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On behalf of the general public as private attorney general

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

SERGIO P. DANCEL JR on behalf of the
general public as private attorney general,

Plaintiff,

v.

EMPLOYBRIDGE HOLDING
COMPANY, a Delaware Corporation
doing business as SELECT STAFFING
and PROLOGISTIX; EMPLOYBRIDGE
MIDWEST 3, INC., a Georgia
Corporation; and DOES 1-50, inclusive,

Defendants.

Case No. CIVSB2201533
*assigned for all purposes to the
Honorable Jessica Morgan, Dept. S-26*

**DECLARATION OF JAMES HAWKINS IN
SUPPORT OF MOTION TO APPROVE
SETTLEMENT OF PRIVATE ATTORNEYS
GENERAL ACT CLAIMS, AND ENTERING
JUDGMENT THEREON**

Date: August 13, 2024
Time: 8:30 a.m.
Dept.: S-26

Action Filed: January 20, 2022

DECLARATION OF JAMES HAWKINS

I, James Hawkins, declare as follows:

1. I am an attorney at law duly licensed to practice law before all of the Courts in the State of California and various federal courts such as the United States District Court, for the Northern, Southern, Central, and Eastern Districts of California. I am a partner at James Hawkins, APLC ("Counsel"). I am one of the attorneys of record for named Plaintiff SERGIO P. DANCEL JR who filed this action on behalf of the purported aggrieved employees subject to the settlement agreement. I submit this Declaration in support of the PAGA Settlement. I have personal knowledge of the facts set forth below, and if called to testify regarding them, I could and would do so competently.

2. Attached hereto as **Exhibit A** is a true and correct copy of the executed the Joint Stipulation of Settlement and Release of PAGA Action (hereinafter "Settlement" or "Settlement Agreement") which the Parties ask the Court to approve.

3. On October 8, 2021 Plaintiff transmitted a letter to the California Labor & Workforce Development Agency ("LWDA") and Defendant in compliance with the exhaustion requirements of the California Labor Code Private Attorneys General Act ("PAGA"), articulating claims related to the failure to (a) accurately pay wages including overtime wage, (b) failure to provide meal periods for every work period exceeding more than ten (10) hours per day and failure to pay an additional hour's of pay or accurately pay an additional hour's of pay in lieu of providing a meal period; (c) failure to authorize and permit rest breaks for every four hours or major fraction thereof worked and failure to pay an additional hour's of pay or accurately pay an additional hour's of pay in lieu of providing a rest period; (d) failing to pay all wages earned and owed upon separation from Defendant's employ, (e) failing to provide accurate itemized wage statements, (f) for issuing payment of wages in the form of a non-Labor Code-compliant instrument, and (g) failure to reimburse business expenses. Attached hereto as **Exhibit B** is a true and correct copy of Plaintiff's October 8, 2021 LWDA Letter. An amended letter clarifying the scope of claims was served on or about November 12, 2021. Attached hereto as **Exhibit C** is a true and correct copy

1 of Plaintiff's amended LWDA Letter.

2 4. On January 20, 2022, Plaintiff filed a Representative Action Complaint in the
3 Superior Court of the State of California for the County of San Bernardino, entitled *Sergio P.*
4 *Dancel, Jr. v. XPO Logistics, Inc., et al*, case number CIVSB2201533. Plaintiff filed the Complaint
5 on behalf of the State of California and other purportedly aggrieved employees as a PAGA action
6 based on violations of Labor Code 201-203, 212, 213, 510, 512, 558, 226, 226.3, 226.7, 1174,
7 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2698, 2699, 2699.5, and related IWC Wage Orders.

8 5. On March 8, 2022, Plaintiff filed a First Amended Complaint against Defendants
9 EmployBridge Holding Company dba Select Staffing and Prologistix and EmployBridge Midwest
10 3, Inc. only (effectively dismissing the XPO and GXO-related defendants).

11 6. During the course of the litigation, the Parties engaged in an informal discovery and
12 fully shared the information necessary for all sides to conduct a legitimate investigation into the
13 allegations of the action and potential defenses thereto including payroll and time keeping sampling
14 for approximately 15% of the purported Aggrieved Employees along with policies and relevant
15 data points. The Parties have reached this settlement only after discovery and investigation was
16 performed.

17 7. On March 17, 2023, the Parties participated in a day-long mediation with the
18 mediator Jeffrey Krivis, a well-respected wage and hour class action and PAGA action mediator.
19 In preparation for the mediation, Plaintiff's counsel requested and Defendants' counsel provided
20 sample time and payroll data for the purported Aggrieved Employees, personnel and employment
21 documents. With Mr. Krivis' assistance, the Parties agreed to fully and finally resolve the Action
22 and the PAGA Released Claims as to Plaintiff, the State of California, the LWDA and the purported
23 Aggrieved Employees.

24 8. Being fully apprised of the value and strength of the PAGA theories alleged in the
25 action, counsel for Plaintiff and Defendants successfully negotiated a settlement through arm's-
26 length negotiations. The terms and conditions of the settlement are set forth in the Settlement
27 Agreement ("Settlement" or "Settlement Agreement"). The Settlement Agreement resolves all
28

1 claims asserted in the Complaint and contemplates that the settlement will be approved and the
2 Court will enter judgment.

3 9. Defendants disputes and denies the allegations and claims asserted in the operative
4 Complaint, and the notices sent to the LWDA. It was also Defendants' position that Plaintiff could
5 not maintain the PAGA Complaints because there is no evidence of a common policy or
6 practice that makes a trial manageable.

7 10. Counsel for Plaintiff and Defendants also considered the fact that the existence of
8 numerous disputes of fact in this case make the outcome uncertain. In the estimation of counsel for
9 the Parties, the delay, inconvenience, distraction, and uncertainty imposed by the litigation demands
10 would far outweigh the potential benefits of additional litigation.

11 **Settlement Terms**

12 11. The Agreement negotiated by the parties provides for Defendants to pay
13 \$80,000.00 as the Gross Settlement Amount ("GSA"). (Agreement at § 1.9). The "Net
14 Settlement Amount" ("NSA") is the amount remaining of the GSA minus the Court-approved
15 amounts awarded for the Attorneys Fees and Costs, Settlement Administration Fees,
16 Enhancement Award to Plaintiff (if any), and the LWDA Payment. (Agreement at § 1.11). The
17 Net Settlement Amount is estimated to be \$23,070.24. (Hawkins Decl. ¶ 6).

18 12. The NSA is calculated as follows: (1) \$26,666.66 (i.e. 33% of the GSA) shall be
19 paid to Plaintiff's Counsel for payment of attorneys' fees; (2) Plaintiff's Counsel's actual
20 litigation costs of \$15,763.10; (3) \$7,500.00 Enhancement Award to the Plaintiff for Plaintiff's
21 time and risks in prosecuting this case and Plaintiff's service to the PAGA Members as well as for
22 Plaintiff's general release of Plaintiff's Released Claims; (4) Settlement Administration Expenses
23 not to exceed (\$7,000) to APEX Class Action Administration (the Settlement Administrator). The
24 remaining Net Settlement Amount is estimated to be \$23,070.24 and will be distributed to the
25 LWDA and purported Aggrieved Employees. An estimated \$5,767.56 (25% of the NSA) will be
26 distributed to the purportedly Aggrieved Employees on a pro rata basis, amounting to an average
27 of \$15.05 per Aggrieved Employee. The remaining \$17,302.68 (75% of the NSA) is to be

distributed to the LWDA. Any difference from these maximum amounts will be added to the Net Settlement Amount.

13. The "PAGA Members" are defined as " all current and former non-exempt employees of Defendants who were placed on assignment at the operative facility operated by GXO Logistics Supply Chain, Inc. (formerly known as XPO Logistics Supply, Chain, Inc. ("GXO Facility") in California during the PAGA Period. (Agreement § 1.16).

14. The "PAGA Period" is defined as "the period from October 8, 2020 through the date the Court approves this settlement or May 17, 2023 (60 days from the date of the March 17, 2023 mediation), whichever is earlier." (Agreement § 1.17).

Analysis of Claims

15. Based on the information and documents obtained through discovery, Plaintiff assessed the maximum value of the limited PAGA claims to be released by the settlement to be approximately \$221,100 (at the reasonable rate of a \$100 penalty for approximately 2,211 pay periods at issue for approximately 383 purported Aggrieved Employees). The Gross Settlement Amount accounts for approximately 36% of the maximum potential recovery (i.e. \$221,100.00).

16. This purportedly Aggrieved Employees recovery compares favorably to the estimated amount of PAGA penalties given the evidence provided and the risks of liability and then penalty awards at trial. As discussed further herein, California Labor Code Section 2699(e) (1) permits a Court to award a lesser amount than the maximum civil penalty if based on the facts and circumstances to do otherwise would result in an award that is "unjust, arbitrary and oppressive or confiscatory."

17. Since the filing of the complaint, the Parties have exchanged extensive discovery and engaged in numerous discussions regarding the factual and legal issues surrounding this case. Throughout the litigation, Defendants produced voluminous pages of information and data, including policies, handbooks, time and payroll records for the PAGA Members reflecting time punches at the start of employees' shifts, and at the end of the shift, and meal period punches as well as the applicable pay rates. Defendant also provided Plaintiff's personnel file, records

1 regarding documents identifying the non-exempt positions and information regarding the number
2 of employees holding these positions during the relevant time period. Defendants also provided
3 substantial information concerning the total number of potential size of the PAGA group, the total
4 number of workweeks and pay periods at issue, and the applicable hourly rates and other summary
5 data related to the alleged PAGA Members. The Parties have conducted themselves in informed,
6 good faith arms-length negotiations after conducting discovery and exchanging extensive evidence
7 and information about the claims and defenses of this lawsuit and engaging in pre-mediation
8 discussions, telephone conferences, and correspondence all aimed at settling their dispute.

9 18. In preparation for the mediation, Plaintiff reviewed the entire discovery produced.
10 The information had to be extrapolated and processed to figure out the amount of compensation
11 Plaintiff contends are due to the PAGA Members. Defendants also provided substantial information
12 concerning the total number of potential PAGA Members, the total number of workweeks and pay
13 periods at issue, and the applicable hourly rates and other summary data related to the alleged class.
14 The evidence and information gathered and reviewed by Plaintiff's counsel provided a factual
15 framework for a comprehensible and reliable damage model pertaining to all Settlement PAGA
16 Members. The mediation and subsequent negotiations included discussion and examination of the
17 PAGA Members and the Parties' respective positions on the legal and factual issues raised in the
18 Complaint. This was both a thorough and exhaustive process.

19 19. Plaintiff and Plaintiff's Counsel believe that the Settlement is a fair, adequate, and
20 reasonable resolution of this matter. Plaintiff and his counsel recognize the expense and length
21 of continued proceedings necessary to litigate the matter through trial and any possible appeals and
22 have also considered the uncertainty and risk of the outcome of further litigation, and the difficulties
23 and delays inherent in such litigation based upon the burdens of proof. Plaintiff and his counsel are
24 also aware of the burdens of proof necessary to establish liability, both generally and in response
25 to Defendants' defenses thereto, and the difficulties in establishing Defendants' liability for, and
26 the right to recover, penalties on behalf of Plaintiff, the State of California, and the other purported
27 aggrieved employees.

1 20. The settlement is a compromise of highly disputed claims and to recover any
2 PAGA penalties, Plaintiff would be required at trial to prove each of the underlying Labor Code
3 violations. *See Cardenas v. McLane Foodservice, Inc.*, No. SACV 10-473 DOC (FFMx), 2011 U.S.
4 Dist. LEXIS 13126, *10 (C.D. Cal. 2011) (“Given the statutory language [of PAGA], a plaintiff
5 cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of
6 the Labor Code by the defendant.”). Here, Plaintiff would need to prove each Aggrieved Employee
7 suffered a violation for each period the employee worked in relation to Defendant’s failure to (a)
8 accurately pay wages including overtime wage, (b) failure to provide meal periods for every work
9 period exceeding more than ten (10) hours per day and failure to pay an additional hour’s of pay or
10 accurately pay an additional hour’s of pay in lieu of providing a meal period; (c) failure to authorize
11 and permit rest breaks for every four hours or major fraction thereof worked and failure to pay an
12 additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a rest
13 period; (d) failing to pay all wages earned and owed upon separation from Defendant’s employ, (e)
14 failing to provide accurate itemized wage statements, (f) for issuing payment of wages in the form
15 of a non-Labor Code-compliant instrument, and (g) failure to reimburse business expenses..

16 21. The result achieved in this case, and the monetary recovery provided by this
17 Settlement, are well-within the range of an acceptable settlement under the circumstances,
18 especially when compared to the settlement of PAGA claims in other cases. *See, e.g., DCH Auto*
19 *Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017) (approving
20 the amount of \$15,000 out of \$4 million toward settlement of PAGA claims); *Flores v. Dart*
21 *Container Corp.*, No. 2:19-cv-00083 WBS JDP, 2021 U.S. Dist. LEXIS 6897, at *3 (E.D. Cal. Jan.
22 12, 2021) (approving the amount of \$15,000 out of \$411,000 towards settlement of PAGA claims);
23 *Dawson v. Hitco Carbon Composites, Inc.*, No. CV 16-07337 PSG (FFMx), 2019 U.S. Dist. LEXIS
24 226687, at *6-7 (C.D. Cal. Nov. 25, 2019) (approving the amount of \$10,000 of \$1.1 million toward
25 settlement of PAGA claims); *Brown v. CVS Pharmacy, Inc.*, No. CV15-7631 PSG (PJWx), 2017
26 U.S. Dist. LEXIS 182309, at *3 (C.D. Cal. Apr. 24, 2017) (approving the amount of \$20,000 of \$3
27 million gross settlement towards settlement of PAGA claims); *Nordstrom Commissions Case*, 186
28

1 Cal.App.4th 576, 589 (2010) (finding no abuse of discretion by the trial court in approving a
2 settlement that allocates \$0 toward the settlement of PAGA claims that were at issue in the lawsuit);
3 *Alcala v. Meyer Logistics, Inc.*, No. CV 17-7211 PSG (AGRx), 2019 U.S. Dist. LEXIS 166879, at
4 *26 (C.D. Cal. June 17, 2019) (finding that courts approve PAGA settlements that fall within zero
5 to two percent of gross settlement recovery). Here, the value obtained for settlement of the PAGA
6 claims is very significant, and it will be distributed in accordance with and in fulfillment of the
7 objectives of the PAGA statute.

8 22. A crucial factor in evaluating the value of a PAGA-only case is that all PAGA
9 awards are discretionary and can be reduced by the Court.¹ California Labor Code Section
10 2699(e)(1) permits a Court to award a lesser amount than the maximum civil penalty if, based on
11 the facts and circumstances, to do otherwise would result in an award that is “unjust, arbitrary and
12 oppressive or confiscatory.” For example, in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504
13 (2018), the Court of Appeal affirmed a judgment after trial that only provided for a PAGA penalty
14 of \$5 per pay period. Given this precedent, there is a risk at trial that any PAGA penalties awarded
15 could be significantly less than Plaintiff’s calculation even where Plaintiff prevailed on the PAGA
16 claim. If the amount of \$5 per pay period from *Carrington v. Starbucks* is used, the potential
17 recovery of civil penalties would be only \$8,000.

18 23. The settlement is also supported by other PAGA settlement previously approved
19 by other courts. See, e.g., *DCH Auto Wage and Hour Cases*, Los Angeles Superior Court, Case
20

21 ¹ Under PAGA, courts have considerable discretion to reduce the penalty award. In
22 *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1135-1136 (2012), the
23 court found no abuse of discretion when the trial court reduced the penalty by 30 percent based on
24 the facts of the case, ruling that “[t]o do otherwise under the particular facts and circumstances of
25 this case would be unjust, arbitrary, oppressive, and confiscatory.” Some trial courts have actually
26 awarded no civil penalties, even when Labor Code violations are established. See *Makabi v.*
Gedalia, 2016 Cal. App. Unpub. 1489, *5-7 (2nd Dist. Ct. of App. Mar. 6, 2016) (no PAGA
penalties were awarded by the Los Angeles County Superior Court) (unpublished decision); *In re*
Taco Bell Wage & Hour Actions, No. 1:07-cv-01314-SAB, 2016 U.S. Dist. LEXIS 48557, *40-43
(E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

1 No. JCCP4833 (May 2017) (approving the amount of \$15,000 out of \$4 million toward settlement
2 of PAGA claims); *Flores v. Dart Container Corp.*, No. 2:19-cv-00083 WBS JDP, 2021 U.S. Dist.
3 LEXIS 6897, at *3 (E.D. Cal. Jan. 12, 2021) (approving the amount of \$15,000 out of \$411,000
4 towards settlement of PAGA claims); *Dawson v. Hitco Carbon Composites, Inc.*, No. CV 16-07337
5 PSG (FFMx), 2019 U.S. Dist. LEXIS 226687, at *6-7 (C.D. Cal. Nov. 25, 2019) (approving the
6 amount of \$10,000 of \$1.1 million toward settlement of PAGA claims); *Brown v. CVS Pharmacy,*
7 *Inc.*, No. CV15-7631 PSG (PJWx), 2017 U.S. Dist. LEXIS 182309, at *3 (C.D. Cal. Apr. 24, 2017)
8 (approving the amount of \$20,000 of \$3 million gross settlement towards settlement of PAGA
9 claims); *Nordstrom Commissions Case*, 186 Cal.App.4th 576, 589 (2010) (finding no abuse of
10 discretion by the trial court in approving a settlement that allocates \$0 toward the settlement of
11 PAGA claims that were at issue in the lawsuit); *Alcala v. Meyer Logistics, Inc.*, No. CV 17-7211
12 PSG (AGRx), 2019 U.S. Dist. LEXIS 166879, at *26 (C.D. Cal. June 17, 2019) (finding that courts
13 approve PAGA settlements that fall within zero to two percent of gross settlement recovery). Here,
14 the value obtained for settlement of the PAGA claims is reasonable, and it will be distributed in
15 accordance with and in fulfillment of the objectives of the PAGA statute.

16 24. Had the case not settled, the Parties would have been required to conduct extensive
17 formal written discovery, and multiple depositions of party and percipient witnesses all over the
18 State of California, to prepare the case for trial. From the inception of this litigation, Defendants
19 indicated that it would aggressively litigate this case. Even if Defendants failed to succeed on their
20 defenses, litigating a complex PAGA action is inherently expensive, and the litigation could
21 continue beyond entry of judgment if either party were to appeal adverse rulings. Additionally,
22 there is a real possibility that Plaintiff would recover nothing, either for himself or on behalf of the
23 State of California or other purportedly Aggrieved Employees, after years of costly and labor-
24 intensive litigation. Avoiding these risks and the likelihood of future contentious litigation, which
25 would involve significant costs, favors settlement.

26 25. Defendants argued that no penalties prior to the PAGA notification should be
27 awarded because the violations were not intentional. Defendants could also argue that the
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1 subsequent violations under PAGA only start to accrue after employers receive notice through a
2 citation from the Labor Commissioner, which would have significantly decreased Defendants'
3 exposure. *See Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008) (holding "[u]ntil
4 the employer has been notified that it is violating a Labor Code provision ... the employer cannot
5 be presumed to be aware that its continuing underpayment of employees is a 'violation' subject to
6 penalties."). *See also Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Servs.,*
7 *Inc.*, 2009 WL 2448430 *1, *9 (S.D. Cal. 2009) ("For the purposes of subsequent violation
8 penalties, the issue is not whether [defendant] willfully violated the Labor Code, but rather whether
9 a court or commissioner had notified it of any violation."); *Robinson v. Open Top Sightseeing San*
10 *Francisco, LLC*, No. 14-CV-00852-PJH, 2018 WL 895572, at *20 (N.D. Cal. Feb. 14, 2018)
11 (applying "initial" penalty to each violation of § 226 and § 2699(f)(2) because there was no
12 evidence showing defendant was previously notified its practice violated § 226); *Willis v. Xerox*
13 *Bus. Servs., LLC*, 2013 WL 605383, at *1, *6 (E.D. Cal. 2013) ("for a plaintiff to recover for a
14 'subsequent violation,' an employer must have notice that it has violated the Labor Code"). As
15 such, Defendants contends that Plaintiff's calculation are inflated not only because the "stack"
16 penalties for a single person during a single pay period, but because the penalties Plaintiff would
17 award in each instances are at an inapplicable (doubled) rate.

18 26. These defenses present a risk to the PAGA claim and the potential that some or all
19 of the PAGA penalties sought may not be awarded. While Plaintiff maintains that the PAGA claim
20 has merit, in reaching the Settlement, Plaintiff and his counsel took into account the strengths and
21 weaknesses of each side's position and the uncertainty associated with continued litigation, trial,
22 and/or appeals.

23 27. Defendants dispute that the penalties assessed by Plaintiff and Plaintiff's
24 expert would have been awarded. Further, it is Defendants' contention that PAGA penalties
25 cannot be stacked, and that at most just one PAGA penalty can be awarded to an aggrieved
26 employee in any one pay period. *See* Labor Code section 2699 (f)(2) (authorizing awardable
27 PAGA penalties to be measure by "each "each aggrieved employee per pay period"); *Smith v. Lux*
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1 *Retail North America, Inc.*, 2013 WL 2932243, at *1, *4 (N.D. Cal. 2013) (rejecting a pleading
2 that sought the “stacking of penalties”; “[f]or the single mistake of failing to include commissions
3 in the overtime base, plaintiff has asserted *five* (count them, five) separate labor code violations
4 that could lead to statutory penalties;” “is it plausible that we would really pile one penalty on
5 another for a single substantive wrong?”; noting that “no actual holding in any judicial decision
6 has ever blessed such stacking”). As such, and for this initial reason, Defendants contend that the
7 maximum potential recovery in this action is significantly lower than as stated by Plaintiff.

8 28. Further, Defendants argue that Plaintiff’s calculation of penalties as applicable to
9 any employee and for any pay period, is inflated for an additional reason. Defendants argue that
10 even were liability established, one does not reach the second-tier penalty for that violation unless
11 and until the employer is first cited for the violation, and that Defendant has never been cited.
12 See *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Servs., Inc.*, 2009 WL
13 2448430 *1, *9 (S.D. Cal. 2009) (“For the purposes of subsequent violation penalties, the issue is
14 not whether [defendant] willfully violated the Labor Code, but rather whether a court or
15 commissioner had notified it of any violation.”); *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th
16 1157, 1209 (2008) (“[u]ntil the employer has been notified that it is violating a Labor Code
17 provision (whether or not the Commissioner or court chooses to impose penalties), the employer
18 cannot be presumed to be aware that its continuing underpayment of employees is a ‘violation’
19 subject to penalties” at a second tier); *Robinson v. Open Top Sightseeing San Francisco, LLC*,
20 No. 14-CV-00852-PJH, 2018 WL 895572, at *20 (N.D. Cal. Feb. 14, 2018) (applying “initial”
21 penalty to each violation of § 226 and § 2699(f)(2) because there was no evidence showing
22 defendant was previously notified its practice violated § 226); *Willis v. Xerox Bus. Servs., LLC*,
23 2013 WL 605383, at *1, *6 (E.D. Cal. 2013) (“for a plaintiff to recover for a ‘subsequent
24 violation,’ an employer must have notice that it has violated the Labor Code”). As such,
25 Defendants contends that Plaintiff’s calculation are inflated not only because the “stack” penalties
26 for a single person during a single pay period, but because the penalties Plaintiff would award in
27 each instances are at an inapplicable (doubled) rate

1 29. Defendants further argues that Plaintiff would still face significant practical
2 problems in aggregating any material exposure, as each violation would need to be proven as to
3 each person and for each period for which recovery is sought. Defendants argue that it is unlikely
4 that any significant number of current and former employees would travel to the venue of a trial,
5 stay at a hotel, prepare for and deliver testimony, all in exchange for – at most – 25% of \$50 or
6 \$100 (i.e. \$12.50 or \$25) for each pay period in which there was a violation. (“wage statement
7 penalties”). For purposes of section 226, “a good faith dispute presents when there is (1)
8 uncertainty in the law; (2) representations by an authority that compliance was not required; or
9 (3) an employer’s good faith mistaken belief grounded in a good faith dispute.” *Magadia v. Wal-*
10 *Mart Assocs., Inc.*, 384 F. Supp. 3d 1058 (N.D. Cal. 2019). “Mere recklessness” is not a basis for
11 liability. *Pedroza*, 2012 WL 9506073, *5.

12 30. Defendants also note that PAGA grants the Court discretion to lower any PAGA
13 penalty otherwise due. See Labor Code section 2699 (e)(2). Defendants also argue that the Court
14 could reduce any penalty potentially due where, as Defendants contend, any technical violation of
15 law would have been inadvertent and in good faith, particularly where the law is undefined and
16 capable of differing interpretations. Section 226, for example, is not violated where the employer
17 acted in “good faith.” See *Pedroza v. PetSmart, Inc.*, 2012 WL 9506073 (C.D. Cal. June 14,
18 2012) (“The good faith defense to the willfulness element of these sections [226, 203] is clearly
19 established under California law); *Woods v. Vector Mktg. Corp.*, 2015 WL 2453202, at *3 (N.D.
20 Cal. May 22, 2015) (“The ‘good faith dispute’ rule has been extended by courts to apply to
21 California Labor Code Section 226. (Id.)

22 31. Plaintiff’s Counsel also took into account that even if Plaintiff prevailed on the
23 merits of the PAGA claim, Defendants could persuasively argue that the Court should exercise its
24 discretion, under Labor Code § 2699(e), to reduce the amount of civil penalties assessed. A court
25 in a PAGA action has the same discretion “to assess a civil penalty” that the Labor Commissioner
26 would have, as well as complete discretion to “award a lesser amount than the maximum civil
27 penalty amount specified [by PAGA] if, based on the facts and circumstances of the particular case,
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1 to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”
2 And indeed, it is common for courts to reduce the penalties. *See e.g., Ghrdilyan v. RJ Financial,*
3 *et al.*, Los Angeles Superior Court, Case No. BC430633 (94% reduction); *Parr v. Golden State*
4 *Overnight Delivery Service, Inc.*, Alameda County Superior Court, Case No. RG12-618103 (94%
5 reduction); *Fleming v. Covidien, Inc.*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. Aug. 12, 2011)
6 (82% reduction); *Gola v. University of San Francisco*, Case No. CGC-18-565018 (Sup. Ct.
7 Decision dates July 21, 2020) (85% reduction of PAGA penalties).

8 32. Defendants contend that Plaintiff and the purportedly Aggrieved Employees were
9 properly compensated, and that they did not violate the Labor Code as to any of them. Defendants
10 asserted additional defenses to the PAGA claim as discussed above. These defenses present a risk
11 to the PAGA claim and the potential that some or all of the PAGA penalties sought may not be
12 awarded

13 33. The underlying Labor Code section 203 claim was uncertain given the defenses
14 asserted for the underlying claims as well as the lack of evidence of the “willfulness” prong
15 necessary for a Labor Code §203 claim. Plaintiff’s counsel also recognized a risk of an adverse
16 finding given Defendant’s apparently compliant policies and procedures at the time of mediation.
17 The labor code section 226 claim was dependent on the underlying claims for failure to pay wages.

18 **Enhancement Award**

19 34. The Settlement provides for an enhancement award to be paid to Plaintiff in the
20 amount of \$7,500.00 in exchange for a general release of all known and unknown claims. Unlike
21 purported Aggrieved Employees who only releasing claims for civil penalties under PAGA,
22 Plaintiff is releasing all his individual claims. In exchange for a signed general release of these
23 claims, the Parties agreed to an Individual Settlement Payment of \$7,500.00. In addition, Plaintiff
24 contributed considerable time and effort to the litigation of this case in order to enforce the
25 California Labor Code on behalf of the State of California and for the benefit of other purportedly
26 Aggrieved Employees. Plaintiff gathered and produced relevant documents and information,
27 provided the facts and evidence necessary to attempt to prove the allegations, and discussed his
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1 employment with his counsel. Plaintiff assisted counsel in developing the theories and evidence to
2 prepare for mediation. He was available whenever his counsel needed him and tried to obtain
3 documents and information that would aid in the litigation of the PAGA claims and pursuit of
4 recovery on behalf of the State of California and the Covered Employees.

5 35. Plaintiff as PAGA Representative has provided extensive supporting documents
6 and assisted Counsel in developing information necessary to litigate and settle this case. Plaintiff
7 also conducted record review and consultation with counsel in preparation for discovery and
8 eventual mediation, and to assist in evaluating and proving the claims.

9 **Counsel's Experience**

10 36. Based on their extensive experience litigating over 200 representative actions,
11 counsel for Plaintiff believes the settlement here is fair and reasonable and warrants approval by
12 the Court.

13 37. I and my firm have a great deal of experience in wage and hour class action
14 litigation. I have been certified and approved as class counsel in many other wage/hour class
15 actions, and I am currently litigating numerous others before federal and state courts. I have been
16 working with James Hawkins of James Hawkins, APLC, formerly of Hawkins & Sofonio, since
17 the commencement of my practice of law in 2002. Since then, I have been committed solely to
18 representing Plaintiffs in both individual employment litigation and complex wage and hour
19 class actions.

20 38. In approximately 2003 to 2004, I began to focus almost exclusively in class action
21 litigation. In my practice as a class action Plaintiffs' attorney, I have been involved in litigating,
22 mediating and settling numerous wage and hour class actions dealing with class sizes ranging from
23 several hundred to several thousand class members resulting in settlements ranging from six figures
24 to multimillion-dollar settlements.

25 39. The following is a non-exhaustive list of other class action cases that I also
26 litigated: Cole, et. al. v. CRST Van Expedited, et. al.; USDC, CENTRAL DISTRICT, EASTERN
27 DIVISION- Case No.: EDCV 08-1570, Wage and Hour Class Action seeking past minimum wages
28

1 and meal and rest break violations for drivers of Defendant in the State of California; Coordination
2 Proceeding Special Title [Rule 1550(b)] Wackenhut Wage and Hour Cases, Los Angeles Superior
3 Court, Case No. JCCP 4545, Wage and Hour Class Action seeking past wages for overtime, meal
4 and rest period violations for security guards employed by defendant in the State of California;
5 Coordination Proceeding Special Title [Rule 1550(b)] California Logistics Wage and Hour Cases,
6 Los Angeles Superior Court, Case No. JCCP 4622, Wage and Hour Class Action seeking past
7 wages for overtime, meal and rest period violations for misclassified drivers employed by defendant
8 in the State of California. Gonzalez v. Robertson's Ready Mix, Ltd., Riverside County Superior
9 Court, Case No. RIC 110770, Wage and Hour Class Action seeking past wages.

10 40. The following is a non-exhaustive list of class action cases in which I was either
11 counsel or co-lead counsel in which final approval and attorneys' fees were granted along with
12 my corresponding hourly rates approved by the various courts throughout my class action career:
13 Walker v. Surf City Hospitality, aka Sharkeez, et al. OCSC, No. 05CC00293, hourly rate
14 approved in 2006 at \$350.00 per hour; Padron v. Universal Protection Service, OCSC No.
15 05CC00013 and JCCP 4480, hourly rate approved in 2008 at \$400.00 per hour; Davila v.
16 Beckman Coulter, Inc., OCSC No. 07CC01347, hourly rate approved in 2009 at \$500.00 per
17 hour; Perez v. Naked Juice Company of Glendora, Inc., et. al., LASC No. BC387088, hourly rate
18 approved in 2009 at \$500.00 per hour; Gonzalez v. Superior Industries International, Inc., et al.,
19 LASC No. BC 357912, approved fees of 33.3% of total settlement amount; Wilson v. MCP
20 Foods, Inc. aka Firmenich, OCSC No. 30-2008-00065584-CU-OE-CXC, hourly rate approved in
21 2010 at \$500.00 per hour; Garcia v. Quiksilver, Inc., OCSC Case No. 30-2008-00083896-CU-
22 OE-CXC, hourly rate approved in 2011 at \$500 per hour; Gutierrez, et. al. v. Hilton Hotels Corp.,
23 OCSC No. 30-2009-00282002-CU-OE-CXC, hourly rate approved in 2011 at \$550.00 per hour;
24 Sanchez v. HVM LQ Management, LLC, USDC Central District No. SA CV11-00123 JAK
25 (PJWx), hourly rate approved in 2012 at \$560.00 per hour; Esquivel v. Fairmont Hotels and
26 Resorts, U.S., Inc., Case No. 30-2010-00418849-CU-OE-CXC, hourly rate approved in 2012 at
27 \$600.00 per hour; Galvez v. Walt Disney Parks and Resorts U.S., Inc., OCSC NO. 30-2011-
28

00473272-CU-OE-CXC, hourly rate approved in 2013 at \$600.00 per hour; Fernando v. GCS Service, Inc., OCSC No. 30-2011-00473162-CU-OE-CXC, hourly rate approved in 2013 at \$600.00 per hour; Navarro v. QS Wholesale, Inc., OCSC Case No. 30-2011-00462143-CU-OE-CXC, hourly rate approved in 2013 at \$600.00 per hour; LoCascio, et. al. v. Hertz Local Edition, SDSC Case No. 37-2015-00020830, hourly rate approved in 2017 at \$750 per hour; Terrado v. Accredited Debt Relief, et. al., SDSC Case No: 37-2018-00014181-CU-OE-CTL, hourly rate approved in 2018 at \$750 per hour; Singer, et. al. v. M.A.C. Cosmetics, SDSC Case No. 37-2019-00033695-CU-OE-CTL, hourly rate of approved in 2020 at \$850 per hour.

41. Our firm served as class counsel in a number of significant wage and hour settlements. Of particular note, in 2019, our firm was co-lead counsel in securing the largest wage and hour class action settlement in California history at \$130,000,000. During this case, Plaintiffs appealed a decertification order. This case involved several appeals. The appellate record amassed an extensive appellate record comprising a 23-volume joint appendix, a three-volume reporters transcript, five briefs, four letter briefs, two motions for judicial notice, a motion to augment the record, and several additional letters informing the appellate court of new legal authority issued after *Dukes*. The matter was argued to and submitted by the Court of Appeal on September 15, 2016, and on November 21, 2016, the decertification order was reversed and the case was remanded for further proceedings. (*Lubin v. The Wackenhut Corporation* (“*Lubin*”), 5 Cal. App. 5th 960 (2016)). Wackenhut filed a petition for review of the Court of Appeal decision to the California Supreme Court. The Supreme Court denied Wackenhut’s petition for review of *Lubin*. The Court of Appeal issued remittitur on April 10, 2017. Eventually through more litigation, the parties were able to secure the 130 million settlement that was approved on October 21, 2019 by Judge Highberger in the Los Angeles Superior Court.

42. First, the requested fees are justified by the result achieved. Plaintiff’s Counsel negotiated a recovery of \$80,000.00 and this result justifies the requested fees equal to 33% of this recovery (\$26,666.66). This percentage is within the standard contingent recovery percentage of one-third, and this percentage is what was expressly approved by the Supreme Court in *Laffitte*

1 v. *Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016). Second, the requested fees are justified by the
2 work performed.

3 43. Our firm as Counsel, on behalf of Plaintiff and the Settlement Aggrieved
4 Employees, invested numerous hours litigating this matter through the date of this declaration and
5 have invested attorney time at a rate of more than double the requested fees. The rates charged by
6 my firm are in line with the prevailing rates of attorneys in the local legal community for similar
7 work and, if this were a commercial matter, these are the charges that would be made and presented
8 to the client. The requested fees are reasonable.

9 44. Finally the award of litigation expenses is based upon the actual expenses incurred
10 by Plaintiff and Plaintiff's Counsel, and were all reasonably necessary to the litigation, and are
11 detailed in **Exhibit E** attached hereto. Under the Agreement, Plaintiff's Counsel will be
12 recovering litigation expenses in the total amount of \$15,763.10.

13 45. Attached hereto as **Exhibit D** is a true and correct copy of the Proposed Settlement
14 Administrator's quote to administer the terms of the settlement.

15 46. The Parties request that the Court enter the accompanying proposed order,
16 approving the Settlement as permitted by Labor Code § 2699(1), in accordance with the terms and
17 conditions of the Settlement Agreement.

18 47. Notice of the Settlement has been provided to the LWDA along with a copy of the
19 Settlement Agreement.

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct. Executed on July 22, 2024 at Irvine, California.

22
23 
24 _____
James R. Hawkins

EXHIBIT A

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Attorneys for Plaintiff
 SERGIO P. DANCEL JR.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

SERGIO P. DANCEL JR., on behalf of the
 general public as private attorney general,

Plaintiff,

vs.

EMPLOYBRIDGE HOLDING COMPANY, a
 Delaware Corporation doing business as
 SELECT STAFFING and PROLOGISTIX;
 EMPLOYBRIDGE MIDWEST 3, INC., a
 Georgia Corporation; and DOES 1-50,
 inclusive,

Defendants.

) Case No. CIVSB2201533

) Assigned for All Purposes To:

) Judge: David Cohn

) Dept: S26

) **JOINT STIPULATION OF SETTLEMENT**
) **AND RELEASE OF PAGA ACTION**

) Action Filed: January 20, 2022

This Joint Stipulation of Settlement and Release of PAGA Action (“Agreement”) is made and entered into between Plaintiff Sergio Dancel (“Plaintiff”), individually and on behalf of the proposed PAGA Group, (defined below), and Defendants EmployBridge Holding Company and EmployBridge Midwest 3, Inc., as well as Real Time Staffing Services, LLC dba Select Staffing and ProLogistix. This Agreement is subject to approval of the Court and is made for the sole purpose of attempting to consummate settlement of the Action (as defined below) on a PAGA basis subject to the following terms and conditions. As detailed below, in the event the Court does not enter an order granting approval of the PAGA Settlement (as defined below) and enter judgment, or the conditions precedent are not met for any reason, this Agreement is void and of no force or effect whatsoever.

1. **DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings specified below. To the extent terms or phrases used in this Agreement are not specifically defined below, but are defined elsewhere in this Agreement, they are incorporated by reference into this definition section.

1.1 **Action**. “Action” shall mean this civil action titled *Sergio P. Dancel Jr. v. XPO Logistics, Inc., et. al.*, San Bernardino County Superior Court Case No. CIV SB 2201533, filed on or about January 10, 2022; the First Amended Complaint filed on or about March 8, 2022 against Defendants EmployBridge Holding Company dba Select Staffing and Prologistix and EmployBridge Midwest 3, Inc. only (effectively dismissing the XPO and GXO-related defendants); the underlying PAGA Notice sent to the Labor and Workforce Development Agency (“LWDA”) by Plaintiff on October 8, 2021; and the amended PAGA Notice sent to the LWDA on November 12, 2021 as well as the action titled *Sergio P. Dancel Jr. v. XPO Logistics, Inc., et. al.*, San Bernardino County Superior Court Case No. CIV SB 2129093, filed on or about October 12, 2021.

1.2 **Approval and Fairness Hearing**. “Approval and Fairness Hearing” shall mean the hearing held to ascertain the fairness, reasonableness, and adequacy of the PAGA Settlement. At this hearing, the Court will consider PAGA Counsel’s application for Attorneys’ Fees and Expenses, the PAGA Representative Incentive Award, the Administration Expenses, and approval

of the PAGA Payment. The proposed Order Granting Approval and Entering Judgment is attached, in substantial form, as **Exhibit B**.

1.3 **Approval Date.** “Approval Date” shall mean the date upon which the Court enters an order granting approval of the PAGA Settlement and enters Judgment.

1.4 **Claims.** “Claims” shall mean the claims and theories asserted and causes of action alleged in the Action, or that could have been alleged in the Action, including the PAGA penalties alleged in the Action.

1.5 **Court.** “Court” shall mean the Superior Court of California, County of San Bernardino.

1.6 **Defendants.** “Defendants” or “EmployBridge” shall mean EmployBridge Holding Company, Real Time Staffing Services, LLC dba Select Staffing and ProLogistix; EmployBridge Midwest 3, Inc.; and Real Time Staffing Services, LLC dba Select Staffing and ProLogistix (Real Time Staffing Services, LLC is the only actual entity that employed the Settlement Group) and includes any of their officers, directors, executives, partners, managers, owners, shareholders, members, employees, agents, attorneys, any of their former and present parents, subsidiaries, successors, assigns and affiliates, and their officers, directors, managers, owners, executives, partners, employees, shareholders, agents, attorneys, and any other successors, assigns, or legal representatives.

1.7 **Defense Counsel.** “Defense Counsel” shall mean David G. Hagopian and Garrett V. Jensen of CDF Labor Law LLP, 18300 Von Karman Avenue, Suite 800, Irvine, California 92612.

1.8 **Effective Date.** “Effective Date” shall be the later of the time when: (i) the date of final affirmance of the Judgment on an appeal of the Judgment, the expiration of the time for, or the denial of, a petition to review the Judgment, or if review is granted, the date of final affirmance of the Judgment following review pursuant to that grant, (ii) the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding to review the Judgment, provided that the Judgment is affirmed and/or not reversed in any part, (iii) the final resolution (or withdrawal) of any filed appeal in a way that affirms the Final Approval Order and Judgment in a

1 form substantially identical to the form of the Final Approval Order entered by the Court, and the
2 time to petition for review with respect to any appellate decision affirming the Final Approval
3 Order has expired; or (iv) if no appeal is filed (including if an appeal is filed, but then withdrawn),
4 the sixty-first (61st) day after the Court enters final approval of the settlement and the Judgment
5 approving this Agreement.

6 1.9 **Gross Settlement Amount.** “Gross Settlement Amount” means the agreed
7 upon settlement amount totaling \$80,000.00, in full settlement of the Released Claims asserted in
8 this case, which includes the Administrator Fees, PAGA Counsel’s Attorneys’ Fees and Expenses,
9 Enhancement Award to Plaintiff (if any), payment to the LWDA, and payments to the individual
10 PAGA Members. In no event shall Defendants be required to pay more than the Gross Settlement
11 Amount.

12 1.10 **Individual Settlement Payment.** “Individual Settlement Payment(s)” shall
13 mean the proportionate share of the Net Settlement Amount to be distributed to each PAGA
14 Member based on the number of his or her Pay Periods worked in the PAGA Period in relation to
15 the aggregate number of Pay Periods worked by the Settlement Group during the PAGA Period.

16 1.11 **Net Settlement Amount.** “Net Settlement Amount” or “NSA” shall mean the
17 Gross Settlement Amount, minus the Court-approved amounts awarded for the Attorneys’ Fees and
18 Costs, Settlement Administration Fees, Enhancement Award to Plaintiff (if any), and the LWDA
19 Payment. The Parties intend that the NSA shall be sufficient to pay all valid claims of Settlement
20 Group Members. Accordingly, if for any reason the total value of Individual Settlement Payments
21 to Settlement Group Members exceeds this amount, then payment to each Settlement Group
22 Member will be adjusted on a pro-rated basis so that the total payout to Settlement Group Members
23 does not exceed the NSA.

24 1.12 **PAGA:** “PAGA” refers to the Labor Code Private Attorneys General Act of
25 2004, Labor Code sections 2699, *et seq.*

26 1.13 **PAGA List:** “PAGA List” shall mean the information for each PAGA Member
27 which Defendants shall compile from their business records and provide to the Administrator for
28 purposes of providing notice of the Settlement to the PAGA Group. The PAGA List shall be in a

readable, ready to use, MS Excel spreadsheet, which will provide for each Settlement Class Member, the following information: (a) full name; (b) last-known mailing address; (c) telephone numbers; (d) Social Security number; and (e) number of pay periods employed as a PAGA Member during the PAGA Period. The PAGA List will be provided to the Settlement Administrator within 30 days of Defendants receiving written notification that the Court granted approval of the Settlement.

1.14 **PAGA Counsel:** “PAGA Counsel” refers to James Hawkins APLC, 9880 Research Drive, Suite 200, Irvine, CA 92618.

1.15 **PAGA Counsel’s Attorneys’ Fees and Expenses:** “PAGA Counsel’s Attorneys’ Fees and Expenses” shall mean PAGA Counsel’s attorneys’ fees and expenses to be requested and subject to approval by the Court at the time of the Approval Hearing in an amount not to exceed \$26,666.66 for attorneys’ fees (representing one-third of the Gross Settlement Amount) and in an amount not to exceed \$20,000.00 for expenses.

1.16 **PAGA Member(s):** “PAGA Member(s)” or “Settlement Group Members” shall mean all current and former non-exempt employees of Defendants who were placed on assignment at the operative facility operated by GXO Logistics Supply Chain, Inc. (formerly known as XPO Logistics Supply, Chain, Inc. (“GXO Facility”) in California during the PAGA Period.

1.17 **PAGA Period.** “PAGA Period” means the period from October 8, 2020 through the date the Court approves this settlement or May 17, 2023 (60 days from the date of the March 17, 2023 mediation), whichever is earlier.

1.18 **PAGA Release.** See Released Claims.

1.19 **Parties.** “Parties” shall mean Plaintiff (as defined below) and Defendants.

1.20 **Pay Periods.** “Pay Periods” means the number of pay periods a PAGA Member was employed during the PAGA Period.

1.21 **Plaintiff.** “Plaintiff” and “PAGA Representative” shall mean Plaintiff Sergio P. Dancel, Jr.

1.22 **Released Claims.** “Released Claims” shall mean all claims and theories that were set forth, or that could have been set forth based on the facts alleged in the Action during the

PAGA Period, including but not limited to under California Labor Code sections 201-203, 212, 213, 510, 512, 558, 226, 226.3, 226.7, 1174, 1174.5, 1175, 1194, 1197.1, 1198, 2698, 2699, 2699.5 and related IWC Wage Orders, based on the various theories of liability, including, but not limited to, Defendants' alleged failure to: (a) accurately pay wages, including overtime, (b) provide meal periods, (c) provide rest periods, (d) pay all wages earned and owed upon separation, (e) provide accurate written wage statements, (f) allegedly issuing payment of wages in the form of a non-Labor Code-compliant instrument, and (g) failure to provide cool down recovery periods.

1.23 Released Parties. "Released Parties" shall mean EmployBridge Holding Company, Real Time Staffing Services, LLC dba Select Staffing and ProLogistix, EmployBridge Midwest 3, Inc., XPO Logistics, Inc., XPO Logistics Freight, Inc., XPO Logistics Supply Chain Corporate Services, Inc., XPO Logistics Worldwide, Inc., GXO Logistics, Inc., GXO Logistics Corporate Services, Inc., and GXO Logistics Supply Chain, Inc. (formerly known as XPO Logistics Supply, Chain, Inc.), and includes any of their former or current officers, directors, executives, partners, managers, owners, shareholders, members, employees, agents, attorneys, any of their former and present parents, subsidiaries, successors, assigns and affiliates, and their officers, directors, managers, owners, executives, partners, employees, shareholders, agents, attorneys, and any other successors, assigns, or legal representatives.

1.24 Settlement. "Settlement" shall mean the settlement between Parties, which is memorialized in this Agreement, including any attached exhibits, and subject to Court approval.

1.25 Settlement Administrator. "Settlement Administrator" or "Administrator" shall mean \$7,000, the third-party settlement administrator selected by the Parties and to be approved by the Court, which the Parties have agreed will be responsible for administration of the Settlement and related matters. The Administrator's fee and expenses are estimated to not exceed \$7,000.

1.26 Settlement Group. "Settlement Group" or "Settlement Group Members" shall mean all PAGA Members.

1.27 Settlement Letter. "Settlement Letter" shall mean the letter accompanying the Individual Settlement Payments attached, in substantial form, as **Exhibit A.**

2. **FACTUAL AND PROCEDURAL BACKGROUND OF ACTION**

2.1 On January 20, 2022, Plaintiff filed the PAGA action in San Bernardino County Superior Court.¹

2.2 The Parties agreed to mediate with Jeffrey Krivis, Esq., and Plaintiff requested, and received, informal discovery to evaluate the claims and theories alleged. With the continued assistance of the mediator, they were able to resolve the matter, the terms of which were memorialized in a Memorandum of Understanding executed by the Parties.

2.3 The Parties and their respective counsel believe this Agreement reflects a fair, adequate, and reasonable settlement of the Action and have arrived at this Agreement as a result of arms'-length negotiations, facilitated by an experienced and neutral mediator, taking into account all relevant factors, present and potential.

3. **ALLEGATIONS OF THE PAGA REPRESENTATIVE AND BENEFITS OF THE SETTLEMENT**

3.1 The investigation and extensive exchange of information and informal discovery conducted in this matter, as well as discussions between counsel, have been adequate to give PAGA Counsel an understanding of the merits of the Parties' respective positions and to evaluate the worth of the claims of the Settlement Group. The information and data exchanged by the Parties prior to and during mediation and settlement negotiations are sufficient to reliably assess the merits of the Parties' respective positions and to compromise the issues on a fair and equitable basis.

3.2 The Parties recognize and acknowledge the expense and delay of continued lengthy proceedings necessary to prosecute the Action against Defendants through trial and through appeals. PAGA Counsel has considered the uncertain outcome of the litigation, the risk of continued litigation in complex actions such as this, as well as difficulties and delays inherent in such litigation, as well as trying the claims of the Settlement Group. PAGA Counsel believes that

¹ On October 12, 2021, Plaintiff also filed a class action asserting the same violations in San Bernardino County Superior Court as Case No. CIVSB2129093 but later dismissed the action without prejudice.

1 the Settlement set forth in this Agreement confers substantial benefits upon Plaintiff and the
2 Settlement Group Members and that an independent review of this Agreement by the Court in the
3 approval process will confirm this conclusion. Based on their own independent investigation and
4 evaluation, PAGA Counsel has determined that the Settlement set forth in the Agreement is in the
5 best interests of Plaintiff and the Settlement Class Members.

6 4. **NO ADMISSION OF ANY LIABILITY**

7 4.1 This Agreement represents a compromise and settlement of highly disputed
8 claims. This Agreement does not constitute, is not intended to constitute, and will not be deemed
9 to constitute, an admission of liability by Defendants or any Released Parties as to the merits,
10 validity, or accuracy of any of the allegations or claims made against Defendants or any Released
11 Parties in the Action. Defendants deny each and all of Plaintiff's allegations in their entirety.

12 4.2 Nothing in this Agreement, the Memorandum of Understanding nor any action
13 taken or made in implementation thereof, nor any statements, discussions, or communications, nor
14 any materials prepared, exchanged, issued, or used during the course of the negotiations leading to
15 the Agreement, is intended by the Parties to, nor will any of the foregoing constitute, be introduced,
16 be used, or be admissible in any way in this case or any other judicial, arbitral, administrative,
17 investigative or other forum or proceeding as evidence of any violation of any federal, state, or
18 local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or
19 in equity. Notwithstanding the foregoing, the Agreement may be used in any proceeding in the
20 Court that has as its purpose the interpretation, implementation, or enforcement of the Agreement
21 or any orders or judgments of the Court entered into in connection therewith.

22 4.3 The Parties agree that Plaintiff's motion for approval of the Settlement and
23 Defendants' agreement thereto is for purposes of the Settlement only. If, for any reason, the
24 Settlement is not approved, this Agreement will not be admissible in this or any other proceeding
25 as evidence that (i) the Action should proceed forward, or (ii) Defendants or any Released Parties
26 are liable to Plaintiff or the Settlement Group Members as Plaintiff alleged. In the event that this
27 Agreement is not approved by the Court or any appellate court, is terminated, or otherwise fails to
28 be enforceable, Defendants will not be deemed to have waived, limited, or affected in any way any

of their objections or defenses in the Action, including, but not limited to, their ability to move to compel arbitration, raise defenses in opposition to the Action, contest the merits of the claims and theories alleged, etc.

5. **SETTLEMENT CONSIDERATION**

5.1 **Gross Settlement and Net Settlement Amounts and Distribution.** The Gross Settlement Amount and other actions and forbearances taken by Defendants shall constitute adequate consideration for the Settlement and will be made in full and final settlement of: (a) the Released Claims, (b) PAGA Counsel's Attorneys' Fees and Expenses, (c) Administration Expenses, (d) LWDA Payment, (e) Enhancement Award to Plaintiff (if any) and (d) the Individual Settlement Payments to Settlement Group Members, and any other obligation of Defendants under this Agreement.

5.2 **Payments to Settlement Group Members.** Each Settlement Group Member shall be eligible to receive an Individual Settlement Payment. The Parties understand that Settlement Group Members who receive an Individual Settlement Payment pursuant to this Agreement shall be solely responsible for any and all other individual tax obligations associated with the payment.

5.3 **No Effect on Employee Benefits.** Neither the Settlement nor any amounts paid under the Settlement will modify any previously credited hours, days, or weeks or service under any employee benefit plan, policy or bonus program sponsored by Defendants (or their affiliates, parents or successors). Such amounts will not form the basis for additional contributions to, benefit under, or any other monetary entitlement under Defendants' sponsored benefit plans, policies or bonus programs, if any. The payments made under the terms of this Settlement shall not be applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of any of Defendants' benefit plans, policies or bonus programs, if any. Defendants retain the right to modify the language of their benefits plans, policies and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this Agreement are not for "weeks worked," "weeks paid," "weeks of service," or any similar measuring term as defined by applicable plans, policies and bonus programs for purpose of

1 eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or
2 benefits are not required by this Agreement. Defendants do not consider the Individual Settlement
3 Payments “compensation” for purposes of determining eligibility for, or benefit accrual within, any
4 benefits plan, policy, or bonus program, or any other plan or program sponsored by Defendants (or
5 their affiliates, parents or successors), if any.

6 5.4 **PAGA Counsel Attorneys’ Fees and Expenses.** As part of the motion for
7 approval of the Settlement, PAGA Counsel may submit an application for an award of Attorneys’
8 Fees and Expenses. Defendants agree not to object to any such fee, cost or expense application in
9 line with this Agreement and in an amount not to exceed 33% of the Gross Settlement Amount for
10 attorneys’ fees and \$20,000 for costs. As a condition of this Settlement, PAGA Counsel has agreed
11 to pursue fees and costs only in the manner reflected by this Agreement. Any PAGA Counsel
12 Attorneys’ Fee and Expenses awarded by the Court shall be paid from the Gross Settlement
13 Amount. If the PAGA Counsel voluntarily reduces the request for Attorneys’ Fees and Expenses
14 or the Court’s award is less than set forth above, the difference shall remain with the Net
15 Settlement Amount.

16 The Attorneys’ Fees and Expenses approved by the Court shall encompass: (a) all work
17 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to
18 represent the Settlement Group through the date of this Agreement; (b) all work to be performed
19 and costs to be incurred in connection with approval by the Court of the Settlement set forth in this
20 Agreement; (c) all work to be performed and costs and expenses, if any, incurred in connection
21 with administering the Class Settlement through the Effective Date; and (d) may be based on the
22 Catalyst Theory and/or Common Fund Doctrine.

23 5.5 **Payment of PAGA Counsel Attorneys’ Fees and Expenses.** PAGA Counsel
24 Attorneys’ Fees and Expenses as awarded by the Court shall be paid by the Settlement
25 Administrator within thirty (30) days of the Effective Date.

26 5.6 **Size of the Settlement Group/Escalator Clause.** There are approximately 383
27 Settlement Group Members who worked approximately 2,211 Pay Periods during the Settlement
28

Time period. If the amount increases by more than 10% by the end of the PAGA Period, the PAGA Period will end on the last day before the 10% threshold was exceeded.

6. **ADMINISTRATION COSTS AND EXPENSES**

6.1 **The Settlement Administrator's Costs and Expenses.** All costs and expenses due to the Settlement Administrator in connection with its administration of the Settlement described in the Agreement, including, but not limited to, formatting and mailing the Settlement Letter and Individual Settlement Payments, performing a National Change of Address database search to update Settlement Group Members addresses prior to the mailing, performing skip-traces to locate and update Settlement Group Members' addresses, calculating, and distributing Individual Settlement Payments, and any other tasks requested by the Parties or by the Court, among other tasks as reflected within this Agreement, will be paid through the Gross Settlement Amount.

7. **FUNDING AND DISTRIBUTION**

7.1 **Funding of the Gross Settlement Amount.** The Settlement Administrator will provide Defendants with its bank wire instructions to establish the Qualified Settlement Fund (QSF).

Within fifteen (15) business days of the Effective Date, Defendants shall transmit the Gross Settlement Amount to the Settlement Administrator.

7.2 **Distribution of the Gross Settlement Amount.** Within 30 calendar days of the Effective Date, the Administrator will pay to Settlement Group Members, their Individual Settlement Payments via first-class regular U.S. Mail; to PAGA Counsel, the Court-awarded Attorneys' Fees and Litigation Expenses Payment; to the LWDA, the Court-approved LWDA Payment; Enhancement Award to Plaintiff (if any); and to the Administrator, the Court-awarded Administration Fees and Expenses.

7.3 **Non-Cashed Settlement Checks.** Settlement Group Members shall have one hundred eighty days (180) to cash their checks. Any funds associated with uncashed checks after one hundred eighty (180) days will be sent to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 et seq., for the benefit of those Settlement Group Members whose checks were voided.

1 8. **NULLIFICATION OF THIS AGREEMENT**

2 8.1 **Non-Approval of the Agreement.** If (a) the Court should for any reason fails
3 to approve this Agreement in the form agreed to by the Parties, or (b) the Court should for any
4 reason fail to enter a judgment on this Action, or (c) the approval of the Settlement and judgment is
5 reversed, modified or declared or rendered void, then the Settlement shall be considered null and
6 void, and neither the Settlement nor any of the related negotiations or proceedings shall be of any
7 force or effect, and all Parties to the Settlement shall stand in the same position, without prejudice,
8 as if the Settlement has been neither entered into nor filed with the Court. Notwithstanding the
9 foregoing, the Parties may attempt in good faith to cure any perceived defects in the Agreement to
10 facilitate approval. In the event the Court awards less than the requested amounts for
11 Administration Fees, PAGA Counsel's Attorneys' Fees and Expenses, Enhancement Award to
12 Plaintiff (if any), or the PAGA Payment, the difference shall become part of the Net Settlement
13 Amount.

14 8.2 **Invalidation.** Invalidation of any material portion of the Settlement shall
15 invalidate the Settlement in its entirety, unless the Parties shall subsequently agree in writing that
16 the remaining provisions of the Settlement are to remain in full force and effect.

17 8.3 **Stay Upon Appeal.** In the event of a timely appeal from the approval of the
18 Settlement and Judgment, the Judgment shall be stayed, and Defendants shall not be obligated to
19 fund the Gross Settlement Amount or take any other actions required by this Agreement until all
20 appeal rights have been exhausted by operation of law.

21 9. **MOTION OR STIPULATION FOR COURT APPROVAL**

22 9.1 **Approval.** PAGA Counsel will submit this Agreement to the Court along with a
23 Motion or Stipulation for an Order Granting Approval of the Settlement.

24 10. **RELEASES AND WAIVERS**

25 10.1 **Settlement Group Members' Release.** Upon the Effective Date, Plaintiff, the
26 Settlement Group Members, and the State of California vis-à-vis the LWDA shall hereby release
27 the Released Parties for the Released Claims for the PAGA Period.
28

10.2 **General Release by Plaintiff.** Plaintiff, for himself, his heirs, successors, and assigns, waive, release, acquit, and forever discharges the Released Parties from any and all claims, actions, charges, complaints, grievances, and causes of action, of any nature arising from Plaintiff's employment with Defendants whether known or unknown, which exist or may exist as of the Parties' execution of this Agreement.

Section 1542 of the California Civil Code 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."

Plaintiff's general release provided herein is made with an express waiver and relinquishment of any claim, right, or benefit under California Civil Code § 1542. Plaintiff warrants that he has read this Agreement, including this waiver of California Civil Code § 1542, and that Plaintiff has consulted with or had the opportunity to consult with counsel about this Agreement and specifically about the waiver of § 1542, and that Plaintiff understands this Agreement and the § 1542 waiver, and so he is freely and knowingly entering into this Agreement. Plaintiff further acknowledges that later may discover facts different from or in addition to those Plaintiff now knows or believes to be true regarding the matters released or described in this Agreement, and even so Plaintiff agrees that the releases and agreements contained in this Agreement shall remain effective in all respects notwithstanding any later discovery of any different or additional facts.

11. **DUTIES OF THE PARTIES**

11.1 **Mutual Full Cooperation.** The Parties agree to cooperate fully with one another to accomplish and implement the terms of this Agreement. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms of this Settlement. The Parties shall use their best efforts, including all effects contemplated by this Agreement and any other efforts that may become necessary by Court order or otherwise, to effectuate the terms of this Agreement. As soon as practicable after execution of this Agreement, PAGA Counsel, with the cooperation of Defendants

1 and Defense Counsel, shall take all necessary and reasonable steps to secure the Court's final
2 approval of this Agreement.

3 11.2 **Duty to Support and Defend the Settlement.** The Parties agree to abide by all
4 of the terms of the Settlement in good faith and to support the Settlement fully and to use their best
5 efforts to defend this Settlement from any legal challenge, whether by appeal or collateral attack.

6 12. **MISCELLANEOUS PROVISIONS**

7 12.1 **Different Facts.** The Parties hereto, and each of them, acknowledge that, except
8 for matters expressly represented herein, the facts in relation to the dispute and all claims released
9 by the terms of this Agreement may turn out to be other than or different from the facts now known
10 by each party and/or their counsel, or believed by such Party or counsel to be true, and each Party
11 therefore expressly assumes the risk of the existence of different or presently unknown facts, and
12 agrees that this Agreement shall be in all respects effective and binding despite such difference.

13 12.2 **No Prior Assignments.** The Parties represent, covenant, and warrant that they
14 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
15 encumber to any person or entity any portion of any liability, claim, demand, action, cause of
16 action, or right herein released and discharged except as set forth herein.

17 12.3 **Non-Admission.** Nothing in this Agreement shall be construed as or deemed to
18 be an admission by any Party or Released Party of any liability, culpability, negligence, or
19 wrongdoing toward any other Party, or any other person, and the Parties specifically disclaim any
20 culpability, negligence, or wrongdoing toward each other or any other person. Each of the Parties
21 has entered into this Agreement with the intention to avoid further disputes and litigation with the
22 attendant inconvenience, expenses, and contingencies. Nothing herein shall constitute any
23 admissions by Defendants or any Released Party of wrongdoing or liability, or of the truth of any
24 factual allegations in the Action. Nothing herein shall constitute any admission by Defendants or
25 the Released Parties regarding the merits of the Claims in this Action. Nothing herein shall
26 constitute an admission by Defendants that the Action was properly brought as a representative
27 action other than for settlement purposes. To the contrary, Defendants have denied and continue to
28 deny each and every material factual allegation and all Claims. To this end, the Settlement of the

1 Action, the negotiation and execution of this Agreement, and all acts performed or documents
2 executed pursuant to or in furtherance of this Agreement or the Settlement are not, shall not be
3 deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on
4 the part of Defendants or the Released Parties or of the truth of any of the factual allegations in the
5 Action; and are not, shall not be deemed to be, and may not be used as, an admission or evidence of
6 any fault or omission on the part of Defendants or any Released Parties in any civil, criminal or
7 administrative proceeding in any court, administrative agency or other tribunal.

8 12.4 **Media or Press.** Plaintiff and Defendants, and their respective counsel, agree to
9 limit public comment on this Settlement, the Action, and claims in the Action, stating that the
10 matter has been resolved to the satisfaction of the Parties. Plaintiff and Defendants, and their
11 respective counsel shall not initiate public comment and/or discuss with or present to the media or
12 press.

13 12.5 **Construction.** The Parties hereto agree that the terms and conditions of this
14 Agreement are the result of lengthy, intensive, arms-length non-collusive negotiations between the
15 Parties and that this Agreement is not to be construed in favor of or against any party by reason of
16 the extent to which any Party or their counsel participated in the drafting of this Agreement. If any
17 of the dates in the Agreement fall on a weekend, bank or court holiday, the time to act shall be
18 extended to the next business day.

19 12.6 **Governing Law.** This Agreement is intended to and shall be governed by the
20 laws of the State of California, without regard to conflict of law principles, in all respects,
21 including execution, interpretation, performance, and enforcement.

22 12.7 **Captions and Interpretations.** Section titles or captions contained herein are
23 inserted as a matter of convenience and for reference only and in no way define, limit, extend, or
24 describe the scope of this Agreement or any provision thereof.

25 12.8 **Modification.** This Agreement may not be changed, altered, or modified,
26 except in writing signed by the Parties and approved by the Court. This Agreement may not be
27 discharged except by performance in accordance with its terms or by a writing signed by the
28 Parties.

12.9 **Integration Clause.** This Agreement contains the entire agreement between the Parties relating to the Settlement of the Action and the transactions contemplated thereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written, and whether by a party or such party's legal counsel, are hereby superseded. No rights under this Agreement may be waived except in writing as provided above.

12.10 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and Settlement Group Members and their respective present and former heirs, trustees, executors, administrators, representatives, officers, directors, shareholders, agents, employees, insurers, attorneys, accountants, auditors, advisors, consultants, pension and welfare benefit plans, fiduciaries, parent companies, subsidiaries, affiliates, related companies, joint ventures, predecessors, successors, and assigns.

12.11 **Corporate Signatories.** Any person executing this Agreement or any such related document on behalf of a corporate signatory or on behalf of a partnership hereby warrants and promises, for the benefit of all Parties hereto, that such person has been duly authorized by such corporation or partnership to execute this Agreement or any such related document.

12.12 **Execution in Counterparts.** This Agreement shall become effective upon its execution by all of the undersigned. The Parties may execute this Agreement in counterparts, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument.

12.13 **Attorneys' Fees, Costs and Expenses.** Except as otherwise specifically provided for herein, each Party shall bear their or its own attorneys' fees, costs and expenses, taxable or otherwise, incurred by them in or arising out of the Action and shall not seek reimbursement thereof from any other Party to this Agreement.

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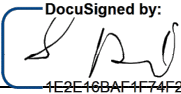
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IN WITNESS WHEREOF, the Parties and their counsel have executed this Agreement on the date below their signatures of their representatives. The date of the Agreement shall be the date of the latest signature.

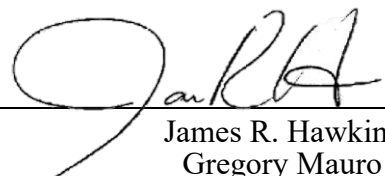
Dated: October 10/11/2023, 2023

PLAINTIFF

By: 
Sergio P. Dancel, Jr.

Dated: October 11, 2023

JAMES HAWKINS, APLC

By: 
James R. Hawkins
Gregory Mauro
Attorneys for Plaintiff
SERGIO P. DANCEL, JR.

Dated: October __, 2023

REAL TIME STAFFING SERVICES, LLC

By: _____
Janelle Bieler, Division President, West
On behalf of REAL TIME STAFFING SERVICES, LLC;
EMPLOYBRIDGE HOLDING COMPANY; AND
EMPLOYBRIDGE MIDWEST 3

Dated: October __, 2023

CDF LABOR LAW LLP

By: _____
David G. Hagopian
Attorneys for Defendants
EMPLOYBRIDGE HOLDING COMPANY; and
EMPLOYBRIDGE MIDWEST 3, INC.

1 IN WITNESS WHEREOF, the Parties and their counsel have executed this Agreement on
2 the date below their signatures of their representatives. The date of the Agreement shall be the date
3 of the latest signature.

4 Dated: October __, 2023 PLAINTIFF

5
6 By: _____
Sergio P. Dancel, Jr.

7
8 Dated: October __, 2023 JAMES HAWKINS, APLC

9
10 By: _____
11 James R. Hawkins
12 Gregory Mauro
13 Attorneys for Plaintiff
SERGIO P. DANCEL, JR.

14 Dated: October 9, 2023 REAL TIME STAFFING SERVICES, LLC

15
16 By:  _____
17 Janelle Bieler, Division President, West
18 On behalf of REAL TIME STAFFING SERVICES, LLC;
19 EMPLOYBRIDGE HOLDING COMPANY; AND
20 EMPLOYBRIDGE MIDWEST 3

21 Dated: October 18, 2023 CDF LABOR LAW LLP

22
23 By:  _____
24 David G. Hagopian
25 Attorneys for Defendants
26 EMPLOYBRIDGE HOLDING COMPANY; and
27 EMPLOYBRIDGE MIDWEST 3, INC.
28

EXHIBIT B

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

October 8, 2021

Via LWDA Website

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Via Certified Mail

XPO LOGISTICS, INC., a Delaware Corporation
Agent for Service of Process: Registered Agent Solutions, Inc.
9 E. Loockerman Street, Suite 311
Dover, DE 19901
Receipt No. 7018 1130 0001 8270 2919

XPO LOGISTICS, INC., a Delaware Corporation
Agent for Service of Process: Registered Agent Solutions, Inc.
1220 S Street, Suite 150
Sacramento, CA 95811
Receipt No. 7018 1130 0001 8270 2896

XPO LOGISTICS FREIGHT, INC., a Delaware Corporation
Agent for Service of Process: Registered Agent Solutions, Inc.
1220 S Street, Suite 150
Sacramento, CA 95811
Receipt No. 7018 1130 0001 8270 2902

XPO LOGISTICS SUPPLY CHAIN CORPORATE SERVICES, INC., a New Jersey Corporation
Agent for Service of Process: Registered Agent Solutions, Inc.
1220 S Street, Suite 150
Sacramento, CA 95811
Receipt No. 7018 1130 0001 8270 2889

XPO LOGISTICS WORLDWIDE, INC., a Delaware Corporation
Agent for Service of Process: Registered Agent Solutions, Inc.
1220 S Street, Suite 150
Sacramento, CA 95811
Receipt No. 7018 1130 0001 8270 2872

EMPLOYBRIDGE HOLDING COMPANY, a Delaware Corporation doing business as
SELECT STAFFING

Agent for Service of Process: Corporate Creations Network Inc.
4640 Admiralty Way, 5th Floor
Marina del Rey, CA 90292
Receipt No. 7018 1130 0001 8270 2841

EMPLOYBRIDGE HOLDING COMPANY, a Delaware Corporation doing business as
PROLOGISTIX

Agent for Service of Process: Corporate Creations Network Inc.
4640 Admiralty Way, 5th Floor
Marina del Rey, CA 90292
Receipt No. 7018 1130 0001 8270 2858

EMPLOYBRIDGE MIDWEST 3, INC., a Georgia Corporation

Agent for Service of Process: Corporate Creations Network Inc.
4640 Admiralty Way, 5th Floor
Marina del Rey, CA 90292
Receipt No. 7018 1130 0001 8270 2865

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698, *et seq.*

To Whom It May Concern:

PLEASE TAKE NOTICE that plaintiff SERGIO P. DANCEL JR., individually and on behalf of all similarly situated representative aggrieved employees, gives NOTICE to commence and/or amend a civil action pursuant to California Labor Code Sections 2698, *et seq.* Plaintiff hereby gives written notice by certified mail to the Labor and Workforce Development Agency, and XPO LOGISTICS, INC., a Delaware Corporation; XPO LOGISTICS FREIGHT, INC., a Delaware Corporation; XPO LOGISTICS SUPPLY CHAIN CORPORATE SERVICES, INC., a New Jersey Corporation; XPO LOGISTICS WORLDWIDE, INC., a Delaware Corporation; EMPLOYBRIDGE HOLDING COMPANY, a Delaware Corporation doing business as SELECT STAFFING and PROLOGISTIX; EMPLOYBRIDGE MIDWEST 3, INC., a Georgia Corporation through its Agent for Service of Process.

Plaintiff hereby attaches a copy of the Proposed PAGA Representative Action Complaint to be filed in the San Bernardino County Superior Court, as though fully set forth herewith setting out the specific provisions of the Labor Code Plaintiff alleges have been violated, including the facts and theories. All labor provisions in the Proposed PAGA Representative Action Complaint alleged to have been violated pertain to all entities and individuals named in the Complaints, even if not expressly specified.

Please advise within sixty (60) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and if you have any questions, please do not hesitate to contact me.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Gregory Mauro', with a stylized, cursive script.

Gregory Mauro

Enclosure: Proposed PAGA Representative Action Complaint

JAMES HAWKINS APLC
James R. Hawkins, Esq. (#192925)
Gregory Mauro, Esq. (#222239)
Michael Calvo, Esq. (#314986)
Jeanne Sarmiento, Esq. (#309660)
9880 Research Drive, Suite 200
Irvine, CA 92618
Tel.: (949) 387-7200
Fax: (949) 387-6676
Email: James@jameshawkinsaplc.com
Email: Greg@jameshawkinsaplc.com
Email: Michael@jameshawkinsaplc.com
Email: Jeanne@jameshawkinsaplc.com

Attorneys for Plaintiff SERGIO P. DANCEL JR.,
individually and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

SERGIO P. DANCEL JR., individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

XPO LOGISTICS, INC., a Delaware
Corporation; XPO LOGISTICS FREIGHT,
INC., a Delaware Corporation; XPO
LOGISTICS SUPPLY CHAIN CORPORATE
SERVICES, INC., a New Jersey Corporation;
XPO LOGISTICS WORLDWIDE, INC., a
Delaware Corporation; EMPLOYBRIDGE
HOLDING COMPANY, a Delaware
Corporation doing business as SELECT
STAFFING and PROLOGISTIX;
EMPLOYBRIDGE MIDWEST 3, INC., a
Georgia Corporation; and DOES 1-50,
inclusive,

Defendants.

CASE NO.:

Assigned For All Purposes To:

Judge:

Dept.:

**CLASS ACTION COMPLAINT
PURSUANT TO CALIFORNIA CODE OF
CIVIL PROCEDURE §382 FOR:**

1. Failure to Pay Wages Including Overtime as Required by Labor Code §§ 510 and 1194
2. Failure to Provide Meal Periods as Required by Labor Code §§ 226.7, 512
3. Failure to Provide Rest Periods as Required by Labor Code §§ 226.7, 512
4. Failure to Pay Timely Wages Required by Labor Code § 203
5. Failure to Provide Accurate Itemized Wage Statements Required by Labor Code § 226
6. For Payment of Wages in a Non-Labor Code Compliant Instrument as Required by Labor Code §§ 212, 213
7. Failure to Provide Cool Down Recovery Periods as Required by Labor Code § 226.7; and
8. Violation of Business & Professions Code § 17200, et seq.

DEMAND FOR JURY TRIAL

1 Plaintiff SERGIO P. DANCEL JR. (“Plaintiff”), individually and on behalf of all others
2 similarly situated (hereinafter collectively referred to as the “Class” or “Class Members”), hereby
3 files this Complaint against Defendants XPO LOGISTICS, INC., a Delaware Corporation; XPO
4 LOGISTICS FREIGHT, INC., a Delaware Corporation; XPO LOGISTICS SUPPLY CHAIN
5 CORPORATE SERVICES, INC., a New Jersey Corporation; XPO LOGISTICS WORLDWIDE,
6 INC., a Delaware Corporation; EMPLOYBRIDGE HOLDING COMPANY, a Delaware
7 Corporation doing business as SELECT STAFFING and PROLOGISTIX; EMPLOYBRIDGE
8 MIDWEST 3, INC., a Georgia Corporation; and DOES 1-50, inclusive (collectively “Defendants”)
9 and alleges on information and belief as follows:

10 **I. JURISDICTION AND VENUE**

11 1. This class action is brought pursuant to California Code of Civil Procedure §382.
12 The monetary damages and restitution sought by Plaintiff exceed the minimum jurisdictional limits
13 of the California Superior Court and will be established according to proof at trial.

14 2. This Court has jurisdiction over this action pursuant to the California Constitution
15 Article VI §10, which grants the California Superior Court original jurisdiction in all causes except
16 those given by statute to other courts. The statutes under which this action is brought do not give
17 jurisdiction to any other court.

18 3. This Court has jurisdiction over Defendants because, upon information and belief,
19 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
20 avails itself of the California market so as to render the exercise of jurisdiction over it by the
21 California Courts consistent with traditional notions of fair play and substantial justice.

22 4. The California Superior Court also has jurisdiction in this matter because the individual
23 claims of the members of the Classes herein are under the seventy-five thousand dollar (\$75,000.00)
24 jurisdictional threshold for Federal Court and the aggregate claim, including attorneys’ fees, is under
25 the five million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of 2005. Further,
26 there is no federal question at issue, as the issues herein are based solely on California statutes and law,
27 including the Labor Code, IWC Wage Orders, CCP, California Civil Code (“CC”) and B&PC.

28 5. Venue is proper in this Court because, upon information and belief, one or more of

1 the Defendants reside, transact business, or have offices in this County and/or the acts or omissions
2 alleged herein took place in this County.

3 **II. PARTIES**

4 6. Plaintiff SERGIO P. DANCEL JR. was at all times relevant to this action a resident
5 of California. Plaintiff was employed by Defendants in approximately September 2020 as a Non-
6 Exempt Employee with the title of Loader and worked during the liability period for Defendants
7 until Plaintiff's separation from Defendants' employ in approximately October 2020. Plaintiff's
8 duties included but were not limited to the unloading and loading of boxes and pallets for retail
9 stores.

10 7. Defendants XPO LOGISTICS, INC., a Delaware Corporation; XPO LOGISTICS
11 FREIGHT, INC., a Delaware Corporation; XPO LOGISTICS SUPPLY CHAIN CORPORATE
12 SERVICES, INC., a New Jersey Corporation; and XPO LOGISTICS WORLDWIDE, INC., a
13 Delaware Corporation operate as a logistics company. Plaintiff estimates there are in excess of 100
14 Non-Exempt Employees who work or have worked for Defendants over the last four years.

15 8. Defendants EMPLOYBRIDGE HOLDING COMPANY, a Delaware Corporation
16 doing business as SELECT STAFFING and PROLOGISTIX; EMPLOYBRIDGE MIDWEST 3,
17 INC., a Georgia Corporation, operate as a staffing company. Plaintiff estimates there are in excess
18 of 100 Non-Exempt Employees who work or have worked for Defendants over the last four years.

19 9. Other than identified herein, Plaintiff is unaware of the true names, capacities,
20 relationships, and extent of participation in the conduct alleged herein, of the Defendants sued as
21 DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are legally
22 responsible for the wrongful conduct alleged herein and therefore sues these defendants by such
23 fictitious names. Plaintiff will amend this complaint when their true names and capacities are
24 ascertained.

25 10. Plaintiff is informed and believes and thereon alleges that each defendant, directly
26 or indirectly, or through agents or other persons, employed Plaintiff and other members of the Class,
27 and exercised control over their wages, hours, and working conditions. Plaintiff is informed and
28 believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the

1 agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects
2 pertinent hereto, and the acts of each Defendant are legally attributable to the other defendants.

3 **III. CLASS ACTION ALLEGATION**

4 11. Plaintiff brings this action individually and on behalf of all others similarly
5 situated as a class action pursuant to Code of Civil Procedure § 382. The members of the Class are
6 defined as follows:

7 All persons who have been employed by Defendants as Non-Exempt Employees or
8 equivalent positions, however titled, in the state of California within four (4) years from the filing
9 of the Complaint in this action until its resolution. (collectively referred to as the “Class” or
“Plaintiff’s Class” or “Class Members”).

10 12. Plaintiff also seeks to represent the subclass(es) composed of and defined as follows:

11 **Sub-Class 1:** All Class Members who are or were employed by Defendants who worked in
12 excess of five or ten hours in a work day but were not provided with a timely, uninterrupted, duty-
free thirty-minute meal period (hereinafter collectively referred to as the “Meal Period Subclass”).

13
14 **Sub-Class 2:** All Class Members who are or were employed by Defendants who worked in
15 excess of three and a half (3.5) or ten hours in a work day but were not authorized and permitted a
rest period (hereinafter collectively referred to as the “Rest Period Subclass”).

16 **Sub-Class 3:** All Class Members who are or were employed by Defendants at any time
17 between October 2020 and the present and who received wage statements from Defendant
(hereinafter collectively referred to as the “Wage Statement Subclass”).

18
19 **Sub-Class 4:** All Class Members who have been employed by Defendants at any time
20 between October 2018 and the present and have separated their employment (hereinafter collectively
referred to as the “Waiting Time Penalty Subclass”).

21 **Sub-Class 5:** All Class Members who are or were employed by Defendants and subject to
22 Defendant’s Unfair Business Practices (hereinafter collectively referred to as the “Unfair Business
Practice Subclass”).

23 13. Plaintiff reserves the right under California Rule of Court 3.765(b) and other
24 applicable laws to amend or modify the class definition with respect to issues or in any other ways.
25 Plaintiff is a member of the Class as well as each of the Sub-Classes.

26 14. The term “Class” includes Plaintiff and all members of the Class and each of the
27 Sub-Classes, if applicable. Plaintiff seeks class-wide recovery based on the allegations set forth in
28 this complaint.

1 15. There is a well-defined community of interest in the litigation and the proposed
2 Class is easily ascertainable through the records Defendants are required to keep.

3 16. Numerosity. The members of the Class are so numerous that individual joinder of
4 all of them as plaintiffs is impracticable. While the exact number of the Class members is unknown
5 to Plaintiff at this time, Plaintiff is informed and believes and thereon alleges that there are at least
6 100 (one hundred) Class members.

7 17. Commonality. Common questions of law and fact exist as to all Class members
8 and predominate over any questions that affect only individual members of the Class. These
9 common questions include, but are not limited to:

10 i. Whether Defendants failed to pay minimum wage compensation to Plaintiff and
11 Class Members for all hours worked;

12 ii. Whether Defendants failed to accurately pay overtime to Plaintiff and Class
13 Members;

14 iii. Whether Defendants violated Labor Code sections 226.7, 512, and applicable IWC
15 Wage Orders, by failing to authorize and permit daily rest periods to Plaintiff and Class Members
16 for every four hours or major fraction thereof worked and failing to compensate said employees one
17 hours wages in lieu of rest periods;

18 iv. Whether Defendants violated Labor Code sections 226.7, 512 and applicable IWC
19 Wage Orders, by failing to provide a meal period to Plaintiff and Class Members on days they
20 worked work periods in excess of five (5) and ten (10) and failing to compensate said employees
21 one hour wages in lieu of meal periods;

22 v. Whether Defendants failed to maintain accurate time record including recording
23 Plaintiff and Class Members' meal periods pursuant to Labor Code sections 1174.5 and the
24 applicable IWC Wage Orders;

25 vi. Whether Defendants failed provide accurate itemized wage statements pursuant to
26 Labor Code sections 226;

27 vii. Whether Defendants violated Labor Code section 226.7, and applicable IWC Wage
28

1 Orders, by failing to authorize and permit Cool Down Recovery Periods to Plaintiff and Class
2 Members;

3 viii. Whether Defendants issued payment in the form of non-Labor Code compliant
4 instruments pursuant to Labor Code §§ 212 and 213;

5 ix. Whether Defendants violated Business and Professions Code and Labor Code
6 sections 201-203, 212, 213, 510, 512, 558, 226, 226.3, 226.7, 1174, 1174.5, 1175, 1194, 1197,
7 1197.1, 1198 and applicable IWC Wage Orders which violation constitutes a violation of
8 fundamental public policy; and

9 x. Whether Plaintiff and the Members of the Plaintiff Class are entitled to equitable
10 relief pursuant to Business and Professions Code section 17200, *et. seq.*

11 xi. Whether Plaintiffs and the Members of the Plaintiffs Class are entitled to relief in the
12 form of back wages, penalties and interest for failure to pay minimum wages pursuant to Labor
13 Code sections 558, 1194 and 1197.

14 18. Typicality. Plaintiff's claims herein alleged are typical of those claims which could
15 be alleged by any member of the Class and/or Subclass, and the relief sought is typical of the relief
16 which would be sought by each member of the Class and/or Subclass in separate actions. Plaintiff
17 and all members of the Class and or Subclass sustained injuries and damages arising out of and
18 caused by Defendants' common course of conduct in violation of California laws, regulations, and
19 statutes as alleged herein.

20 19. Adequacy. Plaintiff is qualified to and will fairly and adequately protect the
21 interests of each member of the Class and/or Subclass with whom Plaintiff has a well-defined
22 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges an
23 obligation to make known to the Court any relationships, conflicts, or differences with any member
24 of the Class and/or Subclass. Plaintiff's attorneys and the proposed Counsel for the Class and
25 Subclass are versed in the rules governing class action discovery, certification, litigation, and
26 settlement and experienced in handling such matters. Other former and current employees of
27 Defendants may also serve as representatives of the Class and Subclass if needed.

28 20. Superiority. A class action is superior to other available means for the fair and

1 efficient adjudication of the claims of the Class and would be beneficial for the parties and the court.
2 Class action treatment will allow a large number of similarly situated persons to prosecute their
3 common claims in a single forum, simultaneously, efficiently, and without the unnecessary
4 duplication of effort and expense that numerous individual actions would require. The damages
5 suffered by each Class member are relatively small in the sense pertinent to class action analysis,
6 and the expense and burden of individual litigation would make it extremely difficult or impossible
7 for the individual Class Members to seek and obtain individual relief. A class action will serve an
8 important public interest by permitting such individuals to effectively pursue recovery of the sums
9 owed to them. Further, class litigation prevents the potential for inconsistent or contradictory
10 judgments raised by individual litigation.

11 21. Public Policy Considerations: Employers in the state of California violate
12 employment and labor laws everyday. Current employees are often afraid to assert their rights out
13 of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because
14 they believe their former employers may damage their future endeavors through negative references
15 and/or other means. The nature of this action allows for the protection of current and former
16 employees' rights without fear of retaliation or damage.

17 **IV. FACTUAL ALLEGATIONS**

18 22. At all times set forth herein, Defendants employed Plaintiff and other persons in the
19 capacity of non-exempt positions, however titled, throughout the state of California.

20 23. Plaintiff is informed and believes Class Members have at all times pertinent hereto
21 been Non-Exempt within the meaning of the California Labor Code and the implementing rules and
22 regulations of the IWC California Wage Orders.

23 24. Defendants continue to employ Non-Exempt Employees, however titled, in
24 California and implement a uniform set of policies and practices to all non-exempt employees, as
25 they were all engaged in the generic job duties related to Defendants' logistics company and staffing
26 agency.

27 25. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were
28 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the

1 requirements of California's wage and employment laws.

2 26. On information and belief, during the relevant time frame, Plaintiff and Class
3 Members frequently worked well over eight (8) hours in a day and forty (40) hours in a work week.

4 27. During the relevant time frame, Defendants compensated Plaintiff and Class
5 Members based upon an hourly rate.

6 28. On information and belief, during the relevant time frame, Plaintiff and Class
7 Members typically worked five (5) days a week.

8 29. Plaintiff is informed and believes that the Class Members were required to keep
9 similar schedules.

10 30. In addition, the Class Members frequently worked in excess of eight (8) hours a day
11 and/or over forty (40) hours in a workweek, but were not properly paid for such time at the
12 employee's correct rate of pay per hour for overtime.

13 31. Plaintiff is informed and believes that Plaintiff and Class Members were not
14 compensated for all time worked in part because Plaintiff and Class Members were required to work
15 off the clock, including times when they were required to wait to engage in a health screening that
16 included having their temperature checked and having to answer health screening questions, which
17 took at least 15 minutes each time they were required to engage in such a health screening. In
18 addition, Plaintiff and Class Members were required to engage in a security check when they were
19 off the clock. This resulted over time of an underpayment of overtime wages to Plaintiff and Class
20 Members.

21 32. Plaintiff is further informed and believes that because Plaintiff and Class Members
22 were required to work off the clock, including the times they had to wait to engage in a health
23 screening that included having have their temperature checked and answering health screening
24 questions, which took at least 15 minutes each time they were required to engage in such a health
25 screening, and because they had to engage in a security check when they were off the clock, this
26 resulted in an underpayment of minimum wages.

27 33. Plaintiff and the Class Members were regularly required to work shifts in excess of
28 five hours without being provided a lawful meal period and over ten hours in a day without being

1 provided a second lawful meal period as required by law.

2 34. During the relevant time, as a consequence of Defendants' staffing and scheduling
3 practices, work demands, and Defendants' policies and practices, Defendants frequently failed to
4 provide Plaintiff and the Class Members timely, legally complaint uninterrupted 30-minute meal
5 periods on shifts over five hours as required by law.

6 35. Similarly, as a consequence of Defendants' staffing and scheduling practices, work
7 demands, and Defendants' policies and practices, Defendants frequently failed to provide Plaintiff
8 and the Class Members legally compliant second meal periods on shifts over ten hours as required
9 by law.

10 36. On information and belief, Plaintiff and Class Members did not waive their rights to
11 meal periods under the law.

12 37. Plaintiff and the Class Members were not provided with valid lawful on-duty meal
13 periods.

14 38. Despite the above-mentioned meal period violations, Defendants failed to
15 compensate Plaintiff, and on information and belief, failed to compensate Class Members, one
16 additional hour of pay at their regular rate as required by California law when meal periods were
17 not timely or lawfully provided in a compliant manner.

18 39. Plaintiff is informed and believes, and thereon alleges, that Defendants know, should
19 know, knew, and/or should have known that Plaintiff and the other Class Members were entitled to
20 receive premium wages based on their regular rate of pay under Labor Code §226.7 but were not
21 receiving such compensation.

22 40. In addition, during the relevant time frame, Plaintiff and the Non-Exempt Employees
23 were systematically not authorized and permitted to take one net ten-minute paid, rest period for
24 every four hours worked or major fraction thereof, which is a violation of the Labor Code and IWC
25 wage order.

26 41. Defendants maintained and enforced scheduling practices, policies, and imposed
27 work demands that frequently required Plaintiff and Class Members to forego their lawful, paid rest
28 periods of a net ten minutes for every four hours worked or major fraction thereof. Such requisite

1 rest periods were not timely authorized and permitted as a result of Defendants' failure to provide
2 relief for Plaintiff and Class Members to take their lawfully required breaks.

3 42. Despite the above-mentioned rest period violations, Defendants did not compensate
4 Plaintiff, and on information and belief, did not pay Class Members one additional hour of pay at
5 their regular rate as required by California law, including Labor Code section 226.7 and the
6 applicable IWC wage order, for each day on which lawful rest periods were not authorized and
7 permitted.

8 43. On information and belief, Plaintiff and Class Members worked in a facility that did
9 not have air conditioning or proper air ventilation, causing the temperature inside the warehouse to
10 get extremely hot, often exceeding temperatures that can cause heat related illness. Further, on
11 information and belief, Defendants did not have a policy, practice or procedure in place to allow
12 employees to take cool down recovery periods when suffering from heat exhaustion or other heat
13 related illness as a result of the extreme temperatures inside the warehouse. On information and
14 belief, Plaintiff and the Class Members were systematically not authorized and permitted to take
15 cool down recovery periods when needed, as required.

16 44. Despite the above-mentioned Cool Down Recovery Period violations, Defendants
17 did not compensate Plaintiff, and on information and belief, did not pay Class Members one
18 additional hour of pay at their regular rate as required by California law, including Labor Code
19 section 226.7 and the applicable IWC wage order, for each day on which lawful Cool Down
20 Recovery Periods were not authorized and permitted.

21 45. On information and belief, Defendants violated Labor Code sections 212 and 213 by
22 issuing payment to Plaintiff and Class Members for their wages in a non-Labor Code-compliant
23 instrument. For instance, Defendants would issue pay cards to Plaintiff and Class Members to be
24 included as a form of compensation of wages and a fee was charged for using the pay card.

25 46. Defendants also failed to provide accurate, lawful itemized wage statements to
26 Plaintiff and the Class Members in part because of the above specified violations. In addition, upon
27 information and belief, Defendants omitted an accurate itemization of total hours worked, including
28 premiums due and owing for meal and rest period violations, gross pay and net pay figures from

1 Plaintiff and the Class Members ' wage statements.

2 47. Plaintiff is informed and believes, and thereon alleges, that at all times herein
3 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
4 thereof for resignations without prior notice as the case may be) they had a duty to accurately
5 compensate Plaintiff and Class Members for all wages owed including minimum wages, meal and
6 rest period premiums, and that Defendants had the financial ability to pay such compensation, but
7 willfully, knowingly, recklessly, and/or intentionally failed to do so in part because of the above-
8 specified violations.

9 48. Upon information and belief, Defendants knew and or should have known that it is
10 improper to implement policies and commit unlawful acts such as:

- 11 a. requiring employees to perform work subject to the control of the employer without
12 being compensated all wages including overtime;
- 13 b. requiring employees to work four (4) hours or a major fraction thereof without being
14 provided a minimum ten (10) minute rest period and without compensating the
15 employees with one (1) hour of pay at the employees' regular rate of compensation
16 for each workday that a rest period was not provided;
- 17 c. requiring employees to work in excess of five (5) hours or ten (10) hours per day
18 without being provided an uninterrupted thirty minute meal period and/or a second
19 meal period, and without compensating employees with one (1) hour of pay at the
20 regular rate of compensation for each workday that such a meal period was not
21 provided;
- 22 d. failing to provide accurate itemized wage statements;
- 23 e. failing to timely pay Plaintiff and Class Members;
- 24 f. issuing wage payments in non-Labor Code compliant instruments;
- 25 g. failing to provide cool down recovery periods; and
- 26 h. conducting and engaging in unfair business practices.

27 49. In addition to the violations above, and on information and belief, Defendants knew
28 they had a duty to compensate Plaintiff and Class Members for the allegations asserted herein, and

1 that Defendants had the financial ability to pay such compensation, but willfully, knowingly,
2 recklessly, and/or intentionally failed to do so.

3 50. Plaintiff and Class Members Plaintiff seeks to represent are covered by, and
4 Defendants are required to comply with, applicable California Labor Codes, Industrial Welfare
5 Commission Occupational Wage Orders (hereinafter “IWC Wage Orders”) and corresponding
6 applicable provisions of California Code of Regulations, Title 8, section 11000 *et seq.*

7 **FIRST CAUSE OF ACTION**

8 **FAILURE TO PAY WAGES INCLUDING OVERTIME**

9 **(Against All Defendants)**

10 51. Plaintiff incorporates and re-alleges each and every allegation contained above as
11 though fully set forth herein.

12 52. At all times relevant, the IWC wage orders applicable to Plaintiff’s and the Class
13 require employers to pay its employees for each hour worked at least minimum wage. “Hours
14 worked” means the time during which an employee is subject to the control of an employer, and
15 includes all the time the employee is suffered or permitted to work, whether or not required to do
16 so, and in the case of an employee who is required to reside on the employment premises, that
17 time spent carrying out assigned duties shall be counted as hours worked.

18 53. At all relevant times, Labor Code §1197 provides that the minimum wage for
19 employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a
20 lesser wage than the established minimum is unlawful. Further, pursuant to the IWC Wage Order
21 and Labor Code, Plaintiff and Class Members are to be paid minimum wage for each hour worked
22 and cannot be averaged. At all times relevant, the IWC wage orders applicable to Plaintiff and Class
23 Members’ employment by Defendants provided that employees working for more than eight (8)
24 hours in a day or forty (40) hours in a work week are entitled to overtime compensation at the rate
25 of one and one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in
26 a day or forty (40) hours in a work week. An employee who works more than twelve (12) hours in
27 a day is entitled to overtime compensation at a rate of twice the regular rate of pay.

28 54. At all relevant times, Labor Code §1197.1 states “[a]ny employer or other persons

acting individually as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties pursuant to Section 203.”

55. Labor Code §510 codifies the right to overtime compensation at the rate of one and one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or forty (40) hours in a work week and to overtime compensation at twice the regular rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work in a particular work week.

56. At all times relevant, Plaintiff and Class Members regularly performed non-exempt work and thus were subject to the overtime requirements of the IWC Wage Orders, CCR § 11000, et. seq. and the Labor Code.

57. At all times relevant, Plaintiff and Class Members consistently worked in excess of eight (8) hours in a day and/or forty (40) hours in a week.

58. Accordingly, Defendants owe Plaintiff and Class Members overtime wages, and have failed to pay Plaintiff and Class Members the overtime wages owed.

59. Pursuant to Labor Code §§ 510, 558 and 1194, Plaintiff and Class Members are entitled to recover their unpaid wages and overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU

THEREOF

(Against All Defendants)

60. Plaintiff incorporates and re-alleges each and every allegation contained above as though fully set forth herein.

61. Pursuant to Labor Code §512, no employer shall employ an employee for a work period of more than five (5) hours without providing a meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties. An employer may not employ an

1 employee for a work period of more than ten (10) hours per day without providing the employee
2 with a second meal period of not less than thirty (30) minutes, except that if the total hours worked
3 is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the
4 employer and the employee only if the first meal period was not waived.

5 62. Pursuant to the IWC wage orders applicable to Plaintiff and Class Members’
6 employment by Defendants, in order for an “on duty” meal period to be permissible, the nature of
7 the work of the employee must prevent an employee from being relieved of all duties relating to his
8 or her work for the employer and the employees must consent in writing to the “on duty” meal
9 period. On information and belief, Plaintiff and Class Members did not consent in writing to an “on
10 duty” meal period. Further, the nature of the work of Plaintiff and Class Members was not such that
11 they were prevented from being relieved of all duties. Despite the requirements of the IWC wage
12 orders applicable to Plaintiff’s and Class Members’ employment by Defendants and Labor Code
13 §512 and §226.7, Defendants did not provide Plaintiff and Class Members with all their statutorily
14 authorized meal periods.

15 63. For the four (4) years preceding the filing of this lawsuit, Defendants failed to provide
16 Plaintiff and Class Members, timely and uninterrupted meal periods of not less than thirty (30)
17 minutes pursuant to the IWC wage orders applicable to Plaintiff and Class Members’ employment
18 by Defendants. As a proximate result of the aforementioned violations, Plaintiff and the other Class
19 Members have been damaged in an amount according to proof at time of trial.

20 64. By their failure to provide a compliant meal period for each shift worked over five
21 (5) hours and their failure to provide a compliant second meal period for any shift worked over ten
22 (10) hours per day by Plaintiff and the Class Members, and by failing to provide compensation in
23 lieu of such non-provided meal periods, as alleged above, Defendants violated the provisions of
24 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders.

25 65. Plaintiff and the Class Members she seeks to represent did not voluntarily or willfully
26 waive meal periods and were regularly required to work shifts without being provided all of their
27 legally required meal periods. Defendants created a working environment in which Plaintiff and
28 Class Members were not provided all of their meal periods due to shift scheduling and/or work

1 related demands placed upon them by Defendants as well as a lack of sufficient staffing to meet the
2 needs of Defendants' business as discussed above. On information and belief, Defendants'
3 implemented a policy and practice which resulted in systematic and class-wide violations of the
4 Labor Code. On information and belief, Defendants' violations have been widespread throughout
5 the liability period and will be evidenced by Defendants' time records for the Class Members.

6 66. As a result of the unlawful acts of Defendants described herein, Plaintiff and the
7 Class Members they seek to represent have been deprived of premium wages in amounts to be
8 determined at trial. Pursuant to Labor Code §226.7, Plaintiff and Class Members are entitled to
9 recover one (1) hour of premium pay for each day in which a meal period was not provided, along
10 with interest and penalties thereon, attorneys' fees, and costs.

11 **THIRD CAUSE OF ACTION**

12 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU**

13 **THEREOF**

14 **(Against All Defendants)**

15 67. Plaintiff incorporates and re-alleges each and every allegation contained above as
16 though fully set forth herein.

17 68. Pursuant to the IWC wage orders applicable to Plaintiff and Class Members'
18 employment by Defendants, "Every employer shall authorize and permit all employees to take rest
19 periods, which insofar as practicable shall be in the middle of each work period.... [The] authorized
20 rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest
21 time per four (4) hours worked or major fraction thereof.... Authorized rest period time shall be
22 counted as hours worked, for which there shall be no deduction from wages." Labor Code §226.7(b)
23 prohibits an employer from requiring any employee to work during any rest period mandated by an
24 applicable order of the IWC.

25 69. Defendants were required to authorize and permit employees such as Plaintiff and
26 Class Members to take rest periods, based upon the total hours worked at a rate of ten (10) minutes
27 net rest per four (4) hours worked, or major fraction thereof, with no deduction from wages. Despite
28 said requirements of the IWC wage orders applicable to Plaintiff's and Class Members' employment

1 by Defendants, Defendants failed and refused to authorize and permit Plaintiff and Class Members,
2 to take ten (10) minute rest periods for every four (4) hours worked, or major fraction thereof.

3 70. On information and belief Defendants created a working environment in which
4 Plaintiff and Class Members were not provided all of their rest periods due to shift scheduling and/or
5 work related demands placed upon them by Defendants to meet the needs of Defendants' business
6 as discussed above. On information and belief, Defendants implemented a policy and practice which
7 resulted in systematic and class-wide violations of the Labor Code. On information and belief,
8 Defendants' violations have been widespread throughout the liability period.

9 71. As a proximate result of the aforementioned violations, Plaintiff and Class Members
10 have been damaged in an amount according to proof at time of trial. Pursuant to Labor Code §226.7,
11 Plaintiff and Class Members are entitled to recover one (1) hour of premium pay for each day in
12 which Defendants failed to provide a rest period to Plaintiff and the Class, plus interest and penalties
13 thereon, attorneys' fees, and costs.

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO PAY TIMELY PAY WAGES**

16 **(Against All Defendants)**

17 72. Plaintiff incorporates and re-alleges each and every allegation contained above as
18 though fully set forth herein.

19 73. Plaintiff incorporates and re-alleges each and every allegation contained above as
20 though fully set forth herein. Labor Code §§201-202 requires an employer who discharges an
21 employee to pay compensation due and owing to said employee immediately upon discharge and
22 that if an employee voluntarily leaves his or her employment, his or her wages shall become due
23 and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
24 two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled
25 to his or her wages on their last day of work.

26 74. Labor Code §203 provides that if an employer willfully fails to pay compensation
27 promptly upon discharge, as required by Labor Code §§201-202, the employer is liable for waiting
28 time penalties in the form of continued compensation for up to thirty (30) work days.

75. During the relevant time period, Defendants willfully failed and refused, and continue to willfully fail and refuse, to pay Plaintiff and Class Members their wages, earned and unpaid, either at the time of discharge, or within seventy-two (72) hours of their voluntarily leaving Defendants' employ. These wages include regular and overtime.

76. As a result, Defendants are liable to Plaintiff and members of the Non-Exempt Production Employee class for waiting time penalties pursuant to Labor Code §203, in an amount according to proof at the time of trial.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Against All Defendants)

77. Plaintiff incorporates and re-alleges each and every allegation contained above as though fully set forth herein.

78. Section 226(a) of the California Labor Code requires Defendants to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Plaintiff and the Class including applicable hourly rates and reimbursement expenses among other things. Defendants have knowingly and intentionally failed to comply with Labor Code section 226 and 204 on wage statements that have been provided to Plaintiff and the Class.

79. IWC Wage Orders require Defendants to maintain time records showing, among others, when the employee begins and ends each work period, meal periods, split shift intervals and total daily hours worked in an itemized wage statement, and must show all deductions and reimbursements from payment of wages, and accurately report total hours worked by Plaintiff and the Class. On information and belief, Defendants have failed to record all or some of the items delineated in Industrial Wage Orders and Labor Code §226.

80. Defendants have failed to provide Plaintiff and Class Members rates of pay and the hours for which they worked for any given pay period.

81. Defendants have failed to accurately record all time worked.

82. Defendants have also failed to accurately record the meal and rest period premiums owed and all wages owed per pay period.

83. Plaintiff and the Class have been injured as they were unable to determine whether they had been paid correctly for all hours worked per pay period among other things.

84. Pursuant to Labor Code section 226, Plaintiff and the Class are entitled up to a maximum of \$4,000 each for record keeping violations.

85. Pursuant to Labor Code section 266.3, any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226

86. As a result of the unlawful acts of Defendants, Plaintiff and the Class Members have been deprived of un-reimbursed expense amounts to be determined at trial, and are entitled to the recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code §§ 226.

SIXTH CAUSE OF ACTION

PROVIDING WAGE PAYMENTS IN NON-LABOR CODE COMPLIANT

INSTRUMENTS

(Against All Defendants)

87. Plaintiff incorporates and re-alleges each and every allegation contained above as though fully set forth herein.

88. California Labor Code § 212 requires California employers to comply with a series of provisions when issuing wages to employees. In short, the provisions of section 212(a)(1) forbid an employer from issuing payment of wages in an instrument that is not (1) negotiable, (2) payable in cash, (3) on demand, (4) without discount, (5) at an established place of business in the State, (6) the name and address of which appears on the instrument, and (7) which place of business has been prepared, by the deposit of funds, the establishment of credit, or by some arrangement or understanding, to pay the money called for by the instrument. *See People v. Turner*, 154 Cal. App. 2d F. Supp. 883, 885-86 (1957).

89. Labor Code § 213 prohibits an employer from depositing wages due or to become

1 due or an advance on wages to be earned in an account in any bank, savings and loan association,
2 or credit union of the employee's choice with a place of business located in this state, provided that
3 the employee has voluntarily authorized that deposit. If an employer discharges an employee or the
4 employee quits, the employer may pay the wages earned and unpaid at the time the employee is
5 discharged or quits by making a deposit authorized pursuant to this subdivision, provided that the
6 employer complies with the provisions of this article relating to the payment of wages upon
7 termination or quitting of employment

8 90. Defendants violated Labor Code sections 212 and 213 by issuing payment to Plaintiff
9 and Class Members for their wages in a non-Labor Code-compliant instrument as Defendants would
10 issue pay cards to Plaintiff and Class Members to be included as a form of compensation for wages.

11 91. As a result of the unlawful acts of Defendant, Plaintiff and Class Members have been
12 deprived of wages to be determined at trial, and are entitled to the recovery of such amounts, plus
13 interest and penalties thereon, attorneys' fees, and costs.

14 **SEVENTH CAUSE OF ACTION**

15 **FAILURE TO PROVIDE COOL DOWN RECOVERY PERIODS OR**
16 **COMPENSATION IN LIEU THEREOF**

17 **(Against All Defendants)**

18 92. Plaintiff incorporates and re-alleges each and every allegation contained above as
19 though fully set forth herein.

20 93. Pursuant to the IWC wage orders applicable to Plaintiff and Class Members'
21 employment by Defendants, "The temperature maintained in each work area shall provide
22 reasonable comfort consistent with industry-wide standards for the nature of the process and the
23 work performed."

24 94. Defendants were required to authorize and permit employees such as Plaintiff and
25 Class Members to take Cool Down Recovery Periods, based upon the intense heat inside the
26 warehouse.

27 95. Labor Code §226.7(b) prohibits an employer from requiring any employee to work
28 during any recovery period mandated by an applicable statute, or applicable regulation, standard, or

1 order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board,
2 or the Division of Occupational Safety and Health.

3 96. On information and belief Defendants created a working environment in which
4 Plaintiff and Class Members were not provided their Cool Down Recovery Periods due to shift
5 scheduling and/or work related demands placed upon them by Defendants to meet the needs of
6 Defendants' business as discussed above. On information and belief, Defendants implemented a
7 policy and practice which resulted in systematic and class-wide violations of the Labor Code. On
8 information and belief, Defendants' violations have been widespread throughout the liability period.

9 97. As a proximate result of the aforementioned violations, Plaintiff and Class Members
10 have been damaged in an amount according to proof at time of trial. Pursuant to Labor Code §226.7,
11 Plaintiff and Class Members are entitled to recover one (1) hour of premium pay for each day in
12 which Defendants failed to provide a Cool Down Recovery Period to Plaintiff and the Class, plus
13 interest and penalties thereon, attorneys' fees, and costs.

14 **SEVENTH CAUSE OF ACTION**

15 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200, et.seq.**

16 **(Against All Defendants)**

17 98. Plaintiff incorporates and re-alleges each and every allegation contained above as
18 though fully set forth herein.

19 99. Defendants' conduct, as alleged in this complaint, has been, and continues to be,
20 unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants' competitors, and the
21 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
22 meaning of the California Code of Civil Procedure §1021.5.

23 100. Defendants' policies, activities, and actions as alleged herein, are violations of
24 California law and constitute unlawful business acts and practices in violation of California Business
25 and Professions Code §§17200, et seq.

26 101. A violation of California Business and Professions Code §§17200, et seq., may be
27 predicated on the violation of any state or federal law. Defendants' policy of failing pay Plaintiff
28 and Class members all wages due and owing including overtime wages, and to provide Plaintiff and

1 the Class with meal periods and rest breaks and cool down recovery periods or the one (1) hour of
2 premium pay when a meal or rest break or cool down recovery period was not provided or provided
3 outside of the required time frames, violates Labor Code § 226, § 512, § 1194, § 510, and §226.7
4 and applicable IWC Wage Orders and California Code of Regulations.

5 102. Plaintiff and Class Members have been personally aggrieved by Defendants'
6 unlawful and unfair business acts and practices alleged herein by the loss of money and/or property.

7 103. Pursuant to California Business and Professions Code §§17200, et seq., Plaintiff and
8 Class Members are entitled to restitution of the wages withheld and retained by Defendants during
9 a period that commences four (4) years prior to the filing of this complaint; an award of attorneys'
10 fees, interest; and an award of costs.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

13 Class Certification

- 14 1. That this action be certified as a class action;
- 15 2. That Plaintiff be appointed as the representative of the Class;
- 16 3. That Plaintiff be appointed as the representative of the Subclass; and
- 17 4. That counsel for Plaintiff is appointed as counsel for the Class and Subclass.

18 On the First Cause of Action

- 19 1. For compensatory damages equal to the unpaid balance of minimum wage
20 compensation and overtime owed to Plaintiff and Class members as well as interest and costs;
- 21 2. For reasonable attorneys' fees and costs pursuant to Labor Code §§ 510, and 1194;
- 22 3. For liquidated damages in an amount equal to the wages unlawfully unpaid and
23 interest thereon pursuant to Labor Code §§ 1194.2, 558;
- 24 4. For such other and further relief as the Court deems proper.

25 On the Second Cause of Action

- 26 1. For one (1) hour of premium pay for each day in which a required meal period was
27 not provided or not provided in a timely manner; and
- 28 2. For such other and further relief as the Court deems proper.

1 On the Third Cause of Action

2 1. For one (1) hour of premium pay for each day in which a required rest period was
3 not authorized or permitted; and

4 2. For such other and further relief as the Court deems proper.

5 On the Fourth Cause of Action

6 1. For statutory penalties pursuant to Labor Code §203;

7 2. For interest for wages untimely paid; and

8 3. For such other and further relief as the Court deems proper.

9 On the Fifth Cause of Action

10 1. For statutory penalties pursuant to Labor Code §226;

11 2. For interest for wages untimely paid;

12 3. For penalties pursuant to Labor Code §266.3; and

13 4. For such other and further relief as the Court deems proper.

14 On the Sixth Cause of Action

15 1. For statutory penalties;

16 2. For interest for wages untimely paid; and

17 3. For such other and further relief as the Court deems proper

18 On the Seventh Cause of Action

19 1. For one (1) hour of premium pay for each day in which a required rest period was
20 not authorized or permitted; and

21 2. For such other and further relief as the Court deems proper.

22 On the Eighth Cause of Action

23 1. That Defendants, jointly and/or severally, pay restitution of sums to Plaintiff and
24 Class Members for their past failure to, pay wages, premium wages for meal and/or rest periods,
25 that were not provided as described herein to Plaintiff and Class Members, and to reimburse
26 expenses, over the last four (4) years in an amount according to proof;

27 2. For pre-judgment interest on any unpaid wages due from the day that such amounts
28 were due;

3. For reasonable attorneys' fees that Plaintiff and Class Members are entitled to recover;

4. For costs of suit incurred herein; and

5. For such other and further relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff and members of the Class and Subclass request a jury trial in this matter.

Dated: October 8, 2021

JAMES HAWKINS APLC

By:

JAMES R. HAWKINS, ESQ.
GREGORY MAURO, ESQ.
MICHAEL CALVO, ESQ.
JEANNE SARMIENTO, ESQ.
Attorneys for Plaintiff SERGIO P. DANCEL
JR., individually and on behalf of all others
similarly situated

EXHIBIT C

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

November 12, 2021

Via LWDA Website

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Via Certified Mail

XPO LOGISTICS, INC.
Agent for Service of Process:
Registered Agent Solutions, Inc.
9 E. Loockerman Street, Suite 311
Dover, DE 19901
Receipt No. 7021 0950 0000 7376 5767

XPO LOGISTICS, INC.
Agent for Service of Process:
Registered Agent Solutions, Inc.
1220 S Street, Suite 150
Sacramento, CA 95811
Receipt No. 7021 0950 0000 7376 5774

XPO LOGISTICS FREIGHT, INC.
Agent for Service of Process:
Registered Agent Solutions, Inc.
1220 S Street, Suite 150
Sacramento, CA 95811
Receipt No. 7021 0950 0000 7376 5781

XPO LOGISTICS SUPPLY CHAIN
CORPORATE SERVICES, INC.
Agent for Service of Process:
Registered Agent Solutions, Inc.
1220 S Street, Suite 150
Sacramento, CA 95811
Receipt No. 7021 0950 0000 7376 5798

XPO LOGISTICS WORLDWIDE, INC.
Agent for Service of Process:
Registered Agent Solutions, Inc.
1220 S Street, Suite 150
Sacramento, CA 95811
Receipt No. 7021 0950 0000 7376 5804

GXO LOGISTICS, INC.
Agent for Service of Process:
Registered Agent Solutions, Inc.
1220 S Street, Suite 150
Sacramento, CA 95811
Receipt No. 7021 0950 0000 7376 5736

GXO LOGISTICS, INC.
Agent for Service of Process:
Registered Agent Solutions, Inc.
9 E. Loockerman Street, Suite 311
Dover, DE 19901
Receipt No. 7021 0950 0000 7376 5743

GXO LOGISTICS CORPORATE
SERVICES, INC.
Agent for Service of Process:
Registered Agent Solutions, Inc.
1220 S Street, Suite 150
Sacramento, CA 95811
Receipt No. 7021 0950 0000 7376 5750

GXO LOGISTICS SUPPLY CHAIN,
INC.
Agent for Service of Process:
Registered Agent Solutions, Inc.
1220 S Street, Suite 150
Sacramento, CA 95811
Receipt No. 7021 0950 0000 7376 5699

EMPLOYBRIDGE HOLDING
COMPANY dba SELECT STAFFING
Agent for Service of Process:
Corporate Creations Network Inc.
4640 Admiralty Way, 5th Floor
Marina del Rey, CA 90292
Receipt No. 7021 0950 0000 7376 5705

EMPLOYBRIDGE MIDWEST 3, INC.
Agent for Service of Process:
Corporate Creations Network Inc.
4640 Admiralty Way, 5th Floor
Marina del Rey, CA 90292
Receipt No. 7021 0950 0000 7376 5729

EMPLOYBRIDGE HOLDING
COMPANY dba PROLOGISTIX
Agent for Service of Process:
Corporate Creations Network Inc.
4640 Admiralty Way, 5th Floor
Marina del Rey, CA 90292
Receipt No. 7021 0950 0000 7376 5712

Re: AMENDED NOTICE PURSUANT TO LABOR CODE §§ 2698, *et seq.*

To Whom It May Concern:

PLEASE TAKE NOTICE that plaintiff SERGIO P. DANCEL JR., individually and on behalf of all similarly situated representative aggrieved employees, gives NOTICE to commence and/or amend a civil action pursuant to California Labor Code Sections 2698, *et seq.* Plaintiff hereby gives written notice by certified mail to the Labor and Workforce Development Agency, and XPO LOGISTICS, INC., a Delaware Corporation; XPO LOGISTICS FREIGHT, INC., a Delaware Corporation; XPO LOGISTICS SUPPLY CHAIN CORPORATE SERVICES, INC., a New Jersey Corporation; XPO LOGISTICS WORLDWIDE, INC., a Delaware Corporation; GXO LOGISTICS, INC., a Delaware Corporation; GXO LOGISTICS CORPORATE SERVICES, INC., a New Jersey Corporation; GXO LOGISTICS SUPPLY CHAIN, INC., a North Carolina Corporation; EMPLOYBRIDGE HOLDING COMPANY, a Delaware Corporation doing business as SELECT STAFFING and PROLOGISTIX; EMPLOYBRIDGE MIDWEST 3, INC., a Georgia Corporation through its Agent for Service of Process.

Plaintiff hereby attaches a copy of the Proposed First Amended PAGA Representative Action Complaint to be filed in the San Bernardino County Superior Court, as though fully set forth herewith setting out the specific provisions of the Labor Code Plaintiff alleges have been violated, including the facts and theories. All labor provisions in the Proposed PAGA Representative Action Complaint alleged to have been violated pertain to all entities and individuals named in the Complaints, even if not expressly specified.

Please advise within sixty (60) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and if you have any questions, please do not hesitate to contact me.

Very Truly Yours,

A handwritten signature in dark ink, appearing to read 'G. Mauro', with a stylized flourish extending to the right.

Gregory Mauro

Enclosure: Proposed First Amended PAGA Representative Action Complaint

JAMES HAWKINS APLC

James R. Hawkins, Esq. (#192925)

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Attorneys for Plaintiff SERGIO P. DANCEL JR.,

On behalf of the general public as private attorney general

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

SERGIO P. DANCEL JR., on behalf of the
general public as private attorney general,

Plaintiff,

v.

XPO LOGISTICS, INC., a Delaware
Corporation; XPO LOGISTICS FREIGHT,
INC., a Delaware Corporation; XPO
LOGISTICS SUPPLY CHAIN CORPORATE
SERVICES, INC., a New Jersey Corporation;
XPO LOGISTICS WORLDWIDE, INC., a
Delaware Corporation; GXO LOGISTICS,
INC., a Delaware Corporation; GXO
LOGISTICS CORPORATE SERVICES, INC.,
a New Jersey Corporation; GXO LOGISTICS
SUPPLY CHAIN, INC., a North Carolina
Corporation; EMPLOYBRIDGE HOLDING
COMPANY, a Delaware Corporation doing
business as SELECT STAFFING and
PROLOGISTIX; EMPLOYBRIDGE
MIDWEST 3, INC., a Georgia Corporation; and
DOES 1-50, inclusive,

Defendants.

Case No.

ASSIGNED FOR ALL PURPOSES TO:

JUDGE:

DEPT:

**[PROPOSED] FIRST AMENDED PAGA
REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code §§ 2698 *et seq.*)**

COMES NOW Plaintiff SERGIO P. DANCEL JR. (“Plaintiff”) on behalf the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general, and asserts claims against Defendants XPO LOGISTICS, INC., a Delaware Corporation; XPO LOGISTICS FREIGHT, INC., a Delaware Corporation; XPO LOGISTICS SUPPLY CHAIN CORPORATE SERVICES, INC., a New Jersey Corporation; XPO LOGISTICS WORLDWIDE, INC., a Delaware Corporation; GXO LOGISTICS, INC., a Delaware Corporation; GXO LOGISTICS CORPORATE SERVICES, INC., a New Jersey Corporation; GXO LOGISTICS SUPPLY CHAIN, INC., a North Carolina Corporation; EMPLOYBRIDGE HOLDING COMPANY, a Delaware Corporation doing business as SELECT STAFFING and PROLOGISTIX; EMPLOYBRIDGE MIDWEST 3, INC., a Georgia Corporation; and DOES 1-50, inclusive (collectively “Defendants”) as follows:

I. INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. In this case, Defendants violated various provisions of the California Labor Code. As set forth below, Defendants implemented policies and practices which led to Defendant’s: (a) failure to pay wages including overtime; (b) failure to provide meal periods for every work period exceeding more than five (5) and ten (10) hours per day and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a meal period; (c) failure to provide rest breaks for every four (4) hours or major fraction thereof worked and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a rest period; (d) failing to pay all wages earned and owed upon separation from Defendant’s employ; (e) failing to provide accurate itemized wage statements; (f) for issuing payment in non-Labor Code compliant instrument; and (g) failure to provide cool down recovery periods. As a result

1 Plaintiff seeks penalties under Labor Code 2698, *et seq.* on behalf of the general public as private
2 attorney general and all other aggrieved employees.

3 **II. JURISDICTION AND VENUE**

4 3. The California Superior Court has jurisdiction over this action pursuant to
5 California Constitution Article VI, Section 10, which grants the Superior Court “original
6 jurisdiction in all cases except those given by statute to other trial courts.” The statutes under which
7 this action is brought do not give jurisdiction to any other court.

8 4. This Court has jurisdiction over Defendants because, upon information and belief,
9 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
10 avails itself of the California market so as to render the exercise of jurisdiction over it by the
11 California Courts consistent with traditional notions of fair play and substantial justice.

12 5. Venue as to each Defendant is proper in this judicial district pursuant to Code of
13 Civil Procedure section 395. Defendants are doing business throughout California, including but
14 not limited to San Bernardino County, and each Defendant is within the jurisdiction of this Court
15 for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff
16 and all other aggrieved employees within the State of California. Defendants employ numerous
17 aggrieved employees in in the State of California.

18 6. On information and belief, Defendants have conducted business within the State of
19 California during the purported liability period and continue to conduct business throughout the
20 State of California. The unlawful acts alleged herein have had a direct effect on Plaintiff, and the
21 similarly situated non-exempt aggrieved employees within California.

22 7. The California Superior Court also has jurisdiction in this matter because on
23 information and belief there are no federal questions at issue, as the issues herein are based solely
24 on California statutes and law, including the California Labor Code, the IWC Wage Orders, the
25 California Code of Civil Procedure, the California Civil Code, and the California Business and
26 Professions Code.

27 8. On information and belief, during the statutory liability period and continuing to
28

the present ("liability period"), Defendant consistently maintained and enforced against Defendant's Non-Exempt Aggrieved Employees, among others, the following unlawful practices and policies, in violation of California state wage and hour laws: (a) failure to pay wages including overtime; (b) failure to provide meal periods for every work period exceeding more than five (5) and ten (10) hours per day and failure to pay an additional hour's of pay or accurately pay an additional hour's of pay in lieu of providing a meal period; (c) failure to provide rest breaks for every four hours or major fraction thereof worked and failure to pay an additional hour's of pay or accurately pay an additional hour's of pay in lieu of providing a rest period; (d) failing to pay all wages earned and owed upon separation from Defendant's employ; (e) failing to provide accurate itemized wage statements; (f) for issuing payment in non-Labor Code compliant instrument; and (g) failing to provide cool down recovery periods.

9. Plaintiff on behalf of the general public as private attorney general and all other aggrieved employees bring this action pursuant to Labor Code 2698, et seq. for violations enumerated under 2699.5 as follows: sections 201-203, 212, 213, 510, 512, 558, 226, 226.3, 226.7, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, and seeking penalties, interest, attorneys' fees and costs.

III. PARTIES

A. Plaintiff

10. Plaintiff SERGIO P. DANCEL JR. was at all times relevant to this action a resident of California. Plaintiff was employed by Defendants in approximately September 2020 as a Non-Exempt Employee with the title of Loader and worked during the liability period for Defendants until Plaintiff's separation from Defendants' employ in approximately October 2020. Plaintiff's duties included but were not limited to the unloading and loading of boxes and pallets for retail stores.

11. As Defendants' employee, Plaintiff, and all other aggrieved employees were regularly required to and subsequently suffered:

a) perform work subject to the control of the employer without being compensated all

1 wages including overtime, all in violation of California labor laws, regulations, and the
2 Industrial Welfare Commission Wage Order (“IWC”);

- 3 b) work without being permitted or authorized a minimum ten-minute rest period for every
4 four hours or major fraction thereof worked and not compensated one (1) hour of pay at
5 his regular rate of compensation for each workday that a rest period was not provided, all
6 in violation of California labor laws, regulations, and the Industrial Welfare Commission
7 Wage Orders (“IWC”);
- 8 c) work in excess of six and ten hours per day without being provided meal periods and not
9 compensated one (1) hour of pay at the regular rate of compensation for each workday
10 that a meal period was not provided, all in violation of California labor laws, regulations,
11 and the Industrial Welfare Commission Wage Orders (“IWC”);
- 12 d) receiving payment in the form on non-Labor Code compliant instruments;
- 13 e) not provided accurate itemized wage statements; and
- 14 f) not provided cool down recovery periods.

15 12. On information and belief, Defendants willfully failed to pay all earned wages in
16 the form regular wages and overtime wages, and meal and rest period premium wages, to its Non-
17 Exempt Employees and members of the Representative Group; nor have Defendants returned to
18 Plaintiff or members of the Representative Group, upon or after separation from employment with
19 Defendants, all wages earned and owing. Plaintiff seeks penalties under Labor Code 2698, *et seq.*
20 on behalf of the general public as private attorney general and all other aggrieved employees..

21
22 **B. Defendants**

23 13. Defendants XPO LOGISTICS, INC., a Delaware Corporation; XPO LOGISTICS
24 FREIGHT, INC., a Delaware Corporation; XPO LOGISTICS SUPPLY CHAIN CORPORATE
25 SERVICES, INC., a New Jersey Corporation; and XPO LOGISTICS WORLDWIDE, INC., a
26 Delaware Corporation operate as a logistics company. Plaintiff estimates there are in excess of 100
27 Non-Exempt Employees who work or have worked for Defendants over the last year.

28 14. Defendants GXO LOGISTICS, INC., a Delaware Corporation; GXO LOGISTICS

1 CORPORATE SERVICES, INC., a New Jersey Corporation; GXO LOGISTICS SUPPLY
2 CHAIN, INC., a North Carolina Corporation operate as a logistics company. Plaintiff estimates
3 there are in excess of 100 Non-Exempt Employees who work or have worked for Defendants over
4 the last year.

5 15. Defendants EMPLOYBRIDGE HOLDING COMPANY, a Delaware Corporation
6 doing business as SELECT STAFFING and PROLOGISTIX; EMPLOYBRIDGE MIDWEST 3,
7 INC., a Georgia Corporation, operate as a staffing company. Plaintiff estimates there are in excess
8 of 100 Non-Exempt Employees who work or have worked for Defendants over the last year.

9 16. Other than identified herein, Plaintiff is unaware of the true names, capacities,
10 relationships and extent of participation in the conduct alleged herein, of the defendants sued as
11 DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are
12 legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by
13 such fictitious names. Plaintiff will amend this complaint when their true names and capacities are
14 ascertained.

15 17. Plaintiff is informed and believes and thereon alleges that each Defendant, directly
16 or indirectly, or through agents or other persons, employed Plaintiff and other members of the
17 Representative Group, and exercised control over their wages, hours, and working conditions.
18 Plaintiff is informed and believes and thereon alleges that each defendant acted in all respects
19 pertinent to this action as the agent of the other defendants, carried out a joint scheme, business
20 plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable
21 to the other defendants.
22

23 **IV. GENERAL ALLEGATIONS**

24 18. At all times set forth herein, Defendants employed Plaintiff and other persons in
25 the capacity of non-exempt positions, however titled, throughout the state of California.

26 19. Plaintiff is informed and believes Aggrieved Employees have at all times pertinent
27 hereto been Non-Exempt within the meaning of the California Labor Code and the implementing
28 rules and regulations of the IWC California Wage Orders.

1 20. Defendants continue to employ Non-Exempt Employees, however titled, in
2 California and implement a uniform set of policies and practices to all non-exempt employees, as
3 they were all engaged in the generic job duties related to Defendants' logistics company and
4 staffing agency.

5 21. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were
6 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of
7 the requirements of California's wage and employment laws.

8 22. On information and belief, during the relevant time frame, Plaintiff and Aggrieved
9 Employees frequently worked well over eight (8) hours in a day and forty (40) hours in a work
10 week.

11 23. During the relevant time frame, Defendants compensated Plaintiff and Aggrieved
12 Employees based upon an hourly rate.

13 24. On information and belief, during the relevant time frame, Plaintiff and Aggrieved
14 Employees typically worked five (5) days a week.

15 25. Plaintiff is informed and believes that the Aggrieved Employees were required to
16 keep similar schedules.

17 26. In addition, the Aggrieved Employees frequently worked in excess of eight (8)
18 hours a day and/or over forty (40) hours in a workweek, but were not properly paid for such time
19 at the employee's correct rate of pay per hour for overtime.

20 27. Plaintiff is informed and believes that Plaintiff and Aggrieved Employees were not
21 compensated for all time worked in part because Plaintiff and Aggrieved Employees were required
22 to work off the clock, including times when they were required to wait to engage in a health
23 screening that included having their temperature checked and having to answer health screening
24 questions, which took at least 15 minutes each time they were required to engage in such a health
25 screening. In addition, Plaintiff and Aggrieved Employees were required to engage in a security
26 check when they were off the clock. This resulted over time of an underpayment of overtime wages
27 to Plaintiff and Aggrieved Employees.
28

1 28. Plaintiff is further informed and believes that because Plaintiff and Aggrieved
2 Employees were required to work off the clock, including the times they had to wait to engage in
3 a health screening that included having have their temperature checked and answering health
4 screening questions, which took at least 15 minutes each time they were required to engage in such
5 a health screening, and because they had to engage in a security check when they were off the
6 clock, this resulted in an underpayment of minimum wages.

7 29. Plaintiff and the Aggrieved Employees were regularly required to work shifts in
8 excess of five hours without being provided a lawful meal period and over ten hours in a day
9 without being provided a second lawful meal period as required by law.

10 30. During the relevant time, as a consequence of Defendants' staffing and scheduling
11 practices, work demands, and Defendants' policies and practices, Defendants frequently failed to
12 provide Plaintiff and the Aggrieved Employees timely, legally complaint uninterrupted 30-minute
13 meal periods on shifts over five hours as required by law.

14 31. Similarly, as a consequence of Defendants' staffing and scheduling practices, work
15 demands, and Defendants' policies and practices, Defendants frequently failed to provide Plaintiff
16 and the Aggrieved Employees legally compliant second meal periods on shifts over ten hours as
17 required by law.

18 32. On information and belief, Plaintiff and Aggrieved Employees did not waive their
19 rights to meal periods under the law.

20 33. Plaintiff and the Aggrieved Employees were not provided with valid lawful on-duty
21 meal periods.

22 34. Despite the above-mentioned meal period violations, Defendants failed to
23 compensate Plaintiff, and on information and belief, failed to compensate Aggrieved Employees,
24 one additional hour of pay at their regular rate as required by California law when meal periods
25 were not timely or lawfully provided in a compliant manner.

26 35. Plaintiff is informed and believes, and thereon alleges, that Defendants know,
27 should know, knew, and/or should have known that Plaintiff and the other Aggrieved Employees
28

1 were entitled to receive premium wages based on their regular rate of pay under Labor Code §226.7
2 but were not receiving such compensation.

3 36. In addition, during the relevant time frame, Plaintiff and the Non-Exempt
4 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
5 period for every four hours worked or major fraction thereof, which is a violation of the Labor
6 Code and IWC wage order.

7 37. Defendants maintained and enforced scheduling practices, policies, and imposed
8 work demands that frequently required Plaintiff and Aggrieved Employees to forego their lawful,
9 paid rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
10 requisite rest periods were not timely authorized and permitted as a result of Defendants' failure
11 to provide relief for Plaintiff and Aggrieved Employees to take their lawfully required breaks.

12 38. Despite the above-mentioned rest period violations, Defendants did not compensate
13 Plaintiff, and on information and belief, did not pay Aggrieved Employees one additional hour of
14 pay at their regular rate as required by California law, including Labor Code section 226.7 and the
15 applicable IWC wage order, for each day on which lawful rest periods were not authorized and
16 permitted.

17 39. On information and belief, Plaintiff and Aggrieved Employees worked in a facility
18 that did not have air conditioning or proper air ventilation, causing the temperature inside the
19 warehouse to get extremely hot, often exceeding temperatures that can cause heat related illness.
20 Further, on information and belief, Defendants did not have a policy, practice or procedure in place
21 to allow employees to take cool down recovery periods when suffering from heat exhaustion or
22 other heat related illness as a result of the extreme temperatures inside the warehouse. On
23 information and belief, Plaintiff and the Aggrieved Employees were systematically not authorized
24 and permitted to take cool down recovery periods when needed, as required.

25 40. Despite the above-mentioned Cool Down Recovery Period violations, Defendants
26 did not compensate Plaintiff, and on information and belief, did not pay Aggrieved Employees one
27 additional hour of pay at their regular rate as required by California law, including Labor Code
28

1 section 226.7 and the applicable IWC wage order, for each day on which lawful Cool Down
2 Recovery Periods were not authorized and permitted.

3 41. On information and belief, Defendants violated Labor Code sections 212 and 213
4 by issuing payment to Plaintiff and Aggrieved Employees for their wages in a non-Labor Code-
5 compliant instrument. For instance, Defendants would issue pay cards to Plaintiff and Aggrieved
6 Employees to be included as a form of compensation of wages and a fee was charged for using the
7 pay card.

8 42. Defendants also failed to provide accurate, lawful itemized wage statements to
9 Plaintiff and the Aggrieved Employees in part because of the above specified violations. In
10 addition, upon information and belief, Defendants omitted an accurate itemization of total hours
11 worked, including premiums due and owing for meal and rest period violations, gross pay and net
12 pay figures from Plaintiff and the Aggrieved Employees ' wage statements.

13 43. Plaintiff is informed and believes, and thereon alleges, that at all times herein
14 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
15 thereof for resignations without prior notice as the case may be) they had a duty to accurately
16 compensate Plaintiff and Aggrieved Employees for all wages owed including minimum wages,
17 meal and rest period premiums, and that Defendants had the financial ability to pay such
18 compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part
19 because of the above-specified violations.
20

21 44. Upon information and belief, Defendants knew and or should have known that it is
22 improper to implement policies and commit unlawful acts such as:

23 (a) requiring employees to perform work subject to the control of the employer without
24 being compensated all wages including overtime;

25 (b) requiring employees to work four (4) hours or a major fraction thereof without
26 being provided a minimum ten (10) minute rest period and without compensating the employees
27 with one (1) hour of pay at the employees' regular rate of compensation for each workday that a
28 rest period was not provided;

1 (c) requiring employees to work in excess of five (5) hours or ten (10) hours per day
2 without being provided an uninterrupted thirty minute meal period and/or a second meal period,
3 and without compensating employees with one (1) hour of pay at the regular rate of compensation
4 for each workday that such a meal period was not provided;

5 (d) failing to provide accurate itemized wage statements;

6 (e) failing to timely pay Plaintiff and Aggrieved Employees;

7 (f) issuing wage payments in non-Labor Code compliant instruments; and

8 (g) failing to provide cool down recovery periods.

9 45. In addition to the violations above, and on information and belief, Defendants knew
10 they had a duty to compensate Plaintiff and aggrieved employees for the allegations asserted
11 herein, and that Defendants had the financial ability to pay such compensation, but willfully,
12 knowingly, recklessly, and/or intentionally failed to do so.

13 **V. REPRESENTATIVE CLAIMS**

14 **THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 et seq.**

15 46. Plaintiff incorporates by reference and re-alleges each and every allegation
16 contained above, as though fully set forth herein.

17 47. On or about October 7, 2021, Plaintiff complied with notice requirements pursuant
18 to Labor Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit**
19 **A**, indicating that the LWDA and Defendants were put on notice of the claims alleged here and
20 that the notice requirement has been satisfied. On or about November 12, 2021, Plaintiff further
21 complied with notice requirements pursuant to Labor Code section 2699.3. A copy of the letter
22 sent to the LWDA is attached hereto as **Exhibit B**, indicating that the LWDA and Defendants were
23 put on notice of the claims alleged here and that the notice requirement has been satisfied. Sixty
24 five days have passed and the LWDA has not indicated intent to investigate the claims. Therefore,
25 Plaintiff may proceed with this action in a representative capacity. The substance and violations
26 set forth in this Complaint of which the LWDA was provided timely notice, Plaintiff has also sent
27 a copy of this PAGA Representative Action Complaint to the LWDA.
28

1 48. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a).
2 Plaintiff brings this cause of action on behalf of all current and former California Non-Exempt
3 Employees of Defendants.

4 49. Pursuant to Labor Code section 2699(a) Plaintiff seek to recover civil penalties for
5 which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint,
6 including without limitation Labor Code section 201-203, 212, 213, 510, 512, 558, 226, 226.3,
7 226.7, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, and 2698 *et seq.*, applicable IWC Wage
8 Orders and California Code of Regulations, Title 8, section 11000 *et seq.*

9 50. At all times relevant, Plaintiff and all other aggrieved employees regularly
10 performed non-exempt work in excess of 50% of the time, and thus, were subject to the meal and
11 rest break requirements of the applicable IWC wage order and the Labor Code.

12 51. Defendants violated Labor Code section 200, 558, 1194, 1197, by failing to
13 accurately pay at least minimum wages due as a result of Defendants' requiring Plaintiff and
14 Aggrieved Employees to work off the clock, including times when they were required to wait off
15 the clock to perform a health screening and waiting for a security check when they were off the
16 clock.

17 52. Defendants violated Labor Code section 510, and 1194 by failing to accurately pay
18 overtime wages owed as discussed above due to Defendants' failure to include the time Plaintiff
19 and Aggrieved Employees were required to perform work-related tasks such as a health screening
20 and submitting to a security check while off-the-clock. Therefore, Defendants violated section 510,
21 and 1194 by not compensating its Non-Exempt Employees for work performed in excess of eight
22 hours (8) in a day or forty hours in a work week (40). Section 510 of the Labor Code codifies the
23 right to overtime compensation at the rate of one and one-half times the regular rate of pay for all
24 hours worked in excess of eight (8) hours in a day or forty (40) hours in a work week and to
25 overtime compensation twice the regular rate of pay for hours worked in excess of twelve (12)
26 hours in a day or in excess of eight (8) hours in a day on the seventh day of work in a particular
27 work week.
28

1 53. Defendants violated Labor Code sections 212 and 213 by issuing payment to
2 Plaintiff and Aggrieved Employees for their wages in a non-Labor Code-compliant instrument as
3 Defendants would issue pay cards to Plaintiff and Aggrieved Employees to be included as a form
4 of compensation as described above.

5 54. California Labor Code § 212 requires California employers to comply with a series
6 of provisions when issuing wages to employees. In short, the provisions of section 212(a)(1) forbid
7 an employer from issuing payment of wages in an instrument that is not (1) negotiable, (2) payable
8 in cash, (3) on demand, (4) without discount, (5) at an established place of business in the State,
9 (6) the name and address of which appears on the instrument, and (7) which place of business has
10 been prepared, by the deposit of funds, the establishment of credit, or by some arrangement or
11 understanding, to pay the money called for by the instrument. *See People v. Turner*, 154 Cal. App.
12 2d F. Supp. 883, 885-86 (1957).

13 55. Labor Code § 213 prohibits an employer from depositing wages due or to become
14 due or an advance on wages to be earned in an account in any bank, savings and loan association,
15 or credit union of the employee's choice with a place of business located in this state, provided
16 that the employee has voluntarily authorized that deposit. If an employer discharges an employee
17 or the employee quits, the employer may pay the wages earned and unpaid at the time the employee
18 is discharged or quits by making a deposit authorized pursuant to this subdivision, provided that
19 the employer complies with the provisions of this article relating to the payment of wages upon
20 termination or quitting of employment.

21 56. Defendants failed to provide Plaintiff and all other aggrieved employees
22 uninterrupted duty free meal periods of not less than thirty (30) minutes. Defendants implemented
23 and enforced policies of on duty meal period practices which required employees to work during
24 their meal periods, to forego their meal periods, and/or to return to work from meal periods prior
25 to thirty (30) uninterrupted minutes. As a proximate result of the aforementioned violations,
26 Plaintiff and all other aggrieved employees have been damaged in an amount according to proof
27 at time of trial.
28

1 57. Plaintiff, and on information and belief, all aggrieved employees, were
2 systematically not permitted or authorized to take ten minute rest periods for every four hours
3 worked or major fraction thereof, which is a violation of the Labor Code and IWC wage order.
4 Plaintiff and on information and belief, aggrieved employees, were not compensated with one hour
5 of wages for every day in which a rest period was missed or untimely as a result of Defendants'
6 policies, practices, or work demands. By failing to authorize and permit a ten-minute rest period
7 for every four hours or major fraction thereof worked per day by its Non-Exempt Employees, and
8 by failing to provide compensation for such non-provided or shortened rest periods, as alleged
9 above, Defendants willfully violated the provisions of Labor Code sections 226.7, 512 and the
10 applicable IWC Wage Order.

11 58. Plaintiff, and on information and belief, all aggrieved employees, were
12 systematically not permitted or authorized to take cool down recovery periods, which is a violation
13 of the Labor Code and IWC wage order. Plaintiff and on information and belief, aggrieved
14 employees, were not compensated with one hour of wages for every day in which a cool down
15 recovery period was missed as a result of Defendants' policies, practices, or work demands. By
16 failing to authorize and permit a cool down recovery period when needed by its Non-Exempt
17 Employees, and by failing to provide compensation for such non-provided cool down recovery
18 periods, as alleged above, Defendants willfully violated the provisions of Labor Code section
19 226.7 and the applicable regulation, standard, or order of the Industrial Welfare Commission, the
20 Occupational Safety and Health Standards Board, or the Division of Occupational Safety and
21 Health.

22 59. Defendants also willfully violated Labor Code sections 201-203 by failing to
23 provide all owed wages at separation from employment. Labor Code sections 201 and 202 require
24 Defendants to pay their employees all wages due either at time of firing, or within seventy-two
25 (72) hours of voluntary separation, if not sooner. Section 203 of the Labor Code provides that if
26 an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to
27 pay the subject employee's wages until the back wages are paid in full or an action is commenced.
28

1 The penalty cannot exceed 30 days of wages.

2 60. Plaintiff and all other aggrieved employees who were separated from employment
3 are entitled to compensation for all forms of wages earned, including but not limited to
4 compensation regular and overtime wages, and for non-provided meal and rest periods, but to date
5 have not received such compensation, therefore entitling them to penalties under PAGA for
6 violations of Labor Code sections 201-203.

7 61. On information and belief, Defendants willfully failed to pay all wages due and
8 owing upon separation from employment. These wages include regular and overtime wages, and
9 meal and rest period premiums.

10 62. On information and belief, Defendants failed to provide accurate itemized wage
11 statements which failed to include the rate of pay and total hours worked per pay period, failed to
12 account for all hours worked, including overtime, and lastly the accurate accounting of, the lawful
13 meal and rest period premiums due and owing to Plaintiff and the aggrieved employees, pursuant
14 to Labor Code section 226(a).

15 63. Defendants have failed to provide Plaintiff and Aggrieved Employees rates of pay
16 and the hours for which they worked for any given pay period.

17 64. Defendants have failed to accurately record all time worked.

18 65. Defendants have also failed to accurately record the meal and rest period premiums
19 owed and all wages owed per pay period.

20 66. Plaintiff and Aggrieved Employees have been injured as they were unable to
21 determine whether they had been paid correctly for all hours worked per pay period among other
22 things
23

24 67. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a)
25 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
26 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
27 for each violation in a subsequent citation, for which the employer fails to provide the employee a
28 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

1 68. Additionally, Defendants have no accurate records relating to aggrieved
2 employees' work periods, meal periods, total daily hours worked, total hours worked per payroll
3 period and applicable pay rates, in violation of Wage Order. Similarly, Defendants failed to
4 maintain accurate records relating to hours worked daily in violation of Labor Code sections
5 1174(d), 1174.5.

6 69. As a result of Defendants' unlawful conduct, Plaintiff and Aggrieved employees
7 are entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours
8 worked.

9 70. Plaintiff and the Representative Aggrieved Employees are entitled to recover
10 Penalties and attorneys' fees and costs under Labor Code section 2698, et seq.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

- 13 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;
- 14 2. For reasonable attorneys' fees and costs; and
- 15 3. For such other and further relief as the Court deems proper.
- 16
- 17

18 Dated: November 12, 2021

JAMES HAWKINS APLC

19

20 By: _____

JAMES R. HAWKINS, ESQ.
GREGORY MAURO, ESQ.
MICHAEL CALVO, ESQ.
JEANNE SARMIENTO, ESQ.
Attorneys for Plaintiff SERGIO P.
DANCEL JR. and on behalf of the general
public as private attorney general

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22

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EXHIBIT D

**Quotation Request:**

Greg Mauro
James Hawkins ALPC
greg@jameshawkinsapl.com
949.387.7200

Case Name:

Dancel v. XPO

Date:

Wednesday, January 3, 2024

RFP Number:

72000024

Prepared By:

Sean Hartranft
Apex Class Action LLC
Sean@apexclassaction.com
949.878.3676

Settlement Specifications

Number of Aggrieved Employees	383
Certified Language Translation:	No
Static Settlement Website	No
Percentage of Undeliverable Mail	20%

Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
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Data Analytics and Standardization

Import and Standardize Data*	Per Hour	\$125.00	2	\$250.00
Data Analyst	Per Hour	\$150.00	2	\$300.00
*Data provided must be in a workable format. Apex can standardize provided data at an additional cost of \$150/hr.				
Sub Total:				\$550.00

Project Management

Project Management	Per Hour	\$150.00	3	\$450.00
Project Coordinator	Per Hour	\$90.00	2	\$180.00
Data Analyst and Reporting	Per Hour	\$140.00	2	\$280.00
Sub Total:				\$910.00

Toll-Free Contact Center, Website, Reporting & Pre-Distribution

Form Set Up	Per Hour	\$120.00	1	\$120.00
Bilingual Toll-Free Contact Center	Static Rate	\$75.00	1	\$75.00
NCOA Address Update (USPS)	Static Rate	\$86.32	1	\$86.32
Settlement Status Reports	Static Rate	\$750.00	1	Waived
Sub Total:				\$281.32



Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
Distribution & Settlement Fund Management				
Settlement Calculations (Preliminary and Final)	Per Hour	\$120.00	3	\$360.00
Account Management and Reconciliation	Per Hour	\$140.00	3	\$420.00
Print & Mail Distribution Settlement Check (W-2/1099)	Per Piece	\$2.00	383	\$766.00
USPS First Class Postage	Per Piece	\$0.66	383	\$252.78
Remail Distribution to Updated Address (Skip Trace)	Per Piece	\$3.00	38	\$114.90
Individual Income Tax Preparation & Reporting	Per Hour	\$100.00	10	\$1,000.00
QSF Income Tax Reporting (per calendar year)	Per Year	\$1,250.00	1	\$1,250.00
			Sub Total:	\$4,163.68
Post Distribution Reconciliation				
Bank Account Reconciliation	Per Hour	\$135.00	3	\$405.00
Project Management Reconciliation	Per Hour	\$100.00	3	\$300.00
Declarations	Per Hour	\$120.00	3	\$360.00
			Sub Total:	\$1,065.00
TOTAL ESTIMATED ADMINISTRATION COST:				\$6,970.00

Thank you for your business!

Terms & Conditions

The following Terms and Conditions govern the provision of all services to be provided by Apex Class Action and its affiliates ("Apex") to the Client. These terms and conditions are binding and shall apply to all services provided by Apex in relation to any related services or products.

1. **Services:** Apex commits to providing the Client with the administrative services detailed in the attached Proposal (the "Services").

2. **Payment Terms:** As compensation for the legal services to be provided, the Client agrees to pay Apex all fees detailed in the Proposal. The fees quoted in the Proposal (and any subsequent proposals for additional services) are estimates based on the information provided to Apex by the Client. Apex makes no representation that the estimated fees in the Proposal or any subsequent proposals for additional services shall equal the actual fees charged by Apex to the Client, which fees (including individual line items) may be greater or less than estimated. If additional services are requested on an hourly basis and are not specifically detailed in the Proposal, Apex will prepare estimates for such services subject to approval by the Client. In the performance of such additional services, Apex will charge standard hourly fees which shall apply.

3. **Incurred Expenses:** In relation to the provision of services outlined in this agreement, the Client agrees to reimburse Apex for all reasonable out-of-pocket expenses incurred. Such expenses may include, but are not limited to, costs associated with postage, media production or publication, banking fees, brokerage fees, messenger and delivery service expenses, travel expenses, filing fees, office supplies, meals, staff overtime expenses, and other related costs and expenses. If not otherwise specified in writing, fees for print notice and certain expenses, such as media publication and postage, must be paid immediately upon invoicing and, in certain cases, at least ten (10) days prior to the date on which such expenses will be incurred.

4. **Invoicing:** Apex shall present invoices for its fees and expenses on a monthly basis, except as provided in Section 3. The Client agrees to pay each invoice within 30 days of receipt. In the event of non-payment within 90 days of the billing date, an additional service charge of 1.5% per month may apply. Apex reserves the right to increase its prices, charges, and rates annually, subject to reasonable adjustments. If any price increases exceed 10%, Apex shall give thirty (30) days' notice to the Client. In the event of any unpaid invoices beyond 120 days of the due date, Apex reserves the right to withhold services and reports until payment is received, subject to notice to the Client. It is important to note that Apex's failure to provide services and reports in such instances shall not constitute a default under this agreement.

5. **Case Duration:** The duration of these Terms and Conditions, except for the data storage obligations stated in Section 13, shall be in effect until 30 days following the completion of the Services as described in the Proposal. The parties may extend these Terms and Conditions in writing for a mutually agreed-upon period beyond this initial 30-day period.

6. **Termination of Services:** Either party may terminate the Services by providing thirty (30) days written notice to the other party. Alternatively, termination may occur immediately upon written notice for Cause, as defined below. Cause means (i) Apex's gross negligence or willful misconduct that causes serious and material harm to the Client; (ii) the Client's failure to pay Apex invoices for more than one hundred twenty (120) days from the date of the invoice; or (iii) the accrual of invoices or unpaid services where Apex reasonably believes it will not be paid. Termination of the Services shall not relieve the Client of its obligation to pay Apex for services rendered prior to the termination.

7. **Independent Contractor:** As an independent contractor, Apex will provide services under the terms of this agreement. It is agreed that neither Apex nor any of its employees will be considered an employee of the Client. Consequently, Apex and its employees will not be eligible for any benefits provided by the Client to its employees. The Client will not make any tax deductions from the payments due to Apex for state or federal tax purposes. Apex will be solely responsible for paying all taxes and other payments due on payments received from the Client under this agreement.

8. **Apex warrants that the Services outlined in the Proposal will be performed in accordance with the standards generally adhered to by professionals providing similar services. It is acknowledged that the Services may entail the likelihood of some human and machine errors, omissions, delays, and losses that may result in damage. However, Apex shall not be held liable for such errors, omissions, delays, or losses unless they are caused by its gross negligence or willful misconduct. In the event of any breach of this warranty by Apex, the Client's sole remedy will be limited to Apex's rerunning, at its expense, any inaccurate output provided that such inaccuracies occurred solely as a result of Apex's gross negligence or willful misconduct under this agreement.**

9. **Limitation of Liability:** The Client acknowledges that Apex shall not be held liable for any consequential, special, or incidental damages incurred by the Client in relation to the performance of Services, whether the claim is based on breach of warranty, contract, tort (including negligence), strict liability, or any other grounds. Under no circumstances shall Apex's liability to the Client, for any Losses (including court costs and reasonable attorney's fees), arising out of or in connection with these Terms and Conditions, exceed the total amount charged or chargeable to the Client for the specific service(s) that caused the Losses.

10. **Indemnification:** The Client agrees to indemnify and hold harmless Apex from any losses, suits, actions, judgments, fines, costs, liabilities, or claims arising from any action or proceeding relating to the Services provided by Apex, regardless of whether or not it results in liability (collectively referred to as "Indemnified Claims"). However, this indemnification provision shall not apply to the extent that such Indemnified Claims are caused by Apex's willful misconduct, gross negligence, or breach of these Terms and Conditions. This provision shall survive termination of the Services.

11. **Confidentiality:** Apex will uphold strict confidentiality between Apex and the Client and applies to all non-public records, documents, systems, procedures, processes, software, and other information received by either party in connection with the performance of services under these terms. Both Apex and the Client agree to keep confidential all such non-public information, including any material marked or identified as confidential or proprietary. Any such confidential information shall not be disclosed, provided, disseminated, or otherwise made available to any third party, except as required to fulfill the parties' obligations under these terms. The parties acknowledge that in the event of any request to disclose any confidential information in connection with a legal or administrative proceeding, or otherwise to comply with a legal requirement, prompt notice of such request must be given to the other party to enable that party to seek an appropriate protective order or other remedy or to waive compliance with the relevant provisions of these terms. If the Client seeks a protective order or another remedy, Apex, at the Client's expense, will cooperate with and assist the Client in such efforts. If the Client fails to obtain a protective order or waives compliance with the relevant provisions of these terms, Apex will disclose only that portion of the confidential information that it determines it is required to disclose. This confidentiality provision shall survive termination of the services provided. Both parties acknowledge and agree that any breach of this these terms may cause irreparable harm to the non-breaching party and that injunctive relief may be necessary to prevent any actual or threatened breach. The terms set forth between the parties supersede all prior negotiations, understandings, and agreements between the party's concerning confidentiality. These terms may only be amended in writing and signed by both parties.

12. **Ownership of the programs, system data, and materials provided by Apex to the Client during the course of providing services herein shall solely belong to Apex. It is acknowledged that fees and expenses paid by the Client do not confer any rights in such property. It is also understood that the said property is made available to the Client solely for the purpose of using it during and in connection with the services provided by Apex.**

13. **Upon the completion of the administration and unless retention instructions are ordered by the court, Apex will notify the client that it will destroy and/or return all confidential information and property within 90 days upon the client's written request. Alternatively, the material may be stored for one year at a monthly fee of \$1.50 per storage box for paper documents and \$0.01 per image for electronic copies over a period of three years, which compensates Apex for its electronic and hard-copy storage costs. Apex will not be liable for any damages, liability, or expenses incurred in connection with any delay in delivery of, or damage to disks, magnetic tapes, or any input data provided by the client or its representatives unless Apex has agreed in writing to assume such responsibility.**

14. **COMPLETE AGREEMENT.** These Terms and Conditions, along with the attached Proposal, represent the complete agreement and understanding between the parties and override any prior agreements (whether written or oral) between Apex and the Client regarding the subject matter. Any modification to these Terms and Conditions may only be made in writing and must be signed by both Apex and the Client. The headings in this document are included for convenience only and do not alter or restrict any provisions in these Terms and Conditions. They may not be used in the interpretation of these Terms and Conditions.

15. **This provision outlines the requirements for providing notice or other communication under this agreement. All such communications must be in writing and can be delivered either by personal delivery or through U.S. Mail with prepaid postage or overnight courier. Once delivered personally or sent through the mail, the notice will be considered given after five (5) days from the deposit date in the U.S. Mail. Alternatively, if sent through an overnight courier, the notice will be considered given one business day after delivery to the such courier. It's important to note that the notice must be provided to a responsible officer or principal of the Client or Apex, depending on the case.**

16. **Force Majeure:** In the event of any failure or delay in performance due to circumstances beyond Apex's control, including but not limited to strikes, lockouts, fires, floods, acts of God or public enemy, riots, civil disorders, insurrections, war or war conditions, or interference by civil or military authorities, Apex shall not be held liable for any resulting loss or damage. The time for performance under this agreement shall be extended for a period equal to the duration of the disabling cause and a reasonable time thereafter. This provision shall constitute a force majeure clause and shall be construed accordingly.

17. **The applicable state and federal laws shall govern the interpretation and enforcement of these Terms and Conditions. No choice of law or conflict of laws provisions shall affect this governing law provision.**

18. **Severability:** This applies to all clauses and covenants contained within these Terms and Conditions. In the event that any clause or covenant is deemed invalid, illegal, or unenforceable, the remaining provisions shall remain valid and enforceable to the fullest extent permissible by law. The validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired by the invalidity, illegality, or unenforceability of any provision deemed so.

19. **Nonwaiver:** This applies to these Terms and Conditions. This means that any failure by one party to enforce a provision of these terms on one or more occasions shall not be construed as a waiver of that provision. In other words, any failure to enforce a provision does not give up the right to enforce it in the future. All provisions of these Terms and Conditions remain in full force and effect, regardless of any prior failure to enforce them.

EXHIBIT E

Matter Billing Detail

JAMES HAWKINS APLC

Date Range: 01/01/1900 to 01/17/2024
Client: XPOPROLIS - Sergio Dancel Jr.
Matter: XPOLOGIS-PGA001 - XPO Logistics / ProLogistix- PAGA-Sergio P. Dancel Jr. v. XPO Logistics

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
		Balance Forward:	\$0.00						
01/19/2022	FST	First Legal Network - Filing branch pdf next day, PAGA Complaint and initial docs IN#30188503	\$1,756.31		Unbilled				
03/18/2022	FST	First Legal Network - Process branch immediate, complaint, inital docs, order, Lit (2), Filing branch PDF next day, proof of service, IN#30192286	\$790.99		Unbilled				
12/06/2022	MED	Mediation Services- IN#10448 (9,000 via QuickBook 1,000 CK#10448)	\$10,000.00		Unbilled				
08/08/2023	FST	First Legal Network - Filing - Joint Report & Req to continue SC IN# 30248438	\$156.07		Unbilled				
08/10/2023	CRT	Court Documents - Order Re 8.14.23 Continuance	\$2.00		Unbilled				
		Total:	\$12,705.37	\$0.00					
		Balance:	\$12,705.37						

Matter Billing Detail

JAMES HAWKINS APLC

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
Total Fees Billed- - - - -			\$0.00						
Total Fees Unbilled : - - - - -			\$0.00						
Total Fees Received : - - - - -			\$0.00						
Total Soft Cost Billed : - - - - -			\$0.00						
Total Soft Cost Unbilled : - - - - -			\$0.00						
Total Soft Cost Received : - - - - -			\$0.00						
Total Hard Cost Billed : - - - - -			\$0.00						
Total Hard Cost Unbilled : - - - - -			\$12,705.37						
Total Hard Cost Received : - - - - -			\$0.00						
Total Taxes Billed : - - - - -			\$0.00						
Total Taxes Unbilled : - - - - -			\$0.00						
Total Taxes Received : - - - - -			\$0.00						
Total Late Charges Billed : - - - - -			\$0.00						
Total Late Charges Unbilled: - - - - -			\$0.00						
Total Late Charges Received : - - - - -			\$0.00						
Trust Balance: - - - - -			\$0.00						

Matter Billing Detail

Report Date: 12/15/2023
Report Time: 4:14PM
Page: 1 of 2
User ID: R. Hawkins

JAMES HAWKINS APLC

Date Range: 01/01/1900 to 12/15/2023

Client: XPOPROLIS - Sergio Dancel Jr.

Matter: XPOPROLOGISTIX - XPO Logistics / ProLogistix- Sergio P. Dancel Jr. v. XPO Logistics

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
		Balance Forward:	\$0.00						
10/08/2021	POS	Postage - LWDA Letter	\$68.48		Unbilled				
10/08/2021	FIL	Filing Fee - LWDA Ntc	\$75.00		Unbilled				
10/08/2021	FST	First Legal Network - Filing branch PDF next day, complaint and initial docs, IN#30179004	\$96.41		Unbilled				
12/09/2021	FST	First Legal Network - Additional billing, complaint and initial docs IN#30182125	\$1,578.50		Unbilled				
12/20/2021	FST	First Legal Network - Process branch immediate, Complaint, initial docs, certificat (3) , Filing branch PDF same day, Proof of service IN#30182125	\$376.10		Unbilled				
12/21/2021	FIL	Filing Fee - 11.12.2021 LWDA Filing Fee	\$75.00		Unbilled				
12/21/2021	POS	Postage - 11.12.2021 Ntc of LWDA Filing to Agent(s) via Certified Mail	\$105.12		Unbilled				
01/19/2022	FST	First Legal Network - Filing branch pdf same day, NAR, IN#30185317	\$81.21		Unbilled				
02/07/2022	FST	First Legal Network - Filing branch pdf next day, DOE amendment, Filing branch pdf same day, notice of cont. IN#30188503	\$162.42		Unbilled				
03/03/2022	FST	First Legal Network - Filing branch pdf same day, NAR, Filing branch pdf next day, first amended complaint, Filing branch PDF same day, amended POS, IN#30192286	\$310.83		Unbilled				
03/08/2022	FST	First Legal Network - Filing branch PDF same day, request for dismissal; proposed order, IN#30192286	\$118.21		Unbilled				
11/10/2023	POS	Postage-10.11.23-Joint Stip of Settlement and Releaser of PAGA	\$10.45		Unbilled				
		Total:	<u>\$3,057.73</u>	<u>\$0.00</u>					
		Balance:	<u>\$3,057.73</u>						

Matter Billing Detail

JAMES HAWKINS APLC

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
Total Fees Billed- - - - -			\$0.00						
Total Fees Unbilled : - - - - -			\$0.00						
Total Fees Received : - - - - -			\$0.00						
Total Soft Cost Billed : - - - - -			\$0.00						
Total Soft Cost Unbilled : - - - - -			\$0.00						
Total Soft Cost Received : - - - - -			\$0.00						
Total Hard Cost Billed : - - - - -			\$0.00						
Total Hard Cost Unbilled : - - - - -			\$3,057.73						
Total Hard Cost Received : - - - - -			\$0.00						
Total Taxes Billed : - - - - -			\$0.00						
Total Taxes Unbilled : - - - - -			\$0.00						
Total Taxes Received : - - - - -			\$0.00						
Total Late Charges Billed : - - - - -			\$0.00						
Total Late Charges Unbilled: - - - - -			\$0.00						
Total Late Charges Received : - - - - -			\$0.00						
Trust Balance: - - - - -			\$0.00						