

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

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

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

Plaintiffs,

v.

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

Defendants.

ORDER

Pursuant to the orders entered in this case, having considered all papers filed and proceedings held herein, and otherwise being fully informed in the premises and good cause appearing therefor, it is hereby

ORDERED that:

1. This Order incorporates by reference the definitions and provisions of the Class Action Settlement Agreement (“Agreement”) [Docket No. 149-3] as though fully set forth herein.
2. This Court has jurisdiction over the subject matter of this Action and personal jurisdiction over the Parties and 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 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, Inc. between December 2, 2007 and August 2, 2017 and who have not been paid for their services in accordance with Defendants' terms of payment.

Excluded from the Settlement Class are Syed K. Hamdani, May Jackson, Oasis Company Realtors, LLC, Drew Perkins, Remax Land and Homes, Michelle Talbott, and Caitlyn Weiman who otherwise satisfy the above requirements for membership in the Settlement Class, but who timely and validly requested exclusion from the Settlement Class.

4. The Court finds, solely for the purposes of this settlement, that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the Members of the Settlement Class are so numerous that joinder of all Settlement Class Members in the Action is impracticable; (b) there are questions of law and fact common to the Settlement Class which predominate over any individual questions; (c) the claims of one or more of the Plaintiffs and Plaintiffs' Counsel have fairly and adequately represented and protected the interests of all of the Settlement Class Members; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering: (i) the interests of the Members of the Settlement Class in individually controlling the prosecution of the separate actions; (ii) the extent and nature of any litigation concerning the controversy already commenced by Members of the Settlement Class; (iii) the desirability or undesirability of continuing the litigation of these claims in this

particular forum; and (iv) the difficulties likely to be encountered in the management of the Action.

5. For purposes of settlement, Plaintiffs Kathy Wornicki and Edward Laine are hereby appointed the “Class Representatives.”

6. 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.

7. The Court finds that the Class Notice given to members of the Settlement Class pursuant to the terms of the Agreement was reasonably calculated under the circumstances to apprise such 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. The Class Notice was the best practicable notice under the circumstances and constituted valid, sufficient, and due notice to all members of the Settlement Class. The Class Notice fully satisfied the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and all other applicable law. Accordingly, this Court makes final the conditional certification set forth in the Preliminary Approval Order [Docket No. 155]. Because the Court has afforded a full opportunity to all Settlement Class Members to be heard, the Court further determines that all members of the Settlement Class, except those who timely excluded themselves from the Settlement Class, are bound by this Order.

8. On April 10, 2017, 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 notice satisfied the requirements of 28 U.S.C. § 1715(b) and more than ninety days have elapsed since the notice was provided, as required by 28 U.S.C. § 1715(d).

9. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, this Court finds that the Settlement is fair, reasonable, and adequate. Accordingly, the Court gives final approval to the Settlement in all respects and authorizes and directs the Parties to consummate the Settlement in accordance with the terms and provisions of the Settlement and this Order. The objection by Donald Oneida is overruled.

10. The Parties, their counsel, and the Settlement Administrator shall fulfill their obligations and duties under the Agreement. These duties include the Agreed Injunctive Relief set forth in Paragraph 40 of the Agreement as follows:

a. Defendants shall prepare a standard form of vendor purchase agreement for broker price opinions (“BPOs”) with uniform payment terms for all BPOs completed and delivered to Brokerpriceopinion.com, Inc. (“Brokerpriceopinion”).

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

c. Defendants shall pay in full within ninety days all amounts as agreed under the standard form agreement for BPOs set forth in Paragraph 10(a) above.

d. Defendants shall train employees in Brokerpriceopinion’s Accounting,

Quality Control, and Production departments to make full payment to persons completing and delivering BPOs within ninety days.

e. 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.

f. Defendants shall make a bi-annual report to Class Counsel outlining their compliance with the injunction and any issues that may have arisen. Defendants agree to submit copies of any lawsuits filed against them and asserting a claim during the reporting period to Class Counsel beginning six months from the Effective Date and every six months thereafter until expiration of the injunction.

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

h. The Agreed Injunctive Relief shall be fully implemented within sixty days following the Effective Date.

11. Defendants shall make their first bi-annual report described in Paragraph 10(f) above within sixty days after the Effective Date. In addition to the items set forth in Paragraph 12 below, in the first report, Defendants shall provide Plaintiffs with a copy of the standard form vendor purchase agreement described in Paragraph 10(a) above, a

description of the training provided pursuant to Paragraph 10(d), and a copy of the language incorporated into the employee handbook pursuant to Paragraph 10(g). Plaintiffs shall provide any comments to the form purchase agreement, employee handbook, and training protocol within five business days of receiving the information. The Parties shall meet and confer regarding Plaintiffs' comments within five days after Plaintiffs provide them. If the Parties cannot reach agreement, Plaintiffs may file a motion with the Court to enforce the Agreement.

12. Defendants shall include the following in each of their bi-annual reports:

a. The current amount of the reserve fund described in Paragraph 10(b), the bank at which the reserve fund is held, the date on which each deposit was made into the reserve fund, and the amount of each deposit;

b. The name of the designated compliance manager employed pursuant to Paragraph 10(g);

c. A copy of any lawsuits or claims against Defendants relating to unpaid broker work orders;

d. The balance of the cash reserve and the damages and amounts of any deposits; and

e. A description of any training Defendants have provided to employees during the reporting period pursuant to Paragraph 10(d).

13. In addition to the bi-annual reports, every two months Defendants shall provide to Class Counsel a spreadsheet that contains a detailed accounting of (1) all payments during those two months to brokers, by check number; (2) the name and broker identification number of each broker paid; (3) information sufficient to identify the work

orders associated with each payment, including the date each work order was completed; and (4) all work orders that have been completed but not paid and the dates they were completed.

14. Within five business days after entry of this Order, Defendants shall provide Class Counsel and the Settlement Administrator with an accounting of all amounts owed to claimants as of August 2, 2018.

15. On or before the Effective Date, Defendants shall execute the Promissory Note and Security Agreement attached to this Order as Exhibit A. Defendants shall make payments pursuant to the schedule set forth in that Promissory Note and Security Agreement.

16. The Action and all claims contained therein are hereby dismissed with prejudice.

17. Plaintiffs and all members of the Settlement Class, except those who timely excluded themselves from the Settlement Class as set forth in Paragraph 3, are deemed to have fully, finally, completely, and forever released, relinquished, and discharged the causes of action raised in this Action, whether for damages or for injunctive relief. Plaintiffs and Settlement Class Members have not released any claims that have arisen or that may arise after August 2, 2017.

18. Plaintiffs and all members of the Settlement Class, except those who timely excluded themselves from the Settlement Class as set forth in Paragraph 3, are permanently enjoined and barred from asserting, initiating, prosecuting, or continuing any of the claims released by the Agreement.

19. The Court hereby awards Class Counsel attorney's fees and costs in the amount of \$500,000. This amount shall be paid from the Settlement Fund pursuant to the

terms of the Agreement.

20. The Court hereby approves the payment of service awards to Plaintiffs Kathy Wornicki and Edward Laine in the amount of \$5,000 each. These amounts shall be paid from the Settlement Fund pursuant to the terms of the Agreement.

21. Neither this Order nor the Agreement is an admission or concession by Defendants of the validity of any claims, of any liability or wrongdoing, or of any violation of law. Neither this Order nor the Agreement shall 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. Neither this Order 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 Order, the Agreement, and all releases given thereunder; or establish the affirmative defenses of *res judicata* or collateral estoppel barring the pursuit of claims released in the Agreement. This Order does not constitute any opinion or position of this Court as to the merits of the claims and defenses related to this Action.

22. Without affecting the finality of this Order, this Court retains jurisdiction to consider all further matters arising out of or connected with the Settlement, including the implementation and enforcement of the Settlement Agreement.

23. Judgment shall be entered dismissing this Action with prejudice.

DATED September 20, 2018.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge

EXHIBIT B

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:

\$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

\$46,676— **[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 secured therein for the payment of this Note in the case of default, but may proceed directly against the Borrower.

EXHIBIT A

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.

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]

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

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.

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:
_____.

(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:

