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17 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
18 **COUNTY OF SANTA BARBARA**

19 DIANE HIGHTREE, individually and on
20 behalf of all others similarly situated,
21 **Plaintiff,**
22 vs.
23 **AMPLIFY, LTD., and DOES 1 through 10,**
24 **inclusive,**
25 **Defendants.**

Case No. 20CV01532
[CLASS ACTION]
CLASS ACTION SETTLEMENT AGREEMENT
Hon. Thomas P. Anderle
Department 3

Complaint Filed: March 20, 2020

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This Class Action Settlement Agreement and Release, dated June 12, 2020, is made and entered into by and between Plaintiff Diane Hightree, on behalf of herself and the Settlement Class, on the one hand, and Defendant Amplify, Ltd., on the other hand, to settle and resolve and discharge the Released Claims, as defined below, according to the terms and conditions herein.

PREAMBLE

1. WHEREAS, on November 12, 2019, Plaintiff notified Defendant of alleged violations of the California Consumers Legal Remedies Act (“CLRA”), California Civil Code Section 1750, *et seq.*, in connection with its product advertising and labeling, including the product efficacy and effectiveness.

2. WHEREAS, on March 20, 2020, Plaintiff filed a class action lawsuit against Defendant styled *Hightree v. Amplify, Ltd.*, Santa Barbara Superior Court of California, Case No. 20CV01532.

3. WHEREAS, Plaintiff alleges in this Action that Defendant has engaged in acts that constitute a breach of express warranty, breach of implied warranty, and unjust enrichment, as well as violate the rules and regulations of the U.S. Food & Drug Administration, and California state consumer protections laws (including California’s False Advertising Law (“FAL”), Bus. & Prof. Code § 17500 *et seq.*, California’s Unfair Competition Law (“UCL”), Bus. & Prof. Code § 17200 *et seq.*, and the CLRA, and that as a direct result of such violations, Plaintiff and putative class members have suffered injury and harm, and, as a result, seek monetary recovery, including restitution and damages, and seek injunctive relief, as well as other equitable remedies.

4. WHEREAS, on April 7, 2020, the Settling Parties participated in a mediation before the Honorable James Warren (Ret.) at JAMS in San Francisco, California. Although the Parties did not reach a settlement that day, on April 9, 2020, Judge Warren provided the Parties with a mediator’s proposal with an all-inclusive monetary component amount for a nationwide class settlement. On April 10, 2020, Judge Warren informed the Settling Parties that both sides had accepted the mediator’s proposal. Based on the input, guidance and recommendations of Judge Warren from the mediation and subsequent mediator’s proposal, Plaintiff’s Counsel and Defendant’s Counsel then negotiated other terms of a classwide settlement providing for both monetary and injunctive relief for Plaintiff and a

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1 nationwide class, and an appropriately tailored release for Defendant. Plaintiff served confirmatory
2 discovery on Defendant on April 16, 2020. Soon thereafter, the Parties further conferred to discuss the
3 specifics of injunctive relief and class settlement. Defendant responded to Plaintiff’s confirmatory
4 discovery on June 11, 2020.

5 5. WHEREAS, based upon the case discovery taken to date, investigation, and
6 evaluation of the facts and law relating to the matters alleged in the pleadings, plus the risks and
7 uncertainties of continued litigation and all factors bearing on the merits of settlement, the Settling
8 Parties have agreed to settle the claims asserted in the Action pursuant to provisions of this
9 Settlement.

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

15 **TERMS AND CONDITIONS OF THE SETTLEMENT**

16 1. DEFINITIONS

17 The terms used in this Class Action Settlement Agreement and in the related documents,
18 attached hereto as exhibits, shall have the meanings set forth below.

19 1.1. “Action” means the civil case entitled *Hightree v. Amplify, Ltd.*, Case No.
20 20CV01532, currently pending in the Santa Barbara Superior Court of California.

21 1.2. “Administrative Costs” means all costs and expenses incurred in administering the
22 Class Action Settlement Agreement, including without limitation in providing Notice to the
23 Settlement Class in accordance with the Preliminary Approval Order, in an amount not to exceed
24 \$100,000, without the prior written approval of the Parties.

25 1.3. “Court” means the California Superior Court for the County of Santa Barbara, the
26 Honorable Thomas P. Anderle, Superior Court Judge, presiding.

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1 1.4. "Claim" or "Settlement Claim" means a claim for cash payment submitted by a
2 Settlement Class Member to the Claims Administrator as provided in this Class Action Settlement
3 Agreement.

4 1.5. "Claim Form" or "Settlement Claim Form" means a claim form, substantially in the
5 format of Exhibit C attached hereto, and any other necessary documentation to be submitted by
6 Claimants to the Claims Administrator pursuant to this Class Action Settlement Agreement.

7 1.6. "Claim Fund" means the sum of money that Defendant shall make available for
8 payment of Valid Claims, which shall equal the amount of money remaining from the Total
9 Monetary Settlement Amount after deducting Administrative Costs, any attorney's fees, costs, and
10 reasonable litigation expenses awarded by the Court, and any incentive award ordered by the
11 Court.

12 1.7. "Claimant" means a Settlement Class Member who submits a claim for payment.

13 1.8. "Claims Administrator" refers to CPT Group.

14 1.9. "Class Action Settlement Agreement," "Settlement Agreement," "Settlement," or
15 "Agreement" means this Class Action Settlement Agreement, including the attached exhibits.

16 1.10. "Class Counsel" means Shireen M. Clarkson, Ryan J. Clarkson, and Zach Chrzan of
17 Clarkson Law Firm, P.C.

18 1.11. "Class Member" means any and all persons who are within the Settlement Class.

19 1.12. "Class Period" means the time period between March 20, 2016, through the deadline
20 for claim submission set forth in the Preliminary Approval Order..

21 1.13. "Class Representative" means Diane Hightree.

22 1.14. "Class Settlement Website" means the Internet website created and maintained by
23 the Claims Administrator for purposes of administering the Settlement.

24 1.15. "Court" means the Santa Barbara Superior Court of California.

25 1.16. "Covered Products" or "Settlement Class Products" means all cosmetics products
26 sold or distributed by Defendant during the Class Period, including but not limited to Microstem
27 Shampoo, Microstem Conditioner, Microstem Hair Stimulation Serum, Stem Cell Shampoo, Stem
28 Cell Conditioner, Microstem Hair Thickening Mask, Advanced Hair Supplement, Nail Serum,

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1 Brow & Lash Booster, Nail Formula, Protective Skin & Lip Moisturizer, Complete Collagen +
2 MCT, SPF 30 Skin Moisturizer, Stem Cell Face Mask, Neck & Decolletage Cream, and Nail &
3 Cuticle Oil, and all other similar products and variations of the above-listed and identified
4 products sold or distributed by Defendant.

5 1.17. “Defendant” means Amplify, Ltd., as well as its past, present, and future owners,
6 officers, directors, shareholders, employees, predecessors, affiliates, parents, subsidiaries,
7 partners, distributors, principals, insurers, administrators, advisors, agents, servants, successors,
8 trustees, vendors, subcontractors, buyers, independent contractors, attorneys, representatives,
9 heirs, executors, experts, consultants, and assigns of all of the foregoing persons and entities.

10 1.18. “Defendant’s Counsel” means Defendant’s attorney of record in the Action, Murad
11 Michael Khan of the law firm of Khan Johnson LLC and George Langendorf of the law firm of
12 Arnold & Porter Kaye Scholer LLP.

13 1.19. “Effective Date” means the first date by which all of the following events shall have
14 occurred: the Court has entered the Final Approval Order and Judgment on the docket in the
15 Action, there has been final resolution of the Fee and Cost Application and any appeals regarding
16 the Fee and Cost Application, and (a) the time to appeal from such order has expired and no
17 appeal has been timely filed, (b) if such an appeal has been filed, it has finally been resolved and
18 has resulted in an affirmation of the Final Approval Order and Judgment, or (c) the Court,
19 following the resolution of the appeal, enters a further order or orders approving settlement on the
20 terms set forth herein, and either no further appeal is taken from such order(s) or any such appeal
21 results in affirmation of such order(s) on appeal.

22 1.20. “Fee and Cost Application” means the written motion or application by which the
23 Class Representative and/or Class Counsel request that the Court award attorney’s fees, costs,
24 litigation expenses, and an incentive award. Neither the pendency of the Fee and Cost
25 Application, nor any appeal pertaining solely to a decision on the Fee and Cost Application, shall
26 in any way delay or preclude the Final Approval Order and Judgment from becoming final.

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1 1.21. “Final Approval Hearing” means the hearing to be conducted by the Court to
2 determine the fairness, adequacy and reasonableness of the Settlement pursuant to California Rule
3 of Court 3.769.

4 1.22. “Final Approval Order” means the order in which the Court grants final approval of
5 the Settlement as fair, adequate and reasonable under California Rule of Court 3.769, certifies the
6 Settlement Class, and authorizes the entry of a final judgment and dismissal of the Action with
7 prejudice.

8 1.23. “Judgment” means the judgment to be entered by the Court pursuant to the
9 Settlement.

10 1.24. “Notice” shall mean the class notice substantially in the form of Exhibit A hereto.

11 1.25. “Notice Date” means the date thirty (30) days after the Court provides Preliminary
12 Approval to the Settlement Agreement by which the Claims Administrator shall complete the
13 dissemination of the Notice to the Settlement Class, as confirmed by the declaration of the Claims
14 Administrator and subject to any reasonable extension as mutually agreed by the Parties.

15 1.26. “Notice Plan” means the method of providing the Settlement Class with notice of
16 the Settlement, as approved by the Court.

17 1.27. “Notice Claim Deadline” means the date by which Class Members must mail their
18 completed and signed Claim Forms, and any other necessary documentation, to the Claims
19 Administrator, which shall be sixty (60) days after the Notice Date.

20 1.28. “Objection Deadline” means the date by which Class Members must object to the
21 Settlement in writing filed with the Court, which shall be sixty (60) days after the Notice Date.

22 1.29. “Opt-Out Deadline” means the date by which Class Members may request exclusion
23 from the Settlement, which shall be sixty (60) days after the Notice Date.

24 1.30. “Participating Claimant” means a Claimant who submits a Qualifying Settlement
25 Claim Form.

26 1.31. “Parties” means Plaintiff and Class Representative Diane Hightree and Defendant
27 Amplify, Ltd. “Party” shall refer to each of them individually.

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1 1.32. "Person" means any natural person, individual, and such individual's spouse, heirs,
2 predecessors, successors, representatives, and assignees.

3 1.33. "Plaintiff" means Diane Hightree.

4 1.34. "Preliminary Approval Order" means the order signed by the Court in which it
5 grants preliminary approval of the Settlement.

6 1.35. "Qualifying Settlement Claim Form" shall mean a Claim Form that is fully
7 completed, properly executed, and timely returned, with any other necessary documentation, by a
8 Settlement Class Member to the Claims Administrator on or before the Notice Claim Deadline. A
9 Qualifying Settlement Claim Form must be either returned with a postmark via U.S. mail or
10 submitted online through the Class Settlement Website, at the Participating Claimant's discretion.
11 The Claims Administrator reserves the right to seek additional information from a Claimant
12 beyond the Qualifying Settlement Claim Form, as is necessary to determine the eligibility of a
13 Claimant to participate in the Settlement.

14 1.36. "Receipt" shall mean documentary evidence establishing the purchase of one or
15 more Covered Products, the date of purchase, and the purchase price.

16 1.37. "Released Claims" means any claim, cross-claim, liability, right, demand, suit, matter,
17 obligation, damage, restitution, disgorgement, loss or cost, attorney's fee or expense, action, or cause
18 of every kind and description that Plaintiff, the Settlement Class or any member thereof had or have,
19 including assigned claims, whether in arbitration, administrative, or judicial proceedings, whether as
20 individual claims, claims asserted on a class basis or on behalf of the general public, whether known or
21 unknown, asserted or unasserted, suspected or unsuspected, latent or patent, that is, has been, could
22 reasonably have been, or in the future might reasonably be asserted by Plaintiff or members of the
23 Settlement Class either in the Action or in any action or proceeding in this Court or in any other court
24 or forum, regardless of legal theory or the law under which such action may be brought, and regardless
25 of the type or amount of relief or damages claimed, against any of the Released Parties or Release
26 Persons, arising out of or relating to the allegations in the Complaint or the labeling, advertising,
27 marketing, efficacy or effectiveness of the Covered Products including but not limited to marketing
28 claims or representations made on the Covered Products or in advertisements about the Covered

1 Products, claims related to the name or web address of the Defendant, the “Cel MD” brand or brand
2 name, endorsements of any of the Covered Products or Defendant, reviews of any of the Covered
3 Products or Defendant, or that otherwise relate in any way to advertising, formulation, labeling, or
4 marketing, in any format or medium, of the Covered Products or the efficacy or effectiveness of the
5 Covered Products. Excluded from the Released Claims are any and all claims for personal injury
6 or wrongful death. With respect to the claims released pursuant to this paragraph, each Settlement
7 Class Member shall be deemed to have waived and relinquished, to the fullest extent permitted by
8 law, the provisions, rights and benefits of California Civil Code section 1542 (and equivalent,
9 comparable, or analogous provisions of the laws of the United States of America or any state or
10 territory thereof, or of the common law or civil law). Section 1542 provides that:

11 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
12 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
13 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
14 **RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**
15 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**
16 **DEBTOR OR RELEASED PARTY.**

17 Each and every term of this paragraph shall inure to the benefit of each and all of the Released
18 Parties and Released Persons, and each and all of their respective successors, agents and
19 representatives, which persons and entities are intended to be beneficiaries of this paragraph.

20 1.38. “Released Parties” and “Released Persons” means Defendant, its owners, parents,
21 subsidiaries, controlled companies, affiliates, each of its and their respective officers, directors,
22 employees, insurers (including their insurers’ reinsurers), consultants, advisors, attorneys and
23 agents, founders, co-founders, partners, privies, representatives, and all persons acting by, through,
24 under the direction of, or in concert with them, including without limitation Chris Masanto and
25 Andrew Masanto, and each of its and their respective predecessors, successors and assigns, and all
26 suppliers, wholesalers, distributors, and retailers of any Covered Products.

27 1.39. “Releasing Parties” means all Settlement Class Members.

28 1.40. “Request for Exclusion” means a valid request for exclusion from a member of the
Settlement Class. To be valid, a request for exclusion must: (a) in writing; (b) be submitted by a
Class Member to the Claims Administrator and postmarked by a date no later than the Opt-Out

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1 Date; (c) contain the submitter’s name, address, and telephone number; and (d) otherwise comply
2 with the instructions set forth in the Notice.

3 1.41. “Settlement” means the terms, conditions, and obligations described in this Class
4 Action Settlement Agreement.

5 1.42. “Settlement Class” means, collectively, all persons in the United States who
6 purchased one or more Covered Product at any time during the Class Period. Excluded from the
7 Settlement Class are any officers, directors, or employees of Defendant, and the immediate family
8 members of any such person. Also excluded is any judge who may preside over this case.

9 1.43. “Settling Parties” means, collectively, Defendant, the Class Representative, and all
10 Settlement Class Members.

11 1.44. “Settlement Class Member” means any Class Member who does not submit a timely
12 and valid Request for Exclusion by the Opt-Out Date.

13 1.45. “Total Monetary Settlement Amount” means Seven Hundred Fifty-Three Thousand
14 Two Hundred Eighty-Five Dollars (\$753,285.00).

15 1.46. “Valid Claim” means a claim for cash payment submitted by a Settlement Class
16 Member that satisfies all the criteria for submission of a Qualifying Settlement Claim Form and
17 any additional information reasonably requested by the Settlement Administrator, if any.

18 1.47. The singular of any defined term includes the plural, and the plural of any defined
19 term includes the singular.

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

21 2.1 Defendant has denied and continues to deny that the labeling, advertising, or marketing
22 of the Covered Products is false, deceptive, or misleading to consumers or violates any legal
23 requirement, and denies claims by Plaintiff asserting that the Covered Products are ineffective or
24 otherwise challenging the efficacy of the Covered Products, including but not limited to the
25 allegations that Defendant engaged in unfair, unlawful, fraudulent, or deceptive trade practices,
26 breached any implied or express warranty, was unjustly enriched or engaged in negligent
27 misrepresentation, or violated any other statute, regulation, including without limitation FDA
28 regulations, or common law or industry standard. Defendant is entering into this Agreement solely

1 because it will eliminate the uncertainty, distraction, burden, and expense of further litigation. The
2 provisions contained in this Agreement and the manner or amount of relief provided to members of
3 the Settlement Class herein shall not be deemed a presumption, concession, or admission by
4 Defendant of any fault, liability, or wrongdoing as to any facts or claims that have been, or might
5 have been, or might be alleged or asserted in the Action, or in any other action or proceeding that has
6 been, will be, or could be brought, and shall not be interpreted, construed, deemed, invoked, offered,
7 or received into evidence or otherwise used by any person in any action or proceeding, whether civil,
8 criminal, or administrative, for any purpose other than as provided expressly herein.

9 2.2 By entering into this Agreement, Defendant is not consenting to or agreeing to
10 certification of the Settlement Class for any purpose other than to effectuate the settlement of the
11 Action. The Parties agree that if the Court does not approve this Agreement substantially in the form
12 submitted (or in a modified form mutually acceptable to the Parties), including, without limitation, if
13 the Court grants a fee application that would cause the total award for attorney's fees and expenses to
14 Class Counsel to exceed one-third of the Total Monetary Settlement Amount, or if this Agreement is
15 terminated or fails to become effective or final in accordance with its terms, the Action shall proceed
16 as if no Party had ever agreed to such settlement, without prejudice to the right of any Party to take
17 any and all action or assert any claim or defense of any kind in the Action.

18 **3. THE BENEFITS OF SETTLEMENT**

19 3.1. The Parties and their counsel recognize and acknowledge the expense and length of
20 continued proceedings that would be necessary to prosecute the Action through trial and appeals.
21 The Parties and their counsel also have taken into account the uncertain outcome and the risk of
22 any litigation, especially in complex actions such as this Action, as well as the difficulties and
23 delays inherent in such litigation. The Class Representative and Class Counsel are mindful of the
24 inherent issues of proof and possible defenses to the claims asserted in the Action. The Class
25 Representative and Class Counsel believe that the proposed settlement set forth in this Class
26 Action Settlement Agreement confers substantial benefits upon the Settlement Class. Based on
27 their evaluation of all of these factors, the Class Representative and Class Counsel have
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1 determined that the Class Action Settlement Agreement is in the best interests of the Class
2 Representative and the Settlement Class.

3 **4. SETTLEMENT CONSIDERATION**

4 4.1. Injunctive Relief

5 4.1.1. **Hair Care Products.** Defendant agrees to ensure that the labeling and marketing
6 of its hair care products complies with applicable FDA regulations, including 21 C.F.R. 310.527,
7 which provides in relevant part that “[a]ny OTC drug product that is labeled, represented, or
8 promoted for external use as a hair grower or for hair loss prevention is regarded as a new drug . . .
9 [i]n the absence of an approved new drug application, such product is also misbranded under
10 section 502 of the act.” In particular, Defendant agrees that, subject to section 4.1.4, and beginning
11 120 days after the Effective Date, it will not state on the labeling of any product that it ships, or in
12 the marketing for any such product, that the product:

13 4.1.1.1. causes new hair growth

14 4.1.1.2. blocks the hormone DHT

15 4.1.2. **Skin Care Products.** Defendant agrees to comply with FDA regulations and
16 guidelines applicable to the advertising and labeling of its skin care products, including the rules
17 governing claims that the products affect the structure or function of the skin. In particular,
18 Defendant agrees that, subject to section 4.1.4, and beginning 120 days after the Effective Date, it
19 will not state on the labeling of any product that it ships, or in the marketing for any such product,
20 that the product:

21 4.1.2.1. reduces wrinkles

22 4.1.2.2. tightens skin

23 4.1.3. **Stem Cell Claims.** Defendant agrees to create a separate page on the product
24 website explaining the origin and nature of the stem cells contained in the products, including that
25 they are plant-based (as opposed to human) and that they are extracts and not alive in the products.
26 Defendant will also include a qualifier or disclaimer on the labeling of the products that contain
27 stem cells stating that the stem cells are plant-based and extracts, or linking to the explanatory
28 page on the website with a statement inviting consumers to “learn more about the stem cells in the

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1 products,” or other similar language. Defendant agrees that subject to section 4.1.4, and beginning
2 120 days after the Effective Date, it will not state on the labeling of any product that it ships, or in
3 the marketing for any such product, that the stem cells in the product cause hair growth, block the
4 hormone DHT, reduce wrinkles or tighten skin.

5 4.1.4. The Parties specifically acknowledge that changing product labeling and marketing
6 materials is costly, and that the products in the marketplace are outside of the control of
7 Defendant. Accordingly, the Parties agree that the provisions of this section 4 do not apply to any
8 products that Defendant puts into the marketplace or has in its inventory prior to the date that is
9 120 days after the Effective Date. The Parties agree that Defendant shall not be required to recall
10 any products, and that any claims related to any products that Defendant puts into the marketplace
11 or has in its inventory prior to the date that is 120 days after the Effective Date are covered by the
12 release provisions of this Settlement Agreement. Furthermore, notwithstanding the provisions of
13 this Section 4, the Parties agree that Defendant may use any labels and ship any inventory bearing
14 non-compliant labels that exist or are created before the date that is 120 days after the Effective
15 Date.

16 4.1.5. The Parties agree that Defendant may make any marketing claim or representation,
17 including those set forth expressly above in this Section 4, if that marketing claim or
18 representation can be made on the label of or in marketing regarding the product at issue, in a
19 manner that complies with applicable FDA, FTC, USDA and EPA regulations.

20 4.1.6. The Parties specifically acknowledge that product packaging, marketing and
21 advertising often changes. Nothing in this Agreement shall require Defendant to continue to use the
22 current trademarks, taglines, and descriptions of its products, and nothing in this Agreement shall
23 preclude Defendant from making further disclosures or any labeling, marketing, advertising, or
24 packaging changes that (i) Defendant reasonably believe are necessary to comply with any changes to
25 any applicable statute, regulation, pronouncement, guidance, or other law of any kind (including but
26 not limited to the Federal Food, Drug and Cosmetic Act, FDA regulations, USDA regulations, FTC
27 regulations, EPA regulations and/or state equivalents); (ii) are necessitated by product changes and/or
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1 reformulations to ensure that Defendant provides accurate product descriptions; or (iii) do not
2 materially differ from the taglines and product descriptions agreed to in this Agreement.

3 Nothing in this Agreement shall prevent Defendant from making changes to its quality
4 control procedures not inconsistent with the foregoing, or as necessary to comply with
5 governmental or regulatory requirements.

6 4.1.7. To the extent that any state and/or federal statute, regulation, policies, and/or code
7 may at any time impose other, further, different and/or conflicting obligations or duties on
8 Defendant at any time with respect to the Covered Products, this Class Action Settlement
9 Agreement and any Judgment which may be entered pursuant thereto, as well as the Court's
10 continuing jurisdiction with respect to implementation and enforcement of the terms of this Class
11 Action Settlement Agreement, shall cease as to the Settlement Class's and Defendant's conduct
12 covered by that statute, regulation, policy, and/or code as of the effective date of such statute,
13 regulation, policy, and/or code.

14 4.2. Monetary Relief

15 4.2.1. Defendant shall make available the Total Monetary Settlement Amount for payment
16 of Valid Claims, Administrative Costs, any attorney's fees, costs, and litigation expenses awarded
17 by the Court, and any incentive award approved by the Court, as set forth below. Defendant's
18 total financial commitment and obligation under this Settlement Agreement shall not exceed the
19 Total Monetary Settlement Amount (\$753,285.00).

20 4.2.1.1. Valid Claims shall be paid from the Claim Fund as soon as practicable but in no
21 event later than ninety (90) days after the Effective Date.

22 4.2.1.2. Defendant shall make payment of the Claim Fund to the Claims Administrator for
23 payment of Valid Claims within thirty (30) days after the Effective Date.

24 4.2.2. The amount of the payment for any Valid Claim shall be determined as follows:

25 4.2.2.1. Settlement Class Members who previously purchased a Covered Product, and have
26 Receipts for such Covered Product, may submit a claim to receive \$5.00 per unit of Covered
27 Product purchased.

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1 4.2.2.2. Settlement Class Members who previously purchased a Covered Product, but who
2 do not have Receipts for such Covered Product, may submit a claim to receive \$5.00 per unit of
3 Covered Product, capped at a total of \$10.00. Each Settlement Class Member may submit a claim
4 either electronically through the Class Settlement Website or by mail. The claims process will
5 include an agreed-upon verification process designed by the claims administrator to reduce the
6 risk of fraudulent claims.

7 4.2.3. Participating Claimants cannot combine claims with Receipts and claims without
8 Receipts.

9 4.2.4. Payment will be made directly to the Participating Claimant by the Claims
10 Administrator within ninety (90) days after the Effective Date.

11 4.2.5. Adequate and customary procedures and standards will be used by the Claims
12 Administrator to prevent the payment of fraudulent claims and to pay only legitimate claims
13 including requesting additional information from Claimants (beyond the online claim form), if
14 necessary.

15 4.2.6. If the cash amount in the Claim Fund is either less or more than the cash amount
16 necessary to make payment of Valid Claims submitted by Participating Claimants, the cash
17 payouts to Participating Claimants will be decreased or increased, respectively, pro rata to ensure
18 the Claim Fund is exhausted, with no reversion from the Claim Fund to Defendant. Any amounts
19 remaining in the Claim Fund after checks are issued and cashed by Participating Claimants shall
20 be disbursed *cy pres* to a charitable organization designated by Class Counsel.

21 4.2.7. There will be no reversion of money from the Claim Fund to Defendant.

22 **5. ADMINISTRATION AND NOTICE**

23 5.1.1. All Administrative Costs shall be paid out of the Total Monetary Settlement
24 Amount, and shall not exceed One Hundred Thousand Dollars (\$100,000), provided that if the
25 Court requires a notice plan or any other class settlement procedure that causes Administrative
26 Costs to exceed that amount, the excess amount will be paid from the Total Monetary Settlement
27 Amount.
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1 5.1.1.1. Defendant shall pay the Administrative Costs, or cause the Administrative Costs to
2 be paid within ten (10) days after entry of the Preliminary Approval Order. The payments shall be
3 subject to the Claims Administrator providing applicable tax I.D. number(s), payment routing
4 information, and invoices for the charges no later than three (3) business days in advance of the
5 required payments. Any Administrative Costs in excess of \$100,000 shall be paid from the
6 remainder of the Total Monetary Settlement Amount within ten (10) days after the Effective Date.

7 5.1.2. Appointment and Retention of Claims Administrator

8 5.1.2.1. Subject to Court approval as part of the motion for a Preliminary Approval Order,
9 the Parties have retained CPT Group as the Claims Administrator to implement the terms of the
10 Class Action Settlement Agreement.

11 5.1.2.2. In addition to the duties set forth elsewhere in this Class Action Settlement
12 Agreement, the Claims Administrator shall be authorized to undertake all tasks and duties that are
13 reasonably necessary to carry out the claims administration provisions of this Class Action
14 Settlement Agreement, including without limitation:

- 15 5.1.2.2.1. implementing the Notice Plan;
- 16 5.1.2.2.2. processing of Claim Forms;
- 17 5.1.2.2.3. arranging for the cash payment to Participating Claimants from the
18 Claim Fund;
- 19 5.1.2.2.4. communicating with Class Members regarding the claims
20 administration process; provided that the Claims Administrator shall not be required to
21 respond to requests for legal advice; and,
- 22 5.1.2.2.5. gathering a completed IRS Form W-9 from and issuing an IRS Form
23 1099 to Class Counsel and to Plaintiff, which reflects the payments made by Defendant to
24 Class Counsel and to Plaintiff.

25 5.1.3. Class Settlement Website

26 5.1.3.1. The Claims Administrator will create and maintain the Class Settlement Website,
27 to be activated within twenty (20) days of the entry of the Preliminary Approval Order by the
28 Court. The Claims Administrator’s responsibilities will also include securing an appropriate URL.

1 The Class Settlement Website will post the settlement documents and case-related documents such
2 as the Class Action Settlement Agreement, the Notice, the Claim Form, and the Preliminary
3 Approval Order. In addition, the Class Settlement Website will include procedural information
4 regarding the status of the Court-approval process, such as an announcement of the Final
5 Approval Hearing Date, when the Final Approval Order and Judgment have been entered, and
6 when the Effective Date has been reached. Claimants will be able to submit their Claims
7 electronically via the Class Settlement Website.

8 5.1.3.2. The Class Settlement Website will terminate (be removed from the Internet) and
9 no longer be maintained by the Claims Administrator sixty (60) days after either (a) the Effective
10 Date or (b) the date on which the Class Action Settlement Agreement is terminated or otherwise
11 not approved by a court, whichever is later. The Claims Administrator will then transfer
12 ownership of the URL to Defendant.

13 5.1.3.3. All costs and expenses related to the Class Settlement Website shall be paid out of
14 the Total Monetary Settlement Amount as set forth in 5.1.1 and 5.1.1.1 of this Agreement.

15 5.1.4. Notice Plan

16 5.1.4.1. The Notice shall conform to all applicable requirements of the California Code of
17 Civil Procedure, the California Rules of Court, the California State Constitution, and any other
18 applicable law, and shall otherwise be in the manner and form agreed upon by the Parties and
19 approved by the Court. The Notice shall constitute the best class notice that is practicable under
20 the circumstances.

21 5.1.4.2. Within thirty (30) days after entry of the Preliminary Approval Order, the Claims
22 Administrator shall disseminate the Notice to the Settlement Class according to the Notice Plan.

23 5.1.4.3. The Notice Plan will require that direct email notice be sent to all Class Members
24 using the email addresses of Class Members maintained by Defendant in its business records. A
25 true and correct copy of the proposed Notice is attached hereto as Exhibit A, and will be submitted
26 to the Court for approval with the motion for a Preliminary Approval Order.

27 5.1.6. Taxes

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Settlement Class Members, Plaintiff, and Class Counsel shall be responsible for paying any and all federal, state, and local taxes due on any payments made to them pursuant to the Settlement, if any.

6. RELEASES

6.1. Upon the Effective Date, Plaintiff and each Settlement Class Member, and each of their successors, assigns, heirs, and personal representatives, shall be deemed to have, and by operation of the Order and Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties and Released Persons. The Released Claims shall be construed as broadly as possible to effect complete finality over this litigation and the advertising, labeling, marketing, efficacy and/or effectiveness of the Covered Products, as set forth herein.

6.2. Plaintiff and Class Counsel understand that the facts upon which this Agreement is executed may hereafter be other than or different from the facts now believed by Plaintiff and Class Counsel to be true and nevertheless agree that this Class Action Settlement Agreement and this release shall remain effective notwithstanding any such difference in facts.

6.3. To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of or contrary to this Class Action Settlement Agreement, or that asserts any Released Claims against any Released Person or Released Party.

7. CLASS CERTIFICATION

7.1.1. The Parties agree that, for settlement purposes only, this Action shall be certified as a class action pursuant to California Code of Civil Procedure section 382, and the state equivalent of Federal Rule of Civil Procedure, Rule 23, with Class Representative serving as the class representative and Class Counsel as counsel for the Settlement Class.

7.1.2. In the event the Class Action Settlement Agreement is terminated, or for any reason the Class Action Settlement Agreement is not effectuated, each individual Action shall proceed as before the Class Action Settlement Agreement was entered into.

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8. SETTLEMENT APPROVAL PROCESS

8.1. Promptly after execution of this Class Action Settlement Agreement, Plaintiff will submit to the Court the Class Action Settlement Agreement, the Notice, and other settlement documents and will request that the Court grant preliminary approval of the Settlement, enter the Preliminary Approval Order, and schedule the Final Approval Hearing to determine whether the Settlement should be granted final approval and whether the Fee and Cost Application should be granted.

8.2. Procedures for Objecting to the Settlement

8.2.1. Settlement Class Members shall have the right to appear and show cause, if they have any reason why the Court should not grant final approval of the Settlement. Any objection to the Settlement, including any of the terms or provisions of this Class Action Settlement Agreement, must be in writing, filed with the Court, with a copy sent to Class Counsel, Counsel for Defendant, and the Claims Administrator at the addresses set forth in the Class Notice, and postmarked no later than the Objection Deadline. Settlement Class Members may object either on their own or through an attorney hired at their own expense.

8.2.2. If a Settlement Class Member hires an attorney to represent him or her at the Final Approval Hearing, he or she must do so at his or her own expense.

8.2.3. Any objection regarding or related to the Settlement shall contain a caption or title that identifies it as “Objection to Class Settlement in *Hightree v. Amplify, Ltd.*” and shall contain the following information: (i) the objector’s name, address, and telephone number, (ii) the name, address, and telephone number of any attorney for the objector with respect to the objection; (iii) the factual basis and legal grounds for the objection, including any documents sufficient to establish the basis for their standing as a Settlement Class Member, e.g., Receipt, or verification under oath as to the approximate date(s) and location(s) of their purchase(s) of the Covered Products; and (iv) identification of the case name, case number, and court for any prior class action lawsuit in which the objector and the objector’s attorney (if applicable) has objected to a proposed class action settlement, the general nature of such prior objection(s), and the outcome of said prior objection(s). If an objecting Settlement Class Member chooses to appear at the Final

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1 Approval Hearing, no later than the Objection Deadline, a written notice of intention to appear,
2 either in person or through an attorney, must be filed with the Court and list the name, address,
3 telephone number, facsimile number, and email address of the attorney, if any, who will appear.

4 8.2.4. If a Settlement Class Member wishes to present witnesses or evidence at the Final
5 Approval Hearing in support of a timely and validly submitted objection, all witnesses must be
6 identified in the objection, and true and correct copies of all supporting evidence must be
7 appended to, or filed and served with, the objection. Failure to identify witnesses or provide
8 copies of supporting evidence in this manner waives any right to introduce such testimony or
9 evidence at the Final Approval Hearing. While the declaration described above is prima facie
10 evidence that the objector is a Settlement Class Member, Plaintiff or Defendant or both may take
11 discovery regarding the matter, subject to Court approval.

12 8.2.5. Any Class Member who does not timely object to the Settlement Agreement or
13 timely submit a Request for Exclusion is deemed to be a Settlement Class Member and bound by
14 the Settlement and/or any further orders of the Court in this Action.

15 8.2.6. The Final Approval Hearing will be the only opportunity for any Settlement Class
16 Member who objects to the Settlement to appear and be heard.

17 8.3. Right to Respond to Objections

18 8.3.1. Plaintiff and Defendant shall have the right, but not the obligation, to respond to any
19 timely-filed objection no later than seven (7) days prior to the Final Approval Hearing. The
20 Settling Party who wishes to respond shall file a copy of the written response with the Court, and
21 shall serve a copy, by hand or overnight delivery, to the objecting Settlement Class Member (or
22 his or her counsel) and by email to counsel for Plaintiff and/or Defendant.

23 8.4. Exclusion from the Settlement

24 8.4.1. Any Class Member who does not wish to participate in the Settlement must make a
25 Request for Exclusion in writing to the Claims Administrator by the Opt-Out Deadline stating an
26 intention to be “excluded” from the Settlement. The written Request for Exclusion must be mailed
27 by first class United States mail to the Claims Administrator at the address set forth in the Notice
28 and postmarked no later than the Opt-Out Deadline. The Request for Exclusion must be personally

1 signed by the Class Member. So-called “mass” or “class” opt-outs shall not be allowed. A Class
2 Member who timely submits a valid Request for Exclusion pursuant to this paragraph shall not be
3 a Settlement Class Member and shall not be considered a party to this Action for any purpose,
4 including without limitation to file an objection to the Settlement.

5 8.4.2. Absent relief from the Court, Class Members who do not exclude themselves by the
6 timely completion and mailing of a Request for Exclusion (as determined by the date of postmark)
7 shall be deemed to be Settlement Class Members and be bound by the terms and conditions of this
8 Class Action Settlement Agreement and the Final Approval Order. Any Class Member who does
9 not request exclusion from the Settlement has the right to object to the Settlement as set forth in
10 Paragraphs 8.2.1 to 8.2.5 above. If a Class Member submits a timely written Request for
11 Exclusion by the Opt-Out Deadline, he or she shall be deemed to have complied with the terms of
12 the opt-out procedure and shall not be bound by the Settlement, if approved by the Court.
13 However, any objecting Class Member who has not timely requested exclusion from the
14 Settlement will be bound by the terms of the Class Action Settlement Agreement and by all
15 proceedings, orders and judgments in the Action.

16 8.4.3. At least seven (7) calendar days prior to the Final Approval Hearing, Class Counsel
17 shall prepare or cause the Settlement Administrator to prepare a list of the persons who have
18 excluded themselves in a valid and timely manner from the Settlement Class (the “Opt-Outs”),
19 and Class Counsel shall file that list with the Court.

20 8.4.4. Defendant, in its sole discretion, has the right to terminate the Settlement if requests
21 for exclusion are filed or submitted by more than 10% of the members of the Settlement Class, as
22 measured by the number of recipients of the Class Notice. If Defendant elects to terminate the
23 Settlement under this provision, it must notify Class Counsel and the Court of its election no later
24 than seven (7) days after the deadline set in the Preliminary Approval Order for the receipt of
25 requests for exclusion. If Defendant has not notified Class Counsel and the Court of such
26 termination by that date, the right to terminate shall lapse and this provision shall become null and
27 void. If Defendant exercises its right to terminate under this provision, the Settlement shall be
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1 terminated and dissolved and the Parties shall be restored to their respective positions prior to
2 entering into the Settlement.

3 **9. ATTORNEY’S FEES, COSTS, AND EXPENSES**

4 9.1. Class Counsel may apply to the Court for an award of attorney’s fees of up to one-
5 third of the \$753,285, plus costs and litigation expenses. This amount will be paid out of the Total
6 Monetary Settlement Fund. Defendant shall pay or cause to be paid any attorney’s fees, costs and
7 expenses awarded to Class Counsel and approved by the Court within thirty (30) days after the
8 Court’s final order approving the settlement and fee award, notwithstanding any appeal, subject to
9 Class Counsel providing applicable tax I.D. number(s), and providing payment routing
10 information, and executing an undertaking in the form attached hereto as Exhibit B. If the Final
11 Approval Order and Judgment or any part of it is vacated, overturned, reversed, or rendered void
12 as a result of an appeal, or the Settlement Agreement is voided, rescinded, or otherwise terminated
13 for any other reason, or the Court’s award of attorney fees, costs or expenses is reduced on appeal
14 or otherwise prior to the Effective Date, then within thirty (30) days of such event, Class Counsel
15 shall return to Defendant the attorney’s fees, costs, and other payments received by Class Counsel
16 under this paragraph, in the amounts and according to the procedures set forth in this Agreement
17 are binding. The terms set forth in Exhibit B are expressly incorporated into this Class Action
18 Settlement Agreement and shall be binding as if fully set forth herein.

19 9.2. Plaintiff may apply to the Court for a total incentive award of \$5,000 for her service
20 as named plaintiff and putative class representative. The amount of the incentive award ordered
21 by the Court shall be paid out of the Total Monetary Settlement Fund and sent to Class Counsel
22 within thirty (30) days after the Effective Date, subject to the prior delivery to Defendant of tax
23 I.D. number(s) and address for delivery for each individual receiving such award.

24 **10. CONDITIONS FOR EFFECTIVE DATE; EFFECT OF TERMINATION**

25 10.1. If this Class Action Settlement Agreement is not approved by the Court or the
26 Settlement is terminated or fails to become effective in accordance with the terms of this Class
27 Action Settlement Agreement, the Settling Parties will be restored to their respective positions in
28 the Action as of the date the Motion for Preliminary Approval is filed. In such event, the terms and

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1 provisions of this Class Action Settlement Agreement and any other contractual obligations or
2 duties regarding the Settlement will have no further force and effect with respect to the Settling
3 Parties and will not be used in this Action or in any other proceeding for any purpose, and any
4 Judgment or order entered by the Court in accordance with the terms of this Class Action
5 Settlement Agreement will be treated as vacated. The Parties will meet and confer regarding a
6 proposed case management schedule, and will submit to the Court a proposed schedule, or
7 competing alternative schedules if they cannot reach agreement.

8 **11. MISCELLANEOUS PROVISIONS**

9 11.1. The Parties acknowledge that it is their intent to consummate this Class Action
10 Settlement Agreement, and they agree to cooperate to the extent reasonably necessary to
11 effectuate and implement all terms and conditions of this Class Action Settlement Agreement and
12 to exercise their best efforts to accomplish the foregoing terms and conditions of this Class Action
13 Settlement Agreement.

14 11.2. The Parties intend the Settlement to be a final and complete resolution of all disputes
15 between them and between Defendant and Settlement Class Members with respect to the Action.
16 The Settlement compromises claims that are contested and will not be deemed an admission by
17 any Settling Party as to the merits of any claim or defense. The Parties agree that the consideration
18 provided to the Settlement Class Members and the other terms of the Settlement were negotiated
19 at arms' length and in good faith by the Parties, and reflect a settlement that was reached
20 voluntarily after consultation with competent legal counsel.

21 11.3. Neither this Class Action Settlement Agreement nor the Settlement, nor any act
22 performed or document executed pursuant to or in furtherance of this Class Action Settlement
23 Agreement or the Settlement is or may be deemed to be or may be used as an admission of, or
24 evidence of, the validity of any Released Claims, or of any wrongdoing or liability of Defendant
25 whatsoever; or is or may be deemed to be or may be used as an admission of, or evidence of, any
26 fault or omission of Defendant in any civil, criminal, or administrative proceeding in any court,
27 administrative agency or other tribunal. Any Party to this Action may file this Class Action
28 Settlement Agreement and/or the Judgment in any action that may be brought against it in order to

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1 support any defense, claim, cross-claim or counterclaim, including without limitation those based
2 on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or
3 reduction, or any other theory of claim preclusion or issue preclusion or similar defense, claim,
4 cross-claim or counterclaim.

5 11.4. All agreements made and orders entered during the course of the Action relating to
6 the confidentiality of information will survive this Class Action Settlement Agreement.

7 11.5. Any and all Exhibits to this Class Action Settlement Agreement are material and
8 integral parts hereof and are fully incorporated herein by this reference.

9 11.6. This Class Action Settlement Agreement may be amended or modified only by a
10 written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

11 11.7. This Class Action Settlement Agreement and any Exhibits attached hereto constitute
12 the entire agreement among the Parties, and no representations, warranties, or inducements have
13 been made to any Party concerning the Settlement, this Class Action Settlement Agreement or its
14 Exhibits other than the representations, warranties, and covenants covered and memorialized in
15 such documents. Except as otherwise provided herein, the Parties will bear their own respective
16 costs.

17 11.8. Class Counsel, on behalf of the Settlement Class, are expressly authorized by the
18 Class Representative to take all appropriate actions required or permitted to be taken by the
19 Settlement Class pursuant to this Class Action Settlement Agreement to effectuate its terms, and
20 are expressly authorized to enter into any modifications or amendments to this Class Action
21 Settlement Agreement on behalf of the Settlement Class that Class Counsel deem appropriate.

22 11.9. Each counsel or other Person executing this Class Action Settlement Agreement or
23 any of its Exhibits on behalf of any Party hereby warrants that such Person has the full authority to
24 do so.

25 11.10. This Class Action Settlement Agreement may be executed in one or more
26 counterparts. All executed counterparts and each of them will be deemed to be one and the same
27 instrument. The parties further agree that signatures provided by portable document format (PDF)
28 or other electronic transmission shall have the same force and effect as original signatures.

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1 11.11. This Agreement shall be binding upon and inure to the benefit of the Settling Parties
2 and Settlement Class Members, their respective agents, attorneys, insurers, employees, representatives,
3 officers, directors, partners, divisions, subsidiaries, affiliates, associates, assigns, heirs, successors in
4 interest, and shareholders, and any trustee or other officer appointed in the event of a bankruptcy, as
5 well as to all Released Parties and Released Persons. A waiver by any Party of a breach of this
6 Agreement by any other Party shall not be deemed a waiver of any other breach of this Agreement.

7 11.12. Except as provided herein, pursuant to Rule 3.769(h) of the California Rules of
8 Court and California Code of Civil Procedure section 664.6, the Court will retain jurisdiction with
9 respect to implementation and enforcement of the terms of this Class Action Settlement
10 Agreement, and all parties hereto submit to the jurisdiction of the Court for purposes of
11 implementing and enforcing the Settlement.

12 11.13. None of the Settling Parties, or their respective counsel, will be deemed the drafter
13 of this Class Action Settlement Agreement or its Exhibits for purposes of construing the
14 provisions thereof. The language in all parts of this Class Action Settlement Agreement and its
15 Exhibits will be interpreted according to its plain meaning and will not be interpreted for or
16 against any of the Settling Parties as the drafter thereof.

17 11.14. This Class Action Settlement Agreement and any Exhibits hereto will be construed
18 and enforced in accordance with, and governed by, the internal, substantive laws of the State of
19 California, without giving effect to that State’s choice-of-law principles.

20 11.16. The time periods and/or dates described in this Settlement Agreement with respect
21 to the giving of notices and hearings are subject to approval and change by the Court or by the
22 written agreement of Class Counsel and Defendant’s Counsel, without notice to Class Members.
23 The Parties reserve the right, by agreement and subject to the Court’s approval, to grant any
24 reasonable extension of time that might be needed to carry out any of the provisions of this Class
25 Action Settlement Agreement.

26 11.17. If the date for performance of any act required by or under this Settlement
27 Agreement falls on a Saturday, Sunday, or court holiday, that act may be performed on the next
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business day with the same effect as if it had been performed on the day or within the period of time specified by or under this Settlement Agreement.

11.18. The Parties agree that information and documents exchanged in negotiating this Agreement were exchanged pursuant to the Parties' confidentiality agreement in privileged settlement discussions, and that no such confidential information exchanged or produced by either side may be used for or revealed for any other purpose than the Settlement. This does not apply to publicly available information or documents.

11.19. The Parties represent, covenant, and warrant that they have not directly or indirectly assigned or transferred to any person or entity any portion of any liability, claim, demand, action, cause of action, or right herein released and discharged, nor purported to do so, except as set forth herein.

11.20. The Parties agree that should any provision of this Class Action Settlement Agreement, or any portion of any provision, be declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the remainder of the provision and/or the Class Action Settlement Agreement shall nonetheless remain binding and in effect, unless this would result in a substantial failure of consideration.

[SIGNATURES ON NEXT PAGE]

6/12/2020

1 DATED: June ___, 2020

DocuSigned by:
Diane Hightree
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2 Diane Hightree

3
4 DATED: June ___, 2020

By: _____

6 Title: _____

7 Defendant Amplify, Ltd.

8
9 **APPROVED AS TO FORM:**

10 6/12/2020

11 DATED: June ___, 2020

CLARKSON LAW FIRM, P.C.

DocuSigned by:
Ryan Clarkson
C769100637604D7...

13 Ryan J. Clarkson, Esq.
14 Shireen M. Clarkson, Esq.
15 Zach Chrzan, Esq.

16 *Attorneys for Plaintiff and the Plaintiff Class*

17 DATED: June ___, 2020

KHAN JOHNSON LLC

19 _____
Murad Michael Khan

20
21 DATED: June ___, 2020

ARNOLD & PORTER KAYE SCHOLER LLP

23 _____
George Langendorf

24
25 *Attorneys for Defendant Amplify, Ltd.*

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DATED: June __, 2020

Diane Hightree

DATED: June __, 2020

By: 

Title: CEO - Jack Nicoll

Defendant Amplify, Ltd.

APPROVED AS TO FORM:

DATED: June __, 2020

CLARKSON LAW FIRM, P.C.

Ryan J. Clarkson, Esq.
Shireen M. Clarkson, Esq.
Zach Chrzan, Esq.

Attorneys for Plaintiff and the Plaintiff Class

DATED: June 12, 2020

KHAN JOHNSON LLC

/s/ Murad Michael Khan
Murad Michael Khan

DATED: June 12, 2020

ARNOLD & PORTER KAYE SCHOLER LLP

/s/ George Langendorf
George Langendorf

Attorneys for Defendant Amplify, Ltd.