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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

CLIFFORD ARMSTRONG, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

CODEFIED INC., a Delaware corporation,

Defendant.

Case No. 2:19-cv-00239 (JAM)

**CLASS ACTION SETTLEMENT
AGREEMENT**

**Hon. John A. Mendez
Action Filed: March 28, 2019**

This Class Action Settlement Agreement (“Agreement”), is made and entered into by and between Representative Plaintiff Clifford Armstrong, on behalf of himself and the Settlement Class, and Codefied Inc. (“Codefied” or “Defendant”) to settle and compromise this action and settle, resolve, and discharge the Released Claims, as defined below, according to the terms and conditions herein.

RECITALS

WHEREAS, *Armstrong v. Codefied Inc.*, No. 2:19-cv-00239-JAM, was filed March 28, 2019 and is currently pending before the Honorable John A. Mendez of the U.S. District Court for the Eastern District of California, alleging Defendant violated the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.*;

WHEREAS, Defendant denies each and every one of Representative Plaintiff’s allegations of unlawful conduct, damages, or other injuries;

WHEREAS, based upon the investigation, and evaluation of the facts and law relating to the matters alleged in the pleadings, plus the risks and uncertainties of continued litigation and all

1 factors bearing on the merits of settlement, Representative Plaintiff and Class Counsel have
2 agreed to settle the claims asserted in the Litigation pursuant to the provisions of this Settlement;

3 **WHEREAS**, in an effort to facilitate a resolution of the Litigation and mediate settlement
4 discussions, the Settling Parties participated in a mediation in Chicago with the Hon. James
5 Holderman (Ret.) of JAMS, Inc., former Chief Judge of the United States District Court of the
6 Northern District of Illinois;

7
8 **NOW THEREFORE**, subject to the Final Approval Order of the Court as required herein
9 and applicable law and rules, the Settling Parties hereby agree, in consideration of the mutual
10 promises and covenants contained herein, that all Released Claims against any Released Parties
11 shall be settled, compromised and forever released upon the following terms and conditions.

12
13 **TERMS AND CONDITIONS OF THE SETTLEMENT**

14 **1. DEFINITIONS**

15 1.1 As used herein, the following terms have the meanings set forth below.

16 1.1.1 “Appeal” means a request for appellate review of any order or judgment of
17 the Court entered in this Litigation, including but not limited to appeals as of right, discretionary
18 appeals, interlocutory appeals, any order reinstating an appeal, and proceedings involving writs of
19 certiorari and/or any proceedings thereon.

20
21 1.1.2 “Approved Claim” means a claim submitted by a Settlement Class Member
22 that: (a) is received by the Settlement Administrator or postmarked on or before the Claims
23 Deadline; (b) is fully and truthfully completed by a Settlement Class Member with all information
24 requested in the Claim Form, and in accordance with the directions on the Claim Form; (c) is
25 signed by the Settlement Class Member, physically or electronically; and (d) is approved by the
26 Settlement Administrator pursuant to the provisions of this Agreement as a valid claim eligible to
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1 receive payment from the Settlement Fund under the Agreement and the Final Approval Order
2 and Judgment.

3 1.1.3 “CAFA Notice” means the notice of this Settlement to the appropriate
4 federal and state officials, as provided by the Class Action Fairness Act of 2005, 28 U.S.C. §
5 1715, and as further described in Paragraph 7.4.
6

7 1.1.4 “Claims Deadline” means the date that is sixty (60) days after the Notice
8 Date.

9 1.1.5 “Claim Form” means the document to be submitted by Claimants seeking
10 payment pursuant to this Settlement, attached as Exhibit A.

11 1.1.6 “Claimant” means a Settlement Class Member who submits a Claim Form.

12 1.1.7 “Class Counsel” means Avi R. Kaufman and Rachel E. Kaufman of
13 Kaufman P.A, and Stefan Coleman of the Law Offices of Stefan Coleman LLC.
14

15 1.1.8 “Court” means the U.S. District Court for the Eastern District of California.

16 1.1.9 “Complaint” means the operative complaint in this Litigation at the time
17 the Court enters the Preliminary Approval Order.

18 1.1.10 “Defendant” means collectively, Codefied Inc. (doing business as
19 Housecall Pro), as well as its past, present, and future officers, directors, shareholders, employees,
20 predecessors, affiliates, parents, subsidiaries, partners, distributors, principals, insurers,
21 administrators, agents, servants, successors, trustees, vendors, subcontractors, alleged co-
22 conspirators, buyers, independent contractors, attorneys, representatives, heirs, executors, experts,
23 consultants, and assigns of all of the foregoing persons and entities who placed calls or texts to
24 the Settlement Class concerning Codefied Inc.’s goods or services.
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1 1.1.11 “Defense Counsel” means Defendant’s counsel of record in the Litigation,
2 Orrick, Herrington & Sutcliffe LLP.

3 1.1.12 “Effective Date” means the first date by which any Judgment entered
4 pursuant to the Agreement becomes Final.
5

6 1.1.13 “Fee Award” means the amount of attorneys’ fees and reimbursement of
7 expenses that may be awarded by the Court and that will be paid out of the Settlement Fund.

8 1.1.14 “Final” means one business day following the later of the following events:
9 (i) the expiration of three (3) business days after the time to file a motion to alter or amend a
10 judgment under Fed. R. Civ. P. 59(e) has passed without any such motion having been filed; (ii)
11 the expiration of the time in which to file an Appeal has passed without any Appeal having been
12 taken; and (iii) the resolution of any Appeal in a manner that does not reverse or vacate the Final
13 Judgment and in a manner that permits the consummation of the Settlement substantially in
14 accordance with the terms and conditions of this Agreement. Any proceeding or order, or any
15 Appeal pertaining solely to any request or order regarding the Fee Award will not in any way delay
16 or preclude the Judgment from becoming Final.
17

18 1.1.15 “Final Approval Hearing” means the final hearing, held after the
19 Preliminary Approval Order is issued and Settlement Class Members have been given reasonable
20 notice and an opportunity to object or to exclude themselves from the Settlement, at which the
21 Court will determine whether to finally approve the Settlement and to enter Judgment.
22

23 1.1.16 “Final Approval Order” means an order, providing for, among other things,
24 final approval of the Settlement.

25 1.1.17 “Judgment” means the judgment to be entered by the Court pursuant to the
26 Settlement.
27

1 1.1.18 “Litigation” means *Armstrong v. Codefied, Inc.*, No. 2:19-cv-00239-JAM,
2 currently pending in the U.S. District Court for the Eastern District of California.

3 1.1.19 “Mediator” shall mean the Hon. James Holderman (Ret.) of JAMS, Inc.

4 1.1.20 “Notice” means a document, substantially in the form of Exhibit B hereto,
5 and “Summary Notice” means a document substantially in the form of Exhibit C hereto, to be
6 disseminated in accordance with the Preliminary Approval Order, informing Persons who fall
7 within the Settlement Class of, among other things, the pendency of the Litigation, the material
8 terms of the proposed Settlement, and their options with respect thereto.

9 1.1.21 “Notice Date” means the first date on which the Notice is disseminated
10 pursuant to the Notice Plan.

11 1.1.22 “Notice Plan” shall mean the proposed plan of disseminating to
12 Settlement Class Members notice of the proposed Settlement and of the Final Approval
13 Hearing, as approved by the Court.

14 1.1.23 “Opt-Out Deadline” means the date that is forty-five (45) days after the
15 Notice Date.

16 1.1.24 “Parties” means, collectively, Representative Plaintiff and Codefied.

17 1.1.25 “Person” means an individual, corporation, partnership, limited
18 partnership, association, joint stock company, estate, legal representative, trust, unincorporated
19 association, government or any political subdivision or agency thereof, any business or legal
20 entity, and such individual’s or entity’s spouse, heirs, predecessors, successors, representatives,
21 and assignees.
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1 1.1.26 “Preliminary Approval Order” means an order, providing for, among other
2 things, preliminary approval of the Settlement and dissemination of the Notice to the Settlement
3 Class according to the Notice Plan.

4 1.1.27 “Released Claims” shall mean any and all claims, liabilities, demands,
5 causes of action, or lawsuits of the Settlement Class Members, whether known or unknown,
6 whether legal, statutory, equitable, or of any other type or form, whether under federal, state, or
7 local law, and whether brought in an individual, representative, or any other capacity, of every
8 nature and description whatsoever that were brought in the Litigation or could have been brought
9 in the Litigation or relating in any way to telephone calls or texts concerning Codefied’s goods or
10 services made or sent by Codefied, its employees, agents, affiliates, representatives, vendors, or
11 independent contractors to Settlement Class Members or telephone numbers assigned to
12 Settlement Class Members, including but not limited to claims for any alleged TCPA violation or
13 any other telephone or telemarketing-related federal, state or local law, regulation or ordinance
14 and claims that in any way relate to automated calls (e.g., those made using an Automatic
15 Telephone Dialing System and/or artificial or prerecorded voice). The Released Claims shall not
16 include claims by Settlement Class Members concerning the performance of or representations
17 about Codefied’s goods or services.

18 1.1.28 “Released Parties” means Codefied, each, any and all of its past, present
19 and future heirs, executors, administrators, predecessors, successors, assigns, parent companies,
20 subsidiaries, divisions, joint venturers, entities in which Codefied has a controlling interest,
21 holding companies, employees, agents, consultants, marketing partners, resellers, lead generators,
22 telemarketers, independent contractors, insurers, reinsurers, directors, officers, partners,
23 principals, attorneys, accountants, financial advisors, investors, investment bankers, underwriters,
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1 shareholders, auditors, legal representatives, successors in interest, affiliates, trusts, and
2 corporations; and each and all of the past, present, and future officers, directors, principals,
3 representatives, employees, agents, shareholders, attorneys, successors, executors, and assigns of
4 any of the foregoing Persons.
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6 1.1.29 “Releasing Parties” means: (a) Representative Plaintiff; (b) Settlement Class
7 Members who do not timely opt out of the Settlement Class; (c) to the extent that a Settlement Class
8 Member is not an individual, all of its present, former, and future predecessors, successors, assigns,
9 parents, subsidiaries, joint ventures, and affiliates, and all employees, agents, representatives,
10 consultants, independent contractors, insurers, directors, officers, partners, principals, members,
11 attorneys, accountants, financial advisors, investors, investment bankers, underwriters,
12 shareholders, lenders, and auditors of any of the foregoing Persons; and (d) to the extent the
13 Settlement Class Member is an individual, any present, former, and future spouses, as well as the
14 present, former, and future heirs, executors, estates, administrators, representatives, agents,
15 attorneys, partners, successors, predecessors, and assigns of each of them, and any other
16 representatives of any of the foregoing Persons.
17

18 1.1.30 “Representative Plaintiff” means Plaintiff Clifford Armstrong.

19 1.1.31 “Settlement” means the settlement set forth in this Agreement.

20 1.1.32 “Settlement Administration Expenses” means the expenses incurred by the
21 Settlement Administrator in providing notice, processing claims, administering the Settlement,
22 and mailing checks for Approved Claims. Settlement Administration Expenses shall be paid
23 from the Settlement Fund.
24

25 1.1.33 “Settlement Administrator” means KCC LLC.
26

1 1.1.34 “Settlement Class” means all individuals or entities in the United States
2 who, from March 28, 2015 to the date of the Preliminary Approval Order, received one or more
3 telephone calls or texts concerning Codefied’s (*i.e.*, Housecall Pro’s) goods or services from or on
4 behalf of Defendant. Excluded from the Settlement Class are: (1) the trial judge presiding over
5 this case; (2) Codefied, as well as any parent, subsidiary, affiliate or control person of Codefied,
6 and the officers, directors, agents, servants or employees of Codefied; (3) any of the Released
7 Parties; (4) the immediate family of any such person(s); (5) any member of the Settlement Class
8 who has timely opted out of the Settlement; and (6) Class Counsel and their employees.

9
10 1.1.35 “Settlement Class Member” means a person who falls within the definition
11 of the Settlement Class and who does not opt out of the Settlement as set forth in Paragraph 11.4.

12
13 1.1.36 “Settlement Class Period” means March 28, 2015 through the date of the
14 Preliminary Approval Order.

15 1.1.37 “Settlement Class Recovery” means the amount of the Settlement Fund
16 available for distribution to the Settlement Class, after payment of Settlement Administration
17 Expenses, any Fee Award to Class Counsel, and any approved incentive award to the
18 Representative Plaintiff.

19 1.1.38 “Settlement Fund” means the fund into which Codefied will transfer funds
20 to cover all costs, expenses, and fees associated with the Settlement according to the terms set
21 forth in this Agreement.

22 1.1.39 “Settling Parties” means, collectively, Defendant, Representative Plaintiff,
23 and all Settlement Class Members.

24 1.1.40 References to “calls” or “telephone calls” in this Agreement shall be
25 deemed to include text messages.

1 1.1.41 The plural of any defined term includes the singular, and the singular of
2 any defined term includes the plural.

3 **2. DENIAL OF WRONGDOING AND LIABILITY**

4 2.1.1 Defendant denies the material factual allegations and legal claims asserted
5 by Representative Plaintiff in the Litigation, including any and all charges of wrongdoing or
6 liability arising out of any of the conduct, statements, acts or omissions alleged, or that could have
7 been alleged, in the Litigation. Further, Defendant maintains that it has strong, meritorious
8 defenses to the claims alleged in the Litigation and that it was prepared to vigorously defend all
9 aspects of the Litigation.
10

11 **3. THE BENEFITS OF SETTLEMENT**

12 3.1 Class Counsel and Representative Plaintiff recognize and acknowledge the
13 expense and length of continued proceedings that would be necessary to prosecute the Litigation
14 against Defendant through trial and appeals. Class Counsel also has taken into account
15 Defendant's financial viability, the strength of Defendant's defenses, difficulties in proving
16 liability, including the legal theories of vicarious liability and agency, and the uncertain outcome
17 and risk of the litigation, especially in complex actions such as this one, and the inherent delays in
18 such litigation. Class Counsel believes that the proposed Settlement confers substantial benefits
19 upon the Settlement Class. Based on their evaluation of all of these factors, Representative
20 Plaintiff and Class Counsel have determined that the Settlement is in the best interests of
21 Representative Plaintiff and the Settlement Class.
22

23 **4. CONFIRMATORY DISCOVERY**

24 4.1 Within thirty (30) calendar days of this Agreement, Defendant will produce call
25 records showing calls to all Settlement Class Members and information on its financial condition
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1 and will make a corporate representative available for an interview regarding its call records, calling
2 practices, policies and procedures to prevent against the placement of calls to cellphones using an
3 Automated Telephone Dialing System or an artificial or prerecorded voice, and financial condition.
4 All information provided pursuant to this paragraph shall be deemed confidential, attorneys' eyes
5 only, and it is agreed that none of the information shall be disclosed without Codefied's prior
6 express consent or Court order. Notwithstanding the foregoing, Class Counsel may respond to any
7 questions posed by the Court at the Final Approval Hearing that may call for disclosure of
8 confidential information, subject to Codefied's right to request confidentiality protections from the
9 Court.
10

11 **5. SETTLEMENT TERMS**

12 5.1 Settlement Fund: Defendant agrees to provide a Settlement Fund in the amount of
13 Two Million Two Hundred Thousand Dollars (\$2,200,000) for the purpose of making all required
14 payments under this Settlement, including payments for Approved Claims, any approved Fee
15 Award, any approved service award for Representative Plaintiff, and the costs of reasonable class
16 notice and class administration. The Parties agree Defendant's maximum monetary obligation
17 under this Agreement shall not exceed \$2,200,000. In no event shall Defendant's total financial
18 liability with respect to this Agreement, the Released Claims, and the Settlement exceed
19 \$2,200,000. Defendant shall fund the Settlement Agreement as follows: (a) within thirty (30)
20 days of the entry of the Preliminary Approval Order (and receipt of wire instructions provided by
21 the Settlement Administrator to Defendant and an executed W-9), Defendant will transfer to the
22 Settlement Administrator (via wire instructions provided by the Settlement Administrator to
23 Defendant) Two Million Two Hundred Thousand Dollars (\$2,200,000). Once Defendant
24 completes this payment, its payment obligations under this Agreement shall be deemed to have
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1 been fully satisfied. The Settlement Administrator will hold those amounts in an interest-bearing
2 escrow account, pursuant to the terms of an escrow agreement to be agreed upon between the
3 Parties and KCC that shall be consistent with this Settlement Agreement. The Settlement
4 Administrator shall only withdraw funds from that escrow account with prior notice to Codefied
5 and pursuant to express authorization pursuant to the Settlement Agreement, the Preliminary
6 Approval Order, the Final Approval Order and Judgment, or other Court order. In the event that
7 this Settlement Agreement is rescinded, voided, rendered unenforceable or terminated, the
8 Settlement Administrator shall return any and all funds remaining in the escrow account to
9 Codefied.
10

11 5.2 The Settlement Fund shall be a Qualified Settlement Fund (QSF) under Section
12 468B of the Internal Revenue Code and 26 C.F.R. § 1.468B-1, established pursuant to the
13 Preliminary Approval Order. The Settlement Administrator shall be the Administrator of the
14 QSF.
15

16 5.3 Codefied further agrees that it has and will implement policies and procedures to
17 prevent against the placement of calls to cellphones using an Automated Telephone Dialing
18 System or an artificial or prerecorded voice.
19

20 5.4 Payment to Settlement Class Members

21 5.4.1 Each Settlement Class Member shall be entitled to submit only one
22 claim, and only one claim can be made per telephone number, regardless of the number of calls
23 to that phone number.

24 5.4.2 Adequate and customary procedures and standards will be used by the
25 Settlement Administrator to prevent the payment of fraudulent claims and to pay only legitimate
26 claims, including, but not limited to, verifying claimed telephone calls with Defendant.
27

1 5.4.3 Payment will be made to Settlement Class Members who timely submit a
2 valid Claim Form by the Claims Deadline after any approved attorneys' fees, expenses, and costs,
3 any approved service award for Representative Plaintiff, and costs of reasonable class notice and
4 class administration are deducted from the Settlement Fund.
5

6 5.4.4 Each Settlement Class Member who timely submits a valid Claim Form by
7 the Claims Deadline shall be entitled to a single payment from Defendant in an amount equivalent
8 to his or her *pro rata* share of the Settlement Fund after any approved Fee Award, any approved
9 service award, and Settlement Administration Costs are deducted. Each Settlement Class
10 Member shall be entitled to receive an amount equal to the Settlement Class Recovery divided by
11 the total number of Approved Claims.
12

13 5.4.5 Payments will be made directly to the Settlement Class Member by the
14 Settlement Administrator.

15 **6. REPRESENTATIVE PLAINTIFF SERVICE AWARD**

16 6.1 Class Counsel, on behalf of Representative Plaintiff, shall petition the Court for a
17 Representative Plaintiff incentive award in an amount up to \$5,000. In the event the Court
18 approves the Settlement, but declines to award a Representative Plaintiff service award in the
19 amount requested by Class Counsel, the Settlement will nevertheless be binding on the Parties
20 and all Settlement Class Members.
21

22 6.2 The incentive award, in the amount approved by the Court shall be paid solely out
23 of the Settlement Fund within thirty (30) calendar days of the Effective Date, and shall not
24 increase Defendant's total financial liability with respect to this Agreement or Settlement. The
25 recipient of the incentive award, if any, shall be responsible for providing a form W-9 to the
26 Settlement Administrator prior to payment.
27

1 6.3 Defendant shall have no liability to Representative Plaintiff or any other Person
2 arising from any claim regarding payment of any incentive award, so long as Defendant complies
3 with its obligations under this Agreement.

4 **7. ATTORNEYS' FEES, EXPENSES, AND COSTS**

5 7.1 Class Counsel shall apply to the Court for attorneys' fees, expenses, and costs,
6 totaling up to one-third of the Settlement Fund for attorneys' fees and up to \$15,000 for
7 documented and reasonable expenses and costs. Class Counsel's application for fees, expenses,
8 and costs and the request for an incentive award shall be filed no later than fifteen (15) days prior
9 to the Opt-Out Deadline. Any Fee Award approved by the Court shall be paid solely out of the
10 Settlement Fund and shall not increase Defendant's total financial liability with respect to this
11 Agreement or Settlement.
12

13 7.2 In the event the Court approves the Settlement, but declines to award a Fee Award
14 in the amount requested by Class Counsel, the Settlement will nevertheless be binding on the
15 Parties and the Settlement Class Members.
16

17 7.3 Defendant shall have no liability to Class Counsel or any other Person arising from
18 any claim regarding the division of any award of attorneys' fees, expenses, and costs between and
19 among Class Counsel or any other counsel who may claim entitlement to any portion of the Fee
20 Award.
21

22 7.4 The Fee Award, if approved by the Court, shall be paid by wire transfer from the
23 Settlement Fund within thirty (30) calendar days following the Court's final order approving the
24 Settlement and the Fee Award, provided that the law firm or attorney being paid has executed the
25 Undertaking in the form attached as Exhibit D, and provided a copy of that Undertaking to the
26 Defendant and to the Settlement Administrator, and a Form W-9 to the Settlement Administrator,
27

1 and also provided that Class Counsel has provided the Settlement Administrator with notice of
2 the allocation of the amounts of the payments to be made to the various firms. The Fee Award
3 shall be paid from the Settlement Fund, and Defendant shall have no additional obligation of
4 Defendant to pay for attorneys' fees, costs and/or expenses of any kind. Notwithstanding the
5 foregoing, if the Judgment or Final Approval Order is reversed, vacated, modified, and/or
6 remanded for further proceedings or otherwise disposed of in any manner other than one resulting
7 in affirmance of the Judgment in full (other than solely due to a reduction or denial of the Fee
8 Award); or if the Judgment, Final Approval Order or Settlement Agreement is rescinded, voided,
9 rendered unenforceable or terminated, in whole or in part (other than solely due to a reduction or
10 denial of the Fee Award); then each law firm or attorney who has received payment of attorney's
11 fees, expenses, and costs shall, within thirty (30) calendar days of any such court action or any
12 such event, repay the full amount of the payment received by that law firm or attorney. If the
13 amount of the Fee Award is reduced after it has been paid from the Settlement Fund, then each
14 law firm or attorney shall repay to the Settlement Fund the amount of the reduction applicable to
15 that law firm's or attorney's portion of the Fee Award within thirty (30) calendar days.

18 7.5 In the event of any repayment pursuant to paragraph 6.4, then any Persons or law
19 firms who shall have received such funds shall be severally liable for the return of such payments.
20 To effectuate this provision, each individual attorney or law firm who receives a share of
21 payments under this provision shall execute the Undertaking in the form attached as Exhibit D.

23 7.6 The Court shall retain jurisdiction of any dispute regarding the Fee Award and any
24 repayment of any amount of the Fee Award.

1 **8. ADMINISTRATION AND NOTICE**

2 8.1 All costs and expenses of administering the Settlement and providing reasonable
3 Notice in accordance with the Preliminary Approval Order shall be paid out of the Settlement
4 Fund, including the cost of CAFA Notice.
5

6 8.2 Responsibilities of Settlement Administrator

7 8.2.1 The Settlement Administrator will facilitate the notice process by assisting
8 the Parties in the implementation of the Notice Plan, as well as CAFA Notice.

9 8.3 Class Settlement Website

10 8.3.1 The Settlement Administrator will create and maintain the Class
11 Settlement Website, to be activated within thirty (30) days of Preliminary Approval. The
12 Settlement Administrator’s responsibilities will also include securing an appropriate URL to be
13 agreed upon by the Parties. The Class Settlement Website will contain information about the
14 Settlement and case-related documents such as the Settlement Agreement, the Long-Form Notice
15 in the form attached hereto as Exhibit B, subject to Court modification and/or approval, the Claim
16 Form, and the Preliminary Approval Order. Settlement Class Members shall have the option to
17 file a claim electronically using the Class Settlement Website.
18

19 8.3.2 The Class Settlement Website will terminate (be removed from the
20 internet) and no longer be maintained by the Settlement Administrator thirty (30) days after either
21 (a) the Effective Date or (b) the date on which the Settlement Agreement is terminated or
22 otherwise not approved in full, if the Settlement is terminated or otherwise not approved in full.
23 The Settlement Administrator will then transfer ownership of the URL to Defendant.
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25 8.3.3 All costs and expenses related to the Class Settlement Website shall be
26 paid out of the Settlement Fund.
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8.4 CAFA Notice

8.4.1 The Parties agree that the Settlement Administrator shall serve notice of the settlement that meets the requirements of CAFA, 28 U.S.C. § 1715, on the appropriate federal and state officials no later than 10 days after the filing of this Settlement Agreement with the Court.

8.4.2 All costs and expenses related to the CAFA Notice shall be paid out of the Settlement Fund.

8.4.3 The Settlement Administrator will file a certification with the Court stating the date(s) on which the CAFA Notices were sent. Each Party will provide the other Parties with any substantive responses received in response to any CAFA Notice.

8.5 Notice Plan

8.5.1 The Notice shall conform to all applicable requirements of the Federal Rules of Civil Procedure, the U.S. Constitution (including the Due Process Clauses), Cal. Civ. Code § 1781, and any other applicable law, and shall otherwise be in the manner and form agreed upon by the Parties and approved by the Court.

8.5.2 Codefied shall provide the telephone numbers for all Settlement Class Members to the Settlement Administrator within fifteen (15) calendar days after the Court enters the Preliminary Approval Order.

8.5.3 To the extent that Codefied possesses the name and contact information for any Person it believes to be a Settlement Class Member, Codefied shall provide that information to the Settlement Administrator within fifteen (15) calendar days after the Court enters the Preliminary Approval Order. Codefied agrees that the number of Persons within the Settlement Class shall not exceed 999,999. Should the number of Persons potentially within the Settlement

1 Class exceed 999,999, as of the date of Preliminary Approval, then the cut-off date for inclusion
2 in the Settlement Class shall be the date on which the Settlement Class reached 999,999.

3 8.5.4 Subject to Court approval, within thirty (30) days after the Court enters the
4 Preliminary Approval Order, the Settlement Administrator shall send direct notice substantially in
5 the form of the Summary Notice in Exhibit C, as modified and/or approved by the Court, via U.S.
6 Postal Service, to the Settlement Class Members.

8 **9. CLAIMS PROCESS**

9 9.1 Submission of Claims. Settlement Class Members must timely submit, by mail or
10 online, a valid Claim Form substantially in the form attached as Exhibit A, as modified and/or
11 approved by the Court, by the Claims Deadline. All Claim Forms must be postmarked or
12 submitted to the Settlement Administrator, either in hard copy form or electronically via the
13 Settlement Website, by the Claims Deadline. A valid Claim Form means a Claim Form
14 containing all required information and which is signed by the claimant and is timely submitted.
15 Any Claim Form which is not timely submitted shall be denied. In the event a Settlement Class
16 Member submits a Claim Form by the Claims Deadline but the Claim Form is not complete, then
17 the Settlement Administrator shall give such Settlement Class Member a reasonable opportunity
18 to provide any requested missing information. For any Class Member who submits a Claim Form
19 determined by the Settlement Administrator to be incomplete, the Settlement Administrator may
20 mail a notice directly to such Class Member, notifying him or her of the missing information and
21 providing him or her with an opportunity to cure (the "Cure Notice"). Class Members must cure
22 incomplete claims on or before the Effective Date.

23 9.2 Claims Processing. The Settlement Administrator shall apply the terms of this
24 Settlement Agreement and the requirements set forth in the Claim Form, and any Claim Form

1 authority. Further, such decisions shall not be submitted to or admissible in any other proceeding
2 or before any other forum or authority.

3
4 **10. RELEASES**

5 10.1 Upon entry of the Judgment, Representative Plaintiff and each Settlement Class
6 Member will be deemed to have, and by operation of the Judgment will have, fully, finally, and
7 forever released, relinquished, and discharged the Released Parties from all Released Claims
8 against the Released Parties.

9
10 10.2 After entering into this Settlement Agreement, Representative Plaintiff or
11 Settlement Class Members may discover facts other than, different from, or in addition to, those
12 that they know or believe to be true with respect to the Released Claims. Representative Plaintiff
13 and Settlement Class Members expressly waive and fully, finally, and forever settle and release
14 any known or unknown, suspected or unsuspected, contingent or noncontingent claim, whether or
15 not concealed or hidden, without regard to the subsequent discovery or existence of such other,
16 different, or additional facts.

17
18 10.3 With respect to the Released Claims, all Settlement Class Members expressly
19 waive and relinquish any rights or benefits available to them under California Civil Code § 1542,
20 which provides:

21 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
22 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
23 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING
24 THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST
25 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
26 WITH THE DEBTOR.

27 10.4 Notwithstanding Section 1542 of the California Civil Code, or any other federal or
28 state statute or rule of law of similar effect, this Settlement Agreement shall be given full force

1 and effect according to each and all of its terms and provisions, including those related to any
2 unknown or unsuspected claims, liabilities, demands, or causes of action which are based on,
3 arise from, or are in any way connected with the Released Claims.
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5 10.5 Upon entry of the Final Approval Order, Representative Plaintiff, and any
6 Settlement Class Member who does not Opt Out as set forth in Paragraph 11.4 is hereby barred
7 against bringing any action against any of the Released Parties for any of the Released Claims.

8 **11. APPROVAL PROCESS**

9 11.1 Court Approval

10 11.1.1 By September 13, 2019, Class Counsel shall submit the Agreement
11 together with its Exhibits to the Court and request that the Court grant preliminary approval of the
12 Settlement, issue a Preliminary Approval Order, and schedule a hearing on whether the
13 Settlement should be granted final approval (collectively, “Motion for Preliminary Approval”).
14

15 11.1.2 In the Motion for Preliminary Approval, Class Counsel shall request that
16 the Court allow for a period of ninety (90) days between entry of the Preliminary Approval Order
17 and the Final Approval Hearing and that the Court schedule a Final Approval Hearing for a date
18 90 days from entry of the Preliminary Approval Order.

19 11.1.3 The date the Motion for Preliminary Approval is filed is the date by which
20 the Settlement shall be deemed “filed” within the meaning of 28 U.S.C. § 1715.
21

22 11.1.4 If the Motion for Preliminary Approval is granted, Class Counsel shall be
23 responsible for asking the Court to grant final approval of the Settlement and to enter a Final
24 Approval Order and Judgment, in accordance with the date set by the Court for the Final
25 Approval Hearing.
26

1 11.1.5 If the Court does not enter a Preliminary Approval Order or a Final Approval
2 Order and Judgment or if the Final Approval Order is reversed or vacated, by any court, this
3 Agreement shall terminate and be of no force or effect, except as otherwise set forth in this
4 Agreement, unless the Parties voluntarily agree to modify this Agreement in the manner necessary
5 to obtain Court approval. If this Agreement is terminated, any portion of the Settlement Fund
6 remaining, including any repayment of attorneys' fees, costs, and expenses pursuant to paragraph
7 6.4, above, shall be returned to Codefied. Notwithstanding any provision of this Agreement, the
8 Parties agree that any decision by any court as to any Fee Award to Class Counsel or any service
9 award to the Representative Plaintiff, described in Sections 6.1 and 7.1 above, including any
10 decision by any court to award less than the amounts sought, shall not prevent the Agreement from
11 becoming effective, prevent Final Judgment from being entered, or provide any grounds for
12 termination of the Agreement or the Settlement.
13

14 11.2 Procedures for Objecting to the Settlement

15 11.2.1 Settlement Class Members shall have the right to appear and show cause, if
16 they have any reason why the terms of this Agreement should not be given final approval, subject
17 to each of the sub-provisions contained in this section. Any objection to this Settlement
18 Agreement, including any of its terms or provisions, must be in writing, filed with the Court or
19 mailed to the Clerk's Office of the United States District Court for the Eastern District of
20 California, Sacramento Division, Robert T. Matsui United States Courthouse, 501 "I" Street,
21 Room 4-200, 95814, with a copy served on Class Counsel, Counsel for Defendant, and the
22 Settlement Administrator at the addresses set forth in the Notice, and postmarked no later than the
23 Opt-Out Deadline. Settlement Class Members may object either on their own or through an
24 attorney hired at their own expense.
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26
27

1 11.2.2 Any objection regarding or related to the Agreement shall contain a caption
2 or title that identifies it as “Objection to Class Settlement in *Armstrong v. Codefied, Inc.*, No.
3 2:19-cv-00239-JAM” and also shall contain the following information: (i) the objector’s name,
4 address, and telephone number; (ii) the name, address, and telephone number of any attorney for
5 the objector with respect to the objection; (iii) the factual basis and legal grounds for the
6 objection, including any documents sufficient to establish the basis for his or her standing as a
7 Settlement Class Member, including the date(s) and phone number(s) at which he or she
8 received call(s) covered by this Settlement; and (iv) identification of the case name, case
9 number, and court for any prior class action lawsuit in which the objector and the objector’s
10 attorney (if applicable) has objected to a proposed class action settlement. If an objecting party
11 chooses to appear at the hearing, no later than the Opt-Out Deadline, a notice of intention to
12 appear, either in person or through an attorney, must be filed with the Court and list the name,
13 address, and telephone number of the person and attorney, if any, who will appear.

14
15
16 11.2.3 A Settlement Class Member who appears at the Final Approval Hearing,
17 either personally or through counsel, may be permitted to argue only those matters that were set
18 forth in the timely and validly submitted written objection filed by such Settlement Class
19 Member. No Settlement Class Member shall be permitted to raise matters at the Final Approval
20 Hearing that the Settlement Class Member could have raised in his/her written objection, but
21 failed to do so, and all objections to the Settlement Agreement that are not set forth in a timely
22 and validly submitted written objection will be deemed waived.

23
24 11.2.4 If a Settlement Class Member wishes to present witnesses or evidence at
25 the Final Approval Hearing in support of a timely and validly submitted objection, all witnesses
26 must be identified in the objection, and true and correct copies of all supporting evidence must be
27

1 appended to, or filed and served with, the objection. Failure to identify witnesses or provide
2 copies of supporting evidence in this manner waives any right to introduce such testimony or
3 evidence at the Final Approval Hearing. Representative Plaintiff or Defendant or both may take
4 discovery regarding any objector, their attorney (if applicable), and the basis of any objection,
5 subject to Court approval.
6

7 11.2.5 Any Settlement Class Member who fails to comply with the applicable
8 provisions of the preceding paragraphs concerning their objection shall waive and forfeit any and
9 all rights he or she may have to object, appear, present witness testimony, and/or submit evidence,
10 shall be barred from appearing, speaking, or introducing any testimony or evidence at the Final
11 Approval Hearing, shall be precluded from seeking review of this Agreement by appeal or other
12 means, and shall be bound by all the terms of this Agreement and by all proceedings, orders and
13 judgments in the Litigation. By filing an objection, objectors and their counsel submit to the
14 jurisdiction of the Court for all purposes, including but not limited to subpoenas and discovery.
15

16 11.3 Right to Respond to Objections

17 11.3.1 Class Counsel and the Parties shall have the right, but not the obligation, to
18 respond to any objection no later than ten (10) days prior to the Final Approval Hearing. The
19 Settling Party so responding shall file a copy of the response with the Court, and shall serve a
20 copy, by hand or overnight delivery, to the objector (or counsel for the objector).
21

22 11.4 Opt Outs

23 11.4.1 Any Settlement Class Member who does not wish to participate in this
24 Settlement must write to the Settlement Administrator stating an intention to be “excluded” from
25 this Settlement. This written request for exclusion must be sent via first class United States mail
26 to the Settlement Administrator at the address set forth in the Notice and postmarked no later than
27

1 the Opt-Out Deadline. A request for exclusion must be signed by the Settlement Class Member,
2 and must include the Settlement Class Member's name, address, and the telephone number that
3 allegedly received a call by or on behalf of Defendant during the Settlement Class Period, and
4 must clearly state that the Person wishes to be excluded from the Litigation and the Agreement.
5 A request for exclusion that does not include all of this information, or that is sent to an address
6 other than that designated in the Notice, or that is not postmarked within the time specified, shall
7 be invalid, and the Person serving such a request shall be a member of the Settlement Class and
8 shall be bound as a Settlement Class Member by the Court's Orders in this Litigation and by this
9 Agreement, if approved. The request for exclusion must be personally signed by the Settlement
10 Class Member. So-called "mass" or "class" opt-outs shall not be allowed.

11
12
13 11.4.2 Any Person in the Settlement Class who submits a request for exclusion
14 may not file an objection to the Settlement. If a Settlement Class Member submits a written
15 request for exclusion pursuant to Paragraph 11.4 above, he or she shall be deemed to have
16 complied with the terms of the opt-out procedure and shall not be bound by the Agreement if
17 approved by the Court.

18
19 11.4.3 After Notice is disseminated and at least fifteen (15) days prior to the Opt-
20 Out Deadline, the Parties shall request and seek to obtain from the Court a Final Approval Order
21 and Judgment, which will (among other things):

- 22 (i) find that the Court has personal jurisdiction over all Settlement Class
23 Members and that the Court has subject-matter jurisdiction to approve the
24 Agreement, including all exhibits hereto;
- 25 (ii) approve the Settlement Agreement and the proposed Settlement as fair,
26 reasonable, and adequate as to, and in the best interests of, Settlement Class
27 Members; direct the Parties and their counsel to implement and
28 consummate the Agreement according to its terms and provisions; and

1 declare the Agreement to be binding on, and have preclusive effect on all
2 pending and future lawsuits or other proceedings maintained by or on
3 behalf of Representative Plaintiff and the Releasing Parties;

4 (iii) find that the Notice and the Notice Plan implemented pursuant to the
5 Agreement (1) constitute the best practicable notice under the
6 circumstances; (2) constitute notice that is reasonably calculated, under the
7 circumstances, to apprise members of the Settlement Class of the pendency
8 of the Litigation, their right to object to or exclude themselves from the
9 proposed Settlement, and to appear at the Final Approval Hearing; (3) are
reasonable and constitute due, adequate, and sufficient notice to all Persons
entitled to receive notice; and (4) meet all applicable requirements of the
Federal Rules of Civil Procedure, the Due Process Clause of the United
States Constitution, and the rules of the Court;

10 (iv) dismiss the Action (including all individual claims and Settlement Class
11 Member claims asserted therein) on the merits and with prejudice, without
12 fees or costs to any Party, except as provided in the Settlement Agreement;
13 incorporate the releases set forth above in Paragraph 10, make those
14 releases effective as of the date of the Final Approval Order and Judgment;
and

15 (v) forever discharge the Released Parties as set forth herein; permanently bar
16 and enjoin all Settlement Class Members from filing, commencing,
17 prosecuting, intervening in, or participating (as class members or
otherwise) in, any lawsuit or other action in any jurisdiction related to the
Released Claims.

18 **12. TAXES**

19 12.1 Settlement Class Members, Representative Plaintiff, and Class Counsel shall be
20 responsible for paying any and all federal, state, and local taxes due on any payments made to
21 them pursuant to the Settlement Agreement.
22

23 **13. CONDITIONS FOR EFFECTIVE DATE; EFFECT OF TERMINATION**

24 13.1 The Effective Date of this Agreement shall be the date the Judgment has become
25 Final, as defined in Paragraph 1.1.14.
26

1 13.2 If this Agreement is not approved by the Court or the Settlement is terminated or
2 fails to become effective in accordance with the terms of this Agreement, the Settling Parties will
3 be restored to their respective positions in the Litigation as of August 14, 2019. In such event, the
4 terms and provisions of this Agreement will have no further force and effect with respect to the
5 Settling Parties and will not be used in this Litigation or in any other proceeding for any purpose,
6 and any Judgment or order entered by the Court in accordance with the terms of this Agreement
7 will be treated as vacated.

9 13.3 The Parties agree to request a stay of the Litigation pending approval of the
10 Settlement.

11 **14. MISCELLANEOUS PROVISIONS**

12 14.1 Cooperation of the Parties: The Parties acknowledge that it is their intent to
13 consummate this Agreement, and they agree to cooperate to the extent reasonably necessary to
14 effectuate and implement all terms and conditions of this Agreement and to exercise their best
15 efforts to accomplish the foregoing terms and conditions of this Agreement. The Parties agree that
16 they will not solicit, facilitate, or assist in any way, requests for exclusions or objections by
17 putative or actual Settlement Class Members. Class Counsel recognize that they have an
18 obligation to support the Settlement and to seek the Court's approval of its terms. Class Counsel
19 will abide by all applicable and governing ethical rules, opinions, and obligations precluding their
20 representation of opt-outs.

21 14.2 Resolution of Dispute without Admission: The Parties intend the Settlement to be
22 a final and complete resolution of all disputes between them with respect to the Litigation. The
23 Settlement covers claims that are contested and will not be deemed an admission by any Settling
24 Party as to the merits of any claim or defense.

1 14.3 Use In Subsequent Proceedings: Neither this Agreement nor the Settlement, nor
2 any act performed or document executed pursuant to or in furtherance of this Agreement or the
3 Settlement is or may be deemed to be or may be used as an admission of, or evidence of, the
4 validity of any Released Claims, or of any wrongdoing or liability of Defendant; or is or may be
5 deemed to be or may be used as an admission of, or evidence of, any fault or omission of
6 Defendant in any civil, criminal, or administrative proceeding in any court, administrative agency
7 or other tribunal. Any party to this Litigation may file this Agreement and/or the Judgment in any
8 action that may be brought against it in order to support any defense or counterclaim, including
9 without limitation those based on principles of *res judicata*, collateral estoppel, release, good faith
10 settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion
11 or similar defense or counterclaim.
12

13
14 14.4 Confidential Information: All agreements made and orders entered during the
15 course of the Litigation relating to the confidentiality of information will survive this Agreement.
16

17 14.5 Incorporation of Exhibits: Any and all Exhibits to this Agreement are material and
18 integral parts hereof and are fully incorporated herein by this reference.
19

20 14.6 Modification: This Agreement may be amended or modified only by a written
21 instrument signed by or on behalf of all Parties or their respective successors-in-interest.
22

23 14.7 Integration: This Agreement and any Exhibits attached hereto constitute the entire
24 agreement among the Parties, and no representations, warranties, or inducements have been made
25 to any Party concerning this Agreement or its Exhibits other than the representations, warranties,
26 and covenants covered and memorialized in such documents. Except as otherwise provided
27 herein, the Parties will bear their own respective costs.
28

1 party can respond to inquiries initiated by the media, and in doing so may decline to comment, or
2 may refer to the Class Notice and/or refer to the court file in this Action.

3 14.14 Interpretation: None of the Parties, or their respective counsel, will be deemed the
4 drafter of this Agreement or its Exhibits for purposes of construing the provisions thereof. The
5 language in all parts of this Agreement and its Exhibits will be interpreted according to its fair
6 meaning, and will not be interpreted for or against any of the Parties as the drafter thereof.


7 14.15 Voiding the Agreement: If 10,000 or more Settlement Class Members opt out of
8 the Settlement, Defendant may at its option elect to withdraw from the Settlement and void this
9 Agreement.

10 14.16 Governing Law: This Agreement and any Exhibits hereto will be construed and
11 enforced in accordance with, and governed by, the internal, substantive laws of the State of
12 California without giving effect to that State's choice-of-law principles.


13 14.17 The headings used herein are used for the purpose of convenience only and are not
14 meant to have legal effect.

15 14.18 No Waiver: The waiver by one Party of any breach of this Agreement by any
16 other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this
17 Agreement.

1 IN WITNESS WHEREOF, the Parties have executed and cause this Agreement to be executed by
2 their duly authorized attorneys, dated as of September 13, 2019.
3

4 5 Dated: 6 7 8 9 10 11 12 13 14	September 13, 2019  Paul Strasen, General Counsel On Behalf of Defendant Codefied Inc.
Dated:	 Clifford Armstrong

15 **APPROVED AS TO FORM AND CONTENT:**

16 17 18 19 20 21 22 23 24 25 26 27 28	Dated: September 13, 2019  Elyse D. Echtman ORRICK, HERRINGTON & SUTCLIFFE LLP Attorney for Codefied Inc.
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1 IN WITNESS WHEREOF, the Parties have executed and cause this Agreement to be executed by
2 their duly authorized attorneys, dated as of September 13, 2019.
3
4

Dated:	<hr/> Paul Strasen, General Counsel On Behalf of Defendant Codefied Inc.
Dated: Sep 13, 2019	<u>CLIFFord W. ARMSTRONG</u> <small>CLIFFord W. ARMSTRONG (Sep 13, 2019)</small> <hr/> Clifford Armstrong

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14 **APPROVED AS TO FORM AND CONTENT:**

Dated:	<hr/> Elyse D. Echtman ORRICK, HERRINGTON & SUTCLIFFE LLP Attorney for Codefied Inc.
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<p>Dated: 9/13/19</p>	 <hr/> <p>Rachel E. Kaufman KAUFMAN P.A. Attorney for Representative Plaintiff and the Settlement Class</p>
<p>Dated: 9/13/19</p>	 <hr/> <p>Amanda F. Benedict LAW OFFICE OF AMANDA F. BENEDICT Attorney for Representative Plaintiff</p>