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11 *Attorneys for Plaintiffs and the Settlement Class*

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13 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
14 **SAN JOSE DIVISION**

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16 THEODORE BROOMFIELD, *et al.*,
17 Plaintiffs,
18 v.
19 CRAFT BREW ALLIANCE, INC.,
20 Defendant.
21

CASE NO.: 5:17-cv-01027-BLF

**PLAINTIFFS' RESPONSE TO ORR
OBJECTION**

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1 **I. INTRODUCTION**

2 Plaintiffs respectfully submit this response to the Objection of Edward W. Orr (“Orr
3 Objection”) (ECF No. 134). The Orr Objection does not challenge any of the Settlement terms but
4 instead focuses exclusively on the accessibility of the Settlement Website
5 (<https://www.konabeersettlement.com/>) for visually impaired persons. More specifically, Mr. Orr
6 contends that the Settlement Website was not compliant with the Americans with Disabilities Act,
7 42 U.S.C. § 12101, *et seq.* (“ADA”) because it was not compatible with his Screen Reader Software,
8 JAWS. Plaintiffs fully agree with Mr. Orr that compliance with the ADA is of the utmost
9 importance and are empathetic with any difficulties he may have experienced in using the Settlement
10 Website. Accordingly, Plaintiffs note at the outset that none of the arguments made herein reflect a
11 callousness to the civil rights protected under the ADA. However, Mr. Orr’s argument is not
12 applicable in this context, and his Objection should be overruled for three reasons: (1) the Settlement
13 Website does not fall within the purview of the ADA under Ninth Circuit law, (2) the Settlement
14 Website has provided reasonable access to visually impaired persons at all times, and (3) even if the
15 Settlement Website did not provide access to visually impaired persons as required under the ADA,
16 and it fell within the purview of the ADA, it still would not merit denying final approval of the
17 Settlement.

18 **II. ARGUMENT**

19 **A. The Settlement Website Does Not Fall Within The Purview Of The ADA**

20 The Settlement Website does not fall within the purview of the ADA. CPT Group, Inc.
21 (“CPT”), the entity that has administered the Settlement Website, is not an enumerated “place of
22 public accommodation” under the ADA. *See* 42 U.S.C. § 12181(7)(A)-(L) (listing hotels, museums,
23 restaurants, etc.). And even if it did fall into one of the enumerated places, the Settlement Website
24 maintained by CPT does not need to be compliant with the ADA because it is not connected to a
25 physical place of business. In *Robles v. Domino’s Pizza, LLC*, 913 F.3d 898, 905 (9th Cir. 2019),
26 the Ninth Circuit recently held that a website of a place of public accommodation must comply with
27 the ADA only if there is a nexus between the website and a physical place of business. There, the
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1 nexus was that customers used Domino’s website to order pizzas from physical restaurant locations.
2 *Id.* at 905-06.

3 In reaching its decision, the *Robles* court distinguished *Weyer v. Twentieth Century Fox Film*
4 *Corp.*, 198 F.3d 1104, 1113-14 (9th Cir. 2000), where an insurance company that administered an
5 allegedly discriminatory employer-provided insurance policy was not considered a covered “place
6 of public accommodation” because there was no connection between the good or service complained
7 of and an actual physical place. More specifically, while the insurance company had a physical
8 office, the policy at issue did not concern physical accessibility to the office, nor was the insurance
9 policy a good offered by the insurance company’s physical office. *Id.* at 1115; *see also Cullen v.*
10 *Netflix, Inc.*, 880 F. Supp. 2d 1017, 1023 (N.D. Cal. 2012), *aff’d*, 600 Fed. Appx. 508, 509 (9th Cir.
11 2015) (applying *Weyer* and holding that because “Netflix’s services are not connected to any ‘actual,
12 physical place[],’ Netflix is not subject to the ADA.”); *Young v. Facebook, Inc.*, 790 F. Supp. 2d
13 1110, 1115 (N.D. Cal. 2011) (rejecting an ADA claim that Facebook’s website was
14 a place of public accommodation because, “[w]hile Facebook’s physical headquarters obviously is
15 a physical space, it is not a place where the online services to which [plaintiff] claims she was denied
16 access are offered to the public.”).

17 Here, the Settlement Website is akin to the insurance policy in *Weyer*, Netflix’s online
18 services in *Cullen*, and Facebook’s website in *Young*. The Settlement Website does not offer any
19 goods in connection with CPT’s physical place of business. It exists simply to provide information
20 about the Settlement and to offer an electronic means for Class Members to submit Claims Forms
21 or Requests for Exclusion. Class Members could also mail Claims Forms and Requests for
22 Exclusion to the Settlement Administrator. In short, the requirements of the ADA do not apply to
23 the Settlement Website.

24 **B. The Settlement Website Has Implemented Reasonable Modifications To**
25 **Provide Effective Communication With Visually Impaired Persons**

26 Under ADA’s implementing regulation, “[a] public accommodation shall furnish
27 appropriate auxiliary aids and services where necessary to ensure effective communication with
28 individuals with disabilities.” 28 C.F.R. § 36.303(c)(1). Although not required to provide ADA

1 accommodations (as discussed *supra*), the Settlement Website provides effective communication
2 with visually impaired persons. Specifically, it contains a UserWay Website Accessibility Widget
3 which allows disabled users to more easily access the website and its contents. Declaration of Ani
4 S. Sarich (“Sarich Decl.”) at ¶ 8. The Accessibility Widget was implemented to comply with the
5 Web Content Accessibility Guidelines (WCAG 2.1), the Authoring Tool Accessibility Guidelines
6 (ATAG 2.0), and the ADA. *Id.* The tool can be accessed by clicking the accessibility menu icon
7 on the top left corner of any page on the Settlement Website. *Id.* Using this Accessibility Widget,
8 individuals can have the Settlement Website’s text read out loud via a text-to-audio feature, enlarge
9 and alter the appearance of the font, highlight links, and more. *Id.* The Accessibility Widget further
10 allows users to report any issues encountered while using the tool. *Id.* With these numerous
11 features, the Accessibility Widget provides effective communication for visually impaired persons.

12 Therefore, the functions of the Accessibility Widget on the Settlement Website comply with
13 the ADA requirement that websites provide “auxiliary aids and services.” *See Robles*, 913 F.3d at
14 905 (citing DOJ Regulation, 28 C.F.R. § 36.303 and holding that places of public accommodation
15 must “provide auxiliary aids and services to make visual materials available to individuals who are
16 blind.”); *Gorecki v. Hobby Lobby Stores, Inc.*, No. CV 17-1131-JFW(SKx), 2017 WL 2957736, at
17 *3 (C.D. Cal. June 15, 2017) (“Examples of auxiliary aids and services that places of public
18 accommodation may use to accomplish this directive include ‘screen reader software’ and ‘other
19 effective methods of making visually delivered materials available to individuals who are blind or
20 have low vision.’”) (citing 28 C.F.R. § 36.303(b)(1)-(2)). Moreover, Plaintiffs are not aware of any
21 authority that the ADA requires websites to be compatible with all screen reading software or
22 specific screen reading software such as JAWS.

23 Finally, although not directly pertinent to the legal issues here, Plaintiffs believe it is
24 important to respond to Mr. Orr’s assertion that he made several attempts to contact CPT about the
25 Settlement Website but received no response. As soon as Class Counsel learned of Mr. Orr’s
26 concerns, Class Counsel reached out to CPT to investigate his allegations. Declaration of Timothy
27 J. Peter (“Peter Decl.”) at ¶ 3. CPT has conducted a diligent review and has found no record of any
28 communications from Mr. Orr. Sarich Decl. ¶ 12. Of course, if CPT had received Mr. Orr’s

1 communications, it would have promptly responded to him. *Id.* at ¶ 12. Similarly, Class Counsel
2 did not receive any communications from Mr. Orr. Peter Decl. at ¶ 4. They too would have
3 promptly responded to Mr. Orr if they had received any such communications. *Id.* In other words,
4 Class Counsel and CPT first learned of Mr. Orr’s concerns with the Settlement Website when his
5 objection was filed October 7, 2019. They did not ignore his concerns with the Settlement Website.

6 **C. Even If The Settlement Website Needed To Comply With The ADA, And**
7 **Assuming It Did Not, The Settlement Should Still Be Finally Approved**

8 Assuming the Settlement Website falls within the purview of the ADA, and that it does not
9 comply with the requirements of the ADA, it still would not support denying final approval of the
10 Settlement.

11 At bottom, Mr. Orr’s objection can be construed as a challenge to only one aspect of the
12 Claim Form. While Plaintiffs are empathetic to any hardship Mr. Orr may have experienced in
13 submitting a Claim Form, this is insufficient to deny approval of the Settlement. In that sense, it is
14 analogous to the issue presented in *In re Toyota Motor Corp. Unintended Acceleration Marketing,*
15 *Sales Practices, & Product Liability Litigation*, No. 8:10ML 02151 JVS (FMOx), 2013 WL
16 3224585, at *18–19 (C.D. Cal. June 17, 2013), where the court overruled an objection by an
17 individual who advocated for larger font on class notices, reasoning that the issue did not “detract
18 from the proposed settlement” and increasing the font size would have been infeasible due to the
19 increased notice costs. Similarly, requiring the Settlement Website to be compliant with all types
20 of screen reader software, or JAWS in particular (assuming it is not), would be infeasible. *See Lane*
21 *v. Facebook, Inc.*, 696 F.3d 811, 818–19 (9th Cir. 2012) (“As our precedents have made clear, the
22 question whether a settlement is fundamentally fair within the meaning of Rule 23(e) is different
23 from the question whether the settlement is perfect in the estimation of the reviewing court.”)

24 Moreover, the substantial number of Class Members who submitted valid Claim Forms
25 when compared to the single objection from Mr. Orr is proof of the Settlement’s fairness and
26 reasonableness. *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 593 (N.D. Ill. 2011) (“All of the
27 above conclusively rebuts the assertion that Class Members could not in good faith fill out and
28 submit a claim form, and the ‘proof of the pudding’ [...] is the fact that Class Members have

1 submitted more than 100,000 claims, and none has submitted an objection or other document
2 complaining that it was impossible for them to file a claim in good faith.”) (citation omitted).

3 The fact that Mr. Orr ultimately submitted a valid Claim Form and filed an Objection
4 supports a finding that the Class Notice as a whole was sufficient. *See Carlin v. DairyAmerica, Inc.*,
5 380 F. Supp. 3d 998, 1016–17 (E.D. Cal. 2019) (rejecting objector’s argument regarding notice
6 deficiencies when the objector indeed received notice). In short, the arguments raised in the Orr
7 Objection do not undermine the robust notice plan implemented by CPT, which was the best means
8 practicable of providing notice and fully complied with due process. *Id.* (“[A]bsent class members
9 are entitled not to perfect notice, but to the ‘best notice practicable.’” (citing *Silber v. Mabon*, 18
10 F.3d 1449, 1454 (9th Cir. 1994)) (actual notice not required under Rule 23(b)(3)). Thus, even
11 assuming some visually impaired persons were deprived of notice due to the fact that their specific
12 screen reader software was not compatible with the Settlement Website, it would not require a
13 finding that the Class Notice was defective or failed to comply with due process.

14 **III. CONCLUSION**

15 For the foregoing reasons, Plaintiffs respectfully request that the Court overrule the Orr
16 Objection.

17
18 Dated: November 14, 2019

FARUQI & FARUQI, LLP

/s/ Timothy J. Peter

Timothy J. Peter
Benjamin Heikali
Joshua Nassir

THE WAND LAW FIRM, P.C.

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Attorneys for Plaintiffs and the Settlement Class

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8 **UNITED STATES DISTRICT COURT**
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9 **SAN JOSE DIVISION**

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11 THEODORE BROOMFIELD, *et al.*,
12 Plaintiffs,
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14 CRAFT BREW ALLIANCE, INC., *et al.*,
15 Defendants.
16

CASE NO.: 5:17-cv-01027-BLF

**DECLARATION OF TIMOTHY J. PETER
IN SUPPORT OF PLAINTIFFS'
RESPONSE TO ORR OBJECTION**

Date: December 19, 2019

Time: 1:30 p.m.

Courtroom: 3 – 5th Floor

Judge: Hon. Beth Labson Freeman

1 I, Timothy J. Peter, hereby declare as follows:

2 1. I am an attorney duly licensed to practice law and admitted to do so in the
3 Commonwealth of Pennsylvania and the United States District Court for the Eastern District of
4 Pennsylvania. I have been admitted *pro hac vice* (see Dkt. No. 32) and am counsel of record for
5 Plaintiffs Theodore Broomfield and Simone Zimmer (“Plaintiffs”) as well as the Settlement Class
6 in the above captioned action. I am a partner at the law firm of Faruqi & Faruqi, LLP (“F&F”). I
7 have personal knowledge of the facts stated herein and if called upon to testify to them, I would be
8 competent to do so.

9 2. I make this declaration in support of Plaintiffs’ Response To Orr Objection, filed
10 concurrently.

11 3. As soon as I learned of Mr. Orr’s concerns in his objection, I reached out to CPT
12 Group, Inc., the claims administrator, to investigate his allegations.

13 4. To date, Class Counsel have not received any communications from Mr. Orr. Had
14 Mr. Orr communicated his concerns to me prior to objecting, I would have promptly responded.

15 I declare under penalty of perjury that the foregoing is true and correct. Executed on
16 November 14, 2019 in Philadelphia, Pennsylvania.

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By: /s/ Timothy J. Peter

Timothy J. Peter

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Attorneys for Plaintiffs and the Settlement Class

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

THEODORE BROOMFIELD, *et al.*,

Plaintiffs,

v.

CRAFT BREW ALLIANCE, INC.,

Defendant.

CASE NO.: 5:17-cv-01027-BLF

**DECLARATION OF ANI S. SARICH ON
BEHALF OF CPT GROUP, INC. IN
SUPPORT OF PLAINTIFFS' RESPONSE
TO LINDBERG AND ORR OBJECTIONS**

1 I, Ani S. Sarich, declare as follows:

2 1. I am a Senior Case Manager for CPT Group, Inc. (“CPT”), the Settlement
3 Administrator jointly agreed upon by the Parties and approved by the Court for the *Broomfield, et*
4 *al. v. Craft Brew Alliance, Inc.* Settlement. I have personal knowledge of the facts set forth in this
5 declaration and, if called upon to testify, I could and would testify competently to such facts.

6 2. I make this declaration in support of Plaintiffs’ Responses to the Objections of Eric
7 Michael Lindberg and Edward W. Orr.

8 **MR. LINDBERG’S CLAIM**

9 3. On October 7, 2019, Mr. Lindberg submitted a claim form in this Settlement. Mr.
10 Lindberg claimed the maximum of \$10 without proof of purchase.

11 4. No other class member has submitted a claim form with the same address as Mr.
12 Lindberg.

13 **THE HOUSEHOLD CAP**

14 5. A household cap is standard in consumer class action settlements. It is not
15 uncommon for an individual trying to take advantage of the system to submit a multitude of
16 fraudulent claims with the same mailing address under different names. One of the primary
17 mechanisms to deter such fraud is to prospectively limit claims from the same household. This
18 preserves the integrity of the claims process. It also benefits the class by reducing the need to
19 weed out numerous fraudulent claims on the back end, which can become a very time-consuming
20 process, which would could thereby increase settlement administration costs.

21 **CLAIM FORMS FROM PERSONS IN PUERTO RICO AND THE USVI**

22 6. I have confirmed that 85 Persons submitted Claim Forms from Puerto Rico and 4
23 Persons submitted Claim Forms from the U.S. Virgin Islands. This does not mean that these
24 Persons did (or did not) purchase the Kona Beers in Puerto Rico or the U.S. Virgin Islands.
25 Rather, it means that these Persons have provided a current mailing address in Puerto Rico or the
26 U.S. Virgin Islands.

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1 **THE SETTLEMENT WEBSITE PROVIDES REASONABLE ACCESS**
2 **TO VISUALLY IMPAIRED PERSONS**

3 7. The Settlement Website (<https://www.konabeersettlement.com/>) went live on July 3,
4 2019 and continues to be maintained by CPT.

5 8. The Settlement Website has at all times provided reasonable access to visually
6 impaired persons. It contains a UserWay Website Accessibility Widget which allows disabled
7 users to more easily access the website and its contents. The Accessibility Widget was
8 implemented to increase compliance with the Web Content Accessibility Guidelines (WCAG
9 2.1), the Authoring Tool Accessibility Guidelines (ATAG 2.0), the ADA. The tool can be
10 accessed by clicking the accessibility menu icon on the top left corner of any page on the
11 settlement website. Using this Accessibility Widget, individuals may have the settlement
12 website’s text read out loud via a text-to-audio feature, enlarge and alter the appearance of the
13 font, highlight links, and more. The Accessibility Widget further allows users to report any issues
14 encountered while using the tool.

15 **COMMUNICATIONS RECEIVED FROM MR. ORR**

16 9. On October 17, 2019, CPT was notified of Mr. Orr’s objection through Plaintiffs’
17 Counsel.

18 10. I have reviewed Mr. Orr’s Objection and the exhibits attached thereto.

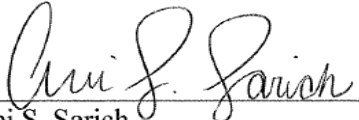
19 11. Mr. Orr states that the JAWS screen reader software that he used was not compatible
20 with the settlement website. As indicated in ¶8 above, the Settlement Website provides
21 reasonable access to disabled individuals through the Accessibility Widget. The widget allows
22 users the option of having website text read out load, amongst other features.

23 12. Mr. Orr states that he called CPT. However, as of the date of this declaration, CPT
24 has no record of incoming calls or any other written or electronic correspondence from Edward
25 Orr apart from the Claim Form he submitted.

26 13. Had CPT received notice of any such communications, CPT would have promptly
27 responded to Mr. Orr.
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I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct. Executed on this 14th day of November, 2019 at Irvine, California.


Ani S. Sarich