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February 13, 2015

Honorable Joseph A. Dickson
U.S. District Court, District of New Jersey
Martin Luther King Jr. Federal Building
50 Walnut Street
Newark, New Jersey 07101

Re: *Ever Bedoya, et al. v. American Eagle Express, Inc.*
No. 2:14-cv-02811-ES-JAD

Dear Judge Dickson:

On December 8, 2014, the Court ordered the parties to brief the impact of the New Jersey Supreme Court's opinion in *Hargrove v. Sleepy's* on the scope of discovery. The purpose of this letter is to do so.

In its *Hargrove* opinion, the New Jersey Supreme Court adopted the ABC Test for purposes of determining employment classification. The ABC Test comprises the following elements:

- (A) The employer neither exercised control over the worker, nor had the ability to exercise control in terms of the completion of the work;
- (B) The services provided were either outside the usual course of business or performed outside of all the places of business of the enterprise; and
- (C) The individual has a profession that will plainly persist despite termination of the challenged relationship.

Given the breadth of these elements, the parties generally agree that *Hargrove* did not change the scope of discovery in any unexpected way. The topics addressed by Plaintiffs' discovery requests are generally relevant to resolving the ABC Test.

The parties also both recognize that responding to certain of Plaintiffs' discovery requests, on a class-wide basis, will generate a great deal of potentially unnecessary burden and

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expense.¹ In relation to some categories of discovery, the parties continue conferring about how to alleviate the burden of responding while ensuring that Plaintiffs are able to explore aspects of the case necessary to brief class certification.

AEX has already produced information in the discovery process specifically related to the three Named Plaintiffs. Of the remaining discovery, the parties have been able to reach agreement on the appropriate scope of 10 out of 11 of Plaintiffs' interrogatories and 15 out of 24 of Plaintiffs' request for production. AEX believes it can produce the agreed information within 45 days. The parties continue conferring in relation to 7 of the 9 disputed requests for production and are optimistic they can reach an agreeable compromise.

The parties do not believe they can informally resolve their dispute over whether AEX must produce, prior to class certification, a "class list" identifying class members by name, address and telephone number. Prior to class certification, "courts have ordinarily refused to allow discovery of class members' identities at the pre-certification stage out of concern that plaintiffs' attorneys may be seeking such information to identify potential new clients, rather than to establish the appropriateness of certification." *Dziennik v. Sealift, Inc.*, No. 05cv4659, 2006 WL 1455464, at *1 (E.D.N.Y. May 23, 2006). And certainly, determining class members' identities is not necessary to determine whether a class should be certified. *Charles v. Nationwide Mutual Ins. Co., Inc.*, No. 09cv94, 2010 WL 7132173, at *3-5 (E.D.N.Y. May 27, 2010) (denying pre-certification discovery of class list as premature); *Bird Hotel Corp. v. Super 8 Motels, Inc.*, No. CIV 06-4073, 2007 WL 404703, at *4 (D.S.D. Feb. 1, 2007) ("The name, current address, current telephone number, franchise address, and franchise telephone number for each franchisee that has ever operated under the same or essentially similar franchise agreement is not helpful or necessary to establish or decide certification of the class."); *Crawford v. Dothan City Bd. of Educ.*, 214 F.R.D. 694, 695 (M.D.Ala. 2003) ("Where discovery is sought in the absence of a conditionally certified [wage and hour] collective action, however, such discovery has been denied.").²

¹ See Advisory Committee's Notes to Fed. R. Civ. P. 23 (it is appropriate to conduct "controlled [class] discovery... limited to those aspects relevant to making the certification [decision] on an informed basis."); *Tracy v. Dean Witter Reynolds, Inc.*, 185 F.R.D. 303, 305 (D. Colo. 1998) (citing *Nat'l Org. for Women v. Sperry Rand Corp.*, 88 F.R.D. 272, 277 (D. Conn. 1980)) (the purpose of class discovery is to provide "a fair and realistic opportunity to obtain evidence which will meet the requirements of Rule 23, yet not so broad that the discovery efforts present an undue burden to [the defendant]").

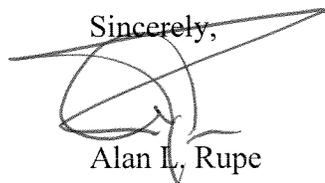
² Footnote two of Plaintiffs' September 22, 2014 letter brief cites cases in which a court supposedly ordered production of a class list. Each of those cases ordered production of a class list based upon a showing that the plaintiffs needed to know class members' identities for some specified reason. Plaintiffs have failed to explain the relevancy of a class list at this juncture.

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AEX looks forward to continuing to productively work with Plaintiffs' counsel toward completing class discovery and respectfully requests an Order from the Court specifying that AEX need not produce class members' identities at this stage of the proceedings.

Sincerely,

A handwritten signature in black ink, appearing to be "Alan L. Rupe", is written over the word "Sincerely,". The signature is somewhat stylized and overlaps the text.

Alan L. Rupe