

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549**

**FORM 8-K**

**CURRENT REPORT  
Pursuant to Section 13 OR 15(D) of the Securities Exchange Act Of 1934**

Date of report (Date of earliest event reported): August 11, 2020

**XpresSpa Group, Inc.**

(Exact Name of Registrant as Specified in Its Charter)

**Delaware**

(State or Other Jurisdiction of Incorporation)

**001-34785**

(Commission File Number)

**20-4988129**

(IRS Employer Identification No.)

**254 West 31<sup>st</sup> Street, 11<sup>th</sup> Floor, New York, New York**

(Address of Principal Executive Offices)

**10001**

(Zip Code)

**(212) 309-7549**

(Registrant's Telephone Number, Including Area Code)

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Securities registered pursuant to Section 12(b) of the Act:**

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.01 per share	XSPA	The Nasdaq Stock Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

### **Item 7.01 Regulation FD**

On August 11, 2020, XpresSpa Group, Inc. (the “Company”) issued a press release regarding the dismissal, with prejudice, of a previously disclosed purported derivative lawsuit filed on June 30, 2019 in the United States District Court for the Southern District of New York (“SDNY”). A copy of the press release is furnished herewith as Exhibit 99.1 and incorporated herein by reference to this Item 7.01.

The information set forth in this Item 7.01 including the information set forth in Exhibit 99.1 shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act, regardless of any general incorporation language in such filing.

### **Item 8.01 Other Events**

The Company announced on August 11, 2020 that Judge Gregory Woods in the SDNY dismissed a previously disclosed purported derivative lawsuit filed on June 30, 2019 by Morton Binn and Marisol F, LLC against the Company; certain of its current and former directors; Rockmore Investment Master Fund, L.P.; B3D, LLC; and Brian Daly. The defendants had filed a motion to dismiss on October 23, 2019. The court heard oral argument on the defendants’ motion to dismiss on January 22, 2020.

On August 6, 2020, Judge Woods adopted in its entirety a report and recommendation issued by Magistrate Judge Sarah Cave on July 13, 2020 and dismissed all of the plaintiffs’ claims with prejudice.

### **Item 9.01. Financial Statements and Exhibits**

[99.1 Press Release, dated August 11, 2020](#)

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**XPRESSPA GROUP, INC.**

Date: August 11, 2020

By: /s/ Douglas Satzman

Name: Douglas Satzman

Title: Chief Executive Officer

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# XpresSpa Group

## XpresSpa Group Announces Dismissal of Purported Derivative Lawsuit Filed by Moreton Binn and Marisol Binn against the Company and Certain Current and Former Directors

August 10, 2020 -- XpresSpa Group, Inc. (Nasdaq: XSPA) (“XpresSpa” or the “Company”), a health and wellness company, today announced that U.S. District Court Judge Gregory Woods dismissed the purported derivative lawsuit that was filed in Manhattan federal court in June 2019 by Moreton Binn and Marisol Binn (through a limited liability company) against XpresSpa; certain of its current and former directors; Rockmore Investment Master Fund, L.P.; B3D, LLC; and Brian Daly.

On October 23, 2019, XpresSpa and the other defendants filed a motion to dismiss the complaint in its entirety and with prejudice. On July 13, 2020, Magistrate Judge Sarah Cave issued a 76-page Report and Recommendation recommending that Judge Woods grant XpresSpa’s motion to dismiss in its entirety for three independent reasons:

- (1) the Binns had failed to make a pre-suit demand on XpresSpa’s independent Board of Directors (a requirement for any derivative lawsuit);
- (2) the Binns were not fair and adequate representatives of XpresSpa’s shareholders for the purposes of a derivative lawsuit, as there was “evidence of ‘economic antagonisms’ between Plaintiffs and Defendants” and “the Binns hav[ing] an outsized personal interest in this litigation,” and that these facts “illustrate a potential vindictiveness by the Binns towards Defendants”; and
- (3) the Binns failed to state any plausible claims for relief with respect to any of their claims.

Magistrate Judge Cave also recommended to Judge Woods that the Binns’ request to amend their complaint be denied because it “would be allowing them a ‘third bite at the apple.’” The Binns did not object to the Report and Recommendation, and Judge Woods adopted the Report and Recommendation in its entirety on August 6, 2020, thereby dismissing all of the Binns’ claims with prejudice, meaning that the Binns cannot re-litigate these claims again.

This was the third lawsuit that the Binns or their longtime counsel have brought against XpresSpa and its former and current directors and certain other parties in the past two years. A different federal judge had previously dismissed the two earlier lawsuits.

Bruce Bernstein, XpresSpa’s Chairman, stated, “We are very happy with the court’s decision. None of the lawsuits brought by the Binns or their lawyers against XpresSpa, its directors and certain investors had any factual or legal merit, and now all three of them have been dismissed by the courts. We are glad to put this wasteful distraction behind us and vindicated that all three lawsuits were dismissed at an early stage.”

This litigation was captioned *Binn v. Bernstein*, 19-CV-06122, and was pending in the U.S. District Court for the Southern District of New York. XpresSpa and the other defendants were represented by Joshua Roth from Fried, Frank, Harris, Shriver & Jacobson LLP and Lawrence Gerschwer from Barnes & Thornburg LLP. Chris Clark and Sandeep Savla from Latham & Watkins LLP also represented one of XpresSpa’s former directors. The Binns were represented by Rosanne Felicello and Michael Maloney of Felicello Law P.C.

### **About XpresSpa Group, Inc.**

XpresSpa Group, Inc. (Nasdaq: XSPA) is a leading global health and wellness holding company. XpresSpa Group’s core asset, XpresSpa, is a leading airport retailer of spa services and related health and wellness products, with 50 locations in 25 airports globally. Through its XpresTest, Inc. subsidiary, the Company also provides COVID-19 screening and testing under its XpresCheck™ brand at JFK International Airport. To learn more about XpresSpa Group, visit: [www.XpresSpaGroup.com](http://www.XpresSpaGroup.com). To learn more about XpresSpa, visit [www.XpresSpa.com](http://www.XpresSpa.com). To learn more about XpresCheck, visit [www.XpresCheck.com](http://www.XpresCheck.com).

### **Investor Relations:**

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