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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 14 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.

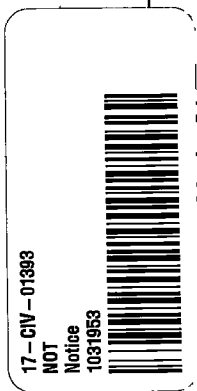
Case No.: 17CIV01393

**NOTICE OF RULING REGARDING:
(1) XPO'S MOTION TO COMPEL FURTHER RESPONSES TO REQUESTS FOR PRODUCTION, SET THREE AND (2) XPO'S MOTION TO COMPEL FURTHER RESPONSES TO REQUESTS FOR ADMISSION, SET ONE**

Hearing Date: March 14, 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

BY FAX



1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** Defendant and Cross-Complainant XPO GF
3 America, Inc.'s Motion to Compel Further Responses to Requests for Production, Set
4 Three, and Motion to Compel Further Responses to Request for Admission, Set One, were
5 scheduled for hearing on March 14, 2018, at 9:00 a.m. in the Law and Motion Department
6 of the San Mateo County Superior Court, located at 400 County Center, Redwood City,
7 California 94063. Prior to the hearing, counsel for the parties agreed to submit on the
8 tentative ruling, and, accordingly, pursuant to the Local Rules of the San Mateo County
9 Superior Court, the tentative ruling became the Order of the Court.

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

11 DATED: March 14, 2018

12 ROSEN ♦ SABA, LLP

13
14 By:


15 RYAN D. SABA, ESQ.

16 KRYSTLE D. MEYER, ESQ.

17 Attorneys for Defendant and Cross
18 Complainant, XPO GF AMERICA, INC.
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Exhibit A

LINE: 2

17-CIV-00048 MARIA CECILIA NAVARRETE VS. RUTH A.
CRYSTAL, ET AL

MARIA CECILIA NAVARRETE
RUTH A. CRYSTAL

CHRISTOPHER B. DOLAN
DEBORAH T. BJONERUD

MOTION TO BE RELIEVED AS COUNSEL

TENTATIVE RULING:

The motion to be relieved as counsel of record is granted.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is uncontested, ATTORNEY is directed to prepare, circulate and submit a written order on the appropriate Judicial Council form for the Court's signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Susan L. Greenberg, Department 3.

9:00

LINES: 3 & 4

17-CIV-01393 ARMANDO SOLORIO VS. XPO LOGISTICS, INC.,
ET AL.

ARMANDO SOLORIO
XPO LOGISTICS, INC.

CARLA J. HARTLEY
RYAN D. SABA

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

TENTATIVE RULING:

The motion is granted as to category 65. Although this category encompasses Category 29, it is broader. The documents are relevant to the subject matter of the cross-complaint. As to documents that might be proprietary to Plaintiff's employer, the Court finds that the Protective Order in this matter does not justify requiring Plaintiff to produce those documents. Still, however, Plaintiff must identify all documents that are withheld under that objection. (Code of Civ. Proc. sect. 2031.240.)

The motion is granted as to categories 66 and 67. Solorio contends that Category 66 is duplicative of Category 33, which sought "DOCUMENTS RELATING TO ASUS USA since YOU became employed at JAS Worldwide." Plaintiff objected to Category 33 and did not state that he would comply. Therefore, even if Category 66 is a subset of Category 33, it does not justify a refusal to respond.

Solorio's Opposition also states that he has no "non-JAS related documents responsive to this request other than some recently located documents pertaining to work he performed on behalf of XPO after his employment was terminated." In that case, Solorio must produce them or identify them in an objection log. (Code of Civ. Proc. sect. 2031.240.)

The motion is denied as to categories 68 and 69. Solorio's objection for vagueness and overbreadth have merit. Document requests must "Designate the documents . . . by specifically describing each individual item or by reasonably particularizing each category of item." (Code of Civ. Proc. sect. 2031.030, subd. (c)(1).) The request for "all documents relating to" XPO or ASUS is so open ended that they are not "reasonably particularized."

The motion is granted as to categories 70 and 71. The objections for vagueness, overbreadth, relevance and duplicative lack merit. To the extent that Solorio contends that any documents belong to his employer or that the requests invade a right to privacy, he must comply with statute and identify all documents withheld under that objection. (Code of Civ. Proc. sect. 2031.240.)

Defendant/Cross-complainant XPO's request for sanctions is granted in the amount of \$2,310.00 against counsel Carla Hartley and the law firm of Dillingham & Murphy only. The motion does not demonstrate that Plaintiff/Cross-defendant Armando Solorio was responsible for the failure to respond.

Plaintiff/Cross-defendant Armando Solorio shall serve supplemental verified responses to Request for Production of Documents (Set Three), as set forth above, no later than April 4, 2018 or two weeks after service of written notice of this ruling, whichever is later.

Attorneys Carla Hartley and the law firm of Dillingham & Murphy shall jointly and severally pay a sanction of \$2,310.00 to Defendant/Cross-complainant XPO Logistics, Inc. no later than March 29, 2018 or one week after service of written notice of this ruling, whichever is later.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Defendant XPO 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 FURTHER RESPONSES TO REQUESTS FOR ADMISSIONS, SET ONE, REQUEST FOR MONETARY SANCTIONS IN THE AMOUNT OF \$3,112.50

TENTATIVE RULING:

As to all Requests, the objection for exceeding 35 requests is overruled. The Cross-complaint alleges 10 causes of action. Good cause exists for propounding more than 35 requests.

The motion is granted as to Requests 36 and 37. The term “disrupted” is part of two elements of the Cross-complaint’s fourth cause of action for intentional interference with contract. (*Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126.) The main purpose of requests for admissions is to set issues at rest (*Murillo v. Superior Court* (2006) 143 Cal.App.4th 730, 735.) Requests may properly seek admission of elements of a cause of action. Therefore, Solorio’s objections lack merit.

The motion is denied as to Request 38. “Each request for admission shall be full and complete in and of itself.” (Code of Civ. Proc. sect. 2033.060, subd. (d).) Request 38 is unreasonably open-ended, asking for an admission that Solorio “failed to act with reasonable care,” but without identifying the acts, particular incident or time. The objection for vagueness has merit.

The motion is granted as to Requests 39 through 42. The Cross-complaint’s ninth cause of action is for equitable indemnity based on allegations that XPO incurred legal costs and paid a settlement in the Juni/Higuera lawsuit, which allegedly arose from Solorio’s acts of sexual harassment. The objections lack merit.

The motion is granted as to Requests 43, 44 and 45. These requests are directly relevant to the Cross-complaint’s tenth cause of action, Money Had and Received.

The motion is granted as to Requests 46, 47, 48, 50, 51, 52 and 53. The first and second causes of action (breach of contract; breach of implied covenant) allege that Solorio divulged confidential information, in violation of various Confidentiality Agreements he signed, and solicited XPO clients, in violation of a Non-Solicitation Agreement. The objections lack merit.

The motion is denied as to Request 49. The Cross-complaint alleges that Solorio was terminated for receiving kickbacks, but XPO does not explain what cause of action relates to the kickbacks. XPO’s moving Points and Authorities and its Separate Statement are silent on this issue.

Defendant/Cross-complainant XPO’s request for sanctions is granted in the amount of \$2,310.00 against counsel Carla Hartley and the law firm of Dillingham & Murphy only. The motion does not demonstrate that Plaintiff/Cross-defendant Armando Solorio was responsible for the failure to respond.

Plaintiff/Cross-defendant Armando Solorio shall serve supplemental verified responses to Requests for Admissions, as set forth above, no later than March 29, 2018 or one week after service of written notice of this ruling, whichever is later. All supplemental responses shall comply with the requirements of Code of Civil Procedure section 2033.220.

Attorneys Carla Hartley and the law firm of Dillingham & Murphy shall jointly and severally pay a sanction of \$2,310.00 to Defendant/Cross-complainant XPO Logistics, Inc. no later than March 29, 2018 or one week after service of written notice of this ruling, whichever is later.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Defendant XPO 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.

9:00

LINES: 5 & 6

17-CIV-02347 JACQUELINE WENDLING VS. PESCADERO
APARTMENTS, ET AL.

JACQUELINE WENDLING
SARES REGIS GROUP OPERATING, INC.

NIKOLAUS W. REED
DAVID V. ROTH

5. DEFENDANT SARES REGIS GROUP OPERATING, INC.'S MOTION TO SET ASIDE DEFAULT

TENTATIVE RULING:

The Motion of Defendant Sares Regis Group Operating, Inc. ("Defendant") to Set Aside Default is DENIED without prejudice.

Relief under Code of Civil Procedure section 473(b) from entry of default may be based either on an attorney affidavit of fault, which is mandatory, or based on a showing of mistake, inadvertence, surprise or excusable neglect, which is discretionary. (See C.C.P. § 473(b).)

The declaration of Ann Kariuki ("counsel") fails to set forth facts supporting that mandatory relief is warranted here based on an attorney declaration of fault. Specifically, counsel fails to establish that she represented Defendant at the time default was entered, such that the entry of default was the result of counsel's mistake of fact, inadvertence or excusable neglect. Counsel states only that she learned of "a responsibility to appear on behalf of the Sares entities [Defendant]." (Kariuki Decl. ¶ 4.) However, counsel does not state that she represented Defendant at the time default was entered.

Furthermore, Defendant has not established that discretionary relief is warranted under section 473(b). A motion for relief under section 473(b) shall be made within a reasonable time, not to exceed six months from entry of the default. (See C.C.P. § 473(b).) Counsel's declaration establishes that she learned that default had been entered against several entities at a case management conference on September 28, 2017. (Kariuki Decl. ¶ 5.) Despite this knowledge though, this motion was not filed to set aside the default until February 20, 2018, almost five months later. Although counsel attempted to file an answer on behalf of Defendant in the interim, this answer was filed on December 4, 2017, well after the default had been entered. (See *Devlin v. Kearny Mesa AMC/Jeep/Renault, Inc.* (1984) 155 Cal.App.3d 381, 385-386 [entry of default terminates a defendant's rights to take any further steps in the action until either default is set aside or a default judgment is entered].) Counsel offers no explanation as to why she

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PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SS

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

On March 14, 2018, I served the foregoing document described as: **NOTICE OF RULING REGARDING:(1) XPO'S MOTION TO COMPEL FURTHER RESPONSES TO REQUESTS FOR PRODUCTION, SET THREE AND (2) XPO'S MOTION TO COMPEL FURTHER RESPONSES TO REQUESTS FOR ADMISSION, SET ONE** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

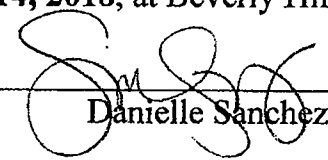
<p>DILLINGHAM & MURPHY, LLP Carla J. Hartley, Esq. Anna Nagornaia, Esq. 601 Montgomery Street, Suite 1900 San Francisco, California 94111</p>	<p>Attorneys for Plaintiff Armando Solorio: Tel: (415) 397-2700 Fax:: (415) 397-3300 cjh@dillinghammurphy.com an@dillinghammurphy.com</p>
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BY MAIL - As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with 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.

BY E-MAIL OR ELECTRONIC TRANSMISSION - Based on a Court order or on an agreement by the parties to accept service by e-mail or electronic transmission, I caused the 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 after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on **March 14, 2018**, at Beverly Hills, California.



Danielle Sanchez