

EXHIBIT 1

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Settlement Agreement”) is entered into between Plaintiff Ryan Odom (“Plaintiff”), on behalf of himself and all Settlement Class Members as defined herein, and ECA Marketing, Inc. (“ECA”). Plaintiff and ECA are referred to collectively in this Settlement Agreement as the “Parties.”

1. RECITALS

1.1. On April 21, 2020, Plaintiff filed a Complaint in the United States District Court for the Central District of California against ECA in the case styled: *Ryan Odom v. ECA Marketing, Inc.*, Case No. 5:20-cv-00851-JGB-SHK (C.D. Cal.) (the “Action”). In the Complaint, Plaintiff alleged that ECA violated the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.*, by negligently and willfully contacting him and others like him on their cell phones without prior express consent.

1.2. On October 22, 2020, the Parties attended an all-day mediation before the Honorable Suzanne H. Segal, an experienced mediator and a former United States Magistrate Judge. During an arms-length mediation, the Parties reached a tentative agreement but continued to discuss certain material terms through November 16, 2020, while exchanging the updated class information and data. On November 16, 2020, the Parties executed a Settlement Term Sheet setting forth main material terms, subject to the execution of the long form agreement and Court approval.

1.3. Taking into account the burdens, uncertainty, and risks inherent in this litigation, Plaintiff has concluded that further prosecution of the Action could be protracted especially during the pandemic, unduly burdensome, and expensive, and that it is desirable, fair, and beneficial to the Class that the Action now be fully and finally compromised, settled, and

terminated in the manner and upon the terms and conditions set forth in this Settlement Agreement.

1.4. ECA denies that it engaged in any improper, illegal or wrongful conduct with respect to Plaintiff's allegations or that Plaintiff and the class members are entitled to any relief from ECA. ECA further denies that the claims in the Action are appropriate for adjudication or relief on a class basis. Nevertheless, given the risks, uncertainties, burden, and expense of continued litigation, and without admitting any liability or wrongdoing whatsoever, ECA agrees to the terms of this Settlement Agreement in order to resolve the Released Claims.

2. DEFINITIONS

As used herein, the following terms have the meanings set forth below.

2.1. "Agreement" or "Settlement Agreement" means this Settlement Agreement and Release, including all exhibits hereto.

2.2. "Approved Claim" means a Claim the Settlement Administrator finds was timely submitted by a Settlement Class Member and that complies with the requirements for a valid claim under this Agreement.

2.3. "Attorneys' Fees and Expenses" means such funds as may be awarded to Class Counsel by the Court out of the Settlement Fund to compensate them (and all other attorneys for Plaintiff or the Settlement Class) for their time, effort, and expenses incurred in the Action.

2.4. The "Action" means the civil action styled *Ryan Odom, on behalf of himself and others similarly situated v. ECA Marketing, Inc.*, Case No. 5:20-cv-00851-JGB-SHK in the United States District Court for the Central District of California.

2.5. "Claim" means a written request for Settlement Relief submitted by a member of the Settlement Class to the Settlement Administrator, using a Claim Form in a substantially similar format to Exhibit A (Mail Notice) or available in electronic format on the Settlement

Website in a form substantially similar to Exhibit D (Electronic Claim Form), both of which are attached to this Agreement.

2.6. “Claimant” means any Settlement Class Member who submits an Approved Claim pursuant to this Settlement Agreement. Each Settlement Class Member may submit one claim.

2.7. “Class Counsel” means Kazerouni Law Group, APC.

2.8. “Class Notice” means the program of notice described in Section 6 of this Agreement to be provided to the Settlement Class.

2.8.1. “Mail Notice” means the notice that is mailed by the Settlement Administrator to the known Settlement Class, in a form substantially similar to Exhibit A to this Agreement and/or as modified by the Parties and approved by the Court.

2.8.2. “Email Notice” means the notice that is emailed by the Settlement Administrator to the known potential members of the Settlement Class, in a form substantially similar to Exhibit B to this Agreement or as modified by the Parties and approved by the Court.

2.8.3. “Website Notice” means the long-form notice made available to the Settlement Class on the Settlement Website, in a form substantially similar to Exhibit C to this Agreement and/or as modified by the Parties and approved by the Court, and which shall include a link to an electronic claim form substantially similar to Exhibit D (“Electronic Claim Form”).

2.9. “Court” means the United States District Court for the Central District of California.

2.10. “Days” means calendar days, except that, when computing any period of time prescribed or allowed by this Agreement, the day of the act, event, or default from which the designated period of time begins to run shall not be included. Further, when computing any

period of time prescribed or allowed by this Agreement, the last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

2.11. Deadlines. As used herein, the Parties agree to the following deadlines, subject to Court approval:

2.11.1. “Notice Deadline” means the last day for the Settlement Administrator to send Mail Notice and Email Notice to the Settlement Class. Mail Notice and/or Email Notice shall be sent not more than thirty (30) Days after the Court’s Preliminary Approval Order. ECA shall provide the Settlement Administrator with the Class List within two business days after the Court’s issued Preliminary Approval Order. This does not include additional Mail Notice by the Settlement Administrator in case of undeliverable mail as described below in Section 6.5.

2.11.2. “Fee and Incentive Motion Deadline” means the last day for Plaintiff to file a motion for an award of Attorneys’ Fees and Expenses, and an Incentive Award to the Plaintiff from the Settlement Fund. The Fee and Incentive Motion shall be filed not later than sixty days (60) Days after the Court’s Preliminary Approval Order.

2.11.3. “Objection Deadline” means the date identified in the Preliminary Approval Order and Class Notice by which a Settlement Class Member must serve written objections, if any, to the Settlement in accordance with Section 12 of this Agreement to be able to object to the Settlement. The Objection Deadline shall be at least one hundred (100) days from the date of the Court’s Preliminary Approval Order.

2.11.4. “Opt Out Deadline” means the date identified in the Preliminary Approval Order and Class Notice by which a Request for Exclusion must be filed in writing with the Settlement Administrator in accordance with Section 11 of this Agreement in order for a

potential member of the Settlement Class to be excluded from the Settlement. The Opt-Out Deadline shall be one hundred (100) days from the date of the Court's Preliminary Approval Order.

2.11.5. "Claim Deadline" means the last date by which a Claim submitted to the Settlement Administrator by a Settlement Class Member must be postmarked or submitted electronically, which will be one hundred (100) days from the date of the Court's Preliminary Approval Order. All Claims postmarked or submitted electronically at the Settlement Website on or before the Claim Deadline shall be timely, and all Claims postmarked or submitted electronically at the Settlement Website after the Claim Deadline shall be untimely and barred from entitlement to any Settlement Relief.

2.11.6. "Final Approval Motion Deadline" means the date by which Class Counsel shall file the motion seeking final approval of the Settlement. The Final Approval Motion Deadline shall be no later than one hundred forty-five (145) Days from the date of the Court's Preliminary Approval Order.

2.12. "Defense Counsel" means the law firm of Haynes and Boone, LLP.

2.13. "Distribution Amount" means the payment to be made from the Settlement Fund to each Settlement Class Member who submits an Approved Claim.

2.14. "Final," with respect to the Final Approval Order, the Judgment, and any award of Attorneys' Fees and Expenses, means (a) the deadline to file a motion to alter or amend the Judgment or Final Approval Order under Federal Rule of Civil Procedure 59(e) has passed without any such motion having been filed or such a motion is overruled and (b) the time for appeal or writ review has expired or, if an appeal or petition for review is taken and dismissed or the Settlement (or award of Attorneys' Fees and Expenses) is affirmed, the time period during

which further petition for hearing, appeal, or writ of certiorari can be taken has expired. If the Final Approval Order and/or Judgment is set aside, modified, or overturned by the Court or on appeal, and is not fully reinstated on further appeal, or is successfully collaterally attacked, the Final Approval Order and/or Judgment shall not become Final.

2.15. “Final Approval” means the entry of the Judgment after the Final Approval Hearing.

2.16. “Final Approval Order” means the Order Granting Final Approval of Class Action Settlement and Dismissing Class Plaintiff’s Claims, to be entered by the Court pursuant to the Settlement and in a form substantially similar to the form attached as Exhibit E. Should the Court make any material changes to the form of the order attached as Exhibit E, ECA may terminate the Settlement Agreement by reason of such variance.

2.17. “Final Approval Hearing” means the hearing held by the Court to determine whether the terms of this Agreement are fair, reasonable, and adequate for the Settlement Class as a whole, and whether the Final Approval Order and the Judgment should be entered. The Parties shall seek to have the Final Approval Hearing at least one hundred seventy-five days from the date of the Court’s Preliminary Approval Order.

2.18. “Final Settlement Date” means the earliest date on which both the Final Approval Order and the Judgment are Final (as defined in Section 2.14). If no appeal has been taken from the Final Approval Order or the Judgment, the Final Settlement Date means the day after the last date on which either the Final Approval Order or the Judgment could be appealed. If any appeal has been taken from the Final Approval Order or from the Judgment, the Final Settlement Date means the date on which all appeals of either the Final Approval Order or the Judgment, including petitions for rehearing, petitions for rehearing en banc, and petitions for certiorari or

any other form of review, have been finally disposed of in a manner that affirms the Final Approval Order and the Judgment.

2.19. “Incentive Award” means Court-approved compensation of up to \$2,500 for Plaintiff for his time and effort undertaken in the Action.

2.20. “Judgment” means the judgment to be entered by the Court pursuant to Final Approval Order in a form substantially similar to the form attached as Exhibit E-1. Should the Court make any material changes to the form of the judgment attached as Exhibit E-1, ECA may terminate the Settlement Agreement by reason of such variance.

2.21. “Notice and Administrative Costs” means all reasonable and authorized costs and expenses of disseminating and publishing the Class Notice in accordance with the Preliminary Approval Order, and all reasonable and authorized costs and expenses incurred by the Settlement Administrator in administering the Settlement, including but not limited to costs and expenses associated with assisting the Settlement Class, establishing the Settlement Website, providing Notice, establishing the Toll-free Settlement Hotline, processing claims, escrowing funds, and issuing and mailing Settlement Relief.

2.22. “Preliminary Approval Application” means Plaintiff’s motion for the Court to approve the Settlement preliminarily and to enter the Preliminary Approval Order, including all exhibits and documents attached thereto, which Plaintiff agrees to file on or before April 30, 2021.

2.23. “Preliminary Approval Order” means an order in a form substantially similar to the form as the attached as Exhibit F. Should the Court make any material changes to the form of the order attached as Exhibit F, ECA may terminate the Settlement Agreement by reason of such variance. The order shall, among other things, determine that the preliminary approval of the

Settlement as fair, reasonable, and adequate; preliminary certification of the Settlement Class for settlement purposes only; dissemination of the Class Notice to the Settlement Class; and a finding that the proposed Class Notice is reasonably calculated to apprise the Settlement Class of the pendency of the Action, the material terms of the proposed Settlement, and the Settlement Class's options and rights with respect thereto.

2.24. "Release" or "Releases" means the releases of all Released Claims by the Releasing Persons against the Released Persons, as provided for in Section 10 of the Settlement Agreement.

2.25. "Released Claims" means the claims released as provided for in Section 10 of the Settlement Agreement.

2.26. "Released Persons" means ECA Marketing, Inc. and each and all of its past, present, and future, direct or indirect, parents, subsidiaries, affiliates, agents, successors, predecessors, or any financial institutions, corporations, trusts and their trustees, or other entities that may hold or have held any interest (including, without limitation, any security interest) in any account or any receivables relating to any account, or any receivables or group of receivables, or any interest in the operation or ownership of ECA, and all of the aforementioned's respective past, present, and future, officers, directors, members, managers, employees, parents, subsidiaries, affiliates, general partners, limited partners, principals, agents, insurers, reinsurers, shareholders, attorneys, advisors, representatives, predecessors, successors, divisions, joint ventures, vendors, assigns, consultants, or related entities, and each of their respective executors, successors, assigns, and legal representatives.

2.27. “Releasing Persons” means Plaintiff, all Settlement Class Members, and anyone claiming through them, including but not limited to heirs, administrators, successors, and assigns.

2.28. “Request for Exclusion” means a written request from a member of the Settlement Class seeking to exclude him or herself from the Settlement and that complies with all requirements in Section 11 of this Agreement.

2.29. “Settlement” means the settlement set forth in this Agreement.

2.30. “Settlement Administrator” means a third-party agent or administrator, selected by Plaintiff, to help implement and effectuate the terms of this Settlement Agreement. Plaintiff selects: CPT Group, Inc. as the Settlement Administrator.

2.31. “Settlement Class” or “Class” means the class of persons that will be certified by the Court for settlement purposes only, as more fully described in Section 3.1 herein, believed to consist of approximately 184,000 individuals, who received ringless voicemails at the direction of ECA within the Class Period.

2.32. “Class List” is the list to be compiled by ECA which will depict the telephone numbers for the Class, last known email addresses, and last known physical addresses for the Class, and any other contact information that ECA may find in its attempt to match the telephone numbers with the contact information for the Class existing and readily available in ECA’s records.

2.33. “Settlement Class Member” means any person, including Plaintiff, who falls within the definition of the Settlement Class and who has not submitted a valid Request for Exclusion.

2.34. “Settlement Class Period” shall commence on April 21, 2016 and shall continue through and including April 21, 2020.

2.35. “Settlement Class Recovery” means the amount of the Settlement Fund available for distribution to Claimants after payment of Notice and Administrative Costs, taxes, and any Court-approved Attorneys’ Fees and Expenses and Incentive Awards.

2.36. “Settlement Fund” means the \$990,000 described in Section 4 that ECA has agreed to pay pursuant to the terms of this Settlement Agreement and which represents the limit and total extent of ECA’s monetary obligations under this Settlement Agreement.

2.37. “Settlement Relief” means the payment to be made from the Settlement Fund to Settlement Class Members who submit Approved Claims.

2.38. “Settlement Website” means the Internet site created and operated by the Settlement Administrator pursuant to Section 6.6 of this Agreement, which shall have the Uniform Resource Locator of www.OdomSettlement.com.

2.39. “Settling Parties” means, collectively, ECA, Plaintiff, and all Releasing Persons.

3. CLASS DEFINITION AND CONDITIONS AND OBLIGATIONS RELATING TO THE EFFECTIVENESS OF THE SETTLEMENT

3.1. The “Settlement Class” shall be as follows:

All persons within the United States who received any call or ringless voicemail from Defendant or its agent/s and/or employee/s to said person’s cellular telephone made through the use of any automatic telephone dialing system or prerecorded voice during the Settlement Class Period.

3.1.1. ECA agrees to provide one Rule 30(b)(6) confirmatory deposition including the following topics: i) the number of calls made to unique cell phone numbers; ii) how the Defendant calculated the numbers of unique numbers called; and iii) the number of

calls made to those unique phone numbers and how that was calculated. Such deposition will not take longer than 60 minutes (excluding any breaks) and all questions will be provided to the Defendant at least one week prior to the deposition. Such deposition will take remotely, via telephone or video conference, at a time and place agreed upon by the Parties. ECA estimates that no more than 182,124 unique cell phone numbers/class members were contacted. If the actual cell phone numbers/class members deviates by more than 10% from the estimated 182,124, Plaintiff may renegotiate the terms. As set forth in Section 5.4, ECA will produce data to the Claims Administrator consisting of the mailing addresses and email addresses of all persons known to ECA to be potential members of the Settlement Class, to the extent those mailing addresses and email addresses are known and readily available in ECA's electronic records. ECA estimates to have last known email addresses for at least 50-60% of the Settlement Class, and last known mailing addresses for the remainder of the Settlement Class, except five (5) potential members.

3.2. This Settlement Agreement is expressly contingent upon the satisfaction, in full, of the material conditions set forth below. In the event that the Settlement is not finally approved, including if ECA elects to void the Settlement pursuant to Section 11.4, below, ECA shall be refunded any money that has not yet been expended.

3.3. Condition No. 1: District Court Approval. The Settlement must be approved by the Court in accordance with the following steps:

3.3.1. Preliminary Approval. After good-faith consultation with Defense Counsel, Class Counsel promptly will move the Court for entry of the Preliminary Approval Order. The Preliminary Approval Application shall include Class Notice, in forms substantially similar to Exhibits A, B, C, and D. The Settling Parties shall, in good faith, take reasonable steps

to secure expeditious entry by the Court of the Preliminary Approval Order. The Preliminary Approval Order shall provide for conditional certification of the Settlement Class for settlement purposes only.

3.3.2. CAFA Notice. Within ten days after the filing of the motion for preliminary approval, ECA shall notify the appropriate state and federal officials of the proposed settlement in accordance with 28 U.S.C. § 1715. In connection with final approval proceedings, ECA shall file a declaration establishing that CAFA notice was timely provided.

3.3.3. Entry of Preliminary Approval Order. The Court shall enter the Preliminary Approval Order, which shall, among other things:

(a) Conditionally certify the Settlement Class for settlement purposes only, approve Plaintiff as Class Representative, and appoint Class Counsel pursuant to Rule 23 of the Federal Rules of Civil Procedure;

(b) Preliminarily approve the Settlement as fair, reasonable and adequate;

(c) Order the issuance of Class Notice to the Settlement Class, and determine that such Class Notice complies with all legal requirements, including, but not limited to, the Due Process Clause of the United States Constitution;

(d) Schedule a date and time for a Final Approval Hearing to determine whether the Preliminary Approval Order should be finally approved by the Court;

(e) Require members of the Settlement Class who wish to exclude themselves to submit a timely written request for exclusion by the Opt-Out Deadline, as directed in the Settlement Agreement and Class Notice, and advise that a failure to opt out shall bind those members of the Settlement Class to the Settlement Agreement;

(f) Require Settlement Class Members who wish to object to the Settlement Agreement to submit a timely written objection by the Objection Deadline, as directed in the Settlement Agreement and Class Notice, and advise that a failure to do so shall prevent those Settlement Class Members from doing so;

(g) Authorize the Parties to take all necessary and appropriate steps to establish the means necessary to implement the Settlement Agreement; and

(h) Issue related orders to effectuate the preliminary approval of the Settlement Agreement.

3.3.4. Issuance of Class Notice. Pursuant to the Preliminary Approval Order to be entered by the Court, the Settlement Administrator shall cause the Class Notice to be issued in accordance with Section 6 below.

3.3.5. Final Approval Hearing. In connection with the motion for Preliminary Approval, Plaintiff shall request that the Court schedule and conduct a hearing after dissemination of Class Notice, at which time it will consider whether the Settlement is fair, reasonable, and adequate pursuant to Rule 23 of the Federal Rules of Civil Procedure. Specifically, Plaintiff, after good faith consultation with Defense Counsel, shall request that, on or after the Final Approval Hearing, the Court: (i) enter the Final Approval Order and the Judgment; (ii) determine the Attorneys' Fees and Expenses that should be awarded to Class Counsel out of the Settlement Fund as contemplated in the Settlement Agreement; and (iii) determine the Incentive Award(s), if any, that should be awarded as contemplated by the Settlement Agreement. The Parties will reasonably cooperate with one another in seeking entry of the Final Approval Order and of the Judgment.

3.4. Condition No. 2: Finality of Judgment. The Court shall enter the Final Approval Order and the Judgment. The Final Approval Order and the Judgment must become Final in accordance with Section 2.14 above, and shall, among other things:

(a) Find that (1) the Court has personal jurisdiction over the Settling Parties and all Settlement Class Members; (2) the Court has subject matter jurisdiction over the claims asserted in this Action; and (3) venue is proper;

(b) Finally approve the Settlement Agreement, pursuant to Rule 23 of the Federal Rules of Civil Procedure, as fair, reasonable, and adequate;

(c) Finally certify the Settlement Class for settlement purposes only;

(d) Find that the form and means of disseminating the Class Notice complied with all laws, including, but not limited to, the Due Process Clause of the United States Constitution;

(e) Find that ECA has complied with its notice obligations under the Class Action Fairness Act, 28 U.S.C. § 1715, in connection with the Settlement;

(f) Dismiss the claims of all Settlement Class Members and the Action with prejudice;

(g) Make the Releases in Section 10 of the Settlement Agreement effective as of the date of Final Approval;

(h) Permanently bar Plaintiff and all Settlement Class Members from filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise) any action in any jurisdiction or forum asserting any of the Released Claims;

(i) Authorize the Parties to implement the terms of the Settlement Agreement;

(j) Retain jurisdiction relating to the administration, consummation, enforcement, and interpretation of the Settlement Agreement, the Final Approval Order, and the Judgment, and for any other necessary purpose; and

(k) Issue related orders to effectuate the Final Approval of the Settlement Agreement and its implementation.

3.5. Condition Three: Dismissal of Action. The Court shall dismiss with prejudice the Action and all Released Claims.

4. SETTLEMENT CONSIDERATION, BENEFITS, AND OTHER RELIEF

4.1. In full and final settlement of the claims asserted in the Action against ECA and in consideration for the Releases set forth in Section 10, ECA will provide the following benefits.

4.2. ECA will fund a non-reversionary common Settlement Fund of \$990,000, from which all Settlement Relief, Attorneys' Fees and Expenses, Notice and Administrative Costs, and Incentive Awards will be paid. The Settlement Fund represents the limit and total extent of ECA's monetary obligations under this Agreement and the Settlement. In no event shall ECA's total financial liability with respect to this Agreement and the Settlement exceed \$990,000.

ECA shall pay the Nine Hundred and Ninety Thousand Dollars (\$990,000.00) to establish the Common Fund to the Settlement Administrator to place into the account set up to hold the Common Fund within thirty (30) calendar days of the Court issuing an order granting preliminary approval of the Settlement. If the Effective Date occurs, ECA shall have no reversionary interest in any portion of the Common Fund, and any unclaimed portion of the Common Fund, as well as any sums allocated to settlement checks that have not been cashed, shall be paid to one or more *cy pres* recipients.

4.2.1. The Court shall retain continuing jurisdiction over the Settlement Fund sufficient to satisfy the requirements of 26 C.F.R. § 1.468B-1. The Settlement Administrator shall at all times seek to have the Settlement Fund treated as a “qualified settlement fund” as that term is defined in 26 C.F.R. § 1.468B-1. The Settlement Administrator shall cause any taxes imposed on the earnings of the Settlement Fund (“Taxes”), including any Taxes or tax detriments that may be imposed upon the Released Persons or their counsel with respect to any income earned by the Settlement Fund for any period after the deposit of the Settlement Amount during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes, if any, to be paid out of such earnings and shall comply with all tax reporting and withholding requirements imposed on the Settlement Fund under applicable tax laws. The Settlement Administrator shall be the “administrator” of the Settlement Fund pursuant to 26 C.F.R. § 1.468B-2(k)(3).

4.2.2. Before making the pro rata calculation below, subject to approval by the Parties, the Settlement Administrator shall provide an estimate of all costs expected to be reasonably incurred by the Settlement Administrator through the completion of the Settlement (the “Administrative Costs Reserve”).

4.2.3. Subject to the limitations of 4.2.1, the Settlement Class Recovery shall be equal to \$990,000, minus all amounts paid for Class Notice and administrative costs, minus the Administrative Costs Reserve, minus any taxes paid, minus any amounts awarded by the Court to Class Counsel for Attorneys’ Fees and Expenses, and minus the amount of any Incentive Awards to Plaintiff. Each Settlement Class Member who has not successfully requested exclusion from the Settlement and who has submitted an Approved Claim shall be entitled to a Distribution Amount from the Settlement Fund equal to the Settlement Class Recovery divided

by the total number of Approved Claims. After calculation, all fractional Distribution Amounts shall be rounded down to the nearest cent.

4.2.4. Each Claimant, upon certifying that he or she falls within the definition of the Settlement Class, shall be entitled to Settlement Relief. The amount of Settlement Relief shall be equal to the Settlement Class Recovery divided by the total number of Approved Claims after accounting for Attorneys' Fees and Costs, Notice and Administration costs and Incentive Awards. No interest shall be included as an element of, or be payable or paid on, any claimed amount.

4.2.5. After receiving approval from counsel to the Parties, the Settlement Administrator shall mail to each Settlement Class Member who submitted an Approved Claim a check in the amount of such Settlement Class Member's Distribution Amount. Settlement Class Members shall be advised that the checks must be negotiated within one hundred and eighty (180) days. On the 30th and 90th Day following mailing of all Settlement Payments, the Settlement Administrator may mail Settlement Class Members, or e-mail to Settlement Class Members with a valid e-mail address, a reminder to cash the check.

4.2.6. After the 180-day period for check cashing has run, the Parties and the Settlement Administrator shall confer regarding the disposition of uncashed settlement payments, any funds created by rounding down the Distribution Amounts, and any unused portion of the Administrative Payment. Specifically, the Parties and the Settlement Administrator shall determine whether there are any cost-effective methods to deliver more settlement proceeds to Settlement Class Members, such as making a second distribution to Settlement Class Members who already cashed their checks, or using e-mail, regular mail, or telephone calls to encourage Settlement Class Members to negotiate uncashed checks. If it is

determined by the Parties and the Settlement Administrator to be reasonable and feasible, the Settlement Administrator shall take such further actions. Once the remainder of the Settlement Amount is determined to be too small for additional distribution efforts to be reasonable and feasible, the Settlement Administrator shall stop payment on all outstanding checks and pay the amount of uncashed checks and any other remaining balance of the Settlement Amount to a *cy pres* recipient. The Parties recommend that Public Law Center be approved as the contingent *cy pres* beneficiary, subject to Court approval.

4.2.7. If for any reason the Final Approval Order and/or the Judgment does not become Final within the meaning of Section 2.14, all money in the Settlement Fund, including the interest accumulated, if any, shall be returned to ECA within seven (7) Days after the occurrence of the condition or event that prevents the Final Approval Order and/or the Judgment from becoming Final.

5. RETENTION OF SETTLEMENT ADMINISTRATOR AND COSTS

5.1. Plaintiff retains CPT Group, Inc. as the Settlement Administrator. The Settlement Administrator shall be responsible for all matters relating to the administration of this Settlement, as set forth herein. Those responsibilities include, but are not limited to, giving notice, obtaining new addresses for returned mail, setting up and maintaining the Settlement Website and toll-free telephone number, fielding inquiries about the Settlement, processing claims, acting as a liaison between Settlement Class Members and the Parties regarding claims information, approving claims, rejecting any claim where there is evidence of fraud, directing the mailing of settlement payments to Settlement Class Members, and any other tasks reasonably required to effectuate the foregoing. The Settlement Administrator will provide bi-weekly updates on the claims status to counsel for both Parties. The Released Persons shall have no responsibility for, interest in, or

liability whatsoever with respect to, the actions of the Settlement Administrator, or any payment or transaction executed by the Settlement Administrator.

5.2. All Notice and Administrative Costs will be paid from the Settlement Fund, and ECA's only responsibility regarding such costs is to fund the Settlement Fund.

5.3. The Settlement Administrator shall administer the Settlement in a cost-effective and timely manner. Without limiting any of its other obligations as stated herein, the Settlement Administrator shall be responsible for Mail Notice, Email Notice, Website Notice, the Settlement Website, administration of Settlement Relief, and providing all other related support, reporting, and administration as further stated in this Agreement.

5.4. ECA will coordinate with the Settlement Administrator and Class Counsel to provide mailing addresses and email addresses, for those people known to be potential members of the Settlement Class based on ECA's electronic records, to the extent ECA's records reflect a last known mailing address or email address and to the extent those addresses are readily available in ECA's electronic records. Because the information about Settlement Class Members that will be provided will consist of confidential information, non-public personal information, and other information protected by privacy laws, any such information shall be deemed "Confidential" under the protective order entered in the Action, and shall be used only for the purpose of administering this Settlement.

5.5. The Released Persons shall have no liability, obligation, or responsibility whatsoever to any person, including, but not limited to, Settlement Class Members, the Settlement Administrator, Class Counsel, or Plaintiff in connection with (a) the selection of the Settlement Administrator; (b) the administration of the Settlement; (c) the management, distribution, or investment of the Settlement Fund; (d) the processing of claims, including the

determination, administration, or calculation of any Claim; (e) any loss suffered by, or fluctuation in the value of, the Settlement Fund; or (g) the disbursement of the Settlement Fund. The Settlement Fund shall indemnify and hold all Released Persons harmless for any Taxes owed with respect to interest earned on the Settlement Fund and related expenses of any kind whatsoever (including, without limitation, Taxes payable by reason of any such indemnification), as well as for any claims related to the administration of the Settlement, the investment of the Settlement Fund, the processing of claims, or the disbursement of the Settlement Fund. ECA shall notify the Settlement Administrator promptly if any of the Released Persons receive any notice of any claim so indemnified.

6. NOTICE TO THE CLASS

6.1. The Parties anticipate that most members of the Settlement Class can be identified and located from ECA's records. Specifically, ECA has the telephone numbers for all Settlement Class Members, last known email addresses for approximately 60% of Settlement Class Members, and last known physical addresses for the remaining 40% (except five potential class members).

6.2. The Court shall order that, no later than one (2) business days after the Court's Order granting preliminary approval of this settlement and Agreement, ECA shall compile and provide to the Settlement Administrator the Class List.

6.3. ECA shall provide the Class List to the Settlement Administrator. The Settlement Administrator shall use such methods as it determines are practicable (which may include a reverse-directory lookup and/or skip tracing) to attempt to match those unmatched telephone numbers to names and addresses for members of the Settlement Class who are identified in the Class List or otherwise identified by the Settlement Administrator; notice of the proposed class action settlement shall be provided by regular mail substantially in the form of the Class Notice

and shall include a paper Claim Form as well as instructions that the Claim Form can be filled out and returned by regular mail or accessed, filled out and submitted on the Settlement Website.

6.4. Email Notice: The Class List will provide the Settlement Administrator with the available email addresses for persons known to be potential Class Members, to the extent those email addresses are known and readily available in ECA's records. ECA believes that it has last known email addresses for at least 60% of Settlement Class Members. The Settlement Administrator shall treat the email addresses as confidential. If the Settlement Administrator receives a notification of failed delivery of the email, it shall then mail the notice to said individual as discussed in Section 6.5 below.

6.5. Mail Notice: For the remaining individuals (40% of Settlement Class Members) and any individuals for whom the Settlement Administrator receives a bounce back notification, the Settlement Administrator shall provide Notice via mail. The Settlement Administrator shall use the available mail addresses on the Class List, and identify the best addresses for the Settlement Class Members as discussed in Section 6.3 above. Before the mailing of the Class Notice, the Settlement Administrator shall run all names and addresses through the National Change of Address Database maintained by the United States Postal Service and, where applicable, adjust the mailing address accordingly. Such notice shall be mailed via a double-sided post-card.

6.5.1. The Mail Notices shall all be mailed thirty (30) Days after the Court's Preliminary Approval Order.

6.5.2. The Mail Notice of Class Action, Proposed Settlement, Final Approval Hearing, Right to Appear, Instructions and Class Action Claim Form shall detail how those

Settlement Class members so desiring may opt out or object to the settlement, and how members of the Class may make a claim for settlement relief as described in Section 7.1 below.

6.5.3. The Mail Notice shall include Instructions to access the Settlement Website, contain instructions for the Class Action Claim Online Form and include a toll-free telephone number from which a Claim Form may be requested, in a form substantially similar to Exhibit A to this Agreement or as ultimately approved by the Court (provided that the font size, folding, and other printing elements or presentation may be adjusted to accommodate a booklet format and for efficient envelope and postage considerations).

6.5.4. After posting of the Mail Notice by the Settlement Administrator with the United States Postal Service, for any Mail Notices returned as undeliverable, the Settlement Administrator shall search for better or updated addresses for such returned Notices, and should such efforts indicate a possible alternate address, the Settlement Administrator may post the returned Mail Notice to the alternative address; provided, however, that if a determination is made in good faith by the Settlement Administrator that it is not possible to further update any particular Settlement Class Member's address(es) in sufficient time to repost the Class Notice(s) at least twenty (20) Days before the scheduled Final Approval Hearing, then the Settlement Administrator need make no further efforts to provide further Mail Notice to such person(s).

6.5.5. All costs of Mail Notice will be paid from the Settlement Fund, and ECA's only responsibility regarding such costs is to fund the Settlement Fund.

6.5.6. The Settlement Administrator will send an Email Notice of the Settlement to the email addresses provided no later than the posting of the Mail Notice, in a form substantially similar to Exhibit B to this Agreement or as ultimately approved by the Court. The

text of the Email Notice will also contain a link to the Settlement Website described in Section 6.6.

6.5.7. All costs of Email Notice will be paid from the Settlement Fund, and ECA's only responsibility regarding such costs is to fund the Settlement Fund.

6.6. Settlement Website: No later than the posting of the Mail Notice, the Settlement Administrator shall establish a secure Settlement Website which shall contain the Website Notice, in a form substantially similar to Exhibit C, copies of the Settlement Agreement and Exhibits, and the Mail Notice. The Settlement Website shall also contain Instructions, a Class Action Claim Online Form, and a sample Request for Exclusion Form (per Court's Order). The Settlement Website shall have a Uniform Resource Locator which identifies the Settlement Website as www.OdomSettlement.com.

6.6.1. The Settlement Website shall remain open and accessible until the stale date of the last issued checks. Settlement Class Members shall also have the option of completing their Claim Form online within the Settlement Website, utilizing an e-signature format.

6.6.2. All costs associated with the Settlement Website will be paid from the Settlement Fund, and ECA's only responsibility regarding such costs is to fund the Settlement Fund.

6.7 Toll-Free Settlement Hotline. The Settlement Administrator will establish and maintain an automated toll-free telephone line (which shall not have live operators) for persons in the Settlement Class to call with and/or to leave questions or messages to request Claim Forms and regarding Settlement-related inquiries, to answer the questions of persons who call with or otherwise communicate such inquiries to Class Counsel (except that the Settlement

Administrator shall not give, and shall not be expected to give, legal advice). All costs associated with this telephone line and arising from its operation will be paid from the Settlement Fund, and ECAs' only responsibility regarding such costs is to fund the Settlement Fund.

7. CLAIM FILING, REVIEW, AND APPROVAL PROCESS

7.1. Claim Filing Process. Settlement Class Members shall be permitted to make a Claim in one of two ways:

- (a) By completing an online Claim Form within the Settlement Website utilizing an e-signature format.
- (b) By mailing (either through posting with the United States Postal Service or through a private mail carrier, such as UPS or Federal Express, provided that proof of the mail date is reflected on the label of the mailing) a written Claim Form providing the required information, to the Settlement Administrator, on a date no later than the Claim Deadline. A written Claim Form will also be available on the Settlement Website for Settlement Class Members to download or print out and mail to the Settlement Administrator pursuant to this Section.

7.2. Any Settlement Class Member who does not properly submit a completed Claim Form as provided in Section 7.1 on or before the Claim Deadline shall be deemed to have waived any claim to Settlement Relief and any such Claim Settlement Form will be rejected.

7.3. Claim Review Process. As soon as practicable, the Settlement Administrator shall confirm that each Claim Form submitted is in the form required, that each Claim Form was submitted in a timely fashion, and that the person submitting the Claim is a member of the Settlement Class.

7.4. Notification. Within fourteen (14) Days after the Claims Deadline, the Settlement Administrator shall provide Class Counsel and ECA with a list of all Settlement Class Members who filed a Claim, whether the Claim was rejected or accepted, and if rejected, the reason it was rejected. The Parties will use their best efforts to amicably resolve any dispute about the

processing of any Claim. The Court will resolve any Claim disputes that cannot be resolved amicably.

7.5. The Settlement Administrator shall have thirty (30) Days after the Final Settlement Date within which to process the Claims and remit the appropriate Settlement Relief amounts by check to Claimants from the Settlement Fund.

7.6. Information Available to Class Counsel and ECA. Class Counsel, ECA, and/or ECA's counsel shall have the right to communicate directly with the Settlement Administrator regarding the administration of this Settlement, provided that each notifies the other within a reasonable time of all such interactions.

8. COVENANTS

The Parties covenant and agree as follows:

8.1. Covenant Not to Sue. Plaintiff and the Settlement Class Members covenant and agree: (i) not to file, commence, prosecute, intervene in, or participate in (as class members or otherwise) in any action in any jurisdiction or forum based on any of the Released Claims against any of the Released Persons; and (ii) that the foregoing covenant and this Agreement shall be a complete defense to any of the Released Claims against any of the Released Persons. However, this Agreement is not intended to and does not prohibit a Settlement Class Member from responding to inquiries from federal, state or local agencies and/or law enforcement or responding to a lawful subpoena to testify, even if the inquiries or subpoena relate to the Released Claims.

8.2. Cooperation. The Parties agree to cooperate reasonably and in good faith with the goal of obtaining entry of the Final Approval Order and the Judgment as quickly as is reasonably practicable and expeditiously reaching agreement on the matters requiring mutual agreement as set forth in this Settlement Agreement, including, but not limited to, the expeditious agreement to

the terms of all class notice documents and settlement administration protocols, and the preparation and execution of all other reasonable documents necessary to achieve Final Approval of the Settlement by the Court.

9. REPRESENTATIONS AND WARRANTIES

9.1. Plaintiff's Representations and Warranties.

9.1.1. Plaintiff represents and warrants that he is the sole and exclusive owner of all of his own Released Claims and that he has not assigned or otherwise transferred any interest in any of their Released Claims against any of the Released Persons, and further covenants that he will not assign or otherwise transfer any interest in any of their Released Claims.

9.1.2. Plaintiff represents and warrants that he has no surviving claim or cause of action against any of the Released Persons with respect to any of the Released Claims.

9.2. The Settling Parties' Representations and Warranties. The Settling Parties, and each of them on his, her, or its own behalf only, represent and warrant that they are voluntarily entering into the Settlement Agreement as a result of arm's-length negotiations among their counsel, that in executing the Settlement Agreement, they are relying solely upon their own judgment, belief, and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof; and that, except as provided herein, they do not rely to any extent whatsoever in executing the Settlement Agreement on any representations, statements, or omissions pertaining to any of the foregoing matters by any Party or by any person representing any Party to the Settlement Agreement. Each of the Settling Parties assumes the risk of mistake as to facts or law.

10. RELEASES.

10.1. Released Claims of Settlement Class. Upon Final Approval, each member of the Settlement Class, including the Plaintiff, and their present, former, or future executors, administrators, successors, predecessors, agents, parent entities, subsidiaries, divisions, related entities, affiliates, partners, limited partners, general partners, members, owners, investors, principals, employees, officers, directors, executive directors, managing directors, advisors of any kind, attorneys, servants, subrogees, indemnitors, insurers, heirs, personal or legal representatives, trusts, family member, and assigns, and any other person or entity who has the right, ability, standing, or capacity to assert, prosecute, or maintain on behalf of or through any member of the Settlement Class in such capacity only, shall be deemed to have, and by operation of the Judgment shall have, fully, conclusively, irrevocably, forever and finally resolved, released, relinquished, waived and discharged the Released Persons from any and all claims, causes of action, third-party claims, cross-claims, counterclaims, suits, obligations, debts, demands, agreements, promises, liabilities, damages, charges, losses, controversies, costs, expenses and attorneys' fees of any nature whatsoever (including expert fees and disbursements of counsel and other professionals), whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), common law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, punitive or compensatory, whether arising in equity or under the law of contract, tort, malpractice, statutory breach, or any other legal right or duty, whether direct, individual, representative, or in any other capacity, whether class or individual in nature, and to the fullest extent that the law permits their release in the Action, as of the date of Final Approval, that relate to or arise out of ECA's use of equipment or methods to contact or

attempt to contact Settlement Class Members by telephone during the Settlement Class Period (the “Released Claims”). For the avoidance of doubt, the Released Claims include claims relating to or arising out of the equipment or method used to contact or attempt to contact Settlement Class Members by telephone by ECA or any person allegedly or purportedly acting through, on behalf of, or for ECA.

10.2. Without in any way limiting their scope, the Released Claims cover by example and without limitation, any and all claims for attorneys’ fees, costs, expert fees, or consultant fees, interest, or litigation fees, or any other fees, costs, and/or disbursements incurred by Class Counsel, Plaintiff, or any Settlement Class Members in connection with or related in any manner to this Settlement, the administration of this Settlement, and/or the Released Claims, except to the extent otherwise specified in the Settlement Agreement.

10.3. In connection with the Releases in paragraph 10.1, and without expanding their scope in any way, Plaintiff and each Settlement Class Member shall be deemed, as of the date of Final Approval, to have waived any and all provisions, rights, benefits conferred by Section 1542 of the California Civil Code, and any statute, rule and legal doctrine similar, comparable, or equivalent to California Civil Code Section 1542, which provides that:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Class Representative for himself and each Settlement Class Member, expressly acknowledges that, to the extent permitted by law, he is waiving for himself in general, and on behalf of each Settlement Class Member in connection with the Released Claims, the protections of Section 1542 and of any comparable statutory or common law provision of any other jurisdiction. Plaintiff and the Settlement Class Members may hereafter discover facts, legal theories, or authorities in

addition to or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims, but Plaintiff shall expressly, and each other Settlement Class Member, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist or may have existed based on any theory of law or equity now existing or coming into existence in the future, including but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts, legal theories, or authorities. Plaintiff and ECA acknowledge, and the other Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and an essential term of the Settlement of which this release is a part. However, the release of known and unknown claims is limited to any and all claims incurred by Class Counsel, Plaintiff, or any Settlement Class Members in connection with or related in any manner to this Settlement, the administration of this Settlement, and/or the Released Claims, except to the extent otherwise specified in the Settlement Agreement.

10.4. This Agreement and the Releases herein do not affect the rights of Settlement Class Members who timely and properly submit a Request for Exclusion from the Settlement in accordance with the requirements in Section 11 of this Settlement Agreement.

10.5. The administration and consummation of the Settlement as embodied in this Settlement Agreement shall be under the authority of the Court. The Court shall retain jurisdiction to protect, preserve, and implement the Settlement Agreement, including, but not limited to, enforcement of the Releases contained in the Agreement. The Court shall retain

jurisdiction in order to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement Agreement.

10.6. Upon entry of the Final Approval Order and the Judgment: (i) the Settlement Agreement shall be the exclusive remedy for any and all Settlement Class Members, except those who have properly requested exclusion (opted out) in accordance with the terms and provisions hereof; (ii) the Released Persons shall not be subject to liability or expense for any of the Released Claims to any Settlement Class Member(s) except as set forth in this Agreement; and (iii) Settlement Class Members who have not opted out shall be permanently barred from filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise) any action in any jurisdiction or forum based on any of the Released Claims.

10.7. Nothing in this Settlement Agreement shall preclude any action to enforce the terms of the Settlement Agreement, including participation in any of the processes detailed therein. The Releases set forth herein are not intended to include the release of any rights or duties of the Settling Parties arising out of the Settlement Agreement, including the express warranties and covenants contained herein.

11. OPT-OUT RIGHTS.

11.1. Any member of the Settlement Class who wishes to opt out of the Settlement must complete and mail to the Settlement Administrator a Request for Exclusion that is postmarked no later than the Opt Out Deadline. The Request for Exclusion must: (a) identify the name and address of the Settlement Class member requesting exclusion; (b) provide the cell phone number at which that the Settlement Class member was called by ECA during the Settlement Class Period; (c) be personally signed by the Settlement Class member requesting exclusion; and (d) contain a statement that reasonably indicates a desire to be excluded from the

Settlement. Mass or class opt-outs shall not be allowed. A sample Request for Exclusion form shall be made available for downloading on the Settlement Website.

11.2. Any potential member of the Settlement Class who properly opts out of the Settlement shall: (a) not be bound by any orders or judgments relating to the Settlement; (b) not be entitled to relief under, or be affected by, the Agreement; (c) not gain any rights by virtue of the Agreement; and (d) not be entitled to object to any aspect of the Settlement.

11.3. The Settlement Administrator shall provide Class Counsel and Defense Counsel with a list of all timely Requests for Exclusion within seven (7) Days after the Opt Out Deadline.

11.4. If the number of potential members of the Settlement Class that properly and timely opt out of the Settlement exceeds the amount specified in the separate Supplemental Agreement Regarding Requests for Exclusion (“Supplemental Agreement”) between Plaintiff and ECA, ECA has the option of voiding this Settlement without penalty or sanction. In the event ECA voids the Settlement pursuant to this provision and the Supplemental Agreement, ECA shall be responsible for paying Notice and Administrative Costs incurred as of the date ECA elects to void the Settlement.

11.5. Except for those potential members of the Settlement Class who timely and properly file a Request for Exclusion in accordance with Section 11, all other potential members of the Settlement Class will be deemed to be Settlement Class Members for all purposes under the Agreement, and upon Final Approval, will be bound by its terms, regardless of whether they receive any monetary relief or any other relief.

12. OBJECTIONS.

12.1. Overview. Any potential member of the Settlement Class who does not successfully request exclusion out of the Settlement will be a Settlement Class Member and may

object to the Settlement. To object, the Settlement Class Member must comply with the procedures and deadlines in this Agreement.

12.2. Process. Any Settlement Class Member who wishes to object to the Settlement must do so in writing on or before the Objection Deadline, as specified in the Class Notice and Preliminary Approval Order. The written objection must be mailed to the Settlement Administrator, no later than the Objection Deadline.

12.2.1. The requirements to assert a valid written objection shall be set forth in the Class Notice and on the Settlement Website, and, to be valid, the written objection must include: (a) the name, address, and telephone number of the Settlement Class Member objecting and, if different, the cellular telephone number at which the Settlement Class Member was called by ECA during the Settlement Class Period; (b) a statement of each objection; (c) if represented by counsel, a written brief detailing the specific reasons, if any, for each objection, including any legal and factual support the objector wishes to bring to the Court's attention and any evidence the objector wishes to introduce in support of the objection(s); and (d) a statement of whether the Settlement Class Member objecting intends to appear at the Final Approval Hearing, either with or without counsel.

12.2.2. Any Settlement Class Member who fails to object to the Settlement in the manner described in the Class Notice and consistent with this Section shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means.

12.3. Appearance. Subject to approval of the Court, any Settlement Class Member who mails a written objection in accordance with Section 12.2 and the Class Notice may appear, in

person or by counsel, at the Final Approval Hearing held by the Court, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, but only if the objecting Settlement Class Member: (a) mails to the Clerk of the Court a notice of intention to appear at the Final Approval Hearing by the Objection Deadline (“Notice Of Intention To Appear”).

12.3.1. The Notice of Intention to Appear must include the Settlement Class Member’s full name, address, and telephone number, as well as copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member will present to the Court in connection with the Final Approval Hearing.

12.3.2. Any Settlement Class Member who does not mail a Notice of Intention to Appear in accordance with the deadlines and other specifications set forth in the Agreement and Class Notice shall not be entitled to appear at the Final Approval Hearing or raise any objections.

13. SETTLEMENT APPROVAL.

13.1. Plaintiff shall, no later than April 30, 2021, or as otherwise set by the Court, apply to the Court for entry of the proposed Preliminary Approval Order and setting of a Final Approval Hearing. Should Plaintiff decide to file the application before April 30, 2021, Plaintiff agrees to provide ECA a minimum of fifteen (15) business days’ notice before the filing date so ECA has sufficient time to notify the appropriate state and federal officials of the proposed settlement in accordance with 28 U.S.C. § 1715.

13.2. Not later than seven (7) Days before the Final Approval Motion Deadline, the Settlement Administrator will provide Class Counsel with a declaration that the Class Notice has been disseminated in accordance with the Preliminary Approval Order and identifying the number of Requests for Exclusion to the Settlement, along with the number of claims received to date.

14. TIMELINE

14.1. The proposed Preliminary Approval Order shall include the following timeline regarding settlement administration:

Last day for ECA to deposit the Common Fund with the Settlement Administrator	30 calendar days after preliminary approval
Last day for ECA to provide the Settlement Administrator with Class List	2 business day after preliminary approval
CAFA Notice by D 28 USC 1715	10 days after Preliminary Approval Motion
Last day for Settlement Administrator to mail Class Notice	30 calendar days after preliminary approval
Last day for Settlement Administrator to publish the Settlement Website	30 calendar days after preliminary approval
Last day for Class Counsel to file motion for award of attorneys' fees, litigation costs, Class Representatives' service payment, and claims administration expenses	60 calendar days after preliminary approval
Last day for requests for exclusion from the settlement to be postmarked	100 calendar days after preliminary approval
Last day for claims to be submitted	100 calendar days after preliminary approval
Last day for Settlement Class Members to serve objections to settlement	100 calendar days after preliminary approval
Last day for Class Counsel to file motion for final approval of settlement	145 calendar days after preliminary approval
Last day for the Parties to respond to any objections filed by Settlement Class Members	145 calendar days after preliminary approval
Hearing on motion for final approval of settlement and application for attorneys' fees and costs, Class Representatives' service payments, and claims administration expenses	At least 175 calendar days after preliminary approval

15. CERTIFICATION OF NATIONWIDE SETTLEMENT CLASS FOR SETTLEMENT PURPOSES.

15.1. Plaintiff shall move for Final Approval of the Settlement and entry of the Final Approval Order and Judgment, and shall request that the preliminary certification of the nationwide Settlement Class for settlement purposes be made final.

15.2. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (i) is or may be deemed to be or may be used as an

admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Released Persons, or of the propriety of certifying a class in the Action; (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of the Released Persons in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal; or (iii) is or may be deemed to be a waiver of any defense or ECA's right to seek to enforce any arbitration provision in other cases or against Settlement Class Members who opt out of the Settlement. The Released Persons may file this Agreement and/or the Judgment in any action or proceeding that may be brought against them, or in this Court at the Released Person's option, in order to bar the claim, support a defense, or support a counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

15.3. In the event that the Settlement is not approved as presented, or ECA terminates the Settlement as permitted herein, the Settling Parties agree that neither the terms of this Agreement nor any publicly disseminated information regarding the Settlement, including, without limitation, the Class Notice, court filings, orders or public statements, may be used as evidence for any purpose whatsoever. In addition, neither the fact of, nor any documents relating to, ECA's termination of the Settlement, any failure of the Court to approve the Settlement or any objections or interventions may be used as evidence for any purpose whatsoever.

16. ATTORNEYS' FEES, EXPENSES, AND PLAINTIFF'S INCENTIVE AWARD.

16.1. Class Counsel may apply to the Court for an award of Attorneys' Fees and Expenses from the Settlement Fund. Plaintiff may seek payment of Attorneys' Fees up to 25% of the Settlement Fund and Expenses. This Settlement Agreement is not dependent upon the Court's approving Class Counsel's requests for such payment or awarding the particular amount

sought by Class Counsel under Sections 16.1 through 16.2. In the event the Court declines Class Counsels' request or awards less than the amount sought, this Settlement Agreement shall continue to be effective and enforceable by the Parties. No interest will accrue on any Attorneys' Fees and Expenses awarded by the Court to Class Counsel. The Settlement Administrator shall pay the amount of Attorneys' Fees and Expenses awarded by the Court from the Settlement Fund to the account(s) of Class Counsel via wire instructions provided by Class Counsel to the Settlement Administrator within seven (7) Days after the Final Settlement Date, provided that Class Counsel provide the Settlement Administrator with a properly completed IRS Form W-9 reasonably in advance of the due date of such payment.

16.2. Class Counsel may also apply to the Court for an Incentive Award for Plaintiff to be paid solely from the Settlement Fund, in an amount not to exceed \$2,500, to be paid from the Settlement Fund. Court Approval of any Incentive Award will not be a condition of the Settlement. The Settlement Administrator shall deliver to Class Counsel a separate check from the Settlement Fund made payable to Plaintiff as an Incentive Award within seven (7) Days after the Final Settlement Date.

17. TERMINATION AND EFFECT THEREOF.

17.1. This Agreement shall be terminable by ECA if any of the conditions of Section 3 are not fully satisfied, or if the conditions of Section 11.4 occur.

17.2. If this Agreement is terminated as provided herein, either automatically or by ECA, the Settlement shall be null and void from its inception and the Settling Parties will be restored to their respective positions in the Action as of the day prior to the date of the Preliminary Approval Order. In such event, the terms and provisions of this Agreement will have no further force and effect with respect to the Settling Parties and will not be used in the

Action, or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of this Agreement will be treated as vacated, nunc pro tunc.

18. MISCELLANEOUS PROVISIONS

18.1. Confirmatory Discovery. Class Counsel shall be entitled to conduct limited confirmatory discovery about the total number of customer accounts believed to be in the Settlement Class. ECA will provide one Rule 30(b)(6) confirmatory deposition including the following topics: 1) the number of calls made to unique cell phone numbers; 2) how ECA calculated the numbers of unique numbers called; and 3) the number of calls made to those unique phone numbers and how that was calculated. Such deposition will not take longer than 60 minutes (excluding any breaks) and all questions will be provided to ECA at least one week prior to the deposition. This discovery shall be used solely for purposes of finalizing this Settlement Agreement and shall not be used for any other purpose in the event this Agreement is terminated, or is otherwise not fully and finally approved by the Court.

18.2. There will be no offset to any amounts received by any Plaintiff or Settlement Class Member under this Settlement to account for any payments to Plaintiff or Settlement Class Members under any other settlement between ECA and any governmental or private entity.

18.3. The Parties acknowledge that it is their intent to consummate this Agreement, and they agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of this Agreement. ECA shall not, however, be obligated to join in any motion for preliminary or final approval, or to support the applications for Attorneys' Fees and Expenses or Incentive Awards.

18.4. The Settling Parties intend the Settlement to be a final and complete resolution of all disputes between them with respect to the Action. The Settlement compromises claims that

are contested and will not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties agree that the consideration provided to the Settlement Class and the other terms of the Settlement were negotiated in good faith and at arm's length by the Settling Parties, and reflect a Settlement that was reached voluntarily after consultation with competent legal counsel. The amounts paid are to compromise the Claimants' claims for damages and the amounts paid represent the Claimants' compensation for such alleged damages.

18.5. Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement is or may be deemed to be or may be used as an admission or evidence of the validity of any Released Claims, or of any wrongdoing or liability of ECA; or is or may be deemed to be or may be used as an admission of, or evidence of, any fault, omission, wrongdoing, or liability of ECA in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. ECA may file this Agreement, the Final Approval Order, and/or the Judgment in any action that may be brought against it in order to support any defense or counterclaim, including, without limitation, those based on principles of res judicata, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or any other theory of claim preclusion, issue preclusion, or similar defense or counterclaim.

18.6. All agreements made and orders entered during the course of the Action relating to the confidentiality of information will survive this Agreement.

18.7. All of the Exhibits to this Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

18.8. This Agreement may be amended or modified only by a written instrument signed by or on behalf of Plaintiff and ECA, or their respective successors-in-interest. Any material changes must be approved by the Court.

18.9. This Agreement and the Exhibits attached hereto constitute the entire agreement among the Settling Parties, and no representations, warranties, or inducements have been made to any Party concerning this Agreement or its Exhibits other than the representations, warranties, and covenants covered and memorialized herein. Except as otherwise provided herein, the Settling Parties will bear their own respective costs.

18.10. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument. A complete set of counterparts will be submitted to the Court.

18.11. This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties.

18.12. The Court will retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all Settling Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement.

18.13. None of the Settling Parties, or their respective counsel, will be deemed the drafter of this Agreement or its Exhibits for purposes of construing the provisions thereof. The language in all parts of this Agreement and its Exhibits will be interpreted according to its fair meaning, and will not be interpreted for or against any Settling Party as the drafter thereof.

18.14. The Settlement shall be governed by the laws of the State of California, except to the extent that the law of the United States governs any matters set forth herein, in which case such federal law shall govern.

18.15. The following principles of interpretation apply to the Agreement: (a) the plural of any defined term includes the singular, and the singular of any defined term includes the plural, as the case may be; (b) references to a person are also to the person's successors-in-interest; and (c) whenever the words "include," "includes," or "including" are used in the Agreement, they shall not be limiting, but rather shall be deemed to be followed by the words "without limitation."

18.16. The Settlement Agreement shall not be subject to collateral attack by any Settlement Class Member or any recipient of the notices of the Settlement Class after the Final Approval Order and Judgment are entered.

18.17. Whether or not the Settlement Agreement is approved by the Court and whether or not the Settlement Agreement is consummated, the Settling Parties and their counsel shall use their best efforts to keep all negotiations, discussions, acts performed, agreements, drafts, documents signed, and proceedings in connection with the Stipulation confidential.

18.18. This Settlement Agreement shall be construed and interpreted to effectuate the intent of the Settling Parties, which is to resolve completely those claims and disputes, including in the Action, and as more fully described herein. If any provision of this Settlement Agreement shall be determined to be invalid, void, or illegal, such provision shall be construed and amended in a manner that would permit its enforcement, but in no event shall such provision affect, impair, or invalidate any other provision hereof.

18.19. Class Counsel, on behalf of the Class, is expressly authorized by Plaintiff to take all appropriate action required or permitted to be taken by the Class pursuant to this Settlement Agreement to effectuate its terms and also is expressly authorized to enter into any modifications

or amendments to this Settlement Agreement on behalf of the Class which they deem appropriate.

18.20. Each counsel executing this Settlement Agreement or any of its Exhibits on behalf of any Settling Party hereby warrants that such person has the full authority to do so.

19. NOTICES

19.1. All notices (other than the Class Notice) required by the Agreement shall be made in writing and communicated by email and mail to the following addresses:

19.2. All notices to Class Counsel shall be sent to Class Counsel, c/o:

Abbas Kazerounian
KAZEROUNI LAW GROUP, APC
245 Fischer Avenue, Suite. D1
Costa Mesa, California 92626
ak@kazlg.com

Yana A. Hart
KAZEROUNI LAW GROUP, APC
2221 Camino Del Rio South, Suite 101
San Diego, California 92108
yana@kazlg.com

Counsel for Plaintiff and Class

19.3. All notices to Defense Counsel shall be sent to Defense Counsel, c/o:

Mark Erickson
Andrea Levenson
HAYNES AND BOONE, LLP
600 Anton Boulevard, Suite 700
Costa Mesa, California 92626
mark.erickson@haynesboone.com
andrea.levenson@haynesboone.com

Counsel for Defendant

19.4. The notice recipients and addresses designated above may be changed by written agreement of Plaintiff and ECA.

19.5. Upon request, the Parties agree to promptly provide each other with copies of objections, Requests for Exclusion, or other similar documents received from Settlement Class Members in response to the Class Notice.

IN WITNESS WHEREOF, the Settling Parties have executed and caused this Settlement on the dates set forth below.

On Behalf of Defendant ECA Marketing, Inc.

Dated: 4-29-2021

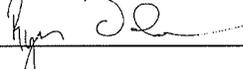
By: 

Name: JOSEPH W. SPILLMAN

Title: PRESIDENT

On Behalf of Plaintiff and the Settlement Class:

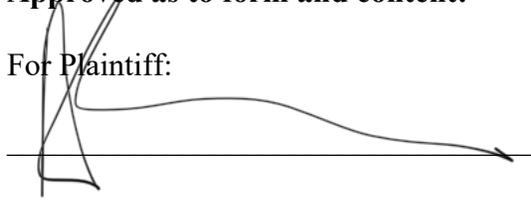
Dated: 04/28/2021

By: 

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Approved as to form and content:

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EXHIBIT A

EXHIBIT B

EXHIBIT C

EXHIBIT D

EXHIBIT E

EXHIBIT E-1