<u>JOINT STIPULATION OF SETTLEMENT</u>

It is stipulated and agreed by and among the undersigned Parties, subject to the approval of the Court pursuant to the California Rules of Court, that the Settlement of the Actions shall be effectuated upon and subject to the following terms and conditions. Capitalized terms used herein shall have the meanings set forth in Article I or as defined elsewhere in this Joint Stipulation of Settlement ("Agreement" or "Settlement").

This Agreement is made by and between Named Plaintiff Omid Giahi ("Named Plaintiff"), the PAGA settlement employees, and the Class Members, on the one hand, and Defendants Xpress Med Pharmacy, Inc. ("Xpress"), Mahbod Zargar ("Zargar"), and Pedram Nassi ("Nassi"), (collectively "Defendants"), on the other hand. Named Plaintiff and Defendants collectively are referred to in this Agreement as "the Parties."

The Parties agree that the Actions shall be, and hereby are, ended, settled, resolved, and concluded by agreement of Xpress to pay the settlement amount of One Hundred And Twenty Five Thousand Dollars and Zero Cents ($125,000.00) as provided in Section 3.06(a) below ("Gross Settlement Amount") pursuant to the terms and conditions of this Agreement and for the consideration set forth herein, including but not limited to, a release of all claims by Named Plaintiff and the Class Members as set forth herein.

ARTICLE I

<u>DEFINITIONS</u>

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

a. "Action" means collectively the PAGA Action and the Class Action, entitled *Omid Giahi v. Xpress Med Pharmacy, Inc., and Mahbod Zargar, et al.,* filed by Plaintiff on March 20, 2023, with Superior Court of California for the County of Orange and designated Case No.: 30-2023-01313532-CU-OE-CXC.

b. "Agreement" means this Joint Stipulation of Settlement, including the attached Exhibit(s).

c. "Aggrieved Employees" means all current and former non-exempt employees who are or were employed by Defendant in California at any time during the PAGA Period.

d. "Class" means all current and former non-exempt employees who are or were employed by Defendant in California at any time during the Class Period.

e. "Class Counsel" means the attorneys for the Class and the Class Members, who are:

EMPLOYEES FIRST LABOR LAW
Jonathan LaCour
Lisa Noveck
Jameson Evans
Amanda M. Thompson
1 S. Fair Oaks Ave., Suite 200
Pasadena, California 91105
Telephone: (310) 853-3461
Facsimile: (949) 743-5442

f. "Class List" means a list based on Defendants' business records that identifies each Class Member's name, last known home or mailing address, Social Security number or, as applicable, other taxpayer identification number, and dates of employment. If Defendants do not have a Class Member's last known home address, they shall provide the Class Member's email address and/or phone number, if known to Defendants.

g. "Class Member(s)" means all members of the Class.

h. "Class Period" means March 20, 2019, through February 28, 2025.

i. "Class Released Claims" means the claims that Participating Class Members will release as part of this Settlement as specified in Section 5.01.

j. "Court" means the California Superior Court for the County of Orange, where the Action is currently pending.

k. "Date of Finality" means (a) the date the Court enters the Final Judgment and order finally approving the Settlement, if no objections, motions for reconsideration and no appeals or other efforts to obtain review have been filed, or (b) in the event that a motion for reconsideration, an appeal or other effort to obtain review of the Final Judgment and order finally approving the Settlement, the date sixty (60) days after such reconsideration, appeal or review has been finally concluded and is no longer subject to review, whether by appeal, petition for rehearing, petition for review or otherwise and the Settlement has not been materially modified. A "material modification" shall not include any change to the Class Counsel Award, Class Representative Service Award, or amount awarded for Settlement Administration Costs.

l. "Defendants" means Defendants Xpress Med Pharmacy, Inc., Mahbod Zargar, and Pedram Nassi.

m. "Defense Counsel" means counsel for Defendant:

Sanjay Bansal
Amir D. Benakote
Golden State Employment Lawyers
12021 Wilshire Blvd., Suite 555
Los Angeles, CA 90025
Telephone: (818) 606-1980

n. "Disposition" means the method by which the Court approves the terms of the Settlement and retains jurisdiction over its enforcement, implementation, construction, administration, and interpretation.

o. "Effective Date" means the date by when the following has occurred: the Court enters a Judgment on its Order Granting Final Approval of the Settlement.

p. "Final Order Approving Settlement of Class Action" or "Final Order" means the final formal court order signed by the Court following the Final Fairness and Approval Hearing in accordance with the terms herein, approving this Agreement.

q. "Gross Settlement Amount" means One Hundred And Twenty Five Thousand Dollars and Zero Cents ($125,000.00) to be paid by Xpress as provided by this Agreement to settle this Action. All payments to the Class, administration costs, attorney's fees and costs, PAGA Settlement Amount, and Incentive Award, pursuant to Section 3.06(f) below, shall be paid out of the Gross Settlement Amount. The employer's share of payroll taxes arising from the payments made under this settlement shall be paid by Defendant separate from and in addition to the Gross Settlement Amount. No part of the Gross Settlement Amount shall revert to Defendants.

r. “Incentive Award” means a monetary amount of up to Two Hundred and Fifty Dollars and Zero Cents ($250.00) for the Named Plaintiff, subject to Court approval, in recognition of his effort and work in prosecuting the Action on behalf of Class Members, and for his general release of claims.

s. “Individual Settlement Payment(s)” means each Participating Class Member’s respective share of the Net Settlement Amount. Individual Settlement Payments will be determined by the calculations provided in this Agreement.

t. “LWDA” means The State of California Labor and Workforce Development Agency.

u. “LWDA Payment” means 75% of the Twenty-Five Thousand Dollars and Zero Cents ($25,000.00) allocated to the settlement of PAGA claims which, subject to Court approval, will be paid to the LWDA pursuant to Section 3.06(e) of this Agreement, as provided for below.

v. “Motion for Final Approval” means Plaintiff’s submission of a written motion, including any evidence as may be required for the Court to conduct an inquiry into the fairness of the Settlement as set forth in this Agreement, to conduct a Final Fairness and Approval Hearing, and to enter a Final Order in this Action.

w. “Motion for Preliminary Approval” means Plaintiff’s submission of a written motion, including any evidence as may be required for the Court to grant preliminary approval of the Settlement as required by Rule 3.769 of the California Rules of Court.

x. “PAGA Period” means October 3, 2021 through February 28, 2025.

y. “PAGA Released Claims” means the claims that Aggrieved Employees will release as part of this Settlement as specified in Section 5.02

z. “Named Plaintiff” means Omid Giahi.

aa. “Net Settlement Amount” means the Gross Settlement Amount less Court-approved administration costs, Class Counsels’ attorney’s fees and costs, Incentive Award, and LWDA Payment, pursuant to Section 3.06(a)-(f) below.

bb. "Non-Participating Class Member(s)" means any Class Member(s) who submit to the Settlement Administrator a valid and timely written request to be excluded from the Class pursuant to Section 3.04(b) below.

cc. "Notice Packet" means the Notice of Proposed Class Action Settlement in a form substantially similar to the Notice Packet attached hereto as **Exhibit A**, subject to Court approval.

dd. "PAGA" means the California Private Attorneys General Act of 2004, which is codified in California Labor Code §§ 2698 *et seq*.

ee. "PAGA Settlement Amount" means the portion of the Gross Settlement Amount allocated to the resolution of PAGA Group Members' claims arising under PAGA. The Parties have agreed that the PAGA Settlement Amount is Twenty-Five Thousand Dollars and Zero Cents ($25,000.00), subject to Court approval. Of the PAGA Settlement Amount, 75% will be considered the LWDA Payment, and the remaining 25% will be added to the Net Settlement Amount and distributed to PAGA Group Members.

ff. "Participating Class Member(s)" is defined as a Class Member who does not timely exclude himself or herself from the Settlement and will therefore receive his or her share of the Net Settlement Amount automatically without the need to return a claim form. Each Participating Class Member will be paid his/her Individual Settlement Payment.

gg. "Preliminary Approval Date" means the date the Court preliminarily approves the Settlement embodied in this Agreement.

hh. "Qualified Settlement Fund" or "QSF" means a fund within the meaning of Treasury Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq*., that is established by the Settlement Administrator for the benefit of Participating Class Members.

ii. "Qualifying Workweeks" means the number of weeks that Class Members worked for Defendant as non-exempt employees during the Class Period.

jj. "Released Parties" means Zargar, Nassi, and Xpress and its former and present parents, joint employers, subsidiaries and affiliated corporations and entities, insurers, and all of their current and former officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, successors, assigns or legal representatives.

kk. "Response Deadline" means the deadline by which Class Members must postmark or fax to the Settlement Administrator requests for exclusion or written notices of objection. The Response Deadline will be forty-five (45) calendar days after the initial mailing of the Notice Packet by the Settlement Administrator, unless the forty-fifth (45th) calendar day falls on a Sunday or federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. The Response Deadline will be extended as set forth herein if there is a re-mailing.

ll. "Settlement Administration Costs" means all costs incurred by the Settlement Administrator in administration of the Settlement, including, but not limited to, mailing of notice to the class, calculation of Individual Settlement Payments, generation of Individual Settlement Payment checks and related tax reporting forms, administration of unclaimed checks, and generation of checks to Class Counsel for attorneys' fees and costs, to Named Plaintiff for his Incentive Award, and to the LWDA. The Settlement Administration Costs shall be paid from the Gross Settlement Amount.

mm. "Settlement Administrator" means CPT Group, Inc., which the Parties have agreed will be responsible for the administration of the Individual Settlement Payments to be made by Defendant from the Gross Settlement Amount and related matters under this Agreement.

ARTICLE II

STIPULATION OF CLASS CERTIFICATION

Section 2.01: Stipulation of Class Certification for Settlement Purposes

The Parties stipulate to the certification of the Class with respect to all causes of action alleged in the Action for settlement purposes only, this Agreement requires preliminary and final approval by the Court. Accordingly, the Parties enter into this Agreement on a conditional basis. This Agreement is contingent upon the approval and certification by the Court. If the Date of Finality does not occur, the fact that the Parties were willing to stipulate for the purposes of this

Agreement to a Class shall have no bearing on, nor be admissible in connection with, the issue of certification of the Class with respect to all causes of action alleged in the Action. Defendants do not consent to certification of the Class for any purpose other than to effectuate settlement of the Action. If the Date of Finality does not occur, or if Disposition of this Action is not effectuated, any certification of the Class as to Defendants will be vacated and Named Plaintiff, Defendants, and the Class will be returned to their positions with respect to the Action as if the Agreement had not been entered into. In the event that the Date of Finality does not occur: (a) any Court orders preliminarily or finally approving certification of any class contemplated by this Agreement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity; and (b) the fact of the settlement reflected in this Agreement, the fact that Defendants did not oppose the certification of a Class under this Agreement, or that the Court preliminarily approved the certification of the Class, shall not be used or cited thereafter by any person or entity, including in any manner whatsoever, including without limitation any contested proceeding relating to the certification of any class. If the Date of Finality does not occur, this Agreement shall be deemed null and void, shall be of no force or effect whatsoever, and shall not be referred to or used for any purpose whatsoever. Defendants expressly reserve the right to challenge the propriety of class certification in the Action for any purpose, if the Date of Finality does not occur.

The Parties and their respective counsel shall take all steps that may be requested by the Court relating to the approval and implementation of this Agreement and shall otherwise use their respective best efforts to obtain Court approval and implement this Agreement. If the Court does not grant the Motion for Preliminary Approval and/or the Motion for Final Approval, the Parties agree to meet and confer to address the Court's concerns. If the Parties are unable to agree upon a resolution, the Parties agree to seek the assistance of mediator Jeffery Owensby to resolve the dispute.

ARTICLE III

PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF THE SETTLEMENT

The procedure for obtaining Court approval of and implementing this Agreement shall be as follows:

Section 3.01: Motion for Preliminary Approval

Named Plaintiff will bring a motion before the Court for an order to conditionally certify the Class for settlement purposes to include all claims pled in the Action and to grant preliminary approval of the Agreement, as agreed to in this Agreement. The date that the Court grants preliminary approval of this Agreement will be the "Preliminary Approval Date." Plaintiff's motion for preliminary approval does not need to meet all standards for a motion for class certification. This Agreement demonstrates an agreement by Defendants that for purposes of effectuating the Agreement, Defendants stipulate to conditional certification of the class. Defendants agree that they will not oppose the motion for preliminary approval and will join in the motion if reasonably necessary for class certification and preliminary approval.

Section 3.02: The Settlement Administrator

The Parties have chosen CPT Group, Inc. to administer this Settlement and to act as the Settlement Administrator, including but not limited to distributing and responding to inquiries about the Notice Packet, determining the validity of exclusions/opt-outs, calculating the Net Settlement Amount and the Individual Settlement Payments, issuing the Individual Settlement Payment checks and distributing them to Participating Class Members, establishing and maintaining the QSF, and issuing the payment to Class Counsel for attorneys' fees and costs, the Incentive Award check to Named Plaintiff, and the employer payroll taxes to the appropriate taxing authorities. The Settlement Administrator shall expressly agree to all of the terms and conditions of this Agreement.

All costs of administering the Settlement, including but not limited to all costs and fees associated with preparing, issuing and mailing any and all notices to Class Members and/or Participating Class Members, all costs and fees associated with computing, processing, reviewing, and mailing the Individual Settlement Payments, all costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency, all costs and fees associated with preparing any other checks, notices, reports, or filings to be prepared in the course of administering disbursements from the Net Settlement Amount, and any other costs and fees incurred and/or charged by the Settlement Administrator in connection with the execution of its duties under this Agreement ("Settlement Administration Costs"), shall be paid to the Settlement Administrator from the Gross Settlement Amount.

Section 3.03: Notice to Class Members

No later than ten (10) days after the Preliminary Approval Date, Defendants will provide the Settlement Administrator with a "Class List" in electronic format based on its business records, identifying the names of the Class Members, their last known home addresses, Social Security numbers or, as applicable, other taxpayer identification number, and their dates of employment during the Class Period. If Defendants do not have a Class Member's last known home address, they shall provide the Class Member's email address and/or phone number, if known to Defendants.

Within ten (10) business days of receiving a Class List from Defendant, the Settlement Administrator will send Class Members, by first-class mail, at their last known address, the Court approved Notice Packet, including notice of this Settlement and of the opportunity to opt out of the Settlement Class. The Notice Packet will include a calculation of the Class Member's approximate share of the Net Settlement Amount. Class Members will have thirty (30) days from the date of mailing in which to postmark objections or requests for exclusion. Prior to the initial mailing, the Settlement Administrator will check all Class Member addresses against the National Change of Address database and shall update any addresses before mailing. The Settlement Administrator will skip trace and re-mail all returned, undelivered mail within five (5) days of receiving notice that a Notice Packet was undeliverable. If a Class Member's notice is re-mailed, the Class Member shall have fifteen (15) calendar days from the re-mailing to postmark objections or requests for exclusion. Class Members shall not be required to submit claim forms in order to receive a proportional share of the Net Settlement Amount.

If the Notice Packet is returned with a forwarding address, the Settlement Administrator shall re-mail the Notice Packet to the forwarding address. With respect to those Class Members whose Notice Packet is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or mass search on LexisNexis or comparable databases based on set criteria and, if another address is identified, shall mail the Notice Packet to the newly identified address. It is the intent of the parties that reasonable means be used to locate Class Members and that the Settlement Administrator be given discretion to take steps in order to facilitate notice of the Settlement and delivery of the Individual Settlement Payments to all Participating Class Members.

If the Notice Packet is re-mailed, the Settlement Administrator will note for its own records and notify Class Counsel and Defense Counsel of the date of each such re-mailing as part of a weekly status report provided to the Parties.

In the event a Class Member's Notice Packet remains undeliverable sixty (60) calendar days after the Notice Packet was initially mailed, the Settlement Administrator will not mail the Class Member's Individual Settlement Payment. The Settlement Administrator will hold the Class Member's Individual Settlement Payment during the check cashing period on behalf of the Class Member. If at the conclusion of the check cashing period the Class Member's Notice Packet and Individual Settlement Payment remain undeliverable and/or unclaimed and uncashed, the Settlement Administrator will distribute the funds from unclaimed/uncashed checks in accordance with the procedures set forth in Section 3.06(j) below. The fact that a Class Member's Notice Packet is undeliverable will not affect the release of his/her claims as set forth in this Agreement.

No later than twenty (20) calendar days prior to the Final Fairness and Approval Hearing, the Settlement Administrator shall provide Defense Counsel and Class Counsel with a declaration attesting to completion of the notice process, including any attempts to obtain valid mailing addresses for and re-sending of any returned Notice Packets, as well as the number of valid requests for exclusion and objections that the Settlement Administrator received.

Section 3.04: <u>Responses to Notice</u>

a. Class Member Disputes

If any Class Member disagrees with Defendants' records as to his or her Qualifying Workweeks during the Class Period as reflected in the Notice Packet, the Class Member shall set forth in writing the Qualifying Workweeks he/she claims to have worked during the Class Period and submit such writing to the Settlement Administrator by the Response Deadline, along with any supporting documentation. The Notice will also provide a method for the Class Member to challenge the employment data on which his or her Individual Settlement Payment is based. The Settlement Administrator shall contact the Parties regarding the dispute and the Parties will work in good faith to resolve it. If the Parties are unable to resolve the dispute, the Settlement Administrator will be the final arbiter of the Qualifying Workweeks for each Class Member during the Class Period based on the information provided to it.

b. Requests for Exclusion from Class

In order for any Class Member to validly exclude himself or herself from the Class and this Settlement (*i.e.,* to validly opt out), a written request for exclusion must be signed by the Class Member or his or her authorized representative, and must be sent to the Settlement Administrator, postmarked no later than the Response Deadline. Class Members whose Notice Packets are re-mailed will have their Response Deadline extended an additional fifteen (15) days. The Notice Packet shall contain instructions on how to validly exclude himself or herself from the Class and this Settlement (*i.e.*, opt out), including the language to be used in a request for exclusion. The date of the initial mailing of the Notice Packet, and the date the signed request for exclusion was postmarked, shall be conclusively determined according to the records of the Settlement Administrator. Any Class Member who timely and validly requests exclusion from the Class will not release their Class Released Claims and will not be entitled to any Individual Settlement Payment for the release of those claims, but will receive their portion of the PAGA Settlement Amount for releasing the PAGA Released Claims if they are an Aggrieved Employee. Therefore, Class Members who are also Aggrieved Employees may not request exclusion from the release of the PAGA Released Claims.

Class Members who timely request exclusion from the Class will not have any right to object, appeal, or comment on the Class portion of this Settlement.

Any Class Member who fails to timely submit a request for exclusion ("Participating Class Member") shall automatically be deemed a Class Member and release the Class Released Claims, and the PAGA Released Claims if they are an Aggrieved Employee.

In the event that more than ten (10) percent of Class Members timely request exclusion from the Settlement, Defendants shall have the option to void the Settlement. Defendants shall exercise its right to void the Settlement by notifying Plaintiff's counsel in writing that it is voiding the Settlement no later than 10 days after the deadline for class members to request exclusion. If Defendants exercise their right to void the Settlement, Defendants shall be obligated to pay for all settlement administration fees incurred though the date that it exercised its right void/cancel the Settlement. Defendants shall also be entitled to a refund of any portion of the Gross Settlement Amount that it transmitted to the Settlement Administrator. Should this occur, Defendants agree that for purposes of prosecution of this case on behalf of the Class and Group of Aggrieved Employees, Plaintiff shall retain standing even if his individual claims may have been settled at this time, and he will not be barred from acting as the Class Representative on that basis.

c. Objections to Settlement

For any Class Member to object to this Agreement, or any term of it, the person making the objection must not submit a request for exclusion (*i.e.*, must not opt out), and should send to the Settlement Administrator, postmarked or faxed no later than the Response Deadline (or fifteen (15) days after the Response Deadline in the case of Class Members whose Notice Packets are re-mailed), a written statement of the grounds of objection, signed by the objecting Class Member or his or her attorney, along with all supporting papers. The date of the initial mailing of the Notice Packet, and the date the signed objection was postmarked, shall be conclusively determined according to the records of the Settlement Administrator. The Settlement Administrator shall send any objections it receives to Defense Counsel and Class Counsel within three (3) business days of receipt. Class Members may also appear at the final approval hearing to object. The Court retains final authority with respect to the consideration and admissibility of any Class Member objections.

d. Encouragement of Class Members

The Parties to this Agreement and the counsel representing such Parties shall not, directly or indirectly, through any person, encourage or solicit any Class Member to exclude him or herself from this Settlement (opt out), or to object to it. However, Class Counsel may respond to inquiries from Class Members.

Section 3.05: <u>Final Fairness and Approval Hearing</u>

On the date set forth in the Order for Preliminary Approval and Notice Packet, a Final Fairness and Approval Hearing shall be held before the Court in order to (1) review this Agreement and determine whether the Court should give it final approval, and (2) consider any objections made and all responses by the Parties to such objections. At the Final Fairness and Approval Hearing, the Parties shall ask the Court to grant final approval to this Agreement and shall submit to the Court a Proposed Final Order Approving Settlement of Class Action.

Section 3.06: <u>Settlement Payment Procedures</u>

a. Gross Settlement Amount

In exchange for the Released Claims set forth in this Agreement, Defendant agrees to pay the Gross Settlement Amount in the amount of One Hundred And Twenty-Five Thousand Dollars and Zero Cents ($125,000.00). The Gross Settlement Amount includes all Individual Settlement Amounts to Participating Class Members, all administration costs, Class Counsel's attorney's fees and costs, PAGA Settlement Amount, and the Incentive Payment.

b. Funding of Gross Settlement Amount

Defendant shall fund the Gross Settlement Amount (provided it has not exercised its right to void the Settlement as described in Section 3.04(b)), by depositing the Gross Settlement Payment with the third-party settlement administrator within fourteen (14) calendar days of the Effective Date being triggered.

c. Payment of Attorneys' Fees and Costs

Class Counsel shall submit an application for an award of attorneys' fees of up to 35% of the Gross Settlement Amount, which, based on the current Gross Settlement Amount, is Forty-Three Thousand Seven Hundred And Fifty Dollars and Zero Cents ($43,750.00). Class Counsel shall submit an application for an award of costs not to exceed Five Thousand Six Hundred Eight Four Dollars and Seventeen Cents ($5,684.17). Such application for attorneys' fees and costs shall be heard by the Court at the Final Fairness and Approval Hearing. Defendants shall not object to or oppose any such application in these amounts. Class Counsel shall serve Defendants with copies of all documents submitted in support of their application for an award of attorneys' fees and costs.

Any attorneys' fees and costs awarded to Class Counsel by the Court shall be paid from the Gross Settlement Amount and shall not constitute payment to any Class Member(s). The attorneys' fees and costs for Class Counsel approved by the Court shall encompass all work performed, costs, and expenses related to the investigation, prosecution, and settlement of the Action incurred through the Date of Finality. To the extent that the Court approves less than the amount of attorney's fees and/or costs that Class Counsel requests, the difference between the requested and awarded amounts will be reallocated to the Net Settlement Amount.

d. Payment of Settlement Administration Costs

The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and shall not constitute payment to any Participating Class Member(s). The amount shall not exceed Ten Thousand Dollars and Zero Cents ($10,000.00).

e. Payment of Incentive Award to Named Plaintiff

Subject to Court approval, the Named Plaintiff shall receive an Incentive Award of up to Two Hundred and Fifty Dollars and Zero Cents ($250.00), the request for which Defendants will not object to or oppose. The Incentive Award shall be paid out of the Gross Settlement Amount and shall not constitute payment to any Participating Class Member(s) other than Plaintiff. To the extent that the Court approves less than the amount of incentive award that Class Counsel requests, the difference between the requested and awarded amounts will be reallocated to the Net Settlement Amount.

Because it is the intent of the Parties that the Incentive Award represents payment to Plaintiff for his service to the Class Members, and as consideration for executing a general release, and which do not constitute wages, the Settlement Administrator will not withhold any taxes from the Incentive Award. The Incentive Award will be reported on a Form 1099, which the Settlement Administrator will provide to Named Plaintiff and to the pertinent taxing authorities as required by law.

f. Payment to the Labor and Workforce Development Agency

In consideration of claims made under PAGA, Class Counsel will request that the Court approve allocation of Twenty-Five Thousand Dollars and Zero Cents ($25,000.00) of the Gross Settlement Amount to these claims. Seventy-five percent (75%) of this payment will be paid to the California Labor and Workforce Development Agency ("LWDA Payment"), and twenty-five percent (25%) will be paid to the Net Settlement Amount for distribution to Aggrieved Employees. Defendant will not oppose this request. The entire PAGA Settlement Amount will be paid out of the Gross Settlement Amount.

g. Payment of Individual Settlement Payments to Participating Class Members

The Parties agree that the Net Settlement Amount shall be used to fund Individual Settlement Payments. The Parties agree that the Net Settlement Amount shall be divided between all Participating Class Members in proportion to the number of individual Qualifying Workweeks for each Class Member. To calculate the minimum amount each Class Member will receive for release of their Class Released Claims based on their individual Qualifying Workweeks, the Net Settlement Amount will be divided by the total number of Qualifying Workweeks by all Class Members during the Class Period and then allocated on a pro rata basis. Qualifying Workweeks will be rounded up to the next whole integer. Each Class Member's approximate Individual Settlement Payment amount for release of their Class Released Claims will be included in his or her Notice Packet. After final approval by the Court, the Net Settlement Amount will be dispersed to Participating Class Members (those who did not exclude themselves) on a pro rata basis based on the individual Qualifying Workweeks worked during the Class Period by each Participating Class Member.

The portion of the Individual Settlement Payment for release of the Class Released Claims will represent wages and penalties allocated using the following formula: 30% allocated to wages; 70% allocated to penalties and interest. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. The employer-side taxes will be paid separate from and in addition to the Gross Settlement Amount. The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms.

The portion of the Individual Settlement Payment for release of the PAGA Released Claims will represent payment for penalties and shall be reported by IRS 1099 forms.

h. Payment of Individual Settlement Payments to Aggrieved Employees

The Parties agree that the Net Settlement Amount shall be used to fund the portion of the Individual Settlement Payment allocated for Aggrieved Employees' portion of the PAGA Payment.

The Parties agree that the Aggrieved Employees' portion of the PAGA Payment Six Thousand Two Hundred And Fifty Dollars and Zero Cents ($6,250.00) shall be divided between all Aggrieved Employees in proportion to the number of individual Qualifying Workweeks for each Aggrieved Employee that were worked during the PAGA Period. To calculate the minimum amount each Aggrieved Employee will receive for release of their PAGA Released Claims based on their individual Qualifying Workweeks worked during the PAGA Period, the Aggrieved Employees' portion of the PAGA Payment will be divided by the total number of Qualifying Workweeks worked by all Aggrieved Employees during the PAGA Period and then allocated on a pro rata basis. Qualifying Workweeks during the PAGA Period will be rounded up to the next whole integer. Each Aggrieved Employee's approximate portion of the PAGA Payment allocated to Aggrieved Employees will be part of the Individual Settlement Payment and will be included in his or her Notice Packet. After final approval by the Court, the portion of the PAGA Payment allocated for payment to Aggrieved Employees will be dispersed to Aggrieved Employees on a pro rata basis based on the individual Qualifying Workweeks worked during the PAGA Period by each Aggrieved Employee.

i. Distribution of Individual Settlement Payments

If the Effective Date is triggered, the Settlement Administrator shall prepare and mail the checks for the Individual Settlement Payments to Participating Class Members and Aggrieved Employees within ten (10) calendar days of the Effective Date being triggered, subject to the timing limitations of Defendant's funding of the Settlement as provided in section 3.06(b).

Individual Settlement Payments paid from the Net Settlement Amount allocated to wages will be reduced by applicable employer and employee tax withholdings, and the Settlement Administrator will issue a Form W-2 for the wage portion of the Individual Settlement Payments. The Settlement Administrator will issue a Form 1099 to the extent required by law for the interest and penalty portions of the Individual Settlement Payments.

Participating Class Members and Aggrieved Employees shall have 180 days from the date their Individual Settlement Payment checks are dated to cash their Settlement checks. Any checks that are not cashed upon the expiration of that 180-day time period will be void, and the uncashed funds shall be paid to the State Controller Unclaimed Property Fund in the name of the Class Member or Aggrieved Employee for whom the funds are designated.

If a check is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or a mass search on LexisNexis or a comparable databases based on set criteria and, if another address is identified, the Settlement Administrator shall mail the check to the newly identified address. If the Settlement Administrator is unable to obtain a valid mailing address through this process, the Settlement Administrator will tender the funds from the undeliverable checks to the

State Controller Unclaimed Property Fund in the name of the Class Member for whom the funds are designated.

j. Default on Payment.

If the Effective Date is triggered, Defendants' failure to fund the Gross Settlement Amount as provided in this Agreement shall be considered a default. In the event Defendant fails to timely fund the Gross Settlement Amount, the Settlement Administrator will provide notice to Class Counsel and Defendants' counsel within three (3) business days of the missed payment. Thereafter, Defendants will have ten (10) business days to cure the default and tender payment to the Settlement Administrator. In the event Defendants fail to cure the default within the times set forth herein, Plaintiff may elect to enter judgment against Defendants, on an ex parte basis, provided the Effective Date is triggered, for the balance of the unpaid Gross Settlement Amount to date. Plaintiff will also be entitled to recover interest as permitted by law on the judgment, and reasonable attorneys' fees and costs incurred in attempting to collect on the judgment.

k. No Credit Toward Benefit Plans.

The Individual Settlement Payments made to Participating Class Member and Aggrieved Employees under this Agreement, as well as any other payments made pursuant to this Agreement, will not be utilized to calculate any additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

ARTICLE IV

LIMITATIONS ON USE OF THIS SETTLEMENT

Section 4.01: No Admission

Defendants dispute the allegations in the Actions and dispute that, but for this Settlement, a Class should not have been certified in the Class Action. This Agreement is entered into solely for the purpose of settling highly disputed claims. Nothing in this Agreement is intended nor will be construed as an admission of liability or wrongdoing by Defendants.

Section 4.02: Non-Evidentiary Use

Whether or not the Effective Date is triggered, neither this Agreement, nor any of its terms, nor the Settlement itself, will be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendants or any other 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 (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further proceeding in the Actions, except for the purposes of effectuating the Settlement pursuant to this Agreement or for Defendants to establish that a Class Member has resolved any of his or her claims released through this Agreement.

Section 4.03: Nullification

The Parties have agreed to the certification of the Class encompassing all claims alleged in the Class Action for the sole purpose of effectuating this Agreement. If (a) the Court should for any reason fail to certify this Class for settlement, or (b) the Court should for any reason fail to approve this Settlement, or (c) the Court should for any reason fail to enter the Final Order, or (d) the Final Order is reversed, or declared or rendered void, or (e) the Court should for any reason fail to dispose of the Action in its entirety, then (i) this Agreement shall be considered null and void; (ii) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect; (iii) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court; and (iv) the fact that the Parties were willing to stipulate to class certification of all causes of action pled in the Class Action as part of the Settlement will have no bearing on, and will not be admissible in connection with, the issue of whether the Class should be certified by the Court in a non-settlement context in the Class Action or any other action, and in any of those events, Defendant expressly reserves the right to oppose certification of the Class.

In the event of a timely appeal from the Final Order, the Final Order shall be stayed and the Gross Settlement Amount shall not be distributed pending the completion of the appeal.

ARTICLE V

RELEASES

Section 5.01: Released Claims by Class Members

Upon the Effective Date, Plaintiff and Participating Class Members who do not opt out of the Settlement, release the "Class Released Claims," which means any and all federal, state and local demands, rights, liabilities, claims and/or causes of action, known or unknown, that are alleged in the Class Action, or reasonably could have been alleged in the Class Action based on the facts alleged in the Class Action including claims for misclassification; failure to pay minimum wages; failure to furnish wage and hour statements; failure to maintain payroll records; failure to provide meal and rest period compensation; failure to pay wages in a timely manner; failure to pay overtime compensation; waiting time penalties; failure to indemnify/reimburse necessary business expenditures incurred during discharge of work duties; in violation of Labor Code §§201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2802 and any other applicable Section of the California Labor Code, or Business and Professions Code § 17200, *et seq*., which are premised on the same allegations.

Section 5.02: Released Claims by PAGA Group Members

Upon the Effective Date, Plaintiff and Aggrieved Employees release the "PAGA Released Claims," which means any and all claims for PAGA penalties , known or unknown, that are alleged in the PAGA Action, or reasonably could have been alleged in the PAGA Action based on the facts alleged in the PAGA Action and described in the PAGA Notices pursuant to the Private Attorneys General Act ("PAGA"), Labor Code §§ 2698-2699.5, which accrued during the PAGA Period, including violations premised on violation of Labor Code §§ 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2802 and any other applicable Section of the California Labor Code.

ARTICLE VI

MISCELLANEOUS PROVISIONS

Section 6.01: **Amendments or Modification**

The terms and provisions of this Agreement may be amended or modified only by an express written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel, and approved by the Court.

Section 6.02: **Assignment**

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express written consent of each other Party and their respective counsel. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement and shall not be construed to confer any right or to avail any remedy to any other person.

Section 6.03: **Governing Law**

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, without regard to conflicts of laws.

Section 6.04: **Entire Agreement**

This Agreement, including the Exhibits referred to herein, which form an integral part hereof, contains the entire understanding of the Parties with respect to the subject matter contained herein. In case of any conflict between text contained in Articles I through VI of this Agreement and text contained in the Exhibits to this Agreement, the former (*i.e.,* Articles I through VI) shall be controlling, unless the Exhibits are changed by or in response to a Court order. There are no restrictions, promises, representations, warranties, covenants, or undertakings governing the subject matter of this Agreement other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings among the Parties with respect to the settlement of the Action, including correspondence between Class Counsel and Defense Counsel and drafts of prior agreements or proposals.

Section 6.05: Waiver of Compliance

Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any obligation, covenant, agreement, or condition set forth in this Agreement may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties and their respective counsel entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 6.06: Counterparts and Electronic/Fax/PDF Signatures

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original. All counterparts taken together shall constitute one instrument. A fax or PDF signature on this Agreement shall be as valid as an original signature. This Agreement may be executed electronically in accordance with California Civil Code section 1633.7.

Section 6.07: Meet and Confer Regarding Disputes

Should any dispute arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, a representative of Class Counsel and a representative of Defense Counsel shall meet and confer in an attempt to resolve such disputes prior to submitting such disputes to the Court.

Section 6.08: Agreement Binding on Successors

This Agreement will be binding upon, and inure to the benefit of, the successors in interest of each of the Parties.

Section 6.09: Cooperation in Drafting

The Parties have cooperated in the negotiation and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party, or the Party's counsel, was the drafter or participated in the drafting of this Agreement.

Section 6.10: Fair and Reasonable Settlement

The Parties believe that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arm's-length negotiation and in the context of adversarial litigation, taking into account all relevant factors, current and potential. The Parties further believe that the Settlement is and is consistent with public policy, and fully complies with applicable law.

Section 6.11: 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 and shall not be considered in interpreting this Agreement.

Section 6.12: Notice

Except as otherwise expressly provided in the Agreement, all notices, demands, and other communications under this Agreement must be in writing and addressed as follows:

To Named Plaintiff and the Class:

EMPLOYEES FIRST LABOR LAW
Jonathan LaCour
Lisa Noveck
Jameson Evans
Amanda M. Thompson
1 S. Fair Oaks Ave., Suite 200
Pasadena, California 91105
Telephone: (310) 853-3461
Facsimile: (949) 743-5442

And

To Defendant:

Sanjay Bansal
Amir D. Benakote
Golden State Employment Lawyers

12021 Wilshire Blvd., Suite 555
Los Angeles, CA 90025
Telephone: (818) 606-1980

Section 6.13: **Enforcement of Settlement and Continuing Court Jurisdiction**

To the extent consistent with class action procedure, this Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court 3.769(h). The Final Order entered by the Court will not adjudicate the merits of the Action or the liability of the Parties resulting from the allegations of the Action. Its sole purpose is to adopt the terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the Court shall retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest extent to enforce and effectuate the terms and intent of this Agreement. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

Section 6.14: **Mutual Full Cooperation**

The Parties agree fully to cooperate with each other to accomplish the terms of this Agreement, including but not limited to the execution of such documents, and the taking of such other action, as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, to effectuate and implement this Agreement and its terms. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of the Settlement, the Parties agree to seek the assistance of the Court.

Section 6.15: **Authorization to Act**

Class Counsel warrants and represents that they are authorized by Named Plaintiff, and Defense Counsel warrants that they are authorized by Defendants, to take all appropriate action required to effectuate the terms of this Agreement, except for signing documents, including but not limited to this Agreement, that are required to be signed by the Parties themselves. Defendants represent and warrant that the individual executing this Agreement on its behalf has the full right, power, and authority to enter into this Agreement and to carry out the transactions contemplated herein.

Section 6.16: No Reliance on Representations

The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of entering into and executing this Agreement, or with respect to any other matters. No representations, warranties, or inducements, except as expressly set forth herein, have been made to any party concerning this Agreement.

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EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

PLAINTIFF:

Dated: 10 / 15 / 2024

Omid Giahi

DEFENDANTS:

Dated: 9/26/24

Xpress Med Pharmacy, Inc.
By: Mahbod Zargar
Its:

Dated: 9/26/24

Mahbod Zargar

Dated: 9/26/2024

Pedram Nassi