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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

IGNACIO PEREZ, on Behalf of Himself and
all Others Similarly Situated,

Plaintiffs,

v.

RASH CURTIS & ASSOCIATES,

Defendants.

CASE NO. 4:16-cv-03396-YGR

Judge: Hon. Yvonne Gonzalez Rogers

**DECLARATION OF MARK SCHEY
RE: DISTRIBUTION PLAN**

DECLARATION OF MARK SCHEY

I, Mark Schey, do hereby declare and state as follows:

1. I am a founding partner of Digital Settlement Group, LLC (“DSG”), a company that provides class action notice and claims administration. The following statements are based on my personal knowledge and information provided by other DSG principals and employees working under my supervision, and if called upon to do so, I could and would testify competently about these issues.

2. DSG was retained to provide claims administration services and a distribution plan for the settlement in this action.

3. DSG, for over a decade, has served as a court-approved notice provider and claims administrator in numerous state and federal court class actions.

4. A sample of more recent class action settlements where DSG has provided class notice and/or administration services is below:

- a. *Hart v. BHH LLC, et al*, Case No. 1:15-cv-04804-WHP (S.D.N.Y.) (Nationwide class of purchasers of “pest repeller” products);
- b. *Pearson, et al. v. NBTY, Inc*, No. CV11-07972 (N.D. Ill.) (Nationwide class of purchasers of glucosamine supplement products);
- c. *Pamela Miller, et al. v. Basic Research, LLC, et al.*, Case No. CV 2:07-cv-00871 (D. Utah) (Nationwide class of purchasers of dietary supplement products);
- d. *Eggatz et al v. The Kellogg Company et al*, Case No. 1:12-cv-21678 (S.D. Fla.) ((Nationwide class of purchasers of Kashi brand cereal products);
- e. *Jan Harrison, et al. v. E. I. Du Pont De Nemours and Company, et al.*, Case No. 5:13-cv-01180-BLF (N.D. Cal.)(Nationwide indirect purchase class of paint products);

1 f. *Iglesias vs. Ferrara Candy Co.*, Case No. 3:17-cv-00849-VC
2 (N.D. Cal.) (Nationwide class of purchasers of candy
3 products);

4 g. *Liptai v. Spectrum Brands Holdings, Inc.*, et al., Case No.
5 2018CV000321 (Wis. Cir. Ct.) (Nationwide class of
6 purchasers of coffee maker and household products);

7 h. *Mateski, et al. v. Just Born, Inc.*, Case No. CIVDS1926742
8 (Cal. Super Ct.) (Nationwide class of purchasers of candy
9 products).

10 **PLAN SUMMARY**

11 **A. Data Transfer and Security**

12 5. DSG will arrange for the names, addresses, email addresses and telephone
13 numbers of class members (the “Class Data”) to be transmitted from Class Counsel to
14 DSG, and ensure that the Class Data is encrypted once received by DSG. The Class
15 Data will then be loaded into a secure database created for the specific purpose of
16 administering and distributing the funds to the Class.

17 **B. Class Member Addresses**

18 6. The class size is 61,705 members. Class Counsel has a phone number for
19 all class members.

20 7. Class Counsel has physical postal mailing addresses for 45,317 of those
21 class members. All such records will be run through the National Change of Address
22 database maintained by the United States Postal Service, in order to ensure that DSG
23 has the most current and accurate mailing address for each class member. Additionally,
24 DSG will also run the addresses through AllFind, which is a higher level address service
25 product, in a further effort to ensure accurate mailing addresses for each class member.

26 8. There are 14,145 class members for whom Class Counsel does not have a
27 physical address. DSG will use the telephone number(s) associated with each class
28 member to conduct a reverse look-up in an attempt to obtain a valid, physical address.

1 9. There are 39,309 class members for whom Class Counsel has email
2 addresses. If a class member has multiple email addresses, DSG will send emails to
3 each such email address.

4 **PAYMENTS TO CLASS MEMBERS**

5 10. DSG will create and host a website that will contain detailed information
6 about the recovery, including important dates, deadlines, and Frequently Asked
7 Questions. The website will also contain an electronic form that will enable class
8 members to elect their preferred method of payment (i.e., paper check, or digital
9 payment through Venmo, Zelle, PayPal, CelPay, Cryptocurrency wallet, etc.), and to
10 provide change of address information, if necessary. However, the submission of a
11 claim form is not a requirement to receipt of a payment and, indeed, DSG, wherever
12 possible, will make payments to class members automatically (e.g., where DSG has a
13 known, valid address)

14 11. DSG will establish a toll-free number with an Interactive Voice Response
15 (“IVR”) system will also be made available to answer potential questions. Class
16 members can leave a message at the toll-free number, email DSG or mail in a request.
17 The phone number, email address and physical address will be listed on the dedicated
18 website.

19 12. DSG will notify class members about the recovery via email. The email
20 will contain a summary of information about the recovery, the specific amount of
21 money that the class member is entitled to, and additional information concerning the
22 recovery, including the address of the settlement website.

23 13. For those class members for whom DSG has a valid physical address
24 (including those who also have a valid email address), DSG will provide notice via
25 mail. The mailings will contain information about the recovery, including the website
26 and instructions related thereto, the amount of money the class member is entitled to,
27 and instructions that will enable class members to elect their preferred method of
28 payment.

1 14. For the approximately 12,000 class members who are entitled to a payment
2 of \$1,000 or more, DSG will institute additional procedures to locate and confirm
3 addresses for those class members, including performing a live call campaign to locate
4 those class members, confirm their contact and payment information, and explain the
5 distribution process.

6 15. For each class member who is entitled to \$5,000 or more (871 class
7 members), and who elects to receive payment by check, DSG will provide said check
8 via UPS or Federal Express.

9 16. For class members who do not respond, and for whom DSG can confirm a
10 valid address, DSG will mail their settlement payments via paper checks.

11 17. DSG will inform Counsel of any residual funds remaining in the settlement
12 account once the initial distribution is completed. DSG will thereafter make a second
13 distribution of those funds, on a *pro rata* basis, to those class members who participated
14 in the initial distribution, in a manner that is most efficient and cost-effective, with the
15 overall goal to pay the entire amount of the recovery (less attorneys' fees and expenses)
16 to class members, rather than have any funds go to cy pres.

17 18. After completing distribution of all funds, DSG will submit a report
18 detailing that distribution to Class Counsel and the Court.

19 **TAX REPORTING**


20 19. For payments to class members exceeding \$600, DSG will request
21 information to enable DSG to issue Forms 1099 or, if such information is not provided,
22 DSG will, as necessary, deduct backup withholding as required by IRS Publication 1281
23 (rev. 5-2021).

24 **COSTS**

25 20. DSG estimates that the costs of administration and distribution will be
26 \$392,680, and has agreed to cap any additional costs and expenses at \$650,000
27 (inclusive of the estimated \$392,680). A copy of DSG's proposal is attached hereto as
28 Exhibit "A".

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

3 DATED: August 19, 2021

4 By: 
5 _____
6 Mark Schey

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EXHIBIT A



**Digital Settlement Group, LLC
Administration Service Agreement
Re: Indian Harbor Insurance Company**

Date: August 18, 2021

Digital Settlement Group, LLC (“DSG”) agrees to provide, and Bursor & Fisher P.A. (“Client”) agrees to purchase services upon the terms and conditions attached hereto (the “Terms and Conditions”), and the provisions stated herein.

Assumptions:

We make the following assumptions for purposes of this project:

- Class size: 61,705
- Email Notice population: 39,309
- Postal address notice population: 45,317
- Reverse look ups (class members without email or physical address): 14,145
- Undeliverable mail: 20%
- Live calls made to all class members receiving over \$1000: 12,000
- Standard Toll Free IVR, Website, Claim Form Management
- Check plus Digital Payment Options
- 1099 Reporting to all class members receiving \$600 or more

Estimated Overall Project Cost:

\$392,680.00

Disbursement Plan:**Mail/E-mail/SMS Notification**

- | | |
|--------------------------------------------------------------|---------------|
| • File Formatting & Cleansing | Included |
| • Extensive File Formatting & Cleansing | \$20/hour |
| • B+W, 3x5, Post Card Notice to Class Members (up to 45,000) | Included |
| ◦ 1 postcard to 45,000 class members 1 time | |
| • B+W, 3x5, Post Card Notice to Class Members (over 45,000) | .55/post card |
| • E-mail Notice to Class Members (up to 40,000) | Included |
| • E-mail Notice to Class Members (over 40,000) | \$15 cpm |
| • Bounced Emails to be Resent Via Post Card | At Cost |

ESTIMATED COST ***\$53,000***

Settlement Website

- | | |
|-------------------------------------------------------------|----------|
| • Website Setup | Included |
| • Domains / Monthly Hosting / Website Support & Maintenance | Included |
| • Basic Online Form Development | Included |
| • Dynamic / Prefilled Form with Pins & Codes | Included |
| • Auto Confirmation E-mail | Included |

ESTIMATED COST ***\$13,350***

Settlement IVR/Calls

- | | |
|------------------------------------------|--------------|
| • Phone IVR Setup | Included |
| • IVR Monthly Maintenance | Included |
| • Incoming Minutes (up to 2,000 minutes) | Included |
| • Incoming Minutes (over 2,000 minutes) | \$.18/minute |
| • Outgoing Calls (up to 1000 minutes) | Included |
| • Outgoing Calls (over 1000 minutes) | \$20/hour |
| • Notice Request / Transcription | At Cost |

ESTIMATED COST ***\$ 8,400***

Claims Processing

- | | |
|-------------------------------------------------|--------------|
| • Online Claim processing (up to 45,000 claims) | Included |
| • Online Claim processing (over 45,000 claims) | \$0.06/claim |
| • Incoming/Outgoing Postal (up to 1000 claims) | Included |
| • Incoming/Outgoing Postal (over 1000 claims) | \$1.50/per |
| • Incoming/Outgoing E-mails (up to 2,000) | Included |
| • Incoming/Outgoing E-mails (over 2,000) | \$20/hour |

ESTIMATED COST ***\$102,930***

Settlement Funds Distribution

• Print and Mail Checks	\$1.25/check
• Digital Payments (Venmo, Paypal, ACH, Zelle)	\$0.49/payment
• CelPay (Digital Payment Transfer)	Free
• Reporting and Reconciliation	Included
• CASS Address Verification	Included
• Fraud Protection	Included
• Check Cash Validation	Included
• Damaged Check Replacement (up to 100)	Included
• Damaged Check Replacement (over 100)	\$3.00/check
• Direct Phone Outreach for Claims Exceeding \$1,000 (up to 12,000)	Included @\$100,000
◦ Live Call Campaign	
• Direct Phone Outreach for Claims Exceeding \$1,000 (over 12,000)	At Cost
◦ Live Call Campaign	
• 1099-MISC & Withholding for Claims Over \$600 (up to 10,000 claims)	Included
• 1099-MISC & Withholding for Claims Over \$600 (over 10,000 claims)	\$7.00/form

ESTIMATED COST***\$215,000*****Additional Expenses**

• Additional Postage	At Cost
• Affidavit Process	At Cost
• Photocopies	At Cost
• Translation Services	At Cost
• IVR Transcription	At Cost
• Additional Post Card Formatting	At Cost
• SMS Notification	At Cost

This Agreement is subject to the Terms and Conditions attached hereto which is incorporated herein. Client acknowledges that it has read such Terms and Conditions and agrees to be bound thereby. Further, Client agrees that this Agreement and the Terms and Conditions represents the entire agreement between the parties, which supersedes all proposals, oral or written, and all other prior communications between the parties relating to the subject matter of this Agreement.

The Pricing set forth in this agreement is individual unit pricing for each service. The price listed for each service represents a bona fide proposal for that service and the Client may accept separate service components or may accept the services listed in their entirety. Services will be provided when requested by the Client. Any additional service not specifically identified above will be billed at standard hourly rates. Services are mutually exclusive and are deemed delivered and accepted when provided by DSG.

Acknowledged and Accepted By:

Digital Settlement Group, LLC

By: _____

Title: _____

Name: _____

Date: _____

Client

By: _____

Title: _____

Name: _____

Date: _____

TERMS AND CONDITIONS

In consideration for Digital Settlement Group, LLC (“DSG”) providing (“Client”) the Services, the following terms and conditions shall apply.

- 1. SERVICES.** DSG agrees to provide Client the services, none of which constitute legal advice, necessary to perform the tasks specified in the attached proposal and estimated pricing attached hereto (the “Services”). Client represents to DSG that, prior to delivery of any data to DSG, Client has obtained binding consents and approvals from all necessary persons, authorities or individuals, and has complied with all applicable policies, regulations and laws, required by Client, in order to allow DSG to access and use all data provided by Client in connection with its Services.
- 2. PAYMENT FOR SERVICES AND EXPENSES.** Client agrees to pay DSG those fees specified in the attached proposal and estimated pricing attached hereto. Client acknowledges that such fees are estimates based upon information provided to DSG by Client and that DSG makes no representation that such fees shall equal the actual and final fees charged to Client, which may exceed or be less than such estimate. Client will incur a 3% late fee for any payment(s) not received by the respective due dates. Disputes with respect to invoiced amounts shall be deemed waived if not raised in writing within such thirty-day period. Out-of-pocket expenses for long-distance travel necessary in connection with its Services will be billed as incurred, approved by Client, and reimbursed by the Claim Fund.
- 3. UNUSUAL MEASURES.** If the Client requires measures that are unusual and beyond normal business practice such as, but not limited to, CPA Audit, and/or Off Premises Storage of Data, the cost of such measures, if provided by DSG, shall be charged to the Client. Said charges may be required in advance if DSG deems it appropriate.
- 4. TERM AND TERMINATION.** Either party may terminate this Agreement (a) upon 90 days prior written notice to the other party or (b) upon written notice to the other party in the event of any material breach of this Agreement if the party receiving such notice (i) fails to cure such breach within thirty (30) days after notice by the non-breaching party or (ii) in the case of any breach which requires more than thirty (30) days to cure, fails to commence and continue good faith efforts to cure such breach, provided that such cure shall be effected no less than ninety (90) days following such notice. In the event of any termination as specified herein, obligations which by their nature survive termination including but not

limited to obligations to pay for services rendered, limitations of liability and warranty, rights to intellectual property and proprietary information, and similar items shall all survive termination of any nature.

5. INDEPENDENT CONTRACTORS; SERVICES; APPROVALS. Each party, its officers, agents and employees are at all times independent contractors to the other party. The Services are being delivered on an “as-is” basis and DSG hereby makes no representation or warranty and disclaims all other express or implied conditions, representations and warranties including any implied warranties or conditions of merchantability, suitability, or fitness for a particular purpose, including any warranty relating to third party products or third party services. DSG’s warranty under this Agreement shall be limited to the rerunning, at its expense, of any inaccurate reports provided that such inaccuracies were caused solely as a result of DSG’s performance of duties as referenced in this Agreement. Client agrees to provide DSG notice of such inaccuracies within thirty (30) days of delivery of such report. Client agrees, represents and warrants to DSG that, prior to delivery of any files, data or information (“Client Data”) to DSG, Client has obtained binding consents and approvals from all necessary persons and authorities, and has complied with all applicable regulations and laws, required by Client in order to allow DSG to use the Client Data in connection with its Services.

6. TAXES. All fees charged by DSG are exclusive of taxes and similar fees now in force or enacted in the future imposed on the Services. Client will be responsible for applicable taxes imposed on the Services by appropriate governmental authority(s) except for taxes based upon DSG’s net income, gross revenue or employment obligations. If invoices exclude such taxes that are subsequently determined to be a statutory obligation of Client, Client will be responsible for paying directly to the taxing authority or reimbursing DSG any such excluded sales, use, excise, transaction or similar taxes plus interest and penalties.

7. RETURN OF CLIENT PROPERTY. Upon the conclusion of the case and in the absence of court-ordered retention instructions, DSG will provide Client with notice that upon the Client’s written request, DSG will return all property and material constituting Confidential Information belonging to Client within thirty (30) days or store hard copy documents for a period of no more than two (2) years at a monthly charge of \$1.00 per box plus \$.005 per Claim to compensate DSG for its storage costs.

8. INDEMNIFICATION. Client shall indemnify, defend and hold harmless DSG, its affiliates and their owners, members, managers, consultants, directors, officer, employees, and agents (“Agents”) against any Losses incurred by them arising out of or in connection with or related to (a) any gross negligence or willful misconduct by Client or its Agents, or any misrepresentations made by such persons to

DSG or third parties in connection with this Agreement, (b) any breach of the terms of this Agreement by Client, (c) the handling of any payment by DSG in connection with Client's instructions, including without limitation the imposition of any stop or void payment on any check or the wrongful dishonor of any check by DSG at Client's instruction; and (d) any instruction or information provided to DSG by Client in connection with the Services.

9. CONFIDENTIALITY. In connection with this Agreement, each of DSG and Client (each, a "Disclosing Party") may disclose to the other party (the "Receiving Party") certain information that is marked or otherwise identified in writing as confidential or proprietary information of the Disclosing Party prior to or upon receipt by the Receiving Party; or which the Receiving Party reasonably should recognize from the circumstances surrounding such disclosure to be confidential or proprietary (the "Confidential Information"). Client agrees that no Confidential Information will contain any data subject to applicable United States export control laws. Client further agrees, represents and warrants to DSG that, prior to delivery of any Confidential Information to DSG, Client has obtained binding consents and approvals from all necessary persons, authorities or individuals, and has complied with all applicable policies, regulations and laws, required by Client, in order to allow DSG to use all Confidential Information in connection with its Services. "Confidential Information" shall not include information (a) that is or becomes generally known or available through no fault of the Receiving Party; (b) that is known by the Receiving Party prior to the time of disclosure by the Disclosing Party; (c) is or becomes available to the Receiving Party on a non-confidential basis from third party, who, to the Receiving Party's knowledge, had the right to make such disclosure without restriction; or (d) any disclosure required by applicable law or approved in writing by a duly authorized officer of the Disclosing Party. Each Receiving Party shall use such Confidential Information only for the purposes of fulfilling their obligations hereunder, and not disclose to any third party any Confidential Information other than in connection with fulfilling the Receiving Party's obligations hereunder. Each party agrees to use best efforts to protect the other party's intellectual property including without limitation inventions (whether or not patentable), concepts, ideas, processes, programs, trade secrets and know-how (collectively, "IP") and shall not during the term of this Agreement or thereafter utilize, reveal, or disclose any such IP. Any IP relating to the software utilized or developed by DSG during the course of this Agreement shall be the exclusive property of DSG. Client shall not: (a) modify, adapt, translate or create derivative works of the DSG's IP or any part thereof; (b) lease, rent, loan, distribute, assign, sublicense, convey or otherwise transfer or encumber DSG's IP; (c) copy, reverse engineer, re-engineer, decompile, or disassemble DSG's IP or any part thereof, nor attempt to discover or create the source code for DSG's IP; (d) use DSG's IP or any part thereof, for the benefit of any other person or entity; or (e) cause, assist or permit any third party to do any of the foregoing.

10. LIMITATION ON DAMAGES. Under no circumstances will DSG or its Agents be liable to the Client (whether in tort, contract, equity, warranty or otherwise) for any special, consequential, punitive, general, indirect or incidental damages arising out of relating to this Agreement or the performance of Services hereunder. Notwithstanding anything in this Agreement or any Work Order to the contrary, neither DSG nor Client shall be liable for liabilities, costs, damages and expenses arising out of or related to a Force Majeure Event, provided that each party performs its obligations with respect to a Force Majeure Event, including, in the case of DSG, following its business continuity procedures. In no event shall DSG's or its Agents' total liability to the Client for any claims, losses, costs, fines, settlements, penalties or damages, including court costs and attorney's fees (collectively, "Losses"), arising out of or related to this Agreement or the performance of Services hereunder, exceed the total amount paid by the Client to DSG for the portion of the particular services which gave rise to the Losses.

11. FORCE MAJEURE. If performance by DSG of any of its obligations hereunder is prevented by reason of any act of God, strike, lock-out or other industrial or transportation disturbance, fire, lack of materials, law, regulation or ordinance, war conditions, or by reason of any other matter beyond DSG's reasonable control ("Force Majeure Event"), then such performance shall be excused and this Agreement shall, at DSG's option, be deemed suspended during the continuation of such event and for a reasonable time thereafter.

12. GOVERNING LAW. This Agreement shall be construed and controlled by the laws of the State of Florida and the State of California (without reference to its conflict of laws provisions). The state and federal courts located in Palm Beach County, Florida and Los Angeles County, California shall have exclusive jurisdiction with respect to any proceedings which may arise in connection with this Agreement, which courts have personal jurisdiction and venue over the parties for purposes hereof.

13. GENERAL. DSG maintains banking relationships with financial institutions, whereby those institutions may provide financial products and related banking services required in connection with the services hereunder. DSG may receive compensation from such institutions in connection with those relationships. This Agreement and the rights and obligations of DSG and Client shall bind and inure to the benefit of their respective successors and assigns. This Agreement represents the entire agreement between the parties and supersedes any existing agreement entered into by DSG and Client relating to the subject matter hereof and may be modified only by a writing signed by the parties hereto. All clauses and covenants in this Agreement are severable; in the event any or part of them are held invalid or unenforceable by any court, such clauses or covenants shall be valid and enforced to the fullest extent available, and this Agreement will be interpreted as if such invalid or unenforceable clauses or covenants were

not contained herein. Any waiver under this Agreement shall not constitute a waiver of any other right hereunder. This Agreement may be executed by facsimile or PDF signature and/or in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. All notices required to be served hereunder shall be in writing, postage prepaid, address to the party to whom service is to be given, as provided herein, and shall be served upon the other party either personally or by registered or certified mail to the address below such party's signature.