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7 on behalf of themselves, all others similarly situated

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13 Attorneys for DEFENDANT XPO LAST MILE, INC. and MACY'S WEST STORES, INC.

14 ***(Additional Counsel for Defendants on Following Page)***

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17 RAMON GARCIA, an individual, VICTOR
18 RAMIREZ, an individual, ADRIAN
VALENTE, an individual; MARIO PINON,
19 an individual; MYNOR CABRERA, an
individual; Individually and on Behalf of All
20 Similarly Situated Individuals,

21 Plaintiffs,

22 v.

23 MACY'S WEST STORES, INC., an Ohio
corporation; JOSEPH ELETTO TRANSFER,
24 INC., a New York corporation; XPO
LOGISTICS, LLC, an Ohio corporation; and
25 DOES 1 through 25, Inclusive,

26 Defendants.

Case No. 2:16-CV-4440-WHO

**AMENDED JOINT STIPULATION OF
CLASS ACTION SETTLEMENT AND
RELEASE**

Complaint Filed: July 1, 2016

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17 on behalf of themselves, all others similarly situated

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25 Attorneys for Defendant MACY'S WEST STORES, INC.

1 Subject to the approval of the Court pursuant to Federal Rule of Civil Procedure 23,
2 Plaintiffs RAMON GARCIA, VICTOR RAMIREZ, ADRIAN VALENTE, MARIO PINON and
3 MYNOR CABRERA (collectively, “Plaintiffs”), on behalf of themselves and the Putative Class
4 defined below, enter into this Settlement Agreement with Defendants MACY’S WEST STORES,
5 INC. (“Macy’s”) and XPO LAST MILE, INC. (collectively hereinafter referred to as “Defendants”)
6 (Plaintiffs and Defendants are collectively the “Parties”) to settle this Action and subject to the
7 terms and conditions described below.

8 I. DEFINITIONS

9 1. Unless otherwise defined herein, capitalized terms used in this Amended Joint
10 Stipulation of Class Action Settlement and Release (hereinafter “Joint Stipulation,” “Settlement,”
11 or “Settlement Agreement”) shall have the meanings set forth below:

12 a. “Action” refers to the state court action filed in the Superior Court of
13 California, County of Alameda, entitled “RAMON GARCIA, an individual, VICTOR RAMIREZ,
14 an individual, ADRIAN VALENTE, an individual, MARIO PINON, an individual, and MYNOR
15 CABRERA, an individual, Individually and on Behalf of All Similarly Situated Individuals,
16 Plaintiffs, v. MACY’S WEST STORES, INC., an Ohio corporation, JOSEPH ELETTO
17 TRANSFER, INC., a New York corporation, XPO LOGISTICS, LLC, an Ohio corporation, and
18 DOES 1 through 25, Inclusive, Defendants,” Case Number RG16821800. The Action was removed
19 to federal court by XPO Logistics, LLC on August 5, 2016, Case Number 4:16-cv-04440-YGR.
20 On September 6, 2016, the Action was deemed related to *Carter v. XPO Last Mile, Inc.* (Case
21 Number 16-cv-01231-WHO) and thereafter was reassigned to the Honorable William H. Orrick.
22 On October 19, 2016, the parties dismissed XPO Logistics, LLC and substituted XPO Last Mile,
23 Inc. (“XPO LM”) as the proper defendant.

24 b. “Class Information” means information regarding Settlement Class
25 Members that Defendants will compile from their records and provide to the Settlement
26 Administrator. It shall include (to the extent this information is available): each Settlement Class
27 Member’s full name; last known address; last known telephone number; and Social Security

1 Number. Class Information shall also include an estimate of the total number of driver days worked
2 during the Class Period based upon information contained in Defendants' records.

3 c. "Class Period" shall mean from December 28, 2014, through and up to the
4 Preliminary Approval Date.

5 d. "Class Representative(s)" shall refer to Plaintiffs Adrian Valente, Mario
6 Pinon, and Mynor Cabrera.

7 e. "Class Representative Enhancement" shall refer to a payment to the Class
8 Representatives for their services in this Action and as consideration for their general release of all
9 individual claims against Defendants. This payment is subject to Court approval and shall not
10 exceed \$5,000 for each Class Representative.

11 f. "Court" refers to the United States District Court, Northern District of
12 California, the Honorable William H. Orrick presiding.

13 g. "Cy Pres Beneficiary" shall refer to the Legal Aid Society – Employment
14 Section.

15 h. "Defense Counsel" shall refer to Fraser A. McAlpine and Adam L.
16 Lounsbury of Jackson Lewis P.C., and Michael C. Christman of Macy's Law Department for
17 Defendant Macy's West Stores, Inc.

18 i. "Effective Date" means the last to occur of the following: (a) if there are no
19 objections to the Settlement, then the Final Approval Date; (b) if there are one or more objections
20 to the Settlement, and if an appeal, review, or writ is not sought from the Final Judgment, the 31st
21 day after entry of the Final Judgment; or (c) if an appeal, review, or writ is sought from the Final
22 Judgment, the day after the Final Judgment is affirmed or the appeal, review, or writ is dismissed
23 or denied, and the Final Judgment is no longer subject to further judicial review.

24 j. "Final Approval Date" means the date the Order Granting Final Approval of
25 Proposed Class Action Settlement is entered by the Court.

26 k. "Final Approval Order" means the Order Granting Final Approval of
27 Proposed Class Action Settlement.

1 w. "Settlement Administrator" shall be a third-party claims administrator
2 agreed upon by the Parties to perform the customary duties of a settlement administrator including,
3 but not limited to, the duties enumerated in this Settlement Agreement.

4 x. "Settlement Administrator Costs" shall mean the total of all costs actually
5 incurred by the Settlement Administrator in order to make all payments owed to Settlement Class
6 Members. Settlement Administrator Costs include all costs of administering the Settlement,
7 including but not limited to all tax document preparation, custodial fees, and accounting fees; all
8 costs and fees associated with preparing, issuing and mailing any and all notices and other
9 correspondence to Putative Class Members, all costs and fees associated with computing,
10 processing, reviewing, and distributing the Net Settlement Amount, and resolving disputed claims;
11 all costs and fees associated with any other payments to be made out of or into the Net Settlement
12 Amount; all costs and fees associated with preparing any filings required by any governmental
13 taxing authority or agency; all costs and fees associated with preparing any other notices, reports,
14 or filings to be prepared in the course of administering disbursements from the Net Settlement
15 Amount; and any other costs and fees incurred and/or charged by the Settlement Administrator in
16 connection with the execution of its duties under this Settlement Agreement.

17 y. "Settlement Class Member" shall mean a Putative Class Member who does
18 not timely opt out of the Settlement and shall include the Class Representatives.

19 z. "Settlement Class Members" shall mean all Putative Class Members who do
20 not timely opt out of the Settlement and shall include the Class Representatives.

21 **II. BACKGROUND AND REASONS FOR SETTLEMENT**

22 2. On July 1, 2016, Plaintiffs filed this case in Alameda County Superior Court on behalf
23 of all individuals who performed services as Drivers and Helpers out of the warehouse location
24 identified as Macy's Logistics and Operations, 1208 Whipple Road, Union City, CA 94587 during
25 the period commencing July 1, 2012 through the present.

26 3. The operative Complaint states the following causes of action: (1) Unpaid Wages (Ca.
27 Labor Code §§ 216 and 1194); (2) Failure to Pay Minimum Wages (Ca. Labor Code § 1194); (3)

1 Failure to Pay Overtime Compensation (Ca. Labor Code §§ 510 and 1194) ; (4) Failure to Provide
2 Meal and Rest Periods (Ca. Labor Code §§ 226.7 and 512); (5) Failure to Furnish Accurate Wage
3 and Hour Statements (Ca. Labor Code §226); (6) Waiting Time Penalties (Ca. Labor Code §§ 201-
4 203); (7) Indemnification (Ca. Labor Code § 2802); (8) Conversion ; and (9) Unfair Competition
5 (Ca. Bus. & Prof. Code §§ 17200 *et seq.*).

6 4. On August 5, 2016, XPO Logistics removed this case to federal court for the Northern
7 District of California. The case was initially reassigned to the Honorable Yvonne Gonzalez Rogers.
8 Thereafter, on September 5, 2016, this case was reassigned to the Honorable William H. Orrick
9 following a finding that this Action was related to a previously filed action entitled *Carter v. XPO*
10 *Logistics, Inc.*, Case Number 16-cv-01231-WHO. This Action was also subsequently related to a
11 concurrently pending action entitled *Ibanez/Kramer v. XPO Logistics, Inc.*, Case Number 16-cv-
12 07039-WHO (consolidated with 3:17-cv-04009-JSC). Plaintiffs and Defendants Macy's West
13 Stores, Inc. and Joseph Eletto Transfer, Inc. agreed to explore resolution through mediation before
14 engaging in protracted discovery. That mediation was conducted with Michael Young in Los
15 Angeles, California on October 5, 2016. Counsel for the Parties fully briefed their positions for the
16 mediator. After extensive arms-length negotiations by and among the Parties, the Parties reached
17 an agreement in principle for One Million Five Hundred Fifty Thousand Dollars and Zero Cents
18 (\$1,550,000.00) which covered the class period of July 2, 2012 through December 27, 2014 and
19 concerned only Defendants Macy's West Stores, Inc. and Joseph Eletto Transfer, Inc. for the
20 aforementioned class period. XPO LM did not participate in mediation or engage in possible
21 settlement discussions, at that time. That settlement was presented to this Court for approval, and
22 finally approved by this Court on December 28, 2017.

23 5. Plaintiffs' Counsel pursued the Action against Macy's West Stores, Inc. and XPO LM.
24 for the class period of December 28, 2014 to the present. Plaintiffs' Counsel drafted a letter to the
25 Labor Workforce and Development Agency on July 22, 2017, alleging various penalties under the
26 California Labor Code pursuant to the Private Attorneys General Act of 2004 (Labor Code §§2698,
27 *et seq.*).

1 **III. TERMS OF THE SETTLEMENT**

2 9. Settlement Payment.

3 a. The Gross Settlement Amount will be transferred to the Settlement
4 Administrator within fourteen calendar (14) days after the Effective Date.

5 b. Within twenty-one (21) calendar days after the Effective Date, the
6 Settlement Administrator will transmit the payments for attorneys' fees and costs (not to exceed 33
7 1/3% of the Gross Settlement Amount in attorneys' fees and \$50,000 in attorney costs) and the
8 Class Representative Enhancement to Plaintiffs' Counsel.

9 c. Within forty-five (45) calendar days after the Effective Date, the Settlement
10 Administrator will mail the payments to the Settlement Class Members for whom the Settlement
11 Administrator has a taxpayer identification number. Settlement Class Members for whom the
12 Settlement Administrator does not have a taxpayer identification number by the time of the
13 distribution date will be bound by the terms of this Settlement Agreement but shall have not receive
14 any payment. All Settlement Class Members who do not receive a portion of the Net Settlement
15 Amount because the Settlement Administrator does not have a taxpayer identification number on
16 file for them by the time of distribution will instead have their share of the Net Settlement Amount
17 reallocated to all other Settlement Class Members for whom the Settlement Administrator does
18 have a taxpayer identification number.

19 10. Payments and Distribution.

20 a. The Settlement Administrator will calculate the individual payments due to
21 Settlement Class Members. Settlement Class Members who choose to submit verified claim forms
22 will be credited for work days reported during the Class Period, subject to a possible reasonable
23 adjustment necessarily made after consultation among the Settlement Administrator and counsel
24 for Defendants and Plaintiffs. Fifteen (15) percent of the individual payment shall be reported on
25 an IRS Form W-2, and eighty five (85) percent shall be reported on an IRS Form 1099. Separate
26 and apart from its obligation to pay the Gross Settlement Amount, XPO LM shall remit to the
27 Settlement Administrator the "employers' share" of the payroll taxes incurred in connection with

1 the amount of individual payments reported on IRS Form W-2s. In no event shall the Released
2 Parties, other than provided herein, be responsible for any taxes related to any payments made under
3 this Settlement Agreement.

4 b. Sixty percent (60%) of the Net Settlement Amount shall be allocated for
5 payment to the Settlement Class Member drivers and shall be known as the Driver Net Settlement
6 Amount. In order to calculate each Settlement Class Member driver's share of the Driver Net
7 Settlement Amount, the Settlement Administrator will use the following formulas:

8 i. Each Settlement Class Member driver shall be provided the
9 opportunity to submit a verified claim form (the "Verified Claim
10 Form") stating the number of days that Settlement Class Member
11 driver worked. The Verified Claim Form will be substantially in the
12 form attached as Exhibit A-1 and will be mailed to each Settlement
13 Class Member driver with the Notice.

14 ii. The numerator for each Settlement Class Member driver who returns
15 a Verified Claim Form shall be the total number of days reported by
16 that Settlement Class Member driver, subject to a possible reasonable
17 adjustment necessarily made after consultation among the Settlement
18 Administrator and counsel for Defendants and Plaintiffs;

19 iii. The denominator for each Settlement Class Member driver who
20 returns a Verified Claim Form shall be the total number of days
21 worked by all Settlement Class Member drivers as provided by
22 Defendants within the Class Information;

23 iv. The proportionate share of the Driver Net Settlement Amount for
24 each Settlement Class Member driver who returns a Verified Claim
25 Form shall be that Settlement Class Member driver's numerator
26 divided by the denominator;

27 ///

1 v. The Settlement Administrator will multiply the Driver Net
2 Settlement Amount by the proportionate share of each Settlement
3 Class Member driver who returns a Verified Claim Form to
4 determine that Settlement Class Member driver's settlement share.

5 vi. If the total number of days worked for the Settlement Class Member
6 drivers who return a Verified Claim Form is less than the total
7 number of days worked by all Settlement Class Member drivers, then
8 undistributed monies remaining from the Driver Net Settlement
9 Amount shall be paid, on an equal basis, to the Settlement Class
10 Member drivers who did not return a Verified Claim Form.

11 c. Forty percent (40%) of the Net Settlement Amount shall be allocated for
12 payment to the Settlement Class Member helpers and shall be known as the Helper Net Settlement
13 Amount. Each Settlement Class Member helper's share of the Helper Net Settlement Amount shall
14 be calculated as follows:

15 i. Each Settlement Class Member helper shall be provided the
16 opportunity to submit a Verified Claim Form stating the number of
17 days that Settlement Class Member helper worked. The Verified
18 Claim Form will be substantially in the form attached as Exhibit A-1
19 and will be mailed to each Settlement Class Member helper with the
20 Notice.

21 ii. The numerator for each Settlement Class Member helper who returns
22 a Verified Claim Form shall be the total number of days reported by
23 that Settlement Class Member helper, subject to a possible reasonable
24 adjustment necessarily made after consultation among the Settlement
25 Administrator and counsel for Defendants and Plaintiffs;

26 iii. The denominator for each Settlement Class Member helper who
27 returns a Verified Claim Form shall be the total number of days
28

1 worked by all Settlement Class Member drivers as provided by
2 Defendants within the Class Information;

3 iv. The proportionate share of the Helper Net Settlement Amount for
4 each Settlement Class Member helper who returns a Verified Claim
5 Form shall be that Settlement Class Member helper's numerator
6 divided by the denominator;

7 v. The Settlement Administrator will multiply the Helper Net
8 Settlement Amount by the proportionate share of each Settlement
9 Class Member helper who returns a Verified Claim Form to
10 determine that Settlement Class Member helper's settlement share.

11 vi. If the total number of days worked for the Settlement Class Member
12 helpers who return a Verified Claim Form is less than the total
13 number of days worked by all Settlement Class Member drivers, then
14 undistributed monies remaining from the Helper Net Settlement
15 Amount shall be paid, on an equal basis, to the Settlement Class
16 Member helpers who did not return a Verified Claim Form.

17 d. Checks issued to Settlement Class Members pursuant to this Settlement shall
18 remain negotiable for a period of one-hundred and eighty (180) days from the date of mailing.
19 Settlement Class Members who fail to negotiate (*i.e.*, cash or deposit) their check(s) within those
20 one-hundred and eighty (180) days shall remain subject to the terms of this Settlement. After the
21 expiration of one-hundred and eighty (180) days, the sum of any un-cashed/un-deposited checks
22 shall revert to the Net Settlement Amount and be distributed to the Legal Aid Society – Employment
23 Law Center.

24 e. The aggregate amount of settlement shares that are not cashed or otherwise
25 negotiated by Settlement Class Members shall, after the expiration of one-hundred and eighty (180)
26 days, be paid to the Legal Aid Society – Employment Law Center. In no event shall any
27 undistributed portion of the Net Settlement Amount revert to Defendants.

1 f. The Settlement Administrator shall promptly notify both Plaintiffs' Counsel
2 and Defendants' Counsel of any Settlement Class Member inquiring about their inclusion in the
3 Action or failure to receive the Notice in conjunction with this Action. Any compensation disputes
4 will be resolved and decided by the Settlement Administrator, in its sole discretion, after
5 consultation with counsel for Defendants and Plaintiffs. The Settlement Administrator's decision
6 on all compensation disputes will be final and non-appealable.

7 g. The Released Parties shall have no responsibility for deciding the validity of
8 the individual settlement amounts or any other payments made pursuant to this Settlement
9 Agreement, and shall not be liable under any circumstances for any errors in the decision of any
10 claims, shall have no involvement in or responsibility for the determination or payment of taxes
11 and required withholdings, if any and shall have no liability for any errors made with respect to the
12 calculation of any individual settlement amount. Settlement Class Members understand that they
13 shall solely be responsible for any and all tax obligations associated with their respective individual
14 settlement amounts. All individual settlement amount shall be deemed to be paid to Settlement
15 Class Members solely in the year in which such payments are actually received by the Settlement
16 Class Members.

17 11. Attorneys' Fees, Costs, and Class Representative Enhancements.

18 a. The Action alleges a potential claim for attorneys' fees and costs pursuant
19 to, *inter alia*, California Labor Code sections 218.5, 226(e), 1194, 2802 and Code of Civil Procedure
20 section 1021.5. The Parties and Plaintiffs' Counsel agree that any and all such claims for attorneys'
21 fees and costs have been settled in this Joint Stipulation subject only to approval by the Court.

22 b. Plaintiffs' Counsel may apply for, and Defendants will not oppose, an award
23 of attorneys' fees in an amount up to one-third (33 1/3%), or not to exceed One Million, One
24 Hundred Sixty-Six Thousand, Six Hundred Sixty-Six Dollars and Sixty-Seven Cents
25 (\$1,166,666.67) of the Gross Settlement Amount, and costs of up to \$50,000.00, all of which shall
26 be paid exclusively from the Gross Settlement Amount, and will compensate Plaintiffs' Counsel
27 for all of the work already performed, and expenses already incurred in the Action, and all work
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1 remaining to be performed in documenting the Settlement, securing Court approval of the
2 Settlement, administering the Settlement, ensuring that the Settlement is fairly administered and
3 implemented, obtaining a dismissal of the Action for the Class Period with prejudice, and defending
4 against any appeals, as well as all associated expenses.

5 c. The substance of Plaintiffs' Counsel's application for attorneys' fees and
6 costs is not part of this Settlement, and is to be considered separately from the Court's consideration
7 of the fairness, reasonableness, adequacy, and good faith of the settlement of the Action. Any
8 proceedings related to Plaintiffs' Counsel's application for attorneys' fees shall not terminate or
9 cancel this Settlement, or otherwise affect the finality of the Final Approval Order. In the event
10 that Plaintiffs' Counsel appeal the Court's decision on fees, the amount of fees approved by the
11 Court and not in dispute shall be distributed to Plaintiffs' Counsel on the 31st day following the
12 Final Approval Date and the amount of fees claimed by Plaintiffs' Counsel that are not approved
13 by the Court and which are subject to an appeal by Plaintiffs' Counsel, if any, shall, on the 31st day
14 following the Final Approval Date, be forwarded to the Settlement Administrator, which will be
15 responsible for holding those disputed funds until the appeal is resolved and distributing them in
16 accordance with the decision stemming from the appeal. Any such appeal by Plaintiffs' Counsel
17 shall not hold up or in any way delay the distribution of the undisputed Net Settlement Amount to
18 Settlement Class Members or the distribution of the undisputed fees to Plaintiffs' Counsel.
19 Defendants will not oppose Plaintiffs' Counsel's fee application in any appellate proceeding as long
20 as the total amount of attorneys' fees sought by Plaintiffs' Counsel does not exceed 33 1/3% of the
21 Gross Settlement Amount.

22 d. In the event that Plaintiffs' Counsel are not awarded their requested fees and
23 costs, in whole or in part, no non-awarded fees or costs shall revert to Defendants, but instead shall
24 revert to the Net Settlement Amount.

25 e. The Class Representative Enhancement is in addition to the Plaintiffs'
26 individual settlement payments. Defendants will not oppose Plaintiffs' enhancement petition so
27 long as it does not exceed \$15,000.00 (\$5,000 for each of the 3 Class Representatives).

1 or any other administrative or legal proceeding, excepting only proceedings to approve this
2 Settlement and/or to enforce it (including any proceeding concerning the preclusive effect of the
3 Settlement on any Putative Class Member). Whether or not the Settlement set forth in this
4 Settlement Agreement becomes final, neither the Settlement, any document, statement, proceeding
5 or conduct related to the Settlement Agreement, nor any reports or accounting of those matters, will
6 be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for
7 any purpose adverse to Plaintiffs, the Putative Class Members, or the Released Parties, including,
8 but not limited to, evidence of a presumption, concession, indication or admission of liability, fault,
9 wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence
10 against the Released Parties in any further proceeding in the Action, or any other civil, criminal or
11 administrative action or proceeding except for purposes of effectuating or enforcing the Settlement
12 pursuant to this Settlement Agreement.

13 15. Class Size

14 The Parties agree that in the event that the number of Class Members or compensable
15 workweeks exceeds 10% of what was estimated by Defendants in connection with mediation, which
16 was 638 Class Members, the parties will negotiate in good faith to reach an understanding of the
17 consequences should that estimate prove to be incorrect, which could include renegotiating the
18 amount of the Gross Settlement Amount, the scope of the release or other changes to the terms of
19 the settlement expressed herein. The Parties recognize that any such material change shall be
20 subject to this Court's approval.

21 **IV. NOTICE TO SETTLEMENT CLASS**

22 16. Within fourteen (14) days after the Preliminary Approval Date, Defendants shall
23 provide the Class Information to the Settlement Administrator and Plaintiffs' Counsel. In the event
24 the information maintained by Defendants regarding contact information is incomplete or
25 inaccurate, the Parties will make reasonable efforts to obtain and provide the approximate, last-
26 known data/information. Within twenty-one (21) days after the Preliminary Approval Date, the
27 Settlement Administrator will send notice of the Settlement, the Verified Claim Form, and a form
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1 IRS W-9 (or equivalent) in the form attached hereto as Exhibit A and A-1, respectively, to
2 Settlement Class Members' last-known addresses. The Settlement Administrator will thereafter
3 follow up promptly on undeliverable addresses and attempt to locate the Settlement Class Members'
4 updated addresses through people-finder software and skip-trace searches through the United States
5 Postal Service. Additionally, the Settlement Administrator may contact the Settlement Class
6 Members via telephone or e-mail to attempt to obtain updated addresses, as necessary, and the
7 Parties will cooperate in providing telephone numbers and e-mail to the extent such information is
8 known by the Parties. In no event, and under no circumstances, shall Plaintiffs' Counsel contact
9 any Settlement Class Member regarding, in any way, the prospective representation or potential
10 representation of any Settlement Class Member relating to any of the Class Released Claims, except
11 as specifically provided herein. To help notice of the Settlement reach all of the Settlement Class
12 Members, the Settlement Administrator shall (1) publish a notice of the Settlement in one San
13 Francisco newspaper and one Oakland newspaper, and (2) have a notice read on a Spanish-language
14 radio station located in the San Francisco bay area. The content of the print and radio notices shall
15 be approved by the Defendants prior to publication. Both the print and radio notices shall provide
16 a telephone number that Settlement Class Members may call to obtain information about the
17 Settlement or provide updated contact information.

18 17. To the extent the Settlement Administrator does not have a Settlement Class
19 Members' taxpayer identification number, the notice issued to that Settlement Class Member shall
20 also include a request for the Settlement Class Member's taxpayer identification number and inform
21 the Settlement Class Member that payment will not issue unless the Settlement Class Member
22 submits an IRS W-9 Form (or equivalent) within the timeframes specified in this Agreement in
23 order to receive their share of the Net Settlement Amount.

24 18. Within thirty (30) days following the expiry of the time in which a Putative Class
25 Member has to opt-out of this Settlement, the Settlement Administrator shall send a reminder
26 postcard to those Settlement Class Members for whom the Settlement Class Member is lacking a
27 taxpayer identification number. That postcard shall inform the Settlement Class Member that (a)
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1 the Settlement Administrator needs their taxpayer identification before issuing a distribution from
2 the Settlement; (b) the requested taxpayer identification must be received by the Settlement
3 Administrator within seven (7) days of the Effective Date of the Settlement; and (c) failure to
4 provide the requested information will result in the Settlement Class Member's portion of the Net
5 Settlement Amount being distributed to the Settlement Class Members for whom the Settlement
6 Administrator has a taxpayer identification numbers.

7 19. The Settlement Administrator, after consultation with Plaintiffs' Counsel and
8 Defense Counsel, will have the authority to resolve all disputes related to the Notice.

9 20. Putative Class Members will have one hundred and twenty (120) days in which to
10 postmark objections, disputes, requests for exclusion, and/or submit a Verified Claim Form, as
11 applicable and as desired. The Settlement Administrator will skip-trace returned mail and re-mail
12 within five (5) days of its return. Under no circumstances will the skip-trace procedure described
13 in this paragraph, or the publication procedure described in paragraph 15, above, extend the period
14 for post-marking objections, disputes, requests for exclusion, and/or Verified Claim Form claims
15 by more than an additional fifteen (15) days.

16 21. If an envelope so mailed has not been returned within thirty (30) days of the mailing,
17 it will be presumed that the Putative Class Member received the Notice.

18 22. Those individuals who do not submit valid and timely requests for exclusion shall be
19 deemed Settlement Class Members.

20 23. Plaintiffs' Counsel shall provide the Court, at least seven (7) business days prior to the
21 Final Approval Hearing, a declaration by the Settlement Administrator specifying the due diligence
22 it has undertaken with regard to the mailing of the Notice and information regarding the class
23 members' response, as required by this Court's Procedural Guidance for Class Action Settlements.

24 24. The Settlement Administrator shall be responsible for issuing the payments to
25 Settlement Class Members. The Settlement Administrator will file proof of payment with the Court
26 and will serve Plaintiffs' Counsel and Defense Counsel with a copy within ninety (90) calendar
27 days after the Effective Date. The Settlement Administrator shall provide Plaintiffs' Counsel and
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1 Defense Counsel with certification that the Gross Settlement Amount was distributed in accordance
2 with this Settlement.

3 **V. DISPUTES, REQUESTS FOR EXCLUSION, OBJECTIONS, AND VERIFIED**
4 **CLAIM FORM**

5 25. The Notice shall provide one hundred and twenty (120) days from the mailing date of
6 the Notice for each Putative Class Member to: (1) opt out of the Settlement; (2) object to the
7 Settlement; or (3) submit a Verified Claim Form and/or IRS W-9 (or equivalent) as applicable and
8 as desired.

9 26. No opt out request will be accepted if postmarked to the Settlement Administrator more
10 than one hundred and twenty (120) calendar days after the date the Notice was mailed to the Putative
11 Class Member. All original opt out requests shall be sent directly to the Settlement Administrator
12 at the address indicated on the Notice and the Settlement Administrator will forward such opt out
13 requests to Plaintiffs' Counsel and Defense Counsel. The Settlement Administrator will certify
14 jointly to Plaintiffs' Counsel and Defense Counsel the number of all Putative Class Members who
15 have submitted opt-out requests. During the one hundred and twenty (120) day period after the
16 date the Notice is mailed to Putative Class Members, the Settlement Administrator will provide this
17 information beginning on the 15th day after the Notice is mailed, and will update this information
18 every following 7 days until the Notice period expires.

19 27. No later than twenty-one (21) calendar days prior to the Final Approval Hearing, the
20 Settlement Administrator will submit information regarding the class members' response to
21 Plaintiffs' Counsel and Defense Counsel, including information about the number of undeliverable
22 class notices, the number of Settlement Class Members who submitted verified claims, the number
23 of Settlement Class Members who elected to opt out of the class, and the number of Settlement
24 Class Members who objected to or commented on the settlement.

25 28. Defendants have the option of withdrawing from the settlement if seven percent (7%)
26 or more of the Putative Class Members opt out of the Settlement.

27 ///

1 the Court enters its Preliminary Approval Order, including, but not limited to, the claim of
2 misclassification or causes of action asserted in the Action. Without limiting the generality of the
3 foregoing, this release shall include, but is not limited to, any and all claims arising from or related
4 to facts and claims alleged in the Action during the Class Period for: unpaid wages including failure
5 to pay minimum wage, straight time compensation, overtime compensation, and interest; failure to
6 pay for all hours worked; wage statements; indemnification; reimbursement; conversion;
7 restitution; injunctive relief; failure to keep accurate records; unfair business practices; penalties,
8 including recordkeeping penalties, wage statement penalties, minimum-wage penalties, statutory
9 penalties, civil penalties, waiting-time penalties, and penalties under the Private Attorneys General
10 Act; meal and rest periods; interest; liquidated damages; punitive damages; and attorneys' fees and
11 costs. The Class Released Claims shall also include all claims arising from or related to facts and
12 claims alleged in the Action during the Class Period under: the California Labor Code (including,
13 but not limited to, §§ 201, 202, 203, 204, 210, 218.6, 221, 225.5, 226, 226.7, 227.3, 510, 511, 512,
14 558, 1174, 1174.5, 1194, 1197, 1197.1, 1197.2, 1198, 2802, and 2698 *et seq.*); the Wage Orders of
15 the California Industrial Welfare Commission; California Business and Professions Code
16 §17200 *et seq.*; the California common law of contract; the Fair Labor Standards Act, 29 U.S.C. §§
17 201 *et seq.*; and federal common law.

18 34. Class Representatives, on behalf of themselves and their assigns, successors, heirs,
19 executors, administrators, and representatives, shall and do hereby forever release, discharge, and
20 agree to hold harmless the Released Parties from any and all claims of any kind whatsoever,
21 including, but not limited to, the Class Released Claims released above and including, but not
22 limited to, any claims that arose from or are dependent on (a) the Americans With Disabilities Act,
23 as amended; (b) Title VII of the Civil Rights Act of 1964, as amended; (c) the Civil Rights Act of
24 1991; (d) 42 U.S.C. § 1981, as amended; (e) the Age Discrimination in Employment Act, as
25 amended; (f) the Equal Pay Act; (g) the Employee Retirement Income Security Act, as amended;
26 (h) the Consolidated Omnibus Budget Reconciliation Act; (i) the Rehabilitation Act of 1973; (j) the
27 Family and Medical Leave Act; and (k) the Civil Rights Act of 1966.

1 this Settlement never existed; (c) the Plaintiffs (50%) and Defendants (50%) shall split any costs
2 for Notice or claims administration incurred by the Settlement Administrator through that date; and
3 (d) any certification order for purposes of settlement will be deemed null and void and the Parties
4 agree to take all steps necessary to ensure that the certification of this action for settlement purposes
5 only will be withdrawn. If there is any reduction in the attorneys' fees award, such reduction may
6 be appealed as set forth herein, but is not a basis for rendering this Settlement void, voidable, and/or
7 unenforceable.

8 **IX. PARTIES' AUTHORITY**

9 40. The respective signatories to the Settlement represent that they are fully authorized to
10 enter into this Settlement and bind the respective Parties to its terms and conditions.

11 **X. MUTUAL COOPERATION**

12 41. The Parties agree to cooperate fully with each other to accomplish the terms of this
13 Settlement, including but not limited to, execution of such documents and to take such other action
14 as may reasonably be necessary to implement the terms of this Settlement. The Parties shall use
15 their best efforts, including all efforts contemplated by this Settlement and any other efforts that
16 may become necessary by order of the Court, or otherwise, to effectuate the terms of this Settlement.
17 As soon as practicable after execution of this Settlement, Plaintiffs' Counsel shall, with the
18 assistance and cooperation of Defendants and their counsel, take all necessary steps to secure the
19 Court's final approval.

20 **XI. NO PRIOR ASSIGNMENTS**

21 42. The Parties and Plaintiffs' Counsel represent, covenant, and warrant that they have not
22 directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or
23 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action
24 or right released and discharged in this Settlement.

25 **XII. NOTICES**

26 43. Unless otherwise specifically provided, all notices, demands or other communications
27 in connection with this Settlement Agreement shall be: (1) in writing; and (2) sent via United States
28

1 registered or certified mail, return receipt requested, addressed as follows:

2
3 To Putative Class Members:

4 Michael Boyamian, Esq.
5 michael@boyamianlaw.com
6 Armand R. Kizirian, Esq.
7 armand@boyamianlaw.com
8 BOYAMIAN LAW, INC.
9 550 North Brand Boulevard, Suite 1500
10 Glendale, California 91203
11 Telephone: (818) 547-5300
12 Facsimile: (818) 547-5678

13 Thomas W. Falvey, Esq.
14 tom@falveyllaw.com
15 LAW OFFICES OF THOMAS W. FALVEY
16 550 North Brand Boulevard, Suite 1500
17 Glendale, California 91203
18 Telephone: (818) 547-5200
19 Facsimile: (818) 500-9307

20 Joseph M. Lovretovich, Esq.
21 JML@jmlaw.com
22 JML LAW, APLC
23 5855 Topanga Canyon Blvd., Suite 300
24 Woodland Hills, California 91367
25 Telephone: (818) 610-8800
26 Facsimile: (818) 610-3030

27 To Defendant XPO Last Mile, Inc.:

28 Fraser A. McAlpine, Esq.
fraser.mcalpine@jacksonlewis.com
JACKSON LEWIS P.C.
50 California Street, 9th Floor
San Francisco, CA 94111
Telephone: (415) 394-9400
Facsimile: (415) 394-9401

Adam L. Lounsbury, Esq.
adam.lounsbury@jacksonlewis.com
JACKSON LEWIS P.C.
701 East Byrd Street, 17th Floor
Richmond, VA 23219
Telephone: (804) 649-0404
Facsimile: (804) 649-0403

1 To Defendant Macy's West Stores, Inc.:

2 Michael Christman
3 michael.christman@macys.com
4 Macy's Law Department
5 11477 Olde Cabin Road, Suite 400
6 St. Louis, Missouri 63141
7 Telephone: (314) 342-6334
8 Facsimile: (314) 342-6366

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13 **XIII. CONSTRUCTION**

14 44. The Parties agree that the terms and conditions of this Settlement are the result of
15 lengthy, intensive arms-length negotiations between the Parties and that this Settlement shall not
16 be construed in favor of or against any Party by reason of the extent to which any Party or its counsel
17 participated in the drafting of this Settlement. The Parties have entered into this Settlement
18 voluntarily and without duress or undue influence.

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22 **XIV. CAPTION AND INTERPRETATIONS**

23 45. Paragraph or section titles or captions contained herein are inserted as a matter of
24 convenience and for reference, and in no way define, limit, extend, or describe the scope of this
25 Settlement or any provision. Each term of this Settlement is contractual and not merely a recital.

26
27
28 **XV. MODIFICATION**

46. This Settlement may not be changed, altered, or modified, except in writing and signed
by the Parties (and, after it has been submitted to the Court, after any such changes have been
approved by the Court). This Settlement may not be discharged except by performance in
accordance with its terms or by a writing signed by the Plaintiffs' Counsel and Defense Counsel.
However, the Parties agree that Defendants may withdraw from the Settlement if seven percent
(7%) of the Putative Class Members choose to opt out of the Settlement.

XVI. INTEGRATION CLAUSE

47. This Settlement contains the entire agreement between the Parties relating to the
resolution of the Action, and all prior or contemporaneous agreements, understandings,
representations, and statements, whether oral or written and whether by a party or such party's legal

1 counsel, are merged in this Settlement. No rights under this Settlement may be waived except in
2 writing.

3 **XVII. BINDING ON ASSIGNS**

4 48. This Settlement shall be binding upon and inure to the benefit of the Parties and their
5 respective heirs, trustees, executors, administrators, successors, and assigns.

6 **XVIII. CLASS COUNSEL SIGNATORIES**

7 49. It is agreed that because the members of the Putative Class are so numerous, it is
8 impossible or impractical to have each Settlement Class Member sign this Settlement. The Notice
9 will advise all Putative Class Members of the binding nature of this Settlement and the release
10 contained within this Settlement. Excepting only the Putative Class Members who timely submit
11 an opt out request, this Settlement (once approved by the Court) shall have the same force and effect
12 as if this Settlement were executed by each Settlement Class Member.

13 **XIX. COUNTERPARTS**

14 50. This Settlement may be executed in counterparts, and when each settling party has
15 signed and delivered at least one such counterpart, each counterpart shall be deemed an original,
16 and, when taken together with other signed counterparts, shall constitute one Settlement, which
17 shall be binding upon and effective as to all Parties.

18 **XX. GOVERNING LAW**

19 51. This Settlement and Exhibit A attached hereto shall be deemed to have been
20 negotiated, executed, and delivered, and to be wholly performed, in the State of California. The
21 rights and obligations of the Parties under this Settlement shall be construed and enforced in
22 accordance with, and be governed by, the substantive and procedural laws of the State of California
23 without regard to California's choice of law principles.

24 **XXI. FAIR SETTLEMENT**

25 52. The Parties and their respective counsel believe and warrant that this Settlement
26 Agreement reflects a fair, reasonable, and adequate settlement of the Action, and have arrived at
27 this Settlement Agreement through arms-length negotiations, taking into account all relevant
28

1 factors, current and potential.

2 **XXII. CONTINUING JURISDICTION**

3 53. Except as otherwise specifically provided for herein, the Court shall retain
4 jurisdiction to construe, interpret, and enforce this Settlement, to supervise all notices, the
5 administration of the Settlement, and to hear and adjudicate any dispute arising from or related to
6 the Settlement.

7 **XXIII. LIMITED DISCLOSURE**

8 54. The Parties recognize that Plaintiffs' Counsel owes a fiduciary duty to the class, and
9 that in the exercise of that duty Plaintiffs' Counsel will, among other things, communicate with
10 members of the putative class, disclose and explain the terms of the settlement, and encourage the
11 submission of verified claim forms. Prior to an order granting preliminary approval of the class
12 action settlement, Plaintiffs' Counsel and Class Representatives nevertheless shall not initiate
13 contact with any media outlet or media representative to provide information about this Action or
14 Settlement that is outside of the public record established in this case. In the course of discussions
15 with any media outlet or media representative, before and after Preliminary Approval, Plaintiffs'
16 Counsel and Class Representatives' will not express any opinions that disparage Defendants'
17 businesses or their business practices; disclose the specific amount paid to any Class Representative
18 or Settlement Class Member unless that information is in the public record. These limitations on
19 disclosure do not otherwise restrict Plaintiffs' Counsel's ability to communicate about the
20 Settlement or encourage the submission of verified claim forms, but instead provide only limited
21 restrictions on disclosures to the media about the Settlement or Action.

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DATED: 9/20/19

BOYAMIAN LAW, INC.

By: [Signature]
Attorneys for Plaintiffs

DATED: 9/23/2019

LAW OFFICES OF THOMAS W. FALVEY

By: [Signature]
Attorneys for Plaintiffs

JML LAW, APLC

DATED: _____

By: _____
Attorneys for Plaintiffs

DATED: _____

By: _____
Mynor Cabrera
Plaintiff

DATED: _____

By: _____
Adrian Valente
Plaintiff

DATED: _____

By: _____
Mario Pinon
Plaintiff

JACKSON LEWIS, P.C.

DATED: _____

Approved by: _____
Attorneys for Defendants

DATED: _____

Agreed by: _____
Printed Name:
Defendant XPO Last Mile, Inc.

DATED: _____

MACY'S LAW DEPARTMENT

Approved by: _____
Attorneys for Macy's West Stores, Inc.

DATED: _____

Agreed by: _____
Printed Name:
Defendant Macy's West Stores, Inc.

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DATED: 9/20/19

BOYAMIAN LAW, INC.

By: 
Attorneys for Plaintiffs

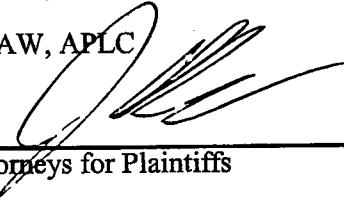
LAW OFFICES OF THOMAS W. FALVEY

DATED: _____

By: _____
Attorneys for Plaintiffs

JML LAW, APLC

DATED: 9/20/19

By: 
Attorneys for Plaintiffs

DATED: _____

By: _____
Mynor Cabrera
Plaintiff

DATED: _____

By: _____
Adrian Valente
Plaintiff

DATED: _____

By: _____
Mario Pinon
Plaintiff

JACKSON LEWIS, P.C.

DATED: _____

Approved by: _____
Attorneys for Defendants

DATED: _____

Agreed by: _____
Printed Name:
Defendant XPO Last Mile, Inc.

DATED: _____

MACY'S LAW DEPARTMENT

DATED: _____

Approved by: _____
Attorneys for Macy's West Stores, Inc.

DATED: _____

Agreed by: _____
Printed Name:
Defendant Macy's West Stores, Inc.

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BOYAMIAN LAW, INC.

DATED: _____

By: _____
Attorneys for Plaintiffs

LAW OFFICES OF THOMAS W. FALVEY

DATED: _____

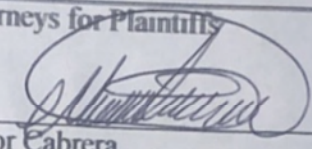
By: _____
Attorneys for Plaintiffs

JML LAW, APLC

DATED: _____

By: _____
Attorneys for Plaintiffs

DATED: 09/23/2019

By: 
Mynor Cabrera
Plaintiff

DATED: _____

By: _____
Adrian Valente
Plaintiff

DATED: _____

By: _____
Mario Pinon
Plaintiff

JACKSON LEWIS, P.C.

DATED: _____

Approved by: _____
Attorneys for Defendants

DATED: _____

Agreed by: _____
Printed Name: _____
Defendant XPO Last Mile, Inc.

DATED: _____

MACY'S LAW DEPARTMENT

Approved by: _____
Attorneys for Macy's West Stores, Inc.

DATED: _____

Agreed by: _____
Printed Name: _____
Defendant Macy's West Stores, Inc.

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BOYAMIAN LAW, INC.

DATED: _____

By: _____
Attorneys for Plaintiffs

LAW OFFICES OF THOMAS W. FALVEY

DATED: _____

By: _____
Attorneys for Plaintiffs

JML LAW, A.P.C.

DATED: _____

By: _____
Attorneys for Plaintiffs

DATED: _____

By: _____
Mynor Cabrera
Plaintiff

DATED: 09-20-2019

By: Adrian Valente
Adrian Valente
Plaintiff

DATED: _____

By: _____
Mario Pineda
Plaintiff

JACKSON LEWIS, P.C.

DATED: _____

Approved by: _____
Attorneys for Defendants

DATED: _____

Agreed by: _____
Printed Name: _____
Defendant: Last Mile, Inc.

DATED: _____

MACY'S LAW DEPARTMENT

Approved by: _____
Attorneys for: Macy's West Stores, Inc.

DATED: _____

Agreed by: _____
Printed Name: _____
Defendant: Macy's West Stores, Inc.

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BOYAMIAN LAW, INC.

DATED: _____

By: _____
Attorneys for Plaintiffs

LAW OFFICES OF THOMAS W. FALVEY

DATED: _____

By: _____
Attorneys for Plaintiffs

JML LAW, APLC

DATED: _____

By: _____
Attorneys for Plaintiffs

DATED: _____

By: _____
Mynor Cabrera
Plaintiff

DATED: _____

By: _____
Adrian Valente
Plaintiff

DATED: 09-24-19

By: mmw
Mario Pinon
Plaintiff

JACKSON LEWIS, P.C.

DATED: _____

Approved by: _____
Attorneys for Defendants

DATED: _____

Agreed by: _____
Printed Name:
Defendant XPO Last Mile, Inc.

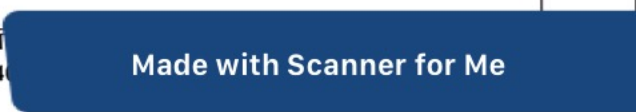
DATED: _____

MACY'S LAW DEPARTMENT

DATED: _____

Approved by: _____
Attorneys for Macy's West Stores, Inc.

Agreed by: _____
Printed Name:
Defendant Macy's West Stores, Inc.



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BOYAMIAN LAW, INC.

DATED: _____

By: _____
Attorneys for Plaintiffs

LAW OFFICES OF THOMAS W. FALVEY

DATED: _____

By: _____
Attorneys for Plaintiffs

JML LAW, APLC

DATED: _____

By: _____
Attorneys for Plaintiffs

DATED: _____

By: _____
Mynor Cabrera
Plaintiff

DATED: _____

By: _____
Adrian Valente
Plaintiff

DATED: _____

By: _____
Mario Pinon
Plaintiff

JACKSON LEWIS, P.C.

DATED: 9/25/2019

Approved by: 
Attorneys for Defendants

DATED: 9/25/2019

Agreed by: C.S. Jr.
Printed Name: Christopher J. Signorello, Senior Vice President, Litigation Counsel
Defendant XPO Last Mile, Inc.

DATED: _____

MACY'S LAW DEPARTMENT

Approved by: _____
Attorneys for Macy's West Stores, Inc.

DATED: _____

Agreed by: _____
Printed Name: _____
Defendant Macy's West Stores, Inc.

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BOYAMIAN LAW, INC.

DATED: _____

By: _____
Attorneys for Plaintiffs

LAW OFFICES OF THOMAS W. FALVEY

DATED: _____

By: _____
Attorneys for Plaintiffs

JML LAW, APLC

DATED: _____

By: _____
Attorneys for Plaintiffs

DATED: _____

By: _____
Mynor Cabrera
Plaintiff

DATED: _____

By: _____
Adrian Valente
Plaintiff

DATED: _____

By: _____
Mario Pinon
Plaintiff

JACKSON LEWIS, P.C.

DATED: _____

Approved by: _____
Attorneys for Defendants

DATED: _____

Agreed by: _____
Printed Name:
Defendant XPO Last Mile, Inc.

DATED: 09/25/19

MACY'S LAW DEPARTMENT

Approved by: 
Attorneys for Macy's West Stores, Inc.

DATED: 09/25/19

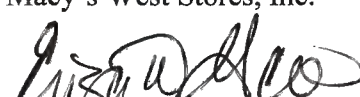
Agreed by: 
Printed Name: Elisa D. Garcia, President
Defendant Macy's West Stores, Inc.

Exhibit A

(Amended Settlement Agreement)

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

In the matter of

Ramon Garcia, an individual, Victor Ramirez, an individual, Adrian Valente, an individual, Mario Pinon, an individual, and Mynor Cabrera, an individual, on behalf of themselves and all others similarly situated, Plaintiffs,

v.

Macy's West Stores, Inc., an Ohio Corporation, Joseph Eletto Transfer, Inc., a New York Corporation, XPO Logistics, LLC, an Ohio Corporation, and DOES 1 through 25, Defendants

Case No. 2:14-cv-4440-WHO

**NOTICE OF CLASS ACTION AND CLASS CERTIFICATION FOR SETTLEMENT
PURPOSES**

TO: All individuals who performed services as Drivers and/or Helpers delivering Macy's/Bloomington's products and/or furnishings, and associated with XPO Logistics, LLC out of/at the location identified as the Macy's Logistics and Operations distribution center, 1208 Whipple Road, Union City, California 94587, at any point from December 28, 2014 to [PRELIMINARY APPROVAL DATE].

Background Information

On [PRELIMINARY APPROVAL DATE], the United States District Court for the Northern District of California, the Honorable William H. Orrick presiding, granted preliminary approval of class action settlement, and correspondingly certified a class for settlement purposes only, in the lawsuit of *Ramon Garcia, et al. v. Macy's West Stores, Inc., et al.*, Case No. 2:14-cv-4440-WHO. This means that the Class Representatives (Adrian Valente, Mario Pinon, Mynor Cabrera), through Class Counsel, have reached a settlement agreement with Defendants (Macy's West Stores, Inc., and XPO Logistics, LLC.), on behalf of themselves and all other putative class members, and that the Court has given an initial (though not final) approval of this settlement agreement. This also means that if the Court ultimately grants final approval of this settlement agreement, you will be entitled to a portion of its proceeds, though in exchange, you will have to give up certain legal rights that you may possess against Defendants Macy's West Stores, Inc., and XPO Logistics, LLC, as well as all of their present and former parent companies, subsidiaries (regardless of tier), sister companies, parts, divisions, and related or affiliated companies. This proposed settlement concerns only the period of time from December 28, 2014 through [PRELIMINARY APPROVAL DATE].

In this lawsuit, the Class Representatives generally allege that they and other Drivers and Helpers provided services out of the Macy's Logistics and Operations' warehouse, located at 1208 Whipple Road, Union City, California 94587, were misclassified by Defendants as independent contractors (as opposed to being classified as employees), and were not paid overtime, or provided meal and rest

breaks, as is required of an employer. The Court certified a class, though for settlement purposes only, for these overtime, meal and rest break, and related claims, for all Helpers and Drivers providing services out of this warehouse, located at 1208 Whipple Road, Union City, California 94587, at any point from December 28, 2014 through [PRELIMINARY APPROVAL DATE].

The parties disagree about whether Drivers and Helpers are or were independent contractors or employees of Defendants. And even if the Court were to eventually decide that Drivers and Helpers must be treated as employees under the law, the parties also disagree as to whether any wage and hour laws that protect employees have even been violated. **The Court has made no rulings on the merits of any of the claims made in this lawsuit.**

Why Have I Received this Notice?

You have received this notice because, according to Defendants' records, you are a member of the class, which has been certified for settlement purposes only, of Drivers and Helpers (described specifically below). This notice explains that there is a settlement agreement that may affect you. You have legal rights and options that you may exercise in lieu of participating in this settlement. In addition, if the Court does not give final approval of this settlement agreement, you also have legal rights that may be exercised as this lawsuit would then continue to move forward.

What Class Has Been Certified?

The Honorable William H. Orrick has certified the following Class for settlement purposes only:

All individuals who performed services as Drivers and/or Helpers delivering Macy's/Bloomington's products and/or furnishings, and associated with XPO Logistics, LLC out of/at the location identified as the Macy's Logistics and Operations distribution center, 1208 Whipple Road, Union City, California 94587, at any point from December 28, 2014 through [PRELIMINARY APPROVAL DATE].

What Happens Next?

The Court has not determined whether this lawsuit should proceed as a class action; the Court is only treating this lawsuit as a class action for purposes of this settlement agreement. If the Court does not approve this settlement agreement, it will then rule on whether, and to what extent, this lawsuit should proceed as a class action. There is no trial date currently scheduled.

If you Wish to Remain in the Class

You do not need to do anything to remain in the class. **IN ORDER TO RECEIVE A PAYMENT FROM THIS SETTLEMENT, THE ADMINISTRATOR OF THE SETTLEMENT MUST RECEIVE YOUR TAX IDENTIFICATION NUMBER WITHIN SEVEN DAYS AFTER THIS SETTLEMENT BECOMES EFFECTIVE.** If you were a Driver or Helper, you may use the verified claim form (attached hereto) to submit your tax identification number to the settlement administrator.

If you remain in the class, and the Administrator has your taxpayer identification number, you will be mailed a settlement payment. In addition, you have the right to use the verified claim form to state, under penalty of perjury, the number of days you worked you worked as a Driver or Helper. Your settlement payment will be based upon the number you submit in the verified claim form, subject to a possible reasonable adjustment necessarily made after consultation among the Settlement Administrator and counsel for Defendants and Plaintiffs. If you were a Driver or Helper and you do not submit a verified claim form, **and if the settlement administrator already has your tax identification number**, your settlement payment will be paid from any remaining settlement fund available for distribution to Drivers and Helpers and your settlement share shall be equal to all other Drivers and Helpers who did not submit a verified claim form. **If you do not opt out of the settlement, you shall be subject to the applicable Class Released Claims.** The Class Released Claims states that you, on behalf of yourself and your assigns, successors, heirs, executors, administrators, representatives, and any entities for which you acted, shall and do hereby forever release, discharge, and agree to hold harmless Defendants Macy’s West Stores, Inc. and XPO Logistics, LLC, and all of their present and former parent and subsidiary companies (regardless of tier), sister companies, parts, divisions, and related or affiliated companies (including but not limited to XPO Last Mile, Inc., Macy’s, Inc. and all of Macy’s, Inc.’s subsidiaries (regardless of tier), parts, divisions, and operating units, including but not limited to Macy’s Retail Holdings, Inc., Macy’s Corporate Services, Inc., and Macy’s Logistics and Operations, Circle E Leaseways, Corp., AACE Associates, Inc., and I. Williams Associates, Inc.), and all such entities’ shareholders, owners, officers, directors, employees, agents, attorneys, insurers, predecessors, and their counsel of record (collectively, the “Released Parties”) from any and all Class Released Claims asserted in the Action from December 28, 2014 to [PRELIMINARY APPROVAL DATE] (“Class Period”). The Class Released Claims include all claims arising from or related to the facts and claims alleged in the Action during the Class Period. The Class Released Claims include all claims for unpaid wages including failure to pay minimum wage, straight time compensation, overtime compensation, and interest; failure to pay for all hours worked; wage statements; indemnification; reimbursement; conversion; restitution; injunctive relief; failure to keep accurate records; unfair business practices; penalties, including recordkeeping penalties, wage statement penalties, minimum-wage penalties, waiting-time penalties, and penalties under the Private Attorneys General Act; meal and rest periods; interest; liquidated damages; punitive damages; and attorneys’ fees and costs. The Class Released Claims include all claims arising during the Class Period under: the California Labor Code (including, but not limited to, §§ 201, 202, 203, 204, 210, 218.6, 221, 225.5, 226, 226.7, 227.3, 510, 511, 512,558, 1174, 1174.5, 1194, 1197, 1197.1, 1197.2, 1198, 2802, and 2698 *et seq.*); the Wage Orders of the California Industrial Welfare Commission; California Business and Professions Code §17200 *et seq.*; the California common law of contract; the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*; and federal common law. This release excludes the release of claims not permitted to be released by law. Class Members who opt-out in compliance with the terms of the Settlement shall not release any claims.

Your Right to Opt Out of this Lawsuit and Settlement

You have the right to opt out of this case and corresponding settlement. **If you choose to opt out, you will not be eligible to recover settlement proceeds from this lawsuit should the Court uphold the settlement agreement, and you will not be subject to the release.** If you opt out, you will be entitled

to pursue your own court action, if you wish, subject to the applicable statute of limitations. You will not be rewarded or punished in any way based on your decision to remain as a class member or opt out, regardless of whether or not you still provide services out of the Macy's Logistics and Operations' warehouse, located at 1208 Whipple Road, Union City, California 94587.

To opt out of this case, you must send the attached opt-out form to [Third-Party Claims Administrator, _____], stating that you have read and understood this notice, and that you do not wish to be a member of the class, that has been certified for settlement purposes only, in this lawsuit. Send your request to: [Address of TPA _____, CA, ZIP CODE]. A pre-paid, self-addressed stamped envelope has been included for your convenience. To be effective, your request must be postmarked no later than [DATE 120 days after mailing and publication of notice], 2019.

Your Right to Object to This Settlement

You can ask the Court to deny approval of this settlement by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payment will be sent out to you or other Class Members and the lawsuit will continue. If that is what you want to happen, you must object.

You may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney. All written objections, supporting papers, and/or requests to appear the Final Approval Hearing must (a) clearly identify the case name and number, i.e. *Garcia v. Macy's*, Case Number 2:14-cv-4440-WHO, (b) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Avenue, Box 36060 San Francisco, CA 94102-3489, or by filing them in person at any location of the United States District Court for the Northern District of California, and (c) be filed or postmarked on or before [DATE 120 days after mailing and publication of notice], 2019.

Who Are Class Counsel?

The Court approved the law firms of Boyamian Law, Inc., Law Offices of Thomas W. Falvey, and JML Law APLC as "class counsel". If you have any questions regarding this class action lawsuit or the topics of this notice, or you want to communicate with lawyers appointed by the Court to serve as lawyers for the class, you can contact class counsel at:

BOYAMIAN LAW, INC.
Michael H. Boyamian, SBN 256107
Armand R. Kizirian, SBN 293992
550 N. Brand Blvd., Suite 1500
Glendale, California 91203
T: (818) 547-5300 | F: (818) 547-5678
E-mail(s): michael@boyamianlaw.com
armand@boyamianlaw.com

LAW OFFICES OF THOMAS W. FALVEY
Thomas W. Falvey, SBN 65744
550 N. Brand Blvd., Suite 1500
Glendale, California 91203
T: (818) 547-5200 | F: (818) 500-9307
E-mail: thomaswfalvey@gmail.com;

JML LAW APLC
Joseph M. Lovretovich, SBN 73403

5855 Topanga Cyn Blvd., Suite 300
Woodland Hills, California 91367
T: (818) 610-8800 | T: (415) 692-3426

| F: (818) 610-3030
E-mail: jml@jmlaw.com;

In addition, you may access important case documents, including filings related to this proposed settlement, at www.boyamianlaw.com

Finally, you may access case documents directly from the Court through the Public Access to Court Electronic Records (“PACER”) system, by registering at <https://www.pacer.gov/>. Once there, click on the ‘Registration’ button at the top of the page and follow the instructions. Alternatively, to learn about how you may inspect case documents in person, visit <http://www.cand.uscourts.gov/doccopies>.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

Dated: _____

Hon. William H. Orrick
United States District Court
Northern District of California

CUT HERE, RETAIN TOP PORTION FOR YOUR RECORDS

DO NOT FILL OUT AND RETURN THIS FORM if you want to be included in the Class Action.

Read this legal notice carefully before filling out this form.

The undersigned has read this Notice and **DOES NOT WISH TO REMAIN A MEMBER OF THE CLASS**. By signing below and returning this form, I understand that I will not share in any recovery that might be paid to the Class Members as a result of trial or settlement of this class action lawsuit; and I will not be bound by any decision in this class action lawsuit favorable to Defendants.

Dated: _____

(Signature (under penalty of perjury))

(Address)

(Typed or Printed Name)

(City, State, Zip Code)

(Telephone Number, Including Area Code)

(Last Four Digits of Social Security Number or Individual Taxpayer Identification Number)

Exhibit A-1

(Amended Settlement Agreement)

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

In the matter of

Ramon Garcia, an individual, Victor Ramirez, an individual, Adrian Valente, an individual, Mario Pinon, an individual, and Mynor Cabrera, an individual, on behalf of themselves and all others similarly situated, Plaintiffs,

v.

Macy's West Stores, Inc., an Ohio Corporation, Joseph Eletto Transfer, Inc., a New York Corporation, XPO Logistics, LLC, an Ohio Corporation, and DOES 1 through 25, Defendants

Case No. 2:14-cv-4440-WHO

VERIFIED CLAIM FORM

IF YOU WERE A DRIVER OR HELPER AND YOU CHOOSE TO SUBMIT THIS VERIFIED CLAIM FORM FOR THE REASONS EXPLAINED BELOW AND IN THE ATTACHED NOTICE, PLEASE COMPLETE, SIGN AND RETURN THIS FORM NO LATER THAN [REDACTED] (120 Days From the Mailing and Publication of the Notice) BY MAIL OR FAX TO:

GARCIA, ET AL. V. MACY'S WEST STORES, INC. AND XPO
LOGISTICS, LLC.

Settlement Administrator

Address:

Telephone:

Facsimile:

PERSONAL INFORMATION

Please Type or Print the following identifying information:

Name: _____

Address: _____

City, State, Zip: _____

Social Security Number: XXX-XX- ____

Telephone Number: _____

WHAT IS THE PURPOSE OF THIS VERIFIED CLAIM FORM?

If you performed services as a Driver or Helper delivering Macy's/Bloomingdale's products and/or furnishings, and associated with XPO Logistics, LLC out of/at the location identified as the Macy's Logistics and Operations distribution center, 1208 Whipple Road, Union City, California 94587, at any point from December 28, 2014 to [PRELIMINARY APPROVAL DATE], and if you have elected to participate in the settlement as outlined in the attached "Notice of Class Action and Class Certification for Settlement Purposes," you may choose to submit this verified claim form stating, under penalties of perjury, the number of days you performed services. Your settlement payment will be based upon the number you submit in this verified claim form, subject to a possible reasonable adjustment necessarily made after consultation among the Settlement Administrator and counsel for Defendants and Plaintiffs. If you were a Driver or Helper and you do not submit a verified claim form, your settlement payment will be paid from any remaining settlement fund available for distribution to Drivers and Helpers and your settlement share shall be equal to all other Drivers and Helpers who did not submit a verified claim form.

VERIFIED CLAIM FORM INSTRUCTIONS

IN ORDER TO RECEIVE ANY FUNDS FROM THIS SETTLEMENT, THE ADMINISTRATOR OF THE SETTLEMENT MUST RECEIVE YOUR TAX IDENTIFICATION NUMBER AND YOU MAY USE THIS FORM TO SUBMIT YOUR TAX IDENTIFICATION NUMBER. If you are unsure if the settlement administrator already has your tax identification number, ***IT IS STRONGLY RECOMMENDED THAT YOU COMPLETE THIS FORM AND PROVIDE YOUR TAX IDENTIFICATION NUMBER.*** Note that a Social Security Number is a type of tax identification number, and if you have a Social Security Number, you may provide this number as your tax identification number.

In addition, if you elect to submit this form, please provide in the space below the number of days you worked as a Driver or Helper out of/at the location identified as the Macy's Logistics and Operations distribution center, 1208 Whipple Road, Union City, California 94587 from December 28, 2014 to **PRELIMINARY APPROVAL DATE**. You may have to estimate your total days worked based on the number of weeks and/or months you worked and the approximate number of days you worked each week and/or month. However, if you elect to submit this form you must state your number of days as accurately as you are able and understand that you are providing the statement of your total days worked under penalty of perjury. Please note that this Verified Claim Form solely applies to your work as a Driver or Helper during the period of time noted above and does not concern your previous work, if any, with Joseph Eletto Transfer, Inc. or before December 28, 2014.

STATEMENT OF DAYS WORKED FROM DECEMBER 27, 2014 TO **PRELIMINARY APPROVAL DATE**

In the space below, please provide the total days you worked as a Driver and Helper delivering Macy's/Bloomingtondale's products and/or furnishings, and associated with XPO Logistics, LLC. out of/at the location identified as the Macy's Logistics and Operations distribution center, 1208 Whipple Road, Union City, California 94587, from December 28, 2014 to **PRELIMINARY APPROVAL DATE**:

_____ Days worked as a Driver.

_____ Days worked as a Helper.

VERIFICATION

By signing below, I declare under penalty of perjury under the laws of the State of California that I worked as a Driver or Helper delivering Macy's/Bloomingtondale's products and/or furnishings, and associated with XPO Logistics, LLC out of/at the location identified as the Macy's Logistics and Operations distribution center, 1208 Whipple Road, Union City, California 94587 from December 28, 2014 to **PRELIMINARY APPROVAL DATE** for the approximate number of days stated above.

Executed this _____ day of _____, _____ at _____, _____.
[Date] [Month] [Year] [City] [State]

Signature of Claimant

**Substitute FORM W-9
Taxpayer Identification Number Certification**

Social Security Number / Taxpayer Identification Number: _____

Exempt Payee Code (if any) _____ Exemption from FATCA reporting code (if any) _____

Check appropriate box for federal tax classification:

Individual C Corporation S Corporation Partnership Trust/estate Other _____

Limited Liability Company - choose tax classification C Corporation S Corporation Partnership

Print your name as it appears on your federal income tax return:

First Name and Last Name, for Individuals. Entity Name for businesses and trusts.

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number; **and**
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; **and**
3. I am a U.S. citizen or other U.S. person (including a U.S. resident alien); **and**
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Note: If you have been notified by the IRS that you are subject to backup withholding, you must cross out item 2 above.

Signature
of U.S. Person: _____ Date: _____