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*Attorneys for Plaintiff and the Proposed
Class*

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SEAN HARTRANFT, on behalf of
himself and all others similarly
situated,

Plaintiff,

v.

TVI, Inc. d/b/a SAVERS, INC.,
APOGEE RETAIL, LLC,

Defendants.

Case No. 8:15-cv-01081-CJC-DFM

CLASS ACTION

**DECLARATION OF DOUGLAS J.
CAMPION IN SUPORT OF
PLAINTIFFS' UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL**

Hon. Cormac J. Carney

Hearing Date: April 22, 2019

Time: 1:30 p.m.

Courtroom: 7C

1 I, Douglas J. Campion, declare:

2
3 1. I am one of the attorneys for the Plaintiff Sean Hartranft, and for the
4 putative class members herein, together “Plaintiffs” or the “Settlement
5 Class”. I submit this declaration in support of Plaintiffs’ Unopposed Motion
6 for Preliminary Approval of the Class Action Settlement and Certification of
7 the Settlement Class. A true and correct copy of the Settlement Agreement
8 and Release of Claims is attached hereto as Exhibit 1. I am licensed to
9 practice law in California and this Court as well as all federal courts in this
10 state. If called as a witness, I would competently testify to the matters herein
11 from personal knowledge.

12 **SETTLEMENT HISTORY**

13 2. As shown on the Court’s docket, this case was filed in July, 2015,
14 stayed for over a year based on waiting for the Supreme Court’s ruling in
15 *Spokeo, Inc. v. Robins*. Plaintiffs’ discovery had been served within about
16 three months of filing his Complaint, but discovery responses were delayed
17 until after the stay was lifted in November, 2016. Once the stay was lifted,
18 motion practice ensued, then the parties decided to pursue mediation. They
19 secured the services of Hon. Edward A. Infante, (Ret.), a JAMS mediator
20 with much experience in resolving Telephone Consumer Protection Act
21 (“TCPA”) cases such as this one. He has mediated some of the largest TCPA
22 settlements in the country, including *Rose v. Bank of America* (\$33 million)
23 and *Wilkins v. HSBC* (\$39 million), both of which I was part of the attorneys’
24 group representing Plaintiffs. Discovery was stayed while negotiations took
25 place.

26 3. Mediation was at first not successful because Plaintiff desired a
27 common fund settlement as typically obtained in TCPA cases, but it was
28 confirmed at mediation that Defendants simply did not have the financial

1 wherewithal to do so. Judge Infante attempted such a settlement at first but
2 was unable to mediate a common fund settlement in the usual range based on
3 the number of class members here. The public information detailing the
4 financial problems of the Defendants' parent company is set forth in footnote
5 1 of the brief at page 3 and for sake of brevity will not be repeated here.
6 Suffice to say that as a result of that financial information and the financial
7 status of the parent company, Judge Infante persuaded Plaintiffs to seek a
8 more creative settlement solution. Otherwise, it was possible that the parent
9 company would file bankruptcy if they lost at trial and had a substantial
10 judgment entered against them. In a number of telephone conferences with
11 Judge Infante taking place after the in-person mediation session, the Parties
12 were able to structure a settlement in the form presented here, partially in
13 cash and partially with goods available at Defendants' stores. Once the
14 potential structure was agreed upon, the negotiations of the details of the
15 settlement, including the amounts, redemption details, timing, notice, claims
16 process, etc., took many more months to resolve because each point was hard
17 fought.

18 **THE SETTLEMENT CLASS AND SETTLEMENT**

19 4. The Settlement Class was originally defined in the Complaint as all
20 persons called by Defendants on behalf of *all* charities for whom they
21 solicited donations, not just the Settlement Class of those persons called for
22 donations on behalf of the Epilepsy Foundation of America. However, it
23 appeared that that class would be too large, about three times the size of the
24 current Settlement Class, which would have made settlement impossible.
25 Because Mr. Hartranft was called by Defendants to seeking donations only
26 on behalf of the Epilepsy Foundation of America, the Parties negotiated a
27 narrowing of the class to only those persons called on behalf of that charity.

28 5. The Settlement Class consists of approximately 747,635 persons that

1 were called that can be identified from Defendant's records, all contained on
2 the "Notice List". All will be mailed a notice postcard, with updating of the
3 addresses before such mailing. There may be a second much smaller group
4 that consists of those persons who were called by Defendant whose numbers
5 may have been reassigned and may have been actually owned by a different
6 person than the person named on the Notice List at the time of the call.
7 Because there would not be any contact information about such persons
8 known other than the number called, that group will be provided notice by
9 publication. Thus, if either the person named on the Notice List or the
10 unknown person with the cellphone number that was called file a claim,
11 either claim – or both claims - will be honored.

- 12 6. The Settlement consists of all persons who file a claim receiving a
13 Certificate shortly after Final Approval worth either 1) \$75.00 in goods of
14 their choice from Defendants' 146 stores in the U.S., or, at their option, 2)
15 they can redeem their Certificate instead for \$25.00 in cash to be paid by the
16 Claims Administrator. In addition, Defendants will pay all costs of Notice
17 and Claims Administration, estimated to be \$420,000.00, and to pay
18 attorneys' fees and litigation costs to Class Counsel in an amount up to
19 \$900,000.00, subject to Court approval. Defendants have also agreed to pay
20 the Class Representative \$5,000.00 as an incentive payment, subject to Court
21 approval.

22 **CLAIMS ADMINISTRATOR SELECTION**

- 23 7. Because Defendants are to pay all costs of notice and claims
24 administration, we negotiated a procedure to assure both sides that there
25 would be a reasonable cost and the work would be done competently, not just
26 choosing the lowest bid from a prospective administrator. Both sides
27 solicited up to three bids and then Defendants were to choose the one they
28 felt most comfortable with, based on cost and experience, subject to

1 Plaintiff's counsel having veto power, and perhaps involving the Court if the
 2 two sides could not agree. Those bids were reviewed and discussed by
 3 counsel for both sides and they agreed on an acceptable claims administrator
 4 who also submitted a reasonable bid, CPT Group, Inc. CPT has submitted a
 5 bid of "not to exceed" \$420,000 for anticipated notice and claims
 6 administration costs. Both sides seek to have CPT appointed as the Claims
 7 Administrator for the case. CPT has submitted a declaration filed herewith
 8 setting forth their experience and their notice plan, their manner of handling
 9 the claims and related items.

10 **ATTORNEYS FEES, COSTS AND INCENTIVE PAYMENT**

11 8. Only after all the terms of the Settlement were negotiated did the
 12 Parties then discuss attorneys' fees and costs, as well as the payment of an
 13 incentive payment to Sean Hartranft, class representative. Because this is not
 14 a common fund settlement that would allow a percentage of the common
 15 fund to be requested of the Court by Plaintiffs' counsel as a fee, the Parties
 16 had to negotiate the amount of payment of fees and costs, to be paid directly
 17 by Defendants to Class Counsel, subject of course to Court approval of any
 18 amount agreed upon. The Parties agreed upon the sum of \$900,000.00,
 19 inclusive of all litigation costs, to be paid by Defendants (through the Claims
 20 Administrator) in total to all three firms representing the Settlement Class
 21 within 10 days of the Effective Date. The Parties also negotiated and agreed
 22 upon the sum of \$5,000.00 as an incentive payment, payable to Sean
 23 Hartranft, also to be paid within 10 days of the Effective Date. Plaintiffs'
 24 counsel will file a separate motion for attorneys' fees, costs and incentive
 25 payment within approximately 30 days of the direct mail notice mailing date.

26 **DISCOVERY CONDUCTED WAS SUFFICIENT TO PURSUE** 27 **SETTLEMENT**

28 9. Within about three months of filing the Complaint in July, 2015, I,

1 along with the other Plaintiff's counsel, propounded interrogatories and
2 document requests to Defendants requesting both class and merits discovery.
3 That included discovery about the dialer, the manner of making the calls,
4 how many calls were made during the Class Period and on whose behalf the
5 calls were made. In addition, Defendants propounded discovery to Plaintiff,
6 consisting of 13 interrogatories and 36 document requests. Plaintiff
7 answered those interrogatories and produced responsive documents in
8 February, 2017. Before either side responded to the discovery served, the
9 action was stayed by the Court due to the then-pending decision in *Spokeo,*
10 *Inc. v. Robins*, 136 S.Ct. 1540, 194 L.Ed. 635 (2016). Ultimately, in
11 December, 2016, Defendants responded to the discovery. Plaintiff answered
12 the discovery propounded by Defendants and produced responsive
13 documents in February, 2017. While certain items in Defendants' discovery
14 responses were in dispute and a joint motion to compel further discovery was
15 being prepared when mediation was commenced, Plaintiff was able to obtain
16 enough information in the discovery responses, and in subsequent informal
17 pre-mediation discovery, to sufficiently prepare for mediation. Plaintiff was
18 provided the number of calls made, the number of putative class members,
19 how certain dialing lists were deficient in their securing prior express consent
20 from persons to be called, the type of dialing systems used and information
21 about consent. In addition, prior to and at the mediation we were provided
22 information about the financial problems of the parent company of
23 Defendants, Evergreen AcqCo. Therefore, Plaintiff's counsel felt they had
24 sufficient information to allow them to pursue settlement negotiations.

25 10. After the Settlement was reached, pursuant to its terms, Plaintiff's
26 counsel conducted confirmatory discovery to confirm that the processes used
27 by Defendants to determine the number of persons called and other
28 information relied upon in settlement discussions was correct.

EXPERIENCE AND RECOMMENDATION OF COUNSEL

11. Based upon my 41 years of experience in practicing law, and litigating class actions for approximately 28 years, it is my opinion that this settlement is fair and reasonable, and should be approved by the Court. Because of the financial problems of Defendants, we were unable to secure a common fund settlement, but in my opinion the settlement reached was the best possible settlement under the circumstances and in the best interests of the Settlement Class members. Based on the risks faced with the litigation, it was a possibility that the Settlement Class members would have received nothing had this matter gone to trial or otherwise forced Defendants into bankruptcy.

12. The Law Offices of Douglas J. Campion, APC, along with Bisnar Chase LLP and the Law Offices of Michael P. Sousa, APC, seek to be confirmed as class counsel for all purposes of this action and for proceeding with the settlement.

13. My experience is sufficient to act as Class Counsel in this case as I have extensive experience in the area of the TCPA class action litigation and handling other class action litigation, including consumer class actions. My qualifications are as follows:

14. The Law Offices of Douglas J. Campion, APC, and its predecessor, The Law Offices of Douglas J. Campion, have been confirmed as class counsel in many prior actions. My experience and 38 years in practice in California are sufficient to justify my appointment as Class Counsel. To that end, I hereby submit for the Court's consideration my qualifications and a summary of my experience which justify that appointment.

15. I am the only principal in my law firm. I was admitted to the State Bar of California in 1977 and have been a member in good standing since that time. Since my admission, I have been engaged in litigation and I have had extensive experience in business litigation prior to working in the class action

1 field. I worked in San Jose, California with Anthony J. Trepel from
2 approximately 1983 through 1988, and the firm's name was Trepel, Kahn &
3 Campion, P.A. In 1989, I joined the San Diego office of a Philadelphia law
4 firm, Barrack, Rodos & Bacine. Our office engaged in class and derivative
5 litigation exclusively, primarily specializing in plaintiff's class action
6 securities cases. I resigned from the firm in 1996. Barrack, Rodos & Bacine
7 was often co-counsel with Milberg Weiss Bershad Hynes & Lerach in class
8 and derivative actions and litigated the same types of cases. A few examples
9 of the cases our firm litigated, separately or with co-counsel, and in which I
10 actively participated, are as follows:

11 a. The Michael Milken – Drexel securities litigation, with a joint recovery for
12 all plaintiffs of more than a billion dollars;

13 b. The savings and loan securities and derivative litigation of the early
14 1990's, in which I represented or litigated against California Federal
15 Far West Financial, Financial Corporation of Santa Barbara, Imperial
16 Savings, and others;

17 c. Defense contractor over-billing cases, including Lockheed, General
18 Dynamics, and Rockwell International;

19 d. A number of health care provider cases including National Health
20 Laboratories, National Medical Enterprises, ICN Pharmaceuticals, and
21 Pfizer;

22 e. Cases against insurance companies including Blue Cross of California, and
23 First Executive Life and its progeny; and

24 f. Many other class and derivative actions including L.A. Gear, Countrywide
25 Trucking, and Glen Ivy timeshares, among others.

26 28. I have also been lead or co-lead counsel in many other class actions or
27 Business & Professions Code representative actions since I opened my own
28 office in 2001. Most of those are consumer-related cases. These included my

1 role as either lead or co-lead plaintiffs' counsel in the following class or
2 17200 representative actions, including Telephone Consumer Protection Act
3 cases:

4 a. Gonzalez, et. al., v. Science Applications International Corporation, et. al.;

5 b. Warner, et al. v. Computer Education Institute, et al.,

6 c. Smith v. Microskills;

7 d. Russell, et al., v. DAT, Inc. dba Laptop Training Solutions;

8 e. Jared Smith vs. Independent Capital Management, Inc., et al.;

9 f. Opyrchal, et al., v. New York Life;

10 g. Bowersox v. Laboratory Corporation of America;

11 h. O'Neal v. NCO Financial Systems, Inc.;

12 i. Zamora v. Consecro, et. al.;

13 j. Shaw v. Tenet Healthcare Corporation, et al.;

14 l. Rodriquez v. Yum Yum Donut Shops, Inc.;

15 m. Arnn, et al., v. West Coast Aquarium Industries, Inc.;

16 n. Grant v. American Agencies, Inc.;

17 o. Rogers v. Whitney Education Group;

18 p. Khosorabi v. North Shore Agency, Inc.;

19 q. Cook v. Collins, et al.,

20 r. Goins v. Checks Cashed for Less, Inc., et al;

21 s. Kight v. Eskanos & Adler, P.C.;

22 t. Gulzynski v. Fidelity Title;

23 u. Kight v. CashCall;

24 v. Grannan v. Direct Electronics, Inc.;

25 w. Charles Smith, et al., v. CRST Expedited;

26 x. American Apparel, Inc. Derivative Litigation;

27 y. Meeks v. CreditWest, et. al.;

28 z. Malta v. Wells Fargo;

1 aa. Burge v. Pinnacle Financial Group, Inc.;

2 bb. Bennett v. Discover Bank;

3 cc. Dominici v. Wells Fargo;

4 dd. Hurtado v. Progressive Financial Services;

5 ee. Galbraith v. Resurgent;

6 ff. Underwood v. San Diego Flight Training, Inc.;

7 gg. Sarabi v. Weltman, Weinberg & Reis Co., LLP.;

8 hh. Lo v. Oxnard European Motors, Inc.; j. Kryptonite Locks Coordinated

9 Litigation

10 hh. Allen v. Portfolio Recovery, Inc.

11 jj. Maier v. J.C. Penney, Inc.

12 kk. Sojka, et. al. v. Direct Buy, Inc.

13 ll. Johnson v. Bennett Law

14 mm. Hoffman v. Bank of America

15 nn. Becerra v. National Recovery Solutions, LLC

16 oo. Dailey v. John D. Bonewicz, PC

17 16. I have also had several state court appellate court opinions published in

18 which our side prevailed and for which I was counsel of record and responsible

19 for the appellate work. Those include *CashCall, Inc. v. Superior Court*

20 (*"CashCall I"*) (2008) 159 Cal. App. 4th 273; *Smith v. Microskills San Diego*

21 *L.P.* (2007) 153 Cal. App. 4th 892; and *Kight v. CashCall* (2011) 200 Cal. App.

22 4th 1377 (*"CashCall II"*). The *CashCall I* case expanded the rights of putative

23 class members to obtain pre-certification class member discovery to substitute a

24 new class representative, even when the named plaintiffs had no standing to

25 initially bring the action. In the *Microskills* case, the Court of Appeal limited the

26 ability of the defendant vocational school, a third party to an arbitration

27 agreement between the plaintiff student and the student loan lender, to compel a

28 plaintiff to arbitrate their case against the school. The *CashCall II* case reversed

1 summary adjudication and set forth new law in the field of privacy rights,
2 including eavesdropping.

3 **EXPERIENCE RELEVANT TO THE TELEPHONE CONSUMER**
4 **PROTECTION ACT**

5 17. I have filed and litigated many other class actions based on the
6 Telephone Consumer Protection Act in the past seven years. I have been lead
7 counsel, liaison counsel or class counsel in the TCPA cases obtaining the largest
8 monetary and non-monetary settlements to date. As detailed below, those
9 include the *Rose v. Bank of America* case, settled in excess of \$32,000,000; the
10 *Wells Fargo* mortgage and auto loan robocalling case, settled in excess of
11 \$17,000,000; *Arthur v. Sallie Mae*, settled in excess of \$24,000,000; *In Re Jiffy*
12 *Lube*, settled for certificates/cash, with the certificates valued over \$40,000,000
13 in value, with a reduced cash value if redeemed for cash; and the *AllianceOne*
14 case, with a settlement of more than \$9,000,000.

15 18. The following is a partial list of the TCPA class actions which I am or
16 have been personally involved in:

17 a. *In Re Jiffy Lube Int'l, Inc. Text Spam Litigation*, MDL Case No. 2261, Master
18 Case No. 3:11-MD-02261 – JM- JMA (liaison counsel) (largest combined
19 monetary and certificate for services case to date, approx. \$45,000,000 value);

20 b. *Bellows v. NCO Financial Systems, Inc.*, 07-CV-01413 W(AJB) (S.D.
21 Cal)(One of the first class action settlements under the TCPA in the nation;
22 Hyde & Swigart served as co-lead counsel; final approval granted in 2009);

23 c. *Adams v. AllianceOne, Inc.*, 08-CV-0248 JAH (S.D. Cal) (Nationwide TCPA
24 class settlement providing class relief of \$40 per claiming class member
25 resulting in over \$2,500,000 paid to claiming class members; final approval
26 granted in 2013);

27 d. *Lemieux v. Global Credit & Collection Corp.*, 08-CV-1012 IEG(POR) (S.D.
28 Cal.)(Co-lead counsel on a national TCPA class settlement providing class

1 recovery in the amount of \$70 for each claiming class member; final approval
2 granted in 2011);

3 e. *Malta, et al. v. Wells Fargo Home Mortgage, et al.*, 10-CV-1290
4 IEG(BLM)(Served as co-lead counsel; obtained a common settlement fund in
5 the amount of \$17,100,000 which was the second largest TCPA settlement at the
6 time, second only to the *Sallie Mae* settlement; final approval granted in 2013);

7 f. *Connor v. JPMorgan Chase Bank, et al.*, 10-CV-1284 DMS(BGS) (S.D.
8 Cal.)(Served as co-lead counsel for the settlement class of borrowers in
9 connection with residential loans and TCPA violations stemming from the
10 collection of those accounts; settled for approximately \$12,000,000);

11 g. *In Re: Portfolio Recovery Associates, LLC Telephone Consumer Protection*
12 *Act Litigation*, 11-md-02295-JAH(BGS)(Counsel for a Plaintiff in the lead
13 action, prior to the action being recategorized through the multi-district litigation
14 process; served as liaison counsel for the MDL, settled for \$18,000,000);

15 h. *Arthur v. SLM Corporation*, 10-CV-00198 JLR (W.D. Wash.)(Nationwide
16 settlement achieving the then-largest monetary settlement in the history of the
17 TCPA: \$24,115,000; final approval granted in 2012);

18 i. *Lo v. Oxnard European Motors, LLC, et al.*, 11-CV-1009-JLS-MDD (S.D.
19 Cal.)(Achieving one of the highest class member payouts in a TCPA action of
20 \$1,331.25; final approval granted in 2012);

21 j. *Franklin v. Wells Fargo Bank, N.A.*, Case No. 14-cv-2349 MMA-BGS
22 (S.D.Cal.); (Nationwide settlement of TCPA credit card collection violations,
23 settlement of more than \$13,800,000);

24 k. *Sarabri v. Weltman, Weinberg & Reis Co., L.P.A.*, 10-01777-AJB-NLS (S.D.
25 Cal.)(Approved as co-lead counsel and worked to obtain a national TCPA class
26 settlement where claiming class members each received payment in the amount
27 of \$70.00; final approval granted in 2013);

28 l. *Wilkins and Mills v. HSBC Bank Nevada, N.A.*, Case No. 14 C 190 (N.D.Ill.)

(Co-counsel in a TCPA settlement of almost \$40,000,000).

m. *Luster v. Wells Fargo*, 1:15-cv-01058-TWT (N.D.Ga)(Co-counsel in a \$14,000,000 settlement);

n. *Markos v. Wells Fargo*, 14-cv-1156-LMM (N.D.Ga.)(Co-counsel in a \$16,400,000 settlement);

o. *Cross v. Wells Fargo*, 15-cv-1270-RWS (N.D.Ga.) (Co-counsel in a \$30,446,022 settlement);

p. *Prather v. Wells Fargo*, 16-cv-4231-CAP (N.D.Ga.) (Co-counsel in a \$2,000,000 settlement).

The cases listed above have resulted in the creation of combined common funds to class members in the tens of millions of dollars. I am proud of my record in the above cases that resulted in substantial settlements for consumers.

SUMMARY OF WORK PERFORMED ON BEHALF OF THE SETTLEMENT CLASS

19. This case was highly contested, with motion practice, a stay imposed for over a year, a discovery motion pursued and a non-common fund settlement that involved a myriad of details that had to be implemented to ensure a fair settlement to all class members. The present defense counsel substituted in after the initial pleadings were filed, and has fought hard throughout this matter to make sure all the details of the settlement were as fair to both sides as possible. With Judge Infante's assistance, the framework of the Settlement was reached. Then the dollar amounts of the purchase of goods and the cash option took quite a while to resolve. Once that was agreed upon, the remaining details had to be resolved. As part of that process, both sides negotiated a substantial number of large and small details, all at arms' length, ranging from how to best choose a claims administrator that would be reasonable in cost but with sufficient experience, to how to implement a Certificate settlement process with a cash

option to avoid fraud and also make certain all claimants are treated fairly and equally. Everything counsel for both sides negotiated had to be further personally reviewed and authorized by Defendants, requiring additional time and effort. Similarly, on Plaintiff's side, the important details had to be discussed and agreed upon by all co-counsel. The postcard notice, the long form notice and the publication notice were drafted and re-drafted, the proposed Order for Preliminary Approval and Final Approval were also gone over several times by counsel for both sides and whether a Spanish translation should be provided was discussed. Another issue that had to be resolved was the "reassigned number" issue in case any numbers called had been reassigned to other persons whose names and addresses are not in Defendants' records. We negotiated how to best handle getting notice to that group, if any, and how to handle any claims they might make. We agreed they would get paid, even if there are two claims submitted for the same cellphone number. The terms of use of the Certificates were negotiated at length and carefully crafted to avoid any similarity to disfavored "coupons" in other settlements. Potential claims administrators were interviewed by phone and in person and the bid form used to request such bids was also negotiated between counsel. The claims administrator bidding process developed into a two - step process, with counsel discussing and negotiating how to implement a second phase to best serve the Parties and the class. And every few months, counsel for each side would jointly submit a status report and a request to the Court for a further extension of time to resolve the Settlement, which the Court graciously provided. As a result, counsel for Plaintiff that are seeking appointment as Class Counsel brought about a substantial result for the class and worked hard on its behalf.

SUITABILITY OF CLASS REPRESENTATIVES

20. I am unaware of any legal differences in the status of Plaintiff Sean Hartranft as a Class Member from the members of the Settlement Class, nor of

1 any unique factual issues pertaining to such representative status which must be
2 litigated. To my knowledge, Mr. Hartranft has no conflict with the other Class
3 Members.

4 21. The claims of Mr. Hartranft appear to be the same as the claims of the
5 other class members, and his claims relate to the same issues of law and fact as
6 the other class claims.

7 22. Plaintiff Mr. Hartranft understands the obligations of serving as class
8 representative, has adequately represented the interests of the putative class, and
9 has retained experienced counsel.

10 23. Plaintiffs Mr. Hartranft supports the proposed Settlement. *See* the
11 Declaration of Sean Hartranft In Support of Preliminary Approval filed herewith
12 in support of preliminary approval.

13 24. Mr. Hartranft rejected a Rule 68 Offer of Judgment served on him in
14 November, 2015. In doing so, he declined personal payment in order to
15 continue in his position as a class representative.

16 I declare under penalty of perjury that the foregoing is true and correct.

17 Executed on March 8, 2019, pursuant to the laws of the United States at San Diego,
18 California.

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20 /s/ Douglas J. Campion
21 Douglas J. Campion
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EXHIBIT 1

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Settlement Agreement”) is entered into by and between Plaintiff Sean Hartranft (“Plaintiff” or “Hartranft”), for himself and the Settlement Class Members (as defined below), on the one hand, and TVI, Inc. doing business as Savers, and Savers’ subsidiary Apogee Retail, LLC (collectively, “Defendants”), on the other hand. Plaintiff and Defendants are referred to collectively in this Settlement Agreement as the “Parties.”

I. RECITALS

1.01 On July 8, 2015, Hartranft filed a class action in the Central District of California, Southern Division, against Defendants entitled *Sean Hartranft, on behalf of himself and all others similarly situated, v. TVI, Inc. d/b/a/ Savers, Inc., Apogee Retail, LLC*, Case No. 8:15-cv-01081 CJC-DFM (C.D. Cal.) (the “Action”).

1.02 Plaintiff alleges that Defendants violated the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, by using an automatic telephone dialing system and/or an artificial or prerecorded voice to call cellular telephones in connection with seeking donations of cash and goods, without his prior express consent and that of putative class members.

1.03 Defendants deny all material allegations in the Action and deny all liability with respect to the facts and claims alleged in the Action. Defendants specifically dispute that they used an automatic telephone dialing system or artificial or prerecorded voice messages to contact Plaintiff or putative class members without their prior express consent; that they violated the TCPA; or that Plaintiff and putative class members are entitled to any relief from Defendants. Defendants further contend that the Action is not amenable to class certification. Nevertheless, given the risks, uncertainties, burden and expense of continued litigation, Defendants have agreed to settle this litigation on the terms set forth in this Settlement Agreement, subject to Court approval, to put to rest all claims that were, or could have been, brought in the Action or in similar litigation based on the facts alleged in the Action.

1.04 This Settlement Agreement resulted from good faith, arm’s-length settlement negotiations, including an in-person negotiation as well as numerous telephonic conferences with

the Hon. Edward Infante, Ret., of JAMS, an experienced and well-respected private mediator. The Parties submitted detailed mediation statements to Judge Infante setting forth their respective views as to the strengths of their cases. Additionally, Plaintiff has investigated Defendants and investigated whether Defendants had any relevant prior history.

1.05 Based on their investigation and the negotiations described above, and having verified through confirmatory discovery described in Paragraph 4.01 below the information currently known to Plaintiff as provided formally, informally, and through the mediation process, Class Counsel have concluded, taking into account the sharply contested issues involved, the risks, uncertainty and cost of further prosecution of this litigation, and the substantial benefits to be received by Settlement Class Members pursuant to this Settlement Agreement, that a settlement with Defendants on the terms set forth herein is fair, reasonable, adequate and in the best interests of the Settlement Class Members.

1.06 The Parties understand, acknowledge, and agree that the execution of this Settlement Agreement constitutes the settlement and compromise of disputed claims. This Settlement Agreement is inadmissible as evidence against any Party except to enforce the terms of the Settlement Agreement and is not an admission of wrongdoing or liability on the part of any Party to this Settlement Agreement. The Parties desire and intend to effect a full, complete, and final settlement and resolution of all existing disputes and claims as set forth herein.

1.07 The settlement contemplated by this Settlement Agreement is subject to preliminary approval and final approval by the Court, as set forth herein. This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims, upon and subject to the terms and conditions hereof.

II. DEFINITIONS

2.01 “Action” means the class action filed in the Central District of California against TVI, Inc. doing business as Savers and Savers’ subsidiary Apogee Retail, LLC, entitled *Sean Hartranft, on behalf of himself and all others similarly situated, v. TVI, Inc. d/b/a/ Savers, Inc., Apogee Retail, LLC*, Case No. 8:15-cv-01081 CJC-DFM (C.D. Cal.).

2.02 “Agreement” or “Settlement Agreement” means this Settlement Agreement and Release between Plaintiff and Defendants and each and every exhibit attached hereto.

2.03 “Apogee” means Apogee Retail, LLC.

2.04 “Approved Claims” means claims that have been validly completed, timely submitted, and approved for payment as complying fully with the claims submission requirements set forth in Section IX below.

2.05 “CAFA Notice” refers to the notice requirements imposed by 28 U.S.C. § 1715(b).

2.06 “Cash Awards” or “Cash Award Option” means the cash payment payable to Settlement Class Members who filed Approved Claims, and who choose to redeem their Settlement Certificates for \$25.00 cash instead of \$75.00 in goods from Defendants’ thrift stores, as set forth in Paragraphs 9.02 and 9.05 below.

2.07 “Claim Form” means the claim form substantially in the form attached hereto as Exhibit A.

2.08 “Claims Deadline” means 90 days from the Settlement Notice Date.

2.09 “Claims Period” means the 90-day period that begins on the Settlement Notice Date within which Settlement Class Members may file a Claim Form.

2.10 “Claims Administrator” means CPT Group, Class Action Administrators, subject to Court approval.

2.11 “Class Counsel” means and includes: Law Offices of Douglas J. Campion, APC; Bisnar | Chase LLP; and the Law Offices of Michael P. Sousa, APC.

2.12 “Class Notice” or “Notice” means the notice specified in Section VIII of this Settlement Agreement including, without limitation, mail notice, publication notice, and may include internet banner advertising if necessary to reach a sufficient number of Settlement Class Members, as set forth in that Section. Notice shall be substantially in the forms attached hereto collectively as Exhibit C, subject to the Court’s approval.

2.13 “Class Period” means July 1, 2011, through September 30, 2015.

2.14 “Class Representative” or “Plaintiff” means Plaintiff Sean Hartranft.

2.15 “Class Size” means the number of persons in the Settlement Class owning the unique cellular telephone numbers to which Apogee made or attempted to make calls regarding donation solicitation on behalf of Epilepsy Foundation of America (“EFA”) during the Class Period according to Defendants’ or their contractors’ available records. Class Counsel has verified through confirmatory discovery that the Class Size is 747,635.

2.16 “Court” means the United States District Court for the Central District of California, and U.S. District Judge Cormac J. Carney, to whom the Action has been assigned.

2.17 “EFA” means Epilepsy Foundation of America.

2.18 “Effective Date” means the date on which the Judgment has become final as provided in Paragraph 12.01.

2.19 “Final Approval Hearing” means the hearing held by the Court to determine whether to finally approve the settlement set forth in this Settlement Agreement as fair, reasonable and adequate, sometimes referred to herein as the “Fairness Hearing.”

2.20 “Final Approval Order” means the order to be submitted to the Court in connection with the Final Approval Hearing, substantially in the form attached hereto as Exhibit B.

2.21 “Incentive Payment” means the payment to the Class Representative for his time and effort in connection with this Action in an amount approved by the Court.

2.22 “Notice List” means the list containing Settlement Class Members’ information which Defendants will provide to the Claims Administrator pursuant to Paragraph 7.02.

2.23 “Objection Deadline” means 60 days from the Settlement Notice Date.

2.24 “Opt-Out Deadline” means 60 days from the Settlement Notice Date.

2.25 “Parties” means the Class Representative and Defendants.

2.26 “Preliminary Approval Order” means the order by the Court granting preliminary approval of this Settlement Agreement, substantially in the form attached hereto as Exhibit D.

2.27 “Released Claims” means any and all claims, rights (including rights to restitution

or reimbursement), demands, actions, causes of action, suits, liens, damages, attorneys' fees, obligations, contracts, liabilities, agreements, costs, expenses, or losses of any nature or description whatsoever, whether known or unknown, direct or indirect, matured or unmatured, contingent or absolute, existing or potential, suspected or unsuspected, equitable or legal, individual or representative, whether based on the TCPA or under other federal statutory law, federal common law or federal regulation, or the statutes, constitutions, regulations, ordinances, common law, or any other law of any and all states or their subdivisions, parishes or municipalities, that arise out of or relate in any way to placing calls to cellular telephones, and that have been, or could have been, brought in the Action, that arise out of the same nucleus of operative facts as any of the claims asserted in the Action. Defendants reserve the right to seek contribution or indemnity from any third party(ies).

In addition, with respect to Class Representative only, "Released Claims" includes all claims arising, or that could arise in the future, out of any conduct or omissions occurring as of the date of preliminary court approval of the settlement that might be attributable to any of the Released Parties.

2.28 "Released Parties" means TVI, Inc., Apogee Retail, LLC, and EFA (including their affiliates, parents, direct and indirect subsidiaries, agents, insurers, and any company or companies under common control with any of them, and each of their respective predecessors, successors, past and present officers, directors, managers, employees, agents, servants, accountants, attorneys, advisors, shareholders, members, insurers, representatives, partners, vendors, issuers, and assigns, or anyone acting on their behalf) and each of their respective past, present and future parents, subsidiaries, affiliated companies and corporations, and each of their respective past, present, and future directors, officers, managers, employees, general partners, limited partners, principals, insurers, reinsurers, shareholders, attorneys, advisors, representatives, predecessors, successors, divisions, assigns, or related entities, and each of their respective executors, successors, and legal representatives.

2.29 "Releasing Parties" means Class Representative, those Settlement Class Members

who do not timely opt out of the Settlement Class, and all of their respective present or past heirs, executors, estates, predecessors, successors, assigns, administrators, affiliates, parents, direct and indirect subsidiaries, agents, insurers, and any company or companies under common control with any of them, and each of their respective predecessors, successors, past and present officers, directors, managers, employees, agents, servants, accountants, attorneys, advisors, shareholders, members, insurers, representatives, partners, vendors, issuers, and assigns, or anyone acting on their behalf or claiming through them.

2.30 “Settlement Certificates” means the certificates provided to Settlement Class Members who submit Approved Claims which will be redeemable for either (a) any of the goods at any Savers or Value Village thrift store in the United States in an amount up to \$75.00, or (b) a check in the amount of \$25.00 (“Cash Award Option”) from the Settlement Administrator.

2.31 “Settlement Class” means all persons and entities to which, between and including July 1, 2011, to September 30, 2015, Apogee made or attempted to make one or more telephone calls to their cellular telephones regarding donation solicitation on behalf of EFA.

2.32 “Settlement Class Members” means those persons who are members of the Settlement Class, as set forth in the definition in Paragraph 2.31 above, and who do not timely and validly request exclusion from the Settlement Class. Defendants and any of their affiliates or subsidiaries, and any entities in which any of such companies have a controlling interest, the judges presiding in the Action, and Class Counsel are also excluded from the Settlement Class.

2.33 “Settlement Notice Date” means 30 days after an Order Granting Preliminary Approval is entered.

2.34 “Settlement Website” means the Internet website operated by the Claims Administrator as described in Paragraph 8.03.

2.35 “TCPA” means the Telephone Consumer Protection Act, 47 U.S.C. § 227, and any regulations or rulings promulgated under it.

2.36 “TVI” means TVI, Inc.

III. BOTH SIDES RECOMMEND APPROVAL OF THE SETTLEMENT AGREEMENT

3.01 Defendants' Position on the Conditional Certification of the Settlement Class.

Defendants dispute that a class would be manageable or that common issues predominate over individual ones, and further deny that a litigation class properly could be certified on the claims asserted in this Action. However, solely for purposes of avoiding the expense and inconvenience of further litigation, Defendants do not oppose the certification for settlement purposes only of the Settlement Class. Preliminary certification of the Settlement Class for settlement purposes shall not be deemed a concession that certification of a litigation class is appropriate, nor would Defendants be precluded from challenging class certification in further proceedings in this Action or in any other action if the Settlement Agreement is not finalized or finally approved. If the Settlement Agreement is not finally approved by the Court for any reason whatsoever, the certification of the Settlement Class will be void, and no doctrine of waiver, estoppel or preclusion will be asserted in any litigated certification proceedings in this Action. No agreements made by or entered into by Defendants in connection with the Settlement Agreement may be used by Plaintiff, any person in the Settlement Class, or any other person to establish any of the elements of class certification in any litigated certification proceedings, whether in this Action or any other judicial proceeding.

3.02 Plaintiff's Belief in the Merits of His Case. Plaintiff believes that the claims asserted in this Action have merit and that the evidence developed to date supports those claims. This Settlement Agreement shall in no event be construed or deemed to be evidence of or an admission or concession on the part of Plaintiff that there is any infirmity in the claims asserted by Plaintiff, or that there is any merit whatsoever to any of the contentions and defenses that Defendants have asserted.

3.03 Plaintiff Recognizes the Benefits of Settlement. Plaintiff recognizes and acknowledges, however, the expense and amount of time which would be required to continue to pursue this Action against Defendants, as well as the uncertainty, risk and difficulties of proof

inherent in prosecuting such claims on behalf of the Settlement Class. Plaintiff has concluded that it is desirable that this Action and any Released Claims be fully and finally settled and released as set forth in this Settlement Agreement. Plaintiff and Class Counsel believe that the terms set forth in this Settlement Agreement confer substantial benefits upon the Settlement Class and that it is in the best interests of the Settlement Class to settle as described herein.

3.04 Acknowledgement and Statement of Present Intent. To induce Defendants to enter into this Agreement, the undersigned Class Counsel represent and warrant: (i) they do not currently intend to bring any further claims against Defendants that arise out of or relate in any way to placing calls to telephones, or against Defendants or any person or entity that arise out of the same nucleus of operative facts as any of the claims asserted in the Action; and (ii) they are presently unaware of any person or entity other than Plaintiff who has or may have claims against Defendants that arise out of or relate in any way to placing calls to telephones, or against Released Parties that arise out of the same nucleus of operative facts as any of the claims asserted in the Action. Further, Class Counsel do not currently intend to solicit or actively seek clients, or advertise availability, for representation of any person seeking relief against Defendants that arise out of or relate in any way to placing calls to telephones, or against Defendants or any person or entity that arise out of the same nucleus of operative facts as any of the claims asserted in the Action.

IV. SETTLEMENT TERMS AND BENEFITS TO THE SETTLEMENT CLASS

4.01 Confirmatory Discovery: Plaintiff has conducted reasonable, mutually agreeable confirmatory discovery regarding the size of the class, the numbers dialed, the identification of the Settlement Class Members, when the calls at issue were made and by whom, and the methods used by Defendants and their agents to compile, assemble and maintain the list(s) of numbers dialed. The Parties agree that this discovery shall be used for the sole purpose of settlement, and the information provided as part of this confirmatory discovery process will not be used for any other purpose.

4.02 Monetary and Non-Monetary Consideration. Defendants shall pay an amount to the Claims Administrator equal to that which is required to compensate all Settlement Class Members that submit Approved Claims and timely choose the Cash Award Option in the amount of \$25.00. The total cash amount paid by Defendants to such Settlement Class Members depends on the number of such Settlement Class Members. The total dollar amount incurred for the redemption of Settlement Certificates for goods at Savers or Value Village stores that Defendants will be responsible for will depend on the number of Settlement Class Members choosing that option. In addition, Defendants shall be solely responsible for payment to the Claims Administrator of all amounts required to provide Notice, process claims, and to pay for all duties required by the Claims Administrator in providing claims administration in this settlement. The specific duties, at a minimum, that will be required and agreed upon in giving Notice and processing claims, opt-out requests, and objections are detailed below in Sections VII-X. Furthermore, Defendants shall provide to the Claims Administrator the funds necessary to pay for any attorneys' fees and costs of litigation, as agreed upon herein, and as approved and awarded by the Court as detailed below in Section V. Defendants shall also pay the sum of \$5,000.00 as an incentive award to Plaintiff, subject to Court approval, as set forth in Section V. Under no circumstances shall Defendants be required to pay any amount in excess of the amounts described in this Paragraph 4.02 in order to resolve the Action and obtain the Released Claims from the Releasing Parties.

4.03 Eligibility for an Award. Settlement Class Members' eligibility to claim and receive a Settlement Certificate redeemable for either a Cash Award Option of \$25.00 or goods at any Savers or Value Village thrift store in the United States in an amount up to \$75.00 is as described in Section IX below.

V. ATTORNEYS' FEES, COSTS, AND PAYMENT TO CLASS REPRESENTATIVE

5.01 Class Representative and Class Counsel Appointment. For settlement purposes, and subject to Court approval, Plaintiff shall be appointed as the Class Representative for the Settlement Class and his attorneys of record shall be appointed Class Counsel.

5.02 Attorneys' Fees, Costs, and Incentive Payment. Approximately sixty (60) days after entry of the Preliminary Approval Order, but sufficiently prior to the expiration of the deadline to object to the settlement, Class Counsel shall move the Court for an award of attorneys' fees and their costs to be paid by Defendants through the Claims Administrator in an amount not to exceed Nine Hundred Thousand Dollars (\$900,000), and an incentive award in an amount not to exceed Five Thousand Dollars (\$5,000) for the time and effort the Class Representative has personally invested in the Action on behalf of the Settlement Class. Defendants agree not to oppose Class Counsel's motion for attorneys' fees, their costs, and Incentive Payment made under and consistent with this Paragraph. If both Final Approval and the Effective Date occur, no later than ten (10) days after the Effective Date, Defendants shall pay to the Claims Administrator an amount equal to the fees and costs and Incentive Payment as approved and ordered by the Court, and the Claims Administrator shall then forward such funds to Class Counsel immediately, or in any event, no later than two days after receipt from Defendants. That payment by Defendants shall constitute full and complete compensation for attorneys' fees, costs, and Incentive Payment. Defendants and the Claims Administrator shall have no responsibility or liability for any failure of Class Counsel to deliver (i) any share of fees, costs, or the Incentive Award to any Class Counsel, or to any counsel not included in the definition of Class Counsel, but claiming some right to fees as a result of resolution of the Action, or (ii) any payment to the Class Representative. Defendants' obligations with respect to any fees, costs, expenses, or payments to any of Class Counsel (or to any counsel not included in the definition of Class Counsel but claiming some right to fees as a result of resolution of the Action) or to the Class Representative shall be fully and forever discharged upon the payment to Class Counsel pursuant to this Paragraph. Other than Defendants' obligation to cause payment of the attorneys' fees, costs, and the Incentive Payment in an amount approved by the Court, Defendants shall have no further obligations to Class Counsel, or to any other counsel not included in the definition of Class Counsel but claiming some right to attorneys' fees, costs, and/or expenses, or to the Class Representative. This Settlement Agreement will be binding and

enforceable regardless of whether the Court approves the attorneys' fees, costs, and Incentive Payment sought by Class Counsel and the Class Representative. In addition, no interest will accrue on such amounts at any time.

5.03 Settlement Independent of Award of Fees, Costs, and Incentive Payment. The payments of attorneys' fees, costs, and Incentive Payment set forth in Paragraph 5.02 are subject to and dependent upon the Court's approval of the settlement as fair, reasonable, adequate and in the best interests of Settlement Class Members. However, this Settlement Agreement is not dependent or conditioned upon the Court's approving Plaintiff's request for such payments or awarding the particular amounts sought by Plaintiff. However, Class Counsel may appeal any such ruling about a request for attorneys' fees, costs and/or an incentive award. In the event the Court declines Plaintiff's requests or awards less than the amounts sought, this Settlement Agreement shall continue to be effective and enforceable by the Parties, notwithstanding to any appeal undertaken by Plaintiff or Class Counsel relating to the amounts awarded by the Court..

5.04 Fees and Costs. Except as otherwise provided herein, each Party shall bear its own attorneys' fees and costs incurred in any way related to the Action.

VI. PRELIMINARY APPROVAL

6.01 Order of Preliminary Approval. As soon as practicable after the execution of this Settlement Agreement, Plaintiff shall move the Court for entry of the Preliminary Approval Order in substantially the form attached as Exhibit D. Class Counsel shall prepare the motion for Preliminary Approval and shall provide Defendants a reasonable opportunity to review the motion and supporting papers so they can provide input in advance of filing. Plaintiff shall retain discretion over whether to accept any of Defendants' comments. Defendants shall file a Statement of Non-Opposition to preliminary settlement approval, but may otherwise respond or object to Plaintiff's motions and supporting papers in any manner that is not inconsistent with Defendants' obligations under this Settlement Agreement. Pursuant to the motion for preliminary approval, Plaintiff will request that:

- a. the Court conditionally certify the Settlement Class for settlement purposes only and appoint Class Counsel as counsel for the Settlement Class for settlement purposes only;
- b. the Court preliminarily approve the proposed settlement and the terms of this Settlement Agreement as fair, adequate and reasonable, and within the reasonable range of possible final approval;
- c. the Court preliminarily enjoin Plaintiff and Settlement Class Members (including those acting their behalf) from bringing, joining, or continuing to prosecute Released Claims against Defendants or the Released Parties.
- d. the Court approve the form(s) of Notice and find that the notice program set forth herein constitutes the best notice practicable under the circumstances, and satisfies due process and Rule 23 of the Federal Rules of Civil Procedure;
- e. the Court set the date and time for the Final Approval Hearing, which may be continued by the Court from time to time without the necessity of further notice, to consider objections, if any, to the settlement and to enter the Final Approval Order; and
- f. the Court set the Claims Deadline, the Objection Deadline and the Opt-Out Deadline.

6.02 Limited Effect of Settlement Class. The certification of the Settlement Class shall have no bearing in deciding whether the claims asserted in the Action are or were appropriate for class treatment in the absence of settlement. If this Agreement terminates or is nullified, the provisional class certification in Exhibit D shall be vacated by its terms, and the Action shall revert to the status that existed before execution of this Agreement. Thereafter, the Class Representative shall be free to pursue any claims available to him, and Defendants shall be free to assert any defenses available to them, including but not limited to, denying the suitability of this case for class treatment. Nothing in this Agreement shall be argued or deemed to estop any Party from the assertion of such claims and defenses.

VII. ADMINISTRATION AND NOTIFICATION PROCESS

7.01 Third-Party Claims Administrator. The Parties acknowledge that both cost and competence are important factors in choosing a Claims Administrator for this Action, and that both sides have an interest in the selection as a result. Some of the primary considerations are, first, that the cost to Defendants be kept to a minimum, and second, to Plaintiff, that a sufficient number of Settlement Class Members are reached and a reasonable process is implemented to file claims. Therefore, in order to reach both goals, the Parties shall each seek bids from up to three different companies experienced in handling class action notice and claims administration, with an identical bid request form as agreed upon by the Parties. After the bids are received, the Parties shall meet and confer to decide which Claims Administrator shall be used. If the Parties cannot agree on the claims administrator, that issue will be presented to the Court for resolution. The Claims Administrator shall be responsible for all matters relating to the administration of this Settlement Agreement, as set forth herein. Those responsibilities include, but are not limited to, giving Class Notice and CAFA Notice, updating addresses through the National Post Office change of address database prior to mailing, obtaining new addresses for returned mail, obtaining publication one time in a national publication, providing notice by internet banner ads if needed, as discussed below, setting up and maintaining the Settlement Website and toll-free interactive voice response (“IVR”) telephone number for informational purposes, fielding inquiries about the settlement, processing claims, acting as a liaison between Settlement Class Members and the Parties regarding claims information, approving claims, rejecting any Claim Form where there is evidence of fraud or noncompliance, directing the mailing of Settlement Certificates to Settlement Class Members filing Approved Claims, notifying claimants with disapproved claims, mailing checks to those Settlement Class Members that choose the Cash Award Option, and any other tasks reasonably required to effectuate the foregoing. The Claims Administrator will provide no less than monthly updates on the claims status to counsel for all Parties. The Parties agree they will copy the other with all communications with the Claims Administrator, except the Defendants shall provide the Notice List directly to the Settlement Administrator without

copying Class Counsel, who shall not have access to the Notice List or any of the name, address, phone number, or other personal identifying information contained within, except as may be necessary to resolve any questions regarding the accuracy and sufficiency of the claims process, including any claimed duplicate or fraudulent claims, or other reasons as described more fully in Paragraph 7.02 below.

7.02 Notice List. To facilitate the Notice and claims administration process, Defendants and their agents will provide to the Claims Administrator no later than a date within 10 days of the Court's entry of the Preliminary Approval Order, in an electronically searchable and readable format, the Notice List which shall include the names, last known mailing addresses, and cellular telephone numbers called for all known members of the Settlement Class, as such information is contained in the reasonably available computerized data Defendants represent they and their agents maintain. If any of the terms of this Settlement Agreement relating to the Claims Administrator's services would unreasonably hinder or delay such processes or make them more costly, the Claims Administrator shall so advise the Parties, and the Parties will accommodate the Claims Administrator to the extent reasonably necessary to carry out the intent of this Settlement Agreement. Any personal information relating to members of the Settlement Class provided to the Claims Administrator pursuant to this Settlement Agreement shall be provided solely for the purpose of providing Notice to members of the Settlement Class and allowing them to recover under this Settlement Agreement; shall be kept in strict confidence; shall be used only for purposes of this settlement; and shall not be disclosed to Plaintiff, Class Counsel, or any third party except as otherwise provided herein. However, Class Counsel shall be provided any such names, addresses, phone numbers or other identifying information for any Class Member relating to: 1) any inquiry by such Class Member about a claim that the Settlement Administrator is unable to resolve without guidance from Class Counsel; 2) where there is any dispute about any Class Member's claim; 3) related to more than one claim submitted for call(s) made to the same cellphone number, or 4) for any other purpose Class Counsel deems it necessary to facilitate the claims or review process. Class Counsel agree

to discuss the request under the fourth category with Defense Counsel if that need arises, and if the Parties are unable to agree on whether that information should be provided to Class Counsel, the matter shall be submitted to the Court.

7.03 Payment of Notice and Claims Administration Costs. Defendants shall pay the reasonable costs of Notice and settlement administration that are incurred and paid when required by the Claims Administrator and as set forth herein. The Claims Administrator shall provide the Parties with an estimate of the costs of sending notice, including one instance of publication notice, internet banner notices (if necessary and as further agreed between the Parties), sending CAFA notice, establishing the Settlement Website and establishing a toll-free IVR telephone number, with the website established to allow the submission of claims, while the toll-free IVR phone number established to provide information about the claims and Notice process, as well as any other initial administration costs. Defendants shall pay such estimated amount to the Claims Administrator no later than ten days after the entry of the Preliminary Approval Order, or earlier if the Claims Administrator reasonably requires. After that upfront payment of administration costs by Defendants, the Claims Administrator shall bill Defendants monthly for any reasonable additional costs of settlement administration. Any amounts paid by Defendants for the estimated costs of administration which are not incurred by the Claims Administrator shall be used for other administration costs, or shall be deducted from future billings by the Claims Administrator. The Claims Administrator shall maintain detailed records of the amounts spent on the administration of the settlement and shall provide those to the Parties no less than monthly.

7.04 Payment of Distribution of Amounts Paid by Defendants. The Claims Administrator shall distribute the funds to be received from Defendants and distribute the Settlement Certificates as set forth herein in the following order and within the time period set forth with respect to each such payment:

a. first, Defendants shall pay the amounts awarded to Class Counsel for attorneys' fees and costs, and to Class Counsel the amount to be paid to the Class Representative

as Incentive Payment, at the time and manner as set forth in Paragraph 5.02;

b. next, no later than 30 days after the Effective Date, the Claims Administrator shall mail the Settlement Certificates to Settlement Class Members who submitted Approved Claims pursuant to Paragraph 9.02;

c. next, payments shall be made to each person that chooses the Cash Award Option, to be made no later than 14 days after the exercise of the Cash Award Option by such person, as set forth in Paragraph 9.05; and

d. next, the amount of checks that remain uncashed after 210 days of the last Cash Award Option distribution shall be returned to Defendants.

VIII. NOTICES

8.01 Timing of Class Notice. Class Notice shall be provided to all persons in the Settlement Class beginning 30 days following entry of the Preliminary Approval Order as described herein.

8.02 Mailing of Class Notice. The Claims Administrator shall send the postcard-type Class Notice via first-class mail 30 days following entry of the Preliminary Approval Order as described herein, to the most recent mailing address as reflected in Defendants' available records, or as updated as set forth herein.

a. Address Confirmation. The last known address of persons in the Settlement Class will be subject to confirmation or updating as follows: (a) the Claims Administrator will check each address against the United States Post Office National Change of Address Database before the initial mailing; (b) the Claims Administrator will conduct a reasonable search to locate an updated address for any person in the Settlement Class whose Class Notice is returned as undeliverable; (c) the Claims Administrator shall update addresses based on any forwarding information received from the United States Post Office; and (d) the Claims Administrator shall continually update addresses based on any information received from persons in the Settlement Class.

b. Re-Mailing of Returned Class Notices. The Claims Administrator shall

promptly re-mail one time any Class Notices that are returned as non-deliverable upon searching for and obtaining a forwarding address. The Claims Administrator may perform skip tracing for returned mail.

c. Costs Considered Settlement Costs. All costs of address confirmation, skip tracing, and re-mailing of returned Class Notices will be considered Settlement Costs and paid for by Defendants.

8.03 Settlement Website. By the Settlement Notice Date, the Claims Administrator shall maintain and administer a dedicated Settlement Website containing class information and related documents, including Court documents. At a minimum, such documents shall include the Settlement Agreement and attached exhibits, the long form Class Notice, a downloadable Claim Form for anyone wanting to print a hard copy and mail in the Claim Form, the operative complaint, and when filed, the motion for attorneys' fees, costs, and Incentive Payment, the Preliminary and Final Approval motions, and the related Orders. The Settlement Website shall contain information necessary to file a claim either electronically or by mail. The Settlement Website shall contain an electronic version of the Claim Form members can complete and submit electronically. The Settlement Website shall also contain a downloadable claim form Settlement Class Members can download and complete, and then mail in as a "hard copy," if they choose to file a claim in that manner as opposed to filing electronically. The Settlement Website shall remain operative until the expiration of the checks issued to those persons choosing the Cash Award Option.

8.04 Toll-Free IVR Telephone Number. Not later than the Settlement Notice Date, the Claims Administrator shall set up a toll-free IVR telephone number for receiving toll-free calls related to the settlement and provide an automated procedure to answer questions about the Settlement and the claims process. Callers with additional questions may leave a message through the automated system and the Claims Administrator shall respond by telephone or email, as it may choose. That telephone number shall be maintained until 30 days after the Claims Deadline. After that time, and for a period of 90 days thereafter, a recording will advise any

caller to the toll-free IVR telephone number that the Claims Deadline has passed and the details regarding the Settlement Agreement may be reviewed on the related Settlement Website.

8.05 Publication Notice. There shall also be a one-time publication notice during the first 30 days of the Claims Period, in a national magazine, newspaper, or other publication deemed sufficient by the Claims Administrator to potentially reach the Settlement Class Members, disclosed to the Parties' counsel in advance. In addition, the Parties agree that the notice provided must reach a minimum of 80% of the putative Class Members, as determined by the Claims Administrator. If the number of undeliverable post-card notices exceeds 20% of the total notices sent, the Parties will work together in good faith to develop in conjunction with the Claims Administrator a reasonable internet banner notice plan. If the Parties are unable to agree on whether the internet banner notices are needed to reach a sufficient percentage of Class Members, they shall first obtain the opinion of the Claims Administrator, and then have the Court resolve this issue if necessary.

8.06 Public Statements. No Party will make public statements about the settlement (including specifically the amount of the settlement), except to the extent contained in materials available to the public in the Court's files.

8.07 CAFA Notice. Defendants shall delegate the responsibility for service of the CAFA Notice required by 28 U.S.C. § 1715 to the Claims Administrator, to be served not later than ten days after the filing of the motion for preliminary approval of the settlement.

IX. CLAIMS PROCESS

9.01 Claim Verification. Each member of the Settlement Class who does not timely and validly request exclusion from the settlement as required in this Settlement Agreement shall be a member of the Settlement Class and entitled to make a claim. Settlement Class Members shall be mailed a Class Notice with a unique Claim Identification number ("ID #") and be entitled to make one claim per associated unique cellular telephone number called regardless of the number of times they were called. Additionally, if Settlement Class Members who do not receive a mailed Settlement Notice file a claim and include a cellphone number called that is on

the Notice List, then that claim is deemed valid, even if that cellphone number is listed as belonging to a different person named on the Class List, or belonging to another member of the Settlement Class who filed a claim. It is anticipated certain persons might file claims if their cellphone numbers are on the Notice List, even though their names are not on the Notice List. To protect against fraudulent claims, for purposes of verification, the Claim Form will require claimants to provide the phone number(s) at which they received calls (if they recall), their names and addresses, as well as the ID # from their Class Notice, if they received one. If the Claimant has a Class Notice ID # which indicates Defendants' records indicate a call was made to the Claimant, it is not necessary that the Claimant also provide the exact number called. The Claim Form will include a notice that by submitting the Claim Form claimants certify they believe they meet the criteria for membership in the Settlement Class. The Claims Administrator shall confirm either that the claimant's phone number or name is on the on the Notice List. If the name of the claimant or the cellphone number of the claimant matches the name or number on the Notice List, those constitute an Approved Claim if otherwise timely submitted and completely filled out. If a claimant provides a name different than the person listed on the Notice List for that ID #, but the cellphone number the claimant provides matches the number on the Notice List, that shall constitute an Approved Claim if otherwise timely submitted and completely filled out. Any person may provide their correct name and current address to facilitate the filing and processing of an Approved Claim. If both persons to whom the Class Notice for that cellphone number was mailed and the persons not receiving the Class Notice but whose cellphone was called make a claim, both claims will be allowed, as long as the total number of, or other circumstances surrounding, such duplicate payments does not cause either Party or the Settlement Administrator to suspect fraud, in which case the Parties agree to work together in good faith to determine whether any suspected fraudulent duplicate claim should be honored. Settlement Class Members who submit Claim Forms that lack required information or a signature shall be permitted to re-submit a Claim Form one time within 14 days of the sending of notice of the defect by the Claims Administrator. The Parties' counsel shall be kept apprised

of the volume and nature of such defective claims. If Settlement Class Members who receive a mailed Settlement Notice file a claim under that ID#, then that claim is valid, provided the other conditions for submitting a claim are met. The Parties will meet and confer about any such objections to the Claims Administrator's claim determinations as to whether the claims are valid and agree to submit any unresolved disputes to the Court for resolution.

9.02 Conditions for Claiming a Settlement Certificate. Settlement Class Members whose names or cellphone numbers are listed on the Notice List of cellphone numbers Apogee called or attempted to call who submit timely and valid claims have a right to receive a Settlement Certificate, including (a) those persons named on the Notice List and (b) those whose phone numbers are on the Notice List, if belonging to persons whose names are not on the Notice List, as set forth above in Paragraph 9.01, Each Settlement Certificate will be redeemable for either (a) any of the goods at any Savers or Value Village thrift store in the United States in the amount up to \$75.00, or (b) a check in the amount of \$25.00 (Cash Award Option) from the Claims Administrator. Settlement Certificates will be redeemable for goods with no expiration date. Only one certificate may be redeemed at a time or by any individual and may not be combined with any other offer. Settlement Certificates redeemed for goods are valid for one-time use only and cannot be redeemed for cash or cash equivalent, applied to past purchases, or used to purchase gift cards. The Settlement Certificates shall be freely transferable by the recipient to a transferee of the recipient's choice, and any information about the transferee shall be provided to the Claims Administrator in a manner as it shall designate. It is understood that when the Certificates are redeemed by the claimant, they are subject to a one-time use provision, i.e., the Settlement Certificates will be redeemed during only one visit to the store, regardless of whether the amount of goods purchased totals the entire \$75.00 or some lesser amount. There will be no credit given for any unused portion of the Settlement Certificate and the claimant will be so advised prior to making any decision as to choosing between the Settlement Certificates or the Cash Award Option.

9.03 Mailing of Settlement Certificates. As set forth Paragraph in 7.04(b), the Claims

Administrator shall mail a Settlement Certificate not later than 30 days after the Effective Date to all persons submitting an Approved Claim. The Settlement Certificate will contain a notification that the certificate represents their right to relief under this Agreement and instructions and deadlines for redemption for goods or for cash.

9.04 Notification of Disapproved Claims. Not later than 30 days after the Effective Date, the Claims Administrator shall email claimants deemed not eligible that their claim has been disapproved, together with a brief statement of the reason(s) why the Claims Administrator disapproved their claim and that the determination of disapproval is final and not subject to challenge by the claimant.

9.05 Exercising Cash Award Option. From the date the Settlement Certificates are mailed, each Settlement Certificate recipient shall have up to 90 days to exercise the Cash Award Option. Any recipient may exercise the Cash Award Option by so informing the Claims Administrator by mail, by calling an IVR 800 telephone number, or going online to the website within that 90 day period. By exercising the Cash Award Option, the Settlement Certificate belonging to the recipient becomes invalid. The Parties will work together to reach agreement on feasible means of (a) ensuring Settlement Certificates redeemed for cash cannot later be redeemed for goods and (b) providing a sufficient funding timing process to allow all Cash Award Option claimants to be issued payment no later than four weeks after the deadline for exercising the Cash Award Option. Defendants shall provide the Claims Administrator funds necessary to allow payment to be made to the Cash Award Option claimants by the Claims Administrator within 14 days of the exercise of the Cash Award Option by any claimant. Those checks shall be valid for 180 days from the date of issuance.

X. OPT-OUTS AND OBJECTIONS

10.01 Opting Out of the Settlement. Members of the Settlement Class who wish to exclude themselves from the Settlement Class must advise the Claims Administrator in writing of that intent, and their opt-out request must be postmarked no later than the Opt-Out Deadline. In the written request for exclusion, Settlement Class Members must include their full name,

address, telephone number, signature, case name (to allow the Claims Administrator to ensure the exclusion request is for this and not another case administered by the same Claims Administrator), and a statement that they wish to be excluded from the Settlement Class for purposes of this settlement. A request to be excluded that does not include all of this information, or that is sent to an address other than that designated in the Notice, or that is not postmarked within the time specified, shall be invalid, and the individual who submitted such a request shall be a member of the Settlement Class and shall be bound as a Settlement Class Member by this Agreement. Any member of the Settlement Class who validly elects to be excluded from this Agreement shall not: (i) be bound by any orders granting preliminary or final approval to this settlement; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be entitled to object to any aspect of this Agreement. The request for exclusion must be personally signed by the individual requesting exclusion. So-called “mass” or “class” opt-outs shall not be allowed.

10.02 Opt-Out Report. The Claims Administrator shall provide the Parties with copies of all opt-out requests it receives, and shall provide a list of all Settlement Class Members who timely and validly opt out of the settlement in its declaration filed with the Court, as required by Paragraph 11.01. The declaration shall include the names of persons who have excluded themselves from the settlement but shall not include their addresses or any other personal identifying information.

10.03 Objections. Settlement Class Members who intend to object to the fairness of this settlement must file a written objection with the Court by, and mail a copy of the written objection to Class Counsel and Defendants’ counsel postmarked no later than, the Objection Deadline. In the written objection, which must be personally signed by the objector, objectors must state: (i) their full name, address, and current telephone number; (ii) an explanation of the basis upon which the objector claims to be a Settlement Class Member, including the cellular telephone number(s) Defendants allegedly called; (iii) all grounds for their objection, including any documents, evidence and citations all reasons for the objection; (iv) the name and contact

information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit or otherwise benefit from the pursuit of the objection (the “Objecting Attorneys”); and (v) whether they intend to appear at the Fairness Hearing on their own behalf or through counsel. Any documents that the objector wishes the Parties and the Court to consider must also be attached to the written objection.

10.04 Appearances. Objectors who timely and fully comply with the requirements of Paragraph 10.03 above may appear at the Fairness Hearing, either in person or through an attorney hired at their own expense, to object to the fairness, reasonableness, or adequacy of this settlement.

XI. FINAL APPROVAL AND JUDGMENT ORDER

11.01 Claims Administrator Declaration. No later than 14 days prior to the Final Approval Hearing, the Claims Administrator shall file with the Court and serve on counsel for all Parties a declaration stating that the Notice and CAFA Notice required by the Settlement Agreement has been completed in accordance with the terms of the Preliminary Approval Order, together with a list of all timely and valid opt-out requests received in the manner described in Paragraph 10.02.

11.02 Final Approval Process. If the settlement is approved preliminarily by the Court, and all other conditions precedent to the settlement have been satisfied, no later than 14 days prior to Final Approval Hearing:

- a. Plaintiff shall move the Court to enter the Final Approval Order in substantially the form attached as Exhibit B;
- b. Plaintiff shall prepare the motion for final approval and shall provide Defendants a reasonable opportunity to review the motion and supporting papers so they can provide input in advance of filing;
- c. Plaintiff shall retain discretion over whether to accept any of Defendants’ comments;

d. Defendants shall file a Statement of Non-Opposition to final settlement approval, but may otherwise respond or object to Plaintiffs' motions and supporting papers in any manner that is not inconsistent with Defendants' obligations under this Settlement Agreement; and

e. Plaintiff and/or Defendants may file a memorandum addressing any objections to the settlement.

11.03 Final Approval Hearing. At the Final Approval Hearing, the Parties will ask the Court to consider and determine whether the provisions of this Settlement Agreement should be approved, whether the settlement should be finally approved as fair, reasonable and adequate, whether any objections to the settlement should be overruled, whether the fee award and Incentive Payments to the Class Representative should be approved, and whether a judgment finally approving the settlement should be entered.

11.04 Agreement Conditioned on Final Approval. This Agreement is subject to and conditioned upon the issuance by the Court of a Final Approval Order substantially in the form of Exhibit B which, among other things, grants final approval of this Settlement Agreement and:

a. finds that the Notice provided satisfies the requirements of due process and Federal Rule of Civil Procedure Rule 23(e)(1);

b. finds that Settlement Class Members have been adequately represented by Plaintiff and Class Counsel;

c. finds that the Settlement Agreement is fair, reasonable and adequate to the Settlement Class, that Settlement Class Members shall be bound by this Settlement Agreement, including the release in Paragraphs 13.02 and 13.03, and the covenant not to sue in Paragraph 13.05, and that this Settlement Agreement should be and is approved;

d. dismisses on the merits and with prejudice all Released Claims of the Settlement Class Members;

e. permanently enjoins Plaintiff and Settlement Class Members (including those acting their behalf) from bringing, joining, or continuing to prosecute Released Claims against Defendants or the Released Parties; and

f. retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation and enforcement of this Settlement Agreement.

XII. FINAL JUDGMENT

12.01 Finality of Judgment. The judgment entered at the Final Approval Hearing shall be deemed final after all of the following have occurred:

- a. The Court has entered the Final Approval Order;
- b. The Court has made its final award of attorneys' fees, costs, and payment to Class Representative referenced in Section V above; and
- c. 31 days have passed after entry of the Final Approval Order if no document is filed within that time seeking appeal, review, or rehearing of the judgment, or, if any such document is filed, then five days after the date upon which all appellate and/or other proceedings resulting from such document have been finally terminated in such a manner as to permit the Final Approval Order to take effect in substantially the form described in Paragraph 11.04 and set forth in Exhibit B.

XIII. RELEASE OF CLAIMS

13.01 Sole and Exclusive Remedy. This settlement shall be the sole and exclusive remedy for any and all Released Claims against the Released Parties. All Releasing Parties shall be barred from initiating, asserting, or prosecuting the Released Claims.

13.02 Class Release to Defendants and the Released Parties. Upon the Effective Date, the Representative Plaintiffs, for themselves and as the representatives of the Settlement Class, and on behalf of each Settlement Class Member and all Releasing Parties, shall have fully, finally, and forever irrevocably released, relinquished, and forever discharged with prejudice all Released Claims against the Released Parties.

13.03 Individual Release by Plaintiff. Upon the Effective Date, Plaintiff, for himself

and on behalf of his respective agents, successors, heirs, assigns, and any other person who can claim by or through them in any manner, shall have fully, finally, and forever irrevocably released, relinquished, and forever discharged with prejudice all Released Claims against the Released Parties.

13.04 Waiver of Unknown Claims. Without limiting the foregoing, with respect to the Released Claims, Plaintiff, for himself and as the representative of the Settlement Class, and on behalf of each Settlement Class Member who has not timely opted out and all Releasing Parties, shall expressly waive, and each Settlement Class Member and Releasing Party shall be deemed to have waived, and by operation of the judgment of the Court shall have expressly waived, any and all claims, rights, or benefits they may have under California Civil Code § 1542 and any similar federal or state law, right, rule, or legal principle that may be applicable. The Parties agree and acknowledge that this waiver is an essential term of this Agreement. California Civil Code § 1542 provides as follows:

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

Plaintiff understands and acknowledges the significance of these waivers of California Civil Code Section 1542 and similar federal and state statutes, case law, rules, or regulations relating to limitations on releases as they relate to the Released Claims only. In connection with such waivers and relinquishment, Plaintiff acknowledges that he is aware that he may hereafter discover facts in addition to, or different from, those facts that they now know or believe to be true with respect to the subject matter of the settlement, but that it is his intention to release fully, finally, and forever all Released Claims, and in furtherance of such intention, the releases of the Released Claims as to Plaintiff will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

13.05 Covenant Not To Sue. Plaintiff agrees and covenants, and Settlement Class

Members (who do not timely and validly opt out) will be deemed to have agreed and covenanted, not to sue any of the Released Parties with respect to any of the Released Claims, and agree to be forever barred from doing so in any court of law or equity, arbitration proceeding, or any other forum. However, nothing herein is intended to restrict Settlement Class Members from contacting, assisting or cooperating with any government agency.

XIV. TERMINATION OF AGREEMENT

14.01 Either Side May Terminate the Settlement Agreement. Plaintiff and Defendants shall all have the right to unilaterally terminate this Agreement by providing written notice of their election to do so (“Termination Notice”) to all other Parties hereto no later than ten days after any of the following occurrences:

- a. the Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement Agreement;
- b. an appellate court reverses the Final Approval Order, and the Settlement Agreement is not reinstated without material change by the Court on remand;
- c. any court incorporates into, or deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, Final Approval Order, or the Settlement Agreement in a way that is material, unless such modification or amendment is accepted in writing by all Parties;
- d. the Effective Date does not occur; or
- e. any other ground for termination provided for elsewhere in this Agreement occurs.

14.02 Termination if Large Number of Opt-Outs. If more than 100 of the Settlement Class Members have timely and properly opted-out of the Settlement pursuant to Section X, Defendants shall have, in their sole and absolute discretion, the option to terminate this Settlement Agreement by delivering written notice of such termination to Class Counsel within ten days after the Opt-Out Deadline.

14.03 Revert to Status Quo. If either Plaintiff or Defendants terminate this Settlement

Agreement as provided herein, the Settlement Agreement shall be of no force and effect and the Parties' rights and defenses shall be restored, without prejudice, to their respective positions as if this Settlement Agreement had never been executed, and any orders entered by the Court in connection with this Settlement Agreement shall be vacated. However, any payments made to the Claims Administrator for services rendered to the date of termination shall not be refunded to Defendants.

XV. NO ADMISSION OF LIABILITY

15.01 Defendants deny any liability or wrongdoing of any kind associated with the alleged claims in the Action. Defendants have denied and continue to deny each and every material factual allegation and all claims asserted against them in the Action. Nothing herein shall constitute an admission of wrongdoing or liability, or of the truth of any allegations in the Action. Nothing herein shall constitute an admission by Defendants that the Action is properly brought on a class or representative basis, or that classes may be certified in the Action, other than for settlement purposes. To this end, the settlement of the Action, the negotiation and execution of this Settlement Agreement, and all acts performed or documents executed pursuant to or in furtherance of the settlement: (i) are not and shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendants or of the truth of any of the allegations in the Action; (ii) are not and shall not be deemed to be, and may not be used as an admission or evidence of any fault or omission on the part of Defendants in any civil, criminal or administrative proceeding in any court, arbitration forum, administrative agency or other tribunal; and, (iii) are not and shall not be deemed to be and may not be used as an admission of the appropriateness of these or similar claims for class certification.

15.02 Pursuant to Rule 408 of the Federal Rules of Evidence and any similar provisions under the laws of other states, neither this Settlement Agreement nor any related documents filed or created in connection with this Agreement shall be admissible in evidence in any proceeding, except as necessary to approve, interpret or enforce this Settlement Agreement.

XVI. TAXES

16.01 Qualified Settlement Fund. The Parties agree that the account into which the Cash Awards are deposited is intended to be and will at all times constitute a “qualified settlement fund” within the meaning of Treas. Reg. §1.468B-1. The Claims Administrator shall timely make such elections as necessary or advisable to carry out the provisions of this Section, including, if necessary, the “relation back election” (as defined in Treas. Reg. §1.468B-1(j)(2)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such Treasury regulations promulgated under §1.468B of the Internal Revenue Code of 1986, as amended (the “Code”). It shall be the responsibility of the Claims Administrator to cause the timely and proper preparation and delivery of the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

16.02 Claims Administrator Is “Administrator”. For the purpose of §1.468B of the Code and the Treasury regulations thereunder, the Claims Administrator shall be designated as the “administrator” of the Settlement Fund. The Claims Administrator shall cause to be timely and properly filed all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. §1.468B-2(k)). Such returns shall reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund.

16.03 Taxes Paid by Administrator. All taxes arising in connection with income earned by the Cash Award Option, including any taxes or tax detriments that may be imposed upon Defendants or any of the other Released Parties with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes shall be paid by the Claims Administrator from the Settlement Fund.

16.04 Expenses Paid by Defendants. Any expenses reasonably incurred by the Claims Administrator in carrying out its duties, including fees of tax attorneys and/or accountants, shall

be paid by Defendants upon request by the Claims Administrator.

16.05 Responsibility for Taxes on Distribution. Any person or entity that receives Merchandise Settlement Certificates (whether redeemed for goods, or Cash Awards, or not redeemed at all) shall be solely responsible for any taxes or tax-related expenses owed or incurred by that person or entity by reason of that distribution. Such taxes and tax-related expenses shall not be paid by Defendants.

16.06 Defendants Are Not Responsible. In no event shall Defendants or any of the other Released Parties have any responsibility or liability for taxes or tax-related expenses arising in connection with the payment or distribution of the Cash Awards to Plaintiff, Settlement Class Members, Class Counsel or any other person or entity.

XVII. MISCELLANEOUS

17.01 Entire Agreement. This Settlement Agreement and the exhibits hereto constitute the entire agreement between the Parties. Any previous memoranda regarding settlement are superseded by this Settlement Agreement. No representations, warranties or inducements have been made to any of the Parties, other than those representations, warranties, and covenants contained in this Settlement Agreement.

17.02 Governing Law. This Settlement Agreement shall be governed by the laws of the State of California, without regard to its rules regarding conflict of laws.

17.03 Jurisdiction. The Court shall retain continuing and exclusive jurisdiction over the Parties to this Settlement Agreement, including Plaintiff and all Settlement Class Members, for purposes of the administration and enforcement of this Settlement Agreement.

17.04 No Construction Against Drafter. This Agreement was drafted jointly by the Parties and, in construing and interpreting this Settlement Agreement, no provision of this Settlement Agreement shall be construed or interpreted against any party based upon the contention that this Settlement Agreement or a portion of it was purportedly drafted or prepared by that Party.

17.05 Resolution of Disputes. The Parties shall cooperate in good faith in the

administration of this Settlement Agreement and agree to use their best efforts to allow Plaintiff to promptly file a motion for preliminary approval with the Court. Any unresolved dispute regarding the administration of this Settlement Agreement shall be decided by the Court, or by a mediator upon agreement of the Parties.

17.06 Effectiveness of Agreement and Counterparts. This Agreement shall become effective upon the last date of its execution by all of the persons for whom signature spaces have been provided below. This Agreement may be signed in counterparts (any one or all of which may be facsimile or PDF/electronic copies) and the separate signature pages executed by the Parties and their counsel may be combined to create a document binding on all of the Parties and together shall constitute one and the same instrument.

17.07 Time Periods. The time periods and dates described herein are subject to Court approval and deadlines set by Court order may only be modified upon order of the Court.

17.08 Authority. Each person executing this Settlement Agreement on behalf of any of the Parties hereto represents that such person has the authority to so execute this Settlement Agreement. The Class Representative represents and warrants that he has not assigned any Released Claim as against any Released Party to any other individual or entity and that he is fully entitled to release the same.

17.09 No Oral Modifications. This Settlement Agreement may not be amended, modified, altered, or otherwise changed in any manner, except by a writing signed by a duly authorized agent of Defendants and Plaintiff, and approved by the Court. Any modification of the Agreement that may adversely affect Settlement Class Members' substantive rights must be in writing and signed by the Class Representative and Defendants; any other modification of the Agreement must be in writing and signed by Class Counsel and Defendants' counsel.

17.10 Publicity and Confidentiality. Subject to Paragraph 8.06, the Parties agree that they will not initiate any publicity of the settlement but may respond to requests by any media (whether print, online, or any traditional or non-traditional form) about the settlement. Notice of the settlement will be delivered exclusively through the notice process set forth in Section VIII,

above, although Class Counsel and the Claims Administrator may provide information to Settlement Class Members and others in response to questions about the settlement.

17.11 Notices. Unless otherwise stated herein, any notice required or provided for under this Settlement Agreement shall be in writing and may be sent by electronic mail, fax or hand delivery, postage prepaid, as follows:

If to Class Counsel:

LAW OFFICES OF DOUGLAS J. CAMPION, APC
Douglas J. Campion
17150 Via Del Campo, Suite 100
San Diego, CA 92027
Telephone: (619) 299-2091
doug@djcampion.com

If to Defendants' counsel:

DAVIS WRIGHT TREMAINE LLP
Kenneth E. Payson
1201 Third Avenue, Suite 220
Seattle, WA 98101
(206) 757-8126
kenpayson@dwt.com

17.12 Cooperation. The Parties and their counsel will cooperate fully in the process of seeking settlement approval. Class Counsel warrant and agree they will take all steps necessary to obtain and implement Final Approval of this Agreement, to defend the Final Approval Order through all stages of any appeals that may be taken (regardless of who prosecutes the appeal), to give Released Parties full and final peace from further prosecution of the Released Claims, and to give the Settlement Class Members the benefits they enjoy under this Agreement.

17.13 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns.

17.14 Waiver. The waiver by one Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

17.15 Use and Retention of Information. The list of Approved Claims and disapproved claims, any Claim Forms submitted, and any other documentation containing the names, addresses, email address, or other personal information of Settlement Class Members, may be used by Class Counsel only for purposes of implementing this Agreement.

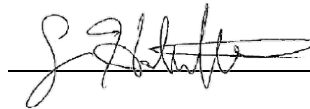
17.16 Exhibits. All of the exhibits to this Agreement are material and integral parts thereof and are fully incorporated herein by this reference.

17.17 Calculation of Time. All time listed in this Agreement is in calendar days unless otherwise provided. Time is calculated by (a) excluding the day of the event that triggers the period; (b) counting every day, including intermediate Saturdays, Sundays, and legal holidays; and (c) including the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed, dated as of _____, 2019.

DATED: 3/4/2019

Plaintiff Sean Hartranft



DATED: _____

Defendant Apogee Retail, LLC

Name: _____

Title: _____

DATED: _____

Defendant TVI, Inc.

Name: _____

Title: _____

AS TO PARAGRAPH 3.04 AND APPROVED AS TO FORM AND CONTENT:

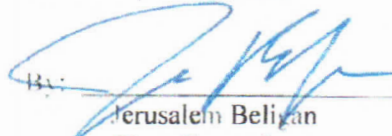
DATED: Feb. 11, 2019

LAW OFFICES OF DOUGLAS J.
CAMPION, APC

By: 
Douglas J. Campion
Class Counsel

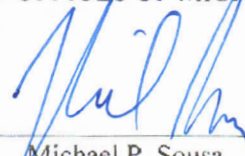
DATED: 2/11/19

BISNAR | CHASE LLP

By: 
Jerusalem Belizan
Class Counsel

DATED: 2/11/19

LAW OFFICES OF MICHAEL P. SOUSA,
APC

By: 
Michael P. Sousa
Class Counsel

APPROVED AS TO FORM AND CONTENT

DATED: _____

DAVIS WRIGHT TREMAINE LLP

By: _____
Kenneth E. Payson
Counsel for Defendants

17.15 Use and Retention of Information. The list of Approved Claims and disapproved claims, any Claim Forms submitted, and any other documentation containing the names, addresses, email address, or other personal information of Settlement Class Members, may be used by Class Counsel only for purposes of implementing this Agreement.

17.16 Exhibits. All of the exhibits to this Agreement are material and integral parts thereof and are fully incorporated herein by this reference.

17.17 Calculation of Time. All time listed in this Agreement is in calendar days unless otherwise provided. Time is calculated by (a) excluding the day of the event that triggers the period; (b) counting every day, including intermediate Saturdays, Sundays, and legal holidays; and (c) including the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.


IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed, dated as of _____, 2019.

DATED: _____

Plaintiff Sean Hartranft

DATED: 02/26/19

Defendant Apogee Retail, LLC

Name: 
Title: President

DATED: 02/26/19

Defendant TVI, Inc.

Name: 
Title: Chief Financial Officer

AS TO PARAGRAPH 3.04 AND APPROVED AS TO FORM AND CONTENT:

DATED: _____

LAW OFFICES OF DOUGLAS J.
CAMPION, APC

By: _____
Douglas J. Campion
Class Counsel

DATED: _____

BISNAR | CHASE LLP

By: _____
Jerusalem Beligan
Class Counsel

DATED: _____

LAW OFFICES OF MICHAEL P. SOUSA,
APC

By: _____
Michael P. Sousa
Class Counsel

APPROVED AS TO FORM AND CONTENT

DATED: 2/26/19

DAVIS WRIGHT TREMAINE LLP


By: 
Kenneth E. Payson
Counsel for Defendants

EXHIBIT A

TVI, Inc. / Apogee Retail Donation Call Settlement Claim Form

Settlement Certificates shall be made to eligible Settlement Class Members on a claims-made basis. Each member of the Settlement Class shall be entitled to make a claim for a Settlement Certificate. As detailed in the Class Notice on the settlement website, the Settlement Certificate is a certificate in the amount of \$75.00 for a one-time use at any Savers or Value Village thrift store in the United States, or alternatively, that certificate can be exchanged for a check in the amount of \$25.00. Any Settlement Class Member shall be entitled to make one claim. This claim form information will NOT be used to add you to any donation solicitation list or other marketing list.

To make a claim, Settlement Class Members must complete and **submit** this Claim Form **on-line no later than DATE** or, if **mailed**, the Claim Form **must be postmarked** no later than **DATE**.

First Name: _____

Last Name: _____

Address 1 (street name and number): _____

Address 2 (apartment, unit or box number): _____

City: _____ State: _____ Zip Code: _____

Foreign Country (only if not USA): _____

Optional Telephone Number for contacting you if there are questions about your claim:
(Home/work/cell): _____

Email Address for contacting you if there are questions about your claim: _____

Cell phone number(s) at which you believe you may have received one or more telephone calls from Apogee Retail regarding donation solicitation on behalf of Epilepsy Foundation of America:

Unique Identifier Number: (Please enter the __ digit unique identifier set forth in the postcard notice that you received. This number [follows your name on the front of the postcard and is preceded by the letters ____.] If you did not receive a postcard notice, or cannot locate the __ digit unique identifier, you may leave this field blank):

I believe I received one or more telephone calls from Apogee Retail regarding donation solicitation on behalf of Epilepsy Foundation of America during the Class Period of between July 1, 2011, to September 30, 2015, on one or more of the cell phone number(s) identified above.

By submitting this claim form, I certify that the foregoing information is true and correct.

Signature of Claimant: _____

Print Name of Claimant: _____

Date: _____

EXHIBIT B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SEAN HARTRANFT, on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

TVI, INC. d/b/a SAVERS, APOGEE
RETAIL, LLC,

Defendants.

) Case No. 8:15-cv-01081-CJC-DFM
) [Assigned to Hon. Cormac J. Carney]

) **[PROPOSED] SETTLEMENT**
) **ORDER AND FINAL JUDGMENT**

) Action filed: July 8, 2015

1 THIS MATTER came before the Court on Class Representative's motion for
2 final approval of the proposed class settlement (the "Settlement") and Class
3 Counsel's application for attorneys' fees and expenses, and incentive award to Class
4 Representative ("Fee, Expense, and Incentive Payment Application"). The Court has
5 considered all papers filed and proceedings in this matter and is fully informed
6 regarding the facts surrounding the proposed Settlement. Based upon this
7 information, the Court has determined to approve the proposed Settlement as fair,
8 reasonable, and adequate. The Court hereby enters this Settlement Order and Final
9 Judgment ("Final Judgment"), which constitutes a final adjudication on the merits of
10 all claims of the Settlement Class.

11 On _____, 201__, this Court granted preliminary approval to the
12 proposed Settlement between Class Representative and Defendants TVI, Inc. d/b/a
13 Savers, and Apogee Retail, LLC (collectively, "Defendants"). The proposed
14 Settlement resolves all of the Settlement Class's claims against Defendants in
15 exchange for Defendants' agreement to provide certain monetary and non-monetary
16 consideration to Settlement Class Members as set forth in the Settlement Agreement
17 and Release (the "Agreement"). On _____, 201__, this Court held a Final
18 Approval Hearing to consider whether to grant final approval to the Settlement and to
19 consider Class Counsel's Fee, Expense and, Incentive Payment Application. The
20 Court heard from counsel [and others who elected to appear to voice their support
21 for, or objection to, the Settlement and/or the Fee, Expense and, Incentive
22 Application].

23 Having read, reviewed and considered the papers filed in support of [and in
24 opposition to] final approval of the Settlement, including supporting declarations;
25 oral arguments of counsel [and presentations by members of the Settlement Class
26 who appeared at the hearing]; Class Counsel's Fee, Expense, and Incentive Payment
27 Application; the Agreement; and the pleadings, the Court finds and concludes as
28 follows:

1 1. **Definitions.** The definitions and provisions of the Agreement are
2 incorporated in this Final Judgment as though fully set forth herein.

3 2. **Jurisdiction.** This Court has jurisdiction over the subject matter of the
4 Agreement with respect to and over all parties to the Agreement, including Class
5 Representative and all members of the Settlement Class. That Settlement Class is as
6 certified in the Court's Order Granting Preliminary Approval of Class Action
7 Settlement ("Preliminary Approval Order"):

8 All persons and entities to which, between and including July 1, 2011,
9 to September 30, 2015, Apogee made or attempted to make one or
10 more telephone calls to their cellular telephones regarding donation
11 solicitation on behalf of EFA.

12 The Settlement Class does not include any persons who timely and validly
13 requested exclusion from the Settlement Class. Defendants and any of their
14 affiliates or subsidiaries, and any entities in which any of such companies
15 have a controlling interest, the judges presiding in the Action, and Class
16 Counsel are also excluded from the Settlement Class.

17 3. **Settlement Approval.** The Court hereby grants final approval to the
18 Settlement and finds the Settlement is, in all respects, fair, reasonable, and adequate,
19 and in the best interests of the Settlement Class. The Court finds the Settlement is
20 within the authority of the parties and the result of extensive arm's length
21 negotiations with the guidance of an experienced mediator.

22 4. **Class Certification.** This Court confirms the proposed Settlement Class
23 satisfies the requirements of Fed. R. Civ. P. 23, as found in the Preliminary Approval
24 Order. Accordingly, this Court makes final the conditional class certification set
25 forth in the Preliminary Approval Order.

26 5. **Exclusion from Settlement Class.** Certain members of the Settlement
27 Class have timely requested to be excluded from the Settlement Class and the
28 Settlement. Exhibit A, attached hereto, lists the Settlement Class Members who

1 timely requested exclusion from the Settlement Class. Accordingly, this Final
2 Judgment shall not bind or affect Settlement Class Members listed on Exhibit A.

3 6. ***Appointment of Class Counsel and Class Representative.*** The Court
4 confirms the appointment of the Law Offices of Douglas J. Campion, APC, Bisnar
5 Chase LLP, and the Law Offices of Michael P. Sousa, APC as Class Counsel. The
6 Court confirms the appointment of Sean Hartranft as Class Representative.

7 7. ***Objections Overruled.*** The Court has considered and hereby overrules
8 all objections brought to the Court's attention, whether properly filed or not.

9 8. ***No Admission.*** Neither this Final Judgment nor the Agreement is an
10 admission or concession by Defendants of the validity of any claims or of any
11 liability or wrongdoing or of any violation of law. This Final Judgment and the
12 Agreement do not constitute a concession and shall not be used as an admission or
13 indication of any wrongdoing, fault or omission by Defendants or any other person in
14 connection with any transaction, event or occurrence, and neither this Final Judgment
15 nor the Agreement nor any related documents in this proceeding, nor any reports or
16 accounts thereof, shall be offered or received in evidence in any civil, criminal, or
17 administrative action or proceeding, other than such proceedings as may be necessary
18 to consummate or enforce this Final Judgment, the Agreement, and all releases given
19 thereunder, or to establish the affirmative defenses of *res judicata* or collateral
20 estoppel barring the pursuit of claims released in the Agreement.

21 9. ***Dismissal with Prejudice.*** This Court hereby dismisses with prejudice
22 all claims of Settlement Class Members against Defendants within the scope of the
23 Released Claims defined by the Settlement Agreement.

24 10. ***Release.*** Class Representative, for himself and as representative of the
25 Settlement Class, and on behalf of each Settlement Class Member who has not timely
26 opted out and each of their respective agents, successors, heirs, assigns, and any other
27 person who can claim by or through them in any manner, fully, finally, and forever
28

1 irrevocably release, relinquish, and forever discharge with prejudice all Released
2 Claims against the Released Parties.

3 11. ***Injunction Against Asserting Released Claims.*** Class Representative,
4 all Settlement Class Members, and any person or entity allegedly acting on behalf of
5 Settlement Class Members, either directly, representatively or in any other capacity,
6 are permanently enjoined from commencing or prosecuting against the Released
7 Parties any action or proceeding in any court or tribunal asserting any of the Released
8 Claims, provided, however, that this injunction shall not apply to individual claims of
9 any Settlement Class Members listed in Exhibit A who timely requested exclusion
10 from the Settlement Class. This injunction is necessary to protect and effectuate the
11 settlement, this Order, and the Court's flexibility and authority to effectuate this
12 settlement and to enter judgment when appropriate, and is ordered in aid of the
13 Court's jurisdiction and to protect its judgments pursuant to 28 U.S.C. § 1651(a).

14 12. ***General Release Acknowledgement.*** By operation of this Final
15 Judgment, Class Representative and Defendants expressly waive, and each
16 Settlement Class Member is deemed to have waived, any and all claims, rights, or
17 benefits they may have under California Civil Code § 1542 and any similar federal or
18 state law, right, rule, or legal principle that may apply. California Civil Code § 1542
19 provides as follows:

20 A general release does not extend to claims which the
21 creditor does not know or suspect to exist in his or her
22 favor at the time of executing the release, which if known
23 by him or her must have materially affected his or her
24 settlement with the debtor.

25 13. ***Class Notice.*** The Claims Administrator completed the delivery of
26 Class Notice according to the terms of the Agreement. The Class Notice given by
27 the Claims Administrator to the Settlement Class, which set forth the principal terms
28

1 of the Agreement and other matters, was the best practicable notice under the
2 circumstances. The Class Notice program prescribed by the Agreement was
3 reasonable and provided due and adequate notice of these proceedings and of the
4 matters set forth therein, including the terms of the Agreement, to all parties entitled
5 to such notice. The Class Notice given to the Settlement Class Members satisfied the
6 requirements of Federal Rule of Civil Procedure 23 and the requirements of
7 constitutional due process. The Class Notice was reasonably calculated under the
8 circumstances to apprise Settlement Class Members of the pendency of this Action,
9 all material elements of the Settlement, and their opportunity to exclude themselves
10 from, object to, or comment on the Settlement and appear at the Final Approval
11 Hearing. The Court has afforded a full opportunity to all Settlement Class Members
12 to be heard. Accordingly, the Court determines that all members of the Settlement
13 Class, except those who timely excluded themselves from the Settlement Class, are
14 bound by this Final Judgment.

15 14. ***Notifications to Appropriate Federal and State Officials.*** Within ten
16 (10) days after the filing of the proposed Agreement in this Court, Defendants served
17 a notice of the proposed Settlement upon the appropriate state official of each State
18 in which a Settlement Class Member resides and upon the Attorney General of the
19 United States. The Court finds that the notice provided by Defendants satisfied the
20 requirements of 28 U.S.C. § 1715(b) and that more than ninety (90) days have
21 elapsed since Defendants provided the required notice, as required by 28 U.S.C. §
22 1715(d).

23 15. ***Continuing Jurisdiction.*** Without affecting the finality of this Final
24 Judgment, the Court retains continuing jurisdiction over (a) implementation of the
25 Agreement, distribution of the settlement payments, incentive award, and attorneys'
26 fees and costs contemplated by the Agreement, and processing of the claims
27 permitted by the Agreement, until each and every act agreed to be performed
28 pursuant to the Agreement has been performed, and (b) all parties to this Action and

1 members of the Settlement Class for the purpose of enforcing and administering the
2 Agreement.

3 16. ***Incentive Award.*** As an incentive payment in compensation for the
4 time, effort, and risk he undertook as representative of the Settlement Class, the
5 Court hereby awards \$_____ to Sean Hartranft to be paid by Defendants.

6 17. ***Class Counsel Fee and Cost Award.*** The Court hereby awards
7 attorneys' fees and costs to compensate Class Counsel for their time incurred and
8 expenses advanced. The Court has concluded that: (a) Class Counsel achieved a
9 favorable result for the Settlement Class by obtaining Defendants' agreement to
10 make available to Settlement Class Members certain monetary and non-monetary
11 consideration; (b) Class Counsel devoted substantial effort to pre-and post-filing
12 investigation, legal analysis, and litigation; (c) Class Counsel prosecuted the
13 Settlement Class's claims on a contingent-fee basis, investing significant time and
14 accumulating costs with no guarantee that they would receive compensation for their
15 services or recover their expenses; (d) Class Counsel employed their knowledge of
16 and experience with class action litigation in achieving a valuable settlement for the
17 Settlement Class, in spite of Defendants' possible legal defenses and their
18 experienced and capable counsel; (e) Class Representative has reviewed the
19 Agreement and has been informed of the Fee, Expense, and Incentive Payment
20 Application and has approved; (f) the Class Notice informed Settlement Class
21 Members of Class Counsel's fee and cost request under the Agreement; and (g) Class
22 Counsel filed and posted their Fee, Expense, and Incentive Payment Application in
23 time for Settlement Class Members to make a meaningful decision whether to object
24 to it. For these reasons, the Court hereby approves Class Counsel's Fee, Expense,
25 and Incentive Payment Application and awards to Class Counsel fees and costs in the
26 total amount of \$_____, to be paid by Defendants. All such fees are in lieu of
27 statutory or other fees that Class Representative and/or the Settlement Class might
28 otherwise have been entitled to recover.

18. ***Payment of Claims Administrator Costs and Disbursement of Settlement Certificates, and Cash Payments to Settlement Class Members Who Submit Approved Claims.*** The Defendants shall pay to the Claims Administrator all costs and fees incurred for all costs of notice and claims administration incurred for this Action, according to the Agreement. Defendants shall also cause the Settlement Certificates to the Settlement Class Members who submit Approved Claims to be issued and honored and shall pay the payments to the Claims Administrator to fund all cash payments requested by Settlement Class Members who submit Approved Claims to be paid by the Claims Administrator in lieu of redeeming the Settlement Certificates for goods, as required by the Agreement.

19. ***Payment Timing.*** Defendants shall pay the fee and cost awards to Class Counsel and the incentive award to Class Representative, as well as monetary and non-monetary consideration due to eligible Settlement Class Members who timely filed a claim under the Agreement, in accordance with and at the times prescribed by the Agreement.

IT IS SO ORDERED.

DATED: _____, 201_____

Hon. Cormac J. Carney
UNITED STATES DISTRICT JUDGE

EXHIBIT C-1

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

If you received an automated call on your cellular phone from Apogee Retail you could be entitled to benefits under a class action settlement.

*The United States District Court for the Central District of California authorized this Notice.
This is not a solicitation from a lawyer.*

- A proposed settlement of a class action lawsuit relates to allegations that TVI, Inc. d/b/a/ Savers, Inc. (“Savers”), Apogee Retail, LLC (“Apogee”) (collectively, “Defendants”) placed calls to cellular telephones in violation of federal law. The case is known as *Sean Hartranft, on behalf of himself and all others similarly situated, v. TVI, Inc. d/b/a/ Savers, Inc., Apogee Retail, LLC*, Case No. 8:15-cv-01081 CJC-DFM (C.D. Cal.) (“Action”).
- Defendants deny all allegations of wrongdoing in the lawsuit. Defendants claim they have rigorous practices and procedures in place to ensure that their calling practices comply with applicable law, and that the Action is not well grounded in law or fact. As part of the proposed settlement, Defendants do not admit to any wrongdoing, maintain their compliance with the law, and continue to deny the allegations against them.
- The proposed settlement, if given final approval by the Court, provides a Settlement Certificate redeemable for goods at Savers or Value Village thrift stores located in the United States or cash to each Settlement Class Member submitting a valid Claim Form by _____, (an “Approved Claim”). The criteria for an Approved Claim are described below.
- **Your legal rights are affected whether you act or don’t act.** Please read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A CLAIM FORM	This is the only way to get a Settlement Certificate redeemable for goods or cash under the settlement.
EXCLUDE YOURSELF	Get no Settlement Certificate under the settlement. This is the only option that allows you to be part of any other lawsuit against Defendants about the legal claims in the case.
OBJECT	Write to the Court about why you don’t like the settlement. You can do this only if you don’t exclude yourself.
GO TO THE HEARING	Ask to speak in Court about the fairness of the settlement. You can do this only if you don’t exclude yourself.
DO NOTHING	You will not receive a Settlement Certificate redeemable for goods or cash under the settlement and are giving up your rights to assert

**QUESTIONS? VISIT WWW.DONATIONCALLSETTLEMENT.COM OR
CALL XXX-XXX-XXXX**

any claims about the legal claims in the case against Defendants.

- This Notice explains these rights and options—**and the deadlines to exercise them.**
- The Court must decide whether to approve the settlement as part of the process described in this Notice. Settlement Certificates will be sent to those submitting Approved Claims if the Court approves the settlement.¹

WHAT THIS NOTICE CONTAINS

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¹ En el sitio web, www.DONATIONCALLSETTLEMENT.com, hay una traducción de este aviso en Español.

**QUESTIONS? VISIT WWW.DONATIONCALLSETTLEMENT.COM OR
CALL XXX-XXX-XXXX**

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**QUESTIONS? VISIT WWW.DONATIONCALLSETTLEMENT.COM OR
CALL XXX-XXX-XXXX**

Basic Information

1. Why did I get a Notice?

You received a postcard notice sent by U.S. mail if Defendants' records show that you are a potential Settlement Class Member. The postcard notice referred you to an informational web site which includes this more detailed Notice.

The Court ordered that a Notice be sent to you because you have a right to know about a proposed settlement of the class action against Defendants and about your options, before the Court decides whether to approve the settlement. If the Court approves it, an administrator appointed by the Court will provide the Settlement Certificates that the settlement allows.

This Notice explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them. Please read this Notice carefully.

The United States District Court for the Central District of California has jurisdiction over this proposed settlement. The person who sued is called the Plaintiff, and the companies he sued are called the Defendants.

2. What is the lawsuit about?

Plaintiff filed a proposed class action lawsuit, the Action, against Defendants.

In the Action, Plaintiff claimed, among other things, that Defendants placed calls to cellular telephones in violation of federal law. That law prevents certain calls to persons' cellphones without their prior consent. Defendants deny all allegations of wrongdoing and believe their calling complied with applicable law. Defendants have asserted many defenses they believe would be successful at trial. In agreeing to settle, Defendants maintain that they complied with the law and do not admit any wrongdoing.

3. Why is this a class action?

In a class action, one or more people, called Plaintiffs, sue on behalf of people who have similar claims. In this case, the Plaintiff is Sean Hartranft. One court resolves the issues for all Settlement Class Members, except those who exclude themselves from the Settlement Class. United States District Court Judge for the Central District of California Cormac J. Carney has jurisdiction over the case in which the parties have submitted this settlement for approval.

4. Why is there a settlement?

The Court did not decide in favor of Plaintiff or Defendants. Instead, both sides agreed to a settlement. That way, they avoid the cost of a trial, and settlement benefits go to the Settlement Class Members. Plaintiff and his attorneys think the settlement is best for the Settlement Class Members.

**QUESTIONS? VISIT WWW.DONATIONCALLSETTLEMENT.COM OR
CALL XXX-XXX-XXXX**

Who Is in the Settlement?

To see if you may qualify for a Settlement Certificate from this settlement, you first have to determine whether you are a Settlement Class Member.

5. How do I know if I am part of the settlement?

Judge Carney has preliminarily decided that everyone who fits this description is a Settlement Class Member: **All persons and entities to which, between and including July 1, 2011, to September 30, 2015 (“Class Period”), Apogee made or attempted to make one or more telephone calls to their cellular telephones regarding donation solicitation on behalf of Epilepsy Foundation of America (“EFA”).**

6. Who is not included in the Settlement Class?

The Settlement Class does *not* include Defendants, any of their affiliates or subsidiaries, or any entities in which any of such companies have a controlling interest. Judge Carney and Class Counsel are also excluded from the Settlement Class. The Settlement Class also does not include any persons who validly request exclusion from the Settlement Class.

7. I’m still not sure if I am included.

If you are still not sure whether you are included, you can visit the settlement website, www.donationcallsettlement.com, for more information, or you can fill out and return the Claim Form described on page [5], in question [10].

The Settlement Benefits—What You Get

8. What does the settlement provide?

Defendants will provide a Settlement Certificate to each Settlement Class Member who submits a valid Claim Form no later than _____, which Claim Form meets the requirements for qualifying for a Settlement Certificate described in Question [9] below.

9. What can I get from the settlement?

Settlement Class members who submit a timely and valid Claim Form certifying that they believe they received one or more telephone calls from Apogee regarding donation solicitation on behalf of EFA during the Class Period on telephone numbers they provide will have the right to receive a Settlement Certificate redeemable for either (a) any of the goods at any Savers or Value Village thrift store in the United States in the amount up to \$75.00, or (b) a check in the amount of \$25.00 (“Cash Award Option”).

How to Get a Settlement Certificate—Submitting a Claim Form

10. How can I get a Settlement Certificate?

**QUESTIONS? VISIT WWW.DONATIONCALLSETTLEMENT.COM OR
CALL XXX-XXX-XXXX**

To qualify for Settlement Certificate you must file a claim. To do so, you can file a claim electronically by filling out the Claim Form on the Settlement Website, or you can download a Claim Form from the Settlement Website and mail it to the Claims Administrator. Read the instructions carefully, fill out the Claim Form (answering all questions truthfully), and submit it no later than _____, either electronically on the website, or postmarked by that date if mailed.

11. When would I get my Settlement Certificate?

The Court will hold a hearing on _____, to decide whether to approve the settlement. If Judge Carney approves the settlement, there may be appeals after that approval. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. It also takes time for the Claim Forms to be processed. Please be patient.

If there is no appeal, the proposed Settlement contemplates distributing Settlement Certificates to those with Approved Claims thirty (30) days from the date the settlement becomes final and not subject to appeal.

12. What am I giving up if I remain in the Settlement Class?

Unless you exclude yourself, you will remain in the Settlement Class, and that means that you can't sue, continue to sue, or be part of any other lawsuit against Defendants about the legal issues in this case. If the settlement is approved and becomes final and not subject to appeal, then you and all Settlement Class Members release all "Released Claims" against all "Released Parties."

"Released Claims" means any and all claims, rights (including rights to restitution or reimbursement), demands, actions, causes of action, suits, liens, damages, attorneys' fees, obligations, contracts, liabilities, agreements, costs, expenses, or losses of any nature or description whatsoever, whether known or unknown, direct or indirect, matured or unmatured, contingent or absolute, existing or potential, suspected or unsuspected, equitable or legal, individual or representative, whether based on the TCPA or under other federal statutory law, federal common law or federal regulation, or the statutes, constitutions, regulations, ordinances, common law, or any other law of any and all states or their subdivisions, parishes or municipalities, that arise out of or relate in any way to placing calls to cellular telephones, and that have been, or could have been, brought in the Action, that arise out of the same nucleus of operative facts as any of the claims asserted in the Action.

"Released Parties" means TVI, Inc., Apogee Retail, LLC, and EFA (including their affiliates, parents, direct and indirect subsidiaries, agents, insurers, and any company or companies under common control with any of them, and each of their respective predecessors, successors, past and present officers, directors, managers, employees, agents, servants, accountants, attorneys, advisors, shareholders, members, insurers, representatives, partners, vendors, issuers, and assigns, or anyone acting on their behalf) and each of their respective past, present and future parents, subsidiaries, affiliated companies and corporations, and each of their respective past, present, and future directors, officers, managers, employees, general partners, limited partners, principals, insurers, reinsurers, shareholders, attorneys, advisors, representatives, predecessors, successors, divisions, assigns, or related entities, and each of their respective executors, successors, and legal representatives.

**QUESTIONS? VISIT WWW.DONATIONCALLSETTLEMENT.COM OR
CALL XXX-XXX-XXXX**

Excluding Yourself from the Settlement

If you don't want a Settlement Certificate redeemable for goods or cash from this settlement, and you want to keep any right you may have to sue or continue to sue Defendants or other Released Parties on your own about the Released Claims, then you must take steps to remove yourself from the Settlement Class. This is called excluding yourself and is sometimes referred to as "opting out" of the Settlement Class. Defendants may terminate the settlement if a certain number of people exclude themselves from the Settlement Class.

13. How do I get out of the settlement?

To exclude yourself from the settlement, you must mail an exclusion request, postmarked no later than _____, to:

Donation Call Settlement
Claims Administrator
P.O. Box _____,
CITY, ST ZIP

You can't exclude yourself on the phone or by fax or email. A request for exclusion must include your full name, address, telephone number, signature, case name (to allow the Claims Administrator to ensure the exclusion request is for this and not another case administered by the same Claims Administrator), and a statement that you wish to be excluded from the Settlement Class for purposes of this settlement.

The request for exclusion must be personally signed by the individual requesting exclusion. So-called "mass" or "class" opt-outs shall not be allowed.

14. What is the effect if I exclude myself from this settlement?

If you ask to be excluded, you will not get any Settlement Certificate redeemable for goods or cash from this settlement. Also you cannot object to the settlement. You will not be legally bound by anything that happens in the Action. You may be able to sue (or continue to sue) Defendants in the future about the legal issues in this case.

15. If I don't exclude myself, can I sue Defendants for the same thing later?

No. Unless you exclude yourself, you give up your right to sue Defendants and the other Released Parties for the claims that this settlement resolves. You must exclude yourself from *this* Settlement Class to pursue your own lawsuit. Remember, your exclusion request must be postmarked on or before _____.

**QUESTIONS? VISIT WWW.DONATIONCALLSETTLEMENT.COM OR
CALL XXX-XXX-XXXX**

16. If I exclude myself, can I get a Settlement Certificate from this settlement?

No. If you exclude yourself, do not send in a Claim Form to ask for a Settlement Certificate from this settlement. You may exercise any right you may have to sue, continue to sue, or be part of a different lawsuit against Defendants and the other Released Parties.

The Lawyers Representing You

17. Do I have a lawyer in the case?

The Court appointed Law Offices of Douglas J. Campion, APC; Bisnar | Chase LLP; and the Law Offices of Michael P. Sousa, APC to represent the Settlement Class. These lawyers are called Class Counsel. You will not be charged for these lawyers. The Court will determine the amount of Class Counsel's fees and costs, which Defendants will pay as part of the settlement. If you want to be represented by your own lawyer, you may hire one at your own expense.

18. How will the lawyers be paid?

Class Counsel will request from the Court an award of attorneys' fees and costs, and for an Incentive Payment for the Plaintiff. Defendants will pay Class Counsel's fees and costs, and the Incentive Payment as awarded by the Court. You have the right to object to the requested fees and costs, and Incentive Payment. Defendants will also pay the costs to administer the settlement.

Class Counsel will file their papers in support of final approval of the settlement and their application for attorneys' fees and reimbursement of costs, and for the Incentive Payment to the Plaintiff, by no later than _____. These papers will also be posted on the settlement website (www.donationcallsettlement.com).

Objecting to the Settlement

You can tell the Court that you don't agree with the settlement or some part of it.

19. How do I tell the Court if I don't like the settlement?

If you are a Settlement Class Member, you can object to the settlement, or any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must file with the Court and mail to Class Counsel and Defendants' counsel a written objection.

In the written objection, which you must personally sign, you must state: (i) your full name, address, and current telephone number; (ii) an explanation of the reason why you claim to be a Settlement Class Member, including the cellular telephone number(s) Defendants allegedly called; (iii) all grounds for your objection, including any documents, evidence and citations all reasons for the objection; (iv) the name and contact information of any and all attorneys representing, advising, or in any way assisting you in connection with the preparation or

**QUESTIONS? VISIT WWW.DONATIONCALLSETTLEMENT.COM OR
CALL XXX-XXX-XXXX**

submission of the objection or who may profit or otherwise benefit from the pursuit of the objection; and (v) whether you intend to appear at the Fairness Hearing on your own behalf or through counsel. Any documents that you want the Parties and the Court to consider must also be attached to the written objection.

Your objection and any supporting papers must be filed with the Court and mailed to Class Counsel and Defendants' counsel at their respective addresses below postmarked no later than _____ :

Sean Hartranft, et al., v. TVI, Inc. d/b/a/ Savers, Inc., Apogee Retail, LLC
Case No. 8:15-cv-01081 CJC-DFM
United States Courthouse
350 W. 1st Street
Los Angeles, CA 90012

LAW OFFICES OF DOUGLAS J. CAMPION, APC
Douglas J. Campion
17150 Via Del Campo, Suite 100
San Diego, CA 92027

DAVIS WRIGHT TREMAINE LLP
Kenneth E. Payson
1201 Third Avenue, Suite 220
Seattle, WA 98101

20. What's the difference between objecting and excluding?

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

The Court's Final Approval Hearing

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to.

21. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval Hearing at _____ on _____, at the United States Courthouse, 350 W. 1st Street, Los Angeles, CA 90012. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. Judge Carney will listen to people who have asked to speak at the hearing. The Court will also consider how much to pay Class Counsel and Plaintiff for their service on behalf

**QUESTIONS? VISIT WWW.DONATIONCALLSETTLEMENT.COM OR
CALL XXX-XXX-XXXX**

of the Settlement Class. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

22. Do I have to come to the hearing?

No. Class Counsel will answer questions Judge Carney may have. You are welcome to come at your own expense. If you file and serve an objection, you don't have to come to Court and talk about it. As long as your written objection is received on time by the Court and the parties' counsel, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary. Finally, you may seek to intervene in the Action, but you don't need to do so.

23. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must file with the Court and serve on the parties a letter that it is your "Notice of Intention to Appear" in "*Sean Hartranft, et al., v. TVI, Inc. d/b/a/ Savers, Inc., Apogee Retail, LLC*, Case No. 8:15-cv-01081 CJC-DFM (C.D. Cal)." Be sure to include your name, address, telephone number, that you are a Settlement Class Member, a list of any documents you want the Court to consider, the names of any witnesses who you want to testify, and your signature. Your Notice of Intention to Appear must be received at the addresses in Question [19], no later than _____. You cannot speak at the hearing if you exclude yourself.

If You Do Nothing

24. What happens if I do nothing at all?

If you do nothing, you will not receive a Settlement Certificate. Unless you exclude yourself from the Settlement Class, you will be bound by any judgment, and you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants or the Released Parties about the legal issues in this case.

Getting More Information

25. Are there more details about the settlement?

This Notice summarizes the proposed settlement. More details appear in the Settlement Agreement and Release (the "Agreement"). Copies of the Agreement and the pleadings and other documents relating to the case are on file at the United States District Court for the Central District of California and may be examined and copied at any time during regular office hours at the United States Courthouse, 350 W. 1st Street, Los Angeles, CA 90012. The Settlement Agreement is also available at the settlement website, www.donationcallsettlement.com.

26. How do I get more information?

You can visit the settlement website at www.donationcallsettlement.com, where you will find answers to common questions about the settlement, the Claim Form, plus other information, including a copy of the Settlement Agreement. You may also write to: *Donation Call*

**QUESTIONS? VISIT WWW.DONATIONCALLSETTLEMENT.COM OR
CALL XXX-XXX-XXXX**

Settlement, Claims Administrator, P.O. Box ____, CITY, ST ZIP. **You should not direct questions to the Court.**

On the website, www.donationcallsettlement.com, there is a complete notice of the Settlement in Spanish. En el sitio web, www.donationcallsettlement.com, hay una traducción de este aviso en Español.

Dated: _____, 201__

By Order of the Court
CLERK OF THE COURT

**QUESTIONS? VISIT WWW.DONATIONCALLSETTLEMENT.COM OR
CALL XXX-XXX-XXXX**

EXHIBIT C-2

If you received an automated call on your cellular phone from Apogee Retail you could be entitled to benefits under a class action settlement.

THIS NOTICE MAY AFFECT YOUR LEGAL RIGHTS. PLEASE READ IT CAREFULLY.

This is an official court notice from the United States District Court for the Central District of California, *Sean Hartranft v. TVI, Inc. & Apogee Retail, LLC*, No. 8:15-cv-01081-CJC-DFM

This is a summary notice only; a more detailed Notice and a Claim Form are available at www.donationcallsettlement.com

Donation Call Settlement
Settlement Administrator
P.O. Box _____
CITY, ST ZIP _____

«Barcode»
Postal Service: Please do not mark barcode

XX – «ClaimID» «MailRec»

«First 1» «Last 1»
«CO»
«Addr2»
«Addr1»
«City», «ST» «Zip» «Country»

XX

This notifies you of a proposed settlement of a class action against TVI, Inc. and Apogee Retail, LLC (“Defendants”).

Defendants’ records show you may be a member of a proposed settlement class. Plaintiff claims Defendants violated federal law by calling cellular telephones without consent. Defendants deny these claims, maintain they complied with the law, and do not admit any wrongdoing by settling.

The proposed settlement, if finally approved by the Court, provides a Settlement Certificate to each Settlement Class Member submitting a valid Claim Form **no later than _____, 2019**. Such certificates are redeemable for up to \$75.00 in goods at Savers or Value Village thrift stores in the United States or, at the Claimant’s option, \$25.00 cash. For details regarding those Settlement Certificates, please visit www.donationcallsettlement.com.

To exclude yourself from this settlement, you must send a written request stating you request exclusion from the settlement to Donation Call Settlement, Settlement Administrator, P.O. Box _____, CITY, STATE ZIP, postmarked **no later than _____, 2019**.

If you remain a class member, you may object to the settlement by filing with the Court and mailing to the parties’ counsel a written objection postmarked no later than _____, **2019**. Full details on how to object or exclude yourself can be found at www.donationcallsettlement.com.

If you do nothing, you will remain part of the Settlement Class and will release your claims against the Released Parties, but you will not receive anything from this Settlement.

The Court will hold a hearing on _____, **2019** at **XX:XX**, to consider whether to approve the settlement. The Court will also consider whether to approve attorneys’ fees and costs as requested. You or your lawyer may ask to appear and speak at your own expense. You may also write to Donation Call Settlement, Settlement Administrator, P.O. Box _____, CITY, STATE ZIP or call XXX-XXX-XXXX to request the more detailed Notice and Claim Form.

To receive a Settlement Certificate under the Settlement, you must complete and submit a claim form either online by visiting www.donationcallsettlement.com or by printing the claim form available at www.donationcallsettlement.com, completing it, and mailing it to Donation Call Settlement, Settlement Administrator, P.O. Box _____, City, State Zip postmarked by _____, 2019. Para ver este aviso en español, visite www.donationcallsettlement.com.

EXHIBIT C-3

LEGAL NOTICE

If you received an automated call on your cellular phone from Apogee Retail you could be entitled to benefits under a class action settlement.

WHAT IS THIS CASE ABOUT?

A proposed settlement of a class action entitled *Sean Hartranft v. TVI, Inc. & Apogee Retail, LLC*, No. 8:15-cv-01081-CJC-DFM, has been reached in United States District Court for the Central District of California.

Plaintiff claims Defendants placed calls to cellular telephones in violation of federal law prohibiting certain calls to cellphones without prior consent. Defendants deny these claims and maintain they complied with the law. In agreeing to settle, Defendants do not admit any wrongdoing.

WHAT DOES THE SETTLEMENT PROVIDE?

The proposed settlement, if given final approval by the Court, provides a Settlement Certificate redeemable for up to \$75.00 in goods at Savers or Value Village thrift stores located in the United States or alternatively, at the option of the Claimant, \$25.00 cash to each Settlement Class Member submitting a valid Claim Form by _____. For details regarding those Settlement Certificates, please visit www.donationcallsettlement.com.

WHAT ARE MY OPTIONS?

If you remain a Settlement Class Member, and the Court approves the settlement, you will be legally bound by its terms and will release your claims relating to certain calls placed to cellular telephones.

If you want to exclude yourself from this settlement, you must send a written request specifically stating that you request exclusion from the settlement to Donation Call Settlement, P.O. Box _____, CITY, STATE ZIP, postmarked **no later than _____, 2019.**

If you remain a Class Member, you may object to the settlement filing with the Court and mailing to the parties' counsel a written objection postmarked no later than _____, 2019. Full details on how to

object or exclude yourself can be found at www.donationcallsettlement.com.

If you do nothing, you will remain part of the Settlement Class and will release your claims against the Released Parties, but you will not receive anything from this Settlement.

SETTLEMENT HEARING

The Court will hold a hearing on _____, 2019, at [time] to consider whether to approve the settlement and award attorneys' fees and expenses as requested, in an amount not to exceed \$900,000.

You or your lawyer may ask to appear and speak at your own expense. A more detailed Notice and a Claim Form are available at www.donationcallsettlement.com. The website also explains the Settlement terms in more detail. You may write to Donation Call Settlement Administrator, P.O. Box ___, CITY, STATE ZIP or call XXX-XXX-XXXX to request the more detailed Notice and Claim Form.

TO RECEIVE A SETTLEMENT CERTIFICATE UNDER THE SETTLEMENT, YOU MUST SUBMIT A CLAIM FORM. YOU MAY COMPLETE AND SUBMIT A CLAIM FORM ONLINE BY VISITING WWW.DONATIONCALLSETTLEMENT.COM OR YOU MAY PRINT A COPY OF THE CLAIM FORM AVAILABLE AT WWW.DONATIONCALLSETTLEMENT.COM, COMPLETE IT, AND MAIL IT TO DONATION CALL SETTLEMENT, SETTLEMENT ADMINISTRATOR, P.O. BOX ___, CITY, STATE ZIP POSTMARKED BY ___, 2019

Para ver este aviso en español, visite www.donationcallsettlement.com.

**www.donationcallsettlement.com
XXX-XXX-XXXXX**

EXHIBIT D

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SEAN HARTRANFT, on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

TVI, INC. d/b/a SAVERS, APOGEE
RETAIL, LLC,

Defendants.

) Case No. 8:15-cv-01081-CJC-DFM
) [Assigned to Hon. Cormac J. Carney]

) **[PROPOSED] ORDER GRANTING**
) **PRELIMINARY APPROVAL OF**
) **CLASS ACTION SETTLEMENT**

) Action filed: July 8, 2015

1 Plaintiff has filed a Motion for Preliminary Approval of Class Action
2 Settlement (“Motion”). Having reviewed the Motion and supporting materials, the
3 Court determines and orders as follows:

4 A. Counsel have advised the Court that the Parties have agreed, subject to
5 final approval by this Court following notice to the proposed Settlement Class and a
6 hearing, to settle this Action on the terms and conditions set forth in the Settlement
7 Agreement and Release (the “Agreement”).

8 B. The Court has reviewed the Agreement, as well as the files, records, and
9 proceedings to date in this matter. The terms of the Agreement are hereby
10 incorporated as though fully set forth in this Order. Capitalized terms shall have the
11 meanings attributed to them in the Agreement.

12 C. Based upon preliminary examination, it appears to the Court that the
13 Agreement is sufficiently fair, reasonable, and adequate to warrant notice to the
14 proposed Settlement Class; that the Settlement Class should be certified for
15 settlement purposes; and that the Court should hold a hearing after notice to the
16 Settlement Class to determine whether to enter a Final Approval Order in this action,
17 based upon that Agreement.

18 Based upon the foregoing, the Court finds and concludes as follows:

19 1. ***Preliminary Approval of Proposed Settlement.*** The Agreement,
20 including all exhibits thereto, is preliminarily approved as fair, reasonable and
21 adequate. The Court finds that (a) the Agreement resulted from extensive arm’s-
22 length negotiations with participation of an experienced mediator, and (b) the
23 Agreement is sufficient to warrant notice thereof to members of the Settlement Class
24 and the Final Approval Hearing described below.

25 2. ***Class Certification for Settlement Purposes Only.***

26 (a) Pursuant to Fed. R. Civ. P. 23(b)(3), the Court, for settlement
27 purposes only, conditionally certifies the following Settlement Class:
28

1 All persons and entities to which, between and including July 1,
2 2011, to September 30, 2015, Apogee Retail, LLC made or
3 attempted to make one or more telephone calls to their cellular
4 telephones regarding donation solicitation on behalf of Epilepsy
Foundation of America.

5 The Settlement Class does not include any persons who timely and validly
6 request exclusion from the Settlement Class. Defendants and any of their
7 affiliates or subsidiaries, and any entities in which any of such companies have
8 a controlling interest, the judges presiding in the Action, and Class Counsel are
9 also excluded from the Settlement Class.

10 (b) In connection with the certification, the Court makes the
11 following preliminary findings:

12 (1) The Settlement Class satisfies Fed. R. Civ. P. 23(a)(1)
13 because the Settlement Class appears to be so numerous that joinder of all members
14 is impracticable;

15 (2) The Settlement Class satisfies Fed. R. Civ. P. 23(a)(2)
16 because there appear to be questions of law or fact common to the Settlement Class;

17 (3) The Settlement Class satisfies Fed. R. Civ. P. 23(a)(3)
18 because the claims of the Plaintiff named in the caption appear to be typical of the
19 claims being resolved through the proposed settlement;

20 (4) The Settlement Class satisfies Fed. R. Civ. P. 23(a)(4)
21 because the Plaintiff appears to be capable of fairly and adequately protecting the
22 interests of the above-described Settlement Class in connection with the proposed
23 settlement and because counsel representing the Settlement Class are qualified,
24 competent, and capable of prosecuting this action on behalf of the Settlement Class.

25 (5) The Settlement Class satisfies the requirements of Fed. R.
26 Civ. P. 23(b)(3) because, for purposes of settlement approval and administration,
27 common questions of law and fact appear to predominate over questions affecting
28 only individual Settlement Class Members and because settlement with the above-

1 described Settlement Class appears to be superior to other available methods for the
2 fair and efficient resolution of the claims of the Settlement Class. The Settlement
3 Class appears to be sufficiently cohesive to warrant settlement by representation.

4 (c) In making the foregoing findings, the Court has exercised its
5 discretion in conditionally certifying a settlement class.

6 3. ***Class Representative.*** For settlement purposes only, the Court hereby
7 appoints Plaintiff Sean Hartranft as Class Representative pursuant to Rule 23 of the
8 Federal Rules of Civil Procedure, and finds that, for settlement purposes only, Mr.
9 Hartranft has and will fairly and adequately protect the interests of the Settlement
10 Class.

11 4. ***Class Counsel.*** For settlement purposes only, the Court appoints Law
12 Offices of Douglas J. Champion, APC; Bisnar | Chase LLP; and the Law Offices of
13 Michael P. Sousa, APC as counsel for the Settlement Class (“Class Counsel”). For
14 purposes of these settlement approval proceedings, the Court finds that Class
15 Counsel are competent and capable of exercising their responsibilities as Class
16 Counsel.

17 5. ***Claims Administrator.*** The Court appoints CPT Group, Inc. as the
18 Claims Administrator, which shall fulfill the Claims Administration functions, duties,
19 and responsibilities of the Claims Administrator as set forth in the Agreement and
20 this Order.

21 6. ***Final Approval Hearing.*** A Final Approval Hearing shall be held
22 before this Court on _____, at _____ a.m./p.m., to determine
23 whether the Agreement is fair, reasonable, and adequate and should be given final
24 approval. Papers in support of final approval of the Agreement and Class Counsel’s
25 application for an award of attorneys’ fees and costs, and for an incentive award to
26 the Class Representative (the “Fee, Expense, and Incentive Payment Application”)
27 shall be filed with the Court according to the schedule set forth in Paragraphs 14 and
28 15, below. The Court may postpone, adjourn, or continue the Final Approval

1 Hearing without further notice to the Settlement Class. After the Final Approval
2 Hearing, the Court may enter a Final Approval Order in accordance with the
3 Agreement, which will adjudicate the rights of the Settlement Class Members with
4 respect to the claims being settled.

5 7. ***Class Notice.*** The Court approves the form and content of the notices
6 substantially in the forms attached as Exhibit C to the Agreement. The Parties shall
7 comply with the notice requirements of Section VIII of the Agreement. In
8 compliance with that Section, beginning thirty (30) days after entry of this Order, the
9 Claims Administrator shall cause notice to be delivered in the manner set forth in the
10 Agreement, shall implement the telephone procedure for providing notice, launch the
11 Settlement website and provide all notice and claims services as set forth in the
12 Agreement.

13 8. ***Filing of CAFA Notice.*** No later than ten (10) days before the Final
14 Approval Hearing, Defendants shall file or cause to be filed with the Court proof of
15 compliance with the notice provisions of the Class Action Fairness Act of 2005
16 (“CAFA”), 28 U.S.C. § 1715.

17 9. ***Findings Concerning Class Notice.*** The Court finds that the Class
18 Notice and the manner of its dissemination described in Paragraph 7 above and
19 Section VIII of the Agreement constitutes the best practicable notice under the
20 circumstances and is reasonably calculated, under all the circumstances, to apprise
21 Settlement Class Members of the pendency of this action, the terms of the
22 Agreement, and their right to object to or exclude themselves from the Settlement
23 Class. The Court finds that the notice is reasonable, that it constitutes due, adequate
24 and sufficient notice to all persons entitled to receive notice, and that it meets the
25 requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and
26 any other applicable laws.

27 10. ***Exclusion from Settlement Class.*** Settlement Class Members who wish
28 to exclude themselves from the Settlement Class and follow the procedures set forth

1 in this Paragraph shall be excluded. Any potential member of the Settlement Class
2 may mail a written request for exclusion, in the form specified in the Class Notice, to
3 the Claims Administrator at the address set forth in the Class Notice. In the written
4 request for exclusion, Settlement Class Members must include their full name,
5 address, telephone number, signature, case name (to allow the Claims Administrator
6 to ensure the exclusion request is for this and not another case administered by the
7 same Claims Administrator), and a statement that they wish to be excluded from the
8 Settlement Class for purposes of this settlement. A request to be excluded that does
9 not include all of this information, or that is sent to an address other than that
10 designated in the Notice, or that is not postmarked within the time specified, shall be
11 invalid, and the individual who submitted such a request shall be a member of the
12 Settlement Class and shall be bound as a Settlement Class Member by this
13 Agreement. All such written requests must be postmarked no later than sixty (60)
14 days after the date established by the Court for the Claims Administrator to provide
15 Class Notice. All persons who properly request exclusion from the Settlement Class
16 shall not be Settlement Class Members and shall have no rights with respect to, nor
17 be bound by, the Agreement, should it be finally approved. The names of all such
18 excluded individuals shall be attached as an exhibit to any Final Approval Order.

19 **11. *Right to Abrogate Agreement.*** In the event more than 100 Settlement
20 Class Members properly exclude themselves from the Settlement Class, Defendants
21 shall have the unilateral right to abrogate the Agreement by written notice of
22 abrogation to Class Counsel in accordance with the procedures set forth in the
23 Agreement. If Defendants exercise their right to abrogate the Agreement, then all
24 aspects of the Agreement and the settlement underlying it, including but not limited
25 to the provisional certification of the Settlement Class for settlement purposes only,
26 shall be altogether null and void, and no aspect of the Agreement, the settlement, or
27 this Order shall serve as legal precedent or as any basis for legal or factual argument
28 in this or any other case.

12. ***Claims Procedures.*** The Court approves the claims procedures set forth in the Agreement. The Court approves the form and content of the Claim Form substantially in the form attached as Exhibit A to the Agreement. A properly executed Claim Form must be submitted as required in the Class Notice over the Internet or postmarked no later than ninety (90) days after the date on which Class Notice is first transmitted. Such deadline may be further extended by Court Order. Each Claim Form shall be deemed to have been submitted when submitted over the Internet or postmarked (if properly addressed and mailed by first-class mail, postage prepaid), provided such Claim Form is actually received no less than thirty (30) days prior to the date for distributing Settlement Certificates, if the 90-day claims filing deadline is extended for some reason. Any Claim Form submitted in any other manner shall be deemed to have been submitted when it was actually received at the address designated on the Claim Form.

13. ***Costs of Class Notice and Claims Processing.*** Defendants shall bear all costs of notice to the Settlement Class of the pendency and settlement of the Action and other Claims Administration costs as provided in the Agreement.

14. ***Objections and Appearances.***

(a) ***Written Objections.*** Any Settlement Class Member who has not timely submitted a written request for exclusion from the Settlement Class, and thus is a Settlement Class Member, may object to the fairness, reasonableness, or adequacy of the Settlement, the Agreement or the Fee,Expense, and Incentive Payment Application. Any Settlement Class Member who wishes to object to the Settlement, Agreement or the Fee,Expense, and Incentive Award Application must file with the Court and deliver to Class Counsel and Defendants' counsel a written objection. The written objection, which the objecting Settlement Class Member must personally sign, must state: (i) the objector's full name, address, and current telephone number; (ii) an explanation of the reason why the objector claims to be a Settlement Class Member, including the cellular telephone number(s) Defendants

1 allegedly called; (iii) all grounds for the objection, including any documents,
2 evidence and citations all reasons for the objection; (iv) the name and contact
3 information of any and all attorneys representing, advising, or in any way assisting
4 the objector in connection with the preparation or submission of the objection or who
5 may profit or otherwise benefit from the pursuit of the objection; and (v) whether the
6 objector intends to appear at the Final Approval Hearing on her or his own behalf or
7 through counsel. Any documents that the objector wants the Parties and the Court to
8 consider must also be attached to the written objection. The written objection and
9 any supporting papers must be filed with the Court and mailed to Class Counsel and
10 Defendants' counsel postmarked no later than sixty (60) days after the date on which
11 Class Notice is first transmitted. Any objection not timely made in this manner shall
12 be waived and forever barred.

13 (b) ***Appearance at Final Approval Hearing.*** Objectors who timely
14 and fully comply with the requirements above may appear at the Final Approval
15 Hearing, either in person or through an attorney hired at their own expense, to object
16 to the fairness, reasonableness, or adequacy of this settlement.

17 (c) ***Fees and Cost Application.*** Class Counsel shall file their Fee,
18 Expense, and Incentive Payment Application, together with all supporting
19 documentation, by no later than thirty (30) days from entry of this Order, sufficiently
20 in advance of the expiration of the objection period that any Settlement Class
21 Member will have sufficient information to decide whether to object and, if
22 applicable, to make an informed objection.

23 (d) ***Motion for Final Approval and Responses to Objections.*** Class
24 Counsel shall file with the Court their motion for final approval of the Settlement
25 and any responses to any filed objections Fee, Expense, and Incentive Payment
26 Application, together with all supporting documentation, no later than fourteen (14)
27 days before the Final Approval Hearing.
28

1 15. ***Dates of Performance.*** In summary, the dates of performance are as
2 follows:

3 (a) Defendants shall send the postcard Class Notice to potential
4 Settlement Class Members on or before _____, i.e., thirty (30) days after
5 entry of this Order;

6 (b) Class Counsel's Fee, Expense, and Incentive Payment
7 Application, and all supporting materials, shall be filed no later than _____, i.e.,
8 no later than sixty (60) days after entry of this Order;

9 (c) Settlement Class Members who desire to be excluded shall mail
10 requests for exclusion postmarked by _____, i.e., no later than sixty (60)
11 days after the date in subsection (a) above;

12 (d) All objections to the Settlement, Agreement or the Fee, Expense,
13 and Incentive Payment Application shall be filed with the Court and mailed to the
14 Parties' counsel postmarked no later than _____, i.e., the same date as in
15 subsection (c) above;

16 (e) Settlement Class Members who desire to submit Claim Forms
17 shall do so online or, if by mail, postmarked, no later than _____, i.e.,
18 ninety (90) days after the date in subsection (a) above.

19 (f) Class Representative's final approval motion, any Parties'
20 responses to objections, and all supporting materials, shall be filed by
21 _____, i.e., at least fourteen (14) days before the date in subsection (g)
22 below;

23 (g) If objections are received by the Parties' counsel and / or filed
24 with the Court after the objection deadline, any Party may file a response at any time
25 prior to the Final Approval hearing; and

26 (h) The Final Approval Hearing shall be held on _____, at
27 _____ a.m./p.m.
28

1 16. ***Effect of Failure to Approve the Agreement.*** In the event the Court
2 does not finally approve the Agreement, or for any reason the Parties fail to obtain a
3 Final Approval Order as contemplated in the Agreement, or the Agreement is
4 terminated pursuant to its terms for any reason, then the following shall apply:

5 (a) All orders and findings entered in connection with the Agreement
6 shall become null and void and have no further force and effect, shall not be used or
7 referred to for any purposes whatsoever, and shall not be admissible or discoverable
8 in any other proceeding;

9 (b) The conditional certification of the Settlement Class pursuant to
10 this Order shall be vacated automatically, and the case shall return to its status as it
11 existed before entry of this Order;

12 (c) Nothing contained in this Order is, or may be construed as, any
13 admission or concession by or against Defendants or Class Representative on any
14 point of fact or law, including, but not limited to, factual or legal matters relating to
15 any effort to certify this case as a class action for purposes of considering settlement
16 approval; and

17 (d) Nothing in this Order or pertaining to the Agreement shall be used
18 as evidence in any further proceeding in this case, including, but not limited to,
19 motions or proceedings pertaining to treatment of this case as a class action.

20 17. ***Discretion of Counsel.*** Counsel are hereby authorized to take all
21 reasonable steps in connection with approval and administration of the Settlement not
22 materially inconsistent with this Order or the Agreement, including, without further
23 approval of the Court, making minor changes to the content of the Class Notice that
24 they jointly deem reasonable or necessary.

25 18. ***Stay of Proceedings Pending Approval of the Settlement.*** All
26 proceedings before the Court are stayed pending final approval of the settlement,
27 except as may be necessary to implement the settlement or comply with the terms of
28 the Agreement.

19. ***Injunction Against Asserting Released Claims Pending Settlement***

Approval. Pending final determination of whether the settlement should be approved, Class Representative, all Settlement Class Members, and any person or entity allegedly acting on behalf of Settlement Class Members, either directly, representatively or in any other capacity, are preliminarily enjoined from commencing or prosecuting against the Released Parties any action or proceeding in any court or tribunal asserting any of the Released Claims, provided, however, that this injunction shall not apply to individual claims of any Settlement Class Members who timely exclude themselves in a manner that complies with this Order. This injunction is necessary to protect and effectuate the settlement, this Order, and the Court's flexibility and authority to effectuate this settlement and to enter judgment when appropriate, and is ordered in aid of the Court's jurisdiction and to protect its judgments pursuant to 28 U.S.C. § 1651(a).

20. ***Reservation of Rights and Retention of Jurisdiction.*** The Parties are ordered to comply with and implement the terms of the Agreement, pending Final Approval. The Court reserves the right to adjourn or continue the date of the Final Approval Hearing without further notice to Settlement Class Members, and retains jurisdiction to consider all further applications arising out of or connected with the settlement. The Court may approve or modify the settlement without further notice to Settlement Class Members.

IT IS SO ORDERED.

DATED: _____, 201_____
Hon. Cormac J. Carney
UNITED STATES DISTRICT JUDGE