

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

HOLLY WINSTON, on behalf of herself and all  
others similarly situated,

Plaintiff,

v.

PEACOCK TV LLC,

Defendant.

Civil Action No.: 1:23-cv-08191-ALC

Hon. Andrew L. Carter, Jr.

**DECLARATION OF NEAL J. DECKANT IN SUPPORT OF PLAINTIFF'S  
MOTION FOR ATTORNEYS' FEES, COSTS EXPENSES, AND INCENTIVE AWARD**

I, Neal J. Deckant, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a Partner at Bursor & Fisher, P.A. (“Bursor & Fisher”), counsel of record for Plaintiff Holly Winston (“Plaintiff” or the “Class Representative”) and Class Counsel in this action. I am an attorney-at-law licensed to practice in the State of New York, and I am a member of the bar of this Court. I have personal knowledge of all matters set forth in this declaration, and, if called as a witness, could and would competently testify under oath thereto.

2. I make this Declaration in support of Plaintiff’s Motion for Attorneys’ Fees, Costs, Expenses, And Incentive Award, filed contemporaneously herewith.

3. Attached hereto as **Exhibit 1** is a true and correct copy of the Parties’ Class Action Settlement Agreement, and the exhibits attached thereto.

4. Beginning in or around August 2023, my firm commenced a pre-suit investigation into potential violations of California’s Automatic Renewal Law (“ARL”), Cal. Bus. & Prof. Code §§ 17600, *et seq.*, including Defendant The New York Times Company (“NYT” or “Defendant”). The theory of liability was relatively novel. Although a handful of other cases

had been filed asserting ARL claims under California law, only one federal ARL case of which I am aware had progressed through summary judgment. *See Ingalls v. Spotify USA, Inc.*, 2017 WL 3021037 (N.D. Cal. Jul. 17, 2017).<sup>1</sup> Thus, our pre-suit investigation was extensive and involved in-depth research into a number of industry practices regarding automatic renewal offers, as well as Defendant’s billing practices, textual analyses of the ARL, the legislative history of the statute, and the assertion of predicate claims for ARL violations under California’s consumer protection statutes—particularly under the “unlawful prong” of California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, *et seq.*

5. Similarly, by the time of our pre-suit investigation, only one federal case of which I was aware had ever ruled on a contested motion for class certification in an ARL case. *See Robinson v. OnStar, LLC*, 2020 WL 364221 (S.D. Cal. Jan. 22, 2020). In *Robinson*, the U.S. District Court for the Southern District of California issued an opinion denying a motion to certify class claims predicated on ARL violations in *Robinson v. OnStar, LLC*, 2020 WL 364221 (S.D. Cal. Jan. 22, 2020). In doing so, the court rejected the plaintiff’s proposed a full refund damages model based, in part, on its finding that the gift provision under Section 17603 of the ARL was inapplicable “because that provision applies to ‘goods’ and not ‘services.’” *See id.*, 2020 WL 364221, at \*22-24. Thus, my firm knew that we faced a potential risk in establishing that damages are capable of measurement on a class-wide basis under a full refund theory, which would depend largely on the applicability of the “gift” provision under Section 17603 of the ARL. Therefore, my firm’s pre-suit investigation also included extensive legal research

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<sup>1</sup> Note that the *Ingalls* decision, issued July 17, 2017, precedes the 2018 enactment of California’s Senate Bill 313, which amended Section 17602 of the ARL, adding new requirements meant to increase consumer protections for, among other things, orders that contain free trial and promotional pricing, and subscription agreements entered into online.

regarding the application of Section 17603 to Plaintiff's claims, and a detailed review of the briefing before the Southern District of California.

6. Likewise, by that time, very few courts had issued an opinion interpreting the statutory text of the ARL generally. The U.S. District Court for the Central District of California issued an opinion granting a motion to dismiss ARL claims in *Hall v. Time, Inc.*, which the U.S. Court of Appeals for the Ninth Circuit affirmed on appeal. *See generally, Hall v. Time, Inc.*, 2020 WL 2303088 (C.D. Cal. Mar. 13, 2020), *aff'd*, No. 20-55354, 2021 WL 2071991 (9th Cir. May 24, 2021). In doing so, the Ninth Circuit considered and rejected the plaintiff's interpretation of the ARL requirements of "visual proximity" and "affirmative consent." Even so, at that time neither *Hall* nor any other court of which I was aware had definitively identified the distinction between obtaining a consumer's "ordinary consent" (which is required for the formation of all agreements) versus "affirmative consent" (which is a heightened form of consent required under Section 17602(a)(2) of the ARL) or conclusively defined the term "visual proximity" as used in Section 17602(a)(1). Therefore, my firm's pre-suit investigation also included extensive analysis of the ARL's requirements of "visual proximity" and "affirmative consent" under Section 17602(a) of the ARL, neither of which are defined by statute.

7. Moreover, my firm was aware that defendants, like Peacock, would probably challenge liability by arguing that they achieved a level of compliance sufficient to qualify for a purported good faith "safe harbor" under Section 17604(b) of the ARL. Thus, my firm also performed extensive legal research and analysis regarding the application of the safe harbor provision under the ARL and other similar statutes in California and across the country. Additionally, my firm anticipated that defendants, like Peacock, would likely raise a challenge to Plaintiff's ability to show causation and reliance on the asserted misrepresentations and

omissions as required under California's consumer protection statutes. Therefore, my firm performed extensive legal research regarding the requirements of statutory standing under California law.

8. Despite knowing we were wading into substantially uncharted waters, on September 15, 2023, Plaintiff filed her initial class action complaint in the U.S. District Court for the Southern District of New York, alleging that Defendant violated California law by automatically renewing her monthly Peacock Subscription and by charging her renewal fees without first providing her with the requisite disclosures and authorizations required to be made to California consumers under California's Automatic Renewal Law ("ARL"), Cal. Bus. & Prof. Code §§ 17600, *et seq.* Plaintiff further alleged that because every violation of the ARL constitutes an "unlawful" practice under California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.*, Defendant's conduct violated the UCL as well. In addition, Plaintiff alleged that because Defendant's ARL violations involve misrepresentations and/or omissions of material fact, Defendant also violated California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code §§ 17500, *et seq.* On that basis, Plaintiff also brought common law claims against Defendant for conversion and unjust enrichment/restitution. Dkt. 1.

9. After Plaintiff filed her Complaint, the Parties engaged in a Rule 26(f) planning conference and a Rule 16 scheduling conference. Then, on November 13, 2023, Defendant filed a Letter Motion for Extension of Time to File an Answer, requesting, with Plaintiff's consent, an extension of Peacock's November 27, 2023 deadline to respond to Plaintiff's complaint up to and including January 8, 2024. *See* ECF No. 8. This Court granted Defendant's request on November 21, 2023. *See* ECF No. 9. Shortly thereafter, the parties agreed to mediate their claims.

10. From the outset of the case, the Parties engaged in direct communications, and as part of their obligations under Fed. R. Civ. P. 26, discussed the prospect of an early resolution. Those discussions eventually led to an agreement between the Parties to engage in early mediation, which the Parties agreed would take place before Judge Diane M. Welsh (Ret.), who is an experienced neutral affiliated with JAMS.

11. In the months leading up to the mediation, the Parties were in regular communication with each other and with Judge Welsh, as the Parties sought to crystallize the disputed issues, produce focused information and data, and narrow potential frameworks for resolution. Prior to the mediation, the Parties exchanged briefing on the key facts, legal issues, litigation risks, and potential settlement structures, and the Parties supplemented that briefing with emails and telephonic correspondence to clarify their positions. Further, during this period and in connection with the mediation proceeding, the Parties exchanged informal discovery, including on issues such as the size and scope of the putative class (i.e., approximately 3.6 million persons). This information was sufficient for the Parties to assess the strengths and weakness of the claims and defenses and their relative negotiating positions.

12. In preparing to make a settlement demand at mediation, my firm devoted substantial time to researching the viability of different class-wide settlement structures under the relevant Second Circuit case law.

13. In advance of the mediation, my firm also prepared a detailed mediation statement outlining the strength of the Plaintiff's case, in addition to a draft class settlement term sheet, in order to help the Parties and the mediator evaluate any potential settlement. Defendant also submitted a detailed mediation statement, and my firm reviewed Defendant's mediation statement closely to evaluate the veracity of Defendant's arguments.

14. The mediation took place on March 11, 2024, was conducted by Zoom, lasted a full day, and involved intense negotiations by skilled counsel, with numerous offers and counter-offers being made with Judge Welsh serving as an intermediary. The Parties engaged in good faith negotiations, which at all times were at arms' length, and which culminated in an agreement to settle the case. At the end of their mediation, the parties executed a binding settlement term sheet and continued to negotiate the terms of the Settlement Agreement, resulting in additional months of follow-up settlement discussions.

15. As a result of the mediation on March 11, 2024, the Parties agreed to the terms of a classwide settlement. Following the mediation session, the Parties continued to engage in settlement negotiations and worked extensively with defense counsel to finalize and memorialize the agreement into a formal Class Action Settlement Agreement, including proposed class notice documents. That process included multiple rounds of redlines and phone calls to discuss proposed edits. The Parties ultimately reached an agreement as to all material terms of the class action settlement, which was fully executed as of July 5, 2024.

16. The proposed Settlement consists of an all-cash non-reversionary "common fund" in the amount of \$3,742.637.14, which will be used to pay all approved claims by class members, notice and administration expenses, a Court-approved incentive award to Plaintiff, and attorneys' fees to proposed Class Counsel to the extent awarded by the Court. Settlement Class Members wishing to receive cash must submit a valid Claim Form to the Settlement Administrator by the Claims Deadline. Settlement Class Members who submit a timely and valid claim will receive a *pro rata* portion of the \$3,742.637.14 settlement fund, following the deduction of notice and claims administration costs, attorneys' fees and expenses, and the class representative incentive payment.

17. Furthermore, in connection with the settlement, Defendant has agreed to revise the presentation and wording of the automatic renewal terms in its mobile and desktop platforms to be consistent with Cal. Bus. & Prof. Code § 17602(a)(1)-(3). Specifically, Defendant agrees to present to California subscribers on the checkout page for any Peacock Subscription that will automatically renew, the automatic renewal offer terms associated with such subscription (including cancellation policy) in a clear and conspicuous manner before the subscription or purchasing agreement and in visual proximity to the request for consent to the offer, as required by Cal. Bus. & Prof. Code § 17602(a)(1). Defendant also agrees to obtain affirmative consent to the agreement containing the automatic renewal terms in a manner that complies with the ARL under Cal. Bus. & Prof. Code § 17602(a)(2). Furthermore, Defendant agrees to disclose to subscribers with California billing addresses, in a manner that substantially complies with the ARL under Cal. Bus. & Prof. Code § 17602(a)(3), the automatic renewal terms, cancellation policy, and information regarding how to cancel in an acknowledgment email that is capable of being retained by consumers.

18. After finalizing and executing the Class Action Settlement Agreement, my firm prepared Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement, which was filed on July 11, 2024. *See* Dkt. 28.

19. On August 1, 2024, the Court granted Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement. *See* Dkt. 28.

20. The Parties agreed to the terms of the Settlement through experienced counsel who possessed all the information necessary to evaluate the case, determined all the contours of the proposed class, and reached a fair and reasonable compromise after negotiating the terms of the Settlement at arms' length and with the assistance of a neutral mediator.

21. Plaintiff and proposed Class Counsel recognize that, despite our belief in the strength of Plaintiff's claims and our confidence in Plaintiff's and the Class's ability to secure a favorable judgment at trial, the expense, duration, and complexity of protracted litigation would be substantial and the outcome of trial uncertain. Thus, the Settlement secures a more proximate and more certain monetary benefit to the Class than continued litigation.

22. Plaintiff and proposed Class Counsel are also mindful that absent a settlement, the success of Defendant's various defenses in this case could deprive the Plaintiff and the Settlement Class Members of any potential relief whatsoever. This is especially true in light of the sparse case law concerning application of the ARL. Indeed, to date, we are only aware of one federal court has issued an opinion on a contested class certification motion based on ARL violations, *see Robinson v. OnStar, LLC*, 2020 WL 364221 (S.D. Cal. Jan. 22, 2020), and only one federal ARL case has progressed through summary judgment, *see Ingalls v. Spotify USA, Inc.*, 2017 WL 3021037 (N.D. Cal. Jul. 17, 2017). Defendant is also represented by highly experienced attorneys who have made clear that, absent a settlement, they were prepared to continue their vigorous defense of this case, including by filing a motion for summary judgment that would present significant risks to the Class. Plaintiff and Class Counsel are also aware that Defendant would likely to challenge liability under the ARL, as well as to assert a number of defenses on the merits, including that Plaintiff's allegations are insufficient under Fed. R. Civ. P. 8 and 12(b)(6) and that Peacock achieved a level of compliance sufficient to qualify for the good faith safe harbor under Section 17604(b) of the ARL. Plaintiff is also aware Defendant would likely challenge Plaintiff's standing under Article III of the Constitution as well as pursuant to California's consumer protection statutes, including Plaintiff's ability to show economic injury or causation and her ability to sue on behalf of unnamed class members. Indeed, ARL litigation



is in the nascent stages, and thus, the scope of the statute is in dispute. Defendant would have also vigorously contested the certification of a litigation class. Even if Plaintiff's claims were to proceed past class certification and summary judgment, this case would ultimately devolve into an uncertain "battle of the experts." Defendant would surely present expert testimony and/or reports showing that the omissions at issue pertain to nonmaterial terms, and Plaintiff's expert evidence would indicate that the missing disclosures are indeed material to prospective subscribers, giving rise to Defendant's duty to disclose such information. Thus, although Plaintiff had confidence in her claims, there could be no guarantee that the Class would be certified or prevail at trial. Looking beyond trial, Plaintiff is aware that Defendant could appeal the merits of any adverse decision. Simply put, a favorable outcome was not assured.

23. By settling, Plaintiff and the Class avoid these risks, as well as the delays and risks of a lengthy trial and appellate process. The Settlement will provide Settlement Class Members with monetary benefits that are immediate, certain, and substantial, and will avoid the obstacles that might have prevented them from obtaining relief.

24. Plaintiff and Class Counsel therefore believe that the relief provided by the Settlement weighs heavily in favor of a finding that the Settlement is fair, reasonable, and adequate, and well within the range of approval.

25. In connection with the settlement agreement reached in this case, Class Counsel selected Epiq Class Action & Claims Solutions, Inc. ("Epiq") to act as the Settlement Administrator. Epiq is a firm with extensive experience handling all aspects of legal administration and has administered settlements in hundreds of class actions.

26. Since the Court granted preliminary approval, my firm has worked with Epiq to carry out the Court-ordered notice plan. Specifically, my firm helped compile and review the

contents of the required notice to State Attorney Generals pursuant to 28 U.S.C. § 1715, reviewed the final claim and notice forms, and reviewed and tested the settlement website before it launched live.

27. In conformity with the Court's August 1, 2024 Order Granting Preliminary Approval of Class Action Settlement, Conditionally Certifying Settlement Class, Appointing Class Representative, Appointing Class Counsel, and Approving Notice Plan (the "Preliminary Approval Order"), Epiq began preparing to disseminate notice and administer the settlement without delay. For instance, Epiq developed and hosted a dedicated settlement website with downloadable forms and online claim submission, and a 24-hour toll-free Interactive Voice Response ("IVR") telephone line. Consistent with the Preliminary Approval Order, Epiq launch the settlement website on August 11, 2024, and obtained the class list from Defendant by August 15, 2024, for purposes of preparing and sending direct notice via email. *See* Dkt. 28.

28. Since Epiq began disseminating class notice, my firm has worked with Epiq on a weekly basis to monitor settlement claims and any other issues that may arise. My firm has also fielded calls from Settlement Class Members and assisted them with filing claims.

29. Attached hereto as **Exhibit 2** are my firm's detailed billing diaries for this matter, as well as a summary of the same. I have personally reviewed all of my firm's time entries associated with this case, and have used billing judgment to ensure that duplicative and unnecessary time has been excluded and that only time reasonably devoted to the litigation has been included. My firm's time entries were regularly and contemporaneously recorded by me and the other timekeepers pursuant to firm policy and have been maintained in the computerized records of my firm.

30. My firm undertook this matter on a contingency basis. Through September 17,

2024, Bursor & Fisher, P.A. expended 104.3 hours in this case. Likewise, Gucovschi Rozenshteyn, PLLC also undertook this matter on a contingency basis. Through September 17, 2024, Gucovschi Rozenshteyn, PLLC expended 81.6 hours in this case. Altogether, Class Counsel have collectively expended 185.9 hours in this case.

31. In addition to the time enumerated above, I estimate that my firm will incur an additional 50-75 hours of future work in connection with the preparation of Plaintiff's Motion for Final Approval, the fairness hearing, coordinating with Epiq, monitoring settlement administration, and responding to Settlement Class Member inquiries.

32. Due to the commitment of time and capital investment required to litigate this action, my firm had to forego other work, including hourly non-contingent matters, and other class action matters.

33. Through September 17, 2024, my firm has also expended \$9,554.57 in out-of-pocket costs and expenses in connection with the prosecution of this case. Attached as **Exhibit 3** is an itemized list of those costs and expenses. These costs and expenses are reflected in the records of my firm and were necessary to prosecute this litigation. Cost and expense items are billed separately, and such charges are not duplicated in my firm's billing rates.

34. Included within Exhibit 2 is a chart setting forth the current hourly rates charged for lawyers and staff at my firm. Based on my knowledge and experience, the hourly rates charged by my firm are within the range of market rates charged by attorneys of equivalent experience, skill, and expertise. These are the same hourly rates that we actually charge to our regular hourly clients who have retained us for non-contingent matters, and which are actually paid by those clients. As a matter of firm policy, we do not discount our regular hourly rates for non-contingent hourly work. I have personal knowledge of the range of hourly rates typically

charged by counsel in our field in New York, California, Florida, and elsewhere, both on a current basis and in the past. In determining my firm's hourly rates from year to year, my partners and I have consciously taken market rates into account and have aligned our rates with the market.

35. Through my practice, I have become familiar with the non-contingent market rates charged by attorneys in New York, California, Florida, and elsewhere (my firm's offices are in New York City, Walnut Creek, California, and Miami, Florida). This familiarity has been obtained in several ways: (1) by litigating attorneys' fee applications; (2) by discussing fees with other attorneys; (3) by obtaining declarations regarding prevailing market rates filed by other attorneys seeking fees; and (4) by reviewing attorneys' fee applications and awards in other cases, as well as surveys and articles on attorney's fees in the legal newspapers and treatises. The information I have gathered shows that my firm's rates are in line with the non-contingent market rates charged by attorneys of reasonably comparable experience, skill, and reputation for reasonably comparable class action work. In fact, comparable hourly rates have been found reasonable by various courts for reasonably comparable services, including:

- i. *Pearlman v. Cablevision Systems Corp.*, 2019 WL 3974358 (E.D.N.Y. Aug. 20, 2019), approving partner rates up to \$875.
- ii. *Dover v. British Airways, PLC*, No. 12-cv-05567-RJD-CLP, Dkt. 321 (E.D.N.Y. Oct. 9, 2018), approving partner rates up to \$875.
- iii. *Laydon v. Mizuho Bank, Ltd.*, No. 1:12-cv-03419-GBD (S.D.N.Y. Dec. 7, 2017), approving partner rates of \$875 to \$975 and associate rates of \$325 to \$600, as set forth in Dkt. 837.
- iv. *In re Credit Default Swaps Antitrust Litig.*, 2016 WL 2731524, at \*17 (S.D.N.Y. April 26, 2016), approving partner rates of \$834 to \$1,125 and associate rates of \$411 to \$714.
- v. *In re Platinum & Palladium Commod. Litig.*, No. 10-cv-3617, 2015 U.S. Dist. LEXIS 98691, at \*13 (S.D.N.Y. July 7, 2015) (Slip Op.), approving billing

rates of \$950 and \$905 per hour and referring to a recent National Law Journal survey yielding an average hourly partner billing rate of \$982 in New York.

- vi. *In re Bear Stearns Cos., Inc. Sec., Deriv., & ERISA Litig.*, No. 1:08-md-01963-RWS, 909 F. Supp. 2d 259, 271-72 (S.D.N.Y. 2012), approving fee award based on hourly rates ranging from \$275 to \$650 for associates and \$725 to \$975 for partners, as set forth in Dkt. 302-5.
- vii. *In re TFT-LCD (Flat Panel) Antitrust Litigation*, No. M 07 1827 SI, MDL, No. 1827 (N.D. Cal. 2013), an antitrust class action, in which the court found blended hourly rates of \$1000, \$950, \$861, \$825, \$820, and \$750 per hour reasonable for the lead class counsel.
- viii. *Williams v. H&R Block Enterprises, Inc.*, No. RG08366506 (Alameda County Superior Ct. Nov. 8, 2012), Order of Final Approval and Judgment, a wage and hour class action, in which the court found the hourly rates of \$785, \$775, and \$750 reasonable for the more senior class counsel.
- ix. *Luquetta v. The Regents of the Univ. of California*, No. CGC-05-443007 (San Francisco Superior Ct. Oct. 31, 2012), Order Granting Plaintiffs' Motion for Common Fund Attorneys' Fees and Expenses, a class action to recover tuition overcharges in which the court found the hourly rates of \$850, \$785, \$750, and \$700 reasonable for Plaintiffs' more experienced counsel.
- x. *Pierce v. County of Orange*, 905 F. Supp. 2d 1017 (C.D. Cal. 2012), a civil rights class action brought by pre-trial detainees, in which the court approved a lodestar-based, *inter alia*, on 2011 rates of \$850 and \$825 per hour.
- xi. *Holloway et. al. v. Best Buy Co., Inc.*, No. 05-5056 PJH (N.D. Cal. 2011) (Order dated November 9, 2011), a class action alleging that Best Buy discriminated against female, African American and Latino employees by denying them promotions and lucrative sales positions, in which the court approved lodestar-based rates of up to \$825 per hour.
- xii. *Californians for Disability Rights, Inc., et al. v. California Department of Transportation, et al.*, 2010 U.S. Dist. LEXIS 141030 (N.D. Cal. 2010), adopted by Order Accepting Report and Recommendation filed February 2, 2011, a class action in which the court found reasonable 2010 hourly rates of up to \$835 per hour.
- xiii. *Credit/Debit Card Tying Cases*, JCCP No. 4335 (San Francisco County Superior Court Aug. 23, 2010), Order Granting Plaintiffs' Motion for Attorneys' Fees, Expenses, and Incentive Awards, an antitrust class action, in which the court, before applying a 2.0 lodestar multiplier, found reasonable 2010 hourly rates of \$975 for a 43-year attorney, \$950 for a 46-year attorney, \$850 for 32 and 38 year attorneys, \$825 for a 35-year attorney, \$740 for a 26-

year attorney, \$610 for a 13-year attorney, and \$600 for a 9-year attorney, and \$485 for a 5-year attorney.

- xiv. *Savaglio, et al. v. WalMart*, No. C-835687-7 (Alameda County Superior Court Sep. 10, 2010), Order Granting Class Counsel’s Motion for Attorneys’ Fees, a wage and hour class action, in which the court found reasonable, before applying a 2.36 multiplier, rates of up to \$875 per hour for a 51-year attorney, \$750 for a 39-year attorney, and \$775 for a 33-year attorney.
- xv. *Qualcomm, Inc. v. Broadcom, Inc.*, Case No. 05-CV-1958-B, 2008 WL 2705161 (S.D. Cal. 2008), in which the court found the 2007 hourly rates requested by Wilmer Cutler, Pickering, Hale & Dorr LLP reasonable; those rates ranged from \$45 to \$300 for staff and paralegals, from \$275 to \$505 for associates and counsel, and from \$435 to \$850 for partners.

36. My firm’s rates are set taking into account our unique experience and track record of success winning 6 of 6 class action trials. We charge these same rates to clients who retain us on an hourly basis, and we do not discount them. My firm’s rates have been deemed reasonable by Courts across the country, including in New York, California, Michigan, Illinois, Missouri, and New Jersey for example:

- i. *Taylor v. Trusted Media Brands, Inc.*, No. 7:16-cv-01812, Dkt. 89 (S.D.N.Y. Feb. 1, 2018) (Final Judgment And Order Of Dismissal With Prejudice). A true and correct copy of the transcript from the Final Approval Hearing in Trusted Media Brands is attached hereto as **Exhibit 4**.
- ii. *Russett v. Northwestern Mutual Life Insurance Co.*, No. 7:19-cv-07414 (S.D.N.Y. Oct. 6, 2020) (Final Judgment And Order Of Dismissal With Prejudice).
- iii. *Edwards v. Hearst Communications, Inc.*, No. 1:15-cv-09279 (S.D.N.Y. Apr. 24, 2019) (Final Judgment And Order Of Dismissal With Prejudice).
- iv. *Rodriguez v. CitiMortgage, Inc.*, No. 7:11-cv-4718 (S.D.N.Y. Oct. 6, 2015), (concluding during the fairness hearing that Bursor & Fisher’s rates for two of its partners, Joseph Marchese and Scott Bursor, were “reasonable”).
- v. *Perez v. Rash Curtis & Associates*, 2020 WL 1904533, at \*20 (N.D. Cal. Apr. 17, 2020) (concluding that “blended rate of \$634.48 is within the reasonable range of rates”).
- vi. *In re Haier Freezer Consumer Litig.*, No. C11-02911 EJD (N.D. Cal. Oct. 25,

2013) (Final Judgment And Order Granting Plaintiffs' Motion For Final Approval Of Class Action Settlement And For Award Of Attorneys' Fees, Costs And Incentive Awards).

- vii. *Kokoszki v. Playboy Enterprises, Inc.*, No. 2:19-cv-10302 (E.D. Mich. Aug. 19, 2020) (Final Judgment And Order Of Dismissal With Prejudice).
- viii. *Moeller v. American Media, Inc.*, No. 2:16-cv-11367 (E.D. Mich. Sept. 28, 2017) (Order And Judgment Of Dismissal With Prejudice).
- ix. *In re Michaels Stores Pin Pad Litigation*, No. 1:11-cv-03350 (N.D. Ill. Apr. 17, 2013) (Order Approving Settlement).
- x. *In re Blue Buffalo Company, Ltd. Marketing and Sales Practices Litigation*, No. 4:14-md-02562 (E.D. Mo. June 16, 2016) (Order Awarding Fees And Costs).
- xi. *Rossi v. The Procter & Gamble Co.*, No. 11-7238 (D.N.J. Oct. 3, 2013) (Final Approval Order And Judgment).

37. No court has ever cut my firm's fee application by a single dollar on the ground that our hourly rates were not reasonable.

38. My firm, Bursor & Fisher, P.A., has significant experience in litigating class actions of similar size, scope, and complexity to the instant action. *See* Firm Resume of Bursor & Fisher, P.A., a true and accurate copy of which is attached hereto as **Exhibit 5**. For instance, Bursor & Fisher was appointed Class Counsel in *Russett, et al. v. The Northwestern Mutual Life Insurance Company*, No. 7:19-cv-07414 (S.D.N.Y.), where we secured a \$595,000 class-wide settlement, which was finally approved by Judge Kenneth Karas on October 6, 2020. *See id.*, Dkt. 51 ("Final Approval Order"); *see also* Preliminary Approval Hearing Transcript in *Russett*, No. 7:19-cv-07414-KMK ("NWM Hearing Tr."), a true and accurate copy of which is attached hereto as **Exhibit 6**.

39. My firm also has served or is currently serving as plaintiff's counsel in a number of substantially similar putative class actions pursuant to the ARL. *See, e.g., Moses v. The New*

*York Times Company*, No. 1:20-cv-04658-RA (S.D.N.Y.), filed June 17, 2020; *Jordan v. WP Company LLC d/b/a The Washington Post*, No. 3:20-cv-05218-WHO (N.D. Cal.), filed July 29, 2020; *Morrell v. WW International, Inc.*, No. 1:20-cv-09912-JGK (S.D.N.Y.), filed November 11, 2020; *Smith v. LinkedIn Corp.*, No. 22CV404069 (Cal. Super. Ct.), filed October 6, 2022.

40. My firm has also been recognized by courts across the country, including in this Circuit, for its expertise litigating Rule 23 class action claims to trial. *See* Ex. 5, Firm Resume; *see also* Ex. 6, NWM Hearing Tr. at 21:1-4 (“[Bursor & Fisher, P.A.] has extensive experience in litigating precisely these types of actions, and that’s why they’ve been appointed in numerous cases to be lead counsel.”); *see also Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561, 566 (S.D.N.Y. Feb. 25, 2014) (“Bursor & Fisher, P.A., are class action lawyers who have experience litigating consumer claims. ... The firm has been appointed class counsel in dozens of cases in both federal and state courts, and has won multi-million dollar verdicts or recoveries in five class action jury trials since 2008.”); *In re Welspun Litigation*, No. 1L16-cv-06792-RJS (S.D.N.Y. January 26, 2017) (appointing Bursor & Fisher interim lead counsel to represent a proposed nationwide class of purchasers of mislabeled Egyptian cotton bedding products); *Williams v. Facebook, Inc.*, No. 3:18-cv-01881, Dkt. 51 (N.D. Cal June 26, 2018) (“[The] Bursor firm ... ha[s] extensive experience in handling class actions and complex litigation, including products liability and consumer protection cases; appear[s] to have knowledge of applicable law; and ha[s] extensive resources.”) (appointing Bursor & Fisher class counsel to represent a putative nationwide class of all persons who installed Facebook Messenger applications and granted Facebook permission to access their contact list).

41. Moreover, as noted above, my firm has served as trial counsel for class action plaintiffs in six jury trials and has won all six, with recoveries ranging from \$21 million to \$299



million. *See infra* ¶ 52.

42. Likewise, Gucovschi Rozenshteyn, PLLC also has extensive experience in litigating class actions of similar size, scope, and complexity to the instant action. *See Firm Resume of Gucovschi Rozenshteyn, PLLC*, a true and accurate copy of which is attached hereto as **Exhibit 7**.

43. I am of the opinion that Ms. Winston's active involvement in this case was critical to its ultimate resolution. She took her role as class representative seriously, devoting significant amounts of time and effort to protecting the interests of the class. Without her willingness to assume the risks and responsibilities of serving as class representative, I do not believe such a strong result could have been achieved.

44. Ms. Winston equipped my firm with critical details regarding her experiences with Defendant. She assisted my firm in investigating her claims, detailing her account history and the automatic renewal charges associated with her Peacock Subscription, supplied supporting documentation, aided in drafting the Complaint, and produced documents in informal discovery conducted in advance of mediation. Further, Ms. Winston was prepared to testify at deposition and trial, if necessary, and she was actively consulted during the appeal and settlement processes.

45. In short, Ms. Winston assisted my firm in pursuing this action on behalf of the class, and her involvement in this case has been nothing short of essential.

I declare under penalty of perjury that the above and foregoing is true and accurate.

Executed this 20th day of September, 2024, at Walnut Creek, CA.

/s/ Neal J. Deckant  
Neal J. Deckant



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

HOLLY WINSTON, on behalf of herself and all others similarly situated,  
  
Plaintiff,  
  
v.  
  
PEACOCK TV LLC,  
  
Defendant.

Civil Action No.: 1:23-cv-08191-ALC  
  
Hon. Andrew L. Carter, Jr.

**CLASS ACTION SETTLEMENT AGREEMENT**

This Agreement (“Agreement” or “Settlement Agreement”) is entered into by and among (i) Plaintiff Holly Winston (“Plaintiff”); (ii) the Settlement Class (as defined herein); and (iii) Defendant Peacock TV LLC (“Defendant” or “Peacock”). Plaintiff and Defendant are collectively referred to herein as the “Parties.” This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined herein), upon and subject to the terms and conditions of this Agreement, and subject to the final approval of the Court.

**RECITALS**

A. This putative class action was filed on September 15, 2023, in the United States District Court for the Southern District of New York. The material allegations of the action are that Defendant enrolled Plaintiff and other Class Members in automatic renewal video streaming subscriptions without first presenting the consumer with the automatic renewal offer terms in a clear and conspicuous manner; charged the consumer’s credit card, debit card, or third party payment account without first obtaining the consumer’s affirmative consent to an agreement

containing clear and conspicuous disclosure of the automatic renewal offer terms; and failed to provide the consumer with an acknowledgment that included clear and conspicuous disclosure of the automatic renewal offer terms, cancellation policy, and information regarding how to cancel. Based on Defendant's alleged conduct, Plaintiff's operative class action complaint (the "Complaint") sought monetary and injunctive relief and brought claims for: (1) violation of California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.*; (2) conversion; (3) violation of California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code §§ 17500, *et seq.*; (4) unjust enrichment; (5) negligent misrepresentation; and (6) fraud. (Dkt. 1.)

B. After Plaintiff filed her Complaint, the Parties engaged in a Rule 26(f) planning conference and a Rule 16 scheduling conference. Shortly thereafter, on November 13, 2023, Defendant filed a Letter Motion for Extension of Time to File Answer, requesting, with Plaintiff's consent, an extension of Peacock's November 27, 2023 deadline to respond to Plaintiff's complaint up to and including January 8, 2024. (Dkt. 8.) This Court granted Defendant's request on November 21, 2023. (Dkt 9.)

C. On December 22, 2023, before Defendant's response to Plaintiff's complaint was due to be filed, the Parties filed a joint letter motion with the Court, indicating that the Parties had agreed to explore early resolution of the case and requested that the Court enter an order staying all upcoming deadlines pending the outcome of the Parties' settlement discussions, including Defendant's deadline to file a response to Plaintiff's Complaint on January 8, 2024, for 60 days, through and including February 20, 2024. (Dkt. 10.) On January 4, 2024, the Court entered an order granting the Parties' requests. (Dkt. 11.) On February 21, 2024, the Court entered an order extending the stay of the action by an additional 45 days, through and including April 5, 2024, while the Parties participate in a mediation scheduled for March 11, 2024. (Dkt. 13.) On April 1, 2024, the Parties sought a further 60-day extension of the stay of all case

deadlines, through and including May 20, 2024, by joint letter request. (Dkt. 14.) The Parties' April 1, 2024, request is currently pending.

D. From the outset of the case the Parties engaged in direct communications, and as part of their obligations under Fed. R. Civ. P. 26, discussed the prospect of an early resolution. Those discussions eventually led to an agreement between the Parties to engage in early mediation, which the Parties agreed would take place on March 11, 2024, before Hon. Diane M. Welsh (Ret.), who is an experienced class action mediator affiliated with JAMS.

E. In the months leading up to the mediation, the Parties were in regular communication with each other and with Judge Welsh, as the Parties sought to crystallize the disputed issues, produce focal information and data, and narrow potential frameworks for resolution. During this period and in connection with the mediation proceeding, Defendant provided counsel for Plaintiff ("Class Counsel") with detailed data regarding the size of Settlement Class; the Parties exchanged briefing on the key facts, legal issues, litigation risks, and potential settlement structures; and the Parties supplemented that briefing with extensive emails and telephonic correspondence in order to clarify the Parties' positions in advance of the mediation. This information was sufficient for the Parties to assess the strengths and weakness of the claims and defenses and their relative negotiating positions.

F. The mediation took place on March 11, 2024, was conducted by Zoom, and it lasted approximately seven hours. The Parties engaged in good faith negotiations, which at all times were at arms' length. Towards the end of the mediation, the Parties reached an agreement to settle the case. The settlement agreement was accomplished largely by Judge Welsh's extensive mediation efforts, including her recommendation for the Parties to accept the agreed-upon terms and conditions of the Agreement detailed below.

G. At all times, Defendant has denied and continues to deny any wrongdoing

whatsoever and has denied and continues to deny that it committed any wrongful act or violation of law or duty alleged in the Action, and has opposed and continues to oppose certification of a litigation class. Defendant believes that the claims asserted in the Action do not have merit and that Defendant would have prevailed on a motion to dismiss, at summary judgment or at trial. Nonetheless, taking into account the uncertainty and risks inherent in any litigation, and the desire for finality and closure of this Action, Defendant has concluded it is desirable and beneficial that the Action be fully and finally settled and terminated in the manner and upon the terms and conditions set forth in this Agreement. This Agreement is a compromise, and the Agreement, any related documents, and any negotiations resulting in it shall not be construed as or deemed to be evidence of or an admission or concession of liability or wrongdoing on the part of Defendant, or any of the Released Parties (defined below), with respect to any claim of any fault or liability or wrongdoing or damage whatsoever or with respect to the certifiability of a litigation class.

H. Plaintiff believes that the claims asserted in the Action against Defendant have merit and that she would have prevailed on a motion to dismiss, summary judgment and/or trial. Nonetheless, Plaintiff and Class Counsel recognize that Defendant has raised factual and legal defenses that present a risk that Plaintiff may not prevail. Plaintiff and Class Counsel also recognize the expense and delay associated with continued prosecution of the Action against Defendant through class certification, summary judgment, trial, and any subsequent appeals. Plaintiff and Class Counsel also have taken into account the uncertain outcome and risks of litigation, especially in complex class actions, as well as the difficulties inherent in such litigation. Therefore, Plaintiff believes it is desirable that the Released Claims be fully and finally compromised, settled, and resolved with prejudice. Based on its evaluation, Class Counsel has concluded that the terms and conditions of this Agreement are fair, reasonable, and

adequate to the Settlement Class, and that it is in the best interests of the Settlement Class to settle the claims raised in the Action pursuant to the terms and provisions of this Agreement.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiff, the Settlement Class, and each of them, and Defendant, by and through their undersigned counsel that, subject to final approval of the Court after a hearing or hearings as provided for in this Settlement Agreement, and in consideration of the benefits flowing to the Parties from the Agreement set forth herein, that the Action and the Released Claims will be finally and fully compromised, settled, and released, and the Action will be dismissed with prejudice, upon and subject to the terms and conditions of this Agreement.

### **AGREEMENT**

#### **1. DEFINITIONS.**

As used in this Settlement Agreement, the following terms have the meanings specified below:

**1.1 “Action”** means *Winston v. Peacock TV LLC*, Case No. 1:23-cv-08191-ALC, pending in the United States District Court for the Southern District of New York.

**1.2 “Alternate Judgment”** means a form of final judgment that may be entered by the Court herein but in a form other than the form of Judgment provided for in this Agreement and where none of the Parties elects to terminate this Settlement by reason of such variance.

**1.3 “Approved Claim”** means a Claim Form submitted by a Settlement Class Member for cash payment from the Settlement Fund that is: (a) submitted timely and in accordance with the directions on the Claim Form and the provisions of the Settlement Agreement, as determined by the Settlement Administrator; (b) fully and truthfully completed by a Settlement Class Member with all of the information requested in the Claim Form; (c) signed

by the Settlement Class Member, physically or electronically under penalty of perjury; and (d) approved by the Settlement Administrator pursuant to the provisions of this Agreement.

**1.4 “Claim Form”** means the document substantially in the form attached hereto as **Exhibit A**, as approved by the Court. The Claim Form shall be submitted by Settlement Class Members seeking a cash payment pursuant to this Settlement Agreement. The Claim Form will be available online at the Settlement Website (defined at paragraph 1.40 below).

**1.5 “Claims Deadline”** means the date by which all Claim Forms must be postmarked or received, including by electronic submission via the Settlement Website, to be considered timely and will be set as a date no later than forty-five (45) days following the dissemination of Notice to the Settlement Class by the Settlement Administrator, pursuant to the terms herein. The Claims Deadline will be clearly set forth in the Preliminary Approval Order, and will be stated on the Notice and the Claim Form.

**1.6 “Class Counsel”** means the law firms of Bursor & Fisher, P.A. and Gucovschi Rozenshteyn, PLLC.

**1.7 “Class Period”** means the period of time from September 15, 2019, to and through February 27, 2024.

**1.8 “Class Representative”** means the named Plaintiff in this Action, Holly Winston.

**1.9 “Court”** means the United States District Court for the Southern District of New York, the Honorable Andrew L. Carter, Jr., presiding, or any judge who will succeed him as the Judge in this Action.

**1.10 “Defendant” or “Peacock”** means Peacock TV LLC.

**1.11 “Defendant’s Counsel”** means the law firm of ZwillGen Law PLLC.

**1.12 “Effective Date”** means the date ten (10) days after which all of the events and conditions specified in paragraph 9.1 have been met and have occurred.



**1.13 “Escrow Account”** means the separate, interest-bearing escrow account to be established by the Settlement Administrator under terms acceptable to all Parties at a depository institution insured by the Federal Deposit Insurance Corporation. The Settlement Fund shall be deposited by Defendant into the Escrow Account in accordance with the terms of this Agreement and the money in the Escrow Account shall be invested in the following types of accounts and/or instruments and no other: (i) demand deposit accounts and/or (ii) time deposit accounts and certificates of deposit, in either case with maturities of forty-five (45) days or less. The costs of establishing and maintaining the Escrow Account shall be paid from the Settlement Fund.

**1.14 “Fee Award”** means the amount of attorneys’ fees and reimbursement of expenses awarded by the Court to Class Counsel, which will be paid out of the Settlement Fund.

**1.15 “Final”** means, with respect to any court order, including, without limitation, the Final Judgment, that such order represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. An order becomes “Final” when: (i) no appeal has been filed and the prescribed time for commencing any appeal has expired; or (ii) an appeal has been filed and either (a) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (b) the order has been affirmed in its entirety and the prescribed time, if any, for commencing any further appeal has expired. Any appeal or other proceeding pertaining solely to any order issued with respect to any application for attorneys’ fees and expenses and/or Incentive Awards pursuant to Section 8.3 below, shall not in any way delay or prevent the Final Judgment from becoming Final.

**1.16 “Final Approval Date”** means one (1) business day following the latest of the following events: (i) the date upon which the time expires for filing or noticing any appeal of the Court’s Final Judgment approving the Settlement Agreement, if no appeal has been filed; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee

Award, the date of completion, in a manner that finally affirms and leaves in place the Final Judgment without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or *certiorari*, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on *certiorari*.

**1.17 “Final Approval Hearing”** means the hearing before the Court where the Parties will request the Final Judgment to be entered by the Court approving the Settlement Agreement, the Fee Award, and the Incentive Award to the Class Representative.

**1.18 “Final Judgment”** means the Final Judgment and Order to be entered by the Court approving the Agreement after the Final Approval Hearing, which is substantially in the form of **Exhibit F** attached hereto.

**1.19 “Incentive Award”** means any award approved by the Court that is payable to the Plaintiff from the Settlement Fund.

**1.20 “Net Settlement Fund”** means the amount of the Settlement Fund remaining after payment of Settlement Administration Expenses, incentive award to the Class Representative, and the Fee Award.

**1.21 “Notice”** means the notice of this proposed Class Action Settlement Agreement and Final Approval Hearing, which is to be sent to the Settlement Class substantially in the manner set forth in this Agreement, consistent with the requirements of Due Process, Rule 23, and substantially in the form of **Exhibits B, C, and D** hereto.

**1.22 “Notice Plan”** means the Settlement Administrator’s plan to disseminate Notice to Settlement Class Members as further detailed in paragraph 4.1.

**1.23 “Notice Date”** means the publication of notice pursuant paragraph 4.1(b) of this Agreement, which shall be no later than twenty-eight (28) days after the Preliminary Approval Order.

**1.24 “Objection/Exclusion Deadline”** means the date by which a written objection to this Settlement Agreement or a request for exclusion submitted by a Person within the Settlement Class must be made, which shall be designated as a date no later than forty-five (45) days after the Notice Date and no sooner than fourteen (14) days after papers supporting the Fee Award are filed with the Court and posted to the settlement website listed in paragraph 4.1(e), or such other date as ordered by the Court.

**1.25 “Peacock Subscriptions”** means all of Defendant’s video streaming subscription offerings.

**1.26 “Person”** shall mean, without limitation, any individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouse, parent, child, guardian, associate, co-owners, heirs, predecessors, successors, representatives, or assigns. “Person” is not intended to include any governmental agencies or governmental actors, including, without limitation, any state Attorney General office.

**1.27 “Plaintiff”** means Holly Winston.

**1.28 “Preliminary Approval”** means the Court’s entry of an order preliminarily approving the terms and conditions of this Settlement Agreement, including the manner of providing, and content of, the notice to Settlement Class Members.

**1.29 “Preliminary Approval Date”** means the date on which the Court enters an order granting Preliminary Approval.

**1.30 “Preliminary Approval Order”** means the order preliminarily approving the Settlement Agreement, conditionally certifying the Settlement Class for settlement purposes, and directing notice thereof to the Settlement Class, which will be agreed upon by the Parties and submitted to the Court in conjunction with Plaintiff’s motion for preliminary approval of the Agreement. The Parties’ proposed form of Preliminary Approval Order is attached hereto as **Exhibit E**.

**1.31 “Released Claims”** means any and all causes of action or claims for relief, whether in law or equity, including but not limited to injunctive relief, actual damages, nominal damages, statutory damages, punitive damages, exemplary or multiplied damages, restitution, disgorgement, expenses, attorneys’ fees and costs, and/or any other form of consideration whatsoever (including “Unknown Claims” as defined below), whether in law or in equity, accrued or un-accrued, direct, individual or representative, of every nature and description whatsoever, that were brought or could have been brought in the Action relating to any and all Releasing Parties, any Peacock TV Subscription associated with any of them, or that in any way relate to or arise out of Defendant’s automatic renewal and/or continuous service programs in California from September 15, 2019, to and through February 27, 2024, including but not limited to any of the facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions or failures to act related thereto.

**1.32 “Released Parties”** means Peacock TV LLC, as well as any and all of its respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, licensors, licensees, associates, affiliates, employers, agents, consultants, independent contractors, insurers, and customers, including without limitation employees of the foregoing, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, underwriters,

shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns and companies, firms, trusts, and corporations.

**1.33 “Releasing Parties”** means Plaintiff, those Settlement Class Members who do not timely opt out of the Settlement Class, and all of their respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, associates, affiliates, employers, employees, agents, consultants, independent contractors, insurers, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns and companies, firms, trusts, and corporations.

**1.34 “Renewal Fees”** means: (i) for Peacock subscriptions that began with a free trial, the first charge for the subscription; and (ii) for Peacock subscriptions that did not begin with a free trial, the first payment automatically charged to the subscriber after the initial payment.

**1.35 “Settlement Administration Expenses”** means the expenses actually incurred by the Settlement Administrator in providing Notice (including CAFA notice), processing claims, responding to inquiries from members of the Settlement Class, mailing checks for Approved Claims, and related services, paying taxes and tax expenses related to the Settlement Fund (including all federal, state or local taxes of any kind and interest or penalties thereon, as well as expenses incurred in connection with determining the amount of and paying any taxes owed and expenses related to any tax attorneys and accountants), as well as all expenses related to the resolution of any disputed claims by Hon. Diane M. Welsh (Ret.), as described below in paragraph 5.3.

**1.36 “Settlement Administrator”** means Epiq Class Action & Claims Solutions, Inc., or such other reputable administration company that has been selected jointly by the Parties and

approved by the Court to perform the duties set forth in this Agreement, including but not limited to serving as Escrow Agent for the Settlement Fund, overseeing the distribution of Notice, as well as the processing and payment of Approved Claims to the Settlement Class as set forth in this Agreement, handing all approved payments out of the Settlement Fund, and handling the determination, payment and filing of forms related to all federal, state and/or local taxes of any kind (including any interest or penalties thereon) that may be owed on any income earned by the Settlement Fund. Class Counsel's assent to this Agreement shall constitute consent on behalf of each and every member of the Settlement Class as defined herein to disclose all information required by the Settlement Administrator to perform the duties and functions ascribed to it herein.

**1.37 “Settlement Class”** means all Persons who, from September 15, 2019, to and through February 27, 2024, enrolled in an automatically renewing Peacock Subscription directly through Peacock using a California billing address, and who were charged and paid Renewal Fees in connection with such subscription(s). Excluded from the Settlement Class are: (1) any Judge or Magistrate presiding over this Action and members of their families; (2) Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest and their current or former officers, directors, agents, attorneys, and employees; (3) Persons who properly execute and file a timely request for exclusion from the class; and (4) the legal representatives, successors or assigns of any excluded Persons.

**1.38 “Settlement Class Member”** means a Person who falls within the definition of the Settlement Class.

**1.39 “Settlement Fund”** means the non-reversionary cash fund that shall be established by Defendant for purposes of this Agreement in the total amount of three million

seven hundred forty-two thousand six hundred thirty-seven dollars and fourteen cents USD (\$3,742,637.14), to be deposited into the Escrow Account, according to the schedule set forth herein, plus all interest earned thereon. The Settlement Fund represents the total extent of Defendant's monetary obligations under this Agreement. The Settlement Fund shall be used for payment of the following: (i) Approved Claims submitted by Settlement Class Members; (ii) the Settlement Administration Expenses; (iii) any Fee Award to Class Counsel; and (iv) any Incentive Award to the Class Representative, not to exceed \$5,000, as may be ordered by the Court. The Settlement Fund shall be kept in the Escrow Account with permissions granted to the Settlement Administrator to access said funds until such time as the listed payments are made. The Settlement Fund includes all interest that shall accrue on the sums deposited in the Escrow Account. The Settlement Administrator shall be responsible for all tax filings with respect to any earnings on the Settlement Fund and the payment of all taxes that may be due on such earnings. The payment of the Settlement Fund by Defendant fully discharges the Defendant and the other Released Parties' financial obligations (if any) in connection with the Agreement, meaning that no Released Party shall have any other obligation to make any payment into the Escrow Account or to any Class Member, or any other Person, under this Agreement. In no event shall the total monetary obligation with respect to this Agreement on behalf of Defendant exceed \$3,742,637.14.

**1.40 "Settlement Website"** means a website to be established, operated, and maintained by the Settlement Administrator for purposes of providing notice and otherwise making available to the Settlement Class Members the documents, information, and online claims submission process referenced in paragraphs 2.1(b) through 2.1(d), below.

**1.41 "Unknown Claims"** means claims that could have been raised in the Action and that any or all of the Releasing Parties do not know or suspect to exist, which, if known by him

or her, might affect his or her agreement to release the Released Parties or the Released Claims or might affect his or her decision to agree, object, or not to object to the Settlement. Upon the Effective Date, the Releasing Parties will be deemed to have, and will have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of § 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY

Upon the Effective Date, the Releasing Parties also will be deemed to have, and will have, waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable, or equivalent to § 1542 of the California Civil Code. The Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention to finally and forever settle and release the Released Claims, notwithstanding any Unknown Claims they may have, as that term is defined in this paragraph.

## **2. SETTLEMENT RELIEF.**

### **2.1 Payment to Settlement Class Members.**

(a) Defendant shall cause to be paid into the Escrow Account the amount of the Settlement Fund (\$3,742,637.14 USD), specified in paragraph 1.39 of this Agreement, within forty-five (45) days after Preliminary Approval. Once Defendant makes its payment to the Escrow Fund, all risk of loss shall pass to the Escrow Fund.

(b) Settlement Class Members shall have until the Claims Deadline to submit a Claim Form for approval by the Settlement Administrator as an Approved Claim. Each



Settlement Class Member who submits an Approved Claim will receive a *pro rata* payment from the Net Settlement Fund in the form of a check, issued and mailed by the Settlement Administrator within 60 days of the Effective Date.

(c) The Settlement Administrator will be responsible for reviewing all claims to determine their validity. The Settlement Administrator will reject any claim that does not comply in any material respect with the instructions on the Claim Form or the terms of paragraphs 1.3 and 1.4, above, or is submitted after the Claims Deadline. Defendant has the right to audit the claims process for evidence of fraud or error; provided, however, that the Settlement Administrator or the Court shall be the final arbiter of a claim's validity.

(d) Each claimant who submits an invalid Claim Form to the Settlement Administrator must be given a notice of the Claim Form's deficiency and an opportunity to cure the deficiency within 21 days of the date of the notice.

(e) All cash payments issued to Settlement Class Members via check will state on the face of the check that it will expire and become null and void unless cashed within one hundred and eighty (180) days after the date of issuance. If a check issued to a Settlement Class Member is not cashed within one hundred and eighty (180) days after the date of issuance, such funds shall revert to the Legal Aid Association of California, a non-sectarian, not-for-profit organization that principally operates in California, or another non-sectarian, not-for-profit organization(s) recommended by Class Counsel and Defendant, and as approved by the Court.

**2.2 Prospective Relief.** Defendant agrees to provide automatic renewal terms on its checkout pages in a manner that is consistent with the requirements of California's Automatic Renewal Law ("ARL"), Cal. Bus. & Prof. Code §§ 17600, *et seq.* Specifically, Defendant agrees to present to California subscribers on the checkout page for any Peacock Subscription that will automatically renew, the automatic renewal offer terms associated with such subscription

(including cancellation policy) in a clear and conspicuous manner before the subscription or purchasing agreement and in visual proximity to the request for consent to the offer. Defendant will obtain affirmative consent to the agreement containing the automatic renewal terms in a manner that complies with the ARL. Defendant further agrees to disclose to subscribers with a California billing address, in a manner that substantially complies with the ARL, how to cancel in an acknowledgment email that is capable of being retained by consumers.

**3. RELEASE.**

**3.1** The obligations incurred pursuant to this Settlement Agreement shall be a full and final disposition of the Action and any and all Released Claims, as against all Released Parties.

**3.2** Upon the Effective Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties, and each of them. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settling Class Member, including Plaintiffs, shall, either directly, indirectly, representatively, or in any capacity, be permanently barred and enjoined from filing, commencing, prosecuting, intervening in, or participating (as a class member or otherwise) in any lawsuit, action, or other proceeding in any jurisdiction (other than participation in the Settlement as provided herein) against any Released Party based on the Released Claims.

**3.3** Plaintiff, the Settlement Class and the Releasing Parties each individually covenant not to bring any Released Claim and expressly agree that this Release will be, and may be raised as, a complete defense to and will preclude any action or proceeding encompassed by the release(s) contained herein in respect to any Peacock Subscription associated with a Class Member.

**4. NOTICE TO THE CLASS.**

**4.1** The Notice Plan shall consist of the following:

(a) *Settlement Class List.* Defendant shall produce an electronic list from its records that includes the names, and last known e-mail and, if available, U.S. Mail addresses that, according to its records, belong to Persons with Peacock Subscriptions within the Settlement Class. This electronic document shall be called the “Class List,” and shall be provided to the Settlement Administrator. In no event shall the Class List be provided to the Settlement Administrator later than fourteen (14) days prior to the date Notice shall be disseminated. This Class List is confidential and shall not be used for any other purposes beyond providing notice to the Settlement Class and assisting with the determination of valid claims. Class Counsel’s assent to this Agreement shall constitute consent on behalf of each and every member of the Settlement Class as defined herein to disclose this information as stated in this paragraph.

(b) *Direct Notice to Settlement Class Members.* No later than the twenty-eight (28) days from entry of the Preliminary Approval Order, the Settlement Administrator shall send notice to the Class Members via email in the form attached as **Exhibit B**, along with an electronic link to the Claim Form, to all Settlement Class Members for whom a valid email address is in the Class List. If an email notice to a Settlement Class Member is returned as non-deliverable, the Settlement Administrator shall send the notice in the form attached as **Exhibit C** to the Settlement Class Member’s billing or mailing address via First Class U.S. Mail, together with a postcard Claim Form with return postage prepaid. For Settlement Class Members without an email address, the Settlement Administrator shall send the Notice via First Class U.S. Mail, together with a postcard Claim Form with return postage prepaid.

(c) If any Notice is returned as non-deliverable, and a forwarding address is provided, the Settlement Administrator shall re-mail the Notice to the forwarding address within

five (5) business days. If any Notice is returned as non-deliverable, and no forwarding address is provided, the Settlement Administrator shall attempt to ascertain a valid address for the affected Settlement Class Member by seeking change of address information through the U.S. Postal Service's National Change of Address Link, and shall re-mail the Notice within five (5) business days to the address(es) that are found. The Settlement Administrator shall have no obligation to send Notices beyond those obligations specified herein.

(d) *Settlement Website.* Within ten (10) days from entry of the Preliminary Approval Order, Notice shall be provided on a website at an available URL (such as, for example, [www.CArenewalsettlementPeacockTV.com](http://www.CArenewalsettlementPeacockTV.com)) which shall be obtained, administered and maintained by the Settlement Administrator and shall include the ability to file Claim Forms online, provided that such Claim Forms, if signed electronically, will be binding for purposes of applicable law and contain a statement to that effect. The Notice provided on the Settlement Website shall be substantially in the form of **Exhibit D** hereto.

(e) *CAFA Notice.* Pursuant to 28 U.S.C. § 1715, not later than ten (10) days after the Agreement is filed with the Court, the Settlement Administrator shall cause to be served upon the Attorney General of the United States, and any other required government official, notice of the proposed settlement as required by law, subject to paragraph 5.1 below.

**4.2** The Notice shall advise the Settlement Class of their rights, including the rights to be excluded from or object to the Settlement Agreement or any of its terms. The Notice shall specify that any objection to the Settlement Agreement, and any papers submitted in support of said objection, shall be considered by the Court at the Final Approval Hearing only if, on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice, the Person making the objection files notice of an intention to do so and at the same time (a) files copies of such papers he or she proposes to be submitted at the Final Approval Hearing with the

Clerk of the Court, or alternatively, if the objection is from a Class Member represented by counsel, files any objection through the Court's CM/ECF system, and (b) sends copies of such papers by mail, hand, or overnight delivery service to Class Counsel and Defendant's Counsel.

**4.3** Any Settlement Class Member who intends to object to this Agreement must present the objection in writing to the Settlement Administrator, postmarked on or before the Objection/Exclusion deadline approved by the Court and specified in the Notice, which must be personally signed by the objector, and must include: (1) the objector's name and address; (2) an explanation of the basis upon which the objector claims to be a Settlement Class Member; (3) all grounds for the objection, including all citations to legal authority and evidence supporting the objection; (4) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the "Objecting Attorneys"); and (5) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel who files an appearance with the Court in accordance with the Local Rules).

**4.4** If a Settlement Class Member or any of the Objecting Attorneys has objected to any class action settlement where the objector or the Objecting Attorneys asked for or received any payment in exchange for dismissal of the objection, or any related appeal, without any modification to the settlement, then the objection must include a statement identifying each such case by full case caption and amount of payment received.

**4.5** A Settlement Class Member may request to be excluded from the Settlement Class by sending a written request postmarked on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice. To exercise the right to be excluded, a Person in the Settlement Class must timely send a written request for exclusion to the Settlement

Administrator providing his/her name and address, a signature, the name and number of the case, and a statement that he or she wishes to be excluded from the Settlement Class for purposes of this Settlement. A request to be excluded that does not include all of this information, or that is sent to an address other than that designated in the Notice, or that is not postmarked within the time specified, shall be invalid, and the Person(s) serving such a request shall be a member(s) of the Settlement Class and shall be bound as a Settlement Class Member by this Agreement, if approved. Any member of the Settlement Class who validly elects to be excluded from this Agreement shall not: (i) be bound by any orders or the Final Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be entitled to object to any aspect of this Agreement. The request for exclusion must be personally signed by each Person requesting exclusion. So-called “mass” or “class” opt-outs shall not be allowed. To be valid, a request for exclusion must be postmarked or received by the date specified in the Notice. Upon receiving any request(s) for exclusion, the Settlement Administrator shall stamp on the original the date it was received and shall promptly notify Class Counsel and Defendant’s Counsel of such request(s) no later than two (2) calendar days after receiving any request. The Settlement Administrator shall indicate whether such request is timely received, and provide copies of the request(s) for exclusion, the mailing envelope, and any accompanying documentation, by email. The Parties and their respective counsel agree that they will make no effort to suggest, solicit, facilitate, or otherwise encourage potential Class Members to opt out of the Settlement.

## **5. SETTLEMENT ADMINISTRATION.**

**5.1** The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Settlement Agreement by processing Claim Forms in a rational, responsive, cost effective, and timely manner, consistent with the terms of this Agreement. The

Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices and such records will be made available to Class Counsel and Defendant's Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall provide Class Counsel and Defendant's Counsel with regular reports at weekly intervals containing information concerning Notice, administration, and implementation of the Settlement Agreement. Should the Court request, the Parties shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator, including a report of all amounts from the Settlement Fund paid to Settlement Class Members on account of Approved Claims. Without limiting the foregoing, the Settlement Administrator shall:

(a) Forward to Defendant's Counsel, with copies to Class Counsel, all original documents and other materials received in connection with the administration of the Settlement, and all copies thereof, within thirty (30) days after the date on which all Claim Forms have been finally approved or disallowed in accordance with the terms of this Agreement;

(b) Provide Class Counsel and Defendant's Counsel with drafts of all administration related documents, including but not limited to CAFA Notices, follow-up class notices or communications with Settlement Class Members, telephone scripts, website postings or language or other communications with the Settlement Class, at least five (5) days before the Settlement Administrator is required to or intends to publish or use such communications, unless Class Counsel and Defendant's Counsel agree to waive this requirement in writing on a case by case basis;

(c) Receive requests to be excluded from the Settlement Class and other requests and promptly provide to Class Counsel and Defendant's Counsel copies thereof. If the Settlement Administrator receives any exclusion forms or other requests after the deadline for the submission of such forms and requests, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant's Counsel;

(d) Provide weekly reports to Class Counsel and Defendant's Counsel, including without limitation, reports regarding the number of Claim Forms received, the number approved by the Settlement Administrator, and the categorization and description of Claim Forms rejected, in whole or in part, by the Settlement Administrator; and

(e) Make available for inspection by Class Counsel or Defendant's Counsel the Claim Forms received by the Settlement Administrator at any time upon reasonable notice.

**5.2** The Settlement Administrator shall be obliged to employ reasonable procedures to screen claims for abuse or fraud and deny Claim Forms where there is evidence of abuse or fraud. The Settlement Administrator shall determine whether a Claim Form submitted by a Settlement Class Member is an Approved Claim by determining if the Person is on the Class List and shall reject Claim Forms that fail to (a) comply with the instructions on the Claim Form or the terms of this Agreement, or (b) provide full and complete information as requested on the Claim Form. If a Person submits a timely Claim Form by the Claims Deadline where the Person appears on the Class List but the Claim Form is not otherwise complete, then the Settlement Administrator shall give such Person one (1) reasonable opportunity to provide any requested missing information, which information must be received by the Settlement Administrator no later than thirty (30) calendar days after the Claims Deadline. If the Settlement Administrator receives such information more than thirty (30) days after the Claims Deadline, then any such



claim shall be denied. The Settlement Administrator may contact any Person who has submitted a Claim Form to obtain additional information necessary to verify the Claim Form.

**5.3** Defendant's Counsel and Class Counsel shall have the right to challenge the acceptance or rejection of a Claim Form submitted by Settlement Class Members. The Settlement Administrator shall follow any agreed decisions of Class Counsel and Defendant's Counsel as to the validity of any disputed submitted Claim Form. To the extent Class Counsel and Defendant's Counsel are not able to agree on the disposition of a challenge, the disputed claim shall be submitted to Judge Welsh from JAMS. Judge Welsh will charge the JAMS hourly rate for providing such services to the Settlement Class, and all expenses related thereto will be paid by the Settlement Administrator from the Settlement Fund. Judge Welsh's determination as to the disputed claim shall be final and binding on the parties.

**5.4** In the exercise of its duties outlined in this Agreement, the Settlement Administrator shall have the right to reasonably request additional information from the Parties or any Settlement Class Member.

**5.5** Defendant, the Released Parties, and Defendant's Counsel shall have no responsibility for, interest in, or liability whatsoever with respect to: (i) any act, omission, or determination by Class Counsel, or the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the settlement or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the allocation of Net Settlement Funds to Settlement Class Members or the implementation, administration, calculation or interpretation thereof; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in value of, the Settlement Fund; or (vi) the payment, reporting, or withholding of

any taxes, tax expenses, or costs incurred in connection with the taxation of the Settlement Fund or the filing of any federal, state, or local returns.

**5.7.** To allow a calculation of the *pro rata* payments to Settlement Class Members, no later than twenty-one (21) days before any distribution of Settlement Funds must occur, the Settlement Administrator shall submit to Class Counsel and Defendant's Counsel a final and total invoice for all of the Settlement Administrator's services.

**5.8.** All taxes and tax expenses shall be paid out of the Settlement Fund, and shall be timely paid by the Settlement Administrator pursuant to this Agreement and without further order of the Court. Any tax returns or reporting forms prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with this Agreement and in all events shall reflect that all taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein. The Released Parties shall have no responsibility or liability for the acts or omissions of the Settlement Administrator or its agents with respect to the reporting or payment of taxes or tax expenses.

## **6. TERMINATION OF SETTLEMENT.**

**6.1** Subject to this Section and paragraphs 9.1-9.2 below, Defendant or the Class Representative on behalf of the Settlement Class, shall have the right to terminate this Agreement by providing written notice of the election to do so ("Termination Notice") to all other Parties hereto within twenty-one (21) days of any of the following events: (i) the Court's refusal to grant Preliminary Approval of this Agreement in any material respect; (ii) the Court's refusal to grant Final Approval of this Agreement in any material respect; (iii) the Court's refusal to enter the Final Judgment in this Action in any material respect; (iv) the date upon which the Final Judgment is vacated, modified or reversed in any material respect by the Court, the Court of Appeals or the Supreme Court; or (v) the date upon which an Alternate Judgment, as defined

in paragraph 9.1(d) of this Agreement is vacated, modified or reversed in any material respect by the Court, the Court of Appeals or the Supreme Court.

**6.2** If, prior to the filing of the Final Approval Motion, Persons who otherwise would be members of the Settlement Class have timely requested exclusion from the Settlement Class in accordance with the provisions of the Notice, and such Persons in the aggregate constitute more than one-half of a percent (.5%) of the Settlement Class, Defendant shall have, in its sole and absolute discretion, the option to terminate this settlement by giving notice as set forth in paragraph 6.1 above.

**6.3** If Defendant seeks to terminate the Settlement Agreement on the basis of Section 6.2, the Parties agree that any dispute as to whether Defendant may invoke Section 6.2 to terminate the Agreement that they cannot resolve amongst themselves after reasonable efforts will be resolved through the alternative dispute resolution process set forth in Section 5.3 of this Agreement, notwithstanding that the Agreement will have been filed with and preliminarily approved by the Court.

If the Parties agree, or the neutral mediator (pursuant to the process set forth in Section 5.3 of this Agreement) rules, that one of the conditions provided in Section 6.2 has been satisfied, Defendant may exercise its option to terminate the Agreement only if Defendant's Counsel provides Plaintiffs' Counsel with written notice no later than twenty-eight (28) calendar days prior to the Final Approval Hearing. If it appears that dispute resolution efforts will not be completed before twenty-eight (28) days in advance of the Fairness Hearing, the Parties will jointly seek an adjournment of the Final Approval Hearing to allow time for this process to be completed.

**7. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER.**

**7.1** Promptly after the execution of this Settlement Agreement, Class Counsel shall submit this Agreement together with its Exhibits to the Court and shall move the Court for Preliminary Approval of the settlement set forth in this Agreement; certification of the Settlement Class for settlement purposes only; appointment of Class Counsel and the Class Representative; and entry of a Preliminary Approval Order substantially in the form of **Exhibit E** hereto, which order shall set a Final Approval Hearing date and approve the Notice and Claim Form for dissemination substantially in the form of **Exhibits A, B, C, and D** hereto. The Preliminary Approval Order shall also authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and its implementing documents (including all Exhibits to this Agreement) so long as they are consistent in all material respects with the terms of the Settlement Agreement and do not limit or impair the rights of the Settlement Class or materially expand the obligations of Defendant.

**7.2** At the time of the submission of this Agreement to the Court as described above, Class Counsel shall request that, after Notice is given, the Court hold a Final Approval Hearing and approve the settlement of the Action as set forth herein.

**7.3** After Notice is given, the Parties shall request and seek to obtain from the Court a Final Judgment substantially in the form of **Exhibit F** hereto, which will (among other things):

(a) find that the Court has personal jurisdiction over all Settlement Class Members and that the Court has subject matter jurisdiction to approve the Agreement, including all Exhibits thereto;

(b) approve the Settlement Agreement and the proposed settlement as fair, reasonable, and adequate as to, and in the best interests of, the Settlement Class Members; direct

the Parties and their counsel to implement and consummate the Agreement according to its terms and provisions; and declare the Agreement to be binding on, and have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff and Releasing Parties;

(c) find that the Notice implemented pursuant to the Agreement (1) constitutes the best practicable notice under the circumstances; (2) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action, their right to object to or exclude themselves from the proposed Agreement, and to appear at the Final Approval Hearing; (3) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and (4) meets all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and the rules of the Court;

(d) find that the prerequisites for a class action under Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b) have been satisfied for settlement purposes for the Settlement Class in that: (1) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (2) there are questions of law and fact common to the Settlement Class Members; (3) the claims of the Class Representative are typical of the claims of the Settlement Class they seek to represent; (4) the Class Representative has and will continue to fairly and adequately represent the interests of the Settlement Class for purposes of entering into the Settlement Agreement; (5) the questions of law and fact common to Settlement Class Members predominate over any questions affecting any individual Settlement Class Member; (6) the Settlement Class is ascertainable; and (7) a class action is superior to the other available methods for the fair and efficient adjudication of the controversy.

(e) dismiss the Action (including all individual claims and Settlement Class Claims presented thereby) on the merits and with prejudice, without fees or costs to any party except as provided in the Settlement Agreement;

(f) incorporate the Release set forth above, make the Release effective as of the date of the Effective Date, and forever discharge the Released Parties as set forth herein;

(g) permanently bar and enjoin all Settlement Class Members from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any lawsuit or other action in any jurisdiction based on the Released Claims;

(h) without affecting the finality of the Final Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and the Final Judgment, and for any other necessary purpose;

(i) close the case; and

(j) incorporate any other provisions, as the Court deems necessary and just, provided that such other provisions do not materially abridge, enlarge or modify any rights or responsibilities of the Released Parties or Settlement Class Members under this Agreement.

**8. CLASS COUNSEL'S ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES; INCENTIVE AWARD.**

**8.1** Defendant agrees that Class Counsel may apply to the Court to receive from the Settlement Fund, subject to Court approval, attorneys' fees, costs, and expenses not to exceed one-third of the Settlement Fund. Plaintiff will petition the Court for an award of such attorneys' fees, costs, and expenses, and Defendant agrees to take no position on, directly or indirectly, Class Counsel's petition for attorneys' fees, costs, and expenses if limited to this amount. Class Counsel, in turn, agrees to seek no more than this amount from the Court in attorneys' fees, costs, and expenses. Payment of the Fee Award shall be made from the Settlement Fund and

should the Court award less than the amount sought by Class Counsel, the difference in the amount sought and the amount ultimately awarded pursuant to this paragraph shall remain in the Net Settlement Fund for *pro rata* distribution to Settlement Class Members in distributions for Approved Claims.

**8.2** The Fee Award shall be payable by the Settlement Administrator within ten (10) business days after entry of the Court's Final Judgment, subject to Class Counsel executing the Undertaking Regarding Attorneys' Fees and Costs (the "Undertaking") attached hereto as **Exhibit G**, and providing all payment routing information and tax I.D. numbers for Class Counsel. Payment of the Fee Award shall be made from the Settlement Fund by wire transfer to Bursor & Fisher, P.A., in accordance with wire instructions to be provided by Bursor & Fisher, P.A., and completion of necessary forms, including but not limited to W-9 forms.

Notwithstanding the foregoing, if for any reason the Final Judgment is reversed or rendered void as a result of an appeal(s) then Class Counsel shall return such funds to the Defendant plus interest. Additionally, should any parties to the Undertaking dissolve, merge, declare bankruptcy, become insolvent, or cease to exist prior to the final payment to Class Members, those parties shall execute a new undertaking guaranteeing repayment of funds within 14 days of such an occurrence.

**8.3** Defendant agrees that, subject to Court approval, the Settlement Administrator may pay an Incentive Award to the Class Representative from the Settlement Fund, in addition to any settlement payment as a result of a valid claim pursuant to this Agreement, in the amount of up to five thousand dollars (\$5,000.00). Defendant shall not object to or otherwise challenge, directly or indirectly, Class Counsel's application for the Incentive Award to the Class Representative if limited to this amount. Class Counsel, in turn, agrees to seek no more than this amount from the Court as the Incentive Award for the Class Representative. Should the Court

award less than this amount, the difference in the amount sought and the amount ultimately awarded pursuant to this paragraph shall remain in the Net Settlement Fund for *pro rata* distribution to Settlement Class Members for Approved Claims. Such Incentive Award shall be paid from the Settlement Fund (in the form of a check to the Class Representative that is sent care of Class Counsel), within five (5) business days after entry of the Final Judgment if there have been no objections to the Settlement Agreement, and, if there have been such objections, within five (5) business days after the Effective Date.

**9. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION.**

**9.1** The Effective Date of this Settlement Agreement shall not occur unless and until ten (10) days after each of the following events occurs and shall be the date upon which the last (in time) of the following events occurs:

- (a) The Parties and their counsel have executed this Agreement;
- (b) The Court has entered the Preliminary Approval Order;
- (c) The Court has entered an order finally approving the Agreement,

following Notice to the Settlement Class and a Final Approval Hearing, as provided in the Federal Rules of Civil Procedure, and has entered the Final Judgment, or a judgment consistent with this Agreement in all material respects; and

(d) The Final Judgment has become Final, as defined above, or, if the Court enters an Alternate Judgment, such Alternate Judgment becomes Final.

**9.2** If some or all of the conditions specified in paragraph 9.1 are not met, or if this Agreement is not approved by the Court, or the settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, then this Settlement Agreement shall be canceled and terminated subject to paragraph 6.1 unless Class Counsel and Defendant's Counsel mutually agree in writing to proceed with this Agreement. If any Party is



in material breach of the terms hereof, any other Party, provided that it is in substantial compliance with the terms of this Agreement, may terminate this Agreement on notice to all of the Settling Parties. Notwithstanding anything herein, the Parties agree that the Court's failure to approve, in whole or in part, Class Counsel's request for payment of attorneys' fees, costs and/or expenses and/or the request for Incentive Award payments set forth in paragraph 8.3 above shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination.

**9.3** If this Agreement is terminated or fails to become effective for the reasons set forth in paragraphs 6.1 or 6.2 and/or 9.1-9.2 above, the Parties shall be restored to their respective positions in the Action as of the moment just prior to the signing of this Agreement. In such event, any Final Judgment or other order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the Action as if this Agreement had never been entered into. Within five (5) business days after written notification of termination as provided in this Agreement is sent to the other Parties, the Settlement Fund (including accrued interest thereon), less any Settlement Administration costs actually incurred, paid or payable and less any taxes and tax expenses paid, due or owing, shall be refunded by the Settlement Administrator to Defendant, based upon written instructions provided by Defendant's Counsel. If the Final Settlement Order and Judgment or any part of it is vacated, overturned, reversed, or rendered void as a result of an appeal, or the Settlement Agreement is voided, rescinded, or otherwise terminated for any other reason, Class Counsel shall, within thirty (30) days repay to Defendant, based upon written instructions provided by Defendant's Counsel, the full amount of the attorneys' fees and costs paid to Class Counsel from the Settlement Fund, plus interest. If the attorney fees and costs awarded by the Court or any part of them are vacated, modified, reversed, or rendered void as a result of an appeal, Class Counsel shall within thirty (30) days repay to

Defendant, based upon written instructions provided by Defendant's Counsel, the attorneys' fees and costs paid to Class Counsel and/or Class Representative from the Settlement Fund, in the amount vacated or modified, plus interest.

**10. MISCELLANEOUS PROVISIONS.**

**10.1** The Parties (a) acknowledge that it is their intent to consummate this Settlement Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement, to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Agreement, to secure final approval, and to defend the Final Judgment through any and all appeals. Class Counsel and Defendant's Counsel agree to cooperate with one another in seeking Court approval of the Settlement Agreement, entry of the Preliminary Approval Order, and the Final Judgment, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Agreement.

**10.2** The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiff, the Settlement Class and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand.

**10.3** The Parties have relied upon the advice and representation of counsel, selected by them, concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully the above and foregoing agreement and have been fully advised as to the legal effect thereof by counsel of their own selection and intend to be legally bound by the same.

**10.4** Whether or not the Effective Date occurs or the Settlement Agreement is terminated, Agreement, the settlement contained herein and/or any term, provision or definition

therein, or any act or communication performed or document executed in the course of negotiating, implementing or seeking approval pursuant to or in furtherance of this Agreement or the settlement:

(a) Is not, may not be deemed, or shall not be used, offered or received in any civil, criminal or administrative proceeding in any court, administrative agency, arbitral proceeding or other tribunal against the Released Parties, or each or any of them, as an admission, concession or evidence of, the validity of any Released Claims, the truth of any fact alleged by the Plaintiff, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the definition or scope of any term or provision, the reasonableness of the settlement amount or the Fee Award, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or any of them. Defendant, while continuing to deny all allegations of wrongdoing and disclaiming all liability with respect to all claims, considers it desirable to resolve the action on the terms stated herein to avoid further expense, inconvenience, and burden, and therefore has determined that this settlement is in Defendant's best interests. Any public statements made by Plaintiff or Class Counsel will be consistent with this paragraph and Class Counsel will not issue any press release concerning this Agreement or the settlement contained herein;

(b) Is not, may not be deemed, or shall not be used, offered or received against any Released Party, as an admission, concession or evidence of any fault, misrepresentation or omission with respect to any statement or written document approved or made by the Released Parties, or any of them;

(c) Is not, may not be deemed, or shall not be used, offered or received against the Released Parties, or each or any of them, as an admission or concession with respect to any liability, negligence, fault or wrongdoing or statutory meaning as against any Released

Parties, or supporting the certification of a litigation class, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. However, the settlement, this Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Agreement and/or Settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Agreement. Further, if this Settlement Agreement is approved by the Court, any Party or any of the Released Parties may file this Agreement and/or the Final Judgment in any action that may be brought against such Party or Parties in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim;

(d) Is not, may not be deemed, or shall not be construed against Plaintiff, the Settlement Class, the Releasing Parties, or each or any of them, or against the Released Parties, or each or any of them, as an admission or concession that the consideration to be given hereunder represents an amount equal to, less than or greater than that amount that could have or would have been recovered after trial; and

(e) Is not, may not be deemed, or shall not be construed as or received in evidence as an admission or concession against Plaintiff, the Settlement Class, the Releasing Parties, or each and any of them, or against the Released Parties, or each or any of them, that any of Plaintiff's claims are with or without merit or that damages recoverable in the Action would have exceeded or would have been less than any particular amount.

**10.5** Plaintiffs and/or Plaintiffs' Counsel shall not, at any time, issue press releases or make other public statements regarding the Settlement or the Action (apart from filings with the Court as necessary to obtain Preliminary or Final Approval of the Settlement) unless Defendant agrees to such press releases or public statements in advance; provided that Plaintiffs' Counsel

may post Court orders regarding the Action and brief summaries of those orders on their website(s) without permission from Defendant, so long as any reference in such order(s) to materials subject to any confidentiality obligations are properly redacted. This provision shall not prohibit Plaintiffs' Counsel from communicating with any person in the Settlement Class regarding the Action or the Settlement (subject to compliance with any and all applicable confidentiality obligations).

**10.6** The Parties acknowledge that (a) any certification of the Settlement Class as set forth in this Agreement, including certification of the Settlement Class for settlement purposes in the context of Preliminary Approval, shall not be deemed a concession that certification of a litigation class is appropriate, or that the Settlement Class definition would be appropriate for a litigation class, nor would Defendant be precluded from challenging class certification in further proceedings in the Action or in any other action if the Settlement Agreement is not finalized or finally approved; (b) if the Settlement Agreement is not finally approved by the Court for any reason whatsoever, then any certification of the Settlement Class will be void, the Parties and the Action shall be restored to the status quo ante, and no doctrine of waiver, estoppel or preclusion will be asserted in any litigated certification proceedings in the Action or in any other action; and (c) no agreements made by or entered into by Defendant in connection with the Settlement may be used by Plaintiff, any person in the Settlement Class, or any other person to establish any of the elements of class certification in any litigated certification proceedings, whether in the Action or any other judicial proceeding.

**10.7.** No person or entity shall have any claim against the Class Representative, Class Counsel, the Settlement Administrator or any other agent designated by Class Counsel, or the Released Parties and/or their counsel, arising from distributions made substantially in accordance with this Agreement. The Parties and their respective counsel, and all other Released Parties

shall have no liability whatsoever for the investment or distribution of the Settlement Fund or the determination, administration, calculation, or payment of any claim or nonperformance of the Settlement Administrator, the payment or withholding of taxes (including interest and penalties) owed by the Settlement Fund, or any losses incurred in connection therewith.

**10.8.** All proceedings with respect to the administration, processing and determination of Claims and the determination of all controversies relating thereto, including but not limited to disputed questions of law and fact with respect to the validity of Claims, and the enforcement of the Release and Covenant not to Sue set forth herein, shall be subject to the jurisdiction of the Court, which shall have exclusive jurisdiction to protect and effectuate the Final Order and Judgment.

**10.9** The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

**10.10** The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

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

**10.12** This Agreement and its Exhibits set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements and undertakings with respect to the matters set forth herein. No representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents. This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

**10.13** Except as otherwise provided herein, each Party shall bear its own costs.

**10.14** Plaintiff represents and warrants that she has not assigned any claim or right or interest therein as against the Released Parties to any other Person or Party and that she is fully entitled to release the same.

**10.15** Each Counsel or other Person executing this Settlement Agreement, any of its Exhibits, or any related settlement documents on behalf of any Party hereto, hereby warrants and represents that such Person has the full authority to do so and has the authority to take appropriate action required or permitted to be taken pursuant to the Agreement to effectuate its terms.

**10.16** This Agreement may be executed in one or more counterparts. Signature by digital means, facsimile, or in PDF format will constitute sufficient execution of this Agreement. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court if the Court so requests.

**10.17** This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and the Released Parties.

**10.18** The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Agreement.

**10.19** This Settlement Agreement shall be governed by and construed in accordance with the substantive laws of the State of New York without giving effect to its conflict of laws provisions.

**10.20** This Agreement is deemed to have been prepared by counsel for all Parties, as a result of arm's-length negotiations among the Parties. Because all Parties have contributed substantially and materially to the preparation of this Agreement, it shall not be construed more strictly against one Party than another.

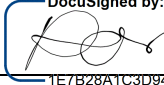
**10.21** Where this Agreement requires notice to the Parties, such notice shall be sent to the undersigned counsel: Neal J. Deckant, Bursor & Fsher, P.A., 1990 North California Blvd., Suite 940, Walnut Creek, CA 94596, ndeckant@bursor.com; Jacob Sommer, ZwillGen PLLC, 1900 M Street NW, Suite 250, Washington D.C. 20036, jake@zwillgen.com.



**IT IS SO AGREED TO BY THE PARTIES:**

Dated: 6/27/2024

**HOLLY WINSTON**

DocuSigned by:  
  
By: \_\_\_\_\_  
TE7B28A1C3D94AA...  
Holly Winston, individually and as representative of  
the Class

Dated: 7/2/2024

**PEACOCK TV LLC**

DocuSigned by:  
  
By: \_\_\_\_\_  
8F28A1C3D94AA...  
Name: Scott Gartner  
Title: General Counsel

**IT IS SO STIPULATED BY COUNSEL:**

Dated: Jun 27, 2024

**BURSOR & FISHER, P.A.**

By:   
Neal Deckant (Jun 27, 2024 16:00 PDT)  
\_\_\_\_\_  
Neal J. Deckant

Dated: 7/5/2024

**ZWILLGEN PLLC**

DocuSigned by:  
  
By: \_\_\_\_\_  
C40289101EF9428...  
Jacob Sommer

**EXHIBIT A**

**THIS CLAIM FORM MUST BE SUBMITTED ONLINE OR POSTMARKED BY [\_\_\_\_], 2024 AND MUST BE FULLY COMPLETED, BE SIGNED, AND MEET ALL CONDITIONS OF THE SETTLEMENT AGREEMENT.**

**Instructions:** Fill out each section of this form and sign where indicated.

First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Email Address (associated with Peacock TV Subscription): \_\_\_\_\_

If you received notice of the Settlement by e-mail or mail, please provide the Class Member ID from the notice:

\_\_\_\_\_

**Billing Address Associated With Your Subscription(s) To Peacock TV (if different than above)**

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Contact Phone #: (\_\_\_\_) \_\_\_\_\_-\_\_\_\_\_ (You may be contacted if further information is required.)

How You Wish To Receive Payment: Please indicate your preferred payment method (check only one):

- I would like to receive a physical check, mailed to the address above.
- I would like to receive an e-payment via a digital MasterCard.
- I would like to receive an e-payment via PayPal.
- I would like to receive an e-payment via Venmo.
- I would like to receive an e-payment in the form of a pre-paid digital Visa card: [insert email account for digital Visa card].

Class Member Verification: By submitting this Claim Form and checking the boxes below, I declare that I believe I am a member of the Settlement Class and that the following statements are true (each box must be checked to receive a payment):

- I enrolled in an automatically renewing Peacock TV Subscription directly through Peacock using a California billing address between September 15, 2019, and February 27, 2024, and was charged and paid a renewal fee(s) in connection with such subscription.
- I have not filed or submitted an Opt-Out or requested to be excluded from this Settlement.
- I have not submitted any other Claim for the same subscription and have not authorized any other person or entity to do so and know of no other person or entity having done so on my behalf. If I maintained subscription(s) jointly with any other person or entity, only one Claim has or will be submitted per subscription.
- Under penalty of perjury, all information in this Claim Form is true and correct to the best of my knowledge and belief.

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

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

The Settlement Administrator will review your Claim Form; you may be required to submit additional documentation to validate your claim. If accepted, you will be mailed a check for a *pro rata* share of the Settlement Fund. This process takes time, please be patient.

**Questions? Visit [www.CArenewalsettlementPeacockTV.com](http://www.CArenewalsettlementPeacockTV.com) or call 1-800-555-5555.**

**EXHIBIT B**

From:  
To: JonQClassMember@domain.com  
Re: Legal Notice of Class Action Settlement

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**  
*Winston v. Peacock TV LLC*, Case No. 1:23-cv-08191-ALC  
**(United States District Court for the Southern District of New York)**

This notice is to inform you of the settlement of a class action lawsuit against Peacock TV LLC (“Peacock”) that may affect your rights. California subscribers to Peacock’s video streaming subscription offerings (the “Peacock Subscriptions”) allege that Peacock automatically renewed their subscriptions and charged their payment methods without first providing certain disclosures and obtaining the requisite authorizations, in violation of California law. Peacock denies these claims. The Court has not decided who is right. Peacock chose to settle this case, without admitting liability, to focus time, effort, and resources on continuing to provide valued content to its viewers, and not on additional legal fees and the uncertainty of litigation.

**Am I a Class Member?** Our records indicate you may be a Class Member. Class Members are all persons who, from September 15, 2019, to and through February 27, 2024, enrolled in an automatically renewing Peacock Subscription directly through Peacock using a California billing address, and who and were charged and paid an automatic renewal fee(s) in connection with such subscription.

**What Can I Get?** A Settlement Fund of \$3,742,637.14 has been established to pay all valid claims submitted by the Settlement Class, together with notice and administration expenses, approved attorneys’ fees and costs, and an incentive award. If you are entitled to relief, you may submit a claim to receive a *pro rata* share of the Settlement Fund, which Class Counsel estimates to be about \$18.33 per class member, although the final amount you receive will also depend on the number of valid claims submitted.

**How Do I Get a Payment?** To receive a payment, you must submit a timely and complete Claim Form by mail or online, submitted or postmarked **no later than [claims deadline], 2024**. You can submit the claim form online at URL, or by clicking [here]. Your payment will come by check, or through another method you may select, such as a digital MasterCard, PayPal, or Venmo.

**What are My Other Options?** You may exclude yourself from the Class by sending a letter to the settlement administrator no later than **[objection/exclusion deadline]**. If you exclude yourself, you cannot get a settlement payment, but you keep any rights you may have to sue Peacock over the legal issues in the lawsuit. You and/or your lawyer have the right to appear before the Court and/or to object to the proposed settlement. Your written objection must be filed no later than **[objection/exclusion deadline]**. Specific instructions about how to object to, or exclude yourself from, the Settlement are available at [www.CArenewalsettlementPeacockTV.com](http://www.CArenewalsettlementPeacockTV.com). If you choose to stay in the Class, and the Court approves the Settlement, you will be legally bound by all orders and judgments of the Court, and you won’t be able to sue, or continue to sue, Peacock as part of any other lawsuit involving the

same facts or claims that are in this lawsuit. This is true even if you do nothing by not submitting a claim.

**Who Represents Me?** The Court has appointed Bursor & Fisher, P.A. and Gucovschi Rozenshteyn, PLLC to represent the class. These attorneys are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense.

**When Will the Court Consider the Proposed Settlement?** The Court will hold the Final Approval Hearing at [\_\_\_\_\_] on [DATE], 2024, at the Thurgood Marshall United States Courthouse, 40 Foley Square, Courtroom 1306, New York, NY 10007, or as otherwise ordered by the Court. At that hearing, the Court will hear any objections concerning the fairness of the Settlement but only if such objections are filed in writing with the Court and sent to Plaintiff's and Peacock's counsel by [DATE], 2024, as explained above; determine the fairness of the Settlement; decide whether to approve Class Counsel's request for attorneys' fees and costs up to a third of the Settlement Fund; and decide whether to award the Class Representative \$5,000 from the Settlement Fund for her services in helping to bring and settle this case. Class Members who support the Proposed Settlement do not need to appear at the hearing or take any other action to indicate their approval. You may hire your own lawyer to appear in Court for you if you wish; however, if you do, you will be responsible for paying that lawyer on your behalf.

**How Do I Get More Information?** For more information, including a more detailed Notice, Claim Form, a copy of the Settlement Agreement and other documents, go to [www.CArenewalsettlementPeacockTV.com](http://www.CArenewalsettlementPeacockTV.com), contact the settlement administrator at 1-800-555-5555 or Winston v. Peacock TV LLC, c/o Settlement Administrator, [address].

**EXHIBIT C**



**COURT AUTHORIZED NOTICE OF CLASS  
ACTION AND PROPOSED SETTLEMENT**

OUR RECORDS  
INDICATE YOU WERE  
CHARGED AND PAID AN  
AUTOMATIC RENEWAL  
FEE BY PEACOCK TV  
LLC. YOU MAY BENEFIT  
FROM A CLASS ACTION  
SETTLEMENT.

By Order of the Court  
Dated: [\_\_\_\_], 2024

Winston v. Peacock TV LLC  
P.O. Box #####  
City, State ZIP CODE

FIRST-CLASS MAIL  
U.S. POSTAGE PAID  
CITY, ST  
PERMIT NO. XXXX

Postal Service: Please do not mark barcode

<<Barcode>>

Active Class Member ID: <<Refnum>>

<<FirstName>> <<LastName>>

<<BusinessName>>

<<Address>>

<<Address2>>

<<City>>, <<ST>> <<Zip>>-<<zip4>>

[[POSTAL CODE AREA]]

A proposed settlement has been reached in a class action lawsuit alleging that Defendant Peacock TV LLC (“Peacock”) unlawfully charged its customers automatic renewal fees in connection with its Peacock Subscriptions without providing the disclosures required by California law. Peacock denies the claims in the lawsuit and contends that it did not do anything wrong. The Court has not decided who is right. Peacock chose to settle the dispute to avoid the cost and risk of litigation.

**Am I a Class Member?** Our records indicate that you may be a Class Member. Class Members are all persons who, from September 15, 2019, to and through February 27, 2024, enrolled in an automatically renewing Peacock Subscription directly through Peacock using a California billing address, and who were charged and paid an automatic renewal fee(s) in connection with such subscription.

**What Can I Get?** A Settlement Fund of \$3,742,637.14 has been established to pay all valid claims submitted by the Settlement Class, together with notice and administration expenses, approved attorneys’ fees and costs, and an incentive award. If you are entitled to relief, you may submit a claim to receive a pro rata share of the Settlement Fund, which Class Counsel estimates to be about \$18.33 per class member, although the final amount you receive will also depend on the number of valid claims submitted.

**How Do I Get My Payment?** To receive payment, you **must** submit a valid Claim Form to the Settlement Administrator by [\_\_\_\_], 2024.

**What are My Other Options?** You may exclude yourself from the Settlement Class by sending a letter to the Settlement Administrator, **postmarked no later than [\_\_\_\_], 2024**. If you exclude yourself, you cannot get a settlement cash payment, but you keep any rights you may have to sue Peacock over the legal issues in the lawsuit. If you don’t exclude yourself from the Settlement Class, then you and/or your lawyer also have the right to appear before the Court, at your own cost, to object to the proposed settlement, if you wish to do so, but you don’t have to. **Your written objection must be filed and postmarked no later than [\_\_\_\_], 2024**. Specific instructions about how to object to, or exclude yourself from, the Settlement are available at [www.CArenewalsettlementPeacockTV.com](http://www.CArenewalsettlementPeacockTV.com). If you do nothing, and the Court approves the Settlement, you will be bound by all of the Court’s orders and judgments, and your claims relating to the fees charged by Peacock will be released.

**Who Represents Me?** The Court has appointed Bursor & Fisher, P.A. and Gucovschi Rozenshteyn, PLLC to represent the class. These attorneys are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense.

**When Will the Court Consider the Proposed Settlement?** The Court will hold the Final Approval Hearing at [\_\_\_\_] p.m. on [\_\_\_\_], 2024 at the Thurgood Marshall United States Courthouse, 40 Foley Square, Courtroom 1306, New York, NY 10007, or as otherwise ordered by the Court. At that hearing, the Court will hear any objections concerning the fairness of the Settlement; determine the fairness of the Settlement; decide whether to approve Class Counsel’s request for attorneys’ fees and costs; and decide whether to award the Class Representative up to \$5,000 from the Settlement Fund for her services in helping to bring and settle this case. Class Counsel may be paid

attorneys' fees and costs out of the Settlement Fund in an amount to be determined by the Court. Class Counsel may seek up to one third of the Settlement Fund but the Court may award less than that amount.

**How Do I Get More Information?** This is only a summary. For more information, including the full Notice, Claim Form and Settlement Agreement go to: [www.CarenewalsettlementPeacockTV.com](http://www.CarenewalsettlementPeacockTV.com), contact the Settlement Administrator at 1-[TOLL-FREE-NUMBER] or Winston v. Peacock TV LLC, c/o Settlement Administrator, PO Box ####, [City, State ZIP].

**EXHIBIT D**

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK**

*Winston v. Peacock TV LLC*, Case No. 1:23-cv-08191-ALC

**IF YOU WERE AUTOMATICALLY BILLED FOR A PEACOCK SUBSCRIPTION FROM SEPTEMBER 15, 2019 TO FEBRUARY 27, 2024, YOU MAY BENEFIT FROM A PROPOSED CLASS ACTION SETTLEMENT**

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

- A Proposed Settlement has been reached in a class action lawsuit against Peacock TV LLC (“Defendant” or “Peacock”). The class action lawsuit alleges that Peacock automatically renewed its video streaming subscription offerings (the “ Peacock Subscriptions”) and charged customers’ payment methods without providing the disclosures and authorizations required by California law.
- Peacock denies these claims. The Court has not ruled in favor of Plaintiff or Peacock. Instead, the parties agreed to a Proposed Settlement to avoid the expense and risks of continuing the lawsuit. Peacock chose to settle this case, without admitting liability, to focus time, effort, and resources on continuing to provide valued content to its viewers, and not on additional legal fees and the uncertainty of litigation.
- The class is defined as all persons who, from September 15, 2019, to and through February 27, 2024, enrolled in an automatically renewing Peacock Subscription directly through Peacock using a California billing address, and who were charged and paid an automatic renewal fee(s) in connection with such subscription.
- Those included in the Settlement will be eligible to receive a *pro rata* (meaning proportional) cash payment from the Settlement Fund, which Class Counsel estimates to be approximately \$18.33.
- To receive a payment, you must submit a timely and complete Claim Form by mail or online, submitted or postmarked no later than [claims deadline], 2024. You can submit the claim form online at [URL], or by clicking [here]. Your payment will come by check or the payment method you choose (such as a digital MasterCard, PayPal, or Venmo).
- Read this Notice carefully. Your legal rights are affected whether you act or don’t act.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>DO NOTHING</b>	You won’t get a share of the Settlement benefits and will give up your rights to sue the Defendant about the claims in this case.
<b>SUBMIT A CLAIM FORM BY [____]</b>	This is the only way to receive a payment.
<b>EXCLUDE YOURSELF</b>	You will receive no cash payment, but you will retain any rights you currently have to sue the Defendant about the claims in this case. Excluding yourself is the only option that allows you to ever bring or maintain your own lawsuit against Defendant regarding the allegations in

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

	this case ever again.
<b>OBJECT</b>	Write to the Court explaining why you don't like the Settlement. Filing an objection does not exclude you from the Class.
<b>GO TO THE HEARING</b>	Ask to speak in Court about your opinion of the Settlement.

These rights and options—**and the deadlines to exercise them**—are explained in this Notice.

The Court in charge of this action has preliminarily approved the Settlement as fair, reasonable, and adequate, and must decide whether to give final approval to the Settlement. The relief provided to Class Members will be provided only if the Court gives final approval to the Settlement and, if there are any appeals, after the appeals are resolved in favor of the Settlement. *Please be patient.*

**BASIC INFORMATION**

**1. Why was this Notice issued?**

The Court authorized this Notice because you have a right to know about a proposed Settlement of this class action lawsuit, and about all of your options, before the Court decides whether to give final approval to the Settlement. This Notice explains the lawsuit, the Settlement, and your legal rights.

The Honorable Andrew L. Carter, Jr., of the U.S. District Court for the Southern District of New York, is overseeing this case. The case is called *Winston v. Peacock TV LLC*, Case No. 1:23-cv-08191-ALC. The person who sued is called the Plaintiff. The Defendant is Peacock TV LLC.

**2. What is a class action?**

In a class action, one or more people called class representatives (in this case, Holly Winston) sue on behalf of a group or a “class” of people who have similar claims. In a class action, the court resolves the issues for all class members, except for those who exclude themselves from the Class.

**3. What is this lawsuit about?**

This lawsuit claims that Peacock violated California law by automatically renewing its customers’ subscriptions and charging customers’ payment methods without first providing certain disclosures and obtaining the requisite authorizations. Peacock denies the claims in the lawsuit and contends that it did not do anything wrong and denies that class certification is warranted or appropriate.

**4. Why is there a Settlement?**

The Court has not decided whether the Plaintiff or Peacock should win this case. Instead, both sides agreed to a Settlement. That way, they avoid the uncertainties and expenses associated with ongoing litigation, and Class Members will get compensation sooner rather than, if at all, after the completion of a trial.

**The issuance of this Notice is not an expression of the Court’s opinion on the merit or the lack of merit of the Representative Plaintiff’s claims or the defenses in the lawsuit. Both parties recognize that to resolve the issues raised in the lawsuit would be time-consuming, uncertain, and expensive.**

#### WHO'S INCLUDED IN THE SETTLEMENT?

##### 5. How do I know if I am in the Settlement Class?

The Court decided that everyone who fits the following description is a member of the **Settlement Class**:

All persons who, from September 15, 2019, to and through February 27, 2024, enrolled in an automatically renewing Peacock Subscription using a California billing address with Defendant and whose payment methods were directly billed by Defendant in connection with such Peacock Subscription.

#### THE SETTLEMENT BENEFITS

##### 6. What does the Settlement provide?

**Monetary Relief:** A Settlement Fund has been created totaling \$3,742,637.14. The Settlement Fund Class Member payments, as well as the cost to administer the Settlement, the cost to inform people about the Settlement, attorneys’ fees, and an award to the Class Representative, will come out of this fund. (*See* Question 13.) Peacock has agreed to provide automatic renewal terms on its checkout pages in a manner that is consistent with the requirements of California’s Automatic Renewal Law (“ARL”), Cal. Bus. & Prof. Code §§ 17600, et seq.

**Other Relief:** Peacock has agreed to provide automatic renewal terms on its checkout pages in a manner that is consistent with the requirements of California’s Automatic Renewal Law (“ARL”), Cal. Bus. & Prof. Code §§ 17600, et seq. Specifically, Peacock agrees to present to California subscribers on the checkout page for any Peacock Subscription that will automatically renew, the automatic renewal offer terms associated with such subscription (including cancellation policy) in a clear and conspicuous manner before the subscription or purchasing agreement and in visual proximity to the request for consent to the offer. Defendant will obtain affirmative consent to the agreement containing the automatic renewal terms in a manner that complies with the ARL. Peacock further agrees to disclose to subscribers with a California billing address, in a manner that substantially complies with the ARL, how to cancel in an acknowledgment email that is capable of being retained by consumers.

A detailed description of the Settlement benefits can be found in the Settlement

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



Agreement, which can be found in the ‘Documents’ section of the website. [hyperlink]

### **7. How can I get a payment from the Settlement?**

If you are a Class Member and you want to get a payment, you **must** complete and submit a valid Claim Form by [\_\_\_\_\_].

To submit a Claim Form on-line or to request a paper copy, go to [www.CArenewalsettlementPeacockTV.com](http://www.CArenewalsettlementPeacockTV.com).

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

The hearing to consider the fairness of the Settlement is scheduled for [\_\_\_\_\_], 2024. If the Court approves the Settlement, eligible Class Members whose claims were approved by the Settlement Administrator will receive their payment after the Settlement has been finally approved and/or after any appeals process is complete. Class members who submit valid Claims Forms by the claims deadline will receive their payment in the form of a check (or an alternative method, such as a digital MasterCard, PayPal, or Venmo), and all checks will expire and become void 180 days after they are issued.

## **REMAINING IN THE SETTLEMENT**

### **9. What am I giving up if I stay in the Class?**

If the Settlement becomes final, you will give up your right to sue Peacock and other Released Parties for the claims being resolved by this Settlement. The specific claims you are giving up against Peacock are described in the Settlement Agreement. You will be “releasing” Peacock and certain of its affiliates, employees and representatives as described in Section 3.2 of the Settlement Agreement. Unless you exclude yourself (*see* Question 14), you are “releasing” the claims, regardless of whether you submit a claim or not. The Settlement Agreement is available through the “Documents” section of the website.

The Settlement Agreement describes the released claims with specific descriptions, so read it carefully. If you have any questions you can talk to the lawyers listed in Question 12 for free, or you can talk to your own lawyer if you have questions about what this means.

### **10. What happens if I do nothing at all?**

If you do nothing, you won’t get any cash payment from this Settlement.

Even if you do nothing, you won’t be able to start a lawsuit or be part of any other lawsuit against the Defendant for the claims being resolved by this Settlement, unless you exclude yourself.

## **THE LAWYERS REPRESENTING YOU**

### **11. Do I have a lawyer in the case?**

QUESTIONS? CALL 1-XXX-XXX-XXXX TOLL FREE, OR VISIT  
[WWW.CArenewalsettlementPeacockTV.COM](http://WWW.CArenewalsettlementPeacockTV.COM)

The Court has appointed Bursor & Fisher, P.A and Gucovschi Rozenshteyn, PLLC to be the attorneys representing the Settlement Class. They are called “Class Counsel.” They believe, after conducting an extensive investigation, that the Settlement Agreement is fair, reasonable, and in the best interests of the Settlement Class. You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense.

**12. How will the lawyers be paid?**

Any Class Counsel attorneys’ fees and costs awarded by the Court will be paid out of the Settlement Fund in an amount to be determined by the Court. The fee petition will seek no more than one third of the Settlement Fund, but the Court may award less than this amount. Under the Settlement Agreement, any amount awarded to Class Counsel will be paid out of the Settlement Fund.

Subject to approval by the Court, the Class Representative may be paid up to \$5,000 from the Settlement Fund.

**EXCLUDING YOURSELF FROM THE SETTLEMENT**

**13. How do I get out of the Settlement?**

To exclude yourself from the Settlement, you must mail or otherwise deliver a written request for exclusion stating that you want to be excluded from the *Winston v. Peacock TV LLC*, Case No. 1:23-cv-08191-ALC Settlement. Your letter or request for exclusion must also include your name, your address, your signature, the name and number of this case, and a statement that you wish to be excluded. You must mail or deliver your exclusion request postmarked no later than [\_\_\_\_], 2024, to:

Winston v. Peacock TV LLC  
c/o Settlement Administrator  
PO Box #####  
City, State ZIP CODE

**14. If I don’t exclude myself, can I sue Peacock for the same thing later?**

No. Unless you exclude yourself, you give up any right to sue Peacock for the claims being resolved by this Settlement.

**15. If I exclude myself, can I get anything from this Settlement?**

No. If you exclude yourself, you will not receive any Settlement benefits.

**OBJECTING TO THE SETTLEMENT**

**16. How do I object to the Settlement?**

If you are a Class Member and do not exclude yourself from the Settlement Class, you

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

can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must file with the Court a letter or brief stating that you object to the Settlement in *Winston v. Peacock TV LLC*, Case No. 1:23-cv-08191-ALC, and identify all your reasons for your objections (including citations and supporting evidence) and attach any materials you rely on for your objections. Your letter or brief must also include your name, your address, the basis upon which you claim to be a Class Member, the name and contact information of any and all attorneys representing, advising, or in any way assisting you in connection with your objection, and your signature. If you, or an attorney assisting you with your objection, have ever objected to any class action settlement where you or the objecting attorney has asked for or received payment in exchange for dismissal of the objection (or any related appeal) without modification to the settlement, you must include a statement in your objection identifying each such case by full case caption. You must also mail or deliver a copy of your letter or brief to Class Counsel and Peacock's Counsel listed below.

Class Counsel will file with the Court and post on the website its request for attorneys' fees on or about [\_\_\_\_], 2024.

If you want to appear and speak at the Final Approval Hearing to object to the Settlement, with or without a lawyer (explained below in answer to Question 21), you must say so in your letter or brief and file the objection with the Court and mail a copy to these two different places postmarked no later than [\_\_\_\_], 2024. **IF YOU DO NOT TIMELY MAKE YOUR OBJECTION, YOU WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS AND WILL NOT BE ENTITLED TO SPEAK AT THE FAIRNESS HEARING.**

Court	Plaintiff's Counsel	Peacock's Counsel
The Honorable Andrew L. Carter, Jr. United States District Court for the Southern District of New York 40 Foley Square, Courtroom 1306 New York, NY 10007	Neal J. Deckant Julia K. Venditti Bursor & Fisher, P.A. 1990 N. California Blvd. Suite 940 Walnut Creek, CA 94596	Jacob Sommer Zachary Lerner Jeff Landis ZwillGen PLLC 1900 M Street NW Suite 250 Washington, DC 20036

**17. 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 Class. Excluding yourself from the Class is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

**THE COURT'S FINAL APPROVAL HEARING**

**18. When and where will the Court decide whether to approve the Settlement?**

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

The Court will hold the Final Approval Hearing at [TIME] p.m. on [\_\_\_\_], 2024, in Courtroom 1306 at the Thurgood Marshall Federal Courthouse, 40 Foley Square, New York, NY 10007. The purpose of the hearing will be for the Court to determine whether to approve the Settlement as fair, reasonable, adequate, and in the best interests of the Class; to consider the Class Counsel’s request for attorneys’ fees and expenses; and to consider the request for an incentive award to the Class Representative. At that hearing, the Court will be available to hear any timely filed objections and arguments concerning the fairness of the Settlement.

The hearing may be postponed to a different date or time without notice, so it is a good idea to check [www.CArenewalsettlementPeacockTV.com](http://www.CArenewalsettlementPeacockTV.com) or call toll free 1-XXX-XXX-XXXX. If, however, you timely objected to the Settlement and advised the Court that you intend to appear and speak at the Final Approval Hearing, you will receive notice of any change in the date of such Final Approval Hearing.

### **19. 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 at your own expense. If you send an objection or comment, you don’t have to come to Court to talk about it. As long as you filed and mailed your written objection on time, the Court will consider it. You may also pay another lawyer to attend, but it’s not required.

### **20. May I speak at the hearing?**

Yes. So long as you timely filed an objection to the Settlement, you may ask the Court for permission to speak at the Fairness Hearing, but do not have to. To do so, you must include in your letter or brief objecting to the Settlement a statement saying that it is your “Notice of Intent to Appear in *Winston v. Peacock TV LLC*, Case No. 1:23-cv-08191-ALC.” It must include your name, address, telephone number and signature as well as the name and address of your lawyer, if one is appearing for you. Your objection and notice of intent to appear must be filed with the Court and postmarked no later than [\_\_\_\_], 2024, and be sent to the addresses listed in Question 17.

## **GETTING MORE INFORMATION**

### **21. Where do I get more information?**

This Notice summarizes the Settlement.

More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement at [www.CArenewalsettlementPeacockTV.com](http://www.CArenewalsettlementPeacockTV.com). You may also write with questions to *Winston v. Peacock TV LLC* c/o Settlement Administrator, PO Box ####, City, XX ZIP CODE. You can call the Settlement Administrator at 1-XXX-XXX- if you have any questions. Before doing so, however, please read this full Notice carefully. You may also find additional information elsewhere on the case website. Please do not telephone the Court to inquire about the Settlement or the claims process.

QUESTIONS? CALL 1-XXX-XXX-XXXX TOLL FREE, OR VISIT  
[WWW.CArenewalsettlementPeacockTV.COM](http://WWW.CArenewalsettlementPeacockTV.COM)

**EXHIBIT E**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

HOLLY WINSTON, on behalf of herself and all others similarly situated,

Plaintiff,

v.

PEACOCK TV LLC,

Defendant.

Civil Action No.: 1:23-cv-08191-ALC

Hon. Andrew L. Carter, Jr.

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT AGREEMENT, CONDITIONALLY CERTIFYING  
SETTLEMENT CLASS, APPOINTING CLASS REPRESENTATIVE,  
APPOINTING CLASS COUNSEL, AND APPROVING NOTICE PLAN**

WHEREAS, a proposed class action is pending before the Court entitled *Winston v. Peacock TV LLC*, Case No. 1:23-cv-08191-ALC;

WHEREAS, Plaintiff Holly Winston (“Plaintiff”), and Defendant Peacock TV LLC (“Defendant” or “Peacock”) (collectively, the “Parties”), have entered into a Settlement Agreement, which, together with the exhibits attached thereto, sets forth the terms and conditions for a proposed class action settlement which would dispose of the Action with prejudice as to Peacock and bind plaintiff and all class members to a full release of their claims, upon the terms and conditions set forth therein (the “Settlement Agreement”); and

WHEREAS, and the Court having considered all papers submitted on Plaintiff’s Motion for Preliminary Approval and Certification of a Settlement Class, including the Settlement Agreement and exhibits attached thereto including the proposed Notices to the Settlement Class;

IT IS HEREBY ORDERED, DECREED, AND ADJUDGED AS FOLLOWS:

The Parties have agreed to settle and dismiss with prejudice this Action in accordance with the terms and conditions of the Settlement Agreement, inclusive of its exhibits. The definitions in the Settlement Agreement are hereby incorporated herein as though fully set forth in this Order, and all other terms and phrases in this Order shall have the same meaning as ascribed to them in the Settlement Agreement.

This Court finds that it has jurisdiction over the subject matter and all Parties to the Action, including the proposed Settlement Class, pursuant to 28 U.S.C. 1332(d)(2).

The Court finds that, subject to the Final Approval Hearing, the Settlement Agreement, including all exhibits thereto, is preliminarily approved as fair, reasonable, and adequate, and in the best interests of the Settlement Class set forth below. The Court further finds that the Settlement Agreement substantially fulfills the purposes and objectives of the class action and provides substantial relief to the Settlement Class without the risks, burdens, costs, or delay associated with continued litigation, trial, and/or appeal. The Settlement is not a finding or admission of liability by the Defendant or any other person, nor a finding of the validity of any claims asserted in the Action or of any wrongdoing or any violation of law.

The Plaintiff, by and through her counsel, has investigated the pertinent facts and has evaluated the risks associated with continued litigation, trial and/or appeal. The Court finds that the Settlement Agreement: (a) is the result of arm's-length negotiations between the parties and experienced counsel; (b) is sufficient to warrant notice of the settlement and the Final Approval Hearing to be disseminated to the Settlement Class; (c) meets all applicable requirements of law, including Federal Rule of Civil Procedure 23 and the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715.

**Conditional Certification of the Settlement Class**

For purposes of settlement only: (a) Bursor & Fisher, P.A. and Gucovschi Rozenshteyn, PLLC are appointed Class Counsel for the Settlement Class; and (b) Holly Winston is appointed Class Representative. The Court finds that these attorneys are competent and capable of exercising the responsibilities of Class Counsel and that Plaintiff will adequately protect the interests of the Settlement Class defined below.

For purposes of settlement only and for purposes of disseminating Class Notice, and without prejudice to Defendant's right to contest class certification if the Settlement Agreement is not finally approved, the Court conditionally certifies the following Settlement Class as defined in the Settlement Agreement, pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(3) and 23(e):

[A]ll Persons who, from September 15, 2019, to and through February 27, 2024, enrolled in an automatically renewing Peacock Subscription directly through Peacock using a California billing address, and who were charged and paid Renewal Fee(s) in connection with such subscription(s).<sup>1</sup>

The Court finds, subject to the Final Approval Hearing referred to below, that the Settlement Agreement is fundamentally fair, adequate, and reasonable, and, solely within the context of and for the purposes of settlement only, that the Settlement Class satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, specifically, that: the Settlement Class is so numerous that joinder of all members is impracticable; there are questions of fact and law common to the Settlement Class; the claims of the Class Representative are

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<sup>1</sup> Excluded from the Settlement Class are: (1) any Judge or Magistrate presiding over this Action and members of their families; (2) Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest and their current or former officers, directors, agents, attorneys, and employees; (3) Persons who properly execute and file a timely request for exclusion from the class; and (4) the legal representatives, successors or assigns of any excluded Persons.



typical of the claims of the members of the Settlement Class; the Class Representative and Class Counsel will fairly and adequately protect the interests of the members of the Settlement Class; common questions of law or fact predominate over questions affecting individual members; and a class action is a superior method for fairly and efficiently adjudicating the Action.

If the Settlement Agreement does not receive the Court's final approval, or if final approval is reversed on appeal, or if the Settlement Agreement is terminated or otherwise fails to become effective, the Court's conditional grant of class certification shall be vacated, null, and void in all respects, and the Class Representative and the Settlement Class will once again bear the burden of establishing the propriety of class certification for purposes of litigation. In such case, neither the conditional certification of the Settlement Class for settlement purposes, nor any other act relating to the negotiation or execution of the Settlement Agreement shall be considered as a factor in connection with any class certification issue(s).

### **Notice and Administration**

The Court approves, as to form, content, and distribution, the Notice Plan set forth in the Settlement Agreement, including Claim Form attached to the Settlement Agreement as Exhibit A, the Notice Plan and all forms of Notice to the Settlement Class as set forth in the Settlement Agreement and Exhibits B, C, and D thereto, and finds that such Notice is reasonable and the best notice practicable under the circumstances, and that the Notice complies fully with the requirements of the Federal Rules of Civil Procedure. The Court also finds that the Notice constitutes valid, due and sufficient notice to all persons entitled thereto, and meets the requirements of Due Process. The Court further finds that the Notice is reasonably calculated to, under all circumstances, reasonably apprise members of the Settlement Class of the pendency of this action, the terms of the Settlement Agreement, and the right to object to the settlement and to exclude themselves from the Settlement Class. In addition, the Court finds that no notice other

than that specifically identified in the Settlement Agreement is necessary in this Action. The Parties, by agreement, may revise the Notice and Claim Form in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting.

The Court approves the request for the appointment of Epiq Class Action & Claims Solutions, Inc. as Settlement Administrator of the Settlement Agreement.

Pursuant to paragraph 4.1 of the Settlement Agreement, the Settlement Administrator is directed to publish the Notice and Claim Form on the Settlement Website and to send direct notice via e-mail and U.S. Mail in accordance with the Notice Plan called for by the Settlement Agreement. The Settlement Administrator shall also maintain the Settlement Website to provide full information about the Settlement and allow for the filing of claims online. The Settlement Website shall prominently display all Settlement deadlines for Settlement Class Members as well as notify the Settlement Class to object to the Settlement Agreement, request exclusion from the Class and appear at the Settlement Hearing.

**Submission of Claims and Requests for Exclusion from Settlement Class**

Members of the Settlement Class with Peacock Subscriptions who wish to receive benefits in the form of *pro rata* cash payments under the Settlement Agreement must complete and submit a timely and valid Claim Form(s) in accordance with the instructions contained therein. All Claim Forms must be postmarked or received by the Settlement Administrator by \_\_\_\_\_ *[suggested date of 73 days after entry of this Order]*.

Any person falling within the definition of the Settlement Class may, upon valid and timely request, exclude themselves or “opt out” from the Settlement Class. Any such person may do so if, on or before the Objection/Exclusion Deadline of \_\_\_\_\_ *[suggested date of 73 days after entry of this Order]* they comply with the exclusion procedures set forth in the Settlement Agreement and Notice. Any members of the Settlement Class so excluded shall

neither be bound by the terms of the Settlement Agreement nor entitled to any of its benefits.

Any members of the Settlement Class who elect to exclude themselves or “opt out” of the Settlement Agreement must file a written request with the Settlement Administrator, received or postmarked no later than the Objection/Exclusion Deadline. The request for exclusion must comply with the exclusion procedures set forth in the Settlement Agreement and Notice and include the Settlement Class member’s name and address, a signature, the name and number of the case, and a statement that he or she wishes to be excluded from the Settlement Class for the purposes of this Settlement. Each request for exclusion must be submitted individually. So called “mass” or “class” opt-outs shall not be allowed.

Individuals who opt out of the Settlement Class relinquish all rights to benefits under the Settlement Agreement and will not release their claims. However, members of the Settlement Class who fail to submit a valid and timely request for exclusion shall be bound by all terms of the Settlement Agreement and the Final Judgment, regardless of whether they have requested exclusion from the Settlement Agreement or received any benefit or award from the settlement.

No request for exclusion may be made on behalf of a group of Settlement Class Members who do not share a single Peacock Subscription. “Mass” opt outs and/or attempts to opt out a “class” shall not be allowed.

### **Appearances and Objections**

At least twenty-one (21) calendar days before the Final Approval Hearing, any person who falls within the definition of the Settlement Class and who does not request exclusion from the Settlement Class may enter an appearance in the Action, at their own expense, individually or through counsel of their own choice. Any Settlement Class Member who does not enter an appearance will be represented by Class Counsel.

Any members of the Settlement Class who have not timely filed a request for exclusion

may object to the fairness, reasonableness, or adequacy of the Settlement Agreement or to a Final Judgment being entered dismissing the Action with prejudice in accordance with the terms of the Settlement Agreement, or to the attorneys' fees and expense reimbursement sought by Class Counsel in the amounts specified in the Notice, or to the award to the Class Representative as set forth in the Notice and Settlement Agreement. At least fourteen (14) days prior to the Objection/Exclusion Deadline, papers supporting the Fee Award shall be filed with the court and posted to the settlement website. Members of the Settlement Class may object on their own, or may do so through separate counsel at their own expense.

To object, members of the Settlement Class must sign and file a written objection no later than on or before the Objection/Exclusion Deadline of \_\_\_\_\_ [*suggested date of 73 days after entry of this Order*]. To be valid, the objection must comply with the objection procedures set forth in the Settlement Agreement and Notice, and include his or her name and address; an explanation of the basis upon which he or she claims to be a Settlement Class Member; a signature; all grounds for the objection, including all citations to legal authority and evidence supporting the objection; the name and contact information of any and all attorneys representing, advising, or in any way assisting him or her in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the "Objecting Attorneys"); and a statement indicating whether he or she intends to appear at the Final Approval Hearing (either personally or through counsel who files an appearance with the Court in accordance with Southern District of New York Local Rules). If a Settlement Class Member or any of the Objecting Attorneys has objected to any class action settlement where the objector or the Objecting Attorneys asked for or received any payment in exchange for dismissal of the objection, or any related appeal, without any modification to the settlement, then the objection must include a statement identifying each such case by full case caption.

Members of the Settlement Class who fail to file and serve timely written objections in compliance with the requirements of this paragraph and the Settlement Agreement shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement Agreement or to any of the subjects listed in paragraph 3, above, *i.e.* (a) whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate and should be given final approval by the Court; (b) whether a judgment and order of dismissal with prejudice should be entered; (c) whether to approve the Fee Award to Class Counsel; and (d) whether to approve the payment of an incentive award to the Class Representative.

To be valid, objections must be filed with the Court and sent to the following: Class Counsel Neal Deckant of Bursor & Fisher, P.A., 1990 North California Blvd., Suite 940, Walnut Creek, CA 94596; and Defendant Peacock TV LLC's Counsel Jeffrey Landis of ZwillGen PLLC, 1900 M Street NW, Suite 250, Washington D.C. 20036. In addition, any objections made by a Class member represented by counsel must be filed through the Court's CM/ECF system.

### **Final Approval Hearing**

The Final Approval Hearing shall be held before this Court on \_\_\_\_\_, at \_\_\_\_\_ [at least 120 days after entry of this order] in Courtroom 1306 at the Thurgood Marshall United States Courthouse, Courtroom 1506, 40 Foley Square, New York, New York to determine (a) whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement (including as it may be modified prior to the Final Hearing date) is fair, reasonable, and adequate and should be given final approval by the Court; (b) whether a judgment and order of dismissal with prejudice should be entered; (c) whether to approve the Fee Award to Class Counsel; and (d) whether to approve the payment of an incentive award to the Class Representative. The Court may

adjourn the Final Approval Hearing without further notice to members of the Settlement Class. The new date of Hearing, if any, shall be published on the Court's docket and on the Settlement Website.

Class Counsel shall file papers in support of their Fee Award and Class Representative's incentive award (collectively, the "Fee Petition") with the Court on or before \_\_\_\_\_ [suggested date of 52 days after entry of this Order, (i.e., 14 days before the Objection/Exclusion Deadline).] Defendant may, but is not required to, file a response to Class Counsel's Fee Petition with the Court on or before \_\_\_\_\_ [suggested date of 21 days before Final Approval hearing.] Class Counsel may file a reply in support of their Fee Petition with the Court on or before \_\_\_\_\_ [suggested date of 14 days before Final Approval hearing.]

Papers in support of final approval of the Settlement Agreement and any supplementation to the Fee Petition shall be filed with the Court on or before \_\_\_\_\_ [suggested date of 14 days before Final Approval hearing.]

### **Further Matters**

All further proceedings in the Action are ordered stayed until Final Judgment or termination of the Settlement Agreement, whichever occurs earlier, except for those matters necessary to obtain and/or effectuate final approval of the Settlement Agreement. Additionally, pending this Court's determination as to whether to finally approve the Settlement, the Court hereby prohibits and/or enjoins any other person, entity or counsel (other than successful opt-outs to this Settlement) from representing or from commencing, prosecuting, participating in or assisting in any lawsuit or proceeding against the Released Parties on any matters within the scope of the Released Claims).

Absent prior approval from this Court, Plaintiff and Class Counsel, shall not issue any press release, advertisement, internet posting, or any other public statement (to the media or

otherwise), or make any other extrajudicial statements concerning the facts and circumstances of this action or the disclosures exchanged between the parties, with the exception of the notices to be distributed to the Settlement Class Members in accordance with this Settlement. Any communications between Class Counsel and any individual Settlement Class Members seeking inquiries shall be limited to providing publicly available information contained in the notices provided to the Settlement Class Members, and Class Counsel shall in no way make any disparaging statements about Peacock or the Released Parties in responding to any such inquiries.

Members of the Settlement Class shall be bound by all determinations and judgments in the Action, whether favorable or unfavorable.

The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement Agreement. The Court may approve the Settlement, with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Class.

All Settlement Class Members who do not timely exclude themselves from the Settlement: (a) shall be bound by the provisions of the Settlement Agreement and all proceedings, determinations, orders and judgments in the Action relating thereto, including, without limitation, the Judgment or Alternate Judgment, if applicable, and the Releases provided for therein, whether favorable or unfavorable to the Settlement Class or Settlement Class Member; and (b) shall forever be barred and enjoined from directly or indirectly filing, commencing, instituting, prosecuting, maintaining, participating in, or intervening (as class members or otherwise) in any action, suit, cause of action, arbitration, claim, demand, or other proceeding in any jurisdiction, whether in the United States or elsewhere, on their own behalf or in a representative capacity, that is based upon or arises out of any or all of the Released Claims

against Peacock and the other Released Parties, as more fully described in the Settlement Agreement, whether or not a Claim Form is required or submitted.

Neither this Order, the Settlement Agreement including the exhibits thereto, the negotiations leading to the execution of the Settlement Agreement, nor any proceedings taken pursuant to or in connection with the Settlement Agreement and/or approval of the Settlement (a) shall be referred to or offered against any of the Releasees as evidence of, or constructed as, or deemed to be evidence of any presumption, concession or admission by any of the Releasees with respect to the truth of any allegation, the validity of any claim or the deficiency of any defense that has been or could have been asserted in the Action or in any other litigation, including the appropriateness of a litigation class, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Releasees, in any civil, criminal or administrative action or proceeding, or (b) shall be construed against any of the Releasees or Releasing Parties as an admission, concession or presumption that the consideration to be given represents the amount which could be or would have been recovered after trial; provided, however, that notwithstanding the foregoing, if the Settlement Agreement is approved by the Court, the Parties and Releasees and their respective counsel may file or refer to the Settlement Agreement or the Judgment in any action that may be brought to enforce its terms.

In accordance with the Settlement Agreement, if the Settlement Agreement is not approved by the Court, each party will have the option of having the Action revert to its status as if the Settlement Agreement had not been negotiated, made, or filed with the Court. In such event, the parties will retain all rights as if the Settlement Agreement was never agreed upon.

If the Settlement Agreement is terminated pursuant to the provisions of the Settlement Agreement or for any reason whatsoever the approval of it does not become Final then (i) the Settlement Agreement shall be null and void, including any provision related to the award of



attorneys' fees, and shall have no further force and effect with respect to any party in this Action, and shall not be used in this Action or in any other proceeding for any purpose; (ii) all negotiations, proceedings, documents prepared, and statements made in connection therewith shall be without prejudice to any person or party hereto, shall not be deemed or construed to be an admission by any party of any act, matter, or proposition, and shall not be used in any manner or for any purpose in any subsequent proceeding in this Action or in any other action in any court or other proceeding, provided, however, that the termination of the Settlement Agreement shall not shield from subsequent discovery any factual information provided in connection with the negotiation of this Settlement Agreement that would otherwise be discoverable; (iii) other than as expressly preserved by the Settlement Agreement in the event of its termination, the Settlement Agreement shall have no further force and effect with respect to any party and shall not be used in the Action or any other proceeding for any purpose; and (iv) any party may elect to move the Court pursuant to the provisions of this paragraph, and none of the non-moving parties (or their counsel) shall oppose any such motion.

Pending final determination of whether the proposed Settlement Agreement should be approved, neither Plaintiff nor any Settlement Class Member, directly or indirectly, in a representative or any other capacity, shall commence or prosecute against Defendant and the other Released Parties any action or proceeding in any court or tribunal asserting any of the Released Claims.

The Parties and their counsel shall meet and confer and work together in good faith to effectuate the terms of the Settlement Agreement and this Order. The Court may, upon proper notice and motion, resolve any disputes between the parties concerning the Settlement Agreement and this Order.

IT IS SO ORDERED, this \_\_\_\_ day of \_\_\_\_\_, 2024.

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Hon. Andrew L. Carter, Jr.  
United States District Court Judge,  
Southern District of New York

**EXHIBIT F**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

HOLLY WINSTON, on behalf of herself and all  
others similarly situated,

Plaintiff,

v.

PEACOCK TV LLC,

Defendant.

Civil Action No.: 1:23-cv-08191-ALC

Hon. Andrew L. Carter, Jr.

**[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT**

On [DATE], this Court granted preliminary approval of the proposed class action settlement agreement between the parties (the “Settlement Agreement” or “Settlement”).

The Court also provisionally certified a Settlement Class for settlement purposes only, approved the procedure for giving notice and forms of Notice, and set a final approval hearing to take place on [DATE]. The Settlement Class is defined as: all Persons who, from September 15, 2019, to and through February 27, 2024, enrolled in an automatically renewing Peacock Subscription directly through Peacock using a California billing address, and who were charged and paid an automatic renewal fee(s) in connection with such subscription. Excluded from this definition are the Released Parties. Settlement Class Members who excluded themselves from the Settlement, pursuant to the procedures set forth in Paragraph 4.5 of the Settlement, shall no longer thereafter be Settlement Class Members and shall not be bound by the Settlement and shall not be eligible to make a claim for any benefit under the terms of the Settlement.

On [DATE], the Court held a duly noticed final approval hearing to consider: (1) whether the terms and conditions of the Settlement are fair, reasonable and adequate; (2) whether a

judgment should be entered dismissing the complaint on the merits and with prejudice in favor of Defendant and against all persons or entities who are Settlement Class members herein who have not requested exclusion from the Settlement Class; and (3) whether and in what amount to award attorneys' fees, costs and expenses to Class Counsel and whether and in what amount to make an incentive award to Plaintiff Holly Winston.

The Court, having considered all matters submitted to it at the hearing and otherwise, and it appearing that the Class Notice substantially in the form approved by the Court was given in the manner that the Court ordered to persons who purchased the Peacock Subscriptions at issue, as ordered by the Court, and having considered and determined that the proposed settlement of the claims of the Settlement Class Members against Defendant, as well as the release of Defendant and the Released Parties, and the awards of attorneys' fees, costs, and expenses and incentive award requested, are fair, reasonable and adequate, hereby ORDERS THAT:

1. The definitions in the Settlement Agreement and the Court's Preliminary Approval Order are hereby incorporated herein as though fully set forth in this Order, and all other terms and phrases in this Order shall have the same meaning as ascribed to them in the Settlement Agreement and in the Court's Preliminary Approval Order, and/or in any Order of this Court prior to the entry of final Judgment.

2. The Court finds that the prerequisites for a settlement class under Federal Rules of Civil Procedure ("Fed. R. Civ. P.") 23(a) and (b)(3) have been satisfied, for purposes of settlement only, in that: (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of the Class Representative are typical of the claims of the Settlement Class she seeks to represent; (d) the Class Representative has and will fairly and adequately represent the interests of the Settlement Class; (e) the questions of law and fact

common to the Settlement Class Members predominate over any questions affecting any individual Settlement Class Member; and (f) a class action is superior to the other available methods for the fair and efficient adjudication of the controversy.

3. The Court finds that the requirements of Rule 23(e) of the Federal Rule of Civil Procedure and other laws and rules applicable to final settlement approval of class actions have been satisfied, and the Court approves the settlement of this Action as memorialized in the Settlement Agreement as being fair, just reasonable and adequate to the Settlement Class and its members. The Court further finds that the Settlement Agreement substantially fulfills the purposes and objectives of the class action, and provides substantial relief to the Settlement Class without the risks, burdens, costs or delays associated with continued litigation, trial and/or appeal. The Settlement is not a finding or admission of liability by the Defendant or any other person, nor a finding of the validity of any claims asserted in the Action or of any wrongdoing or any violation of law.

4. Pursuant to Fed. R. Civ. P. 23, this Court hereby finally certifies this action, for purposes of settlement, a class action on behalf of all Persons who, from September 15, 2019, to and through February 27, 2024, enrolled in an automatically renewing Peacock Subscription directly through Peacock using a California billing and/or delivery address, and who were charged and paid an automatic renewal fee(s) in connection with such subscription. Excluded from this definition are the Released Parties. Settlement Class Members who exclude themselves from the Settlement, pursuant to the procedures set forth in Paragraph 4.5 of the Settlement Agreement, shall no longer thereafter be Settlement Class Members and shall not be bound by the Settlement Agreement and shall not be eligible to make a claim for any benefit under the terms of this Settlement Agreement.

5. The Court appoints the law firms of Bursor & Fisher, P.A. and Gucovschi Rozenshteyn, PLLC as Class Counsel for the Settlement Class. The Court designates Plaintiff Holly Winston as the Class Representative.

6. Notice of the pendency of this action as a class action and of the proposed settlement was given to Settlement Class Members in a manner reasonably calculated to provide the best notice practicable under the circumstances. The form and method of notifying the Settlement Class of the pendency of the Action as a class action and of the terms and conditions of the proposed Settlement met the requirements of Fed. R. Civ. P. 23, due process, and any other applicable law, and constituted due and sufficient notice to all persons and entities entitled thereto. In addition, the Court finds that Defendant fully satisfied any obligation to provide Notice of the proposed Settlement Agreement to the public officials designated under the Class Action Fairness Act, 28 U.S.C. § 1715, to receive such notice, as set forth in the Defendant's Notice of Compliance with 28 U.S.C. § 1715.

7. The Court has considered and finds Class Counsel and the Class Representative have adequately represented the Class. Plaintiff, by and through her counsel, has investigated the pertinent facts and law, and has evaluated the risks associated with continued litigation, class certification, trial, and/or appeal. The Court finds that the Settlement Agreement was reached in the absence of collusion, is the product of informed, good-faith, arms-length negotiations between the parties and their capable and experienced counsel.

8. The Court finds that the Settlement is effective in appropriately distributing relief to the Settlement Class in light of the claims and defenses asserted, that the method of processing Settlement Class Member claims is reasonable and appropriate, and that the Settlement Agreement treats all Settlement Class Members equitably relative to each other.

9. The Court has evaluated this overall reaction of the Class to the Settlement, and finds that the overall acceptance of the Settlement Agreement by Settlement Class Members supports the Court's conclusion that the Settlement Agreement is in all respects fair, reasonable, adequate, and in the best interests of the Class.

10. The Parties are directed to consummate the Settlement Agreement in accordance with its terms and conditions.

11. As set forth at Paragraph 2.2 of the Settlement Agreement, Defendant has agreed to provide automatic renewal terms on its checkout pages in a manner that is consistent with the requirements of California's Automatic Renewal Law ("ARL"), Cal. Bus. & Prof. Code §§ 17600, *et seq.* Specifically, Defendant agrees to present to California subscribers on the checkout page for any Peacock Subscription that will automatically renew, the automatic renewal offer terms associated with such subscription (including cancellation policy) in a clear and conspicuous manner before the subscription or purchasing agreement and in visual proximity to the request for consent to the offer. Defendant will obtain affirmative consent to the agreement containing the automatic renewal terms in a manner that complies with the ARL. Defendant further agrees to disclose to subscribers with a California billing address, in a manner that substantially complies with the ARL, how to cancel in an acknowledgment email that is capable of being retained by consumers.

12. Epiq Class Action & Claims Solutions, Inc. is finally appointed to continue to serve as the Claims Administrator as provided in the Settlement Agreement. The Claims Administrator is directed to process all Authorized Claims in accordance with the Settlement Agreement. Class Counsel and Counsel for Defendant are hereby authorized to employ all reasonable procedures in connection with administration of the Settlement Agreement that are not materially inconsistent with this Order or the Settlement Agreement.



13. The Claims Administrator shall administer the Escrow Account, which is a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1. The Claims Administrator, as administrator of the fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the Escrow Account. The Claims Administrator shall also be responsible for causing payment to be made from the Escrow Account of any Taxes and Tax Expenses owed. None of the Releasees, Plaintiff, Class Counsel or Counsel for Defendant shall have any liability or responsibility for any such Taxes or Tax Expenses, or any required filings regarding same.

14. There shall be no recourse to any Defendant, Releasee, Released Party or their counsel, or to the Class Representative or Class Counsel, or to the Claims Administrator or to this Court, for any determination made by the Claims Administrator pursuant to its responsibilities under the Settlement Agreement. In addition, notwithstanding anything else in this Order, if the Claims Administrator or any Party has reason to believe that a false or fraudulent Claim has been submitted in this Settlement, or that any Claim has been submitted under false pretenses, the Claims Administrator may reject the Claim.

15. The Court has evaluated the application for a Fee Award and Incentive Award in connection with its consideration of the overall fairness, reasonable and adequacy of the Settlement.

16. Pursuant to Fed. R. Civ. P. 23(h), the Court hereby awards Class Counsel attorneys' fees, costs, and expenses in the amount of \$\_\_\_\_\_. The Court also orders payment of an incentive award(s) in the amount(s) of \$\_\_\_\_\_ to Plaintiff Holly

Winston. These amounts are to be paid in the time and manner described in the Settlement Agreement.

17. Any appeal from any Fee Award or Incentive Award or other order relating thereto, shall not operate to terminate or cancel the Settlement Agreement, nor affect or delay the finality of this Final Order and Judgment.

18. The Action is hereby dismissed with prejudice and without costs as against Defendant and the Released Parties.

19. Class Representative and all Settlement Class Members (except any such person who has filed a proper and timely request for exclusion) and all persons acting on behalf of or in concert with any of the above, are hereby permanently barred and enjoined from instituting, commencing or prosecuting, either directly or in any other capacity, any and all of the Released Claims against any of the Released Parties. The Court finds that issuance of the permanent injunction described in this paragraph is necessary and appropriate in aid of the Court's jurisdiction over this Action and to protect and effectuate this Order.

20. Effective as of the Final Settlement Approval Date, each and all of the Settlement Class Members (except any such person who has filed a proper and timely request for exclusion) shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged, and shall be forever barred from asserting, instituting, or maintaining against any or all of the Released Parties, any and all causes of action or claims for relief, whether in law or equity, including but not limited to injunctive relief, actual damages, nominal damages, statutory damages, punitive damages, exemplary or multiplied damages, restitution, disgorgement, expenses, attorneys' fees and costs, and/or any other form of consideration whatsoever (including Unknown Claims), whether in law or in equity, accrued or un-acrued, direct, individual or representative, of every nature and description whatsoever, that

were brought or could have been brought in the Action relating to any and all Releasing Parties, any Peacock Subscription associated with any of them, or that in any way relate to or arise out of Defendant's automatic renewal and/or continuous service programs in California from September 15, 2019, to and through February 27, 2024, including but not limited to any of the facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions or failures to act related thereto. Plaintiff, the Settlement Class and the Releasing Parties each individually covenant not to bring any Released Claim and expressly agree that this Release will be, and may be raised as, a complete defense to and will preclude any action or proceeding encompassed by the release(s) contained herein in respect to any Peacock Subscription associated with a Class Member.

21. Neither the Settlement Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any of the documents or statements referred to therein shall be:

(a) offered by any person or received against Defendant as evidence or construed as or deemed to be evidence of any presumption, concession, or admission by Defendant of the truth of the facts alleged by the Class Representative or any Settlement Class Member or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or other judicial or administrative proceeding, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault or wrongdoing of Defendant;

(b) offered by any person or received against Defendant as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by Defendant or any other wrongdoing by Defendant;

(c) offered by any person or received against Defendant as evidence of a presumption, concession, or admission with respect to any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason against any of the settling parties, in any civil, criminal, or administrative action or proceeding; provided, however, that nothing contained in this paragraph shall prevent the Settlement Agreement from being used, offered, or received in evidence in any proceeding to approve, enforce, or otherwise effectuate the Settlement or the Settlement Approval Order and Final Judgment, or in which the reasonableness, fairness, or good faith of the parties in participating in the Settlement (or any agreement or order relating thereto) is an issue, or to enforce or effectuate provisions of the Settlement, the Settlement Approval Order and Final Judgment, the releases as to the Released Parties.

22. Claims documents in this case, and all materials and data held by the Claims Administrator regarding the Settlement Class, including the Class List, shall be strictly confidential and not subject to publication or disclosure, and shall not be used for any other purposes beyond providing notice to the Settlement Class and assisting with the determination of valid claims. No person other than the Parties and their counsel, the Claims Administrator, and the Court shall be permitted to obtain or review any Claim Form, or any decision of the Claims Administrator with respect to accepting or rejecting any Claim, except as provided for herein or upon Court Order for good cause shown.

23. This Settlement Approval Order and Final Judgment constitutes a judgment within the meaning and for purposes of Rule 54 of the Federal Rules of Civil Procedure. Without affecting the finality of the Settlement Approval Order and Final Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) the disposition of the settlement benefits; (b) the settling parties for purposes of construing, enforcing and administering the

Settlement Agreement; and (c) enforcement of the Stipulation and Order Regarding Undertaking Re: Attorneys' Fees and Costs.

24. Without further order of the Court, the settling parties may agree to reasonably necessary extensions of time to carry out any of the provisions of the Settlement Agreement.

25. In the event that the Final Settlement Approval Date does not occur, this Settlement Approval Order and Final Judgment shall automatically be rendered null and void and shall be vacated and, in such event, all orders entered in connection herewith, except the Stipulation and Order Regarding Undertaking Re: Attorneys' Fees and Costs, shall be null and void.

DONE this \_\_\_\_ day of \_\_\_\_\_, 2024.

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Hon. Andrew L. Carter, Jr.  
United States District Court Judge,  
Southern District of New York

**EXHIBIT G**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

HOLLY WINSTON, on behalf of herself and all  
others similarly situated,

Plaintiff,

v.

PEACOCK TV LLC,

Defendant.

Civil Action No.: 1:23-cv-08191-ALC

Hon. Andrew L. Carter, Jr.

**STIPULATION REGARDING UNDERTAKING RE: ATTORNEYS' FEES AND COSTS**

**BURSOR & FISHER, P.A.**

Neal J. Deckant  
1990 North California Boulevard, Suite 940  
Walnut Creek, CA 94596  
Telephone: (925) 300-4455  
Facsimile: (925) 407-2700  
Email: ndeckant@bursor.com

**GUCOVSKI ROZENSHTEYN, PLLC**

Adrian Gucovski  
630 Fifth Avenue, Suite 2000  
New York, NY 10111  
Telephone: (212) 884-4230  
Email: adrian@gr-firm.com

*Attorneys for Plaintiff and the Putative Class*

Plaintiff Holly Winston (“Plaintiff”), on behalf of the putative class, and Defendant Peacock TV LLC (“Defendant” or “Peacock”) (collectively, the “Parties”), by and through and including their undersigned counsel, stipulate and agree as follows:

WHEREAS, Scott A. Bursor (“Class Counsel”), individually and as principal of his law firm, Bursor & Fisher P.A. (“the Firm”), desire to give an undertaking (the “Undertaking”) for repayment of their award of attorney fees and costs, approved by the Court; and

WHEREAS, the Parties agree that this Undertaking is in the interests of all Parties and in service of judicial economy and efficiency.

NOW, THEREFORE, the undersigned Class Counsel, on behalf of himself as an individual and as principal of the Firm, hereby submits himself and the Firm to the jurisdiction of the Court for the purpose of enforcing the provisions of this Undertaking.<sup>1</sup>

By receiving any payments pursuant to the Settlement Agreement, the Firm and its shareholders, members, and/or partners submit to the jurisdiction of the United States District Court for the Southern District of New York for the enforcement of and any and all disputes relating to or arising out of the reimbursement obligation set forth herein and the Settlement Agreement.

In the event that the settlement, Settlement Agreement, Judgment, or any part of it is reduced, vacated, overturned, reversed, or rendered void as a result of an appeal, or the settlement or Settlement Agreement is voided, rescinded, or otherwise terminated for any other reason, Class Counsel and the Firm shall, within ten (10) days repay to Peacock, based upon written instructions provided by Peacock’s Counsel, the full amount of the attorneys’ fees and

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<sup>1</sup> Capitalized terms used herein without definition have the meanings given to them in the Class Action Settlement Agreement. *See* Deckant Decl. Ex. 1.



costs paid to Class Counsel in this matter, including any accrued interest. In the event the attorneys' fees and costs awarded by the Court or any part of them are reduced, vacated, modified, reversed, or rendered void as a result of an appeal or otherwise, Class Counsel and the Firm shall, within ten (10) days repay to Peacock, based upon written instructions provided by Peacock's Counsel, the attorneys' fees and costs paid to Class Counsel and/or the Class Representatives in this matter in the amount vacated or modified, including any accrued interest.

This Undertaking and all obligations set forth herein shall terminate upon the Effective Date of the Settlement, defined as the date ten (10) days after all of the following events and conditions have been met and have occurred, provided that this Agreement has not been terminated in accordance with the provisions of Section 6 of the Settlement Agreement: (a) the Parties and their counsel have executed this Agreement; (b) the Court has entered the Preliminary Approval Order; (c) the Court has entered an order finally approving the Agreement, following Notice to the Settlement Class and a Final Approval Hearing, as provided in the Federal Rules of Civil Procedure, and has entered the Final Judgment, or a judgment consistent with this Agreement in all material respects; and (d) the Final Judgment has become Final, as defined in the Settlement Agreement, or, if the Court enters an Alternate Judgment, such Alternate Judgment becomes Final. If any appeal of the Final Order and Judgment, or any order awarding attorneys' fees, costs/expenses or service awards/payments is filed, the Undertaking shall not terminate unless and until a final, non-appealable order affirming the Final Order and Judgment or any order awarding attorneys' fees, costs/expenses and service awards/payments is entered.

In the event Class Counsel and the Firm fail to repay to Peacock any attorneys' fees and costs that are owed to it pursuant to this Undertaking, the Court may, upon application of

Peacock, and notice to Class Counsel and the Firm, summarily issue orders, including but not limited to judgments, attachment orders against Class Counsel and the Firm, and findings for sanctions and/or contempt of court.

The undersigned attorney stipulates, warrants, and represents that he has both actual and apparent authority to enter into this Stipulation, agreement, and Undertaking, individually and on behalf of the Firm.

This Undertaking may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Signatures by facsimile shall be as effective as original signatures.

The undersigned declare under penalty of perjury that they have read and understand the foregoing and that it is true and correct.

**IT IS SO STIPULATED:**

DATED: June 27, 2024

**BURSOR & FISHER, P.A.**



By: Scott A. Bursor, individually and on behalf of Bursor & Fisher, P.A.

*Attorneys for Plaintiff and the Putative Class*

DATED: June \_\_, 2024

**ZWILLGEN PLLC**

By: \_\_\_\_\_

*Attorneys for Defendant Peacock TV LLC*

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**BURSOR & FISHER, P.A.**

\_\_\_\_\_  
By: Scott A. Bursor, individually and on behalf of  
Bursor & Fisher, P.A.

*Attorneys for Plaintiff and the Putative Class*

DATED: July 2, 2024

**ZWILLGEN PLLC**

DocuSigned by:  
*Jacob Sommer*  
\_\_\_\_\_  
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By: Jacob Sommer

*Attorneys for Defendant Peacock TV LLC*

**EXHIBIT 2**

## Peacock TV ARL Lodestar

ATTY	HOURS	RATE	TOTAL
LTF	0.4	\$ 1,100.00	\$440.00
JIM	1.0	\$ 1,050.00	\$1,050.00
NJD	58.5	\$ 850.00	\$49,725.00
FJK	6.5	\$ 750.00	\$4,875.00
MSR	0.1	\$ 550.00	\$55.00
JKV	37.3	\$ 500.00	\$18,650.00
RSR	0.2	\$ 350.00	\$70.00
RKA	0.3	\$ 300.00	\$90.00
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	104.3		\$74,955.00

Expenses: \$9,554.57

**Total: \$84,509.57**

**B&F HOURLY RATES**

(As of 1/5/2024)

**2024**

<b>Timekeeper (Class Year) (Title)</b>	<b>2022 Rate</b>
Scott A. Bursor (1997) (Partner)	\$1100
L. Timothy Fisher (1997) (Partner)	\$1100
Joseph I. Marchese (2002) (Partner)	\$1050
Joel D. Smith (2006) (Partner)	\$1000
Josh D. Arisohn (2007) (Partner)	\$950
Sarah N. Westcot (2009) (Partner)	\$900
Neal J. Deckant (2011) (Partner)	\$850
Yitz Z. Kopel (2012) (Partner)	\$825
Yeremey O. Krivoshey (2013) (Partner)	\$800
Philip L. Fraietta (2014) (Partner)	\$775
Alec M. Leslie (2016) (Partner)	\$725
Jennifer S. Rosenberg (1985) (Senior Staff Attorney)	\$875
Victoria Sheehy (2003) (Senior Staff Attorney)	\$875
Stephen A. Beck (2018) (Associate)	\$600
Stefan Bogdanovich (2018) (Associate)	\$600
Brittany S. Scott (2019) (Associate)	\$550
Max S. Roberts (2019) (Associate)	\$550
Matthew A. Girardi (2020) (Associate)	\$500
Julian C. Diamond (2020) (Associate)	\$500
Julia K. Venditti (2020) (Associate)	\$500
Christopher Reilly (2020) (Associate)	\$500
Christina Ramsey (2021) (Staff Attorney)	\$475
Jenna L. Gavenman (2022) (Associate)	\$450
Emily A. Horne (2022) (Associate)	\$450
Ira Rosenberg (2022) (Associate)	\$450
Luke Sironski-White (2022) (Associate)	\$450
Jonathan L. Wolloch (2022) (Associate)	\$450
Luis R. Fernandez (2022) (Staff Attorney)	\$450
Ines Diaz-Villafana (2023) (Associate)	\$400
Caroline C. Donovan (2023) (Associate)	\$400
Joshua B. Glatt (2023) (Associate)	\$400
Kyle Gordon (2023) (Associate)	\$400
Joshua L. Wilner (2023) (Associate)	\$400
Victoria Zhou (2023) (Associate)	\$400
Debbie L. Schroeder (Senior Litigation Support Specialist)	\$350
Rebecca S. Richter (Senior Litigation Support Specialist)	\$350
J. Georgina McCulloch (Senior Litigation Support Specialist)	\$350
Molly C. Sasseen (Senior Litigation Support Specialist)	\$350

Steven E. Riley (Senior Litigation Support Specialist)	\$350
Alicia M. Winfield (Senior Litigation Support Specialist)	\$350
Judy Fontanilla (Litigation Support Specialist)	\$300
Alex Riggsby (Litigation Support Specialist)	\$300
Hannah Grunden (Litigation Support Specialist)	\$300
Emily Knepler (Litigation Support Specialist)	\$300
Alex J. Riggsby (Litigation Support Specialist)	\$300
Cesar A. Zamudio (Litigation Support Specialist)	\$300
Reet K. Atwal (Litigation Support Specialist)	\$300
Jade A. Greer (Litigation Support Specialist)	\$300
Marcella S. Taylor (Litigation Support Specialist)	\$300
Jessica A. Kelley (Litigation Support Specialist)	\$300
Monica A. Castro (Litigation Support Specialist)	\$300
Ashley Dever (Litigation Support Specialist)	\$300
Michaela N. Ferlow (Litigation Support Specialist)	\$300
Valeria Franceschi (Litigation Support Specialist)	\$300
Gabriela Morales (Litigation Support Specialist)	\$300
Brian Palmer (Litigation Support Specialist)	\$300
Lisa Perez (Litigation Support Specialist)	\$300
Lakitta Pierre (Litigation Support Specialist)	\$300

## Bursor Fisher, P.A. - Peacock TV ARL Billing Diaries

DATE	MATTER	ATTY	DESCRIPTION	TIME	RATE	AMOUNT
2023.08.14	Peacock TV ARL	FJK	Call w/ Adrian re new matter (.6)	0.6	\$ 750.00	\$ 450.00
2023.08.31	Peacock TV ARL	FJK	Peacock - call w/ Adrian re idea (.8) & call w / N. Deckant re same (1); attention to next steps w/ internal team (.4)	2.2	\$ 750.00	\$ 1,650.00
2023.08.31	Peacock TV ARL	JKV	Conf. w/ FJK re Peacock removal of arbitration clause & possible ARL claims (.2)	0.2	\$ 500.00	\$ 100.00
2023.08.31	Peacock TV ARL	JKV	Call with NJD re possible ARL claims regarding Peacock subscription & terms (.2)	0.2	\$ 500.00	\$ 100.00
2023.09.12	Peacock TV ARL	FJK	Peacock - call w/ Adrian (.4); Peacock - call w/ N. Deckant (.5) & conf w/ J. Marchese re same (.4)	1.3	\$ 750.00	\$ 975.00
2023.09.13	Peacock TV ARL	FJK	Calls w/ Adrian (.4); conf w/ N. Deckant re next steps (.4)	0.8	\$ 750.00	\$ 600.00
2023.09.14	Peacock TV ARL	FJK	Peacock - call w/ Adrian re next steps (.5);	0.5	\$ 750.00	\$ 375.00
2023.09.15	Peacock TV ARL	FJK	Peacock - conf w/ Adrian re complaint (.4) & calls w/ N. Deckant re same (.4); call w/ N. Deckant re filing (.3)	1.1	\$ 750.00	\$ 825.00
2023.09.19	Peacock TV ARL	JKV	Conf. w/ team re amending complaint to add additional named plaintiff(s) and/or claim(s) (.2)	0.2	\$ 500.00	\$ 100.00
2023.09.19	Peacock TV ARL	JKV	Call with FJK re co-counsel (.3)	0.3	\$ 500.00	\$ 150.00
2023.09.19	Peacock TV ARL	JKV	Conf. w/ NJD re filed complaint, amending with additional plaintiff, & next steps (.4)	0.4	\$ 500.00	\$ 200.00
2023.09.19	Peacock TV ARL	RKA	Opened new matter and created new calendar.	0.3	\$ 300.00	\$ 90.00
2023.10.17	Peacock TV ARL	JKV	Email exchange with R.Richer re: letter of withdrawal re FJK (.1)	0.1	\$ 500.00	\$ 50.00
2023.10.17	Peacock TV ARL	JKV	Call with NJD re: whether to file notice of appearance (.2)	0.2	\$ 500.00	\$ 100.00
2023.10.17	Peacock TV ARL	NJD	Discussed next steps with JKV	0.3	\$ 850.00	\$ 255.00
2023.10.18	Peacock TV ARL	JKV	Reviewed/analyzed/investigated Def's subscription enrollment process, Checkout Page disclosures, & terms and policies on other webpages to determine compliance with ARL (.3)	0.3	\$ 500.00	\$ 150.00
2023.10.19	Peacock TV ARL	JKV	Continued investigation re: website disclosures / compliance with ARL (1.2); Conf. w/ NJD re same (.3)	1.5	\$ 500.00	\$ 750.00
2023.10.19	Peacock TV ARL	NJD	Discussed fact issues with JKV	0.3	\$ 850.00	\$ 255.00
2023.10.23	Peacock TV ARL	JKV	Conf. w/ NJD re: strength of claims (.2); Sent email to A.Gucovschi re: FJK withdrawal as counsel & NJD appearance (.1)	0.3	\$ 500.00	\$ 150.00
2023.10.23	Peacock TV ARL	NJD	Discussed Peacock TV with JKV, wrote email to Adrian	0.3	\$ 850.00	\$ 255.00
2023.10.26	Peacock TV ARL	RSR	Prepared and filed NJD NOA (.1)	0.1	\$ 350.00	\$ 35.00
2023.10.26	Peacock TV ARL	NJD	Planning NJD appearance	0.2	\$ 850.00	\$ 170.00
2023.10.30	Peacock TV ARL	NJD	Attention to notice of appearance and related issues	0.2	\$ 850.00	\$ 170.00
2023.11.07	Peacock TV ARL	NJD	Checked on service, updated calendar with response date	0.2	\$ 850.00	\$ 170.00
2023.11.09	Peacock TV ARL	NJD	Sent client info, per request	0.1	\$ 850.00	\$ 85.00
2023.11.21	Peacock TV ARL	NJD	Checked calendar and extension dates	0.2	\$ 850.00	\$ 170.00
2023.12.12	Peacock TV ARL	NJD	Setting up mediation call	0.3	\$ 850.00	\$ 255.00
2023.12.13	Peacock TV ARL	NJD	Confer with JKV re mediation call	0.2	\$ 850.00	\$ 170.00
2023.12.14	Peacock TV ARL	JKV	Call with NJD re: scheduling M&C with def counsel to discuss possibility of early resolution (.1)	0.1	\$ 500.00	\$ 50.00
2023.12.15	Peacock TV ARL	JKV	Mediation call with def counsel re: potential for early resolution / going to mediation (.4); Calls with NJD & co-counsel re: next steps (.3); Prepared NOI for campaign & sent NOI to Jenna Herschberger of Gemini (.4)	1.1	\$ 500.00	\$ 550.00
2023.12.15	Peacock TV ARL	JKV	Email exchange with Gemini marketing reps re new campaign (.1)	0.1	\$ 500.00	\$ 50.00
2023.12.15	Peacock TV ARL	NJD	Sending mediators and doc requests to defnese counsel	0.3	\$ 850.00	\$ 255.00
2023.12.18	Peacock TV ARL	JKV	Prepared questionnaire for H.Grunden use & circulated same by email (.2)	0.2	\$ 500.00	\$ 100.00
2023.12.20	Peacock TV ARL	NJD	Picking mediators and selecting dates	0.3	\$ 850.00	\$ 255.00
2023.12.26	Peacock TV ARL	NJD	Check in re PSI status	0.3	\$ 850.00	\$ 255.00
2023.12.29	Peacock TV ARL	JKV	Conf. w/ H.Grunden & NJD re adjusting geography (.2)	0.2	\$ 500.00	\$ 100.00
2024.01.02	Peacock TV ARL	JKV	Sent email to J.Herschberger (.1)	0.1	\$ 500.00	\$ 50.00
2024.01.02	Peacock TV ARL	JKV	Further email exchange with J.Herschberger (.1)	0.1	\$ 500.00	\$ 50.00
2024.01.03	Peacock TV ARL	JKV	Conf. w/ H.Grunden (.2)	0.2	\$ 500.00	\$ 100.00
2024.01.04	Peacock TV ARL	NJD	Reviewed stay order, updated calendar	0.3	\$ 850.00	\$ 255.00



## Bursor Fisher, P.A. - Peacock TV ARL Billing Diaries

2024.01.08	Peacock TV ARL	NJD	Reviewed new retainer, saved to Box, sent note to Adrian	0.3	\$ 850.00	\$ 255.00
2024.01.09	Peacock TV ARL	NJD	Setting up mediation	0.3	\$ 850.00	\$ 255.00
2024.01.09	Peacock TV ARL	NJD	Locking in mediation date	0.2	\$ 850.00	\$ 170.00
2024.01.10	Peacock TV ARL	NJD	Confirmed mediation dates, reviewed docket updates	0.2	\$ 850.00	\$ 170.00
2024.01.11	Peacock TV ARL	JKV	Conf. w/ NJD re: mediation (.2)	0.2	\$ 500.00	\$ 100.00
2024.01.11	Peacock TV ARL	NJD	Setting mediation date	0.2	\$ 850.00	\$ 170.00
2024.01.11	Peacock TV ARL	NJD	PSI	0.2	\$ 850.00	\$ 170.00
2024.02.07	Peacock TV ARL	NJD	Mediation logistics	0.1	\$ 850.00	\$ 85.00
2024.02.07	Peacock TV ARL	NJD	Signed mediation agreement and updated calendar	0.3	\$ 850.00	\$ 255.00
2024.02.09	Peacock TV ARL	NJD	Reviewed mediation scheduling notice	0.2	\$ 850.00	\$ 170.00
2024.02.16	Peacock TV ARL	NJD	Discussed extension with team	0.2	\$ 850.00	\$ 170.00
2024.02.16	Peacock TV ARL	NJD	Reviewed scheduling letter	0.3	\$ 850.00	\$ 255.00
2024.02.21	Peacock TV ARL	NJD	Reviewed scheduling order, updated calendar	0.1	\$ 850.00	\$ 85.00
2024.02.28	Peacock TV ARL	NJD	Checking on mediation statement	0.1	\$ 850.00	\$ 85.00
2024.03.01	Peacock TV ARL	JKV	Prepared Mediation Statement & circulated draft to NJD for review (5.4); Email exchange with NJD re suggested edits, revised draft statement in accordance with NJD comments, & circulated updated draft to NJD & co-counsel for further review/redlines (.6)	6.0	\$ 500.00	\$ 3,000.00
2024.03.01	Peacock TV ARL	NJD	Confirming mediation logistics	0.2	\$ 850.00	\$ 170.00
2024.03.01	Peacock TV ARL	NJD	Reviewed and revised mediation statement	0.4	\$ 850.00	\$ 340.00
2024.03.04	Peacock TV ARL	JKV	Call with NJD re: edits to make to draft mediation statement (.2); made revisions to draft mediation statement, prepared draft proposed term sheet to be attached as exhibit 4, prepared other exhibits, & circulated updated draft statement & draft term sheet to team for further review (.6)	0.8	\$ 500.00	\$ 400.00
2024.03.04	Peacock TV ARL	JKV	Email exchanges with team re draft mediation submission, finalized mediation statement and exhibits & served same on mediator via JAMS Access portal (.5)	0.5	\$ 500.00	\$ 250.00
2024.03.04	Peacock TV ARL	NJD	Discussed mediation statement with JKV	0.3	\$ 850.00	\$ 255.00
2024.03.04	Peacock TV ARL	NJD	Discussed mediation statement and settlement strategy with team	0.3	\$ 850.00	\$ 255.00
2024.03.04	Peacock TV ARL	NJD	Confer re settlement strategy and emailed with requests for class data	0.3	\$ 850.00	\$ 255.00
2024.03.04	Peacock TV ARL	NJD	Final review of mediation statement	0.6	\$ 850.00	\$ 510.00
2024.03.04	Peacock TV ARL	NJD	Finalizing mediation statement	0.3	\$ 850.00	\$ 255.00
2024.03.04	Peacock TV ARL	NJD	Reviewed defendant's mediation statement and discussed offer with team	0.4	\$ 850.00	\$ 340.00
2024.03.05	Peacock TV ARL	JKV	Conf. w/ NJD re: mediation strategy & issues to discuss with co-counsel on team call (.2); JKV-NJD call with A.Gucovschi re: mediation strategy (.8); Conf. w/ NJD re same / next steps (.2); Sent email to NJD re same (.1)	1.3	\$ 500.00	\$ 650.00
2024.03.05	Peacock TV ARL	NJD	Discussion and moving forward on offer, setting up call with JKV and Adrian	0.2	\$ 850.00	\$ 170.00
2024.03.05	Peacock TV ARL	NJD	Confirming call and calendar invite	0.1	\$ 850.00	\$ 85.00
2024.03.05	Peacock TV ARL	NJD	Strategy call with JKV and Adrian	0.8	\$ 850.00	\$ 680.00
2024.03.05	Peacock TV ARL	NJD	Sending over mediation submissions	0.3	\$ 850.00	\$ 255.00
2024.03.06	Peacock TV ARL	JIM	Confer with co-counsel in preparation for mediation; discuss settlement strategy and options	1.0	\$ 1,050.00	\$ 1,050.00
2024.03.06	Peacock TV ARL	NJD	Confer with JKV re settlement strategy	0.1	\$ 850.00	\$ 85.00
2024.03.06	Peacock TV ARL	NJD	Discussed settlement structure with Adrian	0.3	\$ 850.00	\$ 255.00
2024.03.07	Peacock TV ARL	NJD	Sent email memo and question to FL office re claims-made and voucher settlements	0.3	\$ 850.00	\$ 255.00
2024.03.07	Peacock TV ARL	NJD	Reviewed cases re vouchers and claims-made deals, sent to co-counsel	0.3	\$ 850.00	\$ 255.00
2024.03.07	Peacock TV ARL	NJD	More prep for mediation	0.2	\$ 850.00	\$ 170.00
2024.03.07	Peacock TV ARL	NJD	Check in with Adrian re negotiating strategy and final prep	0.2	\$ 850.00	\$ 170.00
2024.03.10	Peacock TV ARL	NJD	Corresponded with mediator re circulating copies of mediation statement and logistics	0.1	\$ 850.00	\$ 85.00
2024.03.11	Peacock TV ARL	MSR	Call w/ JKV re: mediation	0.1	\$ 550.00	\$ 55.00
2024.03.11	Peacock TV ARL	JKV	Team call re: mediation strategy (.3); Mediation with Judge Welsh (7.0)	7.3	\$ 500.00	\$ 3,650.00
2024.03.11	Peacock TV ARL	NJD	Mediation prep with Adrian	0.3	\$ 850.00	\$ 255.00

## Bursor Fisher, P.A. - Peacock TV ARL Billing Diaries

2024.03.11	Peacock TV ARL	NJD	Mediation	10.2	\$	850.00	\$	8,670.00
2024.03.11	Peacock TV ARL	NJD	Settlement announcement to SAB	0.3	\$	850.00	\$	255.00
2024.03.12	Peacock TV ARL	NJD	Discussed mediation with LTF and SB separately	0.4	\$	850.00	\$	340.00
2024.03.13	Peacock TV ARL	NJD	Debriefing with JKV	0.3	\$	850.00	\$	255.00
2024.03.19	Peacock TV ARL	NJD	Status update	0.2	\$	850.00	\$	170.00
2024.03.27	Peacock TV ARL	JKV	Conf. w/ NJD re preparing initial draft of classwide SA & notice plan (.3)	0.3	\$	500.00	\$	150.00
2024.03.27	Peacock TV ARL	NJD	Check in with defense counsel re status and next steps	0.3	\$	850.00	\$	255.00
2024.04.01	Peacock TV ARL	JKV	Conf. w/ NJD re: preparing settlement agreement & notice plan (.1)	0.1	\$	500.00	\$	50.00
2024.04.01	Peacock TV ARL	NJD	Reviewed extension request	0.3	\$	850.00	\$	255.00
2024.04.03	Peacock TV ARL	JKV	Started preparing classwide SA (1.2)	1.2	\$	500.00	\$	600.00
2024.04.05	Peacock TV ARL	JKV	Began preparing classwide SA & notice plan (1.3)	1.3	\$	500.00	\$	650.00
2024.04.08	Peacock TV ARL	JKV	Continued preparing draft classwide SA & sent to NJD for review in email re same (2.1)	2.1	\$	500.00	\$	1,050.00
2024.04.08	Peacock TV ARL	NJD	Reviewed draft settlement agreement	1.3	\$	850.00	\$	1,105.00
2024.04.09	Peacock TV ARL	JKV	Reviewed co-counsel redlines to draft SA, made additional edits, & circulated updated clean version of same to NJD for further review/circulation to def counsel (.4)	0.4	\$	500.00	\$	200.00
2024.04.09	Peacock TV ARL	NJD	Reviewed latest draft of SA, discussed with JKV, and sent edits back to defense counsel	0.4	\$	850.00	\$	340.00
2024.04.11	Peacock TV ARL	NJD	Talked about status with JKV	0.2	\$	850.00	\$	170.00
2024.04.17	Peacock TV ARL	JKV	Conf. w/ NJD re: poking def counsel re: circulating redlines to draft SA (.1)	0.1	\$	500.00	\$	50.00
2024.04.17	Peacock TV ARL	NJD	Check in re settlement status	0.2	\$	850.00	\$	170.00
2024.04.19	Peacock TV ARL	NJD	Reviewing court order extending stay	0.2	\$	850.00	\$	170.00
2024.04.26	Peacock TV ARL	JKV	Prepared exhibits to SA & began drafting PA motion (1.5)	1.5	\$	500.00	\$	750.00
2024.04.26	Peacock TV ARL	JKV	Circulated draft exhibits to SA to NJD & co-counsel for review in email re same / next steps / eta on filing PA (.2)	0.2	\$	500.00	\$	100.00
2024.04.26	Peacock TV ARL	JKV	Conf. w/ NJD re eta / timeline for filing PA motion & responding to co-counsel email re same (.3)	0.3	\$	500.00	\$	150.00
2024.04.26	Peacock TV ARL	JKV	Continued drafting PA motion & circulated full draft of same to NJD & co-counsel for review in email re same (2.7)	2.7	\$	500.00	\$	1,350.00
2024.04.26	Peacock TV ARL	NJD	Reviewed and edited forms of notice	0.7	\$	850.00	\$	595.00
2024.04.26	Peacock TV ARL	NJD	Correspondance with Adrian re timing	0.4	\$	850.00	\$	340.00
2024.04.26	Peacock TV ARL	NJD	Reviewed draft PA motion and edited	2.2	\$	850.00	\$	1,870.00
2024.04.29	Peacock TV ARL	JKV	Conf. w/ NJD re circulating exhibits to SA & draft PA motion to def counsel for review (.2)	0.2	\$	500.00	\$	100.00
2024.04.29	Peacock TV ARL	JKV	Reviewed & accepted NJD redlines to draft PA motion & draft exhibits A-F to SA, saved clean versions & circulated same to def counsel for review in email re same (.3)	0.3	\$	500.00	\$	150.00
2024.04.29	Peacock TV ARL	JKV	Email exchange with NJD & co-counsel re: def counsel's redlines to draft SA & addition of "walk-away right" (.2)	0.2	\$	500.00	\$	100.00
2024.04.29	Peacock TV ARL	NJD	Update on FA materials with JKV	0.2	\$	850.00	\$	170.00
2024.04.29	Peacock TV ARL	NJD	Reviewed and commented on SA	0.5	\$	850.00	\$	425.00
2024.05.16	Peacock TV ARL	JKV	Conf. w/ NJD re: correspondence with def counsel, upcoming expiration of stay and def's request to extend same, & eta on SA and PA motion (.2)	0.2	\$	500.00	\$	100.00
2024.05.16	Peacock TV ARL	NJD	Reviewed and discussed letter extending stay	0.2	\$	850.00	\$	170.00
2024.05.16	Peacock TV ARL	NJD	Reviewed stip, updating calendar	0.1	\$	850.00	\$	85.00
2024.05.30	Peacock TV ARL	NJD	Reviewed order staying deadlines, updated calendar	0.2	\$	850.00	\$	170.00
2024.06.03	Peacock TV ARL	NJD	Reviewing edits to SA and PA brief	0.8	\$	850.00	\$	680.00
2024.06.03	Peacock TV ARL	NJD	Advancing settlement agreement. Prepared undertaking and polished SA	0.6	\$	850.00	\$	510.00
2024.06.04	Peacock TV ARL	NJD	Edits to PA motion	0.6	\$	850.00	\$	510.00
2024.06.05	Peacock TV ARL	JKV	Conf. w/ NJD re: status of PA motion / eta on filing same (.1)	0.1	\$	500.00	\$	50.00
2024.06.06	Peacock TV ARL	JKV	Email exchanges with NJD re requesting settlement admin bids & whether to seek "not to exceed" bids (.2)	0.2	\$	500.00	\$	100.00
2024.06.14	Peacock TV ARL	NJD	Checking in re subscriber counts	0.2	\$	850.00	\$	170.00
2024.06.14	Peacock TV ARL	NJD	Sending emails to claims administrators for bids	0.4	\$	850.00	\$	340.00

## Bursor Fisher, P.A. - Peacock TV ARL Billing Diaries

2024.06.14	Peacock TV ARL	NJD	Coordinating with admins	0.2	\$ 850.00	\$ 170.00
2024.06.17	Peacock TV ARL	NJD	Call with Epiq and RG2	1.2	\$ 850.00	\$ 1,020.00
2024.06.18	Peacock TV ARL	NJD	Corresponding with Jenny re bid	0.2	\$ 850.00	\$ 170.00
2024.06.18	Peacock TV ARL	NJD	Discussed bid with Epiq	0.2	\$ 850.00	\$ 170.00
2024.06.18	Peacock TV ARL	NJD	Reviewed updated stay request	0.2	\$ 850.00	\$ 170.00
2024.06.18	Peacock TV ARL	NJD	Ensured motion to stay was filed	0.2	\$ 850.00	\$ 170.00
2024.06.20	Peacock TV ARL	NJD	Confer with claims administrators re status update	0.4	\$ 850.00	\$ 340.00
2024.06.20	Peacock TV ARL	NJD	Reviewed order re expiration of stay, updating calendar re same	0.3	\$ 850.00	\$ 255.00
2024.06.21	Peacock TV ARL	NJD	Reviewed bids, sent them over with analysis to defense counsel	0.7	\$ 850.00	\$ 595.00
2024.06.21	Peacock TV ARL	NJD	Selecting claims admin, notification re next steps, updated SA, and circulated fresh copies for execution	0.7	\$ 850.00	\$ 595.00
2024.06.24	Peacock TV ARL	NJD	Confer with Jenny re admin timeline and next steps, compiled SA to send over	0.4	\$ 850.00	\$ 340.00
2024.06.27	Peacock TV ARL	JKV	Call with NJD re status of draft PA motion & next steps (.3)	0.3	\$ 500.00	\$ 150.00
2024.06.27	Peacock TV ARL	JKV	Call with NJD re draft PA motion, timing for notice plan (.2)	0.2	\$ 500.00	\$ 100.00
2024.06.27	Peacock TV ARL	NJD	Scheduling call	0.2	\$ 850.00	\$ 170.00
2024.06.27	Peacock TV ARL	NJD	Getting ready for call	0.2	\$ 850.00	\$ 170.00
2024.06.27	Peacock TV ARL	NJD	Call with Epiq and discussed with JKV	0.9	\$ 850.00	\$ 765.00
2024.06.27	Peacock TV ARL	NJD	Signing SA	0.6	\$ 850.00	\$ 510.00
2024.07.01	Peacock TV ARL	NJD	Check in with Jake	0.3	\$ 850.00	\$ 255.00
2024.07.08	Peacock TV ARL	NJD	Working on finalizing SA documents	0.6	\$ 850.00	\$ 510.00
2024.07.09	Peacock TV ARL	NJD	Call with Jake	0.3	\$ 850.00	\$ 255.00
2024.07.09	Peacock TV ARL	NJD	Finalized SA and put together final PDF	0.7	\$ 850.00	\$ 595.00
2024.07.09	Peacock TV ARL	NJD	Finalizing PA motion	1.6	\$ 850.00	\$ 1,360.00
2024.07.10	Peacock TV ARL	NJD	Filled in cross cites to PA motion and sent to all lawyers	0.6	\$ 850.00	\$ 510.00
2024.07.10	Peacock TV ARL	NJD	Finalizing PDFs of PA motion for filing	1.7	\$ 850.00	\$ 1,445.00
2024.07.11	Peacock TV ARL	RSR	Filed PA motion (.1)	0.1	\$ 350.00	\$ 35.00
2024.07.15	Peacock TV ARL	NJD	Attention to CAFA notice	0.3	\$ 850.00	\$ 255.00
2024.07.16	Peacock TV ARL	JKV	Conf. w/ NJD re: status / catching up on developments while I was OOO for honeymoon & next steps in litigation (.2)	0.2	\$ 500.00	\$ 100.00
2024.07.16	Peacock TV ARL	NJD	Discussed PA motion and case schedule with JKV	0.3	\$ 850.00	\$ 255.00
2024.08.01	Peacock TV ARL	JKV	Conf. w/ NJD re: PA motion granted & next steps (.3)	0.3	\$ 500.00	\$ 150.00
2024.08.01	Peacock TV ARL	NJD	Going through PA order, discussed with JKV, researching dates, sent internal memo re dates, and updating calendar	1.8	\$ 850.00	\$ 1,530.00
2024.08.01	Peacock TV ARL	NJD	Confer with Adrian and scheduling call with Epiq	0.2	\$ 850.00	\$ 170.00
2024.08.02	Peacock TV ARL	NJD	Sending notices and claim form to Epiq, confer re status	0.4	\$ 850.00	\$ 340.00
2024.08.05	Peacock TV ARL	NJD	Call with Epiq	0.5	\$ 850.00	\$ 425.00
2024.08.05	Peacock TV ARL	NJD	Audit of claims deadlines	0.3	\$ 850.00	\$ 255.00
2024.08.06	Peacock TV ARL	NJD	Reviewing forms of notice	0.3	\$ 850.00	\$ 255.00
2024.08.06	Peacock TV ARL	NJD	Reviewed update cost estimate and responding to defense counsel and claims admin	0.2	\$ 850.00	\$ 170.00
2024.08.07	Peacock TV ARL	NJD	Reviewed claim form	0.2	\$ 850.00	\$ 170.00
2024.08.08	Peacock TV ARL	JKV	Call with NJD re: emails from settlement admin & deadline to launch settlement website on Sunday / reviewing website to verify same (.2)	0.2	\$ 500.00	\$ 100.00
2024.08.08	Peacock TV ARL	NJD	Update with JKV re deadlines and emailing claims admin	0.4	\$ 850.00	\$ 340.00
2024.08.08	Peacock TV ARL	NJD	Check in re escrow funding	0.2	\$ 850.00	\$ 170.00
2024.08.08	Peacock TV ARL	NJD	Status update with LTF	0.2	\$ 850.00	\$ 170.00
2024.08.08	Peacock TV ARL	NJD	Attention to claims admin invoices and related administrative matters	0.3	\$ 850.00	\$ 255.00
2024.08.08	Peacock TV ARL	NJD	Reviewing notice website	0.6	\$ 850.00	\$ 510.00
2024.08.09	Peacock TV ARL	NJD	Assured notice site was live	0.3	\$ 850.00	\$ 255.00

## Bursor Fisher, P.A. - Peacock TV ARL Billing Diaries

2024.08.12	Peacock TV ARL	JKV	Reviewed settlement website & conf. w/ NJD re same (.5)	0.5	\$ 500.00	\$ 250.00
2024.09.09	Peacock TV ARL	JKV	Conf. w/ NJD re Gmail issue (.3); call with NJD and settlement admin re same (.7); further conf. w/ NJD re same / next steps (.1)	1.1	\$ 500.00	\$ 550.00
2024.09.09	Peacock TV ARL	NJD	Call with claims admin and discussion with JKV	0.8	\$ 850.00	\$ 680.00
2024.09.10	Peacock TV ARL	JKV	Call with NJD re: Gmail issue & plan to kick out claims deadline (.2)	0.2	\$ 500.00	\$ 100.00
2024.09.10	Peacock TV ARL	NJD	Call with Jake re notice campaign	0.3	\$ 850.00	\$ 255.00
2024.09.11	Peacock TV ARL	LTF	Discussed notice issue with Neal Deckant and Julia Venditti (.3); reviewed emails regarding same (.1).	0.4	\$ 1,100.00	\$ 440.00
2024.09.11	Peacock TV ARL	JKV	Conf. w/ NJD re: notice Gmail issue (.1); Conf. w/ NJD & LTF re: meeting to discuss same (.1)	0.2	\$ 500.00	\$ 100.00
2024.09.11	Peacock TV ARL	JKV	Meeting with NJD & LTF to discuss issue with Gmail, solutions to same, & approval timeline (.4)	0.4	\$ 500.00	\$ 200.00
2024.09.11	Peacock TV ARL	JKV	NJD-JKV call with Epiq claims admin re: gmail blacklisting issue (.4)	0.4	\$ 500.00	\$ 200.00
2024.09.11	Peacock TV ARL	NJD	Preliminary talk with LTF	0.2	\$ 850.00	\$ 170.00
2024.09.11	Peacock TV ARL	NJD	Discussion re Epiq with LTF and prep	0.4	\$ 850.00	\$ 340.00
2024.09.11	Peacock TV ARL	NJD	Setting up call	0.2	\$ 850.00	\$ 170.00
2024.09.11	Peacock TV ARL	NJD	Call with Epiq	0.3	\$ 850.00	\$ 255.00
2024.09.11	Peacock TV ARL	NJD	Dealing with Gmail issue	2.1	\$ 850.00	\$ 1,785.00
2024.09.12	Peacock TV ARL	NJD	Finalizing and filing letter request for extension	0.4	\$ 850.00	\$ 340.00
2024.09.12	Peacock TV ARL	NJD	Got order extending notice dates, circulated and gave instructions to Epiq	0.5	\$ 850.00	\$ 425.00
2024.09.13	Peacock TV ARL	NJD	Reviewed edits to notice materials	0.5	\$ 850.00	\$ 425.00
2024.09.13	Peacock TV ARL	NJD	Assisting with claims	0.3	\$ 850.00	\$ 255.00

**EXHIBIT 3**

<b>Bursor &amp; Fisher, P.A. - Peacock TV ARL Expenses</b>			
		\$9,520.00	Mediation Expenses
		\$34.57	Catering & Meal Expenses
		<b>\$9,554.57</b>	<b>Total Expenses</b>
<b>Mediation Expenses</b>			
<b>DATE</b>	<b>MATTER</b>	<b>AMOUNT</b>	<b>DESCRIPTION</b>
2024.02.13	Peacock TV ARL	\$11,250.00	JAMS, Inc.
2024.03.27	Peacock TV ARL	-\$1,730.00	JAMS, Inc.
		<b>\$9,520.00</b>	<b>Total Mediation Expenses</b>
<b>Catering &amp; Meal Expenses</b>			
<b>DATE</b>	<b>MATTER</b>	<b>AMOUNT</b>	<b>DESCRIPTION</b>
2024.04.29	Peacock TV ARL	\$34.57	Doordash
		<b>\$34.57</b>	<b>Total Catering &amp; Meal Expenses</b>





1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 SHANNON TAYLOR,

4 Plaintiff,

5 -against-

16 CV 1812 (KMK)

6 TRUSTED MEDIA BRANDS, INC.,

7 Defendant.

8 -----x

9  
10 United States Courthouse  
White Plains, New York

11 January 31, 2018

12  
13 B e f o r e :

14 HONORABLE KENNETH M. KARAS,  
District Court Judge

15 A P P E A R A N C E S :

16 BURSOR & FISHER, PA  
Attorneys for Plaintiff  
17 888 Seventh Avenue  
New York, New York 10019

18 BY: JOSEPH MARCHESE  
PHILIP FRAIETTA

19 DENTONS US LLP  
Attorneys for Defendant  
20 233 South Wacker Drive, Suite 7800  
21 Chicago, Illinois 60601

22 BY: NATALIE SPEARS  
SANDRA HAUSER

23  
24  
25



1 THE CLERK: Honorable Kenneth M. Karas, presiding.  
2 Case number 16CV1812. *Shannon Taylor versus*  
3 *Custom Video Brands, Inc.*

4 Counsel, please state your appearances for the  
5 record.

6 MR. MARCHESE: Good morning, everyone.

7 Joseph Marchese, Bursor & Fisher, for the  
8 settlement class. And I am joined by my colleague today,  
9 Phil Fraietta.

10 THE COURT: Good morning to you both.

11 MS. SPEARS: Good morning, your Honor.

12 Natalie Spears for defendant, Trusted Media.

13 MS. HAUSER: Sandra Hauser, also for Trusted  
14 Media.

15 THE COURT: Good morning to you both. Please be  
16 seated.

17 All right. So we're here on the application for  
18 final approval of the class settlement. I've read the  
19 papers.

20 Is there anything that anybody wants to add?

21 MR. MARCHESE: Your Honor, I've prepared some  
22 somewhat lengthy remarks and, as you know, there are no  
23 objections to the settlement or to our attorneys' fees  
24 requests. So I'm either prepared to present the remarks  
25 from soup to nuts, or just take a cue from your Honor, if

1 you have any questions.

2 THE COURT: I don't have any questions. I feel  
3 terrible that you've done all this work. So if you want to  
4 say to the client that you were brilliant in delivering  
5 these remarks, I'm good with that.

6 MR. MARCHESE: You know, for now, your Honor, I  
7 think I'll just maybe reserve any remarks that I have. If I  
8 hear something that kind of pops up --

9 THE COURT: Okay.

10 MR. MARCHESE: -- I may jump up.

11 THE COURT: Okay. Thank you.

12 Do you want to give a speech?

13 MS. SPEARS: No, thank you. Thank you for the  
14 Court's time, and just take the opportunity to do that, but  
15 other than that, we support approval of the class  
16 settlement.

17 THE COURT: Okay. Well, as I said, I've reviewed  
18 the papers, and so what I'm going to do is rather than have  
19 you all wait for me to draft an opinion, I'm just going to  
20 let you know how I come out on this now.

21 The basic terms of the settlement and the request  
22 for fees and the incentive award come down to defendant  
23 establishing a fund, a non-revisionary settlement fund in  
24 the amount of \$8,225,000. That fund is going to pay all the  
25 claims to the class members, the incentive award to the

1 plaintiff, the notice and administration expenses, as well  
2 as the attorneys' fees.

3           The class members who submitted the claim form are  
4 going to receive a pro rata award estimated to be about \$50.  
5 In exchange for the settlement, the defendant and each of  
6 its related and affiliate entities are going to receive a  
7 full release of all claims, "arising out of any facts,  
8 transactions, events, matters, occurrences, acts,  
9 disclosures, statements, representations, omissions or  
10 failure to act regarding the alleged disclosure of the  
11 settlement class members, Michigan subscriber information,  
12 including, but not limited to all claims that were brought  
13 or could have been brought in the action relating to any and  
14 all releasing parties."

15           And just parenthetically, the law is well-settled  
16 in this circuit, as well as other courts, that class action  
17 releases may include claims not presented, and even those  
18 which could not have been presented, as long as the released  
19 conduct arises out of the identical factual predicate as the  
20 settled conduct. That was noted by the *Second Circuit in*  
21 *Wal-Mart Stores Inc. versus Visa USA*, 396 F.3d 96, 107.  
22 That principle applies here.

23           Class counsel seeks attorneys' fees of 33.33  
24 percent of the settlement fund, which equates to  
25 \$2,741,392.50, and then the class representative, Taylor,

Angela O'Donnell, RPR, 914-390-4025

1 seeks a \$5,000 incentive award.

2 Now, before certification, class certification is  
3 proper for any purpose, whether it's settlement or  
4 otherwise, a court has to make sure that the Rule 23(a) and  
5 (b) requirements have been met. That's what the circuit has  
6 instructed in, among other cases, in *Denney versus Deutsche*  
7 *Bank AG*, 443 F.3d, 253, 270.

8 Obviously, the settlement only class has to meet  
9 all the requirements of Rule 23 with the exception of the  
10 requirement dealing with the trial. So you don't have to  
11 worry about the manageability of the trial. But otherwise,  
12 the Rule 23 requirements are not to be watered down just  
13 because a settlement might be fair and/or equitable. That's  
14 *Denney* at page 270.

15 Now, under Rule 23(a), plaintiff seeking  
16 certification have to meet four requirements; numerosity,  
17 commonality, typicality and adequacy of representation.

18 In terms of numerosity, the Second Circuit has  
19 said its presumed at a level of at least 40 members, that's  
20 from *Consolidated Rail Corp. versus Town of Hyde Park*, 47  
21 F.3d, 473, 483. Here, the representation is that the class  
22 consists of roughly 1.1 million or so individuals. So I  
23 think we're comfortably north of 40.

24 In terms of commonality, that requires the  
25 questions of fact and law are common to the class. That's

1 from the *Meredith Corp.*, case. That's *Meredith Corp. versus*  
2 *SESAC, LLC*, 87 F.Supp. 3d, 650, 659. The courts in the  
3 Second Circuit haven't had the pleasure of addressing  
4 commonality in the context of claims under their PPPA. But,  
5 as class counsel points out, there are cases in the Eastern  
6 District of Michigan that have approved settlement classes  
7 for claims brought under this provision, among others is  
8 *Kinder versus Meredith Corp.*, 2016 WL 454441, \*1. That's a  
9 case from 2016, February of 2016, and there are others that  
10 all say the same thing.

11 So the Court finds here that the question common  
12 to all class members is whether defendants disclose each of  
13 the customers' protected personal reading information to  
14 third parties in violation of PPPA, and so commonality is,  
15 therefore, satisfied. For the same reason, typicality is  
16 satisfied. And in terms of adequacy of representation, this  
17 requires the Court to inquire as to whether the plaintiffs'  
18 interests are antagonistic to the interests of other members  
19 of the class, and also that the plaintiffs' attorneys are  
20 qualified, experienced and able to conduct the litigation.  
21 So said the Second Circuit in *Baffa versus Donaldson, Lufkin*  
22 *& Jenrette Security Corp.*, 222 F.3d, 52, 60.

23 There's nothing in the record to indicate that the  
24 plaintiff is incapable or somehow ill-suited to represent  
25 the other class members, and as for class counsel, it has

1 represented and, indeed, has substantiated that it has  
2 extensive experience in litigating class actions of similar  
3 size and scope, as well as complexity, including other PPPA  
4 cases. And counsel has been appointed as lead counsel in  
5 cases throughout the country. So I'm comfortable in  
6 reaching the conclusion that class counsel's qualified, and  
7 that's without hearing your brilliant statement.

8           Now, in addition to the express requirements of  
9 Rule 23(a), there is an ascertainability requirement which  
10 requires that a class be definite in order to be certified.  
11 That's from the *MTBE Products Liability Litigation*, 209  
12 F.R.D. 323, 336. The touchstone of ascertainability is  
13 whether the class is sufficiently definite so that it is  
14 administratively feasible for the Court to determine whether  
15 a particular individual is a member. That's from *Brecher*  
16 *versus Republic of Argentina*, 806 F.3d, 22, 24.

17           Here the class is defined as, "all persons with a  
18 Michigan street address who subscribe to a TMBI publication  
19 to be delivered to a Michigan street address, between  
20 March 10, 2010 and July 30, 2016. As proposed, this class  
21 satisfies the ascertainability requirement as it is limited  
22 to Michigan residents who subscribed to the aforementioned  
23 publications between the prescribed time period. As such,  
24 these are sufficiently definite requirements that it is  
25 administratively feasible for the Court to determine whether

1 or not a particular individual is a member.

2 Now, turning to Rule 23(b)(3), a class has to meet  
3 two additional requirements. Common questions have to  
4 predominate over questions affecting only individual members  
5 and a class resolution must be superior to other available  
6 methods of the fair and efficient adjudication of the  
7 controversy. That's from the Supreme Court Decision in  
8 *Amchem Products*, 521 U.S. 591, 615. In terms of  
9 predominance, that asks whether the proposed classes are  
10 sufficiently cohesive to warrant adjudication by  
11 representation. That's from the Supreme Court's decision in  
12 *Tyson Foods*, 136 Supreme Court Reporter, 1036, 1045.

13 And again, there is case law that applies these  
14 principles directly to PPPA claims, and they've been held to  
15 satisfy the predominance requirement. So the aforementioned  
16 *Kinder* case, as well as *Coulter-Owens versus Time, Inc.*, 308  
17 F.R.D. 524, 536. And here it's clear to the Court that  
18 common questions regarding whether defendant's practices  
19 violated Michigan law will indeed predominate over  
20 individual questions and so therefore the requirement is  
21 satisfied.

22 Superiority requires a showing that the class  
23 action is superior to other methods available for the fair  
24 and efficient adjudication of the controversy. I don't  
25 think I'm going to break a sweat saying that this would be

1 tough to do if we had to do a million cases. So I think the  
2 superiority requirement is easily satisfied. So, therefore,  
3 the Court finds that the proposed class may be certified for  
4 settlement purposes.

5 In terms of the fairness of the settlement, a  
6 court can approve a settlement only if the settlement is  
7 "fair, adequate and reasonable, and not a product of  
8 collusion." That's from *Wal-Mart Stores* at page 116.

9 In determining fairness, the Court is to look at  
10 both the settlement's terms and the negotiating process that  
11 led to the settlement. And indeed, there's a presumption of  
12 fairness, adequacy and reasonableness attached to a class  
13 settlement reached in arm's-length negotiations between  
14 experienced, capable counsel after meaningful discovery.  
15 All of that from *Wal-Mart Stores*. So that does include  
16 examining, among other things, the negotiating process that  
17 led to the settlement.

18 In terms of this point, the procedural fairness,  
19 the Court seeks to ensure that the settlement resulted from  
20 an arm's-length, good-faith negotiation between experienced  
21 and skilled litigators, said the Second Circuit in *Charron*  
22 *versus Wiener*, 731 F.3d, 241, 247. This is typically found  
23 where there has been sufficient discovery, for example, to  
24 inform the negotiations where the parties are represented by  
25 experienced counsel in litigating these types of claims, and



1 where there is significant evidence demonstrating the  
2 settlement was the product of, as I said, prolonged  
3 arm's-length negotiation, and it certainly helps that there  
4 is the assistance of a respected mediator.

5 Here the settlement was reached after  
6 approximately 12 months of litigation. There was, in fact,  
7 a significant exchange of information through the discovery  
8 process. This included, among other things, document  
9 production, interrogatories -- I've already commented on the  
10 quality of counsel. So there's no question there, and the  
11 settlement was reached after mediation session with Judge  
12 Maas, who is awesome, I'll just say that for the record. So  
13 there's more than enough reason to find that this settlement  
14 satisfies the procedural fairness requirement.

15 In terms of substantive fairness, we go with the  
16 *Grinnell* factors. I'm not going to read all of them here,  
17 you all know them.

18 Starting with complexity, expense and likely  
19 duration of litigation. Obviously, most class actions are  
20 inherently complex. Given the scope of the litigation here,  
21 that factor is easily satisfied.

22 Reaction of the settlement class, some courts have  
23 said this is perhaps the most significant factor. One of  
24 those is *Raniere versus CitiGroup, Inc.*, 310 F.R.D. 211,  
25 218.

1            Obviously, a favorable response demonstrates that  
2            the class approves settlement. Here that's overwhelmingly  
3            satisfied as no class member has objected to the settlement.  
4            So that weighs in favor of approval.

5            Next is the stage of the proceedings and the  
6            amount of discovery completed. I've already talked about  
7            that. This case has had to go through some pretty  
8            substantial document exchanges and interrogatories and a  
9            litigation had been going on for some time before there was  
10           settlement. So that included in the document production,  
11           things like subscription records, records of transmissions  
12           of customer information, there were third parties involved,  
13           there were notices of disclosures. And, yes, it's true  
14           there were not depositions, but there were interrogatories.  
15           So this factor weighs in favor of approval.

16           The risk of establishing liability and damages.  
17           These are the fourth and fifth factors. In analyzing the  
18           risk to plaintiffs in establishing liability, the Court  
19           doesn't need to decide the merits of the case. That's *In Re*  
20           *Hi-Crush Partners, LP Securities Litigation*, 2014 WL  
21           7323417, \*8, the Court is only required to weigh the  
22           likelihood of success on the merits against the relief  
23           provided by the settlement. And the courts often approve  
24           settlements where the plaintiffs were to face significant  
25           legal and factual obstacles to establish liability.

1           Here the defendant has denied and continues to  
2 deny liability in this action. Thus, there is no certainty  
3 that the claims would succeed at trial if the case were to  
4 go to trial. And indeed, plaintiffs acknowledge that the  
5 case, while it's strong, is not without its risks, which,  
6 among other things, could have included a summary judgment  
7 motion. This factor cuts in favor of settlement, because  
8 the settlement provides a tangible, certain substantial  
9 relief to the class now without subjecting to the class to  
10 the risk, complexity, duration and expense of continued  
11 litigation. That's all from *Hi-Crush Partners*, \*9.

12           The sixth factor asks about the risks maintaining  
13 class action status through the trial. Indeed, there could  
14 have been challenges from the defense about the class  
15 certification. So this factor is, at worst, neutral, and,  
16 at best, tips the scales in favor of approval.

17           Seventh factor asks about the ability of defendant  
18 to withstand a greater judgment. Here, there is a question  
19 as to whether or not defendant could withstand a much  
20 greater judgment because defendant has undergone two  
21 bankruptcy proceedings in the preceding ten years. So this  
22 factor cuts in favor of approval.

23           The eighth and ninth factors ask about the range  
24 of reasonableness of the settlement in light of the best  
25 possible recovery and in light of all the attendant risks of

1 litigation.

2           You think someday somebody is going to cut these  
3 nine down to five factors? You should put that in your  
4 speech.

5           MS. SPEARS: We support that as well.

6           THE COURT: Right?

7           So under these factors, the courts need only find  
8 that the settlement falls within a range of reasonableness.  
9 That's from *Meredith Corp.* at 666. So the adequacy of the  
10 amount achieved in settlement is not to be judged in  
11 comparison with the possible recovery in best of all  
12 possible world, but rather in light of strength and  
13 weaknesses of the plaintiffs' case. Same case, same page.

14           So here, as I mentioned already, the settlement  
15 here is an optimal result because there is a certain  
16 recovery, this was a result that was achieved after  
17 substantial exchange of information with the assistance of  
18 Judge Maas. Given especially defendant's bankruptcy files,  
19 the Court is persuaded that the settlement fits safely  
20 within the range of what is reasonable, given all the  
21 circumstances in this case.

22           So next up is the adequacy of the class notice;  
23 23(b) requires the courts must direct to class members the  
24 best notice that is practicable under the circumstances,  
25 including individual notice to all members who can be

1 identified through reasonable effort.

2 So under both the federal rule and due process  
3 considerations, the adequacy of notice to class members  
4 depends on the particular circumstances of each case.

5 Conformity with Rule 23(c) requirements, however,  
6 typically fulfills the due process mandate, said the Supreme  
7 Court back in 1974, *Eisen versus Carlisle and Jacquelin*, 417  
8 U.S. 156, 173.

9 Now, here actual notice was attempted on all class  
10 members and actually given to 91.37 percent of the class,  
11 which is 1,006,569 class members. The identities and  
12 addresses of the class members were obtained by referencing  
13 defendant's records. And, as I said, actual notice was  
14 mailed to these individuals either by postcard or email by  
15 the claims administrator.

16 Notice to the remaining class members was returned  
17 as undeliverable and alternative email or post email  
18 addresses were not available.

19 So given this record, the Court finds that this  
20 notice procedure satisfies Rule 23 and due process. Indeed,  
21 the courts have said that for due process to be satisfied,  
22 not every class member has to receive actual notice, as long  
23 as counsel "acted reasonably in selecting means likely to  
24 inform persons affected." And I'll commit the mortal sin of  
25 citing a summary order, that's from the Second Circuit's

1 order in *Adelphia Communications Corp. Security and*  
2 *Derivative Litigation*, 271 Fed. App. 41, 44.

3 So that requirement has been satisfied.

4 In terms of the incentive award, these are common  
5 in class actions. They serve, obviously, to compensate  
6 plaintiffs for their time and effort assisting in the  
7 prosecution of the litigation, the risk incurred by becoming  
8 and continuing as a litigant, and any of the burdens that  
9 are sustained by the plaintiff.

10 Here class representative Taylor has requested an  
11 incentive award of \$5,000. What is said about Ms. Taylor is  
12 she was critical to the ultimate success of the case, having  
13 spent approximately 30 hours protecting the interests of the  
14 class, including investigating the claims, detailing  
15 magazine subscription histories, aiding in the drafting of  
16 the complaint and also assisting in the discovery process.

17 In light of these contributions, which are not  
18 disputed, the Court finds that the service award is  
19 appropriate.

20 Then we come to the issue of attorneys' fees,  
21 which I always scrub. Here, as I said, the request is for  
22 one-third of the common fund, which is just a little more  
23 than \$2.7 million. It includes, by the way, the  
24 unreimbursed litigation expenses of \$6,675.53, which is a  
25 legitimate thing to seek.

1           Now, in assessing the attorneys' fees, the Second  
2 Circuit says that we're supposed to use one of two methods.  
3 There's the percentage of the fund method; 33 percent is  
4 typical, the *Raniere* case held that at page 216, as well  
5 220, 222, *DeLeon versus Wells Fargo Bank*, 2015 WL, 2255394,  
6 and so that, obviously, is to take into consideration the  
7 attorneys' fees in proportion to the settlement fund as a  
8 whole.

9           The other method is the lodestar method, where the  
10 Court is to scrutinize the fee petition to ascertain the  
11 number of hours reasonably billed to the class and then  
12 multiply that figure by the appropriate hourly rate. That's  
13 discussed in *Goldberger*. But after computing the fee, the  
14 Court may, in its discretion, increase the lodestar by  
15 applying a multiplier based on other less objective factors  
16 such as the risk of litigation and the performance of the  
17 attorney.

18           Now, the lodestar method is not supposed to be  
19 used for computing attorneys' fees. In any event, we're  
20 supposed to apply the *Goldberger* factor.

21           See, *Goldberger* has it down to six factors.

22           So starting with time and labor, here the time and  
23 labor class counsel billed 502.6 hours. That covered  
24 everything from drafting the complaint to doing  
25 investigation, discovery, meetings, conferences, review of

1 material and negotiating the settlement.

2           And there was a lot of legal research that had  
3 done, too, because of the *Spokeo* decision. So there is no  
4 question that counsel have dedicated a meaningful amount of  
5 time and labor to this case.

6           Next is the magnitude, complexity and risk of  
7 litigation. I've already talked about this at length with  
8 respect to the Rule 23 issues. The class is over a million  
9 members. It has its own complexity, both factually and  
10 legally, and the risk of litigation was substantial for the  
11 aforementioned reasons. So this factor cuts in favor of the  
12 request.

13           Next is the result achieved and the quality of  
14 representation. Obviously, the result achieved is a major  
15 factor, and here the result is good for the plaintiffs.  
16 It's a substantial fund, and especially given the risk of  
17 litigation and given the defendants' financial history, the  
18 result achieved here is commendable and, obviously, reflects  
19 the high quality of representation.

20           Next is the requested fee in relation to the  
21 settlement. As I said, it's one-third. That's typically  
22 approved by other courts.

23           Public policy considerations. Here the private  
24 Attorney General role is something that does merit  
25 compensation and this case is another example of that.



1           So applying the *Goldberger* factors, the Court  
2 finds that the request for attorneys' fees and expenses is  
3 reasonable.

4           I would note that using the billing hours and  
5 billing rate, the lodestar calculation is substantially  
6 less. Indeed, there's a pretty healthy multiplier here  
7 about 11.7 times when looking at the one-third percentage.  
8 But a high multiplier "should not result in penalizing the  
9 plaintiffs' counsel for achieving an early settlement,  
10 particularly whereas here the settlement amount was  
11 substantial." That's a quote from *Beckman versus Keybank NA*  
12 293 F.R.D. 467, 482.

13           So for the aforementioned reasons, the motion to  
14 certify the class and approve the settlement is granted, as  
15 well as the application for the attorneys' fees, expenses  
16 and approval of the claims administrator, and also the  
17 incentive award for Ms. Taylor.

18           Anything else?

19           MR. MARCHESE: I don't have anything.

20           Thank you, your Honor.

21           THE COURT: Anything else?

22           MR. MARCHESE: There was a proposer order.

23           THE COURT: Yes, it will be signed and docketed.

24 I promise.

25           MS. SPEARS: Order.

1 THE COURT: It would have been fun to try the  
2 case, but good for you all.

3 MR. MARCHESE: We have another one before you,  
4 your Honor.

5 THE COURT: There you go. Hope springs eternal.  
6 All right, then I'll bid you a pleasant rest of  
7 the day. Good to see you all.

8 MS. SPEARS: Thank you, your Honor.

9 MR. MARCHESE: Thank you.

10 (Proceeding concluded)

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[www.bursor.com](http://www.bursor.com)

701 BRICKELL AVENUE  
MIAMI, FL 33131

1330 AVENUE OF THE AMERICAS  
NEW YORK, NY 10019

1990 NORTH CALIFORNIA BLVD.  
WALNUT CREEK, CA 94596

## **FIRM RESUME**

With offices in Florida, New York, and California, BURSOR & FISHER lawyers have represented both plaintiffs and defendants in state and federal courts throughout the country.

The lawyers at our firm have an active civil trial practice, having won multi-million-dollar verdicts or recoveries in six of six class action jury trials since 2008. Our most recent class action trial victory came in May 2019 in *Perez v. Rash Curtis & Associates*, in which Mr. Bursor served as lead trial counsel and won a \$267 million jury verdict against a debt collector found to have violated the Telephone Consumer Protection Act. During the pendency of the defendant's appeal, the case settled for \$75.6 million, the largest settlement in the history of the Telephone Consumer Protection Act.

In August 2013 in *Ayyad v. Sprint Spectrum L.P.*, in which Mr. Bursor served as lead trial counsel, we won a jury verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

In *Thomas v. Global Vision Products, Inc. (II)*, we obtained a \$50 million jury verdict in favor of a certified class of 150,000 purchasers of the Avacor Hair Regrowth System. The legal trade publication VerdictSearch reported that this was the second largest jury verdict in California in 2009, and the largest in any class action.

The lawyers at our firm have an active class action practice and have won numerous appointments as class counsel to represent millions of class members, including customers of Honda, Verizon Wireless, AT&T Wireless, Sprint, Haier America, and Michaels Stores as well as purchasers of Avacor™, Hydroxycut, and Sensa™ products. Bursor & Fisher lawyers have been court-appointed Class Counsel or Interim Class Counsel in:

1. *O'Brien v. LG Electronics USA, Inc.* (D.N.J. Dec. 16, 2010) to represent a certified nationwide class of purchasers of LG French-door refrigerators,
2. *Ramundo v. Michaels Stores, Inc.* (N.D. Ill. June 8, 2011) to represent a certified nationwide class of consumers who made in-store purchases at Michaels Stores using a debit or credit card and had their private financial information stolen as a result,
3. *In re Haier Freezer Consumer Litig.* (N.D. Cal. Aug. 17, 2011) to represent a certified class of purchasers of mislabeled freezers from Haier America Trading, LLC,
4. *Rodriguez v. CitiMortgage, Inc.* (S.D.N.Y. Nov. 14, 2011) to represent a certified nationwide class of military personnel against CitiMortgage for illegal foreclosures,

5. *Rossi v. The Procter & Gamble Co.* (D.N.J. Jan. 31, 2012) to represent a certified nationwide class of purchasers of Crest Sensitivity Treatment & Protection toothpaste,
6. *Dzielak v. Whirlpool Corp. et al.* (D.N.J. Feb. 21, 2012) to represent a proposed nationwide class of purchasers of mislabeled Maytag Centennial washing machines from Whirlpool Corp., Sears, and other retailers,
7. *In re Sensa Weight Loss Litig.* (N.D. Cal. Mar. 2, 2012) to represent a certified nationwide class of purchasers of Sensa weight loss products,
8. *In re Sinus Buster Products Consumer Litig.* (E.D.N.Y. Dec. 17, 2012) to represent a certified nationwide class of purchasers,
9. *Ebin v. Kangadis Food Inc.* (S.D.N.Y. Feb. 25, 2014) to represent a certified nationwide class of purchasers of Capatriti 100% Pure Olive Oil,
10. *Forcellati v. Hyland's, Inc.* (C.D. Cal. Apr. 9, 2014) to represent a certified nationwide class of purchasers of children's homeopathic cold and flu remedies,
11. *Ebin v. Kangadis Family Management LLC, et al.* (S.D.N.Y. Sept. 18, 2014) to represent a certified nationwide class of purchasers of Capatriti 100% Pure Olive Oil,
12. *In re Scotts EZ Seed Litig.* (S.D.N.Y. Jan. 26, 2015) to represent a certified class of purchasers of Scotts Turf Builder EZ Seed,
13. *Dei Rossi v. Whirlpool Corp., et al.* (E.D. Cal. Apr. 28, 2015) to represent a certified class of purchasers of mislabeled KitchenAid refrigerators from Whirlpool Corp., Best Buy, and other retailers,
14. *Hendricks v. StarKist Co.* (N.D. Cal. July 23, 2015) to represent a certified nationwide class of purchasers of StarKist tuna products,
15. *In re NVIDIA GTX 970 Graphics Card Litig.* (N.D. Cal. May 8, 2015) to represent a proposed nationwide class of purchasers of NVIDIA GTX 970 graphics cards,
16. *Melgar v. Zicam LLC, et al.* (E.D. Cal. March 30, 2016) to represent a certified ten-jurisdiction class of purchasers of Zicam Pre-Cold products,
17. *In re Trader Joe's Tuna Litigation* (C.D. Cal. December 21, 2016) to represent purchaser of allegedly underfilled Trader Joe's canned tuna.
18. *In re Welspun Litigation* (S.D.N.Y. January 26, 2017) to represent a proposed nationwide class of purchasers of Welspun Egyptian cotton bedding products,
19. *Retta v. Millennium Products, Inc.* (C.D. Cal. January 31, 2017) to represent a certified nationwide class of Millennium kombucha beverages,
20. *Moeller v. American Media, Inc.*, (E.D. Mich. June 8, 2017) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
21. *Hart v. BHH, LLC* (S.D.N.Y. July 7, 2017) to represent a nationwide class of purchasers of Bell & Howell ultrasonic pest repellers,
22. *McMillion v. Rash Curtis & Associates* (N.D. Cal. September 6, 2017) to represent a certified nationwide class of individuals who received calls from Rash Curtis & Associates,

23. *Lucero v. Solarcity Corp.* (N.D. Cal. September 15, 2017) to represent a certified nationwide class of individuals who received telemarketing calls from Solarcity Corp.,
24. *Taylor v. Trusted Media Brands, Inc.* (S.D.N.Y. Oct. 17, 2017) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
25. *Gasser v. Kiss My Face, LLC* (N.D. Cal. Oct. 23, 2017) to represent a proposed nationwide class of purchasers of cosmetic products,
26. *Gastelum v. Frontier California Inc.* (S.F. Superior Court February 21, 2018) to represent a certified California class of Frontier landline telephone customers who were charged late fees,
27. *Williams v. Facebook, Inc.* (N.D. Cal. June 26, 2018) to represent a proposed nationwide class of Facebook users for alleged privacy violations,
28. *Ruppel v. Consumers Union of United States, Inc.* (S.D.N.Y. July 27, 2018) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
29. *Bayol v. Health-Ade* (N.D. Cal. August 23, 2018) to represent a proposed nationwide class of Health-Ade kombucha beverage purchasers,
30. *West v. California Service Bureau* (N.D. Cal. September 12, 2018) to represent a certified nationwide class of individuals who received calls from California Service Bureau,
31. *Gregorio v. Premier Nutrition Corporation* (S.D.N.Y. Sept. 14, 2018) to represent a nationwide class of purchasers of protein shake products,
32. *Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast* (S.D.N.Y. Oct. 24, 2018) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
33. *Bakov v. Consolidated World Travel Inc. d/b/a Holiday Cruise Line* (N.D. Ill. Mar. 21, 2019) to represent a certified class of individuals who received calls from Holiday Cruise Line,
34. *Martinelli v. Johnson & Johnson* (E.D. Cal. March 29, 2019) to represent a certified class of purchasers of Benecol spreads labeled with the representation “No Trans Fat,”
35. *Edwards v. Hearst Communications, Inc.* (S.D.N.Y. April 24, 2019) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
36. *Galvan v. Smashburger* (C.D. Cal. June 25, 2019) to represent a proposed class of purchasers of Smashburger’s “Triple Double” burger,
37. *Kokoszki v. Playboy Enterprises, Inc.* (E.D. Mich. Feb. 7, 2020) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
38. *Russett v. The Northwestern Mutual Life Insurance Co.* (S.D.N.Y. May 28, 2020) to represent a class of insurance policyholders that were allegedly charged unlawful paper billing fees,
39. *In re: Metformin Marketing and Sales Practices Litigation* (D.N.J. June 3, 2020) to represent a proposed nationwide class of purchasers of generic diabetes medications that were contaminated with a cancer-causing carcinogen,

40. *Hill v. Spirit Airlines, Inc.* (S.D. Fla. July 21, 2020) to represent a proposed nationwide class of passengers whose flights were cancelled by Spirit Airlines due to the novel coronavirus, COVID-19, and whose tickets were not refunded,
41. *Kramer v. Alterra Mountain Co.* (D. Colo. July 31, 2020) to represent a proposed nationwide class of purchasers to recoup the unused value of their Ikon ski passes after Alterra suspended operations at its ski resorts due to the novel coronavirus, COVID-19,
42. *Qureshi v. American University* (D.D.C. July 31, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by American University due to the novel coronavirus, COVID-19,
43. *Hufford v. Maxim Inc.* (S.D.N.Y. Aug. 13, 2020) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
44. *Desai v. Carnegie Mellon University* (W.D. Pa. Aug. 26, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by Carnegie Mellon University due to the novel coronavirus, COVID-19,
45. *Heigl v. Waste Management of New York, LLC* (E.D.N.Y. Aug. 27, 2020) to represent a class of waste collection customers that were allegedly charged unlawful paper billing fees,
46. *Stellato v. Hofstra University* (E.D.N.Y. Sept. 18, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by Hofstra University due to the novel coronavirus, COVID-19,
47. *Kaupelis v. Harbor Freight Tools USA, Inc.* (C.D. Cal. Sept. 23, 2020), to represent consumers who purchased defective chainsaws,
48. *Soo v. Lorex Corporation* (N.D. Cal. Sept. 23, 2020), to represent consumers whose security cameras were intentionally rendered non-functional by manufacturer,
49. *Miranda v. Golden Entertainment (NV), Inc.* (D. Nev. Dec. 17, 2020), to represent consumers and employees whose personal information was exposed in a data breach,
50. *Benbow v. SmileDirectClub, Inc.* (Cir. Ct. Cook Cnty. Feb. 4, 2021), to represent a certified nationwide class of individuals who received text messages from SmileDirectClub, in alleged violation of the Telephone Consumer Protection Act,
51. *Suren v. DSV Solutions, LLC* (Cir. Ct. DuPage Cnty. Apr. 8, 2021), to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
52. *De Lacour v. Colgate-Palmolive Co.* (S.D.N.Y. Apr. 23, 2021), to represent a certified class of consumers who purchased allegedly “natural” Tom’s of Maine products,
53. *Wright v. Southern New Hampshire University* (D.N.H. Apr. 26, 2021), to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by Southern New Hampshire University due to the novel coronavirus, COVID-19,



54. *Sahlin v. Hospital Housekeeping Systems, LLC* (Cir. Ct. Williamson Cnty. May 21, 2021), to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
55. *Landreth v. Verano Holdings LLC, et al.* (Cir. Ct. Cook Cnty. June 2, 2021), to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act.
56. *Rocchio v. Rutgers, The State University of New Jersey*, (Sup. Ct., Middlesex Cnty. October 27, 201), to represent a certified nationwide class of students for fee refunds after their classes were moved online by Rutgers due to the novel coronavirus, COVID-19,
57. *Malone v. Western Digital Corp.*, (N.D. Cal. Dec. 22, 2021), to represent a class of consumers who purchased hard drives that were allegedly deceptively advertised,
58. *Jenkins v. Charles Industries, LLC*, (Cir. Ct. DuPage Cnty. Dec. 21, 2021) to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
59. *Frederick v. Examsoft Worldwide, Inc.*, (Cir. Ct. DuPage Cnty. Jan. 6, 2022) to represent a certified class of exam takers who used virtual exam proctoring software, in alleged violation of the Illinois Biometric Information Privacy Act,
60. *Isaacson v. Liqui-Box Flexibles, LLC, et al.*, (Cir. Ct. Will Cnty. Jan. 18, 2022) to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
61. *Goldstein et al. v. Henkel Corp.*, (D. Conn. Mar. 3, 2022) to represent a proposed class of purchasers of Right Guard-brand antiperspirants that were allegedly contaminated with benzene,
62. *McCall v. Hercules Corp.*, (N.Y. Sup. Ct., Westchester Cnty. Mar. 14, 2022) to represent a certified class of who laundry card purchasers who were allegedly subjected to deceptive practices by being denied cash refunds,
63. *Lewis v. Trident Manufacturing, Inc.*, (Cir. Ct. Kane Cnty. Mar. 16, 2022) to represent a certified class of workers who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
64. *Croft v. Spinx Games Limited, et al.*, (W.D. Wash. Mar. 31, 2022) to represent a certified class of Washington residents who lost money playing mobile applications games that allegedly constituted illegal gambling under Washington law,
65. *Fischer v. Instant Checkmate LLC*, (N.D. Ill. Mar. 31, 2022) to represent a certified class of Illinois residents whose identities were allegedly used without their consent in alleged violation of the Illinois Right of Publicity Act,
66. *Rivera v. Google LLC*, (Cir. Ct. Cook Cnty. Apr. 25, 2022) to represent a certified class of Illinois residents who appeared in a photograph in Google Photos, in alleged violation of the Illinois Biometric Information Privacy Act,
67. *Loftus v. Outside Integrated Media, LLC*, (E.D. Mich. May 5, 2022) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,



68. *D'Amario v. The University of Tampa*, (S.D.N.Y. June 3, 2022) to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by The University of Tampa due to the novel coronavirus, COVID-19,
69. *Fittipaldi v. Monmouth University*, (D.N.J. Sept. 22, 2022) to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by Monmouth University due to the novel coronavirus, COVID-19,
70. *Armstead v. VGW Malta Ltd. et al.* (Cir. Ct. Henderson Cnty. Oct. 3, 2022) to present a certified class of Kentucky residents who lost money playing mobile applications games that allegedly constituted illegal gambling under Kentucky law,
71. *Cruz v. The Connor Group, A Real Estate Investment Firm, LLC*, (N.D. Ill. Oct. 26, 2022) to represent a certified class of workers who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
72. *Delcid et al. v. TCP HOT Acquisitions LLC et al.* (S.D.N.Y. Oct. 28, 2022) to represent a certified nationwide class of purchasers of Sure and Brut-brand antiperspirants that were allegedly contaminated with benzene,
73. *Kain v. The Economist Newspaper NA, Inc.* (E.D. Mich. Dec. 15, 2022) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
74. *Strano v. Kiplinger Washington Editors, Inc.* (E.D. Mich. Jan. 6, 2023) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
75. *Moeller v. The Week Publications, Inc.* (E.D. Mich. Jan. 6, 2023) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
76. *Ambrose v. Boston Globe Media Partners, LLC* (D. Mass. May 25, 2023) to represent a nationwide class of newspaper subscribers who were also Facebook users under the Video Privacy Protection Act,
77. *In re: Apple Data Privacy Litigation*, (N.D. Cal. July 5, 2023) to represent a putative nationwide class of all persons who turned off permissions for data tracking and whose mobile app activity was still tracked on iPhone mobile devices,
78. *Young v. Military Advantage, Inc. d/b/a Military.com* (Cir. Ct. DuPage Cnty. July 26, 2023) to represent a nationwide class of website subscribers who were also Facebook users under the Video Privacy Protection Act,
79. *Whiting v. Yellow Social Interactive Ltd.* (Cir. Ct. Henderson Cnty. Aug. 15, 2023) to represent a certified class of Kentucky residents who lost money playing mobile applications games that allegedly constituted illegal gambling under Kentucky law,
80. *Kotila v. Charter Financial Publishing Network, Inc.* (W.D. Mich. Feb. 21, 2024) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
81. *Schreiber v. Mayo Foundation for Medical Education and Research* (W.D. Mich. Feb. 21, 2024) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,

82. *Norcross v. Tishman Speyer Properties, et al.* (S.D.N.Y. May 17, 2024) to represent a class of online ticket purchasers under New York Arts & Cultural Affairs Law § 25.07(4).

### **SCOTT A. BURSOR**

Mr. Bursor has an active civil trial practice, having won multi-million verdicts or recoveries in six of six civil jury trials since 2008. Mr. Bursor's most recent victory came in May 2019 in *Perez v. Rash Curtis & Associates*, in which Mr. Bursor served as lead trial counsel and won a \$267 million jury verdict against a debt collector for violations of the Telephone Consumer Protection Act (TCPA).

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In *Thomas v. Global Vision Products, Inc.* (2009), the jury returned a \$50 million verdict in favor of the plaintiff and class represented by Mr. Bursor. The legal trade publication VerdictSearch reported that this was the second largest jury verdict in California in 2009.

Class actions are rarely tried to verdict. Other than Mr. Bursor and his partner Mr. Fisher, we know of no lawyer that has tried more than one class action to a jury. Mr. Bursor's perfect record of six wins in six class action jury trials, with recoveries ranging from \$21 million to \$299 million, is unmatched by any other lawyer. Each of these victories was hard-fought against top trial lawyers from the biggest law firms in the United States.

Mr. Bursor graduated from the University of Texas Law School in 1996. He served as Articles Editor of the Texas Law Review, and was a member of the Board of Advocates and Order of the Coif. Prior to starting his own practice, Mr. Bursor was a litigation associate at a large New York based law firm where he represented telecommunications, pharmaceutical, and technology companies in commercial litigation.

Mr. Bursor is a member of the state bars of New York, Florida, and California, as well as the bars of the United States Court of Appeals for the Second, Third, Fourth, Sixth, Ninth and Eleventh Circuits, and the bars of the United States District Courts for the Southern and Eastern Districts of New York, the Northern, Central, Southern and Eastern Districts of California, the Southern and Middle Districts of Florida, and the Eastern District of Michigan.

### **Representative Cases**

Mr. Bursor was appointed lead or co-lead class counsel to the largest, 2nd largest, and 3rd largest classes ever certified. Mr. Bursor has represented classes including more than 160 million class members, roughly 1 of every 2 Americans. Listed below are recent cases that are representative of Mr. Bursor's practice:

Mr. Bursor negotiated and obtained court-approval for two landmark settlements in *Nguyen v. Verizon Wireless* and *Zill v. Sprint Spectrum* (the largest and 2nd largest classes ever certified). These settlements required Verizon and Sprint to open their wireless networks to

third-party devices and applications. These settlements are believed to be the most significant legal development affecting the telecommunications industry since 1968, when the FCC's Carterfone decision similarly opened up AT&T's wireline telephone network.

Mr. Bursor was the lead trial lawyer in *Ayyad v. Sprint Spectrum, L.P.* representing a class of approximately 2 million California consumers who were charged an early termination fee under a Sprint cellphone contract, asserting claims that such fees were unlawful liquidated damages under the California Civil Code, as well as other statutory and common law claims. After a five-week combined bench-and-jury trial, the jury returned a verdict in June 2008 and the Court issued a Statement of Decision in December 2008 awarding the plaintiffs \$299 million in cash and debt cancellation. Mr. Bursor served as lead trial counsel for this class again in 2013 during a month-long jury trial in which Sprint asserted a \$1.06 billion counterclaim against the class. Mr. Bursor secured a verdict awarding Sprint only \$18.4 million, the exact amount calculated by the class's damages expert. This award was less than 2% of the damages Sprint sought, less than 6% of the amount of the illegal termination fees Sprint charged to class members. In December 2016, after more than 13 years of litigation, the case was settled for \$304 million, including \$79 million in cash payments plus \$225 million in debt cancellation.

Mr. Bursor was the lead trial lawyer in *White v. Cellco Partnership d/b/a Verizon Wireless* representing a class of approximately 1.4 million California consumers who were charged an early termination fee under a Verizon cellphone contract, asserting claims that such fees were unlawful liquidated damages under the California Civil Code, as well as other statutory and common law claims. In July 2008, after Mr. Bursor presented plaintiffs' case-in-chief, rested, then cross-examined Verizon's principal trial witness, Verizon agreed to settle the case for a \$21 million cash payment and an injunction restricting Verizon's ability to impose early termination fees in future subscriber agreements.

Mr. Bursor was the lead trial lawyer in *Thomas v. Global Visions Products Inc.* Mr. Bursor represented a class of approximately 150,000 California consumers who had purchased the Avacor® hair regrowth system. In January 2008, after a four-week combined bench-and-jury trial. Mr. Bursor obtained a \$37 million verdict for the class, which the Court later increased to \$40 million.

Mr. Bursor was appointed class counsel and was elected chair of the Official Creditors' Committee in *In re Nutraquest Inc.*, a Chapter 11 bankruptcy case before Chief Judge Garrett E. Brown, Jr. (D.N.J.) involving 390 ephedra-related personal injury and/or wrongful death claims, two consumer class actions, four enforcement actions by governmental agencies, and multiple adversary proceedings related to the Chapter 11 case. Working closely with counsel for all parties and with two mediators, Judge Nicholas Politan (Ret.) and Judge Marina Corodemus (Ret.), the committee chaired by Mr. Bursor was able to settle or otherwise resolve every claim and reach a fully consensual Chapter 11 plan of reorganization, which Chief Judge Brown approved in late 2006. This settlement included a \$12.8 million recovery to a nationwide class of consumers who alleged they were defrauded in connection with the purchase of Xenadrine® dietary supplement products.

Mr. Bursor was the lead trial lawyer in *In re: Pacific Bell Late Fee Litigation*. After filing the first class action challenging Pac Bell's late fees in April 2010, winning a contested

motion to certify a statewide California class in January 2012, and defeating Pac Bell's motion for summary judgment in February 2013, Mr. Bursor obtained final approval of the \$38 million class settlement. The settlement, which Mr. Bursor negotiated the night before opening statements were scheduled to commence, included a \$20 million cash payment to provide refunds to California customers who paid late fees on their Pac Bell wireline telephone accounts, and an injunction that reduced other late fee charges by \$18.6 million.

### **L. TIMOTHY FISHER**

L. Timothy Fisher has an active practice in consumer class actions and complex business litigation and has also successfully handled a large number of civil appeals.

Mr. Fisher has been actively involved in numerous cases that resulted in multi-million dollar recoveries for consumers and investors. Mr. Fisher has handled cases involving a wide range of issues including nutritional labeling, health care, telecommunications, corporate governance, unfair business practices and consumer fraud. With his partner Scott A. Bursor, Mr. Fisher has tried five class action jury trials, all of which produced successful results. In *Thomas v. Global Vision Products*, Mr. Fisher obtained a jury award of \$50,024,611 — the largest class action award in California in 2009 and the second-largest jury award of any kind. In 2019, Mr. Fisher served as trial counsel with Mr. Bursor in *Perez v. Rash Curtis & Associates*, where the jury returned a verdict for \$267 million in statutory damages under the Telephone Consumer Protection Act.

Mr. Fisher was admitted to the State Bar of California in 1997. He is also a member of the bars of the United States Court of Appeals for the Ninth Circuit, the United States District Courts for the Northern, Central, Southern and Eastern Districts of California, the Northern District of Illinois, the Eastern District of Michigan, and the Eastern District of Missouri. Mr. Fisher taught appellate advocacy at John F. Kennedy University School of Law in 2003 and 2004. In 2010, he contributed jury instructions, a verdict form and comments to the consumer protection chapter of Justice Elizabeth A. Baron's *California Civil Jury Instruction Companion Handbook* (West 2010). In January 2014, Chief Judge Claudia Wilken of the United States District Court for the Northern District of California appointed Mr. Fisher to a four-year term as a member of the Court's Standing Committee on Professional Conduct.

Mr. Fisher received his Juris Doctor from Boalt Hall at the University of California at Berkeley in 1997. While in law school, he was an active member of the Moot Court Board and participated in moot court competitions throughout the United States. In 1994, Mr. Fisher received an award for Best Oral Argument in the first-year moot court competition.

In 1992, Mr. Fisher graduated with highest honors from the University of California at Berkeley and received a degree in political science. Prior to graduation, he authored an honors thesis for Professor Bruce Cain entitled "The Role of Minorities on the Los Angeles City Council." He is also a member of Phi Beta Kappa.

### Representative Cases

*Thomas v. Global Vision Products, Inc.* (Alameda County Superior Court). Mr. Fisher litigated claims against Global Vision Products, Inc. and other individuals in connection with the sale and marketing of a purported hair loss remedy known as Avacor. The case lasted more than seven years and involved two trials. The first trial resulted in a verdict for plaintiff and the class in the amount of \$40,000,000. The second trial resulted in a jury verdict of \$50,024,611, which led to a \$30 million settlement for the class.

*In re Cellphone Termination Fee Cases - Handset Locking Actions* (Alameda County Superior Court). Mr. Fisher actively worked on five coordinated cases challenging the secret locking of cell phone handsets by major wireless carriers to prevent consumers from activating them on competitive carriers' systems. Settlements have been approved in all five cases on terms that require the cell phone carriers to disclose their handset locks to consumers and to provide unlocking codes nationwide on reasonable terms and conditions. The settlements fundamentally changed the landscape for cell phone consumers regarding the locking and unlocking of cell phone handsets.

*In re Cellphone Termination Fee Cases - Early Termination Fee Cases* (Alameda County Superior Court and Federal Communications Commission). In separate cases that are a part of the same coordinated litigation as the Handset Locking Actions, Mr. Fisher actively worked on claims challenging the validity under California law of early termination fees imposed by national cell phone carriers. In one of those cases, against Verizon Wireless, a nationwide settlement was reached after three weeks of trial in the amount of \$21 million. In a second case, which was tried to verdict, the Court held after trial that the \$73 million of flat early termination fees that Sprint had collected from California consumers over an eight-year period were void and unenforceable.

### Selected Published Decisions

*Melgar v. Zicam LLC*, 2016 WL 1267870 (E.D. Cal. Mar. 30, 2016) (certifying 10-jurisdiction class of purchasers of cold remedies, denying motion for summary judgment, and denying motions to exclude plaintiff's expert witnesses).

*Salazar v. Honest Tea, Inc.*, 2015 WL 7017050 (E.D. Cal. Nov. 12, 2015) (denying motion for summary judgment).

*Dei Rossi v. Whirlpool Corp.*, 2015 WL 1932484 (E.D. Cal. Apr. 27, 2015) (certifying California class of purchasers of refrigerators that were mislabeled as Energy Star qualified).

*Bayol v. Zipcar, Inc.*, 78 F.Supp.3d 1252 (N.D. Cal. 2015) (denying motion to dismiss claims alleging unlawful late fees under California Civil Code § 1671).

*Forcellati v. Hyland's, Inc.*, 2015 WL 9685557 (C.D. Cal. Jan. 12, 2015) (denying motion for summary judgment in case alleging false advertising of homeopathic cold and flu remedies for children).

*Bayol v. Zipcar, Inc.*, 2014 WL 4793935 (N.D. Cal. Sept. 25, 2014) (denying motion to transfer venue pursuant to a forum selection clause).



*Forcellati v. Hyland's Inc.*, 2014 WL 1410264 (C.D. Cal. Apr. 9, 2014) (certifying nationwide class of purchasers of homeopathic cold and flu remedies for children).

*Hendricks v. StarKist Co.*, 30 F.Supp.3d 917 (N.D. Cal. 2014) (denying motion to dismiss in case alleging underfilling of 5-ounce cans of tuna).

*Dei Rossi v. Whirlpool Corp.*, 2013 WL 5781673 (E.D. Cal. October 25, 2013) (denying motion to dismiss in case alleging that certain KitchenAid refrigerators were misrepresented as Energy Star qualified).

*Forcellati v. Hyland's Inc.*, 876 F.Supp.2d 1155 (C.D. Cal. 2012) (denying motion to dismiss complaint alleging false advertising regarding homeopathic cold and flu remedies for children).

*Clerkin v. MyLife.com*, 2011 WL 3809912 (N.D. Cal. August 29, 2011) (denying defendants' motion to dismiss in case alleging false and misleading advertising by a social networking company).

*In re Cellphone Termination Fee Cases*, 186 Cal.App.4th 1380 (2010) (affirming order approving \$21 million class action settlement).

*Gatton v. T-Mobile USA, Inc.*, 152 Cal.App.4th 571 (2007) (affirming order denying motion to compel arbitration).

#### **Selected Class Settlements**

*Melgar v. Zicam* (Eastern District of California) - \$16 million class settlement of claims alleging cold medicine was ineffective.

*Gastelum v. Frontier California Inc.* (San Francisco Superior Court) - \$10.9 million class action settlement of claims alleging that a residential landline service provider charged unlawful late fees.

*West v. California Service Bureau, Inc.* (Northern District of California) - \$4.1 million class settlement of claims under the Telephone Consumer Protection Act.

*Gregorio v. Premier Nutrition Corp.* (Southern District of New York) - \$9 million class settlement of false advertising claims against protein shake manufacturer.

*Morris v. SolarCity Corp.* (Northern District of California) - \$15 million class settlement of claims under the Telephone Consumer Protection Act.

*Retta v. Millennium Products, Inc.* (Central District of California) - \$8.25 million settlement to resolve claims of bottled tea purchasers for alleged false advertising.

*Forcellati v. Hyland's* (Central District of California) – nationwide class action settlement providing full refunds to purchasers of homeopathic cold and flu remedies for children.

*Dei Rossi v. Whirlpool* (Eastern District of California) – class action settlement providing \$55 cash payments to purchasers of certain KitchenAid refrigerators that allegedly mislabeled as Energy Star qualified.

*In Re NVIDIA GTX 970 Graphics Chip Litigation* (Northern District of California) - \$4.5 million class action settlement of claims alleging that a computer graphics card was sold with false and

misleading representations concerning its specifications and performance.

*Hendricks v. StarKist Co.* (Northern District of California) – \$12 million class action settlement of claims alleging that 5-ounce cans of tuna were underfilled.

*In re Zakskorn v. American Honda Motor Co.* Honda (Eastern District of California) – nationwide settlement providing for brake pad replacement and reimbursement of out-of-pocket expenses in case alleging defective brake pads on Honda Civic vehicles manufactured between 2006 and 2011.

*Correa v. Sensa Products, LLC* (Los Angeles Superior Court) - \$9 million settlement on behalf of purchasers of the Sensa weight loss product.

*In re Pacific Bell Late Fee Litigation* (Contra Costa County Superior Court) - \$38.6 million settlement on behalf of Pac Bell customers who paid an allegedly unlawful late payment charge.

*In re Haier Freezer Consumer Litigation* (Northern District of California) - \$4 million settlement, which provided for cash payments of between \$50 and \$325.80 to class members who purchased the Haier HNCM070E chest freezer.

*Thomas v. Global Vision Products, Inc.* (Alameda County Superior Court) - \$30 million settlement on behalf of a class of purchasers of a hair loss remedy.

*Guyette v. Viacom, Inc.* (Alameda County Superior Court) - \$13 million settlement for a class of cable television subscribers who alleged that the defendant had improperly failed to share certain tax refunds with its subscribers.

### **JOSEPH I. MARCHESE**

Joseph I. Marchese is a Partner with Bursor & Fisher, P.A. Joe focuses his practice on consumer class actions, employment law disputes, and commercial litigation. He has represented corporate and individual clients in a wide array of civil litigation, and has substantial trial and appellate experience.

Joe has diverse experience in litigating and resolving consumer class actions involving claims of mislabeling, false or misleading advertising, privacy violations, data breach claims, and violations of the Servicemembers Civil Relief Act.

Joe also has significant experience in multidistrict litigation proceedings. Recently, he served on the Plaintiffs' Executive Committee in *In Re: Blue Buffalo Company, Ltd. Marketing And Sales Practices Litigation*, MDL No. 2562, which resulted in a \$32 million consumer class settlement. Currently, he serves on the Plaintiffs' Steering Committee for Economic Reimbursement in *In Re: Valsartan Products Liability Litigation*, MDL No. 2875.

Joe is admitted to the State Bar of New York and is a member of the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, and the Eastern District of Michigan, as well as the United States Court of Appeals for the Second Circuit.

Joe graduated from Boston University School of Law in 2002 where he was a member of The Public Interest Law Journal. In 1998, Joe graduated with honors from Bucknell University.

**Selected Published Decisions:**

*Boelter v. Hearst Communications, Inc.*, 269 F. Supp. 3d 172 (S.D.N.Y. Sept. 7, 2017), granting plaintiff's motion for partial summary judgment on state privacy law violations in putative class action.

*Boelter v. Hearst Communications, Inc.*, 192 F. Supp. 3d 427 (S.D.N.Y. June 17, 2016), denying publisher's motion to dismiss its subscriber's allegations of state privacy law violations in putative class action.

*In re Scotts EZ Seed Litigation*, 304 F.R.D. 397 (S.D.N.Y. 2015), granting class certification of false advertising and other claims brought by New York and California purchasers of grass seed product.

*Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported "100% Pure Olive Oil" product.

*In re Michaels Stores Pin Pad Litigation*, 830 F. Supp. 2d 518 (N.D. Ill. 2011), denying retailer's motion to dismiss its customers' state law consumer protection and privacy claims in data breach putative class action.

**Selected Class Settlements:**

*Edwards v. Mid-Hudson Valley Federal Credit Union*, Case No. 22-cv-00562-TJM-CFH (N.D.N.Y. 2023) – final approval granted for \$2.2 million class settlement to resolve claims that an upstate New York credit union was unlawfully charging overdraft fees on accounts with sufficient funds.

*Edwards v. Hearst Communications, Inc.*, Case No. 15-cv-09279-AT (S.D.N.Y. 2019) – final approval granted for \$50 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

*Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast*, Case No. 15-cv-05671-NRB (S.D.N.Y. 2019) – final approval granted for \$13.75 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

*In re Scotts EZ Seed Litigation*, Case No. 12-cv-4727-VB (S.D.N.Y. 2018) – final approval granted for \$47 million class settlement to resolve false advertising claims of purchasers of combination grass seed product.

*In Re: Blue Buffalo Marketing And Sales Practices Litigation*, Case No. 14-MD-2562-RWS (E.D. Mo. 2016) – final approval granted for \$32 million class settlement to resolve claims of pet owners for alleged false advertising of pet foods.



*Rodriguez v. Citimortgage, Inc.*, Case No. 11-cv-4718-PGG (S.D.N.Y. 2015) – final approval granted for \$38 million class settlement to resolve claims of military servicemembers for alleged foreclosure violations of the Servicemembers Civil Relief Act, where each class member was entitled to \$116,785 plus lost equity in the foreclosed property and interest thereon.

*O'Brien v. LG Electronics USA, Inc., et al.*, Case No. 10-cv-3733-DMC (D.N.J. 2011) – final approval granted for \$23 million class settlement to resolve claims of Energy Star refrigerator purchasers for alleged false advertising of the appliances' Energy Star qualification.

### **SARAH N. WESTCOT**

Sarah N. Westcot is the Managing Partner of Bursor & Fisher's Miami office. She focuses her practice on consumer class actions, complex business litigation, and mass torts.

She has represented clients in a wide array of civil litigation, and has substantial trial and appellate experience. Sarah served as trial counsel in *Ayyad v. Sprint Spectrum L.P.*, where Bursor & Fisher won a jury verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

Sarah also has significant experience in high-profile, multi-district litigations. She currently serves on the Plaintiffs' Steering Committee in *In re Zantac (Ranitidine) Products Liability Litigation*, MDL No. 2924 (S.D. Florida). She also serves on the Plaintiffs' Executive Committee in *In re Apple Inc. App Store Simulated Casino-Style Games Litigation*, MDL No. 2985 (N.D. Cal.) and *In Re: Google Play Store Simulated Casino-Style Games Litigation*, MDL No. 3001 (N.D. Cal.).

Sarah is admitted to the State Bars of California and Florida, and is a member of the bars of the United States District Courts for the Northern, Central, Southern, and Eastern Districts of California, the United States District Courts for the Southern and Middle Districts of Florida, and the bars of the United States Courts of Appeals for the Second, Eighth, and Ninth Circuits.

Sarah received her Juris Doctor from the University of Notre Dame Law School in 2009. During law school, she was a law clerk with the Cook County State's Attorney's Office in Chicago and the Santa Clara County District Attorney's Office in San Jose, CA, gaining early trial experience in both roles. She graduated with honors from the University of Florida in 2005.

Sarah is a member of The National Trial Lawyers Top 100 Civil Plaintiff Lawyers, and was selected to The National Trial Lawyers Top 40 Under 40 Civil Plaintiff Lawyers for 2022.

### **JOSHUA D. ARISOHN**

Joshua D. Arisohn is a Partner with Bursor & Fisher, P.A. Josh has litigated precedent-setting cases in the areas of consumer class actions and terrorism. He participated in the first ever trial to take place under the Anti-Terrorism Act, a statute that affords U.S. citizens the right to assert federal claims for injuries arising out of acts of international terrorism. Josh's practice continues to focus on terrorism-related matters as well as class actions.

Josh is admitted to the State Bar of New York and is a member of the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, the District Court for the District of Columbia, and the United States Courts of Appeals for the Second and Ninth Circuits.

Josh previously practiced at Dewey & LeBoeuf LLP and DLA Piper LLP. He graduated from Columbia University School of Law in 2006, where he was a Harlan Fiske Stone Scholar, and received his B.A. from Cornell University in 2002. Josh has been honored as a 2015, 2016 and 2017 Super Lawyer Rising Star.

**Selected Published Decisions:**

*Fields v. Syrian Arab Republic*, Civil Case No. 18-1437 (RJL), entering a judgment of approximately \$850 million in favor of the family members of victims of terrorist attacks carried out by ISIS with the material support of Syria.

*Farwell v. Google LLC*, 2022 WL 1568361 (C.D. Ill. Mar. 31, 2022), denying social media defendant's motion to dismiss BIPA claims brought on behalf of Illinois school students using Google's Workspace for Education platform on laptop computers.

*Weiman v. Miami University*, Case No. 2020-00614JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

*Smith v. The Ohio State University*, Case No. 2020-00321JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

*Waitt v. Kent State University*, Case No. 2020-00392JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

*Duke v. Ohio University*, Case No. 2021-00036JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

*Keba v. Bowling Green State University*, Case No. 2020-00639JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

*Kirkbride v. The Kroger Co.*, Case No. 2:21-cv-00022-ALM-EPD, denying motion to dismiss claims based on the allegation that defendant overstated its usual and customary prices and thereby overcharged customers for generic drugs.

**Selected Class Settlements:**

*Morris v. SolarCity Corp.*, Case No. 3:15-cv-05107-RS (N.D. Cal.) - final approval granted for \$15 million class settlement to resolve claims under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.*

*Marquez v. Google LLC*, Case No. 2021-CH-1460 (Cir. Ct. Cook Cnty. 2022) – final approval granted for \$100 million class settlement to resolve alleged BIPA violations of Illinois residents appearing in photos on the Google Photos platform.

**NEAL J. DECKANT**

Neal J. Deckant is a Partner with Bursor & Fisher, P.A., where he serves as the firm's Head of Information & e-Discovery. Neal focuses his practice on complex business litigation and consumer class actions. Prior to joining Bursor & Fisher, Neal counseled low-income homeowners facing foreclosure in East Boston.

Neal is admitted to the State Bars of California and New York, and is a member of the bars of the United States District Court for the Northern District of California, the United States District Court for the Eastern District of California, the United States District Court for the Central District of California, the United States District Court for the Southern District of California, the United States District Court for the Southern District of New York, the United States District Court for the Eastern District of New York, and the bars of the United States Courts of Appeals for the Second and Ninth Circuits.

Neal received his Juris Doctor from Boston University School of Law in 2011, graduating cum laude with two Dean’s Awards. During law school, Neal served as a Senior Articles Editor for the Review of Banking and Financial Law, where he authored two published articles about securitization reforms, both of which were cited by the New York Court of Appeals, the highest court in the state. Neal was also awarded Best Oral Argument in his moot court section, and he served as a Research Assistant for his Securities Regulation professor. Neal has also been honored as a 2014, 2015, 2016, and 2017 Super Lawyers Rising Star. In 2007, Neal graduated with Honors from Brown University with a dual major in East Asian Studies and Philosophy.

**Selected Published Decisions:**

*Martinelli v. Johnson & Johnson*, 2019 WL 1429653 (N.D. Cal. Mar. 29, 2019), granting class certification of false advertising and other claims brought by purchasers of Benecol spreads labeled with the representation “No Trans Fats.”

*Dzielak v. Whirlpool Corp.*, 2017 WL 6513347 (D.N.J. Dec. 20, 2017), granting class certification of consumer protection claims brought by purchasers of Maytag Centennial washing machines marked with the “Energy Star” logo.

*Duran v. Obesity Research Institute, LLC*, 204 Cal. Rptr. 3d 896 (Cal. Ct. App. 2016), reversing and remanding final approval of a class action settlement on appeal, regarding allegedly mislabeled dietary supplements, in connection with a meritorious objection.

*Marchuk v. Faruqi & Faruqi, LLP, et al.*, 100 F. Supp. 3d 302 (S.D.N.Y. 2015), granting individual and law firm defendants' motion for judgment as a matter of law on plaintiff's claims for retaliation and defamation, as well as for all claims against law firm partners, Nadeem and Lubna Faruqi.

*Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported "100% Pure Olive Oil" product.

*Ebin v. Kangadis Food Inc.*, 2014 WL 737878 (S.D.N.Y. Feb. 25, 2014), denying distributor's motion for summary judgment against nationwide class of purchasers of purported "100% Pure Olive Oil" product.

#### **Selected Class Settlements:**

*In Re NVIDIA GTX 970 Graphics Chip Litigation*, Case No. 15-cv-00760-PJH (N.D. Cal. Dec. 7, 2016) – final approval granted for \$4.5 million class action settlement to resolve claims that a computer graphics card was allegedly sold with false and misleading representations concerning its specifications and performance.

*Hendricks v. StarKist Co.*, 2016 WL 5462423 (N.D. Cal. Sept. 29, 2016) – final approval granted for \$12 million class action settlement to resolve claims that 5-ounce cans of tuna were allegedly underfilled.

*In re: Kangadis Food Inc.*, Case No. 8-14-72649 (Bankr. E.D.N.Y. Dec. 17, 2014) – class action claims resolved for \$2 million as part of a Chapter 11 plan of reorganization, after a corporate defendant filed for bankruptcy, following claims that its olive oil was allegedly sold with false and misleading representations.

#### **Selected Publications:**

Neal Deckant, *X. Reforms of Collateralized Debt Obligations: Enforcement, Accounting and Regulatory Proposals*, 29 Rev. Banking & Fin. L. 79 (2009) (cited in *Quadrant Structured Products Co., Ltd. v. Vertin*, 16 N.E.3d 1165, 1169 n.8 (N.Y. 2014)).

Neal Deckant, *Criticisms of Collateralized Debt Obligations in the Wake of the Goldman Sachs Scandal*, 30 Rev. Banking & Fin. L. 407 (2010) (cited in *Quadrant Structured Products Co., Ltd. v. Vertin*, 16 N.E.3d 1165, 1169 n.8 (N.Y. 2014)); *Lyon Village Venetia, LLC v. CSE Mortgage LLC*, 2016 WL 476694, at \*1 n.1 (Md. Ct. Spec. App. Feb. 4, 2016); Ivan Ascher, *Portfolio Society: On the Capitalist Mode of Prediction*, at 141, 153, 175 (Zone Books / The MIT Press 2016); Devon J. Steinmeyer, *Does State National Bank of Big Spring v. Geithner Stand a Fighting Chance?*, 89 Chi.-Kent. L. Rev. 471, 473 n.13 (2014)).

**YITZCHAK KOPEL**

Yitzchak Kopel is a Partner with Bursor & Fisher, P.A. Yitz focuses his practice on consumer class actions and complex business litigation. He has represented corporate and individual clients before federal and state courts, as well as in arbitration proceedings.

Yitz has substantial experience in successfully litigating and resolving consumer class actions involving claims of consumer fraud, data breaches, and violations of the telephone consumer protection act. Since 2014, Yitz has obtained class certification on behalf of his clients five times, three of which were certified as nationwide class actions. Bursor & Fisher was appointed as class counsel to represent the certified classes in each of the cases.

Yitz is admitted to the State Bars of New York and New Jersey, the bar of the United States Court of Appeals for the Second, Eleventh, and Ninth Circuits, and the bars of the United States District Courts for the Southern District of New York, Eastern District of New York, Eastern District of Missouri, Eastern District of Wisconsin, Northern District of Illinois, and District of New Jersey.

Yitz received his Juris Doctorate from Brooklyn Law School in 2012, graduating *cum laude* with two Dean's Awards. During law school, Yitz served as an Articles Editor for the Brooklyn Law Review and worked as a Law Clerk at Shearman & Sterling. In 2009, Yitz graduated *cum laude* from Queens College with a B.A. in Accounting.

**Selected Published Decisions:**

*Bassaw v. United Industries Corp.*, 482 F.Supp.3d 80, 2020 WL 5117916 (S.D.N.Y. Aug. 31, 2020), denying motion to dismiss claims in putative class action concerning insect foggers.

*Poppiti v. United Industries Corp.*, 2020 WL 1433642 (E.D. Mo. Mar. 24, 2020), denying motion to dismiss claims in putative class action concerning citronella candles.

*Bakov v. Consolidated World Travel, Inc.*, 2019 WL 6699188 (N.D. Ill. Dec. 9, 2019), granting summary judgment on behalf of certified class in robocall class action.

*Krumm v. Kittrich Corp.*, 2019 WL 6876059 (E.D. Mo. Dec. 17, 2019), denying motion to dismiss claims in putative class action concerning mosquito repellent.

*Crespo v. S.C. Johnson & Son, Inc.*, 394 F. Supp. 3d 260 (S.D.N.Y. 2019), denying defendant's motion to dismiss fraud and consumer protection claims in putative class action regarding Raid insect fogger.

*Bakov v. Consolidated World Travel, Inc.*, 2019 WL 1294659 (N.D. Ill. Mar. 21, 2019), certifying a class of persons who received robocalls in the state of Illinois.

*Bourbia v. S.C. Johnson & Son, Inc.*, 375 F. Supp. 3d 454 (S.D.N.Y. 2019), denying defendant's motion to dismiss fraud and consumer protection claims in putative class action regarding mosquito repellent.

*Hart v. BHH, LLC*, 323 F. Supp. 3d 560 (S.D.N.Y. 2018), denying defendants' motion for summary judgment in certified class action involving the sale of ultrasonic pest repellents.

*Hart v. BHH, LLC*, 2018 WL 3471813 (S.D.N.Y. July 19, 2018), denying defendants' motion to exclude plaintiffs' expert in certified class action involving the sale of ultrasonic pest repellents.

*Penrose v. Buffalo Trace Distillery, Inc.*, 2018 WL 2334983 (E.D. Mo. Feb. 5, 2018), denying bourbon producers' motion to dismiss fraud and consumer protection claims in putative class action.

*West v. California Service Bureau, Inc.*, 323 F.R.D. 295 (N.D. Cal. 2017), certifying a nationwide class of "wrong-number" robocall recipients.

*Hart v. BHH, LLC*, 2017 WL 2912519 (S.D.N.Y. July 7, 2017), certifying nationwide class of purchasers of ultrasonic pest repellents.

*Browning v. Unilever United States, Inc.*, 2017 WL 7660643 (C.D. Cal. Apr. 26, 2017), denying motion to dismiss fraud and warranty claims in putative class action concerning facial scrub product.

*Brenner v. Procter & Gamble Co.*, 2016 WL 8192946 (C.D. Cal. Oct. 20, 2016), denying motion to dismiss warranty and consumer protection claims in putative class action concerning baby wipes.

*Hewlett v. Consolidated World Travel, Inc.*, 2016 WL 4466536 (E.D. Cal. Aug. 23, 2016), denying telemarketer's motion to dismiss TCPA claims in putative class action.

*Bailey v. KIND, LLC*, 2016 WL 3456981 (C.D. Cal. June 16, 2016), denying motion to dismiss fraud and warranty claims in putative class action concerning snack bars.

*Hart v. BHH, LLC*, 2016 WL 2642228 (S.D.N.Y. May 5, 2016) denying motion to dismiss warranty and consumer protection claims in putative class action concerning ultrasonic pest repellents.

*Marchuk v. Faruqi & Faruqi, LLP, et al.*, 100 F. Supp. 3d 302 (S.D.N.Y. 2015), granting clients' motion for judgment as a matter of law on claims for retaliation and defamation in employment action.

*In re Scotts EZ Seed Litigation*, 304 F.R.D. 397 (S.D.N.Y. 2015), granting class certification of false advertising and other claims brought by New York and California purchasers of grass seed product.

*Brady v. Basic Research, L.L.C.*, 101 F. Supp. 3d 217 (E.D.N.Y. 2015), denying diet pill manufacturers' motion to dismiss its purchasers' allegations for breach of express warranty in putative class action.



*Ward v. TheLadders.com, Inc.*, 3 F. Supp. 3d 151 (S.D.N.Y. 2014), denying online job board's motion to dismiss its subscribers' allegations of consumer protection law violations in putative class action.

*Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported "100% Pure Olive Oil" product.

*Ebin v. Kangadis Food Inc.*, 2014 WL 737878 (S.D.N.Y. Feb. 25, 2014), denying distributor's motion for summary judgment against nationwide class of purchasers of purported "100% Pure Olive Oil" product.

#### **Selected Class Settlements:**

*Hart v. BHH, LLC*, Case No. 1:15-cv-04804 (S.D.N.Y. Sept. 22, 2020), resolving class action claims regarding ultrasonic pest repellers.

*In re: Kangadis Food Inc.*, Case No. 8-14-72649 (Bankr. E.D.N.Y. Dec. 17, 2014), resolving class action claims for \$2 million as part of a Chapter 11 plan of reorganization, after a corporate defendant filed for bankruptcy following the certification of nationwide claims alleging that its olive oil was sold with false and misleading representations.

*West v. California Service Bureau*, Case No. 4:16-cv-03124-YGR (N.D. Cal. Jan. 23, 2019), resolving class action claims against debt-collector for wrong-number robocalls for \$4.1 million.

#### **PHILIP L. FRAIETTA**

Philip L. Fraietta is a Partner with Bursor & Fisher, P.A. Phil focuses his practice on data privacy, complex business litigation, consumer class actions, and employment law disputes. Phil has been named a "Rising Star" in the New York Metro Area by Super Lawyers<sup>®</sup> every year since 2019.

Phil has significant experience in litigating consumer class actions, particularly those involving privacy claims under statutes such as the Michigan Preservation of Personal Privacy Act, the Illinois Biometric Information Privacy Act, and Right of Publicity statutes. Since 2016, Phil has recovered over \$100 million for class members in privacy class action settlements. In addition to privacy claims, Phil has significant experience in litigating and settling class action claims involving false or misleading advertising.

Phil is admitted to the State Bars of New York, New Jersey, Illinois, Michigan, and California, the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, the Western District of New York, the Northern District of New York, the District of New Jersey, the Eastern District of Michigan, the Western District of Michigan, the Northern District of Illinois, the Central District of Illinois, and the United States Court of Appeals for the Second, Third, and Ninth Circuits. Phil was a Summer Associate with Bursor & Fisher prior to joining the firm.

Phil received his Juris Doctor from Fordham University School of Law in 2014, graduating cum laude. During law school, Phil served as an Articles & Notes Editor for the Fordham Law Review, and published two articles. In 2011, Phil graduated cum laude from Fordham University with a B.A. in Economics.

**Selected Published Decisions:**

*Fischer v. Instant Checkmate LLC*, 2022 WL 971479 (N.D. Ill. Mar. 31, 2022), certifying class of Illinois residents for alleged violations of Illinois' Right of Publicity Act by background reporting website.

*Kolebuck-Utz v. Whitepages Inc.*, 2021 WL 157219 (W.D. Wash. Apr. 22, 2021), denying defendant's motion to dismiss for alleged violations of Ohio's Right to Publicity Law.

*Bergeron v. Rochester Institute of Technology*, 2020 WL 7486682 (W.D.N.Y. Dec. 18, 2020), denying university's motion to dismiss for failure to refund tuition and fees for the Spring 2020 semester in light of the COVID-19 pandemic.

*Porter v. NBTY, Inc.*, 2019 WL 5694312 (N.D. Ill. Nov. 4, 2019), denying supplement manufacturer's motion for summary judgment on consumers' allegations of false advertising relating to whey protein content.

*Boelter v. Hearst Communications, Inc.*, 269 F. Supp. 3d 172 (S.D.N.Y. 2017), granting plaintiff's motion for partial summary judgment on state privacy law violations in putative class action.

**Selected Class Settlements:**

*Edwards v. Hearst Communications, Inc.*, Case No. 15-cv-09279-AT (S.D.N.Y. 2019) – final approval granted for \$50 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

*Ruppel v. Consumers Union of United States, Inc.*, Case No. 16-cv-02444-KMK (S.D.N.Y. 2018) – final approval granted for \$16.375 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

*Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast*, Case No. 15-cv-05671-NRB (S.D.N.Y. 2019) – final approval granted for \$13.75 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

*Benbow v. SmileDirectClub, LLC*, Case No. 2020-CH-07269 (Cir. Ct. Cook Cnty. 2021) – final approval granted for \$11.5 million class settlement to resolve claims for alleged TCPA violations.

*Gregorio v. Premier Nutrition Corp.*, Case No. 17-cv-05987-AT (S.D.N.Y. 2019) – final approval granted for \$9 million class settlement to resolve claims of protein shake purchasers for alleged false advertising.



*Taylor v. Trusted Media Brands, Inc.*, Case No. 16-cv-01812-KMK (S.D.N.Y. 2018) – final approval granted for \$8.225 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

*Moeller v. American Media, Inc.*, Case No. 16-cv-11367-JEL (E.D. Mich. 2017) – final approval granted for \$7.6 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

*Rocchio v. Rutgers, The State University of New Jersey*, Case No. MID-L-003039-20 (Sup. Ct. Middlesex Cnty. 2022) – final approval granted for \$5 million class settlement to resolve claims for failure to refund mandatory fees for the Spring 2020 semester in light of the COVID-19 pandemic.

*Heigl v. Waste Management of New York, LLC*, Case No. 19-cv-05487-WFK-ST (E.D.N.Y. 2021) – final approval granted for \$2.7 million class settlement to resolve claims for charging allegedly unlawful fees pertaining to paper billing.

*Frederick v. Examsoft Worldwide, Inc.*, Case No. 2021L001116 (Cir. Ct. DuPage Cnty. 2022) – final approval granted for \$2.25 million class settlement to resolve claims for alleged BIPA violations.

### **ALEC M. LESLIE**

Alec Leslie is a Partner with Bursor & Fisher, P.A. He focuses his practice on consumer class actions, employment law disputes, and complex business litigation.

Alec is admitted to the State Bar of New York and is a member of the bar of the United States District Courts for the Southern and Eastern Districts of New York. Alec was a Summer Associate with Bursor & Fisher prior to joining the firm.

Alec received his Juris Doctor from Brooklyn Law School in 2016, graduating *cum laude*. During law school, Alec served as an Articles Editor for Brooklyn Law Review. In addition, Alec served as an intern to the Honorable James C. Francis for the Southern District of New York and the Honorable Vincent Del Giudice, Supreme Court, Kings County. Alec graduated from the University of Colorado with a B.A. in Philosophy in 2012.

### **Selected Class Settlements:**

*Gregorio v. Premier Nutrition Corp.*, Case No. 17-cv-05987-AT (S.D.N.Y. 2019) – final approval granted for class settlement to resolve claims of protein shake purchasers for alleged false advertising.

*Wright v. Southern New Hampshire Univ.*, Case No. 1:20-cv-00609-LM (D.N.H. 2021) – final approval granted for class settlement to resolve claims over COVID-19 tuition and fee refunds to students.

*Mendoza et al. v. United Industries Corp.*, Case No. 21PH-CV00670 (Phelps Cnty. Mo. 2021) – final approval granted for class settlement to resolve false advertising claims on insect repellent products.

*Kaupelis v. Harbor Freight Tools USA, Inc.*, Case No. 8:19-cv-01203-JVS-DFM (C.D. Cal. 2021) – final approval granted for class settlement involving allegedly defective and dangerous chainsaws.

*Rocchio v. Rutgers Univ.*, Case No. MID-L-003039-20 (Middlesex Cnty. N.J. 2021) – final approval granted for class settlement to resolve claims over COVID-19 fee refunds to students.

*Malone v. Western Digital Corporation*, Case No. 5:20-cv-03584-NC (N.D. Cal.) – final approval granted for class settlement to resolve false advertising claims on hard drive products.

*Frederick et al. v. ExamSoft Worldwide, Inc.*, Case No. 2021L001116 (DuPage Cnty. Ill. 2021) – final approval granted for class settlement to resolve claims over alleged BIPA violations with respect to exam proctoring software.

*D’Amario et al. v. Univ. of Tampa*, Case No. 7:20-cv-07344 (S.D.N.Y. 2022) – final approval granted for class settlement to resolve claims over COVID-19 fee refunds to students.

*Olin et al. v. Meta Platforms, Inc.*, Case No. 3:18-cv-01881-RS (N.D. Cal. 2022) – final approval granted for class settlement involving invasion of privacy claims.

*Croft v. SpinX Games et al.*, Case No. 2:20-cv-01310-RSM (W.D. Wash. 2022) – final approval granted for class settlement involving allegedly deceptive and/or illegal gambling practices.

*Armstead v. VGW Malta Ltd. et al.*, Case No. 22-CI-00553 (Henderson Cnty. Ky. 2023) – final approval granted for class settlement involving allegedly deceptive and/or illegal gambling practices.

*Barbieri v. Tailored Brands, Inc.*, Index No. 616696/2022 (Nassau Cnty. N.Y.) – final approval granted for class settlement involving untimely wage payments to employees.

*Metzner et al. v. Quinnipiac Univ.*, Case No. 3:20-cv-00784 (D. Conn.) – final approval granted for class settlement to resolve claims over COVID-19 fee refunds to students.

*In re GE/Canon Data Breach*, Case No. 1:20-cv-02903 (S.D.N.Y.) – final approval granted for class settlement to resolve data breach claims.

*Davis v. Urban Outfitters, Inc.*, Index No. 612162/2022 (Nassau Cnty. N.Y.) – final approval granted for class settlement involving untimely wage payments to employees.

*Armstead v. VGW Malta LTD et al.*, Civil Action No. 22-CI-00553 (Henderson Cir. Ct. Ky.) – final approval granted for class settlement involving allegedly deceptive and/or illegal gambling practices.

*Casler et al. v. Mclane Company, Inc. et al.*, Index No. 616432/2022 (Nassau Cnty. N.Y.) – final approval granted for class settlement involving untimely wage payments to employees.

*Wyland v. Woopla, Inc.*, Civil Action No. 2023-CI-00356 (Henderson Cir. Ct. Ky.) – final approval granted for class settlement involving allegedly deceptive and/or illegal gambling practices.

*Graziano et al. v. Lego Systems, Inc.*, Index No. 611615/2022 (Nassau Cnty. N.Y.) – final approval granted for class settlement involving untimely wage payments to employees.

*Lipsky et al. v. American Behavioral Research Institute, LLC*, Case No. 50-2023-CA-011526-XXXX-MB (Palm Beach Cnty. Fl.) – final approval granted to resolve allegedly deceptive automatic renewal and product efficacy claims.

*Whiting v. Yellow Social Interactive Ltd.*, Civil Action No. 2023-CI-00358 (Henderson Cir. Ct. Ky.) – final approval granted for class settlement involving allegedly deceptive and/or illegal gambling practices.

### **STEPHEN BECK**

Stephen is an Associate with Bursor & Fisher, P.A. Stephen focuses his practice on complex civil litigation and class actions.

Stephen is admitted to the State Bar of Florida and is a member of the bars of the United States District Courts for the Southern and Middle Districts of Florida, the Eastern District of Missouri, and the Northern District of Illinois.

Stephen received his Juris Doctor from the University of Miami School of Law in 2018. During law school, Stephen received an Honors distinction in the Litigation Skills Program and was awarded the Honorable Theodore Klein Memorial Scholarship for excellence in written and oral advocacy. Stephen also received the CALI Award in Legislation for earning the highest grade on the final examination. Stephen graduated from the University of North Florida with a B.A. in Philosophy in 2015.

### **STEFAN BOGDANOVICH**

Stefan Bogdanovich is an Associate with Bursor & Fisher, P.A. Stefan litigates complex civil and class actions typically involving privacy, intellectual property, entertainment, and false advertising law.

Prior to working at Bursor & Fisher, Stefan practiced at two national law firms in Los Angeles. He helped represent various companies in false advertising and IP infringement cases, media companies in defamation cases, and motion picture producers in royalty disputes. He also advised corporations and public figures on complying with various privacy and advertising laws and regulations.

Stefan is admitted to the State Bar of California and all of the California Federal District Courts. He is also a Certified Information Privacy Professional.

Stefan received his Juris Doctor from the University of Southern California Gould School of Law in 2018, where he was a member of the Hale Moot Court Honors Program and the Trial Team. He received the highest grade in his class in three subjects, including First Amendment Law.

### **BRITTANY SCOTT**

Brittany Scott is an Associate with Bursor & Fisher, P.A. Brittany focuses her practice on data privacy, complex civil litigation, and consumer class actions. Brittany was an intern with Bursor & Fisher prior to joining the firm.

Brittany has substantial experience litigating consumer class actions, including those involving data privacy claims under statutes such as the Illinois Biometric Information Privacy Act, the Fair Credit Reporting Act, and the Michigan Preservation of Personal Privacy Act. In addition to data privacy claims, Brittany has significant experience in litigating class action claims involving false and misleading advertising.

Brittany is admitted the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Central, Southern, and Eastern Districts of California, the Eastern District of Wisconsin, the Northern District of Illinois, the Ninth Circuit Court of Appeals, the Seventh Circuit Court of Appeals, and Second Circuit Court of Appeals.

Brittany received her Juris Doctor from the University of California, Hastings College of the Law in 2019, graduating cum laude. During law school, Brittany was a member of the Constitutional Law Quarterly, for which she was the Executive Notes Editor. Brittany published a note in the Constitutional Law Quarterly entitled “Waiving Goodbye to First Amendment Protections: First Amendment Waiver by Contract.” Brittany also served as a judicial extern to the Honorable Andrew Y.S. Cheng for the San Francisco Superior Court. In 2016, Brittany graduated from the University of California Berkeley with a B.A. in Political Science.

### **Selected Class Settlements:**

*Morrissey v. Tula Life, Inc.*, Case No. 2021L0000646 (Cir. Ct. DuPage Cnty. 2021) – final approval granted for \$4 million class settlement to resolve claims of cosmetics purchasers for alleged false advertising.

*Clarke et al. v. Lemonade Inc.*, Case No. 2022LA000308 (Cir. Ct. DuPage Cnty. 2022) – final approval granted for \$4 million class settlement to resolve claims for alleged BIPA violations.

*Whitlock v. Jabil Inc.*, Case No. 2021CH00626 (Cir. Ct. Cook Cnty. 2022) – final approval granted for \$995,000 class settlement to resolve claims for alleged BIPA violations.

**MAX S. ROBERTS**

Max Roberts is an Associate in Bursor & Fisher's New York office. Max focuses his practice on class actions concerning data privacy and consumer protection. Max was a Summer Associate with Bursor & Fisher prior to joining the firm and is now Co-Chair of the firm's Appellate Practice Group.

In 2023, Max was named "Rising Star" in the New York Metro Area by Super Lawyers®.

Max received his Juris Doctor from Fordham University School of Law in 2019, graduating *cum laude*. During law school, Max was a member of Fordham's Moot Court Board, the Brennan Moore Trial Advocates, and the Fordham Urban Law Journal, for which he published a note entitled [\*Weaning Drug Manufacturers Off Their Painkiller: Creating an Exception to the Learned Intermediary Doctrine in Light of the Opioid Crisis\*](#). In addition, Max served as an intern to the Honorable Vincent L. Briccetti of the Southern District of New York and the Fordham Criminal Defense Clinic. Max graduated from Johns Hopkins University in 2015 with a B.A. in Political Science.

Outside of the law, Max is an avid triathlete.

**Selected Published Decisions:**

*Jackson v. Amazon.com, Inc.*, 65 F.4th 1093 (9th Cir. 2023), affirming district court's denial of motion to compel arbitration. Max personally argued the appeal before the Ninth Circuit, which can be viewed [here](#).

*Javier v. Assurance IQ, LLC*, 2022 WL 1744107 (9th Cir. May 31, 2022), reversing district court and holding that Section 631 of the California Invasion of Privacy Act requires prior consent to wiretapping. Max personally argued the appeal before the Ninth Circuit, which can be viewed [here](#).

*Mora v. J&M Plating, Inc.*, 213 N.E.3d 942 (Ill. App. Ct. 2d Dist. 2022), reversing circuit court and holding that Section 15(a) of Illinois' Biometric Information Privacy Act requires an entity to establish a retention and deletion schedule for biometric data at the first moment of possession. Max personally argued the appeal before the Second District, which can be listened to [here](#).

*James v. Walt Disney Co.*, --- F. Supp. 3d ---, 2023 WL 7392285 (N.D. Cal. Nov. 8, 2023), largely denying motion dismiss alleged violations of California and Pennsylvania wiretapping statutes.

*Yockey v. Salesforce, Inc.*, 2023 WL 5519323 (N.D. Cal. Aug. 25, 2023), denying in part motion dismiss alleged violations of California and Pennsylvania wiretapping statutes.

*Cristostomo v. New Balance Athletics, Inc.*, 647 F. Supp. 3d 1 (D. Mass. 2022), denying motion to dismiss and motion to strike class allegations in case involving sneakers marketed as "Made in

the USA.”

*Carroll v. Myriad Genetics, Inc.*, 2022 WL 16860013 (N.D. Cal. Nov. 9, 2022), denying in part motion to dismiss in case involving non-invasive prenatal testing product.

*Louth v. NFL Enterprises LLC*, 2022 WL 4130866 (D.R.I. Sept. 12, 2022), denying motion to dismiss alleged violations of the Video Privacy Protection Act.

*Soo v. Lorex Corp.*, 2020 WL 5408117 (N.D. Cal. Sept. 9, 2020), denying defendants’ motion to compel arbitration and denying in part motion dismiss consumer protection claims in putative class action concerning security cameras.

### **Selected Class Settlements:**

*Sholopa v. Turk Hava Yollari A.O. (d/b/a Turkish Airlines)*, Case No. 1:20-cv-3294-ALC (S.D.N.Y. 2023) – final approval granted for \$14.1 million class settlement to resolve claims of passengers whose flights with Turkish Airlines were cancelled due to COVID-19 and who did not receive refunds.

*Payero v. Mattress Firm, Inc.*, Case No. 7:21-cv-3061-VB (S.D.N.Y. 2023) – final approval granted for \$4.9 million class settlement to resolve claims of consumers who purchased allegedly defective bed frames.

*Miranda v. Golden Entertainment (NV), Inc.*, Case No. 2:20-cv-534-AT (D. Nev. 2021) – final approval granted for class settlement valued at over \$4.5 million to resolve claims of customers and employees of casino company stemming from data breach.

*Malone v. Western Digital Corp.*, Case No. 5:20-cv-3584-NC (N.D. Cal. 2021) – final approval granted for class settlement valued at \$5.7 million to resolve claims of hard drive purchasers for alleged false advertised.

*Frederick v. ExamSoft Worldwide, Inc.*, Case No. 2021-L-001116 (18th Judicial Circuit Court DuPage County, Illinois 2021) – final approval granted for \$2.25 million class settlement to resolve claims of Illinois students for alleged violations of the Illinois Biometric Information Privacy Act.

### **Bar Admissions**

- New York State
- Southern District of New York
- Eastern District of New York
- Northern District of New York
- Northern District of Illinois
- Central District of Illinois
- Eastern District of Michigan
- District of Colorado
- Third Circuit Court of appeals



- Seventh Circuit Court of Appeals
- Ninth Circuit Court of Appeals

### **JULIA K. VENDITTI**

Julia K. Venditti is an Associate with Bursor & Fisher, P.A. Julia focuses her practice on complex civil litigation and class actions. Julia was a Summer Associate with Bursor & Fisher prior to joining the firm.

Julia is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts of California.

Julia received her Juris Doctor in 2020 from the University of California, Hastings College of the Law, where she graduated *cum laude* with two CALI Awards for the highest grade in her Evidence and California Community Property classes. During law school, Julia was a member of the UC Hastings Moot Court team and competed at the Evans Constitutional Law Moot Court Competition, where she finished as a national quarterfinalist and received a best brief award. Julia was also inducted into the UC Hastings Honors Society and was awarded Best Brief and an Honorable Mention for Best Oral Argument in her First-Year Moot Court section. In addition, Julia served as a Research Assistant for her Constitutional Law professor, as a Teaching Assistant for Legal Writing & Research, and as a Law Clerk at the San Francisco Public Defender's Office. In 2017, Julia graduated *magna cum laude* from Baruch College/CUNY, Weissman School of Arts and Sciences, with a B.A. in Political Science.

### **JULIAN DIAMOND**

Julian Diamond is an Associate with Bursor & Fisher, P.A. Julian focuses his practice on privacy law and class actions. Julian was a Summer Associate with Bursor & Fisher prior to joining the firm.

Julian received his Juris Doctor from Columbia Law School, where he was a Harlan Fiske Stone Scholar. During law school, Julian was Articles Editor for the Columbia Journal of Environmental Law. Prior to law school, Julian worked in education. Julian graduated from California State University, Fullerton with a B.A. in History and a single subject social science teaching credential.

### **MATTHEW GIRARDI**

Matt Girardi is an Associate with Bursor & Fisher, P.A. Matt focuses his practice on complex civil litigation and class actions, and has focused specifically on consumer class actions involving product defects, financial misconduct, false advertising, and privacy violations. Matt was a Summer Associate with Bursor & Fisher prior to joining the firm.

Matt is admitted to the State Bar of New York, and is a member of the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, and the Eastern District of Michigan

Matt received his Juris Doctor from Columbia Law School in 2020, where he was a Harlan Fiske Stone Scholar. During law school, Matt was the Commentary Editor for the Columbia Journal of Tax Law, and represented fledgling businesses for Columbia's Entrepreneurship and Community Development Clinic. In addition, Matt worked as an Honors Intern in the Division of Enforcement at the U.S. Securities and Exchange Commission. Prior to law school, Matt graduated from Brown University in 2016 with a B.A. in Economics, and worked as a Paralegal Specialist at the U.S. Department of Justice in the Antitrust Division.

### **JENNA GAVENMAN**

Jenna Gavenman is an Associate with Bursor & Fisher, P.A. Jenna focuses her practice on complex civil litigation and consumer class actions. Jenna was a Summer Associate and a part-time intern with Bursor & Fisher prior to joining the firm as a full-time Associate in September 2022.

Jenna is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts of California.

Jenna received her Juris Doctor in 2022 from the University of California, Hastings College of the Law (now named UC Law SF). During law school, she was awarded an Honorable Mention for Best Oral Argument in her First-Year Moot Court section. Jenna also participated in both the Medical Legal Partnership for Seniors (MLPS) and the Lawyering for Children Practicum at Legal Services for Children—two of UC Hastings's nationally renowned clinical programs. Jenna was awarded the Clinic Award for Outstanding Performance in MLPS for her contributions to the clinic. In addition, Jenna volunteered with her law school's Legal Advice and Referral Clinic and as a LevelBar Mentor.

In 2018, Jenna graduated *cum laude* from Villanova University with a B.A. in Sociology and Spanish (double major). Jenna was a Division I athlete, competing on the Villanova Women's Water Polo varsity team for four consecutive years.

### **EMILY HORNE**

Emily Horne is an Associate with Bursor & Fisher, P.A. Emily focuses her practice on complex civil litigation and consumer class actions. Emily was a Summer Associate with Bursor & Fisher prior to joining the firm.

Emily is admitted to the State Bar of California.

Emily received her Juris Doctor from the University of California, Hastings College of the Law in 2022 (now UC, Law SF). During law school, Emily served as Editor-in-Chief for the UC Hastings Communications and Entertainment Law Journal, and she competed on the Moot Court team. Emily also served as a judicial extern in the Northern District of California and as a Teaching Assistant for Legal Writing & Research. In 2015, Emily graduated from Scripps College with a B.A. in Sociology.



**IRA ROSENBERG**

Ira Rosenberg is an Associate with Bursor & Fisher, P.A. Ira focuses his practice on complex civil litigation and class actions.

Ira received his Juris Doctor in 2022 from Columbia Law School. During law school, Ira served as a Student Honors Legal Intern with Division of Enforcement at the U.S. Securities and Exchange Commission. Ira also interned during law school in the Criminal Division at the United States Attorney's Office for the Southern District of New York and with the Investor Protection Bureau at the Office of the New York State Attorney General. Ira graduated in 2018 from Beth Medrash Govoha with a B.A. in Talmudic Studies.

**LUKE SIRONSKI-WHITE**

Luke Sironski-White is an Associate with Bursor & Fisher, P.A., focusing on complex civil litigation and consumer class actions. Luke joined the firm as a full-time Associate in August 2022.

Luke is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts of California.

Luke received his Juris Doctor in 2022 from the University of California, Berkeley School of Law. During law school, Luke was on the board of the Consumer Advocacy and Protection Society (CAPS), edited for the Berkeley Journal of Employment and Labor Law, and volunteered with the Prisoner Advocacy Network.

In 2017, Luke graduated from the University of Chicago with a B.A. in Anthropology. Before entering the field of law Luke was a professional photographer and filmmaker.

**JONATHAN L. WOLLOCH**

Jonathan L. Wolloch is an Associate with Bursor & Fisher, P.A. Jonathan focuses his practice on complex civil litigation and class actions. Jonathan was a Summer Associate with Bursor & Fisher prior to joining the firm.

Jonathan is admitted to the State Bar of Florida and the bars of the United States District Courts for the Southern and Middle Districts of Florida.

Jonathan received his Juris Doctor from the University of Miami School of Law in 2022, graduating magna cum laude. During law school, Jonathan served as a judicial intern to the Honorable Beth Bloom for the Southern District of Florida. He received two CALI Awards for earning the highest grade in his Trusts & Estates and Substantive Criminal Law courses, and he was elected to the Order of the Coif. Jonathan was also selected for participation in a semester long externship at the Florida Supreme Court, where he served as a judicial extern to the Honorable John D. Couriel. In 2018, Jonathan graduated from the University of Michigan with a B.A. in Political Science.

**INES DIAZ**

Ines Diaz is an Associate with Bursor & Fisher, P.A. Ines focuses her practice on complex civil litigation and class actions.

Ines is admitted to the State Bar of California.

Ines received her Juris Doctor in 2023 from the University of California, Berkeley School of Law. During law school, Ines served as an Executive Editor of the California Law Review. She also served as an intern with the East Bay Community Law Center's Immigration Clinic and as a Fellow of the Berkeley Law Academic Skills Program. Additionally, Ines served as an instructor with the University of California, Berkeley Extension, Legal Studies Global Access Program where she taught legal writing to international law students. In 2021, Ines was selected for a summer externship at the California Supreme Court where she served as a judicial extern for the Honorable Mariano-Florentino Cuéllar.

**CAROLINE C. DONOVAN**

Caroline C. Donovan is an Associate with Bursor & Fisher, P.A. Caroline focuses her practice on complex civil litigation, data protection, mass arbitration, and class actions. Caroline interned with Bursor & Fisher during her third year of law school before joining full time in Fall 2023.

Caroline is admitted to the State Bar of New York.

Caroline received her Juris Doctor in 2023 from Brooklyn Law School. During law school, Caroline was a member of the Moot Court Honor Society Trial Division, where she was chosen to serve as a National Team Member. Caroline competed and coached in numerous competitions across the country, and placed second at regionals in AAJ's national competition in both her second and third year of law school. Caroline was also the President of the Art Law Association, and the Treasurer of the Labor and Employment Law Association.

During law school, Caroline was a judicial intern for Judge Kenneth W. Chu of the National Labor Relations Board. She also interned at the United States Attorney's Office in the Eastern District of New York, as well as a securities class action firm.

**JOSHUA B. GLATT**

Joshua Glatt is an Associate with Bursor & Fisher, P.A. Joshua focuses his practice on complex civil litigation and consumer class actions. Joshua was a Summer Associate with Bursor & Fisher prior to joining the firm as an Associate.

Joshua earned his Juris Doctor from the University of California College of the Law, San Francisco (formerly U.C. Hastings). While there, he received a CALI Award for earning the highest grade in Constitutional Law II and served on the executive boards of the Jewish Law Students Association and the American Constitution Society. Prior to law school, Joshua graduated *summa cum laude* from the Walter Cronkite School of Journalism and Mass

Communication at Arizona State University in 2016 and earned a master's degree from the University of Southern California in 2018.

**JOSHUA R. WILNER**

Joshua Wilner is an Associate with Bursor & Fisher, P.A. Joshua focuses his practice on complex civil litigation, data privacy, consumer protection, and class actions. Joshua was a Summer Associate at Bursor & Fisher prior to joining the firm full time in Fall 2023.

Joshua is admitted to the State Bar of California.

Joshua received his Juris Doctor in 2023 from Berkeley Law. During law school, he received the American Jurisprudence Award for Constitutional Law.

During law school, Joshua served on the board of the Berkeley Journal of Employment and Labor Law. Joshua also interned at Disability Rights California, Legal Aid at Work, and a private firm that worked closely with the ACLU of Northern California to enforce the California Racial Justice Act. In 2022 and 2023, Joshua worked as a research assistant for Professor Abbye Atkinson.

**VICTORIA ZHOU**

Victoria Zhou is an Associate in Bursor & Fisher's New York office. Victoria focuses her practice on class actions concerning data privacy and consumer protection.

Victoria is admitted to the State Bar of New York.

Victoria received her Juris Doctor from Fordham Law School in 2023. During law school, Victoria served as an Associate Editor of the Moot Court Board and competed in multiple mock trial competitions as a member of the Brendan Moore Trial Advocates. In addition, Victoria served as a judicial extern to Chief Judge Mark A. Barnett of the United States Court of International Trade. In 2019, Victoria graduated *magna cum laude* from Fei Tian College with a B.F.A. in Classical Dance.

**KYLE D. GORDON**

Kyle Gordon is an Associate with Bursor & Fisher, P.A. Kyle focuses his practice on class actions concerning data privacy and consumer protection. Kyle was a Summer Associate with Bursor & Fisher prior to joining the firm.

Kyle is admitted to the State Bar of New York.

Kyle received his Juris Doctor from Columbia Law School in 2023, where he was a Harlan Fiske Stone Scholar. During law school, Kyle was a Staff Editor for the Columbia Science and Technology Law Review. In 2020, Kyle graduated *summa cum laude* from New York University with a B.A. in Politics and became a member of Phi Beta Kappa. Prior to law school, Kyle interned in the Clerk's Office of the United States District Court for the District of Columbia.



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1 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

2 -----x  
3 ELIZABETH RUSSETT,  
4 individually and on behalf of  
all others similarly situated,  
et al.,

5 Plaintiffs,

6 v.

19 CV 7414 (KMK)

7 DECISION

8 NORTHWESTERN MUTUAL LIFE  
9 INSURANCE COMPANY,

10 Defendant.

11 United States Courthouse  
12 White Plains, New York  
13 May 28, 2020

14  
15 Before: THE HONORABLE KENNETH M. KARAS, District Judge  
16  
17  
18

19 APPEARANCES

20 BURSOR & FISHER, P.A.  
Attorney for Plaintiffs  
21 FREDERICK JOHN KLORCZYK  
PHILIP LAWRENCE FRAIETTA

22 FAEGRE, DRINKER, BIDDLE & REATH, LLP  
23 Attorneys for Defendant  
TIMOTHY J. O'DRISCOLL  
24 BRIAN PERRYMAN  
25

1 THE DEPUTY CLERK: Russet, et al. v. Northwestern  
2 Mutual Life Insurance Company, 19 Civ. 7414.

3 Counsel, please state your appearances.

4 MR. FRAIETTA: Good morning, your Honor. This is  
5 Phil Fraietta, Bursor & Fisher, for the plaintiff and the  
6 proposed Class.

7 THE COURT: Good morning.

8 MR. KLORCZYK: Good morning, your Honor. This is  
9 Fred Klorczyk on behalf the plaintiffs and the proposed Class  
10 Members. I'm also from Bursor & Fisher.

11 THE COURT: Good morning.

12 MR. PERRYMAN: Good morning. This is Brian Perryman,  
13 law firm of Drinker, Biddle, for the Defendant, Northwestern  
14 Mutual life Insurance Company.

15 THE COURT: Good morning.

16 MR. O'DRISCOLL: Good morning. This is Tim  
17 O'Driscoll at Faegre, Drinker, also, also for the Defendant,  
18 Northwestern Mutual Life Insurance company.

19 THE COURT: All right. Good morning.

20 Anybody else?

21 MR. FRAIETTA: No. That's all, your Honor.

22 THE COURT: Okay. All right.

23 So this is scheduled to be argument on the motion for  
24 preliminary approval of the Class settlement and the  
25 provisional cert. of the Settlement Class as well as the

1 appointment of Settlement Class representative and counsel and  
2 approval of the notice plan.

3 So I've read the papers, but I certainly don't want  
4 to deny anybody the opportunity to elaborate, summarize,  
5 whatever it is. So I guess we'll start with plaintiff. I  
6 don't know who's going to speak on behalf of the plaintiff,  
7 from the plaintiff's side.

8 MR. FRAIETTA: Sure, your Honor. This is  
9 Mr. Fraietta. I'm going to speak for the plaintiff.

10 So, to summarize the lawsuit and the settlement, it's  
11 a lawsuit brought pursuant to New York General Business Law  
12 Section 399-zzz. That section prohibits companies from  
13 charging additional or differential rates or fees for customers  
14 to pay by paper mail.

15 In this case, Northwestern Mutual we allege was  
16 charging a \$1 fee for its customers to pay by paper mail. We  
17 filed a lawsuit. Shortly thereafter, the parties began  
18 extensive settlement discussions which lasted for many months  
19 and involved an in-person mediation with the Honorable Wayne  
20 Anderson of JAMS Chicago. At the conclusion of that mediation,  
21 we continued our negotiations and reached the settlement.

22 Under the terms of the settlement, we have  
23 established a settlement fund of \$595,000, which we believe is  
24 significant given that, at the time of the settlement,  
25 Northwestern had only collected around \$522,000 of these fees,

1 so our recovery there eclipses the actual amount that was  
2 collected.

3 The settlement is set up to be distributed to Class  
4 Members in two manners. The first will be for active account  
5 holders. They'll receive a credit to their bills in a prorated  
6 fashion. They will automatically receive that. They don't  
7 have to file a claim or anything like that so long as they do  
8 not opt out of the settlement. For inactive Class Members,  
9 there will be a pro rata cash award sent via check for those  
10 who file claims. And the reason for that distinction is that  
11 Northwestern cannot guarantee the address of inactive members.  
12 They may have since deceased or moved. So we have the claiming  
13 process set forth to save on the administrative costs because  
14 we don't want to spend the Class' money having an administrator  
15 try and search for addresses of people who may no longer be  
16 alive.

17 We believe that it's a fair settlement and certainly  
18 warrants preliminary approval.

19 THE COURT: All right. So just a couple of questions  
20 more just I think for clarification.

21 MR. FRAIETTA: Sure.

22 THE COURT: Actually, before I do that, anything from  
23 the defense side that either counsel wants to add?

24 MR. PERRYMAN: I'll be speaking on behalf of the  
25 Defendant this morning.



1           No, I think we would generally agree with what  
2 Mr. Fraietta's said. We would emphasize that Northwestern  
3 Mutual does believe it has extremely strong defenses and that  
4 this settlement is the product of a really hard-fought  
5 negotiation process that culminated in mediation and -- I guess  
6 didn't culminate -- started in mediation and continued over a  
7 number of months.

8           We would also just note that to the extent there is a  
9 claiming process, it applies to a really small fraction of the  
10 Class. The vast majority of folks are going to get direct  
11 monetary relief put into their accounts. So we think this is a  
12 meritorious and very worthy settlement.

13           THE COURT: Okay. Thank you for that.

14           So just a couple -- I guess just a couple  
15 clarification questions.

16           So with respect to the amount of the payments, as I  
17 understand it, the amount of the payments are going to be  
18 determined basically using the following.

19           So the total amount of service charges assessed  
20 during the Class period to Settlement Class Members with closed  
21 ISAs who did not commit approved claims and any Class Members  
22 who file a request for exclusion from the Settlement Class will  
23 be subtracted from the net settlement fund. Do I have that  
24 piece of it right?

25           MR. FRAIETTA: Yes.

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1 THE COURT: All right. Then that difference is going  
2 to be divided by the total amount of service charges assessed  
3 during the Class period to Class Members with closed ISAs who  
4 submit approved claims and Class Members with active ISAs, and  
5 then that quotient is going to be multiplied by the amount of  
6 service charges paid through an individual Class member's ISA  
7 during the Class period. Do I have that piece right?

8 MR. FRAIETTA: That is right again. And, yes, I  
9 believe that is correct, your Honor. And the reason for that,  
10 if I may --

11 THE COURT: Please.

12 MR. FRAIETTA: -- is we did not want to end up in a  
13 situation where -- you know, some Class Members, they may have  
14 only paid these fees for a month or two while others paid them  
15 for two or three years, so we didn't want to end up in a  
16 situation where the guy who paid the \$1 fee one time gets the  
17 same recovery as the guy who paid the \$1 fee 30 times.

18 THE COURT: Okay. So the difference between the  
19 amount of the net settlement amount and the total amount of  
20 service charges assessed during the Class period to Class  
21 Members with closed ISAs who do not submit approved claims will  
22 not be distributed from the net settlement fund and will remain  
23 as defendant's property? Is that right?

24 MR. FRAIETTA: That's correct, your Honor.

25 THE COURT: Okay. So I think the way that you all

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1 intend that is that the amount of service charges assessed to  
2 the Class Members with closed ISAs who don't submit will stay  
3 with the Defendant. There is I think a way to read that that  
4 suggests that the difference between the net settlement amount  
5 and the amount of charges assessed to those with closed ISAs  
6 who don't send the claim forms will revert to defendant, and I  
7 guess I'm wondering why that would not be almost the majority  
8 of the net settlement. But maybe I'm misunderstanding that.

9 MR. FRAIETTA: Sure. Yes. And, your Honor, this is  
10 Mr. Fraietta again. We believe it's going to be, if any, a  
11 very, very small minority, and the reason for that is, as  
12 Mr. Perryman said earlier, the vast majority of Class Members  
13 in this case are people with active ISAs. It's over 90  
14 percent. So the actives are already getting their money.  
15 That's over 90 percent of the fund. The remaining 10 percent  
16 are the people who will have to claim to get their money.  
17 Given that it's only 10 percent, it's a small portion. And we  
18 also believe that the claim rate will be high in this kind of  
19 case because we do intend to be able to provide direct notice  
20 to the vast majority of that 10 percent given the ability to  
21 provide notice via e-mail and also via change-of-address  
22 records which the Settlement Administrator will be instructed  
23 to search for. So to the extent that a member with a closed  
24 ISA has moved, under the National Change of Address Registry,  
25 we expect that there's a good likelihood we will be able to

1 find that person to notice them about the settlement. But,  
2 again, it's only less than 10 percent of the settlement class.

3 THE COURT: Okay. All right. Fair enough.

4 All right. So the Settlement Agreement also insures  
5 that Class Members with active ISAs will automatically receive  
6 pro rata shares of the settlement amount and that Class Members  
7 with closed may obtain pro rata shares through the submission  
8 of the claim forms, right?

9 MR. FRAIETTA: That's correct.

10 THE COURT: Okay. So I guess you have a sense of  
11 whether -- or an estimate as to how much the Class Members may  
12 receive from the net settlement fund as a percentage of the  
13 total charges that they paid.

14 MR. FRAIETTA: Yes. And we believe it's probably  
15 going to be around two-thirds of what they paid.

16 THE COURT: Okay. And the basis for that is?

17 MR. FRAIETTA: The basis for that, your Honor, is  
18 that, as I said, the settlement fund itself eclipses the amount  
19 that's actually been collected by Northwestern Mutual. So once  
20 you subtract out the costs of notice, which we've gone ahead  
21 and had the proposed notice administrator submit a budget  
22 before agreeing to the settlement so we have an understanding  
23 of what those costs will be, and the requested incentive awards  
24 and attorneys' fees, it's going to leave approximately  
25 two-thirds of the actual amount that was collected.

1 THE COURT: Right, but to the extent the settlement  
2 fund conceivably exceeds the total amount of what you all  
3 allege to be the lawful fees that are charged, the settlement  
4 amount also -- the settlement fund also includes, does it not,  
5 attorneys' fees, the service awards and some of the other  
6 expenses?

7 MR. FRAIETTA: Yes, yes, your Honor. Sorry if I  
8 wasn't clear there. After you subtract those out, we believe  
9 about two-thirds of the money is going to be left. So  
10 two-thirds of what was actually collected will be left in the  
11 settlement fund to be then distributed to Class Members.

12 THE COURT: Okay.

13 MR. FRAIETTA: That's how we come up with the  
14 two-thirds calculation.

15 THE COURT: Okay.

16 As to the proposed service award, I mean, I don't  
17 think this is going to upset the apple cart, but is there  
18 anything you can add to what's in your memorandum?

19 MR. FRAIETTA: Yes, sure, your Honor. And this was  
20 something that typically we would elaborate in the fee petition  
21 with declarations of the Class representatives, but I can just  
22 tell you that, as Class counsel, the Class representatives were  
23 imperative to getting this lawsuit settled. They provided my  
24 firm with information regarding their own personal accounts,  
25 including billing statements and things of that sort, which

1 allowed us to see how the fee was assessed on the billing  
2 statement, which we believe was a key issue in this case.

3 And I'll point the Court to a similar matter that's  
4 pending before Cathy Seibel, Judge Seibel, right now. It's  
5 called Santoro v. State Farm. And in that case, State Farm has  
6 argued that the statute permits it to offer discounts as  
7 opposed to charging fees. So how the charge itself is assessed  
8 to the individual class member is, in our view, imperative  
9 towards whether or not it's a discount or additional fee. So  
10 that the Class representatives doing that was certainly  
11 imperative to the case. They also were involved in every step  
12 of the negotiation process, in calls with me and my partner,  
13 Mr. Klorczyk, discussing the terms of the settlement, what it  
14 would provide for Class Members, and it was very important to  
15 the Class representatives to ensure that they got an adequate  
16 recovery for their Class, their fellow Class Members. So I  
17 would say that they certainly have done their part to warrant a  
18 \$5,000 service award, which I note is on par with service  
19 awards in this circuit.

20 THE COURT: Yes, I agree with that. And I'm not  
21 surprised that there is more. You're right that's something  
22 that we do cover in more detail, but I just want to make sure.

23 With respect to the release claims, they are limited  
24 by the "identical factual predicate" rule. Here, the release  
25 states that it applies to claims that "arise" -- I'll just put

1 in brackets arise -- "out of or in any way allegedly related  
2 to" certain facts, but is not limited to all claims that were  
3 brought or could have been brought in the action.

4 Is this limited to the Class period or this somehow  
5 could be construed as any future claims?

6 MR. FRAIETTA: I believe the release would be limited  
7 by the Class period, your Honor. I believe it would be limited  
8 by the Class period as those would be the only Class Members  
9 bound by the settlement.

10 THE COURT: Right.

11 MR. FRAIETTA: And we do believe that the release  
12 claims are consistent with the identical factual predicate  
13 rule.

14 THE COURT: Okay. I agree. I just want to make sure  
15 we're all on the same page. You would be amazed at what people  
16 put, and sometimes inadvertently.

17 MR. FRAIETTA: And, your Honor, if I may, we  
18 understand that, and that's why myself and my partner,  
19 Mr. Klorczyk, and Mr. Perryman and Mr. O'Driscoll, with Judge  
20 Anderson's help, we negotiated this settlement over a period of  
21 months. And the negotiation was not just a negotiation about  
22 the ultimate amount of money, it was a negotiation as well  
23 about the specific terms of the settlement, the administration  
24 of the settlement and how it would be effectuated. For all  
25 those reasons, as the Court has mentioned, we understand that

1 sometimes these settlements have, for lack of a better word,  
2 poor (INAUDIBLE) and we wanted to avoid any of that.

3 THE COURT: Okay. Fair enough.

4 I think those are the questions that I had. If  
5 there's nothing else, then I'm just going to go ahead and give  
6 you my ruling so we can get this show on the road.

7 Anything else from either side?

8 MR. PERRYMAN: No, your Honor.

9 MR. FRAIETTA: Nothing from plaintiffs, your Honor.

10 THE COURT: Okay. All right.

11 So, as I mentioned at the outset, this is a class  
12 action, and right now we are at the preliminary approval stage.  
13 I think the long and the short of it is that the plaintiffs'  
14 allegation here is that Northwestern unlawfully charged  
15 plaintiffs a \$1 fee to pay their monthly premiums by mail,  
16 which plaintiffs allege was done in violation of New York GBL  
17 Sections 349 and 349-zzz. And plaintiffs allege that these  
18 fees were collected to the tune of over \$500,000.

19 So the proposed settlement is that the defense will  
20 make available a total of \$595,000, which I have referred to as  
21 the settlement amount during our colloquy here, to pay approved  
22 claims to Class Members and, as I said, settlement  
23 administration expenses, service awards to the Class rep,  
24 attorneys' fees and other costs and expenses.

25 The Class consists of approximately 24,000 members



1 and will include all persons with a New York mailing address  
2 who, from June 21 of 2016 to the date of the preliminary  
3 approval order, were charged this additional fee or a  
4 differential in the rate or fee based upon a method by which  
5 they chose to make certain payments.

6 I'll just note that the Settlement Agreement does  
7 have the typical language about those that might be excluded  
8 from the settlement class. Nothing problematic there.

9 So the settlement Class Members are going to receive  
10 a pro rata payment from the net settlement fund, which is the  
11 amount of the settlement fund after payment of claims  
12 administration and, as I said, the costs and fees and incentive  
13 awards, et cetera.

14 Now, Class Members with active insurance service  
15 accounts, which I referred to as ISAs earlier, are  
16 automatically going to receive credit towards their ISAs.  
17 Individuals with active ISAs account for over 90 percent of the  
18 total fees collected. Class Members with closed ISAs will have  
19 until the claims deadline to submit a claim form for approval  
20 by the Settlement Administrator. These Class Members will  
21 receive a check with their pro rata payment. Class Members who  
22 closed their ISAs between the date of the preliminary approval  
23 order and the effective date will also receive a check with  
24 their pro rata payment. And I've already gone through the  
25 colloquy, so there's no need to repeat here the method being

1 used to calculate the amount of each payment. And this is all  
2 spelled out in Sections 21.1(a) and 21.1(b) of the agreement.

3 Now, Class Members who receive payment by check will  
4 have 180 days to cash the check before it becomes null and  
5 void. That's going to be stated on the face of the check.  
6 Funds from checks not cashed within 180 days after the issuance  
7 will revert to the Legal Aid Society or another nonprofit  
8 organization that's recommended by Class Counsel and defendant  
9 and approved by the Court.

10 In exchange for the settlement, the releasing parties  
11 "shall be deemed to have and, by operation of the final  
12 judgment, shall have fully, finally and forever released,  
13 relinquished and discharged all released claims against the  
14 released parties." That's from paragraph 3.2.

15 Released claims are those that, as I said, "arise out  
16 of any facts, transactions, events, matters, occurrences ... or  
17 failures to act arising out of or in any way allegedly related  
18 to rates or fees or differentials in rates or fees associated  
19 with payments by mail, including but not limited to all claims  
20 that were brought or could have been brought in the action  
21 relating to any and all releasing parties." That's paragraph  
22 1.29. These claims include those that are "known or unknown,  
23 fixed or contingent, claimed or unclaimed and suspected or  
24 unsuspected" and those based on GBL Sections 349, 349-zzz or  
25 any other statute or regulation.

1           There's a one-third payment that comes out of the  
2 settlement fund for attorneys' fees. And defendant also has  
3 agreed to pay incentive awards of up to \$5,000 to the Class  
4 Reps.

5           So that's sort of the agreement in a nutshell.

6           Now, in terms of preliminary approval of a settlement  
7 agreement, a court may do so where "the proposed settlement  
8 appears to be the product of serious, informed, noncollusive  
9 negotiations, has no obvious deficiencies, does not improperly  
10 grant preferential treatment to class representatives or  
11 segments of the class and falls within the range of possible  
12 approval." That's from *In re NASDAQ Market-Makers Antitrust*  
13 *Litigation*, 176 F.R.D. 99, 102.

14           The Court's task at this stage is to determine  
15 "whether there is any reason to notify the Class Members of the  
16 proposed settlement and to proceed with a fairness hearing."  
17 That's from *In re Prudential Securities, Limited Partnership*  
18 *Litigation*, 163 F.R.D. 200, 209.

19           Now, there is a presumption of fairness, adequacy and  
20 reasonableness to a class settlement that is reached as a  
21 result of arm's-length negotiations, especially when it  
22 involves experienced and capable counsel and after meaningful  
23 discovery. And that's all spelled out in *Wal-Mart Stores,*  
24 *Inc. v. Visa U.S.A., Inc.* 396 F.3d 96, 116.

25           Here, the parties engaged in a day-long mediation

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1 session back on December 18th of 2019 before Judge Anderson,  
2 who is a retired judge from the Northern District of  
3 Illinois -- hopefully he's a Cubs fan -- at JAMS in Chicago.

4 Although a settlement wasn't reached at this  
5 in-person mediation, the parties did continue to engage in  
6 extensive settlement discussions after that session.

7 Throughout, Plaintiffs were represented, ably, I  
8 would note, by the firm of Bursor & Fisher, which has  
9 significant experience in litigating class actions of similar  
10 size and scope and complexity and have served as class counsel  
11 on numerous occasions. And, indeed, this Court has previously  
12 found that this firm more than adequately satisfies the  
13 criteria for being deemed Class Counsel. The case is  
14 Ruppel v. Consumer Union of U.S., Inc. The docket number is 16  
15 Civ. 2444.

16 Also, prior to the mediation session, the parties  
17 exchanged an informal discovery. This included discovery  
18 related to the amount of the allegedly unlawful fees. There  
19 were a number of detailed mediation statements that laid out  
20 the parties' respective legal arguments. And counsel for  
21 Plaintiffs represent that this information would have been in  
22 large part the same information that would have been exchanged  
23 in formal discovery and was sufficient to allow the parties to  
24 assess the relative strengths and weaknesses of their  
25 respective claims and/or defenses.

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1           So the Court's finding here is that, based on this  
2 record, the settlement was the result of arm's-length  
3 negotiations between experienced and capable counsel after  
4 sufficiently meaningful discovery and, therefore, is  
5 presumptively fair, reasonable and adequate, as is the test  
6 laid out in Wal-Mart Stores.

7           It also bears noting, as I discussed earlier, that  
8 the Settlement Agreement does ensure that Class Members with  
9 active ISAs will automatically receive pro rata shares on the  
10 settlement amount and the Class Members with closed ISAs may  
11 obtain pro rata shares, as well, through the submission of the  
12 claim forms. To the extent that the active ISAs constitute 90  
13 percent of the Class, that means that the vast, vast majority  
14 of the Class Members will automatically receive compensation  
15 from the settlement.

16           The Court, therefore, finds that the settlement has  
17 no obvious deficiencies and otherwise does not grant  
18 preferential treatment to the Class Representatives or segments  
19 of the Class and falls within the range of possible approval.

20           With regard to the release, that is spelled out in  
21 paragraphs 3.1 and 3.2. I've already laid out what the  
22 definition of released claims is, and that is spelled out in  
23 paragraph 1.29. The unknown claims piece of it is spelled out  
24 in paragraph 1.38. There is a waiver of a certain provision of  
25 the California Civil Code. Isn't there always?

1           And so the release is broad, but the release, in this  
2 Court's view, especially given that the law in this Circuit has  
3 well established that class-action releases may include claims  
4 not presented and even those which could not have presented as  
5 long as the release conduct arises out of the identical factual  
6 predicate of the settled conduct. That's, again, laid out in  
7 the Wal-Mart Stores case at page 107. Indeed, that decision  
8 notes that broad class-action settlements are common because,  
9 otherwise, if you don't have such broad releases, then it  
10 leaves defendants open to potentially limitless liability.

11           So, here, the release is limited to claims that arise  
12 out of or relate to the rates or fees or differentials in rates  
13 or fees associated with payments by mail and specifically  
14 includes but is not limited to claims that were brought or  
15 could have been brought in the action relating to any and all  
16 releasing parties." And that's from the Settlement Agreement  
17 at paragraph 1.29. And so I think that does satisfy the  
18 identical factual predicate test that's laid out within our  
19 Circuit and the release is otherwise appropriate. And the one  
20 question I had was satisfactorily answered on that point.

21           In terms of the released parties, that's all defined  
22 in paragraph 1.30. The released parties certainly include the  
23 Defendant as well as -- there's a whole list there -- and  
24 arguably includes nonparties that is not improper. "Class  
25 action settlements have in the past released claims against

1 nonparties where, as here, the claims against the non-party  
2 being released were based on the same underlying factual  
3 predicate as the claims asserted against the parties to the  
4 action being settled." That's a quote from Wal-Mart Stores at  
5 page 109.

6 So I think the preliminary view of the Court is that  
7 the release terms and the released parties are all appropriate  
8 under the circumstances.

9 Next up is the certification of the Class which is  
10 being sought here. I've already noted that paragraph 1.35 -- I  
11 even quoted it -- has what the Settlement Class is defined as.

12 Applying Rule 23(a), that requires that the class is  
13 sufficiently numerous that joinder would be impracticable; that  
14 there are questions of law or fact common to the class; that  
15 the claims or defenses of the representatives are typical of  
16 the claims or defenses of the class; and that the  
17 representative parties are going to fairly and adequately  
18 protect the interests of the class.

19 Numerosity is presumed at 40. That's exceeded here  
20 easily as the Class consists of approximately 24,000 members.

21 In terms of commonality, that means that the  
22 plaintiff is required to demonstrate that class members have  
23 suffered the same injury. That is satisfied when the claims  
24 depend on a common contention, the resolution of which will  
25 bring class-wide resolution of the claims. That is met here

1 because the claims all involve the allegations of improperly  
2 charged fees for payments made by mail. So there are clearly  
3 issues of fact and law common to all Class Members.

4 Typicality is satisfied when each class member's  
5 claim arises from the same course of events and each class  
6 member makes similar legal arguments to prove the defendant's  
7 liability. That's from Jackson v. Bloomberg, L.P., 298 F.R.D.  
8 152, 164.

9 So, therefore, minor variations in the fact patterns  
10 underlying individual claims do not defeat typicality when the  
11 allegations involve the same unlawful conduct.

12 Here, I don't think there's any question about  
13 typicality. As I said, the claims all involve what Plaintiffs  
14 allege to be the improper charging of fees for payments of  
15 premiums made by mail. So that seems pretty straightforward,  
16 in the Court's view, and, therefore, typicality is satisfied.

17 Adequacy of representation entails inquiry as to  
18 whether, first, the Plaintiffs' interests are antagonistic to  
19 the interest of other class members and, second, that the  
20 plaintiffs' attorneys are qualified, experienced and able to  
21 conduct the litigation. That's from Baffa v. Donaldson, Lufkin  
22 & Jenrette Securities Corp., 222 F.3d 52, 60.

23 There's certainly nothing in the record to suggest  
24 that there's any reason to doubt that the main Plaintiffs are  
25 incapable or somehow ill-suited to represent the Class Members.



1 As I said, I've already found that the Bursor firm has  
2 extensive experience in litigating precisely these types of  
3 actions, and that's why they've been appointed in numerous  
4 cases to be lead counsel. So, therefore, the Court finds that  
5 the adequacy requirement easily is satisfied.

6 In terms of Rule 23(b)(3), the Court finds that, at  
7 this stage, the common issues predominate and a class action is  
8 the superior means of adjudicating the case.

9 Again, the central common question is whether the  
10 Defendant's assessment of fees was in violation of the GBL  
11 provisions I already mentioned. So, therefore, there are  
12 common questions regarding the legality of Defendant's alleged  
13 conduct here. And there's really no doubt that the class  
14 action is a superior means of litigating this case because of  
15 so many Class Members and also the fact that they likely have  
16 limited financial resources with which to prosecute the  
17 individual actions, especially given the recovery they can  
18 expect here. So the 23(b)(3) criteria is satisfied here.

19 The Court's review of the proposed notice plan yields  
20 the conclusion that it complies with the requirements of both  
21 due process and Rule 23(c). Under both, "the adequacy of  
22 notice to class members depends on the particular circumstances  
23 of each case." That's from *In re Global Crossing Securities &*  
24 *ERISA Litigation*, 225 F.R.D. 436, 448.

25 Of course, we all know that conformity with Rule

20205smssc  
1 23(c) (2) satisfies the due process mandate.

2 23(b) (3) certification requires that the notice,  
3 pursuant to Rule 23(c) (2) (B), provide the following: The  
4 nature of the action; the definition of the class certified;  
5 the class claims, issues or defenses; that a class member may  
6 enter an appearance through an attorney if the member so  
7 desires; that the court will exclude from the class any member  
8 who requests exclusions; that the time and manner for  
9 requesting exclusion and also the binding effect of a class  
10 judgment on members under Rule 23(c).

11 Here, the active ISA and closed ISA notices provide  
12 sufficient information about the nature of the case, the  
13 purpose and amount of the settlement, how the payments are  
14 going to be distributed, the deadlines by which Class Members  
15 must request exclusion or object to the settlement, contact  
16 information for the Settlement Administrator, the date and time  
17 of the final approval hearing, and the address of the  
18 settlement website for more information.

19 The notices also explain that Class Members can  
20 expect to obtain a pro rata share of the Settlement Fund that  
21 is based on the total amount of service charges that they paid.  
22 And the notice for Class Members with closed ISAs include the  
23 claim form and provide instructions on how to submit claim  
24 forms by a certain deadline.

25 Also, there's some website notice which provides

1 additional and I would say extensive information about the  
2 action and the terms of the settlement, again, including the  
3 purpose of the lawsuit and the Class Member rights and options,  
4 the process for obtaining claims and information about the  
5 settlement hearing.

6 The method to notify potential claimants the Court  
7 deems to be sufficient. No later than seven days after the  
8 settlement is preliminarily approved, Defendants are going to  
9 produce a list that includes the names and last-known mailing  
10 addresses of all persons within the settlement class. This  
11 list will differentiate between Class Members with active and  
12 closed ISAs and will include the total amount of service  
13 charges paid by each class member. That's all spelled out in  
14 paragraph 4.1(a).

15 The claims administrator will then send notices to  
16 all Settlement Class Members by no later than 28 days from  
17 entry of the preliminary approval order. The Class Members  
18 with closed ISAs, these will include the claim form with  
19 prepaid return postage.

20 If any notices are returned as undeliverable, the  
21 Settlement Administrator is to remail the notices to the  
22 forwarding address, to the extent provided, within five  
23 business days. If a forwarding address is not provided, the  
24 Settlement Administrator will use the USPS National Change of  
25 Address Database to attempt to obtain an updated address.

1           Also, there's going to be a dedicated settlement  
2 website that's going to include the long-form Settlement Notice  
3 as well as certain important court documents and upcoming  
4 deadlines. And again, Class Members with closed ISAs will be  
5 able to submit their claim forms online.

6           Also, the Settlement Administrator is going to  
7 provide notice of the settlement to the appropriate state and  
8 federal officials, as required under CAFA.

9           So, in the Court's view, because the substance of the  
10 proposed notices satisfies the requirements of due process and  
11 23(c) and because the method of notifying the potential  
12 claimants is more than adequate, the Court approves the  
13 proposed notice plan.

14           So, for all these reasons, the unopposed motion for  
15 preliminary approval of the Class Action Settlement,  
16 preliminary certification of the Settlement Class and approval  
17 of the Notice Plan is granted. And the Court also  
18 preliminarily designates Plaintiffs as Class Reps and Bursor &  
19 Fisher as Class Counsel.

20           Is there anything else? We obviously have to fill in  
21 the blanks, but is there anything else, other than the dates?

22           MR. FRAIETTA: No, your Honor. I don't believe  
23 there's anything else. We submitted a proposed order with some  
24 blank dates, as the Court mentioned.

25           THE COURT: Right. So we just need to fill those in

1 based on the number of days where we are now, right?

2 MR. FRAIETTA: I believe that's correct, yes.

3 THE COURT: Okay. I'm sorry. Counsel for defense,  
4 you were about to say something.

5 MR. PERRYMAN: Yes, your Honor. You had mentioned  
6 the CAFA notices. We have filed with the Court a letter  
7 attaching as exhibits the notices that we sent to the  
8 appropriate state and federal regulators satisfying that  
9 obligation.

10 THE COURT: Right. Okay. Thank you for making that  
11 clear on the record.

12 So we'll fill in the dates. On the assumption we  
13 don't screw that up, is there anything else we can do for you  
14 all?

15 MR. FRAIETTA: No, your Honor. Thank you for your  
16 time this morning. We appreciate it.

17 MR. PERRYMAN: No, your Honor. We just ask the Court  
18 be mindful of the recommended dates in there just so that we  
19 can have our CAFA obligations satisfied. You have to give an  
20 appropriate length of notice to the regulators, so nothing too  
21 soon.

22 THE COURT: So we'll just follow what you all are  
23 proposing and we should be fine.

24 MR. PERRYMAN: Yes, your Honor.

25 THE COURT: Okay. Well, when you see the order, if

1 the dates are not satisfactory, please let us know.

2 MR. PERRYMAN: Thank you, your Honor.

3 MR. FRAIETTA: Thank you.

4 THE COURT: All right. So please stay healthy and  
5 sane, everybody, and enjoy the rest of the day.

6 MR. FRAIETTA: Thank you, Judge.

7 MR. PERRYMAN: Thank you, your Honor.

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140 BROADWAY, SUITE 4667  
NEW YORK, NY 10111  
www.gr-firm.com

Tel: +1 (212) 884-4230  
Email: adrian@gr-firm.com

### **FIRM RESUME**

Headquartered in New York, NY, Gucovschi Rozenshteyn PLLC (“GR Firm”) represents consumers in state and federal courts nationwide. Our firm spearheads and prosecutes novel cases aimed at redressing injuries suffered by large and diverse groups of people. In the past two years alone, GR Firm has filed over 30 consumer protection class actions and prevailed in every single motion to dismiss—creating important precedent along the way. *See Stevens v. Walgreen Co.*, 623 F. Supp. 3d 298 (S.D.N.Y. 2022); *Rodriguez v. Walmart Inc.*, No. 22-CV-2991 (JPO), 2023 U.S. Dist. LEXIS 53253 (S.D.N.Y. Mar. 28, 2023); *Ary v. Target Corp.*, No. 22-cv- 02625-HSG, 2023 U.S. Dist. LEXIS 49633 (N.D. Cal. Mar. 23, 2023). GR Firm has also been on the forefront of litigating important Automatic Renewal Law cases. *See e.g., O’Malley, et al. v. FloSports, Inc.*, No. 2023LA000516 (Cir. Ct. DuPage Cty., Ill. Feb. 8, 2024) (granting final approval of a multi-state automatic renewal law class action settlement against a leading sports broadcaster and streaming provider).

Notably, GR Firm has been appointed class counsel on behalf of nationwide classes on numerous occasions. *See Bell v. Pharmacy, Inc.*, No. 21-cv-6850 (E.D.N.Y. July 18, 2023), ECF No. 61 at 6 (“Proposed class counsel, Bursor & Fisher, P.A. and Gucovschi Rozenshteyn, PLLC are qualified, experienced, and have been actively involved throughout the pendency of this litigation”); *Dutcher v. Newrez LLC*, No. 21-2062, 2022 U.S. Dist. LEXIS 194706, at \*15-16 (E.D. Pa. Oct. 20, 2022) (Granting final approval and noting that “Class Counsel recovered the statutory maximum amount recoverable under the Fair Debt Collection Practices Act.”).



### **Biography of Adrian Gucovschi**

Adrian Gucovschi is the founding partner of GR Firm. He is a member in good standing of the New York State Bar and the United States District Courts for the Southern and Eastern District of New York. He received a Bachelor of Arts from Yeshiva University and a Juris Doctor, *cum laude*, from Fordham University School of Law. Before founding GR Firm, Mr. Gucovschi worked at various firms where he prosecuted, and subsequently defended, billion-dollar lawsuits brought by multiple institutional investors and banks arising from the 2008 mortgage-backed securities economic disaster. In early 2021, Mr. Gucovschi partnered with Benjamin A. Rozenshteyn to advance the firm's class action work. Mr. Rozenshteyn received a Bachelor of Arts from Yeshiva University, *magna cum laude*, an Executive Education degree in business analytics from Harvard Business School, and a Juris Doctor from Benjamin N. Cardozo School of Law. Mr. Rozenshteyn is a member in good standing of the New York State Bar.