

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Mutual Release (this “Agreement”) is made and entered into as of the 28th day of August, 2019, by and between Aimee Morrison as class representative (hereinafter referred to as the “Plaintiff”) and Express Recovery Services, Inc. d/b/a Clear Management Solutions, (hereinafter referred to as “Defendant”). Plaintiff and Defendant are sometimes collectively referred to herein as the “Parties.”

### **RECITALS**

A. Plaintiff has filed a lawsuit in the United States District Court for the District of Utah titled *Aimee Morrison vs. Clear Management Solutions, 1:17-cv-00051-CW*, alleging class action violations of the Fair Debt Collection Practices Act (“FDCPA”) among multiple allegations.

B. This Agreement is non-collusive, and resulted from and is the product of extensive, good-faith arm’s-length negotiations. The Parties (as defined above) participated in a settlement conference before the Honorable Paul Kohler, and negotiated the preliminary settlement terms, culminating in this Agreement. Since that time the parties have engaged in further meetings and discussions in order complete that process.

C. Plaintiff and Defendant now intend to settle forever any and all claims arising in connection with the Lawsuit, as well as any and all actual and potential disputes and claims that Plaintiff had, has or may have had against Defendant, or that Defendant had, have or may have had against Plaintiff, arising under, in connection with or related to the Lawsuit.

WHEREFORE, in consideration of the promises, covenants, representations and warranties contained herein, and for good and valuable consideration given hereunder, the sufficiency of which is hereby acknowledged by the signatories to this Settlement Agreement, the Parties hereby agree as follows:

#### **1. Settlement Class**

1.1 Class Definition. Pursuant to the Court’s January 7, 2019 order [Dkt #47] a Class has been certified (herein referred to as “Settlement Class”) consisting of:

All persons with addresses within Utah; who were sent any communication which was similar or identical to Plaintiff’s Exhibit A on behalf of Utah Imaging Associates; to recover a consumer debt; in which this initial communication failed to provide the notice required by 15 U.S.C. § 1962g and/or 15 U.S.C. § 1692e(11); which were not returned undelivered by the United States Postal Service; from April 11, 2016 until April 11, 2017.

#### **2. Preliminary Approval of Proposed Class Action Settlement**

2.1 The Parties desire and intend to seek Court approval of the settlement and a final judgment and order dismissing with prejudice the claims of Plaintiff and the Class Members as set forth in this Settlement Agreement. The Parties agree to undertake all steps necessary to effectuate the purpose of the settlement, to secure the Court’s approval of the settlement, and to oppose any interventions and objections to the settlement, including objections by any regulatory authority.

2.2 Upon full execution of this Settlement Agreement, Plaintiff will file a Motion for Preliminary Approval of Class Action Settlement (“Motion for Preliminary Approval”) in accordance with the terms of this Settlement Agreement.

### **3. The Settlement Fund**

3.1 Within twenty (20) days following Final Judgment, the total cash consideration to be paid by Defendant to the class shall be Twenty Thousand Dollars and No Cents (\$20,000.00). As class representative, Plaintiff will receive not more than 10% or Two Thousand Dollars (\$2,000.00), the remaining Eighteen Thousand Dollars and No Cents (\$18,000.00) shall be used to create a Settlement Fund. (“Settlement Fund”). The Settlement Fund shall be used to provide the exclusive recovery and relief for the Class. Any reasonable attorneys’ fees and costs approved and awarded by the Court, and the costs of claims administration are not to be paid from the Settlement Fund.

3.2 **Distribution of Settlement Fund.** The parties acknowledge that the Settlement Fund described in Paragraph No. 3.1 above will be provided to a non-profit legal aid agency of Plaintiff’s choosing via a cy pres award subject to the Court’s approval. If the Court does not approve a cy pres recipient, the parties agree to request the Court approve a distribution of the Settlement Fund on a pro rata basis to any class members that have timely submitted a claim.

3.3 If the Court elects to distribute the Settlement Fund on the pro rata basis, each Class Member that opts into the class shall be sent, by mail, a single *pro rata* distribution settlement check of the \$18,000.00 damages award portion of the Settlement Fund, unless the Class Member has validly and timely requested exclusion from the class pursuant to Section 9.

### **4. Injunctive Relief**

Defendant agrees to change Defendant’s written communication at issue in Plaintiff’s Complaint (NTC P3) as a result of this action. The Parties believe that this change offers a material benefit to the class.

### **5. Attorney’s Fees, Litigation Costs, and Claims Administration Costs**

Class Counsel shall move the Court for an award of attorneys’ fees and costs incurred in connection with the Action to be paid by Defendant separate from the Settlement Fund. Defendant reserves the right to object to such a motion.

### **6. Incentive Award for Named Plaintiff**

Class Counsel shall move the Court for a service/incentive award for Plaintiff for Plaintiff’s service as a class representative in this Action, in an amount not to exceed \$2,000 to be paid from the Settlement Fund. Court approval of any service/incentive award will not be a condition of the Settlement. Defendant shall not object to a service/incentive award that does not exceed \$2,000 for Plaintiff.

### **7. Third-Party Claims Administrator**

7.1 The Parties will use good faith efforts to minimize the costs of claims administration. Class Counsel will make the final determination of which claims administrator to select for Court approval.

7.2 Subject to the oversight of Class Counsel and Defendant's counsel, the Claims Administrator shall be responsible for, among other things, the following: (a) providing notice to Class Members as set forth in Section 8 below; (b) providing settlement checks to Class Members entitled to receive a settlement check pursuant to Section 13.2 below; (c) acting as a liaison between Class Members and the Parties regarding the settlement. The Claims Administrator shall be permitted to communicate without restriction with Class Counsel and Defendant's counsel.

7.3 Class Counsel will include all costs and expenses related to claims administration in Class Counsels Motion for Attorneys' Fees and Costs.

## **8. Notice of Settlement**

8.1 The parties agree that there is not an agreed upon notice plan, instead Plaintiff will propose a notice plan in Plaintiff's motion for preliminary approval, and Defendant reserves the right to request an alternative notice plan. Each party's notice plan shall include a proposed schedule, the method(s) notice shall be provided to the class members, the content of such notice.

8.2 Notice for Pro-rata distribution: If the Court elects to distribute the settlement fund on a pro rata basis, then the parties agree to provide a direct mail notice.

8.2.1 In the event of Preliminary Approval for a pro rata distribution, Defendant shall create a list of Class Members, including the telephone number and last known address for each Class Member. As soon as practicable but in no event more five (5) days after the Notice Plan is approved, Defendant shall deliver the list of Class Members to the Claims Administrator. The Claims Administrator will treat the information regarding the Class Members in a confidential manner.

8.2.2 The Claims Administrator will provide individual notice, via first class mail, to all Class Members ("Mail Notice"). Prior to mailing the Mail Notice, the Claims Administrator will update the address information provided by Defendant through the National Change of Address ("NCOA") database maintained by the U.S. Postal Service. Any Mail Notice returned to the Claims Administrator with a new forwarding address will be re-mailed to the Class Member at the new forwarding address.

8.2.3 The Claims Administrator will mail the Class Members the Mail Notice as soon as reasonably practicable but no later than thirty (30) days from the date the Court grants the Motion for Preliminary Approval (the "Notice Deadline"). The Claims Administrator will file a declaration with the Court, as part of the final approval papers, stating that these procedures were followed.

8.2.4 The Mail Notice to the Class will consist of notice containing a detailed summary description of the Settlement Agreement, identifying the Claims Administrator, and providing contact information for Class Counsel.

## **9. Right to Opt Out of Settlement**

9.1 Class Members have the right to opt out and exclude themselves from the settlement by mailing an exclusion request ("Exclusion Request") to the Claims Administrator. The Exclusion Request must be postmarked on or before the Opt-Out and Objection Deadline specified on the Notice Form. The Claims Administrator will provide copies of such exclusion requests to Class Counsel and counsel for Defendant promptly upon receipt.

9.2 The Exclusion Request shall be in writing and include the name and number of this case, the Class Member's name, address, and telephone number, and must be signed by the Class Member.

9.3 Except for those Class Members who have properly and timely mailed an Exclusion Request, all Class Members will be bound by this Settlement Agreement and the Final Judgment to be entered following the hearing for final approval of the Settlement Agreement.

## **10. Right to Object to Settlement**

10.1 Any Class Member who intends to object to this Settlement Agreement must mail his or her objections to the Court ("Objection") and submit a copy of the Objection to Class Counsel and Defendant's counsel. The Objection must be postmarked on or before the Opt-Out and Objection Deadline specified in the Mail Notice.

10.2 Any Objection, which must be mailed to the Court and submitted to Class Counsel and Defendant's counsel, must set forth the name and case number of the Action, Class Member's name, address, and telephone number, and all arguments, citations and evidence supporting the Objection, and a statement of whether the objecting Class Member intends to appear at the hearing for final approval of the class action settlement, and whether the objecting Class Member intends to appear at the hearing with or without counsel. If Class Member is represented by counsel, counsel's name, address, email address and telephone number shall be set forth in any Objection. The objecting Class Members shall also indicate in the objection the name and case number of all cases in which the objecting Class Members have previously submitted any objections to the settlement of any class action cases, whether the objection was filed by the objecting Class Member on his or her own behalf or on behalf of someone else. The Claims Administrator will provide to Class Counsel and Defendant's Counsel all copies of any objections mailed to the Claims Administrator.

10.3 Any Class Member who fails to submit a timely Objection pursuant to this Section and as detailed in the Mail Notice shall have waived any right to object to the Settlement Agreement and shall not be permitted to object to this Settlement Agreement at the Final Approval Hearing, and shall be foreclosed from seeking any review of this Settlement Agreement by appeal or other means.

## **11. Right to Enter an Appearance**

On or before the date specified in the Notice, a Class Member may enter an appearance through an attorney if he or she so desires. The Class Member is solely responsible for any fees, costs or expenses of his or her attorney.

## **12. Final Judgment**

12.1 As used herein, "Final Judgment" shall mean the entry by the Court of a judgment finally approving the settlement of the Action pursuant to the terms of this Settlement Agreement and that judgment shall have become final either by expiration of time for appeal or if a Class Member objects to the settlement and files an appeal, by either a dismissal of said appeal or final appellate court decision in favor of, and affirming, the judgment and the Settlement Agreement in all material respects.

12.2 Defendant shall not be obligated to pay any sum pursuant to this Settlement Agreement except upon Final Judgment.

12.3 By entering Final Judgment, the Court shall:

12.3.1 Approve the Settlement Agreement and the proposed settlement as fair, reasonable and adequate as to, and in the best interests of, the Class Members; direct the Parties and their counsel to implement and consummate the Settlement Agreement, to the extent the Parties have not done so already, according to its terms and provisions; and declare the Settlement Agreement to be binding on, and have res judicata and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff and all other Class Members, as well as their heirs, executors and administrators, successors and assigns;

12.3.2 Acknowledge class certification status of the Action;

12.3.3 Find that the Notice Form and the Notice Program implemented pursuant to the Settlement Agreement (a) constitute the best practicable notice, (b) constitute notice that is reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action, their right to accept, object to or exclude themselves from the proposed settlement and to appear at the fairness hearing, (c) constitute reasonable, due, adequate and sufficient notice to all persons entitled to receive notice, and (d) meet all applicable requirements of the applicable Codes of Civil Procedure, the Due Process Clause of the United States Constitution and any Rules of the Court;

12.3.4 Find that Class Counsel and Plaintiff have adequately represented the Class for purposes of entering into and implementing the settlement;

12.3.5 Incorporate the Release set forth in Section 14 below, make the Release effective as of the date of the Final Judgment, and forever discharge the Released Parties from any claims or liabilities arising from or related to the facts, circumstances, or subject matter of this Action;

12.3.6 Bar and enjoin Plaintiff and all Class Members who have not been excluded from the Class from (a) filing, commencing, prosecuting, intervening in, promoting, or participating (as class members or otherwise) in, any lawsuit in any jurisdiction based on or arising out of the claims and causes of action, or the facts and circumstances relating thereto, in this Action and (b) organizing Class Members who have not been excluded from the Class into a separate class for purposes of pursuing as a purported class action any lawsuit (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action) based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Action.

### **13. Payments Upon Final Judgment**

13.1 Defendant shall pay Plaintiff any and all court awarded fees and costs within thirty days (30) after a decision on Plaintiff's Motion for Attorney's Fees and Costs.

13.2 Within thirty (30) days after Final Judgment, the Claims Administrator shall distribute the Settlement Fund. If the Cy Pres recipient is approved by the Court, the Claims Administrator shall forward payment to that recipient. If there is a pro rata distribution of the Settlement Fund, the Claims Administrator shall mail a settlement check to each Class Members who has timely and validly submitted a claim and who has not timely and validly requested exclusion from the Class. The settlement checks to Class Members shall state on their face that the check will expire and become void if not cashed within ninety (90) days of the date of the check.

13.3 If there are any uncashed settlement checks, the Parties will first attempt a redistribution to the Class Members if a redistribution is economically feasible. However, if a redistribution to the Class Members not economically feasible, any funds from uncashed

settlement checks shall be delivered to a *cy pres* recipient selected by the Parties and approved by the Court.

13.4 Within thirty (30) days after Final Judgment, the incentive award shall be paid to Plaintiff from the Settlement Fund.

#### **14. Release Upon Final Judgment**

14.1 Plaintiff and each Class Member, (other than those persons who have timely and properly filed an Exclusion Request), on behalf of themselves and their agents, administrators, servants, employees, representatives, assigns, heirs, executors, trustees, joint venturers, partners, successors, predecessors and attorneys, and each of them (collectively the “Releasing Persons”), hereby jointly and severally release and discharge Defendant and all of its former, present and future direct and indirect parents, affiliates, subsidiaries, successors and predecessors and all of their respective former, present and future officers, directors, shareholders, employees, servants, agents, attorneys, representatives, independent contractors and vendors (collectively the “Released Parties”) from any and all actions, causes of action, obligations, costs, expenses, damages, losses, claims, liabilities, and demands, of whatever character, known or unknown, to the date hereof, arising out of, relating to, or in connection with the debt collection letters that are the subject of this Action, and the administration of this settlement (the “Released Claims”) arising on or before the date of execution of this Agreement.

14.2 Each party acknowledges that it/he/she may hereafter discover facts different from, or in addition to, those which it/he/she now claims or believes to be true with respect to the claims released herein, and agrees that this Settlement Agreement shall remain effective in all respects notwithstanding the discovery of such different, additional or unknown facts.

14.3 In entering into this Settlement Agreement, each party assumes the risk of any misrepresentation, concealment or mistake. If any party should discover subsequent to Final Judgment that any fact relied upon by it/him/her in entering into this Settlement Agreement was untrue, or that any fact was concealed from it/him/her, or that its/his/her understanding of the facts or of the law was incorrect, such party shall not be entitled to any relief in connection therewith, including without limitation, any alleged right or claim to set aside or rescind this Settlement Agreement. This Settlement Agreement is intended to be, and is final and binding between the Parties hereto, regardless of any claims of misrepresentation, promise made without the intention to perform, concealment of fact, mistake of fact or law, or any other circumstance whatsoever. As such, Releasing Persons do hereby waive all rights or benefits in connection with the Released Claims which they now have or in the future.

#### **15. Effect of Court’s Denial of Preliminary or Final Approval of Settlement**

There is no settlement if the Court does not preliminarily approve the settlement or finally approve the settlement in substantially the same form as set forth herein, or if the settlement is appealed, or if the judgment approving the settlement is appealed, and if the settlement or the judgment approving the settlement is not approved on appeal in substantially the same form as set forth herein. In such event, (a) this Settlement Agreement is terminated and is of no force and effect and no party shall be bound by any of its terms; (b) to the extent applicable, any preliminary order approving the settlement, approving the Notice Forms or Notice Program, and providing notice to the Class shall be vacated; (c) the Settlement Agreement and all of its provisions and all negotiations, statements, and proceedings relating to the Settlement Agreement shall be without prejudice to the rights of any of the Parties; (d) each of the Parties shall be restored to their respective positions as of the date this Settlement Agreement was fully executed; and (e) neither the settlement nor any communications or negotiations leading up to the settlement nor any of the

settlement's provisions or the fact that this Settlement Agreement has been made shall be admissible in this Action or in any other action for any purpose whatsoever.

## **16. Representations and Warranties**

Each of the Parties to this Settlement Agreement represents warrants and agrees as follows:

### **16.1 Assignment of Claims.**

No party has hereto assigned, transferred or granted, or purported to assign, transfer, or grant, any of the claims, demands and cause(s) of action disposed of by this Settlement Agreement.

### **16.2 Legal Advice.**

The Parties hereto acknowledge that they have had the opportunity to consult with independent legal counsel with respect to the advisability of making the settlement provided for herein and of executing this Settlement Agreement and all other matters contained herein.

### **16.3 Investigation.**

The Parties hereto acknowledge that they have either been represented in the negotiations for, and in preparation of, this Settlement Agreement by counsel of their choice; that they have read this Settlement Agreement and have had it fully explained to them by such counsel; and that they are fully aware of the contents of this Settlement Agreement and of the legal effect of each and every provision thereof. Each party to this Settlement Agreement has made such investigation of the facts pertaining to this Settlement Agreement and of all of the matters pertaining thereto as it deems necessary.

### **16.4 Authority and Capacity to Execute Settlement Agreement.**

The undersigned individually warrant and represent that they are authorized to execute this Agreement.

## **17. No Admission of Liability**

Nothing in this Agreement, including the fact that it was entered into by the parties, shall constitute or be construed as an admission on behalf of any of the parties as to the validity of any of the claims, defenses or allegations made in the Lawsuit, nor shall it be admissible in any court, administrative agency or tribunal for any party, with the exception of a proceeding to enforce or interpret the terms of this Agreement.

## **18. Representation by Counsel**

The parties warrant and represent that they have been represented by counsel of their choice throughout the negotiations which preceded the execution of this Agreement, and in connection with the preparation and execution of this Agreement, and that they have carefully and thoroughly reviewed this Agreement, in its entirety, with such counsel, and that such counsel has approved it as to form.

**19. Choice of Law and Jurisdiction**

This Settlement Agreement is being executed in the State of Utah, and it shall be deemed to be made under, and shall be interpreted in accordance with, the internal laws of the State of Utah.

**20. Construction of Agreement**

Each party has participated in the drafting and preparation of this Settlement Agreement. Hence, in construing this Settlement Agreement, none of the Parties hereto shall have any term or provision, or any uncertainty or ambiguity as to any term or provision herein, construed against such party solely by reason of such party having drafted the same, as a result of the manner of the preparation of this Settlement Agreement, or otherwise. Each term and provision of this Settlement Agreement shall be construed and interpreted so as to render it enforceable. In the event any provision of this Settlement Agreement is held to be illegal or unenforceable, the remainder of this Settlement Agreement shall be binding and enforceable.

**21. Headings or Pronouns**

Headings or captions contained in this Settlement Agreement are solely for the convenience of the Parties, are not a part of this Settlement Agreement, and shall not be used for the interpretation of, or determination of the validity of, this Settlement Agreement or any provision hereof. Whenever the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular shall be deemed to refer to and include the plural, and vice versa. Whenever the context of this Agreement requires, the gender of all words shall include the masculine, feminine, and neuter, and the number of all words shall include the singular and plural.

**22. Complete Agreement**

This Agreement shall constitute the entire agreement between the parties with respect to the subject matter hereof and there are no agreements, representations or warranties of any kind, except as expressly set forth in this Agreement. The parties acknowledge that in executing this Agreement they have relied solely on their own judgment, belief and knowledge, and the advice of their own respective legal counsel, and, except for representations expressly set forth herein, they have not been influenced by any other representation or statement.

**23. Waiver, Modification and Amendment**

No provision of this Settlement Agreement may be waived unless in writing signed by all Parties hereto. Waiver of any one provision shall not be deemed to be a waiver of any other provision hereof. This Settlement Agreement may not be altered, amended or otherwise changed or modified, except in writing signed by all Parties.

**24. Binding Effect.**

Except as may specifically be provided in this Agreement to the contrary, the terms and conditions contained in this Agreement shall inure to the benefit of, and be binding upon, the respective employees, directors, officers, partners, shareholders, agents, board members, heirs, parents, subsidiaries, related companies, predecessors, legal representatives, successors, assigns, personal representatives, and affiliates of the parties. Except as otherwise expressly provided herein, this Agreement is not assignable by any party without the prior written consent of the other party, and no payment to be made hereunder shall be subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or other charge.



**25. Counterparts; Facsimile.**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall be deemed one and the same instrument, and all signatures need not appear on any one counterpart. If executed in counterparts, this Agreement will be as effective as if simultaneously executed. Signatures on this Agreement may be communicated by facsimile transmission and/or email transmission and shall be binding upon the parties transmitting the same by facsimile transmission and/or email transmission.

**26. Further Cooperation**

The Parties hereto agree to execute all such further and additional documents and instruments, as shall be necessary or expedient to carry out the provisions of this Settlement Agreement, and shall promptly and in good faith undertake all reasonable acts to effectuate the provisions of this Settlement Agreement.

**27. Notices**

All letters, notices, requests, demands and other communication required or permitted to be given to the parties pursuant to this Settlement Agreement, excluding communications directed to Class members, shall be in writing and addressed as follows:

For Named Plaintiff  
and the Class:

David McGlothlin, Esq.  
Ryan McBride, Esq.  
Kazerouni Law Group, APC  
2633 E. Indian School Road, Suite 460  
Phoenix, AZ 85016

For Defendant:

Joseph Lico, Esq.  
Patricia Jo Stone, P.C.  
19751 E. Mainstreet, Suite 200  
Parker, Colorado 80138

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IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed as of the dates set forth below.

DATED: 08/27/2019

Aimee Morrison  
Aimee Morrison, as an Individual  
and as Class Representative

DATED: \_\_\_\_\_

Express Recovery Services, Inc. d/b/a Clear  
Management Solutions

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM AND CONTENT

DATED: \_\_\_\_\_

PATRICIA STONE

By \_\_\_\_\_  
Joseph Lico, Attorneys for Defendant

DATED: 8/28/19

KAZEROUNI LAW GROUP, APC

By [Signature]  
David McGlothlin, Attorneys for Plaintiff


DATED: 8/28/19

KAZEROUNI LAW GROUP, APC

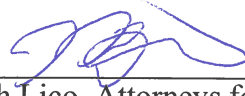
By [Signature]  
Ryan McBride, Attorneys for Plaintiff

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed as of the dates set forth below.

DATED: \_\_\_\_\_  
Aimee Morrison, as an Individual  
and as Class Representative

DATED: 08-29-2018  
Express Recovery Services, Inc. d/b/a Clear  
Management Solutions  
By:   
Name: Michelle Camp  
Title: COO

APPROVED AS TO FORM AND CONTENT

DATED: 8/29/18  
PATRICIA STONE  
By:   
Joseph Lico, Attorneys for Defendant

DATED: \_\_\_\_\_  
KAZEROUNI LAW GROUP, APC  
By \_\_\_\_\_  
David McGlothlin, Attorneys for Plaintiff

DATED: \_\_\_\_\_  
KAZEROUNI LAW GROUP, APC  
By \_\_\_\_\_  
Ryan McBride, Attorneys for Plaintiff