

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Agreement”) is made by and between plaintiff Jonathan Buckner (“Plaintiff”), on behalf of himself and all similarly-situated individuals and aggrieved employees, and Defendant Xpress Global Systems, LLC (“XGS” or “Defendant”), subject to the approval of the Court, that the Settlement of the Action (as defined below) shall be effectuated upon and subject to the following terms and conditions to be filed for approval by the Court. Plaintiff and Defendant collectively are referred to in this Agreement as the “Parties.”

I. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- A. “Action” means the Class Action and PAGA Complaint filed and pending in California Superior Court for Alameda County, and any amendments thereto, which is captioned *Buckner v. Xpress Global Systems, LLC, et al.*, Case No. RG20080657.
- B. “Aggrieved Employees” means all non-exempt hourly individuals who are or were employed by XGS in California during the period from November 9, 2019 through November 12, 2021.
- C. “Class” means all non-exempt hourly individuals who are or were employed by XGS in California during the period from November 9, 2016 through November 12, 2021.
- D. “Class Counsel” means Mehrdad Bokhour of Bokhour Law Group, P.C., and Joshua Falakassa of Falakassa Law, P.C.
- E. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts to be paid to Class Counsel for fees and expenses, respectively, as approved by the Court, to compensate Class Counsel for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation expenses incurred in connection with the Action.
- F. “Class Data” means, for each Class Member, his or her name; last-known mailing address; Social Security number; and, his or her dates of employment and/or number of weeks worked during the Class Period as a Class Member.
- G. “Class Member” is a member of the Class.
- H. “Class Notice” or “Class Notice Packet” means the Notice of Proposed Settlement of Class Action to be provided to the Class Members by the Settlement Administrator in the forms set forth as Exhibit A to this Agreement (other than formatting changes to facilitate printing by the Settlement Administrator).

- I. “Class Period” means the period of time from November 9, 2016 through November 12, 2021.
- J. “Class Representative Service Payment” means the service payment made to Plaintiff in his capacity as Class Representative in order to compensate him for initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendant’s expenses in the event Plaintiff was unsuccessful in the prosecution of the Action, and for the general release of all claims by the Plaintiff.
- K. “Court” means the Superior Court of California, County of Alameda.
- L. “Defendant” means Xpress Global Systems, LLC.
- M. “Defendant’s Counsel” means Angela J. Rafoth of Littler Mendelson, P.C., and Bradley M. Davis and Justin L. Furrow (both admitted *pro hac vice*) of Chambliss, Bahner & Stophel, P.C.
- N. “Effective Date” means the date by which all of the following have occurred:
 - 1. This Agreement is approved by the Court; and
 - 2. The Judgment becomes Final as defined in Section I(P) of this Agreement.
- O. “Election Not to Participate in Settlement” means the completed Opt Out Form submitted by a Class Member to exclude himself or herself from the Class Settlement submitted in accordance with the instructions in the Class Notice. Such a written request will have no effect on one’s inclusion in the PAGA Settlement.
- P. “Final” means the last of the following dates, as applicable:
 - 1. The last date on which a notice of appeal from the Judgment may be filed and none is filed.
 - 2. If Judgment is entered and a timely appeal from the Judgment is filed, the date the Judgment is affirmed and is no longer subject to appeal.
- Q. “Final Approval Hearing” means the hearing to be conducted by the Court to determine whether to approve finally and implement the terms of this Agreement and enter the Judgment.
- R. “Gross Settlement Amount” means Five Hundred Thousand Dollars (\$500,000) to be paid by Defendant as provided by this Agreement. This amount is without any reversion to Defendant or any of the Released Parties and shall be inclusive of all payments of Settlement Shares to the Participating Class Members, Settlement Administration Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments and the PAGA

Payment contemplated in this Agreement, and excluding any employer payroll taxes due on the portion of the Settlement Shares allocated as wages which shall not be paid from the Gross Settlement Amount and shall be the separate additional obligation of Defendant.

- S. “Judgment” means the Final Approval Order and Judgment entered by the Court substantially in the forms attached hereto as Exhibit C to this Agreement and incorporated by reference into this Agreement.
- T. “Net Settlement Amount” means the Gross Settlement Amount less the Court-approved amounts for the Class Representative Service Payments, the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the LWDA Payment, and the Settlement Administration Expenses.
- U. “Non-Participating Class Member” means a Class Member who submits a valid and timely Election Not to Participate in Settlement.
- V. “PAGA Period” means the period of time from November 9, 2019 through November 12, 2021.
- W. “Participating Class Member” means a Class Member who does not submit a valid and timely Election Not to Participate in Settlement.
- X. “Preliminary Approval of the Settlement” means the Court’s Order Granting Preliminary Approval of the Settlement substantially in the form attached hereto as Exhibit B to this Agreement and incorporated by this reference herein.
- Y. “Released Parties” means Defendant and any of its past or present affiliated and related entities and all of its and their past or present partners, parents, subsidiaries, trustees, affiliates, divisions, insurers, re-insurers, successors and assigns and any of its and their past or present directors, officers, owners, principals, attorneys, trustees, heirs, administrators, agents, representatives, employees or assigns (whether acting as agents for any other Released Parties or in their individual capacities), any employment benefit plan sponsored by Defendant, and such plans’ administrators, fiduciaries, trustees, insurers and re-insurers.
- Z. “Settlement” means the disposition of the Action and all related claims effectuated by this Agreement.
- AA. “Settlement Administrator” means ILYM Group, Inc. selected by the Parties to be appointed by the Court to administer the Settlement. The determination of the Settlement Administrator will be by a not to exceed bid and shall be agreed to by all counsel.
- BB. “Settlement Share” means each Participating Class Member’s share of the Net Settlement Amount as provided by this Agreement.

II. RECITALS

- A. On or about November 9, 2020, Plaintiff notified the Labor Workforce Development Agency (“LWDA”) of his intent to file an action under California’s Private Attorneys General Act, California Labor Code § 2698 *et seq.* (“PAGA”).
- B. On December 11, 2020, XGS sent to Plaintiff, through his counsel, and submitted to the LWDA, notice of its cure of certain deficiencies in its wage statements issued for the pay periods April 10, 2020 through November 20, 2020, as identified following Plaintiff’s November 9, 2020, notice to the LWDA.
- C. The LWDA has had an opportunity to investigate Plaintiff’s claims as required by the Labor Code. The LWDA took no action in response to Plaintiff’s notice or Defendant’s cure notice.
- D. On November 10, 2020, Plaintiff filed a putative class and PAGA representative action Complaint in Alameda Superior Court (Case No. RG20080657) on behalf of himself and all allegedly similarly situated individuals, asserting causes of action for (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime; (3) Late Payment of Wages under Labor Code Section 204; (4) Failure to Provide Meal Periods; (5) Failure to Provide Rest Breaks; (6) Failure to Provide Accurate Wage Statements; (7) Failure to Timely Pay Wages Upon Separation; (8) Unfair Competition; and (9) for civil penalties pursuant to PAGA for the underlying Labor Code violations (the “Action”).
- E. On January 13, 2021, Defendant filed a general denial with affirmative defenses to the Action.
- F. During the course of the litigation of the Action, the Parties engaged in informal discovery. Defendant produced to Plaintiff information including, but not limited to: (1) Defendant’s policies and other relevant documents; (2) time and payroll data for the Class Members and Aggrieved Employees; and (3) wage statements for Plaintiff and other Class Members.
- G. On October 12, 2021, the Parties participated in an all-day mediation with Mark Rudy, Esq., a respected mediator of wage and hour class actions.
- H. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any claim in the Action has merit or that Defendant bears any liability to Plaintiff or the Class on those claims or any other claims, or as an admission by Plaintiff that Defendant’s defenses in the Action have merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, Defendant reserves the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Gross Settlement Amount that Defendant will pay under this Settlement is Five Hundred Thousand Dollars (\$500,000). This amount is inclusive of all payments contemplated in this resolution, excluding any employer-side payroll taxes on the portion of the Settlement Shares allocated as wages which shall be separately paid by Defendant to the Settlement Administrator. All of the Gross Settlement Amount will be disbursed pursuant to this Agreement without the need to submit a claim form and none of the Gross Settlement Amount will revert to Defendant.
- B. **Payments from the Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount:
1. **To Plaintiff:** In addition to the Settlement Share to be paid to Plaintiff, Plaintiff will apply to the Court for an award of not more than \$7,500 for a Class Representative Service Payment. The Settlement Administrator will pay the Class Representative Service Payments approved by the Court out of the Gross Settlement Amount. If the Court approves a Class Representative Service Payment of less than \$7,500, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. To receive the payment, Plaintiff agrees to a 1542 waiver and a general release of all claims as set forth below. Subject to approval by the Court, the Class Representative Service Payment is in settlement of claims for penalties and other non-wage damages allegedly due to Plaintiff and as consideration for his execution of a general release, shall not be subject to wage withholdings, and shall be reported on IRS Form 1099.
 2. **To Class Counsel:** Class Counsel will apply to the Court for an award of not more than One-Third of the Gross Settlement Amount, which is presently \$166,666.67, as their Class Counsel Fees Payment and an amount not more than \$20,000 for all expenses incurred as evidenced via supporting documentation and declaration presented to the Court as their Class Counsel Litigation Expenses Payment. The Settlement Administrator will pay the amounts approved by the Court out of the Gross Settlement Amount. If the Court approves a Class Counsel Fees Payment or a Class Counsel Litigation Expenses Payment of less than these amounts, which are presently \$166,666.67, and \$20,000 respectively, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Payroll tax withholding and deductions, if any, will not be taken from the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment and instead one or more Forms 1099 will be issued to Class Counsel with respect to those payments. The Settlement Administrator will be instructed jointly by Class Counsel as to the allocation of the Class Counsel Fees Payment and Class

Counsel Litigation Expenses Payment as between them, as follows: 50% to Bokhour Law Group, P.C., and 50% to Falakassa Law, P.C. Payment of Class Counsel Litigation Expenses Payment shall be made to the firm that incurred the expenses. The Parties explicitly agree and recognize that Defendant incurs no obligation in this Settlement to ensure any particular allocation of these payments between Class Counsel and has no obligation other than to tender these amounts to the Settlement Administrator for distribution as part of the Gross Settlement Amount.

3. **To LWDA.** The Parties will seek approval from the Court for the PAGA Payment of \$25,000 out of the Gross Settlement Amount, which shall be allocated 75% (\$18,750) to the LWDA (the "LWDA Payment") as the LWDA's share of the settlement of civil penalties paid under this Agreement pursuant to the PAGA and 25% (\$6,250) will remain in the Net Settlement Amount for distribution to the Aggrieved Employees based upon their respective workweeks worked during the PAGA Period. If the Court approves a PAGA Payment of less than \$25,000, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Class Counsel shall notify the Labor and Workforce Development Agency of this Settlement as required by statute.
4. **To the Settlement Administrator.** The Settlement Administrator will pay out of the Gross Settlement Amount to itself its reasonable fees and expenses that are documented and approved by the Court in an amount not to exceed \$7,000 ("Settlement Administration Expenses"). To the extent the Settlement Administration Expenses that are documented and approved by the Court are less than \$7,000, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members.

C. **Payments From the Net Settlement Amount.** The Net Settlement Amount shall include the following payments after the deductions have been made from the Gross Settlement Amount as described in this Agreement. The Net Settlement Amount shall include the following:

1. **Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay a Settlement Share from the Net Settlement Amount to each Participating Class Member. The submission of a claim form is not required to be paid.
2. **Calculation.** Each Participating Class Member will be entitled, provisionally, to a share or shares of the Net Settlement Amount. The Settlement Share for each Participating Class Member will be calculated by: (a) dividing the Net Settlement Amount by the total number of weeks worked for all Participating Class Members that occurred during the Class Period according to Defendant's records, or as estimated using the Participating Class Members' dates of employment, and (b) multiplying

the result by each individual Participating Class Member's weeks worked or estimated using dates of employment that occurred during the Class Period. Defendant's records shall control, but Class Members will have the right to challenge the number of work weeks.

3. **Withholding.**

- a. Subject to approval by the Court, 33.4% of each Participating Class Member's Settlement Share is in settlement of wage claims (the "Wage Portion"). Accordingly, the Wage Portion is subject to wage withholdings, and shall be reported on IRS Form W-2 and shall be paid for from the Gross Settlement Amount. Defendant shall be separately responsible for the employer share of payroll taxes on the Wage Portion of each Settlement Share distributed to the Participating Class Members.
- b. Subject to approval by the Court, 33.3% of each Participating Class Member's Settlement Share is in settlement of claims for interest and 33.3% of each Participating Class Member's Settlement Share is in settlement of claims for penalties allegedly due to employees (collectively the "Non-Wage Portion"). The Non-Wage Portion shall not be subject to wage withholdings and shall be reported on IRS Form 1099.

4. **Effect of Non-Participating Class Members.** Non-Participating Class Members will receive no Settlement Share, except as provided in section III.F.3.c with respect to the PAGA Payment, and their Election Not to Participate in Settlement will reduce neither the Gross Settlement Amount nor the Net Settlement Amount. Their respective Settlement Shares will remain a part of the Net Settlement Amount for distribution to Participating Class Members on a *pro rata* basis relative to their Settlement Shares.

- D. **Appointment of Settlement Administrator.** The Parties have mutually agreed to ask the Court to appoint ILYM as the qualified administrator, to serve as the Settlement Administrator, which, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator's duties will include preparing, printing, and mailing the Class Notice Packet to all Class Members; conducting a National Change of Address search to update Class Member addresses before mailing the Class Notice Packets; re-mailing Class Notice Packets that are returned to the Class Member's new address; setting up a toll-free telephone number to receive calls from Class Members; receiving and reviewing for validity completed Elections Not to Participate in Settlement; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of completed Elections Not to Participate in Settlement; calculating Settlement Shares; issuing the checks to effectuate the payments due under the Settlement;

issuing the tax forms required under this Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator will have the authority to resolve all disputes concerning the calculation of a Participating Class Member's Settlement Share, subject to the dollar limitations and calculations set forth in this Agreement. The Settlement Administration Expenses, including the cost of printing and mailing the Class Notice Packet, will be paid out of the Gross Settlement Amount.

The Settlement Administrator shall have its own Employer Identification Number under Internal Revenue Service Form W-9 and shall use its own Employer Identification Number in calculating payroll withholdings for taxes and shall transmit the required employers' and employees' share of the withholdings to the appropriate state and federal tax authorities. The Settlement Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

E. Procedure for Approving Settlement.

1. Motion for Preliminary Approval of Settlement by the Court.

- a. After Execution of this Settlement Agreement, Plaintiff will file a Preliminary Approval Motion with the Court for an order giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice (the "Motion for Preliminary Approval"). Any disagreement among the Parties concerning the Class Notice, the proposed orders, or other documents necessary to implement the Settlement will be referred to the mediator for resolution.
- b. If the Court declines to preliminarily approve material aspects of the Settlement (including but not limited to the scope of release to be granted by Participating Class Members or the binding effect of the Settlement on Participating Class Members), the Parties shall work together in good faith to address any concerns raised by the Court and to propose a revised Settlement for the Court's approval, if necessary.

2. Notice to Class Members. After the Court enters an Order Granting Preliminary Approval of the Settlement, every Class Member will be sent the Class Notice Packet (which will include the Class Notice completed to reflect the Order Granting Preliminary Approval of the Settlement and showing the Class Member's Settlement Share) as follows:

- a. No later than seven business days after the Court enters an Order Granting Preliminary Approval of the Settlement, Defendant will provide to the Settlement Administrator an electronic database containing each Class Member's Class Data. If any or all of the

Class Data is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon the Class Data prior to when it must be submitted to the Settlement Administrator. This information will otherwise remain confidential and will not be disclosed to anyone, except as required to applicable taxing authorities, in order to carry out the reasonable efforts described in section III.E.2.c., or pursuant to Defendant's express written authorization or by order of the Court. All Class Data will be used for settlement notification and settlement administration and shall not be used for any other purpose by Class Counsel.

- b. The Settlement Administrator shall update the Class Data using the National Change of Address database prior to mailing the Class Notice Packets. Using best efforts to mail it as soon as possible, and in no event later than 7 calendar days after receiving the Class Data, the Settlement Administrator will mail the Class Notice Packets to all Class Members via first-class regular U.S. Mail using the mailing address information provided by Defendant, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.
- c. If a Class Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and not longer than fourteen (14) days from receipt of the returned packet, search for a more current address for the Class Member and re-mail the Class Notice Packet to the Class Member. The Settlement Administrator will use the Class Data to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, Court orders, and fee, as agreed to with Class Counsel and according to the following deadlines, to trace the mailing address of any Class Member for whom a Class Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address using available email addresses, phone numbers, social security numbers, credit reports, LinkedIn, and Facebook; and promptly re-mailing to Class Members for whom new addresses are found. If the Class Notice Packet is re-mailed, the Settlement Administrator will note for its own records and notify Class Counsel and Defendant's Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties.

- d. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Elections Not to Participate in Settlement it receives (including the numbers of valid and deficient), and number of objections received.
 - e. Not later than 20 days before the date by which the Plaintiffs file the motion for final approval of the Settlement, the Settlement Administrator will provide Class Counsel and Defense Counsel a declaration of due diligence setting forth its compliance with its obligations under this Agreement and detailing the number of valid and timely opt outs objections received. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.
3. **Objections to Settlement; Disputes as to Shifts allocated to Class Members; Elections Not to Participate in Settlement.** Participating Class Members may submit objections to the Settlement and/or objections to the Class Counsel Fees Payment and/or Class Counsel Litigation Expenses Payment. Class Members may also submit disputes as to work weeks allocated to them and Elections Not to Participate in Settlement pursuant to the following procedures:
- a. **Objections to Settlement.** The Class Notice will provide that only Participating Class Members who wish to object to the Settlement, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or the Class Representative Service Payments may object to the proposed Settlement, either in writing or orally at the Final Approval Hearing. Objections in writing must be submitted to the Settlement Administrator, who will promptly provide copies to to Class Counsel and Defendant's Counsel, postmarked not later than forty-five (45) calendar days after the Settlement Administrator mails the Class Notice Packets. Written objections must set forth the grounds for the objection(s) and comply with the instructions in the Class Notice. Alternatively, Class Members shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) to orally object to the Settlement, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or the Class Representative Service Payments. A Participating Class Member who does not submit an objection in the manner and by the deadline specified above and in the Class Notice will be deemed to have waived any objection and will be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Class Representative Service

Payments. Non-Participating Class Members shall have no ability to comment on or object to the Settlement, except as provided in section III.E.3.c *infra* with regard to objections made to the PAGA portion of the Settlement.

- b. **Disputes as to Weeks Worked.** Each Class Member shall also have forty-five (45) calendar days after the Settlement Administrator mails the Class Notice Packets in which to dispute the number of work weeks the Class Notice allocates to them during the Class Period. Any notice of dispute shall be directed to the Settlement Administrator. Any dispute as to this allocation shall be resolved by the Settlement Administrator, with input and assistance from Defendant's Counsel, where applicable.

- c. **Election Not to Participate in Settlement.** The Class Notice also will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator postmarked not later than forty-five (45) calendar days after the Settlement Administrator mails the Class Notice Packets, a signed Election Not to Participate in Settlement. An Opt Out Form to effectuate the Election Not to Participate in Settlement will be included in the Class Notice Packet. To be valid, an Election Not to Participate in Settlement must be timely and must comply with the instructions in the Class Notice. If a question is raised about the authenticity of a signed Election Not to Participate in Settlement, the Settlement Administrator will have the right to demand additional proof of the Class Member's identity. Individuals meeting the definition of Aggrieved Employees who exclude themselves from the Class Settlement, nonetheless shall be bound by the Judgment of the PAGA claim and will receive their proportionate share of the PAGA Payment. A Non-Participating Class Member will otherwise not participate in or be bound by the Settlement and the Judgment. Defendant will remain free to contest any claim brought by any Class Member that would have been barred by this Agreement, and nothing in this Agreement will constitute or be construed as a waiver of any defense Defendant has or could assert against such a claim. A Class Member who does not complete and mail a timely Election Not to Participate in Settlement in the manner and by the deadline specified above and in the Class Notice will automatically become a Participating Class Member and will be bound by all terms and conditions of the Settlement, including the Released Class Claims by the Class, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement. Persons who submit an Election Not to Participate in Settlement shall not be permitted to file objections to the Settlement or appear at the Final Approval Hearing to voice any objections to the

Settlement except as to the right of any Aggrieved Employee, to the extent required by law, to object to the terms of the PAGA portion of this Settlement.

All Participating Class Members who do not submit a valid and timely Election Not to Participate in Settlement will receive a Settlement Share, without the need to file a claim form, and will be bound by all of the terms of the Settlement, including without limitation, the release of the Released Class Claims by the Participating Class Members set forth in this Agreement.

- d. **Report.** Not later than ten (10) calendar days after the deadline for submission of Elections Not to Participate in Settlement, the Settlement Administration will provide Class Counsel and Defendant's Counsel with a complete and accurate list of all Participating Class Members and all Non-Participating Class Members.
4. **Right of Defendant to Reject Settlement.** If more than five percent (5%) of the Class Members timely submit valid Elections Not to Participate in Settlement, Defendant will have the sole right, but not the obligation, to void the Settlement, in which case the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed under this Agreement, except that Defendant will pay the Settlement Administration Expenses incurred as of the date that Defendant exercises the right to void the Settlement pursuant to this Paragraph. Defendant will notify Class Counsel and the Court whether it is exercising its right pursuant to this Paragraph not later than seven (7) calendar days after the Settlement Administrator notifies the Parties of the number of valid Elections Not to Participate in Settlement it has received.
5. **No Solicitation.** The Parties and their counsel represent that neither the Parties nor their respective counsel have or will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, appeal from the Judgment, or elect not to participate in the Settlement. If a Class Member submits an Election Not to Participate in Settlement, Class Counsel will not solicit, represent, or otherwise encourage that Non-Participating Class Member to participate in separate litigation against Defendant.
6. **Additional Briefing and Final Approval.**
 - a. Unless otherwise ordered by the Court, Class Counsel will file with the Court their motion for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payments no later than the date Plaintiffs

file the Motion for Final Approval, and the application will be scheduled to be heard by the Court at the Final Approval Hearing.

- b. Not later than sixteen (16) court days before the Final Approval Hearing, the Plaintiff will file with the Court a motion for final approval of the Settlement.
 - c. If any opposition is filed, then not later than five (5) court days before the Final Approval Hearing, both Parties may file a reply in support of the motion for final approval.
 - d. If the Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), then the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval. However, an award by the Court of a lesser amount than that sought by Plaintiff and Class Counsel for the PAGA Payment, Class Representative Service Payments, the Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment, will not constitute a material modification to the Settlement within the meaning of this paragraph.
 - e. Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, the Parties will present for the Court's approval and entry the Judgment substantially in the form attached hereto as Exhibit C. After entry of the Judgment, the Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of: (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.
7. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, Plaintiff and Participating Class Members who did not timely submit an objection to the Settlement, Defendant, and their respective counsel, hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion for new trial, and any extraordinary writ. The Judgment therefore will become nonappealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. If an appeal is taken from the Judgment, the time for consummation of the Settlement (including making payments under the Settlement) will be

suspended until such time as the appeal is finally resolved and the Judgment becomes Final.

8. **Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, or application, the reviewing Court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), and that Court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher Court, then the Parties shall work together in good faith to address any concerns raised by the reviewing Court and propose a revised Settlement for the approval of the Court not later than fourteen days after the reviewing Court's decision vacating, reversing, or materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the Court's award of the Class Representative Service Payments or the Class Counsel Fees Payment or Class Counsel Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this paragraph, provided that Defendant's obligation to make payments under this Settlement will remain limited by the Gross Settlement Amount.

9. **Timing of Settlement Funding and Provision of Settlement Shares and Other Payments.** Defendant shall fund the Gross Settlement Amount by depositing the money with the Settlement Administrator. Defendant shall fund the Gross Settlement Amount and the amount necessary to pay Defendant's share of payroll taxes within thirty (30) days of the Effective Date. Within thirty (30) days after Defendant funds the Gross Settlement Amount, the Settlement Administrator will make payment of all Settlement Shares to Participating Class Members, as well as payment of Settlement Administration Expenses, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the Class Representative Service Payments and the LWDA Payment in accordance with this Agreement.

10. **Uncashed Settlement Share Checks.** A Participating Class Member must cash his or her Settlement Share check within 180 days after it is mailed to him or her. If a check is returned to the Settlement Administrator or not cashed within 120 days after the last mailing, the Settlement Administrator will make all reasonable efforts to re-mail it to the affected Participating Class Member at his or her correct address by use of available email addresses, phone numbers, social security numbers, credit reports, LinkedIn and Facebook. If a Participating Class Member's Settlement Share check is not cashed within 120 days after its last mailing to the Participating Class Member, the Settlement Administrator will also send the affected Participating Class Member a notice informing him or her that unless the check is cashed in the next 60 days, it will expire and

become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed. If the check remains uncashed by the expiration of the 60 day period after this notice, the funds from such uncashed checks will be donated to Bet Tzedek Legal Services pursuant to the terms of Code of Civil Procedure section 384(b) and the Settlement Administrator shall issue the unclaimed funds to the *cy pres* within approximately 215 days of mailing the settlement checks...

11. **Final Report by Settlement Administrator to Court.** Within ten days after final disbursement of all funds from the Gross Settlement Amount, the Settlement Administrator will provide the Parties with a declaration proving a final report on the disbursements of all funds from the Gross Settlement Amount.

F. Release of Claims.

1. **Participating Class Members.** Upon entry of final judgment and payment by Defendant of the Gross Settlement Amount in accordance with section III.E.9 of this Agreement, Defendant and the Released Parties shall be entitled to a release from the Participating Class Members as follows:

for all claims alleged or which could have been alleged based on the legal theories, legal authorities, or facts asserted in the Action, regardless of whether such claims arise under federal, state or local law, statute, ordinance, regulation, common law, or other source of law, which occurred during the Class Period (“Released Class Claims”). Released Class Claims also includes all claims alleged or which could have been alleged based on the legal theories, legal authorities, or facts asserted for civil penalties under the PAGA based on the Labor Code violations alleged, in the Action, for the PAGA Period. The Released Class Claims include any and all claims, causes of action, debts, liabilities, obligations, guarantees, including for damages, wages, premiums, penalties, interest, attorneys’ fees, costs, and any other form of relief or remedy in law, equity, of whatever kind or nature and for any relief whatsoever, including monetary, injunctive, or declaratory relief, whether direct or indirect, whether under federal law or the law of any state, which the Plaintiff has or any Class Member has against the Released Parties for any acts occurring during the Class Period that relate to the substantive claims described in the Action, including any amended complaint filed prior to preliminary approval of this Settlement.

2. **Plaintiff.** Upon the Effective Date, Plaintiff generally, unconditionally, irrevocably, and absolutely releases and discharges the Released Parties from any and all claims, transactions or occurrences between them that occurred during the Class Period, to the fullest extent permitted by law (“Plaintiff’s Released Claims”). This release of Plaintiff’s Released

Claims unconditionally, irrevocably and absolutely releases and discharges the Released Parties from any claim that Plaintiff could maintain in any action against any Released Party based on acts that occurred during the Class Period. Notwithstanding the foregoing, this waiver and release of claims does not extend to any rights which as a matter of law cannot be waived and released by private agreement, including rights to sue to enforce this Agreement and rights to unemployment benefits and workers' compensation benefits and claims outside the Class Period.

Plaintiff acknowledges that he may discover facts or law different from, or in addition to the facts or law that he knows or believes to be true with respect to the claims and matters released by way of this Agreement and agrees, nonetheless, that this Agreement and the releases contained in it shall be and remain effective in all respects, notwithstanding such different or additional facts or the discovery of them. The Parties declare and represent that they intend this Agreement to be complete and not subject to any claim of mistake, and that the releases herein express full and complete releases, and that they intend that the releases herein shall be final and complete. The Parties execute this release with the full knowledge that this release of the Plaintiff's Released Claims covers all possible claims by Plaintiff against the Released Parties, to the fullest extent permitted by law. To the extent permitted by law, Plaintiff expressly waives his right to recovery of any type, including damages, penalties, or reinstatement, in any administrative or court action, whether state or federal, and whether brought by Plaintiff or on Plaintiff's behalf, related in any way to the matters released herein.

Notwithstanding the provisions of section 1542, and for the purpose of implementing a full and complete release and discharge of all of the Plaintiff's Released Claims, Plaintiff expressly acknowledges that this settlement is intended to include in its effect, without limitation, all Plaintiff's Released Claims which Plaintiff does not or may not know or suspect to exist in his favor at the time of execution hereof, and that the Settlement contemplates the extinguishment of all such Plaintiff's Released Claims.

Plaintiff and Defendant acknowledge that it is their mutual intent not only to resolve all matters presently in dispute between them, but also by this Agreement to forever prevent the reoccurrence of any question, dispute, or claim regarding the past employment or future consideration for employment of Plaintiff by Defendant or Released Parties.

3. **Plaintiff's Waiver of Rights Under California Civil Code Section 1542.** As partial consideration for the Class Representative Service Payment, the Plaintiff's Released Claims shall include all such claims, whether known or unknown by the releasing party. Thus, even if Plaintiff discovers facts

or claims in addition to or different from those that he now knows or believes to be true with respect to the subject matter of the Plaintiff's Released Claims, those claims will remain released and forever barred. Therefore, with respect to Plaintiff's Released Claims, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or released party.

4. **Class Counsel.** As of the date the Judgment becomes Final, and except as otherwise provided by this Agreement and the Judgment, Class Counsel and any counsel associated with Class Counsel waive any claim to costs and attorneys' fees and expenses against the Released Parties arising from or related to the Action.
- G. **No Effect on Other Benefits.** The Settlement Shares will not result in any additional benefit payments (such as 401(k) or bonus) beyond those provided by this Agreement to Plaintiff or Participating Class Members, and Plaintiff and Participating Class Members will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement.
- H. **Limitation on Public Statements About Settlement.** The Parties agree that Plaintiff and Class Counsel will not publish the fact of, or terms of, this Settlement to members of the press, including to Verdicts and Settlements. Plaintiff and Class Counsel will not publish the fact of, or terms of, this Settlement or any related information on any website, for advertising purposes and/or in publication materials generally available to the public. Further, Class Counsel and Plaintiff agree not to issue press releases or initiate any public statements regarding the Settlement, including but not limited to in the media or on the Internet, with the exception of the Class Notice. This provision shall not prohibit Class Counsel from communicating with Class Members after preliminary approval is granted for the sole purpose of administering the Settlement. This provision also does not limit Class Counsel from complying with ethical obligations. Plaintiff and Class Counsel agree not to respond to any media inquiries except to refer reporters to the papers filed with the Court. The Parties may make public statements to the Court as necessary to obtain preliminary or final approval of the Settlement. The Parties and their counsel shall refrain from publicly disparaging any of the other parties or counsel, including the Released Parties, or taking any public action designed or reasonably foreseeable to cause harm to the public perception of any of the Released Parties regarding any issue related in any way to the Action or the Settlement, but nothing herein is intended to prevent any party or their counsel, should it be

required in connection with official court proceedings in other actions, from discussing the Settlement. In all communications, all Parties must comply with all confidentiality agreements between them. XGS may, at its sole discretion, disclose the Settlement to its auditors, regulators and any other parties as reasonably necessary.

I. Miscellaneous Terms.

1. No Admission of Liability or Class Certification for Other Purposes.

- a. Defendant and the Released Parties deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under the claims asserted in the Action, or that but for the Settlement a class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission of liability or wrongdoing by Defendant or the Released Parties, or an admission by Plaintiff that any of the claims were non-meritorious or any defense asserted by Defendant was meritorious. This Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with effectuating the Settlement pursuant to this Agreement). Nothing in this Agreement shall be construed as an admission by Defendant of any liability or wrongdoing as to Plaintiff, Class Members, or any other person, and Defendant specifically disclaims any such liability or wrongdoing. Moreover, it is not, and it should not be construed as, any admission of fact or law in this matter or any other matter that a class action is appropriate, and that settlement of this Action by way of a class action in no way waives Released Parties' defenses in another action with respect to an individual's waiver of rights to file a class or collective action. The Parties have entered into this settlement with the intention of avoiding further disputes and litigation with the attendant inconvenience, expenses, and risks. Nothing in this Agreement shall be construed as an admission by Plaintiff that Plaintiff's claims do not have merit or that class certification of any claim is inappropriate.
- b. Regardless of whether the Judgment becomes Final, the Settlement, this Agreement, any document, statement, proceeding, conduct related to the Settlement or the Agreement, or any reports or accounting of those matters shall not be: (i) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Plaintiff or Defendant or any of the Released Parties, including, but not limited to, evidence of a

presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage; or (ii) disclosed, referred to, or offered in evidence against any of the Released Parties, in any further proceeding in the Action, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement.

c. This section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all proceedings for the limited purpose of enforcing any or all terms of this Agreement or defending any claims released or barred by this Agreement.

2. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits. This Agreement replaces and supersedes the Memorandum of Understanding executed by the Parties following mediation, and any other agreements, understandings, or representations between the Parties.
3. **Attorney Authorization.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement including any amendments to this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the mediator for resolution.
4. **No Prior Assignments.** The Parties represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.
5. **No Tax Advice.** Neither Class Counsel nor Defendant's Counsel intends anything contained in this Settlement to constitute advice regarding taxes

or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

6. **Modification of Agreement.** Except as set forth in section III.I.3 hereinabove, this Agreement or any part of it may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives.
7. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
8. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California.
9. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
10. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
11. **Use and Return of Documents and Data.** All originals, copies, and summaries of documents and data provided to Class Counsel by Defendant in connection with the mediation or other settlement negotiations in this matter may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule. Within thirty (30) days after the Judgment becomes Final, Class Counsel will confirm in writing to Defendant the destruction of all such documents and data including those provided by Class Counsel to experts for mediation or other settlement purposes.
12. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
13. **Notice.** All notices, demands, or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

To Plaintiffs and the Class:

Joshua S. Falakassa
FALAKASSA LAW, P.C.
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (818) 456-6168; Fax: (888) 505-0868
josh@falakassalaw.com

Mehrdad Bokhour
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1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
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mehrdad@bokhourlaw.com

To Defendant:

Angela J. Rafter
LITTLER MENDELSON, P.C.
333 Bush Street, 34th Floor
San Francisco, CA 94104
Tel: 415.433.1940; Fax: 415.399.8490
arafter@littler.com

Bradley M. Davis
Justin L. Furrow
CHAMBLISS, BAHNER & STOPHEL, P.C.
605 Chestnut Street, Suite 1700
Chattanooga, TN 37450
Telephone: 423.756.3000; Fax: 423.508.1291
bdavis@chamblisslaw.com
jfurrow@chamblisslaw.com

14. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically, or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
15. **Stay of Litigation.** The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement.

16. **Continuing Jurisdiction.** The Court shall retain continuing jurisdiction over the Action under CCP section 664.6 to ensure the continuing implementation of this Agreement and enforcement of the Settlement until performance in full of the terms of this Settlement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

DocuSigned by:

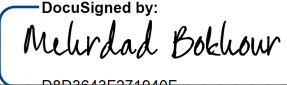
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Plaintiff Jonathan Buckner

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Defendant Xpress Global Systems, LLC

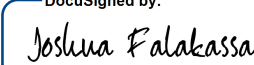
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Mehrdad Bokhour
Counsel for Plaintiff

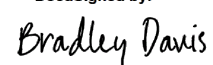
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Littler Mendelson, P.C.
By: Angela J. Rafoth
Counsel for Defendant

DocuSigned by:

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Joshua Falakassa
Counsel for Plaintiff

DocuSigned by:

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Chambliss, Bahner & Stophel, P.C.
By: Bradley M. Davis
Counsel for Defendant

EXHIBIT A

[NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION]

EXHIBIT B

[ORDER GRANTING PRELIMINARY APPROVAL OF THE SETTLEMENT]

EXHIBIT C

[FINAL APPROVAL ORDER AND JUDGMENT]