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8 333 Washington Ave No, Suite 300-9038
9 Minneapolis, MN 55401-1353
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10 *Attorneys for Plaintiff*
11 *David Greenley AND THE PUTATIVE CLASS*

12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 DAVID GREENLEY, individually and)	CASE NO. 21cv339-WQH-MDD
15 on behalf of others similarly situated,)	
16)	[Judge: Hon. William Q. Hayes]
17 Plaintiffs,)	
18 v.)	
19 MAYFLOWER TRANSIT, LLC,)	DECLARATION OF JOSHUA .B
20 Defendant.)	SWIGART IN SUPPORT OF
21)	MOTION FOR (1) ATTORNEY
22)	FEEES;(2) REIMBURSEMENT OF
23)	LITIGATION EXPENSES; (3)
24)	APPROVAL OF SETTLEMENT
25)	ADMINISTRATION FEES; AND (4)
26)	APPROVAL OF CLASS
27)	REPRESENTATIVE SERVICE
28)	AWARD

Date Action Filed: February 25, 2021
Date: August 4, 2022 at 10:30 a.m.
Courtroom: 14B

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DECLARATION OF JOSHUA B. SWIGART

I, JOSHUA B. SWIGART, declare:

1. I am one of the attorneys for the Plaintiff, David Greenley, in this action. I am filing this declaration in support of the Plaintiff’s motion for (1) Attorney Fees; (2) Reimbursement of Litigation Expenses; (3) Approval of Settlement Administration Fees; and (4) Approval of Class Representative Service Award.
2. I am licensed to practice law in the States of California, Washington, Washington D.C., Michigan, and Wisconsin.
3. I have personal knowledge of the following facts and, if called upon as a witness, I could and would competently testify thereto, except as to those matters which are explicitly set forth as based upon my information and belief and, as to such matters, I am informed and believe that they are true and correct.
4. I submit this Declaration to present and summarize the time and expense expended by my firm in the representation of Plaintiff David Greenley in this matter and provide my experience and qualifications for the purposes of supporting the motion for attorney fees.
5. I am the principal attorney at the Swigart Law Group, APC.
6. I was admitted to the State Bar of California in 2003 and have been a member in good standing ever since that time.
7. I am admitted in every federal district in California and have handled federal litigation in the federal districts of California, including being admitted to the 9th Circuit Court of Appeals.
8. Attached hereto as Exhibit 1 is a true and correct summary¹ of the attorneys’ fees from the contemporaneous time records maintained by my firm and by Mr.

¹ Class Counsel is providing a summary because this is a percentage of the recovery fee request and the lodestar calculation is being provided primarily as a cross check. “Class Counsel has not provided detailed time records, but instead provides general summaries of each firm's billing time. (citation omitted). The summaries and declarations provide a

1 Barry’s law firm. In summary, to date my firm expended in excess of a total of
2 227.3 hours resulting in a lodestar amount of \$176,157.50. To date, Mr.
3 Barry’s law firm expended in excess of a total of 181.3 hours resulting in a
4 lodestar amount of \$135,975.00. Should the Court request more detailed time
5 records, they can be provided promptly upon request.

6 9. Attached hereto as Exhibit 2 is a true and correct copy of a summary of the
7 litigation related costs and expenses incurred by both my firm and Peter F.
8 Barry’s firm in litigating this matter. Those expenses totaled \$ 30,874.12.

9 10.CPT Group, Inc., was appointed by this Court as the Settlement Claims
10 Administrator based upon submitted a comprehensive proposal for providing
11 notice and claims administration for a discounted flat fee of \$12,500. Services
12 provided include (1) case setup, (2) direct mail notification, (3) processing of
13 returned undeliverable mail, (4) direct email notification, (5) claims processing
14 administration, (6) claims processing administration, (7) Social Security Number
15 verification, (8) Distribution services, and (9) settlement conclusion and tax
16 reporting. A copy of this proposal is attached hereto as Exhibit 3.

17 11.In my experience this proposal is fair and reasonable for the services to be
18 provided. Accordingly, I request CPT Group, Inc., order payment of \$12,500 to
19 the CPT Group, Inc., for services as Settlement Claims Administrator.

20 12.Additionally, I fully support the application of a Service Award in the amount
21 of \$10,000 for Plaintiff David Greenley. Service Awards are “fairly typical” in
22 class actions in the ninth circuit and Plaintiff David Greenley fully participated
23 in all aspects of this litigation. His participation is more fully detailed in the
24 Declarations of my co-counsel, Peter F. Barry, and of David Greenley. The
25 amount requested falls within the range of reasonableness and is similar to other
26

27
28 sufficient showing of the hours counsel performed on this case.” *Morey v. Louis Vuitton N. Am., Inc.*, No. 11CV1517 WQH BLM, 2014 WL 109194, at *10 (S.D. Cal. Jan. 9, 2014)

1 service awards approved by this court as detailed in the Memorandum of Points
2 and Authorities filed contemporaneously herewith.

3 **Background and Experience**

4 13. Since my admission to the State Bar of California in 2003, I have been engaged
5 exclusively in the area of consumer rights litigation, primarily in the area of fair
6 debt collections, the defense of debt collection lawsuits, class action litigation
7 under the Telephone Consumer Protection Act, California’s invasion of privacy
8 statutes pursuant to Penal Code § 630, et seq., and false advertising actions
9 concerning consumer products.

10 14. A summary of notable cases I have been involved in where notable decisions
11 were issued are as follows:

12 a. *Knell v. FIA Card Services, N.A., et al.*, 12-CV-426 AJB(WVG)(S.D.
13 Cal. 2014) (Co-lead counsel on a California class action involving
14 privacy rights under Cal. Penal Code § 632 et seq. Class relief provided
15 for a common fund in the amount of \$2,750,000. Counsel obtained final
16 approval on August 15, 2014);

17 b. *Hoffman v. Bank of America, N.A.*, 12-CV-539 JAH(DHB) (S.D. Cal.
18 2014) (Co-lead counsel on a California class action involving privacy
19 rights under Cal. Penal Code § 632 et seq. Class relief provided for a
20 common fund in the amount of \$2,600,000. Finally approved on
21 November 6, 2014);

22 c. *Zaw v. Nelnet Business Solutions, Inc., et al.*, C 13-05788 RS (N.D. Cal.
23 2014) (Co-lead counsel on a California class action involving privacy
24 rights under Cal. Penal Code § 632 et seq. Class relief provided for a
25 common fund in the amount of \$1,188,110. Final approval granted on
26 December 1, 2014);

27 d. *CashCall, Inc. v. Superior Court*, 159 Cal. App. 273 (2008) (Allowing
28 the original plaintiff who lacked standing in a class action to conduct

1 precertification discovery of the identities of potential plaintiffs with
2 standing);

3 e. *Kight v. CashCall, Inc.*, 200 Cal. App. 4th 1377 (2011) (Co-lead counsel
4 on a class action involving privacy rights under Cal. Penal Code §632 et
5 seq. Appeals court reversing the trial courts granting of Defendant’s
6 motion for summary judgment after case was certified);

7 f. *Engelen v. Erin Capital Management, LLC, et al.*, No. 12-55039 (9th Cir.
8 2013, not for publication, D.C. No.: 3:10-cv-01125-BEN-RBB)
9 (Reversing the lower court’s granting of summary judgment to the
10 defendant debt collector on the basis of the bona fide error defense and
11 remanding for further proceedings);

12 g. *Sherman v. Yahoo!, Inc.*, 2014 U.S. Dist. LEXIS 13286; 13-CV-0041-
13 GPCWVG (S.D. Cal.) (TCPA class action where Defendant’s motion for
14 summary judgment was denied holding that a single call or text message
15 with the use of an ATDS may be actionable under the TCPA);

16 h. *Olney v. Progressive Casualty Insurance Company*, 13-CV-2058-
17 GPCNLS, 2014 U.S. Dist. LEXIS 9146 (S.D. Cal.) (Defendant’s motion
18 to dismiss or in the alternative to strike the class allegations was denied
19 finding that debt collection calls were not exempt from coverage under
20 the TCPA);

21 i. *Iniguez v. The CBE Group, Inc.*, 13-CV-00843-JAM-AC, 2013 U.S. Dist.
22 LEXIS 127066 (E.D. Cal.) (The court denying Defendant’s motion to
23 dismiss and to strike class allegations holding that the TCPA applies to
24 any call made to a cellular telephone with an ATDS);

25 j. *Catala v. Resurgent Capital Servs., L.P.*, 08-CV-2401 NLS, 2010 U.S.
26 Dist. LEXIS 63501 (S.D. Cal.) (Co-lead counsel on a class settlement
27 involving the Fair Debt Collection Practices Act);
28

- 1 k. *Hosseinzadeh v. M.R.S. Assocs.*, 387 F. Supp. 2d 1104 (C.D. Cal. 2005)
2 (Summary judgment was granted sua sponte in favor of a debtor where
3 debt collector violated the Fair Debt Collection Practices Act, when its
4 employees failed to disclose the debt collector’s identity and the nature of
5 its business in the messages left on the debtor’s answering machine). This
6 case has now been followed in at least four different districts throughout
7 the country;
- 8 l. *Edstrom v. All Servs. & Processing*, 2005 U.S. Dist. LEXIS 2773 (N.D.
9 Cal. 2005) (Numerous omissions from a letter sent by a debt collector to
10 members of a homeowners association, and a statement requiring any
11 dispute to be put in writing, violated 15 U.S.C. §1692g(a) of the FDCPA
12 and Cal. Civ. Code Åò1788.17. The FDCPA required strict compliance;
13 actual confusion on debtors’ part was not required);
- 14 m. *Forsberg v. Fid. Nat’l Credit Servs.*, 2004 U.S. Dist. LEXIS 7622 (S.D.
15 Cal. 2004) (Plaintiff alleged sufficient facts to support his claim that a
16 collection company, in its initial communication, did not comply with the
17 statutory requirements for notice of validation of debts under the
18 FDCPA);
- 19 n. *Sparrow v. Mazda Am. Credit*, 385 F. Supp. 2d 1063 (N.D. Cal. 2005)
20 (Court struck Defendant’s counter claim of the underlying debt in a fair
21 debt action based on lack of subject matter jurisdiction);
- 22 o. *Geoffroy, et al. v. Washington Mutual Bank*, 484 F. Supp. 2d 1115 (S.D.
23 Cal. 2007) (Court striking down Defendant’s arbitration agreement as
24 both procedurally and substantively unconscionable);
- 25 p. *Yang v. DTS Financial Group*, 07-CV-1731 JLS (WMc) (Holding that
26 for profit debt settlement companies are covered under the FDCPA and
27 can be construed as “debt collectors” under 15 U.S.C. § 1692a(6));
28

- 1 q. *Mason v. Creditanswers*, 2008 U.S. Dist. LEXIS 68575 (Holding that a
2 forum selection clause causing a California consumer to litigate its claims
3 seems contrary to the policies advanced by certain consumer protection
4 statutes);
- 5 r. *Myers v. LHR, Inc.*, 543 F.Supp.2d 1215 (2008) (Recognizing actual and
6 statutory damages in the amount of \$92,000 in a default judgment based
7 on violations of the State and Federal collection statutes);
- 8 s. *Yates v. Allied Intl Credit Corp.*, 578 F. Supp. 2d 1251 (2008) (Holding a
9 debtor’s claim based on the FDCPA stemming from the filing of a false
10 police report was not subject to the litigation privilege under Cal. Civ.
11 Code § 47(b));
- 12 t. *Owings v. Hunt & Henriques, et al.*, 2010 U.S. Dist. LEXIS 91819 (S.D.
13 Cal.) (Recognizing that the Service Members Civil Relief Act applies to
14 California National Guard Members and that the debt collection
15 attorney’s false declaration the court violates the FDCPA);
- 16 u. *Heathman v. Portfolio Recovery Assocs., LLC*, 2013 U.S. Dist. LEXIS
17 98742 (S.D. Cal. 2013) (Holding that failing to properly list and disclose
18 the identity of the original creditor in a state collection pleading is a
19 violation of the Fair Debt Collection Practices Act under 15 U.S.C. §
20 1692e);
- 21 v. *Stemple v. QC Holdings, Inc.*, 12-cv-01997-BAS-WVG (S.D. Cal. Nov.
22 7, 2016) (TCPA action finally approved for \$1,500,000);
- 23 w. *Abdeljalil v. GE Capital Retail Bank*, 12-cv-02078–JAH–MDD (S.D. al.)
24 (Class Certification granted and finally approved for \$7,000,000);
- 25 x. *Calderon v. The Wolf Firm*, SACV16-1266 JLS (JESx), 2018 U.S. Dist.
26 LEXIS 42054 (C.D. Cal. March 13, 2018) (FDCPA class action
27 preliminarily approved on March 13, 2018);
28

- 1 y. *Caldera v. Am. Med. Collection Agency*, 2017 U.S. Dist. LEXIS 99239
2 (C.D. Cal. June 27, 2017) (Order certifying nationwide TCPA class
3 action);
- 4 z. *Burkhammer v. Allied Interstate, LLC*, 2017 Cal. Super. LEXIS 109
5 (Sup. Ct. San Luis Obispo) (RFDCPA class action finally approved on
6 October 30, 2017);
- 7 aa. *Moreno-Peralta v. TRS Recovery Services, Inc.*, 2017 Cal. Super. LEXIS
8 548 (Sup. Ct. San Luis Obispo Oct. 10, 2017) (RFDCPA class action
9 preliminarily approved);
- 10 bb. *Maxin v. RHG & Company, Inc.*, 16-cv-2625 JLS (BLM) (S.D. Cal.)
11 (Supplement Misrepresentation class action finally approved on February
12 16, 2018);
- 13 cc. *McPolin v. Credit Service of Logan*, 2017 U.S. Dist. LEXIS 189236, 16-
14 cv-116 BSJ (Utah District Court) (FDCPA class action with consumers to
15 each receive \$1,428.57, debt relief, and tradeline deletion finally
16 approved on November 9, 2017);
- 17 dd. *Giffin v. Universal Protein Supplements Corp.*, 2018 Cal. Super. LEXIS
18 3, BC613414 (Sup. Ct. Los Angeles) (Supplement misrepresentation
19 class action finally approved on February 7, 2018);
- 20 ee. *Anderson v. Phoenix Financial Services, LLC, et al.*, BCV-16-101385,
21 2018 Cal. Super. LEXIS 1030 (Kern Sup. Court) (FDCPA class action
22 finally approval on July 23, 2018);
- 23 ff. *Moreno-Peralta v. TRS Recovery Services, Inc.*, 15CV-0481 (San Luis
24 Obispo Superior Court (RFDCPA class action finally approved on July
25 19, 2018);
- 26 gg. *Reid v. I.C. System Incorporated*, CV-12-2661 PHX ROS, 2018 U.S.
27 Dist. LEXIS 125663 (D. Ariz. July 26, 2018) (\$3,500,000.00 TCPA
28 Class Settlement Finally Approved on July 26, 2018);

1 hh. *Marks v. Crunch San Diego, LLC*, 904 F.3d 1041 (9th Cir. 2018)

2 (Landmark case in the 9th Cir. where the Court held to expand the
3 definition of an automatic telephone dialing system by holding that an
4 ATDS is any “equipment which has the capacity to 1) store numbers to
5 be called or 2) to produce numbers to be called, using a random or
6 sequential number generator – and to dial such numbers automatically).

7 ii. *McCurley v. Royal Seas Cruises, Inc.*, 17-cv-00986-BAS-AGS (S.D. Cal.
8 2019) (Granting Plaintiff’s class certification (in part) pursuant to
9 F.R.C.P. 23, under the Telephone Consumer Protection Act).

10 **ADDITIONAL RELEVANT TRAINING, SPEAKING/TEACHING**

11 **ENGAGEMENTS AND ASSOCIATIONS**

12 15. I have undergone extensive training in the area of consumer law. The following
13 is a list of recent training conferences I attended:

- 14 a. National Consumer Law Conference; Oakland, CA – 2003;
- 15 b. National Consumer Law Conference (FDCPA Mini-Conference); Kansas
16 City, MO – 2004;
- 17 c. National Consumer Law Conference; Boston, MA – 2004;
- 18 d. Five-day extensive one-on-one training with The Barry Law Office; San
19 Diego, CA –2005;
- 20 e. Three-day FDCPA Mini-Conference; Minneapolis, MN – 2005;
- 21 f. Four-day extensive one-on-one training with The Barry Law Office;
22 Minneapolis, MN – 2005;
- 23 g. Four-day National Association of Consumer Advocates Conference
- 24 h. Minneapolis, MN – 2005;
- 25 i. Four-day National Consumer Law Center Conference; Nashville, TN –
26 2008;
- 27 j. Three-day National Consumer Law Center Conference; Portland, OR -
28 2008;

- 1 k. Speaker at a Three-day National Consumer Law Center Conference; San
- 2 Diego, CA - 2009;
- 3 l. Speaker ABA/JAG presentation to military service members and counsel;
- 4 MCRD, San Diego CA – 2010;
- 5 m. Speaker ABA teleconference on defending consumer credit card debt and
- 6 related issues; San Diego, CA – 2010;
- 7 n. Three-day National Consumer Law Center Conference; Seattle, WA -
- 8 2011;
- 9 o. Two-day FDCPA Mini-Conference; New Orleans; LA - 2012;
- 10 p. Two-day National Consumer Law Center Conference on the FDCPA;
- 11 Seattle, WA - 2012;
- 12 q. National Consumer Law Center Conference, National Convention;
- 13 Baltimore, MD - 2013;
- 14 r. Speaker ABA National Conference, Business Litigation Section; Trends
- 15 in Consumer Litigation; San Francisco, CA - 2013;
- 16 s. Speaker National Consumer Law Center; Nuts and Bolts of TCPA
- 17 Litigation; San Antonio, TX - 2014;
- 18 t. Speaker San Diego County Bar Association; Convergence of the FDCPA
- 19 and Consumer Bankruptcy; San Diego, CA - 2014;
- 20 u. Guest Speaker at California Western School of Law; Consumer Law
- 21 class - 2014;
- 22 v. 8th Annual Class Action Seminar; San Francisco, CA – 2014;
- 23 w. Speaker regarding class actions at the NCLC National Conference held in
- 24 Anaheim, CA in 2016.
- 25 x. Wisconsin State Bar Convention, Lake Geneva, Wisconsin – 2018;
- 26 y. Lawyer/Pilot Bar Association Convention, Lake Tahoe, California –
- 27 2018;
- 28 z. Wisconsin State Bar Convention, Green Bay, Wisconsin – 2019;

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16.I am a member in good standing of the following local and national associations:

- a. Federal Bar Association; Southern District of California Chapter (through 2021);
- b. San Diego County Bar Association;
- c. Wisconsin Bar Association;
- d. Enright Inns of Court (2011-2014);
- e. Lawyer/Pilot Bar Association (through 2020).

17.I am unaware of any conflicts of interest between Plaintiff and the putative class members and between proposed class counsel and the other parties to this litigation.

18.I, and my co-counsel, have vigorously litigated this action in the best interests of the class. I have been confirmed as class counsel in multiple class actions. I am competent to serve as class counsel in this action. I have been in practice in California for seventeen years.

19.On these grounds, I believe that I am appropriate and qualified Class Counsel pursuant to Fed. Civ. P. 23(a)(4) and (g), and that I will adequately and fairly represent the interests of the putative class.

20.I am not aware of any other lawsuits commenced by any other persons against Defendant regarding these claims.

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21.I respectfully request this Court grant Plaintiff’s Motion for Class Certification.

I declare under penalty of perjury under the laws of California and the United States of America that the foregoing is true and correct, and that this declaration was executed on March 7, 2022.

 s/ Joshua B. Swigart

Joshua B. Swigart

EXHIBIT 1

Exhibit 1: Summary of Attorney's Fees**Class Counsel, Peter F. Barry's Attorney Fees (\$750/hr)**

	Hours	Attorney Fees
Investigating the Action	2.50	\$ 1,875.00
Conducting Discovery	35.30	\$ 26,475.00
Litigating Discovery Disputes	17.40	\$ 13,050.00
Conducting Depositions	28.00	\$ 21,000.00
Researching and Drafting Documents	60.40	\$ 45,300.00
Settlement Negotiations and Agreement	37.70	\$ 28,275.00
Peter Barry's Total Attorney Fees:	181.3	\$ 135,975.00

Class Counsel, Joshua Swigart's Attorney Fees (\$775/hr)

	Hours	Attorney Fees
Investigating the Action	2.5	\$ 1,937.50
Conducting Discovery	47.8	\$ 37,045.00
Litigating Discovery Disputes	40.3	\$ 31,232.50
Conducting Depositions	38.9	\$ 30,147.50
Researching and Drafting Documents	59	\$ 45,725.00
Settlement Negotiations and Agreement	38.8	\$ 30,070.00
Joshua Swigart's Total Attorney Fees:	227.3	\$ 176,157.50

Collaborative Hours and Attorney Fees

	Hours	Attorney Fees
Investigating the Action	5.00	\$ 3,812.50
Conducting Discovery	83.10	\$ 63,520.00
Litigating Discovery Disputes	57.70	\$ 44,282.50
Conducting Depositions	66.90	\$ 51,147.50
Researching and Drafting Documents	116.40	\$ 88,775.00
Settlement Negotiations and Agreement	76.50	\$ 58,345.00
Total Hours and Attorney Fees		
TOTAL EXHAUSTED HOURS:		408.60
TOTAL FEES:		\$ 312,132.50

EXHIBIT 2

Exhibit 2: Summary of Costs

<u>Category</u>	<u>Amount</u>
Copies and Printing	\$ 18.75
Depositions	\$ 5,130.52
Filing Fees	\$ 658.00
Mediation	\$ 8,578.22
Misc. Office Supplies	\$ 213.12
Outside Services	\$ 11,177.13
Postage	\$ 19.70
Research	\$ 21.00
Service	\$ 769.00
Westlaw	\$ 4,288.68
Total Costs	\$ 30,874.12

EXHIBIT 3



Class Action Administrators

www.cptgroup.com

Contact Name: Dominique Fite
 Corporate Headquarters
 50 Corporate Park, Irvine CA 92606
 DFite@cptgroup.com
 Direct Number: (619) 613-1653
 Corporate Office: (800) 542-0900

CASE REFERENCE: WIP SETTLEMENT

Date: October 28, 2021	* Class Members: 154
Requesting Attorney: Joshua B. Swigart	*Total Filing Rate: 15.0%
Plaintiff or Defense: Plaintiff	*Total Claims Filed: 23
Firm Name: Swigart Law Group, APC	Estimated Postage Total: \$75.85
Telephone: (866) 219-3343	Grand Total: \$15,372.31
Email: josh@swigartlawgroup.com	DISCOUNTED FLAT FEE: \$12,500.00

SUMMARY OF SERVICES: INTERACTIVE WEBSITE / 15% CLAIMS FILING RATE / DIRECT NOTICE MAIL VIA 4X6 SUMMARY POSTCARD / PROCESS RETURNED UNDELIVERABLE MAIL / EMAIL NOTICE / CLAIMS PROCESSING AND CLAIMS VALIDATION / DISPUTE AND OPT-OUT PROCESSING / IVR W/FAQ ONLY / CALCULATIONS / ELECTRONIC PAYMENT & CHECK DISTRIBUTION / REPORTING /

DECLARATION

* This number is an estimate provided by counsel. If the actual number is different, our cost estimate will change accordingly.

CASE SETUP

Upon Intake of the Class Data, CPT will Scrub all Records to a Useable Format to Reduce Duplicates, Anomalies and Increase the Success Rate of Deliverability of the Class Notice. Throughout the Duration of the Settlement, Class Members will be Assigned a Unique Mailing ID. CPT will Establish and Maintain an Interactive Website for Up to One Year After Disbursement. The Settlement Website will Post the Full-Length Notice and all Pertinent Settlement Documents for Download and Provide Electronic Claims Filing Capabilities.

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Project Manager	\$ 95.00	2	\$ 190.00
System Programming/Data Base Setup	\$ 150.00	2	\$ 300.00
Toll Free Number Establish/Setup*	\$ 150.00	2	\$ 300.00
Interactive Website	\$ 2,500.00	1	\$ 2,500.00
Total			\$ 3,290.00

DIRECT MAIL NOTIFICATION

To Ensure Mailing to the Most Current Address Possible, CPT will Perform an Address Update via National Change of Address (NCOA) and Further Skip Trace Prior to Mailing, if Necessary. CPT will Mail via U.S. Postal Mail a 4"x6" Summary Notice Postcard to 154 (100%) Class Members.

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Project Manager-Claim/Notice Format	\$ 95.00	2	\$ 190.00
NCOA (National Change of Address)	\$ 150.00	1	\$ 150.00
Print & Mail 4x6 Summary Postcard	\$ 0.35	154	\$ 53.90
Estimated Postage	\$ 0.40	154	\$ 61.60
Total			\$ 455.50

PROCESS RETURNED UNDELIVERABLE MAIL

Based Upon CPT's Historical Data, 10% of the Notice Packets will be Returned Undeliverable. Upon Receipt, CPT will Perform a Skip Trace in Attempt to Obtain a Current Address. CPT Estimates 86% of the Undeliverable Mail will Require a Skip Trace and 75% will be Remailed.

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Process Undeliverable Mail	\$ 0.50	15	\$ 7.50
Skip Trace	\$ 1.25	13	\$ 16.13
Print & Mail 4x6 Summary Postcard	\$ 0.35	10	\$ 3.39
Estimated Postage	\$ 0.40	10	\$ 3.87
Clerical Staff	\$ 60.00	1	\$ 60.00
Total			\$ 90.88

DIRECT EMAIL NOTIFICATION

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It is Expected that Defendant will Provide CPT the Email Addresses for Approximately 154 (100%) Class Members. Prior to Email Notification, CPT will Perform a Third-Party Email Validation Scan to Improve the Success Rate of Deliverability and Reduce the Number of Undeliverable Emails. Upon Completion of the Initial Email Notification, CPT will Attempt to Resend to Soft Bounced Emails Two Times Pursuant to Best Practice Industry Standards.

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Project Manager-Email Notice Format	\$ 95.00	2 \$	190.00
Email Notification Setup/Establish/Formatting	\$ 150.00	2 \$	300.00
Email Notification Segmentation/Sending	\$ 150.00	2 \$	300.00
Email Notification Reporting/Monitoring	\$ 250.00	1 \$	250.00
Email Summary Notices - Initial Notice + 2 Attempts to Soft Bounced Emails	\$ 0.1500	154 \$	23.10
		Total	\$ 1,063.10

CLAIMS PROCESSING ADMINISTRATION

CPT will Process and Validate all Claims, Opt-Outs, and Other Responses (Received via Mail and Website) from Class Members. CPT Estimates that 85% of the Total Claims Filed will be Filed Electronically and 15% will be Filed by Mail. Deficient Claimants will Receive a Deficiency Notice via Mail According to Method of Claim Submission and Provided Opportunity to Cure. CPT will Scrub the Claims Filed to Eliminate Duplicates, Fraudulent, and Otherwise Invalid Claims. CPT will also Maintain a Dedicated Toll-Free Phone Number with IVR Capabilities and FAQ's Only (No Live Call Center Support or Voicemail Service Offered)

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming of Claims Data Base	\$ 150.00	5 \$	750.00
Claims Processing (Online) - 85%	\$ 1.75	19 \$	32.60
Claims Processing (Mail) - 15%	\$ 2.50	3 \$	8.63
Clerical Staff	\$ 50.00	1 \$	50.00
Opt-Outs/Deficiency/Dispute Letters	\$ 5.00	2 \$	10.00
Estimated Postage (up to 1 oz.)	\$ 0.55	2 \$	1.10
Project Manager	\$ 95.00	1 \$	95.00
Validation/De-duplication/Claims Scrubbing	\$ 150.00	1 \$	150.00
IVR - FAQ Only (No Live Operators or Voicemail Service Capabilities)	\$ 2,500.00	1 \$	2,500.00
		Total	\$ 3,597.33

SSN VERIFICATION

Verify SSN for Validity with IRS / IRS Backup Withholdings

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming for SSN Selection	\$ 150.00	1 \$	150.00
Project Manager	\$ 95.00	3 \$	285.00
SSN Verification	\$ 0.20	23 \$	4.60
		Total	\$ 439.60

DISTRIBUTION SERVICES

CPT will Establish and Manage the Qualified Settlement Fund (QSF) for up to Two Years After Disbursement. Upon Final Approval of the Settlement, CPT will Perform all Necessary Settlement Calculations and Mail a 8.5"x11" MICR Check to all Valid Claimants. Checks will be Mailed in a #10 Security Envelope, Windowless Design. For the Remaining Class Members, CPT will Disbursement Funds through Venmo, PayPal or ACH Direct Deposit. CPT Uses a Payee Positive Pay System to Reconcile Checks Cashed and Conducts Monthly Account

Administrative Tasks:	Unit Price	Pieces/Hours	Cost Estimate
Programming Database-Calculate Totals	\$ 150.00	2 \$	300.00
Project Manager Preparation of Distribution	\$ 95.00	2 \$	190.00
Project Supervisors Review of Distribution	\$ 150.00	1 \$	150.00
Quality Assurance Team Review	\$ 250.00	1 \$	187.50
Project Manager-Correspond w/Attorney	\$ 95.00	2 \$	142.50
Obtain EIN, Setup QSF/Bank Account	\$ 150.00	3 \$	450.00
Programming/Setup & Printing of Checks	\$ 150.00	3 \$	450.00
Print & Mail 8x10 Physical Checks in a #10 Security Envelope	\$ 2.50	12 \$	30.00
Estimated Postage (up to 1 oz.)*	\$ 0.58	12 \$	6.96
Processing Electronic Payment: Venmo, PayPal, ACH Direct Deposit	\$ 1.25	12 \$	14.38
		Total	\$ 1,921.34

SETTLEMENT CONCLUSION & TAX REPORTING

CPT Estimates 5% of the Mail will be Returned Undeliverable and Skip Traced to Locate a Current Address and Remailed Accordingly. CPT will Process all Requests for Re-Issues on a Continuous Basis. CPT Prepares Annual Tax Reporting on Behalf of the QSF. Throughout the Duration of Administration, CPT will Provide Counsel with Bi-Weekly Status Reports. Upon the Conclusion of the Settlement, CPT will Issue a Due Process Declaration in Support of Final Approval.

Administrative Tasks:		Unit Price	Pieces/Hours	Cost Estimate
Re-Issue Checks as Required	\$	5.00	1	\$ 5.00
Estimated Postage (up to 1 oz.)*	\$	0.58	1	\$ 0.58
Skip Traces for Best Address	\$	1.25	1	\$ 1.25
Remail Undeliverable Notices	\$	3.00	2	\$ 6.00
Estimated Postage (up to 1 oz.)*	\$	0.58	3	\$ 1.74
Project Supervisor - Account Recons	\$	100.00	12	\$ 1,200.00
Project Supervisor-Reconcile Uncashed Chk	\$	150.00	3	\$ 450.00
Programming- Weekly Reports	\$	150.00	3	\$ 450.00
Programming- Final Reports	\$	150.00	2	\$ 300.00
Project Manager - Acnt Files Sent to Atty	\$	150.00	1	\$ 150.00
Project Supervisor - Final Declaration	\$	150.00	3	\$ 450.00
Annual Tax Reporting to IRS*	\$	1,000.00	1	\$ 1,000.00
QSF Annual Tax Reporting	\$	500.00	1	\$ 500.00
			Total	\$ 4,514.57

**The final rate will be determined and invoiced at the time of mailing. Postage costs are subject to change at anytime.*

GRAND TOTAL: \$15,372.31

These Terms and Conditions are made a part of and incorporated by reference into the CPT Group, Inc. Terms and Conditions Agreement by and between Client and CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606 (“CPT”).

1. Definitions.

- a) **“Affiliate”** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with, another party.
 - b) **“Approved Bank”** means a financial institution insured by the Federal Deposit Insurance Corporation with capital exceeding \$1 billion.
 - c) **“Case”** means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
 - d) **“Claims Administrator”** means CPT Group, Inc. a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
 - e) **“Client”** means collectively Plaintiff Counsel and Defense Counsel.
 - f) **“Client Content”** means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, objections, and the like which contain Client Data.
 - g) **“Client Data”** means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
 - h) **“Class Member”** means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
 - i) **“Confidential Information”** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked “confidential” or “proprietary” or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient’s prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
 - j) **“Court Order”** means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.
 - k) **“Defendant”** means the named party and/or parties in the Case against whom action is brought.
 - l) **“Defense Counsel”** means the attorney of record for the defendant(s) in the Case.
 - m) **“Intellectual Property Right”** means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
 - n) **“Order”** means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
 - o) **“Parties”** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
 - p) **“Plaintiff”** means the named party and/or parties in the Case who are bringing the action.
 - q) **“Plaintiff Counsel”** means the attorney of record for plaintiff Class Members in the Case.
 - r) **“Products”** means any and all CPT Services, and work product resulting from Services.
 - s) **“Qualified Settlement Fund”** means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.
 - t) **“Service”** means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
 - u) **“Software”** means any and all of CPT’s proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
 - v) **“Settlement”** means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
 - w) **“Settlement Agreement”** means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
 - x) **“Term”** means the term of the Agreement, as set forth in the Order.
 - y) **“Transmission Methods”** means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
 - z) **“Wire Information”** means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.
2. Client Obligations. Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement, and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect the Client Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.
3. Security. The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement, and shall promptly inform the other Parties of such breaches.
4. CPT Obligations. Provided that Client complies with all provisions of Section “Client Obligations”, CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Client.
5. Mutual Obligations.
- a) Resources. Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service. If there

is a delay, the party experiencing the delay will notify the other parties in such a manner as reasonably practicable, and representatives of each party will meet to discuss the reason for the delay and applicable consequences, including beyond the scope of an Order and/or a party's delay in performing its obligations may require an amended Order.

other requirements of law, each party shall (i) promptly notify the other party, (ii) reasonably cooperate with the other party in such a manner as to promptly and in full comply with any such requirements, and (iii) shall disclose only that portion of such information which each party is advised by its counsel in writing is legally required to be disclosed.

- b) **Incident Notification.** Each party will promptly inform the other parties in the event of a breach of Client Data in their possession, and shall utilize best efforts to assist the other parties to mitigate the effects of such incident.
- 6. **Qualified Settlement Fund Account.** At Client's request, CPT shall be authorized to establish one or more bank accounts at an Approved Bank. The amounts held at the Approved Bank under this Agreement are at the sole risk of Client. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
- 7. **Fees and Payment.** Pricing stated within the proposal is good for 90 Days. All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the Client data and /or notice documents. Client will be invoiced for any remaining fees according to the applicable Order. Pricing stated within any proposal from CPT to Client is for illustrative purposes only, and is only binding upon an Order executed by CPT and Client. Payment of fees will be due within 30 days after the date of the invoice, except where this Agreement expressly prescribes other payment dates. All fees set forth in an Order are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation.
- 8. **Term and Termination.**
 - a) **Term.** The Term is set forth in the Order. The Agreement may be renewed by mutual written agreement of the parties.
 - b) **Termination for Cause.** Either party may immediately terminate this Agreement if the other party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
 - c) **Bankruptcy Events.** A party may immediately terminate this Agreement if the other party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
 - d) **Effect of Termination.** Immediately following termination of this Agreement, upon Client's written request, Client may retrieve Client Data via Client's secure FTP site in the same format in which the Client Data was originally inputted into the Software, at no additional charge. Alternatively, Client Data can be returned in a mutually agreed format at a scope and price to be agreed. CPT will maintain a copy of Client Data and Client Content for no more than two (2) years following the date of the final check cashing deadline for Class Members under the Settlement Agreement, after which time any Client Data and Client Content not retrieved will be destroyed.
 - e) **Final Payment.** If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.
- 9. **Confidentiality.** Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement.
 - a. **Compelled Disclosure.** If receiving party is compelled to disclose any Confidential Information by judicial or administrative process or by
- 10. **Intellectual Property.** As between the parties, CPT will and does retain all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. Client retains all ownership rights to Client Data.
- 11. **Indemnification.** Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, Covered CPT Parties") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "Damages") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Client Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
- 12. **Warranties.** Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.
- 13. **Liability.**
 - a. **Liability Cap.** EXCEPT FOR A PARTY'S WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL CLAIMS ADMINISTRATOR FEES PAID OR PAYABLE BY CLIENT TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
 - b. **Exclusion of Consequential Damages.** NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 14. **Communications.** CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.
- 15. **Miscellaneous Provisions.**
 - a. **Governing Law; Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of California and

- the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.
- b. Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
 - c. Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
 - d. Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
 - e. Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.
 - f. Assignment. Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
 - g. No Third Party Beneficiaries. The representations, warranties and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns, and shall not be construed as conferring any rights on any other persons.
 - h. Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT

- from utilizing the Statistical Data for business and/or operating purposes. Provided, that CPT does not share with any third party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.
- i. Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such applicable laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce, and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
 - j. Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
 - k. Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
 - l. Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.
 - m. Subcontractors. CPT shall notify Client of its use of any subcontractors to perform Client-specific Services. CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
 - n. Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret or construe its meaning, scope or intent.
 - o. Waiver. No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power or remedy.
 - p. Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.