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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.

No. 2:19-cv-00550-JAM-EFB

**DECLARATION OF AVI R. KAUFMAN IN SUPPORT OF PLAINTIFF’S UNOPPOSED
MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT**

Avi R. Kaufman declares as follows:

1. I am one of the attorneys designated as Class Counsel for Plaintiff under the Settlement Agreement (“Settlement” or “Agreement”) entered into with Defendant Codefied Inc.¹ I submit this declaration in support of Plaintiff’s Unopposed Motion for Final Approval of Class Settlement. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.
2. The Parties’ proposed Settlement is exceedingly fair and reasonable.
3. First, it provides relief for Settlement Class Members where their recovery, if any, would otherwise be uncertain, especially given Defendant’s financial condition and willingness to continue its vigorous defense of the case.

¹ All capitalized defined terms used herein have the same meanings ascribed in the Agreement.

1 4. Second, the Settlement was reached only after first engaging in extensive pre-
2 litigation discovery, informal pre-mediation discovery, confirmatory discovery including a
3 formal, in-person interview of Codefied’s Chief Operating Officer, and extensive arm’s-length
4 negotiations, including mediation before the Honorable Judge Holderman (Ret.) with JAMS in
5 Chicago.

6
7 5. Third, the Settlement was not conditioned on any amount of attorneys’ fees for
8 Class Counsel or Service Award for Plaintiff, which speaks to the fundamental fairness of the
9 process.

10 6. On or about the time of the Parties’ Rule 26 conference, the Parties began
11 settlement discussions, and ultimately agreed to submit to early mediation with Judge James F.
12 Holderman (Ret.) of JAMS.

13
14 7. On July 15, 2019, the Parties participated in an initial mediation conference with
15 Judge Holderman. The Parties engaged in confidential settlement discovery in preparation for
16 mediation. Based on the Parties’ analyses of the relative strengths and weaknesses of their cases
17 through discovery and Defendant’s financial condition, on August 14, 2019, the Parties engaged
18 in a full-day contentious mediation with Judge Holderman at JAMS in Chicago, resulting in an
19 agreement in principle to settle the Action. Thereafter, the Parties provided notice of the Parties’
20 agreement to settle the Action. Following further negotiations and discussions, the Parties
21 resolved all remaining issues, culminating in the Settlement Agreement.

22
23 8. Class Counsel conducted a thorough analysis of Plaintiff’s claims and engaged in
24 extensive discovery. Class Counsel’s review of that discovery and attendant issues enabled them
25 to gain an understanding of the evidence related to central questions in the Action and prepared
26 them for well-informed settlement negotiations, including understanding Codefied’s financial
27 capacity as a start-up.
28

1 9. Class Counsel are confident in the strength of Plaintiff's case, but are also
2 pragmatic in their awareness of Codefied's financial viability as a start-up, the various defenses
3 available to Defendant, and the risks inherent in trial and post-judgment appeal. The success of
4 Plaintiff's claims turn on questions that would arise at class certification, summary judgment, trial
5 and during an inevitable post-judgment appeal. Under the circumstances, Class Counsel
6 appropriately determined that the Settlement outweighs the risks of continued litigation.
7

8 10. The Parties recognize and acknowledge the expense and length of continued
9 proceedings that would be necessary to prosecute the Litigation against Codefied through trial
10 and potentially appeals. Plaintiff's counsel also has taken into account Codefied's financial
11 viability, the strength of Codefied's defenses, difficulties in proving liability, including the legal
12 theories of vicarious liability and agency, and the uncertain outcome and risk of the litigation,
13 especially in complex actions such as this one, and the inherent delays in such litigation.
14

15 11. Plaintiff's counsel believe that the proposed Settlement confers substantial benefits
16 upon the Settlement Class, including an immediate payout of approximately \$180 to all claiming
17 Class Members and Defendant's agreement that it has and will implement policies and procedures
18 to prevent against the placement of calls to cellphones using an Automated Telephone Dialing
19 System or an artificial or prerecorded voice.
20

21 12. Based on the evaluation of all of these factors, Plaintiff and Plaintiff's counsel
22 have determined that the Settlement is in the best interests of Plaintiff and the Settlement Class.

23 13. The Settlement here is the result of extensive, arm's-length negotiations between
24 experienced attorneys who are familiar with class action litigation and with the legal and factual
25 issues of this Action.
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1 14. Class Counsel are particularly experienced in the litigation, certification, and
2 settlement of nationwide TCPA class action cases. *See* Firm Resume attached hereto as Exhibit
3 1.

4 15. Class Counsel zealously represented Plaintiff and the Settlement Class's best
5 interests throughout this litigation, and will continue to do so.

6 16. The \$2,200,000 being made available for the Settlement Class is more than
7 reasonable given the complexity of the litigation, significant limitations of Codefied's financial
8 capacity, and significant risks and barriers that loomed in the absence of settlement including, but
9 not limited to, class certification, summary judgment, *Daubert* motions, trial, as well as appellate
10 review following a final judgment. This Settlement is therefore a fair and reasonable recovery.

11 17. In this Action, my office co-counseled with the Law Offices of Stefan Coleman,
12 P.A. Both my firm and Mr. Coleman's firm have dedicated substantial resources to the Action's
13 prosecution, and we intend to continue doing so through the duration of the Action.

14 18. Below, I set forth the nature of the work Kaufman P.A. performed in the Action to
15 demonstrate why Class Counsel's request for attorneys' fees and expenses is reasonable and
16 should be approved by the Court.

17 19. I was involved in all major aspects of litigating this Action. Those efforts
18 generally fell into the following categories: (a) pre-filing investigation and pleadings; (b) post-
19 filing investigation and informal discovery; (c) motion practice; (d) settlement; and (e) case and
20 settlement management.

21 20. I am the attorney who oversaw the day-to-day activities in this Action and
22 reviewed the time records in connection with the preparation of this Declaration. The purpose of
23 this review was to confirm the accuracy of the time entries, as well as the necessity for, and
24 reasonableness of, the time and expenses committed to this Action. As a result of this review, I
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1 believe the time reflected herein and the expenses for which payment is sought are reasonable and
 2 were necessary for the effective and efficient prosecution and resolution of the Action. In
 3 addition, I believe that the expenses are all of a type that would be typically charged to an hourly
 4 fee-paying client in the private legal market.

5
 6 21. In total, I devoted 249.5 hours to this litigation and Rachel E. Kaufman devoted
 7 146.25 hours to this litigation, as of December 30, 2019.² A breakdown of the lodestar per
 8 attorney is provided below. The total lodestar amount for Kaufman P.A.’s time is based on the
 9 hourly rates under the Adjusted Laffey Matrix and decreased for the Sacramento area. A copy of
 10 the current Adjusted Laffey Matrix is attached hereto as Exhibit 2. My hourly rate is \$650, and
 11 Ms. Kaufman’s hourly rate is \$730.

12 **Pre-filing Investigation and Pleadings**

13
 14 22. Before filing the Action, Kaufman P.A. conducted a thorough investigation into
 15 the facts of the case as well as researching the potential claims Plaintiff and the Class had against
 16 Codefied. This work also involved drafting and filing the pleadings.

17

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Avi R. Kaufman	\$650	15.5	\$10,075
Rachel E. Kaufman	\$730	11	\$8,030
	Total	26.5	\$18,105

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 22 **Post-filing Investigation and Informal Discovery**

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 24 23. This phase of litigation included work performed by Kaufman P.A. that included,
 25 but was not limited to meeting and conferring with opposing counsel regarding a discovery plan;
 26 preparation of a third party subpoena; extensive investigation of the Defendant, the claims, and a
 27

28 ² Detailed billing records are available for the Court’s in camera inspection on request.

1 potential Do-Not-Call claim; extensive discussions with opposing counsel regarding informal
 2 discovery; review and analysis of thousands of pages of electronic discovery, including call logs
 3 and vendor agreements; confirmatory discovery including a formal, in-person interview with
 4 Defendant's corporate representative.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Avi R. Kaufman	\$650	64.5	\$41,925
Rachel E. Kaufman	\$730	24.5	\$17,885
	Total	89	\$59,810

Law and Motion Practice

12 24. During this phase of the litigation, the work performed by Kaufman P.A. included,
 13 but was not limited to, analyzing Defendant's Motion to Dismiss and drafting a response in
 14 opposition thereto; meeting and conferring with opposing counsel regarding and preparation of
 15 stipulations; research and the briefing of the motion for preliminary approval and the motion for
 16 final approval, award of attorneys' fees, costs, and a service award.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Avi R. Kaufman	\$650	49.75	\$32,337.50
Rachel E. Kaufman	\$730	65	\$47,450
	Total	114.75	\$79,787.50

Settlement

25 25. During this phase of the litigation, Kaufman P.A. was engaged in all aspects of
 26 settlement negotiations with opposing counsel and the mediator, including, but not limited to, pre-
 27 mediation negotiations with opposing counsel, pre-mediation calls with the mediator, drafting a
 28

1 mediation statement, analyzing Codefied's mediation statement, attending mediation, and
 2 reviewing and revising various iterations of the settlement agreement and associated documents.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Avi R. Kaufman	\$650	84	\$54,600
Rachel E. Kaufman	\$730	30.5	\$22,265
	Total	104.5	\$76,865

Case and Settlement Management

10 26. During this phase of the litigation, Kaufman P.A. drafted and edited various
 11 stipulations and notices; dealt with scheduling issues; coordinated with settlement administrator
 12 regarding the implementation of the notice plan and claims process, including reviewing and
 13 revising notices; and addressed inquiries from Class Members about the settlement.

<i>Timekeeper</i>	<i>Hourly Rate</i>	<i>Hours Worked</i>	<i>Lodestar</i>
Avi R. Kaufman	\$650	35.75	\$23,237.50
Rachel E. Kaufman	\$730	15.25	\$11,132.50
	Total	51	\$34,370

Additional Time

21 27. Based on my experience in prior class-wide litigation, I conservatively anticipate
 22 that Kaufman P.A. will expend an additional 45 hours, on top of the above-itemized time, in
 23 preparing for and attending the final fairness hearing, overseeing the claims process for the
 24 settlement, and responding to Class Members' inquiries.

Reasonable Expenses

28. The costs incurred by Kaufman P.A. total \$6,032.68, which were reasonable and necessary to effective litigation of this case. Moreover, Class Counsel incurred these costs at the risk of receiving nothing in return. The costs reasonably expended in this action include the following:

<i>Expenses</i>	<i>Amount</i>
Travel, Hotels, and Airfare	\$5468.05
Mediation	\$539.13
Postage	\$25.50
Total	\$6,032.68

29. The expenses incurred in this Action are reflected in the books and records of my firm. These books and records are prepared from receipts, check records, credit card statements, and other source materials, and are accurate records of the expenses incurred.

30. Class Counsel represented Plaintiff and the Class on a purely contingent basis. Class Counsel assumed the significant risk that they would not be compensated for time and out of pocket expenses invested into this contentious case. This risk of nonpayment incentivized counsel to work efficiently, to prevent duplication of effort, and to advance expenses responsibly.

31. Class Counsel assumed significant risk of nonpayment in initiating and expending attorney hours in this case given the complex legal issues involved and Defendant’s vigorous defense of Plaintiff’s and the Classes’ claims.

* * *

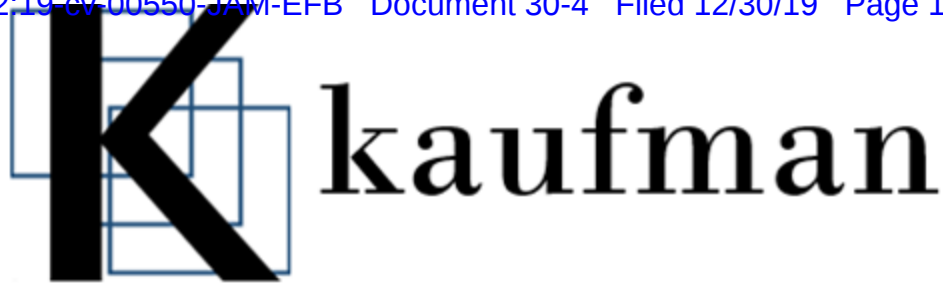
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I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated: December 30, 2019

/s/ Avi R. Kaufman
Avi R. Kaufman

EXHIBIT 1



400 Northwest 26th Street ■ Miami, Florida 33127

kaufman@kaufmanpa.com ■ (305) 469-5881 ■ www.KaufmanPA.com

Law Firm Resume

Kaufman P.A. is a law firm specializing in consumer class actions and complex business litigation matters. Since 2010, the attorneys of Kaufman P.A. have worked on consumer class action cases that have ended in class-wide settlements totaling more than \$100 million. Kaufman P.A.'s attorneys have also successfully recovered millions of dollars in settlements and judgments for plaintiffs in breach of contract actions in the media, real estate, fashion, healthcare, telecommunications, and banking industries.

Avi R. Kaufman, Esq. has a degree in government from Harvard University and a JD from Georgetown University Law Center. Prior to founding Kaufman P.A., Avi worked at Kopelowitz Ostrow Ferguson Weiselberg Gilbert and Carlton Fields Jordan Burt in their national class action and commercial litigation practice groups.

Rachel E. Kaufman, Esq. has degrees in communications and philosophy from Northwestern University and a JD from Boston University School of Law. Prior to joining Kaufman P.A., Rachel worked at Lash & Goldberg in its commercial litigation practice and Epstein, Becker & Green in its class action, commercial litigation and healthcare practices.

During the last two years, the attorneys of Kaufman P.A. have specialized in matters arising under the Telephone Consumer Protection Act and have been appointed as class counsel or interim lead counsel in the following actions:

- *Gottlieb v. CITGO Petroleum Corporation* (S.D. Fla. 2017), a nationwide Telephone Consumer Protection Act class action resulting in an \$8.3 million class wide settlement.
- *In re Uber Text Messaging* (N.D. Cal. 2018), a national Telephone Consumer Protection Act putative class action.
- *Broward Psychology, P.A. v. SingleCare Services, LLC* (Fla. Cir. Ct. 2019), a Florida Telephone Consumer Protection Act class action resulting in a \$925,110 class wide settlement.
- *Van Elzen v. Educator Group Plans, et. al.* (E.D. Wis. 2019), a nationwide Telephone Consumer Protection Act class action resulting in a \$900,000 class wide settlement.
- *Halperin v. YouFit Health Clubs, LLC* (S.D. Fa. 2019), a nationwide Telephone Consumer Protection Act class action resulting in a \$1.4 million class wide settlement.

EXHIBIT 2

LAFFEY MATRIX

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- [Expert Opinions](#)
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- [Contact us](#)
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			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645

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		\$119	\$255	\$331	\$457	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375
6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363

The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., McDowell v. District of Columbia, Civ. A. No. 00-594 (RCL), LEXSEE 2001 U.S. Dist. LEXIS 8114 (D.D.C. June 4, 2001); Salazar v. Dist. of Col., 123 F.Supp.2d 8 (D.D.C. 2000).

* “Years Out of Law School” is calculated from June 1 of each year, when most law students graduate. “1-3” includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). “4-7” applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier “1-3” from June 1, 1996 until May 31, 1999, would move into tier “4-7” on June 1, 1999, and tier “8-10” on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.