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ROSEN ♦ SABA, LLP

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Attorneys for Defendant and Cross-Complainant,
XPO GF AMERICA, INC.
(formerly known as NDO America, Inc.)

FILED
SAN MATEO COUNTY

MAR - 6 2018

Clerk of the Superior Court
By 
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

ARMANDO SOLORIO, an individual,

Plaintiff,

v.

XPO LOGISTICS, INC., a Delaware Corporation; NDO AMERICA, INC., a California Corporation; and DOES 1 through 20, Inclusive,

Defendants.

XPO GF AMERICA, INC., a California Corporation

Cross-Complainant,

v.

ARMANDO SOLORIO, an individual, and ROES 1 through 10, Inclusive,

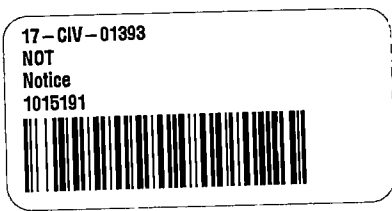
Cross-Defendants.

Case No.: 17CIV01393

NOTICE OF RULING REGARDING DEFENDANT'S MOTION TO COMPEL FURTHER RESPONSES TO REQUESTS FOR PRODUCTION, SET TWO BY FAX

Hearing Date: March 6, 2018
Time: 9:00 a.m.
Dept.: Law and Motion

Complaint Filed: March 28, 2017
FAC Filed: July 17, 2017
Trial Date: September 24, 2018



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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT Defendant and Cross-Complainant XPO GF America, Inc.'s Motion to Compel Further Responses to Requests for Production, Set Two, was scheduled for hearing on March 6, 2018, at 9:00 a.m. in the Law and Motion Department of the San Mateo County Superior Court, located at 400 County Center, Redwood City, California 94063. Prior to the hearing, counsel for the parties agreed to submit on the tentative ruling, and, accordingly, pursuant to the Local Rules of the San Mateo County Superior Court, the tentative ruling became the Order of the Court.

Attached hereto as Exhibit "A" please find a copy of the Court's Order.

DATED: March 6, 2018

ROSEN ♦ SABA, LLP

By: Krystle D Meyer
RYAN D. SABA, ESQ.
KRYSTLE D. MEYER, ESQ.
Attorneys for Defendant and Cross
Complainant, XPO GF AMERICA, INC.



EXHIBIT A

Accordingly, JAS is to produce the following documents:

1. Only documents/emails after 1/1/16;
2. Documents evidencing any compensation, bonuses, incentives, commissions, or other types of benefits that are attached to the acquisition or maintenance of client accounts;
3. Documents/emails referring to XPO and Plaintiff; and
4. Documents/emails referring to ASUS and Plaintiff.

The remainder of the documents sought in the deposition subpoena are QUASHED.

JAS is to produce these documents by March 27, 2018.

Plaintiff's and XPO's requests for sanctions are DENIED.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Defendant shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.

3. XPO GF AMERICA, INC.'S MOTION TO COMPEL FURTHER RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS, SET TWO, AND REQUEST FOR MONETARY SANCTIONS IN THE AMOUNT OF \$3,112.50

TENTATIVE RULING:

The motion is granted as to Categories 25, 26, and 27. The response is deficient for two reasons. First, the response fails to state whether any documents were ever in Plaintiff's possession, but no longer are in his possession. (Code of Civ. Proc. sect. 2031.230.) Second, the response that Plaintiff has no "non-privileged" documents raises the possibility that privileged documents might exist. In that case, Plaintiff is required to provide a log that identifies every document, if any, that is being withheld. (Id. sect. 2031.240, subd. (b) & (c).) Plaintiff shall supplement his responses to comply with sections 2031.230 and 2031.240.

The motion is granted as to Categories 28, 29, 36, 37, 38, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 58, and 59. Plaintiff's response that no documents exist that Plaintiff does not possess any responsive documents fails to meet the requirements of section 2031.230 (indicating that whether any documents were lost, destroyed, or never existed).

The motion is denied as to Categories 30, 31, 32, 34, and 35. The categories are not "reasonably particularized." (Code of Civ. Proc. sect. 2031.030, subd. (c)(1).) Defendant's relevance argument has partial merit, but these categories extend beyond the subject matter relevance of Defendant's contention that Plaintiff used Defendant's confidential information improperly.

The motion is denied as to Category 39, as not reasonably particularized.

The motion is granted as to Category 40. Plaintiff shall supplement his response to by identifying responsive documents, if any, that are withheld under objection. (Code of Civ. Proc. sect. 2031.230)

The motion is denied as to Category 54. Plaintiff's compensation is not relevant to the subject matter of the Complaint or Cross-complaint.

As to documents that are proprietary or confidential to Plaintiff's employers, the Court finds that the Protective Order in this matter does not justify requiring Plaintiff to produce those documents. The Order addresses confidential matter, but not the issue of documents that are property of a nonparty to this litigation.

Both parties' requests for sanctions are denied.

Plaintiff shall serve verified supplemental responses no later than March 23, 2018. Any extension of the deadline shall be confirmed in writing by Defendant's counsel.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Defendant shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.

4. XPO GF AMERICA, INC.'S MOTION TO COMPEL ARMANDO SOLORIO TO ANSWER QUESTIONS IN DEPOSITION, REQUEST FOR MONETARY SANCTIONS IN THE AMOUNT OF \$3,750.00

TENTATIVE RULING:

The motion is granted as to Questions 1 through 32, and 34 through 58. Plaintiff's counsel interposed objections, many of which had merit. With the exception of an objection based on privilege, however, valid objections do not justify an instruction not to answer or a witness's refusing to answer a question. The remedy for a continuing inquiry of objectionable matter is a motion for protective order. (Code of Civ. Proc. sect. 2025.460(b) & 2025.470.) Otherwise, the deponent must answer the question and the testimony will be received, subject to the objection. (Id. sect. 2025.460(b).) Instructing the witness not to answer is improper. (*Stewart v. Colonial Western Agency, Inc.* (2001) 87 Cal.App.4th 1006, 1014, 1015.)

The motion is denied as to Question 33. Plaintiff answered the question. (See Transcript at 21:12.)

Defendant's request for sanctions is granted in the amount of \$2,625.00. Plaintiff's objections mostly had merit, but the refusals to answer were not substantially

ROSEN ♦ SABA, LLP
9350 Wilshire Boulevard, Suite 250, Beverly Hills, CA 90212

PROOF OF SERVICE

1
2 STATE OF CALIFORNIA)
3 COUNTY OF LOS ANGELES) ss

4 I am employed in the County of Los Angeles, State of California. I am over the age
5 of 18 and not a party to the within action; my business address is: 9350 Wilshire Boulevard,
Suite 250, Beverly Hills, California 90212.

6 On March 6, 2018, I served the foregoing document described as: **NOTICE OF**
7 **RULING REGARDING DEFENDANT'S MOTION TO COMPEL FURTHER**
8 **RESPONSES TO REQUESTS FOR PRODUCTION, SET TWO** on the interested
parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed
as follows:

9 10 11 12 13	DILLINGHAM & MURPHY, LLP Carla J. Hartley, Esq. Anna Nagornaia, Esq. 601 Montgomery Street, Suite 1900 San Francisco, California 94111	Attorneys for Plaintiff Armando Solorio: Tel: (415) 397-2700 Fax:: (415) 397-3300 cjh@dillinghammurphy.com an@dillinghammurphy.com
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14 **BY MAIL** - As follows: I am "readily familiar" with the firm's practice of collection and
15 processing correspondence for mailing. Under that practice it would be deposited with
16 U.S. postal service on that same day with postage thereon fully prepaid at Beverly Hills,
California in the ordinary course of business. I am aware that on motion of the party
served, service is presumed invalid if postal cancellation date or postage meter date is
more than one day after date of deposit for mailing in affidavit.

17 **BY E-MAIL OR ELECTRONIC TRANSMISSION** - Based on a Court order or on an
18 agreement by the parties to accept service by e-mail or electronic transmission, I caused the
19 document(s) described above to be sent from e-mail address dsanchez@rosensaba.com to
the persons at the e-mail address listed above. I did not receive, within a reasonable time
20 after the transmission, any electronic message or other indication that the transmission was
unsuccessful.

21 I declare under penalty of perjury under the laws of the State of California that the
above is true and correct

22 Executed on **March 6, 2018**, at Beverly Hills, California.

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25 _____
Danielle Sanchez
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