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

RON CARTER, JUAN ESTRADA,
JERRY GREEN, BURL MALMGREN,
BILL McDONALD, and JOEL MORALES,
on behalf of themselves and others similarly
situated,

Plaintiffs,

v.

XPO LAST MILE, INC. and DOES 1
through 10, inclusive,

Defendants.

Case No. 3:16-cv-01231-WHO

**STIPULATION AND ORDER TO REVISE
THE CLASS CERTIFICATION
SCHEDULE AND REQUEST FOR CASE
MANAGEMENT CONFERENCE**

Amended Complaint Filed: June 9, 2016
Judge: Hon. William H. Orrick

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

Plaintiffs,

v.

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

Defendants.

Case No. 3:16-cv-04440-WHO

Action Filed: July 1, 2016
Date Removed: August 5, 2016
Judge: Hon. William H. Orrick

KEVIN KRAMER on behalf of himself, all
others similarly situated, and on behalf of the
general public,

Plaintiffs,

v.

XPO LOGISTICS, INC.; and DOES 1 – 100,

Defendants.

Case No. 3:16-cv-07039-WHO
Consolidated with 3:17-cv-04009-JSC

Action Filed: September 22, 2016
Date Removed: December 8, 2016
Judge: Hon. William H. Orrick

Case No. 3:16-cv-01231-WHO

1 HECTOR IBANEZ on behalf of himself, all
2 others similarly situated, and on behalf of the
3 general public

4 Plaintiffs,

5 v.

6 XPO LAST MILE, INC.; and DOES 1 – 100,

7 Defendants.

This Document Relates To:
Kramer, 3:16-cv-07039-WHO;
Ibanez, 3:17-cv-04009-JSC;
Carter, 3:16-cv-01231-WHO;
Garcia, 3:16-cv-04440-WHO

8 STIPULATION AND ORDER

9 WHEREAS, the parties to *Carter v. XPO Logistics, Inc.*, No. 16-cv-01231-WHO
10 (“*Carter*”), *Garcia v. Macy’s West Stores, Inc., et al* (“*Garcia*”), and the consolidated *Kramer v.*
11 *XPO Logistics, Inc.*, No. 16-cv-07039-WHO (“*Kramer*”) and *Ibanez v. XPO Last Mile, Inc.*, No.
12 17-cv-04009-JSC (“*Ibanez*”) (consolidated matter referred to as “*Kramer/Ibanez*”), have agreed
13 that the class certification schedule should be revised in order to facilitate the parties’ continuing
14 effort to mediate this dispute. The parties are seeking this adjustment to the briefing schedule due
15 to unanticipated issues experienced in connection with marshalling the data necessary to support a
16 complete and accurate damages analysis by the parties. The parties rescheduled the mediation for
17 two sessions to be held on October 25, 2018, and November 13, 2018, and jointly request that the
18 Court adjust the briefing and hearing schedule to permit the parties to focus on settlement
19 discussions before briefing the case for class certification. A discussion of the obstacles and
20 proposed scheduling amendment follows.

21 On May 30, 2018, the Court entered an Order that set the current certification and motion
22 hearing dates.¹ That schedule was proposed and agreed by the parties in order to facilitate a
23 mediated resolution to this case. At that time, the mediation was scheduled for August 30 and 31,
24 2018 in San Francisco. Stipulation and Order, May 30, 2018 (docketed only at *Kramer/Ibanez*
25 ECF No. 65).

26
27 ¹ That Order revised the prior schedule that was set March 21, 2018 (*Carter* ECF No. 165);
28 (*Garcia* ECF No. 90); (*Kramer/Ibanez* ECF No. 63).

1 Following the Order setting the mediation and briefing schedule, the parties set out to
2 conduct the damages discovery necessary to support an informed damages discussion at the
3 mediation—prior to scheduling the mediation, the parties’ discovery efforts were largely focused
4 on issues bearing on class certification. On June 8, 2018, *Carter* plaintiffs issued a robust request
5 for data to support their damages model that would be used to inform their position in settlement
6 discussions. This request sought information about class member identities, and various metrics
7 that would bear on the days, hours of work, as well as amounts paid to individual carriers and
8 amounts those carriers paid out in various expenses. On July 16, 2018, *Kramer/Ibanez* plaintiffs
9 issued a separate request for information to support their damages model. This request sought
10 information regarding class member identities (and counts), as well as data reflecting hours of
11 work and amounts paid to secondary drivers and helpers in the class. Finally, on July 19, 2018, the
12 *Garcia* plaintiffs issued a separate request for information from a third party source that could
13 provide information regarding hours of work for each secondary driver or helper working out of
14 the Macy’s Union City location during the class period.

15 Following the *Carter* request, XPO LM began to work on a plan to marshal the requested
16 data. As is often the case, the initial challenge was to determine what data – housed in a system
17 that is not intended to be used for these purposes – could be extracted and compiled in a useful
18 and accessible form. It took several weeks and numerous discussions between counsel, XPO LM
19 information technology personnel, and XPO LM’s litigation consultants to establish a basic
20 protocol for extracting the information. Once the protocol was established, XPO LM’s information
21 technology team then had to develop technical queries that would establish relationships between
22 various databases so that the data was useable. That is, the technical team was tasked with creating
23 an output that identified the who, where, and when for each and every truck that delivered for one
24 of XPO LM’s customers in California on each and every day during the class period (which dates
25 back to March 2012 for *Carter*). The result was an output of 10’s of millions of lines of data.

26 After this initial data set was captured, XPO LM began the process of quality testing the
27

1 data output to evaluate its completeness. On July 27, 2018, while this testing was performed XPO
2 LM produced to plaintiffs an initial dataset. Within days, the parties identified massive gaps in the
3 data. Some high-level examples of the issues that were identified include:

- 4 • Certain putative class members' and related contract carrier information was not
5 included in the dataset (including some information about named-plaintiffs);
- 6 • The dataset that was extracted was not representative of the work performed by
7 carriers and was incomplete (as identified by comparison to other records
8 exchanged in discovery);
- 9 • Settlement data did not match to the data provided by the third party settlement
10 company (as identified by a manual comparison of a sample of the data to the
11 individual carrier settlement statements);
- 12 • Information regarding contract interstate routes not included in the data;
- 13 • Estimated length of day and individualized routed stop data was not linked to the
14 delivery team performing the services;
- 15 • The route and stop data collected by some of XPO LM's customers through third
16 party software (ex., Decartes, Cheetah, Mobilink) was not represented in the dataset,
17 which meant there were informational gaps depending on the profit center.

18 Since this first production, XPO LM, its consultants and legal team have been working to
19 resolve each issue to ensure that the data upon which all of the parties base a settlement discussion
20 is accurate and robust as is available. During this data integrity and troubleshooting phase, the
21 parties have regularly communicated about the issues that they have spotted.

22 At the beginning of August, only thirty days before the mediation, the parties recognized
23 that they would not have enough time to complete the data integrity efforts, to exchange millions of
24 lines of data and to develop their damages models in consultation with their experts, in time to have
25 a productive mediation at the end of August. Consequently, the parties contacted the mediator to
26 identify the next available dates for a two day mediation. In order to obtain earlier dates, the
27

1 parties offered to be flexible on location of the mediation and agreed that non-contiguous dates
2 could be selected if that meant an earlier mediation was possible.

3 On August 23, 2018 the parties and mediator Michael Dickstein, Esq., rescheduled the
4 mediation for October 25, in San Francisco, and November 13 in Toronto.

5 According to the current Order, plaintiffs' motions for class certification are due on October
6 2, 2018, defendants' oppositions are due on December 3, 2018, and plaintiffs' reply briefs are due
7 on December 24, 2018, with a hearing to follow on January 17, 2019. Stipulation and Order, May
8 30, 2018 (docketed only at *Kramer/Ibanez* ECF No. 65).

9 NOW THEREFORE, the parties stipulate to and request that the Court order the following
10 revised certification motion, briefing and hearing dates:

- 11 • Motions for class certification due December 14, 2018;
- 12 • Oppositions are due February 8, 2019;
- 13 • Reply briefs are due March 1, 2019;
- 14 • Hearing is set for April 3, 2019 at 2:00 PM.

15 The parties submit that good cause exists to continue the class certification dates. The
16 parties have vigorously litigated the case, and, as previously anticipated that a realistic exploration
17 of settlement will involve the production, review, and analysis of millions of lines of additional
18 data. That data has yet to be exchanged. The substantial amount of time needed to prepare the
19 matter for class certification and Defendant's opposition thereto would interfere with the parties'
20 ability to devote the time needed to prepare the matter for settlement discussions at the scheduled
21 mediation. Should the matter not settle at or around the mediation, the class certification motion
22 will be filed, according to the proposed schedule outlined above, 30 days after the scheduled two-
23 days of mediation. Thus, should the matter not settle at or around the scheduled mediation, the
24 matter will immediately proceed towards certification per the above proposed schedule.
25

26 Additionally, the Parties further request the Court set a Case Management Conference to
27

1 discuss modifications to the case schedule on Thursday, November 15, 2018 or as soon thereafter
2 as the Court's calendar will permit.

3 Respectfully submitted,

4 Dated: August 30, 2018

THE TURLEY & MARA LAW FIRM, APLC

6 /s/ William Turley
7 William Turley, Esq.
8 David Mara, Esq.
9 Jamie Serb, Esq.
Representing *Kramer/Ibanez* Plaintiffs

10 Dated: August 30, 2018

THE BAINER LAW FIRM

11 /s/ Matthew Bainer
12 Matthew Bainer, Esq.
13 Representing *Kramer/Ibanez* Plaintiffs

14 Dated: August 30, 2018

LEONARD CARDER

15 /s/ Beth Ross
16 Beth Ross, Esq.
17 Jennifer Keating, Esq.
18 Amy Endo, Esq.
Representing *Carter* Plaintiffs

19 Dated: August 30, 2018

LAW OFFICES OF THOMAS W. FALVEY

20 /s/ Michael Boyamian
21 Michael Boyamian, Esq.
22 Armand Kizirian, Esq.
23 Representing *Garcia* Plaintiffs

24 Dated: August 30, 2018

JACKSON LEWIS P.C.

25 /s/ Fraser A. McAlpine
26 Fraser A. McAlpine
27 Adam L. Lounsbury

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Representing Defendants XPO Last Mile, Inc.,
Macy's West Stores, Inc.

SIGNATURE ATTESTATION Local Rule 5-1(i)(3)

I Fraser A. McAlpine, attest that each of the other signatories to this document concur in the filing of this document.

/s/ Fraser A. McAlpine
Fraser A. McAlpine

ORDER

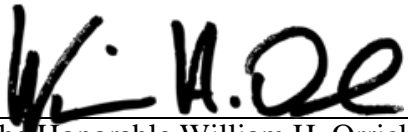
The class certification schedule is amended as follows:

Motions for class certification due December 14, 2018;
Oppositions are due February 8, 2019;
Reply briefs are due March 1, 2019;
Hearing is set for April 3, 2019 at 2:00 PM.

A further CMC is set for Tuesday November 13, 2018 at 2:00 p.m.

IT IS SO ORDERED.

Dated: August 30, 2018



The Honorable William H. Orrick
UNITED STATES DISTRICT JUDGE

4853-2001-4192, v. 4