re: Submitting TINs	<b>March 17, 2020</b> (90 days after the Class Notice Mailing)
Final Approval Motion Filing Deadline	<b>February 26, 2020</b> (35 days before the Final Approval Hearing)
Final Approval Hearing	<b>April 1, 2020, 2:00 p.m.</b>
3rd/Final Reminder Postcard re: Submitting TINs	<b>April 15, 2020</b> (within 14 days following entry of Final Approval)
Effective Final Settlement Date (if no appeal, the deadline for appealing the Final Approval Order – 30 days per FRAP Rule 4)	<b>May 1, 2020</b> (assuming final approval is granted on 4/1/20, no objections were filed, and no appeal is filed)
Funding of Gross Settlement Amount by Defendant to Administrator	<b>May 15, 2020</b> (14 days after Effective Final Settlement Date)
Disbursement of Gross Settlement Amount	<b>June 2, 2020</b> (within 21 business days after the Effective Final Settlement Date)
Post-Distribution Accounting Filing Deadline	<b>June 23, 2020</b> (within 21 days after distribution of the Gross Settlement Amount)
Check Cashing Reminder Postcard	<b>August 31, 2020</b> (90 days after check mailing)
Check Expiration Date	<b>November 29, 2020</b> (180 days after issuance)
Deposit of <i>Cy Pres</i> Funds	<b>December 19, 2020</b> (within 200 days after check issuance)
Final Report by Administrator Filing Deadline	<b>December 29, 2020</b> (within 10 days after the

	disbursement of all funds)
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THEREFORE, the Parties stipulate to and respectfully request the Court preliminarily approve and subject to final approval, an increase in the allowable litigation costs to be reimbursed to Class Counsel in an amount not to exceed \$130,000.00, approve the proposed administration timeline, and reset the Final Approval Hearing for April 1, 2020 at 2:00 p.m.

Accordingly, the Parties stipulate and respectfully request the Court issue an order

Respectfully submitted,

DATED: November 13, 2019

**JACKSON LEWIS P.C.**

By: /s/ Adam L. Lounsbury  
Adam L. Lounsbury  
Fraser A. McAlpine

Attorneys for Defendant,  
XPO LAST MILE, INC.

DATED: November 13, 2019

**MARA LAW FIRM PC**

By: /s/ David Mara  
David Mara  
Jamie Serb

Attorneys for *Kramer/Ibanez* Plaintiffs

DATED: November 13, 2019

**THE BAINER LAW FIRM**

By: /s/ Matthew Bainer  
Matthew Bainer

Attorneys for *Kramer/Ibanez* Plaintiffs

### **SIGNATURE ATTESTATION**

Pursuant to Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this document has been obtained from the other signatories.

DATED: November 13, 2019

By: /s/ David Mara

David Mara