

SUMMONS

(CITACION JUDICIAL)

SUM-100

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

XPO LOGISTICS FREIGHT, INC., a Delaware Corporation; and DOES 1 through 50, inclusive

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

BRANDON SCOTT, individually, and on behalf of all other aggrieved employees,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

JUL 26 2023

BY: Michelle Gomez-Casillas, Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitral award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO
247 WEST 3RD STREET
SAN BERNARDINO, CALIFORNIA 92415

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

SCOTT ERNEST WHEELER (SBN 187998)
250 WEST FIRST STREET, SUITE 216
CLAREMONT, CALIFORNIA 91711

LAW OFFICE OF SCOTT ERNEST WHEELER
TELEPHONE: (909) 621-4988
FACSIMILE: (909) 621-4622

JUL 26 2023

DATE:

(Fecha)

Clerk, by

(Secretario)

Michelle Gomez-Casillas

, Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☐ on behalf of (specify):

under:

- ☐ CCP 416.10 (corporation)
☐ CCP 416.20 (defunct corporation)
☐ CCP 416.40 (association or partnership)
☐ other (specify):

- ☐ CCP 416.60 (minor)
☐ CCP 416.70 (conservatee)
☐ CCP 416.90 (authorized person)

- ☐ by personal delivery on (date):

By Fax

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): SCOTT ERNEST WHEELER (SBN 187998) LAW OFFICE OF SCOTT ERNEST WHEELER 250 WEST FIRST STREET, SUITE 216 CLAREMONT, CALIFORNIA 91711 TELEPHONE NO.: (909) 621-4988 FAX NO. (Optional): (909) 621-4622 E-MAIL ADDRESS: SEW@SCOTTWHEELERLAWOFFICE.COM ATTORNEY FOR (Name): PLAINTIFF, BRANDON SCOTT		FOR COURT USE ONLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN BERNARDINO JUL 20 2023 BY: <u>Michelle Gomez-Casillas</u> , Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO STREET ADDRESS: 247 WEST 3RD STREET MAILING ADDRESS: CITY AND ZIP CODE: SAN BERNARDINO, CALIFORNIA 92415 BRANCH NAME: SAN BERNARDINO - CIVIL DIVISION		
CASE NAME: BRANDON SCOTT V. XPO LOGISTICS FREIGHT, INC.		
CIVIL CASE COVER SHEET ☒ Unlimited (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000 or less)	Complex Case Designation ☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: CIV SB 2317035 JUDGE: DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
- | | | |
|---|--|--|
| Auto Tort
☐ Auto (22)
☐ Uninsured motorist (46)
Other P/VPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other P/VPD/WD (23)
Non-P/VPD/WD (Other) Tort
☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-P/VPD/WD tort (35)
Employment
☐ Wrongful termination (36)
☒ Other employment (15) | Contract
☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)
Real Property
☐ Eminent domain/inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)
Unlawful Detainer
☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)
Judicial Review
☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)
☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment
☐ Enforcement of judgment (20)
Miscellaneous Civil Complaint
☐ RICO (27)
☐ Other complaint (not specified above) (42)
Miscellaneous Civil Petition
☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43) |
|---|--|--|
2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. ☐ Large number of separately represented parties | d. ☒ Large number of witnesses |
| b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. ☒ Substantial amount of documentary evidence | f. ☐ Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): **ONE CAUSE OF ACTION**
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: June 27, 2023

Scott Ernest Wheeler

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

By Fax

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability *(not asbestos or toxic/environmental)* (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice *(not medical or legal)*
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract *(not unlawful detainer or wrongful eviction)*
Contract/Warranty Breach—Seller Plaintiff *(not fraud or negligence)*
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage *(not provisionally complex)* (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment *(non-domestic relations)*
Sister State Judgment
Administrative Agency Award *(not unpaid taxes)*
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint *(not specified above)* (42)
Declaratory Relief Only
Injunctive Relief Only *(non-harassment)*
Mechanics Lien
Other Commercial Complaint Case *(non-tort/non-complex)*
Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition *(not specified above)* (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief from Late Claim
Other Civil Petition

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO**JUL 20 2023**BY: 
Michelle Gomez-Casillas, Deputy*Attorneys for Plaintiff and the Aggrieved Employees*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

BRANDON SCOTT, individually, and on
behalf of all other aggrieved employees,

PLAINTIFFS,

v.

XPO LOGISTICS FREIGHT, INC., a
Delaware corporation; and DOES 1 through
50, inclusive,

DEFENDANTS.

CASE NO. **CIV SB 23 17035****COMPLAINT FOR VIOLATION OF THE
CALIFORNIA LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT OF 2004
("PAGA")**[California Labor Code § 2698 *et seq.*]

By Fax

1 This is a representative action brought by Brandon Scott, individually and on behalf of all other
2 aggrieved employees ("Plaintiff"), relating to systemic violations of the California Labor Code against
3 XPO Logistics Freight, Inc. ("Defendant"). Plaintiff makes the following allegations on information
4 and belief, except as to allegations pertaining to Plaintiff individually, which are based on his personal
5 knowledge.

6 **INTRODUCTION**

7 1. Defendant has implemented common policies and practices that have resulted in
8 systematic violations of California's Labor Code and the applicable Industrial Welfare Commission
9 ("IWC") Wage Order(s). Accordingly, Plaintiff, on behalf of the State of California, brings this
10 representative action to recover civil penalties for the California Labor and Workforce Development
11 Agency ("LWDA"), himself, and all other aggrieved employees—i.e., non-exempt employees who
12 worked for Defendants in California during the statute of limitations period.

13 2. Defendant operates warehouses and provides distribution and logistics services for its
14 clients throughout the State of California. As a private, for-profit business, Defendant has implemented
15 common policies and practices that have resulted in systemic violations of California's Labor Code
16 relating to implemental of quotas applicable to Plaintiff and the other aggrieved employees, failure to
17 provide supplemental COVID-19 sick leave and comply with the requirements of Labor Code §248.2,
18 et seq., and maintain reasonable workplace temperatures at its facilities in violation IWC Wage Order
19 No. 7-2001, § 14 (A)-(C) and all other applicable IWC Wage Orders.

20 3. Defendant has implemented unlawful written policies with respect to quotas and the
21 expectations of nonexempt, hourly employees to comply with unwritten quotas which prevents Plaintiff
22 and the other aggrieved employees from taking legally compliant meal and rest breaks and using the
23 restroom during working hours. Defendant also requires its non-exempt employees, to use the restroom
24 during rest periods and meal periods only (or on their own time).

25 **JURISDICTION AND VENUE**

26 4. The Superior Court of the State of California has jurisdiction in this matter because
27 Plaintiff is a resident of the State of California.

28 5. Venue is proper in this judicial district and the County of San Bernardino because

1 Defendant operates one or more warehouses in the County of San Bernardino, and one or more of the
2 wrongful acts alleged herein occurred in the County of San Bernardino.

3 6. Defendant employed Plaintiff and other aggrieved employees within the State of
4 California and the unlawful acts alleged herein have a direct effect on Plaintiff and other aggrieved
5 employees.

6 7. The State of California, San Bernardino County, has jurisdiction in this matter because
7 the individual claims are under the seventy-five thousand dollar (\$75,000.00) individual jurisdictional
8 threshold and the five million dollar (\$5,000,000.00) aggregate jurisdictional threshold for federal court
9 diversity jurisdiction. Further, there is no federal question at issue as the issues herein are based solely
10 on the California Labor Code, Industrial Welfare Commission Wage Orders, Code of Civil Procedure
11 and Rules of Court. Thus, the State of California, San Bernardino County Superior Court maintains
12 the appropriate jurisdiction to hear this matter.

13 **THE PARTIES**

14 8. Plaintiff is a citizen of the State of California. During the relevant time period, Plaintiff
15 was employed by Defendant as a Classification Specialist Inspector who would review inspection
16 reports to identify potential inspection issues, conduct inspections of shipments on the dock, gather
17 information related to the shipments and issue document corrections based on the applicable provisions.
18 Plaintiff is informed and believes Defendant imposed an unwritten quota to him during his
19 employment. Plaintiff was employed by Defendant from May 28, 2017 through his separation on
20 February 22, 2023.

21 9. Plaintiff is informed and believes, and thereon alleges, that Defendant, is, and at all
22 times relevant hereto was, and is a corporation organized and existing under the laws of the State of
23 Delaware. Defendant is authorized to conduct business and does conduct business in the State of
24 California.

25 10. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
26 in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme,
27 business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally
28 attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer

1 and/or joint employer of Plaintiff and the other aggrieved employees.

2 11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
3 in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy. Managing agent,
4 and/or principal of the co-Defendants, and in performing the acts mentioned below was acting, at least
5 in part, within the course and scope of that authority as such agent, proxy, servant, partner, joint venture,
6 employee, alter-ego, managing agent, and/or principal with the permission and consent of the co-
7 Defendants. Plaintiff also alleges that the acts of each Defendant are legally attributable to the other
8 Defendants.

9 12. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
10 sued herein were, at all relevant times, the employer, owner, shareholder, principal, joint venture, alter-
11 ego, employee, proxy, managing agent, and/or principal of the remaining Defendants, and was acting,
12 at least in part, within the course and scope of such employment and agency, with the express and
13 implied permission, consent and knowledge, approval and/or ratification of the other Defendants. The
14 above co-Defendant, managing agents, and supervisors, aided, abetted, condoned, permitted, approved,
15 authorized, and/or ratified the unlawful acts described herein.

16 13. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
17 Plaintiff at this time, and Plaintiff therefore sues such defendants under fictitious names. Plaintiff is
18 informed and believes, and thereon alleges, that each defendant designated as a DOE is in some manner
19 highly responsible for the occurrences alleged herein, and that Plaintiff and other aggrieved employees'
20 injuries and damages, as alleged herein, were proximately caused by the conduct of such DOE
21 defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege the true names and
22 capacities of such DOE defendants when ascertained.

23 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

24 14. On April 21, 2023, Plaintiff gave written notice by certified mail pursuant to California
25 Labor Code § 2699.3, to the California Labor and Workforce Development Agency ("LWDA") and
26 Defendant, of the specific provisions of the California Labor Code and IWC Wage Order alleged to
27 have been violated, including the facts and theories to support the alleged violations. Plaintiff has not
28 received any response from the LWDA. As Plaintiff has waited more than sixty-five (65) days from

1 April 21, 2023, postmark date of his written notice before filing this action, Plaintiff has complied with
2 all of the requirements set forth in California Labor Code § 2699.3 to commence a representative action
3 under the California Private Attorneys General Act of 2004 ("PAGA").

4 15. Pursuant to the PAGA, California Labor Code §§ 2698-2699.5, Plaintiff brings this
5 action on behalf of the State of California, and all other aggrieved employees (e.g., current and former
6 non-exempt employees of Defendant who performed work for Defendant in the State of California at
7 any time within the period beginning one (1) year prior and sixty-five (65) days prior to the April 21,
8 2023 notice Plaintiff provided to the LWDA and Defendant, and ending at the time this action proceeds
9 to final judgment ("statute of limitations period")).

10 **FACTUAL ALLEGATIONS**

11 **Failure to Provide Aggrieved Employees With Written Description of Quotas**

12 **[Cal. Lab. Code §2101 and 2102]**

13 16. Beginning on January 1, 2022, California Labor Code §2101 requires California
14 employers to provide to each employee, upon hire, or within 30 days of the effective date of
15 California Labor Code §2101, "a written description of each quota to which the employee is subject,
16 including the quantified number of tasks to be performed or materials to be produced or handled,
17 within the defined time period, and any potential adverse employment action that could result from
18 failure to meet the quota." See, California Labor Code §2101.

19 17. Moreover, California Labor Code §2102 states, "An employee shall not be required to
20 meet a quota that prevents compliance with meal or rest periods, use of bathroom facilities, including
21 reasonable travel time to and from bathroom facilities, or occupational health and safety laws in the
22 Labor Code or division standards. An employer shall not take adverse employment action against an
23 employee for failure to meet a quota that does not allow a worker to comply with meal and rest
24 periods, or occupational health and safety laws in the Labor Code or division standards, or for failure
25 to meet a quota that has not been disclosed to the employee pursuant to Section 2101."

26 18. California Labor Code §2100 applies to any non-exempt, hourly employee such as
27 Plaintiff and the other aggrieved employees who work at Defendant's distribution and logistics
28 centers in the State of California. Defendant operates warehouse distribution centers through the

1 State of California, including Blythe, Redlands Fontana and San Bernardino, California, as well as
2 other locations throughout the State of California.

3 19. Defendant is an employer which directly or indirectly, or through an agent or any
4 other person, including through the services of a third-party employer, temporary service, or staffing
5 agency or similar entity, of 100 or more employees at a single warehouse distribution center or 1,000
6 or more employees at one or more warehouse distribution centers in the state. For purposes of this
7 definition, all employees of an employer's commonly controlled group, as that term is defined
8 in Section 25105 of the Revenue and Taxation Code, shall be counted in determining the number of
9 employees employed at a single warehouse distribution center or at one or more warehouse
10 distribution centers in the state. See, California Labor Code §2100(f).

11 20. Defendant further operates warehouse distribution centers in California and its
12 operations are defined by or fall under any of the North American Industry Classification System
13 Codes, in particular Code 493110 (General Warehousing and Storage, and 423/424 (Merchant
14 Wholesales – Durable and Non-Durable Goods.). See, California Labor Code §2100.i.1.(a-d).

15 21. Defendant, is required to provide to each employee, upon hire, or within 30 days of
16 the effective date of this part, a written description of each quota to which the employee is subject,
17 including the quantified number of tasks to be performed or materials to be produced or handled,
18 within the defined time period, and any potential adverse employment action that could result from
19 failure to meet the quota. California Labor Code §2101. Here, Defendant failed to provide any type
20 of description to Plaintiff and the other aggrieved employees of each quota (including detailed
21 metrics regarding Defendant's quota requirements) applicable to them in compliance with California
22 Labor Code §2100.

23 22. Further, Labor Code §2102 provides, an employee shall not be required to meet a
24 quota that prevents compliance with meal or rest periods, use of bathroom facilities, including
25 reasonable travel time to and from bathroom facilities, or occupational health and safety laws in the
26 Labor Code or division standards. An employer shall not take adverse employment action against an
27 employee for failure to meet a quota that does not allow a worker to comply with meal and rest
28 periods, or occupational health and safety laws in the Labor Code or division standards, or for failure

1 to meet a quota that has not been disclosed to the employee pursuant to Section 2101.

2 23. Defendant failed to provide Plaintiff and the other aggrieved employees with written
3 or oral information regarding quotas applicable to them and implemented quotas preventing
4 compliance with meal and rest periods, the use of bathroom facilities, including reasonable travel
5 time to and from bathroom facilities and other occupational health and safety law violations yet to be
6 discovered.

7 24. Plaintiff, on behalf of himself and the other aggrieved employees, are aware that
8 Defendant implemented quotas which caused a violation of their rights to a meal or rest periods,
9 prevented them from using the restroom facilities or required them to violate any occupational health
10 and safety laws in the Labor Code or division standards. For instance, Plaintiff was unable to use the
11 restroom facilities of Defendant during working hours and was only allowed to use the facilities
12 during his own time.

13 25. On April 21, 2023, Plaintiff, on behalf of the other aggrieved employees, requested
14 that Defendant provide a written description of each quota applicable to Plaintiff and the other
15 aggrieved employees to which they were and are subjected to and copies of the aggrieved employees
16 work speed data within the past ninety (90) days of the request. See, Labor Code §2104(a)(1-3).
17 Defendant had twenty-one (21) days to respond to this request but failed to provide information
18 relating to quotas applied to Plaintiff or any other aggrieved employees. See, Labor Code §2104(b).
19 As a result of Defendant's failure to comply with Labor Code §2100, et seq., Defendant is subject to
20 PAGA penalties pursuant to Labor Code §2109.

21 **Failure to Maintain Required Records**

22 **[Cal. Lab. Code §§ 226(a), 1174(d); § 7 of the Applicable IWC Wage Order]**

23 26. During the statute of limitations period, Defendant knowingly and intentionally failed
24 to maintain records as required under California Labor Code §§ 226(a) and 1174(d) and § 7 of the
25 applicable IWC Order, including but not limited to the following records: information and records
26 relating to quotas applicable to Plaintiff and the other aggrieved employees and records relating to
27 temperatures in the workplace. Finally, Defendant failed to provide supplemental COVID-19 paid sick
28 leave to aggrieved employees and failed to maintain records relating to the amount of supplemental

COVID-19 sick leave hours available and the number of hours taken by Plaintiff and the other aggrieved employees.

Failure to Pay COVID-19 Supplemental Sick Leave

[Cal. Lab. Code §§ 246, 248.1, 248.2 and 248.6]

27. During the statute of limitations period, Plaintiff is informed and believes from January 1, 2021, through the present, Defendant employed 26 or more aggrieved employees.

28. Defendant failed to provide 80 hours of COVID-19 Supplemental Paid Sick leave and compensate Aggrieved Employees at their regular rate of pay for supplemental sick leave, i.e., their highest regular rate of pay, taking into consideration non-discretionary bonuses, etc., in violation of California Labor Code § 248.1(b)(3)(A) and §248.6. Defendant also failed to provide COVID-19 Supplemental Sick Leave to aggrieved employees in addition to regular sick leave, in violation of California Labor Code § 248.1(b)(2)(D). Defendant also failed to accurately reflect any offset and/or the current amount of COVID-19 Supplemental Sick Leave available to aggrieved employees on their wage statements, or on a separate written document, provided to Plaintiff and the other aggrieved employees, in violation of California Labor Code §§ 248.1(b)(2)(D), 248.2 and for the reasons provided herein.

Failure to Maintain Reasonable Temperature In Work Areas

[IWC Wage Order No. 7-2001, § 14 and All Other Applicable IWC Wage Orders]

29. IWC Wage Order No. 7-2001, § 14 (A)-(C) provides:

“(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort. Where the nature of the employment requires a temperature of less than 60° F., a heated room shall be provided to which employees may retire for warmth, and such room shall be maintained at not less than 68°.

(C) A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use.”

30. Defendant has failed to maintain a reasonable temperature within the interior work areas

1 where Plaintiff and the other aggrieved employees work by regularly allowing the temperature and heat
2 index to exceed 87 degrees Fahrenheit. Defendant failed to implement a Heat Injury Prevention
3 Program or similar policy at its facilities throughout the State of California.

4 31. Defendant failed to maintain a work area within its facilities of a reasonable temperature
5 in work areas for Plaintiff and the other aggrieved employees by not providing reasonable comfort and
6 avoiding the exposure of excessive heat according to industry standards based upon the nature and
7 process and work performed. Defendant failure to implement a Heat Injury Prevention Program and
8 allow Plaintiff and the other aggrieved employees to work in such an environment violated IWC Wage
9 Order 7-2001, §14 and all other applicable IWC Wage Orders.

10 **FIRST CAUSE OF ACTION**

11 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

12 **[Cal. Lab. Code § 2698 *et seq.*]**

13 **(On Behalf of Plaintiff and the Aggrieved Employees Against Defendant)**

14 32. Plaintiff incorporates herein by specific reference, as though fully set forth, the
15 allegations in paragraphs 1 through 31, above.

16 33. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code §
17 2699(c), and a proper representative to bring a civil action on behalf of himself and other aggrieved
18 employees pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff
19 was employed by Defendant and one or more of the alleged California Labor Code violations was
20 committed against Plaintiff during the statute of limitations period.

21 34. A plaintiff has standing to represent all aggrieved employees for all of his asserted
22 violations of the California Labor Code under PAGA. See *Huff v. Securitas Security Services USA, Inc.*
23 (2018) 23 Cal.App.5th 745, 757 (“For PAGA standing a plaintiff need only have been employed by the
24 violator and affected by ‘one or more’ of the alleged violations. (Sec. 2699, subds. (a), (c)).”).

25 35. Plaintiff seeks to recover civil penalties through a representative action permitted by
26 PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Thus, class
27 certification is not required.
28

36. Pursuant to California Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil penalties from Defendant in a representative action for the violations set forth above, including but not limited to, violations of California Labor Code §§ 1174, 2100, et seq., and for the violations of the applicable IWC Wage Order alleged above.

37. Pursuant to California Labor Code § 2699(a), Plaintiff seeks to recover civil penalties against Defendant for violations of California Labor Code provisions for which a civil penalty is specifically provided, including but not limited to, the following:

a. Pursuant to California Labor Code § 1174.5, for violations of California Labor Code § 1174(d), Defendant is subject to a civil penalty of five hundred dollars (\$500).

58. California Labor Code § 2699(f) provides that for all California Labor Code violations for which a civil penalty is not specifically provided, the following civil penalties are established: one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

59. Plaintiff seeks to recover such civil penalties under California Labor Code § 2699(f) for Defendants' violations of California Labor Code provisions for which a civil penalty is not specifically provided, including but not limited to, California Labor Code § 2100, et seq., and for the violations of the applicable IWC Wage Order alleged above.

60. All civil penalties sought and recovered under this action will be allocated as follows: seventy-five (75) percent to the State of California and twenty-five (25) percent to Plaintiff and aggrieved employees.

61. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1) and California Code of Civil Procedure § 1021.5.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees, prays for relief against Defendant, as follows:

1. For civil penalties according to proof;
2. For reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g),

1 California Code of Civil Procedure § 1021.5, and/or any other applicable provisions providing for
2 attorneys' fees and costs; and

3 3. For such further relief that the Court may deem just and proper.

4 DATED: June 27, 2023

LAW OFFICE OF SCOTT ERNEST WHEELER

5 

6 By: _____
7 SCOTT ERNEST WHEELER
8 JUSTIN A. WHEELER

9 *Attorneys for Plaintiff and the other Aggrieved*
10 *Employees*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

BRANDON SCOTT, individually, and on behalf of all
other aggrieved employees,

CASE NO.:

CIV SB 2317035

vs.

XPO LOGISTICS FREIGHT, INC., a Delaware corporation; and DOES 1
through 50, inclusive,

CERTIFICATE OF ASSIGNMENT

A civil action or proceeding presented for filing must be accompanied by this Certificate. If the ground is the
residence of a party, name and residence shall be stated.

The undersigned declares that the above-entitled matter is filed for proceedings in the SAN BERNARDINO - CIVIL DIVISION
District of the Superior Court under Rule 131 and General Order of this court for the checked reason:

☒ General☐ Collection

Nature of Action

Ground

- | | |
|---|---|
| ☐ 1. Adoption | Petitioner resides within the district. |
| ☐ 2. Conservator | Petitioner or conservatee resides within the district. |
| ☐ 3. Contract | Performance in the district is expressly provided for. |
| ☐ 4. Equity | The cause of action arose within the district. |
| ☐ 5. Eminent Domain | The property is located within the district. |
| ☐ 6. Family Law | Plaintiff, defendant, petitioner or respondent resides within the district. |
| ☐ 7. Guardianship | Petitioner or ward resides within the district or has property within the district. |
| ☐ 8. Harassment | Plaintiff, defendant, petitioner or respondent resides within the district. |
| ☐ 9. Mandate | The defendant functions wholly within the district. |
| ☐ 10. Name Change | The petitioner resides within the district. |
| ☐ 11. Personal Injury | The injury occurred within the district. |
| ☐ 12. Personal Property | The property is located within the district. |
| ☐ 13. Probate | Decedent resided or resides within or had property within the district. |
| ☐ 14. Prohibition | The defendant functions wholly within the district. |
| ☐ 15. Review | The defendant functions wholly within the district. |
| ☐ 16. Title to Real Property | The property is located within the district. |
| ☐ 17. Transferred Action | The lower court is located within the district. |
| ☐ 18. Unlawful Detainer | The property is located within the district. |
| ☐ 19. Domestic Violence | The petitioner, defendant, plaintiff or respondent resides within the district. |
| ☒ 20. Other Employment | The cause of action arose within the district. |
| ☐ 21. THIS FILING WOULD NORMALLY FALL WITHIN JURISDICTION OF SUPERIOR COURT. | |

The address of the accident, performance, party, detention, place of business, or other factor which qualifies
this case for filing in the above-designated district is:

XPO LOGISTICS FREIGHT, INC.

7010 Cajon Boulevard

NAME - INDICATE TITLE OR OTHER QUALIFYING FACTOR

ADDRESS

San Bernardino

California

92407

CITY

STATE

ZIP CODE

I declare, under penalty of perjury, that the foregoing is true and correct and that this declaration was executed

on June 27, 2023

at Claremont

, California.



Signature of Attorney/Party