

**IN THE CIRCUIT COURT OF HAMILTON COUNTY  
AT CHATTANOOGA TENNESSEE**

\_\_\_\_\_, Individually and On Behalf  
of All Others Similarly Situated,

Plaintiff,

v.

US XPRESS ENTERPRISES, INC., ERIC  
FULLER, ERIC PETERSON, JASON  
GREAR, MAX FULLER, LISA QUINN  
PATE, MERRILL LYNCH, PIERCE,  
FENNER & SMITH INCORPORATED,  
MORGAN STANLEY & CO. LLC, J.P.  
MORGAN SECURITIES LLC, WELLS  
FARGO SECURITIES, LLC, STEPHENS  
INC., WR SECURITIES LLC, and STIFEL,  
NICOLAUS & CO, INCORPORATED,

Defendants.

Case No.: DRAFT

**CLASS ACTION COMPLAINT FOR  
VIOLATIONS OF THE FEDERAL  
SECURITIES LAWS**

**JURY TRIAL DEMANDED**

Law Offices of Howard G. Smith

Plaintiff \_\_\_\_\_ (“Plaintiff”), by and through her attorneys, alleges the following upon information and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff’s information and belief is based upon, among other things, her counsel’s investigation, which includes without limitation: (a) review and analysis of regulatory filings made by US Xpress Enterprises, Inc. (“US Xpress” or the “Company”) with the United States Securities and Exchange Commission (“SEC”); (b) review and analysis of press releases and media reports issued by and disseminated by US Xpress; and (c) review of other publicly available information concerning US Xpress.

### **NATURE OF THE ACTION AND OVERVIEW**

1. This is a class action on behalf of persons and entities that purchased or otherwise acquired the Class A common stock (“stock” or “shares”) of US Xpress pursuant and/or traceable to the Company’s false and/or misleading registration statement and prospectus (collectively, the “Registration Statement”) issued in connection with the Company’s June 2018 initial public offering (“IPO” or the “Offering”), seeking to pursue remedies under Sections 11, 12(a)(2) and 15 of the Securities Act of 1933 (the “Securities Act”).

2. US Xpress provides transportation services throughout the United States and Mexico. Its Truckload segment purportedly offers asset-backed truckload services, including over-the-road (“OTR”) trucking and dedicated contract services. Its Brokerage segment purportedly engages in non-asset-based freight brokerage services, where loads are contracted to third-party carriers.

3. On June 15, 2018, the Company filed with the SEC its IPO prospectus, which forms part of the Registration Statement. In the IPO, the Company sold 16,668,000 shares of Class A common stock at a price of \$16.00 per share. The Company received proceeds of approximately \$250.02 million from the IPO, net of underwriting discounts and commissions. The proceeds from

the IPO were purportedly to be used to repay a loan, a note, and a portion of the borrowings outstanding under its revolving credit, as well as to purchase real estate that it historically leased from Q&F Realty, a related party.

4. On November 1, 2018, US Xpress reported that utilization in certain trucking divisions was negatively impacted because the over-the-road division continued to provide drivers to its dedicated division.

5. On November 2, 2018, US Xpress announced that it was retaining a new Chief Operating Officer.

6. On November 2, 2018, US Xpress's stock price closed at \$7.10 per share, which was a decline of \$8.90, or approximately 56%, from the IPO price of \$16.00 per share.

7. The Registration Statement was materially false and misleading and omitted to state: (1) that the Company's dedicated division was experiencing a shortage of trucks to fulfill its contracts; (2) that the Company's over-the-road division would provide continued support of the dedicated accounts; (3) that, as a result, the utilization rate at the over-the-road and dedicated divisions would be materially impacted; and (4) that, as a result of the foregoing, Defendants' statements in the Registration Statement regarding US Xpress's business, operations, and prospects, were materially false and/or misleading.

#### **JURISDICTION AND VENUE**

8. The claims asserted herein arise under and pursuant to Sections 11, 12 and 15 of the Securities Act (15 U.S.C. §§ 77k and 77o). This Court has jurisdiction over the subject matter of this action pursuant to Section 22 of the Securities Act, 15 U.S.C. § 77v, which explicitly states that "[e]xcept as provided in section 16(c), no case arising under this title and brought in any State court of competent jurisdiction shall be removed to any court in the United States." Section 16(c) of the

Securities Act refers to “covered class actions,” which are defined as lawsuits brought as class actions or brought on behalf of more than fifty persons asserting claims under state or common law. This is an action asserting federal law claims. Thus, it does not fall within the definition of a “covered class action” under §16(c) and therefore is not removable to federal court under the Securities Litigation Uniform Standards Act of 1998.

9. Each Defendant has sufficient contacts with Tennessee, or otherwise purposefully avails themselves of benefits of Tennessee or has property in Tennessee so as to render the exercise of jurisdiction over each by the Tennessee courts consistent with traditional notions of fair play and substantial justice.

10. This Court has jurisdiction over the subject matter of this action pursuant to Section 22 of the Securities Act (15 U.S.C. § 77v).

11. Venue is proper in this Court pursuant to Section 22 of the Securities Act, 15 U.S.C. § 77v. Many of the violations of law complained of herein occurred in this State and in large part in this County, including the dissemination of the materially false and misleading statements complained of herein into this State and into this County. In addition, many Defendants are residents of, do business in, or maintain offices in, this County.

### **PARTIES**

12. Plaintiff \_\_\_\_\_ purchased US Xpress securities pursuant and/or traceable to the Registration Statement issued in connection with the Company’s IPO and has been damaged thereby.

13. Defendant US Xpress Enterprises, Inc. is a Nevada corporation with its principal executive offices located in Chattanooga, Tennessee.

14. Defendant Eric Fuller was, at all relevant times, the President, Chief Executive Officer (“CEO”) of the Company, and a Director of the Company, and signed or authorized the signing of the Company’s Registration Statement filed with the SEC.

15. Defendant Eric Peterson (“Peterson”) was, at all relevant times, the Chief Financial Officer (“CFO”), Treasurer, and Secretary of the Company, and signed or authorized the signing of the Company’s Registration Statement filed with the SEC.

16. Defendant Jason Grear (“Grear”) was, at all relevant times, the Chief Accounting Officer (“CAO”) and signed or authorized the signing of the Company’s Registration Statement filed with the SEC.

17. Defendant Max Fuller was a Director of the Company and signed or authorized the signing of the Company’s Registration Statement filed with the SEC.

18. Defendant Lisa Quinn Pate (“Pate”) was a Director of the Company and signed or authorized the signing of the Company’s Registration Statement filed with the SEC.

19. Defendants Eric Fuller, Peterson, Grear, Max Fuller, and Pate are collectively referred to hereinafter as the “Individual Defendants.”

20. Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”) served as an underwriter for the Company’s IPO. In the Offering, Merrill Lynch agreed to purchase 5,348,644 shares of the Company’s Class A common stock, exclusive of the over-allotment option

21. Defendant Morgan Stanley & Co. LLC (“Morgan Stanley”) served as an underwriter for the Company’s IPO. In the Offering, Morgan Stanley agreed to purchase 5,348,664 shares of the Company’s Class A common stock, exclusive of the over-allotment option.

22. Defendant J.P. Morgan Securities LLC (“J.P. Morgan”) served as an underwriter for the Company’s IPO. In the Offering, J.P. Morgan agreed to purchase 2,452,891 shares of the Company’s Class A common stock, exclusive of the over-allotment option.

23. Defendant Wells Fargo Securities, LLC (“Wells Fargo”) served as an underwriter for the Company’s IPO. In the Offering, Wells Fargo agreed to purchase 2,452,891 shares of the Company’s Class A common stock, exclusive of the over-allotment option.

24. Defendant Stephens Inc. (“Stephens”) served as an underwriter for the Company’s IPO. In the Offering, Stephens agreed to purchase 817,630 shares of the Company’s Class A common stock, exclusive of the over-allotment option.

25. Defendant Stifel, Nicolaus & Company, Incorporated (“Stifel”) served as an underwriter for the Company’s IPO. In the Offering, Stifel agreed to purchase 817,630 shares of the Company’s Class A common stock, exclusive of the over-allotment option.

26. Defendant WR Securities, LLC (“WR Securities”) served as an underwriter for the Company’s IPO. In the Offering, WR Securities agreed to purchase 817,630 shares of the Company’s Class A common stock, exclusive of the over-allotment option.

27. Defendants Merrill Lynch, Morgan Stanley, J.P. Morgan, Wells Fargo, Stephens, Stifel, and WR Securities are collectively referred to hereinafter as the “Underwriter Defendants.”

### **CLASS ACTION ALLEGATIONS**

28. Plaintiff brings this action as a class action pursuant to Rule 23 of the Tennessee Rules of Civil Procedure on behalf of a Class, consisting of all persons and entities that purchased or otherwise acquired the Class A common stock of US Xpress pursuant and/or traceable to the Company’s false and/or misleading Registration Statement issued in connection with the Company’s IPO, and who were damaged thereby (the “Class”). Excluded from the Class are Defendants, the officers and directors of the Company or its related entities, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

29. The members of the Class are so numerous that joinder of all members is impracticable. During the relevant period, US Xpress's securities were actively traded on the New York Stock Exchange ("NYSE"). While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. The Company sold 16,668,000 shares of Class A common stock in the IPO. Moreover, record owners and other members of the Class may be identified from records maintained by US Xpress or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

30. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants wrongful conduct in violation of federal law that is complained of herein.

31. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

32. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) whether the Securities Act was violated by Defendants' acts as alleged herein;
- (b) whether statements made by Defendants to the investing public in connection with the Company's IPO omitted and/or misrepresented material facts about the business, operations, and prospects of US Xpress; and
- (c) to what extent the members of the Class have sustained damages and the proper measure of damages.

33. A class action is superior to all other available methods for the fair and efficient

adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

## **SUBSTANTIVE ALLEGATIONS**

### **Background**

34. US Xpress provides transportation services throughout the United States and Mexico. Its Truckload segment purportedly offers asset-backed truckload services, including over-the-road (“OTR”) trucking and dedicated contract services. Its Brokerage segment purportedly engages in non-asset-based freight brokerage services, where loads are contracted to third-party carriers.

### **The Company’s False and/or Misleading Registration Statement and Prospectus**

35. On June 11, 2018, US Xpress filed its final amendment to the Registration Statement with the SEC on Form S-1/A, which forms part of the Registration Statement. The Registration Statement was declared effective on June 13, 2018.

36. On June 15, 2018, the Company filed with the SEC its IPO prospectus, which forms part of the Registration Statement. In the IPO, the Company sold 16,668,000 shares of Class A common stock at a price of \$16.00 per share. The Company received proceeds of approximately \$250.02 million from the IPO, net of underwriting discounts and commissions. The proceeds from the IPO were purportedly to be used to repay a loan, a note, and a portion of the borrowings outstanding under its revolving credit, as well as to purchase real estate that it historically leased from Q&F Realty, a related party.

37. The Registration Statement was negligently prepared and, as a result, contained untrue statements of material facts or omitted to state other facts necessary to make the statements

made not misleading, and was not prepared in accordance with the rules and regulations governing its preparation.

38. Under applicable SEC rules and regulations, the Registration Statement was required to disclose known trends, events or uncertainties that were having, and were reasonably likely to have, an impact on the Company's continuing operations.

39. With respect to the Company's driver retention and asset utilization, the Registration Statement stated, in relevant part:

Dedicated business features committed rates, lanes and volumes under contracts that generally afford us greater revenue predictability over the contract period and help smooth the impact of market cycles. Additionally, our dedicated contract service offering generally has higher driver retention rates than our OTR service offering, which we believe is because our professional drivers prefer the more predictable time at home that dedicated routes offer. In addition, this increased visibility allows us to commit and invest fleet resources with a more predictable return profile.

40. With respect to the Company's metrics of the dedicated and over-the-road divisions, the Registration Statement stated, in relevant part:

We are typically paid a predetermined rate per load or per mile for our Truckload services. We enhance our revenue by charging for tractor and trailer detention, loading and unloading activities and other specialized services. Consistent with industry practice, our typical customer contracts (other than those contracts in which we have agreed to dedicate certain tractor and trailer capacity for use by specific customers) do not guarantee load levels or tractor availability. This gives us and our customers a certain degree of flexibility to negotiate rates up or down in response to changes in freight demand and trucking capacity. In our dedicated contract service offering, which comprised approximately 36.2% of our truckload operating revenue, and approximately 36.8% of our truckload revenue, before fuel surcharge, for 2017, we provide service under contracts with fixed terms, volumes and rates. Dedicated contracts are often used by our customers with high-service and high-priority freight, sometimes to replace private fleets previously operated by them.

41. The Registration Statement was materially false and misleading and omitted to state: (1) that the Company's dedicated division was experiencing a shortage of trucks to fulfill its contracts; (2) that the Company's over-the-road division would provide continued support of the

dedicated accounts; (3) that, as a result, the utilization rate at the over-the-road and dedicated divisions would be materially impacted; and (4) that, as a result of the foregoing, Defendants' statements in the Registration Statement regarding US Xpress's business, operations, and prospects, were materially false and/or misleading.

### **The Subsequent Disclosure**

42. On August 2, 2018, US Xpress announced its financial results for the second quarter 2018. Regarding the Company's over-the-road division's support of the dedicated division, the Company stated, in relevant part:

In the over the road division, average revenue per tractor per week increased 19.8% in the second quarter of 2018, as compared to the second quarter of 2017. The increase was primarily the result of a 13.3% increase in the division's average revenue per loaded mile (excluding fuel surcharge revenue) and a 5.8% increase in the division's revenue miles per tractor per week. Generally, during a challenging driver market with increased demand, utilization will decline because a greater percentage of tractors are in transition onboarding new professional drivers as compared to being productive and because increased freight selectivity slows down overall velocity.

Despite the challenging market for drivers, utilization increased through the successful execution of numerous operational initiatives gaining traction through the quarter. This strong utilization was impacted by the over the road division's support of dedicated accounts during the quarter, which negatively impacted over the road utilization by approximately 150 basis points. While supporting the dedicated accounts with the Company's over the road fleet negatively affected our utilization in the second quarter, management believes that when these accounts are operationally established, U.S. Xpress will be able to recognize this increase in over the road utilization.

43. The same day, Defendants Eric Fuller and Peterson participated in a conference call with analysts. During the call, Defendant Eric Fuller explained:

Turning to our dedicated division, during the quarter we experienced a decrease in our revenue miles per tractor per week of 9.8%. We serve to decrease our average revenue per tractor per week by 2.4% in the second quarter of 2018. This is partially offset by an 8.2% increase in our average revenue preloaded mile. The reduction in our utilization was primarily the result of a certain account shipping patterns that perform differently than expected, which impacted utilization, driver hiring and

retention, and was due in part to mix changes in the portfolio. We negotiated rate increases on these accounts to compensate us for lower than expected utilization. As of July 28, these increases are in effect, which we expect will increase the dedicated overall average revenue per loaded mile by approximately 3.5%.

44. On November 1, 2018, US Xpress announced its financial results for the third quarter 2018 and reported that the over-the-road division was negatively impacted by continued support of the dedicated division. The Company stated, in relevant part:

In the over the road division, average revenue per tractor per week increased 12.0% in the third quarter of 2018, as compared to the third quarter of 2017. The increase was primarily the result of an 11.3% increase in the division's rate per mile. It is worth noting that utilization was essentially flat in the third quarter of 2018, from the year ago period, with headwinds from temporary support of our dedicated division. Looking forward, the Company sees additional opportunities to improve the division's results through the continued execution of its driver and utilization centric initiatives.

The dedicated division's average revenue per tractor per week increased 5.0% in the third quarter of 2018 as compared to the third quarter of 2017. The increase was primarily the result of a 10.3% increase in the division's revenue per mile partially offset by a 4.9% decrease in the division's revenue miles per tractor per week. The division's results continue to be impacted by certain accounts' shipping patterns performing differently than expected which was first experienced in the second quarter of 2018. The Company made progress addressing the issue which resulted in a sequential improvement in utilization to a decline of 5.0% in the third quarter of 2018 from the 9.8% decline in utilization experienced in the second quarter of 2018.

45. The same day, Defendants Eric Fuller and Peterson participated in a conference call with analysts to discuss the financial results. During the call, Defendant Eric Fuller explained the over-the-road division's support of the dedicated division, stating in relevant part:

During the quarter, our over the road division supported contractual commitments in our dedicated division, which adversely impacted this division's utilization. Initially, we thought the support will be reduced towards the beginning of the third quarter; however, it progressively increased and peaked during the quarter.

Over the last six weeks, the support provided to our dedicated division by our over the road division has been reduced significantly due to increased traction in our recruiting efforts to fill these dedicated positions. Additionally, the market for drivers remained challenging through the third quarter, which resulted in a slight decline in our average tractor count as compared to the second quarter of 2018.

46. On November 2, 2018, US Xpress announced that it was retaining a new Chief Operating Officer.

47. On November 2, 2018, US Xpress's stock price closed at \$7.10 per share, which was a decline of \$8.90, or approximately 56%, from the IPO price of \$16.00 per share.

**FIRST CLAIM**  
**Violation of Section 11 of the Securities Act**  
**(Against All Defendants)**

48. Plaintiff repeats and re-alleges each and every allegation contained above.

49. This Count is brought pursuant to Section 11 of the Securities Act, 15 U.S.C. §77k, on behalf of the Class, against all Defendants (the "Section 11 Defendants").

50. The Registration Statement for the IPO was inaccurate and misleading, contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and omitted to state material facts required to be stated therein.

51. US Xpress is the registrant for the IPO. The Section 11 Defendants named herein were responsible for the contents and dissemination of the Registration Statement.

52. As issuer of the shares, US Xpress is strictly liable to Plaintiff and the Class for the misstatements and omissions.

53. None of the Section 11 Defendants named herein made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Registration Statement were true and without omissions of any material facts and were not misleading.

54. By reasons of the conduct herein alleged, each Section 11 Defendant violated, and/or controlled a person who violated Section 11 of the Securities Act.

55. Plaintiff acquired US Xpress shares pursuant and/or traceable to the Registration Statement for the IPO.

56. Plaintiff and the Class have sustained damages. The value of US Xpress Class A common stock has declined substantially subsequent to and due to Section 11 Defendants violations.

**SECOND CLAIM**  
**Violation of Section 12(a)(2) of The Securities Act**  
**(Against All Defendants)**

57. Plaintiff repeats and re-alleges each and every allegation contained above, except any allegation of fraud, recklessness or intentional misconduct.

58. This Count is brought pursuant to Section 12(a)(2) of the Securities Act, on behalf of the Class, against all Defendants (the “Section 12 Defendants”).

59. The Section 12 Defendants were sellers, offerors, and/or solicitors of purchasers of Class A common stock offered by US Xpress pursuant to the IPO. The Section 12 Defendants issued, caused to be issued, and/or signed the IPO Registration Statement in connection with the Offering. The IPO Registration Statement was used to induce investors, such as Plaintiff and other members of the Class, to purchase US Xpress securities.

60. The IPO Registration Statement was inaccurate and misleading, contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and omitted to state material facts required to be stated therein.

61. The Section 12 Defendants’ actions of solicitation included participating in the preparation of the false and/or misleading IPO Registration Statement.

62. None of the Section 12 Defendants named herein made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the IPO Registration Statement were true and without omissions of any material facts and were not misleading.

63. Plaintiff and other Class members did not know, nor could they have known, of the untruths and/or omissions contained in the IPO Registration Statement and Secondary Registration Statement.

64. By virtue of the conduct alleged herein, the Section 12 Defendants are liable for the aforesaid wrongful conduct and are liable to Plaintiff and the Class for damages suffered.

**THIRD CLAIM**  
**Violation of Section 15 of The Securities Act**  
**(Against the Individual Defendants)**

65. Plaintiff repeats and re-alleges each and every allegation contained above.

66. This count is asserted against the Individual Defendants (the “Section 15 Defendants”) and is based upon Section 15 of the Securities Act.

67. The Section 15 Defendants, by virtue of their offices, directorship and specific acts were, at the time of the wrongs alleged herein and as set forth herein, controlling persons of US Xpress within the meaning of Section 15 of the Securities Act. The Section 15 Defendants had the power and influence and exercised the same to cause US Xpress to engage in the acts described herein.

68. The Section 15 Defendants’ positions made them privy to and provided them with actual knowledge of the material facts concealed from Plaintiff and the Class.

69. By virtue of the conduct alleged herein, the Section 15 Defendants are liable for the aforesaid wrongful conduct and are liable to Plaintiff and the Class for damages suffered.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

(a) Determining that this action is a proper class action under Rule 23 of the Tennessee Rules of Civil Procedure;

(b) Awarding compensatory damages in favor of Plaintiff and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

(c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees;

(d) Awarding rescission or a rescissory measure of damages; and

(e) Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: \_\_\_\_\_, 2018

**GLANCY PRONGAY & MURRAY LLP**

By:  s/ \_\_\_\_\_ Draft \_\_\_\_\_

Lionel Z. Glancy  
Robert V. Prongay  
Lesley F. Portnoy  
Charles H. Linehan  
1925 Century Park East, Suite 2100  
Los Angeles, CA 90067  
Telephone: (310) 201-9150  
Facsimile: (310) 201-9160

**LAW OFFICES OF HOWARD G. SMITH**

Howard G. Smith  
3070 Bristol Pike, Suite 112  
Bensalem, PA 19020  
Telephone: (215) 638-4847  
Facsimile: (215) 638-4867

*Attorneys for Plaintiff* \_\_\_\_\_