

EXHIBIT 1

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (“Agreement”) is entered into by plaintiffs, RONNEL CARTER, the estate of JUAN ESTRADA, the estate of JERRY GREEN, BURL MALMGREN, BILL McDONALD, and JOEL MORALES individually and on behalf of the Settlement Class, as defined below, and defendant, XPO LAST MILE, INC. This Agreement is subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, and is made for the sole purpose of attempting to consummate settlement of this Action on a classwide basis subject to the following terms and conditions. As detailed below, in the event the Court does not enter an order granting final approval of the Settlement for any reason, this Agreement shall be void and shall be of no force or effect.

I. DEFINITIONS

1. “Action” shall mean the civil action filed on March 11, 2016, by Ron Carter, Juan Estrada, Jerry Green, Burl Malmgren, Bill McDonald, and Joel Morales against Defendant XPO LM in the United States District Court for the Northern District of California under Case No. 3:16-cv-01231-WHO.

2. “Carrier” shall mean any person who (a) entered into a Delivery Service Agreement either in his or her individual capacity or through a business entity with XPO LM or 3PD, and (b) according to XPO LM’s records was a driver who performed delivery services pursuant to that Delivery Service Agreement, and (c) performed a portion of those delivery services within the state of California during the Class Period.

3. “Class Counsel” shall mean Leonard Carder, LLP (Jennifer Keating and Amy Endo) 1330 Broadway, Suite 1450, Oakland, CA 94612.

4. “Class Counsel Fees and Expenses” shall mean Class Counsel’s attorney fees and expenses as set forth in Section III(6).

5. “Class Notice” shall mean the Notice of Proposed Class Action Settlement, as set forth in the form of Exhibit A attached hereto, or as otherwise approved by the Court, which is to be mailed to Settlement Class Members.

6. “Class Representatives” shall mean Plaintiffs Ron Carter, the estate of Juan Estrada, the estate of Jerry Green, Burl Malmgren, Bill McDonald, and Joel Morales.

7. “Class Period” shall mean the period of time from March 12, 2012, through the earlier of the one hundredth day after mediation date of November 13, 2018 (February 21, 2019) or the date the Court grants preliminary approval of the settlement and authorizes distribution of the Class Notice.

8. “Collective Action Opt-Ins” shall mean each and every Settlement Class Member who timely and validly provided their consent to become a party plaintiff pursuant to the Court’s Order Granting Conditional Certification (Dkt. No. 61) and Order Approving Form of Notice (Dkt. No. 66), unless their federal claims were subsequently dismissed with prejudice for failure to respond to discovery.

9. “Complaint” and “Operative Complaint” shall mean the First Amended Complaint filed in the United States District Court for the Northern District of California on June 9, 2016, in this Action.

10. “Contract Day” shall mean each day during the Class Period that the Carrier is identified as having provided delivery services for XPO LM in the State of California pursuant to the Carrier’s Delivery Service Agreement.

11. “Court” shall mean the United States District Court for the Northern District of California.

12. “Cy Pres Amount” shall mean the aggregate amount of the checks distributed to Settlement Class Members that are not cashed within the time established in Section VI(10).

13. “Defendant” shall mean XPO Last Mile, Inc.

14. “Defendant Releasees” shall mean Defendant, Defense Counsel, and Defendant’s present and former parent companies, subsidiaries, divisions, related or affiliated companies, successors, predecessors, related companies, and joint ventures, and each of their present and former owners, shareholders, officers, directors, employees, consultants, agents, attorneys, insurers, accountants, auditors, advisors, representatives, pension and welfare benefit plans, plan fiduciaries, administrators, trustees, general and limited partners, predecessors, successors and assigns, any individual or entity which could be jointly liable on behalf of the forgoing, and all other persons acting under the supervision, direction, control or on behalf of any of the foregoing.

15. “Defense Counsel” shall mean Jackson Lewis, P.C. (Fraser A. McAlpine and Adam L. Lounsbury, *pro hac vice*) 500 California Street, 9th Floor, San Francisco, CA 94111.

16. “Delivery Service Agreement” shall mean the agreement (a) entered into between XPO LM or 3PD, and a Carrier, either in his or her individual capacity or through a business entity, and (b) typically entitled Delivery Service Agreement in which the contractual terms regarding the Carrier’s provision of delivery services were memorialized.

17. “Effective Date” shall be the date when all of the following events have occurred: (a) this Agreement has been executed by all Parties and by Class Counsel and Defense Counsel; (b) the Court preliminary approves this Agreement; (c) Class Notice has been given as provided in this Agreement; (d) the Court has held a final approval hearing and entered a final order and judgment certifying the Settlement Class and approving this Settlement; and (e) the later of the following events: the expiration of the period for filing any appeal, writ, or other appellate proceeding opposing the Settlement has elapsed without any appeal, writ or other appellate proceeding having been filed; or the dismissal of any appeal, writ, or other appellate proceeding opposing the Settlement with no right to pursue further remedies or relief; or any appeal, writ, or the issuance of such other final appellate order upholding the Court’s final order with no right to pursue further remedies or relief.

18. “Final Approval Date” shall mean the date upon which the Court enters an order finally approving the fairness, reasonableness and adequacy of the Settlement.

19. “Individual Settlement Amount” shall mean the amount which is ultimately distributed to each Settlement Class Member pursuant to the distribution formula established by Section VI.

20. “LWDA” shall mean the state of California Labor & Workforce Development Agency.

21. “LWDA Payment” shall mean the funds allocated from the PAGA Payment to be paid to the LWDA.

22. “Net Settlement Amount” shall mean the Settlement Fund less amounts allocated to resolve the overtime claims of the conditionally certified FLSA class, Class Counsel Fees and Expenses, the LWDA Payment, Settlement Administrator Fees, and Service Awards. The Net Settlement Amount shall be available for paying Individual Settlement Amounts to Settlement Class Members.

23. “Opt-Outs” shall mean any and all persons who timely and validly request exclusion from the Settlement Class in accordance with the terms of the Class Notice or as otherwise approved by the Court.

24. “Opt-Out Request” shall mean a timely and valid request for exclusion from the Settlement Class in accordance with the terms of the Class Notice or as otherwise approved by the Court.

25. “PAGA Payment” shall mean the funds allocated from the Settlement Class Fund for the settlement and full release of any and all claims for civil penalties that could have been made in this Action by the Settlement Class Members under the Private Attorneys’ General Act.

26. “Parties” shall mean the Class Representatives and Defendant.

27. “Preliminary Approval Date” shall mean the date upon which the Court enters an order preliminarily approving this Settlement.

28. “Released Claims” shall mean the Release of Claims by Settlement Class Members and Release by Collective Action Opt-Ins, and Release of Claims by Class Representatives as described in Section IV (1)-(3) herein.

29. “Service Award” shall mean any additional monetary payment provided to the Class Representatives for their efforts and risks taken on behalf of the Settlement Class in this Action as set forth below.

30. “Settlement” shall mean the settlement between the Parties, which is memorialized in this Settlement Agreement and Release of Claims, including any attached exhibits.

31. “Settlement Administrator” shall mean the administrator that the parties select to provide Class Notice to the Settlement Class and to otherwise administer the settlement according to this Agreement following receipt of bids from the following settlement administration firms: Settlement Services, Inc. (SSI), Simpluris, Inc. and KCC.

32. “Settlement Class” shall mean the Class Representatives and Carriers as defined herein. If any member of the Settlement Class provided delivery services in the name of a business entity, the business entity shall be considered one and the same as the individual person for all purposes of this Settlement. Consistent with the Order Defining the Respective Classes (Dkt. No. 101), the Settlement Class does not include individuals who provided delivery services for a Carrier, and did not enter into a Delivery Service Agreement. Membership in the Settlement Class is limited to the Contract Days during the Class Period.

33. “Settlement Class Member” shall mean any person who is a member of the Settlement Class or if such person is incompetent or deceased, the person’s legal guardian, executor, heir, or successor-in-interest.

34. “Settlement Fund” shall mean the gross amount of \$16,500,000.00 (sixteen million five hundred thousand and 00/100 dollars), which will be established as described below, and which represents full payment for the Released Claims, including the PAGA Payment, LWDA Payment, Class Counsel Fees and Expenses, Service Awards, aggregate Individual Settlement Amounts, and any *Cy Pres* Amount. The Defendant’s share of any applicable payroll taxes will be paid to the Settlement Administrator separate and apart from the Settlement Fund, and the Settlement Administrator will remit such taxes to the appropriate authorities on behalf of the Settlement Fund.

35. “Settlement Class Member Information” shall mean, for each Settlement Class Member: (1) his or her name; (2) last known home address; (3) dates of service; (4) telephone number, if available; and (5) email address, if available.

36. “XPO LM” shall mean Defendant XPO Last Mile, Inc.

II. BACKGROUND

1. **Procedural History.** Plaintiffs commenced this lawsuit on March 11, 2016, by filing a complaint in United States District Court for the Northern District of California. Plaintiffs allege that Defendant violated various California and federal wage and hour laws. Plaintiffs subsequently amended their complaint on June 9, 2016 (First Amended Complaint, Dkt. No. 33), which Defendant Answered on June 24, 2016.

On August 10, 2016, Plaintiffs moved to conditionally certify a class of Carriers and facilitate collective action notice (Dkt. No. 49). Defendant opposed the motion for conditional certification on August 31, 2016, and Plaintiffs submitted their reply in further support of the motion on September 14, 2016. The Court granted conditional certification on September 28, 2016, followed by an order filed on October 3, 2016 (Dkt. Nos. 60, 61). Notice of conditional certification was issued and approximately one hundred and fifteen (115) consents were received from the Opt-Ins (Dkt. No. 139).

Thereafter, this Action was related to two others (Dkt. No. 83), and the parties involved in all three cases stipulated to, and the Court issued, an Order Defining the Respective Classes in the three related cases (Dkt. No. 101). Thereafter the parties engaged in extensive discovery described below.

The Parties attended mediation of this Action on October 25, 2018, in San Francisco, and on November 13, 2018, in Toronto, before mediator Michael Dickstein, Esq., a nationally recognized class action wage and hour mediator. The case settled in principle during the second day of mediation.

2. **Class Representatives' Claims.** The Action alleges Defendant misclassified the Settlement Class Members as independent contractors and asserts claims for alleged violations of the Fair Labor Standards Act, California's Wage Laws, California's Labor Code, California's Unfair Business Practices Act and sought penalties pursuant to California's Private Attorneys General Act. Specifically, the Class Representatives assert the following claims:

- a. failure to pay FLSA overtime (29 U.S.C. §§201 *et seq.*);
- b. failure to pay FLSA minimum wage (29 U.S.C. §206);
- c. failure to pay California minimum wage (Labor Code §§1182.11, 1194; IWC Wage Order 9);
- d. failure to pay California overtime (Labor Code §§510, 1194; IWC Wage Order 9);
- e. reimbursement of employment expenses (Labor Code § 2802);
- f. unlawful deductions from wages (Labor Code §§221, 223, Wage Order 9);
- g. failure to provide meal periods (Labor Code §§226.7, 512, Wage Order 9);
- h. failure to authorize and permit rest periods (Labor Code §§226.7, Wage Order 9);
- i. failure to furnish accurate wage statements (Labor Code §§226, 226.3, Wage Order 9);
- j. waiting time penalties (Labor Code §§201-203);
- k. violations of California's Unfair Competition Law (Bus. & Professions Code §§ 17200, *et seq.*);
- l. civil penalties under the Private Attorneys General Act (Labor Code §§ 2698, *et seq.*).

The Class Representatives believe that they have meritorious claims based on these alleged violations of California and federal law, and that class certification is appropriate because the requisites for class certification can be satisfied. Defendant has denied and continues to deny any liability to the Class Representatives and the Settlement Class and has raised various defenses to the claims.

3. **Discovery, Investigation, and Research.** Class Counsel conducted an investigation into the facts during the prosecution of the Action. This discovery and investigation has included, among other things (a) multiple meetings and conferences with the Class

Representatives; (b) inspection and analysis of documents produced by the Class Representatives and Defendant; (c) deposing eleven of Defendant's managers, defending the depositions of all Class Representatives and six putative class members, and attending the depositions of four third parties, (d) analysis of the legal positions taken by Defendant; (e) investigation into the viability of class treatment of the claims asserted; (f) extensive analysis of class-wide damages, including the analysis of millions of lines of data related to the delivery activities of the Carriers throughout the class period in the state of California; (g) research of the applicable law with respect to the claims and potential defenses thereto; (h) serving and responding to discovery requests; (i) conducting wide-ranging electronic discovery which resulted in the production and review of hundreds of thousands of documents and reports; and (j) participating in two full-day mediation sessions.

The Class Representatives have vigorously prosecuted this case, and Defendant has vigorously contested it. The Parties have engaged in sufficient investigation and discovery to assess the relative merits of the claims and of Defendant's defenses available to them.

4. **Allegations of the Class Representatives and Benefit of Settlement.** The factual investigation, discovery, and litigation conducted in this matter, which included extensive preparation for mediation, as well as discussions between Class Counsel and Defense Counsel have been adequate to give the Class Representatives and Class Counsel a sound understanding of the merits of their positions and to evaluate the worth of the Claims of the Settlement Class. This Agreement was reached after arm's-length bargaining over the course of two days of intensive mediation. The discovery conducted in this Action and the information exchanged by the Parties through settlement discussions and mediation are sufficient to reliably assess the merits of the Parties' respective positions and to compromise the issues on a fair and equitable basis.

The Class Representatives and Class Counsel believe that the allegations and contentions asserted in the Action have merit. However, the Class Representatives and Class Counsel recognize and acknowledge the expense and delay of continued lengthy proceedings necessary to prosecute the Action against Defendant through trial and through appeals. Class Counsel has taken into account the uncertain outcome of the litigation, the risk of continued litigation in complex actions such as this, as well as the difficulties and delays inherent in such litigation, and the potential difficulty of demonstrating damages for the class. Class Counsel is mindful of the potential problems of proof under, and possible defenses to, the Claims alleged in the Action.

Class Counsel believes that this Agreement confers substantial benefits upon the Class Representatives and the Settlement Class Members and that an independent review of this Agreement by the Court in the approval process will confirm this conclusion. Based on their own independent investigation and evaluation, Class Counsel has determined that the Agreement is in the best interests of the Class Representatives and the Settlement Class Members.

5. **Defendant's Denial of Wrongdoing and Liability.** Defendant has denied and continues to deny each and all of the claims and contentions alleged by the Class Representatives in the Action. Defendant has expressly denied and continues to deny all charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts or omissions alleged in the Action. Defendant contends that it complied in good faith with California laws, properly classified the Class Representatives and Settlement Class Members under applicable state and federal law,

and has dealt legally and fairly with Class Representatives and Settlement Class Members. Defendant further denies that, for any purpose other than settling this Action, these claims are appropriate for class or representative treatment. Nonetheless, Defendant has concluded that further proceedings in the Action would be protracted and expensive and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Agreement in order to dispose of burdensome and protracted litigation and to permit the operation of Defendant's business without further expensive litigation and the distraction and diversion of its personnel with respect to matters at issue in the Action. Defendant has also taken into account the uncertainty and risks inherent in any litigation, especially in complex cases such as the Action. Defendant has, therefore, determined that it is desirable and beneficial to it that the Action be settled in the manner and upon the terms and conditions set forth in this Agreement.

6. **Intent of Agreement.** The Agreement set forth herein intends to achieve the following: (1) entry of an order preliminarily and finally approving the Agreement; (2) entry of judgment and dismissal with prejudice of the Action; and (3) discharge of Defendant Releasees from liability for any and all of the Released Claims.

III. **SETTLEMENT CONSIDERATION**

1. **Settlement Fund.** The Settlement Fund shall not exceed or be less than the aggregate sum of \$16,500,000.00 (sixteen million five hundred thousand and 00/100 dollars). The Settlement Fund shall constitute adequate consideration for the Agreement and will be made in full and final settlement of: (a) the PAGA Payment, including the LWDA Payment; (b) the Released Claims, (c) the Class Counsel Fees and Expenses; (d) the Service Awards; (e) amounts allocated to resolve the overtime claims of the conditionally certified FLSA class; (f) the aggregate of all Individual Settlement Amounts; (g) the Settlement Administrator Fees and Costs; (h) the *Cy Pres* Amount, if any; and (i) any other obligation of Defendant under this Agreement. Under no circumstances shall Defendant be required to pay more than the Settlement Fund for any reason whatsoever related to or under this Agreement. In addition to the Settlement Fund, Defendant shall separately pay to the Settlement Administrator, its share of all applicable payroll taxes on amounts treated as wages.

2. **Size of the Settlement Class.** The agreement is entered into expressly based on Defendant's representation that, as of November 13, 2018, the number of unique Carriers operating during the Class Period is approximately 847.

3. **Service Awards for the Class Representatives.** The Class Representatives may petition the Court to approve a Service Award to compensate each of them for their efforts on behalf of the Settlement Class in this Action, including assisting in the investigation, participating in discovery, and consulting with Class Counsel regarding all aspects of the litigation and settlement.

Each Service Award shall not exceed \$20,000.00 (twenty thousand and 00/100 dollars) for each of the named plaintiffs, which amounts to \$120,000.00 (one hundred and twenty thousand and 00/100 dollars) in the aggregate. Defendant shall not oppose any request by Class Representatives seeking Service Awards in such amounts. Any Service Award approved by the Court shall be paid to the Class Representatives from the Settlement Fund and shall be in addition

to any distribution to which they may otherwise be entitled as Settlement Class Members. Such Service Award shall not be considered wages, and the Settlement Administrator shall issue the Class Representatives a Form 1099 reflecting such payment. Each Class Representative shall be responsible for the payment of any and all taxes with respect to his Service Award and shall hold Defendant Releasees harmless from any and all liability with regard thereto.

4. **Payment to Settlement Class Members.** Each Settlement Class member shall be eligible to receive payment of the Individual Settlement Amount, which is a share of the Net Settlement Amount based on the distribution formula set forth in Section VI(7)(b), below.

5. Each Settlement Class Member, including the Class Representatives, shall be responsible for the payment of any and all taxes with respect to his or her Individual Settlement Amount, except for the Defendant's share of any applicable payroll taxes on amounts treated as wages. Defendant shall have no responsibility for deciding the validity of the Individual Settlement Amounts or any other payments made pursuant to this Settlement, shall have no involvement in or responsibility for the determination or payment of taxes and required withholdings, if any, and shall have no liability for any errors made with respect to the calculation of any Individual Settlement Amounts.

Settlement Class Members represent and understand that they shall be solely responsible for any and all tax obligations associated with their respective Individual Settlement Amounts. All Individual Settlement Amounts shall be deemed to be paid to Settlement Class Members solely in the year in which such payments are actually received by the Settlement Class Members. It is the intent of this Agreement that the Individual Settlement Amounts are the sole payments to be made to the Settlement Class Members, and that the Settlement Class Members are not entitled to any new or additional compensation or benefits as a result of having received the Individual Settlement Amount.

6. **Class Counsel Fees and Expenses.** As part of the motion for final approval of the Settlement, Class Counsel may submit an application for an award of Class Counsel Fees and Expenses not to exceed 30% of the Settlement Fund (or \$4,950,000.00 (four million nine hundred fifty and 00/100 dollars)). Defendant agrees not to object to any such fee, cost or expense application in this amount. As a condition of this Agreement, Class Counsel has agreed to pursue fees and expenses in a manner consistent with this Section. Any Class Counsel Fees and Expenses awarded by the Court shall be paid from the Settlement Class Fund and shall not constitute payment to any Settlement Class Members. If Class Counsel fees are reduced by the Court and Class Counsel Fees and Expenses is less than set forth above, the amount of the reduction ordered by the Court will be added to the Settlement Fund and shall not revert to XPO LM.

The Class Counsel Fees and Expenses approved by the Court shall encompass: (a) all work performed and costs and expenses incurred by, or at the direction of, any attorney purporting to represent the Settlement Class related to this Action; (b) all work to be performed and costs to be incurred in connection with approval of the Agreement; and (c) all work to be performed and costs and expenses, if any, incurred by Class Counsel in connection with administering the Settlement through the Effective Date.

7. **PAGA Payment.** A portion of the Settlement Fund shall be allocated for the settlement and release of any and all claims for civil penalties that could have been made under the California Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.* by the Settlement Class Members in this Action. The parties agree that \$24,000.00 (twenty four thousand and 00/100 dollars) shall be allocated to this portion of the release. Seventy five percent (75%) of the PAGA Payment will be paid to the LWDA and the remaining twenty five percent (25%) will be distributed to the Settlement Class members as part of the Net Settlement Amount described in Section VI(7)(a), below. This division, and distribution to the LWDA is made pursuant to California Labor Code § 2699. The parties acknowledge that that the Agreement must be approved by the Court and Defendant will provide a copy of the Agreement to the LWDA at the time the Agreement is submitted to the Court for Approval.

8. **Settlement Administrator Fees and Costs.** The parties agree to designate either SSI, Simpluris or KCC as the Settlement Administrator, based on an evaluation of the bids received from them. From the Settlement Class Fund, the fees and costs payable to the Settlement Administrator to effectuate the administration of the settlement are not to exceed \$50,000.00. If, and to the extent that, the fees charged by the Settlement Administrator are less than \$50,000.00, the balance will be added to the Net Settlement Fund and shall not revert to XPO LM.

IV. RELEASES AND WAIVERS

1. **Release of Claims by Settlement Class Members.** Upon the Effective Date, all Settlement Class Members shall fully, finally, irrevocably, unconditionally, and forever release, and discharge XPO LM and Defendant Releasees or any of them, from all claims, actions, causes of action, administrative claims, demands, debts, damages, penalties, costs, interest, attorneys' fees, obligations, judgments, expenses, or liabilities, in law or in equity, whether now known or unknown, contingent or absolute, which: (i) are owned or held by Settlement Class Members and/or by their affiliated business entities (if any), or any of them, as against Defendant Releasees, or any of them; and (ii) which were asserted in Plaintiffs' Operative Complaint or, whether or not asserted, which could have been asserted in this Action arising out of the factual allegations set forth in the Operative Complaint and that are related to, or arise from, the employment classification of the Settlement Class at law or in equity by XPO LM during the Class Period under the statutory or common law of California and/or any local law, statute, ordinance or regulation within the State of California.

The Released Claims include, without limitation, all rights and claims under California wage payment laws and wage and hour related claims, demands, rights, liabilities, and/or causes of action of any nature and description whatsoever for wages, benefits, taxes, compensation, damages, costs, penalties, liquidated damages, treble damages, punitive damages, interest, attorney fees, litigation costs, restitution, equitable relief, or other relief, and any claims of alleged unjust and/or improper (1) classification as an independent contractor and/or non-employee exempt from state minimum wage and/or overtime laws, or any other alleged misclassification under state laws or any alleged misclassification related to other employment-related claims; (2) deductions from compensation and/or wages; (3) failure to pay minimum wages; (4) failure to provide proper pay stubs or other records related to hours worked, wages earned, and/or payroll deductions; (5) failure to pay, indemnify, and/or reimburse for work-related expenses; (6) failure to pay all wages when due; (7) failure to calculate and/or pay overtime compensation; (8) failure to keep and maintain

any records required to be kept or maintained under state wage and hour laws; (9) retaliation; and/or (10) enrichment in any manner of Defendant by any conduct alleged or that could have been alleged in this Action. This release specifically includes, but is not limited to claims under California Labor Code, California Code of Civil Procedure, California Business & Professions Code, and California's Labor Code Private Attorneys General Act of 2004, and any applicable IWC Wage Order.

2. **Release by Collective Action Opt-Ins.** In addition to the releases given in Section IV(1) above, and upon the Effective Date, those Settlement Class Members who are Collective Action Opt-Ins, shall fully, finally, irrevocably, unconditionally, and forever release, and discharge XPO LM and Defendant Releasees or any of them, from any and all claims, demands, rights, liabilities, and/or causes of action of any nature and description whatsoever, whether known or unknown, at law or in equity, whether concealed or hidden, under the Fair Labor Standards Act ("FLSA"), which were asserted in Plaintiffs' Operative Complaint or, whether or not asserted, which could have been asserted in this Action arising out of the factual allegations set forth in the Operative Complaint and that are related to, or arise from, the employment classification of the Collective Action Opt-Ins by XPO LM during the Class Period.

On the back of each Individual Settlement Amount check that is issued to Collective Action Opt-Ins, the following language shall appear that will be an agreement that he/she has been paid in full for any and all FLSA and California State wage and hour claims he/she might have had against Defendant: "By endorsing this check, I am providing opt-in consent to release all FLSA claims covered by the Settlement in addition to the release of all claims covered by the Settlement."

For those Settlement Class Members who are not members of the conditionally certified FLSA class, whether or not they were issued a notice pursuant to this Court's Order Granting Conditional Certification (Dkt. No. 61) and Order Approving Form of Notice (Dkt. No. 66), the back of each Individual Settlement Amount check shall contain the following language that will be an agreement that he/she has been paid in full for any and all California State wage and hour claims he/she might have had against Defendant, and consent to the release provided in Section IV(1): "By endorsing this check, I provide consent to release all claims covered by the Settlement."

3. **Release of Claims by Class Representatives.** The Class Representatives, on behalf of themselves, and any business entities through which they performed services on behalf of Defendant, and their heirs, executors, administrators, and representatives, shall and does hereby forever release, discharge and agree to hold harmless the Defendant Releasees from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorney fees and costs), known or unknown, at law or in equity, which each may now have or may have after the signing of this Agreement, against Defendant arising out of or in any way connected with the work that each performed for XPO LM including, the Released Claims, claims that were asserted or could have been asserted in the Action, and any and all transactions, occurrences, or matters between the parties occurring prior to the Effective Date. Without limiting the generality of the foregoing, this release shall include, but not be limited to, any and all claims under the (a) Americans With Disabilities Act, as amended; (b) Title VII of the Civil Rights Act of 1964, as amended; (c) the Civil Rights Act of 1991; (d) 42 U.S.C. § 1981, as amended; (e) age discrimination claims under the Age Discrimination in Employment Act and the Older Workers

Benefit Protection Act; (f) the Fair Labor Standards Act, as amended; (g) the Equal Pay Act; (h) the Employee Retirement Income Security Act, as amended; (i) the Consolidated Omnibus Budget Reconciliation Act; (j) the Rehabilitation Act of 1973; (k) the Family and Medical Leave Act; (l) the Civil Rights Act of 1966; and (m) any and all other federal, state and local statutes, ordinances, regulations, rules and other laws, and any and all claims based on constitutional, statutory, common law or regulatory grounds as well as any other claims based on theories of wrongful or constructive discharge, breach of contract or implied contract, fraud, misrepresentation, promissory estoppel or intentional and/or negligent infliction of emotional distress, or damages under any other federal, state or local statutes, ordinances, regulations, rules or laws. This release is for any and all relief, no matter how denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses, compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain and suffering, and attorney fees and costs, and the Class Representatives hereby forever release, discharge and agree to hold harmless the Defendant Releasees from any and all claims for attorney fees and costs arising out of the matters released in this Settlement.

4. **Waiver of California Civil Code Section 1542.** The Class Representatives specifically acknowledge that each is aware of and familiar with the provisions of California Civil Code § 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Class Representatives, being aware of this section, hereby expressly waive and relinquish all rights and benefits they may have under this section as well as any other statutes or common law principles of a similar effect. The Class Representatives may hereafter discover facts in addition to or different from those which are now known or believed to be true, but stipulate and agree that, upon the Effective Date, they shall and hereby fully, finally and forever settle and release any and all claims against Defendant, known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed, upon any theory of law or equity and without regard to the subsequent discovery or existence of such different or additional facts.

V. PROCEDURE FOR COURT APPROVAL AND RELATED NOTICES

1. **Preliminary Approval.** Class Counsel will submit this Agreement to the Court along with an uncontested Motion for Preliminary Approval of the Settlement to which the Parties have mutually agreed, and which shall include the proposed Class Notice to be sent to Settlement Class Members. Each party shall cooperate to present the Agreement to the Court for preliminary approval in a timely fashion.

2. **Certification of Settlement Class.** Class Counsel will submit to the Court an uncontested motion to preliminarily certify, for settlement purposes only, a Settlement Class of individuals who are each a Carrier, as that term is defined in Section I(2).

3. **Appointment of Settlement Administrator.** The parties will request that the Court appoint one of the three bidders (SSI, Simpluris, or KCC) as the Settlement Administrator to perform the following functions in accordance with the terms of this Agreement, the Preliminary Approval Order, and the Final Approval Order:

- a. Provide for the Class Notice in a form substantially the same as the documents attached as **Exhibit A**, to be sent by first class mail and, where possible, email, to all Settlement Class Members identified by Defendant;
- b. Receive and evaluate any Opt-Out Requests from Settlement Class Members;
- c. Provide to Defense Counsel and Class Counsel, 14 days after the first mailing of the Class Notice and then updated every 14 days thereafter, a list of the names and addresses of all Settlement Class Members who have submitted Requests for Exclusion along with copies of the Opt-Out Requests;
- d. Forward any objections to the Settlement it receives to Class Counsel, for filing with the Court;
- e. Mail settlement payments to Settlement Class Members in accordance with Section VI(6)-(9) of this Agreement;
- f. Mail payment(s) for attorneys' fees and costs to Class Counsel, as ordered by the Court in the Final Approval Order, in accordance with Section VI(3) of this Agreement;
- g. Mail the PAGA payment to the LWDA, as ordered by the Court in the Final Approval Order, in accordance with Section VI(4) of this Agreement;
- h. Mail Service Awards to Class Representatives as ordered by the Court in the Final Approval Order, in accordance with Section VI(5) of this Agreement;
- i. Establish, designate and maintain the Settlement Fund as a "qualified settlement fund" under Internal Revenue Code § 468B and Treasury Regulation § 1.468B-1;
- j. Maintain the assets of the Settlement Fund in a non-interest bearing escrow account segregated from the assets of XPO LM and any person related to XPO LM;
- k. Obtain an employer identification number (EIN) for the Settlement Fund pursuant to Treasury Regulation § 1.468B-2(k)(4);
- l. Prepare and file federal income tax returns for the Settlement Fund, as well as any other tax filings the Settlement Fund must make under federal, state, or local law;
- m. Cooperate with XPO LM to jointly file a relation-back election under Treasury Regulation § 1.468B-1(j)(2), if necessary, to treat the Settlement Fund as coming into existence as of the earliest possible date;

- n. Pay and deposit the federal taxes owed by the Settlement Fund under Treasury Regulation § 1.468B-2, as well as any state or local taxes owed by the Settlement Fund;
- o. Prepare, file, and issue all necessary tax reporting forms for the Settlement Fund, including IRS Forms W-2 and 1099 regarding the distribution of payments to Settlement Class Members, Class Representatives, and Class Counsel;
- p. Provide XPO LM with copies of all tax reporting and filings made for the Settlement Fund, including copies of the checks and IRS Forms W-2 and 1099 issued to Settlement Class Members, Class Representatives and Class Counsel, and any other documentation to show that the tax reporting and filings were timely transmitted to the claimants and the applicable taxing authorities;
- q. Pay any additional tax liabilities (including penalties and interest) that arise from the establishment and administration of the Settlement Fund solely from the assets of the Settlement Fund without any recourse against XPO LM for additional monies;
- r. Within 30 days after all Individual Settlement Amounts are paid, provide to XPO LM and Class Counsel a statement of the total number of checks cashed in each distribution round and the total dollar amount paid to each Settlement Class Member (the "Final Accounting");
- s. Liquidate any remaining assets of the Settlement Fund after all payments to Settlement Class Members, Class Representatives, and Class Counsel have been made and all tax obligations have been satisfied, and distribute such assets as directed by the Court; and
- t. Petition the Court for termination of the Settlement Fund once all of the duties listed above in subsections (a) to (s) have been completed.

4. **Notice to Settlement Class Members.** Within Fourteen (14) days after the Preliminary Approval, Defendant will provide the Settlement Administrator and Class Counsel with the Settlement Class Member Information. Defendant shall be entitled to provide password protected information on electronic media marked "Confidential – Attorney's Eyes Only." Within twenty one (21) days following the Preliminary Approval Date, Claims Administrator will send the Class Notice (in a form approved by the Court) to Settlement Class Members' last-known addresses by first class mail and email, where available. Settlement Administrator will thereafter follow up promptly on undeliverable addresses and attempt to locate the Settlement Class Members' updated addresses through people-finder or an equivalent software program and skip-trace searches through the United States Postal Service. Additionally, Settlement Administrator may call the telephone numbers of Settlement Class Members to attempt to obtain updated addresses, as necessary, and Defendant will cooperate in providing such numbers to the extent such numbers are available to it. In no event, and under no circumstances, shall Settlement Administrator contact any Settlement Class Member regarding, in any way, the prospective

representation or potential representation of any Settlement Class Member relating to any of the Released Claims, except as specifically provided herein.

Further, within one hundred and twenty (120) days after the last Individual Settlement Amount check is mailed to a Settlement Class Member pursuant to the Second Distribution, the Settlement Administrator shall either destroy or return to Defense Counsel all Settlement Class Member Information received from Defendant, along with all information received by Settlement Administrator relating to the Settlement, including information relating to the Class Notice, except as required by law.

5. **Opt-Out/Request for Exclusion.** Any Settlement Class Member wishing to be excluded from the Settlement must sign and post-mark or fax a written Opt-Out Request to the Settlement Administrator no later than forty five (45) days after the Class Notice is mailed by the Settlement Administrator. This deadline applies notwithstanding any assertion of non-receipt of the respective notice of class settlement. The Opt-Out Request must include the following information: (1) the Settlement Class Member's name, address and telephone number; (2) a statement that the individual wishes to be excluded from the Settlement; and (3) a statement that the individual understands that he or she will not be eligible to receive any payment from this Settlement. Any Settlement Class Member who submits a valid and timely Opt-Out Request shall not be a member of the Settlement Class, shall be barred from participating in this Settlement, shall receive no monetary benefit from this Settlement, and shall not be subject to the releases and waivers in this Agreement including, but not limited to, the releases in Section IV(1)-(3).

6. **Settlement Terms Bind All Class Members Who Do Not Request Exclusion.** Any Settlement Class Member who does not affirmatively make a Request for Exclusion by submitting a timely and valid Request for Exclusion will be bound by all of its terms, including those pertaining to the claims released in Section IV(1)-(3), as well as any Judgment that may be entered by the Court if it grants final approval of this Settlement. However, Defendant will only obtain a release of FLSA claims for those Collective Action Opt-Ins who cash their settlement checks.

7. **Objections.** Any Settlement Class Member who wishes to object to the Settlement must file a written objection with the Court and serve copies on Class Counsel within forty five (45) days of the mailing of the notice of class settlement. Class Counsel shall provide a copy to Defense Counsel and inform the Court of any timely filed objection. The Parties shall not solicit nor otherwise encourage, directly or indirectly, any objections to this Settlement.

8. **Final Approval.** Prior to the final approval hearing, Class Counsel will submit a Motion for Final Approval of the Settlement in a form that the Parties have mutually agreed upon. At the hearing on the Motion for Final Approval of the Settlement, Class Representatives and Defendant shall jointly request the Court enter a final order certifying the Settlement Class for settlement purposes only, approve the Settlement as required by Federal Rule of Civil Procedure 23(e), and enter a final judgment of dismissal with prejudice of the Action consistent with the terms of the Settlement. Class Counsel and Defense Counsel shall submit to the Court such pleadings and/or evidence as may be required for the Court's determination and approval.

VI. SETTLEMENT FUNDING AND DISTRIBUTION

1. **Establishing the Settlement Fund.** Within ten (10) days after the Effective Date, Defendant will deposit \$16,500,00.00 with the Settlement Administrator to form the Settlement Fund, plus an additional amount sufficient to pay the employer's share of employment and payroll taxes due, if any, on that portion of the Settlement Fund. The Settlement Administrator shall place the Settlement Fund in a segregated, interest bearing trust account until all payments are made to the Class Representatives, Settlement Class Members, Class Counsel, LWDA, and the agreed *cy pres* beneficiary, as required by this Agreement. The Parties agree, and Class Counsel shall warrant, that the funds deposited in this account shall constitute a qualifying, designated settlement fund pursuant to Section 468B of the Internal Revenue Code.

2. **Allocation of the Settlement Fund Amount.** The Settlement Class Members are settling for the Settlement Fund of \$16,500,000.00, which will be allocated to pay the (a) Class Counsel Fees and Expenses, (c) LWDA Payment; (b) Service Awards Payments; (c) amounts allocated to resolve the overtime claims of the conditionally certified FLSA class; (d) Individual Settlement Amounts; (e) Settlement Administrator Fees and Costs; and (f) the Cy Pres Award, if any.

3. **Distribution of Class Counsel Fees and Expenses.** Class Counsel shall receive a distribution from the Settlement Fund as follows:

a. **Amount of Class Counsel Fees and Expenses.** The Settlement Administrator shall issue payment from the Settlement Fund to Class Counsel in an amount approved by the Court, but not to exceed \$4,950,000.00 (four million nine hundred fifty thousand and 00/100 dollars).

b. **Time For Payment of Class Counsel Fees and Expenses.** The Settlement Administrator shall issue payment of the Court-approved amount of Class Counsel Fees and Expenses within seven (7) days following the establishment of the Settlement Fund.

4. **Distribution of LWDA Payment.** The California Labor & Workforce Development Agency shall receive a distribution from the Settlement Fund as follows:

a. **Amount of LWDA Payment.** The Settlement Administrator shall issue payment from the Settlement Fund to the LWDA in the amount of \$18,000.00 (eighteen thousand and 00/100 dollars), as approved by the Court. This amount is calculated based on California Labor Code § 2699, which requires that seventy five percent (75%) of the PAGA Payment must be paid directly to the LWDA.

b. **Time For Payment of LWDA Payment.** The Settlement Administrator shall issue payment of the Court-approved LWDA Payment within seven (7) days following the establishment of the Settlement Fund.

5. **Distribution of Service Awards.** The Class Representatives shall receive a distribution from the Settlement Fund as follows:

a. Amount of Service Awards to Class Representative. The Settlement Administrator shall issue payment from the Settlement Fund to each of the Class Representatives a Service Award in an amount approved by the Court, but not to exceed \$20,000.00 (twenty thousand and 00/100 dollars).

b. Time For Payment of Service Awards. The Settlement Administrator shall issue payment of the Court-approved amount within ten (10) days following the establishment of the Settlement Fund.

6. **Distribution of \$150,000 Allocation to Resolve FLSA Claims of Opt-In Class Members.** Collective Action Opt-Ins will each receive a pro rata share of \$150,000 allocated from the Net Settlement Fund in consideration of the release of their FLSA claims, such payments to be calculated based on the number of Contract Days attributed to each Collective Action Opt-In in XPO LM's records during the Class Period relative to the total number of Contract Days attributed to all Collective Action Opt-Ins in XPO LM's records. Fifty (50) percent of the amount allocated to a Settlement Class Member to resolve the FLSA claim will be reported on an IRS Form W-2, and fifty (50) percent shall be reported on an IRS Form 1099.

7. **Distribution of Individual Settlement Amounts.** The Settlement Class members shall receive a distribution from the remaining Settlement Fund as follows:

a. Net Settlement Amount. The Net Settlement Fund shall be allocated to Settlement Class Members based on their California-based delivery services performed pursuant to the Delivery Service Agreement at any time during the Class Period. One hundred percent (100%) of the Net Settlement Amount will be distributed to these Settlement Class Members in an amount determined by the Settlement Administrator's calculation of the Individual Settlement Amount due to each Settlement Class Member.

b. Calculation of Individual Settlement Amounts. Each Settlement Class Member's pro rata share of the Net Settlement Amount will be calculated based on the number of Contract Days attributed to each Settlement Class Member relative to the total number of Contract Days attributed to all Settlement Class Members in XPO LM's records.

c. Amount of Individual Settlement Amounts. The Settlement Administrator Shall issue payment from the Settlement Fund to each of the Settlement Class Members in the amount of each Settlement Class Members' pro rata share of the Net Settlement Amount, less amounts deducted for tax withholdings, as calculated by the Settlement Administrator. Fifteen (15) percent of the amount allocated to a Settlement Class Member pursuant to this section shall be reported on an IRS Form W-2, and eighty five (85) percent shall be reported on an IRS Form 1099.

d. Time for Payment of Individual Settlement Amounts. The Settlement Administrator shall mail, by first-class U.S. mail, a check for the Individual Settlement Amount to each Settlement Class Member's last known address, no later than 10 (ten) days following establishment of the Settlement Fund. In the event

that a Settlement Class Member is deceased, payment shall be made payable to the estate of that Settlement Class Member and delivered to the Settlement Class Member's successor in interest as defined by Code Civ. Proc. § 377.11.

8. **Un-Cashed Settlement Checks.** Each Settlement Class Member must cash his or her Individual Settlement Amount check within 90 days after it is mailed to him or her. If a check is returned to the Settlement Administrator, Settlement Administrator will make all reasonable efforts to re-mail it to the Settlement Class Member at his or her correct address. If any Settlement Class Member's Individual Settlement Amount check is not cashed within 90 days after it is mailed or re-mailed, whichever is later, the Settlement Administrator will send the Settlement Class Member a letter informing him or her that, unless the check is cashed within 30 days of the date of the letter, it will expire and become non-negotiable, and offering to replace the check if it was lost or misplaced, but not cashed. If the check remains uncashed at the expiration of the 30-day period after this notice, the Settlement Administrator will void the check. In such event, the Settlement Class Member will nevertheless remain bound by the Settlement, including the release of the Released Claims.

9. **Second Distribution.** Within 150 days after the Settlement Administrator mails the Individual Settlement Amount checks, the Settlement Administrator shall distribute the amount of any uncashed checks or remaining funds to those Settlement Class Members who cashed their Individual Settlement Amount checks. The amount of uncashed checks or remaining funds shall be allocated according to the method used for Calculation of the Individual Settlement Amounts. The Settlement Administrator shall inform each of the Settlement Class Members receiving a second distribution that the check for any second distribution shall be cashed within 30 days or become void.

10. **Cy Pres Amount.** Within 180 days after the Claims Administrator mails the Individual Settlement Amount checks, the Claims Administrator shall distribute any uncashed checks or remaining funds on a *cy pres* basis to Legal Aid At Work (180 Montgomery St #600, San Francisco, CA 94104 – legalaidatwork.org).

11. **Non-Reversionary Settlement.** The entirety of the Settlement Class Fund will be utilized to pay Settlement Class Members, the Class Representatives, Class Counsel Fees and Expenses, the LWDA Payment, Settlement Administrator Fees and Costs or the *cy pres* beneficiary according to the terms of this Settlement. The Parties agree that no amount of the Settlement Fund will revert back to Defendant once paid pursuant to this Settlement.

12. **Taxes.** The Settlement Fund is a common fund that will be administered as a Qualified Settlement Fund for federal income tax purposes pursuant to Treas. Reg. § 1.468B-1, and the "administrator" of the Settlement Fund, within the meaning of Treas. Reg. § 1.468B-2(k), shall comply with all applicable requirements, which shall include, without limitation, (a) preparing a "Regulation Section 1.468B-3 Statement" pursuant to Treas. Reg. § 1.468B-3(e) on behalf of Plaintiffs and Defendant and providing copies to Counsel for Plaintiff and Defendant for review and approval (which approval shall not be unreasonably withheld); and (b) preparing and timely filing on behalf of the Settlement Fund (i) such income tax and other returns and statements as are required to comply with Treas. Reg. § 1.468B-2 and the other applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and (ii) all necessary state or local tax

returns. In the event that any amounts to be distributed to the Settlement Class remain unpaid, that amount will be redistributed to the Settlement Class or to the Cy Pres beneficiary.

13. **Disclaimer of Liability.** XPO LM shall have no responsibility for deciding the validity of the Individual Settlement Amounts or any other payments made pursuant to this Settlement, and shall not be liable under any circumstances for any errors in the administration of this Settlement, shall have no involvement in or responsibility for the determination or payment of taxes and required withholdings, if any, and shall have no liability for any errors made with respect to the calculation of any Individual Settlement Amount. Settlement Class Members represent and understand that they shall be solely responsible for any and all tax obligations associated with their respective Individual Settlement Amounts. All Individual Settlement Amounts shall be deemed to be paid to Settlement Class Members solely in the year in which such payments are actually received by the Settlement Class Members.

VII. NULLIFICATION OF SETTLEMENT

1. **Non-Approval of the Settlement.** If (a) the Court does not, for any reason, approve this Agreement in the form agreed to by the Parties, or (b) the Court does not, for any reason, enter a judgment and dismissal with prejudice of the Action, or (c) the approval of the Settlement, judgment, or dismissal is reversed, modified or declared or rendered void, then the Agreement and conditional class certification shall be considered void, and neither the Agreement, conditional class certification, nor any of the related negotiations or proceedings, shall be of any force or effect, and all parties to the Agreement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court. Notwithstanding the foregoing, the Parties may attempt in good faith to cure any perceived defects in the Agreement to facilitate Court approval.

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

3. **Stay Upon Appeal.** In the event of a timely appeal from the approval of the Settlement, judgment and dismissal, the judgment shall be stayed, and Defendant shall not be obligated to fund the Settlement Class Fund or take any other actions required by this Settlement until all appeal rights have been exhausted by operation of law.

VIII. CONFIDENTIALITY

1. **Confidentiality of Settlement Class Member Information.** Class Counsel agrees (i) to hold the Settlement Class Member Information in strictest confidence; (ii) not to disclose or divulge the Settlement Class Member Information to any Settlement Class Member, including the Class Representatives, or to any third party except as otherwise required in this Agreement; and (iii) to use the Settlement Class Member Information exclusively for or to assist in administration of this Settlement and for no other purpose, including, but not limited to, fact-gathering, discovery, or communication with Settlement Class Members for any purpose other than administration of this Settlement.

IX. DUTIES OF THE PARTIES

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 efforts contemplated by this Agreement and any other efforts that may become necessary by court order or otherwise, to effectuate this Settlement and the terms set forth herein. As soon as practicable after execution of this Agreement, Class Counsel, with the cooperation of Defendant and Defense Counsel, shall take all necessary and reasonable steps to secure the Court's final approval of this Agreement.

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

3. **Duties Prior to Court Approval.** Class Counsel shall promptly submit this Agreement to the Court for preliminary approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly upon execution of this Agreement, Class Counsel shall apply to the Court for the entry of a preliminary order scheduling a hearing on the question of whether the proposed Settlement should be approved as fair, reasonable, and adequate as to the Settlement Class Members, approving as to form and content the proposed Class Notice as agreed to by the Parties, and directing the mailing of the Class Notice to Settlement Class Members. Defense Counsel shall not oppose the motion for preliminary approval or join in the motion, provided that after review, it does not oppose any of its terms.

4. **CAFA Notice.** If it has not done so by the date this Agreement is executed, Defendant will promptly issue notice of this Settlement as required by the Class Action Fairness Act, 28 U.S.C. § 1715.

X. MISCELLANEOUS

1. **Signatory Authorization to Settle.** The signatories to this Agreement hereby represent that they are fully authorized to enter into this Agreement and bind the Parties to the terms and conditions of this Agreement, and that the Class Representatives' signatures also bind any business entity through which the Class Representatives provided services for Defendant.

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

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

4. **Integration Clause.** This Agreement contains the entire agreement between the Parties relating to the Settlement and transaction contemplated hereby, and all prior and contemporaneous agreements, understandings, representations, and statements, whether oral or written, and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

5. **Construction.** The Parties agree that the terms and conditions of this Agreement are the result of lengthy, intensive, arms-length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his, her, or its counsel participated in the drafting of this Agreement.

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

7. **Non-Admission.** Nothing contained herein, nor the consummation of this Agreement, is to be construed or deemed an admission by any person or party that any person or entity who contracted with, or provided any delivery services for, Defendant is an employee or was improperly classified as an independent contractor, or is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the Defendant Releasees. Each of the Parties has entered into this Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses. This Agreement is a settlement document and shall be inadmissible in evidence in any proceeding. The preceding sentence shall not apply to an action or proceeding to approve, interpret, or enforce this Agreement.

8. **Governing Law.** This Agreement is entered into in accordance with the laws of the State of California and shall be governed by and interpreted in accordance with those laws, excluding any choice of law provisions.

9. **Captions and Interpretations.** Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof. Each term of this Agreement is contractual and not merely a recital.

10. **Court Jurisdiction Over Settlement.** The Parties agree that any dispute regarding the interpretation of the terms of this Agreement shall be resolved by the Court. The Parties further agree that, upon the Final Approval Date, this Agreement shall be binding and enforceable pursuant to applicable law.

11. **Attorney Fees, Costs and Expenses.** Except as otherwise specifically provided for herein, each party shall bear his or its own attorney 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.

12. **Execution in Counterparts.** This Agreement may be executed in counterparts with signatures transmitted by facsimile or electronic mail. When each Party has signed and

delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties.

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

DATED: April _____, 2019

PLAINTIFF RON CARTER

By: _____
Ron Carter

DATED: April _____, 2019

THE ESTATE OF JERRY GREEN

By: _____
Signatory

DATED: April _____, 2019

PLAINTIFF BURL MALMGREN

By: _____
Burl Malmgren

DATED: April _____, 2019

PLAINTIFF BILL MCDONALD

By: _____
Bill McDonald

DATED: April _____, 2019

PLAINTIFF JOEL MORALES

By: _____
Joel Morales

DATED: April _____, 2019

THE ESTATE OF JUAN ESTRADA

By: _____
Signatory

DATED: April 19, 2019

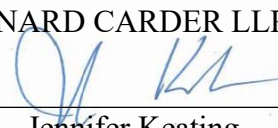
DEFENDANT XPO LAST MILE, INC.

By: CS. jr. b
Chris Signorello
Senior Vice President, Litigation
Counsel

APPROVED AS TO FORM AND CONTENT

DATED: April 19, 2019

LEONARD CARDER LLP

By:  _____

Jennifer Keating
Amy Endo
Attorneys for Plaintiffs and the
Settlement Class

DATED: April ____, 2019

JACKSON LEWIS P.C.

By: _____

Fraser A. McAlpine
Adam L. Lounsbury
Attorneys for Defendant XPO Last
Mile, Inc.

APPROVED AS TO FORM AND CONTENT

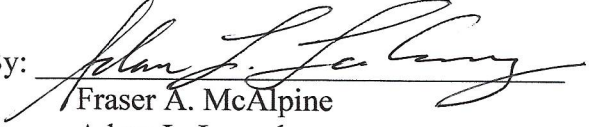
DATED: April _____, 2019

LEONARD CARDER LLP

By: _____
Jennifer Keating
Amy Endo
Attorneys for Plaintiffs and the
Settlement Class

DATED: April 19, 2019

JACKSON LEWIS P.C.

By:  _____
Fraser A. McAlpine
Adam L. Lounsbury
Attorneys for Defendant XPO Last
Mile, Inc.