

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:13-cv-03258-PAB-KMT

KATHY WORNICKI; and  
EDWARD LAINE, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

BROKERPRICEOPINION.COM, INC.;  
WALTER COATS;  
FIRST VALUATION, LLC;  
FIRST VALUATION SERVICES, LLC;  
FIRST VALUATION TECHNOLOGY, LLC;  
VALUTECH, INC.; and  
CARTEL ASSET MANAGEMENT, LLC.

Defendants.

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**CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement (“Agreement” or “Settlement” or “Settlement Agreement”) is entered into by Plaintiffs Kathy Wornicki and Edward Laine, individually and on behalf of all others similarly situated (“Plaintiffs” or “Class Representatives”) and Defendants Brokerpriceopinion.com, Inc., Walter Coats, First Valuation, LLC, First Valuation Services, LLC, First Valuation Technology, LLC, ValuTech, Inc., and Cartel Asset Management, LLC (“Defendants” or “Brokerprice”). Plaintiffs and Defendants are referred to in this Agreement as the “Parties.”

**RECITALS**

1. On December 2, 2013, Plaintiffs filed a proposed Class Action Complaint against Defendants. On February 18, 2014, Plaintiffs filed a proposed First Amended Class Action Complaint. On May 29, 2014, Plaintiffs filed a Second Amended Class Action Complaint. On January 20, 2016, Plaintiffs filed a Third Amended Class Action Complaint (the “Operative Complaint”).

2. Plaintiffs allege that they are or were licensed real estate professionals who performed real estate evaluations on behalf of Brokerpriceopinion.com, Inc. Plaintiffs allege that pursuant to their agreement, Defendants are obligated to pay Plaintiffs for work they performed, but have unlawfully refused to pay Plaintiffs and other real estate professionals in accordance with these payment terms, depriving Plaintiffs of funds earned and due them under contract and by promissory estoppel, and further damaging Plaintiffs by unjust enrichment, fraudulent concealment, and negligent misrepresentation.

3. Plaintiffs seek an injunction restraining the practices complained of, damages, specific performance, rescission, injunctive relief, an accounting, attorneys' fees, costs of suit, and such other or further relief as the Court were to deem proper. Defendants deny all liability and deny that any award of damages or injunctive relief is appropriate.

4. Plaintiffs brought this action (the "Action") as a proposed class action pursuant to Rule 23 of the Federal Rules of Civil procedure. The Court certified the following class: All persons and entities who provided broker price opinions on behalf of Brokerpriceopinion.com, Inc., First Valuation, LLC, First Valuation Services, LLC, First Valuation Technology, LLC, Cartel Asset Management, LLC, Walter Coats, or ValuTech, Inc. between December 2, 2007 and the date of final disposition of this action and who have not been paid for their services in accordance with Defendants' terms of payment.

5. The Parties have engaged in substantial discovery over the course of the litigation. Defendants produced thousands of pages of documents, data relating to the amounts allegedly owed to the brokers, and information relating to their financial status and viability. Plaintiffs took depositions of four individuals designated to testify on Defendants' behalf. Plaintiffs also took the depositions of Michael Poole and Walter Coats in their personal capacity.

6. The Parties participated in mediation on December 6, 2016 with the Honorable Boyd N. Boland (Ret.) of the Judicial Arbitrator Group. The Parties did not settle at that time. However, the Parties continued their settlement discussions following mediation.

7. Defendants have represented, and Plaintiffs have confirmed through discovery, that they do not have sufficient funds to pay Plaintiffs and Class Members the amounts they are owed and will declare bankruptcy if forced to continue the litigation.

8. The Parties agree that it is desirable that the Action be settled upon the terms and conditions set forth in this Settlement Agreement to avoid further expense and uncertain, burdensome and potentially protracted litigation, and to resolve all claims between the parties.

9. The Parties have engaged in extensive arms-length settlement negotiations and Class Counsel represent that they have otherwise conducted a thorough study and investigation of the law and the facts relating to the claims that have been or might have been asserted in the Action and have concluded that, taking into account the benefits that Plaintiffs and the Class Members will receive as a result of this Settlement Agreement and the risks and delays of further litigation, this Settlement Agreement is fair, reasonable and adequate and in the best interests of Plaintiffs and the Class Members.

10. In consideration of the foregoing and other good and valuable consideration, the Parties hereby agree that that the Action should be compromised and settled, subject to the approval of the Court, upon the terms and conditions set forth below.

### **DEFINITIONS**

11. As used in all parts of this Settlement Agreement, the following terms have the meanings specified below:

12. “Claim Form” means the claim form to be submitted by Settlement Class Members in order to receive a cash award.

13. “Claim Period” means the period of time during which Settlement Class Members must submit a Claim Form in order to be eligible to receive a cash award. The Claim Period will end 60 calendar days following the Settlement Notice Date.

14. “Claim Deadline” means the deadline by which Settlement Class Members must submit a claim form and is 60 days following the Settlement Notice Date.

15. “Class Counsel” means Beth E. Terrell, Jennifer Rust Murray and Terrell Marshall Law Group PLLC; Jeffrey A. Berens and Berens Law LLC; and, Stefan Coleman and the Law Offices of Stefan Coleman LLC.

16. “Class Notice” means the notice to be approved by the Court as set forth in paragraph 42 below and in substantially the same form as Exhibits A–C to this Agreement.

17. “Class Period” means since December 2, 2007 through the date of the entry of the Final Approval Order.

18. “Court” means the United States District Court for the District of Colorado.

19. “Email Notice” means the notice that will be provided pursuant to paragraph 42 of this Settlement Agreement, substantially in the same form as Exhibit A.

20. “Effective Date” means the fifth business day after the last of the following dates:

- a. All Parties, Defendants’ Counsel and Class Counsel have executed this Agreement;
- b. The Court has entered, without material change, the Final Approval Order; and
- c. The final disposition of any related appeals, and in the case of no appeal or review being filed, expiration of the applicable appellate period.

21. “Final Approval Hearing” means a hearing set by the Court to determine whether to finally approve the Settlement Agreement and to determine the amount of fees and expenses awarded to Class Counsel and the amount of the service awards to Plaintiffs.

22. “Final Approval Order” means an order to be entered by the Court entitled “Final Approval Order,” substantially in the form attached hereto as Exhibit D.

23. “Notice Plan” means the proposed plan of sending notice to the Settlement Class of the Settlement Agreement as set forth in paragraph 42 of this Settlement Agreement.

24. “Objection Deadline” means the deadline to submit an objection to the Settlement and is 60 calendar days from the Settlement Notice Date.

25. “Opt-Out Deadline” means the deadline for Settlement Class members to submit a letter excluding themselves from the Settlement and is 60 calendar days from the Settlement Notice Date.

26. “Postcard Notice” means the notice that will be provided pursuant to paragraph 42 of this Settlement Agreement, substantially in the same form as Exhibit B.

27. “Preliminary Approval Order” means the order that the Court enters upon preliminarily approving the Settlement, substantially in the form attached hereto as Exhibit E.

28. “Release” means the claims that Settlement Class Members release as a part of this Settlement Agreement as set forth in paragraph 50 of this Settlement Agreement.

29. “Settlement” means the settlement contemplated by this Settlement Agreement.

30. “Settlement Administrator” means: JND Legal Administration.

31. “Settlement Award” means a cash payment that may be available to eligible Settlement Class Members.

32. “Settlement Class” means: All persons and entities who provided broker price opinions on behalf of Brokerpriceopinion.com, Inc., First Valuation, LLC, First Valuation Services, LLC, First

Valuation Technology, LLC, Cartel Asset Management, LLC, Walter Coats, or ValuTech, Inc. between December 2, 2007 and the date of preliminary approval and who have not been paid for their services in accordance with Defendants' terms of payment.

33. "Settlement Class Members" means: All persons preparing broker price opinions (BPOs), who on or after December 7, 2007 entered into agreements with Defendants for BPOs and who were not paid all monies owed them by Defendants under such agreements who do not request to be excluded from the Settlement.

34. "Settlement Notice Date" means the date the Settlement Notices are sent pursuant to the Notice Plan.

35. "Settlement Website" means the website that will be established and maintained by the Claims Administrator as set forth in this Settlement Agreement.

36. "Website Notice" means the detailed notice of the Settlement that will be available on the Settlement Website subject to approval by the Court, substantially in the form attached hereto as Exhibit C.

### **SETTLEMENT TERMS**

37. Settlement Payments. Defendants shall pay a total of \$1,567,000 (hereinafter the "Total Settlement Payment") to fund their settlement payment obligations in this action. This total amount is broken down into the following payments:

a. Defendants shall pay \$1,020,000, which will be distributed to the Settlement Class as Settlement Awards (the "Class Payment") as set forth in paragraph 41 below.

b. Defendants shall pay Plaintiffs Laine and Wornicki \$5,000 each for their service in this action as approved by the Court. If the Court approves service awards less than \$5,000 each, the unapproved portion or portions shall be added to the Class Payment and distributed proportionately to

the Settlement Class Members as Settlement Awards pursuant to paragraph 41 below and on the schedule set forth in paragraph 37(e) below.

c. Defendants shall pay \$500,000 to Class Counsel for the fees and costs they incurred prosecuting this action as approved by the Court pursuant to paragraph 37(e) below. If the Court awards less than this amount, the difference between the amount awarded by the Court and \$500,000 will be added to the Class Payment and distributed proportionately to the Settlement Class Members as Settlement Awards pursuant to paragraph 41 below and on the schedule set forth in paragraph 37(e) below. No amount shall revert to Defendants.

d. Defendants shall pay the cost of sending Class Notice, estimated to be approximately \$37,000 pursuant to paragraph 37(e) below.

e. Defendants shall pay the Total Settlement Payment to the Settlement Administrator as follows (the “Installment Payments”):

- i. \$10,000—within ten days following entry of Preliminary Approval Order;
- ii. \$135,000 — within five days following the Effective Date;
- iii. \$30,000—within thirty days following the Effective Date;
- iv. \$30,000—every 30 days for a period of 45 months following the \$30,000 payment set forth in paragraph 37(e)(ii), above; and
- v. \$42,000 in the forty-sixth month.

f. The Settlement Administrator shall establish and maintain an escrow account into which the Installment Payments will be deposited and from which the Installment Payments will be disbursed.

38. Security for Settlement Payments. As a material term of this Settlement Agreement, Defendants agree to provide the following security to guarantee performance of the above-described settlement payment obligations:

a. Promissory Note and Security Agreement. Defendants will provide Class Counsel with a signed Promissory Note in which Defendants promise to make the above-described payments in the timeline described in paragraph 24. The Promissory Note will be in substantially the form described in Exhibit F. As security for the Promissory Note and payments Defendants must make under this Agreement, Defendants grant Plaintiffs, Class Counsel on their own behalf and on behalf of the Settlement Class a security interest in all of Defendants' tangible and intangible personal property. The security interest includes, but is not limited to, an interest in Defendants' intellectual property.

b. Effect of Default without Cure. Plaintiffs will have the right to terminate the Settlement Agreement if Defendants fail to make any payment under the terms of this Settlement Agreement. Defendants shall have thirty days to cure any default. If Defendants reach any provision of this Settlement Agreement and fail to cure, Plaintiffs and Settlement Class Members will be returned to the status quo ex ante as if this Settlement Agreement had never been negotiated and entered into and any Release will be null and void.

39. Effect of Denial of Final Approval. If the Court for whatever reason declines to grant final approval of the Settlement Agreement, the Parties will be returned to the status quo ex ante as if the Settlement Agreement had never been negotiated or entered into. For example, any payments that Defendants made pursuant to the Settlement Agreement before Final Approval will be returned in full to Defendants.

40. Agreed Injunctive Relief. As a material term of this Settlement Agreement, Defendants agree to provide the following injunctive relief to Plaintiffs and Settlement Class Members:



a. Defendants shall provide a declaration under penalty of perjury in support of preliminary approval that, among other items, establishes that Defendants have insufficient resources to pay Settlement Class members any more than the Total Settlement Payment.

b. Defendants shall prepare a standard form of vendor purchase agreement for BPOs with uniform payment terms for all BPOs completed and delivered to Brokerprice.

c. Defendants shall maintain a cash reserve in the amount of \$240,000 dedicated to the payment of persons completing and delivering BPOs. Brokerprice shall begin contributing \$18,000 a month to such cash reserve within ninety days following the entry of the Preliminary Approval Order, and the cash reserve shall be equal to or greater than \$240,000 no later than one year subsequent to the Effective Date.

d. Defendants shall pay in full within 90 days all amounts as agreed under the standard form agreement for BPOs.

e. Defendants shall train the employees in its Accounting, Quality Control and Production departments to make full payment to persons completing and delivering BPOs within 90 days.

f. Defendants shall not use calling scripts, standardized emails or other communications in an attempt to delay payment or alter payment terms for BPOs after entering into the form vendor purchase agreement.

g. Defendants shall make a bi-annual report to Class Counsel outlining its compliance with the injunction and any issues that may have arisen. Defendants agree to submit copies of any lawsuits filed against it and asserting a claim during the reporting period to Class Counsel beginning 6 months from the effective date and every 6 months thereafter until expiration of the injunction.

h. Defendants shall incorporate into Brokerprice's employee handbooks sufficient instruction and policies to ensure compliance with all terms of the vendor purchase agreement for BPOs. Brokerprice shall employ a compliance manager (who may be a current employee of Brokerprice and the new compliance manager position need not be dedicated exclusively to that position) who shall review the training information, work to train staff, and oversee vendor payment practices and their compliance or lack thereof.

i. The Agreed Injunctive Relief, will be fully implemented within sixty (60) days following the Effective Date.

41. Administration of Settlement Payment

a. Calculation of Settlement Class Members' Payments. In consideration for settlement and a release of all claims of the Settlement Class against Defendants, each member of the Settlement Class who returns a valid and timely Claim Form ("Qualified Claimant") shall receive a proportionate share of the Class Payment. The determination of each Settlement Class Member's share will be based on payment information produced by Defendants and on the computations of Plaintiffs' counsel, all of which is presumed to be accurate (and which is described in detail below).

Specifically, the determination of each Qualified Claimant's proportionate share of the Class Payment will be based on the following formula: Class Payment divided by the total amount owed to all Qualified Claimants as set forth in Defendants' business records times the amount owed to the individual Qualified Claimant. For example, assume Defendants owe all Qualified Claimants \$5,000,000 and owe Qualified Claimant Mary \$5,000. Qualified Claimant Mary's pro rata share of the Class Payment would be  $\$1,020,000/\$5,000,000 \times \$5,000 = \$1,020$ .

b. Payment of Notice Expenses. Within ten days following entry of the Preliminary Approval Order, Defendants will pay the Settlement Administrator \$10,000. Defendants will pay the remaining \$27,000 within five days after the Effective Date as part of the first Installment Payment.

c. Distribution of Payments to Qualified Claimants, Class Representatives and Class Counsel. There will be four distributions of settlement funds to Qualified Claimants, Class Representatives, and Class Counsel:

i. The first distribution will occur within 40 days following the Effective Date. As of this date, Defendants will have paid \$165,000 to the Settlement Administrator pursuant to paragraph 24(e)(i) – (ii), above. After deducting \$27,000 in notice expenses, \$138,000 will remain to distribute. At this time, Class Counsel will be paid \$100,000, which amounts to 20% of their requested \$500,000 fee and cost award. At this time, the Class Representatives each will be paid \$1,000 (\$2,000 total), which amounts to 20% of their requested \$5,000 service awards. Qualified Claimants will receive a pro rata share of the remaining \$36,000, which amounts to 3.5% of the total Class Payment. For example Qualified Claimant Mary above would receive approximately \$35.70 (3.5% of her \$1,020 settlement award).

ii. The second distribution will occur one year following the first distribution. At that time, Defendants will have paid an additional \$360,000 (\$30,000 x 12) to the Settlement Administrator. At this time, Class Counsel will be paid \$100,000, which amounts to 20% of their requested \$500,000 fee and cost award. At this time, the Class Representatives each will be paid \$1,000 (\$2,000 total), which amounts to 20% of their requested \$5,000 service awards. Qualified Claimants will receive a pro rata share of the remaining \$258,000, which amounts to approximately 25.3% of the total Class Payment. For example Qualified Claimant Mary above would receive approximately \$258 (25.3% of her \$1,020 settlement award).

iii. The third distribution will occur one year following the second distribution. At that time, Defendants will have paid an additional \$360,000 ( $\$30,000 \times 12$ ) to the Settlement Administrator. At this time, Class Counsel will be paid \$100,000, which amounts to 20% of their requested \$500,000 fee and cost award. At this time, the Class Representatives each will be paid \$1,000 (\$2,000 total), which amounts to 20% of their requested \$5,000 service awards. Qualified Claimants will receive a pro rata share of the remaining \$258,000, which amounts to 25.3% of the total Class Payment. For example Qualified Claimant Mary above would receive approximately \$258 (25.3% of her \$1,020 settlement award).

iv. The fourth distribution will occur one year following the third distribution. At that time, Defendants will have paid an additional \$360,000 ( $\$30,000 \times 12$ ) to the Settlement Administrator. At this time, Class Counsel will be paid \$100,000, which amounts to 20% of their requested \$500,000 fee and cost award. At this time, the Class Representatives each will be paid \$1,000 (\$2,000 total), which amounts to 20% of their requested \$5,000 service awards. Qualified Claimants will receive a pro rata share of the remaining \$258,000, which amounts to 25.3% of the total Class Payment. For example Qualified Claimant Mary above would receive approximately \$258 (25.3% of her \$1,020 settlement award).

v. The fifth distribution will occur ten months following the fourth distribution. At that time, Defendants will have paid an additional \$302,000 ( $\$30,000 \times 9$  months plus \$32,000 in the tenth month) to the Settlement Administrator. At this time, Class Counsel will be paid \$100,000, which amounts to approximately 20% of their requested \$500,000 fee and cost award. At this time, the Class Representatives each will be paid \$1,000 (\$2,000 total), which amounts to 20% of their requested \$5,000 service awards. Qualified Claimants will receive a pro rata share of the

remaining \$210,000, which amounts to 20.6% of the total Class Payment. For example Qualified Claimant Mary above would receive approximately \$210 (20.6% of her \$1,020 settlement award).

### **CLASS NOTICE**

42. The Settlement Administrator shall provide notice as detailed below within thirty (30) calendar days after the issuance of the Preliminary Approval Order:

a. Notice by Email. The Settlement Administrator will provide individual notice by sending an email in substantially the form as Exhibit A to every Settlement Class member for whom an email address is available in Defendants' records. The email describes the basic terms of the Settlement, informs Settlement Class Members of key deadlines, including the deadline to submit claims, exclusion requests and/or objections, and refers Settlement Class Members to the Settlement Website.

b. U.S. Mail. For any Settlement Class member for whom an email address is not available or for any Settlement Class member whose email is returned undeliverable, the Claims Administrator will provide individual notice by sending a postcard in substantially the form as Exhibit B through U.S. Mail to each Settlement Class Member. The postcard describes the basic terms of the Settlement, informs Settlement Class Members of key deadlines, including the deadline to submit claims, exclusion requests and/or objections, and refers Settlement Class Members to the Settlement Website. Before sending the postcards, the Claims Administrator will update Settlement Class addresses using the National Change of Address Database. If a postcard is returned with a forwarding address, the Claims Administrator will re-send the postcard immediately. If a postcard is returned as undeliverable, the Claims Administrator will perform one "skip trace" to locate an updated address.

c. Settlement Website. Within seven (7) calendar days after entry of the Preliminary Approval Order, the Claims Administrator will also establish and maintain the Settlement

Website, which will display the operative Complaint; this Settlement Agreement; the Preliminary Approval Order; and a detailed description of the Settlement Agreement, including frequently asked questions. Within twenty-four (24) hours after Class Counsel files a motion for an award of attorneys' fees, costs and service awards to Plaintiffs, that motion will also be displayed on the Settlement Website. The Settlement Website will allow Settlement Class Members to submit Claim Forms online.

d. CAFA Notice. The Claims Administrator shall prepare and serve timely Class Action Fairness Act notice within ten (10) calendar days after the filing of the motion for preliminary approval

### **OPT OUT PROCESS**

43. Opt-Out Requirements. Individuals in the Settlement Class may exclude themselves from the Settlement Class by advising the Settlement Administrator in writing no later than the Opt-Out Deadline. All such writings must be signed, and if mailed, must be postmarked no later than the Opt-Out Deadline. All persons in the Settlement Class will be bound by this Settlement and judgments of this Court in this Action unless they exclude themselves in writing by the Opt-Out Deadline.

44. Retention of Opt-Outs. The Settlement Administrator will retain a copy of all opt-out requests and will provide copies to the Parties' counsel upon request. Class Counsel will keep such information strictly confidential and use it only for purposes of determining whether an individual in the Settlement Class has properly opted out.

### **OBJECTIONS**

45. Right to Object. Any Settlement Class Member who desires to object to the fairness of this Settlement must file a written objection with the Court by the Objection Deadline. The written objection must provide the objector's name, address, telephone number, and the reason(s) for the objection.

46. Right to Appear at Final Approval Hearing. Anyone who properly objects, as described herein, may appear at the Final Approval Hearing, including through an attorney hired at the objector's expense. Such objectors or their attorneys intending to appear at the Final Approval Hearing must file a notice of appearance with the Court no later than ten (10) days before the Final Approval Hearing. Any member of the Settlement Class who fails to comply with the provisions herein shall waive and forfeit any and all rights to appear and/or object separately, and shall be bound by the terms of this Settlement and the orders and judgments of this Court.

### **CLAIMS PROCESS**

47. Claim Form. A Settlement Class Member must submit a Claim Form in order to make a claim, either by mail or online. Claim Forms submitted by mail must be post-marked by the last day of the Claim Period.

48. Review of Claims. The Claims Administrator will review each claim that is submitted within the Claim Period. If the Claim Form is timely, sets forth the requisite information, is signed (by written or electronic signature), and is not duplicative of a previously approved Claim Form, then the Claim Administrator will approve the Claim Form and the Settlement Class Member will become a Qualified Claimant. The Claims Administrator will provide updates on a monthly basis to and as requested by the Parties' counsel on the number of claims that are denied and approved. Any disputes over the validity of a Claim Form will be promptly presented to and resolved by the Court.

49. Payment of Claims. All Qualified Claimants will be paid in accordance with the procedure and schedule set forth in paragraph 27 above.

### **RELEASE**

50. Upon the Effective Date, Plaintiffs and Settlement Class Members remise, release and forever discharge the Defendants from any and all individual claims, charges, complaints, demands,

judgments, causes of action, rights of contribution and indemnification, attorneys' fees, costs and liabilities raised in the Lawsuit, whether for damages or injunctive relief.

#### **DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

51. Plaintiffs shall promptly prepare and file with the Court a motion for preliminary approval and determination by the Court as to the fairness, adequacy, and reasonableness of this Settlement. The motion for preliminary approval shall request entry of a preliminary order which would accomplish the following:

- a. Schedule a fairness hearing on the question of whether the proposed Settlement, including payment of attorneys' fees and costs and the Class Representatives' service awards, should be finally approved as fair, reasonable, and adequate as to the Settlement Class Members;
- b. Defining and certifying a Settlement Class under Federal Rule of Civil Procedure 23 for all claims;
- c. Appointing Beth E. Terrell, Jennifer Rust Murray and Terrell Marshall Law Group PLLC; Jeffrey A. Berens and Berens Law LLC; and, Stefan Coleman and the Law Offices of Stefan Coleman LLC Class Counsel;
- d. Approving as to form and content the proposed Class Notice;
- e. Approving as to form and content the proposed Claim Form;
- f. Directing the dissemination of the Class Notice and Claim Form to the Settlement Class Members;
- g. Preliminarily approving the Settlement subject only to the objections of Settlement Class Members and final review by the Court;
- h. Preliminarily approving Class Counsel's request for attorneys' fees and litigation expenses subject to final review of the Court; and



i. Preliminarily approving Class Counsel's request for Plaintiffs' enhancement awards for the class representatives.

52. Class Counsel shall file a motion for an award of attorneys' fees, costs, and Class Representative Service Awards at least thirty (30) days before the deadline for Settlement Class Members to object to the Settlement. The Settlement Agreement is not contingent on the amount of attorneys' fees and costs or Service Awards that the Court awards. The difference between the amount of attorneys' fees, costs, and Service Awards requested and the requested amounts will be added to the Class Payment and distributed to the Settlement Class according to the schedule set forth in paragraph 41.

53. Class Counsel shall prepare a motion for final approval no later than fifteen (15) days before the Final Approval Hearing. With this motion, Class Counsel shall file a declaration from the Settlement Administrator describing its implementation of the Notice Plan and identifying any members of the Settlement Class who excluded themselves from the Settlement.

54. No later than fifteen (15) days before the Final Approval Hearing, the Parties shall file any response to any objections to the Settlement Agreement.

#### **DUTIES OF THE PARTIES FOLLOWING FINAL APPROVAL**

55. Following final approval of the Settlement provided for in this Settlement Agreement, Class Counsel will submit a proposed final order:

- a. Approving the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;
- b. Approving Class Counsel's application for an award of attorneys' fees and reimbursement of costs;
- c. Approving the named Plaintiffs' service awards; and

d. Releasing all claims against Defendants as set forth in paragraph 50 above.

56. If the Court awards attorneys' fees or service awards in an amount that is less than the requested amount, the difference between the amount requested and the amount awarded will be divided among Settlement Class Members who submit a valid claim. Likewise, any funds from uncashed checks will be distributed to Settlement Class Members if it is administratively feasible to do so. If it is not administratively feasible to distribute residual funds, the funds will be distributed to a charity proposed by the Parties and approved by the Court. Under no circumstances will any portion of this settlement fund revert to Brokerprice.

57. Plaintiffs will not be obligated to dismiss this case until after (1) the Court issues an order of final approval of the Settlement and (2) Defendants have made all settlement payments outlined in this Settlement Agreement.

#### **PARTIES' AUTHORITY**

58. The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties to the terms and conditions of this Settlement Agreement.

#### **MUTUAL FULL COOPERATION**

59. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendants and its counsel, take all necessary steps to secure the Court's final approval

of this Settlement. If the Court's approval of this Settlement Agreement includes modifications of the Agreement that do not prejudice any Party, each Party's remaining obligations and rights under the agreement will survive the modifications and remain in effect.

#### **NO PRIOR ASSIGNMENTS**

60. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right herein released and discharged except as set forth herein.

#### **NO ADMISSION**

61. Nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendants. Defendants specifically deny any liability.

#### **CONSTRUCTION**

62. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties. The Parties further agree that this Settlement Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or party's counsel participated in the drafting of this Settlement Agreement.

#### **CAPTIONS AND INTERPRETATIONS**

63. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

## **MODIFICATION**

64. This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto and approved by the Court.

## **INTEGRATION CLAUSE**

65. This Settlement Agreement (including the exhibits) contains the entire agreement between the Parties relating to the Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

## **BINDING ON ASSIGNS**

66. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

## **CLASS COUNSEL SIGNATORIES**

67. It is agreed that because of the large number of Settlement Class Members, it is impossible or impractical to have each Settlement Class Member execute this Settlement Agreement. The Class Notice will advise all Settlement Class Members of the binding nature of the release and such shall have the same force and effect as if this Settlement Agreement were executed by each member of the Settlement Class.

## **COUNTERPARTS**

68. This Settlement Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and,

when taken together with other signed counterparts, shall constitute one Settlement Agreement, which shall be binding upon and effective as to all Parties.

**IN WITNESS WHEREOF**, the Settling Parties hereto, have so agreed on the dates noted below.

Plaintiffs and Class Representatives:

By: *Kathy Wornicki* 3/9/17  
~~Elaine Wornicki~~ Date  
*Kathy*

By: \_\_\_\_\_  
Edward Laine Date

Counsel for Plaintiffs and Class Representatives:

TERRELL MARSHALL LAW GROUP PLLC

By: *Jennifer Rust Murray* March 10, 2017  
Beth E. Terrell, WSBA #26759 Date  
Jennifer Rust Murray, WSBA #36983

BERENS LAW LLC

By: \_\_\_\_\_  
Jeffrey A. Berens, CBA #28007 Date

LAW OFFICES OF STEFAN COLEMAN, LLC


By: *Stefan Coleman* 03/10/2017  
Stefan Coleman, FBA #30188 Date

when taken together with other signed counterparts, shall constitute one Settlement Agreement, which shall be binding upon and effective as to all Parties.

**IN WITNESS WHEREOF**, the Settling Parties hereto, have so agreed on the dates noted below.

Plaintiffs and Class Representatives:

By: \_\_\_\_\_  
Elaine Wornicki Date \_\_\_\_\_

By:  \_\_\_\_\_  
Edward Laine Date 3-9-2017

Counsel for Plaintiffs and Class Representatives:

TERRELL MARSHALL LAW GROUP PLLC

By: \_\_\_\_\_  
Beth E. Terrell, WSBA #26759 Date \_\_\_\_\_  
Jennifer Rust Murray, WSBA #36983

BERENS LAW LLC

By: \_\_\_\_\_  
Jeffrey A. Berens, CBA #28007 Date \_\_\_\_\_

LAW OFFICES OF STEFAN COLEMAN, LLC

By: \_\_\_\_\_  
Stefan Coleman, FBA #30188 Date \_\_\_\_\_

when taken together with other signed counterparts, shall constitute one Settlement Agreement, which shall be binding upon and effective as to all Parties.

**IN WITNESS WHEREOF**, the Settling Parties hereto, have so agreed on the dates noted below.

Plaintiffs and Class Representatives:

By: \_\_\_\_\_  
Elaine Wornicki Date \_\_\_\_\_


By: \_\_\_\_\_  
Edward Laine Date \_\_\_\_\_

Counsel for Plaintiffs and Class Representatives:

TERRELL MARSHALL LAW GROUP PLLC

By: \_\_\_\_\_  
Beth E. Terrell, WSBA #26759  
Jennifer Rust Murray, WSBA #36983 Date \_\_\_\_\_

BERENS LAW LLC

By:  \_\_\_\_\_  
Jeffrey A. Berens, CBA #28007 Date 3-9-17

LAW OFFICES OF STEFAN COLEMAN, LLC

By: \_\_\_\_\_  
Stefan Coleman, FBA #30188 Date \_\_\_\_\_

Defendant:

BROKERPRICEOPINION.COM

By: Walt [Signature]

3-9-17  
Date

Defendant:

WALTER E. COATS

By: Walter E. Coats [Signature]

3-9-17  
Date

Defendant:

FIRST VALUATION, LLC

By: Walt [Signature]

3-9-17  
Date

Defendant:

FIRST VALUATION SERVICES, LLC

By: Walt [Signature]

3-9-17  
Date

Defendant:

FIRST VALUATION TECHNOLOGY, LLC

By: Walt [Signature]

3-9-17  
Date

Defendant:

VALUTECH, INC.

By: Walt [Signature]

3-9-17



Defendant:

CARTEL ASSET MANAGEMENT, LLC

By: Walt Coe

Date

2-9-17  
Date

Counsel for Defendants:

G.W. MERRICK & ASSOCIATES, LLC

By: JB  
Glenn W. Merrick, CBA #10042  
Joseph T. Bernstein, CBA #37753

3/10/17  
Date

**— EXHIBIT A —**

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

If you completed broker price opinions on behalf of Brokerpriceopinion.com, Inc., First Valuation, LLC, First Valuation Services, LLC, First Valuation Technology, LLC, Cartel Asset Management, LLC, Walter Coats, or ValuTech, Inc. (“Brokerprice”) since December 2, 2007 and have not been paid for your services, you could get a payment from a class action settlement.

**Why did I get this Notice?** You received this email notice because a proposed settlement has been reached in a case filed against Brokerpriceopinion.com, Inc., First Valuation Technology, LLC, Cartel Asset Management, LLC, Walter Coats, or ValuTech, Inc. (“Brokerprice”) in the United States District Court for the District of Colorado (*Wornicki v. Brokerpriceopinion.com, Inc.*, Case No. 1:13-CV-13-03258-PAB-KMT) (the “Settlement”).

You may be in the Settlement Class because on or after December 2, 2007 you may have completed broker price opinions on behalf of Brokerprice and may not have been paid for your services.

The Court authorized this Notice because you have a right to know about the proposed Settlement and your options before the Court decides whether to approve the Settlement. Because your rights will be affected by this Settlement, it is extremely important that you read this Notice carefully.

**What is this lawsuit about?** Plaintiffs brought this lawsuit alleging that Defendants breached contractual agreements with real estate brokers and were unjustly enriched by failing to pay brokers for broker price opinions in accordance with their payment terms. The lawsuit seeks payment for broker price opinions that brokers performed on behalf of Defendants. Defendants deny that they did any wrong. The Court has not decided whether Plaintiffs or Defendants are right. The lawyers for Plaintiffs will have to prove their claims at a trial.

**What are the terms of the Settlement?**

Brokerprice will pay a total \$1,567,000 to cover: payments to the class, attorneys’ fees and costs, service awards for Class Representatives, and the costs of administering the settlement. This total amount will be paid to the Settlement Administrator in installments over 47 months. From the fund created by these installments, the Settlement Administrator will make a total of five distributions to Settlement Class Members who file timely, valid claims. With each distribution, the Settlement Administrator will also withdraw funds to cover attorneys’ fees and costs, service awards, and administration costs as approved by the court. The installments and distributions will be made as follows:

**Payment of Installments.** Brokerprice will pay \$10,000 towards settlement administration costs within ten days following entry of the order preliminarily approving the Settlement. Brokerprice will pay \$135,000 within five days of the Settlement’s “Effective Date,” which occurs after the Court grants final approval to the Settlement and the deadline to appeal

settlement approval has run or any appeals are resolved. Brokerprice will pay an additional \$30,000 within 30 days after the Effective Date. Brokerprice will then pay \$30,000 every 30 days for a period of 46 months, except that in the last month Brokerprice will pay \$42,000. Broker price will make the payments to a Settlement Administrator that will hold the funds in trust for Settlement Class Members who file valid claims. Brokerprice will have 30 days to cure any missed payment. If Brokerprice misses a payment and fails to cure within 30 days, then the Settlement and release of claims will be null and void.

**Payments for Amounts Owed to Brokers.** Brokerprice will pay \$1,020,000 for amounts they owe to the Settlement Class. The Settlement Administrator will divide this pro rata among Settlement Class Members who file timely, valid claims in five distributions over 47 months. The first distribution will be in the amount of \$36,000 and will occur within 40 days following the Effective Date. The second distribution will be in the amount of \$258,000 and will occur one year after the first distribution. The third distribution will be in the amount of \$258,000 and will occur one year after the second distribution. The fourth distribution will be in the amount of \$258,000 and will occur one year after the third distribution. The fifth distribution will be in the amount of \$210,000 and will occur ten months after the fourth distribution.

**Changes to Brokerprice's business practices.** Brokerprice has agreed to pay all brokers within ninety days for each BPO that the brokers complete and deliver to Brokerprice. Brokerprice shall maintain a cash reserve in the amount of \$240,000 dedicated to the payment of persons completing and delivering BPOs. Brokerprice shall begin contributing \$18,000 per month to such a cash reserve within ninety days following entry of an order preliminarily approving the Settlement. Brokerprice also has agreed not to use calling scripts, standardized emails or other communications in an attempt to delay payment or alter payment terms for BPOs. Brokerprice has agreed to employ a compliance manager who shall review training material, train staff, and oversee vendor payment practices. If Brokerprice fails to timely make a payment to a broker or to comply with the terms of the Settlement, the Settlement and release will be null and void.

**Attorneys' fees.** Class Counsel will request that Brokerprice pay \$500,000 to compensate them for the time they spent and the expenses they incurred prosecuting this case. Class Counsel will be paid any Court-approved attorneys' fees in five equal distributions over 47 months.

**Class Representative Service Awards.** Plaintiffs will request that Brokerprice pay the Class Representatives, Kathy Wornicki and Edward Laine, a Service Award in the amount of \$5,000 each. These awards compensate the Class Representatives for their time and efforts prosecuting this case. The Class Representatives will be paid any Court-approved service awards in five equal distributions over the course of 47 months.

**Notice costs.** Brokerprice will pay the cost of sending notice to the Settlement Class and administering the Settlement. This cost is estimated to be \$37,000. Of this amount, Brokerprice will pay \$10,000 towards settlement administration costs within ten days following entry of the order preliminarily approving the Settlement. The remaining \$27,000 will come from the first installment paid by Brokerprice.

**Excess or Unclaimed Amounts.** If the Court awards attorneys' fees or service awards in an amount that is less than the requested amount, the difference between the amount requested and the amount awarded will be divided among Settlement Class Members who submit a valid claim. Likewise, any funds from uncashed checks will be distributed to Settlement Class Members if it is administratively feasible to do so. Under no circumstances will any portion of this settlement fund revert to Brokerprice.

**More information.** More information is in a detailed notice available at the Settlement Website at [www.\\*\\*\\*.com](http://www.***.com).

### YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

**Submit a claim form.** To get a cash payment, you must submit a claim form. You may submit a claim form by going to the Settlement Website at [www.\\*\\*\\*.com](http://www.***.com) and following the instructions. You may also request a paper copy of the claim form by calling the Settlement Administrator toll-free at 1-XXX-XXX-XXXX. You must mail your paper claim form to [claims admin ADDRESS]. Your claim form must be postmarked or received through the Settlement Website at [www.\\*\\*\\*.com](http://www.***.com) by **MONTH, DAY, YEAR**.

**Exclude yourself.** To exclude yourself from the settlement, you must send a letter to the Settlement Administrator saying that you want to be excluded from the *Wornicki v. Brokerpriceopinion.com* settlement. You must sign the letter and include the following statement: "I request to be excluded from the Settlement in the Wornicki action." You must mail your exclusion request postmarked no later than **MONTH, DAY, YEAR** to the following address:

Class Administrator  
PO Box x  
\*\*\*, \*\*, \*\*\*\*\*

If you ask to be excluded, you will not get a payment, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) Brokerprice in the future.

**Object.** If you remain a Settlement Class Member, you may object to the Settlement by writing to the Court by no later than **MONTH, DAY, YEAR**. Additional details on how to object or exclude yourself from the Settlement are contained in the detailed notice which is available on the Settlement Website at [insert link to [www.WEBSITE.COM](http://www.WEBSITE.COM)].

**Go to the Fairness Hearing.** The Court will hold a hearing on **MONTH, DAY, YEAR** at **X:00** a.m./p.m. to decide whether to approve the Settlement, including the amount of attorneys' fees and costs to be paid to Class Counsel and the amount of service awards to be paid to the Class Representatives. It is not necessary for you to appear at the hearing, but you

may attend at your own expense. The hearing will be held at the Alfred A. Arraj United States Courthouse A741 in Courtroom A701 in Denver, Colorado.

Further information regarding the Settlement is available at [\[www.WEBSITE.com\]](#). You may also contact the Settlement Administrator toll-free at [1-XXX-XXX-XXXX](#) or by writing to: [\[address\]](#).

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The United States District Court for the District of Colorado has ordered this email notice to be sent. If you wish to UNSUBSCRIBE from future email messages from the Class Settlement Administrator with regard to this Settlement, please click on this [link](#).

**— EXHIBIT B —**

A COURT AUTHORIZED  
THIS LEGAL NOTICE

**If you completed broker price opinions on behalf of Brokerpriceopinion.com, Inc., First Valuation, LLC, First Valuation Services, LLC, First Valuation Technology, LLC, Cartel Asset Management, LLC, Walter Coats, or ValuTech, Inc. ("Brokerprice") since December 2, 2007 and have not been paid for your services, you could get a payment from a class action settlement.**

A settlement has been reached in a class action lawsuit, *Wornicki v. Brokerpriceopinion.com*, No. 1:13-cv-13-03258-PAB-KMT (U.S. District Court D. Colo.), where Plaintiffs allege that Brokerprice failed to pay brokers for BPOs they completed on Brokerprice's behalf.

**Brokerpriceopinion Settlement  
Claims Administrator**

P.O. Box XXXX  
City, State Zip Code

First-Class  
Mail  
US Postage  
Paid  
Permit #\_\_

«Barcode»

Postal Service: Please do not mark barcode

Claim ID #: «ClaimID»

«First1» «Last1»

«CO»

«Addr2»

«Addr1»

«City», «St» «Zip»

«Country»

<Barcode>

**Brokerprice Settlement Claim Form**

To make a claim, fill out each section of this Form, sign where indicated, carefully tear at perforation, and drop in the mail. Claim Forms must be submitted by **Month XX, XXXX**. You may also complete your Claim Form online at [www.XXX.com](http://www.XXX.com). Please have your unique identifier ready.

**Part I: Claimant Identification.**

Name (First, Last): \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

Foreign Country (only if not USA): \_\_\_\_\_

Contact Phone #: (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

**Part II: Claim. Unique Identifier: «ClaimID»**

**Part III: Certification.** By submitting this Claim Form, I certify that the foregoing information supplied by the undersigned is true and correct.

Signature: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Print Name: \_\_\_\_\_



**WHO IS A CLASS MEMBER?**

You may be in the Settlement Class if, on or after December 2, 2007 you completed broker price opinions on behalf of Brokerpriceopinion.com, Inc., First Valuation, LLC, First Valuation Services, LLC, First Valuation Technology, LLC, Cartel Asset Management, LLC, Walter Coats, or ValuTech, Inc. ("Brokerprice") and have not been paid for your services.

**SETTLEMENT TERMS**

Brokerprice will pay (1) a total of \$1,020,000 to cover payments to Settlement Class Members who submit Claim Forms; (2) attorneys' fees to Class Counsel not to exceed \$500,000; (3) court-approved service award of \$5,000 to each of the two Class Representatives; and (4) the costs of administering the settlement. Your share of the fund will depend on the number of claims made. The \$1,020,000 will be divided pro rata among Settlement Class Members who file timely, valid claims based on the total amount owed to the Settlement Class Member at the time the Settlement is preliminarily approved. Brokerprice also agrees to change its business practices to pay all brokers within ninety days, to maintain a cash reserve of \$240,000, and to implement practices and procedures to ensure timely payment to brokers for completion of broker price opinions.

**YOUR RIGHTS AND OPTIONS**

**Submit a Claim Form.** To receive a cash award, fill out the attached Claim Form and drop it in the mail. You may also submit a Claim Form electronically on the Settlement Website: [www.XXX.com](http://www.XXX.com). You may request a Claim Form by calling 1-XXX-XXX-XXXX or you may download a Claim Form on the Settlement Website. Settlement Class Members may only submit one claim. Your Claim Form must be postmarked no later than **Month XX, XXXX**.

**Opt Out.** You may also exclude yourself from the lawsuit and keep your right to sue Brokerprice on your own by sending a written request for exclusion to the Settlement Administrator by **Month XX, XXXX**. If you do not exclude yourself, you will be bound by the settlement and give up your right to sue regarding the settled claims. Please visit the Settlement Website for more details.

**Object.** If you do not exclude yourself, you have the right to comment or object to the proposed settlement. Written objections must be signed, postmarked by **Month XX, XXXX**, and provide the reasons for the objection. Please visit the Settlement Website for more details.

**Do Nothing.** If you do nothing, you will not receive any payment and will lose the right to sue regarding any issues relating to this action. You will be considered part of the Settlement Class, and you will be bound by the Court's decisions.

**Attend the Final Approval Hearing.** The Court has set a hearing to decide whether the settlement should be approved on **Month XX, XXXX** at X:00 **m.** at the Alfred A. Arraj United States Courthouse A741 in Courtroom A701 Denver, Colorado 80294. All persons who timely object to the settlement by **Month XX, XXXX** may ask to appear at the Final Approval Hearing. The Court will also consider Class Counsel's fee request, which will be posted on the Settlement Website on **Month XX, XXXX**. Class Counsel is seeking a payment for fees and costs of up to \$500,000.

**This Notice is only a summary. You can find more details about the settlement on the website: [www.XXX.com](http://www.XXX.com) or by calling toll free 1-XXX-XXX-XXXX. Please do not contact the Court.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NO POSTAGE  
NECESSARY  
IF MAILED IN  
THE UNITED  
STATES

Brokerpriceopinion.com Settlement  
Claims Administrator  
P.O. Box XXXX  
City, State Zip Code

**— EXHIBIT C —**

**If you have completed broker price opinions on behalf of Brokerpriceopinion.com, Inc., First Valuation, LLC, First Valuation Services, LLC, First Valuation Technology, LLC, Cartel Asset Management, LLC, Walter Coats, or ValuTech, Inc. since December 2, 2007 and have not been paid for your services, you could get a payment from a class action settlement.**

*A court authorized this Notice. This is not a solicitation from a lawyer.*

- Brokerpriceopinion.com, Inc., First Valuation, LLC, First Valuation Services, LLC, First Valuation Technology, LLC, Cartel Asset Management, LLC, Walter Coats, and ValuTech, Inc. (“Brokerprice” or “Defendants”) have agreed to pay \$1,020,000 to cover payments to persons who completed broker price opinions on Brokerprice’s behalf but were not paid for their services in accordance with their payment terms. Brokerprice will pay this amount in several installments over the course of four years.
- Brokerprice also agreed to change its business practices to timely pay brokers for every broker price opinion they complete within ninety days. Brokerprice agreed to maintain a reserve fund of \$240,000 to ensure that brokers are timely paid. Brokerprice agreed not to use calling scripts, standardized emails or other communications in an attempt to delay payment or alter payment terms for BPOs. Brokerprice agreed to employ a compliance manager who shall review training material, train staff, and oversee vendor payment practices.
- The Settlement resolves a lawsuit involving allegations that Brokerprice breached contractual agreements with real estate professionals by failing to pay brokers in accordance with the terms of those agreements. The lawsuit also alleges that Defendants were unjustly enriched by failing to pay real estate professionals for broker price opinions.
- Court-appointed lawyers for the class (“Class Counsel”) will ask the Court for up to \$500,000 to compensate them for the fees and costs they incurred prosecuting this action. The two Class Representatives will ask the Court for up to \$5,000 each to compensate them for their time and efforts on behalf of the Class.
- Brokerprice denies all allegations of wrongdoing in the lawsuit. As part of the proposed Settlement, Brokerprice does not admit to any wrongdoing and continues to deny the allegations against it.
- The two sides disagree on whether Plaintiffs and the Class could have won at trial.
- Your legal rights are affected whether you act, or don’t act. Read this Notice carefully.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>SUBMIT A CLAIM FORM BY DATE</b>	This is the only way to receive a payment.
<b>EXCLUDE YOURSELF BY DATE</b>	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against Brokerprice about the legal claims in this case.
<b>OBJECT BY DATE</b>	Write to the Court explaining why you don't like the Settlement.
<b>ATTEND A HEARING ON DATE</b>	Ask to speak in Court about the fairness of the Settlement.
<b>DO NOTHING</b>	Get no payment. Give up rights.

## **BASIC INFORMATION**

### **1. What is this Notice and why should I read it?**

The purpose of this Notice is to let you know that a proposed Settlement has been reached in the class action lawsuit entitled *Wornicki, et al. v. Brokerpriceopinion.com, et al.*, Case No. No. 1:13-CV-03258-PAB-KMT. You have legal rights and options that you may act on before the Court decides whether to approve the proposed Settlement. Because your rights will be affected by this Settlement, it is extremely important that you read this Notice carefully. This Notice summarizes the Settlement and your rights under it.

### **2. What is this lawsuit about?**

In a class action, one or more people, called class representatives, sue on behalf of people who have similar claims. All of these people are a class, or class members. One court resolves the issues for all class members, except those who exclude themselves from the class.

Here, the Class Representatives allege that Defendants failed to pay brokers for the broker price opinions the brokers completed on Defendants' behalf. The Class Representatives allege that Defendants were unjustly enriched by failing to pay the brokers. The Class Representatives seek to be paid for the broker price opinions they complete and for Defendants to timely pay brokers for the broker price opinions they complete going forward.

The Court has certified a class for settlement purposes (the "Settlement Class"). U.S. District Court Judge Philip A. Brimmer (the "Court") is in charge of this class action. Defendants deny that they did anything wrong, and deny that this case would be certified as a class action in litigation.

## THE SETTLEMENT

### 3. Why is there a Settlement?

The Court did not decide in favor of the Plaintiffs or Brokerprice. Instead, both sides agreed to the Settlement. That way, they avoid the cost of a trial, and the people affected will get compensation. The Class Representatives and their attorneys think the Settlement is best for the Settlement Class.

## WHO IS IN THE SETTLEMENT?

### 4. How do I know if I am a part of the Settlement?

The Settlement Class includes: All persons and entities who provided broker price opinions on behalf of Brokerpriceopinion.com, Inc., First Valuation, LLC, First Valuation Services, LLC, First Valuation Technology, LLC, Cartel Asset Management, LLC, Walter Coats, or ValuTech, In. between December 2, 2007 and the date of preliminary approval and who have not been paid for their services in accordance with Defendants' terms of payment.

If you have questions about whether you are part of the Settlement Class, you may call **1-XXX-XXX-XXXX** or visit **www.XXX.com** for more information.

## THE SETTLEMENT BENEFITS – WHAT YOU GET

### 5. What does the Settlement provide?

The Settlement Agreement provides the following:

Brokerprice will pay a total \$1,567,000 to cover: payments to the class, attorneys' fees and costs, service awards for Class Representatives, and the costs of administering the settlement. This total amount will be paid to the Settlement Administrator in installments over 47 months. From the fund created by these installments, the Settlement Administrator will make a total of five distributions to Settlement Class Members who file timely, valid claims. With each distribution, the Settlement Administrator will also withdraw funds to cover attorneys' fees and costs, service awards, and administration costs as approved by the court. The installments and distributions will be made as follows:

**Payment of Installments.** Brokerprice will pay \$10,000 towards settlement administration costs within ten days following entry of the order preliminarily approving the Settlement. Brokerprice will pay \$135,000 within five days of the Settlement's "Effective Date," which occurs after the Court grants final approval to the Settlement and the deadline to appeal settlement approval has run or any appeals are resolved. Brokerprice will pay an additional \$30,000 within 30 days after the Effective Date. Brokerprice will then pay \$30,000 every 30 days for a period of 46 months, except that in the last month Brokerprice will pay \$42,000. Broker price will make the payments to a Settlement Administrator that will hold the funds in trust for Settlement Class Members who file valid claims. Brokerprice will have 30 days to cure any missed payment. If Brokerprice misses a payment and fails to cure within 30 days, then the Settlement and release of claims will be null and void.

**Payments for Amounts Owed to Brokers.** Brokerprice will pay \$1,020,000 for amounts due and owing to the Settlement Class. The Settlement Administrator will divide this pro rata among Settlement Class Members who file timely, valid claims in five distributions. The first distribution will be in the amount of \$36,000 and will occur within 40 days following the Effective Date. The second distribution will be in the amount of \$258,000 and will occur one year after the first distribution. The third distribution will be in the amount of \$258,000 and will occur one year after the second distribution. The fourth distribution will be in the amount of \$258,000 and will occur one year after the third distribution. The fifth distribution will be in the amount of \$210,000 and will occur ten months after the fourth distribution.

**Changes to Brokerprice's business practices.** Brokerprice agreed to pay all brokers within ninety days for each BPO that the brokers complete and deliver to Brokerprice. Brokerprice shall maintain a cash reserve in the amount of \$240,000 dedicated to the payment of persons completing and delivering BPOs. Brokerprice shall begin contributing \$18,000 per month to such a cash reserve within ninety days following entry of an order preliminarily approving the Settlement. Brokerprice also has agreed not to use calling scripts, standardized emails or other communications in an attempt to delay payment or alter payment terms for BPOs. Brokerprice has agreed to employ a compliance manager who shall review training material, train staff, and oversee vendor payment practices. If Brokerprice fails to timely make a payment to a broker or to comply with the terms of the Settlement, the Settlement and release will be null and void.

**Attorneys' fees and litigation costs.** Brokerprice agreed to pay up to \$500,000 to compensate Class Counsel for the time they spent and the expenses they incurred prosecuting this case. The Court must approve Class Counsel's requested attorney's fees. If the Court awards less than this amount, the difference will be added to the award to the Settlement Class. Any fee awarded to Class Counsel will be paid in five equal distributions over 47 months according to the schedule set forth in section 14 below. No amount will revert to Defendants.

**Class Representatives' service awards.** Brokerprice agreed to pay the Class Representatives, Kathy Wornicki and Edward Laine, Service Awards of up to \$5,000 each. These awards compensate the Class Representatives for their time and efforts prosecuting this case. The Class Representatives' Service Awards will be paid in five equal distributions over a period of 47 months according to the schedule set forth in section 14 below. The Court must approve the Class Representatives' requested service awards. If the Court awards less than this amount, the difference will be added to the award to the Settlement Class. No amount will revert to Defendants.

**Notice costs.** Brokerprice will pay the cost of sending notice to the Settlement Class and administering the Settlement. This cost is estimated to be \$37,000. Of this amount, Brokerprice will pay \$10,000 towards settlement administration costs within ten days following entry of the order preliminarily approving the Settlement. The remaining \$27,000 will come from the first installment paid by Brokerprice.

**Excess or Unclaimed Amounts.** Any excess or unclaimed portion of this settlement fund will revert to the class and, if administratively feasible, be distributed pro rata to Settlement Class Members who filed timely, valid claims. If it is not administratively feasible to distribute residual funds, the funds will be distributed to a charity proposed by the Parties and approved by the Court. Under no circumstances will any portion of this settlement fund revert to Brokerprice. Under no circumstances will any portion of this settlement fund revert to Brokerprice.

6. How much will my payment be?

Each person who submits a Claim Form will receive a proportionate share of the \$1,020,000 that Brokerprice agreed to pay to brokers for past amounts due. The determination of each Settlement Class Member's share will be based on information from Defendants' business records. Your share of the Settlement will depend on the number of Settlement Class Members who submit claims and will be calculated according to the following formula:

\$1,020,000 **divided by** the total amount Defendants owe all brokers as set forth in Defendants' business records **times** the amount owed to the individual Settlement Class member.

For example, assume Defendants owe all claimants \$5,000,000 and owe Class member Mary \$5,000. Claimant Mary's pro rata share of the Class Payment would be  $\$1,020,000 / \$5,000,000 \times \$5,000 = \$1,020$ .

## HOW YOU GET A PAYMENT – SUBMITTING A CLAIM FORM

### 7. How do I make a claim?

To qualify for payment, you must submit a Claim Form by **Month XX, XXXX**. You may submit a Claim Form online by going to the Settlement Website at **www.XXX.com** and following directions. You also may download a paper Claim Form on the Settlement Website or call the Settlement Administrator at **1-XXX-XXX-XXXX** to request a paper Claim Form. Claim Forms sent by mail must be postmarked by **Month XX, XXXX** and mailed to:

Brokerpriceopinion.com Settlement  
Settlement Administrator  
**P.O. Box. XXXX**  
**City, State Zip Code**

### 8. When will I get my payment?

The Court will hold a hearing on **Month XX, XXXX** to decide whether to approve the Settlement. If the Settlement is approved, appeals may still follow. If the Settlement is approved, the Settlement Class will be paid according to the following schedule:

Distribution	Date	Amount
First Distribution	40 days after Effective Date	\$36,000
Second Distribution	One year after First Distribution	\$258,000
Third Distribution	One year after Second Distribution	\$258,000
Fourth Distribution	One year after Third Distribution	\$258,000
Fifth Distribution	Ten Months after Fourth Distribution	\$210,000

### 9. What am I giving up to get a payment or stay in the Settlement Class?

Unless you exclude yourself, you are staying in the Settlement Class and you will be a Settlement Class Member. That means you can't sue, continue to sue, or be part of any other lawsuit against Defendants regarding the claims that are subject to the Settlement. It also means that all of the Court's orders will apply to you and legally bind you.

The Settlement Agreement (available at [www.XXX.com](http://www.XXX.com)) describes the claims you are releasing and against whom you are releasing claims in detail, so read it carefully. To summarize, the release includes, but is not limited to, claims for breach of contract, fraudulent concealment, and unjust enrichment arising from Brokerprice's failure to pay brokers for all the broker price opinions they complete in accordance with the terms of the agreements.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want a payment from this Settlement, but you want to keep the right to sue or continue to sue Brokerprice, then you must take steps to remove yourself from the Settlement Class. This is called excluding yourself—or is sometimes referred to as “opting out” of the Settlement Class.

### 10. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a letter saying that you want to be excluded from the *Wornicki v. Brokerpriceopinion.com* Settlement. You must sign the letter and include the following statement: “I request to be excluded from the Settlement in the Brokerpriceopinion.com action.” Please be sure to include your name, address, telephone number, and signature. You must mail your exclusion request postmarked no later than **Month XX, XXXX** to the following address:

Brokerprice Settlement  
Settlement Administrator  
**P.O. Box XXXX**  
**City, State Zip Code**

You cannot exclude yourself on the phone or by fax or email. If you ask to be excluded, you will not get any payment, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) Brokerprice in the future.

### 11. If I don't exclude myself, can I sue Brokerprice for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Brokerprice for the claims that this Settlement resolves. If you already have a lawsuit that may relate to the claims being released as part of this class Settlement, you should speak to your lawyer in that case immediately. You must exclude yourself from this Settlement Class to continue your own lawsuit. Remember, the exclusion deadline is **Month XX, XXXX**.

### 12. If I exclude myself, can I get anything from this Settlement?

No. If you exclude yourself, do not submit a Claim Form to ask for a payment.

## THE LAWYERS REPRESENTING YOU

QUESTIONS? CALL **1-XXX-XXX-XXXX** TOLL FREE OR VISIT **WWW.XXX.COM**



### 13. Do I have a lawyer in this case?

The Court has appointed Beth E. Terrell, Jennifer Rust Murray and Terrell Marshall Law Group PLLC; Jeffrey A. Berens and Berens Law LLC; and, Stefan Coleman and the Law Offices of Stefan Coleman LLCs Class Counsel to represent you and other Settlement Class Members. These lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

### 14. How will the lawyers be paid?

Class Counsel will ask the Court to approve payment of up to \$500,000 to them for attorneys' fees and costs. This payment would pay Class Counsel for investigating the facts, litigating the case, and negotiating the Settlement. Class Counsel also will request a service award of \$5,000 each for the two Class Representatives to compensate them for their time and effort. If the Court awards less than these amounts, the amount of the reduction will be added to the amount awarded to Settlement Class Members that will be distributed on a pro rata basis according to the schedule set forth in section 8 above. Class Counsel and the Class Representatives will be paid according to the following schedule:

<b>Installment</b>	<b>Date</b>	<b>Attorney Fee Amount</b>	<b>Service Award Amount</b>
Installment One	40 days after Effective Date	\$100,000	\$1,000
Installment Two	One year after Installment One	\$100,000	\$1,000
Installment Three	One year after Installment Two	\$100,000	\$1,000
Installment Four	One year after Installment Three	\$100,000	\$1,000
Installment Five	Ten Months after Installment Four	\$100,000	\$1,000

## OBJECTING TO THE SETTLEMENT

### 15. How do I object to the Settlement?

If you are a Settlement Class member and you do not exclude yourself from the Settlement Class, you can object to the Settlement if you don't like any part of it. You may give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to the *Wornicki v. Brokerpriceopinion.com* Settlement. You must make your objection in writing and file it with the Court. The written objection must (a) contain information sufficient to allow the parties to confirm that you are a member of the Settlement Class; and (b) include a statement of your specific objections, as well as any documents that you would like the Court to consider. You must file the objection with the Court no later than **Month XX, XXXX**.

*Wornicki v. Brokerpriceopinion.com*  
Case No. 1:13-CV-03258-PAB-KMT  
Clerk of the Court  
U.S. District Court for the District of Colorado  
Alfred A. Arraj United States Courthouse A741, Courtroom A701  
Denver, Colorado 80294

## 16. What's the difference between objecting and excluding myself from the Settlement?

Objecting simply means 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 from the Settlement Class 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 FAIRNESS HEARING

## 17. When and where will the Court hold a hearing on the fairness of the Settlement?

The Court will hold the final fairness hearing at **X:00 x.m.** on **Month XX, XXXX**, before the Honorable Phillip A. Brimmer at the United States District Court for the District of Colorado, Alfred A. Arraj United States Courthouse A741 in Courtroom A701 Denver, Colorado 80294. The purpose of the hearing is for the Court to determine whether the Settlement is fair, reasonable, adequate, and in the best interests of the class. At the hearing, the Court will hear any objections and arguments concerning the fairness of the proposed Settlement, including those related to the amount requested by Class Counsel for attorneys' fees and expenses and the service awards to the Class Representatives. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

**Note:** The date and time of the fairness hearing are subject to change by Court Order. Any changes will be posted at the Settlement website, [www.XXX.com](http://www.XXX.com).

## 18. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. But you are welcome to come to the hearing at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as your written objection was filed or mailed on time, and meets the other criteria described in the Settlement Agreement, the Court will consider it. You may also pay a lawyer to attend, but you don't have to.

## 19. May I speak at the hearing?

If you do not exclude yourself from the Settlement Class, you may ask the Court for permission to speak at the hearing concerning any part of the proposed Settlement Agreement. If you filed an objection (*see* section 15, above) and intend to appear at the hearing, you must state your intention to do so in your objection. To speak, you must send a letter saying that it is your "Notice of Intention to Appear" in "*Wornicki v. Brokerpriceopinion.com, Case No. 1:13-CV-03258-PAB-KMT.*" Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be received at the address in Question 15, no later than **Month XX, XXXX**. You cannot speak at the hearing if you exclude yourself.

## IF YOU DO NOTHING

### 20. What happens if I do nothing at all?

If you do nothing, you'll get no money from this Settlement. But, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Brokerprice about the legal issues released in this case.

## GETTING MORE INFORMATION

### 21. Are there more details about the Settlement?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You may review the Settlement Agreement on the Settlement Website at [www.XXX.com](http://www.XXX.com). You can also get a copy of the Settlement Agreement by writing to Jennifer Murray, Terrell Marshall Law Group PLLC, 936 North 34th Street, Suite 300, Seattle, Washington 98103.

### 22. How do I get more information?

You can call [1-XXX-XXX-XXXX](tel:1-XXX-XXX-XXXX) toll free; write to Brokerprice Settlement Administrator, [P.O. Box XXXX, City, State Zip Code](mailto:P.O. Box XXXX, City, State Zip Code); or visit the website at [www.XXX.com](http://www.XXX.com), where you will find answers to common questions about the Settlement, a Claim Form, plus other information to help you determine whether you are a member of the Settlement Class. You also may write to Terrell Marshall Law Group PLLC, 936 North 34th Street, Suite 300, Seattle, Washington 98103.

**PLEASE DO NOT CONTACT THE COURT, THE JUDGE, OR THE DEFENDANT WITH QUESTIONS ABOUT THE SETTLEMENT OR CLAIMS PROCESS.**

**— EXHIBIT D —**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:13-cv-03258-PAB-KMT

KATHY WORNICKI; and  
EDWARD LAINE, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

BROKERPRICEOPINION.COM, INC.;  
WALTER COATS;  
FIRST VALUATION, LLC;  
FIRST VALUATION SERVICES, LLC;  
FIRST VALUATION TECHNOLOGY, LLC;  
VALUTECH, INC.; and  
CARTEL ASSET MANAGEMENT, LLC.

Defendants.

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**[PROPOSED] FINAL APPROVAL ORDER OF JUDGMENT AND DISMISSAL WITH  
PREJUDICE**

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This matter came before the Court upon consideration of Plaintiffs' Motion for Final Approval of Class Action Settlement and Class Counsel's Motion for an Award of Fees, Costs, and Class Representative Service Awards. After considering the motions and the declarations and exhibits submitted with the motions, the Court enters this Final Order of Judgment and Dismissal with Prejudice ("Final Order of Judgment"), which constitutes a final adjudication on the merits of all claims of the Settlement Class. It is **HEREBY ORDERED** that the motions are **GRANTED**, the Settlement Class is certified, the Class Action Settlement Agreement

(“Agreement”) is approved, Class Counsel are awarded \$ [REDACTED] in fees and \$ [REDACTED] in costs, and service awards in the amount of \$ [REDACTED] each are approved for Plaintiffs Kathy Wornicki and Edward Laine.

**WHEREAS**, on or about D, 2016, the Parties filed the Agreement (Docket No. [REDACTED]) which sets for the terms and conditions of the settlement and release of certain claims against Defendants;

**WHEREAS**, Plaintiffs and Class Counsel have filed motions, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for orders finally approving the Agreement, which will dismiss this Action with prejudice, and granting Class Counsel’s request for an award of fees, costs, and service awards to the Plaintiffs;

**WHEREAS**, the Court preliminary approved the Settlement on [REDACTED], and Class Notice was given to all Settlement Class Members pursuant to that Preliminary Approval Order;

**WHEREAS**, the Court has reviewed and considered all papers filed in support of and in opposition to the Settlement, and all exhibits thereto, and has held a hearing after Class Notice to the Settlement Class in order to confirm that the Settlement is fair, reasonable, and adequate, and to determine whether the Final Order of Judgment should be entered in this Action pursuant to the terms and conditions set forth in the Agreement (“Final Approval Hearing”) on [REDACTED], at which time the Parties and all interested persons were heard in support of and in opposition to the Settlement; and

**WHEREAS**, upon consideration of all of the above, the Court finds that the Settlement is fair, adequate, and reasonable to the Settlement Class, within the authority of the Parties, and the result of extensive arm's length negotiations.

**THEREFORE**, the following is **HEREBY ORDERED**:

1. This Court has jurisdiction over the subject matter of this Action and personal jurisdiction over the Parties and the Settlement Class.
2. The definitions and provisions of the Agreement are incorporated in this Order as though fully set forth herein.
3. Pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, and for the purposes of Settlement only, the Settlement Class is certified as follows:

All persons and entities who provided broker price opinions on behalf of Brokerpriceopinion.com, Inc., First Valuation, LLC, First Valuation Services, LLC, First Valuation Technology, LLC, Cartel Asset Management, LLC, Walter Coats, or ValuTech, In. between December 2, 2007 and the date of preliminary approval and who have not been paid for their services in accordance with Defendants' terms of payment.

4. For purposes of settlement, Plaintiffs Kathy Wornicki and Edward Laine are hereby appointed the "Class Representatives."
5. For purposes of settlement, Beth E. Terrell, Jennifer Rust Murray and Terrell Marshall Law Group PLLC; Jeffrey A. Berens and Berens Law LLC; and, Stefan Coleman and the Law Offices of Stefan Coleman LLC are hereby appointed as Class Counsel.
6. This Court finds that the Class Notice given to members of the Settlement Class pursuant to the terms of the Agreement fully and accurately informed such members of all

material elements of this settlement and constituted valid, sufficient, and due notice to all such members. The Class Notice fully complied with due process, Rule 23 of the Federal Rules of Civil Procedure, and with all other applicable law. Accordingly, this Court makes final the conditional certification set forth in the Preliminary Approval Order.

7. Settlement Class Members who timely submitted valid requests for exclusion are excluded from the Settlement Class and are not bound by this Order and Judgment. Attached hereto as Exhibit A is a list of all Settlement Class Members who opted out of the Settlement Class.

8. The Court finally approves this Settlement, and finds that it is fair, reasonable, and adequate.

9. The Parties, their counsel, and the Settlement Administrator shall fulfill their obligations and duties under the Agreement.

10. The Court dismisses with prejudice this Action, the claims and the Defendants.

11. The Court adjudges that Plaintiffs and the Settlement Class Members are deemed to have fully, finally, completely, and forever released, relinquished, and discharged the causes of action raised in the Action, whether for damages or injunctive relief.

12. Plaintiffs and the Settlement Class Members are permanently enjoined and barred from asserting, initiating, prosecuting, or continuing any of the claims released by the Settlement Agreement.

13. The Settlement Administrator completed the delivery of Class Notice according to the terms of the Agreement. The Class Notice given by the Settlement Administrator to the



Settlement Class, which set forth the principal terms of the Agreement and other matters, was the best practicable notice under the circumstances. The notice program prescribed by the Agreement was reasonable and provided due and adequate notice of these proceedings and of the matters set forth therein, including the terms of the Agreement, to all parties entitled to such Class Notice. The Class Notice given to members of the Class satisfied the requirements of Federal Rule of Civil Procedure 23 and the requirements of constitutional due process. The Class Notice was reasonably calculated under the circumstances to apprise Settlement Class Members of the pendency of this Action, all material elements of the settlement, and their opportunity to exclude themselves from, object to, or comment on the settlement and appear at the final fairness hearing. The Court has afforded a full opportunity to all Settlement Class Members to be heard. Accordingly, the Court determines that all members of the Settlement Class, except those who timely excluded themselves from the Settlement Class, are bound by this Final Order of Judgment.

14. Within ten (10) days after the filing of the proposed Agreement in this Court, a notice of the proposed Settlement was served upon the appropriate state official of each State in which a Settlement Class Member resides and upon the Attorney General of the United States. The Court finds that the notice provided satisfied the requirements of 28 U.S.C. § 1715(b) and that more than ninety (90) days have elapsed since the notice was provided, as required by 28 U.S.C. § 1715(d).

15. The Court approves payment of attorneys' fees and costs to Class Counsel in the amount of \$ [REDACTED] in fees and out-of-pocket litigation costs. These amounts shall be paid

from the Settlement Fund pursuant to the terms of the Agreement. The Court finds these amounts to be appropriate and reasonable in light of the work performed by Class Counsel and the benefits obtained by the Settlement Class Members. In addition, the Court finds that the Agreement was negotiated at arms' length and without collusion.

16. The Court approves payment of service awards to Plaintiffs in the amount of \$            each. This amount shall be paid from the Settlement Fund pursuant to the terms of the Agreement.

17. Neither this Final Order of Judgment nor the Agreement is an admission or concession by Defendants of the validity of any claims or of any liability or wrongdoing or of any violation of law. This Final Order of Judgment and the Agreement do not constitute a concession and shall not be used as an admission or indication of any wrongdoing, fault, or omission by Defendants or any other person in connection with any transaction, event, or occurrence, and neither this Final Order of Judgment nor the Agreement nor any related documents in this proceeding, nor any reports or accounts thereof, shall be offered or received in evidence in any civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to consummate or enforce this Final Order of Judgment, the Agreement, and all releases given thereunder, or to establish the affirmative defenses of *res judicata* or collateral estoppel barring the pursuit of claims released in the Agreement. This Final Order of Judgment also does not constitute any opinion or position of this Court as to the merits of the claims and defenses related to this Action.

18. If final approval does not occur, the parties shall be returned to the status quo ex ante, for all litigation purposes, as if no settlement had been negotiated or entered into and thus this Final Order of Judgment and all other findings or stipulations regarding the Settlement shall be automatically void, vacated, and treated as if never filed.

19. This Court retains jurisdiction to consider all further matters arising out of or connected with the Settlement, including the implementation and enforcement of the Agreement.

20. There were      objections to the settlement. They are all overruled. Thus, the Court finds that no justifiable reason exists for delaying entry of this Final Order of Judgment.

**THEREFORE**, the Clerk of the Court is **HEREBY ORDERED** to enter this Final Order of Judgment and Dismissal with Prejudice.

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2017.

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UNITED STATES DISTRICT JUDGE

**— EXHIBIT E —**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:13-cv-03258-PAB-KMT

KATHY WORNICKI; and  
EDWARD LAINE, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

BROKERPRICEOPINION.COM, INC.;  
WALTER COATS;  
FIRST VALUATION, LLC;  
FIRST VALUATION SERVICES, LLC;  
FIRST VALUATION TECHNOLOGY, LLC;  
VALUTECH, INC.; and  
CARTEL ASSET MANAGEMENT, LLC.

Defendants.

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

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WHEREAS, on or about March     , 2017, the Parties entered into a Class Action Settlement Agreement (“Agreement”) that sets forth the terms and conditions of the settlement and release of certain claims against Defendants Brokerpriceopinion.com, Inc., First Valuation, LLC, First Valuation Services, LLC, First Valuation Technology, LLC, Cartel Asset Management, LLC, Walter Coats, or ValuTech, Inc. (“Defendants” or “Brokerprice”); the Court having reviewed and considered the Agreement and all of the filings, records, and other submissions; the Court finds upon a preliminary examination that the Agreement appears fair,

reasonable, and adequate, and that a hearing should and will be held after notice to the Settlement Class in order to confirm that the Agreement is fair, reasonable, and adequate, and to determine whether the Settlement Order and Final Judgment should be entered in this Action pursuant to the terms and conditions set forth in the Agreement (“Final Approval Hearing”).

**THEREFORE, THE COURT FINDS AND CONCLUDES AS FOLLOWS:**

1. This Court has jurisdiction over the subject matter of this Action and personal jurisdiction over the Parties and the Settlement Class.

2. The Court finds that (a) the Agreement resulted from arm’s-length negotiations, with participation of an experienced mediator, and (b) the Agreement is sufficient to warrant notice of the Settlement and the Final Approval Hearing to the members of the Settlement Class.

3. Pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, and for the purposes of settlement only, the Settlement Class is preliminarily certified as follows:

All persons and entities who provided broker price opinions on behalf of Brokerpriceopinion.com, Inc., First Valuation, LLC, First Valuation Services, LLC, First Valuation Technology, LLC, Cartel Asset Management, LLC, Walter Coats, or ValuTech, In. between December 2, 2007 and the date of preliminary approval and who have not been paid for their services in accordance with Defendants’ terms of payment.

The Settlement Class does not include any persons who validly request exclusion from the Class.

4. For purposes of settlement only, the Court hereby appoints Plaintiffs Kathy Wornicki and Edward Laine as “Class Representatives” pursuant to Rule 23 of the Federal Rules

of Civil Procedure, and finds that, for settlement purposes only, these Class Representatives have and will fairly and adequately protect the interests of the Settlement Class.

5. For purposes of settlement only, the Court appoints Beth E. Terrell, Jennifer Rust Murray and Terrell Marshall Law Group PLLC; Jeffrey A. Berens and Berens Law LLC; and, Stefan Coleman and the Law Offices of Stefan Coleman LLC as Class Counsel and finds that Class Counsel have and will fairly and adequately protect the interests of the Settlement Class.

6. The Court preliminarily finds that the Agreement is fundamentally fair, adequate, and reasonable, and that the Settlement Class satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure as follows:

- a. The number of members in the Settlement Class are so numerous that joinder of all members is impracticable;
- b. There are common questions of law and fact;
- c. The claims of the Class Representatives are typical of the claims of the Settlement Class;
- d. The Class Representatives and Class Counsel appear are able to fairly and adequately represent and protect the interests of the Settlement Class;
- e. The questions of law and fact common to the members of the Settlement Class predominate over individual questions of law and fact; and
- f. A class action settlement is superior to other methods of adjudication.

7. The Court appoints JND Legal Administration as the Settlement Administrator, who shall fulfill the functions, duties, and responsibilities of the Settlement Administrator as set forth in the Agreement and this Order.

8. The Court approves the proposed forms of notice and notice plan for giving direct notice to the Settlement Class by email and U.S. Mail as set forth in the Agreement and its attached exhibits (“Notice Plan”). The Notice Plan, in form, method, and content, fully complies with the requirements of Rule 23 and due process, constitutes the best notice practicable under the circumstances, and is due and sufficient notice to all persons entitled thereto. The Court finds that the Notice Plan is reasonably calculated to, under all circumstances, reasonably apprise the persons in the Settlement Class of the pendency of this action, the terms of the Agreement, the right to object to the settlement and to exclude themselves from the Settlement Class, and the process for submitting a claim for monetary relief.

9. Pursuant to the Agreement, the Settlement Administrator shall provide individual notice via email to every Settlement Class member for whom an email address is available in Defendants’ records. For any Settlement Class member for whom an email address is not available or for any Settlement Class member whose email is returned undeliverable, the Settlement Administrator will provide individual notice by sending a postcard through U.S. Mail to the most recent mailing address of the Settlement Class member. The initial Notices will be sent no later than                     , which is thirty (30) days after entry of this Order.

10. Members of the Settlement Class may exclude themselves from the Settlement Class by advising the Settlement Administrator in writing no later than                                      (“Opt-



Out Deadline”), which is sixty (60) days after the date notice is sent to the Settlement Class. All such writings must be signed, and if mailed, must be postmarked no later than the Opt-Out Deadline.

11. Any Settlement Class Member who desires to object to the fairness of this settlement must file a written objection with the Court by [REDACTED] (“Objection Deadline”), which is sixty (60) days from the date notice is mailed to the Settlement Class. The objection must provide the objector’s name, address, telephone number, and the reason(s) for the objection.

12. Anyone who properly objects, as described herein, may appear at the Final Approval Hearing, including through an attorney hired at the objector’s expense. Such objectors or their attorneys intending to appear at the Final Approval Hearing must file a notice of appearance with this Court no later than ten (10) days prior to the Final Approval Hearing. Any member of the Settlement Class who fails to comply with this provision shall waive and forfeit any and all rights to appear and/or object separately, and shall be bound by the terms of this settlement and the orders and judgments of this Court. Class Counsel shall file responses to any valid objections no later than fifteen (15) days prior to the Final Approval Hearing. Brokerprice’s counsel also may file responses, but no later than fifteen (15) days prior to the Final Approval Hearing.

13. 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 B

to the Agreement. A properly executed Claim Form must be submitted electronically through the Settlement Website or postmarked by a date specified in the Class Notice.

14. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure a hearing will be held before this Court to finally determine whether the prerequisites for class certification and treatment under Rule 23(a) and (b) of the Federal Rules of Civil Procedure are met; to determine whether the settlement is fair, reasonable, and adequate, and should be approved by this Court; to determine whether the Settlement Order and Final Judgment under this settlement should be entered; to consider the application for attorneys' fees and expenses of Class Counsel; to consider the application for a service award to the class representative; to consider the distribution of the Settlement Fund pursuant to the Agreement; and to rule on any other matters that the Court may deem appropriate. At the Final Approval Hearing, the Court may enter the Settlement Order and Final Judgment in accordance with the Agreement that will adjudicate the rights of the Settlement Class Members.

15. The Final Approval Hearing is scheduled for [REDACTED].

16. All memoranda and other submissions in support of the Settlement shall be filed no later than fifteen (15) days prior to the Final Approval Hearing, including proof of compliance with the notice provisions of the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715.

17. All notice and Settlement Administration expenses shall be paid pursuant to the Agreement.

18. On or before thirty (30) days after the Notice Date, Class Counsel shall file and serve an application for an award of attorneys' fees and out-of-pocket costs, and an application for service awards to Plaintiff. The application shall be posted on the Settlement Website within twenty-four hours after the day it is filed.

19. On or before fifteen (15) days prior to the Final Approval Hearing, Class Counsel shall file and serve a motion for final approval and responses to any objections.

20. All members of the Settlement Class will be bound by all orders pertaining to the settlement unless such persons request exclusion from the Settlement Class. Members of the Settlement Class who do not timely and validly request exclusion shall be so bound, even if they have previously or subsequently initiated individual litigation or other proceedings against Defendants.

21. Settlement Class Members do not need to appear at the Final Approval Hearing or take any other action to indicate their approval and partake in this settlement.

22. This Order and the settlement are not admissions or concessions by Defendants of any liability or wrongdoing. This Order is not a determination of liability or wrongdoing. This Order also does not constitute any opinion or position of this Court as to the merits of the claims and defenses related to this Action.

23. This Action is stayed until further ordered by this Court, except such actions and proceedings that may be necessary to implement this Settlement and issue a Final Approval Order and Judgment.

24. Pending final determination of whether the settlement should be approved, Plaintiffs, 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 Defendants any action or proceeding in any court or tribunal regarding the claims alleged in this lawsuit, 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).

25. If Final Approval does not occur, the parties shall be returned to the status quo ex ante, for all litigation purposes, as if no settlement had been negotiated or entered into and thus this Order and all other findings or stipulations regarding the settlement, including, but not limited to, certification of the Settlement Class shall be automatically void, vacated, and treated as if never filed.

26. Counsel for the parties are hereby authorized to utilize all reasonable procedures in connection with the administration of the settlement which are not materially inconsistent with either this Order or the terms of the Settlement Agreement.

27. This Court retains jurisdiction to consider all further matters arising out of or connected with the settlement. 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.

28. The following timeline will govern proceedings through the Final Approval Hearing:

Thirty (30) days after entry of this Order	Deadline to make the Settlement Website available
Thirty (30) days after entry of this Order	Deadline to mail notice
Sixty (60) days after entry of this Order	Deadline for Class Counsel to file fee petition and request for service awards
Ninety (90) days after entry of this Order	Deadline for Settlement Class Members to submit claims, exclusion requests, and objections
Fifteen (15) days before Final Approval Hearing	Deadline to file responses to objections and motion for final approval
At the court's convenience but no earlier than 110 days after entry of this Order	Final Approval Hearing

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2017.

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UNITED STATES DISTRICT JUDGE

**— EXHIBIT F —**

## SETTLEMENT AGREEMENT - EXHIBIT F

### ***PROMISSORY NOTE***

\$1,567,000.00      Date: [EFFECTIVE DATE]

For value received, the undersigned Brokerpriceopinion.com, Inc., First Valuation, LLC, First Valuation Services, LLC, First Valuation Technology, LLC, Cartel Asset Management, LLC, Walter Coats, and ValuTech, Inc. (the “Borrower”), at 6300 South Syracuse Way, Suite 220, Centennial, Colorado 80111, promises to pay to the order of Kathy Wornicki, Edward Laine, Terrell Marshall Law Group PLLC, and the Settlement Class as defined in the Settlement Agreement attached hereto as Exhibit A (the “Lender”), at 936 North 34th Street, Suite 300, Seattle, Washington 98103 (or at such other place as the Lender may designate in writing), the sum of \$1,567,000.00 according to the schedule set forth below.

#### **I. TERMS OF REPAYMENT**

##### **A. Payments**

The unpaid principal shall be payable according to the following schedule:

\$10,000—[DATE], which is within ten days following entry of Preliminary Approval Order;

\$135,000 — [DATE], which is within five days following the Effective Date;

\$30,000— [DATE], which is within thirty days following the Effective Date;

\$30,000—every 30 days for a period of 45 months following the \$30,000 payment set forth above; and

\$42,000— [DATE], which is in the forty-sixth month.

##### **B. Acceleration of Debt**

If any payment obligation under this Note is not paid when due, the remaining unpaid principal balance shall become due immediately at the option of the Lender. In addition, according to the terms of the Settlement Agreement, the Settlement Agreement and Release shall be null and void.

#### **II. SECURITY**

This Note is secured by all tangible and intangible personal property of Defendants including but not limited to Defendants’ intellectual property pursuant to the Security Agreement attached as Exhibit A. The Lender is not required to rely on the above security instrument and the assets

## SETTLEMENT AGREEMENT - EXHIBIT F

secured therein for the payment of this Note in the case of default, but may proceed directly against the Borrower.

### **III. PREPAYMENT**

The Borrower reserves the right to prepay this Note (in whole or in part) prior to the Due Date with no prepayment penalty. Any such prepayment shall be applied against the installments of principal due under this note in the inverse order of their maturity.

### **IV. COLLECTION COSTS**

If any payment obligation under this Note is not paid when due, the Borrower promises to pay all costs of collection, including reasonable attorney fees, whether or not a lawsuit is commenced as part of the collection process.

### **V. DEFAULT**

If any of the following events of default occur, this Note and any other obligations of the Borrower to the Lender, shall become due immediately, without demand or notice:

- 1) the failure of the Borrower to pay amounts owed when due;
- 2) the liquidation, dissolution, incompetency or death of the Borrower;
- 3) the filing of bankruptcy proceedings involving the Borrower as a debtor;
- 4) the application for the appointment of a receiver for the Borrower;
- 5) the making of a general assignment for the benefit of the Borrower's creditors;
- 6) the insolvency of the Borrower;
- 7) a misrepresentation by the Borrower to the Lender for the purpose of obtaining or extending credit.

In addition, the Borrower shall be in default if there is a sale, transfer, assignment, or any other disposition of any assets pledged as security for the payment of this Note, or if there is a default in any security agreement which secures this Note. In the event Borrower sells a material portion of their business or assets, Borrower shall provide Lender 60 days-notice and shall assign any liability to the successor.

### **VI. SEVERABILITY OF PROVISIONS**

If any one or more of the provisions of this Note are determined to be unenforceable, in whole or in part, for any reason, the remaining provisions shall remain fully operative.



## SETTLEMENT AGREEMENT - EXHIBIT F

### **VII. MISCELLANEOUS**

All payments on this Note shall be paid in the legal currency of the United States. The Borrower waives presentment for payment, protest, and notice of protest and demand of this Note.

No delay in enforcing any right of the Lender under this Note, or assignment by Lender of this Note, or failure to accelerate the debt evidenced hereby by reason of default in the payment of a monthly installment or the acceptance of a past-due installment shall be construed as a waiver of the right of Lender to thereafter insist upon strict compliance with the terms of this Note without notice being given to Borrower. All rights of the Lender under this Note are cumulative and may be exercised concurrently or consecutively at the Lender's option.

This note may not be amended without the written approval of the holder.

### **VIII. GOVERNING LAW**

This Note shall be construed in accordance with the laws of the State of Colorado.

### **IX. SIGNATURES**

This Note shall be signed by G.W. Merrick & Associates, LLC, on behalf of Brokerpriceopinion.com, Inc., First Valuation, LLC, First Valuation Services, LLC, First Valuation Technology, LLC, Cartel Asset Management, LLC, Walter Coats, and ValuTech, Inc. and Kathy Wornicki, Edward Laine, Terrell Marshall Law Group PLLC, and the Settlement Class as defined in the Settlement Agreement attached hereto as Exhibit A.

**[SIGNATURE PAGE FOLLOWS]**

SETTLEMENT AGREEMENT - EXHIBIT F

**IN WITNESS WHEREOF**, this Agreement has been executed and delivered in the manner prescribed by law as of the date first written above.

SETTLEMENT AGREEMENT - EXHIBIT F

Signed this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_,  
\_\_\_\_\_.

Borrower:  
Brokerpriceopinion.com, Inc.

By: \_\_\_\_\_  
Brokerpriceopinion.com, Inc.

First Valuation, LLC

By: \_\_\_\_\_  
First Valuation, LLC

First Valuation Services, LLC

By: \_\_\_\_\_  
First Valuation Services, LLC

First Valuation Technology, LLC

By: \_\_\_\_\_  
First Valuation Technology, LLC

Cartel Asset Management, LLC

By: \_\_\_\_\_  
Cartel Asset Management, LLC

Walter Coats

By: \_\_\_\_\_  
Walter Coats

ValuTech, Inc.

By: \_\_\_\_\_  
ValuTech, Inc.

SETTLEMENT AGREEMENT - EXHIBIT F

Lender:

Kathy Wornicki, Edward Laine, Terrell Marshall Law Group PLLC, and the Settlement Class as defined in the Settlement Agreement attached hereto as Exhibit A

By: \_\_\_\_\_  
Terrell Marshall Law Group PLLC on behalf of Lender

EXHIBIT A TO PROMISSORY NOTE

**SECURITY AGREEMENT**

**[TO BE EXECUTED AS OF EFFECTIVE DATE]**

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_ (“Debtor”), for valuable consideration, receipt of which is acknowledged, grants to Edward Laine, Kathy Wornicki, Terrell Marshall Law Group PLLC, and the Settlement Class as defined in the class action Settlement Agreement executed by the Parties on March 10, 2017 (“Secured Party”) a security interest in the following property of Debtor (the “Collateral”): All tangible and intangible personal property of Defendants including but not limited to Defendants’ intellectual property to secure payment of the following obligations of Debtor to Secured Party (the “Obligations”): All obligations and liabilities of Debtor to Secured Party as set forth in the Parties’ Settlement Agreement.

**1. Warranties and Covenants of Debtor.** Debtor warrants and covenants that:

(a) No other creditor has a security interest in the Collateral except the following: Walter Coats.

(b) Debtor is the owner of the Collateral free from any adverse lien or encumbrance except this lien and the others described in this Security Agreement.

(c) Debtor will defend the Collateral against all claims of other persons.

(d) Debtor will immediately notify the Secured Party in writing of any change in name or address.

(e) Debtor will do all such things as Secured Party at any time or from time to time may reasonably request to establish and maintain a perfected security interest in the Collateral.

(f) Debtor will pay the cost of filing this agreement in all public offices where recording is deemed by Secured Party to be necessary or desirable. A photographic or other reproduction of this agreement is sufficient as a financing statement.

(g) Debtor will not transfer or encumber the Collateral without the prior written consent of Secured Party.

(h) Debtor will keep the Collateral insured against risk of loss or damage upon such terms as Secured Party may reasonably require.

(i) Debtor will keep the Collateral free from any adverse lien and in good repair, will not waste or destroy the Collateral, and will not use the Collateral in violation of any law or policy of insurance. Secured Party may examine and inspect the Collateral at any reasonable time.

(j) Debtor will pay promptly when due all taxes and assessments upon the Collateral or for its use or operation or upon this Agreement or upon any note evidencing the Obligations.

2. **Additional Rights.** Secured Party may discharge liens placed on the Collateral, may place and pay for insurance on the Collateral upon failure by the Debtor to do so, and may pay for the maintenance, repair, and preservation of the Collateral. To the extent permitted by applicable law, Debtor agrees to reimburse Secured Party on demand for any payment under this authorization.

3. **Events of Default.** Debtor shall be in default under this Agreement upon the occurrence of any of the following events or conditions: (a) the failure to perform any of the Obligations or this Agreement; (b) the loss, theft, substantial damage, destruction, transfer or encumbrance of the Collateral; (c) the making of any levy, seizure or attachment upon the Collateral; or (d) the filing by Debtor or by any third party against Debtor of any petition under any Federal bankruptcy statute, the appointment of a receiver of any part of the property of Debtor, or any assignment by Debtor for the benefit of creditors.

4. **Remedies.** UPON DEFAULT AND AT ANY TIME THEREAFTER, SECURED PARTY MAY DECLARE ALL OBLIGATIONS IMMEDIATELY DUE AND PAYABLE AND SHALL HAVE THE REMEDIES OF A SECURED PARTY UNDER THE UNIFORM COMMERCIAL CODE OF TENNESSEE.

**SECURED PARTY:**

**DEBTOR:**

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