

**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 products and/or furnishings, who did not sign a Delivery Service Agreement with Defendants, and who were tendered loads 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 October 30, 2019. **PLEASE READ THE FOLLOWING NOTICE CAREFULLY. IF YOU QUALIFY, YOU WILL HAVE TO SUBMIT YOUR TAX IDENTIFICATION NUMBER BY MARCH 21, 2020 IN ORDER TO RECEIVE FUNDS FROM THIS SETTLEMENT.**

**Background Information**

On October 30, 2019, 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 to October 30, 2019.

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 to October 30, 2019.

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 products and/or furnishings, who did not sign a Delivery Service Agreement with Defendants, and who were tendered loads 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 October 30, 2019.

### **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, YOU MUST SUBMIT YOUR TAX IDENTIFICATION NUMBER BY MARCH 21, 2020.** If you were a Driver or Helper, you may use the verified claim form (enclosed herewith) 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 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 state 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 Last Mile, Inc., 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 Macy's, Inc. and all of Macy's, Inc.'s subsidiaries (regardless of tier), parts, divisions, and operating units, Macy's Retail Holdings, Inc., Macy's Corporate Services, Inc., and Macy's Logistics and Operations; and including but not limited to XPO Logistics, Inc. and all of its subsidiaries (regardless of tier) parts, divisions, and operating units), and all such entities' shareholders, owners, officers, directors, employees, agents, attorneys, insurers, predecessors, successors, and assigns, and any individual or entity which could be jointly liable with Defendants, or any of them, 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 October 30, 2019 ("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 enclosed opt-out form to:

*Garcia, et al. v. Macy's West Stores, Inc. and XPO Logistics, LLC*  
Settlement Administrator  
P.O. Box 43208  
Providence, RI 02940-3208

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.

A pre-paid, self-addressed stamped envelope has been included for your convenience. To be effective, your request must be postmarked no later than March 21, 2020.

### **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 at 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 March 21, 2020.

### 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 Canyon Blvd.,  
Suite 300  
Woodland Hills, California 91367  
T: (818) 610-8800  
T: (415) 692-3426  
F: (818) 610-3030  
E-mail: jml@jmllaw.com

In addition, you may access important case documents, including filings related to this proposed settlement, at **[www.boyamianlaw.com](http://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 [www.pacer.gov](http://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 [www.cand.uscourts.gov/doccopies](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: November 22, 2019

---

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