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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **NICHOLAS C. SMITH-WASHINGTON,**) Case No. 3:23-CV-830-VC
14 **JOYCE MAHONEY, JONATHAN AMES,**)
15 **MATTHEW HARTZ, and JENNY LEWIS**) Assigned for all purposes to Hon. Vince
on behalf of themselves and all others similarly) Chhabria
situated,)

16 Plaintiffs,)

17 vs.)

18 **TAXACT, INC.,** an Iowa corporation,)

19 Defendant.)

) **PLAINTIFFS’ NOTICE OF MOTION**
) **AND MOTION FOR PRELIMINARY**
) **APPROVAL OF CLASS ACTION**
) **SETTLEMENT**

) Courtroom: 4, 17th Floor
) Hearing Date: April 4, 2024
) Hearing Time: 2:00 p.m.
)
)
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NOTICE OF MOTION

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on April 4, 2024, at 2:00 p.m., or as soon thereafter as this matter may be heard, before the Honorable Vince Chhabria, in Courtroom 4, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California 94102, Plaintiffs Nicholas C. Smith-Washington, Joyce Mahoney, Jonathan Ames, Matthew Hartz, and Jenny Lewis (“Plaintiffs”), on behalf of themselves and the putative Classes, by and through their Counsel, shall and hereby do, respectfully move the Court for entry of an Order, pursuant to Federal Rule of Civil Procedure 23(e), in the above-captioned action (the “Action”):

1. Certifying the proposed Nationwide Class, California Subclass, Nationwide Married Filing Jointly Class, and California Married Filing Jointly Subclass for purposes of settlement;

2. Provisionally appointing Plaintiffs Nicholas C. Smith-Washington, Joyce Mahoney, and Jonathan Ames as Settlement Class Representatives of the Nationwide Class and the California Subclass, Plaintiff Matthew Hartz as an additional Settlement Class Representative of the Nationwide Class, Plaintiff Jenny Lewis as Settlement Class Representative of the Nationwide Married Filing Jointly Class and the California Married Filing Jointly Subclass, and HammondLaw, P.C., and Keller Postman LLC, as Class Counsel for purposes of settlement;

3. Granting preliminary approval of the proposed class action settlement between Plaintiffs and Defendant TaxAct, Inc. (“Defendant”) as fair, adequate, and reasonable, based upon the terms set forth in the Parties’ Class Action Settlement Agreement and Release (“Settlement Agreement”),¹ including payment by Defendant of a cash settlement of **\$17,450,000** for the benefit of the Settlement

¹ Capitalized terms shall have the same meaning as set forth in the Class Action Settlement Agreement and Release dated February 21, 2024, attached as **Exhibit 1** to the Declaration of Julian Hammond in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Hammond Decl.”). In addition, these terms have the following meaning as used herein: (1) “Postman Decl.” means the Declaration of Warren D. Postman in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement; (2) “Hughes Decl.” means the Declaration of Hunter Hughes in Support of Motion for Preliminary Approval of Class Action Settlement; (3) “Smith-Washington Decl.,” “Mahoney Decl.,” “Ames Decl.,” “Hartz Decl.,” and “Lewis Decl.,” mean the respective declarations of Plaintiffs in support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement; and (4) “Kroll Decl.” means the Declaration of Jeanne C. Finegan, APR of Kroll Settlement Administration LLC in Connection with Preliminary Approval of Settlement (which is attached as Exhibit B to the Settlement Agreement).

1 Classes, comprising a \$14,950,000 non-reversionary cash settlement common fund plus up to
2 \$2,500,000 of additional funds set aside to be used towards Notice and Administration Costs with any
3 remainder of that amount to be distributed to the Settlement Classes (the “Total Cash Settlement
4 Amount”), and the provision of an In-Kind Payment to all Settlement Class Members who file a valid
5 claim, with an estimated total redeemable valuation, assuming a 5% claims rate, of \$31 million with a
6 minimum redeemed value of **\$5.8 million** – resulting in a conservatively estimated total settlement value
7 of **\$23,250,000**;

8 4. Approving the Plan of Allocation for the Net Settlement Fund and the In-Kind Payment;

9 5. Approving the form and substance of the proposed Notice of Proposed Settlement of
10 Class Action (“Long-Form Class Notice”), Short-Form Notice (“Short-Form Notice”), Claim Form
11 (“Claim Form”), and Opt-Out Form; the manner and timing of disseminating notice to the Class (the
12 “Notice Plan”); and the selection of Kroll Settlement Administration LLC as the Settlement
13 Administrator;

14 6. Setting deadlines for Class Members to exercise their rights in connection with the
15 proposed Settlement; and

16 7. Scheduling a hearing date for final approval of the Settlement and Plan of Allocation and
17 application for attorneys’ fees and expenses.

18 This Motion is based on the Memorandum of Points and Authorities below and the exhibits
19 thereto, the Declaration of Julian Hammond, the Declaration of Warren D. Postman, the Declaration of
20 Hunter Hughes, the Settlement Agreement and exhibits thereto, the declarations of Plaintiffs, the Court’s
21 record in this matter, and such oral and documentary evidence as may be presented at or before the
22 hearing on this matter.

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STATEMENT OF THE ISSUES TO BE DECIDED

The issues to be decided on this Motion are:

- 1. Whether the proposed Settlement on the terms and conditions set forth in the Settlement Agreement warrants preliminary approval;
- 2. Whether to certify this Action as a class action for purposes of settlement;
- 3. Whether the Court should approve the form and substance of the proposed Class Notice, Short-Form Notice, Claim Form, and Opt-Out Form;
- 4. Whether the Court should approve the deadlines proposed for Class Members to exercise their rights under the proposed Settlement; and
- 5. Whether the Court should schedule a Final Approval Hearing to determine whether the Settlement, Plan of Allocation, and the forthcoming application for attorneys’ fees and expenses and Service Awards for the Class Representatives should be finally approved.

MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

After a year of litigation, extensive motion practice, substantial discovery, an expert-led review of pixels and tracking tools on Defendant TaxAct's website, a full-day mediation guided by renowned mediator Hunter Hughes, Esq., and subsequent intense arm's-length negotiations, Plaintiffs have achieved a \$17,450,000 cash settlement for the benefit of the Settlement Classes (which comprises a \$14,950,000 non-reversionary common fund plus \$2,500,000 for notice and case administration costs, any unused portion of which will be distributed to the Settlement Classes), and substantial in-kind relief with a conservatively-estimated expected redeemed value of \$5,800,000; for a total estimated settlement value of at least \$23,250,000. Assuming a claims rate of 5%, Plaintiffs estimate that the gross share of the cash settlement available to each Settlement Class Member submitting a valid claim will be \$33.86, their net share of the cash settlement (after the payment of court-approved attorneys' fees and costs, Class Representative Service Awards, and Settlement Administration Costs) will be \$18.65, and the average total gross and net relief available to them (including in-kind relief) will total \$93.85 and \$78.64, respectively. Hammond Decl. ¶ 77. In addition to the monetary and in-kind relief obtained by Plaintiffs, TaxAct has entered into an injunction with the Missouri Attorney General that prohibits TaxAct from engaging in the practices challenged by Plaintiffs in the instant case. *Id.* ¶ 25, Ex. 3.

The proposed Settlement is an excellent result, reached while a motion to compel Plaintiffs' claims to individual arbitration was pending. The pending motion likely would have resulted in Plaintiffs being compelled to individual arbitration of their claims, which would have precluded class-wide relief on any claim. The amount of the recovery is particularly impressive given that TaxAct argued that their website's Terms of Service, which Class Members allegedly agreed to: (i) limit the time in which Class Members can bring claims arising out of or related to TaxAct's services to one-year after such claims arose; and, (ii) limit damages recoverable by Class Members to the amounts they paid to TaxAct. These risks are in addition to TaxAct's merits-based arguments, including Defendant's claim that its users consented to the practices at issue, that its conduct was permissible under IRS regulations, that taxpayer information was not actually disclosed, and that the class suffered no actual damages. Plaintiffs dispute these characterizations, but acknowledge the substantial risks in this complex case, which is facing a

1 serious threat of being compelled to arbitration.

2 The Settlement is a product of informed, arm's-length negotiations. Plaintiffs reviewed and
3 analyzed more than 7,300 pages of documents, and over 100 pages of written discovery responses,
4 prepared for and conducted a deposition of TaxAct's Marketing Technology Manager and a deposition
5 of TaxAct's Vice President of Tax Operations, and were preparing for a 30(b)(6) deposition and
6 depositions of several former employees, when the parties reached an agreement in principle to settle.
7 This discovery, and the risks discussed in the paragraph immediately above, allowed Plaintiffs to form
8 a clear view of the strengths and weaknesses of their case. Hammond Decl. ¶¶ 9, 30-32, 36, 39.

9 In exchange for the cash settlement and in-kind relief, described above, Plaintiffs, on behalf of
10 the proposed Settlement Classes, agreed to release the claims alleged in their Second Amended
11 Complaint and potential claims based on the identical factual predicate underlying those claims.

12 In reviewing the proposed Settlement, the Court must determine "whether the settlement is 'fair,
13 reasonable, and adequate,' under Rule 23(e) , based on any information the district court receives from
14 the parties or can obtain through its own research." *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D.
15 Cal. 2016); *see also Hunt v. VEP Healthcare, Inc.*, No. 16-cv-04790-VC, 2017 WL 3608297 (N.D. Cal.
16 Aug. 22, 2017); *Eddings v. D.S. Services of America, Inc.*, No. 15-cv-02576-VC, 2016 WL 3390477
17 (N.D. Cal. May 20, 2016). Balancing the risks against the substantial attendant benefits, the Court should
18 find that the Settlement Agreement more than meets the applicable standard. In Plaintiffs' view, it
19 represents an outstanding result for the Settlement Classes. Hunter Hughes, the mediator, concluded:

20 "Based upon my experience as a mediator, my knowledge of the issues in dispute,
21 my review of the materials presented before and during mediation, the rigor of the
22 Parties' negotiations during the mediation session, and the benefits achieved by
23 the Settlement, I believe the Settlement represents a reasoned and sound
24 resolution of this litigation."

25 Hughes Decl. ¶ 17. Accordingly, Plaintiffs respectfully request that the Court preliminarily approve the
26 proposed Settlement.

27 II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

28 A. Brief Summary of the Litigation

On January 24, 2023, Plaintiff Smith-Washington filed this putative class action lawsuit in the

1 Superior Court of Alameda, California alleging that Defendant secretly disclosed its California
2 customers' confidential taxpayer information to Meta Platforms, Inc. ("Meta" or "Facebook"), an
3 unauthorized third party. Defendant removed this case on February 23, 2023. Dkt. 1. On March 2, 2023,
4 Defendant filed a Motion to Stay Pending Arbitration Under 9 U.S.C. § 3. Dkt. 12. On May 25, 2023,
5 the Court heard argument on Defendant's Motion, denying it without prejudice and opening discovery.
6 Dkt. 44. On June 8, 2023, Defendant filed a Renewed Motion to Compel Arbitration and Stay
7 Proceedings. Dkt. 50. On June 12, 2023, because of information discovered by Plaintiff as part of
8 Counsel's continuing investigation into the case, Plaintiff informed Defendant that he intended to file an
9 amended complaint. On June 20, 2023, Plaintiff filed the First Amended Complaint: adding Plaintiffs
10 Mahoney, Ames, and Lewis; alleging that Defendant also disclosed its customers' confidential
11 information to Google, Google Double Click (collectively "Google"), and other unauthorized third
12 parties; expanding the class definition to cover all persons nationwide who used TaxAct's website's tax
13 preparation services to prepare a tax return, with a California subclass; and, adding a second putative
14 class of "Married Filers," whose spouses used TaxAct's website's tax preparation services to prepare a
15 joint tax return with them. Dkt. 56. On June 29, 2023, pursuant to a stipulation of the Parties, the Court
16 recognized that the additional Plaintiffs in the First Amended Complaint as well as the newly pled facts
17 and causes of action rendered Defendant's pending Motion moot. Dkt. 62. Accordingly, the Court set a
18 deadline and briefing and hearing schedule for a Renewed Motion to Compel Arbitration and Stay
19 Proceedings from Defendant ("Renewed Motion"). *Id.*

20 Thereafter, the parties entered into a Stipulated Protective Order. Dkt. 74. On June 23 and July
21 10, 2023, respectively, Plaintiffs served their first sets of Requests for Production and Interrogatories.
22 Hammond Decl. ¶ 26. On July 12, 2023, Defendant filed its Renewed Motion. On July 20 and 21, 2023,
23 Plaintiffs served third-party subpoena on Google and Meta, respectively for the production of documents
24 and information. *Id.* ¶ 27. On July 24, 2023, Defendant served its responses to Plaintiffs' First Set of
25 Requests for Production. *Id.* ¶ 28. The Parties met and conferred on numerous occasions over the
26 following several weeks regarding Defendant's responses. *Id.* ¶ 30. Defendant served supplemental
27 responses to Plaintiff's Request for Production on August 4, 2023. *Id.* On August 9, 2023, Defendant
28 served its responses to Plaintiffs' First Set of Interrogatories. *Id.* ¶ 29. Also in August 2023, Plaintiffs
took the depositions of two of TaxAct's high-level employees, including its Manager of Marketing

1 Technology & Website. *Id.* ¶ 32.

2 Plaintiffs filed their opposition papers to Defendant’s Renewed Motion on August 29, 2023,
3 which consisted of a 22-page brief, over 500 pages of supporting documents including deposition
4 transcripts from the above-mentioned depositions and declarations from all four named Plaintiffs at the
5 time, and a 34-page evidentiary objection to TaxAct’s supporting declaration. Dkts. 79-80. On
6 September 7, 2023, Defendant filed its reply brief and its response to Plaintiffs’ evidentiary objections.
7 Dkt. 82.

8 After Plaintiffs had filed their Opposition papers, in September 2023, the parties agreed to attend
9 mediation and stipulated to continue the hearing on Defendant’s Motion to Compel Arbitration until
10 November 30, 2023. Dkt. 88. The parties attended a full-day mediation with Hunter Hughes on
11 November 20, 2023, but were unable to reach a settlement. Hammond Decl. ¶ 36. On November 27,
12 2023, as requested in Plaintiffs’ unopposed Administrative Motion, and in light of Plaintiffs’ intent to
13 seek leave to file a Second Amended Complaint, the Court continued the hearing date for Defendant’s
14 Renewed Motion to January 18, 2024. Dkt. 94. On November 28, 2023, Plaintiffs filed a Motion for
15 Leave to File a Second Amended Complaint. Dkt. 95. With Plaintiffs’ Motion for Leave to File a Second
16 Amended Complaint fully briefed, on December 22, 2023, the Court set the hearing date for January 11,
17 2024. Hammond Decl. ¶ 20.

18 On December 5, 2023, Plaintiffs served their Second Set of Requests for Production. Hammond
19 Decl. ¶ 33. In late December 2023, Counsel for Plaintiffs, as part of their continuing investigation of the
20 case, discovered that, on or about December 22, 2023, Defendant had changed the Terms of Service
21 applicable to customers using its website. *Id.* ¶ 21. On January 3, 2024, Plaintiffs filed a Motion for
22 Protective Order and Corrective Notice asking the Court, *inter alia*, to enjoin Defendant from enforcing
23 §§ 9, 13, and 14 of the Updated Terms of Service against putative Class Members with respect to claims
24 arising during the Class Period in this litigation and/or in arbitration and to require Defendant to issue a
25 corrective notice to putative Class Members by mail, email, and by posting that notice on its website.
26 Dkt. 103.² On that same day, Plaintiffs also filed a motion to shorten time for the briefing and hearing of
27

28 ² On or about January 2, 2024, Plaintiffs’ Counsel obtained an agreement from TaxAct that it would not seek to enforce the Updated TOS against any of the Plaintiffs and any members of the Classes that Plaintiffs seek to represent, should such Classes be certified. Hammond Decl. ¶ 23.

1 their motion. Dkt. 104. The Court set the hearing for the Motion for Protective Order and Corrective
2 Order for January 11, 2024, at the same time as the hearing on Plaintiffs’ Motion for Leave to File a
3 Second Amended Complaint. Dkt. 105. In response to Plaintiffs’ Counsel’s request, Defendant did
4 stipulate that it would not seek to enforce the new Updated TOS against the Plaintiffs or any of the class
5 members they seek to represent, should the class be certified. Hammond Decl. ¶ 23.

6 On January 4, 2024, Defendant served its objections and responses to Plaintiffs’ Second Set of
7 Requests for Production. Hammond Decl. ¶ 33. In combination, Defendant’s responses to Plaintiffs’
8 First and Second Sets of Requests for Production resulted in Defendant producing more than 7,300 pages
9 of documents. *Id.* ¶ 31. Plaintiffs also prepared notices of depositions for three former TaxAct employees
10 and a 30(b)(6) witness and were actively negotiating with Defendant in early January to find mutually
11 agreeable dates to take those depositions. *Id.* ¶ 33.

12 On January 10, 2024, the Parties informed the Court that they had reached a settlement in
13 principle. That same day, the Court stayed all current deadlines and took the scheduled hearings off
14 calendar pending the submission of Plaintiffs’ Motion for Preliminary Approval. Dkt. 107.

15 On February 20, 2024, pursuant to a stipulation of the Parties, Plaintiffs filed a Second Amended
16 Complaint (“Operative Complaint” or “SAC”) which, *inter alia*, added Plaintiff Matthew Hartz, made
17 minor revisions to the class definitions and the classes covered by certain causes of action, and added a
18 cause of action for breach of contract. Dkt. 117.

19 **B. Summary of the Mediation Efforts and Agreement to Settle**

20 The negotiations that ultimately led to the Settlement Agreement were protracted and complex.³
21 They involved dozens of video conferences, telephone calls, and emails regarding the documents and
22 information to be informally produced by Defendant in order to ensure that Plaintiffs were able to fully
23 assess the realistic value of each of their claims; substantial briefing submitted by both sides to the
24 mediator; a full-day mediation session with respected mediator Hunter Hughes, Esq.; and numerous
25 subsequent video conferences and telephone calls as the Parties continued to explore whether a
26 settlement was possible. Hammond Decl. ¶¶ 35-40.

27
28

³ No counsel from any other case participated in the settlement negotiations on behalf of Plaintiffs.

1 On January 10, 2024, the Parties executed a Memorandum of Understanding which set out the
 2 principal terms of the Settlement. Hammond Decl. ¶ 40. Since January 10, 2024, the Parties have made
 3 considerable efforts, with yet more video conferences, phone calls, and emails, in order to resolve the
 4 details associated with finalizing this Settlement, which included the Notice Plan, selecting the
 5 Settlement Administrator, agreeing on the Plan of Allocation, and determining the best method to
 6 provide the In-Kind Payment to Class Members. *Id.* Ultimately, on February 21, 2024, the Parties
 7 executed the Settlement Agreement. *Id.* ¶ 42.

8 C. Summary of Changed Practices

9 During the pendency of this litigation, and prior to reaching final terms on the Settlement
 10 Agreement, Defendant entered into a Stipulated Consent Judgment with the Missouri Attorney General
 11 entered by the Circuit Court of St. Louis City, State of Missouri, on October 31, 2023. Hammond Decl.
 12 ¶ 25, Ex. 3, ¶ 13 (Stipulated Consent Judgment). And, the practices challenged by Plaintiffs, in the instant
 13 case, are enjoined by that same Stipulated Consent Judgment. *Id.* ¶ 25, Ex. 3, ¶¶ 5-7. The Stipulated
 14 Consent Judgment provides, *inter alia*, that (1) TaxAct shall not disclose to third parties any consumer
 15 personal or tax information⁴ collected through tracking tools, unless TaxAct has obtained express
 16 consent from consumers or it is permitted by law, (2) TaxAct shall maintain an information security
 17 program that complies with state and federal laws and industry norms and practices, and which is
 18 designed to protect the security, integrity and confidentiality of consumer personal or tax information
 19 that is collected, stored, and/or transmitted by TaxAct, and (3) that the information security program
 20 maintained by TaxAct shall contain administrative, technical, and/or physical safeguards. *Id.* ¶ 25, Ex.
 21 3, ¶¶ 5-7.

22 III. SUMMARY OF THE PROPOSED SETTLEMENT

23 A. The Settlement Provides Substantial Relief to the Class Members

24
25
26

27 ⁴ Consumer tax information is defined in the Stipulated Consent Judgment as “a Unique Identifier in
 28 combination with *any* specific items from a tax return (including but not limited to names of dependents,
 filing status, or the amounts of the following: adjusted gross income, tax refunds, investment income,
 mortgage interest, standard deductions, student loan interest, and/or charitable contributions), ...”
 Exhibit 3 to Hammond Decl., at p. 2.

1 The Settlement Agreement creates a cash settlement for the benefit of the Settlement Classes in
2 the amount of **\$17,450,000**, which comprises a non-reversionary \$14,950,000 common fund plus
3 \$2,500,000 set aside to be used towards Notice and Administration Costs with any unused remainder of
4 that amount to be distributed to the Settlement Classes (“Qualified Settlement Fund” or “QSF,” also
5 referred to as the “Total Cash Settlement Amount” or “TCSA”). Settlement Agreement ¶¶ 49, 63. The
6 QSF, less a court-approved Attorneys’ Fees and Expenses Award, court-approved Service Awards to the
7 Settlement Class Representatives, and Notice and Administration Costs, will be allocated among
8 Settlement Class Members who submit a valid claim form in accordance with the Plan of Allocation
9 attached as Exhibit 2 to the Hammond Declaration, and discussed below in Part III.B. Settlement
10 Agreement, ¶¶ 40, 115-16. Assuming a claims rate of 5%, Plaintiffs estimate that the average Authorized
11 Claimant’s gross share of the QSF will be \$33.86, and the average Authorized Claimant’s share of the
12 Net Settlement Fund will be \$18.65. Hammond Decl. ¶ 74.

13 In addition to the cash payment to be made by Defendant, the Settlement Agreement requires
14 Defendant to provide an In-Kind Payment, in an easy-to-redeem format, in the form of TaxAct® Xpert
15 Assist (“Xpert Assist”) to all Settlement Class Members who file a valid claim form. Settlement
16 Agreement, ¶ 72. Xpert Assist is an add-on feature that TaxAct offers to its customers that provides live
17 advice and assistance from tax experts to customers completing a tax return through TaxAct. *Id.* TaxAct
18 will provide complimentary TaxAct® Xpert Assist to Authorized Claimants to use in connection with
19 preparing a tax return using any TaxAct online do-it-yourself consumer Form 1040 tax return filing
20 product (including TaxAct’s free product), applied to tax year 2024. *Id.* Specifically, upon entering their
21 Social Security number into the TaxAct platform, which occurs at the beginning of the tax return form
22 process, Authorized Claimants will receive a pop-up alerting them to their complimentary Xpert Assist
23 and be able to add and use Xpert Assist immediately. *Id.* TaxAct currently offers Xpert Assist to
24 customers at the price of \$59.99. *Id.* The estimated potential redeemable value of the In-Kind Payment,
25 based on a 5% claims rate, is \$31 million. Hammond Decl. ¶¶ 4, 75. Recognizing that not every
26 Settlement Class Member will return to use TaxAct to file their taxes, Plaintiffs conservatively estimate
27 the minimum expected redeemed value of the In-Kind Payment will be \$5.8 million. *Id.* ¶ 75.

28 The combined size of the QSF and the In-Kind Payment represents an excellent result for
Plaintiffs and the Settlement Classes. Plaintiffs conservatively estimate that the average gross and net

1 relief available to Authorized Claimants (including in-kind relief) will be \$93.85 and \$78.64,
2 respectively. Hammond Decl. ¶ 77.

3 **B. The Allocation of Relief Among Settlement Class Members**

4 The Net Settlement Fund will be allocated according to the Plan of Allocation among those
5 Settlement Class Members who complete and submit a simple claim form. Hammond Decl. ¶¶ 71, 78,
6 Exhibit 2 (Plan of Allocation). Authorized Claimants – i.e., Settlement Class Members who submit valid
7 claims – are assigned allocation points according to the Settlement Class or Subclass of which they are
8 a member. If an Authorized Claimant was a member of one Class or a Subclass during a portion of the
9 Class Period and was a member of a different Class or Subclass during a different portion of the Class
10 Period, the Authorized Claimant will be assigned allocation points for the Class or Subclass to which the
11 Authorized Claimant belonged that has the highest number of allocation points. Allocation points shall
12 be assigned as follows: Members of the Nationwide Class are assigned 3 allocation points; Members of
13 the California Subclass are assigned 6 allocation points; Members of the Nationwide Married Filing
14 Jointly Class are assigned 1 allocation point; and Members of the California Married Filing Jointly
15 Subclass are assigned 2 allocation points. Hammond Decl. ¶ 78.

16 “Approval of a plan of allocation of settlement proceeds in a class action ... is governed by the
17 same standards of review applicable to approval of the settlement as a whole: the plan must be fair,
18 reasonable and adequate.” *In re Oracle Sec. Litig.*, No. C-90-0931-VRW, 1994 WL 502054, at *1-2
19 (N.D. Cal. June 18, 1994) (citing *Class Pls. v. City of Seattle*, 955 F.2d 1268, 1284-85 (9th Cir. 1992)).
20 Here, Plaintiffs’ proposed Plan of Allocation is fair, reasonable, and adequate because it attempts to
21 “allocate the settlement funds to class members based on . . . the strength of their claims on the merits.”
22 *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1045 (N.D. Cal. 2008) (citing *In re Oracle Sec.*
23 *Litig.*, 1994 WL 502054, *1-2 (other internal citation omitted)). Plaintiffs have attempted to achieve the
24 appropriate ratio between each respective group such that the allocation points assigned to them, relative
25 to other Settlement Class Members, reflect the strength of the claims that Plaintiffs have pursued on their
26 behalf.

27 As described in more detail below, *see infra* Parts V.A.11 & V.D.2, Plaintiffs have brought three
28 claims on behalf of the nationwide classes, with eight on behalf of the two California subclasses. Given
the strength of the California-specific claims, particularly, those based on Business & Professions Code

1 § 17530.5 and the Tax Preparation Act (Bus. & Prof. Code §§ 22250, *et seq.*), Plaintiffs believe it is
 2 appropriate that members of the California subclasses receive more than members of the nationwide
 3 classes. Similarly, because there are substantial challenges and risks for the Nationwide Married Filing
 4 Jointly Class’s claims as compared to the Nationwide Class’s claims, Plaintiffs believe it is appropriate
 5 that Nationwide Married Filing Jointly Class Members, whose interactions with Defendant differ
 6 materially from those of their spouses, should receive fewer allocation points than their Nationwide Class
 7 counterparts, as discussed more fully below.

8 **C. The Settlement Class Definitions Differ Only Slightly from the Classes Defined in**
 9 **the Operative Complaint**

10 The Settlement Agreement defines two Settlement Classes, each with a Subclass. The
 11 Nationwide Class is defined as “all natural persons who used a TaxAct online do-it-yourself consumer
 12 Form 1040 tax filing product and filed a tax return using the TaxAct online product during the Class
 13 Period, and whose postal address listed on such tax return was in the United States.” Settlement
 14 Agreement, ¶ 55.a. The Nationwide Class includes the California Subclass which is defined as “all
 15 natural persons who used a TaxAct online do-it-yourself consumer Form 1040 tax filing product and
 16 filed a tax return using the TaxAct online product during the Class Period, and whose postal address
 17 listed on such tax return was in California.” *Id.*, ¶ 55.a.i. The Nationwide Married Filing Jointly Class is
 18 defined as: “all natural persons whose spouse used a TaxAct online do-it-yourself consumer Form 1040
 19 tax filing product and filed a joint tax return using the TaxAct online product during the Class Period,
 20 and whose postal address listed on such joint tax return was in the United States.” *Id.*, ¶ 55.b. The
 21 Nationwide Married Filing Jointly Class includes the California Married Filing Jointly Subclass which
 22 is defined as “all natural persons residing in California during the Class Period whose spouse used a
 23 TaxAct online do-it-yourself consumer Form 1040 tax filing product and filed a joint tax return using
 24 the TaxAct online product during the Class Period, and whose postal address listed on such joint tax
 25 return was in California.” *Id.*, ¶ 55.b.i. The Class Period, for settlement purposes, is defined as “the time
 26 period from January 1, 2018, through December 31, 2022[.]” *Id.* ¶ 30.

27 The differences between these definitions and the Classes and Subclasses proposed in the
 28 Operative Complaint are minimal. First, the Class and Subclass definitions in the Operative Complaint
 refer to persons who “used Defendant TaxAct’s website’s tax preparation services to prepare a tax
 return,” Dkt. 117, ¶ 184, but the Settlement Class and Subclass definitions refer to persons who “used a

1 TaxAct online do-it-yourself consumer Form 1040 tax filing product and filed a tax return using the
2 TaxAct online product.” Settlement Agreement, ¶ 55.a-b. This difference stems from the fact that the
3 definitions in the Operative Complaint could include TaxAct customers who used TaxAct’s website to
4 file business tax returns, who used TaxAct’s Professional products, or who used TaxAct’s download do-
5 it-yourself consumer Form 1040 tax return filing product. Plaintiffs never intended to include these
6 groups of people in the Classes they sought to represent and for each of these groups TaxAct asserts that
7 the allegations in the Operative Complaint are entirely inapplicable because their use of TaxAct’s
8 website and products cannot have resulted in the collection and/or disclosure of any confidential taxpayer
9 information and/or is not covered by the consumer-focused allegations and causes of action set out in
10 the Operative Complaint.

11 Second, the Class and Subclass definitions in the Operative Complaint refer to “natural persons
12 residing in the United States” or “natural persons residing in California,” respectively. Dkt. 117, ¶ 184.
13 The Settlement Class and Subclass definitions refer to persons “whose postal address listed on such tax
14 return was in the United States” or “whose postal address listed on such tax return was in California.”
15 Settlement Agreement, ¶ 55.a-b. This is because it is not possible for TaxAct to determine who was
16 “resident” in California or the United States, and the best information available to the parties to determine
17 who was most likely to be resident in California and/or the United States in any year in which they used
18 TaxAct’s online do-it-yourself consumer Form 1040 tax filing product and filed a tax return using the
19 Tax Act online product is the postal address that they listed on that tax return.

20 **D. The Settlement’s Release is Coextensive with the Ninth Circuit’s “identical factual**
21 **predicate” Requirement**

22 In exchange for the benefits to be provided to the Settlement Classes, the Settlement Agreement
23 proposes to release specific parties, including TaxAct and its current, former and/or future parents,
24 subsidiaries, divisions, affiliates and/or departments, from all claims asserted in Plaintiffs’ Second
25 Amended Complaint as well as claims that have not been asserted but “could have been pled based on,
26 relating to, or arising out of the identical factual predicate in the Operative Complaint” Settlement
27 Agreement, ¶ 83. Thus, to be clear, the claims released by the Settlement Agreement are the same as the
28 claims in the Second Amended Complaint (i.e., the Operative Complaint), except that claims which
could have been pled based on the identical factual predicate in the Operative Complaint, but were not
pled, are also released. *See Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010) (quoting *Williams*

1 *v. Boeing Co.*, 517 F.3d 1120, 1133 (9th Cir. 2008); *Class Plaintiffs*, 955 F.2d at 1287). The release is
 2 to be “construed as broadly as possible under Ninth Circuit law to effect complete finality over this
 3 Action.” Settlement Agreement, ¶ 84.

4 **E. The Settlement Agreement Allows Counsel to Seek Fees and Costs and the**
 5 **Settlement Class Representatives to Seek Service Awards**

6 As provided for in the Settlement Agreement, and as required by this Court, Plaintiffs will submit
 7 their motion for attorneys’ fees and expenses at least 14 days before the deadline for objecting to the
 8 settlement. Standing Order, pp. 15-16 (citing *In re Mercury Interactive Corp. Sec. Litig.*, 618 F. 3d 988
 9 (9th Cir. 2010)). Plaintiffs will seek fees for their Counsel in an amount not exceeding a total of 25% of
 10 the Total Cash Settlement Amount and 25% of the redeemed value of the In-Kind Payment (up to a
 11 maximum redeemed value of \$5,800,000); the total fees Counsel may request is \$5,812,500 (\$4,362,500
 12 from the Total Cash Settlement Amount and \$1,450,000 from the In-Kind Payment). Settlement
 13 Agreement, ¶ 93. The portion of the Attorneys’ Fees and Expenses Award awarded based on the In-Kind
 14 Payment will be paid at a later date, no earlier than May 2025, once a reasonable valuation of the
 15 redeemed value of the Xpert Assist service is possible. *Id.*⁵ This portion of the Attorneys’ Fees and
 16 Expenses Award will be held by the Settlement Administrator until the amount of attorneys’ fees owing
 17 can be calculated. If any portion of the amount held by the Settlement Administrator is not owed as
 18 attorneys’ fees (i.e., if the total redeemed value of the In-Kind Payment is less than \$5,800,000) it will
 19 be distributed to the National Consumer Law Center as a *cy pres* recipient in accordance with the Plan
 20 of Allocation. *Id.* at ¶ 94; *see also*, Hammond Decl., Ex. 2 (Plan of Allocation), ¶ 8.

21 Given the substantial amount of work performed by Plaintiffs’ Counsel and associated counsel
 22 in litigating this Action – 3,395.8 hours thus far, resulting in a lodestar of more than \$2,765,267.75, and
 23 with additional work expected to increase that lodestar to a minimum of \$3,041,833 – the maximum fee
 24 request represents a multiplier of approximately 1.91. Hammond Decl. ¶¶ 101-105; Postman Decl. ¶¶ 7-
 25 9. This is at the low end of the range of multipliers commonly awarded. *See Wolf v. Permanente Medical*
 26 *Group, Inc.*, No. 17-cv-05345-VC, 2018 WL 5619801, at *2 (N.D. Cal. Sept 14, 2018) (approving

27
 28 ⁵ The redeemed value of the In-Kind Payment will be determined by multiplying the number of
 Settlement Class Members who redeem their offer of Xpert Assist by the then-current price for that
 service. As of the filing of this motion, TaxAct currently offers Xpert Assist to customers at \$59.99.

1 multiplier of 2.75-3.0 and citing cases). Moreover, 25% of the settlement amount is the benchmark
2 percentage for a reasonable fee in this Circuit. *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F. 3d 935,
3 942 (9th Cir. 2011). Thus, the fee request is eminently reasonable under either a “percentage of the
4 common fund method,” or the “lodestar method.” *Wolf*, 2018 WL 5619801, at *2. In addition, there is
5 no clear sailing agreement. Settlement Agreement, ¶ 93. Approval of the Settlement Agreement is not
6 contingent upon approval of Plaintiffs’ fee request, and Defendant has reserved the right to oppose
7 Plaintiffs’ fee request. *Id.* ¶¶ 93, 95.

8 The Settlement Agreement also provides that Settlement Class Counsel may apply to the Court
9 for up to \$75,000 for reimbursement of litigation costs and expenses. Settlement Agreement, ¶ 93.
10 Currently, proposed Settlement Class Counsel have incurred a total of \$58,493.79 in litigation costs and
11 expenses, including: \$10,000 in mediation fees; \$20,400 in fees paid to consulting experts who were
12 central to Counsel’s investigation, review, and analysis of the pixels and tracking tools on Defendant
13 TaxAct’s website; and, \$8,491 for court reporting and videographic services for depositions and Court
14 hearings. Hammond Decl. ¶ 106.

15 Finally, as set forth in the Settlement Agreement, the five Plaintiffs, who have each devoted
16 substantial time and effort reviewing documents in this action, meeting with their Counsel, and reviewing
17 the Settlement Agreement, will ask for appointment as Settlement Class Representatives and seek
18 approval of Service Awards of up to \$10,000 each. Settlement Agreement, ¶ 97; Smith-Washington
19 Decl. ¶¶ 6-17; Mahoney Decl. ¶¶ 6-16 Ames Decl. ¶¶ 4-15; Lewis Decl. ¶¶ 3-16; Hartz Decl. ¶¶ 4-14.
20 As with Plaintiffs’ fee request, approval of the Settlement Agreement is not contingent upon the amount
21 of the Service Awards paid to the Plaintiffs. Settlement Agreement, ¶ 97.

22 **IV. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASSES**

23 **A. The Settlement Classes Satisfy the Rule 23(a) Prerequisites**

24 Although the parties have settled, the Court must nevertheless certify that the proposed
25 Settlement Classes satisfy Rule 23. Rule 23(a) requires: (1) numerosity; (2) commonality; (3) typicality;
26 and (4) adequacy of representation. Fed. R. Civ. P. 23(a). In addition, the Classes must satisfy one of the
27 three subsections of Rule 23(b). However, when “[c]onfronted with a request for a settlement-only class
28 certification, a district court need not inquire whether the case, if tried, would present intractable

1 management problems . . . for the proposal is that there [will] be no trial.” *Amchem Prods., Inc. v.*
2 *Windsor*, 521 U.S. 591, 620 (1997).

3 **1. Numerosity**

4 Here, numerosity is met. The Nationwide Class consists of an estimated 8,263,789 individuals
5 dispersed throughout the United States, with the California Subclass comprising an estimated 519,060
6 individuals. The Nationwide Married Filing Jointly Class consists of an estimated 2,042,940 individuals,
7 with the California Married Filing Jointly Subclass comprising an estimated 109,096 members.
8 Settlement Agreement, ¶ 70. Numerosity is generally satisfied when a class exceeds forty members. *See,*
9 *e.g., Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 654 (C.D. Cal. 2000).

10 **2. Commonality**

11 Here, commonality is met. The commonality requirement is satisfied where a plaintiff asserts
12 claims that “depend upon a common contention” that is “of such a nature that it is capable of classwide
13 resolution – which means that determination of its truth or falsity will resolve an issue that is central to
14 the validity of each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 389-
15 90 (2011).

16 In the instant case, the class claims derive from Plaintiffs’ allegations that when Plaintiffs and
17 other Class Members, or, in the case of the Nationwide Married Filing Jointly Class, their spouses filing
18 jointly, used TaxAct’s online consumer tax return preparation products to prepare and file their tax
19 returns, their privacy was invaded and their personal and confidential tax return information was
20 disclosed to, shared with, and intercepted by unauthorized third-parties through pixels and other tracking
21 tools placed on TaxAct’s website. Operative Complaint, ¶¶ 1-11, 22-182. This common conduct raises
22 common questions, resolution of which will generate common answers “apt to drive the resolution of
23 the litigation” for the Class as a whole. *Dukes*, 564 U.S. at 350 (quoting Richard A. Nagareda, *Class*
24 *Certification in the Age of Aggregate Proof*, 84 N.Y.U. L. Rev. 97, 132 (2009)).

25 **3. Typicality**

26 Typicality is also met. Rule 23(a)(3) requires that “the claims or defenses of the representative
27 parties are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). “The purpose of the
28 typicality requirement is to assure that the interest of the named representative aligns with the interests
of the class.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (citation omitted).

1 In the instant case, the experiences of the Settlement Class Representatives match the experiences
2 of the millions of other Settlement Class Members in the respective Classes that each Settlement Class
3 Representative seeks to represent. The proposed Settlement Class Representatives for the Nationwide
4 Class and the California Subclass experienced the same alleged privacy violations, and allegedly had
5 their confidential tax return information shared in the same manner as Members of that Class and
6 Subclass. While Mr. Smith-Washington, Ms. Mahoney, and Mr. Ames, are Members of both the
7 Nationwide Class and the California Subclass, Mr. Hartz is an Illinois resident and is a member of only
8 the Nationwide Class.

9 Similarly, the proposed Settlement Class Representative for the Nationwide Married Filing
10 Jointly Class and the California Married Filing Jointly Subclass, Ms. Lewis, just as the Members of that
11 Class and Subclass, allegedly had her privacy invaded and her confidential tax return information shared
12 when her husband used TaxAct's consumer online tax preparation products to prepare and file his joint
13 tax return with Ms. Lewis.

14 Because the Settlement Class Representatives' allegations involve the "same course of conduct,"
15 which is "not unique to the named plaintiffs," typicality is satisfied here. *Valliere v. Tesoro Refin. &*
16 *Mktg. Co. LLC*, No. 17-cv-00123-JST, 2020 WL 13505042, at *5 (N.D. Cal. June 26, 2020) (citing
17 *Hanon*, 976 F.2d at 508). Moreover, Plaintiffs and the putative Class Members they seek to represent all
18 seek the same remedies. Accordingly, the typicality requirement of Rule 23(a) is satisfied.

19 **4. Adequacy**

20 Finally, adequacy too, is met. The fourth and final Rule 23(a) requirement is "adequacy of
21 representation," Fed. R. Civ. P. 23(a)(4), which has two components: "(1) Do the representative plaintiffs
22 and their counsel have any conflicts of interest with other class members, and (2) will the representative
23 plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Staton v. Boeing Co.*,
24 327 F.3d 938, 957 (2003) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)).

25 The proposed Settlement Class Representatives' interests in this case are aligned with, and not
26 antagonistic to, the respective Classes and Subclasses they seek to represent. *See, e.g., In re Yahoo! Inc.*
27 *Customer Data Sec. Breach Litig.*, No. 16-MD-02752-LHK, 2020 WL 4212811, at *4-5 (N.D. Cal. July
28 22, 2020), *aff'd*, No. 20-16633, 2022 WL 2304236 (9th Cir. July 27, 2022); Hammond Decl. ¶¶ 107-
108; Smith-Washington Decl. ¶¶ 8; Mahoney Decl. ¶¶ 9-10; Ames Decl. ¶¶ 13-14; Lewis Decl. ¶¶ 8-9;

1 Hartz Decl. ¶¶ 12-13. For the Nationwide Class, the proposed Settlement Class Representatives and
2 Settlement Class Members all used TaxAct’s consumer online tax preparation products, and for the
3 Nationwide Married Filing Jointly Class, the proposed Settlement Class Representative and Class
4 Members all had spouses who used TaxAct’s consumer online tax preparation products to prepare and
5 file their joint tax returns. All of the proposed Settlement Class Representatives and Settlement Class
6 Members, in both Classes, share the same interest in seeking relief based on TaxAct’s alleged sharing
7 and disclosure of their confidential and private tax return information and in protecting their privacy.

8 The proposed Settlement Class Representatives also fully understand their duties as class
9 representatives, will protect the interest of absent Settlement Class Members, and have actively
10 participated in this Action and the Parties’ efforts in reaching this Settlement. Smith-Washington Decl.
11 ¶¶ 7-8, 10-15; Mahoney Decl. ¶¶ 7-14; Ames Decl. ¶¶ 5-15; Lewis Decl. ¶¶ 4-14. They have provided
12 their counsel with necessary factual information, have been available to discuss Defendant’s numerous
13 motions and Plaintiffs’ responses thereto, have reviewed and approved the Settlement Agreement, and
14 have communicated with counsel regarding various issues pertaining to this case, and will continue to
15 do so until this case closes. Smith-Washington Decl. ¶¶ 10-17; Mahoney Decl. ¶¶ 6-16; Ames Decl. ¶¶
16 4-15; Lewis Decl. ¶¶ 3-16.

17 Plaintiff Hartz was the sole Plaintiff in *Hartz v. TaxAct, Inc.*, No. 1:23-cv-04591, in the Northern
18 District of Illinois, which made similar allegations against TaxAct and which was dismissed on February
19 22, 2024, on the basis that the Settlement Agreement reached in the instant action will resolve the claims
20 in *Hartz v. TaxAct, Inc.* Hammond Decl. ¶ 41. Mr. Hartz was an active and important participant in *Hartz*
21 *v. TaxAct, Inc.* and he has continued that active role, and will continue that active role, in the instant
22 Action as a Settlement Class Representative of the Nationwide Class. Hartz Decl. ¶¶ 4-14.

23 With respect to Class Counsel, Plaintiffs are represented by qualified and competent counsel who
24 are highly experienced in class actions generally and in consumer privacy litigation, in particular.
25 Proposed Class Counsel have successfully investigated, commenced, and prosecuted many complex
26 class actions, including the instant action. *See* Hammond Decl. ¶¶ 87-100; Postman Decl. ¶¶ 3-5 and Ex.
27 A. Despite a significant risk of no recovery, they have devoted substantial time and resources to this
28 case. Hammond Decl. ¶ 10. And their capable representation has been critical in driving this litigation
towards settlement.

1 Accordingly, the adequacy of representation requirement of Rule 23(a) is satisfied.

2 **B. The requirements of Rule 23(b)(3) are satisfied**

3 Plaintiffs seek certification of the Settlement Classes under Rule 23(b)(3). Accordingly, they
4 must also show: (1) that common questions of law or fact predominate over questions affecting only
5 individual class members; and (2) that a class action is superior to other methods of resolving the
6 controversy. Fed. R. Civ. P. 23(b)(3). Both requirements are easily satisfied by the proposed Classes.

7 **1. Common issues of law and fact predominate**

8 The predominance requirement of Rule 23(b)(3) “tests whether proposed classes are sufficiently
9 cohesive to warrant adjudication by representation.” *Amchem Prods., Inc.*, 521 U.S. at 623. This
10 requirement is satisfied in the instant case because the numerous common questions “present a
11 significant aspect of the case and . . . can be resolved for all members of the class in a single
12 adjudication,” and, thus, “there is clear justification for handling the dispute on a representative rather
13 than on an individual basis.” *Hanlon*, 150 F. 3d at 1022 (citations and quotations omitted).

14 Here, common issues unquestionably predominate. Because each claim alleged comes from a
15 core set of factual allegations that do not differ between Class Members, the most important issues in
16 this case can all be resolved on a classwide basis. In addition, the Court need not concern itself with
17 questions of the manageability of a trial because the settlement disposes of the need for a trial. The
18 Supreme Court has explained that the “predominance” inquiry is relaxed in the settlement context:
19 “Confronted with a request for settlement-only class certification, a district court need not inquire
20 whether the case, if tried, would present intractable management problems . . . for the proposal is that
21 there be no trial.” *Amchem Prods., Inc.*, 521 U.S. at 620 (discussing manageability, which is a subpart
22 of Rule 23(b)(3) predominance).

23 **2. Class treatment of Plaintiffs’ claims is superior**

24 “The superiority inquiry under Rule 23(b)(3) requires determination of whether the objectives
25 of the particular class action procedure will be achieved in the particular case.” *Hanlon*, 150 F.3d at
26 1023. Rule 23(b)(3) provides four factors that a court must consider in determining whether a class action
27 is superior to other methods of adjudication. These factors are:

28 (A) the class members’ interests in individually controlling the prosecution or defense of
separate actions;

1 (B) the extent and nature of any litigation concerning the controversy already begun by or
2 against class members;

3 (C) the desirability or undesirability of concentrating the litigation of the claims in the
4 particular forum; and

5 (D) the likely difficulties in managing a class action.

6 Fed. R. Civ. P. 23(b)(3). “[T]he purpose of the superiority requirement is to assure that the class is the
7 most efficient and effective means of resolving the controversy.” *Wolin v. Jaguar Land Rover N. Am.,*
8 *LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (quoting 7AA Charles Wright, Arthur Miller & Mary Kay
9 Kane, *Federal Practice and Procedure*, § 1779 at p. 174 (3d ed. 2005)).

10 In the instant case, there is no question that class treatment is superior to the litigation of millions
11 of individual claims. First, “[f]rom either a judicial or litigant viewpoint, there is no advantage in
12 individual members controlling the prosecution of separate actions. There would be less litigation or
13 settlement leverage, significantly reduced resources and no greater prospect for recovery.” *Hanlon*, 150
14 F.3d at 1023.⁶ The damages sought by each Settlement Class Member, when weighed against their risks,
15 are not so large as to counsel against certification. *See Smith v. Cardinal Logistics Mgmt. Corp.*, No. 07-
16 cv-02104-SC, 2008 WL 4156364, at *11 (N.D. Cal. Sept. 5, 2008).

17 Second, as described below in Part VII, there remains only one pending action against Defendant
18 related to the claims at issue in the instant case; *Kirkham et al. v. TaxAct, Inc.*, No. 2:23-cv-03303-WB
19 (E.D. Pa.). *Kirkham* was filed six months after the instant case. Hammond Decl. ¶¶ 110-114. The
20 existence of that case does not mean that treatment of the instant case as a class action is not superior to
21 individual adjudication of all Class Members’ claims.

22 Third, concentrating litigation in this district is desirable because eight of the eleven claims are
23 brought under California law on behalf of Subclasses composed of California residents. *See McKenzie*
24 *v. Fed. Exp. Corp.*, 275 F.R.D. 290, 302 (C.D. Cal. 2011) (“Here, there is no reason to believe that
25 concentrating this action in this Court is undesirable, especially considering that the challenge is under
26 California law, and the proposed class is composed of only hourly employees in California.”).

27 ⁶ Plaintiffs further note, their Settlement Class definitions exclude those individuals who would
28 otherwise be Class Members but who have chosen to pursue their claims through individual arbitration.
Settlement Agreement, ¶ 55; *see also* Operative Complaint, ¶ 185. Thus, those Class Members who have
indicated an interest in controlling their own claims, by filing an arbitration, are able to proceed with
that arbitration if they so wish.

1 Finally, the fourth factor, which concerns the difficulty of managing a class action, depends
 2 largely on whether Plaintiffs' case "rises and falls [on] common evidence." *In re HighTech Emp.*
 3 *Antitrust Litig.*, 985 F.Supp.2d 1167, 1228 (N.D. Cal. 2013). This factor overlaps with the requirements
 4 of commonality, typicality, and predominance, discussed above. Because Plaintiffs easily satisfy those
 5 three requirements, the fourth superiority factor weighs in favor of certification.

6 The resolution of all claims of all Settlement Class Members in a single proceeding also promotes
 7 judicial efficiency and avoids inconsistent decisions. *See Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S.
 8 147, 155 (1982) (noting "the class-action device saves the resources of both the courts and the parties by
 9 permitting an issue potentially affecting every class member to be litigated in an economical fashion
 10 under Rule 23."). Accordingly, the superiority requirement is satisfied, and the Court should
 11 provisionally certify the Settlement Classes and Subclasses for purposes of settlement.

12 V. SETTLEMENT APPROVAL IS WARRANTED

13 Rule 23 requires the Court to determine whether the Settlement is "fair, reasonable, and
 14 adequate." Fed. R. Civ. P. 23(e)(2). And, this Court has made clear that it "review[s] class action
 15 settlements just as carefully at the initial stage as [it] do[es] at the final stage . . . rather than kicking the
 16 can down the road." *Cotter*, 193 F. Supp. 3d at 1037; *see also* Standing Order ¶ 57 (citing cases). To
 17 assess the fairness of a class settlement, Ninth Circuit courts consider factors including:

18 (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration
 19 of future litigation; (3) the risk of maintaining class action status throughout the trial; (4)
 20 the amount offered in settlement; (5) the extent of discovery completed and the stage of the
 21 proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
 22 participant; and (8) the reaction of class members to the proposed settlement.⁷

23 *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944 (9th Cir. 2015) (quoting *Churchill Vill.*,
 24 *LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)). As explained below, these factors strongly favor
 25 preliminary approval.

26 A. The Strengths and Risks of Plaintiffs' Case

27 Plaintiffs believe their claims are meritorious and have pursued them aggressively. Nevertheless,
 28 Plaintiffs acknowledge that they face a number of procedural and merits-based risks which threaten their

⁷ This final factor cannot be addressed now because Class Members have not yet had the chance to react.

1 ability to recover. Plaintiffs address each of these risks below, starting with a number of risks which
 2 apply to many or all of their claims. Plaintiffs then proceed to separate analyses for each category of
 3 claim in which Plaintiffs detail the substantive strengths and risks of each category, provide an estimate
 4 of potential realistic exposure on each claim, where possible, and explain the discounts they have applied
 5 to that exposure for settlement purposes.⁸

6 ***1. Defendant's Affirmative Defenses***

7 Defendant has raised a number of affirmative defenses which, if successful, could preclude
 8 Plaintiffs from bringing their claims in Court, could preclude Plaintiffs and Class Members from
 9 bringing claims arising more than one year prior to the filing of Plaintiffs' initial complaint, could limit
 10 Plaintiffs' ability to recover more than the amounts actually paid by Plaintiffs and Class Members to
 11 Defendant, and could preclude Plaintiffs from bringing their claims on a class basis. Success on even
 12 one of these defenses would dramatically reduce Plaintiffs' potential recovery.

13 a. Risk that Plaintiffs are Compelled to Arbitrate their Claims on an Individual Basis

14 The most significant risk faced by Plaintiffs and the Settlement Class Members in this litigation
 15 is Defendant's pending motion to compel individual arbitration of Plaintiffs' claims. If Defendant
 16 prevailed on its pending Renewed Motion to Compel Arbitration, Plaintiffs would be left with five
 17 individual arbitrations and no means of obtaining relief for the Settlement Classes. This Renewed Motion
 18 has been fully briefed. Hammond Decl. ¶ 44.

19 Plaintiffs consider it a substantial, concrete, and material risk that Defendant would be able to
 20 compel individual arbitration of the claims of Plaintiffs Smith-Washington, Mahoney, Ames, and Hartz
 21

22 ⁸ Plaintiffs do not analyze punitive damages here, even though some of the claims allow their recovery.
 23 See, e.g., Cal. Penal Code § 496; CCDAFA, Cal. Penal Code § 502(e)(4). Plaintiffs would seek such
 24 damages, where available, at trial. However, even in an antitrust class action, where treble damages are
 25 automatic, see 15 U.S.C. § 15(a), "courts generally determine fairness . . . based on how it compensates
 26 the class for past injuries, without giving much, if any, consideration to treble damages." *Rodriguez v.*
 27 *W. Publ'g Corp.*, 563 F.3d 948, 964 (9th Cir. 2009). Unlike treble antitrust damages, punitive damages
 28 are inherently unpredictable and discretionary. For that reason, they typically play a limited role in
 determining the fairness of a settlement. See *In re Volkswagen "Clean Diesel" Mktg., Sales Practices,*
and Prods. Liab. Litig., No. 15-md-02672-CRB, 2017 WL 2212783, at *24 (N.D. Cal. May 17, 2017)
 (explaining that, because "any award of punitive damages is inherently speculative and discretionary,
 courts regularly approve settlements that offer no or little compensation representing the risk of a
 punitive damages award" (quoting *In re Oil Spill by Oil Rig Deepwater Horizon*, 295 F.R.D. 112, 155
 (E.D. La. 2013))).

1 and of all members of the Nationwide Class and California Subclass. Plaintiffs also believe that there is
2 a substantial, albeit lower, risk of Defendant successfully compelling arbitration of Plaintiff Lewis'
3 claims. Plaintiffs believe that a large discount is required for all claims based on TaxAct's arbitration
4 defense. Hammond Decl. ¶ 45.

5 b. Risk that the Majority of Class Members' Claims May be Time-Barred

6 Another risk is that a substantial number of Plaintiffs' and Class Members' claims would be
7 found to be time barred. Throughout the Class Period, Defendant maintained a Terms of Service and
8 License Agreement ("Terms of Service" or "TOS") that purported to bar claims asserted by users
9 "arising out of or related to this agreement or [TaxAct's] services or content" unless they were "filed
10 within one year after such claim arose." Hammond Decl. ¶ 47, Ex. 4.

11 Courts have routinely found provisions like this one, which seeks to create an end-run around a
12 limitations period, to be substantively unconscionable and Plaintiffs believe that the Court would find
13 that this provision is unenforceable. *See, e.g., Fisher v. MoneyGram International, Inc.*, 66 Cal. App.
14 5th 1084, 1105 (2021) (finding substantively unconscionable an arbitration provision's one-year
15 limitations periods, which was "considerably shorter than the otherwise applicable four-year limitations
16 period [for plaintiff's UCL claim] and wa[s] inherently one-sided against complaining consumers.").
17 There is, however, authority to the contrary, and, thus, there is a risk that the Court could find it
18 appropriate to enforce this provision. *See Capehart v. Heady*, 206 Cal. App. 2d 386, 388 (1962).

19 Here, the Complaint was filed on January 24, 2023. If the Terms of Service's one-year limitations
20 period was held to be enforceable, the liability period would begin in January 2022; the potential liability
21 period could be reduced from five years (starting in 2018, the year the pixel was placed on the website),
22 down to one year. Plaintiffs have applied a discount based on the litigation risk that a court might decide
23 to allow for this provision to be enforced.

24 c. Risk That Damages Are Limited to the Amounts Paid by Class Members

25 An additional litigation risk is that the Court may enforce the damages limitation clause contained
26 in the TOS that limits Plaintiffs' and Class Members' recovery to the amount they paid. That clause,
27 addressed to the user, provides: "to the fullest extent permitted by applicable law, the entire liability of
28 TaxAct and the participating parties (jointly) for any reason shall be limited to the amount paid by you
for the services and content." Hammond Decl. ¶ 48, Ex. 4.

1 Plaintiffs believe that the Court or Arbitrator (if a claim was to be arbitrated) would find such a
 2 limitation substantively unconscionable and, thus, liable to be severed or otherwise unenforceable as part
 3 of an unconscionable contract, because it deprives Plaintiffs and Class Members of the relief to which
 4 they are entitled. *See Newton v. AM. Debt. Servs.*, 854 F. Supp. 2d 712, 725 (N.D. Cal. 2012) (finding
 5 substantively unconscionable a provision limiting plaintiff to amount of fees paid for the service under
 6 the agreement because a customer, like plaintiff, was entitled to greater recovery under relevant statutes).
 7 Hammond Decl. ¶ 48.

8 Nevertheless, Plaintiffs acknowledge that there is a litigation risk that the Court might find that
 9 Plaintiffs' and Class Members' recovery is limited as Defendant argues. Were Defendant to prevail on
 10 this argument, it would, most importantly, preclude recovery of statutory damages, and would, thus,
 11 dramatically reduce Defendant's potential exposure. Plaintiffs, therefore, have applied a discount based
 12 on this risk. Hammond Decl. ¶ 46.

13 d. The Risk that Defendant May Be Able to Defeat Class Certification

14 The Court has not certified the classes proposed in Plaintiffs' Second Amended Complaint.
 15 Plaintiffs believe that both the Nationwide Class and the Nationwide Married Filing Jointly Class, and
 16 their respective Subclasses, should be certified, nevertheless, as discussed in detail below there are
 17 litigation risks associated with certifying these classes for litigation purposes. *See infra* Part V.C.

18 **2. *Comparing the Strengths and Risks of the Invasion of Privacy Claims***

19 a. Strengths and Weaknesses

20 To state a claim for intrusion into private matters, a plaintiff must allege "(1) that the defendant
 21 intentionally intruded into a place, conversation, or matter as to which the plaintiff had a reasonable
 22 expectation of privacy and (2) that intrusion was 'highly offensive' to a reasonable person." *In re*
 23 *Facebook Internet Tracking Litig.*, 263 F. Supp. 3d 836, 846 (N.D. Cal. 2017) (citing *Hernandez v.*
 24 *Hillsdale*, 47 Cal. 4th 272, 285 (2009)). To state a claim for invasion of privacy under the California
 25 Constitution, a plaintiff must allege "(1) a specific, legally protected privacy interest, (2) a reasonable
 26 expectation of privacy, and (3) a 'sufficiently serious' intrusion by the defendant." *Id.* (quoting *Hill v.*
 27 *Nat'l Collegiate Athletic Ass'n*, 7 Cal. 4th 1, 26 (1994)). We address Plaintiffs' two invasion of privacy
 28 claims (counts one and two in the Second Amended Complaint) together because "the California
 Supreme Court has moved toward treating the tort and constitutional privacy inquiries as functionally

1 identical, although the claims do continue to exist as separate claims with technically distinct elements.”
2 *Lopez v. Apple, Inc.*, 519 F. Supp. 3d 672, 689 (N.D. Cal. 2021). When they are brought together, courts
3 conduct a combined inquiry, considering “(1) the nature of any intrusion upon reasonable expectations
4 of privacy, and (2) the offensiveness or seriousness of the intrusion, including any justification and other
5 relevant interests.” *Hernandez*, 47 Cal. 4th at 288.

6 Plaintiffs believe the evidence supports their allegations that TaxAct’s customers had a
7 reasonable expectation of privacy both in light of the numerous state and federal statutory provisions
8 that protect the confidentiality of information provided in order to complete a tax return, and in light of
9 TaxAct’s representations to its customers that their taxpayer information would be kept private.
10 Defendant contended, however, that Nationwide Class Members and California Subclass Members
11 consented to the use of tracking tools on Defendant’s website. And, for all Settlement Class Members,
12 Plaintiffs would be required to prove that the disclosure of users’ information was highly offensive or
13 serious, i.e., so offensive as to “shock the ordinary sense of decency or privacy.” *Gill v. Hearst Pub. Co.*,
14 40 Cal. 2d 224, 231 (1953); *see Reade v. New York Times Co.*, No. 22-cv-00543-WBS-KJN, 2022 WL
15 2396083, at *6 (E.D. Cal. July 1, 2022) (requiring the private facts to be “embarrassing,
16 uncomplimentary, discreditable, indecent, derogatory, or reprehensible”). Defendant contended that
17 none of the information disclosed meets that threshold. Finally, for Nationwide Married Filing Jointly
18 Subclass Members and California Married Filing Jointly Subclass Members, Plaintiffs faced the
19 additional challenge of establishing that they had a reasonable expectation of privacy in information they
20 had provided to their spouse, who then provided it to TaxAct. This could raise issues both on the merits
21 and for class certification purposes.

22 b. Realistic Exposure and Discounts Applied

23 For Defendant’s common law invasion of privacy (first cause of action), Plaintiffs seek on behalf
24 of the Nationwide Class and the Nationwide Married Filing Jointly Class, compensatory damages,
25 disgorgement of profits, and punitive damages. For Defendant’s violation of California Constitution,
26 Article 1, Section 1 (second cause of action), Plaintiffs seek the same remedies on behalf of the California
27 Subclass and the California Married Filing Jointly Subclass.

28 For settlement purposes, Plaintiffs valued Defendant’s exposure using the value Class Members
place on the information disclosed by Defendant to unauthorized third parties. In a paper presented to

1 PrivacyCon 2020, hosted by the Federal Trade Commission, the authors reported that U.S. consumers
 2 they surveyed would require, on average, \$5 per month in order for a financial institution to have the
 3 right to share information on their respective account balances with any company or individual willing
 4 to pay for it.⁹ Hammond Decl. ¶ 50, and Ex. 5.

5 During the Class Period (between 2018 and 2022), approximately 23,690,215 tax returns were
 6 filed by Nationwide Class Members or on behalf of Nationwide Married Filing Jointly Class Members.
 7 Hammond Decl. ¶ 50. Thus, we estimate the Defendant's realistic exposure under Plaintiffs' first cause
 8 of action as \$118,451,075. *Id.* During the Class Period, there were approximately 1,276,490 tax returns
 9 filed by California Subclass Members or on behalf of California Married Filing Jointly Subclass
 10 Members. Thus, we estimate the Defendant's exposure under Plaintiffs' second cause of action as
 11 \$6,382,450. *Id.*

12 These figures are then appropriately subject to discounts for the risks of being compelled to
 13 arbitration, the risk of recovery being limited to claims arising after January 24, 2022, the risk of recovery
 14 being limited to the amounts paid by Class Members (with none paid by Nationwide Married Filing
 15 Jointly Class Members or California Married Filing Jointly Subclass Members), the risk of no class being
 16 certified on this claim, and further discounts based on the merits-risks discussed immediately above.
 17 There is also a risk that only nominal damages would be awarded. If this occurred, and assuming a
 18 nominal damages award of \$1 per Class Member, the aggregate damages award available to Nationwide
 19 Class Members and Nationwide Married Filing Jointly Class Members would be approximately \$10
 20 million, and for California Subclass Members and California Married Filing Jointly Subclass Members
 21 it would be approximately \$630,000. Hammond Decl. ¶ 51.

22 **3. Comparing the Strengths and Risks of Plaintiffs' Claim Under Business &**
 23 **Professions Code §§ 17530.5 et seq.**

24
 25 ⁹ We note that this figure is also consistent with other estimates for the value of personally identifiable
 26 confidential information in order cases. *See In re Vizio, Inc., Consumer Privacy Litig.*, 16-ml-02693-
 27 JLS-KES, 2019 WL 12966639, at *9 (C.D. Cal. July 31, 2019) (citing expert opinion valuing personally
 28 identifiable viewing data as worth approximately \$4.76 per individual); *In re Google Plus Profile,*
Litig., No. 18-CV-06164-EJD-VKD, 2021 WL 242887, at *5 (N.D. Cal. Jan. 25, 2021) (final approval
 order) (citing to expert opinion valuing exposed personal information of Google+ users, including users'
 profile information, including users' names, genders, and email addresses, as well as additional profile
 fields, such as occupation and places lived, at between \$0.20 to \$29.60, depending on the information
 type disclosed, with an average of \$2.50 per individual).

1 a. Strengths and Weaknesses

2 Because it is “engaged in the business of preparing federal or state income tax returns or assisting
3 taxpayers in preparing those returns,” Cal. Bus. & Prof. Code § 17530.5(b), Defendant is prohibited from
4 disclosing the information it obtains while preparing Class Members’ tax returns, unless that disclosure
5 is: (i) consented to in writing by the taxpayer in a separate document which states to whom the disclosure
6 will be made and how the information will be used; (ii) expressly authorized by state or federal law; (iii)
7 necessary to the preparation of the return; or (iv) pursuant to court order, § 17530.5(a). Plaintiffs believe
8 that evidence indicates that Defendant made impermissible disclosures without the written consent of
9 Class Members, without any potential authorization in state or federal law, that were not necessary for
10 the preparation of tax returns and were not pursuant to court order.

11 Defendant contended the uses and disclosure of the information at issue, or part of that
12 information, was authorized by the Treasury Regulations promulgated under the Internal Revenue Code
13 § 7216. These regulations permit disclosure of Tax Return Information to third parties, without taxpayer
14 consent, for a limited number of purposes including: if they are made to contractors performing auxiliary
15 services in connection with tax return preparation, 26 C.F.R. § 303.7216-2(d)(2); to produce statistical
16 information in connection with tax preparation, 26 C.F.R. § 303.7216-2(o); and, to prepare and maintain
17 lists for solicitation of tax return preparation business, 26 C.F.R. § 303.7216-2(n). Defendant contended
18 as described above, that California Subclass Members consented to the use of tracking tools on
19 Defendant’s website. Defendant also contended, as described above, that no taxpayer information was
20 actually disclosed.

21 Plaintiffs feel they have the better of this argument, but assign a discount based on a general
22 litigation risk associated with the litigation of each claim as well as the risks associated with arbitration.

23 b. Realistic Exposure and Discounts Applied

24 Pursuant to Bus. & Prof. Code § 17535, Plaintiffs, on behalf of the California Subclass and the
25 California Married Filing Jointly Subclass, seek restitution and disgorgement of all earnings, profits,
26 compensation, and benefit obtained by Defendant as a result of the unlawful practices described herein
27 in violation of Bus. & Prof. Code § 17530.5. Restitution is subject to offsets for the value of services
28 received by Subclass Members. *See Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163,

1 174 (2000) (“The difference between what the plaintiff paid and the value of what the plaintiff received
2 is a proper measure of restitution.”).

3 For settlement purposes, Plaintiffs estimated the appropriate measure of restitution to be \$5 per
4 tax return, as it arguably represents a usable estimate of the difference between the amount a Class
5 Member paid for TaxAct’s services in a given year and the amount a Class Member would have paid
6 had they known that their information would be disclosed to third parties. Accordingly, we estimate
7 Defendant’s exposure under this cause of action to be \$6,382,450. *See* Hammond Decl. ¶ 52.

8 This figure is subject to appropriate discounts for the risks of being compelled to arbitration, the
9 risk of recovery being limited to claims arising after January 24, 2022, the risk of no class being certified
10 on this claim, and further discounts based on the merits-risks discussed immediately above.

11 **4. Comparing the Strengths and Risks of Plaintiffs’ Tax Preparation Act Claim**

12 a. Strengths and Weaknesses

13 The Tax Preparation Act (“TPA”) is intended, *inter alia*, “to ensure tax preparers . . . treat
14 confidential information appropriately, [and] to prohibit tax preparers from making fraudulent, untrue,
15 or misleading representations.” Bus. & Prof. Code § 22251.1. The TPA specifically imposes several
16 duties on tax preparers, such as Defendant, including the following: (1) not to disclose confidential
17 information obtained by it regarding its client or prospective clients without written permission; (2) not
18 to violate 26 U.S.C. § 7216; and (3) not to violate Bus. & Prof. Code §17530.5. Plaintiffs are confident
19 that they can prove that Defendant failed to perform each of these duties. Plaintiffs believe the evidence
20 supports the allegation that Defendant disclosed Class Members’ confidential tax return information to
21 third parties, including Meta and Google, without permission.

22 Defendant contended that Plaintiffs’ claim under the TPA is subject to similar risks to Plaintiffs’
23 claim under Bus. & Prof. Code § 17530.5: that the claims under the TPA were preempted by the Treasury
24 Regulations promulgated under the Internal Revenue Code § 7216; that California Subclass Members
25 did, in fact, consent to the use of tracking tools on Defendant’s website; and, that Defendant did not
26 actually disclose any “taxpayer information.” Hammond Decl. ¶ 54.

27 Moreover, even if Plaintiffs overcame the Motion to Compel Arbitration and prevailed at trial on
28 their TPA claim, an award of statutory damages could face a due process challenge—based on the size
of the award—and might be reduced.

1 b. Realistic Exposure and Discounts Applied

2 Pursuant to Bus. & Prof. § 22257, for each time TaxAct failed to perform a duty “specifically
3 imposed on [it] pursuant to [the Tax Preparation Act],” “any person may maintain an action . . . to recover
4 a civil penalty in the amount of one thousand (\$1,000).”

5 Based on the approximately 628,156 members of the California subclasses, the total exposure on
6 this claim is close to \$630 million.¹⁰ Hammond Decl. ¶ 53. Defendant contends that such a figure would
7 be subject to a due process challenge.¹¹ The Ninth Circuit recently held in *Wakefield v. ViSalus, Inc.* that
8 “aggregated statutory damages . . . are subject to constitutional limitation in extreme situations – that is,
9 when they are ‘wholly disproportioned’ and ‘obviously unreasonable’ in relation to the goals of the
10 statute and the conduct the statute prohibits.” 51 F. 4th 1109, 1123 (9th Cir. 2022) (quoting *St. Louis,*
11 *I.M. & S. Ry. Co. v. Williams*, 251 U.S. 63, 67 (1919)); *see also In re Facebook, Inc. Internet Tracking*
12 *Litigation*, No. 22-16903, 2024 WL 700985, *1 (9th Cir. Feb. 21, 2024) (“With 124 million potentially
13 affected Facebook users in the United States, the district court properly rejected the \$1.24 trillion in
14 statutory damages proposed by Objectors as an unreasonable baseline that would violate due process. *See*
15 *Wakefield*, 51 F.4th at 1121–22). As a court in this district concluded in another class settlement
16 involving statutory damages, “[g]iven the class size, it is not plausible that class members could recover
17 the full amount of the statutory penalties in any event.” *Fraley v. Facebook, Inc.*, 966 F. Supp. 2d 939,
18 944 (N.D. Cal. 2013), *aff’d sub nom. Fraley v. Batman*, 638 F. App’x 594 (9th Cir. 2016).

19 For settlement purposes only, Plaintiffs use \$5 per tax return, as discussed above, placing
20 Defendant’s exposure on this claim at \$6,382,450. Hammond Decl. ¶ 53. And, again, this would be
21 subject to reduction on the basis of the various procedural and merits-based risks discussed above. *Id.*

22 **5. Comparing the Strengths and Risks of Plaintiffs’ Electronic Communications**
23 **Privacy Act Claim**

24 a. Strengths and Weaknesses

25
26
27 ¹⁰ This figure is calculated by multiplying 519,060 members of the California Subclass and 109,096
28 members of the California Married Filing Jointly Subclass by \$1,000. Hammond Decl. ¶ 53.

¹¹ Defendant, as a corporate entity, was sold for \$720 million in November 2022. Hammond Decl. ¶ 53.
And Defendant’s reported revenue (not profit) for the most recent report year, 2021, was \$227 million.
Id.

1 The ECPA makes it unlawful for an entity such as TaxAct to “intentionally intercept[],
2 endeavor[] to intercept, or procure[] any other person to intercept or endeavor to intercept, any wire,
3 oral, or electronic communications.” 18 U.S.C. § 2511(1)(a). “Intercept” is defined as “the aural or other
4 acquisition of the contents of any wire, electronic, or oral communication through the use of any
5 electronic, mechanical, or other device.” 18 U.S.C. § 2510(4).

6 Defendant contended that information intercepted by the third-party tracking tools on
7 Defendant’s website was not the contents of an electronic communication – i.e., “the intended message
8 conveyed by the communication.” *In re Zynga Priv. Litig.*, 750 F. 3d 1098, 1106 (9th Cir. 2014).
9 Defendant also contended that the ECPA’s party exception to liability applied. However, the ECPA’s
10 party exception does not apply when a “communication is intercepted for the purpose of committing any
11 criminal or tortious act in violation of the Constitution or laws of the United States or of any State.” *Id.*
12 And, in the instant case, Class Members’ electronic communications were intercepted as part of TaxAct’s
13 alleged practice of divulging confidential personal and financial information to unauthorized third parties
14 in violation of numerous federal and state laws as described elsewhere in this memorandum and as
15 alleged in Plaintiffs’ Second Amended Complaint. Finally, with respect to Nationwide Married Filing
16 Jointly Class Members, the Court may find that they are not covered by the ECPA because the
17 intercepted communications were between their spouses and TaxAct. Although Plaintiffs are confident
18 of their position, these merits arguments warrant a discount.

19 b. Realistic Exposure and Discounts Applied

20 Pursuant to 18 U.S.C. § 2520, Nationwide Class Members and Nationwide Married Filing Jointly
21 Class Members can recover damages assessed as the greater of the sum of actual damages suffered and
22 any profits made by TaxAct as a result of its violations of the ECPA or statutory damages of whichever
23 is the greater of \$100 per day per violation or \$10,000. Defendant’s exposure based on \$10,000 per
24 violation generates a figure of greater than \$100 billion.¹² This figure raises due process concerns. For
25 settlement purposes, Plaintiffs estimate Defendant’s exposure on this claim by applying the figure of \$5
26 to each tax return filed by or on behalf of Nationwide Class Members and Nationwide Married Filing
27

28 ¹² \$10,000 x (8,263,789 Nationwide Class Members + 2,042,940 Nationwide Married Filing Jointly
Class Members).

1 Jointly Class Members. Defendant’s exposure is \$118,451,075, which is based on multiplying the
 2 23,690,215 tax returns that were filed by Class Members during the relevant time period (18,748,659 by
 3 Nationwide Class Members plus 4,941,556 by Married Joint Filers Class Members) by \$5 per Class
 4 Member. Hammond Decl. ¶ 55.

5 Plaintiffs also note that Defendant’s realistic exposure is subject to discounts for the likelihood
 6 that this claim is compelled to arbitration, for the possibility that recovery is limited to claims arising in
 7 the year preceding the filing of the initial Complaint, for the possibility that recovery is limited only to
 8 the amounts paid by Class Members (with none paid by members of the Nationwide Married Filing
 9 Jointly Class), for the possibility that no class is certified on this claim, and further discounts based on
 10 the merits-risks discussed immediately above. Hammond Decl. ¶ 56.

11 **6. *Comparing the Strengths and Risks of Plaintiffs’ California Invasion of Privacy*** 12 ***Act Claim***

13 a. Strengths and Weaknesses

14 The analysis of the strengths and weaknesses of Plaintiffs’ CIPA claim is similar to that of the
 15 ECPA, except that, importantly, CIPA is a two-party consent statute. *See Coulter v. Bank of America*,
 16 28 Cal. App. 4th 923, 928-29 (1994); *Javier v. Assurance IQ, LLC*, No. 21-16351, 2022 WL 1744107
 17 (9th Cir. May 31, 2022) (Section 631(a) requires “the prior consent of all parties to a communication.”).
 18 Thus, CIPA prohibits one party to a communication from aiding another party in intercepting it without
 19 the consent of all parties to the communication. *See* Cal. Penal Code § 631(a).

20 Accordingly, one of the merits-based risks to Plaintiffs’ ECPA claim, the question of whether
 21 the party exception applies, does not pertain to Plaintiffs’ CIPA claim. The remaining risks do, however,
 22 still apply. Under § 631(a), unlawful conduct requires that a person, such as Defendant, “aids, agrees
 23 with, employs, or conspires with any person” who “intentionally . . . reads, or attempts to read, or to
 24 learn the contents or meaning of any message, report, or communication while the same is in transit or
 25 passing over any wire, line, or cable.” Thus, Defendant has available to it similar arguments regarding
 26 whether Defendant and/or any third party, such as Meta and Google, intended to intercept Class
 27 Members’ communications and whether the information intercepted constituted the “contents” of any
 28 message or communication.

b. Realistic Exposure and Discounts Applied

1 Pursuant to Penal Code § 637.2, California Subclass Members and California Married Filing
 2 Jointly Subclass Members are entitled to the greater of \$5,000 per violation or three times the amount of
 3 actual damages suffered. Even assuming that each Class Member can recover only \$5,000 (rather than
 4 \$5,000 per tax year, or even \$5,000 per website visit), Defendant’s theoretical exposure is \$3.14 billion.¹³
 5 As discussed above, Defendant contended this amount raises due process concerns. Thus, Defendant’s
 6 exposure, applying the figure of \$5 to each tax return filed by or on behalf of California Subclass
 7 Members and California Married Filing Jointly Subclass Members, is \$6,382,450. Hammond Decl. ¶ 57.

8 And, this amount is subject to discounts for the risk of being compelled to arbitration, the risk of
 9 recovery being limited to claims arising after January 24, 2022, the risk of recovery being limited to the
 10 amounts paid by Class Members (with none paid by California Married Filing Jointly Subclass
 11 Members), the risk of no class being certified on this claim, and further discounts based on the merits-
 12 risks discussed immediately above. In addition, a discount is warranted because the Court might not
 13 permit a substantial recovery under both the ECPA and CIPA.

14 **7. *Comparing the Strengths and Risks of Plaintiffs’ Comprehensive Computer Data***
 15 ***Access and Fraud Act Claim***

16 a. Strengths and Weaknesses

17 CDAFA prohibits certain computer-based actions such as “[k]nowingly and without permission
 18 access[ing] or caus[ing] to be accessed any computer, computer system, or computer network,” and
 19 “[k]nowingly and without permission provid[ing] or assist[ing] in providing a means of accessing a
 20 computer, computer system, or computer network in violation of this section.” Penal Code §§ 502(c)(6)-
 21 (7). CDAFA also makes it an offense when a person: “Knowingly introduces any computer contaminant
 22 into any computer, computer system, or computer network.” Pen. Code § 502(c)(8).

23 There is a paucity of case law interpreting CDAFA. There is authority and there are arguments
 24 available to both sides on the key issues, raised by Defendant, of whether the tracking tools introduced
 25 by Defendant onto its website constitute computer contaminants because they “usurp[ed] the normal
 26 operation of [Class Members’] computer[s],” Pen. Code § 502(b)(12), and whether California Subclass
 27

28 ¹³ \$5,000 x (519,060 California Subclass Members + 109,096 California Married Filing Jointly Subclass Members).

1 Members and California Married Filing Jointly Subclass Members are owners of “data who suffer[ed]
2 damage or loss by reason of a violation of [CDAFA],” § 502(e)(1). Plaintiffs believe there is better
3 authority on their side. Nevertheless, there are litigation risks associated with Defendant’s arguments on
4 these key issues that warrant a discount.

5 b. Realistic Exposure and Discounts Applied

6 Pursuant to Penal Code § 502(e)(1), Plaintiffs will seek to recover compensatory damages on
7 behalf of California Subclass Members and California Married Filing Jointly Subclass Members.
8 Plaintiffs estimate compensatory damages based on the value of the data disclosed, i.e., \$5 per tax return.
9 During the Class Period, there were approximately 1,276,490 tax returns filed by California Subclass
10 Members or on behalf of California Married Filing Jointly Subclass Members. Thus, we estimate the
11 Defendant’s exposure as \$6,382,450. Hammond Decl. ¶ 58. There is also a risk that only nominal
12 damages would be awarded. If this occurred, and assuming a nominal damages award of \$1 per Class
13 Member, the aggregate damages award would be approximately \$630,000. *Id.* Defendant’s realistic
14 exposure is then subject to appropriate discounts; based on both the merits-based risks described
15 immediately above, and the risks generally applicable to all of Plaintiffs’ claims.

16 **8. *Comparing the Strengths and Risks of Plaintiffs’ Claim Under California Penal***
17 ***Code §§ 484, 496***

18 a. Strengths and Weaknesses

19 Plaintiffs’ claim under California Penal Code §§ 484 and 496 alleges that Defendant feloniously
20 took Class Members’ property when it obtained it through the Meta Pixel. Because Defendant concealed,
21 withheld, and/or sold that property to Meta, Google, and other third parties, Plaintiffs allege that they,
22 and Class Members, are entitled to recover under § 496.

23 “To plausibly state a theft by false pretenses claim, plaintiffs must allege not only that [defendant]
24 made specific false representations to them, but also that plaintiffs transferred their property to
25 [defendant] ‘in reliance on the representation.’” *Doe v. Meta Platforms, Inc.*, No. 22-CV-03580-WHO,
26 2023 WL 5837443, at *15 (N.D. Cal. Sept. 7, 2023) (quoting *People v. Miller*, 81 Cal. App. 4th 1427,
27 1440 (2000), as modified on denial of reh’g (July 6, 2000)). Defendant contends that Plaintiffs cannot
28 establish either of these factual predicates. Plaintiffs strongly disagree, but do consider this a litigation
risk that warrants a discount.

b. Realistic Exposure and Discounts Applied

Pursuant to Penal Code § 496(c), California Subclass Members and California Married Filing Jointly Subclass Members are entitled to recover “three times the amount of actual damages, if any, sustained . . . costs of suit, and reasonable attorney’s fees.” As discussed above, we use the figure of \$5 per tax return as an estimate of the actual damages suffered by Subclass members. There were approximately 1,276,490 tax returns filed by California Subclass Members or on behalf of California Married Filing Jointly Subclass Members. Thus, we estimate the Defendant’s exposure under Plaintiffs’ second cause of action as $\$6,382,450 \times 3 = \$19,147,350$. Hammond Decl. ¶ 60. There is also a risk that only nominal damages would be awarded. If this occurred, and assuming a nominal damages award of \$1 per Class Member, the aggregate damages award would be approximately \$630,000. *Id.* Defendant’s exposure would then be subject to appropriate discounts; based on both the merits-based risks described immediately above, and the risks generally applicable to all of Plaintiffs’ claims.

9. Comparing the Strengths and Risks of Plaintiffs’ Breach of Contract Claim

a. Strengths and Weaknesses

Plaintiffs’ breach of contract claim, on behalf of the Nationwide Class and the Nationwide Married Filing Jointly Class, rests on a third-party beneficiary theory. Central to this theory, and this claim, is the issue of whether Plaintiffs and Class Members were intended beneficiaries of the alleged contract between Meta and Defendant – the Facebook Business Tools Terms. Third-party beneficiary status is a matter of contract interpretation, a party seeking to enforce a contract under such a theory “must plead [that the contract] was made expressly for his [or her] benefit and one in which it clearly appears that he [or she] was a beneficiary.” *Schauer v. Mandarin Gems of Cal., Inc.*, 125 Cal. App. 4th 949, 957 (2005) (citation omitted). In making this determination, courts must determine whether an intent to extend third-party beneficiary rights was “clearly manifested by the contracting parties.” *Sofias v. Bank of America*, 172 Cal. App. 3d 583, 587 (1985) (citation omitted).

Plaintiffs believe that the evidence supports their claim, but they are mindful of the risk that the Court would find that the requisite intent is not apparent from the Facebook Business Tools Terms themselves. Those Terms expressly provide that they “supplement and amend” the Facebook Commercial Terms of Service which, themselves, in all versions in effect during the Class Period, have expressly provided that they “do not confer any third party beneficiary rights.” Hammond Decl. ¶ 61.

1 While Plaintiff disagree with this interpretation of the contract terms, Defendant’s argument in this
 2 regard warrants a discount.

3 **b. Realistic Exposure and Discounts Applied**

4 Pursuant to Plaintiffs’ claim, they seek compensatory and consequential damages on behalf of
 5 Nationwide Class Members and Nationwide Married Filing Jointly Class Members. Plaintiffs estimate
 6 such damages, for settlement purposes, by applying \$5 to each tax return filed. Thus, Defendant’s
 7 exposure is \$118,451,075.¹⁴ Hammond Decl. ¶ 61. There is also a risk that only nominal damages would
 8 be awarded. If this occurred, and assuming a nominal damages award of \$1 per Class Member, the
 9 aggregate damages award would be approximately \$10 million. Defendant’s exposure would then be
 10 subject to appropriate discounts; based on both the merits-based risks described immediately above, and
 11 the risks generally applicable to all of Plaintiffs’ claims.

12 **10. Plaintiffs’ UCL Claim**

13 Plaintiffs’ UCL claim is derivative of their other claims. Moreover, the restitution sought by
 14 Plaintiffs under the UCL is also available to them under their § 17535 claim. Given the strength of that
 15 claim, Plaintiffs’ UCL claim would likely only entitle them to the same or similar monetary relief that
 16 they would obtain pursuant to § 17535. Accordingly, Plaintiffs ascribe *de minimus* value to this claim.

17 **11. Summary of Plaintiffs’ Realistic Exposure Analysis**

18 Plaintiffs bring three claims on behalf of the Nationwide Class and Nationwide Married Filing
 19 Jointly Class: (i) violation of the ECPA; (ii) common law invasion of privacy; and (iii) breach of contract.
 20 Plaintiffs estimate the Defendant’s realistic exposure under each of these claims to be \$118,451,075.
 21 This calculation is based on multiplying \$5 times 23,690,215, representing the total number of tax returns
 22 filed by all Class Members during the relevant period. Hammond Decl. ¶¶ 50, 55, 61-62. However,
 23 because of the strength of the ECPA claim, and because the other two claims seek to recover on the basis
 24 of the same underlying conduct as the ECPA, and both seek the same remedy (compensatory damages),
 25

26
 27
 28 ¹⁴ This is calculated by adding 18,748,659 total tax returns filed by Nationwide Class Members between 2018 and 2022 to 4,941,556 tax returns filed by Married Filing Jointly Filers During that same time period (for a total number of 23,690,215 tax returns filed by all Class Members) and multiplying that total number of tax returns filed by \$5.

1 Plaintiffs consider Defendant's realistic aggregate exposure on all three claims to be \$118,451,075 plus
2 nominal damages of \$20,000,000, for a total of \$138,451,075. *Id.* ¶ 63.

3 Plaintiffs bring a further eight claims on behalf of Members of the California Subclass and the
4 California Married Filing Jointly Subclass. For their TPA claim, Plaintiffs estimate that Defendant's
5 exposure is approximately \$6,382,450.¹⁵ And, under their Bus. & Prof. Code § 17535, Plaintiffs estimate
6 that Defendant's exposure is an additional \$6,382,450. Hammond Decl. ¶ 52. Several of Plaintiffs'
7 claims seek duplicative remedies and, for settlement purposes only, Plaintiffs do not include cumulative
8 recovery of these remedies in their calculation of Defendant's realistic exposure. Accordingly, Plaintiffs'
9 estimate of Defendant's exposure to the California subclasses (in addition to their portion of the
10 nationwide recovery) is \$12,764,900.

11 This assessment of Defendant's exposure to the nationwide classes and their California
12 subclasses is consistent with the proposed Plan of Allocation. Under the Plan of Allocation,
13 approximately \$16.5 million (94.5%) of the \$17.45 million QSF is assigned to the nationwide classes
14 (including the portion of the nationwide recovery that will go to members of the California subclasses).
15 As set out above, we estimate that, of the total aggregate realistic exposure (\$151,179,975),
16 \$138,451,075 (91.6%) is based on the nationwide claims. Hammond Decl. ¶ 65.

17 **B. Further Litigation Would be Risky, Expensive, Complex, and Lengthy**

18 As detailed above, there are a number of risks which, combined, mean that there is no certainty
19 that Plaintiffs and Settlement Class Members would recover anything from this case should it proceed
20 in litigation. Moreover, as discussed above, should litigation continue, this Court would rule on
21 Defendant's Renewed Motion to Compel Arbitration. Should Defendant win, that would be the end of
22 this Action, in this Court; should Defendant lose, it would likely appeal, and these proceedings would
23 be stayed, pending the result of that appeal. Should this case proceed past a Motion to Compel Arbitration
24 and subsequent appeal, the remaining proceedings would also be time consuming and expensive. In
25 short, absent this Settlement, this Action could have taken many years to be finally resolved. Hammond
26 Decl. ¶¶ 66-70.

27 _____
28 ¹⁵ This figure is calculated by multiplying 1,276,490 x \$5, which is the total number of tax returns filed
by the California Subclass and the California Married Filing Jointly Subclass, by \$5 per tax return filed.
Hammond Decl. ¶ 53.

1 No. 16-ml-02693-JLS-KES (C.D. Cal.), which involved the unauthorized collection and disclosure of
2 information from VIZIO smart TVs, including content viewing histories, IP addresses, and device
3 identifiers, settled for \$17 million on behalf of 16 million class members, resulting in a gross per class
4 member recovery of \$1.06. *In re Plaid Inc. Privacy Litig.*, No. 20-cv-03056-DMR (N.D. Cal.), a case
5 involving a fintech company using consumers' banking login credentials to harvest and sell detailed
6 financial data, settled for \$58 million on behalf of 98 million class members, a \$0.59 gross, per class
7 member recovery. And, notably, unlike in *In re Plaid Inc. Privacy Litig.*, there is, in the instant case, a
8 pending motion to compel arbitration which could eliminate or, at best, eviscerate the potential class
9 recovery. Finally, in *Hodges v. GoodRx Holdings, Inc.*, Case No. 23-cv-24127-BB (S.D. Fl.), defendant
10 collected and disclosed personal and sensitive health information, such as a person's interest in certain
11 drugs. The court granted preliminary approval of a \$13 million settlement on behalf of 16.7 million class
12 members, representing a \$0.78 average per-class-member recovery. In the instant case, the cash settlement
13 fund alone achieves a gross recovery of \$1.69 per class member.

14 The settlement value in the instant case also compares favorably with the following additional
15 settlements: *In re Facebook, Inc. Consumer Privacy User Profile Litig.*, No. 18-md-02843-VC (N.D.
16 Cal.) (a \$725 million data privacy settlement on behalf of approximately 250-280 million consumers, a
17 \$2.59 to \$2.99 recovery, achieved after more than four years of contentious litigation and in a case with
18 no arbitration risk), and *In re Google Plus Profile Litig.*, No. 18-cv-06614-EJD-VKD (N.D. Cal.),
19 (involving disclosure of users' private profile data, that settled for \$7.5 million on behalf of 10 million
20 consumers, a \$1.33 gross per class member recovery).

21 In addition, each Authorized Claimant, in the instant case, is entitled to in-kind relief in the form
22 of Xpert Assist, which represents substantial additional available relief. Taken in combination, the
23 monetary and in-kind relief offered to Settlement Class Members is more than fair, adequate, and
24 reasonable and compares very favorably to the total relief available to claimants in comparable cases.

25 Hammond Decl. ¶ 86.¹⁶

26
27
28 ¹⁶ Plaintiffs further note that privacy damages are particularly uncertain and numerous privacy class
actions have been settled for non-monetary relief only. *See, e.g., Campbell v. Facebook, Inc.*, No. 13-
cv-05996-PJH, 2017 WL 3581179, at *8 (N.D. Cal. Aug. 18, 2017) (granting final approval of
declaratory and injunctive relief settlement in litigation alleging Facebook engaged in user privacy

1 **2. The Plan of Allocation is Reasonable**

2 The proposed Plan of Allocation, as described above in Part III.B, uses “allocation points” to
 3 divide the Net Settlement Fund – i.e., the Qualified Settlement Fund less any Attorneys’ Fees and
 4 Expenses Award, Service Awards, and Notice and Administration Costs – among Authorized Claimants
 5 (i.e., Settlement Class Members who submit a valid claim form). The Net Settlement Fund is then
 6 allocated to each Authorized Claimant pro rata based on each Authorized Claimant’s share of all
 7 allocation points assigned. In addition all Authorized Claimants are entitled to in-kind relief in the form
 8 of Xpert Assist.

9 The Plan of Allocation is fair, reasonable, and adequate because it attempts to achieve the
 10 appropriate ratio of allocation points between the respective Settlement Classes and Subclasses such that
 11 the allocation points assigned to each group reflect the strength of the claims that Plaintiffs have pursued
 12 on their behalf. *See In re Omnivision Techs., Inc.*, 559 F. Supp. 2d at 1045 (Plan of Allocation fair,
 13 reasonable, and adequate where it attempted to “allocate the settlement funds to class members based on
 14 . . . the strength of their claims on the merits.” (citing *In re Oracle Sec. Litig.*, 1994 WL 502054, *1-2
 15 (other citation omitted)).

16 Plaintiffs have brought three claims on behalf of all Settlement Class Members, and a further
 17 eight claims on behalf of only the California Subclass Members and California Married Filing Jointly
 18 Subclass Members. Among the California-only claims are the Tax Preparation Act claim and the
 19 Business and Professions Code § 17530.5 claim, both of which are particularly strong claims, and under
 20 the former of which Subclass Members are entitled to significant statutory damages. Because of the
 21 additional claims brought on their behalf, Plaintiffs believe it appropriate to allocate twice as many points
 22 to members of each California subclass as to the members of the respective nationwide classes. This
 23 results in approximately \$16.5 million (94%) of the \$17.45 million QSF being assigned to the nationwide
 24

25 _____
 26 violations), *aff’d*, 951 F. 3d 1106 (9th Cir. 2020); *In re Google LLC St. View Elec. Commc'ns Litig.*, No.
 27 10-MD-02184-CRB, 2020 WL 1288377, at *16 (N.D. Cal. Mar. 18, 2020) (granting final approval of
 28 settlement providing class with injunctive relief and creating a non-distributable *cy pres* settlement fund
 in litigation alleging Google violated privacy by illegally gathering Wi-Fi network data); *McDonald, et
 al. v. Killoo A/S, et al.*, No. 3:17-cv-04344-JD (N.D. Cal. Apr. 12, 2021), ECF No. 406 (granting final
 approval of 16 injunctive relief-only settlements in related privacy class actions accusing defendants of
 violating child privacy protection laws by collecting and selling PII of children).

1 classes (including the portion of the nationwide recovery that will go to members of the California
2 subclasses), and an additional \$960,000 (6%) being assigned to the California subclasses solely based
3 on California-only claims. Of course, the ultimate division of the Net Settlement Fund will depend on
4 which Settlement Class Members file valid claims, but the availability of relief is proportionate to the
5 relative size of Defendant's exposure on nationwide claims (roughly 92% of the total) and Defendant's
6 exposure on California-only claims (roughly 8%). Hammond Decl. ¶¶ 65, 80.

7 With respect to members of the Nationwide Married Filing Jointly Class and the California
8 Married Filing Jointly Subclass, there are substantial additional risks associated with certification of that
9 Class and Subclass and with the merits of claims pursued on behalf of those members that justify
10 allocating three times as many points to members of the Nationwide Class as to members of the
11 Nationwide Married Filing Jointly Class and three times as many points to members of the California
12 Subclass as to members of the California Married Filing Jointly Subclass. In particular, it is not certain
13 that members of the Nationwide Married Filing Jointly Class could successfully pursue a claim under
14 the ECPA given that it was their spouses' communications that were intercepted. A similar argument
15 could be raised against the California Married Filing Jointly Subclass claim under CIPA. Given the
16 prominence of these claims in Plaintiffs' estimate Defendant's exposure, members of the Married Filing
17 Jointly class and subclass should recover less.

18 Finally, Counsel for Plaintiffs conducted a comprehensive survey of potential state claims and
19 did not identify a statute in any other state akin to California Business & Professions Code § 17530.5 or
20 California's Tax Preparation Act. Hammond Decl. ¶ 80. The handful of similar statutes that Counsel
21 were able to find all lacked a private right of action. *Id.* Some states do have wiretapping statutes
22 analogous to the California Invasion of Privacy Act, *id.*, but, as explained above, Plaintiffs assigned little
23 value to CIPA in estimating the value of each claim because they did not believe that a court would
24 permit a fulsome recovery under the ECPA and under CIPA. On that basis, Plaintiffs do not believe the
25 release of potential state wiretapping claims by Settlement Class Members requires an adjustment to the
26 ratios of allocation points provided for in the Plan of Allocation.

27 **E. The Settlement is Informed by Extensive Discovery**

28 The Settlement was informed by extensive discovery. *In re Volkswagen "Clean Diesel" Mktg.,
Sales Practices, & Prods. Liab. Litig.*, 2016 WL 6248426, at *14 ("extensive review of discovery

1 materials indicates [Plaintiffs have] sufficient information to make an informed decision about the
2 Settlement. As such, this factor favors approving the Settlement.”); *see also In re Portal Software Sec.*
3 *Litig.*, No. C-03-5138-VRW, 2007 WL 4171201, at *4 (N.D. Cal. Nov. 26, 2007).

4 As discussed above, Class Counsel engaged in extensive investigation, research, and analysis of
5 the Settlements Classes’ claims. Class Counsel pursued discovery through Requests for Production and
6 Interrogatories, numerous intensive meet and confers, and by taking the depositions of two of
7 Defendant’s key employees. Hammond Decl. ¶¶ 26-33. In response, TaxAct produced 1,926 documents,
8 totaling 7,336 pages of fact-related material for review. *Id.* ¶ 31. In addition, Class Counsel consulted
9 with technical experts who were able to assist Class Counsel in investigating Defendant’s conduct
10 regarding the use of third-party tracking tools on its website and to assist Class Counsel in interpreting
11 the voluminous technical documents produced by Defendant. *Id.* ¶¶ 24, 31. Class Counsel also served
12 third-party subpoenas on Meta and Google. *Id.* ¶ 9. And, prior to reaching settlement, Class Counsel
13 had identified and would have sought to depose three former TaxAct employees. *Id.* Class Counsel was
14 also in the process of meeting and conferring with TaxAct regarding the scheduling of a Fed. R. Civ. P.
15 30(b)(6) deposition on numerous pertinent subjects. *Id.* ¶ 33.

16 **F. Counsel Believe the Settlement is an Outstanding Result**

17 Courts recognize that the opinion of experienced counsel supporting settlement after arm’s length
18 negotiations is entitled to considerable weight. *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D.
19 Cal. 1980), *aff’d*, 661 F.2d 939 (9th Cir. 1981) (“[T]he fact that experienced counsel involved in the case
20 approved the settlement after hard-fought negotiations is entitled to considerable weight.”).

21 Here, as described above, Counsel for Plaintiffs conducted an extensive investigation into the
22 Settlement Classes’ claims, diligently and aggressively prosecuted the case, and faced a robust defense
23 from litigators from two premier national firms. Through this challenging litigation, the comprehensive
24 mediation before Hunter Hughes Esq. – which saw both Parties submit detailed mediation briefs, and
25 numerous subsequent discussions between the Parties, Counsel for Plaintiffs have been able to form a
26 complete picture of the merits of the Settlement Classes’ claims and the quality of the Settlement
27 reached. Counsel for Plaintiffs consider the Settlement to be an outstanding result. It is particularly so,
28

1 considering that no Class has been certified and a number of Plaintiffs’ claims involve unsettled areas of
 2 law.¹⁷

3 **G. Governmental Participation is Not a Factor at Issue Here**

4 This factor is not at issue because there is no government participation in this case. *Betorina v.*
 5 *Randstad US, L.P.*, No. 15-cv-03646-EMC, 2017 WL 1278758, at *9 (N.D. Cal. Apr. 6, 2017); *see also*
 6 *Martin v. Sysco Corp.*, No. 16-cv-00990-DAD-SAB, 2019 WL 3253878, at *6 (E.D. Cal. July 19, 2019).

7 **H. The Settlement Also Satisfies the Bluetooth Factors**

8 Prior to class certification, class settlements must withstand a “higher level of scrutiny for
 9 evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e) before
 10 securing the court’s approval as fair.” *In re Bluetooth*, 654 F.3d at 946. The Court must be satisfied that
 11 “the settlement is not the product of collusion among the negotiating parties.” *Id.* at 946-47. The Ninth
 12 Circuit has identified three “signs” of possible collusion:

- 13 (1) “when counsel receive[s] a disproportionate distribution of the settlement”; (2) “when
 14 the parties negotiate a ‘clear sailing arrangement,’” under which the defendant agrees not
 15 to challenge a request for an agreed-upon attorney’s fee; and (3) when the agreement
 contains a “kicker” or “reverter” clause that returns unawarded fees to the defendant, rather
 than the class.

16 *Briseno v. Henderson*, 998 F.3d 1014, 1023 (9th Cir. 2021) (quoting *In re Bluetooth*, 654 F.3d at 947).
 17 Evaluation of the *Bluetooth* factors assists the Court in determining whether Plaintiffs’ Counsel have
 18 “allowed pursuit of their own self-interests and that of certain class members to infect the negotiations.”
 19 *In re Bluetooth*, 654 F. 3d at 947. Here, this evaluation militates strongly in favor of granting preliminary
 20 approval as none of the factors applies.

21 First, the settlement does not provide that Plaintiffs’ Counsel should “receive a disproportionate
 22 distribution of the settlement.” *In re Bluetooth*, 654 F. 3d at 947. Rather, as set forth in the Settlement
 23 Agreement, proposed Class Counsel may request no more than 25% of the Qualified Settlement Fund,
 24 no more than 25% of the amount (up to \$2,500,000) paid separately by Defendant towards Notice and
 25 Administration Costs, and no more than 25% of the redeemed value of the In-Kind Payment (up to a
 26

27
 28 ¹⁷ In forming his opinion that “the Settlement represents a reasoned and sound resolution of this
 litigation,” Mediator Hughes considered a number of factors, including “the risks, rewards and costs of
 litigation in this ever developing and evolving factual and legal landscape.” Hughes Decl. ¶¶ 16-17.

1 maximum redeemed value of \$5,800,000). Settlement Agreement, ¶ 93. Second, the Settlement
 2 Agreement does not include a “clear sailing” agreement. *Bluetooth*, 654 F. 3d at 947. Rather, all
 3 attorneys’ fees will be determined by the Court and Defendant “reserves the right to oppose the
 4 application seeing an Attorneys’ Fees and Expenses Award.” Settlement Agreement, ¶¶ 93-95. And,
 5 third, there is no reversion of any amount of unawarded fees to the Defendant. *See Bluetooth*, 654 F. 3d
 6 at 947. The Settlement Agreement establishes that the Qualified Settlement Fund is a non-reversionary
 7 settlement fund whereby none of that amount, including any attorneys’ fees and costs sought by
 8 Settlement Class Counsel but not awarded by the Court, will revert to Defendant. Settlement Agreement
 9 ¶¶ 49, 116.

10 **VI. THE PROPOSED NOTICE PROGRAM, SETTLEMENT ADMINISTRATOR, AND**
 11 **PROCESS FOR CLAIMS, OPT-OUTS, AND OBJECTIONS SHOULD BE**
 12 **APPROVED**

13 **A. The Proposed Notice Plan**

14 **1. Class Notice**

15 The proposed notice plan is described in extensive detail by the Kroll Declaration at paragraphs
 16 12-29. It will include direct email notice (followed, where necessary, by mail notice), a settlement
 17 website, and a toll-free telephone number. Kroll Decl. ¶¶ 12-29. The Settlement Administrator estimates
 18 that the email and mail notice program (“direct notice”) will likely reach an estimated 91% of the
 19 Settlement Class Members. *Id.* ¶ 13. This is consistent with other court-approved, best-practicable notice
 20 programs and far exceeds the reach characterized as the “norm” and a “high percentage” by the Federal
 21 Judicial Center Guidelines. *Id.* Should the actual reach achieved by direct notice be unsatisfactory, the
 22 Parties may agree to use supplemental publication notice including targeted online display and keyword
 23 search on Google Ads in both English and Spanish and additional social media outreach through ads on
 24 Facebook and Instagram. *Id.* ¶ 26.

25 As this District’s guidance recommends, the draft notices include contact information for class
 26 counsel; the address for the settlement website (which will contain a summary of the Settlement; enable
 27 online Claim Form filing; allow Settlement Class Members to contact the Settlement Administrator with
 28 any questions or changes of address; provide notice of important dates (such as the Final Approval
 Hearing, Claims Submission Deadline, Objection Deadline, Opt-Out Deadline); provide Settlement
 Class Members who file Claim Forms online the opportunity to select an electronic payment method

1 (including Venmo, Zelle, PayPal, e-Mastercard, ACH), or payment by check; and, contain relevant case
2 documents including the Operative Complaint, the Settlement Agreement, the Long-Form Notice,
3 Plaintiffs' motion for preliminary approval, and the Preliminary Approval Order); instructions on how
4 to access the case docket via PACER or in person; the date and time of the final approval hearing, clearly
5 stating that the date may change without further notices to the Classes; and a note to Class Members to
6 check the settlement website or PACER to confirm the date. Settlement Agreement, Ex. C (Short-Form
7 Notice), Ex. D (Long-Form Notice); Kroll Decl. ¶ 28.

8 **2. CAFA Notice**

9 The Settlement Administrator will provide notice pursuant to the Class Action Fairness Act
10 within ten days of the filing of the Settlement Agreement. Settlement Agreement, ¶ 137; Kroll Decl. ¶
11 15.

12 **B. The Settlement Administrator**

13 The parties propose Kroll Settlement Administrations LLC, whose business address is 2000
14 Market Street, Suite 2700, Philadelphia, PA 19103, ("Kroll") as the settlement administrator. Settlement
15 Agreement ¶ 54. The parties obtained competing bids from three prospective settlement administrators.
16 Hammond Decl. ¶ 109. They each proposed generally similar notice and claims processes to the one the
17 parties ultimately selected. *Id.* Counsel for both parties independently evaluated each proposal and then
18 conferred with each other regarding the strengths and perceived weaknesses of each proposal and
19 requested revised proposals from two of the prospective settlement administrators. *Id.* Counsel for both
20 Parties jointly held virtual meetings with all three of the prospective settlement administrators. The
21 proposals included various methods of identifying and validating contact information, direct and indirect
22 notice, and securely administering claims and funds to the class (including through mailed checks or
23 convenient and commonly used consumer electronic payment options). *Id.* At the end of the process, the
24 parties agreed to choose Kroll. *Id.*

25 Kroll has experience as an appointed settlement administrator in large class-action settlements,
26 including those involving data breach and online tracking technologies. Kroll Decl. ¶¶ 5-11, Ex. A. In
27 addition, Kroll was responsive to a request to revise the scope of the proposal following the virtual
28 meeting with Parties' counsel. Kroll's proposal also highlighted its robust data security standards, which
comply with industry-recognized standards and include redundancies to ensure data integrity and

1 business continuity, and procedures for handling claimant data, which are of critical importance to the
 2 Parties. Kroll Decl. ¶¶ 32, 34, 35, 36 and 37. The contract with Kroll also includes privacy and
 3 information security requirements, standard professional representations, and Kroll maintains “standard
 4 business insurance, including professional liability insurance, cyber insurance and crime insurance”.
 5 Kroll Decl. ¶ 33. The Parties would not have selected Kroll if they were not comfortable with its data
 6 handling practices.

7 Kroll has estimated the costs of issuing notice and administering the Settlement as between
 8 approximately \$1.9 and \$2.3 million. Kroll Decl. ¶ 38. Notice costs primarily relate to direct notice via
 9 email address or postal address, and subsequent direct notice reminders, Kroll Decl. ¶¶ 16-28—which
 10 should provide a higher claims rate, particularly given that TaxAct has contact information for each
 11 Settlement Class Member given the nature of the business, which Kroll will be able to update and
 12 validate.

13 These costs will be paid out of the Qualified Settlement Fund. Settlement Agreement ¶¶ 49, 72-
 14 73. The Parties have agreed that costs of issuing notice and administering the Settlement, up to
 15 \$2,500,000, will be deducted from the Qualified Settlement Fund, and any additional and unanticipated
 16 costs for issuing notice and administering the Settlement will be deducted from the Net Settlement Fund.
 17 Settlement Agreement ¶¶ 40, 49, 73. The estimated costs of notice and administration are reasonable
 18 when compared to the value of the Settlement and in light of the size of the Settlement Classes. At the
 19 midpoint of the estimated range, costs are approximately 12.03% of the \$17,450,000 Total Cash
 20 Settlement Amount.¹⁸

21 C. Opt-outs and Objections: Timeline, Instructions, and Forms

22 The proposed schedule ensures that Settlement Class Members have at least 119 days from the
 23 issuance of the order granting preliminary approval to opt out or object to the Settlement, and 35 days to
 24 opt out or object to the motion for attorneys’ fees and costs. N.D. Cal. Procedural Guidance ¶ 9. The opt-
 25 out form and instructions for objecting are in plain language and clearly prompt those who wish to opt-
 26 out or to object to provide the specific information each action requires. Settlement Agreement, Exs. C,
 27

28

¹⁸ Calculated using the midrange value of \$2,100,000, and \$17,450,000 in the Total Cash Settlement Amount.

1 D, & F. The notice clearly informs class members of the opt-out deadline and how to opt out, and requires
2 that they supply only the information needed to opt out of the settlement. *Id.* Exs. C, D. Similarly, the
3 notice informs class members of the objection deadline and instructs them to send their written objections
4 to the Court, tells them that the Court can only approve or deny the Settlement and cannot change its
5 terms, and clearly identifies the objection deadline. *Id.*

6 **D. The Claims Process**

7 **1. The Claim Form**

8 It is necessary to require submission of a claim form in order for a Settlement Class Member to
9 receive a monetary payment and Xpert Assist for several reasons. First, by allowing Settlement Class
10 Members to choose a payment option, rather than simply mailing checks, the use of a claim form makes
11 it more likely that a greater proportion of the settlement funds distributed will actually be received and
12 redeemed by Class Members. Hammond Decl. ¶ 82. Second, and relatedly, the use of a claims form, and
13 the corresponding expected use of electronic means of receiving payment by the majority of Authorized
14 Claimants will help reduce the likelihood of fraud in the receipt of settlement funds. *Id.* Third, the use
15 of a claim form allows monetary payments to be provided by means that are significantly less expensive
16 than writing and mailing checks. The Settlement Administrator's estimates of Notice and Administration
17 Costs assume that 80% of Settlement Class Members submitting valid claims will elect payment by
18 electronic means. *Id.* The alternative of sending checks to the best available mailing address would
19 dramatically increase the costs of notice and administration. *Id.* Fourth, it is necessary to confirm whether
20 those Settlement Class Member who are part of the Nationwide Married Filing Jointly Class are also
21 part of the California Married Filing Jointly Subclass. The information required by the claim form will
22 allow the Settlement Administrator to make this determination. Fifth, requiring Settlement Class
23 Members to confirm the address they used when filing a tax return through TaxAct's website will assist
24 the Settlement Administrator in validating their claims (and membership in the Settlement Classes) and
25 in resolving any disputes. *Id.* And sixth, requiring the submission of claim forms will assist TaxAct in
26 understanding the staffing it will need in order to provide the In-Kind Payment (Xpert Assist). TaxAct
27 will have to undertake a considerable amount of advance planning and hiring of tax experts in order to
28 provide the In-Kind Payment in the manner contemplated in the Settlement Agreement and the use of

1 claim forms will assist TaxAct in forecasting how many individuals will likely avail themselves of
2 complimentary Xpert Assist as part of the Settlement. *Id.*

3 **2. The Estimated Claim Rate**

4 Plaintiffs' Counsel estimate that the claims rate will be approximately 5%. One broad analysis
5 of 149 consumer class actions conducted by the Federal Trade Commission concluded that "[a]cross all
6 cases in our sample requiring a claims process, the median calculated claims rate was 9%, and the
7 weighted mean (i.e., cases weighted by the number of notice recipients) was 4%." *See* Fed. Trade
8 Comm'n, *Consumers & Class Actions: A Retrospective & Analysis of Settlement Campaigns*, p. 11
9 (Sept. 2019) ("FTC Report").¹⁹ However, the weighted mean claims rate for class actions with two or
10 more attempts to reach class members was 9%. FTC Report, pp. 26-27 ("cases that send multiple
11 communications to class members have average and median claims rates that are more than twice as
12 high as cases that attempt to reach class members just once."). And, in the instant case, the Settlement
13 Administrator will send a "reminder notice via email to all Settlement Class Members for whom email
14 addresses are available, and who have not already filed a Claim Form under the Settlement." Kroll Decl.
15 ¶ 25. Because Defendant has email addresses for the substantial majority of Settlement Class Members,
16 these reminder notices will be sent to the substantial majority of Settlement Class Members. Hammond
17 Decl. ¶ 83. Thus, Plaintiffs' Counsel believe a slightly higher-than-average estimated claims rate is
18 reasonable.

19 In *In re Facebook, Inc. Consumer Privacy User Profile Litig.*, No. 3:18-md-02843-VC (N.D.
20 Cal.), plaintiffs secured a \$725 million data privacy settlement on behalf of approximately 250-280
21 million consumers. In that case, the settlement also permitted class members to submit claims online or
22 by mail. The notice plan, as in the instant case, used direct notice, a toll-free telephone number, and a
23 settlement website. In *In re Facebook, Inc. Consumer Privacy User Profile Litig.*, the notice plan also
24 provided for a media campaign, which, here, is an option if the Parties are not satisfied with the results
25 of the direct notice. We note, however, that the expected 91% reach of the direct notice in the instant
26

27
28 ¹⁹ This report is available at https://www.ftc.gov/system/files/documents/reports/consumers-class-actions-retrospective-analysis-settlement-campaigns/class_action_fairness_report_0.pdf (last accessed February 23, 2024).

1 case,²⁰ is similar to the estimated 93.43% reach of the notice plan in *In re Facebook, Inc. Consumer*
 2 *Privacy User Profile Litig.* Given the similarity of the notice plans and claims process in the two cases,
 3 we think *In re Facebook, Inc. Consumer Privacy User Profile Litig.* is a useful comparator. The claims
 4 rate ultimately achieved in that case was approximately 7%.

5 *In re Vizio, Inc., Consumer Privacy Litig.*, No. 16-ml-02693-JLS-KES (C.D. Cal.), was a case
 6 involving the unauthorized collection and disclosure of information from VIZIO smart TVs, including
 7 content viewing histories, IP addresses, and device identifiers. That case settled for \$17 million on behalf
 8 of 16 million class members. Following the conclusion of the claims process, the claims rate was 4.1%.
 9 In that case, unlike in the instant case, the settlement administrator could only provide direct notice to
 10 approximately 49% of the class, with a direct reminder notice only sent to approximately 34% of the
 11 class. The notice plan also involved notices sent directly to internet-connected Vizio Smart TVs, a digital
 12 media campaign, a settlement website, and a nationwide press release. But the estimated reach achieved
 13 by the notice program was only 74% of class members. In the instant case, with an expected reach of the
 14 direct notice program of 91% and the likelihood that a substantial majority of Settlement Class Members
 15 will receive an email reminder notice, Counsel for Plaintiffs believe that it is fair to estimate a higher
 16 claims rate.

17 The proposed Settlement Administrator stated in its declaration that courts have found that a
 18 claims rate of 4.6% in other cases it has handled was more than adequate. In this case, the administrator
 19 used a 5% claims rate in calculating its estimated notice and administration costs. Hammond Decl. ¶ 74;
 20 Kroll Decl. at Ex. A, p. 3.

21 VII. OTHER CASES AFFECTED

22 Plaintiffs are aware of one case filed during the pendency of the instant action that would be
 23 affected by the proposed Settlement. *Kirkham et al. v. TaxAct, Inc.*, No. 2:23-cv-03303-WB (E.D. Pa.),
 24 was initiated on July 25, 2023, in Pennsylvania state court, before being removed to District Court on
 25 August 24, 2023. The plaintiffs in *Kirkham* proposed a class defined as:

26 All persons who used TaxAct's online tax preparation software from within
 27 Pennsylvania to prepare and/or file a tax return during the time that Meta Pixel or
 28

²⁰ Kroll Decl. ¶ 13.

1 Google Analytics coding was present and active on TaxAct's website and/or its
2 other online mobile and desktop applications up and until November 23, 2022.

3 And a second class, akin to the Nationwide Married Filing Jointly Class proposed in the instant case,
4 defined as:

5 All persons whose spouses used TaxAct's online tax preparation software from
6 within Pennsylvania to prepare and/or file a joint tax return during the time that
7 Meta Pixel or Google Analytics coding was present and active on TaxAct's website
and/or its other online mobile and desktop applications up and until November 23,
2022.

8 Plaintiffs' understanding is that all of the claims in *Kirkham* will be released if the proposed
9 Settlement in the instant case is approved. No class has been certified in that case, thus is it only
10 individual claims that would be released. Plaintiffs also understand that TaxAct has filed a motion to
11 compel arbitration in *Kirkham* upon which the respective District Court has not, yet, ruled.

12 Counsel for Plaintiffs in the instant case have spoken with plaintiffs' counsel in *Kirkham* and
13 sought to agree on how they could coordinate their actions or coordinate their settlement efforts or even
14 reach joint settlement of both cases. No agreement was reached and plaintiffs' counsel in *Kirkham* did
15 not participate in the settlement negotiations in the instant case, and there is no ongoing communication
16 between Counsel for Plaintiffs in the instant case and plaintiffs' counsel in *Kirkham*, nor is there any
17 arrangement or agreement between those two sets of attorneys. Hammond Decl. ¶ 113.

18 On or about January 22, 2024, plaintiffs' counsel in *Kirkham* filed a motion to be appointed as
19 interim class counsel. On or about February 12, 2024, that Motion was granted.

20 VIII. THE PROPOSED FINAL APPROVAL HEARING SCHEDULE

21 Plaintiffs' [Proposed] Order Granting Preliminary Approval of Class Action Settlement filed
22 herewith, includes the following proposed schedule for the approval process:

EVENT	PROPOSED DEADLINE
Preliminary Approval Order	TBD
Class List due to Administrator	14 days after Entry of the Preliminary Approval Order
Notice Date	45 days after provision of the Class List (59 days after Entry of Preliminary Approval Order)
Motion for Attorneys' Fees	84 days after Entry of Preliminary Approval Order
Opposition to Motion for Attorneys' Fees	114 days after Entry of Preliminary Approval Order

Objection Date	60 days after Notice Date (119 days after Entry of Preliminary Approval Order)
Reply in Support of Motion for Attorneys’ Fees	128 days after Entry of Preliminary Approval Order
Opt-Out Date	90 days after Notice Date (149 days after Entry of Preliminary Approval Order)
Claim Deadline	90 days after Notice Date (149 days after Entry of Preliminary Approval Order)
Motion for Final Approval	120 days after Notice Date (179 days after Entry of Preliminary Approval Order)
Reply in Support of Final Approval Motion and Update Regarding Notice Administration	134 days after Notice Date (193 days after Entry of Preliminary Approval Order)
Final Approval Hearing	TBD

IX. CONCLUSION

For these reasons, Plaintiffs respectfully request that their motion for preliminary approval of the Parties’ class action Settlement be granted.

DATED: February 26, 2024

Respectfully submitted,

/s/ Julian Hammond
 Julian Hammond
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9 *Attorneys for Plaintiffs and the Putative Classes*

10 *Additional Counsel listed on the next page*

11
12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 **NICHOLAS C. SMITH-WASHINGTON,**) Case No. 3:23-CV-830-VC
15 **JOYCE MAHONEY, JONATHAN AMES,**)
16 **MATTHEW HARTZ, and JENNY LEWIS**) Assigned for all purposes to Hon. Vince
on behalf of themselves and all others similarly) Chhabria
situated,)
17 Plaintiffs,) **DECLARATION OF JULIAN**
18 vs.) **HAMMOND IN SUPPORT OF**
19 **TAXACT, INC.,** an Iowa corporation,) **PLAINTIFFS’ MOTION FOR**
Defendant.) **PRELIMINARY APPROVAL OF CLASS**
20) **ACTION SETTLEMENT**
21) Courtroom: 4, 17th Floor
Hearing Date: April 4, 2024
Hearing Time: 2:00 p.m.
22)
23)
24)
25)
26)
27)
28)

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1 I, Julian Hammond, declare as follows:

2 1. I am a member in good standing of the Bar of the State of California and counsel of
3 record for Plaintiffs in the above-captioned matter and the putative Settlement Classes. I make this
4 declaration based on personal knowledge and, if called as a witness, I could and would testify
5 competently to the matters set forth herein.

6 2. I submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of
7 Class Action Settlement. A true and correct copy of the Settlement Agreement, which has been
8 executed by the parties, is attached hereto as **Exhibit 1**. Annexed as exhibits to the Settlement
9 Agreement are the following documents:

- 10 • Exhibit A – Proposed Preliminary Approval Order
- 11 • Exhibit B – Settlement Administration Protocol & Notice Plan (Declaration of Jeanne
12 C. Finegan of Kroll Settlement Administration LLC)
- 13 • Exhibit C – Short-Form Notice
- 14 • Exhibit D – Long-Form Notice
- 15 • Exhibit E – Claim Form
- 16 • Exhibit F – Opt Out Form
- 17 • Exhibit G – Proposed Final Approval Order
- 18 • Exhibit H – Proposed Final Judgment

19 3. Plaintiffs' proposed Plan of Allocation is attached hereto as **Exhibit 2**.

20 **I. INTRODUCTION**

21 4. Plaintiffs have achieved an impressive result, less than a year after filing their lawsuit
22 and while facing a Motion to Compel Arbitration that could have resulted in a zero dollar recovery for
23 the Class, when they obtained a cash settlement of \$17,450,000 for the benefit of the Settlement
24 Classes, comprising a \$14,950,000 non-reversionary cash settlement common fund plus up to
25 \$2,500,000 of additional funds set aside to be used towards Notice and Administration Costs with any
26 remainder of that amount to be distributed to the Settlement Classes, and substantial in-kind relief with
27 a potential value of \$31 million (assuming a 5% claims rate) and a minimum redeemable value of
28 \$5,800,000. Thus, the estimated total settlement value is at least \$23,250,000, and if a higher
redemption rate is reached, the value of the in-kind relief would be significantly more.

1 5. There are two proposed settlement Classes, each with a subclass. Based on information
2 provided by the Defendant, the Nationwide Class consists of an estimated 8,263,789 individuals, with
3 a California Subclass comprising an estimated 519,060 individuals. The Nationwide Married Filing
4 Jointly Class consists of an estimated 2,042,940 individuals, with the California Married Filing Jointly
5 Subclass comprising an estimated 109,096 members. Collectively, there are an estimated 10,306,729
6 Settlement Class Members. Additionally, the approximate total number of tax returns filed by all Class
7 Members between 2018 and 2022 is 23,690,215, which includes approximately 18,748,659 returns
8 filed by the Nationwide Class Members (with approximately 1,012,604 filed by California Subclass
9 Members) and approximately 4,941,556 tax returns filed by the Married Filing Jointly Class (with
10 approximately 263,886 filed by members of the California Married Filing Jointly Subclass). With
11 respect to the California subclasses, based on information provided by Defendant, it is estimated that
12 approximately 1,276,490 returns were filed by the California Subclass Members or on behalf of
13 California Married Filing Jointly Subclass Members with TaxAct during the Class Period.

14 6. This case seeks to address and enforce the privacy of consumers online, which has
15 become a ubiquitous public concern. Plaintiff Smith-Washington filed this case on January 24, 2023,
16 challenging TaxAct, Inc.'s ("TaxAct" or "Defendant") alleged practice of disclosing confidential
17 taxpayer information of its users to third-parties, including at least Meta Platforms, Inc. ("Meta" or
18 "Facebook") and Google, through the use of tracking tools, including the Meta Pixel, Google tracking
19 tools, and other third party tracking tools, intentionally embedded and configured on Defendant's
20 website and invisible to the website's users.

21 7. Plaintiffs allege that TaxAct transmitted its users' confidential taxpayer data without
22 their awareness or authorization, for economic gain through targeted advertising and other means.

23 8. This case was thoroughly researched and investigated by Plaintiffs' Counsel with
24 respect to both the facts and the law. Plaintiffs' Counsel were assisted in their factual investigation by
25 two experts who analyzed third-party tracking tools embedded on Defendant's website, including the
26 data they collected and disclosed to third parties. Plaintiffs' Counsel also closely reviewed the publicly
27 available documents from the investigation initiated by Senator Elizabeth Warren into the misuse of
28 consumer data by tax preparation companies, statutory requirements, and the requirements placed by

1 the Internal Revenue Service (IRS) on tax preparation companies, as well as filings in a lawsuit by the
2 Missouri Attorney General against TaxAct.

3 9. Litigation was highly contentious, complex, and very active. Defendant filed a motion
4 to stay the case pending individual arbitration almost immediately after removing the case from
5 Alameda County Superior Court, and, after its initial motion was denied, continued to pursue its effort
6 to compel arbitration throughout the remainder of the case until settlement. After the case was initiated,
7 Plaintiff filed an amended complaint expanding the scope of the allegations, adding causes of action, a
8 nationwide class, and three additional named Plaintiffs. Plaintiffs served two sets of written discovery,
9 obtained and reviewed over 7,336 pages of 1,926 documents produced by Defendant in response and
10 over 100 pages of written discovery responses, and conducted two depositions, one of Defendant's
11 Marketing Technology Expert and one of its Vice President of Tax Operations. Plaintiffs also served
12 third-party subpoenas on Meta and Google for production of documents and information, met and
13 conferred with TaxAct regarding discovery disputes, and were preparing for a 30(b)(6) deposition - as
14 well as depositions of three former employees—and a motion for class certification when the case
15 settled. At the time the case settled, there were several pending motions: Defendant's renewed motion
16 to compel arbitration; a motion filed by Plaintiffs for leave to amend; and a motion filed by Plaintiffs
17 for corrective notice to the Class Members in connection with Defendant's updates to the Terms of
18 Service at the end of 2023 ("Updated TOS"). Throughout the case, the parties also continuously met
19 and conferred regarding depositions, amendments to the complaint, the arbitration issue, the effect of
20 Defendant's updated Terms of Service on the present case, and discovery disputes.

21 10. Plaintiffs overcame substantial litigation risks in obtaining this settlement, including the
22 significant risk posed by the pending motion to compel arbitration which could have resulted in
23 Plaintiffs being compelled to individual arbitration of their claims, precluding class-wide relief on any
24 claim. Despite a significant risk of no recovery, they have devoted substantial time and resources to
25 this case. As described in more detail below, in light of this and numerous other risks on the merits
26 and certification based on Defendant's actual and potential defenses, Plaintiffs consider the
27 Settlement's immediate relief to offer a very substantial benefit to the Settlement Classes.

28 ///

II. SUMMARY OF THE LITIGATION

a. Initial Complaint and Defendant's First Motion to Compel Arbitration

11. On January 24, 2023, Plaintiff Smith-Washington filed this putative class action lawsuit in the Superior Court for the County of Alameda, alleging that Defendant secretly disclosed its California customers' confidential taxpayer information to Meta Platforms, Inc. ("Meta" or "Facebook"), an unauthorized third party. Plaintiff alleged that, until November 23, 2022, when a nonprofit newsroom contacted TaxAct for comments on a soon-to-be-published article regarding its use of tracking tools, TaxAct secretly transmitted its users' confidential taxpayer information with Meta. Plaintiff alleged that TaxAct users were shown no disclaimer or warning that their confidential information would be disclosed to any unauthorized third party, had no idea that their confidential information was being collected and transmitted to an unauthorized third party, and never consented to TaxAct's conduct. Nevertheless, Plaintiff alleged that TaxAct secretly transmitted their data to Meta for economic gain because there is a well-established national and international market for consumers' confidential information. Defendant removed this case on February 23, 2023. Dkt. 1.

12. On March 2, 2023, Defendant filed a Motion to Stay Under 9 U.S.C. § 3 (Defendant's first motion to compel arbitration). Dkt. 12. The Parties stipulated to continue the hearing date on Defendant's Motion so that they could meet and confer regarding records that Plaintiff Smith-Washington required in order to be able to address Defendant's arguments regarding the alleged agreement to arbitrate, its validity, and its enforceability. Dkt. 20. Plaintiff filed his opposition on April 20, 2023 (Dkt. 27), and Defendant replied on May 4, 2023 (Dkt. 33).

13. On May 9, 2023, Plaintiff moved to strike new arguments he alleged were improperly made by Defendant for the first time in its Reply, or in the alternative, for leave to file a surreply to address Defendant's new arguments. Dkt. 34. The Court permitted Plaintiff to file a surreply which he did on May 18, 2023. Dkt. 37, 38.

14. On May 25, 2023, the Court heard argument on Defendant's Motion. During the hearing, the Court denied the Motion without prejudice and opened discovery. Dkt. 44.

b. Second Motion to Compel Arbitration and First Amended Complaint

15. On June 8, 2023, Defendant filed its Motion to Compel Arbitration and Stay Proceedings (its second motion to compel arbitration). Dkt. 50. On June 12, 2023, because of

1 information discovered by Plaintiff as part of Counsel’s continuing investigation into the case, Plaintiff
2 informed Defendant that he intended to file an amended complaint.

3 16. On June 20, 2023, Plaintiff filed the First Amended Complaint: adding Plaintiffs
4 Mahoney, Ames, and Lewis; alleging that Defendant also disclosed its customers’ confidential
5 information to Google, Google Double Click (collectively “Google”), and other unauthorized third
6 parties; expanding the class definition to cover all persons nationwide who used TaxAct’s website’s
7 tax preparation services to prepare a tax return with a California subclass (represented by Plaintiffs
8 Smith-Washington, Mahoney, and Ames); and, adding a second putative class of “Married Filers,”
9 whose spouses used TaxAct’s website’s tax preparation services to prepare a joint tax return with them
10 (represented by Plaintiff Lewis, whose husband used TaxAct’s consumer online tax preparation
11 products to prepare and file their joint tax return). Dkt. 56.

12 17. On June 29, 2023, pursuant to a stipulation of the Parties, the Court entered an Order
13 finding that Defendant’s pending Motion to Compel Arbitration and Stay Proceedings (Dkt. 50) was
14 moot in light of the additional Plaintiffs included in the First Amended Complaint and the newly pled
15 facts and causes of action. Dkt. 62. Accordingly, the Court set a briefing and hearing schedule regarding
16 Defendant’s anticipated Renewed Motion to Compel Arbitration and Stay Proceedings (“Renewed
17 Motion”). *Id.*

18 18. On July 12, 2023, Defendant filed its Renewed (third) Motion to Compel Arbitration
19 and Stay Proceedings (“Renewed Motion”). Dkt. 83. On August 18, 2023, Plaintiffs filed an
20 administrative motion for leave to file an evidentiary objection to Defendant’s supporting declaration,
21 which Plaintiffs contended contained significant evidentiary issues. Plaintiffs also sought to file an
22 overlength brief to address issues which were not raised in Defendant’s first or second motion to compel
23 arbitration. On August 29, 2023, the Court granted Plaintiffs’ administrative motion. On August 29,
24 2023, Plaintiffs filed their Opposition to Defendant’s Renewed Motion, which consisted of a 22-page
25 memorandum of points and authorities, over 500 pages of supporting documents, including deposition
26 transcripts from the above-mentioned depositions, and declarations from all four named Plaintiffs.
27 Plaintiffs concurrently filed 34 pages of evidentiary objections to TaxAct’s supporting declaration. On
28 September 7, 2023, Defendant filed its reply and its response to Plaintiffs’ evidentiary objections.

1 19. After all of the briefs associated with the Renewed Motion were filed and before the
2 hearing was held, the parties began engaging in settlement negotiations and requested that the hearing
3 date be continued during this time. As a result of the parties' requests for continuances to pursue a
4 possible settlement, the Renewed Motion was set for hearing on January 25, 2024.

5 ***c. Motion for Leave to Amend Complaint***

6 20. On November 27, 2023, after failing to resolve the dispute on the day of mediation,
7 Plaintiffs filed a Motion for Leave to File a Second Amended Complaint, (1) adding Avantax, Inc.,
8 TaxAct's former parent, as a named Defendant; (2) adding a breach of contract cause of action based
9 on a third-party beneficiary claim; and (3) changing the class definition to exclude consumers who are
10 seeking to resolve their claims via arbitration. Dkt. 95. These proposed amendments were sought based
11 on certain facts Plaintiffs ascertained during discovery. This Motion was fully briefed and set for
12 hearing on January 11, 2024.

13 ***d. Motion for Corrective Notice***

14 21. In late December 2023, Counsel for Plaintiffs, as part of their continuing investigation
15 of the case, discovered that, on or about December 22, 2023, Defendant had changed the Terms of
16 Service applicable to customers using its website. Defendant's newly changed Terms of Service posted
17 on its website were made effective immediately and purportedly created a legally binding contract with
18 all persons who visit the site. Importantly, the Updated Terms of Service had the potential to interfere
19 with and/or eliminate the rights of some putative Class Members in this Action because they include
20 new or revised provisions that purport to: (1) release TaxAct from "responsibility, liability, claims,
21 demands, and/or damages of every kind and nature, in any way arising out of or related to the operation,
22 or [use of TaxAct's services] that in any way arise out of or relate to the acts or omissions of third
23 parties" (including some of the claims alleged in this Action); and, (2) alter the procedural rights of
24 putative Class Members by eliminating the right to permissive joinder and class litigation in court.
25 Thus, if applied, the Updated Terms of Service might preclude any putative Class Members who
26 returned to the TaxAct website at any time after December 22, 2023, from pursuing the claims asserted
27 in the Complaint, which all, arguably, "arise out of or relate to the acts or omissions of third parties,"
28 and/or could prohibit those same Class Members from participating in the instant class Action.

1 22. On January 3, 2024, Plaintiffs filed a Motion for Protective Order and Corrective Notice
2 asking the Court, *inter alia*, to enjoin Defendant from enforcing §§ 9, 13, and 14 of the Updated Terms
3 of Service against putative Class Members with respect to claims arising during the Class Period in this
4 litigation and/or in arbitration and to require Defendant to issue a corrective notice to putative Class
5 Members by mail, email, and by posting that notice on its website. On that same day, Plaintiffs also
6 filed a motion to shorten time for the briefing and hearing of their motion for a protective order and
7 corrective notice. The Court set the hearing for the Motion for Protective Order and Corrective Order
8 for January 11, 2024, at the same time as the hearing on Plaintiffs’ Motion for Leave to File a Second
9 Amended Complaint.

10 23. On or about January 2, 2024, Plaintiffs’ Counsel obtained an agreement from TaxAct
11 that it would not seek to enforce the Updated TOS against any of the Plaintiffs and any members of the
12 Classes that Plaintiffs seek to represent, should such Classes be certified.

13 **III. DISCOVERY AND INVESTIGATION**

14 ***a. Research and Investigation***

15 24. As briefly discussed above, prior to filing this lawsuit and continuing throughout
16 litigation, Plaintiffs’ Counsel conducted extensive and thorough investigation into the factual and legal
17 basis of this lawsuit. Plaintiffs’ Counsel ultimately retained two experts in the field who analyzed the
18 network traffic on Defendant’s website, the tracking tools, and the configuration of the tracking tools,
19 and provided their findings and analysis to Plaintiffs’ Counsel.

20 25. Plaintiffs’ Counsel also closely reviewed publicly available information in connection
21 with the investigation launched by Senator Elizabeth Warren into the misuse of customer information
22 by tax preparation companies, including Defendant. One of the documents is a 54-page report, titled
23 “Attacks on Tax Privacy” prepared by the Offices of Senators Elizabeth Warren, Ron Wyden, Richard
24 Blumenthal, Tammy Duckworth, Bernie Sanders, and Sheldon Whitehouse, and Representative Katie
25 Porter, in July 2023. Additionally, Plaintiffs reviewed the filings in the case against TaxAct filed by
26 the Missouri Attorney General, Andrew Bailey, including the Complaint and Stipulated Consent
27 Judgment between TaxAct and the Attorney General, which includes a five-year term injunction halting
28 the conduct by TaxAct challenged by the Plaintiffs in the instant case. The Stipulated Consent Judgment
provides, *inter alia*, that (1) TaxAct shall not disclose to third parties any consumer personal or tax

1 information¹ collected through tracking tools, unless TaxAct has obtained express consent from
2 consumers or it is permitted by law, (2) TaxAct shall maintain an information security program that
3 complies with state and federal laws and industry norms and practices, and which is designed to protect
4 the security, integrity and confidentiality of consumer personal or tax information that is collected,
5 stored, and/or transmitted by TaxAct, and (3) that the information security program maintained by
6 TaxAct shall contain administrative, technical, and/or physical safeguards. A true and correct copy of
7 the Stipulated Consent Judgment is attached hereto as **Exhibit 3**.

8 ***b. Written Discovery and Depositions***

9 26. After the Court opened discovery, following the denial of Defendant’s Motion to Stay
10 Under 9 U.S.C. § 3 (Defendant’s first motion to compel the case to arbitration), Plaintiffs served their
11 first sets of Requests for Production and Interrogatories on June 23 and July 10, 2023, respectively.

12 27. On July 20 and 21, 2023, Plaintiffs served third-party subpoenas on Google and Meta,
13 respectively, for the production of documents and information.

14 28. On July 24, 2023, Defendant served its responses to Plaintiffs’ First Set of Requests for
15 Production. The following day, the parties entered into a Stipulated Protective Order to facilitate the
16 production of confidential documents and data. Dkt. 74.

17 29. On August 9, 2023, Defendant served its responses to Plaintiffs’ First Set of
18 Interrogatories.

19 30. The Parties met and conferred on numerous occasions regarding Defendant’s responses,
20 and Defendant served supplemental responses to Plaintiffs’ First Set of Requests for Production on
21 August 4, 2023.

22 31. In total, Defendant produced and Plaintiffs analyzed 1,926 documents, totaling 7,336
23 pages, and over 100 pages of written discovery responses. The documents produced and analyzed by
24 Plaintiffs’ Counsel included detailed information about the pixels Plaintiffs allege TaxAct installed on
25
26

27
28 ¹ Consumer tax information is defined in the Stipulated Consent Judgment as “a Unique Identifier in combination with *any* specific items from a tax return (including but not limited to names of dependents, filing status, or the amounts of the following: adjusted gross income, tax refunds, investment income, mortgage interest, standard deductions, student loan interest, and/or charitable contributions), ...” Exhibit 3, at p. 2.

1 its website. Plaintiffs also consulted and were assisted by technical experts in interpreting the
2 voluminous technical documents produced by Defendant.

3 32. In August 2023, Plaintiffs took two depositions of TaxAct's high-level employees:
4 Manager of Marketing Technology & Website, Nicholas Zabokrtsky, and Vice President of Tax
5 Operation, Mark Jaeger. Both of these depositions took place in Chicago, Illinois.

6 33. On December 5, 2023, Plaintiffs served their Second Set of Requests for Production.
7 On January 4, 2024, Defendant served its objections and responses to Plaintiffs' Second Set of Requests
8 for Production. In addition, Plaintiffs were in the process of working to find mutually agreeable dates
9 to schedule the depositions of three former TaxAct employees and a 30(b)(6) deponent, when this
10 matter settled.

11 **IV. MEDIATION AND SETTLEMENT NEGOTIATIONS**

12 34. In September 2023, after Plaintiffs filed their Opposition to Defendant's Renewed
13 Motion, the parties agreed to attend mediation and stipulated to continue the hearing on Defendant's
14 Renewed Motion until November 30, 2023.

15 35. In addition to documents obtained as part of formal discovery, in preparation for the
16 mediation, the parties participated in dozens of video conferences and telephone calls, and exchanged
17 emails regarding the documents and information to be informally produced by Defendant in order to
18 ensure that Plaintiffs were able to fully assess the maximum and realistic value of each of their claims.

19 36. On November 20, 2023, the parties participated in a full-day mediation session with a
20 highly-regarded and skilled mediator, Hunter Hughes. Based on the voluminous discovery produced
21 by Defendant and analyzed by Plaintiffs' Counsel, the deposition testimony of Defendant's Manager
22 of Marketing Technology & Website and Vice President of Tax Operation, the independent research
23 and investigation conducted by Plaintiffs' Counsel (including analysis of Defendant's website
24 performed by Plaintiffs' experts), information gathered during numerous communications with
25 Defendant's counsel, and the posture of the case (with Defendant's motion to compel arbitration, and
26 Plaintiffs' motions for leave to amend and for corrective notice fully briefed and pending), Plaintiffs'
27 Counsel were well-informed of the strength and weaknesses of Plaintiffs' claims and the risks of
28 continued litigation at the time they participated in the mediation.

1 37. Plaintiffs drafted a detailed mediation statement addressing the facts, applicable law,
2 evidence Plaintiffs would rely on, and liability and damages, supported by documents and information
3 produced by Defendant in discovery and excerpts from the deposition transcripts. Defendant also
4 shared its mediation brief with Plaintiffs so that Plaintiffs' Counsel were aware of and prepared to
5 address Defendant's evidence and arguments.

6 38. After an entire day of hard-fought settlement discussions on the day of the mediation,
7 the parties were unable to reach a settlement.

8 39. After the mediation, the Parties returned to actively litigating the case, including
9 preparing for several depositions including a 30(b)(6) deposition and their motion for class certification,
10 and continued to make extensive efforts to explore whether a settlement could be reached.

11 40. The continued settlement negotiations, which took close to two months, were intense,
12 complicated, and involved numerous video conferences and telephone calls. The discussions involved
13 the exchange of multiple demands and offers, and covered the strengths and weaknesses of Plaintiffs'
14 claims, the risks both parties faced based on Defendant's pending motion to compel arbitration and
15 Plaintiffs' pending motions for leave to amend the complaint and for corrective notice, and the possible
16 structure of the settlement. The parties finally reached an agreement in principle and entered into a
17 Memorandum of Understanding which set out the principal terms of the Settlement on January 10,
18 2024. Since January 10, 2024, the parties have made considerable efforts, with yet more video
19 conferences, phone calls, and emails, in order to resolve the details associated with finalizing this
20 Settlement, which included the Notice Plan, selecting the Settlement Administrator (including
21 obtaining bids from three prospective settlement administrators and meeting with each one to discuss
22 their proposed notice and administration plan), agreeing on the Plan of Allocation, and determining the
23 best method to provide the In-Kind Payment to Class Members.

24 41. In order to effectuate the Settlement Agreement, on February 16, 2024, Plaintiffs filed
25 their stipulation for leave to file Plaintiffs' Second Amended Complaint, adding Mathew Hartz, the
26 sole named plaintiff in a similar case against TaxAct, as a Named Plaintiff representing the Nationwide
27
28

1 Class;² updating TaxAct’s principal place of business address; excluding parties who may have
2 conflicts of interest; excluding consumers who seek to arbitrate their claim against Defendant; adding
3 a cause of action for breach of contract; adding a prayer for relief under Cal. Penal Code §§ 496 and
4 502 *et seq.* for the violations alleged in the Eighth and Ninth causes of action; and other changes
5 consistent with these amendments. Dkt. 114. On February 20, 2024, after the Court granted the parties’
6 stipulation, Plaintiffs filed their Second Amended Complaint. Dkt. 117.

7 42. On February 21, 2024, the parties executed the Settlement Agreement, which is now
8 presented to this Court for approval.

9 **V. RISKS APPLICABLE TO PLAINTIFFS’ CLAIMS**

10 43. Plaintiffs believe their claims are meritorious and have pursued them aggressively.
11 Nevertheless, Plaintiffs acknowledge that they face a number of procedural, certification, and merits-
12 based litigation risks based on Defendant’s actual and potential arguments that might threaten their
13 ability to recover or might preclude any recovery.

14 **a. Individual Arbitration of Plaintiffs’ Claim**

15 44. The primary issue contested by the Parties, thus far, through extensive motion practice
16 has been whether Defendant can compel individual arbitration of Plaintiffs’ claims. Defendant’s
17 Renewed Motion to Compel Arbitration was fully briefed and pending at the time the parties agreed to
18 resolve this action. If Defendant had prevailed on its pending Renewed Motion to Compel Arbitration,
19 Plaintiffs would be left with five individual arbitrations and no means of obtaining relief for the
20 Settlement Classes.

21 45. Plaintiffs consider it a concrete, substantial, and material risk that Defendant would be
22 able to compel individual arbitration of Plaintiffs Smith-Washington, Ames, and Mahoney’s claims
23 and of the claims of all members of the Nationwide Class and Subclass. Plaintiffs believe there is a
24 lower risk that Defendant would be able to compel Plaintiff Lewis’ claims to arbitration, however, still
25 a substantial risk. Thus, Plaintiffs believe that a large discount for all claims is warranted based on the
26 risk of having Plaintiffs’ claims compelled to individual arbitration.

27
28

² As discussed below, that case, *Hartz v. TaxAct, Inc.*, No. 1:23-cv-04591, was dismissed on February 22, 2024,
on the basis that the Settlement Agreement reached in the instant action will resolve many of its claims.

1 **b. Risk on Class Certification**

2 46. While Plaintiffs are confident that they would be able to certify the class, if Defendant’s
3 motion to compel arbitration was denied and their claims remained in court, Plaintiffs faced risks based
4 on Defendant’s anticipated arguments that individualized questions would predominate. For example,
5 Defendant could have argued that approximately a quarter of its customer base did not pay money to
6 use its website to prepare tax returns and their claims should not be certified. Defendant could have
7 also argued with respect to Plaintiffs’ claims on behalf of the Nationwide Married Filing Jointly Class
8 and the California Married Filing Jointly Subclass, that whether they consented to their spouse’s use of
9 the TaxAct website to prepare and file their joint tax return, and whether the third parties to whom
10 information was disclosed received information sufficient to identify the Class Member would require
11 individualized inquiries and would preclude certification.

12 **c. Limitations Associated with Defendant’s Terms of Service**

13 47. Throughout the Class Period, the Terms of Service and License Agreement (“Terms of
14 Service”) on Defendant’s website provided:

15 “ANY CLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT OR OUR
16 SERVICES OR CONTENT MUST BE FILED WITHIN ONE YEAR AFTER SUCH
17 CLAIM AROSE; OTHERWISE, THE CLAIM IS PERMANENTLY BARRED, WHICH
18 MEANS THAT YOU AND TAXACT WILL NOT HAVE THE RIGHT TO ASSERT THE
19 CLAIM.”

20 Defendant has consistently maintained that this provision limits recovery by Class Members.

21 48. The Terms of Service also provided, throughout the Class Period, that:

22 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE ENTIRE
23 LIABILITY OF TAXACT AND THE PARTICIPATING PARTIES (JOINTLY) FOR
24 ANY REASON SHALL BE LIMITED TO THE AMOUNT PAID BY YOU FOR THE
25 SERVICES AND CONTENT.

26 Defendant has consistently maintained that this provision limits recovery by Class Members because
27 it limits Defendant’s exposure to amounts paid by the Class Members. A true and correct copy of
28 Defendant’s Terms of Service, in effect during the Class Period (last updated November 17, 2020), is
attached hereto as **Exhibit 4**.

///

1
2 **VI. DEFENDANT’S EXPOSURE ON PLAINTIFFS’ CLAIMS**

3 *a. Compensatory Damage Calculations*

4 49. For settlement purposes only, one available measure of recovery is the value Class
5 Members place on the information disclosed by Defendant to unauthorized third parties.³ In a paper
6 presented to PrivacyCon 2020, hosted by the Federal Trade Commission, the authors reported that U.S.
7 consumers they surveyed would require, on average, \$5 per month in order for a financial institution
8 to have the right to share information on their respective account balances with any company or
9 individual willing to pay for it. A true and correct copy of “How Much is Privacy Worth Around the
10 World and Across Platforms?”, Jeffrey Prince, March 2020, is attached as **Exhibit 5** hereto.

11 *b. Invasion of Privacy Claims (Common Law and California Constitution)*

12 50. Using a \$5 figure to estimate, for settlement purposes, the value of Class Members’
13 information disclosed by TaxAct in each year in which they used TaxAct’s online services, Plaintiffs
14 calculate Defendant’s realistic exposure on the first cause of action as \$118,451,075. This calculation
15 is based on the fact that TaxAct has provided information to Plaintiffs confirming that approximately
16 23,690,215 returns were filed by the members of the Nationwide Class or on behalf of the members of
17 the Married Filing Jointly class. With respect to the California Subclass Members, using this \$5
18 estimate, Plaintiffs calculate Defendant’s realistic exposure on the second cause of action, for
19 settlement purposes only, as \$6,382,450. This calculation is based on information provided to Plaintiffs
20 by TaxAct indicating that there were approximately 1,276,490 returns filed by the California Subclass
21 Members or on behalf of California Married Filing Jointly Subclass Members with TaxAct during the
22 Class Period.

23 51. If this case were litigated and this court decided to award nominal damages, such as a
24 nominal damages award of \$1 per Class Member, the Defendant’s realistic exposure for aggregate
25

26
27 ³ Plaintiffs do not take punitive damages into account. See e.g. *See In re Volkswagen “Clean Diesel” Mktg., Sales*
28 *Practices, and Prods. Liab. Litig.*, No. 3:15-md-02672-CRB, 2017 WL 2212783, at *24 (N.D. Cal. May 17, 2017)
(explaining that, because “any award of punitive damages is inherently speculative and discretionary, courts
regularly approve settlements that offer no or little compensation representing the risk of a punitive damages
award” (citation omitted)).

1 damages for the Nationwide Class Members and Nationwide Married Filing Jointly Class Members
 2 would be approximately \$10 million, and for California Subclass Members and California Married
 3 Filing Jointly Subclass Members it would be approximately \$630,000.

4 *c. Business & Professions Code §§ 17530.5 et seq. Claim*

5 52. Using a \$5 figure to calculate, for settlement purposes, the value of compensatory
 6 damages for the California subclasses, Plaintiffs estimate the Defendant's realistic exposure for this
 7 cause of action for violations of Bus. and Prof. Code section 17530.5 as \$6,382,450 (1,276,490 returns
 8 filed by members of the California subclasses x \$5).

9 *d. Tax Preparation Act Claim*

10 53. With respect to Plaintiffs' claim for violation of the Tax Preparation Act, pursuant to §
 11 22257, a civil penalty of \$1,000 is available for each time TaxAct failed to perform a duty "specifically
 12 imposed on [it] pursuant to [the Tax Preparation Act]." As for civil penalties under § 22257, assuming
 13 damages would be awarded per person, the maximum recovery would be \$628,156,000. This is based
 14 on taking the estimated 519,060 members of the California Subclass and 109,096 members of the
 15 California Married Filing Jointly Subclass, which is a figure provided by TaxAct, and multiplying it
 16 by \$1,000. Defendant, as a corporate entity, was sold for \$720 million in November 2022, and in 2021,
 17 the most recently reported year, reported revenue (not profit) of \$227 million. Using the figure of \$5
 18 per tax return, discussed above, Plaintiffs calculate Defendant's realistic exposure of \$6,382,450, which
 19 would be subject to reduction on the basis of the various procedural and merits-based risks.

20 *e. Risks Applicable to Invasion of Privacy, Bus. & Prof. Code §§ 17530.5 et seq.,*
 21 *Tax Preparation Act Claims*

22 54. In addition to the risks applicable to all claims, discussed at paragraph 44-48 above,
 23 Defendant raised several arguments with respect to the claims for invasion of privacy, §§ 17530.5, and
 24 Tax Preparation Act ("TPA") claims specifically. With respect to all these claims, Defendant
 25 contended that Nationwide Class Members and California Subclass Members consented to the use of
 26 tracking tools on Defendant's website. With respect to the invasion of privacy claims, Defendant
 27 contended that Plaintiffs would not be able to prove for all Settlement Class Members that the
 28 disclosure of users' information was highly offensive or serious or that they had a reasonable
 expectation of privacy. While Plaintiffs believe their allegations that TaxAct's customers had a

1 reasonable expectation of privacy both were supported by the evidence, in light of the numerous state
 2 and federal statutory provisions that protect the confidentiality of information provided and TaxAct's
 3 representations to its customers that their taxpayer information would be kept private, Plaintiffs
 4 recognized the risk posed by Defendant's argument. With respect to the Nationwide Married Filing
 5 Jointly Subclass Members and California Married Filing Jointly Subclass Members, Defendant also
 6 could have contended that Plaintiffs would not be able to establish that these subclass members had a
 7 reasonable expectation of privacy in information they had provided to their spouse, who then provided
 8 it to TaxAct. With respect to §§ 17530.5 and TPA, Defendant contended that its use and disclosure of
 9 the information at issue, or part of that information, was authorized by the Treasury Regulations
 10 promulgated under the IRC § 7216; and, that Defendant did not actually disclose any taxpayer
 11 information. Plaintiffs feel that they have the better argument for most or all of these arguments, but
 12 do recognize that they present litigation risks.

13 *f. Electronic Communications Privacy Act Claim*

14 55. Pursuant to 18 U.S.C. § 2520, Nationwide Class Members and Nationwide Married
 15 Joint Filers Class Members can recover damages assessed as the greater of the sum of actual damages
 16 suffered and any profits made by TaxAct as a result of its violations of the ECPA or statutory damages
 17 of whichever is the greater of \$100 per day per violation or \$10,000. Simple arithmetic generates a
 18 figure of greater than \$100 billion.⁴ Defendant's realistic exposure on this claim is \$118,451,075, based
 19 on adding 18,748,659 total tax returns filed by Nationwide Class Members between 2018 and 2022 to
 20 4,941,556 tax returns filed by Married Filing Jointly Filers during that same period (for a total number
 21 of 23,690,215 tax returns filed by all Class Members) and multiplying that number of tax returns filed
 22 by \$5.

23 56. Plaintiffs recognize that Defendant's realistic exposure is subject to discounts based on
 24 the risks described above (i.e. arbitration, limit on claims arising only with the year preceding the filing
 25 of the Complaint and only to the amounts paid, noncertification) and Defendant's actual and potential
 26 arguments that the taxpayer information intercepted by the third-party tracking tools on Defendant's
 27 website was not the contents of an electronic communication and therefore not a violation of ECPA;
 28

⁴ \$10,000 x (8,263,789 Nationwide Class Members + 2,042,940 Married Joint Filers Class Members).

1 that ECPA's party exception to liability applied; that the Court may find that the Nationwide Married
 2 Filing Jointly Class Members are not covered by the ECPA because the intercepted communications
 3 were not between them and TaxAct, but between their spouses and TaxAct.

4 ***g. California Invasion of Privacy Act Claim***

5 57. Pursuant to Penal Code § 637.2, California Subclass Members and California Married
 6 Joint Filers Subclass Members are entitled to the greater of \$5,000 per violation or three times the
 7 amount of actual damages suffered. Even assuming that each Class Member can recover only \$5,000
 8 (rather than \$5,000 per tax year, or even \$5,000 per website visit), Defendant's theoretical maximum
 9 exposure is \$3.14 billion.⁵ As discussed above with respect to other claims, Defendant's realistic
 10 exposure can be generated by applying the figure of \$5 to each tax return filed by or on behalf of
 11 California Subclass Members and California Married Filing Jointly Subclass Members, which amounts
 12 to a realistic exposure of \$6,382,450 (1,276,490 tax returns filed by members of the Subclasses x \$5).
 13 This figure is then subject to discount based on the risk of arbitration and other risks discussed above.

14 ***h. Comprehensive Computer Data Access and Fraud Act Claim***

15 58. Plaintiffs seek compensatory damages on their claims made under Penal Code §
 16 502(e)(1) for violations of the Comprehensive Computer Data Access and Fraud Act on behalf of
 17 California Subclass Members and California Married Joint Filers Subclass Members. The \$5 per tax
 18 return amount can be used as an approximation of compensatory damages, which results in a realistic
 19 exposure of \$6,382,450 based on approximately 1,276,490 tax returns filed by California Subclass
 20 Members or on behalf of California Married Filing Jointly Subclass Members. There is also a risk that
 21 only nominal damages would be awarded. Assuming a nominal damages award of \$1 per Class
 22 Member, the aggregate damages award would be approximately \$630,000. As with the other claims,
 23 any estimated maximum recovery would be subject to arbitration and merits-based risks described
 24 above, and the risks generally applicable to all of Plaintiffs' claims.

25 ***i. California Penal Code §§ 484, 496***

26 59. Plaintiffs allege that they and Class Members, are entitled to recovery under Penal Code
 27 § 496 because Defendant committed "theft" under §§ 484, 486 by obtaining Class Members' property
 28

⁵ \$5,000 x (519,060 California Subclass Members + 109,096 California Married Joint Filers Subclass Members).

1 through the Meta Pixel and concealing, withholding, and/or selling that property to Meta, Google, and
2 other third parties. Defendant contended that Plaintiffs cannot establish either of the two factual
3 predicates for this claim, (1) that Defendant made specific false representations, and (2) that Plaintiffs
4 transferred their property to Defendant in reliance on these representations. Plaintiffs strongly disagree
5 but do consider these to be litigation risks that warrant a discount.

6 60. Plaintiffs use the figure of \$5 per tax return as an estimate of the actual damages suffered
7 by subclass members. Based on this figure and based on subclass members' entitlement to recover
8 "three times the amount of actual damages, if any, sustained . . . costs of suit, and reasonable attorney's
9 fees" under Penal Code § 496(c), Plaintiffs calculate the realistic exposure as \$19,147,350 (1,276,490
10 tax returns filed by California Subclass Members or on behalf of California Married Filing Jointly
11 Subclass Members, multiplied by \$5 and by 3). If the risk that only nominal damages would be awarded
12 materialized, and assuming a nominal damages award of \$1 per Class Member, the total damages award
13 would be approximately \$630,000. Any estimated realistic recovery would then be subject to merits-
14 based risks described immediately above, and the risks generally applicable to all of Plaintiffs' claims.

15 ***j. Breach of Contract Claim***

16 61. Plaintiffs seek compensatory and consequential damages on behalf of Nationwide Class
17 Members and Married Joint Filers Subclass Members under their breach of contract claim, which rests
18 on the theory that Plaintiffs and Class Members were intended beneficiaries of the alleged contract
19 between TaxAct and Meta – the Facebook Business Tools Terms. As explained above, Plaintiffs
20 believe a realistic measure of Defendant's exposure for settlement purposes can be based on the figure
21 of \$5 per tax return filed, which amounts to \$118,451,075. Assuming a potential risk that only nominal
22 damages of \$1 would be awarded, Defendant's exposure would be approximately \$10 million. Either
23 of these estimated exposure amounts, would still be subject to the risk that the Court would find that
24 there is no apparent intent in the Facebook Business Tools Terms to extend third-party beneficiary
25 rights to Plaintiffs and Class Members, given that those Terms provide that they "supplement and
26 amend" the Facebook Commercial Terms of Service which, themselves, in all versions in effect during
27 the Class Period, have expressly provided that they "do not confer any third party beneficiary rights."
28 Further, either of the estimated exposures would also be subject to the risks generally applicable to all
of Plaintiffs' claims.

1
2 *k. Summary of Plaintiffs' Realistic Exposure Analysis*

3 62. Plaintiffs estimate Defendant's realistic exposure under each of the three claims brought
4 on behalf of the Nationwide Class and Nationwide Married Filing Jointly Class (i) violation of the
5 ECPA; (ii) common law invasion of privacy; and (iii) breach of contract, to be \$118,451,075.

6 63. Because of the strength of the ECPA claim, and because the other two claims are based
7 on the same underlying conduct as the ECPA, and both seek the same remedy (compensatory damages),
8 Plaintiffs consider the realistic aggregate exposure on all three claims to be \$118,451,075 plus
9 \$20,000,000 in nominal damages awards, for a total of \$138,451,075.

10 64. Plaintiffs estimate the Defendant's exposure for the eight claims brought on behalf of
11 members of the California Subclass and the California Married Filing Jointly Subclass, as \$12,764,900
12 as follows. For their TPA claim, Plaintiffs estimate that the Defendant's realistic exposure is
13 approximately \$6,382,450. Under their Bus. & Prof. Code § 17535 claim, Plaintiffs estimate that the
14 California subclasses could recover an additional \$6,382,450. For settlement purposes, the remaining
15 claims add little value to the Defendant's exposure to California subclass members' claims. As
16 discussed above, several of these claims are duplicative of the nationwide claims brought on their
17 behalf. A court could find that Plaintiffs' claim under CIPA, for example, is duplicative of Plaintiffs'
18 ECPA claim while evaluating the appropriate available relief and might refuse to permit members of
19 the California subclasses to recover under both CIPA and the ECPA.

20 65. Plaintiffs' assessment of the Defendant's exposure for the nationwide classes and their
21 California subclasses is consistent with the proposed Plan of Allocation, which is attached hereto as
22 Exhibit 2. Under the Plan of Allocation, approximately \$16.5 million (94.5%) of the \$17.45 million
23 QSF is assigned to the nationwide classes (including the portion of the nationwide recovery that will
24 go to members of the California subclasses). As set out above, we estimate that, of the total aggregate
25 realistic exposure (\$151,179,975), \$138,451,075 (91.6%) is based on the nationwide claims.

26 **VII. RISK OF FURTHER LITIGATION**

27 66. The arbitration and litigation risks mean that there is no certainty that Plaintiffs and
28 Settlement Class Members would recover anything from this case should it proceed in litigation.
Further litigation would also be expensive, extremely complex, and likely not fully resolved for several

1 years. For example, even if Plaintiffs were to defeat Defendant's Renewed Motion to Compel
2 Arbitration, Defendant had promised that it would immediately appeal that ruling, which would tie the
3 parties up in appellate litigation of that issue for years.

4 67. Plaintiffs' Counsel have already devoted substantial resources to the investigation and
5 litigation of this case, including costs for consulting experts, depositions and related services, travel
6 expenses for depositions and court appearances, mediation, and the processing of documents produced
7 by Defendant in discovery. Plaintiffs would have incurred additional substantial expenses if Plaintiffs
8 ended up taking a 30(b)(6) deposition, expenses for testifying experts in connection with class
9 certification and trial, and other costs associated with a likely weeks-long trial. These additional
10 expenses would ultimately be deducted from the Classes' recovery.

11 68. Further litigation would also be complex. This case has already generated considerable
12 motion practice, with briefing raising complex issues and supported with voluminous evidence, without
13 Defendant's efforts to compel arbitration yet being decided.

14 69. Absent settlement, Plaintiffs' Counsel expects litigation would have remained
15 contentious and hard-fought. Extensive motion practice would need to be completed before Plaintiffs
16 could proceed with their class certification motion, which Counsel expects would be strongly-
17 contested. Plaintiffs' certification motion would be complex as it would address issues across 11 claims,
18 two proposed classes (each with a subclass), and with a combined total of more than 10 million class
19 members. Defendant would also likely seek summary judgment at some point.

20 70. If Plaintiffs succeeded in opposing Defendant's efforts to compel their case to individual
21 arbitration, litigation would likely continue for many years. Plaintiffs would have to clear the hurdles
22 of class certification and summary judgment. The losing party would appeal the Court's ruling on one
23 or both of those matters. The Parties would then likely seek a lengthy jury trial. The case would almost
24 certainly not end with a jury verdict; given the novelty of the claims, the relatively unsettled nature of
25 relevant precedent, the complexity of the facts, and the magnitude of Defendant's potential exposure,
26 one or both Parties would almost certainly appeal. In short, absent this Settlement, this Action could
27 take many years to be resolved.

28 ///

1 **VIII. THE SETTLEMENT REPRESENTS AN EXCELLENT RESULT**

2 *a. The Monetary and In-Kind Relief Offered by the Settlement*

3 71. The Settlement Agreement creates a cash settlement for the benefit of the Settlement
4 Classes in the amount of \$17,450,000, which comprises a non-reversionary \$14,950,000 common fund
5 plus \$2,500,000 set aside to be used towards Notice and Administration Costs with any unused
6 remainder of that amount to be distributed to the Settlement Classes (“Qualified Settlement Fund” or
7 “QSF,” also referred to as the “Total Cash Settlement Amount” or “TCSA”). The QSF, less a court-
8 approved Attorneys’ Fees and Expenses Award, court-approved Service Awards to the Settlement
9 Class Representatives, and Notice and Administration Costs, will be allocated among Settlement Class
10 Members who submit a valid claim form in accordance with the Plan of Allocation discussed below.

11 72. In addition to the cash component, the Settlement provides for In-Kind relief in the form
12 of complimentary access to TaxAct® Xpert Assist to Class Members who submit a valid claim form
13 (“Xpert Assist”). Xpert Assist is an add-on feature that TaxAct offers to its customers that provides
14 live advice and assistance from tax experts to customers completing a tax return through TaxAct. Xpert
15 Assist is available for all online do-it-yourself consumer Form 1040 tax filing products and is currently
16 offered by TaxAct at a price of \$59.99. Upon entering their Social Security number into the TaxAct
17 platform, which occurs at the beginning of the tax return form process, Authorized Claimants will
18 receive a pop-up alerting them to their complimentary Xpert Assist and be able to add and use Xpert
19 Assist immediately.

20 73. Plaintiffs’ Counsel consider the Settlement to be an outstanding result, particularly in
21 light of the fact that no Class has been certified and a number of Plaintiffs’ claims involve unsettled
22 areas of law.

23 74. The proposed Settlement Administrator stated in its declaration that courts have found
24 that a claims rate of 4.6% in other cases it has handled to be more than adequate. In this case, the
25 administrator used a 5% claims rate in calculating the estimated notice and administration costs. Based
26 on an assumed 5% claims rate (which is consistent with the range anticipated by the Settlement
27 Administrator), Plaintiffs estimate that the average Authorized Claimant’s gross share of the TCSF will
28 be \$33.86, and the average Authorized Claimant’s share will be \$18.65.

1 75. Based on a 5% claims rate, the estimated potential redeemable value of the In-Kind
 2 Payment is \$31 million, and Plaintiffs estimate there will be a *minimum* redeemed value of \$5.8 million.
 3 This estimate is based on a 65% year-over-year retention rate and on the conservative assumption that
 4 only 9-10% of Settlement Class Members who are returning users will take advantage of the Xpert
 5 Assist.⁶

6 76. The combined size of the monetary settlement and the In-Kind Payment represents an
 7 excellent result for Plaintiffs and the Settlement Classes. Plaintiffs conservatively estimate that the
 8 average net relief available to each Settlement Class Member who files a valid claim (i.e., an Authorized
 9 Claimant) will be \$78.64 (assuming Authorized Claimants redeem Xpert Assist).

10 77. In summary, assuming a claims rate of 5%, Plaintiffs estimate that the gross share of the
 11 cash settlement available to each Settlement Class Member submitting a valid claim will be \$33.86,
 12 their net share of the cash settlement (after the payment of court-approved attorneys' fees and costs,
 13 Class Representative Service Awards, and Settlement Administration Costs) will be \$18.65, and the
 14 average total gross and net relief available to them (including in-kind relief) will total \$93.85 and
 15 \$78.64, respectively.

16 ***b. The Proposed Allocation is Fair and Reasonable***

17 78. The Net Settlement Fund will be allocated among those Settlement Class Members who
 18 complete and submit a simple Claim Form. Authorized Claimants – i.e., Settlement Class Members
 19 who submit valid claims – are assigned allocation points according to the Settlement Class or Subclass
 20 of which they are a member. If an Authorized Claimant was a member of one Class or a Subclass during
 21 a portion of the Class Period and was a member of a different Class or Subclass during a different
 22 portion of the Class Period, the Authorized Claimant will be assigned allocation points for the Class or
 23 Subclass to which the Authorized Claimant belonged that has the highest number of allocation points.

24
 25
 26 ⁶ The specific calculations are as follows. In 2022, TaxAct has confirmed that there were approximately
 27 3,600,000 members of the Classes who used TaxAct to file their taxes. Using the 65% retention rate year-over-
 28 year, Plaintiffs estimate that in 2025 (the year Xpert Assist will be available for use in connection with the filing
 of 2024 tax returns) approximately 988,650 of the Class Members will return to use TaxAct. Assuming,
 conservatively, that between 9% and 10% of these returning users will take advantage of the offer of
 complimentary Xpert Assist, the redeemed value will be approx. \$5.8 million (988,650 x (between 0.09 and 0.1)
 x \$60).

1 Allocation points shall be assigned as follows: Members of the Nationwide Class are assigned 3
2 allocation points; Members of the California Subclass are assigned 6 allocation points; Members of the
3 Nationwide Married Filing Jointly Class are assigned 1 allocation point; and Members of the California
4 Married Filing Jointly Subclass are assigned 2 allocation points.

5 79. Plaintiffs have attempted to achieve the appropriate ratio between each respective group
6 such that the allocation points assigned to them, relative to other Settlement Class Members, reflect the
7 strength of the claims that Plaintiffs have pursued on their behalf. As described in more detail below,
8 Plaintiffs have brought three claims on behalf of the nationwide classes, with eight on behalf of the two
9 California subclasses.

10 80. Among the California-only claims are the Tax Preparation Act claim and the Business
11 and Professions Code § 17530.5 claim, both of which are particularly strong claims for the California
12 subclasses, and the former of which entitles them to significant statutory damages. I conducted a
13 comprehensive survey of potential state claims and did not identify a statute in any other state akin to
14 California Business & Professions Code § 17530.5 or California's Tax Preparation Act.⁷ Because of
15 the additional claims brought on their behalf, Plaintiffs believe it appropriate to allocate twice as many
16 points to members of each California subclass as to the members of the respective nationwide classes.
17 Accordingly, approximately \$16.5 million (94%) of the \$17.45 million QSF is assigned to the
18 nationwide classes (including the portion of the nationwide recovery that will go to members of the
19 California subclasses), and an additional \$960,000 (6%) is assigned to the California subclasses solely
20 based on California-only claims. The ultimate division of the Net Settlement Fund will depend on
21 which Settlement Class Members file valid claims, but the availability of relief is proportionate to the
22 relative size of the aggregate maximum recovery available on nationwide claims (roughly 92% of the
23 total) and the aggregate maximum recovery available based on California-only claims (roughly 8%).

24 81. There are additional risks associated with certification of the Nationwide Married Filing
25 Jointly Class and the California Married Filing Jointly Subclass, and with the merits of claims pursued
26 on behalf of those members that justify allocating three times as many points to members of the
27

28

⁷ The handful of similar statutes that Counsel was able to find all lacked a private right of action. Counsel also found that some states do have wiretapping statutes analogous to the California Invasion of Privacy Act.

1 Nationwide Class as to members of the Nationwide Married Filing Jointly Class and three times as
2 many points to members of the California Subclass as to members of the California Married Filing
3 Jointly Subclass. In particular, it is unclear that members of the Nationwide Married Filing Jointly Class
4 could successfully pursue a claim under the ECPA given that it was their spouses' communication that
5 was intercepted. A similar argument is an obstacle to recovery by the California Married Filing Jointly
6 Subclass under CIPA. Given the prominence of these claims in Plaintiffs' estimate of Defendant's
7 exposure, members of the Married Filing Jointly Class and Subclass should recover less.

8 *c. A Claim Form is Necessary*

9 82. It is necessary to require submission of a claim form in order for a Settlement Class
10 Member to receive a monetary payment and Xpert Assist for several reasons. First, by allowing
11 Settlement Class Members to choose a payment option, rather than simply mailing checks, the use of
12 a claim form makes it more likely that a greater proportion of the settlement funds distributed will
13 actually be received and redeemed by Class Members. Second, and relatedly, the use of a claims form,
14 and the corresponding expected use of electronic means of receiving payment by the majority of
15 Authorized Claimants will help reduce the likelihood of fraud in the receipt of settlement funds. Third,
16 the use of a claim form allows monetary payments to be provided by means that are significantly less
17 expensive than writing and mailing checks. The Settlement Administrator's estimates of Notice and
18 Administration Costs assume that 80% of Settlement Class Members submitting valid claims will elect
19 payment by electronic means. The alternative of sending checks to the best available mailing address
20 would dramatically increase the costs of notice and administration. Fourth, it is necessary to confirm
21 whether those Settlement Class Member who are part of the Nationwide Married Filing Jointly Class
22 are also part of the California Married Filing Jointly Subclass. The information required by the claim
23 form will allow the Settlement Administrator to make this determination. Fifth, requiring Settlement
24 Class Members to confirm the address they used when filing a tax return through TaxAct's website
25 will assist the Settlement Administrator in validating their claims (and membership in the Settlement
26 Classes) and in resolving any disputes. And sixth, requiring the submission of claim forms will assist
27 TaxAct in understanding the staffing it will need in order to provide the In-Kind Payment (Xpert
28 Assist). TaxAct will have to undertake a considerable amount of advance planning and hiring of tax
experts in order to provide the In-Kind Payment in the manner contemplated in the Settlement

1 Agreement and the use of claim forms will assist TaxAct in forecasting how many individuals will
2 likely avail themselves of complimentary Xpert Assist as part of the Settlement.

3 83. Defendant has informed Plaintiffs that it has email addresses for the substantial majority
4 of Settlement Class Members, which will enable the administrator to send reminder notices to a
5 substantial majority of Settlement Class Members.

6 ***d. TaxAct Has Already Agreed to an Injunction Requiring it to Have Ceased***
7 ***Engaging in the Challenged Practices***

8 84. TaxAct has entered into a Stipulated Consent Judgment with the Missouri Attorney
9 General entered by the Circuit Court of St. Louis City, State of Missouri, on October 31, 2023.

10 85. Under that Stipulated Consent Judgment, the practices challenged by Plaintiffs in the
11 instant case are enjoined, for a 5-year term. Specifically, the Consent Judgment provides, inter alia, that
12 (1) TaxAct shall not disclose to third parties any consumer personal or tax information⁸ collected
13 through tracking tools, unless TaxAct has obtained express consent from consumers or it is permitted
14 by law, (2) TaxAct shall maintain an information security program that complies with state and federal
15 laws and industry norms and practices, and which is designed to protect the security, integrity and
16 confidentiality of consumer personal or tax information that is collected, stored, and/or transmitted by
17 TaxAct, (3) that the information security program maintained by TaxAct shall contain administrative,
18 technical, and/or physical safeguards, and (4) that TaxAct shall provide clear and conspicuous notice
19 of its consumer privacy policy through a hyperlink on the home pages of its website(s), the privacy
20 policy must comply with applicable state and federal laws, and TaxAct must update the policy to reflect
21 material changes before they take effect. *See* Exhibit 3 (Stipulated Consent Judgment) hereto.

22 ***e. The Settlement Compares Very Favorably with Similar Settlements***

23 86. The Settlement Agreement creates a \$17,450,000 cash settlement plus in-kind relief
24 valued at a minimum of \$5.8 million. A comparison to court-approved settlements of other data privacy
25 claims further confirms the desirability of this Settlement for Class Members. The monetary settlement,
26

27
28 ⁸ Consumer tax information is defined in the Stipulated Consent Judgment as “a Unique Identifier in combination with *any* specific items from a tax return (including but not limited to names of dependents, filing status, or the amounts of the following: adjusted gross income, tax refunds, investment income, mortgage interest, standard deductions, student loan interest, and/or charitable contributions), ...” *See* Exhibit 2, at page 2.

1 alone, places this Settlement within the range of court-approved settlements in similar cases. And, if
2 the In-Kind Payment is taken into account, the average gross relief available to each Authorized
3 Claimant (estimated to be \$93.85) makes the recovery in this case significantly higher than recovery in
4 comparable cases. A chart of comparable settlements identified by Class Counsel is attached as **Exhibit**
5 **6** hereto.

6 **IX. CLASS COUNSEL'S EXPERIENCE**

7 87. HammondLaw attorneys have extensive class action and complex litigation expertise.
8 Our attorneys have consistently won unprecedented recoveries for consumers as well as employees,
9 obtained crucial injunctive relief, caused changes in industry standards, and even caused the California
10 Legislature to pass new legislation. Their extensive experience and expertise were instrumental in
11 securing the excellent result in this case. HammondLaw's firm resume is attached as **Exhibit 7** hereto.

12 88. **Julian Hammond** has more than twenty years of experience in commercial and
13 complex class litigation. Having been a Barrister in Australia, representing GlaxoSmithKline in the
14 then-largest commercial litigation in Australia's history, Mr. Hammond transitioned his practice to
15 California in 2010 and founded his own law firm, and has since become a leading California class
16 action attorney. Mr. Hammond has obtained over 40 class action settlements and judgments over just
17 the past 3 years, securing over \$50 million in settlements for employees and consumers (and close to
18 \$100 million since 2010 in more than 80 class actions). Included among these was Mr. Hammond's
19 success, with Ms. Brandler as second chair, securing judgment in a class action against the University
20 of San Francisco in 2020, and his successful defense of that judgment before the Court of Appeal in
21 2023. Also notable was a \$16.5 million settlement for approximately four million consumers against
22 Apple in relation to its automatic renewal policies. Recently, Mr. Hammond has begun representing
23 consumers and patients in various data privacy cases, including in cases against Cerebral, Inc. and
24 BetterHelp for disclosing their patients' medical information to Meta through the Pixel.

25 89. Mr. Hammond earned his bachelor's degree from the University of New South Wales,
26 and his J.D., *summa cum laude*, from the University of Technology. Mr. Hammond also received an
27 LLM from New York University School of Law in 2001.

28 90. **Christina Tusan** has served as the lead attorney on the case. Ms. Tusan is a nationally
recognized consumer protection litigator and a Partner at HammondLaw, P.C. Ms. Tusan has obtained

1 over \$1 billion in judgments on behalf of consumers. Ms. Tusan was recently appointed co-lead
2 counsel in a case in federal district court in a privacy case against BetterHelp. She has directly litigated
3 and led teams of attorneys in the litigation of complex consumer protection cases at federal, state and
4 local consumer protection agencies over the past 25 years. While at the FTC for seven years, Ms. Tusan
5 successfully led multiple complex consumer protection cases resulting in judgments of over \$578
6 million. She received the FTC Director's Award for co-leading the FTC team that obtained a \$478
7 million summary judgment, which was the largest litigated judgment in an FTC matter at that time (and
8 constituted full restitution for every dollar that defendants had collected in that case). Ms. Tusan also
9 received the FTC Director's Award for successfully leading a large team of attorneys and staff in a case
10 that was litigated against DeVry University and resulted in a \$100 million settlement, which was the
11 largest litigated settlement against a for-profit university at the time. All of the \$100 million order in
12 that judgment was for restitution that was returned to consumers either through direct payments or
13 through loan forgiveness. While at the California Attorney General's Office, Ms. Tusan obtained
14 judgments valued at over \$60 million, which also included strong consumer redress and preliminary
15 and permanent injunctions. She also successfully led a large team of lawyers at the LA City Attorney's
16 Office where she obtained judgments worth hundreds of millions of dollars. Ms. Tusan has received
17 multiple awards for her ground-breaking work, including three awards from the FTC, the California
18 Attorney General's Award for Excellence, and the National Anti-Fraud Network's Siris Investigation
19 of the Year Award in 2023.

20 91. Ms. Tusan received her bachelor's degree from Stanford University in 1994, cum laude,
21 and her J.D. from the University of Southern California in 1997, where she was a member of the USC
22 Law Review and received the Warren Ferguson Social Justice Writing Award.

23 92. **Adrian Barnes** has over 12 years of experience successfully representing consumers
24 and employees in class-action cases. Adrian is currently pursuing litigation against a number of leading
25 financial and healthcare companies for the unauthorized disclosure of customers' confidential financial
26 and medical information. Adrian has represented clients before the National Labor Relations Board,
27 the Public Employment Relations Board, and has litigated class actions to the Supreme Court. He has
28 also obtained favorable settlements in multi-million-dollar class actions under California's wage and
hour laws.

1 93. Adrian earned his law degree from Columbia Law School, where he was on the editorial
2 board of the Columbia Law Review, was a James Kent Scholar, and received the Emil Schlesinger
3 Prize for the student most proficient in labor law. Prior to law school, Adrian earned a bachelor's degree
4 in Rhetoric from the University of California, Berkeley, where he graduated *magna cum laude*, and a
5 master's degree in English Literature from University College London.

6 94. **Polina Brandler** has over 11 years of complex class action experience and a total of 15
7 years of legal experience, having spent the first two and a half years of her career as a judicial law clerk.
8 Ms. Brandler has a wealth of litigation experience, having litigating over 30 class actions, and worked
9 on every stage of litigation, from case researching and investigation, pleadings and motion practice,
10 expert discovery to depositions, through to mandatory settlement conferences and mediations, and
11 recently successfully second chaired a class action trial against the University of San Francisco.
12 Additionally, Ms. Brandler brings her formidable briefing skills to the table, being responsible for
13 numerous motions and oppositions, including oppositions to motions to compel arbitration, and recent
14 appellate briefs, in which HammondLaw was successful.

15 95. Ms. Brandler received her bachelor's degree, *cum laude*, in 2005 from Macaulay Honors
16 College at the City University of New York, and her J.D. from the Benjamin N. Cardozo School of
17 Law in 2009.

18 96. **Ari Cherniak** has been with HammondLaw since 2010 and has extensive class action
19 litigation experience. Mr. Cherniak's assists in managing all aspects of the class action litigation at
20 HammondLaw, including overseeing case calendars, advising on compliance with applicable rules
21 including procedural rules, local rules, standing orders, and guidelines, and ensures the smooth
22 operation of the cases from inception through to final approval. Mr. Cherniak has been appointed along
23 with other members of the HammondLaw Team as class counsel in over 70 class actions since 2010.

24 97. Mr. Cherniak received his bachelor's degree from Towson University in 2007, and his
25 J.D. from Tulane University Law School in 2011.

26 98. **Steven Greenfield** earned his bachelor's degree from Yeshiva University in 1996,
27 where he was valedictorian from the Sy Syms School of Business, his J.D. from the University of
28 Pennsylvania Law School in 1999, where he graduated in the top 25% of his class, an LLM in taxation
from the New York University School of Law in 2002, and an MBA from Columbia University in

1 2007. Mr. Greenfield has over seven years of legal experience, and over 20 years of professional
2 experience.

3 99. The background and experience of **Keller Postman** is set out in the concurrently filed
4 Declaration of Warren D. Postman.

5 100. Here, as described above, Counsel for Plaintiffs conducted an extensive investigation
6 into the Settlement Classes' claims, diligently and aggressively prosecuted the case, and faced a robust
7 defense from litigators from two premier national firms. Counsel also participated in a comprehensive
8 mediation, during which the Parties submitted detailed mediation briefs, and numerous subsequent
9 discussions between the Parties. Throughout this challenging litigation, Counsel for Plaintiffs have
10 been able to form a complete picture of the merits of the Settlement Classes' claims and the quality of
11 the Settlement reached. Counsel for Plaintiffs consider the Settlement to be an outstanding result. It is
12 particularly so, considering that no Class has been certified and a number of Plaintiffs' claims could all
13 be compelled to arbitration.

14 **X. ATTORNEYS' FEES AND COSTS**

15 101. Plaintiffs will seek attorneys' fees in an amount not exceeding a total 25% of the Total
16 Cash Settlement Amount and 25% of the redeemed value of the In-Kind Payment (up to a maximum
17 redeemed value of \$5,800,000), to be paid from the Qualified Settlement Fund. The portion of the
18 Attorneys' Fees and Expenses Award awarded based on the In-Kind Payment will be paid at a later
19 date, no earlier than May 2025, once the redeemed value of the Xpert Assist service is calculated. This
20 portion of the Attorneys' Fees and Expenses Award will be held by the Settlement Administrator until
21 the amount of attorneys' fees can be calculated. If any portion of the amount held by the Settlement
22 Administrator is not payable as attorneys' fees (i.e., if the total redeemed value of the In-Kind Payment
23 is less than \$5,800,000) it will be distributed to a *cy pres* recipient in accordance with the Allocation
24 Plan.

25 102. As of February 21, 2024, Plaintiffs' Counsel have spent more than 3,395.8 hours⁹
26 working on this case for a total lodestar of \$2,765,267.75 as follows:

27
28

⁹ The time spent by HammondLaw, Gerstein Harrow, and Barry Goldstein is as of February 13, 2024. The time spent by Keller Postman, as reflected in the Warren Decl., is as of February 21, 2024.

Firm	Hours	Lodestar
HammondLaw	2,925	\$2,338,909.00
Keller Postman	325.8	\$310,433.75
Gerstein Harrow	103.6	\$65,210.00
Barry Goldstein	41.4	\$50,715.00
Total		\$2,765,267.75

103. Plaintiffs' Counsel expect to expend many additional hours before their submission of a request for an award of attorneys' fees, and expect that their lodestar will increase to a minimum of \$3,041,833.

104. Plaintiffs' Counsel will spend an estimated 300 additional hours preparing and filing the motion for final approval, responding to objections, continuing to oversee the notice process, answering calls and questions from Class Members, attending the final approval hearing, and overseeing the distribution of the settlement funds.

105. The maximum fee request represents a multiplier of approximately 1.91 on the expected \$3,041,833.

XI. COSTS

106. Class Counsel have incurred \$58,493.79 in costs and expenses in this litigation to date. The following is a summary of these expenses, identified by the category of expense and the amount incurred:

Category	Total Amount
Court Fees	\$2,642.43
Mediation fee	\$10,000.00
Consulting expert fees	\$20,400.00
Document Management	\$2,100.00
Deposition Costs; Transcript Fees	\$8,491.00
Travel (air/ground and lodging)	\$2,787.00
Research (Pacer, Lexis/Westlaw)	\$3,517.90
Witness location	\$8,555.46
Grant Total	\$58,493.79

XII. PLAINTIFFS' EFFORTS ON BEHALF OF THE CLASS

107. Plaintiffs Smith-Washington, Ames, Mahoney, and Lewis have each devoted substantial time and effort to this case. They each discussed their claims with Plaintiffs' Counsel, reviewed and

1 accepted their duties as Class Representatives, reviewed documents filed in this case, promptly
2 responded to calls and emails from Plaintiffs' Counsel, looked for and shared documents with
3 Plaintiffs' Counsel, and were actively involved in the case. Mr. Hartz was an active participant and
4 sole plaintiff in the *Hartz v. TaxAct, Inc.* case and has continued that active role in this case, including
5 reviewing documents and speaking to Plaintiffs' Counsel.

6 108. I am not aware of any conflicts of interests between any of the Plaintiffs and the
7 members of the Classes. Plaintiffs' interests in prosecuting this Action and obtaining the most
8 beneficial recovery possible fully comport with the interests of the Class Members. Plaintiffs were
9 subject to the same unlawful practices as the rest of the members of the Classes, namely the
10 surreptitious collection and disclosure of their taxpayer information, without their knowledge or
11 consent.

12 **XIII. PROPOSED SETTLEMENT ADMINISTRATOR**

13 109. The parties propose Kroll Settlement Administrations LLC, whose business address is
14 2000 Market Street, Suite 2700, Philadelphia, PA 19103, ("Kroll") as the settlement administrator. The
15 parties obtained competing bids from three prospective settlement administrators. They each proposed
16 generally similar notice and claims processes to the one the parties ultimately selected. Counsel for
17 both parties independently evaluated each proposal and then conferred with each other regarding the
18 strengths and perceived weaknesses of each proposal and requested revised proposals from two of the
19 prospective settlement administrators. Counsel for both Parties jointly held virtual meetings with all
20 three of the prospective settlement administrators. The proposals included various methods of
21 identifying and validating contact information, direct and indirect notice, and securely administering
22 claims and funds to the class (including through mailed checks or convenient and commonly used
23 consumer electronic payment options). At the end of the process, the parties agreed to choose Kroll.

24 **XIV. OTHER CASES AFFECTED BY THIS SETTLEMENT**

25 110. Plaintiffs are aware of one case filed during the pendency of the instant action that would
26 be affected by the proposed Settlement: *Kirkham et al. v. TaxAct, Inc.*, No. 2:23-cv-03303-WB (E.D.
27 Pa.).

28 111. *Kirkham et al. v. TaxAct, Inc.*, was initiated on July 25, 2023, six months after Plaintiffs'
case, in Pennsylvania state court, and was removed on August 24, 2023. The plaintiffs in *Kirkham*

1 proposed two classes:

2 All persons who used TaxAct’s online tax preparation software from within Pennsylvania to
3 prepare and/or file a tax return during the time that Meta Pixel or Google Analytics coding was
4 present and active on TaxAct’s website and/or its other online mobile and desktop applications
up and until November 23, 2022.

5 and, a class akin to the Nationwide Married Joint Filers Class proposed in the instant case, defined as:

6 All persons whose spouses used TaxAct’s online tax preparation software from within
7 Pennsylvania to prepare and/or file a joint tax return during the time that Meta Pixel or Google
8 Analytics coding was present and active on TaxAct’s website and/or its other online mobile and
desktop applications up and until November 23, 2022.

9 112. Plaintiffs’ understanding is that all of the claims in *Kirkham* will be released if the
10 proposed Settlement in the instant case is approved. Although the court has appointed interim class
11 counsel, given that no class has been certified in that case, only individual claims would be released.
12 On February 16, 2024, TaxAct filed a renewed motion to compel arbitration in *Kirkham* after its first
13 motion was denied without prejudice on the ground that the court found it did not properly address the
14 relevant Texas law. *Kirkham*, Dkt. 52, 55. In addition, on February 21, 2024, TaxAct filed a motion to
15 stay *Kirkham* pending the resolution of the instant case, on the grounds that the parties in this case
16 reached settlement which, if approved, will resolve the parallel *Kirkham* matter for most—if not all—
17 putative class members. *Kirkham*, Dkt. 64.

18 113. Counsel for Plaintiffs in the instant case have spoken with plaintiffs’ counsel in *Kirkham*
19 and sought to agree on how they could coordinate their actions or coordinate their settlement efforts or
20 even reach joint settlement of both cases. No agreement was reached and plaintiffs’ counsel in *Kirkham*
21 did not participate in the settlement negotiations in the instant case. There is no ongoing communication
22 between Counsel for Plaintiffs in the instant case and plaintiffs’ counsel in *Kirkham*, nor is there any
23 arrangement or agreement between those sets of attorneys.

24 114. On or about January 22, 2024, plaintiffs’ counsel in *Kirkham* filed a Motion to Appoint
25 Interim Class Counsel that was granted.

26 I declare under penalty of perjury under the laws of the United States of America that the
27 foregoing is true and correct. Executed on February 26, 2024.

28 /s/ Julian Hammond
Julian Hammond

EXHIBIT 1

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EXHIBIT LIST

Exhibit A	Proposed Preliminary Approval Order
Exhibit B	Settlement Administration Protocol & Notice Plan (Declaration of Jeanne C. Finegan of Kroll Settlement Administration LLC)
Exhibit C	Short-Form Notice
Exhibit D	Long-Form Notice
Exhibit E	Claim Form
Exhibit F	Opt Out Form
Exhibit G	Proposed Final Approval Order
Exhibit H	Proposed Final Judgment

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release, including Exhibits A-H hereto (“**Settlement Agreement**”), is made and entered into by, between, and among Plaintiffs Nicholas C. Smith-Washington, Joyce Mahoney, Jonathan Ames, Matthew Hartz¹ and Jenny Lewis (together, “**Settlement Class Representatives**”), on behalf of themselves and the Settlement Classes as defined below, and Defendant TaxAct, Inc. (“**Defendant**” or “**TaxAct**”). This Settlement Agreement is subject to Court approval and is intended by the Settlement Class Representatives, the Settlement Classes, and Defendant (collectively, the “**Parties**”) to effect a full and final settlement, resolution, and dismissal of this action, *Smith-Washington v. TaxAct, Inc.*, Case No. 3:23-CV-00830-VC (the “**Action**”), upon and subject to the terms and conditions hereof.

I. RECITALS

1. WHEREAS, on January 24, 2023, Plaintiff Nicholas C. Smith-Washington filed the Action in the Superior Court of California for the County of Alameda (*see* Dkt. No. 1);

2. WHEREAS, TaxAct is a tax preparation software company that, among other services, offers software to individual tax filers;

3. WHEREAS, this Action pertains to TaxAct’s alleged use of auxiliary services provider technologies;

4. WHEREAS, on February 23, 2023, Defendant timely removed the Action to this Court;

5. WHEREAS, on June 20, 2023, Plaintiffs filed a First Amended Complaint (Dkt. No. 56);

6. WHEREAS, on December 21, 2023, Plaintiffs proposed a Second Amended Complaint (Dkt. No. 101);

7. WHEREAS, on January 3, 2024, Plaintiffs filed a Motion for Protective Order and Corrective Notice (Dkt. No. 103);

8. WHEREAS, this Action was vigorously contested and aggressively litigated,

¹ Mr. Hartz is represented by Spencer Sheehan of Sheehan & Associates, P.C., in *Hartz v. TaxAct, Inc.*, No. 1:23-cv-04591. Mr. Hartz is represented by Settlement Class Counsel in this matter.

1 including that:

- 2 a. The Parties engaged in extensive discovery, including production of documents by
3 TaxAct in response to sixty-four requests for production of documents by Plaintiffs
4 b. Plaintiffs deposed two fact witnesses;
5 c. TaxAct responded to thirteen interrogatories;
6 d. The Parties briefed multiple iterations of TaxAct's Motion to Compel Arbitration and
7 Stay Proceedings in response to the Class Action Complaint and First Amended Class
8 Action Complaint, as well as Plaintiffs' Motion for Leave to File Second Amended
9 Complaint;

10 9. WHEREAS, should Defendant's pending Motion to Compel Arbitration and Stay
11 Proceedings succeed, this matter shall proceed through individual arbitration;

12 10. WHEREAS, on November 20, 2023, the Parties mediated their dispute with Hunter
13 Hughes, Esq., in an arm's-length, full-day, contested session, during which the Parties attempted to,
14 but were unable to, negotiate a settlement of their dispute;

15 11. WHEREAS, following the November 20, 2023 mediation session, the Parties
16 continued to negotiate a settlement of their dispute, and ultimately reached an agreement in principle
17 regarding the terms of this Settlement Agreement, culminating in a Memorandum of Understanding
18 that was executed on January 10, 2024;

19 12. WHEREAS, on January 10, 2024, the Parties submitted a Notice of Settlement and
20 requested the Court to stay this Action to allow the parties to focus on finalizing the settlement and
21 preparing the preliminary approval motion (Dkt. No. 106);

22 13. WHEREAS, on January 10, 2024, the Court granted the Parties' request to stay this
23 Action (Dkt. 107);

24 14. WHEREAS, on February 16, 2024, the Parties stipulated to the filing of a Second
25 Amended Complaint (Dkt. 114);

26 15. WHEREAS, on February 20, 2024, the Court granted the Parties' stipulation for leave
27 to file a Second Amended Complaint (Dkt. 116);

28 16. WHEREAS, on February 20, 2024, Plaintiffs filed a Second Amended Complaint

1 (Dkt. 117);

2 17. WHEREAS, before entering into this Settlement Agreement, Settlement Class
3 Counsel conducted a thorough assessment of the relevant law, facts, and allegations to assess the
4 merits and strengths of Settlement Class Representatives' claims, potential remedies, and all defenses
5 thereto, and, based on that assessment, believe that the Settlement Agreement reflects an excellent
6 result for the Settlement Classes and that it is a fair, reasonable, and adequate resolution of the claims,
7 when balanced against the risks associated with continuing to litigate them and the time it would take
8 to secure recovery for the Settlement Classes;

9 18. WHEREAS, Defendant denies each of the allegations in the pleadings in the Action,
10 denies that it has engaged in any wrongdoing, denies that the Settlement Class Representatives'
11 allegations state valid claims, denies that Plaintiffs can maintain a class action for purposes of
12 litigation, and vigorously disputes that Settlement Class Representatives and the Settlement Classes
13 are entitled to any relief, but Defendant nevertheless agrees to resolve the Action in this forum, solely
14 for purposes of the Settlement, on the terms set forth in this Settlement Agreement in order to
15 eliminate the uncertainties, burden, expense, and delay of further protracted litigation;

16 19. WHEREAS, Defendant has agreed to settlement class action treatment of the claims
17 alleged in this Action pursuant to Fed. R. Civ. P. 23(e) solely for the purpose of compromising and
18 settling those claims on a class-wide basis as set forth herein;

19 20. WHEREAS, the Parties agree that the consideration provided to the Settlement
20 Classes and the other terms of the Settlement Agreement were negotiated at arm's length, in good
21 faith by the Parties, and reflect a settlement that was reached voluntarily, after consultation with
22 competent legal counsel, and with the assistance of an independent, neutral mediator;

23 21. WHEREAS, the Settlement Class Representatives and Settlement Class Counsel have
24 concluded that the Settlement set forth herein constitutes a fair, reasonable, and adequate resolution
25 of the claims that the Settlement Class Representatives asserted against Defendant, including the
26 claims on behalf of the Settlement Classes, and that it promotes the best interests of the Settlement
27 Classes;

28 22. NOW THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND

1 AGREED, by the Settlement Class Representatives, for themselves and on behalf of the Settlement
2 Classes, and by Defendant that, subject to the approval of the Court, the Action shall be settled, and
3 the Released Claims shall be finally and fully settled as to the Released Parties, in the manner and
4 upon the terms and conditions hereafter set forth in this Settlement Agreement.

5 **II. DEFINITIONS**

6 23. In addition to the terms defined elsewhere in the Settlement Agreement, the following
7 terms used in this Settlement Agreement shall have the meanings specified below.

8 24. “**Attorneys’ Fees and Expenses Award**” means such funds as may be awarded by
9 the Court to Settlement Class Counsel to compensate Settlement Class Counsel for its fees, costs, and
10 expenses in connection with the Action and the Settlement, as described in Section VII.

11 25. “**Authorized Claimant**” means a Settlement Class Member or their authorized legal
12 representative who is approved for payment from the Net Settlement Fund and In-Kind Payment in
13 accordance with the requirements established by the Settlement Agreement and the Court.

14 26. “**Claim Form**” means the proof of claim form substantially in the form attached as
15 Exhibit E.

16 27. “**Claims Submission Deadline**” means the date by which Claim Forms must be
17 postmarked or electronically submitted to be considered timely for participation in any monetary or
18 in-kind benefits of the Settlement. The Claims Submission Deadline shall be 90 days after the Notice
19 Date.

20 28. “**Settlement Class Counsel**” means the law firms HammondLaw, P.C. and Keller
21 Postman LLC, including Julian Hammond of HammondLaw, P.C., and Warren D. Postman of Keller
22 Postman LLC, who have the necessary authority and capacity to execute this Settlement Agreement
23 and bind all of the Settlement Class Representatives.

24 29. “**Class Notice**” means the Notice of Proposed Settlement of Class Action, which shall
25 include the Short-Form Notice and Long-Form Notice, substantially in the forms attached as Exhibits
26 C and D, respectively, as approved by the Court.

27 30. “**Class Period**” means the time period from January 1, 2018, through December 31,
28 2022, during which Settlement Class Representatives and members of the Settlement Class used

1 TaxAct's tax preparation services to prepare a tax return.

2 31. "**Court**" means the United States District Court for the Northern District of California.

3 32. "**Defense Counsel**" means the law firm Sidley Austin LLP and all of Defendant's
4 attorneys of record in the Action.

5 33. "**Effective Date**" means the date on which the Final Approval and Final Judgment
6 become Final.

7 34. "**Final**" means, with respect to any judicial ruling or order granting the final approval
8 order and/or final judgment, that: (a) if no appeal, motion for reconsideration, reargument and/or
9 rehearing, or petition for writ of certiorari has been filed, the time has expired to file such an appeal,
10 motion, and/or petition; or (b) if an appeal, motion for reconsideration, reargument and/or rehearing,
11 or petition for a writ of certiorari has been filed, the judicial ruling or order has been affirmed with
12 no further right of review, or such appeal, motion, and/or petition has been denied or dismissed with
13 no further right of review. Any proceeding or order, or any appeal or petition for a writ of certiorari
14 pertaining solely to any application for attorneys' fees or expenses associated with this Settlement
15 will not in any way delay or preclude the judgment from becoming Final.

16 35. "**Final Approval Hearing**" means the hearing that is to take place after the entry of
17 the Preliminary Approval Order and after the Notice Date for purposes of: (a) entering a Final
18 Approval Order and Final Judgment and dismissing the Action with prejudice; (b) determining
19 whether the Settlement should be approved as fair, reasonable, and adequate; (c) ruling upon an
20 application for a Service Award by the Settlement Class Representatives; and (d) ruling upon an
21 application by Settlement Class Counsel for an Attorneys' Fees and Expenses Award.

22 36. "**Final Approval Motion Deadline**" means the date by which Settlement Class
23 Counsel shall file the motion seeking final approval of the Settlement. The Final Approval Motion
24 Deadline shall be 120 days after the Notice Date, such date being subject to approval or modification
25 by the Court.

26 37. "**Final Approval Order**" means the order finally approving the terms of this
27 Settlement Agreement, without material variation from the terms set forth in the proposed order
28 attached as Exhibit G, absent consent of all Parties.

1 38. **“Final Judgment”** means a separate judgment to be entered by the Court, pursuant to
2 Federal Rule of Civil Procedure 58(a), dismissing the Action with prejudice.

3 39. **“In-Kind Payment”** means the provision of complimentary TaxAct® Xpert Assist
4 (**“Xpert Assist”**) to Authorized Claimants to use in connection with preparing a tax return using any
5 TaxAct online do-it-yourself consumer Form 1040 tax return filing product (including TaxAct’s free
6 product), applied to tax year 2024. TaxAct will make available to each Authorized Claimant
7 complimentary Xpert Assist. Specifically, upon entering their Social Security number into the TaxAct
8 platform, which occurs at the beginning of the tax return form process, Authorized Claimants will
9 receive a pop-up alerting them to their complimentary Xpert Assist and be able to add and use Xpert
10 Assist immediately.

11 40. **“Net Settlement Fund”** means the Qualified Settlement Fund less: (i) the Attorneys’
12 Fees and Expenses Award; (ii) the Service Awards; (iii) any Notice and Administration Costs that
13 are less than Two Million Five Hundred Thousand (\$2,500,000.00) U.S. Dollars and zero cents and
14 (iv) such other costs, expenses, or amounts as may be awarded or allowed by the Court.

15 41. **“Notice”** or **“Notice Plan”** means the dissemination of notice as described in
16 Section VIII and set forth in Exhibits C and D, attached hereto. In no event shall the Settlement
17 Administrator disseminate notice in any manner materially different from that set forth in the Notice
18 Plan, unless the Parties agree in writing to authorize such forms of notice and the Court so approves.

19 42. **“Notice and Administration Costs”** means the reasonable and necessary (i) costs,
20 fees, and expenses that are incurred in connection with providing Notice to the Settlement Class; and
21 (ii) costs, fees, and expenses that are incurred in connection with administering the Claims process
22 and allocating and distributing payments to Settlement Class Members.

23 43. **“Notice Date”** means the date upon which the Summary Notice and Class Notice is
24 first disseminated. Under no circumstances will the Notice Date be prior to April 30, 2024.

25 44. **“Objection Deadline”** means the date identified in the Preliminary Approval Order,
26 Summary Notice, and Class Notice by which a Settlement Class Member must serve a written
27 objection, if any, to the Settlement in accordance with Section XI and the other related terms of this
28 Settlement Agreement. Untimely objections and objections not meeting the terms of Section XI will

1 be deemed overruled. The Objection Deadline shall be 60 days after the Notice Date, such date being
2 subject to approval or modification by the Court.

3 45. **“Operative Complaint”** means the Second Amended Complaint filed on
4 February 20, 2024.

5 46. **“Opt-Out Deadline”** means the date identified in the Preliminary Approval Order,
6 Summary Notice, and Class Notice by which a Request to Opt-Out must be filed in writing with the
7 Settlement Administrator in accordance with Section X and the other related terms of this Settlement
8 Agreement in order for a potential Settlement Class Member to be excluded from the Settlement
9 Class. The Opt-Out Deadline shall be 90 days after the Notice Date, such date being subject to
10 approval or modification by the Court.

11 47. **“Plan of Allocation”** means the proposed plan of allocation of the Net Settlement
12 Fund or such other plan of allocation as the Court may approve.

13 48. **“Preliminary Approval Order”** means the Order by this Court preliminarily
14 approving the Settlement, providing for Notice to the Settlement Class, and other related matters,
15 without material variation from the terms set forth in the proposed order attached as Exhibit A.

16 49. **“Qualified Settlement Fund”** means the non-reversionary cash settlement common
17 fund for the benefit of the Settlement Class in the amount of Fourteen Million Nine Hundred and
18 Fifty Thousand U.S. Dollars and Zero Cents (\$14,950,000), plus up to Two Million Five Hundred
19 Thousand U.S. Dollars and Zero Cents (\$2,500,000) of additional funds set aside to be used towards
20 Notice and Administration Costs with any remainder of unused Notice and Administration Costs
21 funds to be distributed to the Settlement Class.

22 50. **“Releases,” “Released Party,” “Releasing Parties,”** and **“Released Claims”** shall
23 have the meanings as set forth in Section VI.

24 51. **“Request to Opt-Out”** means a written request from a potential Settlement Class
25 Member who seeks to opt out of the Settlement Classes, which is postmarked by the Opt-Out Deadline
26 and complies with all requirements in Section X.

27 52. **“Service Award(s)”** means the incentive/service awards for the Settlement Class
28 Representatives as approved by the Court, as set forth in Paragraph 94.

1 53. “**Settlement**” means the settlement embodied in this agreement, including all attached
2 Exhibits (which are an integral part of this agreement and are incorporated in their entirety by
3 reference).

4 54. “**Settlement Administrator**” means the firm Kroll Settlement Administration LLC,
5 2000 Market Street, Suite 2700, Philadelphia, PA 19103, which shall provide Notice in accordance
6 with the approved Notice Plan and administration services pursuant to the terms of the Settlement
7 Agreement.

8 55. “**Settlement Classes**” include the Nationwide Settlement Class and the Nationwide
9 Married Filing Jointly Class and the associated California subclasses. Excluded from the Settlement
10 Classes are TaxAct, its current, former and/or future parents, subsidiaries, divisions, affiliates and/or
11 departments, and their employees, officers, directors, management, legal representatives, heirs,
12 successors, and wholly or partly owned subsidiaries or affiliated companies during the Class Period
13 or thereafter; counsel for Plaintiffs and their employees, including but not limited to the undersigned
14 counsel for Plaintiffs and the undersigned counsel’s employees; any district judge or magistrate judge
15 to whom this case is or was assigned, as well as those judges’ immediate family members, judicial
16 officers and their personnel, and all governmental entities; customers who only used TaxAct’s
17 download do-it-yourself consumer Form 1040 tax return filing product, TaxAct’s Professional
18 products, or TaxAct’s online do-it-yourself business tax return filing products; and all individuals
19 who have, as of January 9, 2024, filed a demand for arbitration against TaxAct to arbitrate claims that
20 would otherwise be released in accordance with the terms of this Settlement Agreement unless those
21 individuals elect to opt-in to the Settlement Classes by filing a timely Claim Form.

22 a. “**Nationwide Class**” includes all natural persons who used a TaxAct online do-it-
23 yourself consumer Form 1040 tax filing product and filed a tax return using the TaxAct
24 online product during the Class Period, and whose postal address listed on such tax
25 return was in the United States. The Nationwide Class includes the California
26 Subclass.

27 i. “**California Subclass**” is a subclass of the Nationwide Class that includes all
28 natural persons who used a TaxAct online do-it-yourself consumer Form 1040

1 tax filing product and filed a tax return using the TaxAct online product during
2 the Class Period, and whose postal address listed on such tax return was in
3 California.

4 b. **“Nationwide Married Filing Jointly Class”** includes all natural persons whose
5 spouse used a TaxAct online do-it-yourself consumer Form 1040 tax filing product
6 and filed a joint tax return using the TaxAct online product during the Class Period,
7 and whose postal address listed on such joint tax return was in the United States. The
8 Nationwide Married Filing Jointly Class includes the California Married Filing Jointly
9 Subclass.

10 i. **“California Married Filing Jointly Subclass”** is a subclass of the Nationwide
11 Married Filing Jointly Class that includes all natural persons residing in
12 California during the Class Period whose spouse used a TaxAct online do-it-
13 yourself consumer Form 1040 tax filing product and filed a joint tax return
14 using the TaxAct online product during the Class Period, and whose postal
15 address listed on such joint tax return was in California.

16 56. **“Settlement Class Member(s)”** means any and all persons who fall within the
17 definitions of the Settlement Classes.

18 57. **“Settlement Class Representatives”** means Plaintiffs Nicholas C. Smith-
19 Washington, Joyce Mahoney, Jonathan Ames, Matthew Hartz, and Jenny Lewis.

20 58. **“TaxAct”** or **“Defendant”** means TaxAct, Inc., and refers to the named defendant
21 TaxAct, Inc., as well as all of TaxAct’s current and former directors, officers, members,
22 administrators, agents, insurers, beneficiaries, trustees, employee benefit plans, representatives,
23 servants, employees, attorneys, parents, subsidiaries, divisions, branches, units, shareholders,
24 investors, successors, predecessors, and assigns, and all other individuals and entities acting on
25 TaxAct’s behalf.

26 59. **“Taxes”** means all federal, state, or local taxes of any kind imposed on, or measured
27 by reference to or in connection with any income earned by the Qualified Settlement Fund and the
28 expenses and costs incurred in connection with the taxation or tax treatment of the Qualified

1 Settlement Fund (including, in each case and without limitation, interest, penalties, additions to tax
2 and the reasonable expenses of tax attorneys and accountants).

3 60. “**Tax Expenses**” means any tax-related expenses and costs incurred in connection
4 with the operation and implementation of this Settlement Agreement (including, without limitation,
5 expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating
6 to filing (or failing to file) any tax returns or other tax-related documentation (including those
7 described in Section XIV)).

8 61. “**Tax Year 2024**” means January 1, 2025, through October 15, 2025, which is the
9 time period when taxpayers can timely file their tax returns for 2024.

10 62. “**Treas. Reg.**” means the United States Treasury regulations.

11 63. “**Total Cash Settlement Amount**” means the non-reversionary cash settlement
12 common fund for the benefit of the Settlement Class in the amount of Fourteen Million Nine Hundred
13 and Fifty Thousand U.S. Dollars and Zero Cents (\$14,950,000.00) plus up to Two Million Five
14 Hundred Thousand U.S. Dollars and Zero Cents (\$2,500,000) of additional funds set aside to be used
15 towards Notice and Administration Costs with any remainder of unused Notice and Administration
16 Costs funds to be distributed to the Settlement Class.

17 **III. SETTLEMENT CLASS CERTIFICATION**

18 64. For purposes of settlement only, the Parties agree to seek provisional certification of
19 the Settlement Classes for the Class Period, pursuant to Federal Rules of Civil Procedure 23(e) and
20 23(b)(3).

21 65. The Parties further agree that the Court should make preliminary findings and enter
22 the Preliminary Approval Order granting provisional certification of the Settlement Classes subject
23 to the final findings and approval in the Final Approval Order and Final Judgment and appointing the
24 Settlement Class Representatives as the representatives of the Settlement Classes and Settlement
25 Class Counsel as counsel for the Settlement Classes.

26 66. Defendant does not consent to certification of the Settlement Classes (or to the
27 propriety of class treatment) for any purpose other than to effectuate the settlement of this Action.
28 Defendant’s agreement to provisional certification does not constitute an admission of wrongdoing,

1 fault, liability, or damage of any kind to the Settlement Class Representatives or any of the provisional
2 Settlement Class Members, any admission as to the enforceability of any agreement to arbitrate, or
3 the appropriateness of certification of any class for purposes other than this Settlement.

4 67. If this Settlement Agreement is terminated pursuant to its terms, disapproved by any
5 court (including any appellate court), and/or not consummated for any reason, or the Effective Date
6 for any reason does not occur, the Settlement Agreement shall be void, the order certifying the
7 Settlement Classes for purposes of effectuating the Settlement and all preliminary and/or final
8 findings regarding that class certification order shall be automatically vacated upon notice of the same
9 to the Court, the Action shall proceed as though the Settlement Classes had never been certified
10 pursuant to this Settlement Agreement and such findings had never been made, and the Action shall
11 return to the procedural posture on January 9, 2024, in accordance with this Paragraph, including but
12 not limited to reinvigoration of Defendant's Motion to Compel Arbitration, Plaintiff's Motion for
13 Leave to File Second Amended Complaint and Plaintiff's Motion for Protective Order and Corrective
14 Notice. For clarity, should this Settlement Agreement be void, the Parties agree that Defendant has
15 not waived its right to pursue arbitration by entering into this Settlement and Settlement Agreement.
16 No Party nor counsel shall refer to or invoke the vacated findings, order(s), and/or substantive briefing
17 relating to the Settlement or Rule 23 of the Federal Rules of Civil Procedure in connection with the
18 Settlement, if this Settlement Agreement is not consummated and the Action is later litigated and
19 contested by Defendant under Rule 23 of the Federal Rules of Civil Procedure.

20 **IV. SETTLEMENT CONSIDERATION**

21 68. In consideration for the dismissal of the Action with prejudice and the Releases
22 provided in this Settlement Agreement, Defendant agrees to pay the Qualified Settlement Fund,
23 which includes the Notice and Administration Costs), and contribute the In-Kind Payment for the
24 benefit of Settlement Class Members in the manner described in this Section IV of the Settlement
25 Agreement.

26 **A. Qualified Settlement Fund**

27 69. All valid claims paid to Settlement Class Members, Service Awards to the Settlement
28 Class Representatives approved by the Court, the Attorneys' Fees and Expenses Award (in the

1 amount determined by the Court), and any Notice and Administration Costs shall be paid from the
2 Qualified Settlement Fund. In no event shall Defendant be liable under this Settlement Agreement
3 for payment of claims paid to Settlement Class Members, Service Awards to the Settlement Class
4 Representatives, or the Attorneys' Fees and Expenses Award beyond the provision of the In-Kind
5 Payment and the payment of the amount of the Qualified Settlement Fund.

6 70. It is estimated that there are 8,263,789 Nationwide Class Members, 2,042,940
7 Nationwide Married Filing Jointly Class Members (collective, 10,306,729 Class Members), 519,060
8 California Subclass Members, and 109,096 California Married Filing Jointly Subclass Members. If
9 the total number of Class Members exceeds 10,306,729 by 5% or more, then the Qualified Settlement
10 Fund shall increase by the same percent by which the number of Class Members exceeds 5%, e.g., if
11 the total number of Class Members exceeds 10,306,729 by 7%, the Qualified Settlement Fund shall
12 increase by 2%.

13 71. No later than thirty (30) calendar days after the Court's entry of the Final Approval
14 Order, Defendant shall cause to be paid an amount equal to the Qualified Settlement Fund less the
15 sum of the Initial Deposit and any Periodic Payment(s) as set forth in Section IV.B into the Qualified
16 Settlement Fund to be administered by the Settlement Administrator pursuant to the terms of this
17 Settlement Agreement. No appeal shall affect this Paragraph's funding obligation. Aside from the
18 Initial Deposit, the Periodic Payment(s), Taxes, and Tax Expenses, no payments or distributions
19 (whether for claims paid to Settlement Class Members, Service Awards, or Attorneys' Fees and
20 Expenses) will be made from the Qualified Settlement Fund unless and until the Settlement
21 Agreement becomes Final. If this Settlement Agreement is terminated pursuant to its terms,
22 disapproved by any court (including any appellate court), and/or does not become Final for any
23 reason, or the Effective Date for any reason does not occur, then all funds from the Qualified
24 Settlement Fund shall be promptly released and returned to Defendant (along with all accrued
25 interest).

26 **B. Notice and Administration Costs**

27 72. Within 30 days after the entry of the Preliminary Approval Order, Defendant shall
28 cause to be paid a sum to be determined and sufficient to effectuate the Notice Plan to the Settlement

1 Administrator (the “Initial Deposit”). This deadline may be extended by consent of the Parties and
2 the Settlement Administrator.

3 73. Following entry of the Preliminary Approval Order, and after payment of the Initial
4 Deposit, Defendant shall cause to be paid all periodic subsequent amounts for Notice and
5 Administration Costs (as invoiced by the Settlement Administrator and approved by Settlement Class
6 Counsel and Defendant) (the “Periodic Payment(s)”) (with Notice and Administration Costs in excess
7 of Two Million Five Hundred Thousand (\$2,500,000.00) U.S. Dollars and Zero Cents to be deducted
8 from the Net Settlement Fund), within 30 days after the submission of an invoice by the Settlement
9 Administrator. This deadline may be extended by mutual consent of the Parties and the Settlement
10 administrator.

11 **C. In-Kind Payment**

12 74. No later than January 1, 2025, the beginning of tax filing season for tax year 2024,
13 TaxAct will make available to each Authorized Claimant complimentary Xpert Assist. Specifically,
14 upon entering their Social Security number into the TaxAct platform, which occurs at the beginning
15 of the tax return form process, Authorized Claimants will receive a pop-up alerting them to their
16 complimentary Xpert Assist and be able to add and use Xpert Assist immediately.

17 75. Xpert Assist is an add-on feature TaxAct offers to its customers that provides live
18 advice and assistance from tax experts to customers completing a tax return through TaxAct. Xpert
19 Assist is available for all online do-it-yourself consumer Form 1040 tax filing products. TaxAct
20 currently offers Xpert Assist to customers at a value of \$59.99. More information about Xpert Assist
21 can be found on the TaxAct website: <https://www.taxact.com/tax-xpert-assist>.

22 76. The complimentary Xpert Assist will enable the Authorized Claimant to use Xpert
23 Assist in connection with preparing a consumer tax return using any TaxAct online do-it-yourself
24 consumer Form 1040 tax return product, applied to Tax Year 2024.

25 **V. SUBMISSION OF SETTLEMENT AGREEMENT TO COURT FOR REVIEW AND** 26 **APPROVAL**

27 77. Solely for purposes of implementing this Settlement Agreement and effectuating the
28 proposed Settlement, the Parties agree and stipulate that Settlement Class Counsel shall submit to the

1 Court a motion for preliminary approval of the Settlement together with the Preliminary Approval
2 Order (Exhibit A).

3 78. Among other things, Settlement Class Counsel will seek a Preliminary Approval Order
4 that shall:

5 a. Approve the Notice Plan and Class Notice, substantially in the form set forth at
6 Exhibits B-D;

7 b. Find that the requirements for provisional certification of the Settlement Class have
8 been satisfied, appoint the Settlement Class Representatives as the representatives of
9 the provisional Settlement Classes and Settlement Class Counsel as counsel for the
10 provisional Settlement Classes, and preliminarily approve the Settlement as being
11 within the range of reasonableness such that the Class Notice should be provided
12 pursuant to this Settlement Agreement according to the Notice Plan;

13 i. Plaintiffs Nicholas C. Smith-Washington, Joyce Mahoney, and Jonathan Ames
14 shall be appointed as Settlement Class Representatives of the Nationwide
15 Class and the California Subclass.

16 ii. Plaintiff Matthew Hartz shall be appointed as a Settlement Class
17 Representative of the Nationwide Class.

18 iii. Plaintiff Jenny Lewis shall be appointed as Settlement Class Representative of
19 Nationwide Married Filing Jointly Class and the California Married Filing
20 Jointly Subclass.

21 c. Find that the CAFA notice sent by the Settlement Administrator complies with 28
22 U.S.C. § 1715 and all other provisions of the Class Action Fairness Act of 2005;

23 d. Determine that the Notice Plan, as set forth in this Settlement Agreement, complies
24 with all legal requirements, including but not limited to the Due Process Clause of the
25 United States Constitution;

26 e. Appoint the Settlement Administrator;

27 f. Direct that Class Notice shall be given to the Class as provided in Section VIII and the
28 other related terms of this Settlement Agreement;

- 1 g. Provide that Settlement Class Members will have until the Claims Submission
2 Deadline to submit a Claim Form;
- 3 h. Provide that any objections by any Settlement Class Member to the certification of the
4 Settlement Classes and the proposed Settlement contained in this Settlement
5 Agreement, and/or the entry of the Final Approval Order and Final Judgment, shall be
6 heard and any papers submitted in support of said objections shall be considered by
7 the Court at the Final Approval Hearing only if, on or before the Objection Deadline,
8 such objector files with the Court a written objection and notice of the objector's
9 intention to appear, and otherwise complies with the requirements in Section XI and
10 the other related terms of this Settlement Agreement;
- 11 i. Schedule the Final Approval Hearing on a date selected by the Court, to be provided
12 in the Preliminary Approval Order, and in compliance with applicable law, to
13 determine whether the Settlement should be approved as fair, reasonable, and
14 adequate, and to determine whether a Final Approval Order and Final Judgment
15 should be entered dismissing the Action with prejudice except as to such Settlement
16 Class Members who timely file valid written Requests to Opt-Out in accordance with
17 this Settlement Agreement and the Class Notice;
- 18 j. Provide that all Settlement Class Members will be bound by the Final Approval Order
19 and Final Judgment dismissing the Action with prejudice, except Settlement Class
20 Members who timely file valid written Requests to Opt-Out in accordance with this
21 Settlement Agreement and the Class Notice; and
- 22 k. Pending the Final Approval Hearing, stay all proceedings in the Action, other than the
23 proceedings necessary to carry out or enforce the terms and conditions of this
24 Settlement Agreement and Preliminary Approval Order.

25 79. Following the entry of the Preliminary Approval Order, the Class Notice shall be given
26 and published in the manner set forth in Section VIII of the Settlement Agreement and approved by
27 the Court.

28 80. By the Final Approval Motion Deadline, Settlement Class Counsel shall file a motion

1 seeking final approval of the Settlement. Unless otherwise agreed by the Parties, Settlement Class
2 Counsel shall request entry of a Final Approval Order and Final Judgment that shall, among other
3 things:

- 4 a. Find that the Court has personal jurisdiction over all Settlement Class Members, that
5 the Court has subject matter jurisdiction over the claims asserted in the Action, and that
6 the venue is proper;
- 7 b. Finally approve this Settlement Agreement and the Settlement pursuant to Rule 23(e)
8 of the Federal Rules of Civil Procedure;
- 9 c. Certify the Settlement Classes under Federal Rule of Civil Procedure 23(b)(3) and
10 23(e) for purposes of settlement only;
- 11 d. Find that the Class Notice complied with all laws, including, but not limited to, the Due
12 Process Clause of the United States Constitution;
- 13 e. Incorporate the Releases set forth in this Settlement Agreement and make the Releases
14 effective as of the Effective Date;
- 15 f. Authorize the Parties to implement the terms of the Settlement;
- 16 g. Dismiss the Action with prejudice and enter a separate judgment pursuant to Rule 58
17 of the Federal Rules of Civil Procedure;
- 18 h. Determine that the Settlement Agreement and the Settlement provided for herein, and
19 any proceedings taken pursuant thereto, are not, and should not in any event be offered,
20 received, or construed as evidence of, a presumption, concession, or an admission by
21 any Party of liability or nonliability or of the certifiability or non-certifiability of a
22 litigation class, or of any misrepresentation or omission in any statement or written
23 document approved or made by any Party; provided, however, that reference may be
24 made to this Settlement Agreement and the Settlement provided for herein in such
25 proceedings as may be necessary to effectuate the provisions of this Settlement
26 Agreement, as further set forth in this Settlement Agreement;
- 27 i. Retain jurisdiction relating to the administration, consummation, enforcement, and
28 interpretation of this Settlement Agreement, the Final Approval Order and Final

1 Judgment, any final order approving the Attorneys' Fees and Expenses Award and
2 Service Awards, and for any other necessary purpose; and

3 j. Comply with the timing requirement of 28 U.S.C. Section 1715(d).

4 81. The Parties agree that the Notice Plan contemplated by this Settlement Agreement is
5 valid and effective, that, if effectuated, it would provide reasonable notice to the Settlement Classes,
6 and that it represents the best practicable notice under the circumstances.

7 VI. RELEASES AND DISMISSAL OF ACTION

8 82. "**Releases**" mean the releases and waivers set forth in this Settlement Agreement and
9 in the Final Approval Order and Final Judgment.

10 83. "**Released Parties**" means (i) TaxAct; (ii) its current, former and/or future parents,
11 subsidiaries, divisions, affiliates and/or departments; (iii) the current, former and/or future officers,
12 directors, employees, stockholders, partners, members, managers, servants, agents, attorneys,
13 representatives, insurers, reinsurers and/or subrogees of TaxAct and/or any of its current, former
14 and/or future parents, subsidiaries, divisions, affiliates and/or departments; and (iv) all predecessors,
15 successors and/or assigns of any of the foregoing.

16 84. "**Released Claims**" means, with respect to Settlement Class Members, who do not
17 timely opt out of the Settlement Classes, any and all liabilities, rights, claims, actions, causes of
18 action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses,
19 controversies, costs, expenses, and attorneys' fees of any nature whatsoever, whether based on any
20 law (including but not limited to federal law, state law, common law, contract, rule, or regulation) or
21 equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or
22 unforeseen, actual or contingent, liquidated or unliquidated, that arise during the Class Period and are
23 pled or that could have been pled based on, relating to, or arising out of the identical factual predicate
24 in the Operative Complaint, including but not limited to sharing or otherwise making accessible user
25 data in any form with third-party tracking technology providers. The definition of "Released Claims"
26 shall be construed as broadly as possible under Ninth Circuit law to effect complete finality over this
27 Action. For the avoidance of doubt, the Parties agree that nothing in the Plan of Allocation or any
28 other provision contained herein shall in any way limit the scope of the Release.

1 85. Upon the Effective Date, the Settlement Class Representatives and each of the
2 Settlement Class Members (and each of their heirs, estates, trustees, principals, beneficiaries,
3 guardians, executors, administrators, representatives, agents, attorneys, partners, successors,
4 predecessors-in-interest, and assigns) (collectively, “**Releasing Parties**”) shall be deemed to have,
5 and by operation of the Final Approval Order and Final Judgment in this Action shall have, fully,
6 finally and forever released, relinquished, and discharged each and every Released Claim, and to have
7 covenanted not to pursue any or all Released Claims against any Released Party, whether directly or
8 indirectly, whether on their own behalf or otherwise, and regardless of whether or not such Settlement
9 Class Member submits a Claim Form (except that the foregoing provision shall not apply to any such
10 representative, spouse, domestic partner, trustee, heir, executor, administrator, successor or assign
11 who independently would be a Settlement Class Member and timely excludes himself, herself or
12 itself).

13 86. Nothing in this Settlement Agreement is intended to alter the standard Terms of
14 Service and License Agreement (“Terms”) for the use of Defendant’s products or services by its
15 users, or Defendant’s enforcement of the standard Terms for the use of its products or services. To
16 the extent any conflict exists between the terms and conditions of this Settlement Agreement and the
17 Defendant’s standard Terms, the terms and conditions of the Settlement Agreement shall control.

18 87. Individuals who have timely and validly opted out of the Settlement by the Opt-Out
19 Deadline do not release their claims and will not obtain any benefits of the Settlement.

20 88. After entering into this Settlement Agreement, the Parties may discover facts other
21 than, different from, or in addition to, those that they know or believe to be true with respect to the
22 claims released by this Settlement Agreement. The Released Claims include known and unknown
23 claims as set forth above, and this Settlement Agreement is expressly intended to cover and include
24 all such injuries or damages, including all rights of action thereunder.

25 89. The Parties hereby expressly, knowingly, and voluntarily waive any and all provisions,
26 rights, and benefits conferred by California Civil Code Section 1542 (“Section 1542”) and any statute,
27 rule, and legal doctrine similar, comparable, or equivalent to Section 1542, which provides as follows:

28 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**

1 **THAT THE CREDITOR OR RELEASING PARTY DOES NOT**
2 **KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT**
3 **THE TIME OF EXECUTING THE RELEASE AND THAT, IF**
4 **KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY**
5 **AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR**
6 **OR RELEASED PARTY.**

7 90. In connection with such waiver and relinquishment, the Settlement Class
8 Representatives hereby acknowledge that they are aware that they or their attorneys may hereafter
9 discover claims or facts in addition to or different from those that they now know or believe exist
10 with respect to the Released Claims, but that it is their intention to hereby fully, finally, and forever
11 settle and release all of the Released Claims against the Released Parties.

12 91. In furtherance of such intention, the Release herein given to the Released Parties shall
13 be and remain in effect as a full and complete general release of the Released Claims notwithstanding
14 the discovery or existence of any such additional different claims or facts. The Settlement Class
15 Representatives expressly acknowledge that they have been advised by their attorneys of the contents
16 and effect of Section 1542, and with knowledge, each of the Parties hereby expressly waives whatever
17 benefits he/she/they may have had pursuant to such section. The Settlement Class Representatives
18 acknowledge, and the Settlement Class Members shall be deemed by operation of the Final Approval
19 Order and Final Judgment to have acknowledged, that the foregoing waiver was separately bargained
20 for and a material element of the Settlement of which this Release is a part.

21 92. Upon the Effective Date: (a) the Settlement Agreement shall be the exclusive remedy
22 for any and all Released Claims of Settlement Class Representatives and Settlement Class Members;
23 and (b) Settlement Class Representatives and Settlement Class Members stipulate to be and shall be
24 permanently barred from initiating, asserting, or prosecuting against the Released Parties in any
25 federal or state court or tribunal or arbitral forum any and all Released Claims.

26 **VII. MOTION FOR ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARDS**

27 93. Settlement Class Counsel may apply to the Court for an award of reasonable attorneys'
28 fees incurred in the case as a percentage of the value conferred on the Settlement Classes of no more
 than 25% of the Total Cash Settlement Amount plus 25% of the redeemed value of the In-Kind
 Payment up to a maximum redeemed value of \$5,800,000. Settlement Class Counsel may also apply

1 to the Court for up to \$75,000 for reimbursement of litigation costs and expenses. Defendant reserves
2 the right to oppose the application seeking an Attorneys' Fees and Expenses Award. The Attorneys'
3 Fees and Expenses Award determined by the Court will be paid from the Qualified Settlement Fund.
4 The portion of the Attorneys' Fees and Expenses Award awarded based on the dollar amount of the
5 Total Cash Settlement Amount shall be paid from the Qualified Settlement Fund within 30 days after
6 the Effective Date occurs; and the portion of the Attorneys' Fees and Expenses Award awarded based
7 on the In-Kind Payment shall be paid after the time a reasonable valuation of the redeemed value of
8 Xpert Assist is possible because most Authorized Claimants have had an opportunity to redeem their
9 complimentary Xpert Assist, a time no earlier than May 2025.

10 94. The maximum Attorneys' Fees and Expenses Award based on the In-Kind Payment –
11 which would be \$1,450,000 if the Court awards 25% of the maximum redeemed value of \$5,800,000
12 of the In-Kind Payment – will be held by the Settlement Administrator until such time as a reasonable
13 valuation of the redeemed value of Xpert Assist is possible and the actual amount of attorneys' fees
14 to be based on the basis of the In-Kind Payment can be determined. If any portion of the Attorneys'
15 Fees and Expenses Award based on the In-Kind Payment and held back by the Settlement
16 Administrator is not ultimately distributed as attorneys' fees to Settlement Class Counsel, it will be
17 distributed to National Consumer Law Center as *cy pres* recipient.

18 95. Settlement Class Counsel's application for Attorneys' Fees and Expenses Award is
19 subject to Court approval, and a reduction in Attorneys' Fees, Expenses Award, or other settlement
20 enhancements awarded by the Court is not a basis for the Settlement Class Representatives, on their
21 own behalf or on behalf of the Settlement Classes, or Settlement Class Counsel to void, rescind, or
22 terminate this Settlement Agreement.

23 96. Settlement Class Counsel shall have the sole and absolute discretion, subject to any
24 orders issued by the Court, to allocate the Attorneys' Fees and Expenses Award amongst Settlement
25 Class Counsel and any other attorneys. Defendant shall have no liability or other responsibility for
26 allocation of any such Attorneys' Fees and Expenses Award. The amount ordered by the Court, which
27 shall be paid from the Qualified Settlement Fund, shall be the sole monetary obligation for attorneys'
28 fees and expenses pursuant to this Settlement Agreement.

1 97. The Parties agree that Settlement Class Counsel may apply on behalf of the Settlement
2 Class Representatives to the Court for a Service Award to each of them not to exceed \$10,000 for
3 their services as Settlement Class Representatives. Any Service Award(s) approved by the Court shall
4 be paid from the Qualified Settlement Fund within thirty (30) days after the Effective Date occurs.
5 The Parties agree that the Court has the authority under this Settlement Agreement to issue Service
6 Awards, and that the decision whether or not to award any such payment, and the amount of that
7 payment, rests in the exclusive discretion of the Court. The amount of any such Service Award
8 approved by the Court shall not be grounds for the Settlement Class Representatives to void, rescind,
9 or terminate this Settlement Agreement.

10 98. The Settlement was reached following a vigorously-contested settlement negotiation
11 process, including a full-day mediation conducted before a third-party neutral, Hunter Hughes, Esq.,
12 and via the Parties' respective legal counsels. The Parties did not negotiate the terms of any service
13 award payments or attorneys' fees and expenses until they had negotiated the material terms of the
14 Qualified Settlement Fund and Total Cash Settlement Amount, and during the negotiations of the
15 Qualified Settlement Fund and Total Cash Settlement Amount, they made no agreements in
16 connection with the Settlement Class Representatives' requests for service award payments or
17 Settlement Class Counsel's attorneys' fees and expenses.

18 **VIII. NOTICE AND SETTLEMENT ADMINISTRATION**

19 99. The Settlement Administrator's fees and costs, including the costs of notice, will be
20 paid as described in Section IV.B of this Settlement Agreement.

21 100. The Settlement Administrator will execute a confidentiality and non-disclosure
22 agreement with Defendant and Settlement Class Counsel and will utilize best efforts to ensure that
23 any information provided to it by Settlement Class Members will be kept confidential and secure, and
24 used solely for the purpose of effecting this Settlement.

25 101. For purposes of identifying and providing notice to potential Settlement Class
26 Members, the Preliminary Approval Order shall order Defendant to provide or cause to be provided
27 to the Settlement Administrator within 14 days of the date of entry of the Preliminary Approval Order
28 information about the Settlement Class Members required by the Settlement Administrator to effect

1 the Notice Plan.

2 102. In fulfilling its responsibilities in providing notice to the Settlement Class Members,
3 the Settlement Administrator shall be responsible for, without limitation, consulting on and designing
4 the notice to the Settlement Class with the input and approval of Defendant and Settlement Class
5 Counsel. A preview of the contemplated language and form of that communication (“Short-Form
6 Notice”) is attached as Exhibit C and a preview of the contemplated language and form of the long-
7 form notice to be posted on the settlement website is attached as Exhibit D (“Long-Form Notice”).

8 103. The Settlement Administrator shall commence Class Notice under the Notice Plan
9 30 days after entry of the Preliminary Approval Order, but in no event prior to April 30, 2024
10 (hereinafter the “Notice Date”).

11 104. Settlement Class Members who wish to receive a cash payment and In-Kind Payment
12 will be required to submit a Claim Form. The Claim Form shall, among other things, require the
13 Settlement Class Member to provide current name and contact information (i.e., first and last name,
14 email address, phone number, mailing address), as well as the name and contact information (i.e.,
15 first and last name, email address, phone number, mailing address) associated with their TaxAct
16 account during the time they used the TaxAct services (if different than current name and contact
17 information), and an indication of whether they filed a tax return on their own behalf or their spouse
18 filed a joint tax return on their behalf.

19 105. The Claim Forms shall be submitted to the Settlement Administrator via U.S. mail or
20 electronically. To be valid, Claim Forms must be received by the Settlement Administrator by the
21 Claims Submission Deadline.

22 106. The Class Notice shall set forth the procedure detailed in Section X of the Settlement
23 Agreement whereby members of the Settlement Class may exclude themselves from the Settlement
24 by submitting a Request to Opt-Out to the Settlement Administrator. Requests to Opt-Out must be
25 submitted by the Opt-Out Deadline. Any member of the Settlement Class who does not timely and
26 validly Request to Opt-Out shall be bound by the terms of this Settlement. As soon as practicable
27 after the Opt-Out Deadline, the Settlement Administrator shall provide the Court with a list of the
28 individuals who timely and validly requested to opt-out from the Settlement. Any member of the

1 Settlement Class who submits a timely Request to Opt-Out may not file an objection to the Settlement
2 and shall be deemed to have waived any and all rights and benefits under this Settlement.

3 107. The Class Notice shall set forth the procedure detailed in Section XI of the Agreement
4 whereby Settlement Class Members may object to the Settlement. Objections shall be filed with the
5 Court by the Objection Deadline.

6 108. The Settlement Administrator shall determine whether a submitted Claim Form meets
7 the requirements set forth in this Settlement Agreement. Each Claim Form shall be submitted to and
8 reviewed by the Settlement Administrator, who shall determine whether each claim shall be allowed.
9 The Settlement Administrator shall use best practices and all reasonable efforts and means to identify
10 and reject duplicate and/or fraudulent claims, including, without limitation, indexing all payments
11 provided to the Settlement Class Members. Cash and In-Kind Payment under this Settlement will
12 only be made to Settlement Class Members who submit Valid Claims, defined as claims approved
13 under Paragraphs 101 and 102.

14 109. If a Claim Form does not substantially comply with the formal requirements set forth
15 in this Settlement and/or in the Claim Form instructions, the Settlement Administrator shall promptly
16 notify the claimant of the noncompliance using the contact information provided in the Claim Form.
17 If the claimant fails to cure the noncompliance within 21 days after the Settlement Administrator has
18 notified the claimant of the noncompliance, the Claim Form shall be rejected as not meeting the terms
19 and conditions of this Settlement for receipt of a cash payment from the Qualified Settlement Fund
20 and distribution of In-Kind Payment. Any claimant who does not submit a valid and timely Request
21 to Opt-Out, and whose Claim Form is rejected by the Settlement Administrator, shall be deemed to
22 be a Settlement Class Member upon expiration of the Opt-Out Deadline, and shall be bound by all
23 subsequent proceedings, orders, and Judgments applicable to the Settlement Class(es).

24 110. Where a good faith basis exists, the Settlement Administrator may reject a Claim Form
25 for the following reasons: (a) the Claim Form is fraudulent; (b) the Claim Form is duplicative of
26 another Claim Form; (c) the person submitting the Claim Form is not a Settlement Class Member;
27 (d) the person submitting the Claim Form requests that payment be made to a person or entity other
28 than the Settlement Class Member for whom the Claim Form is submitted; (e) the Claim Form is not

1 timely submitted; or (f) the Claim Form otherwise does not meet the requirements of this Settlement
2 Agreement.

3 111. Claim Forms that do not meet the terms and conditions of this Settlement for payment
4 from the Qualified Settlement Fund shall be rejected by the Settlement Administrator. The Settlement
5 Administrator shall have 30 days from the Claims Submission Deadline to exercise the right of
6 rejection. Settlement Class Counsel and Defendant's Counsel shall be provided with copies of all
7 rejection determinations along with information sufficient to permit the parties to analyze the basis
8 for the rejection. If Settlement Class Counsel and Defendant's Counsel believe that any rejection was
9 inappropriate but cannot agree on a resolution of the claimant's claim, the decision of the Settlement
10 Administrator shall be final. No person shall have any claim against Defendant, Defense Counsel,
11 Settlement Class Representatives, Settlement Class Counsel, and/or the Settlement Administrator
12 based on any eligibility determinations, distributions, or awards made in accordance with this
13 Settlement.

14 112. The Settlement Administrator will provide information as agreed between Settlement
15 Class Counsel and the Settlement Administrator, including weekly written reports on the submissions
16 of claims, objections, and Requests to Opt-Out.

17 113. As soon as reasonably possible after the Claims Submission Deadline, but no later
18 than 7 days from the Claims Submission Deadline, the Settlement Administrator shall provide
19 Settlement Class Counsel and Defense Counsel with a spreadsheet that contains information
20 sufficient to determine: (a) the number of Settlement Class Members that submitted a claim; (b) the
21 number of submitted Claim Forms that are valid and timely, and the number that are not; (c) the
22 number of Valid Claims; and (d) the number of submitted Claim Forms the Settlement Administrator
23 has rejected. The materials that the Settlement Administrator provides to Settlement Class Counsel
24 pursuant to this Paragraph shall not contain the names, email addresses, mailing addresses, or other
25 personal identifying information of the Settlement Class Members.

26 114. Defendant may, in its sole discretion, terminate this Settlement Agreement if more
27 than three percent (3%) of Settlement Class Members submit valid and timely requests to exclude
28 themselves from the Settlement, as agreed to by the Parties and submitted to the Court for in camera

1 review. If Defendant elects to terminate the Settlement pursuant to this provision of the Settlement
2 Agreement, it shall provide written notice within 25 days following the date the Settlement
3 Administrator informs Defendant of the number of Settlement Class Members who have requested
4 to opt out of the Settlement pursuant to the provisions set forth above. If Defendant rescinds the
5 Settlement pursuant to this section of the Agreement, it shall have no further obligations to pay the
6 Qualified Settlement Fund and shall be responsible for only the fees and expenses actually incurred
7 by the Settlement Administrator, for which the Settlement Class Representatives and Settlement Class
8 Counsel are not liable.

9 **IX. PLAN OF ALLOCATION**

10 115. The Plan of Allocation is set forth in a separate document that will be filed by Plaintiffs
11 at the same time as the Settlement Agreement. The Parties shall mutually agree on the disbursement
12 of any amounts not distributed to Settlement Class Members who submit Valid Claims. Defendant
13 shall otherwise have no liability or other responsibility for the Plan of Allocation.

14 116. This is a common fund settlement. There will be no reversion of the Qualified
15 Settlement Fund to Defendant upon the occurrence of the Effective Date irrespective of the number
16 of Claims paid, or the amounts to be paid to Authorized Claimants from the Net Settlement Fund.

17 **X. OPT-OUTS**

18 117. Any individual who wishes to exclude themselves from the Settlement must submit a
19 written opt-out form to the administrator requesting exclusion, which shall be postmarked or
20 electronically submitted no later than the Opt-Out Deadline.

21 118. The Request to Opt-Out must:

- 22 a. Identify the case name of the Action;
- 23 b. Identify the name and current address of the individual seeking exclusion from the
24 Settlement;
- 25 c. Be personally signed by the individual seeking exclusion;
- 26 d. Include a statement clearly indicating the individual's intent to be excluded from the
27 Settlement;
- 28 e. Request exclusion only for that one individual whose personal signature appears on the

1 request;

2 f. Include the contact information (i.e., first and last name, email address, phone number,
3 and mailing address) associated with the TaxAct account of the individual seeking
4 exclusion, or their spouse's TaxAct account if the individual is a Married Filing Jointly
5 Class Member; and

6 g. Verify that the individual seeking exclusion used TaxAct's services during the Class
7 Period and is part of the Settlement Class.

8 119. Opt-out requests seeking exclusion on behalf of more than one individual shall be
9 deemed invalid by the Settlement Administrator.

10 120. Any individual who submits a valid and timely Request to Opt-Out in substantial
11 compliance with the requirements described herein shall not: (i) be bound by any orders or judgments
12 entered in connection with the Settlement; (ii) be entitled to any relief under, or be affected by, the
13 Agreement; (iii) gain any rights by virtue of the Settlement Agreement; or (iv) be entitled to object
14 to any aspect of the Settlement.

15 121. Any individual who does not substantially comply with the requirements of this
16 Settlement Agreement governing Requests for Opt-Out and otherwise meets the definitional
17 requirements of a Settlement Class Member shall be deemed to be a Settlement Class Member upon
18 expiration of the Opt-Out Deadline, and shall be bound by all subsequent proceedings, orders, and
19 judgments applicable to the Settlement Class.

20 122. All signatories and counsel must not encourage opt-outs. Counsel for Plaintiffs and
21 Counsel for Defendant specifically agree not to solicit opt-outs, directly or indirectly, through any
22 means, but rather encourage members of the Settlement Class to participate in the settlement.

23 123. If more than three percent (3%) of the Settlement Class opt out, Defendant shall have
24 the sole and absolute discretion to terminate the Settlement as described above in Paragraph 111.

25 **XI. OBJECTIONS**

26 124. Any Settlement Class Member who wishes to object to the Settlement must timely
27 submit a written objection to the Court on or before the Objection Deadline, as specified in the
28 Preliminary Approval Order.

1 125. The objection must include:

- 2 a. The case name and number of the Action;
- 3 b. The full name, address, telephone number, and email address of the objecting
4 Settlement Class Member and, if represented by counsel, of his/her counsel;
- 5 c. The email address associated with the objector's TaxAct account, or the email address
6 associated with their Spouse's TaxAct account if the objector is a Married Filing Jointly
7 Class Member;
- 8 d. A statement of whether the objection applies only to the objector, to a specific subset
9 of the classes, or to an entire class;
- 10 e. A statement of the number of times in which the objector (and, where applicable,
11 objector's counsel) has objected to a class action settlement, along with the caption of
12 each case in which the objector has made such objection;
- 13 f. A statement whether the objector has sold or otherwise transferred the right to their
14 recovery in this Action to another person or entity, and, if so, the identity of that person
15 or entity;
- 16 g. A statement of the specific grounds for the objection, including any legal and factual
17 support and any evidence in support of the objection;
- 18 h. A statement of whether the objecting Settlement Class Member intends to appear at the
19 Final Approval Hearing, and if so, whether personally or through counsel; and
- 20 i. The objector's signature.

21 126. If an objecting Settlement Class Member intends to speak at the Final Approval
22 Hearing (whether *pro se* or through an attorney), these requirements may be excused by the Court
23 upon a showing of good cause.

24 127. Any Settlement Class Member who fails to substantially comply with the requirements
25 in this Settlement Agreement governing objections shall be deemed to have waived any such
26 objection, shall not be permitted to object to any terms or approval of the Settlement at the Final
27 Approval Hearing, and shall be precluded from seeking any review of the Settlement or the terms of
28 this Settlement Agreement by appeal or any other means.

1 **XII. MODIFICATION OR TERMINATION OF SETTLEMENT AND RESERVATION**
2 **OF RIGHTS**

3 128. This Settlement Agreement may be amended or modified only by a written instrument
4 signed by or on behalf of all Parties or their respective successors-in-interest and approval of the
5 Court; provided, however that, after entry of the Final Approval Order and Final Judgment, the Parties
6 may by written agreement effect such amendments, modifications, or expansions of this Settlement
7 Agreement and its implementing documents (including all Exhibits hereto) without further approval
8 by the Court if such changes are consistent with the Court's Final Approval Order and Final Judgment
9 and do not materially alter, reduce, or limit the rights of Settlement Class Members under this
10 Settlement Agreement.

11 129. This Settlement Agreement and any Exhibits attached hereto constitute the entire
12 agreement among the Parties, and no representations, warranties, or inducements have been made to
13 any Party concerning this Settlement Agreement or its Exhibits other than the representations,
14 warranties, and covenants covered and memorialized in such documents.

15 130. In the event the terms or conditions of this Settlement Agreement are modified by (or
16 are modified to comply with) any court order as described in this Paragraph, any Party in its sole
17 discretion to be exercised within 14 days after such modification may declare this Settlement
18 Agreement null and void. For purposes of this Paragraph, modifications include any material changes
19 including but not limited to (a) the definition of the Settlement Classes, Settlement Class Members,
20 Released Parties, or Released Claims; and/or (b) the terms of the Settlement Consideration described
21 in Section IV; and/or (c) the Notice Plan, including methods of distributing notice, to the Settlement
22 Classes. In the event of qualifying modification by any court, and in the event the Parties do not
23 exercise their unilateral option to withdraw from this Settlement Agreement pursuant to this
24 Paragraph, the Parties shall meet and confer within 21 days of such ruling to attempt to reach an
25 agreement as to how best to effectuate the court-ordered modification.

26 131. In the event that a Party exercises his/her/their option to withdraw from and terminate
27 this Settlement Agreement, then the Settlement proposed herein shall become null and void and shall
28 have no force or effect, the Parties shall not be bound by this Settlement Agreement, and the Parties

1 will be returned to their respective positions existing on January 9, 2024.

2 132. The Parties agree that the effectiveness of this Settlement Agreement is not contingent
3 upon the Court's approval of the payment of any Attorneys' Fees or Expenses or Service Awards. If
4 the Court declines to approve, in whole or in part, a request for Attorneys' Fees or Expenses or Service
5 Awards, all remaining provisions in this Settlement Agreement shall remain in full force and effect.
6 No decision by the Court, or modification or reversal or appeal of any decision by the Court,
7 concerning the payment of Attorneys' Fees or Expenses or Service Awards, or the amount thereof,
8 shall be grounds for cancellation or termination of this Settlement Agreement.

9 **XIII. NO ADMISSION OF WRONGDOING OR LIABILITY**

10 133. Defendant denies the material factual allegations and legal claims asserted in the
11 Action, including any and all charges of wrongdoing or liability arising out of any of the conduct,
12 statements, acts or omissions alleged, or that could have been alleged, in the Action. Similarly, this
13 Settlement Agreement provides for no admission of wrongdoing or liability by any of the Released
14 Parties. This Settlement is entered into solely to eliminate the uncertainties, burdens, and expenses of
15 protracted litigation.

16 134. The Parties understand and acknowledge that this Settlement Agreement constitutes a
17 compromise and settlement of disputed claims. No action taken by the Parties, whether previously or
18 in connection with the negotiations or proceedings connected with the Settlement or this Agreement,
19 shall be deemed or construed to be an admission of the truth or falsity of any allegations, claims, or
20 defenses heretofore made, or an acknowledgment or admission by any party of any fact, fault,
21 liability, or wrongdoing of any kind whatsoever.

22 135. Neither the Settlement, nor any act performed or document executed pursuant to or in
23 furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or
24 evidence of, the validity of any claim made by the Plaintiffs or Settlement Class Members, or of any
25 wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as,
26 an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or
27 in any proceeding in any court, administrative agency or other tribunal; or construed as an admission
28 by Plaintiffs regarding the validity of any allegation or claim asserted in this Action or that Plaintiff

1 has waived any allegation or claim asserted in the Action.

2 **XIV. NO DISPARAGEMENT**

3 136. The Parties agree that they will not make or publish written statements which are
4 disparaging to the reputation of the other or their current or former corporate parents and affiliates.

5 **XV. CAFA NOTICE PURSUANT TO 28 U.S.C. SECTION 1715**

6 137. The Settlement Administrator shall serve notice of the Settlement Agreement that
7 meets the requirements of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, on the appropriate
8 federal and state officials no later than ten days following the filing of this Settlement Agreement
9 and related Preliminary Approval Motion with the Court.

10 **XVI. TAX MATTERS**

11 138. The Released Parties and their counsel shall have no liability or responsibility for any
12 Taxes, Tax Expenses, or tax-related reporting or compliance with respect to the Qualified Settlement
13 Fund or any other matter contemplated by this Settlement Agreement. Without limiting the generality
14 of the preceding sentence, (i) all Taxes and Tax Expenses shall be paid solely out of the Qualified
15 Settlement Fund and (ii) all Taxes and Tax Expenses shall be treated as, and considered to be, a cost
16 of administration of the Qualified Settlement Fund and shall be timely paid as instructed by the
17 Settlement Administrator, out of the Qualified Settlement Fund without the need for any further
18 authorization (including an order from the Court).

19 139. The Settlement Administrator shall comply with all legal requirements regarding tax
20 withholding, tax reporting, and tax compliance (including filing all Tax returns and other returns).
21 Settlement Class Counsel shall provide such assistance as the Settlement Administrator reasonably
22 requests to enable the Settlement Administrator to comply with the preceding sentence. All returns
23 filed by the Settlement Administrator shall be consistent with this Section XIV (including with respect
24 to the election described in Paragraph 138).

25 140. Notwithstanding anything in this Settlement Agreement to the contrary, the Settlement
26 Administrator is hereby authorized and instructed to deduct and/or withhold from distribution to
27 Authorized Claimants any (i) taxes required to be deducted or withheld by law (including under Treas.
28 Reg. §1.468B-2(l)(2), if applicable) and (ii) any funds necessary to pay Taxes or Tax Expenses

1 (including the establishment of adequate reserves for any Taxes and Tax Expenses). Any amount
2 deducted or withheld in accordance with this Paragraph shall be treated as having been paid to the
3 person in respect of whom such deduction or withholding was made.

4 141. The Parties agree to treat the Qualified Settlement Fund at all times as a qualified
5 settlement fund for U.S. federal income tax purposes within the meaning of Treas. Reg.
6 Sections 1.468B-1 through 1.468B-5. The Parties and the Settlement Administrator shall, and shall
7 cause their affiliates to, take any action reasonably necessary to ensure the Qualified Settlement Fund
8 satisfies the requirements of Treas. Reg. Sections 1.468B-1 through 1.468B-5 (including the
9 requirement to ensure that economic performance occurs at the time of the transfer to the Qualified
10 Settlement Fund pursuant to Treas. Reg. Section 1.468B-3(c)). The Settlement Administrator shall
11 be, and hereby is, appointed the “administrator” within the meaning of Treas. Reg. Section 1.468B-
12 2(k)(3). If the Settlement Administrator cannot or will not serve as the administrator in accordance
13 with the preceding sentence, the administrator shall be such other professional settlement
14 administrator firm as the Parties shall reasonably select.

15 142. The Parties agree that TaxAct shall not have any liability or responsibility for the taxes
16 or the tax expenses related to the Qualified Settlement Fund other than those paid from the Qualified
17 Settlement Fund.

18 143. The Parties agree to cooperate with the Settlement Administrator (and any person
19 other than the Settlement Administrator that serves as the administrator of the Qualified Settlement
20 Fund as described in Paragraph 138), each other, and their tax attorneys and accountants to the extent
21 reasonably necessary to carry out the provisions of this Settlement Agreement.

22 **XVII. MISCELLANEOUS PROVISIONS**

23 144. Unless otherwise specifically provided herein, all notices, demands, or other
24 communications given hereunder shall be in writing and shall be deemed to have been duly given as
25 of the third business day after mailing by United States registered or certified mail, return receipt
26 requested, addressed as follows:

27 To the Settlement Class Representatives and the Settlement Class:
28 Julian Hammond

1 Christina Tusan
2 HammondLaw P.C.
3 1201 Pacific Ave, 6th Floor
4 Tacoma, WA 98402

5 To Counsel for TaxAct:

6 James W. Ducayet
7 Sidley Austin LLP
8 One South Dearborn
9 Chicago, IL 60603

10 With a Copy to TaxAct:

11 Willa Kalaidjian
12 Chief Legal Officer and General Counsel
13 3200 Olympus Blvd., Suite 150
14 Dallas, TX 75019

15 145. All of the Exhibits to this Settlement Agreement are an integral part of the Settlement
16 and are incorporated by reference as though fully set forth herein.

17 146. The Parties agree that the Recitals are contractual in nature and form a material part
18 of this Settlement Agreement.

19 147. No extrinsic evidence or parol evidence shall be used to interpret, explain, construe,
20 contradict, or clarify this Settlement Agreement, its terms, the intent of the Parties or their counsel,
21 or the circumstances under which this Settlement Agreement was made or executed. This Settlement
22 Agreement supersedes all prior negotiations and agreements, including the Memorandum of
23 Understanding executed on January 10, 2024. The Parties expressly agree that the terms and
24 conditions of this Settlement Agreement will control over any other written or oral agreements.

25 148. Unless otherwise noted, all references to “days” in this Settlement Agreement shall be
26 to calendar days. In the event any date or deadline set forth in this Settlement Agreement falls on a
27 weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

28 149. The Settlement Agreement, the Settlement, all documents, orders, and other evidence
relating to the Settlement, the fact of their existence, any of their terms, any press release or other
statement or report by the Parties or by others concerning the Settlement Agreement, the Settlement,
their existence, or their terms, any negotiations, proceedings, acts performed, or documents drafted
or executed pursuant to or in furtherance of the Settlement Agreement or the Settlement shall not be
offered, received, deemed to be, used as, construed as, and do not constitute a presumption,

1 concession, admission, or evidence of (i) the validity of any Released Claims or of any liability,
2 culpability, negligence, or wrongdoing on the part of the Released Parties; (ii) any fact alleged,
3 defense asserted, or any fault, misrepresentation, or omission by the Released Parties; (iii) the
4 propriety of certifying a litigation class or any decision by any court regarding the certification of a
5 class, and/or (iv) whether the consideration to be given in this Settlement Agreement represents the
6 relief that could or would have been obtained through trial in the Action, in any trial, civil, criminal,
7 administrative, or other proceeding of the Action or any other action or proceeding in any court,
8 administrative agency, or other tribunal.

9 150. The Parties to this Action and any other Released Parties shall have the right to file
10 the Settlement Agreement and/or the Final Approval Order and Final Judgment in any action that
11 may be brought against them in order to support a defense or counterclaim based on principles of res
12 judicata, collateral estoppel, release, good-faith settlement, judgment bar, reduction, or any other
13 theory of claim preclusion or issue preclusion or similar defense or counterclaim.

14 151. To the extent permitted by law, all agreements made and orders entered during the
15 course of the Action relating to the confidentiality of information shall survive this Settlement
16 Agreement. TaxAct reserves the right to disclose the settlement in connection with its customary
17 engagement with regulators and financial reporting practices.

18 152. The waiver by one Party of any breach of this Settlement Agreement by any other
19 Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement
20 Agreement.

21 153. This Settlement Agreement may be executed in counterparts, each of which shall be
22 deemed an original and all of which, when taken together, shall constitute one and the same
23 instrument. Signatures submitted by email, PDF via DocuSign, or facsimile shall also be considered
24 originals. The date of execution shall be the latest date on which any Party signs this Settlement
25 Agreement.

26 154. The Parties hereto and their respective counsel agree that they will use their best efforts
27 to obtain all necessary approvals of the Court required by this Settlement Agreement, including to
28 obtain a Final Approval Order and Final Judgment approving the Settlement.

1 155. This Settlement Agreement shall be binding upon and shall inure to the benefit of the
2 successors and assigns of the Parties hereto, including any and all Released Parties and any
3 corporation, partnership, or other entity into or with which any Party hereto may merge, consolidate,
4 or reorganize, each of which is entitled to enforce this Settlement Agreement.

5 156. This Settlement Agreement was jointly drafted by the Parties. Settlement Class
6 Representatives, Settlement Class Members, and Defendant shall not be deemed to be the drafters of
7 this Settlement Agreement or of any particular provision, nor shall they argue that any particular
8 provision should be construed against its drafter or otherwise resort to the *contra proferentem* canon
9 of construction. Accordingly, this Settlement Agreement should not be construed in favor of or
10 against one Party as the drafter, and the Parties agree that the provisions of California Civil Code
11 Section 1654 and common law principles of construing ambiguities against the drafter shall have no
12 application.

13 157. This Settlement Agreement shall be governed by and construed in accordance with the
14 laws of the State of California, without regard to any conflict of laws principles that would result in
15 applying the substantive law of a jurisdiction other than the State of California.

16 158. The headings used in this Settlement Agreement are inserted merely for the
17 convenience of the reader and shall not affect the meaning or interpretation of this Settlement
18 Agreement.

19 159. In construing this Settlement Agreement, the use of the singular includes the plural
20 (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

21 160. The provision of the confidentiality agreement entered into with respect to the
22 mediation process concerning this Action is waived for the limited purpose of permitting the Parties
23 to confirm that they participated in the mediation and that the mediation process was successful in
24 advancing final settlement of this Action.

25 IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have
26 duly executed this Settlement Agreement as of the date set forth below.

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Dated: February 21, 2024

Dated: February 21, 2024

By: _____

By: _____

On behalf of Plaintiffs and the Putative Classes

On behalf of TaxAct, Inc.

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Attorneys for Plaintiffs and the Putative Classes

Attorneys for Defendant TaxAct, Inc.

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Exhibit A:
Proposed Preliminary Approval Order

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION

4 NICHOLAS C. SMITH-WASHINGTON, JOYCE
5 MAHONEY, JONATHAN AMES, MATTHEW
6 HARTZ, and JENNY LEWIS on behalf of
7 themselves and all other similarly situated,

8 Plaintiffs,

9 v.

10 TAXACT, INC.,

11 Defendant.

Case No. 3:23-CV-00830-VC

Assigned to Hon. Vince Chhabria

**[PROPOSED] ORDER CERTIFYING
SETTLEMENT CLASSES; GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT PURSUANT
TO FEDERAL RULE OF CIVIL
PROCEDURE 23(e)(1); AND
APPROVING FORM AND CONTENT
OF CLASS NOTICE**

12 WHEREAS, Plaintiffs Nicholas C. Smith Washington, Joyce Mahoney, Jonathan Ames,
13 Matthew Hartz, and Jenny Lewis (together, “Settlement Class Representatives”), and Defendant
14 TaxAct, Inc. (“TaxAct”) (collectively “Parties”), entered into a Settlement Agreement on February
15 __, 2024 (ECF. No. __), which, together, with the exhibits and appendices thereto, sets forth the
16 terms and conditions for a proposed resolution of this Action and for its dismissal with prejudice;

17 WHEREAS, this Court has reviewed the Settlement entered into by the Parties, all exhibits
18 thereto, the record in this case, and the Parties’ arguments;

19 WHEREAS, this Court preliminarily finds, for the purpose of settlement only, that the
20 Settlement Classes meet all the prerequisites of Federal Rule of Civil Procedure 23(a) for class
21 certification—numerosity, commonality, typicality, and adequacy—and meets the requirements of
22 Federal Rule of Civil Procedure 23(b)(3)—predominance of common issues, and superiority;

23 GOOD CAUSE APPEARING, IT IS HEREBY ORDERED AS FOLLOWS:²

24 **Preliminary Certification of Settlement Classes for Purpose of Settlement Only and**
25 **Appointment of Class Counsel and Settlement Class Representatives**

26
27
28 ² All terms and definitions used herein have the same meanings as set forth in the Settlement Agreement.

1 1. The Settlement is hereby preliminarily approved as fair, reasonable, and adequate such that
2 notice thereof should be given to members of the Settlement Classes. Under Federal Rule of
3 Civil Procedure 23(b)(3), the Settlement Classes, as set forth in Paragraph 51 of the Settlement
4 Agreement and defined as follows, are preliminarily certified for the purpose of settlement
5 only:³

6 a. “Nationwide Class” includes all natural persons who used a TaxAct online do-it-
7 yourself consumer Form 1040 tax filing product and filed a tax return using the TaxAct
8 online product during the Class Period, and whose postal address listed on such tax
9 return was in the United States. The Nationwide Class includes the California
10 Subclass.

11
12 i. “California Subclass” includes all natural persons who used a TaxAct online
13 do-it-yourself consumer Form 1040 tax filing product and filed a tax return
14 using the TaxAct online product during the Class Period, and whose postal
15 address listed on such tax return was in California.

16 b. “Nationwide Married Filing Jointly Class” includes all natural persons whose spouse
17 used a TaxAct online do-it-yourself consumer Form 1040 tax filing product and filed
18 a joint tax return using the TaxAct online product during the Class Period, and whose
19 postal address listed on such joint tax return was in the United States. The Nationwide
20 Married Filing Jointly Class includes the California Married Filing Jointly Subclass.

21
22 i. “California Married Filing Jointly Subclass” includes all natural persons
23 residing in California during the Class Period whose spouse used a TaxAct
24 online do-it-yourself consumer Form 1040 tax filing product and filed a joint
25

26
27
28 ³ “Class Period,” as set forth in Paragraph 27 of the Settlement Agreement, means the time period from January 1, 2018, through December 31, 2022, during which Settlement Class Representatives and members of the Settlement Class used TaxAct’s tax preparation services to prepare a tax return.

1 tax return using the TaxAct online product during the Class Period, and whose
2 postal address listed on such joint tax return was in California.

3
4 2. Excluded from the Settlement Classes are: TaxAct, its current, former and/or future
5 parents, subsidiaries, divisions, affiliates and/or departments, and their employees, officers, directors,
6 management, legal representatives, heirs, successors, and wholly or partly owned subsidiaries or
7 affiliated companies during the Class Period or thereafter; counsel for Plaintiffs and their employees,
8 including but not limited to the undersigned counsel for Plaintiffs and the undersigned counsel's
9 employees; any district judge or magistrate judge to whom this case is or was assigned, as well as
10 those judges' immediate family members, judicial officers and their personnel, and all governmental
11 entities; customers who only used TaxAct's download do-it-yourself consumer Form 1040 tax return
12 filing product, TaxAct's Professional products, or TaxAct's online do-it-yourself business tax return
13 filing products; and all individuals who have, as of January 9, 2024, filed a demand for arbitration
14 against TaxAct to arbitrate claims that would otherwise be released in accordance with the terms of
15 this Settlement Agreement unless those individuals elect to opt-in to the Settlement Classes by filing
16 a timely Claim Form.

17 3. Plaintiffs Nicholas C. Smith-Washington, Joyce Mahoney, Jonathan Ames and
18 Matthew Hartz shall be appointed as Settlement Class Representatives of the Nationwide Class and
19 the California Subclass. Plaintiff Jenny Lewis shall be appointed as Settlement Class Representative
20 of Nationwide Married Filing Jointly Class and the California Married Filing Jointly Subclass.

21 4. The Court preliminarily finds, for purposes of settlement only, that the proposed
22 Settlement Classes as defined above meets the numerosity requirement of Rule 23(a)(1) such that
23 joinder would be impractical; that there are questions of law and fact common to the Settlement Class
24 as required by Rule 23(a)(2); that these common questions predominate over individual questions as
25 required by Rule 23(b)(3); and that the claims of the proposed Settlement Class Representatives are
26 typical of the claims of the Settlement Classes under Rule 23(a)(3).
27
28

1 10. By _____, 2024, [(14) calendar days after the issuance of this Order], TaxAct
2 shall provide or cause to be provided to the Settlement Administrator information about the
3 Settlement Class Members required by the Settlement Administrator to effectuate the Notice Plan.

4 11. The Court Finds that Approve the Notice Plan and Class Notice, substantially in the
5 form set forth at Exhibits B-D of the Settlement Agreement, complies with 28 U.S.C. § 1715 and all
6 other provisions of the Class Action Fairness Act of 2005.

7 12. The Settlement Administrator and TaxAct shall provide Class Notice consistent with
8 the Notice Plan outlined in Exhibit B, and Class Notice shall be disseminated to Settlement Class
9 Members beginning on the Notice Date, _____, ____ 2024, [(45) calendar days after the provision of
10 data pursuant to the Order].

11 13. The Court appoints Kroll Settlement Administration LLC, (“Kroll”) located at 2000
12 Market Street, Suite 2700, Philadelphia, PA 19103, to serve as the Settlement Administrator. Kroll
13 shall establish the Net Settlement Fund as a Qualified Settlement Fund as for U.S. federal income
14 tax purposes within the meaning of Treas. Reg. Sections 1.468B-1 through 1.468B-5, as set forth in
15 the Settlement Agreement, supervise and administer the notice procedures, establish and operate the
16 settlement website, administer the claims processes, distribute cash payments according to the
17 processes and criteria set forth in the Settlement Agreement, and perform any other duties that are
18 reasonably necessary and/or provided for in the Settlement Agreement.

19 14. The Settlement Administrator shall make all necessary efforts and precautions to
20 ensure the security and privacy of Settlement Class Member information and protect it from loss,
21 misuse, unauthorized access and disclosure, and to protect against any reasonably anticipated threats
22 or hazards to the security of Settlement Class Member information; not using the information
23 provided by TaxAct or Class Counsel in connection with the Settlement or this Notice Plan for any
24 purposes other than providing Class Notice or conducting claims administration; and not sharing
25 Settlement Class Member information with any third parties without advance consent from the
26 Parties.
27
28

1 15. Settlement Class Members who wish to make a claim must do so by submitting a
2 Claim Form by _____, __ 2024 [ninety days after the Notice Date], (the “Claims Submission
3 Deadline”), in accordance with the instructions contained therein. The Settlement Administrator shall
4 determine the eligibility of claims submitted and allocate the Net Settlement Fund in accordance with
5 the Settlement Agreement.

6 16. Settlement Class Members who wish to object to the Settlement must object in writing,
7 and must include: (a) case name and number of the Action; (b) the full name, address, telephone
8 number, and email address of the objecting Settlement Class Member and, if represented by counsel,
9 of his/her counsel; (c) the email address associated with the objector’s TaxAct account, or the email
10 address associated with their Spouse’s TaxAct account if the objector is a Married Filing Jointly Class
11 Member; (d) a statement of whether the objection applies only to the objector, to a specific subset of
12 the classes, or to an entire class; (e) a statement of the number of times in which the objector (and,
13 where applicable, objector’s counsel) has objected to a class action settlement, along with the caption
14 of each case in which the objector has made such objection; (f) a statement whether the objector has
15 sold or otherwise transferred the right to their recovery in this Action to another person or entity, and,
16 if so, the identity of that person or entity; (g) a statement of the specific grounds for the objection,
17 including any legal and factual support and any evidence in support of the objection; (h) a statement
18 of whether the objecting Settlement Class Member intends to appear at the Final Approval Hearing,
19 and if so, whether personally or through counsel; and (i) The objector’s signature. If an objecting
20 Settlement Class Member intends to speak at the Final Approval Hearing (whether *pro se* or through
21 an attorney), these requirements may be excused by the Court upon a showing of good cause.
22 Objections must be filed with the Court or post-marked or electronically submitted to the Settlement
23 Administrator no more than sixty days from the Notice Date (the “Objection Deadline”).
24

25 17. Any Settlement Class Member who seeks to be excluded from the Settlement Classes
26 must submit a written request for exclusion that shall be submit a written opt-out form to the
27 administrator requesting exclusion, which shall be postmarked or electronically submitted no later
28 than ninety (90) days from the Notice Date (the “Opt-Out Deadline”). To be an effective and valid

1 written request for exclusion, the request must: (a) identify the case name and number of the Action:
2 (b) identify the full name and current address of the individual seeking exclusion from the Settlement;
3 (c) be personally signed by the individual seeking exclusion; (d) include a statement clearly indicating
4 the individual's intent to be excluded from the Settlement; (e) request exclusion only for that one
5 individual whose personal signature appears on the request; (f) include the contact information (i.e.,
6 first and last name, email address, phone number, and mailing address) associated with the TaxAct
7 account of the individual seeking exclusion, or their spouse's TaxAct account if the individual is a
8 Married Filing Jointly Class Member; and (g) verify that the individual seeking exclusion used
9 TaxAct's services during the Class Period and is part of the Settlement Class. Any member of the
10 Settlement Class who does not file a valid and timely request for exclusion shall be bound by the final
11 judgment dismissing the Action on the merits with prejudice.

12 **Final Approval Hearing**

13 18. The Final Approval Hearing shall be held by the Court on _____, __ 2024,
14 beginning at _____, to determine whether the requirements for certification of the Settlement
15 Classes have been met; whether the proposed settlement of the Action on the terms set forth in the
16 Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Settlement
17 Class Members; whether Class Counsel's motion or application for an Attorneys' Fees and Expenses
18 Award and application for the Service Awards should be approved; and whether final judgment
19 approving the Settlement and dismissing the Action on the merits with prejudice against the
20 Settlement Class Representatives and all other Settlement Class Members should be entered. The
21 Final Approval Hearing may, without further notice to the Settlement Class Members (except to those
22 who have filed timely and valid objections and requested to speak at the Final Approval Hearing), be
23 continued or adjourned by order of the Court.

24
25 19. Any objector who timely submits an objection has the option to appear and request to
26 be heard at the Final Approval Hearing, either in person or through the objector's counsel. Any
27 objector wishing to appear and be heard at the Final Approval Hearing must include a notice of
28 intention to appear in the body of the objector's objection. Objectors who fail to submit or include

1 such timely notice of intention to appear may not speak at the Final Approval Hearing without
2 permission of the Court.

3 20. By _____, __ 2024, [(84) days after the issuance of this Order] Class Counsel shall
4 file all papers in support of the application for Attorneys’ Fees and in support of an Expenses Award
5 and/or for Service Awards. All opposition papers shall be filed by _____, __ 2024, [(114) days
6 after the issuance of this Order] and any reply papers shall be filed by _____, __ 2024 [(128) days
7 after the issuance of this Order].
8

9 21. By _____, __ 2024 [one hundred twenty (120) days after the Notice Date], Class
10 Counsel shall file all papers in support of the application for the Final Approval Order and Final
11 Judgment. Any reply papers regarding objections to the settlement and to update the Court regarding
12 notice and administration shall be filed by _____, __ 2024 [one hundred and thirty-four (134) days
13 after the Notice Date].

14 22. Class Counsel’s motion or application for Attorneys’ Fees and an Expenses Award
15 and for Service Awards will be considered separately from the fairness, reasonableness, and adequacy
16 of the Settlement. Any appeal from any order relating solely to Class Counsel’s motion for Attorneys’
17 Fees and an Expenses Award, and/or for Service Awards, or any reversal or modification of any such
18 order, shall not operate to terminate, vacate, or cancel the Settlement.
19

20 23. Defense Counsel and Class Counsel are hereby authorized to utilize all reasonable
21 procedures in connection with the administration of the Settlement which are not materially
22 inconsistent with either this Order or the Settlement Agreement.
23

24 IT IS SO ORDERED.

25 DATED: _____

26 _____
27 The Honorable Vince Chhabria
28 United States District Judge

Exhibit B:

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**Settlement Administration Protocol & Notice Plan
(Declaration of Jeanne C. Finegan of Kroll Settlement Administration LLC)**

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 2 Christina Tusan (SBN 192203)
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 3 Adrian Barnes (SBN 253131)
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 4 Ari Cherniak (SBN 290071)
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Attorneys for Plaintiffs and the Putative Classes Attorneys for Defendant TaxAct, Inc.

14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**
 16 **SAN FRANCISCO DIVISION**

18 NICHOLAS C. SMITH-WASHINGTON,
 JOYCE MAHONEY, JONATHAN AMES,
 19 MATTHEW HARTZ and JENNY LEWIS, on
 behalf of themselves and all others similarly
 20 situated,

21 Plaintiffs,

22 vs.

23 TAXACT, INC.,

24 Defendant.

Case No.: 3:23-CV-00830-VC

Assigned to: Hon. Vince Chhabria

CLASS ACTION

**DECLARATION OF
 JEANNE C. FINEGAN, APR OF KROLL
 SETTLEMENT ADMINISTRATION LLC
 IN CONNECTION WITH PRELIMINARY
 APPROVAL OF SETTLEMENT**

INTRODUCTION

1
2
3 1. I am the Managing Director and Head of Kroll Notice Media Solutions (“Kroll Media”),¹ a
4 business unit of Kroll Settlement Administration LLC (“Kroll”). This declaration (the “Declaration”)
5 is based upon my personal knowledge as well as information provided to me by my associates and
6 staff, including information reasonably relied upon in the fields of advertising media and
7 communications.

8 2. Kroll has been designated by the Parties as the Settlement Administrator to develop and
9 implement a proposed legal notice program as part of the Parties’ proposed class action settlement in
10 the above captioned case, as reflected in that certain Class Action Settlement Agreement and Release,
11 dated as of February 21, 2024 (the “Settlement Agreement”).

12 3. Kroll has extensive experience in class action matters, having provided services in class action
13 settlements involving antitrust, securities, labor and employment, consumer and government
14 enforcement matters. Kroll has provided class action services in over 3,000 settlements varying in
15 size and complexity over the past 50 years. Based on this experience, Kroll is prepared to provide a
16 full complement of notification and claims administration services in connection with the Settlement
17 Agreement, including notice of the Settlement by mail, email, publication, and through the use of a
18 settlement website to be created in connection with this matter.

19 4. This Declaration describes my experience in designing and implementing notices and notice
20 programs, as well as my credentials to opine on the overall adequacy of notice effort. This Declaration
21 will also describe the proposed Notice Plan and address how this comprehensive proposed program
22 is consistent with other best practicable court-approved notice programs and the requirements of Fed.
23 Civ. P. 23(c)(2)(B) and the Federal Judicial Center guidelines² for best practicable due process notice.
24

25
26 ¹ Capitalized terms used but not defined herein have the meanings given to them in the Settlement
Agreement (as defined below).

27 ² FED. JUD. CTR., *Judges’ Class Action Notice and Claims Process Checklist and Plain Language*
28 *Guide* (2010), available at <https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf>. The guide
suggests that the minimum threshold for adequate notice is 70%. *See id.* at pp. 1, 3.

QUALIFICATIONS

1
2
3 5. My credentials, expertise, and experience that qualify me to provide an expert opinion and
4 advice regarding notice class action cases include more than 30 years of communications and
5 advertising experience, specifically in class action and bankruptcy notice context. My Curriculum
6 Vitae delineating my experience is attached hereto as **Exhibit A**.

7 6. In summary, I have served as an expert and have been directly responsible for the design and
8 implementation of numerous notice programs, including some of the largest and most complex
9 programs ever implemented in the United States as well as globally in over 140 countries and thirty-
10 seven (37) languages. I have been recognized by numerous courts in the United States as an expert
11 on notification and outreach.

12 7. During my career, I have planned and implemented over 1,000 complex notice programs for
13 a wide range of class action, bankruptcy, regulatory, and consumer matters. The subject matters of
14 which have included product liability, construction defect, antitrust, asbestos, medical,
15 pharmaceutical, human rights, civil rights, telecommunications, media, environmental, securities,
16 banking, insurance and bankruptcy.

17 8. I have provided testimony before the United States Congress on issues of notice.³ I have
18 lectured, published, and been cited extensively on various aspects of legal noticing, product recall,
19 and crisis communications. I have served the Consumer Product Safety Commission (“CPSC”) as an
20 expert to determine ways in which the CPSC can increase the effectiveness of its product recall
21 campaigns. Additionally, I have published and lectured extensively on various aspects of legal

22
23 ³ See, e.g., Report on the Activities of the Committee on the Judiciary of the House of
24 Representatives: “Notice” Provision in the *Pigford v. Glickman* Consent Decree: Hearing Before
25 Subcommittee on the Constitution, 108th Cong. 2nd Sess. 805 (2004) (statement of Jeanne C.
26 Finegan); *Pigford v. Glickman & U.S. Dep’t of Agric.*, 185 F.R.D. 82, 102 (D.D.C. Apr. 14, 1999)
27 (J. Finegan provided live testimony and was cross-examined before Congress in connection with a
28 proposed consent decree settling a class action suit against the U.S. Department of Agriculture. In
the court opinion that followed, the Honorable Paul L. Friedman approved the consent decree and
commended the notice program, stating, “The [c]ourt concludes that class members have received
more than adequate notice . . . the timing and breadth of notice of the class settlement was sufficient
. . . The parties also exerted extraordinary efforts to reach class members through a massive
advertising campaign in general and African American targeted publications and television
stations.”)

1 noticing and taught continuing education courses for Jurists and lawyers alike on best practice
2 methods for providing notice in various contexts.

3 9. I worked with the Special Settlement Administrator's team to assist with the outreach strategy
4 for the historic Auto Airbag Settlement. *In re Takata Airbag Prods. Liab. Litig.*, No. 15-MD-2599-
5 FAM (S.D. Fla.). I was extensively involved as a lead contributing author for "*Guidelines and Best*
6 *Practices Implementing 2018 Amendments to Rule 23 Class Action Settlement Provisions*" published
7 by Duke University School of Law

8 10. Among others, my relevant experience includes *In re: Yahoo! Inc. Customer Data Security*
9 *Breach Litigation*, Case No. 5:16-MD-02752 (N.D. Cal. 2016). Further, I have been recognized as
10 being at the forefront of modern notice practices,⁴ and I was one of the first notice experts to integrate
11 digital media,⁵ social media and influencers⁶ into court-approved legal notice programs.

12 11. In evaluating the adequacy and effectiveness of my notice programs, courts have repeatedly
13 recognized my work as an expert. For example:

14 a. ***Yahoo! Inc. Customer Data Security Breach Litigation***, No. 5:16-MD-
15 02752 (N.D. Cal. 2010). In the Order of Preliminary Approval, dated July 20, 2019, para 21,
the Honorable Lucy Kho stated:

16 The Court finds that the Approved Notices and Notice Plan set forth in the
17 Amended Settlement Agreement satisfy the requirements of due process and
18 Federal Rule of Civil Procedure 23 and provide the best notice practicable
under the circumstances.

19 b. ***Hill's Pet Nutrition, Inc., Dog Food Products Liability Litigation***, Case No.
20 19-MD-2887 (D. Kan. 2021). In the Preliminary Approval Transcript, February 2, 2021 p.
21 28-29, the Honorable Julie A. Robinson stated:

22 I was very impressed in reading the notice plan and very educational, frankly
23 to me, understanding the communication, media platforms, technology, all of
24 that continues to evolve rapidly and the ability to not only target consumers,
25 but to target people that could rightfully receive notice continues to improve
all the time.

26 ⁴ See, e.g., Deborah R. Hensler et al., *Class Action Dilemmas, Pursuing Public Goals for Private*
27 *Gain*, RAND (2000).

28 ⁵ See *In re Louisiana-Pacific Inner-Seal Siding Litig.*, Nos. 879-JE, 1453-JE (D. Or. 1995).

⁶ See *In Re: PG&E Corporation*, No. 19-30088 Bankr. (N.D. Cal. 2019)

1 c. ***In re Purdue Pharma L.P.***, No. 19-23649 (Bankr. S.D.N.Y. 2019). Omnibus
2 Hearing, Motion Pursuant to 11 U.S.C. §§ 105(a) and 501 and Fed. R. Bankr. P. 2002 and
3 3003(c)(3) for Entry of an Order (I) Extending the General Bar Date for a Limited Period
4 and (II) Approving the Form and Manner of Notice Thereof, June 3, 2020, transcript p. 88:10,
the Honorable Robert Drain stated:

5 The notice here is indeed extraordinary, as was detailed on page 8 of Ms.
6 Finegan's declaration in support of the original bar date motion and then in her
7 supplemental declaration from May 20th in support of the current motion, the
8 notice is not only in print media, but extensive television and radio notice,
9 community outreach, -- and I think this is perhaps going to be more of a trend,
10 but it's a major element of the notice here -- online, social media, out of home,
11 i.e. billboards, and earned media, including bloggers and creative messaging.
12 That with a combined with a simplified proof of claims form and the ability to
13 file a claim or first, get more information about filing a claim online -- there
was a specific claims website -- and to file a claim either online or by mail.
Based on Ms. Finegan's supplemental declaration, it appears clear to me that
that process of providing notice has been quite successful in its goal in
ultimately reaching roughly 95 percent of all adults in the United States over
the age of 18 with an average frequency of message exposure of six times, as
well as over 80 percent of all adults in Canada with an average message
exposure of over three times.

14 d. ***In Re: PG&E Corporation***, No. 19-30088 Bankr. (N.D. Cal. 2019). Hearing
15 Establishing, Deadline for Filing Proofs of Claim, (II) establishing the Form and Manner of
16 Notice Thereof, and (III) Approving Procedures for Providing Notice of Bar Date and Other
17 Information to all Creditors and Potential Creditors PG&E. June 26, 2019, Transcript of
18 Hearing pp. 21:1, 201:20, the Honorable Dennis Montali stated:

19 "...the technology and the thought that goes into all these plans is almost
20 incomprehensible... Ms. Finegan has really impressed me today..."

21 **NOTICE PROGRAM**

22 12. It is Kroll's understanding that it will be provided with a list of Settlement Class Members
23 covered under the Settlement Agreement, and the Settlement Class Member list is to contain a
24 combination of names, addresses, email addresses, Settlement Classes identifier and other data
25 elements pertinent to the administration of the Settlement. Direct notice will be sent to the entire
26 class (both direct filers and married joint filers) by either email or mailed notice.

27 13. Based upon information provided by Defendant, and assuming the data received is relatively
28 up to date, Kroll estimates an average undeliverable rate of no more than 9% and thus projects direct
notice will likely reach an estimated 91% of the proposed Settlement Class Members. These

1 assumptions are subject to the accuracy and quality of the data received. This estimated Settlement
2 Class Member reach is consistent with other court-approved, best-practicable notice programs and
3 Federal Judicial Center Guidelines, which state that a notice plan that reaches over 70% of targeted
4 class members is considered a high percentage and the “norm” of a notice campaign.⁷

5 14. To reach those class members not reached by direct methods, and consistent with numerous
6 settlement notice plans, the robust direct outreach may be supplemented, as agreed to by the Parties,
7 through digital publication notice, employing online display ads, key word search, and social
8 media. Indeed, at the conclusion of this extensive outreach effort, we anticipate the final analysis
9 may well report even greater results.

10 **CAFA Notice**

11 15. On behalf of the Defendant, Kroll will provide notice of the proposed Settlement pursuant to
12 the Class Action Fairness Act, 28 U.S.C. § 1715(b) (the “CAFA Notice”). At Defense Counsel’s
13 direction, Kroll will send the CAFA Notice, containing access to certain documents relating to the
14 Settlement, via first-class certified mail to (i) the Attorney General of the United States and (ii) the
15 applicable state Attorneys General. The CAFA Notice will direct the recipients to the website
16 www.CAFANotice.com, a site that will contain all the documents relating to the Settlement.
17

18 **Notice by Email**

19 16. In preparation for disseminating notices by email, Kroll will work with Settlement Class
20 Counsel and Defense Counsel (collectively “Counsel”) to finalize the language for the email form of
21 the Short-Form Notice. Once the email form of the Short-Form Notice is approved, Kroll will create
22 an email notice template in preparation for the email campaign. In consultation with Counsel, Kroll
23 will run the email addresses through an email cleanse process. Kroll will then prepare a file with all
24 appropriate Settlement Class Member email addresses and upload the file to an email campaign
25 platform. Kroll will prepare email proofs for Counsel’s review and approval, which will include the
26 body of the email and subject line. Once these proofs are approved, the email campaign will begin
27

28 ⁷ Barbara Rothstein and Thomas Willging, Federal Judicial Center Managing Class Action Litigation: A Pocket Guide for Judges, at 27 (3d Ed. 2010).

1 as directed in the Settlement.

2 17. Kroll will track and monitor emails that are rejected or “bounced back” as undeliverable. At
3 the conclusion of the email campaign, Kroll will provide a report with the email delivery status of
4 each record. The report will include the number of records that had a successful email delivery, and
5 a count of the records where delivery failed. Kroll will also update its administration database with
6 the appropriate status of the email campaign for each of the Settlement Class Member records.

7 18. If the email Short-Form Notice was delivered successfully, no further action will be taken
8 with respect to the particular potential Settlement Class Member record.

9 19. Email Short-Form Notices rejected or “bounced back” as undeliverable will be sent a Short-
10 Form Notice via mail if a physical mailing address is available.

11 **Notice by Mail**

12 20. Kroll will work with Counsel to draft and format the Short-Form Notice for hardcopy mailing.
13 Upon approval, Kroll will coordinate the preparation of Short-Form Notice hardcopy proofs for
14 Counsel to review and approve.

15 21. As required under the Notice Plan, Kroll will send the Short-Form Notices to the physical
16 addresses of Settlement Class Members: 1) who only have a physical mailing address (and no email
17 address) in the Settlement Class Member data to be provided; and 2) whose email bounced and a
18 mailing address is included in the Settlement Class Member data.

19 22. Notices by mail will be sent by first-class mail to all physical addresses as noted above. In
20 preparation for the notice mailing, Kroll will send the Settlement Class Member data through the
21 United States Postal Service’s (“USPS”) National Change of Address (“NCOA”) database. The
22 NCOA process will provide updated addresses for Settlement Class Members who have submitted a
23 change of address with the USPS in the last 48 months, and the process will also standardize the
24 addresses for mailing. Kroll will then prepare a mail file of Settlement Class Members that are to
25 receive the notice via first-class Mail.

26 23. As required under the Settlement Agreement, mailed Short-form Notices returned by the
27 USPS with a forwarding address will be automatically re-mailed to the updated address provided by
28

1 the USPS.

2 24. As required under the Settlement Agreement, mailed Short-form Notices returned by the
3 USPS undeliverable as addressed without a forwarding address will be sent through an advanced
4 address search process in an effort to find a more current address for the record. If an updated address
5 is obtained through the advanced search process, Kroll will re-mail the notice to the updated address.

6 **Reminder Notice**

7 25. In consultation with Counsel, Kroll will also coordinate the sending of a reminder notice via
8 email to all Settlement Class Members for whom email addresses are available, and who have not
9 already filed a Claim Form under the Settlement.

10 **Supplemental Publication Notice**

11 26. While the proposed notice program as outlined in the Settlement Agreement is expected to
12 provide direct notice to reach the vast majority of Settlement Class Members, the parties may agree
13 to employ a scaled supplemental effort to reach those who may not have been reached through direct
14 means. The scope of the supplemental publication notice will be determined based on the final
15 analysis of the results of the direct portions of the Notice Plan, but will likely include:

- 16
- 17 • Online display and keyword search ads on Google Ads will target adults over the age of
18 18. These online ads will appear in both English and Spanish.
 - 19 • Additional social media outreach through ads on Facebook and Instagram will target
20 adults over the age of 18.

21 The total impressions employed in this program will be scaled as needed to supplement the results of
22 the direct outreach efforts. A full report on the number of impressions employed will be provided to
23 Class Counsel upon completion of these outreach efforts.

24 27. A press release may also be distributed over PR Newswire's US1 Newswire in English and
25 Spanish. PR Newswire distributes to thousands of print and broadcast newsrooms nationwide, as
26 well as websites, data bases and online services. Kroll intends to monitor various media channels for
27 subsequent news articles and various social mentions as a result of the press release efforts. A
28 complete report on the results will be filed with the Court upon completion of the notice program.

Settlement Website

1
2 28. Kroll will work with counsel to create a dedicated Settlement website. The website URL will
3 be determined and approved by Counsel. The Settlement website will contain a summary of the
4 Settlement, will enable online Claim Form filing, will allow Settlement Class Members to contact the
5 Settlement Administrator with any questions or changes of address, provide notice of important dates,
6 such as the Final Approval Hearing, Claims Submission Deadline, Objection Deadline, Opt-Out
7 Deadline, and provide Settlement Class Members who file Claim Forms online the opportunity to
8 select an electronic payment method, including Venmo, Zelle, PayPal, e-Mastercard, ACH, or
9 payment by check. The Settlement website will also contain relevant case documents including the
10 Operative Complaint, the Settlement Agreement, the Long-Form Notice, Plaintiffs' motion for
11 preliminary approval, and the Preliminary Approval Order. Lastly, the Settlement website will
12 contain the Kroll privacy policy, including the policy for California Consumer Privacy Act.

Toll-Free Telephone Number

13
14 29. Kroll has established a toll-free telephone number for the Settlement, which will allow
15 Settlement Class Members to call and obtain information about the Settlement through an interactive
16 voice response system and/or by being connected to a live operator. The toll-free number will be
17 available twenty-four hours a day, seven days a week.

Post Office Box

18
19 30. Kroll will designate a post office box with the mailing address *Smith-Washington v TaxAct*
20 *Settlement*, c/o Kroll Settlement Administration, PO Box 225391, New York, NY 10150-5391 in
21 order to receive Requests to Opt-Out, Claim Forms, and correspondence from Settlement Class
22 Members.

Data Use Limitation

23
24 31. Kroll will solely use Settlement Class Member data for notice and Settlement administration,
25 award calculations, and issuing Settlement payments to Authorized Claimants.

Technical Controls, Data Security

26
27 32. Kroll is an industry leader in data security. Kroll is CCPA, HIPAA, and GDPR compliant
28 and maintains numerous industry certifications related to data security, including SOC2 and ISO 2700

1 certification. Kroll has technical, physical, and procedural protocols and safeguards in place to ensure
2 the security and privacy of Settlement Class Member data. These include standards related to data
3 retention and document destruction; fully redundant environmental systems and redundant storage;
4 regular audits; and documented plans for both incident and crisis response, including breach protocols
5 and physical controls. Kroll's information security program includes vulnerability management,
6 compliance, security monitoring and security engineering supported by a team of information security
7 professionals, including a Chief Information Security Officer and Chief Privacy Officer.

8 **Business/Liability Insurance**

9 33. Kroll maintains standard business insurance, including professional liability insurance, cyber
10 insurance, and crime insurance.

11 **Administrative and Ethical policies**

12 34. Kroll has employee administrative and ethical policies that all employees are required to follow.
13 These include, but are not limited to:

- 14 • Pre-hire background checks;
- 15 • Controls for accessing systems, data and applications, along with processes for
16 assigning access;
- 17 • Annual Code of Ethics training and certification;
- 18 • Annual Information Security training and certification; and
- 19 • HIPAA training for all staff.

20 **Crisis and Risk Management**

21 35. Kroll has defined and tested incident response and disaster recovery plans that it employs
22 across the organization. Should an incident occur, Kroll will take immediate action, which will
23 include notification to clients and claimants of the incident consistent with privacy laws and
24 regulations or as otherwise provided in any contractual agreements with its clients. Kroll also has
25 detailed vendor on-boarding and management policies.

26 **Physical Access Controls**

27 36. Security keycard access is required to enter Kroll's facilities. Additionally, keycard access is
28 required for employees to use the facility elevators and to enter Kroll's office spaces.

Exhibit A

JEANNE C. FINEGAN, APR



Jeanne Finegan, APR, is the Managing Director and Head of Kroll Notice Media. She is a member of the Board of Directors for the prestigious Alliance for Audited Media (AAM) and was named by *Diversity Journal* as one of the "Top 100 Women Worth Watching." She is a distinguished legal notice and communications expert with more than 30 years of communications and advertising experience.

She was a lead contributing author for Duke University's School of Law, "*Guidelines and Best Practices Implementing Amendments to Rule 23 Class Action Settlement Provisions.*" And more recently, she has been involved with New York School of Law and The Center on Civil Justice (CCJ) assisting with a class action settlement data analysis and comparative visualization tool called the *Aggregate Litigation Project*, designed to help judges make decisions in aggregate cases on the basis of data as opposed to anecdotal information. Moreover, her experience also includes working with the Special Settlement Administrator's team to assist with the outreach strategy for the historic Auto Airbag Settlement, In re: *Takata Airbag Products Liability Litigation* MDL 2599.

During her tenure, she has planned and implemented over 1,000 high-profile, complex legal notice communication programs. She is a recognized notice expert in both the United States and in Canada, with extensive international notice experience spanning more than 170 countries and over 40 languages.

Ms. Finegan has lectured, published and has been cited extensively on various aspects of legal noticing, product recall and crisis communications. She has served the Consumer Product Safety Commission (CPSC) as an expert to determine ways in which the Commission can increase the effectiveness of its product recall campaigns. Further, she has planned and implemented large-scale government enforcement notice programs for the Federal Trade Commission (FTC) and the Securities and Exchange Commission (SEC).

Ms. Finegan is accredited in Public Relations (APR) by the Universal Accreditation Board, which is a program administered by the Public Relations Society of America (PRSA), and is also a recognized member of the Canadian Public Relations Society (CPRS). She has served on examination panels for APR candidates and worked *pro bono* as a judge for prestigious PRSA awards.

Ms. Finegan has provided expert testimony before Congress on issues of notice, and expert testimony in both state and federal courts regarding notification campaigns. She has conducted numerous media audits of proposed notice programs to assess the adequacy of those programs under Fed R. Civ. P. 23(c)(2) and similar state class action statutes.

She was an early pioneer of plain language in notice (as noted in a RAND study,¹) and continues to set the standard for modern outreach as the first notice expert to integrate social and mobile media into court approved legal notice programs.

In the course of her class action experience, courts have recognized the merits of, and admitted expert testimony based on, her scientific evaluation of the effectiveness of notice plans. She has designed legal notices for a wide range of class actions and consumer matters that include product liability, construction defect, antitrust, medical/pharmaceutical, human rights, civil rights, telecommunication, media, environment, government enforcement actions, securities, banking, insurance, mass tort, restructuring and product recall.

¹ Deborah R. Hensler et al., CLASS ACTION DILEMMAS, PURSUING PUBLIC GOALS FOR PRIVATE GAIN. RAND (2000).



JUDICIAL COMMENTS AND LEGAL NOTICE CASES

In evaluating the adequacy and effectiveness of Ms. Finegan's notice campaigns, courts have repeatedly recognized her excellent work. The following excerpts provide some examples of such judicial approval.

In re Purdue Pharma L.P., No. 19-23649 (Bankr. S.D.N.Y. 2019). Omnibus Hearing, Motion Pursuant to 11 U.S.C. §§ 105(a) and 501 and Fed. R. Bankr. P. 2002 and 3003(c)(3) for Entry of an Order (I) Extending the General Bar Date for a Limited Period and (II) Approving the Form and Manner of Notice Thereof, June 3, 2020, transcript p. 88:10, the Honorable Robert Drain stated:

"The notice here is indeed extraordinary, as was detailed on page 8 of Ms. Finegan's declaration in support of the original bar date motion and then in her supplemental declaration from May 20th in support of the current motion, the notice is not only in print media, but extensive television and radio notice, community outreach, -- and I think this is perhaps going to be more of a trend, but it's a major element of the notice here -- online, social media, out of home, i.e. billboards, and earned media, including bloggers and creative messaging. That with a combined with a simplified proof of claims form and the ability to file a claim or first, get more information about filing a claim online -- there was a specific claims website -- and to file a claim either online or by mail. Based on Ms. Finegan's supplemental declaration, it appears clear to me that that process of providing notice has been quite successful in its goal in ultimately reaching roughly 95 percent of all adults in the United States over the age of 18 with an average frequency of message exposure of six times, as well as over 80 percent of all adults in Canada with an average message exposure of over three times."

In Re: PG&E Corporation Case No. 19-30088 Bankr. (N.D. Cal. 2019). Hearing Establishing, Deadline for Filing Proofs of Claim, (II) establishing the Form and Manner of Notice Thereof, and (III) Approving Procedures for Providing Notice of Bar Date and Other Information to all Creditors and Potential Creditors PG&E. June 26, 2019, Transcript of Hearing p. 21:1, the Honorable Dennis Montali stated:

...the technology and the thought that goes into all these plans is almost incomprehensible. He further stated, p. 201:20 ... Ms. Finegan has really impressed me today...

Yahoo! Inc. Customer Data Security Breach Litigation, Case No. 5:16-MD-02752 (ND Cal 2016). In the Order Preliminary Approval, dated July 20, 2019, the Honorable Lucy Kho stated, para 21,

"The Court finds that the Approved Notices and Notice Plan set forth in the Amended Settlement Agreement satisfy the requirements of due process and Federal Rule of Civil Procedure 23 and provide the best notice practicable under the circumstances."

Hill's Pet Nutrition, Inc., Dog Food Products Liability Litigation, Case No. 19-MD-2887 (U.S. District Court, District Kansas 2021). In the Preliminary Approval Transcript, February 2, 2021 p. 28-29, the Honorable Julie A. Robinson stated:

"I was very impressed in reading the notice plan and very educational, frankly to me, understanding the communication, media platforms, technology, all of that continues to evolve rapidly and the ability to not only target consumers, but to target people that could rightfully receive notice continues to improve all the time."

In re: The Bank of New York Mellon ADR FX Litigation, 16-CV-00212-JPO-JLC (S.D.N.Y. 2019). In the Final Order and Judgement, dated June 17, 2019, para 5, the Honorable J. Paul Oetkin stated:

"The dissemination of notice constituted the best notice practicable under the circumstances."

Simerlein et al., v. Toyota Motor Corporation, Case No. 3:17-cv-01091-VAB (District of CT 2019). In the Ruling and Order on Motion for Preliminary Approval, dated January 14, 2019, p. 30, the Honorable Victor Bolden stated:

"In finding that notice is sufficient to meet both the requirements of Rule 23(c) and due process, the Court has reviewed and appreciated the high-quality submission of proposed Settlement Notice Administrator Jeanne C. Finegan. See Declaration of Jeanne C. Finegan, APR, Ex. G to Agrmt., ECF No. 85-8."



Fitzhenry- Russell et al., v. Keurig Dr. Pepper Inc., Case No. :17-cv-00564-NC, (ND Cal). In the Order Granting Final Approval of Class Action Settlement, Dated April 10, 2019, the Honorable Nathanael Cousins stated:

“...the reaction of class members to the proposed Settlement is positive. The parties anticipated that 100,000 claims would be filed under the Settlement (see Dkt. No. 327-5 ¶ 36)—91,254 claims were actually filed (see Finegan Decl ¶ 4). The 4% claim rate was reasonable in light of Heffler’s efforts to ensure that notice was adequately provided to the Class.”

Pettit et al., v. Procter & Gamble Co., Case No. 15-cv-02150-RS ND Cal. In the Order Granting Final Approval of the Class Action Settlement and Judgement, Dated March 28, 2019, p. 6, the Honorable Richard Seeborg stated:

“The Court finds that the Notice Plan set forth in the Settlement Agreement, and effectuated pursuant to the Preliminary Approval Order, constituted the best notice practicable under the circumstances and constituted due and sufficient notice to the Settlement Class. ...the number of claims received equates to a claims rate of 4.6%, which exceeds the rate in comparable settlements.”

Carter v Forjas Taurus S.S., Taurus International Manufacturing, Inc., Case No. 1:13-CV-24583 PAS (S.D. Fl. 2016). In her Final Order and Judgment Granting Plaintiffs Motion for Final Approval of Class Action Settlement, the Honorable Patricia Seitz stated:

“The Court considered the extensive experience of Jeanne C. Finegan and the notice program she developed. ...There is no national firearms registry and Taurus sale records do not provide names and addresses of the ultimate purchasers... Thus the form and method used for notifying Class Members of the terms of the Settlement was the best notice practicable. ...The court-approved notice plan used peer-accepted national research to identify the optimal traditional, online, mobile and social media platforms to reach the Settlement Class Members.”

Additionally, in January 20, 2016, Transcript of Class Notice Hearing, p. 5 Judge Seitz, noted:

“I would like to compliment Ms. Finegan and her company because I was quite impressed with the scope and the effort of communicating with the Class.”

Cook et. al., v. Rockwell International Corp. and the Dow Chemical Co., No. 90-cv-00181- KLK (D.Colo. 2017)., aka, Rocky Flats Nuclear Weapons Plant Contamination. In the Order Granting Final Approval, dated April 28, 2017, p.3, the Honorable John L. Kane said:

The Court-approved Notice Plan, which was successfully implemented by [HF Media- emphasis added] (see Doc. 2432), constituted the best notice practicable under the circumstances. In making this determination, the Court finds that the Notice Plan that was implemented, as set forth in Declaration of Jeanne C. Finegan, APR Concerning Implementation and Adequacy of Class Member Notification (Doc. 2432), provided for individual notice to all members of the Class whose identities and addresses were identified through reasonable efforts, ... and a comprehensive national publication notice program that included, inter alia, print, television, radio and internet banner advertisements. ...Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, the Court finds that the Notice Plan provided the best notice practicable to the Class.

In re: Domestic Drywall Antitrust Litigation, MDL. No. 2437, in the U.S. District Court for the Eastern District of Pennsylvania. For each of the four settlements, Finegan implemented and extensive outreach effort including traditional, online, social, mobile and advanced television and online video. In the Order Granting Preliminary Approval to the IPP Settlement, Judge Michael M. Baylson stated:

“The Court finds that the dissemination of the Notice and summary Notice constitutes the best notice practicable under the circumstances; is valid, due, and sufficient notice to all persons... and complies fully with the requirements of the Federal rule of Civil Procedure.”



Warner v. Toyota Motor Sales, U.S.A. Inc., Case No 2:15-cv-02171-FMO FFMx (C.D. Cal. 2017). In the Order Re: Final Approval of Class Action Settlement; Approval of Attorney's Fees, Costs & Service Awards, dated May 21, 2017, the Honorable Fernando M. Olguin stated:

Finegan, the court-appointed settlement notice administrator, has implemented the multiprong notice program. ...the court finds that the class notice and the notice process fairly and adequately informed the class members of the nature of the action, the terms of the proposed settlement, the effect of the action and release of claims, the class members' right to exclude themselves from the action, and their right to object to the proposed settlement. (See Dkt. 98, PAO at 25-28).

Michael Allagas, et al., v. BP Solar International, Inc., et al., BP Solar Panel Settlement, Case No. 3:14-cv-00560- SI (N.D. Cal., San Francisco Div. 2016). In the Order Granting Final Approval, Dated December 22, 2016, The Honorable Susan Illston stated:

Class Notice was reasonable and constituted due, adequate and sufficient notice to all persons entitled to be provided with notice; and d. fully satisfied the requirements of the Federal Rules of Civil Procedure, including Fed. R. Civ. P. 23(c)(2) and (e), the United States Constitution (including the Due Process Clause), the Rules of this Court, and any other applicable law.

Foster v. L-3 Communications EOTech, Inc. et al (6:15-cv-03519), Missouri Western District Court.

In the Court's Final Order, dated July 7, 2017, The Honorable Judge Brian Wimes stated: "The Court has determined that the Notice given to the Settlement Class fully and accurately informed members of the Settlement Class of all material elements of the Settlement and constituted the best notice practicable."

In re: Skechers Toning Shoes Products Liability Litigation, No. 3:11-MD-2308-TBR (W.D. Ky. 2012). In his Final Order and Judgment granting the Motion for Preliminary Approval of Settlement, the Honorable Thomas B. Russell stated:

... The comprehensive nature of the class notice leaves little doubt that, upon receipt, class members will be able to make an informed and intelligent decision about participating in the settlement.

Brody v. Merck & Co., Inc., et al, No. 3:12-cv-04774-PGS-DEA (N.J.) (Jt Hearing for Prelim App, Sept. 27, 2012, transcript page 34). During the Hearing on Joint Application for Preliminary Approval of Class Action, the Honorable Peter G. Sheridan acknowledged Ms. Finegan's work, noting:

Ms. Finegan did a great job in testifying as to what the class administrator will do. So, I'm certain that all the class members or as many that can be found, will be given some very adequate notice in which they can perfect their claim.

Quinn v. Walgreen Co., Wal-Mart Stores Inc., 7:12 CV-8187-VB (NYSB) (Jt Hearing for Final App, March. 5, 2015, transcript page 40-41). During the Hearing on Final Approval of Class Action, the Honorable Vincent L. Briccetti stated:

"The notice plan was the best practicable under the circumstances. ... [and] "the proof is in the pudding. This settlement has resulted in more than 45,000 claims which is 10,000 more than the Pearson case and more than 40,000 more than in a glucosamine case pending in the Southern District of California I've been advised about. So the notice has reached a lot of people and a lot of people have made claims."

In Re: TracFone Unlimited Service Plan Litigation, No. C-13-3440 EMC (ND Ca). In the Final Order and Judgment Granting Class Settlement, July 2, 2015, the Honorable Edward M. Chen noted:

"...[D]epending on the extent of the overlap between those class members who will automatically receive a payment and those who filed claims, the total claims rate is estimated to be approximately 25-30%. This is an excellent result..."



In Re: Blue Buffalo Company, Ltd., Marketing and Sales Practices Litigation, Case No. 4:14-MD-2562 RWS (E.D. Mo. 2015), (Hearing for Final Approval, May 19, 2016 transcript p. 49). During the Hearing for Final Approval, the Honorable Rodney Sippel said:

It is my finding that notice was sufficiently provided to class members in the manner directed in my preliminary approval order and that notice met all applicable requirements of due process and any other applicable law and considerations.

DeHoyos, et al., v. Allstate Ins. Co., No. SA-01-CA-1010 (W.D.Tx. 2001). In the Amended Final Order and Judgment Approving Class Action Settlement, the Honorable Fred Biery stated:

[T]he undisputed evidence shows the notice program in this case was developed and implemented by a nationally recognized expert in class action notice programs. ... This program was vigorous and specifically structured to reach the African American and Hispanic class members. Additionally, the program was based on a scientific methodology which is used throughout the advertising industry and which has been routinely embraced routinely [sic] by the Courts. Specifically, in order to reach the identified targets directly and efficiently, the notice program utilized a multi-layered approach which included national magazines; magazines specifically appropriate to the targeted audiences; and newspapers in both English and Spanish.

In Re: Reebok Easytone Litigation, No. 10-CV-11977 (D. MA. 2011). The Honorable F. Dennis Saylor IV stated in the Final Approval Order:

The Court finds that the dissemination of the Class Notice, the publication of the Summary Settlement Notice, the establishment of a website containing settlement-related materials, the establishment of a toll-free telephone number, and all other notice methods set forth in the Settlement Agreement and [Ms. Finegan's] Declaration and the notice dissemination methodology implemented pursuant to the Settlement Agreement and this Court's Preliminary Approval Order... constituted the best practicable notice to Class Members under the circumstances of the Actions.

Bezdek v. Vibram USA and Vibram FiveFingers LLC, No 12-10513 (D. MA) The Honorable Douglas P. Woodlock stated in the Final Memorandum and Order:

...[O]n independent review I find that the notice program was robust, particularly in its online presence, and implemented as directed in my Order authorizing notice. ...I find that notice was given to the Settlement class members by the best means "practicable under the circumstances." Fed.R.Civ.P. 23(c)(2).

Gemelas v. The Dannon Company Inc., No. 08-cv-00236-DAP (N.D. Ohio). In granting final approval for the settlement, the Honorable Dan A. Polster stated:

In accordance with the Court's Preliminary Approval Order and the Court-approved notice program, [Ms. Finegan] caused the Class Notice to be distributed on a nationwide basis in magazines and newspapers (with circulation numbers exceeding 81 million) specifically chosen to reach Class Members. ... The distribution of Class Notice constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. 1715, and any other applicable law.

Pashmova v. New Balance Athletic Shoes, Inc., 1:11-cv-10001-LTS (D. Mass.). The Honorable Leo T. Sorokin stated in the Final Approval Order:

The Class Notice, the Summary Settlement Notice, the web site, and all other notices in the Settlement Agreement and the Declaration of [Ms Finegan], and the notice methodology implemented pursuant to the Settlement Agreement: (a) constituted the best practicable notice under the circumstances; (b) constituted notice that was reasonably calculated to apprise Class Members of the pendency of the Actions, the terms of the Settlement and their rights under the settlement ... met all applicable requirements of law, including, but not limited to, the Federal Rules of Civil Procedure, 28 U.S.C. § 1715, and the Due Process Clause(s) of the United States Constitution, as well as complied with the Federal Judicial Center's illustrative class action notices.



Hartless v. Clorox Company, No. 06-CV-2705 (CAB) (S.D.Cal.). In the Final Order Approving Settlement, the Honorable Cathy N. Bencivengo found:

The Class Notice advised Class members of the terms of the settlement; the Final Approval Hearing and their right to appear at such hearing; their rights to remain in or opt out of the Class and to object to the settlement; the procedures for exercising such rights; and the binding effect of this Judgment, whether favorable or unfavorable, to the Class. The distribution of the notice to the Class constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. §1715, and any other applicable law.

McDonough et al., v. Toys 'R' Us et al, No. 09:-cv-06151-AB (E.D. Pa.). In the Final Order and Judgment Approving Settlement, the Honorable Anita Brody stated:

The Court finds that the Notice provided constituted the best notice practicable under the circumstances and constituted valid, due and sufficient notice to all persons entitled thereto.

In re: Pre-Filled Propane Tank Marketing & Sales Practices Litigation, No. 4:09-md-02086-GAF (W.D. Mo.) In granting final approval to the settlement, the Honorable Gary A. Fenner stated:

The notice program included individual notice to class members who could be identified by Ferrellgas, publication notices, and notices affixed to Blue Rhino propane tank cylinders sold by Ferrellgas through various retailers. ... The Court finds the notice program fully complied with Federal Rule of Civil Procedure 23 and the requirements of due process and provided to the Class the best notice practicable under the circumstances.

Stern v. AT&T Mobility Wireless, No. 09-cv-1112 CAS-AGR (C.D.Cal. 2009). In the Final Approval Order, the Honorable Christina A. Snyder stated:

[T]he Court finds that the Parties have fully and adequately effectuated the Notice Plan, as required by the Preliminary Approval Order, and, in fact, have achieved better results than anticipated or required by the Preliminary Approval Order.

In re: Processed Egg Prods. Antitrust Litig., MDL No. 08-md-02002 (E.D.P.A.). In the Order Granting Final Approval of Settlement, Judge Gene E.K. Pratter stated:

The Notice appropriately detailed the nature of the action, the Class claims, the definition of the Class and Subclasses, the terms of the proposed settlement agreement, and the class members' right to object or request exclusion from the settlement and the timing and manner for doing so.... Accordingly, the Court determines that the notice provided to the putative Class Members constitutes adequate notice in satisfaction of the demands of Rule 23.

In re Polyurethane Foam Antitrust Litigation, 10- MD-2196 (N.D. OH). In the Order Granting Final Approval of Voluntary Dismissal and Settlement of Defendant Domfoam and Others, the Honorable Jack Zouhary stated:

The notice program included individual notice to members of the Class who could be identified through reasonable effort, as well as extensive publication of a summary notice. The Notice constituted the most effective and best notice practicable under the circumstances of the Settlement Agreements, and constituted due and sufficient notice for all other purposes to all persons and entities entitled to receive notice.

Rojas v Career Education Corporation, No. 10-cv-05260 (N.D.E.D. IL) In the Final Approval Order dated October 25, 2012, the Honorable Virginia M. Kendall stated:

The Court Approved notice to the Settlement Class as the best notice practicable under the circumstance including individual notice via U.S. Mail and by email to the class members whose addresses were obtained from each Class Member's wireless carrier or from a commercially reasonable reverse cell phone number look-up service, nationwide magazine publication, website publication, targeted on-line advertising, and a press release. Notice has been successfully implemented and satisfies the requirements of the Federal Rule of Civil Procedure 23 and Due Process.



Golloher v Todd Christopher International, Inc. DBA Vogue International (Organix), No. C 1206002 N.D. CA. In the Final Order and Judgment Approving Settlement, the Honorable Richard Seeborg stated:
The distribution of the notice to the Class constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. §1715, and any other applicable law.

Stefanyshyn v. Consolidated Industries, No. 79 D 01-9712-CT-59 (Tippecanoe County Sup. Ct., Ind.). In the Order Granting Final Approval of Settlement, Judge Randy Williams stated:
The long and short form notices provided a neutral, informative, and clear explanation of the Settlement. ... The proposed notice program was properly designed, recommended, and implemented ... and constitutes the "best practicable" notice of the proposed Settlement. The form and content of the notice program satisfied all applicable legal requirements. ... The comprehensive class notice educated Settlement Class members about the defects in Consolidated furnaces and warned them that the continued use of their furnaces created a risk of fire and/or carbon monoxide. This alone provided substantial value.

McGee v. Continental Tire North America, Inc. et al, No. 06-6234-(GEB) (D.N.J.).

The Class Notice, the Summary Settlement Notice, the web site, the toll-free telephone number, and all other notices in the Agreement, and the notice methodology implemented pursuant to the Agreement: (a) constituted the best practicable notice under the circumstances; (b) constituted notice that was reasonably calculated to apprise Class Members of the pendency of the Action, the terms of the settlement and their rights under the settlement, including, but not limited to, their right to object to or exclude themselves from the proposed settlement and to appear at the Fairness Hearing; (c) were reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notification; and (d) met all applicable requirements of law, including, but not limited to, the Federal Rules of Civil Procedure, 20 U.S.C. Sec. 1715, and the Due Process Clause(s) of the United States Constitution, as well as complied with the Federal Judicial Center's illustrative class action notices.

Varacallo, et al. v. Massachusetts Mutual Life Insurance Company, et al., No. 04-2702 (JLL) (D.N.J.). The Court stated that:

[A]ll of the notices are written in simple terminology, are readily understandable by Class Members, and comply with the Federal Judicial Center's illustrative class action notices. ... By working with a nationally syndicated media research firm, [Finegan's firm] was able to define a target audience for the MassMutual Class Members, which provided a valid basis for determining the magazine and newspaper preferences of the Class Members. (Preliminary Approval Order at p. 9). ... The Court agrees with Class Counsel that this was more than adequate. (Id. at § 5.2).

In Re: Nortel Network Corp., Sec. Litig., No. 01-CV-1855 (RMB) Master File No. 05 MD 1659 (LAP) (S.D.N.Y.). Ms. Finegan designed and implemented the extensive United States and Canadian notice programs in this case. The Canadian program was published in both French and English, and targeted virtually all investors of stock in Canada. See www.nortelsecuritieslitigation.com. Of the U.S. notice program, the Honorable Loretta A. Preska stated:

The form and method of notifying the U.S. Global Class of the pendency of the action as a class action and of the terms and conditions of the proposed Settlement ... constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

Regarding the B.C. Canadian Notice effort: *Jeffrey v. Nortel Networks*, [2007] BCSC 69 at para. 50, the Honourable Mr. Justice Groberman said:

The efforts to give notice to potential class members in this case have been thorough. There has been a broad media campaign to publicize the proposed settlement and the court processes. There has also been a direct mail campaign directed at probable investors. I am advised that over 1.2 million claim packages were mailed to persons around the world. In addition, packages



have been available through the worldwide web site nortelsecuritieslitigation.com on the Internet. Toll-free telephone lines have been set up, and it appears that class counsel and the Claims Administrator have received innumerable calls from potential class members. In short, all reasonable efforts have been made to ensure that potential members of the class have had notice of the proposal and a reasonable opportunity was provided for class members to register their objections, or seek exclusion from the settlement.

Mayo v. Walmart Stores and Sam's Club, No. 5:06 CV-93-R (W.D.Ky.). In the Order Granting Final Approval of Settlement, Judge Thomas B. Russell stated:

According to defendants' database, the Notice was estimated to have reached over 90% of the Settlement Class Members through direct mail. The Settlement Administrator ... has classified the parties' database as 'one of the most reliable and comprehensive databases [she] has worked with for the purposes of legal notice.'... The Court thus reaffirms its findings and conclusions in the Preliminary Approval Order that the form of the Notice and manner of giving notice satisfy the requirements of Fed. R. Civ. P. 23 and affords due process to the Settlement Class Members.

Fishbein v. All Market Inc., (d/b/a Vita Coco) No. 11-cv-05580 (S.D.N.Y.). In granting final approval of the settlement, the Honorable J. Paul Oetken stated:

"The Court finds that the dissemination of Class Notice pursuant to the Notice Program...constituted the best practicable notice to Settlement Class Members under the circumstances of this Litigation ... and was reasonable and constituted due, adequate and sufficient notice to all persons entitled to such notice, and fully satisfied the requirements of the Federal Rules of Civil Procedure, including Rules 23(c)(2) and (e), the United States Constitution (including the Due Process Clause), the Rules of this Court, and any other applicable laws."

Lucas, et al. v. Kmart Corp., No. 99-cv-01923 (D.Colo.), wherein the Court recognized Jeanne Finegan as an expert in the design of notice programs, and stated:

The Court finds that the efforts of the parties and the proposed Claims Administrator in this respect go above and beyond the "reasonable efforts" required for identifying individual class members under F.R.C.P. 23(c)(2)(B).

In Re: Johns-Manville Corp. (Statutory Direct Action Settlement, Common Law Direct Action and Hawaii Settlement), No 82-11656, 57, 660, 661, 665-73, 75 and 76 (BRL) (Bankr. S.D.N.Y.). The nearly half-billion dollar settlement incorporated three separate notification programs, which targeted all persons who had asbestos claims whether asserted or unasserted, against the Travelers Indemnity Company. In the Findings of Fact and Conclusions of a Clarifying Order Approving the Settlements, slip op. at 47-48 (Aug. 17, 2004), the Honorable Burton R. Lifland, Chief Justice, stated:

As demonstrated by Findings of Fact (citation omitted), the Statutory Direct Action Settlement notice program was reasonably calculated under all circumstances to apprise the affected individuals of the proceedings and actions taken involving their interests, Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950), such program did apprise the overwhelming majority of potentially affected claimants and far exceeded the minimum notice required. . . The results simply speak for themselves.

Pigford v. Glickman and U.S. Department of Agriculture, No. 97-1978. 98-1693 (PLF) (D.D.C.).

This matter was the largest civil rights case to settle in the United States in over 40 years. The highly publicized, nationwide paid media program was designed to alert all present and past African-American farmers of the opportunity to recover monetary damages against the U.S. Department of Agriculture for alleged loan discrimination. In his Opinion, the Honorable Paul L. Friedman commended the parties with respect to the notice program, stating;

The parties also exerted extraordinary efforts to reach class members through a massive advertising campaign in general and African American targeted publications and television



stations. . . The Court concludes that class members have received more than adequate notice and have had sufficient opportunity to be heard on the fairness of the proposed Consent Decree.

In Re: Louisiana-Pacific Inner-Seal Siding Litig., Nos. 879-JE, and 1453-JE (D.Or.). Under the terms of the Settlement, three separate notice programs were to be implemented at three-year intervals over a period of six years. In the first notice campaign, Ms. Finegan implemented the print advertising and Internet components of the Notice program. In approving the legal notice communication plan, the Honorable Robert E. Jones stated:

The notice given to the members of the Class fully and accurately informed the Class members of all material elements of the settlement...[through] a broad and extensive multi-media notice campaign.

Additionally, with regard to the third-year notice program for Louisiana-Pacific, the Honorable Richard Unis, Special Master, commented that the notice was:

...well formulated to conform to the definition set by the court as adequate and reasonable notice. Indeed, I believe the record should also reflect the Court's appreciation to Ms. Finegan for all the work she's done, ensuring that noticing was done correctly and professionally, while paying careful attention to overall costs. Her understanding of various notice requirements under Fed. R. Civ. P. 23, helped to insure that the notice given in this case was consistent with the highest standards of compliance with Rule 23(d)(2).

In Re: Expedia Hotel Taxes and Fees Litigation, No. 05-2-02060-1 (SEA) (Sup. Ct. of Wash. in and for King County). In the Order Granting Final Approval of Class Action Settlement, Judge Monica Benton stated:

The Notice of the Settlement given to the Class ... was the best notice practicable under the circumstances. All of these forms of Notice directed Class Members to a Settlement Website providing key Settlement documents including instructions on how Class Members could exclude themselves from the Class, and how they could object to or comment upon the Settlement. The Notice provided due and adequate notice of these proceeding and of the matters set forth in the Agreement to all persons entitled to such notice, and said notice fully satisfied the requirements of CR 23 and due process.

Thomas A. Foster and Linda E. Foster v. ABTco Siding Litigation, No. 95-151-M (Cir. Ct., Choctaw County, Ala.). This litigation focused on past and present owners of structures sided with Abitibi-Price siding. The notice program that Ms. Finegan designed and implemented was national in scope and received the following praise from the Honorable J. Lee McPhearson:

The Court finds that the Notice Program conducted by the Parties provided individual notice to all known Class Members and all Class Members who could be identified through reasonable efforts and constitutes the best notice practicable under the circumstances of this Action. This finding is based on the overwhelming evidence of the adequacy of the notice program. ... The media campaign involved broad national notice through television and print media, regional and local newspapers, and the Internet (see id. ¶¶9-11) The result: over 90 percent of Abitibi and ABTco owners are estimated to have been reached by the direct media and direct mail campaign.

Wilson v. Massachusetts Mut. Life Ins. Co., No. D-101-CV 98-02814 (First Judicial Dist. Ct., County of Santa Fe, N.M.). This was a nationwide notification program that included all persons in the United States who owned, or had owned, a life or disability insurance policy with Massachusetts Mutual Life Insurance Company and had paid additional charges when paying their premium on an installment basis. The class was estimated to exceed 1.6 million individuals. www.insuranceclassclaims.com. In granting preliminary approval to the settlement, the Honorable Art Encinias found:

[T]he Notice Plan [is] the best practicable notice that is reasonably calculated, under the circumstances of the action. ...[and] meets or exceeds all applicable requirements of the law, including Rule 1-023(C)(2) and (3) and 1-023(E), NMRA 2001, and the requirements of federal and/or state constitutional due process and any other applicable law.



Sparks v. AT&T Corp., No. 96-LM-983 (Third Judicial Cir., Madison County, Ill.). The litigation concerned all persons in the United States who leased certain AT&T telephones during the 1980's. Ms. Finegan designed and implemented a nationwide media program designed to target all persons who may have leased telephones during this time period, a class that included a large percentage of the entire population of the United States. In granting final approval to the settlement, the Court found:

The Court further finds that the notice of the proposed settlement was sufficient and furnished Class Members with the information they needed to evaluate whether to participate in or opt out of the proposed settlement. The Court therefore concludes that the notice of the proposed settlement met all requirements required by law, including all Constitutional requirements.

In Re: Georgia-Pacific Toxic Explosion Litig., No. 98 CVC05-3535 (Ct. of Common Pleas, Franklin County, Ohio). Ms. Finegan designed and implemented a regional notice program that included network affiliate television, radio and newspaper. The notice was designed to alert adults living near a Georgia-Pacific plant that they had been exposed to an air-born toxic plume and their rights under the terms of the class action settlement. In the Order and Judgment finally approving the settlement, the Honorable Jennifer L. Bunner stated:

[N]otice of the settlement to the Class was the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The Court finds that such effort exceeded even reasonable effort and that the Notice complies with the requirements of Civ. R. 23(C).

In Re: American Cyanamid, No. CV-97-0581-BH-M (S.D.AI.). The media program targeted Farmers who had purchased crop protection chemicals manufactured by American Cyanamid. In the Final Order and Judgment, the Honorable Charles R. Butler Jr. wrote:

The Court finds that the form and method of notice used to notify the Temporary Settlement Class of the Settlement satisfied the requirements of Fed. R. Civ. P. 23 and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all potential members of the Temporary Class Settlement.

In Re: First Alert Smoke Alarm Litig., No. CV-98-C-1546-W (UWC) (N.D.AI.). Ms. Finegan designed and implemented a nationwide legal notice and public information program. The public information program ran over a two-year period to inform those with smoke alarms of the performance characteristics between photoelectric and ionization detection. The media program included network and cable television, magazine and specialty trade publications. In the Findings and Order Preliminarily Certifying the Class for Settlement Purposes, Preliminarily Approving Class Settlement, Appointing Class Counsel, Directing Issuance of Notice to the Class, and Scheduling a Fairness Hearing, the Honorable C.W. Clemon wrote that the notice plan:

...constitutes due, adequate and sufficient notice to all Class Members; and (v) meets or exceeds all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Alabama State Constitution, the Rules of the Court, and any other applicable law.

In Re: James Hardie Roofing Litig., No. 00-2-17945-65SEA (Sup. Ct. of Wash., King County). The nationwide legal notice program included advertising on television, in print and on the Internet. The program was designed to reach all persons who own any structure with JHBP roofing products. In the Final Order and Judgment, the Honorable Steven Scott stated:

The notice program required by the Preliminary Order has been fully carried out... [and was] extensive. The notice provided fully and accurately informed the Class Members of all material elements of the proposed Settlement and their opportunity to participate in or be excluded from it; was the best notice practicable under the circumstances; was valid, due and sufficient notice to all Class Members; and complied fully with Civ. R. 23, the United States Constitution, due process, and other applicable law.

Barden v. Hurd Millwork Co. Inc., et al, No. 2:6-cv-00046 (LA) (E.D.Wis.)



"The Court approves, as to form and content, the notice plan and finds that such notice is the best practicable under the circumstances under Federal Rule of Civil Procedure 23(c)(2)(B) and constitutes notice in a reasonable manner under Rule 23(e)(1)."

Altieri v. Reebok, No. 4:10-cv-11977 (FDS) (D.C.Mass.)

"The Court finds that the notices ... constitute the best practicable notice... The Court further finds that all of the notices are written in simple terminology, are readily understandable by Class Members, and comply with the Federal Judicial Center's illustrative class action notices."

Marenco v. Visa Inc., No. CV 10-08022 (DMG) (C.D.Cal.)

"[T]he Court finds that the notice plan... meets the requirements of due process, California law, and other applicable precedent. The Court finds that the proposed notice program is designed to provide the Class with the best notice practicable, under the circumstances of this action, of the pendency of this litigation and of the proposed Settlement's terms, conditions, and procedures, and shall constitute due and sufficient notice to all persons entitled thereto under California law, the United States Constitution, and any other applicable law."

Palmer v. Sprint Solutions, Inc., No. 09-cv-01211 (JLR) (W.D.Wa.)

"The means of notice were reasonable and constitute due, adequate, and sufficient notice to all persons entitled to be provide^{3d} with notice."

In Re: Tyson Foods, Inc., Chicken Raised Without Antibiotics Consumer Litigation, No. 1:08-md-01982 RDB (D. Md. N. Div.)

"The notice, in form, method, and content, fully complied with the requirements of Rule 23 and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons entitled to notice of the settlement."

Sager v. Inamed Corp. and McGhan Medical Breast Implant Litigation, No. 01043771 (Sup. Ct. Cal., County of Santa Barbara)

"Notice provided was the best practicable under the circumstances."

Deke, et al. v. Cardservice Internat'l, Case No. BC 271679, slip op. at 3 (Sup. Ct. Cal., County of Los Angeles)

"The Class Notice satisfied the requirements of California Rules of Court 1856 and 1859 and due process and constituted the best notice practicable under the circumstances."

Levine, et al. v. Dr. Philip C. McGraw, et al., Case No. BC 312830 (Los Angeles County Super. Ct., Cal.)

"[T]he plan for notice to the Settlement Class ... constitutes the best notice practicable under the circumstances and constituted due and sufficient notice to the members of the Settlement Class ... and satisfies the requirements of California law and federal due process of law."

In re: Canadian Air Cargo Shipping Class Actions, Court File No. 50389CP, Ontario Superior Court of Justice, Supreme Court of British Columbia, Quebec Superior Court

"I am satisfied the proposed form of notice meets the requirements of s. 17(6) of the CPA and the proposed method of notice is appropriate."

Fischer et al v. IG Investment Management, Ltd. et al, Court File No. 06-CV-307599CP, Ontario Superior Court of Justice.

In re: Vivendi Universal, S.A. Securities Litigation, No. 02-cv-5571 (RJH)(HBP) (S.D.N.Y.).

In re: Air Cargo Shipping Services Antitrust Litigation, No. 06-MD-1775 (JG) (VV) (E.D.N.Y.).

Berger, et al., v. Property ID Corporation, et al., No. CV 05-5373-GHK (CWx) (C.D.Cal.).



Lozano v. AT&T Mobility Wireless, No. 02-cv-0090 CAS (AJWx) (C.D.Cal.).

Howard A. Engle, M.D., et al., v. R.J. Reynolds Tobacco Co., Philip Morris, Inc., Brown & Williamson Tobacco Corp., No. 94-08273 CA (22) (11th Judicial Dist. Ct. of Miami-Dade County, Fla.).

In re: Royal Dutch/Shell Transport Securities Litigation, No. 04 Civ. 374 (JAP) (Consolidated Cases) (D. N.J.).

In re: Epson Cartridge Cases, Judicial Council Coordination Proceeding, No. 4347 (Sup. Ct. of Cal., County of Los Angeles).

UAW v. General Motors Corporation, No: 05-73991 (E.D.MI).

Wicon, Inc. v. Cardservice Intern'l, Inc., BC 320215 (Sup. Ct. of Cal., County of Los Angeles).

In re: SmithKline Beecham Clinical Billing Litig., No. CV. No. 97-L-1230 (Third Judicial Cir., Madison County, Ill.).

Ms. Finegan designed and developed a national media and Internet site notification program in connection with the settlement of a nationwide class action concerning billings for clinical laboratory testing services.

MacGregor v. Schering-Plough Corp., No. EC248041 (Sup. Ct. Cal., County of Los Angeles).

This nationwide notification program was designed to reach all persons who had purchased or used an aerosol inhaler manufactured by Schering-Plough. Because no mailing list was available, notice was accomplished entirely through the media program.

In re: Swiss Banks Holocaust Victim Asset Litig., No. CV-96-4849 (E.D.N.Y.).

Ms. Finegan managed the design and implementation of the Internet site on this historic case. The site was developed in 21 native languages. It is a highly secure data gathering tool and information hub, central to the global outreach program of Holocaust survivors.
www.swissbankclaims.com.

In re: Exxon Valdez Oil Spill Litig., No. A89-095-CV (HRH) (Consolidated) (D. Alaska).

Ms. Finegan designed and implemented two media campaigns to notify native Alaskan residents, trade workers, fisherman, and others impacted by the oil spill of the litigation and their rights under the settlement terms.

In re: Johns-Manville Phenolic Foam Litig., No. CV 96-10069 (D. Mass).

The nationwide multi-media legal notice program was designed to reach all Persons who owned any structure, including an industrial building, commercial building, school, condominium, apartment house, home, garage or other type of structure located in the United States or its territories, in which Johns-Manville PFRI was installed, in whole or in part, on top of a metal roof deck.

Bristow v Fleetwood Enters Litig., No Civ 00-0082-S-EJL (D. Id).

Ms. Finegan designed and implemented a legal notice campaign targeting present and former employees of Fleetwood Enterprises, Inc., or its subsidiaries who worked as hourly production workers at Fleetwood's housing, travel trailer, or motor home manufacturing plants. The comprehensive notice campaign included print, radio and television advertising.

In re: New Orleans Tank Car Leakage Fire Litig., No 87-16374 (Civil Dist. Ct., Parish of Orleans, LA) (2000).

This case resulted in one of the largest settlements in U.S. history. This campaign consisted of a media relations and paid advertising program to notify individuals of their rights under the terms of the settlement.



Garrja Spencer v. Shell Oil Co., No. CV 94-074(Dist. Ct., Harris County, Tex.).

The nationwide notification program was designed to reach individuals who owned real property or structures in the United States, which contained polybutylene plumbing with acetyl insert or metal insert fittings.

In re: Hurd Millwork Heat Mirror™ Litig., No. CV-772488 (Sup. Ct. of Cal., County of Santa Clara).

This nationwide multi-media notice program was designed to reach class members with failed heat mirror seals on windows and doors, and alert them as to the actions that they needed to take to receive enhanced warranties or window and door replacement.

Laborers Dist. Counsel of Alabama Health and Welfare Fund v. Clinical Lab. Servs., Inc., No. CV-97-C-629-W (N.D. Ala.)

Ms. Finegan designed and developed a national media and Internet site notification program in connection with the settlement of a nationwide class action concerning alleged billing discrepancies for clinical laboratory testing services.

In re: StarLink Corn Prods. Liab. Litig., No. 01-C-1181 (N.D. Ill)

Ms. Finegan designed and implemented a nationwide notification program designed to alert potential class members of the terms of the settlement.

In re: MCI Non-Subscriber Rate Payers Litig., MDL Docket No. 1275, 3:99-cv-01275 (S.D.Ill.).

The advertising and media notice program, found to be "more than adequate" by the Court, was designed with the understanding that the litigation affected all persons or entities who were customers of record for telephone lines presubscribed to MCI/World Com, and were charged the higher non-subscriber rates and surcharges for direct-dialed long distance calls placed on those lines. www.rateclaims.com.

In re: Albertson's Back Pay Litig., No. 97-0159-S-BLW (D.Id.).

Ms. Finegan designed and developed a secure Internet site, where claimants could seek case information confidentially.

In re: Georgia Pacific Hardboard Siding Recovering Program, No. CV-95-3330-RG (Cir. Ct., Mobile County, Ala.)

Ms. Finegan designed and implemented a multi-media legal notice program, which was designed to reach class members with failed G-P siding and alert them of the pending matter. Notice was provided through advertisements, which aired on national cable networks, magazines of nationwide distribution, local newspaper, press releases and trade magazines.

In re: Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig., Nos. 1203, 99-20593.

Ms. Finegan worked as a consultant to the National Diet Drug Settlement Committee on notification issues. The resulting notice program was described and complimented at length in the Court's Memorandum and Pretrial Order 1415, approving the settlement.

Ms. Finegan designed the Notice programs for multiple state antitrust cases filed against the Microsoft Corporation. In those cases, it was generally alleged that Microsoft unlawfully used anticompetitive means to maintain a monopoly in markets for certain software, and that as a result, it overcharged consumers who licensed its MS-DOS, Windows, Word, Excel and Office software. The multiple legal notice programs designed by Jeanne Finegan and listed below targeted both individual users and business users of this software. The scientifically designed notice programs took into consideration both media usage habits and demographic characteristics of the targeted class members.

In re: Florida Microsoft Antitrust Litig. Settlement, No. 99-27340 CA 11 (11th Judicial Dist. Ct. of Miami-Dade County, Fla.).



In re: Montana Microsoft Antitrust Litig. Settlement, No. DCV 2000 219 (First Judicial Dist. Ct., Lewis & Clark Co., Mt.).

In re: South Dakota Microsoft Antitrust Litig. Settlement, No. 00-235(Sixth Judicial Cir., County of Hughes, S.D.).

In re: Kansas Microsoft Antitrust Litig. Settlement, No. 99C17089 Division No. 15 Consolidated Cases (Dist. Ct., Johnson County, Kan.)

“The Class Notice provided was the best notice practicable under the circumstances and fully complied in all respects with the requirements of due process and of the Kansas State. Annot. §60-22.3.”

In re: North Carolina Microsoft Antitrust Litig. Settlement, No. 00-CvS-4073 (Wake) 00-CvS-1246 (Lincoln) (General Court of Justice Sup. Ct., Wake and Lincoln Counties, N.C.).

In re: ABS II Pipes Litig., No. 3126 (Sup. Ct. of Cal., Contra Costa County).

The Court approved regional notification program designed to alert those individuals who owned structures with the pipe that they were eligible to recover the cost of replacing the pipe.

In re: Avenue A Inc. Internet Privacy Litig., No: C00-1964C (W.D. Wash.).

In re: Lorazepam and Clorazepate Antitrust Litig., No. 1290 (TFH) (D.C.C.).

In re: Providian Fin. Corp. ERISA Litig., No C-01-5027 (N.D. Cal.).

In re: H & R Block., et al Tax Refund Litig., No. 97195023/CC4111 (MD Cir. Ct., Baltimore City).

In re: American Premier Underwriters, Inc, U.S. Railroad Vest Corp., No. 06C01-9912 (Cir. Ct., Boone County, Ind.).

In re: Sprint Corp. Optical Fiber Litig., No: 9907 CV 284 (Dist. Ct., Leavenworth County, Kan).

In re: Shelter Mutual Ins. Co. Litig., No. CJ-2002-263 (Dist.Ct., Canadian County. Ok).

In re: Conseco, Inc. Sec. Litig., No: IP-00-0585-C Y/S CA (S.D. Ind.).

In re: Nat’l Treasury Employees Union, et al., 54 Fed. Cl. 791 (2002).

In re: City of Miami Parking Litig., Nos. 99-21456 CA-10, 99-23765 – CA-10 (11th Judicial Dist. Ct. of Miami-Dade County, Fla.).

In re: Prime Co. Incorporated D/B/A/ Prime Co. Personal Comm., No. L 1:01CV658 (E.D. Tx.).

Alsea Veneer v. State of Oregon A.A., No. 88C-11289-88C-11300.



INTERNATIONAL EXPERIENCE

In re Purdue Pharma L.P., No. 19-23649 (Bankr. S.D.N.Y. 2019).

Imerys Talc America, Inc. No. 19-10289 Bankr. D.Del 20201

Bell v. Canadian Imperial Bank of Commerce, et al, Court File No.: CV-08-359335 (Ontario Superior Court of Justice); (2016).

In re: Canadian Air Cargo Shipping Class Actions (Ontario Superior Court of Justice, Court File No. 50389CP, Supreme Court of British Columbia.

In re: Canadian Air Cargo Shipping Class Actions (Québec Superior Court).

Fischer v. IG Investment Management LTD., No. 06-CV-307599CP (Ontario Superior Court of Justice).

In Re Nortel I & II Securities Litigation, Civil Action No. 01-CV-1855 (RMB), Master File No. 05 MD 1659 (LAP) (S.D.N.Y. 2006).

Frohlinger v. Nortel Networks Corporation et al., Court File No.: 02-CL-4605 (Ontario Superior Court of Justice).

Association de Protection des Épargnants et Investisseurs du Québec v. Corporation Nortel Networks, No.: 500-06-0002316-017 (Superior Court of Québec).

Jeffery v. Nortel Networks Corporation et al., Court File No.: S015159 (Supreme Court of British Columbia).

Gallardi v. Nortel Networks Corporation, No. 05-CV-285606CP (Ontario Superior Court).

Skarstedt v. Corporation Nortel Networks, No. 500-06-000277-059 (Superior Court of Québec).

SEC ENFORCEMENT NOTICE PROGRAM EXPERIENCE

SEC v. Vivendi Universal, S.A., et al., Case No. 02 Civ. 5571 (RJH) (HBP) (S.D.N.Y.).
The Notice program included publication in 11 different countries and eight different languages.

SEC v. Royal Dutch Petroleum Company, No.04-3359 (S.D. Tex.)

FEDERAL TRADE COMMISSION NOTICE PROGRAM EXPERIENCE

FTC v. TracFone Wireless, Inc., Case No. 15-cv-00392-EMC.

FTC v. Skechers U.S.A., Inc., No. 1:12-cv-01214-JG (N.D. Ohio).

FTC v. Reebok International Ltd., No. 11-cv-02046 (N.D. Ohio)

FTC v. Chanery and RTC Research and Development LLC [Nutraquest], No :05-cv-03460 (D.N.J.)

BANKRUPTCY EXPERIENCE



Ms. Finegan has designed and implemented hundreds of domestic and international bankruptcy notice programs. A sample case list includes the following:

In Re: PG&E Corporation Case No. 19-30088 Bankr. N.D. Cal. 2019). Hearing Establishing, Deadline for Filing Proofs of Claim, (II) establishing the Form and Manner of Notice Thereof, and (III) Approving Procedures for Providing Notice of Bar Date and Other Information to all Creditors and Potential Creditors PG&E. *June 26, 2019, Transcript of Hearing p. 21:1*, the Honorable Dennis Montali stated:

...the technology and the thought that goes into all these plans is almost incomprehensible. He further stated, p. 201:20 ... Ms. Finegan has really impressed me today...

Imerys Talc America, Inc. No. 19-10289 Bankr. D.Del 20201.

In re AMR Corporation [American Airlines], et al., No. 11-15463 (SHL) (Bankr. S.D.N.Y.)
"due and proper notice [was] provided, and ... no other or further notice need be provided."

In re Jackson Hewitt Tax Service Inc., et al., No 11-11587 (Bankr. D.Del.) (2011).

The debtors sought to provide notice of their filing as well as the hearing to approve their disclosure statement and confirm their plan to a large group of current and former customers, many of whom current and viable addresses promised to be a difficult (if not impossible) and costly undertaking. The court approved a publication notice program designed and implemented by Finegan and the administrator, that included more than 350 local newspaper and television websites, two national online networks (24/7 Real Media, Inc. and Microsoft Media Network), a website notice linked to a press release and notice on eight major websites, including CNN and Yahoo. These online efforts supplemented the print publication and direct-mail notice provided to known claimants and their attorneys, as well as to the state attorneys general of all 50 states. The *Jackson Hewitt* notice program constituted one of the first large chapter 11 cases to incorporate online advertising.

In re: Nutraquest Inc., No. 03-44147 (Bankr. D.N.J.)

In re: General Motors Corp. et al, No. 09-50026 (Bankr. S.D.N.Y.)

This case is the 4th largest bankruptcy in U.S. history. Ms. Finegan and her team worked with General Motors restructuring attorneys to design and implement the legal notice program.

In re: ACandS, Inc., No. 0212687 (Bankr. D.Del.) (2007)

"Adequate notice of the Motion and of the hearing on the Motion was given."

In re: United Airlines, No. 02-B-48191 (Bankr. N.D Ill.)

Ms. Finegan worked with United and its restructuring attorneys to design and implement global legal notice programs. The notice was published in 11 countries and translated into 6 languages. Ms. Finegan worked closely with legal counsel and UAL's advertising team to select the appropriate media and to negotiate the most favorable advertising rates. www.pd-ual.com.

In re: Enron, No. 01-16034 (Bankr. S.D.N.Y.)

Ms. Finegan worked with Enron and its restructuring attorneys to publish various legal notices.

In re: Dow Corning, No. 95-20512 (Bankr. E.D. Mich.)

Ms. Finegan originally designed the information website. This Internet site is a major information hub that has various forms in 15 languages.

In re: Harnischfeger Inds., No. 99-2171 (RJW) Jointly Administered (Bankr. D. Del.)

Ms. Finegan designed and implemented 6 domestic and international notice programs for this case. The notice was translated into 14 different languages and published in 16 countries.

In re: Keene Corp., No. 93B 46090 (SMB), (Bankr. E.D. MO.)



Ms. Finegan designed and implemented multiple domestic bankruptcy notice programs including notice on the plan of reorganization directed to all creditors and all Class 4 asbestos-related claimants and counsel.

In re: Lamonts, No. 00-00045 (Bankr. W.D. Wash.)

Ms. Finegan designed and implemented multiple bankruptcy notice programs.

In re: Monet Group Holdings, Nos. 00-1936 (MFW) (Bankr. D. Del.)

Ms. Finegan designed and implemented a bar date notice.

In re: Laclede Steel Co., No. 98-53121-399 (Bankr. E.D. MO.)

Ms. Finegan designed and implemented multiple bankruptcy notice programs.

In re: Columbia Gas Transmission Corp., No. 91-804 (Bankr. S.D.N.Y.)

Ms. Finegan developed multiple nationwide legal notice notification programs for this case.

In re: U.S.H. Corp. of New York, et al. (Bankr. S.D.N.Y.)

Ms. Finegan designed and implemented a bar date advertising notification campaign.

In re: Best Prods. Co., Inc., No. 96-35267-T, (Bankr. E.D. Va.)

Ms. Finegan implemented a national legal notice program that included multiple advertising campaigns for notice of sale, bar date, disclosure and plan confirmation.

In re: Lodgian, Inc., et al., No. 16345 (BRL) Factory Card Outlet – 99-685 (JCA), 99-686 (JCA) (Bankr. S.D.N.Y.).

In re: Internat'l Total Servs, Inc., et al., Nos. 01-21812, 01-21818, 01-21820, 01-21882, 01-21824, 01-21826, 01-21827 (CD) Under Case No: 01-21812 (Bankr. E.D.N.Y.).

In re: Decora Inds., Inc. and Decora, Incorp., Nos. 00-4459 and 00-4460 (JJF) (Bankr. D. Del.).

In re: Genesis Health Ventures, Inc., et al, No. 002692 (PJW) (Bankr. D. Del.).

In re: Tel. Warehouse, Inc., et al, No. 00-2105 through 00-2110 (MFW) (Bankr. D. Del.).

In re: United Cos. Fin. Corp., et al, No. 99-450 (MFW) through 99-461 (MFW) (Bankr. D. Del.).

In re: Caldor, Inc. New York, The Caldor Corp., Caldor, Inc. CT, et al., No. 95-B44080 (JLG) (Bankr. S.D.N.Y.).

In re: Physicians Health Corp., et al., No. 00-4482 (MFW) (Bankr. D. Del.).

In re: GC Cos., et al., Nos. 00-3897 through 00-3927 (MFW) (Bankr. D. Del.).

In re: Heilig-Meyers Co., et al., Nos. 00-34533 through 00-34538 (Bankr. E.D. Va.).

MASS TORT EXPERIENCE AND PRODUCT RECALL

In Re: PG&E Corporation Case No . 19-30088 Bankr. N.D. Cal. 2019).

In re Purdue Pharma L.P., No. 19-23649 (Bankr. S.D.N.Y. 2019).

Imerys Talc America, Inc. No. 19-10289 Bankr. D.Del 2021.



Reser's Fine Foods. Reser's is a nationally distributed brand and manufacturer of food products through giants such as Albertsons, Costco, Food Lion, WinnDixie, Ingles, Safeway and Walmart. Ms. Finegan designed an enterprise-wide crisis communication plan that included communications objectives, crisis team roles and responsibilities, crisis response procedures, regulatory protocols, definitions of incidents that require various levels of notice, target audiences, and threat assessment protocols. Ms. Finegan worked with the company through two nationwide, high profile recalls, conducting extensive media relations efforts.

Gulf Coast Claims Facility Notice Campaign. Finegan coordinated a massive outreach effort throughout the Gulf Coast region to notify those who have claims as a result of damages caused by the Deep Water Horizon Oil spill. The notice campaign included extensive advertising in newspapers throughout the region, Internet notice through local newspaper, television and radio websites and media relations. The Gulf Coast Claims Facility (GCCF) was an independent claims facility, funded by BP, for the resolution of claims by individuals and businesses for damages incurred as a result of the oil discharges due to the Deepwater Horizon incident on April 20, 2010.

City of New Orleans Tax Revisions, Post-Hurricane Katrina. In 2007, the City of New Orleans revised property tax assessments for property owners. As part of this process, it received numerous appeals to the assessments. An administration firm served as liaison between the city and property owners, coordinating the hearing schedule and providing important information to property owners on the status of their appeal. Central to this effort was the comprehensive outreach program designed by Ms. Finegan, which included a website and a heavy schedule of television, radio and newspaper advertising, along with the coordination of key news interviews about the project picked up by local media.

ARTICLES/ SOCIAL MEDIA

Interview, "How Marketers Achieve Greater ROI Through Digital Assurance," Alliance for Audited Media ("AAM"), white paper, January 2021.

Tweet Chat: Contributing Panelist #Law360SocialChat, A live Tweet workshop concerning the benefits and pit-falls of social media, Lextalk.com, November 7, 2019.

Author, "Top Class Settlement Admin Factors to Consider in 2020" Law360, New York, (October 31, 2019, 5:44 PM ET).

Author, "Creating a Class Notice Program that Satisfies Due Process" Law360, New York, (February 13, 2018 12:58 PM ET).

Author, "3 Considerations for Class Action Notice Brand Safety" Law360, New York, (October 2, 2017 12:24 PM ET).

Author, "What Would Class Action Reform Mean for Notice?" Law360, New York, (April 13, 2017 11:50 AM ET).

Author, "Bots Can Silently Steal your Due Process Notice." Wisconsin Law Journal, April 2017.

Author, "Don't Turn a Blind Eye to Bots. Ad Fraud and Bots are a Reality of the Digital Environment." LinkedIn article March 6, 2107.

Co-Author, "Modern Notice Requirements Through the Lens of *Eisen* and *Mullane*" – Bloomberg - BNA Class Action Litigation Report, 17 CLASS 1077, (October 14, 2016).



Author, "Think All Internet Impressions Are The Same? Think Again" – Law360.com, New York (March 16, 2016, 3:39 ET).

Author, "Why Class Members Should See an Online Ad More Than Once" – Law360.com, New York, (December 3, 2015, 2:52 PM ET).

Author, 'Being 'Media-Relevant' — What It Means and Why It Matters - Law360.com, New York (September 11, 2013, 2:50 PM ET).

Co-Author, "New Media Creates New Expectations for Bankruptcy Notice Programs," ABI Journal, Vol. XXX, No 9, (November 2011).

Quoted Expert, "Effective Class Action Notice Promotes Access to Justice: Insight from a New U.S. Federal Judicial Center Checklist," Canadian Supreme Court Law Review, (2011), 53 S.C.L.R. (2d).

Co-Author, with Hon. Dickran Tevrizian – "Expert Opinion: It's More Than Just a Report...Why Qualified Legal Experts Are Needed to Navigate the Changing Media Landscape," BNA Class Action Litigation Report, 12 CLASS 464, May 27, 2011.

Co-Author, with Hon. Dickran Tevrizian, Your Insight, "Expert Opinion: It's More Than Just a Report -Why Qualified Legal Experts Are Needed to Navigate the Changing Media Landscape," ¹¹TXLR, Vol. 26, No. 21, May 26, 2011.

Quoted Expert, "Analysis of the FJC's 2010 Judges' Class Action Notice and Claims Process Checklist and Guide: A New Roadmap to Adequate Notice and Beyond," BNA Class Action Litigation Report, 12 CLASS 165, February 25, 2011.

Author, Five Key Considerations for a Successful International Notice Program, BNA Class Action Litigation Report, April, 9, 2010 Vol. 11, No. 7 p. 343.

Quoted Expert, "Communication Technology Trends Pose Novel Notification Issues for Class Litigators," BNA Electronic Commerce and Law, 15 ECLR 109 January 27, 2010.

Author, "Legal Notice: R U ready 2 adapt?" BNA Class Action Report, Vol. 10 Class 702, July 24, 2009.

Author, "On Demand Media Could Change the Future of Best Practicable Notice," BNA Class Action Litigation Report, Vol. 9, No. 7, April 11, 2008, pp. 307-310.

Quoted Expert, "Warranty Conference: Globalization of Warranty and Legal Aspects of Extended Warranty," Warranty Week, warrantyweek.com/archive/ww20070228.html/ February 28, 2007.

Co-Author, "Approaches to Notice in State Court Class Actions," For The Defense, Vol. 45, No. 11, November, 2003.

Citation, "Recall Effectiveness Research: A Review and Summary of the Literature on Consumer Motivation and Behavior," U.S. Consumer Product Safety Commission, CPSC-F-02-1391, p.10, Heiden Associates, July 2003.

Author, "The Web Offers Near, Real-Time Cost Efficient Notice," American Bankruptcy Institute, ABI Journal, Vol. XXII, No. 5., 2003.

Author, "Determining Adequate Notice in Rule 23 Actions," For The Defense, Vol. 44, No. 9 September, 2002.

Author, "Legal Notice, What You Need to Know and Why," Monograph, July 2002.



Co-Author, "The Electronic Nature of Legal Noticing," The American Bankruptcy Institute Journal, Vol. XXI, No. 3, April 2002.

Author, "Three Important Mantras for CEO's and Risk Managers," - International Risk Management Institute, irmi.com, January 2002.

Co-Author, "Used the Bat Signal Lately," The National Law Journal, Special Litigation Section, February 19, 2001.

Author, "How Much is Enough Notice," Dispute Resolution Alert, Vol. 1, No. 6. March 2001.

Author, "Monitoring the Internet Buzz," The Risk Report, Vol. XXIII, No. 5, Jan. 2001.

Author, "High-Profile Product Recalls Need More Than the Bat Signal," - International Risk Management Institute, irmi.com, July 2001.

Co-Author, "Do You Know What 100 Million People are Buzzing About Today?" Risk and Insurance Management, March 2001.

Quoted Article, "Keep Up with Class Action," Kentucky Courier Journal, March 13, 2000.

Author, "The Great Debate - How Much is Enough Legal Notice?" American Bar Association – Class Actions and Derivatives Suits Newsletter, winter edition 1999.

SPEAKER/EXPERT PANELIST/PRESENTER

Chief Litigation Counsel Association (CLCA)	Speaker, "Four Factors Impacting the Cost of Your Class Action Settlement and Notice," Houston TX, May 1, 2019
CLE Webinar	"Rule 23 Changes to Notice, Are You Ready for the Digital Wild, Wild West?" October 23, 2018, https://bit.ly/2RIRvZq
American Bar Assn.	Faculty Panelist, 4 th Annual Western Regional CLE Class Actions, "Big Brother, Information Privacy, and Class Actions: How Big Data and Social Media are Changing the Class Action Landscape" San Francisco, CA June, 2018.
Miami Law Class Action Faculty & Complex Litigation Forum	Panelist, "Settlement and Resolution of Class Actions," Miami, FL December 2, 2016.
The Knowledge Group	Faculty Panelist, "Class Action Settlements: Hot Topics 2016 and Beyond," Live Webcast, www.theknowledgegroup.org , October 2016.
ABA National Symposium	Faculty Panelist, "Ethical Considerations in Settling Class Actions," New Orleans, LA, March 2016.
S.F. Banking Attorney Assn.	Speaker, "How a Class Action Notice can Make or Break your Client's Settlement," San Francisco, CA, May 2015.
Perrin Class Action Conf.	Faculty Panelist, "Being Media Relevant, What It Means and Why It Matters – The Social Media Evolution: Trends, Challenges and Opportunities," Chicago, IL May 2015.
Bridgeport Continuing Ed.	Speaker, Webinar "Media Relevant in the Class Notice Context." July, 2014.



Bridgeport Continuing Ed.	Faculty Panelist, "Media Relevant in the Class Notice Context." Los Angeles, California, April 2014.
CASD 5 th Annual	Speaker, "The Impact of Social Media on Class Action Notice." Consumer Attorneys of San Diego Class Action Symposium, San Diego, California, September 2012.
Law Seminars International	Speaker, "Class Action Notice: Rules and Statutes Governing FRCP (b)(3) Best Practicable... What constitutes a best practicable notice? What practitioners and courts should expect in the new era of online and social media." Chicago, IL, October 2011. *Voted by attendees as one of the best presentations given.
CASD 4 th Annual	Faculty Panelist, "Reasonable Notice - Insight for practitioners on the FJC's <i>Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide</i> . Consumer Attorneys of San Diego Class Action Symposium, San Diego, California, October 2011.
CLE International	Faculty Panelist, Building a Workable Settlement Structure, CLE International, San Francisco, California May, 2011.
CASD	Faculty Panelist, "21 st Century Class Notice and Outreach." 3 rd Annual Class Action Symposium CASD Symposium, San Diego, California, October 2010.
CASD	Faculty Panelist, "The Future of Notice." 2 nd Annual Class Action Symposium CASD Symposium, San Diego California, October 2009.
American Bar Association	Speaker, 2008 Annual Meeting, "Practical Advice for Class Action Settlements: The Future of Notice In the United States and Internationally – Meeting the Best Practicable Standard." Section of Business Law Business and Corporate Litigation Committee – Class and Derivative Actions Subcommittee, New York, NY, August 2008.
Women Lawyers Assn.	Faculty Panelist, Women Lawyers Association of Los Angeles "The Anatomy of a Class Action." Los Angeles, CA, February, 2008.
Warranty Chain Mgmt.	Faculty Panelist, Presentation Product Recall Simulation. Tampa, Florida, March 2007.
Practicing Law Institute.	Faculty Panelist, CLE Presentation, 11 th Annual Consumer Financial Services Litigation. Presentation: Class Action Settlement Structures – Evolving Notice Standards in the Internet Age. New York/Boston (simulcast), NY March 2006; Chicago, IL April 2006 and San Francisco, CA, May 2006.
U.S. Consumer Product Safety Commission	Ms. Finegan participated as an invited expert panelist to the CPSC to discuss ways in which the CPSC could enhance and measure the recall process. As a panelist, Ms Finegan discussed how the CPSC could better motivate consumers to take action on recalls and how companies could scientifically measure and defend their outreach efforts. Bethesda, MD, September 2003.



Weil, Gotshal & Manges	Presenter, CLE presentation, "A Scientific Approach to Legal Notice Communication." New York, June 2003.
Sidley & Austin	Presenter, CLE presentation, "A Scientific Approach to Legal Notice Communication." Los Angeles, May 2003.
Kirkland & Ellis	Speaker to restructuring group addressing "The Best Practicable Methods to Give Notice in a Tort Bankruptcy." Chicago, April 2002.
Georgetown University Law	Faculty, CLE White Paper: "What are the best practicable methods to Center Mass Tort Litigation give notice? Dispelling the communications myth – A notice Institute disseminated is a notice communicated," Mass Tort Litigation Institute. Washington D.C.
American Bar Association	Presenter, "How to Bullet-Proof Notice Programs and What Communication Barriers Present Due Process Concerns in Legal Notice," ABA Litigation Section Committee on Class Actions & Derivative Suits. Chicago, IL, August 6, 2001.
McCutchin, Doyle, Brown	Speaker to litigation group in San Francisco and simulcast to four other McCutchin locations, addressing the definition of effective notice and barriers to communication that affect due process in legal notice. San Francisco, CA, June 2001.
Marylhurst University	Guest lecturer on public relations research methods. Portland, OR, February 2001.
University of Oregon	Guest speaker to MBA candidates on quantitative and qualitative research for marketing and communications programs. Portland, OR, May 2001.
Judicial Arbitration & Mediation Services (JAMS)	Speaker on the definition of effective notice. San Francisco and Los Angeles, CA, June 2000.
International Risk Management Institute	Past Expert Commentator on Crisis and Litigation Communications. www.irmi.com .
The American Bankruptcy Institute Journal (ABI)	Past Contributing Editor – Beyond the Quill. www.abi.org .

BACKGROUND

Ms. Finegan's past experience includes working in senior management for leading Class Action Administration firms including The Garden City Group (GCG) and Poorman-Douglas Corp., (EPIQ). Ms. Finegan co-founded Huntington Advertising, a nationally recognized leader in legal notice communications. After Fleet Bank purchased her firm in 1997, she grew the company into one of the nation's leading legal notice communication agencies.

Prior to that, Ms. Finegan spearheaded Huntington Communications, (an Internet development company) and The Huntington Group, Inc., (a public relations firm). As a partner and consultant, she has worked on a wide variety of client marketing, research, advertising, public relations and Internet programs. During her tenure at the Huntington Group, client projects included advertising (media planning and buying), shareholder meetings, direct mail, public relations (planning, financial communications) and community outreach programs. Her past client list includes large public and privately held companies: Code-A-Phone Corp., Thrifty-Payless Drug Stores, Hyster-Yale, The Portland Winter Hawks Hockey Team, U.S. National Bank, U.S. Trust Company, Morley Capital Management, and Durametal Corporation.



Prior to Huntington Advertising, Ms. Finegan worked as a consultant and public relations specialist for a West Coast-based Management and Public Relations Consulting firm.

Additionally, Ms. Finegan has experience in news and public affairs. Her professional background includes being a reporter, anchor and public affairs director for KWJJ/KJIB radio in Portland, Oregon, as well as reporter covering state government for KBZY radio in Salem, Oregon. Ms. Finegan worked as an assistant television program/promotion manager for KPDX directing \$50 million in programming. She was also the program/promotion manager at KECH-22 television.

Ms. Finegan's multi-level communication background gives her a thorough, hands-on understanding of media, the communication process, and how it relates to creating effective and efficient legal notice campaigns.

MEMBERSHIPS, PROFESSIONAL CREDENTIALS

APR Accredited. Universal Board of Accreditation Public Relations Society of America

- **Member of the Public Relations Society of America**
- **Member Canadian Public Relations Society**

Board of Directors - Alliance for Audited Media

Alliance for Audited Media ("AAM") is the recognized leader in cross-media verification. It was founded in 1914 as the Audit Bureau of Circulations (ABC) to bring order and transparency to the media industry. Today, more than 4,000 publishers, advertisers, agencies and technology vendors depend on its data-driven insights, technology certification audits and information services to transact with trust.

SOCIAL MEDIA

LinkedIn: www.linkedin.com/in/jeanne-finegan-apr-7112341b

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Exhibit C:
Short-Form Notice

THIS IS A COURT APPROVED LEGAL NOTICE. YOU ARE NOT BEING SUED.

THIS IS NOT A SOLICITATION FROM A LAWYER.

United States District Court for the Northern District of California

Smith-Washington et al. v. TaxAct, Inc.

Case No. 3:23-cv-00830-VC

www.TaxActClassSettlement.com

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION

If you used a TaxAct online do-it-yourself consumer Form 1040 tax filing product and filed a tax return using the TaxAct online product at any time between January 1, 2018, and December 31, 2022, or your spouse filed a joint tax return using the TaxAct online product during that same period, you should read this notice as you may be entitled to a cash payment and the free use of TaxAct® Xpert Assist for your tax year 2024 return.

What Is the Lawsuit About?

This lawsuit was brought on behalf of TaxAct users who allege that TaxAct, Inc. (“TaxAct”) purportedly shared or otherwise made accessible to third parties (including but not limited to Facebook (now Meta Platforms, Inc.) and Google) certain of its users’ personal and financial information, without permission. TaxAct expressly denies any liability or wrongdoing.

Who Is Part of the Settlement Classes?

There are two Settlement Classes. The Nationwide Class includes all natural persons who used a TaxAct online do-it-yourself consumer Form 1040 tax filing product and filed a tax return using the TaxAct online product at any time between January 1, 2018, and December 31, 2022, and whose postal address listed on their tax return was in the United States. The Nationwide Class includes a California Subclass of members whose postal address listed on their tax returns was in California. The Nationwide Married Filing Jointly Class includes all natural persons whose spouse used a TaxAct online do-it-yourself consumer Form 1040 tax filing product and filed a joint tax return using the TaxAct online product at any time between January 1, 2018, and December 31, 2022, and whose postal address listed on such joint tax return was in the United States. The Nationwide Married Filing Jointly Class also includes a California Married Filing Jointly Subclass of members of whose postal address listed on the joint tax return was in California.

If, as of January 9, 2024, you filed a demand for arbitration against TaxAct to arbitrate claims that would otherwise be released in accordance with the terms of this Settlement Agreement, you are excluded from both Settlement Classes unless you elect to opt-in to the Settlement Classes by filing a timely Claim Form.

What Does the Settlement Provide?

If the Settlement is approved by the Court, TaxAct will establish a Qualified Settlement Fund of fourteen million, nine hundred and fifty thousand U.S. dollars (\$14,950,000.00) plus up to two million five hundred thousand U.S. dollars (\$2,500,000.00) of additional funds set aside to be used towards Notice and Administration Costs with any remainder of unused Notice and Administrative funds to be distributed to the Settlement Class. The Qualified Settlement Fund will

1 be used to pay all valid claims submitted by Settlement Class Members (estimated to be approximately
2 \$ [REDACTED] each based on a [REDACTED] % claim rate), as well as notice and administration expenses, attorneys' fees
3 and costs (up to 25% of the cash value of the Settlement Fund plus up to 25% of the value of Xpert
4 Assist redeemed, up to a maximum redeemed value of Five Million Eight Thousand US Dollars and
5 Zero Cents (\$5,800,000.00) by approved Settlement Class Members, as well as reasonable expenses),
6 and Service Awards (up to \$10,000 each) for the Settlement Class Representatives. **TaxAct will also
7 provide Xpert Assist to all Settlement Class Members who submit a valid claim form and who
8 return to prepare a 2024 tax year tax return on TaxAct's website using any TaxAct online do-it
9 yourself consumer Form 1040 tax return filing product (including TaxAct's free product).**

6 **How Do I Submit a Claim and Get a Cash Payment and Xpert Assist?**

7 Claim Forms may be submitted online at www.TaxActClassSettlement.com by 11:59 p.m. PST on
8 [REDACTED] or printed from the Settlement Website and mailed
9 to the Settlement Administrator at: [REDACTED] postmarked by [REDACTED]
10 [REDACTED]. You may also contact the Settlement Administrator to request a Claim Form
11 by telephone [REDACTED], by email [REDACTED], or by U.S. mail at [REDACTED].

11 **Do I Have a Lawyer in the Case?**

12 The Court has appointed Julian Hammond and Christina Tusan of HammondLaw, P.C. and Warren D.
13 Postman of Keller Postman LLC to represent the Settlement Class as Class Counsel.

13 **Your Other Options**

14 If you are a Settlement Class Member and you do nothing, your rights will be affected, and you will
15 not receive a Settlement payment or Xpert Assist from this Settlement. If you do not want to be legally
16 bound by the Settlement, you must exclude yourself from it by opting out. The deadline to exclude
17 yourself is [REDACTED].

18 Unless you exclude yourself, you will give up any right to sue TaxAct based on the legal and factual
19 issues that this Settlement resolves. If you exclude yourself, you cannot get a payment or Xpert Assist
20 from this Settlement. Settlement Class Members agree to release all claims based on, relating to, or
21 arising out of the identical factual predicate in the operative complaint.

22 If you stay in the Settlement (i.e., do not exclude yourself), you can ask the Court to deny approval by
23 filing an objection to the Settlement or Class Counsel's fees by [REDACTED]
24 [REDACTED]. You can give reasons why you think the Court should not approve it. The Court will
25 consider your views. You can't ask the Court to order a different Settlement; the Court can only approve
26 or reject the Settlement. If the Court denies approval, no Settlement payments will be sent out, and the
27 lawsuit will continue. If that is what you want to happen, you should object.

28 Any objection to the proposed settlement must be in writing. Please check the settlement website for
all requirements associated with filing a written objection. If you file a timely written objection, you
may, but are not required to, appear at the Final Approval Hearing, either in person or through your
own attorney. If you appear through your own attorney, you are responsible for hiring and paying that
attorney. All written objections and supporting papers must (a) clearly identify the case and number
(*Smith-Washington et al. v. TaxAct, Inc.*, Case No. 3:23-cv-00830-VC), (b) be submitted to the Court
either by filing them electronically or in person at any location of the United States District Court for

1 the Northern District of California, or by mailing them to the Class Action Clerk, United States District
2 Court for the Northern District of California, San Francisco Division, and (c) be filed or postmarked
3 on or before **[INSERT OBJECTION DEADLINE]**.

4 More information can be found in the Frequently Asked Questions and Class Action Settlement
5 Agreement and Release, which are available at www.TaxActClassSettlement.com. If you have
6 additional questions, you may contact the Settlement Administrator or Class Counsel.

6 **The Court's Final Approval Hearing**

7 The Court has scheduled a Final Approval Hearing at **[INSERT TIME]** PST on **[INSERT FINAL**
8 **APPROVAL HEARING DATE]**. The hearing may proceed by video conference. If so, a link to the
9 video conference will appear at the following address: [https://www.cand.uscourts.gov/judges/chhabria-](https://www.cand.uscourts.gov/judges/chhabria-vince-vc/)
10 [vince-vc/](https://www.cand.uscourts.gov/judges/chhabria-vince-vc/). Please check the Settlement Website often to confirm the date, time, and location. At the
11 Final Approval Hearing, the Court will consider whether the Settlement is fair, reasonable, and
12 adequate and whether to approve it. The Court will also consider whether to approve Class Counsel's
13 request for an award of attorneys' fees and expenses, as well as the Settlement Class Representatives'
14 Service Awards. If there are objections, the Court will consider them.

15 **This Notice is only a summary of the proposed Settlement. For the precise terms of the**
16 **Settlement, please see the Settlement Agreement by calling **[INSERT PHONE NUMBER]**,**
17 **visiting www.TaxActClassSettlement.com, by accessing the Court docket in this case, for a fee,**
18 **through the Court's Public Access to Court Electronic Records (PACER) system at**
19 **<https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United**
20 **States District Court for the Northern District of California, [insert appropriate Court location**
21 **here], between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.**

22 **PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO**
23 **INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**

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Exhibit D:
Long-Form Notice

THIS IS A COURT APPROVED LEGAL NOTICE. YOU ARE NOT BEING SUED.
THIS IS NOT A SOLICITATION FROM A LAWYER.

United States District Court for the Northern District of California
Smith-Washington et al. v. TaxAct, Inc.
Case No. 3:23-cv-00830-VC
www.TaxActClassSettlement.com

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION

If you used a TaxAct online do-it-yourself consumer Form 1040 tax filing product and filed a tax return using the TaxAct online product at any time between January 1, 2018, and December 31, 2022, or your spouse filed a joint tax return using the TaxAct online product during that same period, you should read this notice as you may be entitled to a cash payment and the free use of TaxAct® Xpert Assist for your tax year 2024 return.

- A Settlement⁴ has been reached between Defendant TaxAct, Inc. (“TaxAct” or “Defendant”) and Plaintiffs in a class action lawsuit pending in the United States District Court for the Northern District of California.
- You are included in this Settlement as a Settlement Class Member if you are a member of either or both of the following two Settlement Classes:
 - The Nationwide Class: this Class includes all natural persons who used a TaxAct online do-it-yourself consumer Form 1040 tax filing product and filed a tax return using the TaxAct online product at any time between January 1, 2018, and December 31, 2022, and whose postal address listed on their tax return was in the United States. The Nationwide Class includes a California Subclass of members whose postal address listed on their tax returns was in California.
 - The Nationwide Married Filing Jointly Class: this Class includes all natural persons whose spouse used a TaxAct online do-it-yourself consumer Form 1040 tax filing product and filed a joint tax return using the TaxAct online product at any time between January 1, 2018, and December 31, 2022, and whose postal address listed on such joint tax return was in the United States. The Nationwide Married Filing Jointly Class also includes a California Married Filing Jointly Subclass of members of whose postal address listed on the joint tax return was in California.
 - If, as of January 9, 2024, you filed a demand for arbitration against TaxAct to arbitrate claims that would otherwise be released in accordance with the terms of this

⁴ All capitalized terms not defined in this document have the same meaning as in the Settlement Agreement, which can be viewed at www.TaxActClassSettlement.com.

Settlement Agreement, you are excluded from both Settlement Classes unless you elect to opt-in to the Settlement Classes by filing a timely Claim Form.

- This lawsuit is known as *Smith-Washington, et al. v. TaxAct, Inc.*, Case No. 3:23-cv-00830 (N.D. California). Defendant denies that it violated any law but has agreed to the Settlement to avoid the costs and risks associated with continuing this case.
- Your rights are affected whether you act or don't act. Please read this Notice carefully.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT		DEADLINE
SUBMIT A CLAIM	<p>The only way to receive a cash payment from this Settlement and the free use of TaxAct® Xpert Assist for your tax year 2024 return is by submitting a timely and properly completed Claim Form that obtains approval from the Settlement Administrator. The Claim Form must be submitted no later than _____, 2024.</p> <p>You can submit your Claim Form online at www.TaxActClassSettlement.com or download the Claim Form from the Settlement Website and mail it to the Settlement Administrator. You may also call the Settlement Administrator to receive a paper copy of the Claim Form.</p> <p>As a Settlement Class Member, regardless of whether you submit a Claim Form, provided that you do not opt out of the Settlement, if the Settlement is approved by the Court you will give up the right to sue the Defendant in a separate lawsuit about the legal claims or factual allegations this Settlement resolves.</p> <p>For more information see Question 10.</p> <p>However, if, as of January 9, 2024, you filed a demand for arbitration against TaxAct to arbitrate claims that would otherwise be released in accordance with the terms of this Settlement Agreement, you are excluded from both Settlement Classes unless you elect to opt-in to a Settlement Class by filing a timely Claim Form.</p>	_____, 2024
OPT OUT OF THE SETTLEMENT	<p>You can choose to opt out of the Settlement and receive no payment or free use of TaxAct® Xpert Assist. This option allows you to sue, continue to sue, or be part of another lawsuit against the Defendant related to the legal claims and factual allegations resolved by this Settlement. You can choose to hire your own legal counsel at your own expense.</p>	_____, 2024

	For more information see Question 16.	
OBJECT TO THE SETTLEMENT AND/OR ATTEND A HEARING	If you do not opt out of the Settlement, you may object to it by writing to the Court about why you don't like the Settlement. You may also ask the Court for permission to speak about your objection at the Final Approval Hearing. If you object, you may also file a Claim Form. For more information see Question 17.	____, 2024
DO NOTHING	Unless you opt out of the Settlement, you are automatically part of the Settlement. If you do nothing, you will not get a payment or free use of TaxAct® Xpert Assist from this Settlement and you will give up the right to sue, continue to sue, or be part of another lawsuit against the Defendant related to the legal claims or factual allegations resolved by this Settlement.	No Deadline

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement.
- This Notice summarizes the proposed Settlement. For the precise terms of the Settlement, please see the Settlement Agreement available at www.TaxActClassSettlement.com, by contacting class counsel, whose contact information is listed in Question 13 below, by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <http://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the of the Court for the United States District Court for the Northern District of California, San Francisco Division, 450 Golden Gate Avenue, San Francisco, CA 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.
- **PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**

WHAT THIS NOTICE CONTAINS

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BASIC INFORMATION

1. Why was this Notice Issued?

A federal court authorized this Notice because you have a right to know about the proposed Settlement of this class action lawsuit and about all of your options before the Court decides whether to grant final approval of the Settlement. This Notice explains the lawsuit, your legal rights, what benefits are available, and who can receive them.

For information on how to determine if you are a Settlement Class Member, and therefore eligible for benefits under this settlement, see **Question 5**.

2. What is this lawsuit about?

This lawsuit was brought on behalf of TaxAct users who allege that TaxAct purportedly shared or otherwise made accessible to third parties (including but not limited to Facebook (now Meta Platforms, Inc.) and Google) certain of its users’ personal and financial information, without permission. TaxAct expressly denies any liability or wrongdoing. The Honorable Vince Chhabria of the United States District Court for the Northern District of California was appointed to oversee this lawsuit. The people that filed this lawsuit are called the “Plaintiffs” and the company they sued, TaxAct, is called the “Defendant.”

In a class action, one or more individuals sue on behalf of other people with similar claims. These individuals are known as “class representatives.” Together, the people included in the class action are called a “class” or “class members.” One court resolves the lawsuit for all class members, except for those who opt out from a settlement. In this Settlement, the Settlement Class Representatives are Plaintiffs Nicholas C. Smith-Washington, Joyce Mahoney, Jonathan Ames, Matthew Hartz, and Jenny Lewis.

3. Why is there a Settlement?

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The Court did not decide in favor of Plaintiffs or Defendant. Defendant denies all claims and that it violated any law. Plaintiffs and Defendant agreed to a Settlement to avoid the costs and risks of further litigation, and to allow the Settlement Class Members to receive cash payments and relief in the form of complementary use of TaxAct® Xpert Assist. The Settlement Class Representatives and their attorneys think the Settlement is best for all Settlement Class Members.

WHO IS IN THE SETTLEMENT?

4. Am I part of the Settlement?

There are two Settlement Classes. If you fall within one of these definitions and have not filed a demand for arbitration, you are in the Settlement Class.

(1) The **Nationwide Class** includes all natural persons who used a TaxAct online do-it-yourself consumer Form 1040 tax filing product and filed a tax return using the TaxAct online product at any time between January 1, 2018, and December 31, 2022, and whose postal address listed on their tax return was in the United States. The Nationwide Class includes a **California Subclass** of members whose postal address listed on their tax returns was in California.

(2) The **Nationwide Married Filing Jointly Class** includes all natural persons whose spouse used a TaxAct online do-it-yourself consumer Form 1040 tax filing product and filed a joint tax return using the TaxAct online product at any time between January 1, 2018, and December 31, 2022, and whose postal address listed on such joint tax return was in the United States. The Nationwide Married Filing Jointly Class also includes a **California Married Filing Jointly Subclass** of members of whose postal address listed on the joint tax return was in California.

However, if, as of January 9, 2024, you filed a demand for arbitration against TaxAct to arbitrate claims that would otherwise be released in accordance with the terms of this Settlement Agreement, you are excluded from both Settlement Classes unless you elect to opt-in to the Settlement Classes by filing a timely Claim Form.

5. Are there exceptions to being included?

Yes. The Settlement does not include: (i) TaxAct, its current, former and/or future parents, subsidiaries, divisions, affiliates and/or departments, and their employees, officers, directors, management, legal representatives, heirs, successors, and wholly or partly owned subsidiaries or affiliated companies during the period from January 1, 2018, through to and including December

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31, 2022; (ii) counsel for Plaintiffs and their employees, including but not limited to the undersigned counsel for Plaintiffs and the undersigned counsel’s employees; (iii) any district judge or magistrate judge to whom this case is or was assigned, as well as those judges’ immediate family members, judicial officers and their personnel, and all governmental entities; (iv) customers who only used TaxAct’s download do-it-yourself consumer Form 1040 tax return filing product, TaxAct’s Professional products, or TaxAct’s online do-it-yourself business tax return filing products; (v) and all individuals who have, as of January 9, 2024, filed a demand for arbitration against TaxAct to arbitrate claims that would otherwise be released in accordance with the terms of the Settlement unless those individual elect to opt-in to the Settlement Classes by filing a timely Claim Form.

If you are not sure whether you are included in the Settlement Class, you can ask for free help by emailing the Settlement Administrator at info@TaxActClassSettlement.com or calling the Settlement Administrator at 1-XXX-XXX-XXXX. You may also view the Settlement Agreement at www.TaxActClassSettlement.com.

THE SETTLEMENT BENEFITS

6. What does the Settlement provide?

If the Settlement is approved by the Court, TaxAct will establish a Settlement Fund of fourteen million, nine hundred and fifty thousand U.S. dollars (\$14,950,000.00) plus up to two million five hundred thousand U.S. dollars (\$2,500,000) of additional funds set aside to be used towards Notice and Administration Costs with any remainder of unused Notice and Administration Costs funds to be distributed to the Settlement Class. The Settlement Fund will be used to pay all valid claims submitted by Settlement Class Members (approximately \$ __ each), as well as notice and administration expenses, attorneys’ fees and costs (up to 25% of the cash value of the Settlement Fund plus up to 25% of the value of Xpert Assist redeemed by approved Settlement Class Members, up to a maximum redeemed value of Five Million Eight Thousand US Dollars and Zero Cents (\$5,800,000.00), as well as reasonable expenses), and Service Awards (up to \$10,000 each) for the Settlement Class Representatives. TaxAct will also provide Xpert Assist to all Settlement Class Members who submit a valid claim form and who return to prepare a 2024 tax year return on TaxAct’s website using any TaxAct online do-it yourself consumer Form 1040 tax return filing product (including TaxAct’s free product).

7. How much will my payment be, and what else will I receive?

The answer depends on how many Settlement Class Members submit valid claims. It also depends on of which Settlement Class and Subclass you are a member.

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First, the total amount distributed will be the Qualified Settlement Fund minus any amount awarded by the Court as fees and costs to Class Counsel, any Service Awards to the Settlement Class Representatives, and Notice and Administration Costs, and such other costs, expenses, or amounts as may be awarded or allowed by the Court. The resulting amount is called the “Net Settlement Fund.” The Net Settlement Fund is the amount of money available to be distributed to Settlement Class Members.

Next, the Net Settlement Fund will be allocated to Settlement Class Members who submit valid claims, also called “Authorized Claimants.” If an Authorized Claimant was a member of one Class or a Subclass during a portion of the Class Period and was a member of a different Class or Subclass during a different portion of the Class Period, the Authorized Claimant will be assigned allocation points for the Class or Subclass to which the Authorized Claimant belonged that has the highest number of allocation points. Allocation points shall be assigned as follows: Where you used a TaxAct online do-it-yourself consumer Form 1040 tax filing product and filed a tax return using the TaxAct online product, and the postal address listed on your tax return was in California (i.e., you are a California Subclass Member) you will be assigned 6 points. Where you used a TaxAct online do-it-yourself consumer Form 1040 tax filing product and filed a tax return using the TaxAct online product, and the postal address listed on your tax return was elsewhere in the United States (i.e., you are a Nationwide Class Member and not a California Subclass Member), you will be assigned 3 points. Where your spouse used a TaxAct online do-it-yourself consumer Form 1040 tax filing product and filed a joint tax return using the TaxAct online product, and the postal address listed on the joint tax return was in California (i.e., you are a California Married Filing Jointly Subclass Member), you will be assigned 2 points. Finally, where your spouse used a TaxAct online do-it-yourself consumer Form 1040 tax filing product and filed a joint tax return using the TaxAct online product, and the postal address listed on the joint tax return was elsewhere in the United States (i.e., you are a Nationwide Married Filing Jointly Class Member and not a California Married Filing Jointly Subclass Member), you will be assigned 1 point.

After the deadline for submitting a claim (see **Question 11** below), the Settlement Administrator will add up all the points assigned to all the Authorized Claimants and divide the Net Settlement Amount by that number. The result will be the amount of the Net Settlement Fund available for each point. Each Authorized Claimant will receive that per-point amount multiplied by the number of points they were assigned.

In addition to the cash payment, all Authorized Claimants who return to prepare their tax year 2024 return using any TaxAct online do-it-yourself consumer Form 1040 tax return filing product (including TaxAct’s free product), will be provided with complimentary Xpert Assist. Specifically, upon entering their Social Security number into the TaxAct platform, which occurs at the beginning of the tax return form process, Authorized Claimants will receive a pop-up alerting them to their complimentary Xpert Assist and be able to add and use XpertAssist immediately. Xpert

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Assist provides one-on-one advice over the phone from real tax experts and allows for personalized tax advice.

8. What claims am I releasing if I stay in the Settlement Classes?

Unless you opt out of the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit or arbitration against the Defendant about any of the legal claims this Settlement resolves. The “Released Claims” section in the Settlement Agreement describes the legal claims that you give up (“release”) if you remain in the Settlement Class. Released Claims include claims that are pled or could have been pled based on, relating to, or arising out of the identical factual predicate in the operative complaint. The Settlement Agreement and operative complaint can be found at www.TaxActClassSettlement.com.

HOW TO GET A PAYMENT AND XPERT ASSIST - MAKING A CLAIM

9. How do I submit a claim and get a cash payment and Xpert Assist?

Claim Forms may be submitted online at www.TaxActClassSettlement.com or printed from the website and mailed to the Settlement Administrator at: TaxAct Consumer Pixel Settlement Administrator, [INSERT ADDRESS]. You may also contact the Settlement Administrator to request a Claim Form by telephone 1-XXX-XXX-XXXX, by email Info@taxactclasssettlement.com, or by U.S. mail at TaxAct Consumer Pixel Settlement Administrator, [INSERT ADDRESS].

11. What is the deadline for submitting a claim?

If you submit a claim by U.S. mail, the completed and signed Claim Form must be postmarked by [REDACTED], 2024. If submitting a Claim Form online, you must do so by 11:59 p.m. PST on [REDACTED], 2024.

12. When will I get my payment and Xpert Assist?

The Court has scheduled a Final Approval Hearing for the Settlement of this case on [REDACTED], 2024 at [REDACTED] a.m. PST to consider: (1) whether to approve the Settlement; (2) any objections; (3) the requests for awards to the Settlement Class Representatives; and (4) the request for an award of attorneys’ fees and costs to Settlement Class Counsel for their work in this litigation. If the Court approves the Settlement, there may be appeals. It is always uncertain whether appeals will be filed and, if so, how long it will take to resolve them. Settlement payments will be distributed as soon as possible if the Court grants Final Approval of the Settlement and after any appeals are resolved.

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After January 1, 2025, Xpert Assist will be provided to Authorized Claimants upon entering their Social Security number into the TaxAct platform, which occurs at the beginning of the tax return form process, Authorized Claimants will receive a pop-up alerting them to their complimentary Xpert Assist and be able to add and use XpertAssist immediately for preparation of their 2024 tax year return. The briefs and declarations in support of the Final Approval of the Settlement and the requests described above will be posted on the Settlement Website, www.TaxActClassSettlement.com after they are filed. You may ask to appear at the hearing but you do not have to appear. The date and time of the Final Approval Hearing is also subject to modification by the Court. Please review the Settlement Website for any updated information regarding the final hearing.

THE LAWYERS REPRESENTING YOU

13. Do I have lawyers in the case?

Yes. The Court has appointed Julian Hammond and Christina Tusan of HammondLaw, P.C. and Warren D. Postman of Keller Postman LLC to represent the Settlement Class as Class Counsel:

Julian Hammond	Warren D. Postman
Christina Tusan	Keller Postman LLC
HammondLaw, P.C.	1100 Vermont Avenue, N.W., 12th Floor
1201 Pacific Ave., 6th Floor	Washington, DC 20005
Tacoma, WA 98402	
310-807-1666	
www.hammondlawpc.com	

You will not be charged for their services.

14. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel works for you. If you want to be represented by your own lawyer, you may hire one at your own expense.

15. How will my lawyers get paid?

Class Counsel will ask the Court for an award of attorneys' fees not to exceed 25% of the Qualified Settlement Fund plus up to 25% of the value of the Xpert Assist redeemed by Authorized Claimants, up to a maximum redeemed value of Five Million Eight Thousand US Dollars and Zero Cents (\$5,800,000.00), as well as reasonable expenses incurred in the litigation. They will also ask the Court to approve a service award for each of the Settlement Class Representatives not to exceed

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\$10,000 each. The Court may award less than these amounts. If approved, these fees, costs and awards will be paid from the Qualified Settlement Fund. The portion of the attorneys’ fees that will be paid based on the value of the redemption of Xpert Assist will not be paid before May 2025, which allows time for a reasonable valuation of the redeemed value of Xpert Assist.

EXCLUDING YOURSELF FROM THE SETTLEMENT

16. How do I opt out of the Settlement?

If you do not want to receive any benefits from the Settlement, and you want to keep your right, if any, to separately sue the Defendant about the legal issues in this case, you must take steps to exclude yourself from the Settlement Class. This is called “opting out” of the Settlement Class. The deadline for requesting exclusion from the Settlement is [redacted], 2024.

To exclude yourself from the Settlement, you must submit a complete opt-out form at www.TaxActClassSettlement.com or by U.S. mail at the below address. Alternatively, you may submit a written opt-out request that includes the following information: (i) the case name of the Action, *Smith-Washington, et al. v. TaxAct, Inc.*, Case No. 3:23-cv-00830 (N.D. Cal.); (ii) your first and last name and current address; (iii) first and last name, email address, phone number, and mailing address associated your TaxAct account or of your spouse’s TaxAct account if you are a member of the Married Filing Jointly Class; (iv) your personal signature; and, (v) a statement clearly indicating your intent to be excluded from the Settlement. The request for exclusion must be made only for the individual whose personal signature appears on the request.

If you exclude yourself, you are stating to the Court that you do not want to be part of the Settlement. You will not be eligible to receive a payment or the complementary use of Xpert Assist from this Settlement if you exclude yourself. You may only exclude yourself – not any other person. Opt-out requests seeking exclusion on behalf of more than one individual will be found invalid by the Settlement Administrator.

If submitted electronically, at www.TaxActClassSettlement.com, the opt-out form or any written request to opt-out must be submitted and verified no later than 11:59 p.m. PST on [redacted], 2024.

If submitted by U.S. mail, at the below address, the opt-out form or any written request to opt-out must be postmarked no later than [redacted], 2024.

TaxAct Pixel Settlement Administrator
Attn: Opt-Out Request, Kroll Settlement Administration LLC
2000 Market Street, Suite 2700
Philadelphia, PA 19103

COMMENTING ON OR OBJECTING TO THE SETTLEMENT BENEFIT

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17. How do I tell the court if I like or do not like the Settlement?

If you are a Settlement Class Member, you can choose to object to the Settlement if you do not like it or a portion of it. You can ask the Court to deny approval by filing an objection. You can give reasons why you think the Court should not approve it. The Court will consider your views. You can't ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out, complementary Xpert Assist will not be provided to Authorized Claimants, and the lawsuit will continue. If that is what you want to happen, you should object. Any comments or objections from Settlement Class Members regarding the proposed Settlement Agreement must be submitted in writing to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California; or by filing them in person at any location of the United States District Court for the Northern District of California, and they must be filed or postmarked on or before _____, 2024.

**Class Action Clerk
United States District Court for the Northern District of California
450 Golden Gate Avenue, Box 36060
San Francisco, CA 94102-3489**

Your objection must include: (i) the case name and number: *Smith-Washington, et al. v. TaxAct, Inc.*, Case No. 3:23-cv-00830 (N.D. Cal.); (ii) your full name, address, telephone number, and email address; (iii) the email address associated with the objector's TaxAct account, or the email address associated with their Spouse's TaxAct account if the objector is a Married Filing Jointly Class Member (iv) a statement of whether your objection applies only to you, to a specific subset of a class or subclass, to an entire class or subclass, or to all members of both Settlement Classes; (iv) a statement of the number of times in which you (and, where applicable, your counsel) have objected to a class action settlement, along with the caption of each case in which you (or your counsel) made such objection; (v) a statement of whether the objector has sold or otherwise transferred the right to their recovery in this Action to another person or entity, and, if so, the identity of that person or entity; (vi) a statement of the specific grounds for the objection, including any legal or factual support and any evidence in support of the objection; (vii) a statement of whether you intend to appear at the Final Approval Hearing, and if so, whether personally or through counsel; and (viii) your signature. These requirements may be excused by the Court upon a showing of good cause. You or your attorney may speak at the Final Approval Hearing about your objection. To do so, you must include a statement in your objection indicating whether you or your attorney intend to appear at the Final Approval Hearing. This requirement may be excused upon a showing of good cause. You may also appear at the Final Approval Hearing without submitting a written objection upon a showing of good cause.

18. What is the difference between opting out and objecting?

Objecting is telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself from the Settlement. Excluding yourself

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from the Settlement is opting out and stating to the Court that you do not want to be part of the Settlement. If you opt out of the Settlement, you cannot object to it because the Settlement no longer affects you.

THE COURT’S FINAL APPROVAL HEARING

19. When is the Court’s Final Approval Hearing?

The Court has scheduled a Final Approval Hearing at [INSERT TIME] PST on [Insert Final Approval Hearing Date], 2024. If the hearing proceeds **in person**, it will be held at the San Francisco Courthouse, Courtroom 4 – 17th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102. If the Court holds the hearing **by video conference**, you will find a link to the video conference at the following address: <https://www.cand.uscourts.gov/judges/chhabria-vince-vc/>.

At the Final Approval Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider whether to approve Class Counsel’s request for an award of attorneys’ fees and expenses, as well as the Settlement Class Representatives’ Service Awards. If there are objections, the Court will consider them. Judge Chhabria will listen to people who have asked to speak at the hearing (see **Question 17** above). After the hearing, the Court will decide whether to approve the Settlement.

The date or time of the Final Approval Hearing may change. Please check the Settlement Website, www.TaxActClassSettlement.com, for any updates, and to find out whether the Final Approval Hearing will be held in person or by video conference.

20. Do I have to come to the Final Approval Hearing?

No. Class Counsel will answer any questions the Court may have. You may attend at your own expense if you wish. If you file an objection, you do not have to come to the Final Approval Hearing to talk about it. If you file your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but such attendance is not necessary for the Court to consider your objection if it was filed on time.

IF I DO NOTHING

21. What happens if I do nothing at all?

If you are a Settlement Class Member and you do nothing, you will give up the rights explained in **Question 9**, including your right to start a lawsuit, continue a lawsuit, or be part of any other lawsuit or arbitration against the Defendant and the Released Parties about the legal issues or factual allegations resolved by this Settlement. In addition, you will not receive a payment or get access to complementary Xpert Assist from this Settlement.

GETTING MORE INFORMATION

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22. How do I get more information?

This Notice summarizes the proposed Settlement. Complete details are provided in the Settlement Agreement. The Settlement Agreement and other related documents are available at the Settlement Website, www.TaxActClassSettlement.com.

If you have additional questions, you may contact the Settlement Administrator by email, phone, or mail:

Email: info@taxactclasssettlement.com

Toll-Free: 1-XXX- XXX XXXX

Mail: TaxAct Consumer Pixel Litigation, c/o Settlement Administrator, **[INSERT ADDRESS]**

Publicly filed documents can also be obtained by:

- accessing the Court docket in this case, for a fee, through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>;
- visiting the office of the Clerk of the United States District Court for the Northern District of California at: Office of the Clerk, United States District Court, 450 Golden Gate Avenue, San Francisco, CA 94102-3489 between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

Please do not telephone the Court, the Clerk’s Office, or TaxAct to inquire about the Settlement or the Claims Process.

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Exhibit E:
Claim Form

1 UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA
2 *Smith-Washington, et al. v. TaxAct, Inc.*, Case No. 3:23-cv-00830-VC
3 www.TaxActClassSettlement.com

4 **CLAIM FORM INSTRUCTIONS**

5 This Claim Form is for Settlement Class Members. The Settlement Class Members includes
6 members in either of the two following Classes: (1) Nationwide Class – all natural persons who used
7 a TaxAct online do-it-yourself consumer Form 1040 tax filing product and filed a tax return using the
8 TaxAct online product at any time between January 1, 2018 and December 31, 2022, and whose postal
9 address listed on such tax return was in the United States; or (2) Nationwide Married Filing Jointly
10 Class – all natural persons whose spouse used a TaxAct online do-it-yourself consumer Form 1040
11 tax filing product and filed a joint tax return using the TaxAct online product at any time between
12 January 1, 2018 and December 31, 2022, and whose postal address listed on such joint tax return was
13 in the United States.

14 **TO RECEIVE A PAYMENT FROM THE SETTLEMENT AND TO RECEIVE TAXACT®
15 XPERT ASSIST YOU MUST COMPLETE AND SUBMIT THIS FORM**

16 If, as of January 9, 2024, you filed a demand for arbitration against TaxAct to arbitrate claims that
17 would otherwise be released in accordance with the terms of this Settlement Agreement, you are
18 excluded from both Settlement Classes unless you elect to opt-in to the Settlement Classes by filing a
19 timely Claim Form.

20 **How To Complete This Claim Form**

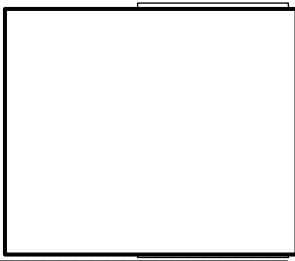
- 21 1. There are two ways to submit this Claim Form to the Settlement Administrator: (a) online at
22 www.TaxActClassSettlement.com; or (b) by U.S. mail to the following address: Smith-
23 Washington, et al. v. TaxAct, Inc., c/o Kroll Settlement Administration LLC, 2000 Market Street,
24 Suite 2700, Philadelphia, PA 19103.
- 25 2. **Deadline:** If you submit your Claim Form by U.S. Mail, the completed and signed Claim Form
26 must be postmarked by _____, 2024. If you submit your Claim Form online, you must do so by
27 11:59 p.m. PDT on _____, 2024.
- 28 3. You must complete the entire Claim Form. Please type or write your responses legibly.
4. If your Claim Form is incomplete or missing information, the Settlement Administrator may
contact you for additional information. If you do not respond by the deadline provided by the
Settlement Administrator for you to supply any such additional information, your claim will not
be processed, and you will waive your right to receive money and Xpert Assist under the
Settlement.
5. You may only submit one Claim Form. You must only submit the Claim Form on your own behalf
or on behalf of someone for whom you are an authorized legal representative.
6. Submission of the Claim Form does not guarantee payment or receipt of Xpert Assist. Your Claim
Form must be approved by the Settlement Administrator.
7. If you have any questions, please contact the Settlement Administrator by email at _____, by
chat available at _____, by telephone at _____, or by U.S. mail at the address listed
above.

1 8. **You must notify the Settlement Administrator if your contact or payment information**
2 **changes after you submit your Claim Form. If you do not, even if you submit a valid claim**
3 **under the Settlement, you may not receive your Settlement payment.**
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Your claim must be submitted online or postmarked by: _____, 2024

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
Smith-Washington, et al. v. TaxAct, Inc.,
Case No. 3:23-cv-00830-VC
www.TaxActClassSettlement.com



Claim Form

I. YOUR CONTACT INFORMATION

Provide your name and current contact information. You must notify the Settlement Administrator if your contact information changes after you submit this form. NOTE: The personal information you provide below will be processed only for purposes of effectuating the Settlement.

First Name

Last Name

Street Address

City

State

Zip Code

Current Phone Number

Email Address

I filed a: _____ Individual Return _____ Joint Tax Return

If your contact information above is the same as the information associated with your TaxAct account at the time you used Tax Act services, continue to Section II. If different, please provide the contact information associated with your TaxAct account below:

First Name

Last Name

Street Address

[Empty box for Street Address]

[Empty box for City]

[Empty box for State]

City

State

Zip Code

[Empty box for Phone Number]

[Empty box for Email Address]

Phone Number

Email Address

II. METHOD OF RECEIVING PAYMENT (choose one)

Please select **one** of the following payment options for the cash component of the Settlement. Please make sure the email or phone number you provide to receive payment matches your contact information above.

PayPal - Enter your **PayPal email address**: _____

Venmo - Enter the **mobile number** associated with your Venmo account: _____-_____-____

Zelle - Enter the **email address or mobile number** associated with your Zelle account:

Physical Check – Payment will be mailed to the address provided above.

III. VERIFICATION AND ATTESTATION UNDER OATH

By signing below and submitting this Claim Form, I hereby swear under penalty of perjury that I am the person identified above and the information provided in this Claim Form is true and correct.

Your signature

Date: _____
MM DD YYYY

Your name

REMINDER CHECKLIST

1. Please make sure you completed all three parts of the Claim Form. Be sure to select only **one** payment option.
2. Please make sure that you signed and dated the Claim Form.
3. Please keep a copy of your completed claim form for your own records.
4. Please submit your completed Claim Form online OR by mail by _____, 2024 to: Smith-Washington, et al. v. TaxAct, Inc. c/o Settlement Administrator, [INSERT Address]

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Exhibit F:
Opt-Out Form

1 UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA
2 *Smith-Washington, et al. v. TaxAct, Inc.*, Case No. 3:23-cv-00830-VC
3 www.TaxActClassSettlement.com

4 **OPT-OUT FORM INSTRUCTIONS**

5 This Opt-Out Form is for Settlement Class Members who wish to exclude themselves from the
6 benefits of the Settlement. The Settlement Class Members includes members in either of the two
7 following Classes: (1) Nationwide Class – all natural persons who used a TaxAct online do-it-yourself
8 consumer Form 1040 tax filing product and filed a tax return using the TaxAct online product at any
9 time between January 1, 2018 and December 31, 2022, and whose postal address listed on such tax
10 return was in the United States; or (2) Nationwide Married Filing Jointly Class – all natural persons
11 whose spouse used a TaxAct online do-it-yourself consumer Form 1040 tax filing product and filed a
12 joint tax return using the TaxAct online product at any time between January 1, 2018 and December
13 31, 2022, and whose postal address listed on such joint tax return was in the United States.

14 **ANY INDIVIDUAL WHO WISHES TO EXCLUDE THEMSELVES FROM THE
15 SETTLEMENT MUST SUBMIT THIS FORM ONLINE OR A REQUEST FOR EXCLUSION
16 TO THE SETTLEMENT ADMINISTRATOR, WHICH SHALL BE POSTMARKED NO
17 LATER THAN [OPT-OUT DEADLINE]. IF YOU FILL OUT THIS OPT-OUT FORM YOU
18 WILL BE EXCLUDED FROM THE SETTLEMENT AND ANY OF ITS BENEFITS.**

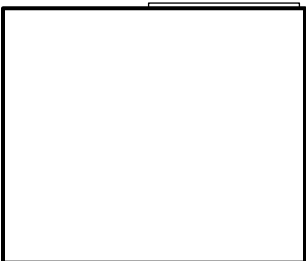
19 **How To Complete This Opt-Out Form**

- 20 1. To submit this Opt-Out Form, complete the online form **here** or print this form and mail it to
21 following address: Smith-Washington, et al. v. TaxAct, Inc., c/o Kroll Settlement Administration
22 LLC, 2000 Market Street, Suite 2700, Philadelphia, PA 19103. The completed and signed Opt-
23 Out Form must be postmarked by _____, 2024.
- 24 2. You must complete the entire Opt-Out Form. Please type or write your responses legibly.
- 25 3. You must only submit the Opt-Out Form on your own behalf or on behalf of someone for whom
26 you are an authorized legal representative.
- 27 4. If you have any questions, please contact the Settlement Administrator by email at _____, by
28 chat available at _____, by telephone at _____, or by U.S. mail at the address listed
above.

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Your opt-out form
must be
postmarked by:
_____, 2024

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
Smith-Washington, et al. v. TaxAct, Inc.,
Case No. 3:23-cv-00830-VC
www.TaxActClassSettlement.com



Opt-Out Form
IF YOU COMPLETE THIS FORM YOU WILL BE EXCLUDED FROM THE SETTLEMENT AND ITS BENEFITS

IV. YOUR CONTACT INFORMATION

Provide your name and contact information. NOTE: The personal information you provide below will be processed only for purposes of effectuating the Settlement.

Two empty rectangular boxes for name entry.

First Name

Last Name

One wide empty rectangular box for street address.

Street Address

Empty rectangular box for city.

City

Empty rectangular box for state.

State

Empty rectangular box for zip code.

Zip Code

Empty rectangular box for current phone number.

Current Phone Number

Empty rectangular box for email address.

Email Address

I filed a: ___ Individual Return ___ Married Filing Jointly Return

V. CONTACT INFORMATION ASSOCIATED WITH TAXACT ACCOUNT

If different from above, please provide the contact information associated with your TaxAct account at the time of filing, or your spouse's TaxAct account at the time of filing if you are a Married Filing Jointly Class Member.

1 ____: My TaxAct account information is the same as above.

2

3

4 **First Name**

Last Name

5

6 **Street Address**

7

8

9 **City**

State

Zip Code

10

11

12 **Phone Number**

Email Address

13 **VI. VERIFICATION AND ATTESTATION UNDER OATH**

14
15 By signing below and submitting this Opt-Out Form, I hereby swear under penalty of perjury that I
16 am used TaxAct's services during the Class Period and am part of the Settlement Class.

17 _____
Your signature

Date: _____

MM DD YYYY

18 _____
Your name

19
20 **REMINDER CHECKLIST**

- 21 1. Please make sure you completed all three parts of the Opt-Out Form.
- 22 2. Please make sure that you signed and dated the Opt-Out Form.
- 23 3. Please keep a copy of your completed Opt-Out Form for your own records.
- 24 4. Please submit your completed Opt-Out Form online or by mail by _____, 2024 to: Smith-
25 Washington, et al. v. TaxAct, Inc. c/o Kroll Settlement Administration LLC, 2000 Market Street,
26 Suite 2700, Philadelphia, PA 19103.

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Exhibit G:
Proposed Final Approval Order

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

NICHOLAS C. SMITH-WASHINGTON, JOYCE MAHONEY, JONATHAN AMES, MATTHEW HARTZ, and JENNY LEWIS on behalf of themselves and all other similarly situated,

Plaintiffs,

v.

TAXACT, INC.,

Defendant.

Case No. 3:23-CV-00830-VC
Assigned to Hon. Vince Chhabria

[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 23(E)(2); AWARDING ATTORNEYS' FEES, EXPENSES, AND NAMED PLAINTIFF SERVICE AWARDS

WHEREAS, Plaintiffs Nicholas C. Smith Washington, Joyce Mahoney, Jonathan Ames, Jenny Lewis, and Matthew Hartz (together, "Settlement Class Representatives"), and Defendant TaxAct, Inc. ("TaxAct") (collectively "Parties"), entered into a Settlement Agreement on February __, 2024 (ECF No. ____), which, together, with the exhibits and appendices thereto, sets forth the terms and conditions for a proposed resolution of this Action and for its dismissal with prejudice;

WHEREAS, by order dated _____, 2024, the Court granted preliminary approval of the Settlement between the parties in the Action, ordering notice to Settlement Class Members, and providing Settlement Class Members with an opportunity either to exclude themselves from the Settlement Class or to object to the Settlement (ECF No. ____);

WHEREAS, by order dated _____, 2024, the Court also provisionally certified the Settlement Class for settlement purposes only, finding that the Settlement Class meets all the prerequisites of Federal Rule of Civil Procedure 23 for class certification, including numerosity, commonality, typicality, predominance of common issues, superiority, and that the Settlement Class Representatives and Class Counsel are adequate representatives of the Settlement Class (*id.*);

WHEREAS, the Court held a Final Approval Hearing on _____, 2024, to consider approval of this Settlement;

1 WHEREAS, the Court has considered the Settlement Agreement, the record in this Action,
2 and the Parties' arguments and authorities;

3 GOOD CAUSE APPEARING, IT IS HEREBY ORDERED AS FOLLOWS:

4 1. All terms and definitions used herein have the same meanings as set forth in the
5 Settlement Agreement unless stated otherwise herein or in the Court's Order Granting Preliminary
6 Approval of the Settlement.

7 2. The Court has jurisdiction over this Action and the Parties.

8 3. The Court finds that the Notice Plan constituted the best notice practicable under the
9 circumstances to all Settlement Class Members and fully complied with the requirements of Federal
10 Rule of Civil Procedure 23 and due process.

11 4. The Court finds that, for purposes of the Settlement only, all prerequisites for
12 maintenance of a class action set forth in Federal Rules of Civil Procedure 23(a) and (b)(3) are
13 satisfied and certifies the following Settlement Classes:

14 a. "Nationwide Class" includes all natural persons who used a TaxAct online do-it-
15 yourself consumer Form 1040 tax filing product and filed a tax return using the TaxAct
16 online product during the Class Period, and whose postal address listed on such tax
17 return was in the United States. The Nationwide Class includes the California
18 Subclass.

19 i. "California Subclass" is a subclass of the Nationwide Class that includes all
20 natural persons who used a TaxAct online do-it-yourself consumer Form 1040
21 tax filing product and filed a tax return using the TaxAct online product during
22 the Class Period, and whose postal address listed on such tax return was in
23 California.

24 b. "Nationwide Married Filing Jointly Class" includes all natural persons whose spouse
25 used a TaxAct online do-it-yourself consumer Form 1040 tax filing product and filed
26

1 a joint tax return using the TaxAct online product during the Class Period, and whose
2 postal address listed on such joint tax return was in the United States. The Nationwide
3 Married Filing Jointly Class includes the California Married Filing Jointly Subclass.

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5 i. “California Married Filing Jointly Subclass” is a subclass of the Nationwide
6 Married Filing Jointly Class that includes all natural persons residing in
7 California during the Class Period whose spouse used a TaxAct online do-it-
8 yourself consumer Form 1040 tax filing product and filed a joint tax return
9 using the TaxAct online product during the Class Period, and whose postal
10 address listed on such joint tax return was in California.

11 5. Excluded from the Settlement Classes are: TaxAct, its current, former and/or future
12 parents, subsidiaries, divisions, affiliates and/or departments, and their employees, officers, directors,
13 management, legal representatives, heirs, successors, and wholly or partly owned subsidiaries or
14 affiliated companies during the Class Period or thereafter; counsel for Plaintiffs and their employees,
15 including but not limited to the undersigned counsel for Plaintiffs and the undersigned counsel’s
16 employees; any district judge or magistrate judge to whom this case is or was assigned, as well as
17 those judges’ immediate family members, judicial officers and their personnel, and all governmental
18 entities; customers who only used TaxAct’s download do-it-yourself consumer Form 1040 tax return
19 filing product, TaxAct’s Professional products, or TaxAct’s online do-it-yourself business tax return
20 filing products; and all individuals who have, as of January 9, 2024, filed a demand for arbitration
21 against TaxAct to arbitrate claims that would otherwise be released in accordance with the terms of
22 this Settlement Agreement unless those individuals elect to opt-in to the Settlement Classes by filing
23 a timely Claim Form.

24
25 6. Pursuant to Federal Rule of Civil Procedure 23(e), the Court hereby grants final
26 approval of the Settlement and finds that the Settlement is fair, reasonable, and adequate and in the
27 best interests of the Settlement Class Members based on the following factors, among other things:
28

- 1 a. There is no fraud or collusion underlying this Settlement, and it was reached as a result
2 of a mediation session with a respected mediator and extensive arm's length
3 negotiations. *See, e.g., Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625
4 (9th Cir. 1982); *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 948 (9th
5 Cir. 2011) (presence of a neutral mediator is a factor weighing in favor of a finding of
6 noncollusiveness). Despite the mediator's presence, the Court has performed its own,
7 independent analysis of the Settlement's fairness, reasonableness, and adequacy
8 pursuant to Federal Rule of Civil Procedure 23(e)(2). *See Briseño v. Henderson*, 908
9 F.3d 1014, 1021 (9th Cir. 2021).
- 10 b. The complexity, expense, and likely duration of the litigation favor settlement—which
11 provides meaningful benefits on a shorter time frame than otherwise possible—on
12 behalf of the Settlement Class Members. *See, e.g., Lane v. Facebook, Inc.*, 696 F.3d
13 811, 820 (9th Cir. 2012) (affirming the district court's approval of a settlement where
14 class counsel "reasonably concluded that the immediate benefits represented by the
15 Settlement outweighed the possibility—perhaps remote—of obtaining a better result
16 at trial"); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (the
17 Ninth Circuit has a "strong judicial policy that favors settlements, particularly where
18 complex class action litigation is concerned"). Based on the stage of the proceedings
19 and the amount of investigation and discovery completed, the Parties have developed
20 a sufficient factual record to evaluate their chances of success at trial and the proposed
21 Settlement.
- 22 c. The support of Class Counsel and the Settlement Class Representatives, who have
23 participated in this litigation and evaluated the proposed Settlement, also favor final
24 approval. *See Class Plaintiffs*, 955 F.2d at 1294; *Boyd v. Bechtel Corp.*, 485 F. Supp.
25 610, 622 (N.D. Cal. 1979).
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1 d. The Settlement provides meaningful relief to the Settlement Classes and falls within
2 the range of reasonable possible recoveries by the Settlement Class Members.

3
4 7. Upon the Effective Date: (i) the Settlement Agreement shall be the exclusive remedy
5 for any and all Released Claims of Settlement Class Representatives and Settlement Class Members;
6 and (ii) Settlement Class Representatives and Settlement Class Members stipulate to be and shall be
7 permanently barred from initiating, asserting, or prosecuting against the Released Parties in any
8 federal or state court or other tribunal any and all Released Claims. Likewise, upon the Effective
9 Date, Defendant and each of the other Released Parties shall be deemed by operation of law to have
10 released, waived, discharged and dismissed each and every claim relating to the institution or
11 prosecution of the Action by Settlement Class Representatives, Class Counsel and the Settlement
12 Class. Accordingly, the Settlement shall terminate the Action.

13 8. The Court finds that an award of attorneys' fees and expenses is appropriate pursuant
14 to Federal Rule of Civil Procedure 23(e)(2)(C)(iii) and therefore approves such award in an amount,
15 manner and timing as set forth in the Court's separate Order on Class Counsel's motion for Attorneys'
16 Fees and Expenses Award and Service Awards.

17
18 9. The Court finds that the payment of Service Awards to the Settlement Class
19 Representatives is fair and reasonable and therefore approves such payment as set forth in the Court's
20 separate Order on Class Counsel's motion for Attorneys' Fees and Expenses Award and Service
21 Awards.

22 10. Ten percent of Class Counsel's awarded attorneys' fees shall remain in the Qualified
23 Settlement Fund until after Class Counsel files a Notice of Completion of Duties and the Court
24 authorizes the release to Class Counsel of the attorneys' fees remaining in the Qualified Settlement
25 Fund. Class Counsel shall file the Notice of Completion of Duties only after substantially all of the
26 Qualified Settlement Fund has been distributed to the Class and administration of the Settlement is
27 substantially complete. The Notice of Completion of Duties shall generally describe the results of
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1 the Settlement administration process, including the total cost of administration, noting the portion of
2 these costs paid by TaxAct.

3
4 11. The Action, and all claims asserted therein, is settled and dismissed on the merits with
5 prejudice.

6 12. Consummation of the Settlement shall proceed as described in the Settlement
7 Agreement, and the Court reserves jurisdiction over the subject matter and each Party to the
8 Settlement with respect to the interpretation and implementation of the Settlement for all purposes,
9 including enforcement of any of the terms thereof at the instance of any Party and resolution of any
10 disputes that may arise relating to the implementation of the Settlement or this Order.

11 13. In the event that any applications for relief are made, such applications shall be made
12 to the Court. To avoid doubt, the Final Judgment applies to and is binding upon the Parties, the
13 Settlement Class Members, and their respective heirs, successors, and assigns.

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15 14. The Settlement and this Order are not admissions of liability or fault by TaxAct or the
16 Released Parties, or a finding of the validity of any claims in the Action or of any wrongdoing or
17 violation of law by TaxAct or the Released Parties. To the extent permitted by law, neither this Order,
18 nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall
19 be offered as evidence or received in evidence in any pending or future civil, criminal, or
20 administrative action or proceeding to establish any liability of, or admission by, the Released Parties.

21 15. Notwithstanding the foregoing, nothing in this Order shall be interpreted to prohibit
22 the use of this Order in a proceeding to consummate or enforce the Settlement or this Order, or to
23 defend against the assertion of released claims in any other proceeding, or as otherwise required by
24 law.

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26 16. As provided in the Settlement Agreement, the parties shall file a post-distribution
27 accounting in accordance with this District's Procedural Guidance for Class Action Settlements
28 within 21 days after the distribution of the Net Settlement Fund, and payment of Attorneys' Fees or

1 Expenses and/or Service Awards to Class Settlement Representatives, if any. The Court SETS a
 2 compliance deadline of [INSERT COMPLIANCE DEADLINE] to verify timely filing of the post-
 3 distribution accounting. The Parties may request a continuance of this deadline if the Net Settlement
 4 fund has not been distributed 14 days before the compliance deadline.

5
 6 17. [CHART OF SETTLEMENT ADMINISTRATION DEADLINES TO BE
 7 INSERTED]
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9 IT IS SO ORDERED.

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 11 DATED: _____

 The Honorable Vince Chhabria
 United States District Judge

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Exhibit H:
Proposed Final Judgement

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

NICHOLAS C. SMITH-WASHINGTON, JOYCE MAHONEY, JONATHAN AMES, MATTHEW HARTZ, and JENNY LEWIS on behalf of themselves and all other similarly situated,

Case No. 3:23-CV-00830-VC
Assigned to Hon. Vince Chhabria

Plaintiffs,

[PROPOSED] FINAL JUDGEMENT

v.

TAXACT, INC.,

Defendant.

On _____, the Court signed and entered its Order Granting Final Approval of Class Action Settlement and its Order on Class Counsel’s Motion for Attorneys’ Fees and Expenses and Service Awards (ECF Nos. ___) (the “Final Approval Order” and the “Order on Motion for Attorneys’ Fees and Expenses and Service Awards”) in the above-captioned matter as to the following classes of persons:

“**Nationwide Class**” includes all natural persons who used a TaxAct online do-it-yourself consumer Form 1040 tax filing product and filed a tax return using the TaxAct online product during the Class Period, and whose postal address listed on such tax return was in the United States. The Nationwide Class includes the California Subclass.

“**California Subclass**” includes all natural persons who used a TaxAct online do-it-yourself consumer Form 1040 tax filing product and filed a tax return using the TaxAct online product during the Class Period, and whose postal address listed on such tax return was in California.

“**Nationwide Married Filing Jointly Class**” includes all natural persons whose spouse used a TaxAct online do-it-yourself consumer Form 1040 tax filing product and filed a joint tax return using the TaxAct online product during the Class Period, and whose postal address

1 listed on such joint tax return was in the United States. The Nationwide Married Filing
2 Jointly Class includes the California Married Filing Jointly Subclass.

3 “California Married Filing Jointly Subclass” includes all natural persons residing
4 in California during the Class Period whose spouse used a TaxAct online do-it-
5 yourself consumer Form 1040 tax filing product and filed a joint tax return using the
6 TaxAct online product during the Class Period, and whose postal address listed on
7 such joint tax return was in California.

8 JUDGMENT IS HEREBY ENTERED, pursuant to Federal Rule of Civil Procedure 58, as to
9 the specified class of persons (excluding the individuals who validly and timely requested exclusion
10 from the Settlement Class, as identified in the Final Approval Order); Settlement Class
11 Representatives Nicholas C. Smith Washington, Joyce Mahoney, Jonathan Ames, Jenny Lewis, and
12 Matthew Hartz; and TaxAct, Inc. (“TaxAct”) on the terms and conditions of the Settlement
13 Agreement approved by the Court’s Final Approval Order.

14 1. For purposes of this Order, the Court adopts the terms and definitions set forth in the
15 Settlement Agreement unless otherwise defined in the Preliminary Approval Order or Final Approval
16 Order.

17 2. Payments to Settlement Class Members under the Settlement Agreement shall be
18 made as outlined in the Final Approval Order and Settlement Agreement.

19 3. Upon the Effective Date: (i) the Settlement Agreement shall be the exclusive remedy
20 for any and all Released Claims of Settlement Class Representatives and Settlement Class Members;
21 and (ii) Settlement Class Representatives and Settlement Class Members stipulate to be and shall be
22 permanently barred from initiating, asserting, or prosecuting against the Released Parties in any
23 federal or state court or other tribunal any and all Released Claims.

24 4. Likewise, upon the Effective Date, Defendant and each of the other Released Parties.
25
26 hall be deemed by operation of law to have released, waived, discharged and dismissed each and
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1 every claim relating to the institution or prosecution of the Action by Settlement Class
2 Representatives, Class Counsel and the Settlement Classes.

3 5. This Action is settled and dismissed on the merits with prejudice.
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5 6. Without affecting the finality of this Judgment, the Court reserves jurisdiction over
6 the Settlement Class Representatives, the Settlement Classes, Class Counsel, and Defendant as to all
7 matters concerning administration, consummation, and enforcement of the Settlement Agreement.

8 JUDGEMENT APPROVED AS TO FORM.
9

10
11 _____
12 The Honorable Vince Chhabria
13 United States District Judge

14 JUDGEMENT ENTERED _____, 2024

15 By: CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT
16 OF CALIFORNIA

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EXHIBIT 2

1 JULIAN HAMMOND (SBN 268489)

jhammond@hammondlawpc.com

2 CHRISTINA TUSAN (SBN 192203)

ctusan@hammondlawpc.com

3 ADRIAN BARNES (SBN 253131)

abarnes@hammondlawpc.com

4 ARI CHERNIAK (SBN 290071)

acherniak@hammondlawpc.com

5 POLINA BRANDLER (SBN 269086)

pbrandler@hammondlawpc.com

6 HAMMONDLAW, P.C.

1201 Pacific Ave, 6th Floor

7 Tacoma, WA 98402

(310) 601-6766 (Office)

8 (310) 295-2385 (Fax)

9 *Attorneys for Plaintiffs and the Putative Classes*

10 *Additional Counsel on the next page*

11 **UNITED STATES DISTRICT COURT**

12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **NICHOLAS C. SMITH-WASHINGTON,** Case No. 3:23-CV-830-VC

14 **JOYCE MAHONEY, JONATHAN AMES,**

15 **MATTHEW HARTZ, and JENNY LEWIS,** PLAN OF ALLOCATION

on behalf of themselves and all others
similarly situated,

16 Plaintiffs,

17 vs.

18 **TAXACT, INC.,** an Iowa corporation,

19 Defendant.

1 WARREN D. POSTMAN (SBN 330869)
wdp@kellerpostman.com
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PLAN OF ALLOCATION

1
2 1. **Definitions.** Unless otherwise defined, terms used in this Plan of Allocation have the
3 same meaning as in the Class Action Settlement Agreement and Release (“Settlement Agreement”).

4 2. **Non-reversionary common fund.** This is a common fund settlement; there shall be no
5 reversion of the Qualified Settlement Fund to Defendant TaxAct, Inc. (“Defendant”) upon the
6 occurrence of the Effective Date.

7 3. **No effect on Releases.** This Plan of Allocation does not, and is not intended to, affect
8 the scope of the Released Claims or any other part of the Releases.

9 4. **Plan of Allocation not a necessary term.** The Plan of Allocation is a matter separate
10 and apart from the proposed Settlement Agreement between Defendant and the Settlement Class
11 Representatives, and any decision by the Court concerning the Plan of Allocation shall not affect the
12 validity or finality of the proposed Settlement Agreement. The Plan of Allocation is not a necessary
13 term of the Settlement Agreement, and it is not a condition of the Settlement Agreement that any
14 particular plan of allocation be approved by the Court. Any order relating solely to the allocation of
15 the Net Settlement Fund among the Authorized Claimants, or any request for further judicial review
16 from any order relating solely thereto, or reversal or modification thereof, shall not operate to
17 terminate the Settlement Agreement.

18 5. **Distribution to Authorized Claimants.** The Net Settlement Fund shall be allocated to
19 each Authorized Claimant pro rata by reference to the total number of allocation points assigned to all
20 Authorized Claimants. Authorized Claimants will be allocated points according to the Settlement
21 Class or Subclass of which they are a member. If an Authorized Claimant was a member of one Class
22 or a Subclass during a portion of the Class Period and was a member of a different Class or Subclass
23 during a different portion of the Class Period, the Authorized Claimant will be assigned allocation
24 points for the Class or Subclass to which the Authorized Claimant belonged that has the highest
25 number of allocation points. Allocation points shall be assigned as follows: Members of the
26 Nationwide Class are assigned 3 allocation points; Members of the California Subclass are assigned 6
27 allocation points; Members of the Nationwide Married Filing Jointly Class are assigned 1 allocation
28 point; and Members of the California Married Filing Jointly Subclass are assigned 2 allocation points.

1 6. **Minimum payment.** Notwithstanding Section 5, the Settlement Administrator shall
2 have the discretion, after consulting with Class Counsel, to select an amount for minimum payments to
3 Authorized Claimants, with the goal of ensuring that payments to Authorized Claimants are
4 administratively and economically feasible and that as much of the Net Settlement Fund as possible is
5 actually distributed to Authorized Claimants. The Court shall be informed of the amount of the
6 minimum payment before the Net Settlement Fund is distributed to Authorized Claimants.

7 7. **Unclaimed payments.**

- 8 a. If a payment made according to sections 5-6 and distributed to an Authorized
9 Claimant via a check is not negotiated within ninety (90) days after the Settlement
10 Administrator has contacted, or made reasonable attempts to contact, the
11 Authorized Claimant, the Authorized Claimant shall be deemed to have waived and
12 released their claim for payment under the Settlement Agreement. If an Authorized
13 Claimant reasonably requests that a check be reissued, the Settlement Administrator
14 shall reissue it.
- 15 b. If a check to an Authorized Claimant is returned as undeliverable, the Settlement
16 Administrator shall attempt to obtain a new mailing address for the Authorized
17 Claimant and effect a second mailing. If, after a second mailing, the check is again
18 returned as undeliverable, or if the Settlement Administrator, after reasonable
19 efforts, is unable to determine a second mailing address, there is no obligation to
20 take further efforts to distribute the check, and the Authorized Claimant shall be
21 deemed to have waived and released their claim for payment under the Settlement
22 Agreement.
- 23 c. If a payment is made according to sections 5-6 and distributed to the Authorized
24 Claimant electronically (including via ACH, if such means of payment is made
25 available) and is unable to be processed, the Settlement Administrator shall make
26 reasonable efforts to contact the Authorized Claimant to correct the problem. If the
27 Authorized Claimant does not provide a means of payment within a reasonable
28 amount of time, or provides a means of payment that is unable to be processed,

1 there is no obligation to take further efforts to distribute the payment, and the
2 Authorized Claimant shall be deemed to have waived and released their claim for
3 payment under the Settlement Agreement.

4 8. **Residual funds.** Any portion of the Attorneys’ Fees and Expenses Award based on the
5 In-Kind Payment and held back by the Settlement Administrator that is not ultimately distributed as
6 attorneys’ fees to Settlement Class Counsel will be distributed to the National Consumer Law Center
7 as *cy pres*. After the process outlined in section 5-7 is completed, there may be funds remaining in the
8 Net Settlement Fund. Any such remaining funds shall be distributed as follows:

- 9 a. If it is administratively and economically feasible to distribute the remaining funds
10 to all Authorized Claimants or some portion thereof, then Class Counsel, in
11 consultation with the Settlement Administrator, shall propose to the Court an
12 equitable method for doing so. Such method of distribution shall be effected if the
13 Court approves (or approves it in modified form).
- 14 b. To the extent there is no distribution of remaining funds according to subsection a
15 of this section, or if funds still remain after distribution according to subsection a of
16 this section, the Parties shall confer and present to the Court a proposal for
17 treatment of the remaining funds. Such proposal shall be effected if the Court
18 approves (or approves it in modified form).

19 9. **Modification of provisions related to unclaimed payments and residual funds.**
20 Should the Parties agree, after final approval of the Settlement Agreement, that the provisions of this
21 Plan of Allocation governing unclaimed payments and residual funds should be modified in the
22 interests of justice, they shall seek the Court’s approval for such modification. If the Court approves,
23 the provisions governing unclaimed payments and residual funds shall be effected as modified.

24 10. **In-Kind Payments.** Pursuant to the Parties’ Settlement Agreement, all Authorized
25 Claimants will be provided an In-Kind Payment, in an easy-to-redeem format, in the form of TaxAct®
26 Xpert Assist (“Xpert Assist”). Xpert Assist is an add-on feature that TaxAct offers to its customers that
27 provides live advice and assistance from tax experts to customers completing a tax return through
28 TaxAct. TaxAct will provide complimentary Xpert Assist to Authorized Claimants to use in

1 connection with preparing a tax return using any TaxAct online do-it-yourself consumer Form 1040
2 tax return filing product (including TaxAct’s free product), applied to tax year 2024. *Id.* Specifically,
3 upon entering their Social Security number into the TaxAct platform, which occurs at the beginning of
4 the tax return form process, Authorized Claimants will receive a pop-up alerting them to their
5 complimentary Xpert Assist and they will be able to add and use Xpert Assist immediately.

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EXHIBIT 3

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IN THE CIRCUIT COURT OF ST. LOUIS CITY
STATE OF MISSOURI

FILED
OCT 30 2023

STATE OF MISSOURI, ex rel.)
Attorney General Andrew Bailey,)

Plaintiff,)

vs.)

Case No. 2322-CC01433

H&R Block Inc., TaxSlayer LLC, and)
TaxAct, Inc.)

Defendants.)

22ND JUDICIAL CIRCUIT
CIRCUIT CLERK'S OFFICE
BY _____ DEPUTY

STIPULATED CONSENT JUDGMENT WITH TAXACT, INC.

Plaintiff State of Missouri, ex rel. Attorney General Andrew Bailey ("the State"), and defendant TaxAct, Inc., an Iowa corporation ("Defendant") have stipulated and consent to the Court's entry of this Stipulated Consent Judgment ("Consent Judgment") in this proceeding and accept this Consent Judgment as the final adjudication of the claims brought by the State against TaxAct in this civil action without taking proof and without trial.

This Consent Judgment is not intended to and does not constitute any evidence of or an admission by TaxAct regarding any issue of law or fact alleged in the State's Petition; TaxAct does not admit any liability.

The Court having considered the matter and good cause appearing, it is hereby ordered, adjudged, and decreed as follows:

DEFINITIONS

1. For purposes of this Consent Judgment, the following definitions apply:
 - a. "Auxiliary Service Provider" means any individual or entity "providing auxiliary services" as defined in Section 7216.
 - b. "Business" means the business conducted by Defendant.

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c. **“Consumer Personal Information”** shall mean and include “personal information,” as that term is defined in Section 407.1500, RSMo, and **“Consumer Tax Information”** as that term is defined in this Consent Judgment on the date of entry.

d. **“Consumer Tax Information”** means a Unique Identifier in combination with *any* specific items from a tax return (including but not limited to names of dependents, filing status, or the amounts of the following: adjusted gross income, tax refunds, investment income, mortgage interest, standard deductions, student loan interest, and/or charitable contributions), provided that (a) data that merely identifies a person as having started or completed a tax return is not Consumer Tax Information; (b) data that merely identifies a person as visiting TaxAct’s website generally or interacting with a component of the website, but does not thereby also disclose specific items pertaining to the Consumer’s tax return (e.g., disclosing that the person visited a URL associated with investment income), is not Consumer Tax Information; (c) data that is already readily-available in public records is not Consumer Tax Information; and (d) data that is aggregated and cannot be reidentified.

e. **“Covered Conduct”** means the disclosure to Third Parties by TaxAct of Consumer Tax Information collected through use of Tracking Technologies, where such disclosure was not permitted either by obtaining Express Consumer Consent or by Section 7216.

f. **“Effective Date”** means the date that this Consent Judgment is entered by the Court.

g. **“Express Consumer Consent”** means consent obtained through a discrete, verifiable written or electronically generated agreement, through which the consumer affirmatively agrees to the action, including via a banner that presents choices that allow the consumer to consent or not consent to the use of Tracking Technology to collect Consumer Tax Information with the default being not consenting.

h. **“Section 7216”** means section 7216 of the Internal Revenue Code, 26 U.S.C. § 7216 and its related regulations, 26 C.F.R. § 301.7216-1 to -3, as amended and interpreted in Revenue Rulings or other Internal Revenue Service or Treasury Department guidance.

i. **“TaxAct”** means Defendant, its successors and assigns and, if any, its subsidiaries.

j. **“Third Party”** means any individual or entity other than Defendant and its Auxiliary Service Providers. For the avoidance of doubt, a consumer is not a Third Party with respect to that individual’s Consumer Personal Information or information derived from a tax return filing submitted by that consumer, including married joint filers.

k. **“Tracking Technology”** means a Third-Party script or code on a website used to gather Consumer Tax Information about users as they interact with the website for any purposes other than the preparation of a tax return or the provision of auxiliary services by an Auxiliary Service Provider.

l. **“Unique Identifier”** means a natural person’s full name, first initial and last name, or other unique identifier (expressly including a Meta Pixel) or combination of identifiers that permits the identification of that person by a Third Party, including

by deanonymization of pseudonymous data by reasonably available commercial means.

INJUNCTIVE RELIEF

2. With respect to the Business, TaxAct shall not disclose to Third Parties any Consumer Tax Information collected through use of Tracking Technologies in the Business, unless it has obtained Express Consumer Consent or it is permitted by Section 7216 or any other state or federal law.

3. With respect to the Business, TaxAct shall maintain a written information security program for the Business (“Information Security Program”) consisting of policies and procedures, consistent with applicable state and federal laws and industry norms and practices, reasonably designed to protect the security, integrity, and confidentiality of Consumer Personal Information that TaxAct collects, stores, and/or transmits in the Business.

4. The Information Security Program shall be documented and shall contain administrative, technical, and/or physical safeguards appropriate to:

- a. The size and complexity of TaxAct’s operations;
- b. The nature and scope of TaxAct’s activities; and
- c. The sensitivity of the Consumer Personal Information that TaxAct collects, stores, and/or transmits.

5. The Information Security Program shall include requirements that, with respect to the Business, TaxAct uses reasonable efforts to collect and share Consumer Personal Information consistent with the lawful purposes of the Business.

6. With respect to the Business, TaxAct shall provide notice of its consumer privacy notice through a hyperlink on the homepage of any website owned or controlled by TaxAct in

connection with the Business that is in the same language(s) used on the homepage containing the link. The notice shall be clear and conspicuous, and consistent with all applicable state and federal requirements.

7. With respect to the Business, TaxAct shall update its online privacy notice to reflect material changes to TaxAct's Consumer Personal Information practices as soon as practicable in advance of those changes taking effect.

8. The terms of injunctive relief mandated by Paragraphs 2 through 7 shall expire five years from the Effective Date of this Consent Judgment.

COOPERATION

9. TaxAct shall provide the Missouri Attorney General's Office with reasonable cooperation with respect to TaxAct's use of Tracking Technologies. Such cooperation shall include:

- a. Using reasonable good faith efforts to provide reasonably available and complete productions of TaxAct's contracts and written communications with providers of any Tracking Technology used by TaxAct (expressly including the Meta Pixel) from existing document collections within 60 days without the need for formal process;
- b. Providing the Missouri Attorney General, upon reasonable request but without the need for formal process, with non-privileged factual information related to TaxAct's use of Tracking Technology (expressly including the Meta Pixel); and
- c. If requested by the Missouri Attorney General, but without the need for formal process, attending, on reasonable notice, any legal proceedings and answering any

inquiries into non-privileged material related to TaxAct's use of Tracking Technology (expressly including the Meta Pixel).

MONETARY RELIEF

10. Within thirty (30) days of the Effective Date, TaxAct shall pay One Hundred and Ninety-Five Thousand Dollars (\$195,000.00) to the State of Missouri. The money received by the State of Missouri pursuant to this paragraph may be used for any purposes that may include, but are not limited to, recoupment of attorneys' fees and other costs of investigation and litigation, or may be placed in, or applied to, the Missouri Merchandising Practices Fund for future consumer protection or privacy enforcement, or for other uses permitted by law, at the sole discretion of the Missouri Attorney General.

RELEASE

11. Following full payment of the amounts due to the State under this Consent Judgment, the Missouri Attorney General shall hereby release and discharge TaxAct from all civil claims, complaints, suits, or causes of action that the Missouri Attorney General brought or could have brought, in law or in equity, that arise out of, relate to, or are based on any action or inaction by TaxAct related to the Covered Conduct. Nothing contained in this paragraph shall be construed to limit the ability of the Missouri Attorney General to enforce the obligations that TaxAct has under this Consent Judgment. The Missouri Attorney General covenants not to bring any proceeding arising from, relating to, or filed in connection with the Covered Conduct.

12. Nothing in this Consent Judgment shall be construed to: (a) create, waive, or limit any private right of action; or (b) excuse or exempt TaxAct from complying with any state or federal law, rule, or regulation in the future.

GENERAL PROVISIONS

13. As inducement for the Missouri Attorney General to enter into this Consent Judgment, and for the release provided herein, TaxAct represents and warrants since at least as early as January 2023 that it has not intentionally disclosed to Third Parties any Consumer Tax Information collected through use of Tracking Technologies.

14. Nothing contained in this Consent Judgment is intended to be, and shall not in any event be construed or deemed to be, an admission or concession or evidence of any liability or wrongdoing whatsoever on the part of TaxAct or of any fact or violation of law, rule, or regulation. This Consent Judgment is made without trial or adjudication of any alleged issue of fact or law and without any finding of liability or wrongdoing of any kind. TaxAct enters into this Consent Judgment for settlement purposes only.

15. Nothing in this Consent Judgment shall be construed as relieving TaxAct of the obligation to comply with all applicable state and federal laws, regulations, and rules, nor shall any of the provisions of this Consent Judgment be deemed to be permission to engage in any acts or practices prohibited by such laws, regulations, and rules.

16. This Consent Judgment shall not be construed to waive any claims of sovereign immunity that Missouri may have in any action or proceeding.

17. If any portion of this Consent Judgment is held invalid or unenforceable, the remaining terms of this Consent Judgment shall not be affected and shall remain in full force and effect.

18. No modification of the terms of this Consent Judgment shall be valid or binding unless made in writing, signed by the Parties, and approved by the Court. However, the Parties may agree in writing, through counsel, to an extension of any time period specified in this

Consent Judgment, or to a change in the notice provisions set forth in Paragraph 23, without a court order.

19. Nothing in this Consent Judgment shall provide any rights to or permit any person or entity not a party hereto, to enforce any provision of this Consent Judgment. No person or entity not a signatory hereto is a third-party beneficiary of this Consent Judgment. Nothing in this Consent Judgment shall be construed to create, affect, alter, or assist any private right of action that any consumer or other third-party may hold against TaxAct.

20. TaxAct stipulates the jurisdiction of this Court for the purpose of approving, modifying, or enforcing this Consent Judgment.

21. The Parties hereby acknowledge that their undersigned representative or representatives are authorized to enter into and execute this Consent Judgment. Both Parties have been represented by legal counsel and have been advised by their respective legal counsel of the meaning and legal effect of this Consent Judgment.

22. Any signatures by the Parties required for entry of this Consent Judgment may be executed in counterparts, each of which shall be deemed an original, but all of which shall be considered one and the same stipulated Consent Judgment. One or more counterparts of this Consent Judgment may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart thereof.

23. Any notices or other documents required to be sent pursuant to this Consent Judgment shall be sent to the following addresses via first class and electronic mail. Any party may update its designee or address, or method of delivery, by sending written notice to the other party informing them of the change.

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For the Missouri Attorney General:

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Respectfully submitted,


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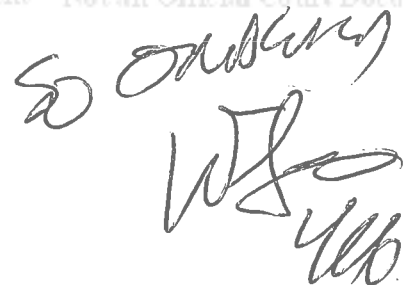


EXHIBIT 4

TaxAct Terms of Service and License Agreement

Last Updated: November 17, 2020

This Terms of Service and License Agreement ("this Agreement") is a legally-binding contract between TaxAct, Inc. ("TaxAct", "we", "us", or "our") and you ("you", "your", or "user"), a visitor or user of TaxAct's websites, mobile applications, online and offline tax return preparation products, and related services, and, if selected by you, TaxAct's electronic filing services (collectively, the "Services") for the Services related to the then-current tax filing year at the time this Agreement is accepted or amended.

You may not use the Services until you have read and agreed to this Agreement. By using the Services, you indicate your unconditional acceptance of this Agreement. If you do not accept this Agreement, you must terminate your use of the Services.

A "registered user" is a user from whom TaxAct has received the information necessary to permit such person to print or electronically file a tax return prepared using the Services and who complies with the terms and conditions of this agreement.

Ownership; Limited License; Copyright & Trademark Ownership.

The Services and all related text, graphics, images, photographs, videos, illustrations, computer code, and other information, materials and content contained in the Services or provided by TaxAct in connection therewith (collectively, "Content") are owned by or licensed to TaxAct and are protected under both United States and foreign laws. Except as explicitly stated in this Agreement, TaxAct and its licensors reserve all right in and to the Services and Content.

Limited License to Services.

Subject to your continued compliance with this Agreement, including payment of any applicable fees, you are hereby granted a limited, nonexclusive, nontransferable, non-sublicensable, revocable license to access and use the Services for your personal purposes. You may only use the TaxAct tax preparation software (whether online, downloaded, or via mobile application) to prepare one valid and complete tax return per applicable service fee paid and, after proper registration and any applicable payment, to file electronically and/or print such tax return. Unless you have purchased a license to one of TaxAct's Professional products, you will not use the Services for commercial purposes, including, but not limited to using the Services to prepare tax returns, schedules or worksheets for others as part of a service offering.

Limited License to Content.

Subject to this agreement, you are hereby granted a limited, nonexclusive, nontransferable, non-sublicensable, revocable license to electronically copy and print portions of Content to hardcopy for the sole purpose of your personal, non-commercial use in researching and making a decision to purchase Services. Any other use of the Content—including reproductions other than specified, modifications, distribution, or republication—without the prior written permission of TaxAct is strictly prohibited.

Restrictions.

The license granted to you is subject to this Agreement and does not include any right to (a) sell, mirror, frame, resell or commercially use our Services or Content; (b) copy, reproduce, distribute, publicly perform or publicly display any Services or Content; (b) modify, or create derivative works based on, the Services or Content; (c) remove or alter any proprietary rights notices or markings on or in the Services or Content; (d) use any data mining, robots or similar data gathering or extraction methods in relation to the Services or Content; (e) use our Services or Content other than for their intended purposes; (f) transmit any viruses, malware, or other malicious code or software through the Services or otherwise interfere or attempt to interfere with the normal operation of the Services; (g) attempt to gain unauthorized access to TaxAct's or any third party's systems, networks, or data; (h) use the Services to transmit any fraudulent information, create any false identity, or misrepresent your identity; or (i) otherwise use the Services or Content in violation of any applicable law. Any use of our Services or Content other than as specifically authorized herein, without our prior written permission, is strictly prohibited and will terminate the permissions granted in this Agreement.

Trademarks

TaxAct® and the associated logos and any other TaxAct service names, logos or slogans that may appear on the Services are trademarks of TaxAct and our licensors and may not be copied, imitated or used, in whole or in part, without our or the applicable trademark holder's prior written permission. You may not use metatags or other "hidden text" utilizing "TaxAct" or any other name, trademark or product or service name of TaxAct. In addition, the look and feel of the Services, including, without limitation, all page headers, custom graphics, button icons and scripts, constitute the service mark, trademark or trade dress of TaxAct and may not be copied, imitated or used, in whole or in part, without our prior written permission. All other trademarks, registered trademarks, product names and company names or logos mentioned on the Services are the property of their respective owners and may not be copied, imitated or used, in whole or in part, without the permission of the applicable trademark holder.

User Responsibility

You agree that you are responsible for submitting accurate and complete information while preparing your tax return and for reviewing your tax return for indications of obvious errors prior to electronically filing or printing your return. TaxAct may, but is under no obligation to, make certain non-substantive (e.g., formatting) changes to your return in conformance with various e-filing requirements and standards. You are also responsible for acquiring and maintaining all equipment, computers, software and communications or Internet services (such as data or long distance phone charges) relating to your access and use of the Services, and for all expenses relating thereto (plus applicable taxes). You must use your valid form of payment to pay all fees and charges related to the Services and, except as otherwise provided herein, all fees and charges are non-refundable. You are responsible for meeting any tax filing deadlines. We cannot guarantee how long it will take to complete and file your return, so you are responsible for preparing your return early enough to ensure it can be filed before any applicable deadlines.

TaxAct may offer you the ability to use certain informative tools, including, without limitation, for example, a tax estimator/calculator, interview questions related to life events, or a deduction maximizer. You acknowledge and agree that these tools are provided merely as a convenience to our users, and that you retain ultimate responsibility for ensuring the accuracy and completeness of any information you submit while using the

Services. The deduction maximizer is intended to highlight certain commonly-used deductions for filers listing a particular occupation. It is solely your responsibility to determine, based on your specific circumstances, if such deductions apply to you and if other deductions, that may not have been highlighted by the tool, may apply to you.

You are the only person authorized to use your user identification and password, and you shall not permit or allow other people to have access to or use the same. You are responsible for maintaining the confidentiality of your user identification and password. You are responsible for any actions taken using your user identification and password. You are responsible for ensuring that all information in your account, including without limitation your contact information, are and remain at all times complete and accurate.

You acknowledge and agree that are solely responsible for all content, data, and information submitted by your user identification into the Service, including, without limitation, content, data, and information relating to third parties. You hereby indemnify and hold harmless TaxAct from and against any third party claims, liabilities, costs and expenses, including attorney's fees, related to such content, data, and information submitted by you. You further acknowledge and agree that you are responsible for implementing and responding to any third party requests to modify, update, delete, or otherwise alter any content, data, and information that you have submitted into the Service.

To the fullest extent permitted by applicable law, TaxAct has no obligation to store or maintain any information you provide to it, and you are responsible for printing or saving a copy of your tax return for your records.

Electronic Communications

By creating a TaxAct account, you consent to receive electronic communications from TaxAct (e.g., SMS or text messaging, telephone, via email, or by posting notices on our Services). These communications may include notices about your account (e.g., authentication, payment authorizations, password changes and other transactional information) or legal notices and are part of your relationship with us. You agree that any notices, agreements, disclosures or other communications that we send to you electronically will satisfy any legal communication requirements, including, but not limited to, that such communications be in writing.

You can cancel the SMS service at any time. Just text "STOP" to the short code. After you send the SMS message "STOP" to us, we will send you an SMS message to confirm that you have been unsubscribed. After this, you will no longer receive SMS messages from us. If you want to join again, just sign up as you did the first time and we will start sending SMS messages to you again. If you are experiencing issues with the messaging program, you can reply with the keyword HELP for more assistance, or you can get help directly at SMS@taxact.com or (319) 373-3600.

Carriers are not liable for delayed or undelivered messages. As always, message and data rates may apply for any messages sent to you from us and to us from you. You will receive messages as described above and every time you sign in you choose not to remember the device. If you have any questions about your text plan or data plan, it is best to contact your wireless provider.

If you have any questions regarding privacy, please read our privacy policy at <http://www.taxact.com/privacy-policy>.

Electronic Filing Services

If you choose to file your return electronically, your tax return will be forwarded to TaxAct's Electronic Filing Center, where it will be converted to and stored in a standardized format and, then, transmitted to the applicable federal or state taxing authority. TaxAct cannot guarantee that the taxing authority will accept your return, as rejections may occur due to circumstances beyond TaxAct's control (e.g., incorrect user information, malfunction of the taxing authority's system, etc.). Your e-filing fee, if any, is non-refundable even if your return is rejected by the taxing authority. You are responsible for verifying the status of your return to confirm that it has been received and accepted by the applicable taxing authority and, if necessary, for filing it manually. The Internal Revenue Service (IRS) requires TaxAct to provide notification to it of information relating to your use of the Services, such as notice of your electronic filing of your tax return, of the Internet Protocol (IP) address and other device information of the computer from which your return originated, and of whether your email address was collected. By using the Services to prepare and submit your tax return, you consent to the disclosure to the IRS and any other tax authority, revenue authority, or other governmental authority with jurisdiction of all information pertaining to your use of the Services. You agree that TaxAct is permitted to access and use any tax return and other information provided by you to perform the Services and, if necessary, to access such information to obtain contact information in order to provide notifications relating to the Services to you.

Modifications

TaxAct has the right at any time and for any reason to modify or discontinue the Services or any aspect or feature of the Services, including but not limited to their Content, functionality or hours of availability, the equipment needed for its access or use, or pricing. In addition, TaxAct reserves the right, at any time, to change the terms of this Agreement. If TaxAct makes changes to this Agreement, TaxAct will provide you with notice of such changes, such as by sending an email, posting a notice on the Services or updating the date at the top of this Agreement. Your continued use of the Services after any such changes will confirm your acceptance of the then-current version of this Agreement. For avoidance of doubt, TaxAct's posting a notice or updating the terms of this Agreement for the then current tax year will not amend or modify the terms for any prior tax year unless the terms expressly indicate prior year terms are also amended or modified. If you do not agree with any such changes, you must immediately discontinue your use of the Services.

Satisfaction Guaranteed for Registered Users

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Contact

Please refer to <https://www.taxact.com/support/request> if you would like to contact us regarding this Agreement or the Services or Content.

EXHIBIT 5

How Much is Privacy Worth Around the World and Across Platforms?

March 2020

Abstract

Using carefully designed discrete choice surveys, we measure individuals' valuation of online privacy across countries (United States, Mexico, Brazil, Colombia, Argentina, and Germany) and data types (personal information on finances, biometrics, location, networks, communications, and web browsing). We find that Germans value privacy most, compared to the U.S. and Latin American countries. Across countries, people most value privacy for financial (bank balance) and biometric (fingerprint) information. People had to be paid the least for permission to receive ads – respondents in Argentina, Colombia and Mexico would even *pay* for them – followed by location privacy. We discuss privacy policy implications.

1. Introduction

The prevalence and value of data in virtually all sectors has grown tremendously, with some even declaring it the world's most valuable resource (Economist, 2017). However, along with this growth in volume and value has come increased importance in getting policy right—balancing privacy preferences with benefits that derive from the use of data. Such cost benefit analyses are currently difficult, if not impossible, due to the lack of market data that reveal how much people truly value different elements of privacy or the services they receive in exchange for use of that data. Indeed, the prevalence of nonmarket goods and services in the digital economy is a major obstacle to coherent policymaking. Nevertheless, issues ranging from high-profile data breaches (e.g., Equifax, 2017) and Facebook's Cambridge Analytica scandal to a general unease about access to personal information have made data privacy a matter of increasing concern for governments and businesses around the globe.

Despite widespread agreement on the need for some kind of data privacy oversight, agreement on what that means remains elusive. The typical comparisons involve the United States vs. Europe and the State of California. As of this writing, the U.S. government is discussing legislation and regulation beyond its current policy of imposing punishments and consent decrees after finding that a firm has violated existing laws or user agreements. By contrast, Europe has implemented a comprehensive set of data privacy regulations known as the General Data Protection Regulation (GDPR). The State of California passed a law known as the California Consumer and Privacy Act (CCPA), which is scheduled to take effect in January 2020. With the legal and regulatory landscape fragmented, it is not surprising that data practices by firms are similarly inconsistent. Several Latin American countries, including Brazil,

Colombia, Mexico, and Argentina also either have or are considering privacy rules.¹ Firms vary on how they deal with data privacy, and third parties distribute rankings of the best and worst firms for protecting data privacy (e.g., eWeek, 2017).

With much disagreement on best public and private practices, and much at stake, it is unfortunate and perhaps surprising that very little empirical evidence exists on how much people value different elements of data privacy. Even less, if any, empirical evidence explores how those values differ across countries. In addition, the evidence that does exist is often qualitative in nature, focusing on opinions regarding data privacy in general but lacking quantification of this general measure, or for any particular type(s) of data.

In this paper, we estimate how much people value a range of highly relevant aspects of privacy and how these values vary across countries, data types, and platforms. Quantifying the value of privacy is necessary for conducting any analysis of proposed privacy policies, both public and private, as these values are necessary for estimating policy benefits. Because any such regulations will come with costs, it is important to be reasonably certain that proposed rules do not cost more than consumers and constituents would themselves want imposed.

If privacy values differ across countries or regions, then acceptable rules and regulations may similarly differ across regions. If, for example, we were to discover that Europeans value certain elements of their privacy more than the U.S., then a strict privacy regime like that created by GDPR might yield net benefits in Europe but not America. While we have a general sense, based on its history of relevant laws, that Europeans place a higher value on data privacy than do Americans, even that basic information is lacking for Latin American countries. Do Latin Americans value data privacy even more than do Europeans, or do they value it even less than

¹ <https://www.tmf-group.com/en/news-insights/articles/2019/april/data-privacy-laws-across-latin-america/>

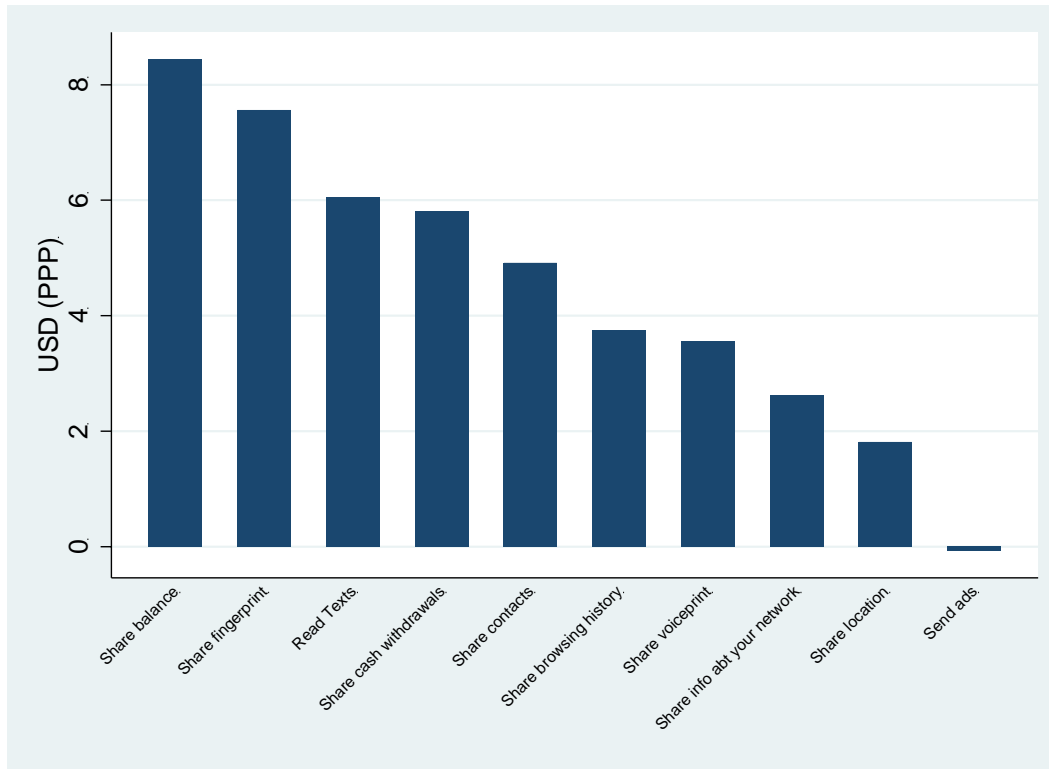
Americans? Do these preferences vary significantly across Latin American countries? The answers to these questions are crucial for generating coherent privacy policies that will yield the most benefits.

To measure how much consumers value different types of data privacy, we employed a battery of discrete-choice surveys—a trusted approach demonstrated to be far more reliable than open-ended surveys. This approach is especially relevant for data privacy valuation, given it quite closely mimics the types of choices individuals can make in real markets for personal data (e.g., Datacoup.com). We constructed four different survey structures, centered respectively on the respondent's wireless carrier, financial institution, smartphone, and Facebook account. Across the four survey structures, we measure values for a range of data privacy types, including personal information on: finances, biometrics, location, networks, communications, and web browsing. We administered each of these four different surveys across six different countries: the United States, Mexico, Brazil, Colombia, Argentina, and Germany.

On average across countries and platforms, people placed the highest value on keeping financial data, biometric (fingerprint) information, and texts private, as shown in Figure 1. Specifically, to allow a platform to share this information with third parties, expressed in USD based on purchasing power parity (PPP) conversions, the platform would have to pay users \$8.44/month to share a bank balance, \$7.56/month to share fingerprint information, \$6.05/month to read an individual's texts, and \$5.80/month to share information on cash withdrawals. By contrast, people had to be paid only \$1.82/month to share their location and essentially nothing to be sent ads via SMS.²

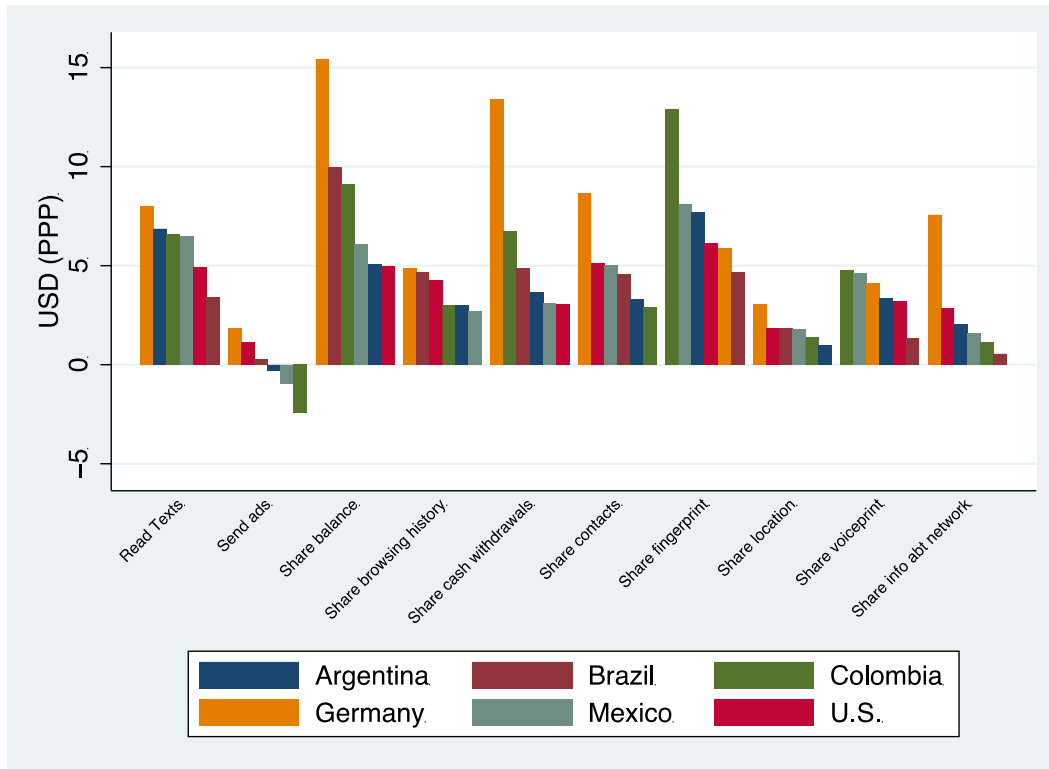
² These are estimates of willingness-to-accept (WTA).

Figure 1: Average Payment Consumers Would Demand for Permission to Share Data Across Countries and Platforms



These averages mask significant differences across countries. In general, people in Germany valued privacy more than people in the U.S. and Latin America. Figure 2 contains the averages by country. This figure shows what many believe to be true, which is that Germans tend to value their privacy more than others. However, this summary finding is not true across the board and is largely driven by Germans' strong preferences for financial privacy. For example, for fingerprint information – which people on average across countries value the second-highest in the list of data types we study – German's value is well below that of several other countries. Another noteworthy result is not just that people value avoiding targeted ads relatively little, but that people in Latin American seem to appreciate them—in Colombia, for example, people are willing to pay about \$2.50/month to see ads.

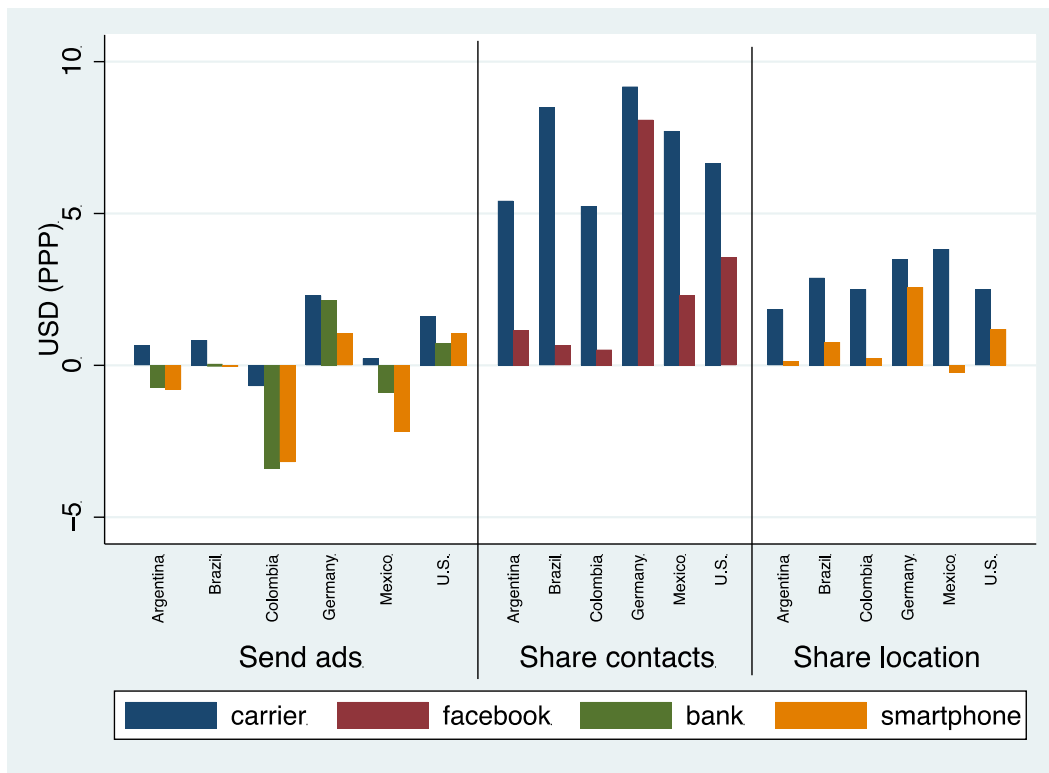
Figure 2: Average Payment Consumers Would Demand for Permission to Share Data to Share Data Across Countries by Feature



We are also able to examine how values may differ across platform. In principle, if a user is giving an organization the right to share their data, then these values should not differ across platform since presumably each platform could share with the same third parties. In reality, though, people may have different levels of trust in different platforms or believe that data sharing practices differ. We do, in fact, see some differences across platforms for the same piece of data. The surveys did not ask about the same types of information for each platform, so our ability to compare across platforms is thus constrained. Figure 3 shows the available comparisons by platform and country. The figure shows that in all six countries, people must be paid more by their wireless carrier than other platforms to be sent ads, share contact information, and share location data. While people are more willing to share contact information with Facebook than with their wireless provider across countries, the amount Facebook would have to pay users for the right to share contact

information varies significantly across countries. Germany again shows its strong taste for privacy, with the U.S. in a distant second place, with Facebook needing to pay those users about \$8/month and \$3.50/month, respectively, to share their contact information. Across the Latin American countries, however, values are generally much lower: ranging from \$2.30/month in Mexico to as little as \$0.52/month in Colombia.

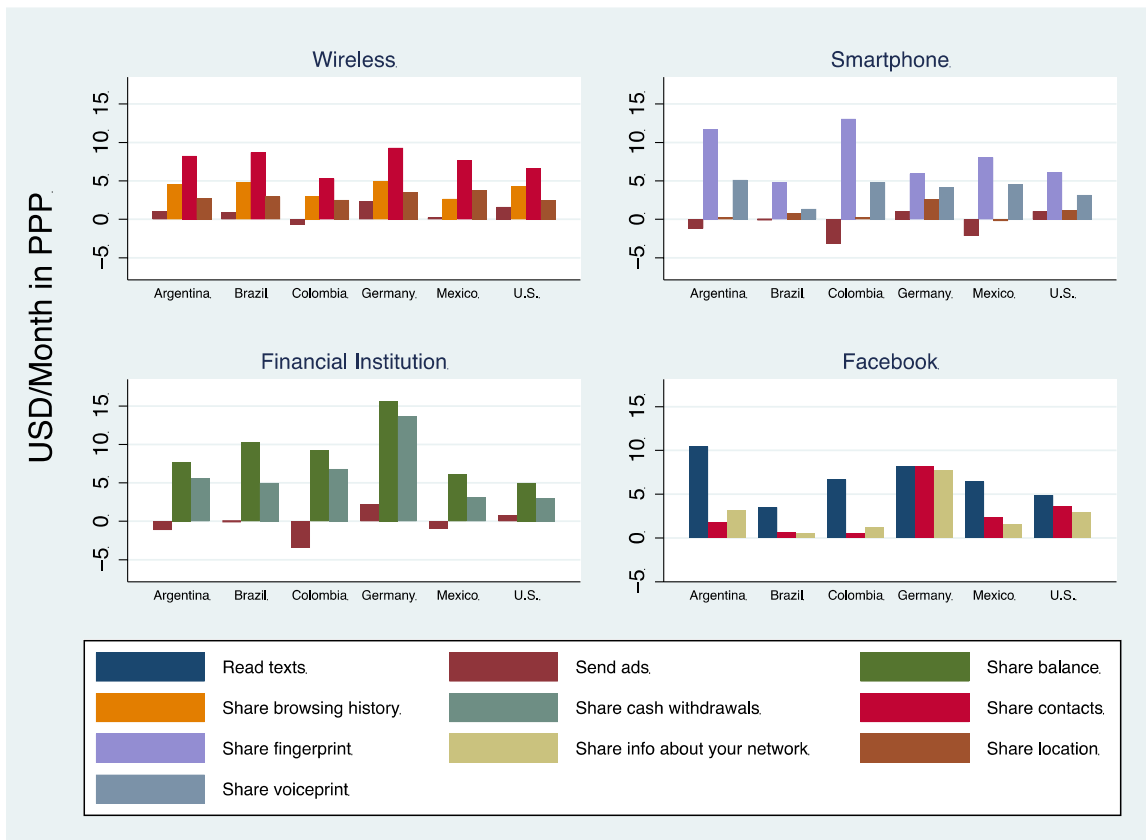
Figure 3: Average Payment Consumers Would Demand for Permission to Share Data Across Platforms and Countries



Overall (Figure 4), key international differences in relative rankings are most evident with regard to ads, with Latin Americans generally showing a preference for, rather than aversion to, ads on both their smartphone and from their financial institution – all in contrast to the U.S. and Germany. In absolute terms, we see consumers in all countries exhibiting relatively high values for privacy of financial information, with Germans having an especially high value. After accounting for Germany’s high preference for financial privacy, we also see notable

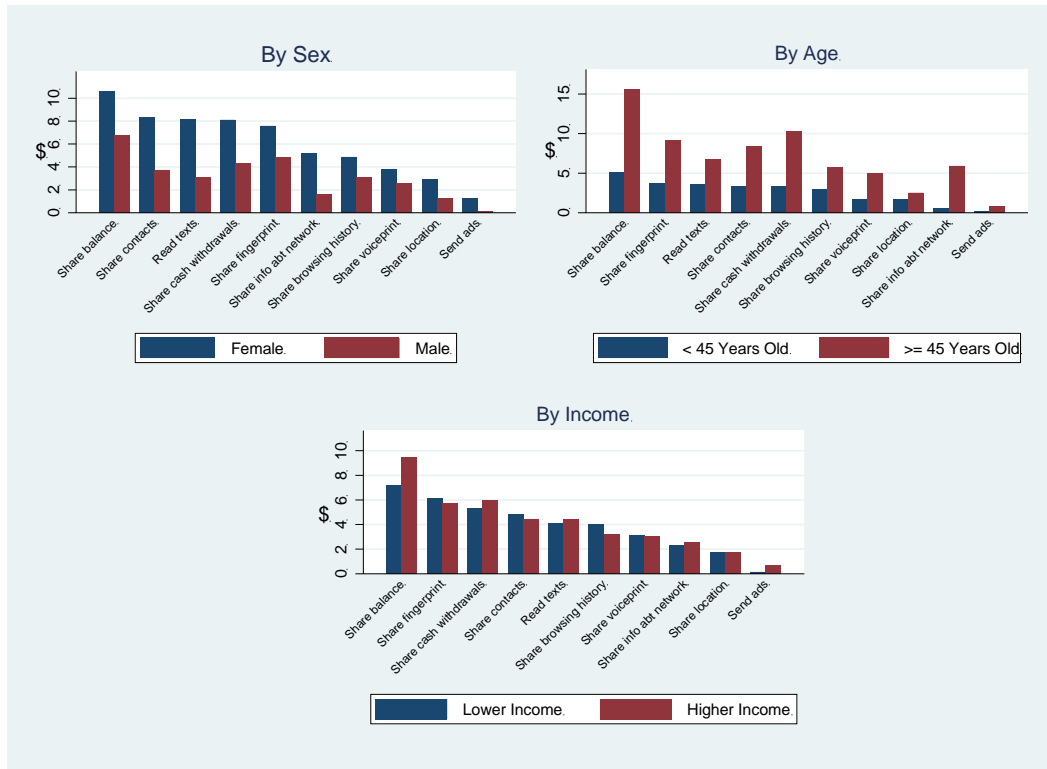
comparability in the magnitude and relative rankings in WTA for privacy across countries, with some exceptions (e.g., network information in Mexico and fingerprint information in Colombia). Additional analysis indicates that within-country variation in values is largely similar for each of the six countries, with Germans often exhibiting more homogeneous preferences compared to the others.

Figure 4: Summary of Results



We also find consistent differences by sex in privacy valuations. Across platforms, data types, and countries, women value privacy more than men do. Similarly, older people value privacy higher than younger people. We find no consistent differences in privacy valuations by income. Figure 5 shows these estimates averaged across platforms and countries.

Figure 5: Average Payment Consumers Would Demand for Permission to Share Data by Sex, Age, and Income



These results are largely robust to a randomly controlled treatment in the form of a leading statement about the value of data collection by these entities. Preferences for privacy are generally unaffected by such a prompt, suggesting that their values of online privacy are reasonably stable and not easily influenced.

Our findings have several implications. The striking consistencies in relative rankings of the value of online privacy across our six countries suggests that both public and private policies should offer similar *relative* privacy protections if facing similar costs for protection. However, differences in how much people value privacy of different data types across countries suggests that people in some places may prefer weaker rules while people in other places might prefer stronger rules. How much people value some data types does not vary much across countries,

however. In particular, people value the privacy of their contact information and texts fairly similarly across countries.

The generally similar within-country variation in values has interesting implications for both firms and governments. For firms, this suggests that, to the extent that tiered privacy protections may be economically sensible for one country, it is likely economically sensible for all in our group. With respect to government policies, these results suggest that, when viewed in economic terms, the distribution of support for various protections is likely similar across countries. The notable exception in both cases is Germany, which appears to have more homogeneous preferences regarding online data privacy.

2. The Value of Privacy

The empirical analysis in the paper measures the value of online privacy across different types of privacy, countries, and people within countries. In this section, we provide context for our empirics by discussing various existing methods for measuring the value of privacy, and determinants of such value.

2.1. Measuring the Value of Privacy

Measuring the value of data privacy can be challenging for myriad reasons. For starters, “privacy” in the abstract does not have a specific meaning. This problem is reminiscent of challenges in valuing the environment, such as the value of having clean oceans or clean air. A solution is to quantify data privacy in general, such as the value of avoiding a major data breach. However, valuing something of this magnitude can be difficult, often relying on much-critiqued contingent valuation approaches.

A range of prior studies have attempted to measure individuals' monetary valuations for particular types of privacy, many in the form of experiments where participants faced actual or hypothetical privacy and financial trade-offs. The majority of these studies focused on individuals' willingness-to-accept (WTA) payment in exchange for disclosing otherwise private information, as we do below, while a few examine willingness to pay (WTP) to keep personal information private (see, e.g., Huberman, Adar, and Fine 2005, Cvrcek et al. 2006, Tedeschi 2002, Wathieu and Friedman 2007, Savage and Waldman 2013, Hann et al. 2007, Tsai et al. 2011, Jentzsch, Preibusch, and Harasser 2012, Beresford, Kübler, and Preibusch 2012). Additional studies have used surveys and other market data to generate measures for the value of privacy (e.g., Goldfarb and Tucker 2012).

Measures of general sentiments in stated-preference surveys often indicate a high valuation of privacy, at least in the U.S. For example, Rainie et al. (2013) note a 2013 Pew Research Center study that finds 68 percent of US adults believed current laws are insufficient in protecting individuals' online privacy, and Madden and Rainie (2015) find that 93 percent of U.S. adults believe that being in control of who can get information about them is important. Nevertheless, the results of the aforementioned measures for specific types of privacy indicate that the value of privacy notably varies with context and personal traits (Acquisti, Brandimarte, and Loewenstein 2015). Hence, prior work suggests we might expect meaningful variation in the value of online privacy across different contexts, individuals, and even countries. Our analysis examines and quantifies this type of variation for a set of highly relevant data types and platforms across several countries.

2.2. Determinants of the Value of Privacy

As noted above, prior work suggests context and personal traits are important determinants of the value of privacy. A particularly relevant component of personal traits includes cultural values, defined as a set of strongly held beliefs that guide attitudes and behavior and that tend to endure even when other differences between countries are eroded by changes in economics, politics, technology, and other external pressures (Hofstede 1980, Long & Quek 2002). Milberg et al. (2000) used a formative index to assess how four of Hofstede's (1980, 1991) cultural values indices – Power Distance Index (PDI), Individualism (IND), Masculinity (MAS), and Uncertainty Avoidance Index (UAI) – influence information privacy concerns. They found that concerns about information privacy were positively associated with PDI, IND, and MAS, and negatively associated with UAI. Hence, this prior work points to differences in general sentiment across countries but leaves open the question of whether and how such differences materialize for specific types of (online) privacy.

3. Survey Design

The surveys we construct measure individuals' WTA to give up various forms of privacy, rather than their WTP to retain privacy. The choice to measure WTA rather than WTP is largely driven by the fact that several proposals (and existing marketplaces, such as DataCoup) involve firms paying consumers for their data rather than consumers paying firms to keep their data private.³ For this reason, we believe WTA is arguably the more appropriate measure relative to WTP.

³ A substantial literature finds that WTA estimates tend to be higher than WTP estimates, suggesting that our estimates may be considered an upper bound. (See Chapman, et al. 2019 for a comprehensive discussion).

To estimate WTA to give up various forms of privacy, we collect and analyze data from four separate surveys that employ repeated discrete choice experiments (DCEs). The four surveys pertain to respondents' wireless carrier, Facebook use, checking account at a bank, and smartphone. Because we are interested in comparing results across countries, the survey had to be in four languages given our country choices: English, Spanish, Portuguese, and German. We designed the survey in English, paid to have it translated into each language, and then had native speakers review the translations and compare to the English to ensure not just proper translation but also that the same meanings and information were conveyed to the respondent.

Prior work has shown that DCEs mitigate the reporting inaccuracy of stated-preference data (Carare et al. 2015). Even if hypothetical bias may potentially overestimate demand, the estimation for changes in feature levels is statistically unbiased, at least for WTP estimates (Ding et al. 2005; Miller et al. 2011).⁴ A reliable DCE method, however, requires a careful design to cause respondents to answer truthfully, as if they are making a choice in the real market (Ben-Akiva et al. 2016). We thus structure the survey in three parts. We first collect relevant demographic information in order to conduct comparative analyses and to ensure a representative sample according to region, age, race, and sex. Demographics we collect include sex, age, proximity to a city, and household income.

The second part of the survey collects information regarding each respondent's current use of online services and connected devices that may collect personal information. We then provide respondents with cognitive buildup by describing each of the relevant features about which we

⁴ Specifically, Miller et al. (2011) attribute the upward bias to the non-incentive-aligned feature of the choice experiment. Participants do not need to actually pay for their choice in the hypothetical experiment and hence understate the possibility of choosing "none." The result is the biased demand intercept, but not the slope parameters, so WTP estimations remain valid in their test. In the context of Internet service, an incentive-aligned design is not possible due to high product cost, e.g. we cannot realistically offer a fiber-level service if no such infrastructure exists. On the other hand, we suspect that the Internet has become a necessity for most households, even at a reasonably high price. The tendency to choose "none" is likely to be low, especially given we are surveying current subscribers.

will inquire in the third part of the survey. The cognitive buildup is in the Appendix, and was carefully vetted by several focus groups.

Based on interactions with focus groups, we recognized many respondents may not be aware of how much data they are sharing currently. For example, some showed an initial aversion to sharing their voiceprint, until they were made aware that home devices like the Amazon Echo (via Alexa) and Google (via Assistant) may collect this information. We included examples in areas where lack of awareness of data sharing seemed particularly relevant.

The final part of the survey consists of repeated choice experiments. Here, we mimic the real market choice situation while exogenously varying our variables of interest – particularly, prices, exposure to ads, and the types of data the user shares. In the discrete choice experiments (DCEs), individuals make a series of choices over hypothetical alternatives, defined by a set of attributes. Since our primary goal is to estimate the WTA to give up specific elements of privacy, the core attributes are price and various measures of data privacy. We provide the descriptions and levels for each survey in Tables 1a-1d.

[Tables 1a-1d about here]

In principle, we could include other common attributes for each survey. However, our surveys are not designed to elicit choices over the products/services themselves (e.g., choices over different smartphones or checking accounts). Rather, for a given product or service, our respondents are asked to make choices about corresponding privacy packages. Such choices are not inconsistent with actual market decisions. For example, the firm Datacoup⁵ actively pays

⁵ Datacoup.com

individuals for access to their digital data, so a privacy market already exists. We also note that the specific types of privacy we consider were generally motivated by existing policies, such as GDPR and CCPA.

Each respondent is presented with ten different choice questions, a common volume for such surveys at this level of complexity. In addition, to mitigate any endogeneity concern, we explicitly state that any omitted feature should be assumed to be identical across all alternatives. In other words, any omitted attributes are controlled for, i.e., held fixed, when making the comparison. If the survey involves a product or service already owned by the respondent, we specifically instruct them to treat all unmentioned features as being identical to the product or service they currently have.

Finally, for each of the four surveys, we randomize across two versions. The first is as described above. The second includes a statement at the top of the feature descriptions page, which highlights the potential benefits of third-party data access, particularly with regard to targeting advertising. In our analysis, we examine whether the presence of such a statement materially impacts the value respondents indicate for their data privacy.

We provide the content of each survey (in English, i.e., the U.S. version) in the Appendix, including an example choice question and an indicator for the randomized statement concerning data value for advertising.

We conclude this subsection with a brief description of our process for arriving at an optimal design, i.e., the construction of the levels for each attribute presented to each respondent for each choice. For a statistically optimal design, we rely on D-optimality (Zwerina et al. 2010), which we implement in the statistical software program SAS. We use a fractional factorial design

to capture the main effects.⁶ Our relative D efficiency is 72.5%, 82.4%, 82.6%, and 72.4%, for the finance, smartphone, carrier, and Facebook surveys, respectively. The chosen design generates 150 choice questions for the smartphone and carrier surveys and 50 choice questions for the financial and Facebook surveys. The latter two have fewer features, and so require fewer variants. We grouped the choice questions into sets of ten (which we call versions), with four alternatives for the smartphone and carrier surveys and three alternatives for the financial and Facebook surveys. We randomly vary the alternatives for each choice, and randomly distribute the versions across respondents.

4. Data

Our data come from ResearchNow's (RN)⁷ standing Internet panel across six countries: Argentina, Brazil, Colombia, Germany, Mexico, and the United States. We requested 325 completed surveys per type (smartphone, etc.), per description header (information about data use for advertising or not), per country. Hence, our total number of requested completed surveys is $4*2*6*325 = 15,600$. RN makes sure that the target sample sizes are satisfied. In our analysis, we also weight observations according to 2017 Census estimates for both age and sex⁸.

A qualified response requires the household respondent to be at least 18 years old. For the carrier, Facebook, and smartphone surveys, respondents were required to have a carrier subscription, a Facebook account, or own a smartphone, respectively. In all three of these surveys, the respondent also must have been the primary decision-maker for the relevant product or service.

⁶ We use SAS %mktruns and %mktex to produce candidate runs given our target sample size. We avoid dominated alternatives (i.e. better privacy and higher payment) by using the SAS %macro. We then evaluate and select the design by using SAS %choicoff.

⁷ Recently renamed "Dynata."

⁸ We note that none of our qualitative findings depend on this weighting, and the quantitative findings only change minimally, suggesting any selection in terms of who completes the surveys in each country is unlikely to be driving our main results.

For the financial survey, respondents were allowed to proceed even if they did not have a checking account.⁹

Appendix tables A1-A6 contain demographic distributions for each country, broken down by the four survey types.

5. Econometric Methods

To estimate values for privacy, we use a conditional logistic regression model (McFadden 1974; Greene 2012) to estimate utility parameters and ultimately calculate the WTA.

Let \mathbf{x}_{ijk} be a vector of attributes for alternative j in choice question k that individual i faces. A linear random utility model can be written as:

$$u_{ijk} = \mathbf{x}'_{ijk}\boldsymbol{\beta} + \varepsilon_{ijk} \quad (1)$$

We interpret the errors (ε_{ijk}) as individual idiosyncratic preference and assume that it is independently and identically distributed with type I extreme value distributions. With this assumption the probability for individual i to choose alternative j among, say, four alternatives in question k is then

$$\text{Prob}(Y_{ik} = j) = \frac{\exp(\mathbf{x}'_{ijk}\boldsymbol{\beta})}{\sum_{n=1}^4 \exp(\mathbf{x}'_{ink}\boldsymbol{\beta})} \quad (2)$$

Since we observe individual choices in each question, we are able to generate the likelihood function based on these probabilities. We then optimize the likelihood function with

⁹ Given the relatively large share of people without formal bank accounts in Latin America, we were concerned about excluding too many people with such a restriction and concluded that the questions were such that people could provide meaningful answers even if they did not currently have an account.

respect to β and obtain the estimated utility parameters for each attribute, clustering our errors on individuals.

The calculation of WTA for attributes relies on β . In our case, the attributes include the personal data whose values we intend to estimate and the services the person would receive in exchange for providing that information. For illustration, consider our survey focusing on wireless carriers. In this survey, we partition \mathbf{x}'_{ijk} into $[Price_{ijk}, Ads_{ijk}, Location_{ijk}, Browsing_{ijk}, Contacts_{ijk}]$, where each of the last four variables is a dummy variable equal to 1 if it is kept private and 0 otherwise. The corresponding β' is $[\beta_P, \beta_A, \beta_L, \beta_B, \beta_C]$. Using this formulation, the point estimate of WTA for giving up location data privacy, for example, can be monetized using the estimated β_P and β_L in the following formula:

$$WTA(\text{share location}) = -\frac{\beta_L}{\beta_P} \quad (3)$$

Finally, we estimate the variance of WTA by using a linear transformation of the variance-covariance matrix of β , also known as the delta method.

A key merit of using a survey is the ability to generate sufficient variation in our variables of interest and clean identification of the underlying parameters. The use of a hypothetical environment, however, may also induce unrealistic responses that generate bias. To minimize this possibility, we carefully designed our survey to elicit respondents' preferences and mimic the real market situation with respect to payments for data access. However, we are not actually collecting the private information we ask about (e.g., location data), nor are we providing an actual payment in return.

6. Results and Discussion

Tables A7-A10 contain our parameter estimates for all four surveys across all six countries. Tables 2a-2d then contain our valuation estimates, which we calculated as described in Section 5¹⁰.

[Tables 2a-2d about here]

To facilitate comparisons, we convert each estimate into U.S. dollars using purchasing power parity (PPP) conversion rates provided by the International Monetary Fund for October 2019. Although not a perfect means of comparison, it provides a clearer sense of relative valuations across countries.

Averaged across countries, people seemed most averse to sharing financial (particularly bank balance but also cash withdrawals) and biometric (fingerprint) information, and least averse to receiving ads and sharing their location (Table 3, last column). These results are sensible. Financial institutions are often subject to specific privacy laws above and beyond those other institutions must follow.¹¹ Although regulatory governance of biometrics is not particularly common yet, some have expressed concerns about sharing biometric data due to the inability to replace identifiers like fingerprints or faces if the data are compromised.¹² On the other end, it is also sensible that people are not particularly averse to receiving ads. Ads are, at worst, a nuisance and can be helpful.

¹⁰ Tables A11-A13 provide WTA comparisons across dichotomous breakdowns for sex, age, and income. These are preliminary findings that we intend to further explore in future research.

¹¹ See, for example, <https://www.ftc.gov/news-events/media-resources/protecting-consumer-privacy/financial-privacy>

¹² See, for example, <https://www.wired.com/2016/03/biometrics-coming-along-serious-security-concerns/>

We find that people, on average required payments of about \$9/month from their banks to for the right to share their balance and about \$7.50/month from their smartphone manufacturer to share their fingerprint information. At the other end of the spectrum, people placed very low value on avoiding ads and required payments of \$1.82/month for their location data. Interestingly, respondents were far less averse to sharing their voiceprint than their fingerprint, requiring nearly two times as much to share their fingerprint as their voiceprint. As shown below, this contrast is generally consistent across countries.

[Table 3 about here]

Across countries, Germans valued privacy more than people in the U.S. and Latin America, aligning with the widespread belief that Germans tend to value their privacy more than others.¹³ However, we see in Table 3 that this basic insight is not true across the board and is largely driven by Germans' high value of financial privacy. For example, for fingerprint information – which has the second highest average value – Germany's value is well below that of several other countries. Notably, the U.S. and Latin American countries place similar values on average, and even similar to Germany outside of financial information. We also note that people in Latin America actually appear to appreciate ads—in Colombia, for example, people are willing to pay about \$2.50/month to see ads. While we cannot tell the reason from the data, this could be due to

¹³ See, for example, <https://www.dotmagazine.online/issues/security/germany-land-of-data-protection-and-security-but-why>

differences in Latin American ads vs. Germany and the U.S. or differences in preferences for ads between Latin Americans compared to Germans and Americans.

We also see variation across countries for each type of data and platform. Table 4 shows privacy values disaggregated across country, data type, and platform.

[Table 4 about here]

For wireless carriers, we find a strikingly similar rank ordering of preferences across countries, with highest value for information on contacts, followed by browsing history, location, and ads. The range of values, however, is large and differs by country. Wireless providers in Germany would have to pay users \$2.30/month for the right to send them ads by text while wireless providers in the U.S. would have to pay \$1.63/month. In both countries, people would have to be paid four times by their wireless provider to allow the provider to share their contact information. While Germans generally place the highest value on information on contacts, browsing history, and location, it is by a relatively small margin, with notable similarity in magnitudes on the whole across countries.

We see the same international consistency in rank order for banks, with people placing higher values on checking balance compared to cash withdrawal information. Certain cross-country differences are stark for financial information. Germans stand out with high preference for privacy, requiring their banks to pay them \$15.43 and \$13.42 per month for the right to share information on their account balance and cash withdrawals, respectively. It is also notable that we see the starkest difference between Germany and the U.S. for banking information – the U.S.

respondents place the lowest value on both types of banking information (\$4.99 & \$3.03), with the Latin American countries all somewhere in between, e.g., \$3.30 for cash withdrawals in Mexico and \$9.96 for balance in Brazil. The value people place on avoiding ads was much lower across all countries—over \$2/month for Germany, about \$0.75/month for the U.S., and generally negative for the Latin American countries.

Respondents are more averse to having Facebook read their texts read than to the platform sharing information about their networks or contacts. Germans seemed particularly Facebook-averse, requiring the platform to pay them around \$8/month for the right to read their texts or share information about their contacts or network. By contrast, people in the U.S. required about \$5/month to allow access to their texts, \$3.50 to share information about their contacts, and \$3/month to share information about their networks. For Latin American countries, the numbers for texts are generally between those for the U.S. and Germany but lower than the U.S. for networks and contacts.

For smartphones, the rank ordering of privacy for different types of data is consistent internationally with, as might be expected, people valuing their biometric information far more than their location data or being sent ads. Latin Americans generally valued fingerprint data very highly, up to \$12/month. Privacy preference for location data was the opposite, with Latin Americans placing quite low values, even negative in one case, on keeping that information private.

In sum, key international differences in relative rankings are most evident with regard to ads, with Latin Americans generally showing a preference for, rather than aversion to, ads on both their smartphone and from their financial institution – in contrast to the U.S. and Germany.

In absolute terms, we see all countries exhibiting notable value for financial privacy, with Germany having an especially high value. After accounting for Germany's high value for financial information, we also see notable comparability in the magnitude and relative rankings in value for privacy across countries, with some exceptions (e.g., network information in Mexico and fingerprint information in Colombia). Lastly, for the two types of information we consider on multiple platforms (location and contacts), we see a notably higher values when it comes from the carrier than another source. While in principle ceding information privacy implies the same set of possibilities as to who ultimately will access it, this difference may imply a lower level of trust concerning what carriers will do with information they possess and can distribute.

We also collect demographic data about respondents, partly to ensure that the samples are representative, but also to allow us to make some comparisons across groups (see Tables A11 – A13). We find that women value privacy more than men do across privacy type, platform, and country without exception.

Additionally, older people generally value privacy more than younger people do. This finding is consistent with Goldfarb and Tucker (2012), who find that “Older people are much less likely to reveal information than are younger people.” There are two exceptions to the age generality in our results. First, a few cases in which point estimates for older people are larger than for younger people but are not statistically significant. The lack of statistical significance exists for sending ads in Brazil, Colombia, and Mexico on wireless carriers and in Brazil for smartphones, although the magnitudes follow the same pattern as others. Second, in Argentina, young people value their financial privacy in terms of sharing their bank balance or information on cash withdrawals more than old people, although the magnitude of the difference is small.

We find no consistent differences in privacy preferences across income.

In light of any lingering concerns about hypothetical bias or other data issues, we are able to cross-check our findings with those of Milberg et al. (2000) along with current measures for the cultural metrics they use (PDI, IND, MAS, and UAI).¹⁴ The key finding we attempt to cross-check is that, for occasions that one country has notably higher valuations for online privacy, that country is typically Germany. Further, by a small margin, the U.S. is second across all our measures. This finding generally aligns with the qualitative findings of Milberg et al. (2000). As noted in Section 2, they find that concerns about information privacy were positively associated with PDI, IND, and MAS, and negatively associated with UAI. Recent estimates for these cultural metrics indicate that Germany and the U.S. have the lowest scores (of the six countries) for UAI, and either the highest or near highest scores for IND and MAS, respectively. However, Germany and the U.S. have the lowest scores for PDI. Nonetheless, these measures are largely consistent with Germany and the U.S. having the highest WTA, particularly given Milberg et al. (2000) finds PDI to have the smallest impact on privacy concerns of the four cultural measures.

Beyond our international comparisons, we also consider within-country variation in valuation for online privacy. To do this, rather than estimate a fixed (mean) utility for each of the non-price variables in our surveys, we assume a normal distribution for each and estimate its mean and variance. This expanded approach allows us to estimate the level of heterogeneity in preferences for different types of online privacy for each country. The estimated coefficients are in Tables A11-A14. We report a simple measure of preference heterogeneity, the coefficient of variation (standard deviation divided by mean), for each type of online privacy for each country in Tables 5a-5d. Here we see that within country variation is largely similar for each of the six

¹⁴ Recent estimates can be found at <https://www.hofstede-insights.com/product/compare-countries/>.

countries, with Germans often exhibiting notably more homogeneous preferences compared to the others.

[Tables 5a-5d about here]

Tables 6a-6d present differences in values for each type of online privacy between the survey that highlights the potential benefits of third-party data access and the one that doesn't. Here, we generally see little difference between the two survey versions. While a few coefficients indicate some statistical significance, there is not a clear pattern. Further, Holm adjusted p-values and joint tests of significance indicate failure to reject the differences as zero. Hence, it appears that preferences for privacy are generally unaffected by prompts indicating potential benefits from sharing online personal information.

[Tables 6a-6d about here]

Because of our unique focus on specific platforms and types of data across countries, few other results exist to compare against our own. One exception is Savage and Waldman (2013), discussed earlier, who focus on WTP for privacy in smartphone apps, as opposed to our WTA approach. Among other types of data, they investigated how much people were WTP to keep their location hidden from smartphone apps. They found that people were WTP \$1.19 to keep location hidden. While we do not ask about smartphone apps explicitly, we explore how much people are WTA to allow their smartphone to share their location. We estimate a WTA of \$1.20 in the U.S. for smartphones, remarkably close to their \$1.19, providing some element of external validity.

Other comparisons are less clean, as we focus on other platforms while Savage and Waldman focus on apps. They estimate WTP \$4.05 to conceal contact information from apps while

we estimate WTA \$5.11 averaged across Facebook and wireless carrier (the two platforms on which we include this data type), which seem reasonably similar. Finally, they estimate a WTP of \$2.12 to eliminate advertising in apps, while we estimate WTA of \$1.06 in the U.S. to allow your smartphone to send ads. Whether the difference is due to changes in attitudes about ads over time, different valuations of in-app advertising versus receiving ads on your smartphone more generally, or something else, we cannot say.

A natural question is whether the results are additive—that is, is it meaningful to add the data types within a platform and conclude that the sum is a total value for all those data types combined? In short, the answer largely depends on the degree to which preferences for different types of data privacy are interrelated. We did not explore any interactions in this exercise, given the already-substantial complexity of the survey instruments. It remains work for future research.

7. Conclusions

Our findings have several implications. The striking consistencies in relative rankings of the value of online privacy across our six countries suggests that both public and private policies should offer similar *relative* privacy protections if facing similar costs for protection. However, when it comes to advertisements, and some other specific examples such as financial information for Germany, notable discrepancies between Latin America, Europe, and the U.S. should be considered. Germany stands out as placing the highest value on privacy, driven by their strong preference for financial privacy. After controlling for this difference, we see largely similar valuations across all six countries (with some notable exceptions). This finding suggests stricter protections such as those in GDPR may be relatively more sensible for Europe, but there may be a case for largely similar protections – be they strict or lax – across all these countries.

The largely similar within-country variation in values that we find has interesting implications for both firms and governments. For firms, this finding suggests that, to the extent tiered privacy protections may be economically sensible for one country, it is likely economically sensible for all in our group. With respect to government policies, these results suggest that, when viewed in economic terms, the distribution of support for various protections is likely similar across countries. The notable exception in both cases is Germany, which appears to have more homogeneous preferences regarding online data privacy.

Finally, the absence of any notable change in estimated value when respondents are prompted about possible benefits from sharing information suggests that their values of online privacy are reasonably stable and not easily influenced.

Proposed and enacted privacy regulations have not included cost benefit analyses. The research discussed in this paper is one approach to estimating some of the benefits that might be obtained from privacy regulations. The approach could be used to estimate the value of keeping all manner of data private, and somewhat more complex work could explore how the different pieces of data interact. But a full accounting requires estimates of the costs of such regulation.

Our estimates are therefore not an estimate of the net value of privacy. For example, we estimate that in the U.S., on average, consumers value keeping location data at \$1.20 per month on a smartphone. Suppose that keeping location data private meant no or less accurate driving directions on the person's smartphone. The net benefits of requiring smartphones to keep location data private would, therefore, be \$1.20 minus however much people value high-quality directions on their phones. The same argument is true for all types of data.

In short, this paper is one approach at estimating the gross, but not net, benefits of some aspects of privacy regulations. More research is necessary to do full cost benefit analyses. Given

the importance of data in the digital economy and the amount of data people share, it would seem prudent to continue this work.

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Tables

Table 1a: Attributes, Descriptions, and Levels for Carrier Survey

Attributes	Descriptions and Levels	Levels
Monthly Payment	The amount you would receive in monthly payments from the carrier. This payment to you is separate from the price you pay for your wireless plan	Arg:\$0, \$10, \$20,...,\$160, \$170 Bra.:\$0,\$1,...\$8,\$8.50,\$9,\$10,...\$15,\$16 Col.:\$0,\$750,\$1500,...,\$12,000,\$12,750 Ger:€0,€0.25,€0.50,...,€4.00,€4.25 Mex:\$0,\$5,\$10,...,\$80,\$85 U.S.:\$0,\$0.25,\$0.50,...,\$4.00,\$4.25
Sends Ads	The carrier is able to send ads to your smartphone via text message	No or Yes
Shares Location	The carrier can use and distribute your location information to any company or individual that pays for it	No or Yes
Shares Browsing History	The carrier can use and distribute your browsing history to any company or individual that pays for it	No or Yes
Shares Contact List	The carrier can use and distribute your contact list to any company or individual that pays for it	No or Yes

Table 1b: Attributes, Descriptions, and Levels for Financial Survey

Attributes	Descriptions and Levels	Levels
Monthly Payment	The amount you would receive in monthly payments from the bank.	Arg: \$0, \$10, \$20, ..., \$160, \$170 Bra.: \$0, \$1, ..., \$8, \$8.50, \$9, \$10, ..., \$15, \$16 Col.: \$0, \$750, \$1500, ..., \$12,000, \$12,750 Ger: €0, €0.25, €0.50, ..., €4.00, €4.25 Mex: \$0, \$5, \$10, ..., \$80, \$85 U.S.: \$0, \$0.25, \$0.50, ..., \$4.00, \$4.25
Sends Ads	The bank is able to send ads to your smartphone via text message	No or Yes
Shares Balance	The bank can use and distribute your balance information to any company or individual that pays for it	No or Yes
Shares Frequency and Amounts of Cash Withdrawals	The bank can use and distribute information about the frequency and amounts of your cash withdrawals to any company or individual that pays for it	No or Yes

Table 1c: Attributes, Descriptions, and Levels for Smartphone Survey

Attributes	Descriptions and Levels	Levels
Monthly Payment	The amount you would receive in monthly payments by a third party.	Arg: \$0, \$10, \$20, ..., \$160, \$170 Bra.: \$0, \$1, ..., \$8, \$8.50, \$9, \$10, ..., \$15, \$16 Col.: \$0, \$750, \$1500, ..., \$12,000, \$12,750 Ger: €0, €0.25, €0.50, ..., €4.00, €4.25 Mex: \$0, \$5, \$10, ..., \$80, \$85 U.S.: \$0, \$0.25, \$0.50, ..., \$4.00, \$4.25
Sends Ads	The third party is able to send ads to your smartphone via text message	No or Yes
Shares Fingerprint	The third party can use and distribute your fingerprint information to any company or individual that pays for it	No or Yes
Shares Voiceprint	A voiceprint is the data required for a computer to identify your voice as yours. For example, Alexa on an Amazon Echo can use this information to identify you as the speaker. The third party can use and distribute your voiceprint information to any company or individual that pays for it	No or Yes
Records Location	The third party can use and distribute your location information to any company or individual that pays for it	No or Yes

Table 1d: Attributes, Descriptions, and Levels for Facebook Survey

Attributes	Descriptions and Levels	Levels
Monthly Payment	The amount you would receive in monthly payments by a third party.	Arg:\$0, \$10, \$20,...,\$160, \$170 Bra.:\$0,\$1,...\$8,\$8.50,\$9,\$10,...\$15,\$16 Col.:\$0,\$750,\$1500,...,\$12,000,\$12,750 Ger:€0,€0.25,€0.50,...,€4.00,€4.25 Mex:\$0,\$5,\$10,...,\$80,\$85 U.S.:\$0,\$0.25,\$0.50,...,\$4.00,\$4.25
Reads Texts	Facebook can use and distribute information from your texts to any company or individual that pays for it. Note that this includes texts sent using WhatsApp and Facebook Messenger.	No or Yes
Uses Network	Facebook can use and distribute information about your friend network to any company or individual that pays for it.	No or Yes
Access Contacts	Facebook can use and distribute your contact list from your smartphone to any company or individual that pays for it.	No or Yes

Table 2a: WTA Estimates for Carrier Survey¹⁵

	Argentina	Brazil	Colombia	Germany	Mexico	U.S.
Send Ads	15.60** (6.13)	1.74 (1.54)	-913.07* (455.44)	1.77** (0.31)	2.13 (3.18)	1.63** (0.40)
Share location	43.91** (7.36)	6.00** (1.65)	3364.05** (604.74)	2.70** (0.44)	35.71** (4.81)	2.50** (0.51)
Share contacts	129.66** (14.12)	17.67** (3.30)	7035.25** (922.81)	7.07** (0.86)	71.88** (7.55)	6.66** (1.13)
Share browsing history	71.51** (9.30)	9.72** (2.24)	4033.31** (744.15)	3.73** (0.50)	25.17** (3.99)	4.25** (0.76)

Table 2b: WTA Estimates for Financial Survey¹⁶

	Argentina	Brazil	Colombia	Germany	Mexico	U.S.
Send ads	-17.78* (7.05)	0.01 (1.28)	-4571.51** (1106.67)	1.65** (0.43)	-8.39+ (4.43)	0.73** (0.25)
Share balance	121.45** (13.71)	20.72** (4.15)	12181.23** (2440.85)	11.88** (1.98)	56.82** (8.80)	4.99** (0.79)
Share cash withdrawals	87.53** (11.73)	10.14** (2.42)	9004.59** (1806.81)	10.33** (1.77)	29.04** (6.03)	3.03** (0.53)

¹⁵ T-stats in parentheses. + is significant at 10% level. * is significant at 5% level. ** is significant at 1% level.

¹⁶ T-stats in parentheses. + is significant at 10% level. * is significant at 5% level. ** is significant at 1% level.

Table 2c: WTA Estimates for Smartphone Survey¹⁷

	Argentina	Brazil	Colombia	Germany	Mexico	U.S.
Send Ads	-18.87** (7.12)	-0.08 (0.62)	-4269.86** (871.46)	0.81** (0.26)	-20.27** (3.70)	1.06** (0.28)
Share location	3.46 (7.68)	1.61* (0.81)	329.76 (835.74)	1.99** (0.31)	-2.26 (3.87)	1.20** (0.32)
Share fingerprint	184.25** (20.35)	9.73** (1.37)	17290.30** (2186.27)	4.51** (0.59)	75.51** (9.09)	6.13** (0.88)
Share voiceprint	80.56** (11.39)	2.75** (0.86)	6400.68** (1185.91)	3.17** (0.45)	42.84** (6.20)	3.18** (0.52)

Table 2d: WTA Estimates for Facebook Survey¹⁸

	Argentina	Brazil	Colombia	Germany	Mexico	U.S.
Read Texts	164.13** (16.62)	7.09** (1.04)	8851.95** (868.91)	6.17** (1.45)	60.51** (6.78)	4.91** (0.84)
Shares information about your network	48.72** (8.44)	1.16** (0.41)	1531.76** (464.39)	5.83** (1.47)	14.73** (3.33)	2.87** (0.58)
Share contacts	27.90** (7.16)	1.36* (0.62)	693.66+ (410.76)	6.23** (1.46)	21.45** (4.11)	3.55** (0.67)

¹⁷ T-stats in parentheses. + is significant at 10% level. * is significant at 5% level. ** is significant at 1% level.

¹⁸ T-stats in parentheses. + is significant at 10% level. * is significant at 5% level. ** is significant at 1% level.

Table 3: Average WTA By Feature Across Country and Platform

Read Texts	Argentina	Brazil	Colombia	Mexico	Germany	U.S.	Average
Share balance	5.08	9.96	9.09	6.10	15.43	4.99	8.44
Share fingerprint	7.71	4.68	12.90	8.11	5.86	6.13	7.56
Read texts	6.86	3.41	6.61	6.50	8.01	4.91	6.05
Share cash withdrawals	3.66	4.88	6.72	3.12	13.42	3.03	5.80
Share contacts	3.29	4.57	2.88	5.01	8.64	5.11	4.92
Share browsing history	2.99	4.67	3.01	2.70	4.84	4.25	3.75
Share voiceprint	3.37	1.32	4.78	4.60	4.12	3.18	3.56
Share info about your network	2.04	0.56	1.14	7.57	1.58	2.87	2.63
Share location	0.99	1.83	1.38	1.80	3.05	1.85	1.82
Send Ads	-0.29	0.27	-2.43	-0.95	1.83	1.14	-0.07

Table 4: WTA Estimates for All Surveys in U.S. Dollars¹⁹

		Argentina	Brazil	Colombia	Germany	Mexico	U.S.
Survey	Feature						
Carrier	Send Ads	0.65* (0.26)	0.84 (0.74)	-0.68* (0.34)	2.30** (0.40)	0.23 (0.34)	1.63** (0.40)
	Share location	1.84** (0.35)	2.88** (0.79)	2.51** (0.45)	3.51** (0.57)	3.84** (0.52)	2.50** (0.51)
	Share contacts	5.42** (0.59)	8.50** (1.59)	5.25** (0.69)	9.18** (1.12)	7.72** (0.81)	6.66** (1.13)
	Share browsing history	2.99** (0.39)	4.67** (1.08)	3.01** (0.56)	4.84** (0.65)	2.70** (0.43)	4.25** (0.76)
Financial	Send Ads	-0.74* (0.29)	0.01 (0.62)	-3.41** (0.83)	2.14** (0.56)	-0.90+ (0.48)	0.73** (0.25)
	Share balance	5.08** (0.57)	9.96** (2.00)	9.09** (1.82)	15.43** (2.57)	6.10** (0.95)	4.99** (0.79)
	Share cash withdrawals	3.66** (0.49)	4.88** (1.16)	6.72** (1.35)	13.42** (2.30)	3.12** (0.65)	3.03** (0.53)
Smartphone	Send Ads	-0.79** (0.30)	-0.04 (0.30)	-3.19** (0.65)	1.05** (0.34)	-2.18** (0.40)	1.06** (0.28)
	Share location	0.14 (0.32)	0.77* (0.39)	0.25 (0.62)	2.58** (0.40)	-0.24 (0.42)	1.20** (0.32)
	Share fingerprint	7.71** (0.85)	4.68** (0.66)	12.90** (1.63)	5.86** (0.77)	8.11** (0.98)	6.13** (0.88)
	Share voiceprint	3.37** (0.48)	1.32** (0.41)	4.78** (0.89)	4.12** (0.58)	4.60** (0.67)	3.18** (0.52)
Facebook	Read Texts	6.86** (0.70)	3.41** (0.50)	6.61** (0.65)	8.01** (1.88)	6.50** (0.73)	4.91** (0.84)
	Shares information about your network	2.04** (0.35)	0.56** (0.20)	1.14** (0.35)	7.57** (1.91)	1.58** (0.36)	2.87** (0.58)
	Share contacts	1.17** (0.30)	0.65* (0.30)	0.52+ (0.31)	8.09** (1.90)	2.30** (0.44)	3.55** (0.67)

¹⁹ Calculations made using WTA estimates from Tables 2a-2d and the October purchasing power parity (PPP) conversion rates provided by the IMF (<https://www.imf.org/external/datamapper/PPPEX@WEO/OEMDC/ADVEC/WEOWORLD>). PPP conversion rates are as follows. Argentina: 23.91, Brazil: 2.08, Colombia: 1340, Germany: 0.77, Mexico: 9.31.

Table 5a: Coefficient of Variation Estimates for Carrier Survey²⁰

	Argentina	Brazil	Colombia	Germany	Mexico	U.S.
Send Ads	3.64** (0.80)	6.46 (4.44)	-10.93 (9.11)	1.82** (0.24)	55.45 (195.15)	2.59** (0.39)
Share location	3.23** (0.62)	2.55** (0.45)	2.87** (0.51)	1.48** (0.29)	2.13** (0.29)	2.45** (0.36)
Share contacts	1.26** (0.09)	1.33** (0.13)	1.73** (0.19)	0.88** (0.05)	1.41** (0.11)	1.27** (0.11)
Share browsing history	1.75** (0.17)	2.17** (0.34)	2.17** (0.25)	1.08** (0.08)	1.93** (0.23)	1.48** (0.12)

Table 5b: Coefficient of Variation Estimates for Financial Survey²¹

	Argentina	Brazil	Colombia	Germany	Mexico	U.S.
Send Ads	-7.00* (3.57)	40.47 (157.22)	-2.93** (0.59)	1.61** (0.27)	-8.32* (4.28)	3.43** (0.75)
Share balance	1.41** (0.10)	1.63** (0.16)	1.91** (0.19)	0.80** (0.08)	1.86** (0.17)	1.47** (0.10)
Share cash withdrawals	1.76** (0.18)	1.98** (0.27)	2.56** (0.39)	0.85** (0.10)	2.79** (0.39)	1.56** (0.12)

²⁰ T-stats in parentheses. + is significant at 10% level. * is significant at 5% level. ** is significant at 1% level.

²¹ T-stats in parentheses. + is significant at 10% level. * is significant at 5% level. ** is significant at 1% level.

Table 5c: Coefficient of Variation Estimates for Smartphone Survey²²

	Argentina	Brazil	Colombia	Germany	Mexico	U.S.
Send Ads	-5.81** (2.45)	27.44 (46.84)	-2.29** (0.42)	2.33** (0.38)	-2.30** (0.54)	3.53** (0.77)
Share location	13.52 (11.26)	5.67** (2.30)	-80.03 (406.37)	1.60** (0.19)	32.52 (66.52)	2.76** (0.47)
Share fingerprint	1.07** (0.07)	1.56** (0.13)	1.24** (0.08)	1.14** (0.07)	1.41** (0.11)	1.34** (0.09)
Share voiceprint	1.61** (0.16)	3.49** (0.82)	2.68** (0.40)	1.44** (0.14)	1.82** (0.20)	1.62** (0.16)

Table 5d: Coefficient of Variation Estimates for Facebook Survey²³

	Argentina	Brazil	Colombia	Germany	Mexico	U.S.
Read Texts	1.32** (0.21)	1.49** (0.10)	1.42** (0.11)	1.34** (0.10)	1.46** (0.12)	1.48** (0.11)
Shares information about your network	2.42** (0.37)	2.77** (0.59)	4.78** (1.33)	1.30** (0.11)	3.76** (0.78)	1.86** (0.18)
Share contacts	3.64** (0.84)	4.34** (1.29)	8.64* (3.55)	1.25** (0.10)	2.17** (0.25)	1.69** (0.14)

²² T-stats in parentheses. + is significant at 10% level. * is significant at 5% level. ** is significant at 1% level.

²³ T-stats in parentheses. + is significant at 10% level. * is significant at 5% level. ** is significant at 1% level.

Table 6a: Difference in WTA When Prompted for Carrier Survey²⁴

	Argentina	Brazil	Colombia	Germany	Mexico	U.S.
Send Ads	-1.78 (12.21)	-4.07 (3.40)	-496.43 (922.54)	-1.13 (0.72)	-5.47 (6.44)	0.05 (0.79)
Share location	-15.09 (16.81)	1.18 (3.22)	-542.05 (1241.84)	-1.23 (0.98)	3.54 (9.66)	0.44 (1.02)
Share contacts	30.21 (28.31)	-0.94 (6.63)	-2896.35 (1880.27)	-3.12 (1.96)	9.84 (15.14)	-0.57 (2.27)
Share browsing history	0.81 (18.64)	-0.75 (4.46)	1150.18 (1548.93)	-1.34 (1.10)	7.27 (8.00)	1.84 (1.52)

Table 6b: Difference in WTA When Prompted for Financial Survey²⁵

	Argentina	Brazil	Colombia	Germany	Mexico	U.S.
Send Ads	-8.40 (14.12)	4.73 (2.68)	-2818.07 (2159.10)	-0.25 (0.87)	6.33 (8.87)	0.08 (0.52)
Share balance	8.34 (27.41)	-0.29 (8.64)	-1269.47 (5049.41)	-3.64 (4.17)	23.24 (18.03)	2.67 (1.87)
Share cash withdrawals	-4.29 (23.47)	3.06 (4.85)	-3435.92 (3885.97)	-3.10 (3.69)	9.54 (12.20)	2.61+ (1.34)

²⁴ T-stats in parentheses. + is significant at 10% level. * is significant at 5% level. ** is significant at 1% level. Note that Holm-adjusted p-value for Colombia is 0.35.

²⁵ T-stats in parentheses. + is significant at 10% level. * is significant at 5% level. ** is significant at 1% level. Note that Holm-adjusted p-value for U.S. is 0.11.

Table 6c: Difference in WTA When Prompted for Smartphone Survey²⁶

	Argentina	Brazil	Colombia	Germany	Mexico	U.S.
Send Ads	-8.09 (14.27)	-0.52 (1.23)	1538.41 (1725.83)	-0.04 (0.52)	-16.52+ (8.49)	-0.64 (0.68)
Share location	2.81 (15.33)	-0.63 (2.73)	-573.87 (1689.72)	0.32 (0.61)	-1.52 (8.06)	-0.98 (0.80)
Share fingerprint	-8.86 (40.70)	-0.81 (1.68)	587.84 (4439.91)	-0.23 (1.19)	39.94* (20.28)	-4.72+ (2.62)
Share voiceprint	6.68 (22.78)	-0.29 (1.61)	1675.88 (2460.98)	0.38 (0.90)	22.87+ (13.62)	-3.27* (1.59)

Table 6d: Difference in WTA When Prompted for Facebook Survey²⁷

	Argentina	Brazil	Colombia	Germany	Mexico	U.S.
Read Texts	-54.24 (34.38)	-0.68 (2.06)	2934.08+ (1780.00)	-0.20 (2.90)	1.98 (13.57)	-1.67 (1.89)
Shares information about your network	-14.81 (17.19)	0.08 (0.83)	-397.80 (922.83)	-0.36 (2.94)	-5.03 (6.71)	-1.23 (1.31)
Share contacts	-21.35 (14.71)	-1.20 (1.21)	993.94 (828.23)	0.19 (2.92)	11.42 (8.27)	-1.04 (1.49)

²⁶ T-stats in parentheses. + is significant at 10% level. * is significant at 5% level. ** is significant at 1% level. Note that Holm-adjusted p-value for Germany is 0.09, for Mexico is 0.23, and for U.S. is 0.26.

²⁷ T-stats in parentheses. + is significant at 10% level. * is significant at 5% level. ** is significant at 1% level. Note that Holm-adjusted p-value for Colombia is 0.18

EXHIBIT 6

Case	Type	Common Fund	In Kind Relief	Class Size	Gross per CM
<i>In re Vizio, Inc., Consumer Privacy Litig., No. 8:16-ml-02693-JLS-KES (C.D. Cal.)</i>	Data Privacy (smart TV software used to collect and disclose customers' information)	\$17 mill	No	16 mill	\$1.06
<i>In re Plaid Inc. Privacy Litig., No. 4:20-cv-03056-DMR (N.D. Cal.)</i>	Data Privacy (fintech co. obtained and disclosed data from customers' financial account)	\$58 mill	No	98 mill	\$0.59
<i>In re Facebook, Inc. Consumer Privacy User Profile Litig., No. 3:18-md-02843-VC (N.D. Cal.)</i>	Data Privacy (variety of FB account information disclosed)	\$725 mill	No	250-280 mill	\$2.90 to \$2.59
<i>In re Google Plus Profile Litig., No. 5:18-cv-06164-EJD-VKD (N.D. Cal.)</i>	Data Privacy (users' profile private data disclosed)	\$7.5 mill	No	10 mill	\$1.33
<i>In re TikTok Privacy, Litig., MDL No. 2948 (N.D. Ill.)</i>	Data Privacy/Biometric (disclosure of broad array of personal data including biometric data and content info)	\$92 mill	No	89 mill	\$1.03
<i>Beltran v. Sony Pictures Entertainment, Inc. d/b/a Crunchyroll, No: 1:22-cv-04858 (N.D. Ill.),</i>	Data Privacy (disclosure of personally identifiable video viewing data)	\$16 mill	No	20 mill	\$0.82
<i>Hodges v. GoodRx Holdings, Inc., No. 1:23-cv-24127-BB (S.D. Fl.)</i> (preliminary approval granted)	Data Privacy (disclosure of personal and health information)	\$13 mill	No	16.7 mill	\$0.78
<i>In re Facebook Internet Tracking Litigation, 12-md- 02314-EJD (N.D. Cal.)</i>	Data Privacy (tracking users' web browsing after they logged out of Facebook)	\$90 mill	No	Over 124 million	\$0.73

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Attorneys for Plaintiffs and the Putative Classes

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**NICHOLAS C. SMITH-WASHINGTON,
JOYCE MAHONEY, JONATHAN AMES,
MATTHEW HARTZ, and JENNY LEWIS,**
on behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

TAXACT, INC., an Iowa corporation,

Defendant.

) Case No. 3:23-CV-830-VC
)
) **DECLARATION OF WARREN D.
) POSTMAN IN SUPPORT OF
) PLAINTIFFS' MOTION FOR
) PRELIMINARY APPROVAL OF
) CLASS ACTION SETTLEMENT**

) Dated: April 4, 2024
) Time: 10:00 a.m.
) Place: Courtroom 4, 17th Floor
)
)
)

DECLARATION OF WARREN D. POSTMAN

I, Warren D. Postman, declare as follows:

1. I am over 18 years of age and am competent to testify to the matters in this declaration.

I have personal knowledge of each matter attested to in this document.

2. I am a partner in the law firm of Keller Postman LLC (“Keller Postman”), which is counsel to Nicholas C. Smith-Washington, Joyce Mahoney, Jonathan Ames, Matthew Hartz, and Jenny Lewis, on behalf of themselves and all others similarly situated (collectively, “Plaintiffs”), in connection with the above-captioned action. I respectfully submit this declaration in support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement.

3. Attached as Exhibit A to this declaration is a true and correct copy of Keller Postman’s firm resume.

4. Keller Postman was founded six years ago with the mission of creating one of the leading complex plaintiff’s litigation firms in the United States. To fulfill this mission, Keller Postman has amassed a uniquely elite, creative, and resolute group of litigators. Since its inception, Keller Postman has grown from three lawyers to 72 lawyers and more than 100 professional staff across four offices (Chicago, Illinois; Washington, D.C.; Austin, Texas; and Boston, Massachusetts). Around 80% of Keller Postman’s partners and associates have practiced at the top national, defense-oriented firms, with more than 70% having trained at AmLaw 100 firms or elite trial boutiques. Nearly 40% of Keller Postman’s partners and associates served as law clerks for judges on federal courts of appeals or district courts, and four of the firm’s partners clerked for justices on the Supreme Court of the United States. All attorneys involved in this matter have extensive experience with complex, hard-fought litigation against sophisticated and well-financed adversaries.

5. Keller Postman has significant experience in class actions generally, including the successful investigation, commencement, and prosecution of numerous complex class actions, including this action. In addition, Keller Postman has substantial experience in litigating consumer protection and consumer privacy claims on behalf of consumers across the country.

6. The attorneys and paraprofessionals from Keller Postman who have worked on this action have billable rates of between \$350 and \$1,500 per hour.

Exhibit A

Keller | Postman

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About Keller Postman

Keller Postman is a leading complex litigation firm for plaintiffs, specializing in mass actions. We represent consumers, employees, and veterans in class actions, mass torts, and mass arbitrations, at the trial and appellate levels, in federal and state courts.



Our Mission

To aggressively pursue our clients' claims, en masse, against the entities that have harmed them by driving innovation in the practice of law, devising cutting-edge strategies that don't follow the standard playbook, conceiving novel arguments, and pursuing unparalleled excellence in everything we do.

Our Approach

Serving hundreds of thousands of clients in litigation and arbitration, Keller Postman has prosecuted high-profile antitrust, privacy, product-liability, employment, and consumer-rights cases and secured substantial settlements for our clients. Our firm also acts as plaintiffs' counsel in high-stakes public-enforcement actions.

Keller Postman seeks out complicated cases and takes on groundbreaking legal challenges where our legal and strategic counsel can add significant value. Our innovative approach combines high-end legal expertise with best practices in business operations and technology to deliver superlative representation for plaintiffs.

Our greatest asset is our team of smart, dedicated professionals. Keller Postman lawyers honed their skills at AmLaw 100 law firms, national trial boutiques, corporate in-house legal departments, prestigious government posts, and successful business startups. Every member of our team shares a commitment to client service and a spirit of determination, dedication, creativity, and excellence.

OUR TEAM

- 12 PARTNERS
- 20 ASSOCIATES
- 40 STAFF ATTORNEYS & COUNSEL
- 45 LEGAL SUPPORT TEAM MEMBERS
- 40 CLIENT SERVICES TEAM MEMBERS
- 45 CASE MANAGEMENT TEAM MEMBERS
- 111 BUSINESS, OPERATIONS & IT TEAM MEMBERS

OUR OFFICES

CHICAGO, IL
WASHINGTON, D.C.
AUSTIN, TX
BOSTON, MA



About Our Team

**OF KELLER
POSTMAN'S
PARTNERS AND
ASSOCIATES:**

80%

hail from **national defense-oriented law firms**, and 73% from AmLaw 100 firms and elite trial boutiques.

38%

were **law clerks** at a federal court of appeals or district court.

53%

attended a **Top 15 U.S. News ranked law school**.

4

of Keller Postman's partners were **law clerks at the Supreme Court of the United States**.

Keller Postman is home to one of the most exceptional teams representing plaintiffs in the United States.

We're powered by a talented team with top-notch credentials and real-world experience. Our lawyers have litigated "bet the company" cases for plaintiffs and defendants, studied and taught at some of the top law schools in the country, served at the highest levels of government, and managed more than \$1 billion of litigation-related investments.

**THE FIRM COMPRISES OVER
FIVE DOZEN LAWYERS
AND MORE THAN
200 PROFESSIONAL STAFF MEMBERS.**

CLIENT SERVICES & CASE MANAGEMENT TEAM

We have established large, in-house client-services and case-management teams to serve our clients from the early stages of litigation to the final moments of settlement distributions. We expertly and efficiently cover all aspects of our cases, including client intake, case workup, and litigation at all levels of the judiciary.

TECHNOLOGY, DATA & ANALYTICS TEAM

Keller Postman operates a dedicated, in-house technology, data, and analytics team. Our firm utilizes cutting-edge technology and processes to ensure successful litigation for thousands of claims at once.

Why Keller Postman

CLIENTS FIRST APPROACH

Our primary goal is always to achieve exceptional results for our clients—we are tireless in our pursuit of justice on their behalf. We move with speed and efficacy. We genuinely care about each individual client, and we demonstrate that by providing outstanding client service.

FEARLESS INNOVATION

We drive innovation in the practice of law, sharing an ambition to do things differently—and to do them better. It is not enough merely to advocate for our clients. We prize creativity, develop and harness our own technology, and commit the resources necessary to succeed.

COMMITTED TO EXCELLENCE

We pursue unparalleled excellence in everything we do. We challenge ourselves to perform at the highest level and deliver outstanding results. At every level of the firm, we take pride in serving as trusted advisors and provide exceptional client service.

STRENGTH TO WIN

Our team has the skills and resources to go head-to-head with the largest, most well-resourced corporations in the country. Plus, our lawyers have experience on both sides of the courtroom and the negotiating table, allowing us the unique ability to anticipate our opponents' moves.

Industry Recognition

THE NEW YORK TIMES

Keller Postman is driven “by a legal reformist spirit and entrepreneurial zeal.”

WALL STREET JOURNAL

“[Keller Postman is calling] companies on their bluff and saying, ‘You think you’re going to get out of liability by going to arbitration? We’ll show you what the arbitration system can do when you face tens of thousands of claims.’”

THE AMERICAN LAWYER

“Part of the vision was to make plaintiff-side work attractive to folks with clerkship and Big Law experience like [Keller Postman’s] founders. So far, the approach seems to be working.”

LAWDRAGON MAGAZINE

“Accelerated by a well-curated culture of excellence, innovation, and service, Keller Postman [leads] litigation across some of the biggest product liability MDLs in history.”



Awards

We're proud of the recognition we've received as leaders of the plaintiffs' bar.



ELITE TRIAL LAWYERS LAW FIRM OF THE YEAR

In 2021, the *National Law Journal* named Keller Postman the Trial Strategy Innovation Law Firm of the Year. And in 2022, Keller Postman was named the Privacy & Data Breach Law Firm of the Year.



ELITE TRIAL LAWYERS RISING STARS & ELITE WOMEN

Our lawyers have been named 2021 & 2022 Elite Trial Lawyers' Rising Stars of the Plaintiffs' Bar and 2022 Elite Trial Lawyers' Elite Women of the Plaintiffs' Bar.

NATIONAL LAW JOURNAL & AMERICAN LAWYER TRAILBLAZERS

Our team has been named 2021 and 2022 Plaintiffs' Lawyers Trailblazers and 2022 Employment Law Trailblazers by the *National Law Journal*. Our lawyers have also been named 2022 Midwest Trailblazers and South Trailblazers by *American Lawyer*.



LAW360 MVP

Managing Partner **Warren Postman** was named the 2022 Law360 Technology MVP of the Year and the 2021 Law360 Employment MVP of the year.



WOMEN WORTH WATCHING IN LEADERSHIP

Partner **Zina Bash** is named to the 2022 Women Worth Watching in Leadership by *Profiles in Diversity Journal*.

KELLER POSTMAN ATTORNEYS NAMED TO MANY EXCLUSIVE LEGAL DIRECTORIES,

including Chambers & Partners, National Trial Lawyers Top 100 and Top 40 under 40, Super Lawyers, Best Lawyers, and Lawdragon's 500 Leading Lawyers in America, 500 Leading Plaintiff Consumer Lawyers, and Leading Plaintiff Financial Lawyers.



SUPER LAWYERS®

Nine of Keller Postman's Attorney's were recognized by Illinois Super Lawyer for 2024. Four Partners as Super Lawyers and nine as Rising Stars.

Practice Areas



Practice Areas

At Keller Postman, we represent plaintiffs in complex litigation matters. Our diverse team has experience litigating cases across a wide variety of practice areas, which allows us to be flexible and responsive to our clients' needs. Regardless of the substantive claims involved, one thing is true about all our cases: they give us the opportunity to use our unique skills and resources to help our clients solve problems and vindicate their rights.

Antitrust

We believe competition stimulates innovation, sparks improvements of products and services, and leads to more efficient means of delivery and production. We fight anti-competitive conduct through bringing antitrust claims against some of the largest and best-known corporations in the world—and we are confident in our team's vast experience, knowledge and capabilities to successfully litigate these cases.

Arbitration

We help our clients level the playing field when contracts written by defendants force them into arbitration. Our team has successfully represented plaintiffs in complex arbitration proceedings throughout the United States, including wage-and-hour disputes, employee misclassification claims, consumer product disputes, and other types of contract-related disputes.

Consumer Protection

We safeguard consumers from unfair corporate practices, corporate malfeasance, and any type of deceptive business practices. We work to protect consumer rights through arbitration and class action under federal and state laws. And our work specifically focuses on regulating emerging and increasingly dominant tech-based corporations that often push boundaries to take advantage of consumers in new or developing areas of law.

Privacy

Technology continues to evolve and intertwine itself with our day-to-day. With these technological advances come a greater threat to privacy and data protection. Keller Postman is committed to protecting that fundamental right to privacy. Our attorneys' legal acumen matches our technical expertise, which allows us to skillfully litigate even the most complicated privacy claims.

Product Liability

With extensive experience handling claims associated with products (including with suppliers, manufacturers, and sellers), our attorneys play key roles in some of the most significant product liability multidistrict litigation proceedings in the country. Our team continues to be selected to lead federal and state product-liability litigation through appointments to leadership positions.

Public Institutions

We represent States, municipalities, and other government entities as plaintiffs in legal actions for the benefit of their constituents. In line with our commitment to the public good, our practice provides pivotal support—in terms of expert attorneys and resources—to public entities for the benefit of their people. We have developed the expertise to help public institutions navigate the legal landscape they face every day.

Case Highlights



Case Highlights

AMAZON ALEXA MASS ARBITRATION

As reported by *The Wall Street Journal*, Keller Postman filed roughly 75,000 individual arbitration demands on behalf of Amazon Alexa users who had been recorded without permission. Faced with arbitrating so many individual claims at once, in May 2021, Amazon eliminated its arbitration clause, allowing consumers (for the first time) to pursue their rights in court. Keller Postman's arbitration practice has caused the world's largest retailer to shift away from forced arbitration—a once-unthinkable result that significantly benefits consumers.

After individual and class-action lawsuits against Amazon became permissible, Keller Postman filed a federal antitrust lawsuit against Amazon for the same illegal conduct (the very first lawsuit filed against the company since it began including an arbitration clause into contracts with consumers). In *De Coster et al. v. Amazon.com, Inc.*, Keller Postman represents individual consumers who were charged unfairly high prices by Amazon because of the company's most favored nation clause against third-party merchants. Our firm was also named Co-Lead Class Counsel. In conjunction with the filing of this lawsuit, Keller Postman also separately filed another 75,000 individual arbitration demands for related claims.

The matters have resolved. This matter is significant because of Amazon's move to drop its arbitration clause nationwide and restore access to the courts for over 140 million Amazon consumers. The unprecedented—and astounding—rescission by Amazon of its arbitration requirement marked a significant victory for consumers and access to justice. Across all of Keller Postman's arbitration matters to date, we've secured millions in settlements for more than 500,000 individuals.

DE COSTER V. AMAZON.COM INC. & FRAME-WILSON V. AMAZON.COM INC.

Leadership Role: Keller Postman Partner Zina Bash named Interim Co-Lead Class Counsel in *De Coster v. Amazon.com Inc.*

Keller Postman filed a federal antitrust lawsuit against Amazon—*De Coster et al. v. Amazon.com Inc.*—after the company dropped its arbitration clause as a result of one of Keller Postman's largest arbitration campaigns representing more than 75,000 consumers in simultaneous individual arbitrations. In this lawsuit, Keller Postman represents a proposed class of Amazon shoppers alleging that the Amazon platform's unlawful imposition of 'most favored nation' pricing restrictions against third-party sellers blocks competition from other e-commerce marketplaces and inflates the prices paid by customers. The plaintiffs' allegation is that Amazon has exploited its market power to inflate prices on its own platform—and across the internet. Given the scale of this antitrust violation, the suit has the potential to be one of the largest antitrust cases in history.

Keller Postman later filed *Frame-Wilson v. Amazon.com Inc.* on behalf of individuals who purchased products from Amazon competitors (such as Ebay). These plaintiffs allege that because Amazon distorted market prices on competitor seller sites through its anticompetitive conduct, they paid far higher prices for their merchandise.

Case Highlights Continued:

INTUIT MASS ARBITRATION

Through deceptive web tactics, Intuit tricked thousands of lower-income Americans into paying to file taxes through TurboTax, though they were eligible to file for free. Faced with a putative consumer class action on behalf of 19 million consumers, Intuit compelled the dispute to individual arbitration. Keller Postman then filed individual arbitration demands at AAA for approximately 200,000 of those consumers.

In response, Intuit sought to send most of those consumers to small claims court and delay the arbitrations. In *Intuit, Inc. v. 9,933 Individuals*, the LA Superior Court denied Intuit's motion to force our clients' claims into small-claims court. It also rejected Intuit's argument that California's SB 707—which imposes severe penalties on companies that refuse to comply with their own arbitration agreements—is preempted. At oral argument, Judge Terry Green said Keller [Postman] deserves “a toast. Good work.”

Intuit then tried to propose a settlement in the class action it had already compelled to arbitration. Our firm objected, arguing that Intuit should not be able to use a class-action settlement to frustrate individual class members' efforts to bring individual arbitrations against the company. Intuit's proposed \$40 million class settlement was denied. In his opinion, Judge Charles Breyer directly addressed the significance of this matter: “This case illustrates the urgent need for Congress to reverse the U.S. Supreme Court's arbitration jurisprudence, which gives corporate defendants an unfair advantage over consumers, and undermines the class's ability to secure a more significant monetary result.”

Furthermore, this is Keller Postman's largest “mass arbitration” matter to date – and an unprecedented number of simultaneous individual arbitrations against a single defendant. As litigation continued throughout 2021, the American Arbitration Association also implemented new arbitral rules for “multiple consumer filings” as a result of Keller Postman's ability to arbitrate so many matters simultaneously.

BARR V. DRIZLY, LLC F/K/A DRIZLY, INC. ET AL

This class action lawsuit was filed in August 2020 against Drizly, the largest online alcohol delivery marketplace in North America. The complaint alleged that Drizly's security measures were deficient in protecting consumers' personal information and that the company was slow to report the breach. As a result of the data breach, customers were exposed to fraud, identity theft, and other injuries.

Drizly moved to compel arbitration. However, after Keller Postman made an appearance with co-counsel, Drizly agreed to settlement terms within a week. This matter further emphasizes how Keller Postman's innovative strategy in arbitration has come to the aid of consumers whose private information was stolen. We've leveled up our arbitration strategy through making appearances with co-counsel partners after defendants compelled arbitration. We're extremely proud that our firm's reputation in mass arbitration has helped to swiftly secure favorable resolutions for both consumers and employees—and has also prevented defendants from using arbitration to evade liability.

Case Highlights Continued:

STATE OF TEXAS V. GOOGLE LLC

Leadership Role: Partner Zina Bash & Partner Ashley Keller are Co-Lead Counsel for our State clients

Keller Postman represents the States of Texas, Idaho, Indiana, Mississippi, North Dakota, South Dakota, and South Carolina in the States' antitrust litigation against Google. Filed in the U.S. District Court for the Eastern District of Texas (and subsequently centralized in the Southern District of New York with similar private cases), the suit alleges that Google monopolized products and services used by advertisers and publishers in online-display advertising. The complaint also alleges that Google engaged in false, misleading, and deceptive acts while selling, buying, and auctioning online-display ads. Google also entered into an unlawful agreement with rival Facebook to maintain control of the marketplace for header bidding. These anticompetitive and deceptive practices demonstrably diminished publishers' ability to monetize content, increased advertisers' costs to advertise, and directly harmed consumers.

Google sought dismissal of the entire case, arguing that its conduct was lawful and that its success was merely a "product of innovation," among other forced justifications. But on September 13, 2022—after Keller Postman Partner Ashley Keller delivered a momentous oral argument—the Court largely rejected those arguments, allowing the States' claims of monopolization, attempted monopolization, and tying to proceed to discovery. We are proud of this result, and eager and ready to push these claims forward on behalf of the States to discover and expose the full magnitude of Google's wrongdoing and restore free competition to the multibillion-dollar ad display marketplace.

STATE OF TEXAS V. META PLATFORMS INC.

Leadership Role: Partner Zina Bash is Lead Counsel for the State of Texas

Keller Postman represents the State of Texas in a lawsuit against Facebook parent Meta Platforms Inc. for its decade-long use of facial-recognition technology to exploit Texans' biometric information in violation of Texas law. The suit—*State of Texas v. Meta Platforms LLC, f/k/a Facebook, Inc.*—alleges that the social media giant, formerly known as Facebook, unlawfully captured Texans' biometric identifiers for a commercial purpose without informed consent, disclosed those identifiers to others, and failed to destroy them within a reasonable time—all in violation of the Texas Capture or Use of Biometric Identifier Act ("CUBI"). The State also alleges that Facebook engaged in false, misleading, and deceptive acts and practices in violation of the Texas Deceptive Trade Practices-Consumer Protection Act. The suit seeks civil penalties in the hundreds of billions of dollars.

According to the complaint, for more than a decade, Facebook built an artificial-intelligence empire on the backs of Texans by deceiving them while capturing their most intimate data, thereby putting their well-being, safety, and security at risk. Filed in the state district court in Marshall, TX, the suit seeks civil penalties in the hundreds of billions of dollars.

Attorney General Ken Paxton emphasized the significance of this matter in his statement: "Facebook has been secretly harvesting Texans' most personal information—photos and videos—for its own corporate profit... Texas law has prohibited such harvesting without informed consent for over 20 years. While ordinary Texans have been using Facebook to innocently share photos of loved ones with friends and family, we now know that Facebook has been brazenly ignoring Texas law for the last decade."

Case Highlights Continued:

TOPDEVS, LLC ET AL V. LINKEDIN CORPORATION

Keller Postman filed a class action against LinkedIn—*TopDevs, LLC et al v. LinkedIn Corporation*—on behalf of users of LinkedIn’s advertising platform. LinkedIn admitted in August 2019 that it had inflated video view and ad impression metrics for more than 418,000 advertisers, who overpaid for their campaigns as a result. The suit alleges that LinkedIn was aware of these metric errors and, in fact, reports rampant non-genuine metrics that inflate the prices for all types of advertising across the LinkedIn platform. Specifically, the suit alleges that, despite aggressively marketing its platform as a premium product that allows marketers to advertise to highly engaged audiences of working professionals, LinkedIn’s platform is plagued by automated, fraudulent, mistaken, and miscalculated engagement with LinkedIn ads, which inflates the prices for all types of advertising on the LinkedIn platform.

This lawsuit is intended to not only stop LinkedIn’s allegedly unfair and fraudulent business practices but also increase transparency into whether LinkedIn’s advertising metrics truly reflect user engagement with paid advertisements. The matter therefore raises important issues regarding overall transparency in online marketing.

FISHON ET AL V. PELOTON INTERACTIVE, INC.

To secure beneficial network effects in a nascent and growing industry of home-based studio classes, Peloton promised consumers an “ever-growing” library. But Peloton was forced to remove the majority of its content in March 2019 following a copyright infringement lawsuit by members of the National Music Publishers Association. Keller Postman filed approximately 2,700 individual arbitrations on behalf of customers who were promised an “ever-growing” class library. Several arbitrations moved forward, and decisions were issued in favor of the plaintiffs. In response, Peloton refused to abide by the terms of its own arbitration clause and ignored the American Arbitration Association’s requirement that it pay filing fees for demands seeking less than \$10,000.

AAA barred Peloton from using its arbitral forum and announced that “either party may choose to submit its dispute to the appropriate court for resolution.” Keller Postman, in partnership with attorneys from DiCello Levitt Gutzler, filed a class-action lawsuit in the U.S. District Court for the Southern District of New York, *Fishon et al v. Peloton Interactive, Inc.*

Judge Lewis Liman denied Peloton’s motion to dismiss the case. This matter is important, because Peloton affirmatively chose to disregard its own arbitration agreement and opted instead for the class action. That move reflects the company’s true intention behind the arbitration clause within its Terms of Service: not as an effective method for customers to pursue claims, but as an escape route from liability. Keller Postman’s ability to push forward arbitrations on a mass scale led to Peloton’s decision to voluntarily submit itself to class action litigation. And now the firm can pursue consumer-protection remedies on behalf of all affected Peloton subscribers.

Case Highlights Continued:

MITCH OBERSTEIN ET AL V. LIVE NATION ENTERTAINMENT, INC. ET AL & SKOT HECKMAN ET AL V. LIVE NATION ENTERTAINMENT INC. ET AL

Quinn Emanuel Urquhart & Sullivan filed a class-action lawsuit, *Mitch Oberstein et al v. Live Nation Entertainment, Inc. et al* (formerly *Olivia Van Iderstine et al v. Live Nation Entertainment, Inc. et al*). Ticketmaster customers allege that Ticketmaster and Live Nation used their dominance to inflate ticket prices. After Ticketmaster moved to force consumers to individually arbitrate their disputes, Keller Postman joined as co-counsel with Quinn Emanuel. Later, the district court granted Ticketmaster's motion to compel arbitration, and the order compelling arbitration is on appeal to the Ninth Circuit.

Ticketmaster next published a new arbitration clause for consumers in its terms and conditions that designated a new dispute resolution forum called New Era ADR. Keller Postman filed a new class action against Ticketmaster in January 2022—*Skot Heckman et al. v. Live Nation Entertainment Inc. et al.*—on behalf of individuals subject to the new arbitration agreement. Ticketmaster moved to compel arbitration under the new arbitration agreement. We believe the new arbitration agreement is unconscionable and unfair to consumers. The court has granted our motion for discovery into whether an enforceable arbitration agreement exists, and we will work to uncover the business dealings that exist between Ticketmaster and New Era ADR to prove that this forum is unfair to consumers. Regardless of Ticketmaster's evasive tactics, we will rely on our firm's legal and operational innovation to see that corporations can't change the rules to avoid liability.

BIPA LITIGATION OVERVIEW

Keller Postman represents thousands of clients in the state of Illinois who assert violations of the Illinois Biometric Information Privacy Act (BIPA). Our clients' biometric information has been wrongfully captured without consent by employers and technology platforms. We have been litigating cases against numerous entities, including against MOD Pizza, Vonachen Service, Inc., Heartland Beef, Inc., Wireless Vision LLC, and Sydell Hostel Manager LLC, d/b/a Freehand Chicago.

BIPA is one of the country's most stringent biometric privacy laws, prohibiting private companies from capturing, obtaining, storing, transferring, and/or using the biometric identifiers and/or information (such as fingerprints) of another individual for any purpose without first providing such individual with certain written disclosures and obtaining written consent. BIPA requires anyone who records biometric information to get informed consent before doing so and to create a publicly available retention policy so people can be assured that their sensitive biometric data won't be disclosed without their knowledge.

Although BIPA has existed for more than a decade, companies are still capturing biometric information (which can easily be used to perpetrate identity fraud in the wrong hands) in Illinois without explaining the implications of that capture to their employees and customers. While corporations often loosely interpret new laws, Keller Postman is actively influencing the enforceability of these laws, setting a clear path forward for those seeking reprieve from improper collection and storage of private information.

Results:

- *Soper v. Sydell Hostel Manager LLC*: Secured \$250,000 settlement for class of ~300
- *Pratz v. MOD Super Fast Pizza, LLC*: Secured \$1.3 million settlement for class of ~1,134
- *Corey v. Wireless Vision, LLC*: Secured \$279,000 settlement for class of ~300

Case Highlights Continued:

DATA BREACH LITIGATION OVERVIEW

Keller Postman is leading numerous class actions on behalf of hundreds of thousands of individuals whose sensitive personal information—including social security numbers, health/medical records, and financial information—has been stolen. The lawsuits accuse defendants of negligently handling consumers' personal data and private information. Defendants failed to take appropriate precautions to protect this data, did not appropriately and speedily resolve data breach occurrences, and also failed to adequately recompense the plaintiffs.

These class actions include:

- *William Biscan v. Shields Health Care Group Inc.* (Named Interim Co-Lead Class Counsel)
- *Gilbert v. AFTRA Retirement Fund et al.*
- *Greco v. Syracuse ASC, LLC d/b/a Specialty Surgery Center of Central New York*
- *Harrington v. Elekta, Inc.*
- *Miller v. Syracuse University*
- *Valencia v. North Broward Hospital District d/b/a Broward*
- *Esposito et al v. Refuah Health Center, Inc.*
- *Garner v. Missouri Delta Medical Center*
- *Abbott et al v. Taylor County Hospital District Health Facilities Corporation d/b/a Taylor Regional Hospital*
- *Cain et al v. Lavaca Medical Center; Crawford v. Ascension Michigan*
- *Crawford v. Ascension Michigan*
- *Shepherd v. Cancer and Hematology Centers of Western Michigan, P.C.*

Results:

- *Hestrup et al. v. DuPage Medical Group. Ltd. d/b/a DuPage Medical Group*: Secured \$3 million settlement; Partner Seth Meyer was named Interim Class Counsel
- *Alexander, et al. v. Otis R. Bowen Center for Human Services, Inc.*: Received preliminary approval for \$1.55 million settlement
- *Hall, et al. v. AspenPointe, Inc., et al.*: Secured \$1.3 million settlement

ZANTAC (RANITIDINE) MULTIDISTRICT LITIGATION

Leadership Role: Partner Ashley Keller chairs the Law & Briefing Committee and is a member of the Plaintiffs' Executive Committee

In late 2019, public watchdogs discovered that ranitidine (branded as “Zantac”) degrades into the cancer-causing compound NDMA. The FDA pulled it from the market. The Zantac MDL coordinates suits accusing Pfizer Inc., Sanofi SA, Boehringer Ingelheim Pharmaceuticals Inc., and GlaxoSmithKline LLC—as well as generic makers, distributors, pharmacies, and others in the supply chain—of causing thousands of plaintiffs to develop cancer. The importance of this matter lies in the severity of the plaintiffs' claims and the number of injured plaintiffs given the widespread use of these drugs before they were pulled from the shelves.

The Keller Postman team has briefed and argued four rounds of motions to dismiss; amended the master complaints; litigated three appeals through oral argument; briefed and argued key discovery fights; and briefed and argued *Daubert* motions on general causation. We have also worked up bellwethers for trial, collecting their medical records, responding to discovery, and so forth.

Case Highlights Continued:

ZANTAC STATE COURT LITIGATION

In the Zantac MDL, plaintiffs' leadership has made a conservative choice to only pursue claims for plaintiffs who suffer from at least one of five designated cancers allegedly caused by Zantac consumption (including bladder, gastric, esophageal, liver, and pancreatic cancer). But Keller Postman is leading the charge on aggressive litigation in state court, largely for plaintiffs who suffer from non-designated cancers—and have no other avenue to pursue their claims. We also represent a number of clients with designated cancers in state court. Our firm has filed claims in California, Delaware, Illinois, and Pennsylvania. No other plaintiffs' firm involved in state-side Zantac litigation has attempted to take on such a large number of claimants in this many jurisdictions.

During a hearing on August 9, 2022 in the Illinois case *Bayer v. Boehringer Ingelheim Pharm.*, Keller Postman received a favorable *Frye* decision when the court denied defendants' motions to exclude Keller Postman's expert on general causation for esophageal and kidney cancer. This is the first ruling in the country on causation and is especially important in vindicating our firm's decision to bring kidney cancer cases, a non-designated cancer.

3M COMBAT ARMS EARPLUGS MULTIDISTRICT LITIGATION

Leadership Role: Partner Nicole Berg sits on the Law & Briefing Subcommittee; Partner Ashley Keller is Counsel of Record on the first two appeals

The 3M Combat Arms Earplugs MDL involves claims by military servicemembers against 3M for hearing loss and tinnitus caused by faulty earplugs. Roughly 270,000 servicemembers have lodged claims against 3M related to the earplugs, making this the largest MDL in history.

The court appointed Keller Postman Partner Nicole Berg to the plaintiffs' leadership team as a member of the Law & Briefing Subcommittee. Berg and her team represented one of the 25 bellwether plaintiffs at trial and have played an integral role in drafting responses to MDL-wide dispositive motions and in briefing key legal issues in many bellwether trials. Keller Postman is counsel of record on 3M's appeals of bellwether verdicts. With the bellwether trials complete, the Court ordered four "waves" of 500 cases each to proceed to trial. Keller Postman is currently preparing wave cases for trial.

In July 2022, several "Aearo" subsidiaries—but not 3M itself—filed for bankruptcy, seeking an injunction in favor of 3M to halt litigation in the MDL entirely. Keller Postman responded creatively and aggressively. Specifically, we won a preliminary injunction under the All Writs Act from the MDL Court preventing 3M from trying to relitigate long-settled MDL rulings in bankruptcy. We participated in the bankruptcy court, presenting an expert witness who testified that 3M was facing \$100 billion in liability, arguing that if 3M obtained an injunction to halt MDL litigation, it should also be enjoined from issuing dividends and share buybacks. The bankruptcy court fully denied 3M's injunction request.

In August 2022, Keller Postman filed a bombshell fraudulent transfer complaint against 3M, asking the MDL Court to stop 3M from dissipating its assets by spinning off its healthcare business, paying dividends, and buying back stock (all violations of the Florida Uniform Fraudulent Transfer Act).

Most recently, Judge Rodgers issued a 22-page order in which she granted plaintiffs' motion for summary judgment on 3M's "full and independent liability" for earplug claims, issuing an unprecedented sanction and formally nullifying 3M's bankruptcy scheme.

Case Highlights Continued:

ACETAMINOPHEN —ASD-ADHD MULTIDISTRICT LITIGATION

Leadership Role: Partner Ashley Keller is Co-Lead Counsel and a member of the Plaintiffs’ Executive Committee along with Partner Ashley Barriere, who leads the Law and Briefing Subcommittee.

Studies over the last decade have shown that consuming acetaminophen while pregnant increases a child’s risk for autism spectrum disorder (ASD), attention deficit hyperactivity disorder (ADHD), and other developmental disorders related to infant exposure during pregnancy. Parents on behalf of their injured children are bringing claims against makers of generic store brand acetaminophen for failing in their duty to adequately warn of the hazards of prenatal exposure to acetaminophen.

According to the complaints, acetaminophen has long been marketed as the safest, and the only appropriate, over-the-counter pain relief drug on the market for pregnant women. However, increasing experimental and epidemiological research shows that prenatal exposure to acetaminophen alters fetal development, which significantly increases the risks of neurodevelopmental disorders. For example, in a study at Johns Hopkins School of Public Health, the risk of autism was three times higher for children whose mothers took the most Acetaminophen. Since 2013, there have been six European birth cohort studies examining over 70,000 mother-child pairs, showing the association between prenatal use of acetaminophen and ASD. And numerous studies over the last decade have shown that long-term maternal use of acetaminophen during pregnancy is substantially associated with ADHD.

Given the strong science, Keller Postman has filed claims in Nevada, California, and Washington, with far more claims to be filed in the following weeks and months. This matter is significant, because more than 65% of women in the United States use acetaminophen during pregnancy and have been reassured repeatedly of its safety (despite the widespread, long-term scientific evidence showing the high risk of developmental disorders because of consuming when pregnant). We anticipate that this will be one of the largest multidistrict litigations in the history of the United States.

Keller Postman has been at the forefront of this fast-growing mass tort since our team first uncovered the Consensus Statement in *Nature* highlighting the increasing evidence linking prenatal acetaminophen exposure to autism and ADHD. Our team also recently defeated Walmart’s motion to dismiss on preemption grounds, overcoming the single largest barrier to plaintiffs’ ultimate recovery.

NECROTIZING ENTEROCOLITIS/INFANT-FORMULA LITIGATION

Keller Postman is leading the state-side litigation against Abbot and Mead—the makers of Enfamil and Similac infant formula and fortifiers—for their role in causing preterm infants to develop necrotizing enterocolitis (NEC), a dangerous inflammation of the intestines that can lead to rupture and death. The lawsuits allege that defendants (including Mead Johnson & Company LLC, Mead Johnson Nutrition Company, and Abbot Laboratories) falsely marketed their infant formulas as “medically endorsed” and “nutritionally equivalent” to mother’s breast milk when the formulas are linked to the development of necrotizing enterocolitis.

We are bringing claims on behalf of families in state courts across the country, with cases filed in Illinois (Madison County, Cook County, and St. Clair County), as well as in state courts in California, Pennsylvania, and Missouri. This underscores the vast scope of the harm that the defendants have inflicted on these most vulnerable victims throughout the United States.

Case Highlights Continued:

This matter is significant, namely due to the obvious vulnerability of the young victims and the severity of NEC and its long-term effects. Despite mounting legal claims against the companies based on scientific evidence and research that has existed for decades, as well as safer alternatives like donor milk and human-milk based formula, these defendants continue to sell these products and encourage them to be distributed to premature infants across the country. Through this litigation and other advocacy efforts, we hope to shed more light on the dangers of these products and to equip other parents with the information they need to avoid putting their infants' health at risk.

CAMP LEJEUNE WATER CONTAMINATION LITIGATION

Leadership Role: Partner Zina Bash appointed Co-Lead Counsel and Government Liaison

Keller Postman represents thousands of veterans, military family members, and other civilians who were poisoned by the water at U.S. Marine Corps Base Camp Lejeune. As a result of consuming, bathing in, cooking with, and swimming in this contaminated water, our clients allege that they have developed diseases and chronic conditions, including cancers of the bladder, kidney, and liver, non-Hodgkin's lymphoma, Parkinson's disease, and multiple myeloma - among many other ailments.

Keller Postman also played a significant role in lobbying for the passage of The Camp Lejeune Justice Act, which was signed into law by the President on August 10, 2022. Keller Postman Partner Zina Bash played a particularly meaningful role in advancing the Justice Act. Having previously worked at the highest levels of the government, Bash leveraged her connections in Washington to help the bill make its way through Congress. And within minutes of the bill-signing, Keller Postman began filing actions against the U.S. government under the Camp Lejeune Justice Act.

This matter is significant, because over one million individuals were exposed to the toxic water at Camp Lejeune over a 30-year period, from the 1950s to the 1980s. Though the government became aware of the contamination in the early 1980s, it took years to remedy it and decades to warn individuals who had been exposed. Camp Lejeune's poisonous water has also been linked to widespread birth defects and high rates of stillborn babies. In fact, there were so many stillborn babies in Camp Lejeune during that time that a cemetery near the base became known as "Baby Heaven." What happened at Camp Lejeune is a terrible tragedy that could have been prevented. The Camp Lejeune Justice Act has been a long time coming, and it is our privilege to fight for justice on behalf of our clients.

Keller Postman has played a leading role in advocating for the passage of the Camp Lejeune Justice Act. After the Act became law, our firm helped clients sign up for claims under the Act and file them with the Navy and in Court. In fact, within minutes of the bill-signing, we filed the first actions against the government under the Justice Act to obtain compensation for victims.

PARAGARD IUD MULTIDISTRICT LITIGATION

Leadership Role: Partner Nicole Berg sits on the Plaintiffs' Executive Committee

The Paragard IUD MDL coordinates suits accusing Teva Pharmaceuticals USA, Inc., Teva Women's Health, Inc., The Cooper Companies Inc., and CooperSurgical Inc. of failing to warn users of the risks posed by the Paragard copper intrauterine device (IUD). The plaintiffs allege that their Paragard IUDs broke apart, leaving behind pieces of the device, which sometimes embedded in their uterus. The breakage

Case Highlights Continued:

caused serious complications and injuries, including surgeries to remove the broken pieces of the device, infertility, and pain.

In September 2021, Partner Nicole Berg argued against defendants' motion to dismiss the claims of plaintiffs in this MDL. Two months later, Judge Leigh Martin May sided with plaintiffs and denied defendants' motion on preemption, shotgun pleading, Rule 12, and Rule 9(b), finding that "factual underpinnings for the design defect claims and detailed allegations about the defendants' failure to warn" were sufficient to state a claim. The discovery process has begun.

ONGLYZA AND KOMBIGLYZE XR MULTIDISTRICT LITIGATION

Leadership Role: Partner Ashley Barriere appointed to the Plaintiffs' Steering Committee and leads the Law & Briefing Committee

This MDL involves individuals who took Onglyza (saxagliptin) and Kombiglyze XR (saxagliptin and metformin) to treat Type 2 diabetes. The plaintiffs represented by Keller Postman allege that the drugs caused serious cardiac complications. Defendants Bristol-Myers Squibb and AstraZeneca began selling the drugs in 2009 and 2010, before completing a cardiac risk study recommended by the U.S. Food and Drug Administration. The study was completed in 2013 and showed that saxagliptin users had a significantly increased risk of hospitalization due to heart failure.

We're proud of Partner Ashley Barriere's position on plaintiffs' leadership in this MDL. Our firm values empowering both young attorneys and female leaders to take on pivotal roles.

IN RE JOHNSON & JOHNSON AEROSOL SUNSCREEN MARKETING, SALES PRACTICES & PRODUCTS LIABILITY LITIGATION

Leadership Role: Keller Postman named Interim Class Counsel

Keller Postman filed a class action against Johnson & Johnson subsidiary Johnson & Johnson Consumer, Inc. (J&J)—*Dominguez et al v. Johnson & Johnson Consumer*—on behalf of purchasers of certain Aveeno and Neutrogena sunscreens that have dangerous and unacceptable levels of the known cancer-causing chemical, benzene. Benzene, which is often found in crude oil and identified by the smell associated with gasoline, is classified as a human carcinogen by the United States Department of Health and Human Services, and a Group 1 compound (i.e. "carcinogenic to humans") by the World Health Organization and the International Agency for Research on Cancer.

In October 2021, the Judicial Panel on Multidistrict Litigation approved centralizing in Florida the federal court lawsuits accusing Johnson & Johnson of selling sunscreen products tainted with benzene. The consolidated litigation is *In re Johnson & Johnson Aerosol Sunscreen Marketing, Sales Practices & Products Liability Litigation*.

Attorney Biographies





Warren Postman

Managing Partner

Warren combines a deep understanding of the civil litigation system with broad substantive expertise to solve complex litigation challenges for the firm's clients.

Warren is a champion for plaintiffs in mass action litigation. His vision to boldly employ cutting-edge technology and innovation to empower plaintiff-side litigants has given hundreds of thousands of ordinary Americans a realistic avenue to vindicate their rights.

Warren spearheaded the development of the firm's revolutionary mass arbitration practice, which pursues individual arbitrations for thousands of individuals whose claims are subject to arbitration clauses with class-action waivers. The firm aggressively pursues individual arbitrations for tens of thousands of clients simultaneously and, as described by the *New York Times*, has left defendants "scared to death." Warren has won numerous precedent-setting victories requiring defendants to comply with their obligation to arbitrate under agreements they drafted.

Due in large part to the arbitration practice Warren has built at Keller Postman, the rise of "mass arbitrations" has been one of the most significant recent developments in civil litigation. In the last four years alone, Keller Postman has secured millions in settlements for more than 500,000 individual clients.

Before joining Keller Postman, Warren was Vice President and Chief Counsel for Appellate Litigation at the U.S. Chamber Litigation Center. In that role, he managed appellate strategy for the U.S. Chamber of Commerce, which participates in more than 150 cases each year to shape the law on a wide range of issues affecting businesses. Working closely with senior in-house lawyers at some of the world's largest companies, Warren gained unique insight into the dynamics and trends that shape business litigation.

Warren was previously an attorney in the Issues & Appeals practice at Jones Day, where he helped guide trial and appellate strategy in some of the firm's most complex and high-stakes cases.

Warren served as a law clerk for Justice David H. Souter at the Supreme Court of the United States and Judge William A. Fletcher at the U.S. Court of Appeals for the Ninth Circuit. He graduated *magna cum laude* from Harvard Law School, where he was Articles Editor on the *Harvard Law Review*, and graduated *magna cum laude* and Phi Beta Kappa from Brandeis University.

EDUCATION

J.D., Harvard Law School
B.S., Brandeis University

CLERKSHIPS

Hon. David H. Souter, Supreme Court of the United States
Hon. William A. Fletcher, U.S. Court of Appeals for the Ninth Circuit

AWARDS

Chambers & Partners Band 1 District of Columbia Ranking (2022)
Law360 Technology MVP of the Year (2022)
Law360 Employment MVP of the Year (2021)
National Law Journal's Plaintiffs' Lawyers Trailblazers (2021)
Lawdragon's 500 Leading Lawyers in America (2021, 2022)
Lawdragon's Leading Plaintiff Financial Lawyers (2021, 2022)
National Trial Lawyers' Top 100 (2021, 2022)
Super Lawyers D.C. (2022, 2023)

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202.918.1870



Albert Pak

Partner

Albert represents clients in a range of disputes, including consumer protection and antitrust matters.

At Keller Postman, Albert has represented tens of thousands of people in court and in arbitration. He represents individuals whose privacy rights were violated by devices enabled with Alexa, Amazon's smart home technology. He also represents individual consumers who were charged unfairly high prices by Amazon in light of Amazon's most favored nation clause against third-party merchants.

Before joining Keller Postman, Albert was an associate at Kellogg, Hansen, Todd, Figel & Frederick PLLC in Washington, D.C., where he represented plaintiffs and defendants in federal and state courts at the trial and appellate levels. His practice at Kellogg Hansen focused on appellate, commercial, securities, and antitrust litigation.

Among his notable matters during his time at Kellogg, Albert supported litigation in an antitrust class action against Sutter Health, which operates 24 acute care hospitals in Northern California. The case, *UFCW & Employers Benefit Trust v. Sutter Health et al.*, settled on the eve of trial for \$575 million. In litigating that case and others, Albert has taken and defended multiple depositions, briefed dispositive motions, and presented oral argument in trial and appellate courts.

Albert served as a law clerk for Judge John M. Rogers of the U.S. Court of Appeals for the Sixth Circuit. He graduated from Yale Law School, where he was Managing Editor of the Yale Journal of International Law and a teaching assistant for a course on legal writing. He earned his undergraduate degree with distinction and honors from Stanford University and was admitted to Phi Beta Kappa.

EDUCATION

J.D., Yale Law School
B.A., Stanford University

CLERKSHIPS

Hon. John M. Rogers, U.S. Court of Appeals for the Sixth Circuit

AWARDS

Chambers & Partners Up and Coming (2023)
Super Lawyers Rising Stars (2022-2024)
LawDragon 500 X – The Next Generation
National Trial Lawyers - Top 40 under 40
National Law Journal - Elite Trial Lawyers

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Ethan Ames

Associate

Ethan he leverages his experience in litigating complex disputes to advocate efficiently and effectively for the firm's clients. His primary focus is on consumer protection and employment matters.

At Keller Postman, Ethan specializes in representing clients in the firm's pioneering mass arbitration practice.

Before joining Keller Postman, Ethan was an associate at Venable LLP, where he represented companies and ultra-high net worth individuals in state and federal courts throughout the United States. Ethan gained extensive experience in various aspects of litigation, from pleadings to discovery, motion practice, and appellate work. He has also regularly assisted clients in resolving disputes without resorting to litigation—including by negotiating pre-litigation settlements, and utilizing alternative means of dispute resolution like mediation and arbitration. Ethan's past representations include high-profile clients in the media and entertainment industry.

Ethan is a graduate of the University of Chicago Law School and earned his undergraduate degree, summa cum laude, from the University of Toledo. Before embarking on his legal career, he gained valuable experience as an associate at PricewaterhouseCoopers LLP.

EDUCATION

J.D., University of Chicago Law School
B.B.A., University of Toledo

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 5 ARI CHERNIAK (SBN 290071)
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 9 Attorneys for Plaintiff and Putative Class

10
 11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **NICOLAS C. SMITH-WASHINGTON,**
 14 **JOYCE MAHONEY, JONATHAN AMES,** and
 15 **JENNY LEWIS,** on behalf of himself and all
 others similarly situated,

16 Plaintiffs,

17 v.

18 **TAXACT, INC.,** an Iowa Corporation

19
 20 Defendant.
 21

Case No. 3:23-CV-00830-VC

**DECLARATION OF HUNTER
 HUGHES IN SUPPORT OF MOTION
 FOR PRELIMINARY APPROVAL OF
 CLASS ACTION SETTLEMENT**

Date:
 Time:
 Location:

1 I, Hunter Hughes, declare as follows:

2 1. I make this Declaration based on personal knowledge of the facts set forth herein and,
3 if called as a witness, could and would testify competently to them.

4 2. I was selected by the Parties to mediate *Smith-Washington et al v. TaxAct, Inc.* No. 23-
5 cv-830-VC (N.D. Cal.) (the “Action”) and did so as an independent mediator.

6 3. I have not received any compensation for providing this declaration. The only
7 compensation I received is for my service as a mediator in this case, which was shared equally by the
8 parties.

9 4. While the mediation process is confidential, the Parties have jointly authorized me to
10 inform the Court of the matters set forth herein in support of preliminary approval of the Settlement.
11 My statements and those of the Parties during the mediation process are subject to confidentiality
12 under, *inter alia*, Federal Rule of Evidence 408, and there is no intention on either my part or the
13 Parties’ part to waive such protections.

14 **BACKGROUND AND QUALIFICATION**

15 5. I received my B.A. and J.D. degrees with honors from the University of Virginia and
16 have practiced law for over 40 years. I have been lead trial counsel in hundreds of cases, including
17 dozens of nationwide class and mass actions. I am admitted to practice in the Northern, Middle, and
18 Southern Districts of Georgia, the Fifth, Sixth, Eighth, Ninth, and Eleventh Circuit Courts of Appeal,
19 and the United States Supreme Court.

20 6. I now work as a mediator, arbitrator, and special master. My principal office is in
21 California, but my practice as a neutral extends to cases pending across the United States.

22 7. I am a retired Distinguished Fellow in the American College of Civil Trial Mediators
23 and have been selected for inclusion in multiple editions of Woodward/White’s “Best Lawyers in
24 America,” Chambers’ USA “America’s Leading Lawyers for Business,” “Who’s Who in American
25 Law, Law & Politics,” Atlanta Magazine’s Top 10 and Top 100 “Georgia Super Lawyers Top 10 and
26 Top 100,” and Georgia Trend’s “Legal Elite.”

27 8. I have served as a neutral in scores of national class, collective, and mass actions
28 (including mediating the Morgan Stanley, Smith Barney, FedEx, Abercrombie, Viacom, Disney,

1 NBC, Time Warner, Coca-Cola, Home Depot, Publix, Wal-Mart, Dell, Xerox, Lowe's, Cigna,
2 Lockheed, Credit Suisse, Mutual of Omaha, General Dynamics, Boeing, Bechtel, Intrust, AXA,
3 and Allscripts class and collective action cases).

4 9. I have written numerous articles and publications, including "How Our Subconscious
5 Bias Impacts the Negotiations," American Journal of Mediation; Chapter 26, "Mediating Class
6 Actions: How Mediators Operate and What They Want," How ADR Works, BNA Books; and "Class
7 Actions in Arbitrations," A Treatise Project of the American Bar Association Labor and Employment
8 Law Section.

9 10. I have served as an Adjunct Professor at the University of Virginia Law School and
10 also have been a speaker throughout the country at several hundred seminars and conferences on
11 various topics, including trial practice, alternate dispute resolution, settlement strategies, damages,
12 negotiations skills, and a wide range of substantive matters.

13 **THE ARMS-LENGTH SETTLEMENT NEGOTIATIONS**

14 11. In or about September 2023, the parties retained me to mediate this case. I had
15 previously mediated other similar class cases. These cases were settled following my assistance and
16 to my knowledge all such settlements received final court approval.

17 12. In preparation for mediation in this Action, the Parties provided to me, and exchanged
18 among themselves, briefs, analyses, documents and presentations discussing the key disputed factual
19 and legal issues in the Action. It was evident from the submissions and presentations made by the
20 Parties before and during the mediation process that counsel for the Parties had performed a thorough
21 examination of the facts underlying the Action and, with the aid of experts, analyzed it to determine
22 appropriate case viewpoints and valuations. Counsel for the Parties were well informed on the current
23 law and provided legal research and analysis of the relevant law.

24 13. It was apparent to me that considerable work was done by counsel for the Parties to
25 prepare the case for mediation, and that counsel on both sides have deep experience in class action
26 litigation and settlements.

27 14. The mediation session in this case was held on November 20, 2023 via Zoom. During
28 this session, the parties engaged in extensive arms' length negotiations. I was actively involved during

1 this process. The negotiations were hotly contested. This was a challenging mediation given the highly
2 technical and complex nature of the issues in this case. The negotiations were also difficult and
3 contentious because each side held strong to their convictions that they had the better arguments with
4 regard to liability and damages, and debates were held on virtually every issue, including what
5 motions, trials and appeals would ultimately yield if a negotiated agreement was not achieved. Both
6 Parties had the wherewithal to prosecute and defend this action for many more years and were prepared
7 to do so.

8 15. After much back-and-forth, the parties were unable to reach agreement. At this point,
9 I encouraged the parties to continue talking amongst themselves while they proceeded to litigate the
10 case.

11 16. I was pleased to learn that the parties ultimately agreed to a class settlement a few
12 months later. I have reviewed the Settlement Agreement and believe the terms that were eventually
13 reached represent a fair compromise of this difficult dispute. This is based on my understanding of the
14 full range of the dispute, the positions of the Parties, and the strengths and weaknesses of those
15 positions, as well as the risks, rewards and costs of litigation in this ever developing and evolving
16 factual and legal landscape

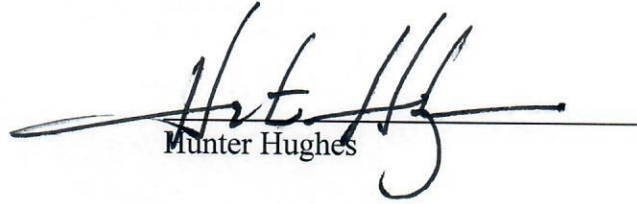
17 **CONCLUSION**

18 17. Based upon my experience as a mediator, my knowledge of the issues in dispute, my
19 review of the materials presented before and during the mediation, the rigor of the Parties' negotiations
20 during the mediation session, and the benefits achieved by the Settlement, I believe the Settlement
21 represents a reasoned and sound resolution of this litigation.

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

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27 DATED: *February 22, 2024*

Respectfully submitted,



Minter Hughes

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9 *Attorneys for Plaintiffs and the Putative Classes*

10 *Additional Counsel listed on next page*

11 **UNITED STATES DISTRICT COURT**

12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **NICHOLAS C. SMITH-WASHINGTON,** Case No. 3:23-CV-830-VC

14 **JOYCE MAHONEY, JONATHAN AMES,**

15 **MATTHEW HARTZ, and JENNY LEWIS**

on behalf of themselves and all others similarly
situated,

16 Plaintiffs,

17 vs.

18 **TAXACT, INC.,** an Iowa corporation,

19 Defendant.

) Assigned to Hon. Vince Chhabria

) **DECLARATION OF JONATHAN AMES**
) **IN SUPPORT OF PLAINTIFFS' MOTION**
) **FOR PRELIMINARY APPROVAL OF**
) **CLASS ACTION SETTLEMENT**

) Courtroom: 4, 17th Floor
) Hearing Date: April 4, 2024
) Hearing Time: 10:00 a.m.

) Date Action Filed: January 24, 2023
) Removal Filed: February 23, 2023

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1 I, Jonathan Ames, declare as follows:

2 1. I am over the age of 18, have personal knowledge of the facts set forth in this Declaration
3 and could and would testify competently to them.

4 2. I am one of the Named Plaintiffs and proposed Class Representatives in the above-
5 captioned case. My fiancée, Joyce Mahoney, is also one of the Named Plaintiffs and Class
6 Representatives in this case.

7 3. I submit this Declaration in support of Plaintiffs' Motion for Preliminary Approval of
8 Class Action Settlement.

9 3. I have used TaxAct to file my income tax returns between approximately 2005 and tax
10 year 2020. During this time period, Joyce Mahoney and I filed our taxes separately. When my
11 personal, financial information was entered into the TaxAct website, I fully expected that my
12 information would be secure and would only be available to TaxAct, the Internal Revenue Service and
13 me; I was disappointed to learn that this expectation was inaccurate.

14 4. I decided to join this lawsuit as a Named Plaintiff and Class Representative after Joyce
15 Mahoney and I spoke to our attorneys about the claims in this case. Our initial call lasted
16 approximately one hour. During that time, we discussed our use of TaxAct's website, how frequently
17 we logged into our respective accounts, the kind of personal and financial information we entered on
18 the website, whether we had Facebook accounts, which we both have had since at least 2005, and if
19 we recalled seeing advertisements for TaxAct and other tax preparation service providers after we
20 began using TaxAct which, again, we did.

21 5. During our conversation, our attorneys asked Joyce Mahoney and me to search through our
22 records and confirm both the dates we signed-up for our TaxAct accounts and the years in which we
23 had used the TaxAct website to file our income taxes. Our attorneys also explained the duties of Class
24 Representatives to us, which we both readily agreed to accept, and we agreed that our attorneys would
25 send us our representation agreements to review and sign. I was familiar with the concept of class
26 actions and the duties of Class Representatives before speaking to my attorneys because I myself am a
27 real estate attorney having practiced transactional real estate, land use and governmental affairs law
28 for more than 38 years.

1 6. Although, admittedly, Joyce Mahoney did most of the searching through our records, I
2 spent approximately twelve (12) hours assisting her with locating, retrieving, and reviewing the many
3 boxes of tax returns and other materials relevant to our TaxAct accounts that had been consigned to
4 the attic over the many years. After consulting with our attorneys relative to the documents
5 specifically needed for our case, we retrieved approximately ten relevant documents from the fifteen
6 (15) different, large boxes that we retrieved from the attic. We then provided these documents to our
7 attorneys at their direction.

8 7. After 38 years of practice, I was and am well-familiar with the review of legal documents
9 and devoted a significant number of hours reviewing and providing comments and feedback on the
10 documents sent to me by my attorneys in this matter. At the outset, I reviewed the initial
11 Representation Agreement, the description of Class Representatives' duties and obligations to the
12 class, and the initial Complaint (to familiarize myself with the allegations in the case). I spent
13 approximately two hours reviewing these initial documents.

14 8. I spent approximately three (3) to four (4) hours reviewing the lengthy First Amended
15 Complaint, approximately three (3) hours reviewing, comparing and contrasting the proposed Second
16 Amended Complaint to the First Amended Complaint, and another three (3) hours reviewing,
17 comparing and contrasting the final, Second Amended Complaint which was recently filed.

18 9. I spent approximately five (5) to six (6) hours on the various tasks related to the
19 submission of my sworn Declaration in Opposition to TaxAct's Motion to Compel Arbitration and
20 Stay Proceedings. This included time spent discussing my Declaration and its content with our
21 attorneys in this case; time spent obtaining Joyce Mahoney's and my financial information for the year
22 in which the case was filed and for several years prior thereto for the purposes of affirming that we
23 did, in fact, qualify for a Waiver of Arbitration Fees; time spent drafting my declaration and discussing
24 and reviewing it with my personal attorney; time spent providing comments and feedback to our
25 attorneys in this case; time spent reviewing Joyce Mahoney's Declaration in support of Plaintiffs'
26 Motion for Preliminary Approval of Class Action Settlement; and time spent working with my
27 attorneys to draft this declaration in support of Plaintiffs' Motion for Preliminary Approval.

1 10. After our attorneys informed me that the Defendant had agreed to mediation in this matter,
2 I discussed the mediation strategy with them and affirmed that I would be available by telephone on
3 the day of mediation in case my attorneys needed to reach me.

4 11. When the parties reached a settlement in principle, I discussed the details of that proposed
5 settlement with my attorneys and reviewed and approved the Memorandum of Understanding
6 (“MOU”), which I found to be straightforward and to reflect the terms of the settlement I had
7 discussed with my attorneys. Concise and accurate, it took me but a few minutes to review the MOU
8 before approving and executing it. Subsequently, I have reviewed the long-form Settlement
9 Agreement, pairing and comparing it with and to the operative Complaint and, specifically the Causes
10 of Action contained therein. In total, I spent approximately three (3) hours reviewing the Settlement
11 Agreement prior to approving it.

12 12. I believe that the terms of the Settlement Agreement are fair, reasonable and in the best
13 interests of the Class. I understand that the Settlement is for a substantial amount of money and I truly
14 hope that it will make TaxAct less likely to violate its users’ privacy in the future. As with any case, I
15 understand that the Plaintiffs in this case faced significant risks including the possibility that our case
16 would be compelled to individual arbitration.

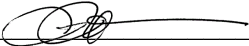
17 13. I have, as a matter of personal course, taken my role as a named Plaintiff and Class
18 Representative very seriously and have put the interests of the Class before my own. I have been
19 actively involved in the case since I agreed to act as a Class Representative and have, as stated
20 hereinabove, devoted a significant amount of time to it, all for the benefit of the Class. The review of
21 the pleadings and other documents that my attorneys have provided me throughout this matter has
22 required me to be in frequent contact with them, and I have always and promptly responded to their
23 many calls and emails. I have also often reached out to them for explanation and amplification in my
24 dedication to remaining well-informed relative to the progress of the case.

25 14. In considering the proposed Settlement Agreement and staying well-informed relative to
26 the settlement approval process, I believe that I have acted in the Class’s best interests. I continue to be
27 firmly committed to representing the interests of the Class to the best of my ability and am wholly
28 committed to maintaining that standard of representation for the duration of this matter. Finally, I will

1 remain committed to assisting our attorneys as part of my role in representing the Class to the best of
2 my ability until this case is concluded.

3 15. Considering the search, retrieval and review of almost two (2) decades worth of tax
4 documents and supporting evidence, the careful review of the many documents and legal instruments
5 attendant to this case, my continual monitoring of the case as it has progressed through the judicial
6 system, the number of phone calls and emails that I made to the attorneys and received therefrom, the
7 time spent reviewing the various components of the matter with both my attorneys in this case and my
8 personal counsel, and finally working with my attorneys to draft the instant declaration, as well as
9 reviewing Joyce Mahoney’s declaration, I estimate that I have invested between thirty (30) and forty
10 (40) hours on activities related to this case.

11 I declare under penalty of perjury under the laws of the United States that the foregoing is true
12 and correct. Executed on 22FEB2024, 2024, in Lancaster, California.

13 
14 _____
Jonathan L. Ames

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9 *Attorneys for Plaintiffs and the Putative Classes*

10 *Additional Counsel listed on next page*

11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **NICHOLAS C. SMITH-WASHINGTON,**) **Case No. 3:23-CV-830-VC**
 14 **JOYCE MAHONEY, JONATHAN AMES,**)
 15 **MATTHEW HARTZ, and JENNY LEWIS**) Assigned to Hon. Vince Chhabria
 on behalf of themselves and all others similarly)
 situated,)

16 Plaintiffs,)

17 vs.)

18 **TAXACT, INC.,** an Iowa corporation,)
 19 Defendant.)

) **DECLARATION OF JENNY LEWIS IN**
) **SUPPORT OF PLAINTIFFS' MOTION**
) **FOR PRELIMINARY APPROVAL OF**
) **CLASS ACTION SETTLEMENT**

) Dated: April 4, 2024
) Time: 10:00 a.m.
) Place: Courtroom 4, 17th Floor

) Date Action Filed: January 24, 2023
) Removal Filed: February 23, 2023

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1 I, Jenny Lewis declare as follows:

2 1. I am over the age of 18 and have personal knowledge of the facts set forth in this
3 declaration and could and would testify competently to them.

4 2. I am one of the Named Plaintiffs and proposed Class Representatives in the above-
5 captioned case. I submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of
6 Class Action Settlement.

7 3. I decided to join this lawsuit as a Named Plaintiff and Class Representative after
8 speaking to my attorneys in or about June 2023. During our initial conversation, which lasted a little
9 over an hour, my attorneys and I discussed my husband's use of TaxAct to file our taxes. The
10 discussion included the year my husband created his TaxAct account, and the years during which he
11 used TaxAct to file our income taxes, which we file as "married filing jointly." My husband was part
12 of this conversation because he is the one who files our tax returns and he was the one who created the
13 TaxAct account and completed and filed our tax returns using TaxAct's website.

14 4. During our initial conversation, my attorneys also asked me to search through my and
15 my husband's records to locate the records of our tax filings through TaxAct's website. My husband
16 and I spent approximately four hours searching through both paper and electronic records to determine
17 when my husband first created his TaxAct account, which years he used TaxAct's website to file our
18 taxes, and to pull up receipts of these transactions.

19 5. I also spent approximately 30 minutes figuring out how long I have had an account with
20 Facebook, which was something my attorneys asked me to do.

21 6. After searching through my and my husband's records, I was able to figure out that he
22 had a TaxAct account at least as of 2015, and that he has used TaxAct's website to file our taxes for
23 tax year 2014 through tax year 2022.

24 7. My husband and I also collected records from approximately six different years (2017,
25 2018, 2019, 2020, 2021, and 2022), confirming that my husband filed our returns using TaxAct's
26 website during those years. We also searched through my husband's TaxAct account for our records
27 from 2015 and prior, but received a message stating that information for returns from 2015 and prior is
28 no longer available online.

1 8. After I expressed an interest in joining the case as a Named Plaintiff and Class
2 Representative, my attorneys explained to me what it means to be a Class Representative and what
3 duties and obligations I would have to the Class Members in this role. Based on our conversation, I
4 understood that I was required to see to the best interests of the Class and to put the interests of the
5 Class Members ahead of my own, which is what I have done throughout my involvement in this case.

6 9. My attorneys also sent me a representation agreement, which included a list of duties a
7 class representative has to the Class. I carefully reviewed this list, as well as the rest of the agreement
8 before signing it. I spent approximately one hour or a little longer reviewing the representation
9 agreement.

10 10. I have been actively involved in the case. I have stayed in touch with my attorneys since
11 our first conversation and have stayed up to date about the progress of the case. I promptly responded to all
12 their calls and emails, and assisted them in whatever way they asked. I reviewed the pleadings in this case,
13 including the First Amended Complaint, the proposed Second Amended Complaint submitted to the Court
14 last year (which I understand was ultimately not filed) and the Second Amended Complaint which was
15 recently filed, after the settlement was reached in principle, to make sure I agreed with everything they
16 stated (particular with respect to the facts that concerned me). I estimate that I spent approximately three
17 hours reviewing all three complaints, and additional time speaking to my attorneys throughout the case.

18 11. In or about August 2023, my attorneys advised me that they wanted me to submit a
19 declaration in opposition to TaxAct's Motion to Compel Arbitration and Stay Proceedings. I spent
20 approximately one and a half hours speaking to my attorneys about the purpose and content of my
21 declaration, reviewing a draft of my declaration to make sure that everything it stated was accurate,
22 and signing it.

23 12. Thereafter, my attorneys informed me that TaxAct has agreed to participate in mediation to
24 see whether the parties could resolve this lawsuit without engaging in further litigation. I made sure to be
25 available by phone throughout the day of mediation as my attorneys asked me to do. After the mediation,
26 my attorneys informed me that the mediation was not successful and that the parties may continue to
27 discuss a potential settlement.

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9 *Attorneys for Plaintiffs and the Putative Classes*

10 *Additional Counsel listed on next page*

11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **NICHOLAS C. SMITH-WASHINGTON,** Case No. **3:23-CV-830-VC**
 14 **JOYCE MAHONEY, JONATHAN AMES,**
 15 **MATTHEW HARTZ, and JENNY LEWIS** Assigned to Hon. Vince Chhabria
 on behalf of themselves and all others similarly
 situated,

16 Plaintiffs,

17 vs.

18 **TAXACT, INC.,** an Iowa corporation,
 19 Defendant.

) **DECLARATION OF JOYCE MAHONEY**
) **IN SUPPORT OF PLAINTIFFS' MOTION**
) **FOR PRELIMINARY APPROVAL OF**
) **CLASS ACTION SETTLEMENT**
)
) Courtroom: 4, 17th Floor
) Hearing Date: April 4, 2024
) Hearing Time: 10:00 a.m.
)
) Date Action Filed: January 24, 2023
) Removal Filed: February 23, 2023
)
)
)
)

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1 I, Joyce Mahoney, declare as follows:

2 1. I am over the age of 18 and have personal knowledge of the facts set forth in this
3 declaration and could and would testify competently to them.

4 2. I am one of the Named Plaintiffs and proposed Class Representatives in the above-
5 captioned case.

6 3. I submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of
7 Class Action Settlement.

8 4. My fiancé, Jonathan Ames, is also one of the Named Plaintiffs and proposed Class
9 Representatives in this case. Jonathan Ames and I file our taxes separately. I created my TaxAct
10 account in approximately 2005, and I have used TaxAct's website to prepare and file my state and
11 federal taxes from approximately 2005 through tax year 2020.

12 5. I have had a Facebook account for at least the last 15 years, and I also have an
13 Instagram account, which is owned by Facebook (now known as "Meta"). My understanding, based on
14 conversations with my attorneys, is that TaxAct used the Meta Pixel and other tracking tools on its
15 website to track and disclose my personal information, and that of other users, to Meta and other third
16 parties who then use it for business purposes in conjunction with Facebook user IDs and/or other
17 social media accounts.

18 6. I first spoke to my attorneys in or about March 2023. My initial call lasted
19 approximately 45 minutes to one hour. During this call, Mr. Ames and I discussed in detail my use of
20 and experience with TaxAct's website and services, as well as the allegations in the lawsuit. My
21 attorneys also asked me to look through my records to confirm when I created my account with
22 TaxAct and the tax years during which Mr. Ames and I filed our income tax returns using TaxAct's
23 website.

24 7. I keep meticulous records of all my financial transactions going back to the 1980s,
25 including my income tax returns and related documents. I also keep records of Mr. Ames' financial
26 transactions, including his income tax returns and related documents, going back to approximately the
27 late 1990s. In order to figure out when Jonathan Ames and I created our TaxAct accounts and the tax
28 years during which we used TaxAct's website to file our income tax returns, I spent over 20 hours

1 searching through boxes of documents from 2006 and onwards. Through these efforts, I was able to
2 locate and gather all the necessary records and confirm for my attorneys the year I created my TaxAct
3 account, the tax years during which I used TaxAct's website to file my income tax returns, and other
4 related information. Jonathan Ames was also able to confirm the years during which he used TaxAct's
5 website to prepare and file his income tax returns. Once I gathered these documents, I sent them over
6 to our attorneys as proof of our respective use of TaxAct's website/services.

7 8. After speaking to my attorneys, I decided to take an active role in the case and to
8 become a Class Representative because I felt that this case involved an important right to privacy. I am
9 very bothered by the fact that TaxAct shared my personal and financial information with third parties
10 without my permission, which I do not recall ever giving. I believe that other consumers feel the same
11 way.

12 9. Before I agreed to act as a Class Representative, my attorneys explained to me (and to
13 Jonathan Ames) what it meant to be a Class Representative and what duties and obligations I would
14 have to the class members if I decided to represent them. I also carefully reviewed the representation
15 agreement that my attorneys sent to me, which included a description of the duties and obligations I
16 had to agree to accept to become a Class Representative. I accepted these duties and obligations and
17 signed the representation agreement.

18 10. I understood then and I understand now that as a Named Plaintiff and Class
19 Representative my duty is to act in the best interests of the Class and to put the interests of the Class
20 before my own. I have done this to the best of my ability.

21 11. Since agreeing to act as a Class Representative, I have been actively involved in the
22 case and it has been, at times, very taxing. I have been in frequent contact with my attorneys
23 throughout the case and have promptly responded to all their calls and emails. I very carefully
24 reviewed the First Amended Complaint, the proposed Second Amended Complaint, which I
25 understand was ultimately not filed, and the Second Amended Complaint, which was recently filed,
26 after the settlement was reached in principle. In total, I spent approximately four hours reviewing these
27 three complaints.

1 12. I also spent time working with my attorneys to submit my declaration in opposition to
2 TaxAct's Motion to Compel Arbitration and Stay Proceedings in this case. I had several discussions
3 with my attorneys related to the content of my declaration. Because we were on a tight timeline to file
4 my declaration, I had to turn my attention away from some personal matters to focus on being
5 available to my attorneys and to review my draft declaration before signing in. At the time my
6 attorneys asked me to review and sign the final draft of this Declaration, I was driving in a remote area
7 with poor cellular service. I had to pull off the road and search for an area with good reception to be
8 able to access the final draft of my declaration and sign it. In total, I spent approximately two to three
9 hours speaking to my attorneys about my declaration, reviewing and commenting on a draft, and
10 reviewing and signing the final copy.

11 13. I discussed the mediation and mediation strategy with my attorneys and made sure to be
12 available by phone throughout the day of mediation as my attorneys asked of me. I discussed the
13 details of the proposed settlement with my attorneys and carefully reviewed and approved the
14 Memorandum of Understanding, which took me approximately one hour. I also discussed with my
15 attorneys and closely reviewed the long-form Settlement Agreement, which took me approximately
16 four (4) hours.

17 14. I estimate that since the initial conversation with my attorneys in early 2023, I devoted
18 between 45 and 55 hours to activities related to this case including time spent searching through the
19 large and cramped attic of our home, retrieving the 15-boxes of our tax records going back to 2006 and
20 then combing through each box to find the records my attorneys required.

21 15. I feel that it was important for me to bring this lawsuit on behalf of myself and other
22 users of TaxAct's tax filing services to ensure that companies, including TaxAct, take the privacy of
23 their customers more seriously than they apparently do. I am proud of having participated in this
24 lawsuit and of the results that it has achieved. I believe that this settlement will have a positive impact
25 on the Class and will make TaxAct less likely to violate its users' privacy in the future.

26 16. I will continue to devote all the necessary time and to actively participate in this case
27 and will do whatever my attorneys advise is needed until this case is concluded.

1 I declare under penalty of perjury under the laws of the United States that the foregoing is true and
2 correct. Executed on February 22, 2024 in Lancaster, California.

3 Joyce Mahoney
4 Joyce Mahoney

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9 *Attorneys for Plaintiffs and the Putative Classes*

10 *Additional Counsel listed on next page*

11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **NICHOLAS C. SMITH-WASHINGTON,** Case No. **3:23-CV-830-VC**
 14 **JOYCE MAHONEY, JONATHAN AMES,**
 15 **MATTHEW HARTZ, and JENNY LEWIS** Assigned to Hon. Vince Chhabria
 on behalf of themselves and all others similarly
 situated,

16 Plaintiffs,

17 vs.

18 **TAXACT, INC.,** an Iowa corporation,
 19 Defendant.

) **DECLARATION OF MATTHEW HARTZ**
) **IN SUPPORT OF PLAINTIFFS' MOTION**
) **FOR PRELIMINARY APPROVAL OF**
) **CLASS ACTION SETTLEMENT**

) Courtroom: 4, 17th Floor
) Dated: April 4, 2024
) Time: 10:00 a.m.

) Date Action Filed: January 24, 2023
) Removal Filed: February 23, 2023

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1 I, Matthew Hartz, declare as follows:

2 1. I am over the age of 18 and have personal knowledge of the facts set forth in this
3 declaration and could and would testify competently to them.

4 2. I am one of the proposed named Plaintiffs and proposed Nationwide Class
5 Representatives in the above-captioned case against TaxAct, Inc. (“TaxAct”). I submit this
6 declaration in support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement.

7 3. I used TaxAct to file my income tax returns from approximately 2010 through 2022, for
8 tax years 2009 through 2021. When I entered my personal financial information into the TaxAct
9 website, I fully expected that my information would be secure and would only be available to me,
10 TaxAct, the IRS, and the Illinois Department of Revenue. However, I was disappointed to learn that
11 this turned out not to be the case.

12 4. I initially decided to bring a lawsuit against TaxAct as the named Plaintiff and Class
13 Representative, in a case entitled *Hartz v. TaxAct, Inc.*, No. 23-cv-4591 (N.D. Ill.), which I now
14 understand contains similar allegations to those in the present case. I have spent 15–20 hours working
15 with my attorney in that case, Spenser Shehan, including time spent on numerous phone calls with Mr.
16 Shehan, and time spent reviewing documents that were being filed on my behalf in that case.

17 5. On or about February 8, 2024, after speaking with Mr. Shehan as well as attorneys in
18 this case, I agreed to serve as a proposed Nationwide Class Representative in the present action and to
19 agree to the ultimate dismissal of the case *Hartz v. TaxAct, Inc.*, No. 23-cv-4591 (N.D. Ill.). I
20 understood that a settlement in principle had been reached in the present case, and I believed that
21 joining this case as a proposed Plaintiff and Nationwide Class Representative would be the best way to
22 get the best relief for myself and other Nationwide Class Members. I understood that in connection
23 with this settlement, the case I had served as lead Plaintiff on would ultimately be dismissed. Around
24 the same time, I also spent 1 hour talking with my attorneys in the present case about my experiences
25 with TaxAct as well as discussing the allegations in this case and the proposed settlement.

26 6. During my initial conversation with my attorneys in this case, my attorney also asked
27 me to search through my records and confirm the date on which I signed up for my TaxAct account,
28 and the years for which I filed my income tax returns using TaxAct’s website. He also explained to

1 me the duties of class representatives, which I readily agreed to accept. I was familiar with the
2 concept of class actions and the duties of class representatives before speaking to my attorneys
3 because I have previously served as a named plaintiff in an unrelated class action. During our
4 conversation, we also discussed my use of TaxAct's website, how frequently I logged into my
5 account, the kind of personal and financial information I entered on the website, whether I had a
6 Facebook and Instagram account (which I have had for at least fifteen years and five years,
7 respectively), and any advertisements I recalled seeing for TaxAct and other tax preparation services
8 providers after I began using TaxAct.

9 7. I spent approximately six hours reviewing my records to confirm the date on which I
10 signed up for my TaxAct account, and the years for which I filed my income tax returns using
11 TaxAct's website. After searching through my records, I gathered several of the most relevant
12 documents and provided them to my attorneys.

13 8. I devoted many hours to the present case by carefully reviewing all the documents my
14 attorneys sent to me to ensure that they were accurate and that I agreed with what they stated. I spent
15 approximately one hour reviewing the representation agreement that the attorneys sent to me,
16 including the attached description of class representatives' duties and obligations to the class.

17 9. On or around February 13, 2024, Plaintiffs' counsel in this matter sent me a Second
18 Amended Complaint for my review and approval in this case. After reviewing the complaint, I
19 communicated with my attorneys to indicate my approval of their filing the complaint. I spent three
20 hours reviewing the Second Amended Complaint that was recently filed in this matter on February 20,
21 2024.

22 10. In connection with the settlement in principle reached by the parties, I reviewed the
23 memorandum of understanding regarding the settlement in principle and then corresponded with my
24 attorneys to indicate my approval of the terms set forth in the memorandum of understanding. I found the
25 memorandum of understanding to be straightforward and to reflect the terms of settlement I discussed with
26 my attorneys. It took me approximately 1 hour to review the memorandum of understanding. I
27 subsequently discussed the long-form Settlement Agreement with my attorneys, spent approximately 6
28 hours reviewing, and then signed it.

1 11. I believe that the terms of the Settlement are fair, reasonable, and in the best interests of the
2 Class. The Settlement is for a substantial amount of money, and I believe it will make TaxAct less likely
3 to violate its users' privacy in the future. As with any case, I understand that the Plaintiffs in this case
4 faced serious risks, including the risk that our case would be compelled to individual arbitration.

5 12. I have taken my role as a proposed named Plaintiff and Nationwide Class
6 Representative very seriously. I have put the interests of the Nationwide Class before my own
7 interests, I have been actively involved in the case since I agreed to act as a proposed Nationwide
8 Class Representative and, as described above, have devoted substantial time for the benefit of the
9 Nationwide Class. In addition to reviewing the pleadings and other documents my attorneys sent to
10 me, I also have been in contact with my attorneys throughout the case, promptly responded to their calls
11 and emails throughout the case, and stayed informed about the case.

12 13. I also acted on behalf of the Nationwide Class's best interests in considering the
13 proposed settlement and in staying informed of the settlement approval process. I am firmly
14 committed to representing the interests of the class. I intend to do whatever is necessary and what is
15 asked of me by my attorneys on behalf of the Nationwide Class until this case is concluded to ensure
16 the Nationwide Class is best represented in this matter.

17 14. In total, I estimate that I have devoted between 20 and 25 hours to activities related to this
18 case to date.

19 I declare under penalty of perjury under the laws of the United States that the foregoing is true
20 and correct. Executed on 2/22/2024 at Chicago, Illinois.

21
22 

23 _____
Matthew Hartz

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9 *Attorneys for Plaintiffs and the Putative Classes*

10 *Additional Counsel listed on next page*

11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **NICHOLAS C. SMITH-WASHINGTON,**) **Case No. 3:23-CV-830-VC**
 14 **JOYCE MAHONEY, JONATHAN AMES,**)
 15 **MATTHEW HARTZ, and JENNY LEWIS**) **Assigned to Hon. Vince Chhabria**
 on behalf of themselves and all others similarly)
 situated,)

16 Plaintiffs,

17 vs.

18 **TAXACT, INC.,** an Iowa corporation,)
 19 Defendant.)

) **DECLARATION OF NICHOLAS C.**
) **SMITH-WASHINGTON IN SUPPORT OF**
) **PLAINTIFFS' MOTION TO GRANT**
) **PRELIMINARY APPROVAL OF**
) **SETTLEMENT**

) Courtroom 4, 17th Floor
) Dated: April 4, 2024
) Time: 10:00 a.m.

) Date Action Filed: January 24, 2023
) Removal Filed: February 23, 2023
)
)

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1 I, Nicholas C. Smith-Washington, declare as follows:

2 1. I am over the age of 18 and have personal knowledge of the facts set forth in this
3 declaration and could and would testify competently to them.

4 2. I am one of the Named Plaintiffs and proposed Class Representatives in the above-
5 captioned case. I have served as a named Plaintiff in this case since the very beginning of this case and
6 at the time I agreed to step up to represent the Class, I was the sole Named Plaintiff and Class
7 Representative.

8 3. I submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of a
9 Class Action Settlement.

10 4. I created my TaxAct account in approximately 2005, and I have used TaxAct's website
11 to prepare and file my federal and state income taxes from approximately 2005 to 2022 (for tax years
12 2004 to 2021).

13 5. During at least the last 10 years, I also had a Facebook account, which I understand is
14 how TaxAct was able to intercept and disclose my information to Facebook (now known as Meta).

15 6. After speaking to my attorney at or about the end of 2022 about my experience using
16 TaxAct, I decided to bring this lawsuit against TaxAct and to act as a Class representative because I
17 felt it was important to enforce and protect my privacy and the privacy of other users' of TaxAct's
18 website and tax preparation services.

19 7. Before agreeing to take on the role of a Class Representative, I discussed with one of
20 my attorneys what it meant to be a Class Representative and what duties and obligations I would have
21 to the Class Members if I decided to represent them. I also carefully reviewed the representation
22 agreement sent to be by my attorneys which included a description of the duties and obligations I was
23 agreeing to take on in representing the Class. I spent approximately one (1) hour reviewing the
24 agreement.

25 8. I understood then, and I understand now that as a Named Plaintiff my duty is to act in
26 the best interests of the Class and to put the interests of the Class before my own, which I have done to
27 the best of my ability. I am committed to representing the interests of the Class and I have vigorously
28 pursued this case on behalf of the Class since the very beginning of this case. I do not believe, nor do

1 I have any reason to believe, that my interests are in conflict in any way or antagonistic to the interests
2 of the Class.

3 9. I understand that I am able to represent the Class because my claims against TaxAct are
4 the same as the claims of the other Class Members, and that our claims arise out of the same conduct
5 on the part of TaxAct. Thus, my claims are typical of the claims of other Class Members.

6 10. I have been actively involved in the case from the beginning and have spent substantial
7 time and effort to do whatever my attorneys asked of me. At the beginning of this case, I spent
8 approximately four (4) to six (6) hours searching through my records, including paper records, my email,
9 and my TaxAct account, to determine when I first created an account with TaxAct, which years I filed my
10 income taxes using TaxAct's website, and how much I paid for the filings.

11 11. Throughout the case, I regularly communicated with my attorneys about the status of
12 the case and discussed with them any new developments and case strategy. I carefully reviewed the
13 complaints filed in this case to make sure that the facts alleged (that pertained to me and my experience)
14 were accurate, and that I agreed with everything stated in the complaints. I spent a total of approximately
15 three (3) to four (4) hours reviewing the initial complaint, which named me as the sole Named Plaintiff and
16 Class Representative, the First Amended Complaint, and a proposed Second Amended Complaint (which
17 was ultimately not filed).

18 12. I had several lengthy discussions with my attorneys' about TaxAct's motions to compel
19 this case to arbitration, and worked with my attorneys to prepare a detailed declaration in opposition to
20 TaxAct's motions. As part of preparing my declaration, I spent time figuring out when I submitted my
21 taxes electronically and when I filed physical copies (because I had fallen victim to tax fraud). I also
22 spent time going over my earnings as my attorneys asked me to do to determine whether I would
23 qualify for a waiver of certain arbitration fees. Finally, I reviewed my draft declaration to make sure it
24 was accurate. I estimate that I spent approximately four (4) hours discussing the motion to compel
25 with my attorneys, searching for and providing all the information requested by my attorneys, and
26 reviewing my declaration prior to signing it.

27 13. I have also communicated with my attorneys regarding mediation, and was available by
28 phone on the day of mediation. After the mediation ended, I spoke to my attorneys who informed that the

1 case had not settled but that the parties may continue to engage in settlement discussions. A few weeks
2 thereafter, my attorneys informed me that a proposed settlement had been reached and sent me a draft
3 memorandum of understanding. I spent approximately one and half (1.5) hours going over the
4 memorandum of understanding and had approximately three separate discussions with my attorneys about
5 the terms of the settlement agreement, which in total lasted at least three (3) hours. After ensuring that I
6 understood the terms of the settlement, and believed that they were fair and reasonable, I approved and
7 signed the memorandum of understanding.

8 14. After the memorandum of understanding was fully executed, my attorney sent to me a
9 revised draft of the Second Amended Complaint to review and approve for filing, and a long-form
10 Settlement Agreement. I spent approximately two and a half (2.5) hours reviewing this version of the
11 Second Amended Complaint, which is the operative Complaint, and approximately three (3) hours
12 reviewing the long-form Settlement Agreement and discussing it with my attorneys prior to approving it.

13 15. I estimate that over the course of more than a year since I became involved in this lawsuit, I
14 devoted between 24 and 27 hours to this case for the benefit of the Class, including communicating with
15 my attorneys, searching for documents, and reviewing case documents my attorneys asked me to review. I
16 took this time out of my personal schedule, which is quite busy, because I had agreed to represent the
17 interests of the Class Members, and I took my duties and obligations as a Class Representative seriously.

18 16. I feel that it was important for me to bring this lawsuit on behalf of myself and other users
19 of TaxAct's tax filing services to ensure that companies, including TaxAct, take the privacy of their
20 customers seriously. I believe the Settlement will have a positive impact for the Class and will make
21 TaxAct less likely to violate its users' privacy in the future.

22 17. I will continue to devote all the necessary time and to actively participate in this case until
23 it is concluded.

24 I declare under penalty of perjury under the laws of the United States that the foregoing is true
25 and correct. Executed on February 22nd, 2024.

26 Nicholas C. Smith-Washington
27 Nicholas C. Smith-Washington
28

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

NICHOLAS C. SMITH-WASHINGTON, JOYCE MAHONEY, JONATHAN AMES, MATTHEW HARTZ, and JENNY LEWIS on behalf of themselves and all other similarly situated,

Plaintiffs,

v.

TAXACT, INC.,

Defendant.

Case No. 3:23-CV-00830-VC
Assigned to Hon. Vince Chhabria

[PROPOSED] ORDER CERTIFYING SETTLEMENT CLASSES; GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 23(e)(1); AND APPROVING FORM AND CONTENT OF CLASS NOTICE

WHEREAS, Plaintiffs Nicholas C. Smith Washington, Joyce Mahoney, Jonathan Ames, Jenny Lewis, and Matthew Hartz (together, “Settlement Class Representatives”), and Defendant TaxAct, Inc. (“TaxAct”) (collectively “Parties”), entered into a Settlement Agreement on February 21, 2024 (ECF. No. ___), which, together, with the exhibits and appendices thereto, sets forth the terms and conditions for a proposed resolution of this Action and for its dismissal with prejudice;

WHEREAS, this Court has reviewed the Settlement entered into by the Parties, all exhibits thereto, the record in this case, and the Parties’ arguments;

WHEREAS, this Court preliminarily finds, for the purpose of settlement only, that the Settlement Classes meet all the prerequisites of Federal Rule of Civil Procedure 23(a) for class certification—numerosity, commonality, typicality, and adequacy—and meets the requirements of Federal Rule of Civil Procedure 23(b)(3)—predominance of common issues, and superiority;

GOOD CAUSE APPEARING, IT IS HEREBY ORDERED AS FOLLOWS:¹

¹ All terms and definitions used herein have the same meanings as set forth in the Settlement Agreement.

1 **Preliminary Certification of Settlement Classes for Purpose of Settlement Only and**
2 **Appointment of Class Counsel and Settlement Class Representatives**

3 1. The Settlement is hereby preliminarily approved as fair, reasonable, and adequate such
4 that notice thereof should be given to members of the Settlement Classes. Under Federal Rule of
5 Civil Procedure 23(b)(3), the Settlement Classes, as set forth in Paragraph 55 of the Settlement
6 Agreement and defined as follows, are preliminarily certified for the purpose of settlement only:²

7 a. “Nationwide Class” includes all natural persons who used a TaxAct online do-it-
8 yourself consumer Form 1040 tax filing product and filed a tax return using the TaxAct
9 online product during the Class Period, and whose postal address listed on such tax
10 return was in the United States. The Nationwide Class includes the California
11 Subclass.

12 i. “California Subclass” includes all natural persons who used a TaxAct online
13 do-it-yourself consumer Form 1040 tax filing product and filed a tax return
14 using the TaxAct online product during the Class Period, and whose postal
15 address listed on such tax return was in California.

16 b. “Nationwide Married Filing Jointly Class” includes all natural persons whose spouse
17 used a TaxAct online do-it-yourself consumer Form 1040 tax filing product and filed
18 a joint tax return using the TaxAct online product during the Class Period, and whose
19 postal address listed on such joint tax return was in the United States. The Nationwide
20 Married Filing Jointly Class includes the California Married Filing Jointly Subclass.

21 i. “California Married Filing Jointly Subclass” includes all natural persons
22 residing in California during the Class Period whose spouse used a TaxAct
23 online do-it-yourself consumer Form 1040 tax filing product and filed a joint
24 tax return using the TaxAct online product during the Class Period, and whose
25 postal address listed on such joint tax return was in California.

26 ² “Class Period,” as set forth in Paragraph 27 of the Settlement Agreement, means the time period
27 from January 1, 2018, through December 31, 2022, during which Settlement Class Representatives
and members of the Settlement Class used TaxAct’s tax preparation services to prepare a tax return.

1 2. Excluded from the Settlement Classes are: TaxAct, its current, former and/or future
2 parents, subsidiaries, divisions, affiliates and/or departments, and their employees, officers, directors,
3 management, legal representatives, heirs, successors, and wholly or partly owned subsidiaries or
4 affiliated companies during the Class Period or thereafter; counsel for Plaintiffs and their employees,
5 including but not limited to the undersigned counsel for Plaintiffs and the undersigned counsel's
6 employees; any district judge or magistrate judge to whom this case is or was assigned, as well as
7 those judges' immediate family members, judicial officers and their personnel, and all governmental
8 entities; customers who only used TaxAct's download do-it-yourself consumer Form 1040 tax return
9 filing product, TaxAct's Professional products, or TaxAct's online do-it-yourself business tax return
10 filing products; and all individuals who have, as of January 9, 2024, filed a demand for arbitration
11 against TaxAct to arbitrate claims that would otherwise be released in accordance with the terms of
12 this Settlement Agreement unless those individuals elect to opt-in to the Settlement Classes by filing
13 a timely Claim Form.

14 3. Plaintiffs Nicholas C. Smith-Washington, Joyce Mahoney, and Jonathan Ames shall
15 be appointed as Settlement Class Representatives of the Nationwide Class and the California
16 Subclass. Plaintiff Matthew Hartz shall be appointed as an additional Settlement Class Representative
17 of the Nationwide Class. Plaintiff Jenny Lewis shall be appointed as Settlement Class Representative
18 of the Nationwide Married Filing Jointly Class and the California Married Filing Jointly Subclass.

19 4. The Court preliminarily finds, for purposes of settlement only, that the proposed
20 Settlement Classes as defined above meet the numerosity requirement of Rule 23(a)(1) such that
21 joinder would be impractical; that there are questions of law and fact common to the Settlement
22 Classes as required by Rule 23(a)(2); that these common questions predominate over individual
23 questions as required by Rule 23(b)(3); and that the claims of the proposed Settlement Class
24 Representatives are typical of the claims of the Settlement Classes under Rule 23(a)(3).

25 5. In addition, the Court preliminarily finds that the Class Counsel and Settlement Class
26 Representatives will fairly and adequately represent the interests of the Settlement Classes under Rule
27 23(a)(4), have done so, and meet the requirements of Rule 23(g) and, therefore, appoints them as

1 Class Counsel and Settlement Class Representatives under Rules 23(c)(1)(B) and 23(g).

2 6. If the Settlement Agreement is not finally approved by this Court, or if such final
3 approval is reversed or materially modified on appeal by any court, this Order (including but not
4 limited to the certification of the Settlement Classes) shall be vacated, null and void, and of no force
5 or effect, and TaxAct and Settlement Class Representatives shall be entitled to make any arguments
6 for or against certification for litigation purposes.

7 7. Class Counsel and the Settlement Class Representatives are appointed as adequate
8 representatives of the Settlement Classes.

9 **Notice to Settlement Classes**

10 8. By _____, 2024, [(30) calendar days after the issuance of this Order], TaxAct
11 shall cause to be paid a portion a sum to be determined and sufficient to effectuate the Notice Plan to
12 the Settlement Administrator (the “Initial Deposit”). This deadline may be extended by consent of
13 the Parties and the Settlement Administrator.

14 9. Following issuance of this Order, and after payment of the Initial Deposit, TaxAct
15 shall cause to be paid all periodic subsequent amounts for Class Notice and Administration Costs (as
16 invoiced by the Settlement Administrator and approved by Settlement Class Counsel and TaxAct)
17 (the “Periodic Payments”) (with Notice and Administration Costs in excess of Two Million Five
18 Hundred Thousand (\$2,500,000.00) U.S. Dollars and Zero Cents to be deducted from the Net
19 Settlement Fund) within thirty (30) calendar days after the submission of an invoice by the Settlement
20 Administrator. The deadline may be extended by mutual consent of the Parties and the Settlement
21 Administrator.

22 10. By _____, 2024, [(14) calendar days after the issuance of this Order], TaxAct
23 shall provide or cause to be provided to the Settlement Administrator information about the
24 Settlement Class Members required by the Settlement Administrator to effectuate the Notice Plan.

25 11. The Court approves the Notice Plan and Class Notice, substantially in the form set forth
26 at Exhibits B-D of the Settlement Agreement, complies with 28 U.S.C. § 1715 and all other provisions
27 of the Class Action Fairness Act of 2005.

1 12. The Settlement Administrator and TaxAct shall provide Class Notice consistent with
2 the Notice Plan outlined in Exhibit B, and Class Notice shall be disseminated to Settlement Class
3 Members beginning on the Notice Date, _____, ___ **2024**, [(45) calendar days after the issuance of
4 this Order].

5 13. The Court appoints Kroll Settlement Administration LLC, (“Kroll”) located at 2000
6 Market Street, Suite 2700, Philadelphia, PA 19103, to serve as the Settlement Administrator. Kroll
7 shall establish the Net Settlement Fund as a Qualified Settlement Fund for U.S. federal income tax
8 purposes within the meaning of Treas. Reg. Sections 1.468B-1 through 1.468B-5, as set forth in the
9 Settlement Agreement, supervise and administer the notice procedures, establish and operate the
10 settlement website, administer the claims processes, distribute cash payments according to the
11 processes and criteria set forth in the Settlement Agreement, and perform any other duties that are
12 reasonably necessary and/or provided for in the Settlement Agreement.

13 14. The Settlement Administrator shall make all necessary efforts and precautions to
14 ensure the security and privacy of Settlement Class Member information and protect it from loss,
15 misuse, unauthorized access and disclosure, and to protect against any reasonably anticipated threats
16 or hazards to the security of Settlement Class Member information; not using the information
17 provided by TaxAct or Class Counsel in connection with the Settlement or this Notice Plan for any
18 purposes other than providing Class Notice or conducting claims administration; and not sharing
19 Settlement Class Member information with any third parties without advance consent from the
20 Parties.

21 15. Settlement Class Members who wish to make a claim must do so by submitting a
22 Claim Form by _____, ___ **2024** [(90) days after the Notice Date], (the “Claims Submission
23 Deadline”), in accordance with the instructions contained therein. The Settlement Administrator shall
24 determine the eligibility of claims submitted and allocate the Net Settlement Fund in accordance with
25 the Settlement Agreement.

26 16. Settlement Class Members who wish to object to the Settlement must object in writing,
27 and must include: (a) case name and number of the Action: (b) the full name, address, telephone

1 number, and email address of the objecting Settlement Class Member and, if represented by counsel,
2 of his/her counsel; (c) the email address associated with the objector's TaxAct account, or the email
3 address associated with their Spouse's TaxAct account if the objector is a Married Filing Jointly Class
4 Member; (d) a statement of whether the objection applies only to the objector, to a specific subset of
5 the classes, or to an entire class; (e) a statement of the number of times in which the objector (and,
6 where applicable, objector's counsel) has objected to a class action settlement, along with the caption
7 of each case in which the objector has made such objection; (f) a statement whether the objector has
8 sold or otherwise transferred the right to their recovery in this Action to another person or entity, and,
9 if so, the identity of that person or entity; (g) a statement of the specific grounds for the objection,
10 including any legal and factual support and any evidence in support of the objection; (h) a statement
11 of whether the objecting Settlement Class Member intends to appear at the Final Approval Hearing,
12 and if so, whether personally or through counsel; and (i) The objector's signature. If an objecting
13 Settlement Class Member intends to speak at the Final Approval Hearing (whether *pro se* or through
14 an attorney), these requirements may be excused by the Court upon a showing of good cause.
15 Objections must be filed with the Court or post-marked or electronically submitted to the Settlement
16 Administrator no more than sixty days from the Notice Date (the "Objection Deadline").

17 17. Any Settlement Class Member who seeks to be excluded from the Settlement Classes
18 must submit a written request for exclusion that shall be submit a written opt-out form to the
19 administrator requesting exclusion, which shall be postmarked or electronically submitted no later
20 than ninety (90) days from the Notice Date (the "Opt-Out Deadline"). To be an effective and valid
21 written request for exclusion, the request must: (a) identify the case name and number of the Action;
22 (b) identify the full name and current address of the individual seeking exclusion from the Settlement;
23 (c) be personally signed by the individual seeking exclusion; (d) include a statement clearly indicating
24 the individual's intent to be excluded from the Settlement; (e) request exclusion only for that one
25 individual whose personal signature appears on the request; (f) include the contact information (i.e.,
26 first and last name, email address, phone number, and mailing address) associated with the TaxAct
27 account of the individual seeking exclusion, or their spouse's TaxAct account if the individual is a

1 Married Filing Jointly Class Member; and (g) verify that the individual seeking exclusion used
2 TaxAct's services during the Class Period and is part of the Settlement Class. Any member of the
3 Settlement Class who does not file a valid and timely request for exclusion shall be bound by the final
4 judgment dismissing the Action on the merits with prejudice.

5 **Final Approval Hearing**

6 18. The Final Approval Hearing shall be held by the Court on _____, __ 2024,
7 beginning at _____, to determine whether the requirements for certification of the Settlement
8 Classes have been met; whether the proposed settlement of the Action on the terms set forth in the
9 Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Settlement
10 Class Members; whether Class Counsel's motion or application for an Attorneys' Fees and Expenses
11 Award and application for the Service Awards should be approved; and whether final judgment
12 approving the Settlement and dismissing the Action on the merits with prejudice against the
13 Settlement Class Representatives and all other Settlement Class Members should be entered. The
14 Final Approval Hearing may, without further notice to the Settlement Class Members (except to those
15 who have filed timely and valid objections and requested to speak at the Final Approval Hearing), be
16 continued or adjourned by order of the Court.

17 19. Any objector who timely submits an objection has the option to appear and request to
18 be heard at the Final Approval Hearing, either in person or through the objector's counsel. Any
19 objector wishing to appear and be heard at the Final Approval Hearing must include a notice of
20 intention to appear in the body of the objector's objection. Objectors who fail to submit or include
21 such timely notice of intention to appear may not speak at the Final Approval Hearing without
22 permission of the Court.

23 20. By _____, __ 2024, [(84) days after the Notice Date] Class Counsel shall file all
24 papers in support of the application for Attorneys' Fees and in support of an Expenses Award and/or
25 for Service Awards. All opposition papers shall be filed by _____, __ 2024, [(114) days after the
26 issuance of this Order] and any reply papers shall be filed by _____, __ 2024 [(128) days after the
27 issuance of this Order].

