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 Superior Court of California
 County of Los Angeles

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11 **SUPERIOR COURT OF CALIFORNIA**
 12 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

13 ANGEL OMAR ALVAREZ, an individual;
 14 ALBERTO RIVERA, an individual;
 15 FERNANDO RAMIREZ, an individual; JUAN
 ROMERO, an individual; and JOSE PAZ, an
 individual; on behalf of themselves and others
 similarly situated,

Case No.: *BC695123*

CLASS ACTION *DRL*

FIRST AMENDED COMPLAINT FOR:

Plaintiffs,

vs.

17 XPO LOGISTICS CARTAGE, LLC dba XPO
 18 LOGISTICS, a Delaware Limited Liability
 19 Company; XPO CARTAGE, INC. dba XPO
 20 LOGISTICS, a Delaware corporation; JEFFREY
 21 TRAUNER, an individual; and DOES 1 through
 100, inclusive,

Defendants.

1. FAILURE TO PAY MINIMUM WAGE
(*Cal. Lab. Code §§ 1194, 1194.2 & 1197*);
2. FAILURE TO PAY WAGES FOR MISSED
MEAL PERIODS (*Cal. Lab. Code § 226.7*);
3. FAILURE TO PAY WAGES FOR MISSED
REST PERIODS (*Cal. Lab. Code § 226.7*);
4. FAILURE TO REIMBURSE BUSINESS
EXPENSES (*Cal. Lab. Code § 2802*);
5. FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS (*Cal.
Lab. Code § 226*);
6. WAITING TIME PENALTIES (*Cal. Lab.
Code §§ 201, 202 & 203*);

-) 7. UNFAIR COMPETITION (*Cal. Bus. & Prof. Code §§ 17200 et seq.*);
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-) 8. CIVIL PENALTIES UNDER PRIVATE ATTORNEY GENERAL ACT ARISING FROM WILLFUL MISCLASSIFICATION (*Cal. Lab. Code §§ 2698 et seq.*);
-)
-) **AND DEMAND FOR JURY TRIAL**
-)
-)

NATURE OF ACTION

1. This case involves defendant-employers’ deliberate scheme to misclassify their truck drivers as independent contractors, thereby denying them the fundamental protections due to employees under California law. This class action seeks to enjoin the defendants’ unlawful conduct, to obtain restitution of unpaid wages and unlawful deductions made from truck drivers’ pay, and to prosecute a private enforcement action to collect civil penalties under the Labor Code Private Attorney General Act (“PAGA”), against Defendants XPO LOGISTICS CARTAGE, LLC dba XPO LOGISTICS, XPO CARTAGE, INC. dba XPO LOGISTICS, JEFFREY TRAUNER, and DOES 1 through 100, inclusive (hereafter, collectively referred to as “Defendants”), under the California Labor Code, the California Industrial Welfare Commission’s (“IWC”) Wage Orders, the California Business and Professions Code (§§ 17200 *et seq.*), and other statutes and regulations applicable to non-exempt employees in the State of California.

2. This combined class and PAGA enforcement action is brought against Defendants—who run a large trucking operation in Southern California—for engaging in a pattern and practice of willfully misclassifying their truck drivers, including Plaintiffs ANGEL OMAR ALVAREZ, ALBERTO RIVERA and FERNANDO RAMIREZ (hereafter, collectively referred to as “Plaintiffs”), as independent contractors instead of affording them their true status as employees, thus denying these workers the basic wage-and-hour rights and protections guaranteed to employees by the California Labor Code and the IWC’s applicable Wage Order.

1 3. The result of Defendants' misclassification scheme is that Plaintiffs and other similarly-
2 situated truck drivers were, and are, routinely denied payment of all earned wages, including: (i) the
3 compensation earned but left unpaid for non-driving work, pursuant to California law's requirement that
4 employees be paid at least the minimum wage for each hour worked; (ii) the premium wages earned for
5 each day an employee is deprived an uninterrupted, duty-free meal period mandated by California law;
6 (iii) the premium wages earned for each day an employee is deprived an uninterrupted, duty-free rest
7 period mandated by California law; and (iv) improper deductions made from drivers' pay for Defendants'
8 own business operational expenses. Instead, Defendants have taken such wages owed to Plaintiffs and
9 other similarly-situated truck drivers and unlawfully converted the funds for Defendants' own use and
10 benefit, in order to maximize profits and gain an unfair business advantage over their competitors at the
11 expense of Defendants' own employees. By their unlawful misclassification scheme, Defendants also
12 evaded their obligation to provide Workers' Compensation protection to these employees in an industry
13 where work-related injuries and illnesses are far from uncommon.

14 4. Defendants' acts and omissions, as described herein, violate provisions of the California
15 Labor Code, including sections 201, 202, 204, 226, 226.7, 226.8, 432.5, 512, 1197 and 2802; violate the
16 applicable Wage Orders issued by the California Industrial Welfare Commission, including Wage Order
17 9-2001; and amount to unfair and unlawful business practices prohibited by the California Business and
18 Professions Code, sections 17200 *et seq.*

19 5. Plaintiffs now bring this class action, on behalf of themselves and a class of similarly-
20 situated former and current truck drivers who drive trucks they lease or own but over whom Defendants
21 nonetheless retain and exercise a level of control such that they are properly deemed employees under
22 California law (hereafter collectively referred to as "Drivers"), to recover the unpaid wages owed to
23 Drivers by Defendants, to recover the expenses unlawfully deducted from Drivers' pay by Defendants,
24 and to collect all applicable statutory penalties for Defendants' myriad violations of the California Labor
25

1 Code, including recordkeeping penalties under Labor Code section 226 and waiting-time penalties under
2 Labor Code section 203.

3 6. Also, pursuant to the California Labor Code Private Attorney General Act of 2004 (*Cal.*
4 *Lab. Code §§ 2698 et seq.*), Plaintiffs seek to assess and collect—on behalf of the California Labor and
5 Workforce Development Agency and each aggrieved Driver—the applicable civil penalties for
6 Defendants’ Labor Code violations committed against Plaintiffs, and other former and current Drivers,
7 who were willfully misclassified by Defendants as independent contractors.

8 **THE PARTIES**

9 7. Plaintiff Angel Omar Alvarez is a resident of Los Angeles County, California, and has been
10 a Driver for Defendants since December 2009. Throughout that time, Plaintiff has been assigned to, and
11 works out of, Defendants’ facility in Commerce, California.

12 8. Plaintiff Alberto Rivera is a resident of San Diego County, California, and has been a
13 Driver for Defendants since May 2017. Throughout that time, Plaintiff Rivera has been assigned to, and
14 works out of, Defendants’ facility in San Diego, California.

15 9. Plaintiff Fernando Ramirez is a resident of San Diego County, California, and has been a
16 Driver for Defendants since December 2017. Throughout that time, Plaintiff Ramirez has been assigned
17 to, and works out of, Defendants’ facility in San Diego, California.

18 10. Plaintiff Juan Romero is a resident of Los Angeles County, California, and has been a
19 Driver for Defendants from February 2013 until February 2018. Throughout that time, Plaintiff has been
20 assigned to, and works out of, Defendants’ facility in Commerce, California.

21 11. Plaintiff Jose Paz is a resident of San Bernardino, California, and has been a Driver for
22 Defendants since April 2015. Throughout that time, Plaintiff has been assigned to, and works out of,
23 Defendants’ facility in Commerce, California.

24 12. Defendant XPO LOGISTICS CARTAGE, LLC dba XPO LOGISTICS is a Delaware
25 Limited Liability Company that maintains California offices and operations in Commerce, California and

1 San Diego, California. As the successor company to Defendant XPO CARTAGE, INC. dba XPO
2 LOGISTICS, Defendant XPO LOGISTICS CARTAGE, LLC (hereafter, “Defendant XPO LLC”) has
3 provided customers with trucking services involving the transportation of cargo to and from ocean
4 shipping and railway terminals since July 2017. As alleged herein, Defendant XPO LLC has directly
5 hired the services of Drivers, including Plaintiffs, who, at all relevant times herein, have resided and
6 worked in the State of California.

7 13. Defendant XPO CARTAGE, INC. dba XPO LOGISTICS is the predecessor company to
8 Defendant XPO LLC, and provided the same trucking services as the latter in the time period prior to July
9 2017. Defendant XPO CARTAGE, INC. (hereafter, “Defendant XPO INC.”) is a Delaware corporation
10 that filed a Certificate of Surrender with the California Secretary of State on July 20, 2017, thereby
11 surrendering its rights and authority to transact intrastate business in the State of California. Prior to that
12 time, Defendant XPO INC. directly hired the services of Drivers, including Plaintiffs, who, at all relevant
13 times herein, have resided and worked in the State of California. Plaintiffs bring this action against
14 Defendant XPO INC. for liabilities incurred prior to July 20, 2017, as described herein.

15 14. Defendant Jeffrey Trauner (hereafter, “Defendant Trauner”) is a resident of the State of
16 California, and has been the Director of Drayage Operations for Defendants XPO LLC and XPO INC.
17 (collectively, the “XPO Defendants”) during the relevant period. Defendant Trauner is also the General
18 Manager for the XPO Defendants’ operations in both Commerce, California and San Diego, California.
19 Plaintiffs are informed and believe, and thereby allege, that Defendant Trauner, as the highest-ranking
20 officer of the XPO Defendants in the State of California, has headed the XPO Defendants’ trucking
21 operations in the State of California during the relevant period. Plaintiffs further allege on information
22 and belief that Defendant Trauner is directly and personally responsible for the wage-and-hour policies
23 and practices at issue in this case, in that he created, formulated, directed, implemented, knowingly ratified
24 and/or consented to these unlawful policies and practices.

1 15. Plaintiffs are currently unaware of the true names and capacities of the defendants sued in
2 this action by the fictitious names DOES 1 through 100, inclusive, and therefore sue those defendants by
3 fictitious names. Plaintiffs shall seek leave to amend this Complaint to allege the true names and capacities
4 of such fictitiously-named defendants when they are ascertained.

5 16. Plaintiffs are informed and believe, and based thereon allege, that each defendant sued in
6 this action acts and acted, in all respects pertinent to this action, as the agent of the other defendants,
7 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and that the acts of each
8 defendant are legally attributable to the other defendants.

9 17. Plaintiffs are informed and believe, and based thereon allege, that each defendant sued in
10 this action, including each defendant sued by the fictitious names DOES 1 through 100, inclusive, is
11 directly or indirectly responsible in some manner for the occurrences, controversies and damages alleged
12 herein, in various capacities, including but not limited to serving as joint employer, joint tortfeasor, single
13 enterprise, *alter ego*, or agents of the other defendants. Each defendant approved, participated in,
14 controlled, or ratified the acts of all other defendants.

15 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

16 18. The XPO Defendants, each operating as XPO Logistics, are major trucking companies that,
17 *inter alia*, transport loads of containers to and from ocean shipping and railway terminals, as well as their
18 customers' warehouses or other facilities throughout North America. In Southern California, the XPO
19 Defendants operate and run their trucking business out of facilities located in Commerce, California and
20 San Diego, California.

21 19. In order to run its transportation business, the XPO Defendants hire Drivers—i.e.,
22 individuals who drive trucks they themselves lease or own—to move cargo for the XPO Defendants on a
23 regular basis. The cargo they transport belongs to the XPO Defendants' customers, who do not deal
24 directly with Drivers. The cargo is kept inside huge containers bearing Defendants' names. The containers
25 are then placed on top of a wheeled trailer or undercarriage called a chassis, which are then pulled by the

1 trucks. Defendants supply the drivers with the chassis and the containers, both of which are essential to
2 the movement of cargo.

3 20. As a condition to working for the XPO Defendants, Plaintiffs and other Drivers are required
4 to sign a form Independent Contractor Operating Contract that the XPO Defendants unilaterally prepared
5 (hereafter, the “IC Contract”), under which Drivers are made to acknowledge their status as independent
6 contractors. Under the IC Contract, Drivers are made to assume the XPO Defendants’ responsibilities to
7 pay operational expenses, such as various administrative fees, fees for the use of tablet computers Drivers
8 are compelled to use on their routes by the XPO Defendants, and the costs of workers’
9 compensation/occupational accident insurance for the Drivers, in clear violation of the law. While the IC
10 Contract deceptively pays lip service to Drivers’ ostensible independence in determining their manner and
11 means of work, in actual practice, the XPO Defendants significantly control the details of the work
12 performed by Drivers, as discussed herein.

13 21. Defendants impose minimal driving and licensing qualifications on Drivers. No special
14 skills outside of the ability to drive a commercial truck are required. However, Defendants employ an
15 application process that enables them to greatly control the individual Driver. For instance, the XPO
16 Defendants perform on each individual Driver a full background check and employment eligibility
17 verification, including a credit check, a criminal history check, an employment check, and a drug test.

18 22. The trucks used by Drivers to transport cargo for the XPO Defendants contain prominent
19 XPO labeling, and Drivers use their trucks to work exclusively for the XPO Defendants on a long-term
20 basis.

21 23. Defendants impose on Drivers, and strictly oversee, recordkeeping requirements by which
22 Drivers are required to document, on forms generated by the XPO Defendants, Drivers’ work and hours,
23 in the manner and frequency dictated by Defendants. The XPO Defendants keep and maintain these
24 records.

1 24. The XPO Defendants control the assignment and dissemination of loads to each Driver,
2 and direct Drivers' work. Drivers are subject to discipline, including verbal reprimands and *de facto*
3 suspensions, if they reject a load assigned by the XPO Defendants.

4 25. The XPO Defendants unilaterally set Drivers' pay rates, which are not negotiable as would
5 be expected in a true independent contractor relationship.

6 26. Drivers are not engaged in a separate business or profession, but instead work exclusively
7 for the XPO Defendants on a long-term basis, rather than periodically, and regularly work for the XPO
8 Defendants at least 5 days a week. Plaintiff and other Drivers working for the XPO Defendants are
9 dependent on Defendants for their livelihood.

10 27. The XPO Defendants require Drivers to obtain certain types of insurance and specific
11 coverage levels on all trucks operated and cargo transported by Drivers as a condition for working for the
12 XPO Defendants. In actuality, the XPO Defendants themselves obtain and provide these insurance
13 coverages and charge them to Drivers.

14 28. The days and hours worked by Drivers are controlled by the XPO Defendants. To obtain
15 work each day, Drivers are required to check in with the XPO Defendants' dispatchers at the start of the
16 Drivers' work shift, at which time the Driver is provided an initial load assignment. Throughout the course
17 of the workday, the Driver must continually contact the XPO Defendants to receive further instructions
18 on further assignments, and is expected to continue working until all cargo loads have been pulled, and
19 may be reprimanded and/or denied further assignments if he or she stops working early. Dispatchers
20 continuously communicate with Drivers, who are required to be available at all times over mobile phone
21 and on the tablet computers issued to them by the XPO Defendants for receiving load instructions.
22 Plaintiffs allege, on information and belief, that the XPO Defendants also use the tablet computers issued
23 to Drivers to monitor, in real time, the location, movement and status of Drivers pulling loads for the XPO
24 Defendants.

1 29. Drivers who work for the XPO Defendants are integrated into the XPO Defendants' regular
2 business operations and are essential to the XPO Defendants' day-to-day operations.

3 30. The XPO Defendants strictly impose various policies, instructions, work rules and
4 regulations on Drivers, disobedience of which would result in worker discipline, including reprimands,
5 warnings, suspensions, and up to immediate termination. The XPO Defendants maintain the right to
6 terminate and can easily terminate Drivers at any time for seemingly insignificant grounds.

7 31. The XPO Defendants strictly require Drivers to do daily truck inspections, and to perform
8 other maintenance inspections, subject to suspension and even termination for disobedience. Drivers are
9 also subjected to mandatory drug and alcohol tests, also subject to discipline.

10 32. In reality, Defendants control the means, manner and methods by which the Drivers
11 perform their work for the XPO Defendants. Nevertheless, Defendants have willfully misclassified
12 Drivers as independent contractors, in order to minimize costs and unduly maximize profits at the expense
13 of their primary workforce.

14 33. Through their unlawful misclassification scheme, Defendants avoid the costs of providing
15 workers compensation/occupational accident insurance to Drivers, denying such employees much needed
16 protection in the event of work-related injuries or illnesses. Defendants also unlawfully pass on their
17 operational costs in the form of administrative fees, and use and rental fees for tablet computers they
18 provide and compel Drivers to use for work.

19 34. Defendants' unlawful conduct of misclassifying Drivers also allows Defendants to deprive
20 Plaintiffs and other Drivers of fundamental employment rights, such as the right to minimum wages, the
21 right to mandated meal breaks, the right to mandated rest breaks, the right to premium wages for missed
22 meal and rest breaks, the right to accurate itemized wage statements, the right to the prompt payment of
23 full wages within time limits designated by law, and the right to workers compensation protection,
24 guaranteed to employees under various provisions of the Labor Code and Wage Order 9-2001.

1 40. There is a well-defined community of interest amongst the Class Members, as all of these
2 individuals have resided and worked in California and have been similarly subjected to unlawful policies
3 and/or practices that misclassified them as independent contractors, thereby depriving them of the
4 protections afforded employees by California's employment laws. Through such misclassification, Class
5 Members, including Plaintiffs, were similarly subjected to unlawful policies and/or practices that
6 improperly required them to pay for expenses incurred in discharging their duties, such as fees for using
7 a tablet computer provided and required by Defendants, administrative fees, and the costs of workers
8 compensation/occupational accident insurance. In addition, Class Members, including Plaintiffs, have
9 been similarly deprived of the legally-mandated minimum-wage compensation for all hours worked,
10 mandated meal and rest periods, the additional hour of compensation owing to them for missed meal and
11 rest periods, accurate, itemized wage statements reflecting all earned wages, and timely payment of all
12 earned wages.

13 41. Common questions of law and fact that affect the class predominate over questions that
14 affect only individual Class Members, including, among other things, (a) whether Defendants maintained
15 a policy and/or practice whereby Class Members were improperly classified as independent contractors
16 as opposed to employees; (b) whether Defendants maintained a policy and/or practice of failing to pay
17 Class Members the legally-mandated minimum-wage for all hours worked; (c) whether Defendants
18 maintained a policy and/or practice of failing to provide Class Members the meal periods to which they
19 were entitled under California law; (d) whether Defendants maintained a policy and/or practice of failing
20 to allow Class Members the rest periods to which they were entitled under California law; (e) whether
21 Defendants maintained a policy and/or practice of failing to pay Class Members the additional hour of
22 compensation owed to them under Labor Code section 226.7 for all shifts during which a mandated meal
23 period was not provided; (f) whether Defendants maintained a policy and/or practice of failing to pay
24 Class Members the additional hour of compensation owed to them under Labor Code section 226.7 for all
25 shifts during which they were deprived a mandated rest period; (g) whether Defendants maintained a

1 policy and/or practice of failing to pay all wages owed to Class Members within the time limits prescribed
2 by Labor Code sections 201, 202 and/or 204; (h) whether Defendants maintained a policy and/or practice
3 of failing to maintain and furnish accurate, itemized wage statements to Class Members; and (i) whether
4 Defendants maintained a policy and/or practice whereby Class Members are improperly required to pay
5 for expenses and losses incurred in discharging their duties.

6 42. Plaintiffs' claims are typical of the claims of the Class Members because (a) Plaintiffs'
7 jobs, positions and duties are similar, if not identical to, the duties and activities of other Class Members;
8 (b) Plaintiffs were similarly misclassified as independent contractors as were other Class Members; (c)
9 Plaintiffs were similarly denied payment of minimum-wage compensation as were other Class Members;
10 (d) Plaintiffs were denied the same meal-break benefits, including additional compensation for missed
11 meal breaks, as other Class Members; (e) Plaintiffs were denied the same rest-break benefits, including
12 additional compensation for missed rest breaks, as other Class Members; (f) Plaintiffs were not given
13 accurate, itemized wage statements, as required by Labor Code section 226, like other Class Members;
14 (g) Plaintiffs were not paid all their earned wages within the time limits prescribed by the California Labor
15 Code, like other Class Members; (h) Plaintiffs were similarly subjected to the requirement that they pay
16 for expenses and losses incurred in discharging their duties for the XPO Defendants as other Class
17 Members; and (i) Plaintiffs were denied the foregoing rights and benefits provided under California's
18 employment laws and regulations in the same manner that such rights and benefits were denied to other
19 Class Members.

20 43. It is common knowledge that employees face great risks in pursuing separate actions,
21 including retaliation. For these and other reasons, a class action is superior to other methods for the fair
22 and efficient adjudication of this controversy. Individual actions are expensive in terms of attorneys' fees
23 and costs relative to Limited amounts of possible recovery. The great majority of class members are
24 unlikely to find attorneys to represent them and they would find it difficult if not impossible to afford to
25 pay hourly fees to attorneys for such actions.

1 47. Labor Code section 1197 makes it unlawful to pay an employee less than the minimum
2 wage, as established by the Industrial Welfare Commission, for each hour worked.

3 48. Labor Code section 1194 entitles an employee receiving less than the minimum wage to
4 recover, in a civil action, the unpaid balance of minimum wages owing, plus interest thereon, reasonable
5 attorneys' fees, and costs of suit.

6 49. Labor Code section 1194.2 entitles an employee receiving less than the minimum wage to
7 recover liquidated damages in an amount equal to the unpaid minimum wages and interest thereon.

8 50. Class Members, including Plaintiffs, are paid a piece rate, consisting of a flat, non-
9 negotiable amount for each load they transport. Defendants do not pay Class Members earned
10 compensation for additional time they are under the control of Defendants and suffered or permitted to
11 work, including, but not limited to, the time drivers spend waiting at the XPO Defendants' facility to be
12 given assignments by dispatchers, meeting with the XPO Defendants' Safety Department personnel,
13 conducting pre-trip and post-trip truck and safety inspections mandated by Defendants, and filling out
14 mandatory paperwork, including, without limitation, time logs, manifests, lease paperwork, and pre-trip
15 and post-trip inspections.

16 51. As a result of Defendants' improper pay policy and/or practice, as described herein,
17 Defendants failed to pay Plaintiffs and other Class Members any compensation at all for each of hour of
18 work outside of actual driving time, and thus failed to pay the minimum wage that these workers were
19 entitled to, for each hour worked, under Labor Code section 1197 and Wage Order 9-2001.

20 52. Plaintiffs are informed and believe, and based thereon allege, that Defendants' failure to
21 pay the minimum wage for each hour worked, as described herein, was done willfully.

22 53. Additionally, as a result of Defendants' failure to pay Plaintiffs and other misclassified
23 truck drivers the minimum wages for all hours worked, these workers were not timely paid all earned
24 wages as required by Labor Code section 204.

1 knowingly and intentionally failed to comply with Labor Code section 226(a) on each and every wage
2 statement that should have been provided to Plaintiffs and other Class Members.

3 71. By failing to keep adequate records, as required by Labor Code section 226, Defendants
4 have injured Plaintiffs and other Class Members, and made it confusing and difficult to calculate the
5 unpaid wages earned and expenditures not indemnified by Defendants (including wages, interest, and
6 penalties thereon) due to Plaintiffs and other Class Members.

7 72. Plaintiffs seek to recover, on behalf of themselves and other Class Members, the statutory
8 penalties provided by Labor Code section 226(e) for the wage statement violations committed by
9 Defendants.

10 **SIXTH CAUSE OF ACTION**
11 **For Waiting Time Penalties**
(Cal. Lab. Code §§ 201, 202 & 203)

12 **AGAINST XPO DEFENDANTS AND DOES 1 THROUGH 100**

13 73. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 72, inclusive, as
14 though set forth fully herein.

15 74. Sections 201 and 202 of the California Labor Code require employers to promptly pay all
16 wages owing to an employee at the conclusion of employment.

17 75. Many of the proposed Class Members are no longer working for Defendants. These former
18 employees were either discharged, quit, or otherwise terminated their employment with Defendants.

19 76. Defendants' failures to pay Class Members who are no longer working for Defendants all
20 wages owing to these former employees, as alleged above, were willful.

21 77. Class Members no longer working for Defendants are therefore entitled to penalties against
22 Defendants, in an amount to be determined at trial, pursuant to Labor Code section 203, which provides
23 that an employee's wages shall continue as a penalty until paid, for a period of up to thirty (30) days from
24 the time they were due.

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1 **SEVENTH CAUSE OF ACTION**
2 **For Unfair Competition**
3 **(Cal. Bus. & Prof. Code §§ 17200 et seq.)**

4 **AGAINST XPO DEFENDANTS AND DOES 1 THROUGH 100**

5 78. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 77, inclusive, as
6 though set forth fully herein.

7 79. California has an important public policy of protecting the welfare of employees, and thus
8 provides for necessary meal and rest periods and that statutorily-guaranteed wages be paid for all hours
9 worked and for missed meal and rest periods. California also prohibits deductions to wages unless
10 authorized by law. *See Cal. Lab. Code §§ 221, 224, 226.7, 512 & 1197.* Defendants' willful
11 misclassification scheme, through which Drivers are denied mandated meal and rest periods, premium
12 wages for missed meal and rest periods, and the legally-mandated minimum wages for all hours worked,
13 and are subjected to improper deductions to wages not authorized by law, has been, and continues to be,
14 unfair, unlawful, and harmful to Plaintiffs, the proposed Class Members, and the general public. Plaintiffs
15 seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure
16 section 1021.5.

17 80. A violation of California Business & Professions Code sections 17200 *et seq.* may be
18 predicated on the violation of any state or federal law. Defendants' activities, as alleged herein, are
19 violations of California law, and constitute unlawful business acts and practices in violation of California
20 Business & Professions Code sections 17200 *et seq.*

21 81. Plaintiffs and Class Members are low wage workers dependent on Defendants for their
22 livelihood, and do not have the same bargaining advantage as their employers. Defendants'
23 misclassification of Plaintiffs and Class Members as independent contractors, when these Drivers are truly
24 employees subject to strict control by Defendants, is unlawful and unfair. By devising a subterfuge where
25 Class Members are required to sign Independent Contractor Operating Contracts under which Class
Members are labelled as independent contractors, Defendants are able to avoid their obligations to abide

1 by the minimum employee-protection thresholds set by State, including provisions regarding mandated
2 meal and rest periods, earned premium wages for missed meal and rest periods, guaranteed minimum-
3 wage compensation for all hours worked, prohibitions against improper deductions from employees' pay
4 for costs arising from Defendants' own business activities, and the guarantees of employer-provided
5 workers compensation insurance to protect against work-related injuries and illnesses. Throughout the
6 time relevant to this action, Defendants, as described herein, have failed and/or refused to abide by the
7 minimum-employee protections that have long been set forth in California law.

8 82. Defendants' misclassification scheme allows Defendants to strip Plaintiffs and Class
9 Members of their fundamental employment rights, such as the rights to minimum wage, mandated meal
10 and rest periods, premium wages for missed meal and rest periods, itemized wage statements, and the
11 prompt payment of full wages within time limits set by law, as provided under various provisions of the
12 Labor Code and Wage Order 9-2001. Defendants also willfully deprive Plaintiff and Class Members of
13 the protections afforded to them under California Workers Compensation laws, denying said drivers the
14 basic medical and financial assistance guaranteed to all employees in the event of work-related injuries
15 and/or sicknesses that may occur in the course of operating trucks for the XPO Defendants. Under their
16 unlawful scheme, Defendants are further able to evade their other legal responsibilities as employers, and
17 instead shift the burden of paying the costs of self-employment and unemployment taxes onto Plaintiffs
18 and other Class Members.

19 83. With their unlawful scheme, Defendants are able to unjustly keep and appropriate for
20 themselves significant amounts of money that otherwise should have been paid to Class Members as
21 wages. Defendants are also able to illegally pass on business operational costs like use of their tablet
22 computers, administrative fees, and the costs of workers compensation/occupational accident insurance to
23 their employees, thereby reducing wages due, in violation of Labor Code section 2802. To the extent that
24 Defendants require Class Members to waive the benefits of said statute, Defendants also violate Labor
25 Code section 2804.

1 b. For failing to pay Plaintiffs and other misclassified Drivers the legally-mandated
2 minimum wage for each hour worked, in violation of Labor Code sections 1197 and 1197.1;

3 c. For failing to provide required meal periods to Plaintiffs and other misclassified
4 Drivers, in violation of Labor Code sections 226.7 and 512, and paragraph 11 of Wage Order 9-2001;

5 d. For failing to pay Plaintiffs and other misclassified Drivers the additional hour of
6 compensation earned for every shift that a mandated meal period was denied, in violation of Labor Code
7 section 226.7(b) and paragraph 11 of Wage Order 9-2001;

8 e. For failing to authorize and/or permit required rest periods to Plaintiffs and other
9 misclassified Drivers, in violation of Labor Code section 226.7 and paragraph 12 of Wage Order 9-2001;

10 f. For failing to pay Plaintiffs and other misclassified Drivers the additional hour of
11 compensation earned for every shift that a mandated rest period was denied, in violation of Labor Code
12 section 226.7(b) and paragraph 12 of Wage Order 9-2001;

13 g. For failing to indemnify Plaintiffs and other misclassified Drivers for expenditures
14 incurred by such employees in direct consequence of their discharge of duties, in the form of fees for use
15 of tablet computers, administrative fees, and the costs of workers compensation/occupation accident
16 insurance, in violation of Labor Code sections 2800, 2802, and 2804;

17 h. For unlawfully collecting, receiving, or withholding part of Plaintiffs' and other
18 misclassified Drivers' wages, in violation of Labor Code sections 221 and 225.5;

19 i. For failing to pay wages promptly following termination of employment, or when
20 due and payable, in violation of Labor Code sections 201, 202 and 204; and

21 j. For failing to maintain for and provide to Plaintiffs and other misclassified Drivers
22 the accurate, itemized wage statements required by Labor Code section 226.

23 88. The above-referenced civil penalties shall include the recovery of amounts specified in the
24 applicable sections of the Labor Code, and if not specifically provided, those under section 2699(f), and
25 shall include those amounts sufficient to recover underpaid wages, including all necessary expenditures

1 or losses incurred by Plaintiff and other misclassified truck drivers, pursuant to Labor Code sections 210,
2 225.5, 226.3, 226.8, 558(a), 1197.1(a), 2802, and 2699, subdivisions (a) and (f).

3 89. Plaintiffs reserve their rights to allege any additional and all other violations of the Labor
4 Code and the Wage Order as may be disclosed in discovery and as a result of additional investigation that
5 may be pursued in this action.

6 90. Defendant Trauner, acting for himself, and on behalf of the XPO Defendants, is responsible
7 for the violations of law described herein, in that Trauner decided, planned, caused, assisted, participated
8 in, allowed and/or ratified the unlawful acts as alleged herein. As Director of Drayage Operations and
9 General Manager, and the highest-ranking officer of the XPO Defendants in California, Trauner exercises
10 supervisory authority and control over the key employees that implemented, and continue to implement,
11 the unlawful wage-and-hour practices against Plaintiffs and other former and current Drivers. Trauner
12 knew that the Drivers should be regarded as employees, but chose to willfully misclassify the drivers as
13 independent contractors, in order to maximize profits for the XPO Defendants.

14 91. Consequently, Defendant Trauner is individually liable, pursuant to PAGA, for civil
15 penalties arising: (a) under Labor Code section 226.8, which makes it unlawful for “any person or
16 employer to engage” in “willful misclassification of an individual as an independent contractor”; (b)
17 under Labor Code section 1197.1, which holds liable “any employer or other person acting either
18 individually or as an officer, agent or employee” who pays or causes to be paid to any employee a wage
19 less than the minimum wage; (c) under Labor Code section 558, which holds liable any “person acting on
20 behalf of an employer who violates, or causes to be violated,” *inter alia*, Labor Code section 512, and/or
21 “any provision regulating hours and days of work in any order of the Industrial Welfare Commission”; (d)
22 under Labor Code section 210(a), which holds liable “every person who fails to pay the wages of each
23 employee as provided” within the time limits set under Labor Code section 204; and (e) under Labor Code
24 section 225.5, which holds liable “every person who unlawfully withholds wages due any employee in
25 violation of”, *inter alia*, Labor Code section 221.

- 1 3. Preliminary and permanent injunctions enjoining and restraining Defendants from
2 continuing the unfair and unlawful business practices set forth above, and requiring the
3 establishment of appropriate and effective policies, procedures and practices in place to
4 prevent future violations, including the maintenance of records that comply with California
5 Labor Code section 226 and Wage Order 9-2001;
- 6 4. Declaratory relief;
- 7 5. Liquidated damages pursuant to section 1194.2 of the California Labor Code, for
8 Defendants' violations of the minimum-wage provisions of California Labor Code section
9 1197 and IWC Wage Order 9-2001, according to proof;
- 10 6. Reasonable attorneys' fees and costs, pursuant to, *inter alia*, California Labor Code
11 sections 218.5, 226, 1194, 2699 and 2802, and California Code of Civil Procedure section
12 1021.5;
- 13 7. Interest accrued on damages and penalties, including pre-judgment interest, pursuant to,
14 *inter alia*, California Labor Code sections 218.6, 1194 and 1194.2, and California Civil
15 Code sections 3287 and 3288;
- 16 8. Civil penalties pursuant to California Labor Code sections 210, 225.5, 226.3, 226.8, 558,
17 1197.1, 2802, and 2699, subdivisions (a) and (f), for Defendants' violations of the
18 California Labor Code and IWC Wage Order 9-2001, according to proof; and
- 19 9. Such other and further relief as the Court deems just and proper.

20
21 Dated: February 27, 2018

LAW OFFICES OF C. JOE SAYAS, JR.

22
23 By: 

24 C. JOE SAYAS, JR.
25 KARL P. EVANGELISTA
Attorneys for Plaintiffs

1 Dated: February 27, 2018

JULIE GUTMAN DICKINSON
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3 By: Julie Gutman Dickinson for

4 JULIE GUTMAN DICKINSON
5 IRA L. GOTTLIEB
6 KATHERINE TRAVERSO
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8 Attorneys for Plaintiffs

9 **DEMAND FOR JURY TRIAL**

10 Plaintiffs ANGEL OMAR ALVAREZ, ALBERTO RIVERA, FERNANDO RAMIREZ, JUAN
11 ROMERO and JOSE PAZ hereby demand a jury trial on all issues so triable.

12 Dated: February 27, 2018

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14 By: C. Joe Sayas Jr.
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