

Regulatory Action and Litigation at XPO Logistics

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XPO Logistics (XPO) is a publicly traded, global company that last year earned \$17 billion in revenue and whose subsidiaries XPO Cartage and XPO Port Services, Inc. d/b/a XPO Logistics are together among the top trucking companies servicing the Ports of Los Angeles and Long Beach. XPO Logistics specializes in moving goods to and from the ports, while XPO Cartage primarily moves goods to nearby intermodal rail yards. There are approximately 280 alleged misclassified drivers working for both companies in their LA-area locations and about 240 additional drivers in XPO Cartage's San Diego facility.

XPO and its subsidiaries have faced repeated legal and enforcement agency actions for alleged wage theft due to misclassification of their drivers as independent contractors, outlined below:

Agency investigations and determinations:

California Labor Commissioner

- **Final judgments:**

In the past year, state and federal courts have issued two final judgments against XPO in the claims of 12 individual drivers, ordering XPO to pay over \$3 million:

- In one case, between 2012 and 2014, five XPO Cartage drivers filed wage claims with the DLSE for misclassification and truck related unlawful deductions and unreimbursed expenses.¹ The Labor Commissioner issued decisions in favor of the drivers in 2015. The company appealed the decision in Los Angeles Superior Court then the case was moved to Federal Court on August 2015.^{2 3} Trials were held in December 2016, and on May 16, 2017 a federal judge issued a judgment in favor of the drivers. XPO appealed the decision to the 9th Circuit US Court of Appeals. On February 20, 2019, the 9th Circuit court entered a judgment affirming the US District Court's decision.⁴ **XPO was ordered to pay the five drivers \$981,843.64 for misclassification and other labor code violations.**
- In another case, in March 2014, the San Diego DLSE office issued findings in the wage claims of seven individual Pacer Cartage, Inc. (now known as XPO Cartage) drivers, all of whom it found to be employees who had been illegally misclassified as independent contractors. The DLSE awarded these drivers a combined \$2.1 million. That ruling was subsequently upheld by the California Superior Court in September 2015 following XPO's appeal of the DLSE's initial

¹ *Jose Alba v Pacer Cartage, Inc.*, Case No. 05-56927 FC; *Mario Alba v Pacer Cartage, Inc.*, Case No. 05-56639 KR; *Jose Ramirez v Pacer Cartage, Inc.*, Case No. 05-62026 KR; *Jose Peraza v Pacer Cartage, Inc.*, Case No. 05-61122 KR; *Mauricio Rodriguez v Pacer Cartage, Inc.*, Case No. 05-61693 KR

² *Jose Alba v XPO Cartage, Inc. et al.*, LASC, Case No. NS030622; *Mario Alba v XPO Cartage, Inc. et al.*, LASC, Case No. NS030623; *Jose Ramirez v XPO Cartage, Inc. et al.*, LASC, Case No. NS030259; *Jose Peraza v XPO Cartage, Inc. et al.*, LASC, Case No. NS030624; *Mauricio Rodriguez v XPO Cartage Inc. et al.*, LASC, Case No. NS030621

³ *Jose Ramirez v Pacer Cartage, Inc.*, Case No. 2:15-cv-03830-WDK-AGR; *Jose Alba v Pacer Cartage, Inc.*, Case No. 2:15-cv-06059-WDK-AGR; *Jose Peraza v Pacer Cartage, Inc.*, Case No. 2:15-cv-06062-WDK-AGR; *Mario Alba v Pacer Cartage, Inc.*, Case No. 2:15-cv-06064-WDK-AGR; *Mauricio Rodriguez v Pacer Cartage, Inc.*, Case No. 2:15-cv-06065-WDK-AGR

⁴ *Jose Ramirez et al. v XPO Cartage, Inc.*, 9th Circuit US Court of Appeals, Case No. 17-55848

decision. XPO appealed that decision to the California Fourth District Court of Appeal, where the judge upheld the Superior Court judgment, with the exception of truck lease payments, and the case was remanded back to trial court to recalculate the damages.⁵ On October 2017 XPO filed a case for review at the Supreme Court of California, where the petition for review was denied, rendering the appellate court decision final.⁶ **On March 2018, the California Superior Court, County of San Diego issued a final judgment where the seven drivers were awarded \$2.3 million.**

- **Pending claims:**

In total, there are an additional 46 pending wage claims against XPO for a **combined estimated liability of \$ 3,213,399.**

- **DLSE:** There are currently at least 41 pending claims with the California Division of Labor Standards Enforcement (DLSE). Drivers from both XPO's Commerce and San Diego yards submitted these wage claims in August 2018 and August 2019 and the total estimated liability for these claims is \$ 2,355,721.27.
- **Appeals:** Additionally, there are four other wage claims where the Labor Commissioner issued decisions and found XPO drivers to be employees, and not independent contractors, and awarded them \$855,285.72.⁷ XPO appealed the Labor Commissioner's decisions to LA County Superior Court and a month later the cases were removed to US District Court.⁸ The cases were then remanded back to LA County Superior Court on July 24, 2017 where trial was held on December 2018 and Judge Vicencia ruled from the bench that the four XPO drivers are employees. **On September 9, 2019, Judge Vicencia affirmed the DLSE's 2017 decision and awarded the four XPO drivers \$812,651 in unpaid meal and rest breaks, expenses, and nonproductive time.** This is the first time that port drivers win nonproductive time in their de novo appeal hearing. XPO appealed the decision to the California Second District Court of Appeal on October 21, 2019.⁹ The case remains pending.
- **Past claims:** On September 21, 2018, the Labor Commissioner issued a decision on the claim of one XPO port driver, awarding him \$123,074.43 for misclassification and other labor code violations.¹⁰ XPO requested a trial de novo in US District Court, Central District of California on October 10, 2018.¹¹ Notice of related cases with three class action suits was also filed on October 10, 2018.¹² On February 13, 2019 both parties settled for an undisclosed amount.

⁵ Miranda et al. v. Pacer Cartage, Fourth Appellate District, Div. 1, Case No. D069425

⁶ Miranda et al. v Pacer Cartage, California State Supreme Court, Case No. S244793

⁷ *Jose Herrera v XPO Cartage, Inc.*, DLSE, Case No. 05-66694 KR; *Napoleon Gaitan v XPO Cartage, Inc.*, DLSE, Case No. 05-66467 KR; *Domingo Avalos v XPO Cartage, Inc.*, DLSE, Case No. 05-66468 KR; *Jose Lopez v XPO Cartage, Inc.*, DLSE, Case No. 05-66595 KR

⁸ *Jose Herrera v XPO Cartage, Inc.*, LASC, Case No. NS033715; *Napoleon Gaitan v XPO Cartage, Inc.*, LASC, Case No. NS033716; *Domingo Avalos v XPO Cartage, Inc.*, LASC, Case No. NS033718; *Jose Lopez v XPO Cartage, Inc.*, LASC, Case No. NS033717

⁹ *Herrera v XPO Logistics Cartage, LLC*, Case No. B301866

¹⁰ *Rodolfo Dominguez v XPO Cartage, Inc. et al.*, DLSE, Case No. 05-68524 KR

¹¹ *Rodolfo Dominguez v. XPO Cartage, Inc., et al*, US District Court Central District, Case No. 2:18-CV-08699

¹² Related Case(s): 2:18-cv-03736-SJO-E, 2:18-cv-06175-SJO-E, 2:18-cv-8220-FMO-MAA

National Labor Relations Board (NLRB)

- **XPO Cartage:** On September 12, 2018 NLRB Administrative Law Judge Christine E. Dibble issued a decision finding that XPO Cartage drivers are employees and that the company had therefore violated federal labor laws by misclassifying them. Her decision also found that the company violated workers' rights by interrogating an employee for his union support and for soliciting complaints and grievances by making promises of increased benefits.¹³ XPO subsequently filed exceptions to the ALJ's decision. While the exceptions were pending the NLRB remanded the case to the ALJ to consider whether the Board's decision in SuperShuttle, DFW, Inc., 367 N.L.R.B. No. 75 (January 25, 2019) changed her determination as to employee status. ALJ Dibble has scheduled a hearing to reopen the record in the case for December 2, 2019.
- **XPO Cartage:** In November 2016, Region 21 of the NLRB refused to issue a complaint against XPO Cartage for terminating Domingo Avalos in retaliation for his union support and activity. The Teamsters filed an appeal with the NLRB's Office of Appeals in Washington, D.C. In September 2017, the Office of Appeals sustained the appeal and remanded the case to the Region for trial. Thereafter, XPO settled the case based on the outcome of the earlier XPO Cartage case. If the ALJ's decision in XPO Cartage is ultimately upheld, then XPO agrees to remedy the unfair labor practice by making Avalos whole for any loss he suffered as a result of the termination.
- **XPO Port Services:** Region 21 of the NLRB has also issued a similar complaint against XPO Port Services alleging the drivers there are employees and that Port Services engaged in unfair labor practices to discourage workers from supporting the Teamsters. XPO settled this case based on the outcome of the XPO Cartage case. If the ALJ's decision in XPO Cartage is ultimately upheld, then XPO agrees to remedy the unfair labor practices at Port Services.

Employment Development Department (EDD)

- Upon investigations triggered by individual claims, the EDD has determined that at least seven XPO drivers (from both XPO Cartage and Port Services) are employees – not independent contractors – and therefore have a right to unemployment and state disability insurance.

Private Litigation

In addition to the DLSE claims outlined above, drivers have filed at least 14 misclassification related lawsuits against XPO over the past six years, seven of which have settled and seven of which remaining pending:

- **Pending litigation**
 - On October 25, 2019, XPO Port Services drivers filed a new misclassification class action lawsuit against XPO.¹⁴ The causes of action include failure to pay the minimum wage, unpaid meal and rest breaks, unreimbursed business expenses, unfair competition, and others.

¹³ NLRB Case Nos. 21-CA-150873, 21-CA-164483, 21-CA-175414, 21-CA-192602

¹⁴ *Villatoro et al v XPO Port Services LLC et al*, No. 2:19-cv-09199

- On February 2018, XPO drivers filed suit on behalf of themselves and other drivers at the Commerce and San Diego yards for violations of the California Labor Code including failure to pay minimum wages, waiting time penalties, failure to provide accurate itemized wage statements, failure to reimburse business expenses and to provide meal and rest periods.¹⁵ Drivers stated that their key goal in filing this suit was to end the misclassification, since XPO has continued to misclassify drivers following an April 2016 settlement of a previous class action suit. In May 2018, XPO removed the case from LA County Superior Court to US District Court.¹⁶ The plaintiff drivers moved to remand the case back to state court; after the district court denied that motion, the drivers filed a petition for permission to appeal the ruling in the Ninth Circuit, but the Ninth Circuit declined to hear an appeal of the remand decision.¹⁷ In September 2018, XPO sought to have the entire case dismissed; the drivers prevailed and the case continues to move forward. The plaintiff drivers filed a motion for class certification on September 3, 2019, which is set for hearing in federal district court on December 5, 2019. Since the filing of this lawsuit, three additional and almost identical cases have been filed, which have been consolidated with this case.
 - On March 2018, three XPO drivers filed suit on behalf of themselves and other drivers for violations of the California Labor Code that included failure to pay minimum wages, failure to provide meal and rest periods and failure to pay overtime wages.¹⁸ The case then was removed to US District Court.¹⁹
 - On July 2, 2018, XPO drivers filed a misclassification class action lawsuit.²⁰ The causes of action include failure to pay overtime wages, failure to provide meal or rest breaks, failure to reimburse expenditures, unfair business practices, and others. The case was moved to US District Court in October 2018.²¹
 - In March 2017, drivers for XPO Logistics Port Services, Inc. filed a class action lawsuit against XPO for misclassification of drivers as independent contractors, failure to provide itemized wage statements and failure to provide meal and rest breaks.²² The case was moved to US District Court on September 21, 2018 and remains pending.²³
- On December 27, 2018, XPO drivers filed a misclassification class action lawsuit for misclassification and violations of the California Labor Code.²⁴ The case remains pending.

¹⁵ *Angel Omar Alvarez et al. v XPO Logistics Cartage LLC et al*, Case No. BC695123

¹⁶ *Angel Omar Alvarez et al. V XPO Logistics Cartage LLC et al.* Case No. 2:18-CV-03736

¹⁷ *Angel Omar Alvarez et al. V XPO Logistics Cartage LLC et al.* Case No. 18-80079

¹⁸ *Jairo Moreno Martinez et al. v XPO Logistics, Inc. et al*, Case No. BC698296

¹⁹ *Jairo Moreno Martinez et al. v XPO Logistics, Inc. et al*, Case No. 2:18-cv-06175

²⁰ *Edgar Mendoza v. XPO Logistics Cartage, LLC et al.*, Case No. BC711992

²¹ *Edgar Mendoza v. XPO Logistics Cartage, LLC et al.*, Case No 2:18-CV-09144

²² *Victor Cortes Arellano v XPO Port Services Inc.*, Case No. BC655393

²³ *Victor Cortes Arrellano et al v. XPO Logistics Port Services, LLC, et al.*, 2:18-CV-08220

²⁴ *Julio Cesar Martinez Diaz v XPO Logistics, Inc. et al.* Case No. 18STCV09938

- On February 2018, plaintiffs who brought claims in 2014 in the Lopez, Disus, and Contreras cases, filed a mass action for retaliation of that suit.²⁵ The case remains pending.
- **Past litigation:**
 - In 2014, a total of 169 drivers filed individual complaints in three separate “mass action” lawsuits against their respective companies – XPO subsidiary, Harbor Rail Transport, Pacer Cartage, and the now-defunct former XPO subsidiary PDS Trucking – for wage and hour violations arising due to misclassification as “independent contractors.”²⁶ All cases settled in February 2019.²⁷
 - On September 30, 2013 drivers at Pacer Cartage, Inc. filed a class action for misclassification, violation of meal and rest break periods, and failure to provide overtime pay.²⁸ The parties settled in April 2016 and **the total amount recovered by plaintiffs was \$2,687,500.**²⁹
 - In addition, XPO has settled out three other misclassification suits: A May 2016 class action suit against XPO Port Services (f/k/a Intermodal Container Service, dba Harbor Rail Transport);³⁰ an April 2016 suit filed by two former drivers for XPO subsidiary, Harbor Rail Transport;³¹ and an August 2015 class action suit filed against XPO Logistics, Inc.³²

XPO Cartage’s main customers: Amazon, Toyota, Samsung, Bose, Procter and Gamble, Sony, Floor and Décor

XPO Logistics’ main customers: Firestone, Graco, Converse, BMW

²⁵ Abel Contreras et al. V XPO Cartage, Inc. et al., Case No. BC695795

²⁶ XPO Logistics acquired 17 companies between 2012-2015, including Pacer International.

<https://www.joc.com/international-logistics/logistics-providers/brad-jacobs%E2%80%99-grand-design-engineering-growth-20151023.html?destination=node/3252841>

²⁷ *Lopez v. PDS Trucking, Inc., et al.*, No. BC540537; *Disus v. Intermodal Container Svc., Inc.*, No. BC540538; and *Contreras v. Pacer Cartage, Inc.*, No. BC567807 (LASC filed Dec. 23, 2016). The lead case is *Lopez v PDS Trucking, Inc., et al.*

²⁸ *Mendoza v Pacer Cartage, Inc.*, No. 37-2013-00063453-CU-OE-CTL

²⁹ *Mendoza v Pacer Cartage, Inc.* No. 13-cv-2344-LAB

³⁰ *M. Cortez v. XPO Logistics*, No. BC621798

³¹ *Hernández v. XPO Logistics*, No. 2:16-cv-03112-ROJC

³² *Arévalo v. XPO Logistics, Inc., et al.*, No. BC592813