

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Settlement Agreement”), effective as of the date of the last signature below, is made by and between Plaintiff Terry Fabricant (“Plaintiff”), individually and on behalf of the Settlement Class as further defined herein, and Defendant Top Flite Financial, Inc. (“Defendant” or “TF”), subject to Court approval as required by California Rules of Court Rule 3770. As provided herein, the Parties hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Settlement Agreement and upon entry by the Court of a Final Approval Order and Final Judgment, all claims of Plaintiff and the Settlement Class against Defendant asserted in *Terry Fabricant, individually and on behalf of all others similarly situated, v. TOP FLITE FINANCIAL, INC.*, Case No. 20STCV13837, pending before the Superior Court of California County of Los Angeles, shall be fully and finally settled and compromised upon the terms and conditions set forth herein.

RECITALS

A. There is pending in the Superior Court of California County of Los Angeles, a civil action entitled *Terry Fabricant, individually and on behalf of all others similarly situated, v. TOP FLITE FINANCIAL, INC.*, Case No. 20STCV13837.

B. Plaintiff commenced the Action on April 7, 2020 by filing a putative class action complaint asserting causes of action under California Penal Code §§ 630 et seq. (“IPA”) and the later filing of a First Amended Complaint on September 8, 2020. Plaintiff alleges that TF violated the IPA by knowingly, negligently and/or intentionally employing and/or causing to be employed certain recording equipment in order to record telephone conversations with Plaintiff without the knowledge or consent of Plaintiff and other parties to calls. On July 20, 2021, Defendant filed an Answer to Plaintiff’s First Amended Complaint, denying generally and specifically all of the material allegations contained therein.

C. For several months, the Parties have actively litigated the Action. Among other things, Plaintiff has propounded written discovery and received responses and documents in preparation for mediation.

D. On February 15, 2022, the Parties attended an all-day mediation with well-respected mediator Hon. Joe Hilberman (Ret.). Taking into account the burdens, uncertainty, and risks inherent in the Action, the Parties have concluded that further prosecution and defense of the Action could be protracted, unduly burdensome, and expensive, and that it is desirable, fair, and beneficial that the Action now be fully and finally compromised, settled and terminated in the manner and upon the terms and conditions set forth in this Settlement Agreement.

E. Defendant has denied and continues to deny each and every claims and contention alleged against it in the Action and that it committed any wrongful act or violated any law or duty. Defendant also denies that Plaintiff, or the class he seeks to represent, is entitled to any form of damages or relief based on the conduct alleged in the Action. In addition, Defendant maintains that it has meritorious defenses to all claims alleged in the Action and it is prepared to fully defend

the Action. This Settlement Agreement, and all related documents, shall not be construed as any admission or concession by Defendant, or any of the Released Parties (defined in Section 15 below), of any fault, liability, wrongdoing or damage whatsoever. Defendant also disputes that a class would be manageable or that issues common to the class predominate over individual issues, and denies that a litigation class should be certified on the claims asserted in the Action. However, solely for purposes of avoiding the expense and inconvenience of further litigation, Defendant agrees to settle the Action on the terms set forth below. Defendant's agreement to settle shall not be deemed a concession that certification of a litigation class would be appropriate, nor would Defendant be precluded from opposing class certification in further proceedings in the Action if the Settlement does not receive Final Approval. If the Settlement does not receive Final Approval by the Court for any reason whatsoever, the Settlement will be void, and no doctrine of waiver, estoppel, or preclusion will be asserted in any proceedings involving Defendant. No agreements made by or entered into by Defendant in connection with the Settlement may be used by Plaintiff, any person in the Settlement Class, or any other persons to establish any of the elements of class certification in any other proceedings.

F. Plaintiff and his counsel believe that the claims asserted in the Action have merit. However, taking into account the risks of continued litigation, as well as the delays and uncertainties inherent in such litigation and any subsequent appeal, Plaintiff and his counsel believe that it is desirable that the Action be fully and finally compromised, settled and terminated now with prejudice, and forever barred pursuant to the terms and conditions set forth in this Settlement Agreement. Plaintiff and his counsel have concluded that the terms and conditions of this Settlement Agreement are fair, reasonable, and adequate to the proposed class, and that it is in the best interests of the proposed class to settle the Action.

WHEREFORE, in consideration of the promises, covenants, representations and warranties contained herein, and for good and valuable consideration given hereunder, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties hereby agree, subject to approval by the Court, as follows:

1. Definitions

In addition to the terms defined at various points within this Settlement Agreement, the following Defined Terms apply throughout this Agreement and the attached exhibits:

1.1 "Action" means *Terry Fabricant, individually and on behalf of all others similarly situated, v. TOP FLITE FINANCIAL, INC.*, Case No. 20STCV13837, pending before the Superior Court Of Los Angeles County.

1.2 "Agreement" means this agreement that sets forth the terms of this Settlement. Exhibits A-E are hereby incorporated into this agreement to further set forth the terms of the Settlement herein

1.3 "Claim Form" means the form made available for use by Class Members on the back of the Mail Notice and on the Settlement Website for the purpose of making a claim for recovery under the Settlement.

1.4 "Claims Administrator" means Postlethwaite & Netterville (P&N).

1.5 “Class Counsel” means Todd M. Friedman, Thomas E. Wheeler, and Adrian Bacon of The Law Offices of Todd M. Friedman, P.C.

1.6 “Class Period” means the period from April 8, 2019 to June 7, 2019.

1.7 “Court” means the Superior Court of Los Angeles County.

1.8 “Defendant” means TOP FLITE FINANCIAL, INC.

1.9 “Escrow Account” means the account to be established consistent with the terms and conditions described below.

1.10 “Final Approval” means entry of the Final Approval Order and Final Judgment and a determination of the amount of fees, costs, and expenses awarded to Class Counsel and the amount of the Service Award to Plaintiff.

1.11 “Final Approval Order” means the order that the Court enters upon finally approving the Settlement. The Parties shall tender the form of Final Approval Order attached hereto as **Exhibit D** for the Court’s consideration.

1.12 “Final Hearing Date” means the date set by the Court for the hearing on final approval of the Settlement.

1.13 “Final Judgment” means the entry by the Court of a judgment finally approving the settlement of the Action pursuant to the terms of this Settlement Agreement. That judgment shall have become final either by expiration of time for appeal or, if a Class Member files an appeal, the date on which such reconsideration, appeal, or review has been finally concluded and is no longer subject to review, whether by appeal, petitions for rehearing, petitions for rehearing *en banc*, or petitions for writ of certiorari, or otherwise.

1.14 “Mail Notice” means the form of notice to be mailed by the Claims Administrator to all Class Members with a known address. Mail Notice shall take a form substantially the same as that attached hereto as side one of **Exhibit A**.

1.15 “Notice Deadline” means forty-five (45) days from the date the Court grants Plaintiff’s Motion for Preliminary Approval.

1.16 “Opt-Out Period” means the period that begins the day after the earliest date on which the Class Mail Notice is first mailed or published, and that ends no later than sixty (60) days later. The Opt-Out deadline will be specified in the Class Mail Notice.

1.17 “Opt-Out and Objection Deadline” means sixty (60) days from the date Mail Notice is sent to Class Members.

1.18 “Parties” means Plaintiff and Defendant.

1.19 “Plaintiff” or “Class Representative” means Plaintiff Terry Fabricant.

1.20 “Preliminary Approval” means the date that the Court enters an order granting preliminary approval of the Settlement.

1.21 “Preliminary Approval Order” means the order that the Court enters upon preliminarily approving the Settlement. The Parties shall tender the form of Preliminary Approval Order attached hereto as **Exhibit C** for the Court’s consideration.

1.22 “Q & A Notice” means the notice concerning the Settlement to be posted on the Settlement Website as described in Section 9.2 of this Agreement.

1.23 “Released Claims” means all claims to be released as specified in Section 15 of this Agreement. The “Releases” means all of the releases contained in Section 15 of this Agreement.

1.24 “Released Parties” shall have the meaning set forth in Section 15.1 of this Agreement.

1.25 “Releasing Persons” shall have the meaning set forth in Section 15.1 of this Agreement.

1.26 “Settlement” means the settlement into which the Parties have entered to resolve the Action. The terms of the Settlement are as set forth in this Agreement and the attached Exhibits A-E.

1.27 “Settlement Class” means the proposed class as defined at Section 2.1 of this Agreement.

1.28 “Settlement Class Member” means any person or entity included in the Settlement Class who does not timely and properly opt out of the Settlement.

1.29 “Settlement Fund” means the fund established under Section 4 of this Agreement.

1.30 “Settlement Website” means the website to be created and operated by the Claims Administrator to facilitate Class Members’ access to settlement-related information and necessary settlement-related forms.

1.31 “Service Award” means any Court-ordered payment to Plaintiff in addition to any payment due Plaintiff as a Settlement Class Member.

1.32 “Valid Claim Form” means a timely-submitted Claim Form that satisfies the criteria set forth at Section 10.2 of this Agreement.

1.33 “Valid Exclusion Request” means a timely-submitted opt-out or exclusion request that satisfies the criteria set forth at Section 11 of this Agreement.

2. Settlement Class

2.1 Proposed Class Definition. The Parties have agreed to petition the Court to certify the Settlement Class, which is defined as follows:

All California residents who, between April 8, 2019 and June 7, 2019, had a call with Defendant that lasted more than nine (9) seconds and whose call was recorded.

For avoidance of doubt, class membership consists exclusively of the individuals included on the list to be provided to the Claims Administrator as set forth in Section 9.1.1.

2.2 Estimated Class Size. The Parties have entered into this Settlement Agreement on the basis of Plaintiff and his counsel's estimate, pursuant to the exchange of documents, that the Class consists of approximately 8,500 members ("Class Members").

3. Motions for Preliminary Approval and Final Approval

3.1 The Parties desire and intend to seek Court approval of the Settlement and a final judgment as set forth in this Settlement Agreement. The Parties agree to undertake all steps necessary to effectuate the purpose of the Settlement, to secure the Court's approval of the Settlement, and to oppose any interventions and objections to the Settlement, including objections by any regulatory authority. Class Counsel (as defined in Section 1.3, above) reserves the right to appeal any award of attorney's fees and costs that is less than the amount set forth in Section 4 below. The proposed Preliminary Approval Order is attached as **Exhibit C** hereto. The proposed Final Approval Order is attached as **Exhibit D** hereto.

3.2 Upon full execution of this Settlement Agreement, Plaintiff will file a Motion for Preliminary Approval of Class Action Settlement ("Motion for Preliminary Approval") in accordance with the terms of this Settlement Agreement. Plaintiff will request that the court enter a Preliminary Approval Order in substantially similar form to order attached hereto as Exhibit C. Defendant will not oppose the Motion for Preliminary Approval. The Motion for Preliminary Approval will seek an order from the Court that: (a) preliminarily approves the Settlement of the Action as fair, reasonable, and adequate; (b) approves the forms provided for and described in this Settlement Agreement for giving notice of the Settlement to the Class, as provided in Section 9 of this Settlement Agreement (the "Notice Forms"); (c) approves the methods provided for in this Settlement Agreement for giving notice of the Settlement as provided in Section 9 of this Settlement Agreement; (d) approves the Claim Form attached as side two of **Exhibit A** hereto and the claims process described in Section 10; (e) sets deadlines for providing notice to the Class and for Class Members to submit requests for exclusion/opt-out, entry of an appearance, or objections to the proposed settlement; (f) schedule a date and time for a Final Approval Hearing to determine whether the Settlement should be finally approved by the Court, the amount of attorneys' fees and costs that should be awarded to Class Counsel, and the amount of any Service Award to Plaintiff; and (g) authorize the Parties to take all necessary and appropriate steps to establish the means necessary to implement the Settlement Agreement.

3.3 In connection with the Motion for Preliminary Approval Application, Plaintiff shall request that the Court schedule and conduct a Final Approval Hearing after dissemination of class notice, at which it will consider whether the Settlement is fair, reasonable, and adequate pursuant to California Rules of Court Rule 3.769. Specifically, after good faith consultation with Defendant, Plaintiff shall request that, on or after the Final Approval Hearing, the Court: (i) enter the Final Judgment substantially in the form attached hereto as **Exhibit D**; (ii) determine the amount of any attorney's fees and costs that should be awarded to Class Counsel as contemplated in the Settlement Agreement; and (iii) determine the amount of any Service Award that should be

awarded to Plaintiff as contemplated by this Settlement Agreement. Any application for attorney's fees and costs or a service award shall be made at least fourteen (14) days prior to the Opt-Out and Objection Deadline. Plaintiff's final approval motion shall be filed twenty-one (21) Court days prior to the hearing set for Final Approval or as otherwise directed by the Court. The Parties will reasonably cooperate with one another in seeking entry of the Final Judgment.

3.4 At the Final Approval Hearing, the parties shall request that the Court enter a Final Judgment in substantially similar form as **Exhibit D** that shall, among other things:

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

b. Finally approve the Settlement Agreement, pursuant to California Rules of Court Rule 3.769, as fair, reasonable, and adequate;

c. Find that the form and means of disseminating the Class Notice complied with all laws, including, but not limited to, to California Rules of Court Rule 3.769, and the Due Process Clause of the United States Constitution;

d. Enter Final Judgment with respect to the claims of all Settlement Class Members;

e. Make the Releases in Section 15 of this Settlement Agreement effective as of the Final Settlement Date;

f. Find that, by operation of the entry of the Judgment, Plaintiff and all Settlement Class Members who have not opted out of this Settlement Agreement shall be deemed to have forever released, relinquished, and discharged the Released Parties from any and all Released Claims;

g. Authorize the Parties to implement the terms of this Settlement Agreement;

h. Without affecting the finality of the Judgment for purposes of appeal, for the Court to retain jurisdiction relating to the administration, consummation, enforcement, and interpretation of this Settlement Agreement, the final Judgment, and for any other necessary purpose; and

i. Issue related orders to effectuate the Final Approval of this Settlement Agreement and its implementation.

3.4 If the Court declines to approve the Settlement, or if the Court changes the Settlement Class definition or the terms of this Settlement Agreement in any way not acceptable to one or more of the Parties, or if certification of the Settlement Class or approval of this Settlement Agreement is reversed, or if certification of the Settlement Class or approval of this Settlement Agreement is changed upon appeal or review in any way not acceptable to one of more of the Parties, that Party or those Parties shall, after reasonable consultation with the other, have

the right to terminate this Settlement Agreement. In that event, there will have been no admission of liability or that a class should be certified and no waiver of any claim or defense of any kind whatsoever.

4. The Settlement Fund

4.1 In exchange for the mutual promises and covenants in this Agreement, including, without limitation, the Releases as set forth in Section 15, below, and the entry of judgment upon Final Approval, within thirty (30) days following Final Judgment, whichever is the latest, the Parties agree to fully and resolve the Action for the total sum of Two Hundred Seventy-Five Thousand Dollars (\$275,000.00). Defendant shall deposit the sum of Two-Hundred Seventy-Five Thousand Dollars (\$275,000) into an Escrow Account held by the Claims Administrator to create the Settlement Fund within thirty (30) days following Final Judgment.

4.2 The Settlement Fund shall be used to provide the exclusive recovery and relief for the Class, any reasonable attorneys' fees and costs approved and awarded by the Court, any Service approved and awarded by the Court, and the costs of claims administration, including class notice. Defendant shall not, under any circumstances, be obligated to pay any other additional amounts to the Settlement Fund or any other amounts in connection with this Settlement Agreement. No interest shall accrue on the Settlement Fund.

4.3 The Settlement Fund at all times shall be deemed a "qualified settlement fund" within the meaning of United States Treasury Reg. § 1.468B-1. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Settlement Fund or otherwise, including any taxes or tax detriments that may be imposed on Defendant or its counsel or Plaintiff and Class Counsel with respect to income earned by the Settlement Fund during any period during which the Settlement Fund does not qualify as a "qualified settlement fund" for the purpose of federal or state income taxes or otherwise (collectively "Taxes"), shall be paid out of the Settlement Fund. Defendant and its counsel and/or Plaintiff and Class Counsel shall have no liability or responsibility for any of the Taxes.

4.4 The amount of the Settlement Fund shall not be reduced as a result of any member(s) of the Settlement Class electing to opt out or be excluded from the Settlement or for any other reason.

5. Recovery for the Class

Class Members who submit a Valid Claim Form, as set forth in Section 10.2, below, will receive a pro rata share of the Settlement Fund in the form of a check after payment of any attorneys' fees and costs awarded by the Court (for which Class Counsel is requesting up to \$91,666 fees plus up to \$10,000 in costs), any Service Award to Plaintiff awarded by the Court (for which Plaintiff is asking for an incentive award of \$5,000), and any costs of claims administration are deducted from the Settlement Fund (estimated at \$60,000 by the Claims Administrator). Total deductions from the Settlement fund are estimated at \$148,418, leaving an estimated \$108,334 available to Class Members who make valid claims. There shall be permitted

only one claim per telephone number for each Class Member regardless of the number of calls received.

6. Attorney's Fees and Costs for Class Counsel

Class Counsel shall move the Court for an award of attorneys' fees and costs incurred in connection with the Action to be paid to Class Counsel from the Settlement Fund. The motion for attorney's fees and costs shall be made at least fourteen (14) days prior to the Opt-Out and Objection Deadline. Class Counsel agree their request for attorneys' fees will not exceed more than 33% of the Settlement Fund and the request for litigation costs will not exceed \$10,000. Defendant shall not object to such a motion so long as the attorneys' fees requested are not more than 33% of the Settlement Fund and the request for litigation costs will not exceed \$10,000. Any attorneys' fees and costs approved by the Court shall be paid to Class Counsel from the Settlement Fund. Class Counsel expressly disclaims any right to recover attorneys' fees and costs in excess of the amount awarded by the Court from any person or entity. Class Counsel also agrees that the amounts of such attorneys' fees and costs awarded shall compensate them for all legal work in the Action up to including the Final Judgment, as well as for all legal work and costs that may be incurred in the Action after the Final Judgment. This Settlement Agreement is not conditioned on the Court's approval of any attorneys' fees and costs sought by Class Counsel. If the amounts awarded by the Court are less than what was sought by Class Counsel, the remaining provisions of this Settlement Agreement shall be binding and effective. No interest will accrue on any attorneys' fees or costs awarded by the Court to Class Counsel.

7. Service Award for Plaintiff

Class Counsel shall move the Court for a Service Award for Plaintiff for his service as class representative in this Action, in an amount not to exceed \$5,000, to be paid from the Settlement Fund. The motion for a Service Award shall be made at least fourteen (14) days prior to the deadline for class members to object. Court approval of any Service Award will not be a condition of the Settlement and if the amounts awarded by the Court are less than what was sought by Plaintiff, the remaining provision of this Agreement shall be binding and effective. Defendant shall not object to a Service Award that does not exceed \$5,000.

8. Third-Party Claims Administrator

8.1 The costs and expenses related to claims administration shall be paid exclusively from the Settlement Fund. Because the costs and expenses of claims administration will affect each Class Member's pro rata share of the Settlement Fund, the costs and expenses of claims administration shall be overseen by Class Counsel. Defendant's counsel may also oversee the claims administration process as they deem necessary. The Parties will use good faith efforts to minimize the costs of claims administration.

8.2 Claims administration shall be conducted by a third party administrator, P&N (the "Claims Administrator"), which is located at 8550 United Plaza, Suite 1001 Baton Rouge, LA 70809. The Claims Administrator's telephone number is (225) 922-4600.

8.3 Subject to the oversight of Class Counsel and Defendant's counsel, the Claims Administrator shall be responsible for, among other things, the following: (a) providing notice to Settlement Class Members as set forth in Section 9, below; (b) providing settlement checks to Settlement Class Members entitled to receive a settlement check pursuant to Section 10.1, below; (c) creating and maintaining the Settlement Website as set forth in Section 9.2, below; (d) maintaining a toll-free telephone number as set forth in Section 9.3 below; (e) acting as a liaison between Settlement Class Members and the Parties regarding the settlement; (f) make available for inspection by Class Counsel or Defendant's Counsel the Claim Forms, any documentation submitted in support thereof, and any correspondence received by the Claims Administrator at any time upon reasonable notice; and (g) provide Class Counsel and Defendant's Counsel with an affidavit or declaration by a competent affiant or declarant, attesting that the Mail Notice has been disseminated in accordance with the Preliminary Approval Order and identifying the number of Requests for Exclusion to the Settlement. The Claims Administrator shall be permitted to communicate without restriction with Class Counsel and Defendant's counsel.

8.4 All costs and expenses related to claims administration shall be paid from the Settlement Fund as invoiced by the Claims Administrator in order to do what is necessary for claims administration.

9. Notice of Settlement

9.1 Mail Notice.

9.1.1 In the event of Preliminary Approval, Defendant shall create a list of Settlement Class Members, including the telephone number and last known address for each Class Member to the extent available from its existing business records. As soon as practicable, but in no event more than twenty one (21) days after Preliminary Approval, Defendant shall deliver the list of Settlement Class Members to the Claims Administrator. As a condition of receiving the list of settlement class members, the Claims Administrator will maintain the confidentiality of that data. The Claims Administrator will treat the information regarding the Settlement Class Members in a confidential manner pursuant to terms set forth in Section 19 of this Settlement Agreement.

9.1.2 The Claims Administrator will provide individual notice, via First Class U.S. Mail, to all Settlement Class Members with known addresses ("Mail Notice"). Prior to mailing the Mail Notice, the Claims Administrator will update the address information provided by Defendant through the National Change of Address ("NCOA") database maintained by the U.S. Postal Service. Any Mail Notice returned to the Claims Administrator with a new forwarding address will be re-mailed to the Settlement Class Member at the new forwarding address within seven (7) days of the Mail Notice being initially returned. Settlement Class Members who receive re-mailed notices shall have up to seventy-five (75) days from the date of Mail Notice to submit a claim, request exclusion, or object.

9.1.3 The Claims Administrator will perform a reverse telephone number lookup for the Settlement Class Members, if any, for whom Defendant does not have address information. The address information obtained through a reverse phone number lookup will be used to facilitate Mail Notice to the Settlement Class Members.

9.1.4 The Claims Administrator will mail the Settlement Class Members the Mail Notice as soon as reasonably practicable but no later than thirty (30) days from the date the Court grants the Motion for Preliminary Approval (the “Notice Deadline”). The Claims Administrator will file a declaration with the Court, as part of the final approval papers, stating that these procedures were followed.

9.1.5 The Mail Notice to the Settlement Class will consist of a double-sided postcard that contains a summary description of this Settlement Agreement, identifies the Claims Administrator, and directs recipients to the Settlement Website from which additional information about the Settlement, including the Claim Form, can be obtained. The back of the Mail Notice will contain the Claim Form. The Mail Notice and Claim Form will be substantially in the form of **Exhibit A** attached hereto.

9.2 Settlement Website Notice.

9.2.1 The Claims Administrator shall create an Internet website for this Action, where settlement information and claim submission will be made available (“Settlement Website”). The Settlement Website will: (a) inform Settlement Class Members of the basis of the claims raised in the Action and the payment under this settlement; (b) advise Settlement Class Members about how to submit opt out/exclusion notices from the settlement and the deadlines for Settlement Class Members to submit requests for exclusion/opt-out or objections to the proposed settlement (“Opt-Out and Objection Deadline”); (c) instruct that Settlement Class Members should direct questions about the Action or proposed settlement to Class Counsel; and (d) inform Settlement Class Members to their right to appear in the Action through their own attorney. This notice will be in a question and answer format and will contain a full copy of the release (the “Q & A Notice”) and will be substantially in the form of **Exhibit B** attached hereto.

9.2.2 In addition, the Settlement Website will provide access to copies of the Mail Notice, Q & A Notice, Claim Form, the Settlement Agreement, the Preliminary Approval Order, Plaintiff’s fee brief, and any other materials the Parties agree to include. The Settlement Website shall also provide for online submission of Claim Forms. These documents shall be available on the Settlement Website no later than the Notice Deadline and remain so at least until Final Approval. The Claims Administrator shall secure a URL for the Settlement Website selected by Class Counsel and approved by Defendant. The content and format of the website will be agreed upon by the Parties. The cost of securing and maintaining the Settlement Website shall be paid out of the Settlement Fund. The Settlement Website shall be maintained for at least one hundred and eighty (180) days from the date of Final Approval and shall be fully operational on the day the Mail Notice is sent to Class Members.

9.3 Settlement Call Center.

The Claims Administrator shall designate a toll-free number for receiving calls related to the settlement (“Settlement Call Center”). Anyone may call the Settlement Call Center from anywhere in the United States to ask questions of the Claims Administrator about the Settlement. The Parties shall jointly resolve any dispute that may arise regarding the operation of the Settlement Call Center. The Mail Notice and Q & A Notice shall include the toll-free number

for the Settlement Call Center. The Settlement Call Center shall be maintained from the date Mail Notice is provided through at least the next one hundred (100) days. Once this time period has expired, for a period of at least thirty (30) days, either a live person or a recording will advise any caller to the Settlement Call Center that the details regarding the settlement may be reviewed on the Settlement Website.

9.4 Notice of Entry of Judgment.

Notice of entry of judgment shall be in the form of a document which shall be made on pleading paper and state “1. A judgment was entered in this action on [DATE]. 2. A copy of the judgment and order is attached to this notice.” and be signed by Class Counsel and include as an attachment a copy of this judgment and the final approval order. Class Counsel shall give notice of such entry of judgment by posting the notice on the Settlement Website when it is filed with the Court.

10. **Claims Process**

10.1 Potential Claimants

Each Settlement Class Member who does not timely and validly request for exclusion from the Settlement as required in this Settlement Agreement shall be bound by this Settlement Agreement and Final Judgment to be entered following the hearing for final approval of the Settlement. Any Settlement Class Member who does not submit a completed Claim Form within 60 days after the mailing of Class Notice shall be deemed to have waived any claim to relief from the Settlement Fund.

10.2 Valid Claim Forms

10.2.1. In order to receive a settlement payment pursuant to Section 4, a Settlement Class Member must submit a valid and timely claim form, substantially in the form attached hereto as side two of **Exhibit A** (“Claim Form”). A Claim Form is valid and timely if it: (a) includes the Settlement Class Member’s full name and address; (b) includes the telephone number called by Defendant to those Class Members; (c) is postmarked or submitted online by the last date of the 60-day “Claim Period,” as specified in the Claim Form and on the Mail Notice and Q&A Notice, which will be sixty (60) days following the Mailing of the Class Notice; (d) is correct and truthful; and (e) is not successfully challenged under Section 10.2.2 (“Valid Claim Form”) of this Settlement Agreement.

10.2.2 Defendant reserves the right, but not the obligation, to challenge a claim by submitting written objection to the Claims Administrator, with notice to Class Counsel and the Settlement Class Member making the claim. The Claims Administrator will provide Defendant’s Counsel with copies of the Claim Forms to review on a weekly basis. The Claims Administrator shall have full authority to determine the validity of all claims based on the criteria set forth in the definition of “Valid Claim Form” at Section 10.2.1 of this Settlement Agreement.

11. Right to Opt Out of Settlement

11.1 Settlement Class Members have the right to opt out and exclude themselves from the Settlement by mailing a valid exclusion request (“Valid Exclusion Request”) to the Claims Administrator. An exclusion request form will be made available on the Settlement Website, substantially in the form attached hereto as side two of **Exhibit E**. The Valid Exclusion Request must be postmarked on or before the Opt-Out and Objection Deadline specified on the Notice Forms, which is sixty (60) days from the date Mail Notice is sent. The Claims Administrator will provide copies of such exclusion requests to Class Counsel and counsel for Defendant promptly upon receipt.

11.2 The Valid Exclusion Request shall also: (1) be in writing; (2) include the name and number of this case, as well as the Settlement Class Member’s name, address, and cellular telephone number at which the Settlement Class Member was called by Defendant and (3) be signed by the Settlement Class Member.

11.3 A Valid Exclusion Request may be withdrawn by providing written notice of the withdrawal no more than fourteen (14) days prior to the Final Approval Hearing.

11.4 Except for those Settlement Class Members who have properly and timely mailed a Valid Exclusion Request, all Settlement Class Members will be bound by this Settlement Agreement and the Final Judgment to be entered following the hearing for final approval of the Settlement Agreement.

12. Right to Object to Settlement

12.1 Any Settlement Class Member who intends to object to this Settlement Agreement must mail his or her objection(s) (the “Objection”) in writing to the Claims Administrator at the address to be setup and provided on the Settlement Website and Mail Notice. The Claims Administrator will provide a declaration attaching all, if any, such Objections prior to Final Approval. To be considered timely, an Objection must be postmarked on or before the Opt-Out and Objection Deadline specified on the Settlement Website, which is sixty (60) days from the date Mail Notice is sent.

12.2 Any Objection must set forth the name and case number of this matter, the objecting Settlement Class Member’s name, address, telephone number with which he or she had a call with Defendant and all arguments, and citations and evidence supporting the Objection. The Claims Administrator will provide to Settlement Class Counsel and Defendant’s Counsel all copies of any objections mailed or otherwise transmitted to the Claims Administrator.

12.3 Any Class Member shall be permitted to object to this Settlement Agreement at the Final Approval Hearing without filing anything by appearing at the hearing and requesting to be heard. Any Class Member who does not object in person or by mail shall be foreclosed from seeking any review of this Settlement Agreement by appeal or by any other means.

13. Final Judgment

13.1 Defendant shall not be obligated to pay any sum pursuant to this Settlement Agreement except upon Final Judgment. However, in the event that Final Approval of this Settlement Agreement is not granted, Defendant will reimburse the Claims Administrator for reasonable costs incurred in administering the settlement, including but not limited to time spent to prepare documents and testimony in support of the Motion for Preliminary Approval or Final Approval motion.

13.2 By entering Final Judgment, the Court shall:

13.2.1 Approve this Settlement and the proposed Settlement as fair, reasonable and adequate as to, and in the best interests of, the Settlement Class Members; direct the Parties and their counsel to implement and consummate this Settlement, to the extent the Parties have not done so already, according to its terms and provisions; and declare this Settlement to be binding on, and have res judicata and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff and all other Settlement Class Members, as well as their past and present agents, administrators, servants, employees, representatives, assigns, heirs, executors, trustees, joint venturers, partners, successors, predecessors and attorneys, and each of them.

13.2.2 Find that the Notice Forms and the manner of disseminating notice pursuant to the Settlement Agreement: (a) constitute the best practicable notice; (b) constitute notice that is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, their right to accept, object to or exclude themselves from the proposed settlement and to appear at the fairness hearing; (c) constitute reasonable, due, adequate and sufficient notice to all persons entitled to receive notice; and (d) meet all applicable requirements of the California Code of Civil Procedure, the Due Process Clause of the United States Constitution and any Rules of the Court;

13.2.3 Find that Class Counsel and Plaintiff adequately represented the Class for purposes of entering into and implementing the Settlement;

13.2.4 Incorporate the Release set forth in Section 15, below, make the Release effective as of the date Defendant fully funds the Settlement Fund pursuant to section 4.1, and forever discharge the Released Parties from any claims or liabilities arising from or related to the facts, circumstances, or subject matter of this Action;

13.2.5 Enter judgment on all claims of Plaintiff and the Settlement Class Members asserted against Defendant, as well as the Action, without costs to any party, except as provided in this Agreement.

13.3.6 Notice of Entry of Judgment will be served upon Settlement Class Members by electronic posting on the Settlement Website upon filing.

14. Payments Upon Final Judgment

14.1 Within forty-five (45) days of Final Judgment, the Claims Administrator shall pay to Class Counsel, from the Settlement Fund, any reasonable attorney's fees and costs awarded by the Court. However, in the event Final Judgment occurs prior to creation of the Escrow Account, such payment shall be made within thirty (30) days of creation of the Escrow Account. Class Counsel may request that attorneys' fees and costs be paid into a qualified settlement fund, pursuant to United States Treasury Reg. § 1.468B.

14.2 Within forty-five (45) days of Final Judgment, the Service Award shall be paid to Plaintiff from the Settlement Fund. However, in the event Final Judgment occurs prior to creation of the Escrow Account, such payment shall be made within thirty (30) days of creation of the Escrow Account.

14.3 Within forty-five (45) days of Final Judgment, and after all attorney's fees and costs awarded to Class Counsel and all costs of claims administration have been paid out of the Settlement Fund, the Claims Administrator shall calculate the pro rata share that each Settlement Class Member who submitted a Valid Claim Form is entitled to receive and mail a settlement check to each Settlement Class Member who submitted a Valid Claim Form. The settlement checks to Settlement Class Members shall state on their face that the check will expire and become void if not cashed within one-hundred eighty (180) days of the date of the check.

14.4 The settlement checks shall be sent via U.S. Mail to the addresses provided by Settlement Class Members who submitted Valid Claim Forms. In the event a settlement check is returned to the Claims Administrator as undeliverable, the Claims Administrator shall attempt to identify a new address pursuant to the process described at Section 9.1.2 above or other reasonable means and shall re-send the settlement check if a valid address can be identified.

14.5 After the expiration of the validity of checks sent pursuant to Sections 14.3 through 14.4, any remaining funds from uncashed settlement checks, including settlement checks to Settlement Class Members who submitted Valid Claim Forms but whose current Valid Address could not ultimately be determined, shall be delivered to the State Controller's Office for Unclaimed Property in the name of the Settlement Class Members who made a claim and did not cash their checks.

15. Releases Upon Final Judgment

15.1 Release by Settlement Class Members. All Settlement Class Members, (other than those persons who have timely and properly filed a Valid Exclusion Request), on behalf of themselves and their agents, administrators, servants, employees, representatives, assigns, heirs, executors, trustees, joint venturers, partners, successors, predecessors and attorneys, and each of them (collectively the "Releasing Persons"), hereby jointly and severally release and discharge Defendant and all of its respective former, present and future direct and indirect parents, affiliates, subsidiaries, successors and predecessors and all of their respective former, present and future

officers, directors, shareholders, indemnitees, employees, servants, attorneys, representatives, independent contractors, vendors, (including, but not limited to, LowerMyBills.com, Velocify), successors, trusts, trustees, partners, associates, principals, divisions, insurers, members, representatives, brokers, consultants, heirs, and assigns (collectively the “Released Parties”) from any and all actions, causes of action, obligations, costs, expenses, damages, losses, claims, liabilities, and demands from April 8, 2019 to June 7, 2019 arising out of facts asserted in, or claims alleged in the operative First Amended Complaint, including any claims for violation of Sections 632 and Section 632.7 of the IPA and any other federal, state or local statute, regulation, or common law relating to the recording of telephone calls. This release will become effective on the date the Defendant has rendered full payment in this matter to the class action administrator.

15.2 Release by Plaintiff. Plaintiff on behalf of himself and his heirs, executors, estates, predecessors, successors, assigns, agents and representatives, hereby release any and all claims, liens, demands, causes of action, obligations, damages, and liabilities, known or unknown, suspected or unsuspected, fixed or contingent, which he has or may have against any of the Released Parties that arose before the date this Agreement is executed. The release is intended to be a general one covering all existing claims or demands of any nature whatsoever. Plaintiff expressly understand and acknowledge that it is possible that unknown losses or claims exist or that present losses may have been underestimated in amount or severity. The Parties to this Agreement explicitly took that possibility into account in entering into this Agreement. A portion of the consideration has been bargained for between the Parties to this Agreement with the knowledge of the possibility of such unknown losses or claims and was given in exchange for a full accord, satisfaction, and discharge of all such losses or claims. Consequently, Plaintiff, for himself, expressly waive all rights under California Civil Code § 1542, which provides:

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

This release will become effective on the date the Defendant has rendered full payment in this matter to the class action administrator.

16. Effect of Court’s Denial of Preliminary or Final Approval of Settlement

There is no settlement if the Court does not preliminarily approve the Settlement or finally approve the Settlement in substantially the same form as set forth herein, or if the settlement or the judgment approving the Settlement is appealed and not approved on appeal in substantially the same form as set forth herein. In such event, (a) this Settlement Agreement is terminated and is of no force and effect and no party shall be bound by any of its terms; (b) to the extent applicable, any preliminary order approving the Settlement, approving the Notice Program, and providing notice to the Settlement Class shall be vacated; (c) this Settlement Agreement and all of its provisions and all negotiations, statements, and proceedings relating to the Settlement shall be without prejudice to the rights of any of the Parties; (d) each of the Parties shall be restored to their

respective positions as of the date this Agreement was fully executed; and (e) neither the Settlement nor any of its provisions or the fact that this Settlement and/or this Agreement has been made shall be admissible in this Action or in any other action for any purpose whatsoever.

17. Representations and Warranties

Each of the Parties to this Settlement Agreement acknowledges, represents, warrants, and/or agrees as follows:

17.1 Assignment of Claims.

Plaintiff represents and warrants that he is the sole and exclusive owner of all Released Claims and that he has not assigned or otherwise transferred any interest in any of the Released Claims against any of the Released Persons, and further covenants that he will not assign or otherwise transfer any interest in any of Plaintiff's Released Claims. Plaintiff further represents and warrants that he has no surviving claim or cause of action against any of the Released Parties with respect to any of the Released Claims.

17.2 Legal Advice.

The Parties had the opportunity to consult with independent legal counsel with respect to the advisability of making the settlement provided for herein and of executing this Settlement Agreement and all other matters contained herein, including the waiver of rights under California Civil Code Section 1542 or any other similar statute of any other state.

17.3 Investigation.

The Parties have been represented in the negotiations for, and in preparation of, this Settlement Agreement by counsel of his/its choice; he/she/it has read this Settlement Agreement and has had it fully explained to him/her/it by such counsel to the extent necessary; and that he/she/it is fully aware of the contents of this Settlement Agreement and of the legal effect of each and every provision thereof. He/It has made such investigation of the facts pertaining to this Settlement Agreement and of all of the matters pertaining thereto as it deems necessary.

17.4 Authority and Capacity to Execute Settlement Agreement.

The person executing this Settlement Agreement on his/her/its behalf has full authority and capacity to execute this Settlement Agreement and to give the releases and other promises contained herein.

18. No Admission of Liability

This Settlement Agreement affects the settlement of claims that are denied and contested, and nothing contained herein shall be construed as an admission by Defendant of any liability of

any kind. Defendant denies any liability in connection with any such claims and intend merely to avoid further litigation of the Action.

19. Confidentiality

19.1. Neither Class Counsel nor Plaintiff will issue press releases or make other public statements regarding the settlement unless Defendant agrees to such press releases or public statements in advance. However, Class Counsel may post Court orders regarding the Action and brief summaries of those orders on their website(s) without permission from Defendant. Neither Class Counsel nor Plaintiff will make a statement of any kind to any third party regarding the Settlement prior to applying for preliminary approval, with the exception of communications with the Claims Administrator. The Parties may make public statements to the Court as necessary to obtain preliminary or final approval of the Settlement. This provision shall not prohibit Class Counsel from communicating with any Settlement Class Member regarding the Action or the Settlement; provided, however, that Class Counsel must comply with all confidentiality agreements in the Action in communicating with Settlement Class Members and will not disclose information that is not a part of the public record. For avoidance of doubt, Defendant may also report this Settlement subject to any regulatory or compliance related reporting requirements as required.

19.2 Nothing in this Settlement Agreement shall preclude Settlement Class Members from addressing, contacting, dealing with, or complying with requests or inquiries from any governmental authorities relating to the issues raised in the Settlement.

20. Choice of Law and Jurisdiction

This Settlement Agreement is being executed in the State of California, and it shall be deemed to be made under, and shall be interpreted in accordance with, the internal laws of the State of California and applicable federal law, rule, and/or regulation.

21. Construction of Agreement

Each Party has participated in the drafting and preparation of this Settlement Agreement. Hence, in construing this Settlement Agreement, none of the Parties hereto shall have any term or provision, or any uncertainty or ambiguity as to any term or provision herein, construed against such Party solely by reason of such Party having drafted the same, as a result of the manner of the preparation of this Settlement Agreement, or otherwise. Each term and provision of this Settlement Agreement shall be construed and interpreted so as to render it enforceable.

22. Headings or Pronouns

Headings or captions contained in this Settlement Agreement are solely for the convenience of the Parties, are not a part of this Settlement Agreement, and shall not be used for the interpretation of, or determination of the validity of, this Settlement Agreement or any provision hereof. Whenever the context may so require, the masculine gender shall be deemed

to refer to and include the feminine and neuter, and the singular shall be deemed to refer to and include the plural, and vice versa.

23. Entire Agreement

This Settlement Agreement contains the entire agreement and understanding between the Parties concerning the subject matter hereof, and any and all prior oral or written agreements or understandings between the Parties related hereto are superseded. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Settlement Agreement, have been made by any party hereto.

24. Waiver, Modification and Amendment

No provision of this Settlement Agreement may be waived unless in writing signed by all Parties hereto. Waiver of any one provision shall not be deemed to be a waiver of any other provision hereof. This Settlement Agreement may not be altered, amended or otherwise changed or modified, except in writing signed by all Parties.

25. Successors and Assigns

This Settlement Agreement is binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors, assigns, heirs, agents, employees, attorneys, representatives, officers, parents, affiliates, and subsidiaries.

26. Execution in Counterparts

This Settlement Agreement may be executed in counterparts and all of said counterparts shall collectively constitute one agreement binding on all Parties.

27. Termination Of Discovery And Motion Practice

By signing this Settlement Agreement, the Parties agree not to serve any discovery or proceed with any motion after the date of this Settlement Agreement, except for motions related to the approval of the Settlement, unless the Parties are ordered to do so by the Court or the Final Approval Order is not entered and this Settlement becomes void.

28. Further Cooperation

The Parties hereto agree to execute all such further and additional documents and instruments as shall be necessary or expedient to carry out the provisions of this Settlement Agreement, and shall promptly and in good faith undertake all reasonable acts to effectuate the provisions of this Settlement Agreement.

29. Notices

All letters, notices, requests, demands and other communication required or permitted to be given to the parties pursuant to this Settlement Agreement, excluding communications directed to Settlement Class members, shall be in writing and addressed as follows:

For Plaintiff and the Settlement Class:

Todd M. Friedman, Esq.
The Law Offices of Todd M. Friedman, P.C.
21031 Ventura Blvd, Suite 340
Woodland Hills, CA 91364

For Defendant:

Frances M. O'Meara, Esq.
Mindy Bae Kulikov, Esq.
WOOD SMITH HENNING & BERMAN LLP
10960 Wilshire Blvd., 18th Fl.
Los Angeles, CA 90024
E-mail: fomeara@wshblaw.com
mkulikov@wshblaw.com

[SIGNATURE PAGE TO FOLLOW]

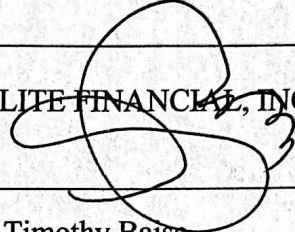
IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed as of the dates set forth below.

DATED: March 9, 2023

Terry Fabricant

Terry Fabricant, as an Individual and as Class Representative

DATED: March 10, 2023



TOP FLITE FINANCIAL, INC.

By _____

Name: Timothy Baise

Title: Chief Executive Officer

APPROVED AS TO FORM AND CONTENT

DATED: March 10, 2023

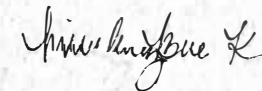
LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By 

Todd M. Friedman, Attorney for Plaintiff

DATED: March 9, 2023

WOOD, SMITH, HENNING & BERMAN, LLP

By: 

Frances O'Meara, Esq.

Mindy Bae Kulikov, Esq.

Attorneys for Defendant Top Flite Financial, Inc.