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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

IRVYN MUNOZ, ANDREW CASTANON GONZALEZ, LIBORIO MONTOYA, and LEMUEL KINNEY, as individuals and on behalf of all others similarly situated, Plaintiffs, vs. XPO LOGISTICS FREIGHT, INC., a Delaware Corporation; XPO ENTERPRISE SERVICES, LLC, a Delaware Limited Liability Company; and DOES 1-100, inclusive, Defendants.	Case No. 23CV003704 *Assigned to Hon. Lauri A. Damrell, Dept. 22* **SUPPLEMENTAL MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** Date: April 18, 2025 Time: 9:00 a.m. Dept.: 22 Reservation Number: **A-03704-001**

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The Court's February 28, 2025, Order requested that Plaintiffs address several questions regarding the Class Action and PAGA Settlement Agreement. Plaintiffs submit this supplemental memorandum addressing these issues.

1. ***Scott* Matter and Overlapping Actions**

On March 19, 2025, Plaintiffs filed a Second Amended Complaint in *Munoz*, adding Plaintiff Scott and his claims (alleged in *Scott v. XPO Logistics Freight, Inc.*, Case No. 22STCV24015, initiated in the San Bernardino County Superior Court on July 20, 2023). (Wheeler Decl., ¶ 6.)

The matter of *Michael Randall Sarnicola, Jr. v. XPO Logistics Freight, Inc.*, Case No. 23STCV29878, pending in Los Angeles County, for which Defendants filed a Notice of Related Case filed on February 13, 2024, is a wrongful termination matter that also has a PAGA cause of action. It is not included in the settlement of this matter and, to the extent there are any overlapping claims under PAGA in the *Sarnicola* matter, those claims will be extinguished by the settlement. Apart from the *Scott* matter, which is now part of this matter given the Second Amended Complaint, and the *Sarnicola* matter, Plaintiffs are unaware of any other pending that overlap with this matter. (Ardestani Decl., ¶ 22; Wheeler Decl., ¶ 8.)[1]

2. ***Scott* LWDA Notice**

The LWDA Notice sent by Plaintiff Scott is provided to this Court in connection with this Supplemental Memorandum. (Wheeler Decl., ¶ 3, Ex. A.)

3. **Conditional Class Certification**

In the present matter, conditional certification is proper since this matter satisfies all requirements for class certification under Code of Civil Procedure section 382. First, the class is both sufficiently numerous, consisting of approximately 3,174 individuals, and ascertainable by reference to Defendants' personnel and payroll records. "There is no set number required to maintain a class action, and the statutory test is whether a class is so numerous that 'it is

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[1] A prior putative class and PAGA action, *Magallon v. XPO Logistics Freight, Inc.*, Case No. 21STCV46330 (La. Sup. Ct.) was dismissed and is no longer pending. Ms. Ardestani's reference to other matters in her prior declaration was in error and inadvertent. (Ardestani Decl., ¶ 22.)

impracticable to bring them all before the court.'" Hebbard v. Colgrove (1972) 28 Cal. App. 3d 1017, 1030 (noting that there is no set minimum to meet the numerosity prerequisite, but that a class of as few as 28 is acceptable); Bowles v. Superior Court (1995) 44 Cal. 2d 574 (upholding a class of ten members); Rose v. City of Hayward (1981) 126 Cal. App. 3d 926, 932 (finding that "Class Members are 'ascertainable' where they may be readily identified without unreasonable expense or time by reference to official records."). Thus, the ascertain ability requirement is met.

Plaintiffs' claims are all typical of the absent class members, as each is a member of the class, and their claims arise from the same employment practices and alleged course of conduct giving rise to the claims of the other class members. As reflected in their respective declarations, each Plaintiff complains of an alleged failure to pay all wages, failure to provide meal and rest breaks, and failure to provide proper wage statements and timely pay wages due upon separation of employment, and each Plaintiff further alleges those same claims apply to the absent class members as a result of Defendants alleged common employment practices and policies. The typicality requirement is met if the claims of the named representative are typical of those of the Class, though "they need not be substantially identical." Classen v. Weller (1983) 145 Cal.App.3d 27, 46-47.

As set forth in their respective declarations, Plaintiffs have been and will continue to be committed to vigorously prosecuting this case, and each has spent substantial time assisting their counsel and participating in the pursuit of these claims on behalf of the Class. Further, each Plaintiff has no conflicts of interest with the Class. Adequacy requires that the Plaintiff have no interests adverse to the interests of the proposed Class Members and be committed to vigorously prosecuting the case on behalf of the Class. McGhee v. Bank of America (1976) 70 Cal.App.3d 442, 450-51. Accordingly, Plaintiffs all contend they are adequate class representatives.

Common questions of law and fact predominate – particularly for purposes of a settlement class – as the Class Members all were subject to the same meal and rest break policies and alleged "de facto" policies resulting in meal period violations, and similarly subject to the same improper time rounding policy. Since the focus of the claims against Defendants concerns the legality of common policies applied uniformly to the entire class, common issues predominate over individualized inquiries concerning liability. For instance, Defendants meal and rest break policy is company-wide policy applied equally and consistently to all class members, and this policy is either compliant with California law or it is not. Regardless of that determination, it will decide liability for all class members one way or another. Similarly, whether the wage statements improperly tabulated employee hours worked is another question common to all class members. A theory of recovery asserting the existence of a uniform policy violating California law is sufficient to satisfy the requirements for class certification. Jones v. Farmers Ins. Exch. (2013) 221 Cal.App.4th 986, 996 ("Claims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment"); Williams v. Superior Court (2013) 221 Cal.App.4th 1353 ("A company-wide practice can sustain a common question of fact or law that supports commonality for class certification").

Finally, resolving this matter as a class action is superior to other available means for the fair and efficient adjudication of this controversy for multiple reasons, including inter alia: (a) individual joinder of all members of the class is impractical, (b) class action treatment will permit a large number of similarly situated persons to resolve their common claims in a single forum simultaneously, efficiently, and without unnecessary duplication of effort and expense; and (c) the damages suffered by many of the individual class members are relatively small and the expenses and burden of individual litigation would make it difficult or impossible for them to seek redress on their own. (Ardestani Decl., ¶¶ 4-8.)

4. **Distribution Structure**

Plaintiffs have removed the Second Distribution provision, per the Court's request. (Amended Class Action and PAGA Settlement Agreement, Ex. 1, ¶¶ 4.4.3-4.4.4.)

5. **Scope of Releases**

Plaintiffs have revised the Release by Participating Class Members and Release of PAGA Claims to remove the phrase "ascertained in the course of the Action," per the Court's request. (Amended Class Action and PAGA Settlement Agreement, Ex. 1, ¶¶ 5.2-5.3.)

6. **Further Exposure Analysis**

Plaintiffs estimated XPO's likely maximum exposure on the class claims at approximately $43,419,285, including about $7,689,185 on the off the clock/unpaid wage claims, around $80,065 on the regular rate claims, approximately $3,546,700 on the meal period claims, about $12,280,695 on the rest period claims, around $9,108,000 on the wage statement claims, and $10,714,650 on the waiting time penalty claims.

The unpaid wage claims focus primarily on XPO's alleged failure to pay Class Members at least minimum wages and/ or overtime wages for all of their hours worked. Plaintiffs allege, for example, if there was a Covid-related illness at the docks where employees worked, their supervisors instructed them to clock-out and wait in the rest area between 2-3 hours while Defendants cleaning crew disinfected and sanitized the dock area before clocking back in to work. Plaintiffs alleged drivers also were not paid for off-the-clock work because, although they were paid an hourly wage when performing tasks unrelated to driving, such as fueling vehicles, waiting on loads, washing trucks, and performing pre and post trip inspections, XPO allotted an exact amount of time for each tasks regardless of how long it actually took. So if it took more than the allotted 15 minutes to fuel a truck, Plaintiffs allege the excess time went unpaid.

Plaintiffs also allege Defendants failed to incorporate all forms of compensation into their regular rate of pay calculations when paying overtime as required under the law. Here, Plaintiffs allege class members regularly received various non-discretionary bonuses and other payments and that XPO failed to pay the required overtime on those payments.

In response, XPO argued that its payroll policies are fully compliant, that it properly tracked and paid for all hours worked at the appropriate hourly wage. Defendants also argued that if any class members failed to record and report time it was in violation of company policy and would have occurred on a haphazard and individual basis. Accordingly, Defendants argued the issue would not be certifiable since it would require individualized inquiries whether any compensable "off the clock" work occurred and why it was or was not documented and paid for. Defendants further argued that Plaintiffs' claims (including claims for overtime) are preempted in whole or in part by the Federal Motor Carrier Safety Administrations' Hours of Service Regulations and California law. After accounting for these procedural and merits defenses, Plaintiffs discounted the value of the minimum wage/off the clock claim by 80%, to around $1,537,835, and we applied a 10% discount to the regular rate claims, yielding a risk-discounted exposure of about $72,000.

On the meal and rest break claims, Plaintiffs contend XPO's written policies are not fully compliant, and in particular argued the written policy in effect prior to June 2021 failed to accurately reflect the law in several respects. While the 2021 meal period policy and attestation seem legally compliant, they did not go into effect until May 10, 2021. Even after the new meal period policy went into effect, there were also many instances where Plaintiffs recall that their meal periods were cut short, were untimely and not duty-free. Plaintiffs' expert reviewed a 20% sampling of meal period time records, and based on that review Plaintiffs contend around 31.6% of eligible shifts had at least one meal period violation. Thus, per Plaintiffs, regardless of whether the written policies were compliant, XPO's own time and pay records show substantial "de facto" violations for non-compliant meal breaks.

In response, XPO argued its written policies are fully compliant, particularly and that it provided employees with the opportunity to receive all required meal breaks and thereby met its obligations under the Labor Code and applicable Wage Order. Further, Defendants argued to the extent employees missed a break or took a non-compliant break, any such discrepancies were aberrational and against company policy and a myriad of individual issues would be required to determine whether the potential violation resulted from employee choice or some other reason. Consequently, according to the Defendants, individualized inquiries would dominate this issue and render class certification of the meal break claim inappropriate. Defendants further argued that Plaintiffs' claims (including claims for meal and rest periods) are preempted in whole or in part by the Federal Motor Carrier Safety Administrations' Hours of Service Regulations as set forth in *International Brotherhood of Teamsters* (9th Cir. 2021) 986 F.3d 841, and that any alleged non-compliance meal punches that were caused by business reasons were remedied by meal period premium payments. After accounting for these procedural and merits defenses, Plaintiffs discounted the value of the meal break claim by 80%, making the estimated exposure about $691,340 on a risk-discounted basis.

For rest breaks, Plaintiffs again argued that there were numerous “de facto” violations where class members didn’t receive a break (especially third breaks), or didn’t receive a compliant break/had their breaks interrupted by supervisors. As with meal breaks, Defendants argued the applicable rest break policies complied with California law, and that it authorized and permitted employees to take all required breaks. Defendants further contended that, in light of the fact that it is not required to maintain a record of rest periods, any evidence of failure to authorize rest periods and/or discouragement from taking rest periods would be purely anecdotal and individual issues would predominate on liability. This arguably would once again make class certification and a trial unmanageable since the number of instances an employee missed a rest break, or had a break interrupted, would have to be tested on a case by case basis to determine compliance. Defendants further argued that Plaintiffs’ meal claims are preempted by the Federal Motor Carrier Safety Administrations’ Hours of Service Regulations, as set forth in *International Brotherhood of Teamsters* (9th Cir. 2021) 986 F.3d 841. After accounting for these procedural and merits defenses, and particularly the fact that there are no rest break records, Plaintiffs discounted the value of the minimum wage/off the clock claim by 90%, for an estimated exposure of about $1,228,000

The claims under Labor Code sections 203 and 226 are derivative of the primary unpaid wage claims, and accordingly are subject to the same risks and uncertainties plus additional risks posed by the need to take into account the discretionary nature of such awards and the “good faith” and other defenses available to Defendants. Thus, while these claims largely are derivative of the unpaid wage claims, they also are subject to multiple additional defenses. Plaintiffs likewise discounted these claims by about 80% to account for Defendants’ arguments. This resulted in a risk-discounted exposure of approximately $1,821,600 on the wage statement claims and about $2,035,900.

Plaintiffs and counsel discounted the value of the class claims consistent with the risks discussed above, and carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation continued. We concluded – in light of these very real and substantial risks – settlement on the proposed terms and without prolonged and costly litigation was in the best interests of the class, and the overall $2,850,000 recovery represents a significant percentage of Defendants potential exposure, including around 6.5% of the maximum theoretical exposure, and about 38% of the estimated risk-discounted exposure, which we estimated at about $7,385,775 after applying the risk-discounts addressed above. These amounts are well within the general range of recoveries approved as reasonable by other courts in California in similar cases. <u>Cavazos v. Salas Concrete, Inc.</u> (E.D. Cal., Feb 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S.Dist. LEXIS 30201, at *41-42 (citing cases listing range of 5 to 25-35 percent of the maximum potential exposure); <u>Stovall-Gusman v. W.W. Granger, Inc.</u> (N.D. Cal. 2015) U.S. Dist. LEXIS 78671, at * 12 (granting final approval in a wage and hour misclassification action where settlement represented about 10% of the estimated trial award as within the "range of reasonableness."); <u>Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.</u> (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing "roughly one-sixth of the potential recovery." Given these risks, a total recovery for the class of $2,850,000, with an average award of some $474 per class member, is a significant result well within the range of reasonableness considering all potential outcomes, and it will provide direct monetary awards to all Class Members without further delay. The settlement provides for some recovery for each class member and eliminates the risk and expense of further litigation, and accordingly should be preliminarily approved as fair, reasonable and adequate, and in the best interests of the class.

As far as the potential PAGA penalties are concerned, we estimated the maximum theoretical exposure at about $67 million, and Plaintiffs discounted these potential penalties based on the same merits defenses that applied to the class claims. Further, many courts find that, in hybrid class/PAGA cases, significant discounts to the PAGA penalties are appropriate where the class component of the settlement provides robust relief to the affected employees. <u>Viceral v Mistras Group</u> (N.D. Cal. Oct. 11, 2016) 2016 WL 5907869, at *9 (approving 0.15% PAGA recovery where relief to class was substantial)<u>; Ruch v. AM Retail Grp., Inc.</u> (N.D. Cal. Sept. 28, 2016) 2016 WL 5462451, at *2, 7 (approving settlement allocating $10,000 to PAGA penalties where potential value was over $5.2 million, or 0.2%). Also, as noted in the moving papers, many courts look to the proportion of the PAGA settlement to the overall settlement recovery, and Plaintiffs submit the PAGA allocation in this matter is in line with these authorities. Finally, as also noted in the moving papers, many courts find it persuasive of approval if the LWDA does not offer any comments or objections to the proposed PAGA component of a settlement. (Ardestani Decl., ¶¶ 9-21.)

7. **Class Notice**

Plaintiffs have revised the Class Notice, per the Court's request to:

(a) Remove the language that "Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) XPO has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees;"

(b) Inform Settlement Class Members that if they desire to appear remotely at the final approval hearing, they can join via the Department's Zoom link or phone number and provide the following access information for the appropriate Department in the Notice: To join by Zoom link: https://saccourt-cagov.zoomgov.com/my/sscdept22; To join by phone: (833) 568-8864 / ID:16184738886.

(c) Ensure consistency with the revisions to the Amended Class Action and PAGA Settlement Agreement

(Amended Class Action and PAGA Settlement Agreement, Ex. 1.)

8. **Class Counsel Fees**

Any attorney's fees awarded by the Court will be split 65% to Crosner Legal and 35% to Wheeler Law Firm, and all clients have been informed of the fee split and consented thereto in writing. (Ardestani Decl., ¶ 23; Wheeler Decl., ¶ 7.)

Dated: March 26, 2025

CROSNER LEGAL, P.C.

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Attorneys for Plaintiffs

Dated: March 26, 2025

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