

COMMONWEALTH OF KENTUCKY  
HENDERSON COUNTY CIRCUIT COURT  
CIVIL ACTION NO. 24-CI-00062

BROOKE KINGSTON,  
on behalf of herself and all others similarly situated,

PLAINTIFF,

v.

**NOTICE-MOTION-ORDER**  
*(Electronically Filed)*

SPINX GAMES LTD.,

DEFENDANT.

\*\*\*\*\*

Please take notice that this Joint Motion will be heard at the convenience of the Court.

**JOINT MOTION FOR PRELIMINARY APPROVAL  
OF AMENDED CLASS ACTION SETTLEMENT**

Plaintiff Brooke Kingston (“Plaintiff”) and Defendant SpinX Games Ltd., (“SpinX” or “Defendant”), jointly, and pursuant to Kentucky Rule of Civil Procedure 23, move the Court for an order:

(1) preliminarily approving the proposed settlement in this action (“Settlement”) as memorialized in the Amended Class Action Settlement Agreement (“Amended Settlement Agreement”)<sup>1</sup> attached hereto as **Exhibit 1**;

(2) approving the newly proposed plan for class notice;

(3) approving the dissemination of class notice;

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<sup>1</sup> The Settlement Agreement contains all material terms of the Settlement, including the manner and form of notice to the Settlement Class and the conditions for final approval of Settlement.

(4) establishing dates for the dissemination of class notice, the deadline for the submitting of requests for exclusion from the Settlement Class, the deadline for filing and serving of objections to the Settlement, and other relevant deadlines; and

(5) scheduling a hearing date and briefing schedule for final settlement approval, Class Counsel's fee and expense application, and determination of any appropriate incentive award for the Class Representatives.

This motion is made upon the grounds that the parties, by and through their respective counsel, have entered into the Amended Settlement Agreement which provides for dismissal of this action, pursuant to Rule 23, upon the terms and conditions specified therein and subject to the approval of the Court.

This motion is based upon this notice, the complete records and file in this action, and upon any other such oral or documentary evidence as may be permitted by the Court. Plaintiff will separately file a memorandum of law in support of the motion.

Dated: 9/12/2025

Respectfully submitted,

By: /s/ Philip. G. Fairbanks

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**COMMONWEALTH OF KENTUCKY  
HENDERSON COUNTY CIRCUIT COURT**

BROOKE KINGSTON, individually and on behalf of  
all others similarly situated,

Plaintiff,

Case No. 24-CI-00062

v.

SPINX GAMES LTD.

Defendant.

**AMENDED CLASS ACTION SETTLEMENT AGREEMENT**

This Agreement (“Agreement” or “Settlement Agreement”) is entered into by and among (i) Plaintiff, Brooke Kingston (“Plaintiff”); (ii) the Settlement Class (as defined herein); and (iii) Defendant, SpinX Games Ltd. (“Defendant” or “SpinX”). The Settlement Class and Plaintiff are collectively referred to as the “Plaintiffs” unless otherwise noted. The Plaintiff and SpinX 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. On March 9, 2023, Plaintiff, through her counsel, sent a demand letter to SpinX alleging that its Games (defined below) fall within the definition of an illegal gambling game and that players can recover their losses under Kentucky law, setting forth claims for violations of Ky. Rev. Stat. § 372.020, based on Plaintiff’s use of and purchases of virtual items in SpinX’s Games.

B. Over the next several months, counsel for the Parties had numerous telephone calls and discussed the prospect of resolution.

C. Those discussions eventually led to an agreement between the Parties to engage in mediation, which the Parties agreed would take place before Ms. Niki Mendoza, Esq., a neutral affiliated with Phillips ADR Enterprises (“Phillips ADR”).

D. In the weeks leading up to the mediation, the Parties were in regular communication with each other and with Phillips ADR, as the Parties sought to crystallize the disputed issues, produce focal information and data, and narrow potential frameworks for resolution.

E. During this period and in connection with the mediation proceedings, SpinX provided Class Counsel with transaction data for virtual coin purchases made by the 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 telephonic correspondence, mediated by Phillips ADR, in order to clarify the Parties’ positions in advance of the mediation.

F. On July 12, 2023, the Parties participated in a full-day mediation via Zoom videoconference before Ms. Mendoza. At the conclusion of the mediation, Ms. Mendoza made a mediator’s proposal to settle the case, which all Parties accepted. The Parties then executed a binding term sheet to settle the case on a class action basis.

G. On January 29, 2024, Plaintiff filed a putative class action complaint against SpinX in the Henderson County Circuit Court, Case No. 24-CI-00062.

H. Plaintiff and Class Counsel have conducted a comprehensive examination of the law and facts regarding the claims against SpinX, and the potential defenses available. Plaintiff believes that the claims asserted in the Action against SpinX have merit and that Plaintiff would

have prevailed at summary judgment and/or trial. Nonetheless, Plaintiff and Class Counsel recognize that SpinX 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 SpinX 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.

I. At all times, SpinX has denied and continues to deny any wrongdoing and liability and denies all material allegations in the Action. Specifically, SpinX denies that the Games constitute or constituted illegal gambling, and it opposes certification of a litigation class. SpinX is prepared to continue its vigorous defense. Nonetheless, taking into account the uncertainty and risks inherent in a motion to dismiss, class certification, summary judgment, and trial, SpinX has concluded that continuing to defend the Action would be burdensome and expensive. SpinX has further concluded that 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 SpinX, 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.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiff, the Settlement Class, and each of them, and SpinX, by and through its undersigned counsel that, subject to final approval of the Court after a hearing or hearings as provided for in this Settlement Agreement, in consideration of the benefits flowing to the Parties from the Agreement set forth herein, that the Action and the Released Claims shall be finally and fully compromised, settled, and released, and the Action shall 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 the case captioned *Kingston v. SpinX Games Ltd.*, Case No. 24-CI-00062, pending in the Henderson County Circuit Court.

**1.2 “Approved Claim”** means a Claim Form submitted by a Settlement Class Member that: (a) is submitted timely and in accordance with the directions on the Claim Form and the provisions of the Settlement Agreement; (b) is fully and truthfully completed by a Settlement Class Member with all of the information requested in the Claim Form; (c) is signed by the Settlement Class Member, physically or electronically; and (d) is approved by the Settlement Administrator pursuant to the provisions of this Agreement.

**1.3 “Claim Form”** means the document substantially in the form attached hereto as Exhibit A, as approved by the Court. The Claim Form, to be completed by Settlement Class

Members who wish to file a Claim for a payment, shall be available in electronic and paper format in the manner described below.

**1.4 “Claims Deadline”** means the date by which all Claim Forms must be postmarked or received to be considered timely and shall be set as a date no later than fifty-six (56) days after the Final Approval Hearing. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the Notice and the Claim Form.

**1.5 “Class Counsel”** means Philip L. Fraietta and Alec M. Leslie of Bursor & Fisher, P.A.

**1.6 “Class Representative”** means the named Plaintiff in this Action, Brooke Kingston.

**1.7 “Court”** means the Marshall County Circuit Court, the Honorable Karen L. Wilson presiding, or any judge who shall succeed her as the Judge in this Action.

**1.8 “Defendant”** means SpinX Games Ltd.

**1.9 “Defendant’s Counsel”** means Keker, Van Nest & Peters LLP.

**1.10 “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.

**1.11 “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 SpinX 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.



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

**1.13 “Final”** means one 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; (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*, leaving the Final Judgment intact in all material respects.

**1.14 “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.

**1.15 “Final Judgment”** means the Final Judgment and Order to be entered by the Court approving the Agreement after the Final Approval Hearing.

**1.16 “Games”** means Cash Frenzy, Lotsa Slots, Jackpot World (previously known as Jackpot Mania and/or DAFU Casino), Jackpot Crush, and Vegas Friends.

**1.17 “Net Settlement Fund”** means the Settlement Fund, plus any interest or investment income earned on the Settlement Fund, less any Fee Award, incentive award of the Class Representative, taxes, and Settlement Administration Expenses.

**1.18 “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, is consistent with the requirements of Due Process, Rule 23, and is substantially in the form of Exhibits B, C, and D hereto.

**1.19 “Notice Date”** means the date by which the Notice set forth in Paragraph 4.1 is complete, which shall be no later than twenty-eight (28) days after Preliminary Approval.

**1.20 “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(d), or such other date as ordered by the Court.

**1.21 “Person”** shall mean, without limitation, any individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assigns.

**1.22 “Plaintiffs”** means Brooke Kingston and the Settlement Class Members.

**1.23 “Platform Provider(s)”** means Amazon, Apple, Facebook, and/or Google.

**1.24 “Platform ID”** means the unique identifier assigned by a Platform Provider to a person who has a Platform Provider account and/or login. For avoidance of doubt, Platform IDs are not assigned/generated by Defendants.

**1.25 “Player ID”** means the unique identifier assigned by SpinX to a person who has an account or log-in with any of the Games referenced in Section 1.16 of this agreement.

**1.26 “Preliminary Approval”** means the Court’s certification of the Settlement Class for settlement purposes, preliminary approval of this Settlement Agreement, and approval of the form and manner of the Notice.

**1.27 “Preliminary Approval Order”** means the order preliminarily approving the Settlement Agreement, 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.

**1.28 “Released Claims”** means any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action, contracts or agreements, extra contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, attorneys’ fees and or obligations (including “Unknown Claims,” as defined below), whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, whether based on the Kentucky or other state, federal, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside the United States against the Released Parties, or any of them, arising out of any facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions, or failures to act relating to the operation of the Games and/or the sale of virtual coins in the Games, such as claims that the Games are illegal gambling games, that virtual coins in the Games are “something of value,” that aspects of the Games are deceptive or unfair, or that SpinX has been unjustly enriched by the operation of the Games, including but not limited to all claims that were brought or could have been brought in the Action relating to any and all Releasing Parties. For the avoidance of doubt, this release: (i) includes claims potentially subject to arbitration agreements;

and (ii) does not extend to other games owned and/or operated by SpinX and/or the Released Parties.

**1.29 “Released Parties”** means SpinX Games Ltd., as well as any of its parents, subsidiaries, divisions, corporate affiliates, predecessors, successors, agents, consultants, associates, affiliates, licensors, licensees, vendors, or independent contractors and any of their respective present and former officers, directors, owners, shareholders, insurers, agents, affiliates, representatives, employees, and assigns.

**1.30 “Releasing Parties”** means Plaintiff, those Settlement Class Members who do not timely opt out of the Settlement Class, and all of their and their respective past, present, and future heirs; children; spouses; next of kin; beneficiaries; conservators; executors; estates; administrators; assigns; agents; consultants; independent contractors; insurers; attorneys; accountants; financial and other advisors; investment bankers; underwriters; lenders; and any other representatives of any of these persons and entities.

**1.31 “Relevant Spending Amount”** means the total amount of money a Settlement Class Member spent on games including Cash Frenzy on the dates between December 18, 2018 and February 24, 2021, Lotsa Slots on the dates between March 27, 2019 and February 4, 2021, Jackpot World (previously known as Jackpot Mania and/or DAFU Casino) on the dates between May 18, 2018 and March 8, 2021, Jackpot Crush on the dates between November 26, 2019 and February 24, 2021, and Vegas Friends on the dates between April 13, 2019 and March 2, 2021, in amounts of \$5.00 or more within a 24-hour period, while located in the Commonwealth of Kentucky (as reasonably determined by billing address information, IP address information, or other information furnished by SpinX), minus thirty percent (which the Parties agree represents a reasonable approximation of the fees collected by the Platform Providers).

**1.32 “Settlement Administration Expenses”** means the expenses incurred by the Settlement Administrator in providing Notice, processing claims, responding to inquiries from members of the Settlement Class, distributing funds 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 (as described below in paragraph 5.4), and all expenses, excluding the fees and expenses of Class Counsel and Defendant’s Counsel, related to any work required by the Court to confirm that Notice is consistent with Due Process and Rule 23.

**1.33 “Settlement Administrator”** means JND Legal Administration, 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.

**1.34 “Settlement Class”** means all individuals who, in Kentucky (as reasonably determined by billing address information, IP address information, or other information furnished by SpinX), spent \$5.00 or more within a 24-hour period on games on Cash Frenzy on the dates between December 18, 2018 and February 24, 2021, Lotsa Slots on the dates between March 27, 2019 and February 4, 2021, Jackpot World (previously known as Jackpot Mania

and/or DAFU Casino) on the dates between May 18, 2018 and March 8, 2021, Jackpot Crush on the dates between November 26, 2019 and February 24, 2021, and Vegas Friends on the dates between April 13, 2019 and March 2, 2021. Excluded from the Settlement Class are (1) any Judge or Magistrate presiding over this Action and members of their families; (2) SpinX, SpinX's subsidiaries, parent companies, successors, predecessors, and any entity in which the SpinX 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 such excluded persons.

**1.35 “Settlement Class Member”** means a Person who falls within the definition of the Settlement Class as set forth above and who has not submitted a valid request for exclusion.

**1.36 “Settlement Fund”** means the non-reversionary cash fund that shall be established by SpinX in the total amount of two hundred and eighty-five thousand five hundred dollars (\$285,500.00 USD) to be deposited into the Escrow Account, according to the schedule set forth herein, plus all interest earned thereon. From the Settlement Fund, the Settlement Administrator shall pay all Approved Claims made by Settlement Class Members, Settlement Administration Expenses, any incentive award to the Class Representative, any Fee Award to Class Counsel, taxes, and any other costs, fees, or expenses approved 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 Settlement Fund represents the total extent of SpinX's monetary obligations under this

Agreement. The payment of the amount of the Settlement Fund by SpinX into the escrow account fully discharges SpinX and the other Released Parties' financial obligations (if any) in connection with the Settlement, meaning that no Released Party shall have any other obligation to make any payment into the Escrow Account or to any Settlement Class Member, or any other Person, under this Agreement. In no event shall SpinX's total monetary obligation with respect to this Agreement exceed two hundred and eighty-five thousand five hundred dollars (\$285,500.00 USD).

**1.37 “Settlement Payment(s)”** means the payments from the Net Settlement Fund to be made to Settlement Class Members with Approved Claims according to the plan of allocation attached as Exhibit D (the “Plan of Allocation”).

**1.38 “Settlement Website”** means the website to be created, launched, and maintained by the Settlement Administrator which shall allow for the electronic submission of Claim Forms and shall provide access to relevant case documents including the Notice, information about the submission of Claim Forms, and other relevant documents. The Settlement Website shall also advise the Settlement Class of the total value of the Settlement Fund and give Settlement Class Members the ability to estimate their Settlement Payment. The Settlement Website shall remain accessible at least thirty (30) days after the Effective Date.

**1.39 “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 or to seek exclusion from the Settlement Class. Upon the Effective Date, the Releasing Parties shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent

permitted by law, the provisions, rights and benefits of § 1542 of the California Civil Code (if applicable), 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 shall be deemed to have, and shall 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 Payments to Settlement Class Members.**

(a) SpinX shall pay or cause to be paid into the Escrow Account the amount of the Settlement Fund (\$285,500.00), specified in Section 1.36 of this Agreement, within ten (10) days after entry of the Final Judgment.

(b) Settlement Class Members shall have until the Claims Deadline to submit a Claim Form. Each Settlement Class Member with an Approved Claim shall be entitled to a Settlement Payment from the Net Settlement Fund, calculated by the Settlement Administrator, by check or electronic payment.

(c) The Settlement Payment will be determined according to the Plan of Allocation attached as Exhibit D.



(d) If the total Approved Claims do not exhaust the Net Settlement Fund under the baseline marginal recovery percentages in the Plan of Allocation, the marginal recovery percentages will be increased pro rata so that the Settlement Payments will exhaust or leave only *de minimis* funds in the Net Settlement Fund.

(e) Within thirty (30) days after the Claims Deadline, the Settlement Administrator shall determine proration of amounts due to Settlement Class Members from the Settlement Fund.

(f) Within the later of sixty (60) days after the Claims Deadline or the date on which the Final Judgment becomes Final, the Settlement Administrator shall pay from the Settlement Fund all Approved Claims by check or electronic payment, provided, however, that the default payment method will be check, unless a Settlement Class Member elects for an electronic payment.

(g) 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 eighty (180) days after the date of issuance.

(h) In the event that an electronic deposit to a Settlement Class Member is unable to be processed, the Settlement Administrator shall attempt to contact the Settlement Class Member within thirty (30) days to correct the problem.

(i) To the extent that a check issued to a Settlement Class Member is not cashed within one hundred eighty (180) days after the date of issuance, or an electronic deposit is unable to be processed one hundred eighty (180) days after the first attempt, such funds shall remain in the Net Settlement Fund and shall be apportioned *pro rata* to participating Settlement Class Members in a second distribution, if practicable. To the extent that any second distribution is impracticable, or that any second-distribution funds remain in the Net Settlement Fund after an

additional one hundred and eighty (180) calendar days, such funds shall, subject to Court approval, revert to the Civil Rule 23 Account maintained by the Kentucky IOLTA Fund Board of Trustees pursuant to Supreme Court Rule 3.830(20).

(j) No amount paid by Defendant into the Escrow Account shall revert to Defendant unless the Settlement is terminated in accordance with Section 6.

**2.2 Prospective Measures.** In connection with this Settlement and within fifty-six (56) days after the Preliminary Approval Order, SpinX shall take the following steps:

(a) SpinX will continue to maintain a webpage on the Games sites that (1) encourages responsible gameplay; (2) describes what video game behavior disorders are; (3) provides or links to resources relating to video game behavior disorders; and (4) includes a link to SpinX's self-exclusion policy. SpinX will maintain a policy, and will make commercially reasonable efforts to enforce that policy, such that customer service representatives will provide the same information to any player who contacts them and references or exhibits video game behavior disorders, and will face no adverse employment consequences for providing players with this information.

(b) SpinX shall continue to publish on its website a voluntary self-exclusion policy in which players may terminate their ability to purchase virtual coins in the Games or close their Game accounts entirely. That policy shall provide that, when a player self-excludes by specifying the relevant Player ID, SpinX shall use commercially reasonable efforts to implement the player's request with respect to all account(s) associated with those Player ID(s). SpinX shall retain discretion as to the particular method by which players may self-exclude; for example, SpinX may permit players to self-exclude by contacting SpinX customer support, completing a form on SpinX's website, or any other reasonably accessible means. SpinX shall use commercially reasonable efforts to prevent any use of the Games specified by the player, for

the duration of the requested account disablement (either permanently or temporarily). After a self-exclusion request is addressed in full by SpinX, SpinX shall not remove these restrictions for the period identified in the self-exclusion policy at the time the self-exclusion is requested.

(c) SpinX will maintain its changes to the game mechanics for the Games – implemented in Cash Frenzy on February 25, 2021, in Lotsa Slots on February 5, 2021, in Jackpot World (previously known as Jackpot Mania and/or DAFU Casino) on March 9, 2021, in Jackpot Crush on February 25, 2021 and in Vegas Friends on March 3, 2021 – to ensure that players who run out of sufficient virtual coins are able to continue to play games within the Games without needing to purchase additional virtual coins or wait until they would have otherwise received free additional virtual coins in the ordinary course. Specifically, players who run out of coins will be able to continue to play at least one game within the Games.

(d) SpinX retains the authority on how to specifically implement the measures described in (a)-(c) above, but agrees to consider in good faith suggestions by Class Counsel on these issues, as well as any suggestions for further changes to the game modifications described in (c).

(e) Notwithstanding the above, the settlement will not require that SpinX state or imply that it is engaged in gambling activities, and SpinX will not implement any game modifications or enhancements that either directly or indirectly imply that SpinX admits that Claimant's legal claims have merit. SpinX denies all of Claimant's allegations and claims and that it is liable to Claimant, and will memorialize this in the Settlement Agreement.

### **3. RELEASES.**

**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, finally, fully, and forever released, relinquished, and discharged all Released Claims against the Released Parties and each of them.

**3.3** Upon the Effective Date, the Released Parties, and each of them, further shall by operation of the Final Judgment have, fully, finally, and forever released, relinquished, and discharged all claims against Plaintiff, the Settlement Class, and Class Counsel that arise out of or relate in any way to the commencement, prosecution, settlement, or resolution of the Action, except for claims to enforce the terms of the Settlement.

**3.4** Plaintiffs and all Settlement Class Members stipulate that, with the changes delineated in Section 2.2(c) above, virtual coins in the Games are gameplay enhancements, not “something of value” as defined by Ky. Rev. Stat. Ann. § 528.010(11). As long as those prospective measures remain implemented in the Games as described, Settlement Class Members are estopped from contending that virtual coins in the Games are “something of value” under current Kentucky law, or that aspects of the Games are deceptive or unfair and, for the avoidance of doubt, the release will include but will not be limited to (1) claims potentially subject to arbitration agreements; and (2) claims for amounts spent on in-game purchases within the Games.

#### **4. NOTICE TO THE CLASS.**

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

**(a) *Settlement Class List.*** To effectuate the Notice Plan, Defendants shall provide Class Counsel and the Settlement Administrator with a Class List which will identify Settlement Class Members by Kentucky IP address that will contain the Player ID, email address on file (where reasonably available), and Relevant Spending Amount for each Player ID for all Applications, as of March 8, 2021. All information for the Class List will be provided by

Defendants, except that the following information, and the following information only, has been obtained by subpoena issued from Plaintiff to each of the Platforms as follows:

The Platforms will be asked to identify the name and email address for each member of the Settlement Class who made a purchase in the Applications using that Platform.

**(b)** The Parties will provide the completed Class List to Class Counsel and the Settlement Administrator within fourteen (14) days after receiving the last data requested in Paragraph 4.1(a) from the Platforms. Such information shall be provided pursuant to FRE 408 until Preliminary Approval; and at that time, shall be treated as Confidential and not subject to public filing.

**(c)** Defendants shall provide the Settlement Administrator the information reflected in any opt-out letters from the Dispute Resolution and Arbitration Provision or any part thereof received by Defendants before the date of the execution of this Settlement Agreement. Defendants will fulfill this obligation by providing a spreadsheet listing, to the extent provided in the opt-out letter, the first, middle, and last name; date on the letter; and address.

**(d)** The Settlement Administrator shall keep the Class List and all personal information obtained therefrom, including the identity, and e-mail addresses of all persons, strictly confidential. To prepare the Class List for potential Settlement Payments, the Settlement Administrator shall (1) first, attach to each unique and identifiable person all of his/her associated Application accounts (e.g., by Player IDs), (2) second, use Claim Forms to supplement, amend, verify, adjust, and audit the foregoing data, as necessary, (3) third, calculate the total Relevant Spending Amount for each unique and identifiable person, and (4) finally, categorize each unique and identifiable person according to the appropriate Relevant Spending Amount levels identified in the Plan of Allocation. The Class List may not be used by the

Settlement Administrator for any purpose other than advising specific individual Settlement Class Members of their rights, distributing Settlement Payments, and otherwise effectuating the terms of the Settlement Agreement or the duties arising thereunder, including the provision of Notice of the Settlement

**4.2 Notice Plan.** The Notice Plan shall consist of the following:

(a) *Direct Notice.* No later than the Notice Date, the Settlement Administrator shall send Notice via email substantially 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 available in the Class List. In the event transmission of email notice results in any “bounce-backs,” the Settlement Administrator shall, where reasonable: correct any issues that may have caused the “bounce-back” to occur and make a second attempt to re-send the email notice..

(b) *Reminder Notice.* Both thirty (30) days prior to the Claims Deadline and seven (7) days prior to the Claims Deadline, the Settlement Administrator shall again send Notice via email substantially in the form attached as Exhibit B (with minor, non-material modifications to indicate that it is a reminder email rather than an initial notice), along with an electronic link to the Claim Form, to all Settlement Class Members for whom a valid email address is available in the Class List.

(c) *Settlement Website.* Within seven (7) days from entry of the Preliminary Approval Order, Notice shall be provided on a website such as [www.SpinXgamesettlement.com](http://www.SpinXgamesettlement.com), which shall be obtained, administered and maintained by the Settlement Administrator and shall include the ability to file Claim Forms on-line, 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 C hereto. The Settlement Website will also advise the

Settlement Class of the total value of the Settlement Fund and provide Settlement Class Members the ability to approximate their Settlement Payments.

(d) *Digital Publication Notice.* The Settlement Administrator will supplement the direct notice program with a digital publication notice program that will deliver more than three hundred thousand (300,000) impressions to likely Settlement Class Members. The digital publication notice campaign will run for at least one month and will contain active hyperlinks to the Settlement Website. The final digital notice advertisements, and the overall digital publication notice program to be used, shall be subject to the final approval of Defendants, which approval shall not be unreasonably withheld.

(e) *Contact from Class Counsel.* Class Counsel, in their capacity as counsel to Settlement Class Members, may from time to time contact Settlement Class Members to provide information about the Settlement Agreement and to answer any questions Settlement Class Members may have about the Settlement Agreement.

**4.3** The Notice shall advise the Settlement Class of their rights, including the right to be excluded from, comment upon, and/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, and (b) sends copies of such papers by mail, hand, or overnight delivery service to Class Counsel and Defendant's Counsel. A Class Member represented by counsel *must* timely file any objection through the Court's electronic filing system.

**4.4** Any Settlement Class Member who intends to object to this Agreement must present on a timely basis the objection in writing, which must be personally signed by the objector, and must include: (1) the objector's name and address; (2) any Player ID(s); (3) an explanation of the basis upon which the objector claims to be a Settlement Class Member, including any email address(es) associated with the Games; (4) all grounds for the objection, stated with specificity, including all citations to legal authority and evidence supporting the objection; (5) all documents or writings that the Settlement Class Member desires the Court to consider; (6) 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 (7) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel who must file an appearance with the Court in accordance with the Local Rules). All written objections must be filed with, or otherwise received by the Court, and emailed or delivered to Class Counsel and Defendant's Counsel, no later than the Objection/Exclusion Deadline. Any Settlement Class Member who fails to timely file or submit a written objection with the Court and notice of his or her intent to appear at the Final Approval Hearing in accordance with the terms of this Section and as detailed in the Notice, and at the same time provide copies to designated counsel for the Parties, shall not be permitted to object to this Settlement Agreement or appear at the Final Approval Hearing, and shall be foreclosed from seeking any review of this Settlement by appeal or other means and shall be deemed to have waived his or her objections and be forever barred from making any such objections in the Action or any other action or proceeding.

**4.5** 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.

**4.6** A Class Member may request to be excluded from the Settlement Class by sending a timely 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, physically signed by the individual seeking exclusion, to the Settlement Administrator providing his/her name and address, any Player ID(s) and any email address(es) associated with the Games, the name and number of the case, “*Brooke Kingston v. SpinX Games Ltd.*, No. 24-CI-00062 (Cir. Ct. Henderson Cnty.)” 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.

**4.7** The Final Approval Hearing shall be no earlier than ninety (90) days after the Notice described in Paragraph 4.2(a) is provided.

**4.8** Any Settlement Class Member who does not, in accordance with the terms and conditions of this Agreement, seek exclusion from the Settlement Class or timely file a valid Claim Form shall not be entitled to receive any payment or benefits pursuant to this Agreement, but will otherwise be bound by all of the terms of this Agreement, including the terms of the Final Judgment to be entered in the Action and the Releases provided for in the Agreement, and will be barred from bringing any action against any of the Released Parties concerning the Released Claims.

## **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. 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 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 post-distribution accounting of all amounts from the Settlement Fund paid to Settlement Class Members, the number and value of checks not cashed, the number and value of electronic payments unprocessed, and the amount distributed to any *cy pres* recipient. Without limiting the foregoing, the Settlement Administrator shall:

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

(b) Provide Class Counsel and Defendant's Counsel with drafts of all administration related documents, including but not limited to 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) business 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 document-by-document basis;

(c) Provide weekly reports to Class Counsel and Defendant's Counsel regarding the number of Claim Forms received, the amount of the Settlement Payments associated with those Claim Forms, and the categorization and description of Claims Form rejected, in whole or in part, by the Settlement Administrator; and

(d) 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 distribute the Settlement Payments according to the provisions enumerated in Section 2.1.

**5.3** 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, including by cross-referencing Approved Claims with the Class List. The Settlement Administrator shall determine whether a Claim Form submitted by a Settlement Class Member is an Approved Claim 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. In the event a person submits a timely Claim Form by the Claims Deadline but the Claim Form is not otherwise complete, then the Settlement Administrator shall give such person reasonable opportunity to provide any requested missing information, which information must be received by the Settlement Administrator no later than twenty-eight (28) calendar days after the Claims Deadline. In the event the Settlement Administrator receives such information more than twenty-eight (28) calendar 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.

**5.4** Class Counsel and Defendant's Counsel shall both have the right to challenge the Settlement Administrator's acceptance or rejection of any particular Claim Form or the amount proposed to be paid on account of any particular Settlement Class Member's claim. The Settlement Administrator shall follow any joint decisions of Class Counsel and Defendant's Counsel as to the validity or amount of any disputed claim. Where Class Counsel and Defendant's Counsel disagree, the Settlement Administrator will finally resolve the dispute and the claim will be treated in the manner designated by the Settlement Administrator.

**5.5** 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.

**5.6** 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 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 payment of taxes or tax expenses.

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

**6.1** Each Party additionally shall have the right, but not the obligation, to terminate the Settlement Agreement if 5% or more of the members of the Settlement Class exclude themselves from or object to the Settlement. Notification of intent to terminate the Settlement Agreement must be provided with ten (10) calendar days after the *earlier* of: (1) the date the Parties agree in good faith that they have received a final tabulation from the Settlement Administrator of the objections and requests for exclusion timely received by the Objection/Exclusion Deadline, or (2) the date the Parties receive sufficient evidence from the Settlement Administrator to establish beyond a reasonable doubt that the threshold for a Section 6.1 Termination Notice has been or will be met. For example, if the Settlement Administrator – after the Objection/Exclusion Deadline – notifies the Parties that there were no objections and just a single opt-out, that evidence would be sufficient to establish beyond a reasonable doubt that no threshold for a Section 6.1 Termination Notice has been or will be met. If this Settlement Agreement is terminated, it will be deemed null and void *ab initio*.

**6.2** Subject to Paragraphs 9.1-9.3 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

modified or reversed in any material respect by the Kentucky Court of Appeals, Kentucky Supreme Court or any federal court.

**6.3** In the event of termination pursuant to Section 6, Class Counsel shall cause the prompt return of the Settlement Fund in full to SpinX, including any interest accrued while in the Escrow Account, minus one-half (50%) of any amounts reasonably incurred by the Settlement Administrator until the date of termination.

**6.4 Confirmatory Discovery.** SpinX has represented that the total combined Relevant Spending Amount of all Class members is less than or equal to \$1,143,489.20. Simultaneous with the execution of this Agreement, SpinX has provided a declaration, from a person with sufficient knowledge, of SpinX's best estimate attesting to the total combined Relevant Spending Amount of all Class Members. In the event that the declaration shows that amount exceeds \$1,143,489.20 by more than two percent (2%), the Parties further agree that they shall execute an amended settlement agreement that adjusts the amount of the Settlement Fund proportionally to the increase in amount to account for this error.

## **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; preliminary certification of the Settlement Class for settlement purposes only; preliminary appointment of Class Counsel to represent the class; preliminary appointment of Brooke Kingston as the Class Representative of the Settlement Class; and entry of a Preliminary Approval Order, which order shall set a Final Approval Hearing date and approve the form and contents of the Notice and Claim Forms 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 SpinX.

**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 where the Court will review comments and/or objections regarding the Settlement, consider its fairness, reasonableness and adequacy, consider the application for any Fee Award and incentive awards to the Class Representative, and consider whether the Court shall issue a Final Judgment approving this Agreement and dismissing the Action with prejudice.

**7.3** After Notice is given, the Parties shall request and seek to obtain from the Court a Final Judgment, which will:

(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 Plaintiffs and Releasing Parties with respect to the Released Claims;

(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 Kentucky Rules of Civil Procedure, the Due Process Clause of the United States and Kentucky Constitutions, and the rules of the Court;

(d) find that the Class Representative and Class Counsel adequately represent the Settlement Class for purposes of entering into and implementing the Agreement;

(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 who have not been properly excluded from the Settlement Class 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; and

(i) incorporate any other provisions as necessary or appropriate to effectuate the terms and conditions of the Settlement Agreement.



**7.4** The Parties shall, in good faith, cooperate, assist, and undertake all reasonable actions and steps in order to accomplish these required events on the schedule set by the Court, subject to the terms of this Settlement Agreement.

**8. CLASS COUNSEL’S ATTORNEYS’ FEES, COSTS, AND EXPENSES; INCENTIVE AWARD.**

**8.1** Pursuant to Ky. R. Civ. P. 23.08, SpinX agrees that Class Counsel shall be entitled to an award of reasonable attorneys’ fees and costs out of the Settlement Fund in an amount determined by the Court as the Fee Award. With no consideration given or received, Class Counsel will limit its petition for attorneys’ fees, costs, and expenses to no more than one third of the Settlement Fund (i.e., \$95,166.67). Payment of any 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 Settlement Fund for distribution to eligible Settlement Class Members.

**8.2** The Fee Award shall be payable by the Settlement Administrator within thirty (30) 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 E, 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 pursuant to instructions 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) or otherwise does not become Final, then Class Counsel shall return such funds to SpinX. 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 fourteen (14) days of such an occurrence.

**8.3** Class Counsel intends to file a motion for Court approval of an incentive award to the Class Representative, to be paid from the Settlement Fund, in addition to any funds the Class Representative stands to otherwise receive from the Settlement. With no consideration having been given or received for this limitation, Brooke Kingston will seek no more than \$5,000 as an incentive award. 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 Settlement Fund for distribution to eligible Settlement Class Members. Such 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 thirty (30) 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 thirty (30) 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 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 Kentucky Rules of Civil Procedure, and has entered the Final Judgment, or a judgment consistent with this Agreement in all material respects;

- (d) SpinX has funded the Settlement Fund; and

(e) The Final Judgment has become Final, as defined above.

**9.2** If some or all of the conditions specified in Section 9.1 are not met, or in the event that 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 Section 6 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, the attorneys' fees payment to Class Counsel and/or the incentive award set forth in Section 8 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 above, and unless Class Counsel and Defendant's Counsel mutually agree in writing to proceed with this Agreement, the Parties shall be restored to their respective positions in the Action as of the date of 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 one-half (50%) of any amounts reasonably incurred by the Settlement Administrator until the date of termination (including costs and any taxes and tax expenses paid, due or owing), shall be refunded by the Settlement Administrator to SpinX, based upon written instructions provided by Defendant's Counsel. In

the event that the Final 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 SpinX, based upon written instructions provided by Defendant's Counsel, the full amount of the Fee Award paid to Class Counsel from the Settlement Fund, including any accrued interest. In the event the Fee Award 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 SpinX, 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, including any accrued interest.

## **10. CONFIDENTIALITY AND PUBLIC STATEMENTS**

**10.1** Except as otherwise agreed by Class Counsel and Defendant's Counsel in writing and/or as required by legal disclosure obligations, all terms of this Agreement will remain confidential and subject to Rule 408 of the Kentucky Rules of Evidence until presented to the Court along with Plaintiff's motion for preliminary approval.

## **11. MISCELLANEOUS PROVISIONS.**

**11.1** 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.

**11.2** 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. Accordingly, the Parties agree not to assert in any forum that the Action was brought by Plaintiff or defended by SpinX, or each or any of them, in bad faith or without a reasonable basis.

**11.3** The Parties have relied upon the advice and representation of counsel, selected by them, concerning the claims hereby released. The Parties have read and fully understand the Settlement Agreement and have been fully advised as to the legal effect hereof by counsel of their own selection and intend to be legally bound by the same.

**11.4** Whether or not the Effective Date occurs or the Settlement Agreement is terminated, neither this Agreement nor the settlement contained herein or any term, provision or definition therein, nor 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, may be deemed, or shall 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 Plaintiffs, 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;

(b) is, may be deemed, or shall 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, may be deemed, or shall 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, may be deemed, or shall 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, may be deemed, or shall 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.

(f) The Parties acknowledge and agree that any Party may request that the Court appoint a Settlement Special Master. Each Party explicitly reserves the right to oppose any such request. Any fees earned or costs incurred by any such Settlement Special Master shall be paid exclusively from the Settlement Fund.

**11.5** 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, nor that the Settlement Class definition would be appropriate for a litigation class, nor would SpinX 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 SpinX 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.

**11.6.** 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. The Parties acknowledge and agree that no opinion concerning the tax consequences of the proposed Settlement to Settlement Class Members is given or will be given by the Parties, nor are any representations or warranties in this regard made by virtue of this Settlement Agreement. Each Settlement Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Settlement Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Settlement Class Member.

**11.7.** All proceedings with respect to the administration, processing and determination of Claims and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of Claims, shall be subject to the jurisdiction of the Court.

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

**11.9** 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.



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

**11.11** 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.

**11.12** Except as otherwise provided herein, each Party shall bear its own costs and attorneys' fees incurred in any way related to the Action.

**11.13** 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.

**11.14** 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.

**11.15** 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.

**11.16** 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.

**11.17** 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.

**11.18** This Settlement Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

**11.19** 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.

**11.20** Where this Agreement requires notice to the Parties, such notice shall be sent by mail and by email to the undersigned counsel:

For Plaintiff: Philip L. Fraietta, Bursor & Fisher, P.A., 1330 Avenue of the Americas, New York, NY 10019. Email: pfraietta@bursor.com

For Defendant: Matan Shacham and Ajay Krishnan, Kecker, Van Nest & Peters LLP, 633 Battery Street, San Francisco, CA 94111. Email: MShacham@kecker.com, AKrishnan@kecker.com

**11.21** All time periods and dates described in this Agreement are subject to the Court's approval. These time periods and dates may be changed by the Court or by the Parties' written agreement without notice to the Settlement Class. The Parties reserve the right, subject to the

Court's approval, to make any reasonable extensions of time that might be necessary to carry out any provision of this Agreement.

**11.22** SpinX shall be given an opportunity to review and provide comments to Plaintiff's preliminary approval and final approval briefs, and Plaintiff shall consider in good faith all such comments.

**[SIGNATURES BEGIN ON FOLLOWING PAGE]**

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

Dated: Aug 4, 2025

**BROOKE KINGSTON**

By:  Brooke Kingston (Aug 4, 2025 15:42:34 CDT)

Brooke Kingston, individually and as representative  
of the Class

Dated: \_\_\_\_\_

**SPINX GAMES LTD.**

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

Name:

Title:

**IT IS SO STIPULATED BY COUNSEL:**

Dated: Aug 4, 2025

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

By: 

Philip L. Fraietta

pfraietta@bursor.com

Alec M. Leslie

aleslie@bursor.com

BURSOR & FISHER, P.A.

1330 Avenue of the Americas

New York, New York 10019

Tel: (646) 837-7150

Fax: (212) 989-9163

*Attorneys for Class Representative and the  
Settlement Class*

Dated: \_\_\_\_\_

**KEKER, VAN NEST & PETERS LLP**

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

Matan Shacham

mshacham@keker.com

KEKER, VAN NEST & PETERS LLP

633 Battery Street

San Francisco, CA 94111

Tel: (415) 391-5400

Fax: (202) 551-0468

*Attorneys for Defendant SpinX Games Ltd.*

# EXHIBIT A

## **SpinX Games Settlement Claim Form**

THIS CLAIM FORM MUST BE SUBMITTED ONLINE OR POSTMARKED BY DATE. THE CLAIM FORM MUST BE SIGNED AND MEET ALL CONDITIONS OF THE SETTLEMENT AGREEMENT.

The Settlement Administrator will review your Claim Form. If accepted, you will receive a share of the Settlement Fund. This process takes time, please be patient. If you have any questions, or would like to estimate your share of the Settlement Fund, visit: [www.SpinXGamesSettlement.com](http://www.SpinXGamesSettlement.com).

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

<b>Unique ID, if known (included on your mailed or e-mailed notice):</b>		
<b>First Name</b>	<b>Last Name</b>	
<b>Street Address</b>		
<b>City</b>	<b>State</b>	<b>ZIP Code</b>
<b>Email Address</b>		<b>Phone Number</b>
<b>Cash Frenzy, Lotsa Slots, Jackpot World (previously known as Jackpot Mania), Jackpot Crush, or Vegas Friends Player ID(s) OR Proof Of Purchase</b>		
<b>All email addresses associated with Cash Frenzy, Lotsa Slots, Jackpot World (previously known as Jackpot Mania), Jackpot Crush, or Vegas Friends accounts.</b>		

**Settlement Class Member Affirmation:** By submitting this Claim Form you affirm under penalty of perjury that, to the best of your knowledge, the Player ID(s) and the email address(es) listed above are yours.

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

**Select Payment Method:** Select **ONE** box for how you would like to receive payment and provide the requested information.

<b>Check</b>	<b>Venmo®</b>	<b>PayPal®</b>
<b>Mailing Address:</b>	<b>Phone Number:</b>	<b>Email Address:</b>

## **EXHIBIT B**

From: [Notice@classactionadmin.com](mailto:Notice@classactionadmin.com)  
To: JonQClassMember@domain.com  
Re: Legal Notice of Class Action Settlement

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**  
*Kingston v. SpinX Games Ltd.*, Case No. 24-CI-00062  
**(Commonwealth of Kentucky, Henderson County Circuit Court)**

**If you played Cash Frenzy, Lotsa Slots, Jackpot World (previously known as Jackpot Mania), Jackpot Crush, or Vegas Friends you may be part of a class action settlement.**

*A court authorized this notice. You are not being sued. This is not a solicitation from a lawyer.*

This notice is to inform you of the settlement of a class action lawsuit against SpinX Games Ltd. (“SpinX”), alleging claims based on the sale of virtual coins in Cash Frenzy, Lotsa Slots, Jackpot World (previously known as Jackpot Mania), Jackpot Crush, and Vegas Friends (the “Games”). SpinX denies all claims and that it violated any law, but has agreed to the settlement to avoid the uncertainties and expenses associated with continuing the case.

**Am I a Class Member?** Our records indicate you may be a Settlement Class Member. Settlement Class Members are persons who spent \$5.00 or more within a 24-hour period on games on Cash Frenzy on the dates between December 18, 2018 and February 24, 2021, Lotsa Slots on the dates between March 27, 2019 and February 4, 2021, Jackpot World (previously known as Jackpot Mania) on the dates between May 18, 2018 and March 8, 2021, Jackpot Crush on the dates between November 26, 2019 and February 24, 2021, and Vegas Friends on the dates between April 13, 2019 and March 2, 2021, while located in the Commonwealth of Kentucky.

**What Can I Get?** If approved by the Court, SpinX will establish a Settlement Fund of \$285,500 to pay all valid claims submitted by the Settlement Class, together with notice and administration expenses as well as any attorneys’ fees, costs, and incentive award to the Class Representative awarded by the Court. If you are entitled to relief, you may submit a claim to receive a share of the Settlement Fund. Your share will depend on, among other things, (1) the total dollar amount of in-game purchases you made while playing the Games, with those who spent more money receiving a higher percentage back, and (2) how many Settlement Class Members submit claims. You can find more information, and estimate your share of the Settlement Fund, at [[website](#)].

**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](#)]. You can submit the claim form online at [www.URL](#), or by clicking [[here](#)]. You may also request a paper claim form and mail it to [[address](#)].

**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 SpinX over the legal issues in the lawsuit. You and/or your lawyer have the right to appear before the Court and/or 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 [website]. If you file a claim or do nothing, and the Court approves the Settlement, you will be bound by all of the Court's orders and judgments. In addition, your claims relating to the allegations in this case against SpinX and any other Released Parties will be released.

**Who Represents Me?** The Court has appointed Philip L. Fraietta and Alec M. Leslie of Bursor & Fisher, P.A. 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. Plaintiff Brooke Kingston is a Settlement Class Member and the Court appointed her as "Class Representative."

**When Will the Court Consider the Proposed Settlement?** The Court will hold the Final Approval Hearing at [ ] .m. on [date] in [TBD]. 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 \$5,000 from the Settlement Fund for her services in helping to bring and settle this case. Class Counsel will be paid from the Settlement Fund in an amount to be determined and awarded by the Court. Class Counsel will seek no more than one third of the Settlement Fund in attorneys' fees, costs, and expenses, but the Court may award less than this amount.

**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 [website], contact the settlement administrator at 1- - - or SpinX Settlement Administrator, [address], or call Class Counsel at 1-646-837-7150.

# EXHIBIT C

**HENDERSON COUNTY CIRCUIT COURT**  
*Kingston v. SpinX Games Ltd.*, Case No. 24-CI-00062

**If you played Cash Frenzy, Lotsa Slots, Jackpot World (previously known as Jackpot Mania), Jackpot Crush, or Vegas Friends you may be part of a class action settlement.**

***A court authorized this notice. You are not being sued. This is not a solicitation from a lawyer.***

- A Settlement has been reached in a class action lawsuit against SpinX Games, Ltd. (“SpinX”), alleging claims based on the sale of virtual coins in Cash Frenzy, Lotsa Slots, Jackpot World (previously known as Jackpot Mania), Jackpot Crush, or Vegas Friends (the “Games”). SpinX denies all claims and that it violated any law, but has agreed to the settlement to avoid the uncertainties and expenses associated with continuing the case.
- You are a Settlement Class Member if you spent \$5.00 or more within a 24-hour period on Cash Frenzy on the dates between December 18, 2018 and February 24, 2021, Lotsa Slots on the dates between March 27, 2019 and February 4, 2021, Jackpot World (previously known as Jackpot Mania) on the dates between May 18, 2018 and March 8, 2021, Jackpot Crush on the dates between November 26, 2019 and February 24, 2021, and Vegas Friends on the dates between April 13, 2019 and March 2, 2021, while located in the Commonwealth of Kentucky.
- Those who file timely and properly completed claims will be eligible to receive a share of the Settlement Fund. Your share will be depend on, among other things, (1) the total dollar amount of in-game purchases you made while playing the Games, with those who spent more money receiving a higher percentage back, and (2) how many Settlement Class Members submit claims.
- Read this notice carefully. Your legal rights are affected whether you act, or don’t act.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
<b>SUBMIT A CLAIM FORM</b>	This is the only way to receive a payment.
<b>EXCLUDE YOURSELF</b>	You will receive no benefits, but you will retain any rights you currently have to sue SpinX about the claims in this case.
<b>OBJECT</b>	Write to the Court explaining why you don’t like the Settlement.
<b>GO TO THE HEARING</b>	Ask to speak in Court about your opinion of the Settlement.
<b>DO NOTHING</b>	You won’t get a share of the Settlement benefits and will give up your rights to sue SpinX about the claims in this case.

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

**QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [WEBSITE]**

## BASIC INFORMATION

### 1. Why was this Notice issued?

A 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 Karen L. Wilson, of the Henderson County Circuit Court, Commonwealth of Kentucky, is overseeing this case. The case is called *Kingston v. SpinX Games Ltd.*, Case No. 24-CI-00062. The person who sued is called the Plaintiff. The Defendant is SpinX Games Ltd.

### 2. What is a class action?

In a class action, one or more people called class representatives (in this case, Brooke Kingston) 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?

The lawsuit claims that Defendant violated Kentucky’s gambling laws through the sale of virtual coins in the Games Slots. SpinX denies all claims and that it violated any law.

### 4. Why is there a Settlement?

The Court has not decided whether the Plaintiff or SpinX 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.

More information about the Settlement and the lawsuit are available in the “Court Documents” section of the settlement website, or by accessing the Court docket in this case, for a fee, through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.wawd.uscourts.gov>, or by visiting the office of the Henderson County Circuit Court Clerk, 5 N. Main St. Henderson, KY 42420, between 8:00 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays.

## WHO’S INCLUDED IN THE SETTLEMENT?

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

QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [WEBSITE]

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

All individuals who, in Kentucky (as reasonably determined by billing address information, IP address information, or other information furnished by SPINX), spent \$5.00 or more within a 24-hour period on Cash Frenzy on the dates between December 18, 2018 and February 24, 2021, Lotsa Slots on the dates between March 27, 2019 and February 4, 2021, Jackpot World (previously known as Jackpot Mania) on the dates between May 18, 2018 and March 8, 2021, Jackpot Crush on the dates between November 26, 2019 and February 24, 2021, and Vegas Friends on the dates between April 13, 2019 and March 2, 2021.

## THE SETTLEMENT BENEFITS

### 6. What does the Settlement provide?

**Monetary Relief:** If approved by the Court, SpinX will establish a Settlement Fund totaling \$285,500. Settlement Class Member payments, as well as the cost to administer the Settlement, the cost to inform people about the Settlement, any attorneys' fees and costs awarded by the Court, and any incentive award to the Class Representative approved by the Court will also come out of this fund (*see* Question 13).

**Prospective Relief:** SpinX has also agreed to take or maintain measures designed to address video game behavior disorders, including providing self-service resources to players, providing for voluntary self-exclusion, and implementing in-game mechanics to ensure that players who run out of sufficient virtual coins will be able to continue to play the games without waiting an unreasonable amount of time.

A detailed description of the settlement benefits can be found in the Settlement Agreement. [\[insert hyperlink\]](#)

### 7. How much will my payment be?

If you are member of the Settlement Class you may submit a Claim Form to receive a portion of the Settlement Fund. The exact amount of your payment can't be determined at this time, but you can get an estimate by visiting the settlement website. The amount of your payment will depend on, among other things, (1) the total dollar amount of in-game purchases you made while playing the Games, with those who spent more money receiving a higher percentage back, and (2) how many Settlement Class Members submit claims. If you would like more information about how Settlement Payments are determined, visit [\[website\]](#).

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

QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [\[WEBSITE\]](#)

You should receive a check or electronic payment from the Settlement Administrator within 90 days after the Settlement has been finally approved and/or any appeals process is complete. The hearing to consider the final approval of the Settlement is scheduled for [Fairness Hearing Date]. If you elect to receive your payment via check, please keep in mind that checks will expire and become void 180 days after they are issued. If appropriate, funds remaining from the initial round of uncashed checks, or electronic payments that cannot be processed, may be used for a second distribution to Settlement Class Members and/or may be donated to the Civil Rule 23 Account maintained by the Kentucky IOLTA Fund Board of Trustees.

## HOW TO GET BENEFITS

### 9. How do I get a payment?

If you are a Class Member and you want to get a payment, you must complete and submit a Claim Form by [Claims Deadline]. Claim Forms can be found and submitted online or you may have received a Claim Form in the mail (and which you can then submit by mail). To submit a Claim Form on-line or to request a paper copy, go to [WEBSITE] or call toll free, 1-800-000-0000.

We encourage you to submit your claim electronically. Not only is it easy and secure, but it is completely free and takes only minutes.

## REMAINING IN THE SETTLEMENT

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

If the Settlement becomes final, you will give up your right to sue SpinX and other Released Parties for the claims being resolved by this Settlement. The specific claims you are giving up against SpinX are described in the Settlement Agreement. You will be “releasing” SpinX and certain of its affiliates, employees and representatives as described in Section 1.28 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 “court documents” link on 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, of course, talk to your own lawyer if you have questions about what this means.

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

If you do nothing, you won’t get any benefits from this Settlement. But, unless you exclude yourself, you won’t be able to start a lawsuit or be part of any other lawsuit against SPINX for the claims being resolved by this Settlement.

QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [WEBSITE]

## THE LAWYERS REPRESENTING YOU

### 12. Do I have a lawyer in the case?

The Court has appointed two lawyers at the firm Bursor & Fisher, P.A. to be the attorneys representing the Settlement Class. Those lawyers – Philip L. Fraietta and Alec M. Leslie – are called “Class Counsel.” They are experienced in handling similar class action cases. More information about these lawyers, their law firm, and their experience is available at [www.bursor.com](http://www.bursor.com). 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.

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

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

Subject to approval by the Court, the Class Representative may be paid an Incentive Award from the Settlement Fund for helping to bring and settle the case. The Class Representative will ask for \$5,000 as an incentive award.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

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

To exclude yourself from the Settlement, you must mail or otherwise deliver a letter (or request for exclusion) stating that you want to be excluded from the “*Kingston v. SpinX Games Ltd.*, Case No. 24-CI-00062 settlement.” Your letter or request for exclusion must also include your name, all Player ID(s), your address, and any email address(es) associated with your Cash Frenzy, Lotsa Slots, Jackpot World (previously known as Jackpot Mania), Jackpot Crush, or Vegas Friends account, 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 no later than **[objection/exclusion deadline]** to:

**SPINX Games Settlement**  
**0000 Street**  
**City, ST 00000**

### 15. If I don’t exclude myself, can I sue the Defendant for the same thing later?

**QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [WEBSITE]**

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

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

No. If you exclude yourself, you should not submit a Claim Form to ask for benefits because you won't receive any.

**OBJECTING TO THE SETTLEMENT**

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

If you are a Class Member, you 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 *Kingston v. SpinX Games Ltd.*, Case No. 24-CI-00062 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, all Player ID(s), your address, the basis upon which the objector claims to be a Settlement Class Member, including any email address(es) associated with your Cash Frenzy, Lotsa Slots, Jackpot World (previously known as Jackpot Mania), Jackpot Crush, or Vegas Friends account, 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 Defendant's Counsel listed below.

Class Counsel will file with the Court and post on this website its request for attorneys' fees, costs, and expenses by **[two weeks prior to objection deadline]**.

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 Number 21), you must say so in your letter or brief. File the objection with the Court and mail a copy to these two different places postmarked no later than **[objection deadline]**.

<b>Court</b>	<b>Class Counsel</b>	<b>Defendant's Counsel</b>
<b>INSERT</b>	Philip L. Fraietta Alec M. Leslie Bursor & Fisher PA	Matan Shacham Kecker, Van Nest & Peters LLP

**QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [WEBSITE]**



	1330 Avenue of the Americas New York, NY 10019	633 Battery Street San Francisco, CA 94111
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### 18. 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 case no longer affects you.

## THE COURT'S FINAL APPROVAL HEARING

### 19. When and where will the Court decide whether to approve the Settlement?

The Court will hold the Final Approval Hearing at [time] on **Month 00, 2023** in [TBD]. 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 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 [website] or call **1-800-000-0000**. 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.

### 20. 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.

### 21. May I speak at the hearing?

Yes. You may ask the Court for permission to speak at the Fairness Hearing. 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 *Kingston v. SpinX Games Ltd.*, Case No. 24-CI-00062." 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 **QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [WEBSITE]**

objection and notice of intent to appear must be filed with the Court and postmarked no later than **[objection deadline]**, and be sent to the addresses listed in Question 17.

## GETTING MORE INFORMATION

### **22. 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 **[website]**. You may also write with questions to **SpinX Games Settlement, P.O. Box 0000, City, ST 00000**. You can call the Settlement Administrator at **1-800-000-0000** or Class Counsel at 1-646-837-7150, 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.

**QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [WEBSITE]**

## **EXHIBIT D**

## **PLAN OF ALLOCATION**

Each Settlement Payment will be comprised of (1) a Base Payment Amount, (2) *plus* a Supplemental Payment Amount, (3) *minus* the Settlement Class Member's share of any Fee Award, incentive awards to the Class Representatives, and Settlement Administration Expenses.

### **1. Base Payment Amounts.**

Base Payment Amounts will be calculated by applying an escalating marginal recovery formula to the Settlement Class Member's Relevant Spending Amount through and including the date of the execution of the Settlement Agreement.

Settlement Class Members who submit a valid claim will be subject to an escalating marginal recovery formula based on the percentages described in Figure 1 below.

**Figure 1**

Relevant Spend (\$)	Marginal Rate (%)
0.1-1,000	10
1,000.01-10,000	17.5
10,000.01-100,000	30
100,000.01+	60

By way of example, an individual with a Relevant Spending Amount of \$40,000 will be entitled to a Base Payment Amount of \$7,472.50, calculated as: ((10% of their first \$1,000 in spending [\$100]) + (17.5% of their next \$9,000 in spending ([\$1,575])) + (30% of their next \$30,000 in spending [\$9,000])) \* (70%)). Settlement Class Members will have the ability to opt to receive an electronic payment via Venmo or PayPal, provided, however, that the default payment method will be check.

### **2. Proration.**

In the event the sum of all Base Payment Amounts for Settlement Class members who submit a valid claim exceed the total amounts available for distribution in the Settlement Fund,

each individual's Base Payment Amount will be reduced proportionately. Proration of amounts due to Settlement Class Members from the Settlement Fund will be determined 30 days after the deadline for Settlement Class Members to file claims. *Pro rata* payments to Settlement Class Members shall be made within 60 days of the deadline for Settlement Class Members to file claims.

### **3. Supplemental Payment Amounts.**

In the event there are available amounts remaining in the Settlement Fund after calculation of all Base Payment Amounts for Settlement Class members who have submitted a valid claim, Supplemental Payment Amounts will be calculated on a *pro rata* basis. Upon the close of the claims period, the sum of all unallocated amounts in the Settlement Fund (minus any amounts necessary to cover costs and fees) will be considered the Supplemental Payment Fund. The Supplemental Payment Fund will be apportioned *pro rata* to each Settlement Class Member who submitted a valid claim, based on the participating Settlement Class Member's Base Payment Amount. All payment amounts are subject to the deductions described in Section (3).

Regardless of Settlement Class Member participation rates, the sum of Base Payment Amounts and Supplemental Payment Amounts will equal the amounts available for distribution from the Settlement Fund.

### **3. Fee Award, Incentive Awards, and Settlement Administration Expenses.**

Settlement Payment Amounts will be a Settlement Class Member's Base Payment Amount plus any Supplemental Payment Amount, minus that Settlement Class Member's share of any Fee Award, Incentive Awards and Settlement Administration Expenses, anticipated not to exceed one-third (cumulatively) of the Settlement Fund.

## **EXHIBIT E**

**COMMONWEALTH OF KENTUCKY  
HENDERSON COUNTY CIRCUIT COURT**

BROOKE KINGSTON, individually and on behalf of  
all others similarly situated,

Plaintiff,

v.

SPINX GAMES LTD.,

Defendant.

Case No. 24-CI-00062

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

Plaintiff Brooke Kingston and Defendant SpinX Games Ltd. ("Defendant") (collectively, "the Parties"), by and through and including their undersigned counsel, stipulate and agree as follows:

WHEREAS, Class Counsel's law firm Bursor & Fisher P.A. (the "Firm") desires 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, as agent for the Firm, hereby submits the Firm to the jurisdiction of the Court for the purpose of enforcing the provisions of this Undertaking.

Capitalized terms used herein without definition have the meanings given to them in the Settlement Agreement.

By receiving any payments pursuant to the Settlement Agreement, the Firm and its shareholders, members, and/or partners submit to the jurisdiction of the Henderson County Circuit Court, Commonwealth of Kentucky, 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 Final 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, the Firm 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 the Firm from the Settlement Fund, including any accrued interest.

In the event 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, the Firm shall within thirty (30) days repay to Defendant, based upon written instructions provided by Defendant's Counsel, the attorneys' fees and costs paid to the Firm and/or Representative Plaintiff from the Settlement Fund in the amount vacated or modified, including any accrued interest.

This Undertaking and all obligations set forth herein shall expire upon finality of all direct appeals of the Final Settlement Order and Judgment.

In the event the Firm fails to repay to Defendant any of attorneys' fees and costs that are owed to it pursuant to this Undertaking, the Court shall, upon application of Defendant, and notice to the Firm, summarily issue orders, including but not limited to judgments and attachment orders against the Firm, and may make appropriate findings for sanctions for contempt of court.

The undersigned stipulates, warrants, and represents that he has both actual and apparent authority to enter into this stipulation, agreement, and undertaking 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 under the laws of the United States that they have read and understand the foregoing and that it is true and correct.

IT IS SO STIPULATED THROUGH COUNSEL OF RECORD:

DATED: \_\_\_\_\_

BURSOR & FISHER, P.A.

\_\_\_\_\_  
By: Philip L. Fraietta on behalf of Bursor & Fisher, P.A.  
Attorneys for Plaintiff Brooke Kingston

DATED: \_\_\_\_\_

KEKER, VAN NEST & PETERS LLP

\_\_\_\_\_  
By: Matan Shacham on behalf of Keker, Van Nest & Peters  
LLP  
Attorneys for Defendant SpinX Games Ltd.

COMMONWEALTH OF KENTUCKY  
HENDERSON COUNTY CIRCUIT COURT  
CIVIL ACTION NO. 24-CI-00062

BROOKE KINGSTON,  
on behalf of herself and all others similarly situated,

PLAINTIFF,

v.

SPINX GAMES LTD.,

DEFENDANT.

\*\*\*\*\*

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION  
FOR PRELIMINARY APPROVAL OF AMENDED CLASS ACTION SETTLEMENT**

In support of the joint motion of the Parties for an order preliminarily approving the amended proposed settlement of this class action, Plaintiff states as follows:

**I. INTRODUCTION**

In this putative class action, Plaintiff alleges that Defendant SpinX Games Ltd. ("Defendant" or "SpinX") owns and operates a video game development company, among which are popular virtual casino games available through mobile apps on Apple iOS and Android devices (the "Games" or "Casino Games") that constitute illegal gambling under Kentucky state law. After several months of arm's-length negotiations – including a mediation session facilitated by Niki Mendoza, Esq. of Phillips ADR ("Phillips ADR") – Plaintiff and Defendant reached a class-wide settlement. The Court preliminarily approved that settlement on March 13, 2024. However, due to unforeseen issues with verification of class member spend amounts, notice could not be disseminated by the Settlement Administrator by the court-ordered notice date. Although Plaintiff worked diligently to negotiate with the subpoenaed parties and with Defendant to explore solutions to the issues with the thus-far produced datasets, the Parties eventually concluded that the Notice

Plan and Plan of Allocation provided for in the Settlement, as presently constructed, were not feasible given the data available. After the Court stayed all deadlines in its June 2, 2025 order, the Parties diligently investigated alternative options for notice, negotiated the parameters of the same, and executed a new class action settlement (the “Amended Settlement Agreement”) with updated proposals on class notice and claim procedure. The Parties now ask the court to approve the Amended Settlement Agreement, which is unmodified from the Agreement that the Court previously approved other the necessitated edits to the Notice Plan, Claim Form, and Plan of Allocation. It is Class Counsel’s view that the Amended Settlement still provides excellent relief to the Class.

The Court should thus still have no hesitation finding that the Settlement falls within the range of possible approval. Accordingly, Class Counsel respectfully request that this Court review the parties’ Amended Settlement Agreement, and enter an order:

1. Granting preliminary approval of the proposed amended settlement;
2. Directing that notice be given to the members of the Settlement Class as proposed; and,
3. Setting a hearing date and briefing schedule for final settlement approval, Class Counsel’s fee and expense application, and determination of an appropriate enhancement award for the Class Representative.

Because nothing is modified between the Settlement the Court previously approved and the Amended Settlement other than the Notice Plan, Claim Form, and Plan of Allocation, Plaintiff has included below much of her prior briefing in support of preliminary approval for the convenience of the Court, as it is still applicable here.

## **II. THE PROPOSED SETTLEMENT**

The key terms of the Amended Settlement Agreement are summarized below for the Court's convenience.

### **A. Settlement Class Definition**

The Settlement Class is defined as:

all individuals who, in Kentucky (as reasonably determined by billing address information, IP address information, or other information furnished by SpinX), spent \$5.00 or more within a 24-hour period on games on Cash Frenzy on the dates between December 18, 2018 and February 24, 2021, Lotsa Slots on the dates between March 27, 2019 and February 4, 2021, Jackpot World (previously known as Jackpot Mania and/or DAFU Casino) on the dates between May 18, 2018 and March 8, 2021, Jackpot Crush on the dates between November 26, 2019 and February 24, 2021, and Vegas Friends on the dates between April 13, 2019 and March 2, 2021 (collectively, the "Games").

(Amended Settlement Agreement, Ex. 1, at § 1.34). Excluded from the Settlement Class are (1) any Judge or Magistrate presiding over this Action and members of their families; (2) SpinX, SpinX's subsidiaries, parent companies, successors, predecessors, and any entity in which the SpinX 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 such excluded persons. *Id.*

### **B. Monetary Relief**

Subject to the Court's final approval of the Amended Settlement Agreement, Defendant has agreed to establish a non-reversionary Settlement Fund in the total amount of two-hundred and eighty-five-thousand and five-hundred dollars (\$285,500.00 USD) from which Class members who file a valid claim will be entitled to recover a cash payment, after deducting costs and

administrative expenses, any fee award to proposed Class Counsel, and any incentive payment to the Class Representative. *See id.* § 1.36. No portion of the Settlement Fund will revert to Defendant. *Id.*; *see also id.* § 2.1(j). In the event that any Settlement Class member checks are not cashed within 180 days of issuance, those funds shall remain in the Net Settlement Fund and shall be apportioned *pro rata* to participating Settlement Class members in a second distribution, if practicable. *Id.* § 2.1(i). To the extent that any second distribution is impracticable, or that any second-distribution funds remain in the Net Settlement Fund after an additional one hundred and eighty (180) calendar days, such funds shall, subject to Court approval, revert to the Civil Rule 23 Account maintained by the Kentucky IOLTA Fund Board of Trustees pursuant to Supreme Court Rule 3.830(20). *Id.* Recovery will differ according to the Settlement Class member's relevant spending amount (i.e., individuals with higher expenditures will recover a greater percentage back) and overall Settlement Class member participation levels. *Id.* § 2.1 (c)-(i); *see also* Ex. D to the Amended Settlement Agreement ("Plan of Allocation"). A precise breakdown of how Settlement Payments will be calculated and allocated can be found in the Plan of Allocation attached as Exhibit D to the Amended Settlement Agreement. *Id.* Generally, Settlement Class Members who submit a valid claim will be subject to an escalating marginal recovery formula ranging from 10% (at the low end of relevant spending amounts) to 60% (at the high end). *Id.*

### **C. Prospective Relief**

Pursuant to the Amended Settlement Agreement's terms, Defendant will be required to maintain resources relating to video game behavior disorders that are accessible within the Games. Specifically, SpinX will maintain a webpage on the Games sites that (1) encourages responsible gameplay; (2) describes what video game behavior disorders are; (3) provides or links to resources relating to video game behavior disorders; and (4) includes a link to SpinX's self-exclusion policy. Amended Settlement Agreement § 2.2 (a). SpinX will maintain a policy, and will make

commercially reasonable efforts to enforce that policy, such that customer service representatives will provide the same information to any player who contacts them and references or exhibits video game behavior disorders, and will face no adverse employment consequences for providing players with this information. *Id.*

In addition, Defendant shall publish on its websites a voluntary self-exclusion policy which players may terminate their ability to purchase virtual coins in the Games or close their Game accounts entirely. *Id.* § 2.2(b). That policy shall provide that, when a player self-excludes by specifying the relevant User ID, Defendant shall use commercially reasonable efforts to implement the player's request with respect to all account(s) associated with those User ID(s). *Id.* Defendant shall retain discretion as to the particular method by which players may self-exclude; for example, SpinX may permit players to self-exclude by contacting Defendant's customer support, completing a form on Defendant's website, or any other reasonably accessible means. *Id.* Defendant shall use commercially reasonable efforts to prevent any use of the Games specified by the player, for the duration of the requested account disablement (either permanently or temporarily). *Id.* After a self-exclusion request is addressed in full by Defendant, Defendant shall not remove these restrictions for the period identified in the self-exclusion policy at the time the self-exclusion is requested. *Id.*

Defendant shall maintain its changes to game mechanics for the Games to ensure that players who run out of sufficient virtual coins are able to continue to play games within the Game suites without needing to purchase additional virtual coins or to wait until they would have otherwise received free additional virtual coins in the ordinary course. *Id.* § 2.2(c). Specifically,

players who run out of coins will be able to continue to play at least one game within the Game suites. *Id.*

#### **D. Release**

In exchange for the relief described herein, all Settlement Class members will release Defendant, and any of its parents, subsidiaries, divisions, corporate affiliates, predecessors, successors, agents, consultants, associates, affiliates, licensors, licensees, vendors, or independent contractors and any of their respective present and former officers, directors, owners, shareholders, insurers, agents, affiliates, representatives, employees, and assigns from any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action, contracts or agreements, extra contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, attorneys' fees and or obligations, whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, whether based on the Kentucky or other state, federal, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside the United States, against the Released Parties, or any of them, arising out of any facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions, or failures to act relating to the operation of the Games and/or the sale of virtual coins in the Games, such as claims that the Games are illegal gambling games, that virtual coins in the Games are "something of value," that aspects of the Games are deceptive or unfair, or that SpinX has been unjustly enriched by the operation of the Games, including but not limited to all claims that were brought or could have been brought in the Action relating to any and all Releasing Parties. *Id.* §§ 1.28, 1.29, 1.30, 3.1-3.4. For the avoidance

of doubt, this release: (i) includes claims potentially subject to arbitration agreements; and (ii) does not extend to other games owned and/or operated by SpinX and/or the Released Parties. *Id.*

Further all Settlement Class members will stipulate that, with the changes delineated in § 2.2, virtual coins in the Games are gameplay enhancements, not “something of value” as defined by Ky. Rev. Stat. Ann. § 528.010(11). *Id.* § 3.4. As long as those prospective measures remain implemented in the Games as described, Settlement Class Members are estopped from contending that virtual coins in the Games are “something of value” under current Kentucky law, or that aspects of the Games are deceptive or unfair and, for the avoidance of doubt, the release will include but will not be limited to (1) claims potentially subject to arbitration agreements; and (2) claims for amounts spent on in-game purchases within the Games that are attributable to payment processing fees. *Id.*

#### **E. Class Notice**

Upon final approval, the Settlement Fund will be used to pay the costs of sending the notice set forth in the Agreement and any other notice as required by the Court, as well as all costs of administration of the Settlement. *Id.* § 1.36. JND Legal Administration, the Settlement Administrator, will send class notices via email based on records produced by Defendant and obtained from third parties. *Id.* § 4. JND will also establish a settlement website and implement a digital publication notice campaign targeting class members. *Id.* § 4.2. In line with Rule 23, the notice will include the nature of the action, a summary of the settlement terms, and instructions on how to object or opt out of the settlement, including relevant deadlines. *Id.* § 4.3.

#### **F. Incentive Awards**

With no consideration having been given or received, Plaintiff Brooke Kingston will seek no more than \$5,000 as an incentive award. Amended Settlement Agreement § 8.3.

#### **G. Attorneys’ Fees And Expenses**



The Parties have agreed that proposed Class Counsel is entitled to an award of reasonable attorneys' fees and expenses in amount to be determined by the Court and to be paid from the Settlement Fund. *Id.* § 8.1. With no consideration given or received, Class Counsel will limit its petition for attorneys' fees, costs, and expenses to no more than one-third of the Settlement Fund (i.e., \$95,166.67). *Id.*

### **III. THE SETTLEMENT OF THIS ACTION IS IN THE BEST INTEREST OF THE CLASS AND SHOULD BE PRELIMINARILY APPROVED**

Kentucky Rule of Civil Procedure 23.05 requires court approval for any compromise of a class action. Generally, court approval occurs in three separate steps: “(1) the court must preliminarily approve the proposed settlement, *i.e.*, the court should determine whether the compromise embodied in the decree is legal or tainted with collusion; (2) members of the class must be given notice of the proposed settlement; and (3) a hearing must be held to determine whether the decree is fair to those affected, adequate and reasonable.” *Tennessee Assoc. of Health Maintenance Orgs., Inc. v. Grier*, 262 F.3d 559, 565-66 (6th Cir. 2001).<sup>1</sup> At the preliminary approval stage, the court “must only make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice of certification, proposed settlement, and date of the final fairness hearing.” *In re Skechers Toning Shoe Prod. Liab. Litig.*, No. 3:11-MD-2308-TBR, 2012 WL 3312668, at \*7 (W.D. Ky. Aug. 13, 2012); *see also Manual for Complex Litigation*, Fourth, § 21.632 (noting that at preliminary approval stage, the first task before the court is to make a preliminary determination as to the

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<sup>1</sup> Kentucky courts often look to Federal Rule of Civil Procedure 23 and the federal case law interpreting it as guidance for interpreting Kentucky's counterpart, Kentucky Rule of Civil Procedure 23. *See* 6 Kurt A. Phillips, Jr., David V. Kramer and David W. Burleigh, *Kentucky Practice – Rules of Civil Procedure Annotated*, CR 23.02 (6th ed. 2005) (“Kentucky courts customarily rely on federal case law when interpreting a Kentucky rule of procedure that is similar to its federal counterpart. Such is the case with CR 23.01 and FRCP 23(a).”); *see also Bellarmine College v. Hornung*, 662 S.W.2d 847 (Ky. Ct. App. 1983) (relying on federal case law on FRCP 23 to interpret Kentucky Rule of Civil Procedure 23); *Lamar v. Office of Sheriff*, 669 S.W.2d 27 (Ky. Ct. App. 1984) (same).

fairness, reasonableness, and adequacy of the settlement terms). It is important at this preliminary stage that the court “take care not to intrude upon the private settlement negotiations of the parties any more than is necessary to determine that the agreement is not the result of fraud or collusion, and that it is fair and adequate in light of the potential outcome and costs of litigation.” *Skechers*, 2012 WL 3312668, at \*8 (quoting *Smith v. Ajax Magnethermic Corp.*, No. 4:02CV0980, 2007 WL 3355080, at \*5 (N.D. Ohio Nov. 7, 2007)).

In making its preliminary determination as to fairness, reasonableness, and adequacy, the court analyzes whether the settlement ““appears to be the product of serious, informed, non-collusive negotiation, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval.”” *Skechers*, 2012 WL 3312668, at \*8 (quoting *Hyland v. HomeServices of Am., Inc.*, No. 3:05–CV–612, 2012 WL 122608, at \*2 (W.D. Ky. Jan. 17, 2012)).

The proposed settlement in this action is well within the “range of possible approval,” and probable cause clearly exists to certify the Settlement Class and issue notice of a final fairness hearing. The proposed settlement was negotiated at arm’s length by counsel who are fully versed in class litigation and falls well within the range of settlements that warrant preliminary approval. In the view of Class Counsel, the settlement represents a significant recovery for the Settlement Class. Although Class Counsel believe strongly in the merits of their respective arguments, Class Counsel recognizes that they would face substantial obstacles in establishing liability, proving certification, and damages should this case proceed to trial. There is also a significant question whether a class could even be certified and get to trial given that each class member agreed to arbitrate any claims with Defendant on an individual basis, raising the specter of no class-wide relief. Furthermore, even if this case were to proceed to trial, Defendant could appeal any favorable

judgment, putting at risk, or otherwise delaying, any recovery to the Settlement Class. Defendant, in turn, believes that it would prevail in arbitration or litigation on many, if not all, of its defenses. The Parties respectively weighed the strengths and weaknesses of their positions with the assistance of a nationally recognized mediator before reaching this settlement. Accordingly, the proposed settlement should be preliminarily approved.

**A. The Amended Settlement Agreement is the product of arms-length, non-collusive negotiations**

The original Settlement Agreement was reached after extensive evaluation (over a period of months) of the facts asserted herein and of Plaintiff's likelihood of success on the merits. *See* Fraietta Affidavit ¶¶ 3–7. This lengthy negotiation provided the Parties with sufficient information to evaluate the claims of the class. *Id.* ¶ 10. The Parties only reached settlement after engaging in months of evaluation, briefing, and negotiation and mediation conducted by Ms. Mendoza on July 12, 2023, which culminated in an accepted mediator's proposal. *Id.* ¶¶ 3–9. Every step leading up to and throughout the mediation session was hard-fought and adversarial, demonstrating the absence of collusion. *Id.* ¶ 10.

The Amended Settlement Agreement was likewise the result of further arms-length negotiations resulting from the Parties' diligent investigation of alternative options for notice. *Id.* ¶ 16.

**B. The Amended Settlement Agreement has no obvious deficiencies.**

The Amended Settlement Agreement is a comprehensive agreement that is the result of careful examination of the facts and circumstances and is intended to provide meaningful relief to the putative class members. Not only has the Amended Settlement Agreement been approved by Plaintiff and Defendant, it obtains recovery for the class comparable to that obtained in the court-approved VGW settlement and Washington settlements. Simply put, there are no obvious

deficiencies in the Amended Settlement Agreement.

**C. The Amended Settlement Agreement does not improperly grant preferential treatment to the Class Representative and provides for a fair allocation of relief to all Class Members.**

The Amended Settlement Agreement gives Class Counsel the discretion to seek an incentive award of \$5,000 for the Class Representative (Plaintiff Brooke Kingston), which Class Counsel has chosen to do and which Class Counsel believes is appropriate under the circumstances and does not constitute preferential treatment. In general, courts look to the following factors to determine if an incentive award is appropriate: “(1) the action taken by the Class Representatives to protect the interests of the Class Members and others and whether these actions resulted in a substantial benefit to Class Members; (2) whether the Class Representatives assumed substantial direct and indirect financial risk; and (3) the amount of time and effort spent by the Class Representatives in pursuing the litigation.” *In re Countrywide Fin. Corp. Customer Data Sec. Breach Litig.*, No. 3:08-MD-01998, 2010 WL 3341200, at \*12 (W.D. Ky. Aug. 23, 2010) (quoting *Enterprise Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 250 (S.D. Ohio 1991)).

Here, the \$5,000 incentive award for the proposed Class Representative is appropriate. The incentive award is relatively small (considering the total size of the settlement) and corresponds directly to the effort put forth by the Class Representative in securing the terms of the Amended Settlement Agreement. Moreover, the Amended Settlement Agreement provides for a fair allocation of relief to all the members of the Settlement Class consistent with the allocation method described in the Amended Settlement Agreement. Amended Settlement Agreement Ex. D. There are no sub-classes of Class Members that are treated any differently. Thus, aside from the incentive award, the Class Representative is treated in the exact same manner as any other Class Members.

**D. The Amended Settlement Agreement falls within the range of possible approval.**

As demonstrated above, the Amended Settlement Agreement falls “within the range of possible approval,” and this Court should grant preliminary approval of the settlement. Notably, the VGW, YSI, and Woopla settlements represented a lower percentage of actual damages and cases based on similar theories in the Western District of Washington under Washington law have settled for comparable percentages of actual damages, including at similar stages of litigation, and all have been approved. *See* Plaintiff’s Feb. 7, 2024 Motion for Preliminary Approval, § I (collecting cases); *see also* Exs. 2-4 to *id.* Further, it bears noting that the Washington Cases settled on the backdrop of a published Ninth Circuit opinion concluding that “virtual chips are a ‘thing of value’” under Washington law and therefore a social slots game awarding virtual coins “falls within Washington’s definition of an illegal gambling game.” *Kater v. Churchill Downs Inc.*, 886 F.3d 784, 788 (9th Cir. 2018). Here, by contrast and adding to the uncertainty, no court – let alone a published Kentucky appellate court – has considered whether virtual coins are “something of value” and therefore would fall within Kentucky’s definition of an illegal gambling game. *See* KRS 528.010(11) (defining “something of value”). And indeed, as Defendant would have surely pressed should the case have proceeded, numerous courts to consider this question under different state laws have concluded virtual coin-based games are not illegal gambling under those states’ laws. *See, e.g., Mason v. Machine Zone, Inc.*, 140 F. Supp. 3d 457 (D. Md. 2015), *aff’d* 851 F.3d 315 (4th Cir. 2017) (interpreting California and Maryland law); *Phillips v. Double Down Interactive LLC*, 173 F. Supp. 3d 731 (N.D. Ill. 2016) (interpreting Illinois law); *Soto v. Sky Union, LLC*, 159 F. Supp. 3d 871 (N.D. Ill. 2016) (interpreting California, Illinois and Michigan law); *Ristic v. Machine Zone, Inc.*, No. 15-cv-8996, 2016 WL 4987943 (N.D. Ill. Sept. 19, 2016) (interpreting Illinois law). Simply put, although the Washington Cases provide a useful

comparison, this case presented a novel legal question that could have derailed the entire case from the beginning. Class Counsel is thus of the view that settlement for a higher percentage of actual damages than the VGW settlement and for comparable percentages of actual damages to the Washington Cases under these circumstances is nothing short of extraordinary.

**IV. THE PROPOSED METHOD AND FORM OF NOTICE IS THE BEST NOTICE PRACTICABLE AND SHOULD BE APPROVED**

Under Kentucky Rule of Civil Procedure 23.05(1), the court “must direct notice [of a proposed settlement] in a reasonable manner to all class members who would be bound by the proposal.” The sufficiency of the notice provided to class members is analyzed along two fronts: the method of the notice and the contents of the notice.

**A. The method of disseminating the Class Action Notice satisfies Due Process.**

As for the method of notice, courts have held that in order to satisfy due process concerns, the notice must be “reasonably calculated” to reach the intended party. *See, e.g., Fidel v. Farley*, 534 F.3d 508, 514 (6th Cir. 2008) (“To comport with the requirements of due process, notice must be reasonably calculated to reach interested parties.”). That said, “[d]ue process does not, however, require *actual notice* to each party intended to be bound by the adjudication of a representative action.” *Id.* (emphasis added).

Here, the Parties have agreed upon a multi-part notice plan to be carried out by JND Legal Administration, a well-respected class action settlement administrator. To effectuate the Notice Plan, Defendant shall provide Class Counsel and the Settlement Administrator with a Class List which will identify Settlement Class Members by Kentucky IP address that will contain the Player ID, email address on file (where reasonably available), and Relevant Spending Amount for each Player ID for all Applications, as of March 8, 2021. All information for the Class List has been provided by Defendant, except that the following information, and the following information only,

has been obtained by subpoena issued from Plaintiff to each of the Platforms as follows:

The name and email address for each member of the Settlement Class who made a purchase in the Applications using that Platform.

The Parties have provided the completed Class List to Class Counsel and the Settlement Administrator. Such information has been provided pursuant to FRE 408 until Preliminary Approval; and at that time, shall be treated as Confidential and not subject to public filing.

Defendant shall provide the Settlement Administrator the information reflected in any opt-out letters from the Dispute Resolution and Arbitration Provision or any part thereof received by Defendant before the date of the execution of the Amended Settlement Agreement. Defendant will fulfill this obligation by providing a spreadsheet listing, to the extent provided in the opt-out letter, the first, middle, and last name; date on the letter; and address.

The Settlement Administrator shall keep the Class List and all personal information obtained therefrom, including the identity, and e-mail addresses of all persons, strictly confidential. To prepare the Class List for potential Settlement Payments, the Settlement Administrator shall (1) first, attach to each unique and identifiable person all of his/her associated Application accounts (e.g., by Player IDs), (2) second, use Claim Forms to supplement, amend, verify, adjust, and audit the foregoing data, as necessary, (3) third, calculate the total Relevant Spending Amount for each unique and identifiable person, and (4) finally, categorize each unique and identifiable person according to the appropriate Relevant Spending Amount levels identified in the Plan of Allocation. The Class List may not be used by the Settlement Administrator for any purpose other than advising specific individual Settlement Class Members of their rights, distributing Settlement Payments, and otherwise effectuating the terms of the Amended Settlement Agreement or the duties arising thereunder, including the provision of Notice of the Settlement.

**Direct Notice.** No later than the Notice Date, the Settlement Administrator shall send Notice via email substantially 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 available in the Class List. In the event transmission of email notice results in any “bounce-backs,” the Settlement Administrator shall, where reasonable: correct any issues that may have caused the “bounce-back” to occur and make a second attempt to re-send the email notice..

**Reminder Notice.** Both thirty (30) days prior to the Claims Deadline and seven (7) days prior to the Claims Deadline, the Settlement Administrator shall again send Notice via email substantially in the form attached as Exhibit B (with minor, non-material modifications to indicate that it is a reminder email rather than an initial notice), along with an electronic link to the Claim Form, to all Settlement Class Members for whom a valid email address is available in the Class List.

**Settlement Website.** Within seven (7) days from entry of the Preliminary Approval Order, Notice shall be provided on a website such as [www.SpinXgamessettlement.com](http://www.SpinXgamessettlement.com), which shall be obtained, administered and maintained by the Settlement Administrator and shall include the ability to file Claim Forms on-line, 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 C hereto. The Settlement Website will also advise the Settlement Class of the total value of the Settlement Fund and provide Settlement Class Members the ability to approximate their Settlement Payments. This form of notice will make it easier for Class Members to learn of this action and the settlement. *See Wilson v. Anthem Health Plans of Kentucky, Inc.*, No. 3:14-CV-743-TBR, 2017 WL 1089193, at \*3 (W.D. Ky. Mar. 21, 2017) (“the Court agrees with Anthem that providing additional



information on a website dedicated to the instant suit may be a particularly cost-effective means to provide current information....”).

**Digital Publication Notice.** The Settlement Administrator will supplement the direct notice program with a digital publication notice program that will deliver more than three hundred thousand (300,000) impressions to likely Settlement Class Members. The digital publication notice campaign will run for at least one month and will contain active hyperlinks to the Settlement Website. The final digital notice advertisements, and the overall digital publication notice program to be used, shall be subject to the final approval of Defendants, which approval shall not be unreasonably withheld.

These proposed methods of giving notice are appropriate because they provide a fair opportunity for Class Members to obtain full disclosure of the conditions of the Settlement and to make an informed decision regarding the proposed Settlement. Thus, the notices and notice procedures amply satisfy the requirements of due process.

**B. The contents of the Class Action Notice sufficiently inform class members of the existence of the action and the details of the settlement.**

As for the contents of the notice, within the Sixth Circuit, “[a]ll that notice must do is ‘fairly apprise...prospective members of the class of the terms of the proposed settlement’ so that class members may come to their own conclusions about whether the settlement serves their interests.” *Gooch v. Life Inv. Ins. Co. of Am.*, 672 F.3d 402, 423 (6th Cir. 2012) (quoting *Int’l Union, UAW v. Gen. Motors Corp.*, 497 F.3d 615, 630 (6th Cir. 2007)). That is, “[d]ue process does not require the notice to set forth every ground on which class members might object to the settlement.” *Gooch*, 672 F.3d at 423. Instead, the contents of the notice will be sufficient if “‘they inform the class members of the nature of the pending action, the general terms of the settlement, that complete and detailed information is available from the court files, . . . that any class member may

appear and be heard at the hearing...[and] information [about] the class members’ right to exclude themselves and the results of failure to do so.” *Id.* (quoting *Newberg on Class Actions*, §§ 8:32, 8:33). Ultimately, courts have considerable discretion in approving an appropriate notice plan. *See Manual for Complex Litigation*, Fourth, § 21.311 (“Determination of whether a given notification is reasonable under the circumstances of the case is discretionary.”).

Here, the Parties request approval of the proposed Email Notice, attached as **Exhibits B** to the Amended Settlement Agreement, and the Long Form Class Action Notice, which is attached as **Exhibit C** to the Amended Settlement Agreement (together, the “Class Action Notices”). The proposed Class Action Notices meet all of the requirements of Rule 23.05 and the Sixth Circuit’s requirements for notice. They identify the Plaintiff and the Defendant and describe the lawsuit and the Settlement Class in a straightforward manner. They are clearly organized, succinctly describe (in question and answer format) the essential terms of the proposed settlement, and identify all parties against whom claims are being released. *See, e.g., Dick v. Sprint Communs. Co. L.P.*, 297 F.R.D. 283, 293 (W.D. Ky. Jan. 29, 2014) (finding that a class action notice was adequate, in part, because “information was presented in a well-organized fashion...addressing in question-and-answer format...typical queries”). The Class Action Notices further provide information on how to submit a claim form, how to opt out of the Settlement Class, and how to object to the Amended Settlement Agreement (including an explanation of the right to retain separate counsel and the right to attend the final approval hearing), and provide all applicable deadlines for such action. Finally, the notice informs the Settlement Class that if they do not exclude themselves, and the settlement is approved, they will be bound by the resulting judgment. In short, the proposed notice provides the necessary information for the Settlement Class to make an informed decision regarding the Amended Settlement Agreement.

For these reasons, the Parties submit that the proposed form and means of effecting notice are adequate and reasonably calculated to provide notice of the settlement to the Settlement Class. Accordingly, the Court should approve the proposed forms and dissemination of notice.

**V. CERTIFICATION OF THE SETTLEMENT CLASS FOR SETTLEMENT PURPOSES ONLY IS STILL APPROPRIATE**

In order to proceed with the preliminary approval process, it was necessary for the Court to preliminarily certify a class for purposes of the Amended Settlement Agreement, appoint class representatives, and appoint Class Counsel. The Court has already certified the Settlement Class in its prior preliminary approval order. Certification is still appropriate.

To be certified under Kentucky Civil Rule 23, a putative class must satisfy, by a preponderance of the evidence, each of the four requirements of Rule 23.01: numerosity, commonality, typicality and adequacy. *See* Rule 23.01. In addition, a putative class must satisfy the requirements of one of the three provisions of Rule 23.02. *Id.* Here, for purposes of Settlement only, the Parties seek certification of the Settlement Class under Rule 23.02(c), which requires that “questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” Rule 23.02(c)

In addition to the express requirements of Rule 23, courts have generally held that the class definition must be drafted in such a way as to ensure that membership is ascertainable by some objective standard. *Young v. Nationwide Mutual Insurance Co.*, 693 F.3d 532, 539 (6th Cir. 2012).

Here, the Class is defined through objective criteria that can easily be used to identify its members. To be a Class Member, one must have: (1) in Kentucky (as reasonably determined by billing address information, IP address information, or other information furnished by SpinX ),

(2) spent \$5.00 or more within a 24-hour period on: Cash Frenzy on the dates between December 18, 2018 and February 24, 2021, Lotsa Slots on the dates between March 27, 2019 and February 4, 2021, Jackpot World (previously known as Jackpot Mania and/or DAFU Casino) on the dates between May 18, 2018 and March 8, 2021, Jackpot Crush on the dates between November 26, 2019 and February 24, 2021, and/or Vegas Friends on the dates between April 13, 2019 and March 2, 2021.

Through the application of these objective limitations, it will be administratively feasible for the Court to determine whether a particular individual is a member of the Settlement Class. Indeed, Defendant maintains these data for every single customer, and thus can easily determine which class members must be paid under the settlement, and if so, how much. Thus, ascertainability is confirmed; membership in the Class can be determined objectively by the records maintained by Defendant. *Young*, 693 F.3d at 539.

Plaintiff is a member of the Settlement Class. *See Young*, 693 F.3d at 543. Plaintiff: (i) played Defendant's Games in Kentucky; and (ii) spent \$5.00 or more within a 24-hour period on Defendant's relevant apps during the defined period prior to filing of this action.

#### **A. The Class Satisfies The Requirements Of Rule 23.01.**

##### **1. Numerosity Is Established**

The numerosity requirement of Rule 23.01(a) requires a plaintiff to demonstrate that the class is so numerous that joinder of all members is impracticable. Although "no strict numerical test exists to define numerosity under Rule 23(a)(1), substantial numbers of affected consumers are sufficient to satisfy this requirement." *In re Whirlpool Corp. Front-Loading Washer Prod. Liab. Litig.*, 722 F.3d 838, 852 (6th Cir. 2013), *cert. denied*, 134 S. Ct. 1277 (2014). Here, the proposed class consists of thousands of individuals. *See Fraietta Affidavit* ¶ 20. Numerosity is therefore easily met for the purposes of preliminary approval.

## 2. Commonality Is Established

Rule 23.01(b) requires the proponent of class certification to show that “there are questions of law or fact common to the class,” and that a class action will “generate common answers apt to drive the resolution of the litigation.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349-350 (2011) (citation and emphasis omitted); *see also Young*, 693 F.3d at 542 (To establish “commonality, the plaintiffs’ ‘claims must depend on a common contention . . . of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.’”). Moreover, “there need be only one common question to certify a class.” *In re Whirlpool Corp.*, 722 F.3d at 853; *see also Dukes*, 564 U.S. at 359 (“We quite agree that for purposes of Rule 23(a)(2) ‘[e]ven a single [common] question’ will do.”).

It is Class Counsel’s view that the case presents a host of common questions for settlement purposes, including (i) whether the virtual currency in Defendant’s Games are “things of value”; (ii) whether the Games constitute “gambling” under Kentucky law; and (iii) whether class members are entitled to recover their losses under Kentucky law. These common questions, posed in the context of Defendant’s practices, “will yield a common answer for the entire class that goes to the heart of whether [Defendant] will be found liable under the relevant [] laws. That is all *Dukes* requires.” *Rikos v. P&G*, 799 F.3d 497, 508-09 (6th Cir. 2015), *cert. denied*, *P&G v. Rikos*, 136 S. Ct. 1493 (2016) 508-09. At the heart of this case is Plaintiff’s allegation that the Games (as previously constituted) amounted to illegal gambling under Kentucky law. While Defendant believes individual issues would defeat commonality were Plaintiff to seek certification for trial, the Parties agree that for settlement purposes commonality is satisfied.

### 3. Typicality Is Established

Rule 23.01(c) requires proposed Class Representatives to demonstrate that their claims and defenses “are typical of the claims and defenses of the class.” “As the Supreme Court made clear in *Dukes*, ‘[t]he commonality and typicality requirements of Rule 23(a) tend to merge.’” *Id.* at 509 (quoting *Dukes*, 564 U.S. at 349 n.5). Thus, “many courts have found typicality if the claims or defenses of the representatives and the members of the class stem from a single event or a unitary course of conduct, or if they are based on the same legal or remedial theory.” *Rikos*, 799 F.3d at 509 (quoting 7A Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, Fed. Prac. & Proc. § 1764 (3d ed. 2005)).

Typicality is met here because, while Plaintiff’s claimed individual damages may not be identical to each Class member’s, her alleged legal claim against Defendant in this Settlement is identical to those possessed by all Class members: i.e., that the Games (as previously constituted) are illegal gambling games. Plaintiff therefore has the same interest as every other Class member. As a result, “[b]ecause Plaintiff[] allege[s] both a single practice or course of conduct on the part of [] Defendant [] that gives rise to the claims of each class member and a single theory of liability,” typicality is satisfied. *Young*, 693 F.3d at 543.

### 4. Adequacy Is Established

A “class representative must be part of the class and possess the same interest and suffer the same injury as the class members.” *Young*, 693 F.3d at 543 (quoting *Amchem Prods. v. Windsor*, 521 U.S. 591, 625-26 (1997)). The Sixth Circuit “looks to two criteria for determining adequacy of representation: ‘1) the representative must have common interests with unnamed members of the class, and 2) it must appear that the representatives will vigorously prosecute the interests of the class through qualified counsel.’” *Id.* at 543 (quoting *In re Am. Med. Sys.*, 75 F.3d

1069, 1083 (6th Cir. 1996)). In addition, courts in the Sixth Circuit “review[] the adequacy of class representation to determine whether class counsel are qualified, experienced and generally able to conduct the litigation.” *Id.* (quoting *Stout v. J.D. Byrider*, 228 F.3d 709, 717 (6th Cir. 2000)).

Here, with regard to the first criterion, Class Counsel believes that Ms. Kingston’s interests are fully aligned with those of the Settlement Class, as she is part of the Settlement Class and her claim arises out of the same common course of conduct and is based upon the same legal theories as Class Members’ claims. As to the “second criterion, [Plaintiff has] demonstrated, through her diligent ‘prosecution of the litigation to date,’ that she ‘will continue to vigorously prosecute the claims of the class as a whole.’” *Wilson v. Anthem Health Plans of Kentucky, Inc.*, No. 3:14-CV-743-TBR, 2017 WL 56064, at \*11 (W.D. Ky. Jan. 4, 2017) (quoting *Young*, 693 F.3d at 543). Plaintiff, for her part, has demonstrated her willingness to vigorously prosecute this case, including by providing her counsel with relevant documents, testimony, and consumer insight into the intricacies of Defendant’s Games. *See* Fraietta Affidavit ¶ 21. Plaintiff has remained in constant communication with her counsel, and she was heavily involved in nearly every aspect of this case, from its inception through settlement. *Id.* Plaintiff will fairly and adequately protect the interests of the Settlement Class. *Id.*

Finally, Plaintiff has retained highly qualified counsel, who have vigorously prosecuted the interests of the Settlement Class. *See Wilson*, 2017 WL 56064, at \*11 (listing criteria for determining adequacy). Class Counsel are well-qualified and experienced members of the plaintiffs’ bar, and have significant experience and success in prosecuting complex class actions such as this one. *See* Fraietta Affidavit ¶ 23, *see also* firm resume of Bursor & Fisher, P.A., attached hereto as **Exhibit 2**. Notably, Class Counsel was appointed Class Counsel in the VGW

settlement. *Armstead v. VGW Malta Ltd. and VGW Luckyland, Inc.*, Case No. 22-CI-00553 (Cir. Ct. Henderson Cnty. October 3, 2022) (appointing Philip L. Fraietta and Alec M. Leslie of Bursor & Fisher, P.A. as Class Counsel). Class Counsel was also recently appointed as Head of the Facebook Track in a high-profile MDL class action lawsuit involving similar “illegal gambling” allegations against Apple, Google, and Facebook. *See, e.g., In Re: Apple Inc. App Store Simulated Casino-Style Games Litig.*, Case No. 5:21-cv-02777-EJD, ECF No. 77, at 5 (N.D. Cal. Sept. 23, 2021) (Order Granting Appointment of Interim Lead Counsel). Moreover, Proposed Class Counsel was also appointed Class Counsel in *Croft v. SpinX Games Limited, et al.*, Case No. 20-cv-01310-RSM, ECF No. 60, at ¶ 4 (W.D. Wash. Mar. 24, 2022) (appointing Philip L. Fraietta and Alec M. Leslie of Bursor & Fisher, P.A. as Class Counsel).

#### **A. The Class Satisfies Rule 23.02(c)**

##### **1. Common Issues Predominate**

“‘To meet the predominance requirement, a plaintiff must establish that issues subject to generalized proof and applicable to the class as a whole predominate over those issues that are subject to only individualized proof.’” *Young*, 693 F.3d at 544 (quoting *Randleman v. Fidelity Nat’l Title Ins. Co.*, 646 F.3d 347, 352-53 (6th Cir. 2011)). In similar actions in other jurisdictions, courts have found that common issues predominate in multiple orders approving comparable settlements. *See, e.g., Reed v. Scientific Games* (No. 18-cv-565, final approval granted August 12, 2022), *Croft v. SpinX Games Limited*, (No. 2:20-cv-01310-RSM, preliminary approval granted March 24, 2022), *Wilson v. Playtika* (No. 18-cv5277, final approval granted February 11, 2021), *Ferrando v. Zynga Inc.* (2:22-cv-00214-RSL) (preliminary approval granted June 28, 2022).

The inquiry is especially straightforward in this case. A factfinder’s resolution of questions related to the operation of the Games—for example, whether the virtual currency sold in the Games are “things of value”—will resolve a fundamentally core and common question. *See Reichert*, 331



F.R.D. at 554-55 (finding predominance satisfied when all or nearly all elements of the class’s prima facie case presented common questions); *Taylor v. Universal Auto Grp. I, Inc.*, 2014 WL 6654270, at \*16 (W.D. Wash. Nov. 24, 2014) (predominance satisfied where “predominant” issue contested by the parties was common to the class).

Predominance is established here for purposes of certification for settlement purposes.

## 2. Superiority Is Established

Class actions are preferred over small, individual suits for damages because they provide a mechanism through which individuals who, under other circumstances, would not otherwise have the opportunity to seek redress from the defendant through litigation. *See Young*, 693 F.3d at 545 (6th Cir. 2010); *see also Amchem*, 521 U.S. at 617. In addition, “cases alleging a single course of wrongful conduct are particularly well-suited to class certification.” *Id.* (quoting *Powers v. Hamilton Cty. Pub. Def. Comm’n*, 501 F.3d 592, 619 (6th Cir. 2007)). As the Sixth Circuit recently explained, “[t]he policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights.” *Young*, 693 F.3d at 545 (quoting *Amchem*, 521 U.S. at 617).

As in *Young*, damages here “are relatively small for each [of the] potential class member[s].” *Id.*; *Carnegie v. Household Int’l, Inc.*, 376 F.3d 656, 661 (7th Cir. 2004) (“[t]he realistic alternative to a class action is not 17 million individual suits, but zero individual suits” because of litigation costs). Although a small number of class members may have substantial alleged damages (relative to other Class Members), it is difficult to imagine that a rational contingency-fee lawyer would take on most individual’s claims given the time, effort, and resources that Defendant has demonstrated it is willing to commit to defending claims against its

Games. *See In re Whirlpool Corp.*, 722 F.3d at 861 (“Use of the class method is warranted particularly because class members are not likely to file individual actions—the cost of litigation would dwarf any potential.”). Moreover, the huge number of individuals in the class would overwhelm the judicial system if class members were forced to litigate individually.

Accordingly, a class action is the superior method for adjudicating the Settlement Class’s claims.

#### **VI. THE COURT SHOULD SET A SCHEDULE FOR FINAL APPROVAL**

The next steps in the settlement approval process are to notify the class of the proposed settlement, allow members of the Settlement Class an opportunity to file any objections or opt-outs, and hold a final approval hearing. Toward those ends, the Parties propose the following schedule:

<b>Event</b>	<b>Proposed Deadline</b>
Deadline to disseminate class notice	October 17, 2025 (approx. 28 days after entry of Preliminary Approval Order)
Deadline to file fee application papers	14 days prior to objection/opt-out deadline
Deadline for members of the Settlement Class to opt-out of the Amended Settlement Agreement	45 days after dissemination of class notice and claim forms 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 4.2(d), or such other date as ordered by the Court.

Deadline for members of the Settlement Class to file objections to the Amended Settlement Agreement	45 days after dissemination of class notice and claim forms 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 4.2(d), or such other date as ordered by the Court.
Deadline for members of the Settlement Class to make a claim under the Amended Settlement Agreement	To be clearly set forth in the Preliminary Approval Order as well as in the Notice and the Claim Form, but no later than 56 days after Final Approval Hearing.
Deadline to file final approval papers	14 days prior to Final Approval Hearing
Final Approval Hearing	To be set by Court (no earlier than 90 days after entry of Preliminary Approval Order)

## VII. CONCLUSION

For the foregoing reasons, Class Counsel respectfully request that the Court enter the accompanying proposed Order Granting Preliminary Approval of Amended Class Action Settlement, directing dissemination of class notice, and setting a hearing for the purpose of deciding whether to grant final approval.

Dated: September 12, 2025

Respectfully submitted,

/s/ Philip G. Fairbanks  
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*Attorneys for Plaintiff and the Putative  
Class*

\* *Pro hac vice* application forthcoming

## **EXHIBIT 1**

COMMONWEALTH OF KENTUCKY  
HENDERSON COUNTY CIRCUIT COURT  
CIVIL ACTION NO. 24-CI-00062

BROOKE KINGSTON,  
on behalf of herself and all others similarly situated,

PLAINTIFF,

v.

SPINX GAMES LTD.,

DEFENDANT.

**AFFIDAVIT OF PHILIP L. FRAIETTA IN SUPPORT OF MOTION FOR  
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Affiant, Philip L. Fraietta, being first duly sworn, hereby declares as follows:

1. I am an attorney at law licensed to practice in the State of New York, and I am, concurrent with this affidavit, applying to be admitted to practice *pro hac vice* in this action. I am a Partner with Bursor & Fisher, P.A., counsel for Plaintiff in this action. I have personal knowledge of the facts set forth in this declaration, and, if called as a witness, could and would competently testify thereto under oath.

2. Attached to the Parties' Joint Motion for Preliminary Approval as **Exhibit 1** is a true and accurate copy of the Amended Class Action Settlement Agreement.

3. Plaintiff, through undersigned counsel, has conducted extensive research, discovery, and investigation during the prosecution of the action, including, without limitation: (i) the review of in-game purchase documents produced by Defendant; (ii) the review of publicly available reports, articles, and other publications concerning Defendant's Games; (iii) the review of publicly available information regarding Defendant and its business practices, and (iv) drafting and exchanging mediation briefing on the core facts, legal issues, litigation risks, and potential settlement structures, supplemented with extensive telephonic correspondence. These efforts led to the production of critical documents concerning the case, which Class Counsel reviewed and used to ascertain the strengths and weaknesses of the case.

4. In March of 2023, Plaintiff initiated dispute resolution proceedings pursuant to the SpinX Terms & Conditions.

5. On May 18, 2023, Plaintiff filed a demand for arbitration against Defendant with the Judicial Arbitration and Mediation Services (“JAMS”) seeking, *inter alia*, declaratory relief that SpinX’s Platform constitutes illegal gambling under Kentucky Law.

6. Over the next several months, counsel for the Parties had numerous telephone calls and discussed the prospect of resolution. Those discussions led to an agreement to participate in a mediation with the Niki Mendoza, Esq. of Phillips ADR Enterprises (“Phillips ADR”), which was ultimately scheduled for July 12, 2023.

7. In the weeks leading up to the mediation, the Parties were in regular communication with each other and with the Phillips ADR team, as the Parties sought to crystallize the disputed issues, produce focal information and data, and narrow down potential frameworks for resolution. During this period, Defendant provided Class Counsel with transactional data for virtual coin purchases made by the Settlement Class; the Parties exchanged rounds of voluminous briefing on the core facts, legal issues, litigation risks, and potential settlement structures; and the Parties supplemented that briefing with extensive telephonic correspondence, mediated and shuttled by the Phillips ADR team, clarifying each other’s positions in advance of the mediation.

8. On July 12, 2023, following the mediation session, Ms. Mendoza made a mediator’s proposal to settle the case in principle, which both Parties accepted.

9. Working within the guideposts of prior analogous VGW and Washington settlements, the Parties were able to negotiate and execute a term sheet memorializing their agreement at the conclusion of the mediation.

10. Every step leading up to and throughout the mediation session was hard-fought and adversarial. This lengthy negotiation provided the Parties with sufficient information to evaluate the claims of the class.

11. In my professional judgment, when the Parties agreed to this settlement, the

Parties were fully informed on all pertinent issues and capable of assessing the benefits of the settlement.

12. Over the next several weeks, the Parties exchanged several rounds of a working settlement document and supporting exhibits, met and conferred telephonically to discuss the remaining disputed provisions, and negotiated the form and substance of a notice and administration plan.

13. On February 1, 2024, the Parties completed execution of the original Settlement Agreement preliminarily approved by the Court on March 13, 2024.

14. Due to unforeseen issues with verification of class member spend amounts, notice could not be disseminated by the Settlement Administrator by the court-ordered notice date.

15. Although Plaintiff worked diligently to negotiate with the subpoenaed parties and with Defendant to explore solutions to the issues with the thus-far produced datasets, the Parties eventually concluded that the Notice Plan and Plan of Allocation provided for in the Settlement, as presently constructed, were not feasible given the data available.

16. After the Court stayed all deadlines in its June 2, 2025 order, the Parties diligently investigated alternative options for notice, negotiated the parameters of the same, and executed a new class action settlement (the “Amended Settlement Agreement”) with updated proposals on class notice and claim procedure. The Amended Settlement Agreement was the result of further arms-length negotiations resulting from the Parties’ diligent investigation of alternative options for notice

17. The Parties now ask the court to approve the Amended Settlement Agreement, which is unmodified from the Agreement that the Court previously approved other the necessitated edits to the Notice Plan and Plan of Allocation. It is Class Counsel’s view that the Amended Settlement still provides excellent relief to the Class.

18. In accordance with KY CR 23.05 (3), there have been no agreements made in connection with the Settlement other than the Amended Settlement Agreement itself.



19. Although Plaintiff and Class Counsel had confidence in their claims, a favorable outcome was not assured. Plaintiff and Class Counsel also recognize that they would face risks at the motion to dismiss stage, class certification, summary judgment, and trial. Thus, in my professional judgment, the proposed Settlement provides the Class with an outstanding opportunity to obtain significant relief at this stage in the litigation, while also abrogating the risk of Plaintiff and the Class obtaining no relief at all.

20. Based on documents I have reviewed in this case, thousands of individuals have spent money on Defendant's Games within the Commonwealth of Kentucky over the relevant Class Period.

21. Plaintiff Brooke Kingston demonstrated her willingness to vigorously prosecute this case, including by providing her counsel with relevant documents, testimony, and consumer insight into the intricacies of Defendant's Games. Plaintiff remained in constant communication with her counsel, and she was heavily involved in nearly every aspect of this case, from its inception through mediation and settlement. In sum, Plaintiff remained committed to proving Defendant's common course of conduct, and obtaining redress on behalf of herself and the Class.

22. Proposed Class Counsel have no conflicts of interest. Proposed Class Counsel have no financial stake in the Defendant nor any connections to particular class members that might cause it to privilege certain members over others.

23. Proposed Class Counsel are well-qualified and experienced members of the plaintiffs' bar who together have extensive experience in class actions of similar size, scope, and complexity to these cases, have frequently been appointed lead class counsel by courts throughout the country, and have the resources necessary to conduct litigation of this nature. Attached to Plaintiff's Memorandum as **Exhibit 2** is a true and accurate copy of Bursor & Fisher's firm resume.

24. In my professional judgment, if Plaintiff tried this case to verdict, there would be subsequent appeals that would likely take years to resolve. In my professional judgment, the expense and burden associated with litigating this through both trial and appeals militate in favor of granting preliminary approval.

25. Based on the proposed Plan of Allocation, and based on information from publicly-filed documents in other similar cases, the recoveries class members stand to receive will in many instances be significant.

26. In my professional judgment, the proposed settlement is fair, reasonable, and adequate, and in the best interests of the class.

I declare under penalty of perjury under the laws of the United States, the State of New York and the Commonwealth of Kentucky that the foregoing is true and correct. Executed on September 12, 2025 at New York, New York.

Further, Affiant sayeth naught.



Philip L. Fraietta

State of New York }  
County of New York }

Subscribed and sworn before me by Philip L. Fraietta on this 12<sup>th</sup> day of September, 2025.

My Commission expires: January 18, 2028

VICTORIA XIZHI ZHOU  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 02ZH0020047  
Qualified in New York County  
My Commission Expires 01-18-2028



Notary Public, State of New York

## **EXHIBIT 2**



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## **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).

In *Ayyad v. Sprint Spectrum L.P.* (2013), where Mr. Bursor served as lead trial counsel, the jury returned a 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.* (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, unlawful and junk fees, data breach claims, and violations of the Telephone Consumer Protection Act and 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 Courts of Appeals for the First, Second and Sixth Circuits.

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:**

*Farwell v. Google, LLC*, 595 F. Supp. 3d 702 (C.D. Ill. Mar. 31, 2022), denying defendant's motion to dismiss BIPA claims brought on behalf of Illinois students using Google's Workspace for Education platform.

*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:**

*Schreiber v. Mayo Foundation*, Case No. 22-cv-0188-HYJ-RSK (W.D. Mich. 2024) – final approval granted for \$52.5 million class settlement to resolve claims of periodical subscribers for alleged statutory privacy violations.

*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 alleging unlawfully charged overdraft fees on accounts with sufficient funds.

*Benbow v. SmileDirectClub, LLC*, Case No. 2020-CH-07269 (Cir. Ct. Cook Cnty. 2022) – final approval granted for \$11.5 million class settlement to resolve claims for alleged TCPA violations.



*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 on the Google Photos platform.

*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.

### **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 repellers.

*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 repellers.

*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 repellers.

*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 repellers.

*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® 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:**

*Garner v. Me-TV National Limited Partnership*, 132 F.4th 1022 (7th Cir. Mar. 28, 2025), reversing grant of motion to dismiss under federal Video Privacy Protection Act and specifying standard for being a “consumer” under the Act.

*Jancik v. WebMD LLC*, 2025 WL 560705 (N.D. Ga. Feb 20, 2025), certifying the first ever contested class under the federal Video Privacy Protection Act.

*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.

*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:**

*Ramos v. ZoomInfo Technologies, LLC*, Case No. 21-cv-02032-CPK (N.D. Ill. 2024) – final approval granted for \$29.5 million class settlement to resolve claims for alleged statutory right of publicity violations.

*Awad v. AMC Entertainment Holdings, Inc.*, Index No. 607322/2024 (Sup. Ct. Nassau Cnty. 2024) – final approval granted for \$12.3 million class settlement to resolve claims for alleged New York ticket fee claims.

*Schreiber v. Mayo Foundation for Medical Education and Research*, Case No. 22-cv-00188-HYJ (W.D. Mich. 2024) – final approval granted for \$52.5 million class settlement to resolve claims of newsletter subscribers for alleged statutory privacy violations.

*Fischer v. Instant Checkmate LLC*, Case No. 19-cv-04892-MSS (N.D. Ill. 2024) – final approval granted for \$10.1 million class settlement to resolve claims for alleged statutory right of publicity violations.

*Young v. Military Advantage, Inc.*, Case No. 2023LA000535 (Cir. Ct. DuPage Cnty. 2023) – final approval granted for \$7.35 million class settlement to resolve claims of newsletter subscribers for alleged federal Video Privacy Protection Act claims.

*Rivera 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.

*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.

### **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.

### **DANIEL GUERRA**

Daniel Guerra is a Senior Associate with Bursor & Fisher, P.A. Dan focuses his practice on complex civil litigation and consumer class actions.

Prior to working at Bursor & Fisher, Dan practiced at a national law firm in San Francisco. He helped represent various companies during internal investigations and in complex civil litigation, including product liability litigation and commercial disputes. He also advised clients on a range of matters including regulatory compliance, litigation risk assessment, and product counseling.

Dan is admitted to the State Bar of California, all California Federal District Courts, and the United States District Court for the Western District of Texas.

Dan received his Juris Doctor from the University of California Law, San Francisco (formerly U.C. Hastings College of the Law) in 2009.

### **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.

### **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.

Since 2023, Max has been 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:**

*Huertas v. Bayer US LLC*, 120 F.4th 1169 (3d Cir. 2024), reversing district court and holding plaintiffs had alleged an injury-in-fact sufficient for Article III standing. Max personally argued the appeal before the Third Circuit, which can be listened to [here](#).

*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](#).

*Newman v. Bayer Corp.*, --- F.R.D. ---, 2025 WL 856225 (S.D.N.Y. Mar. 19, 2025), certifying class of New York purchases of "One A Day" gummy multivitamins.

*Shah v. Fandom, Inc.*, 754 F. Supp. 3d 924 (N.D. Cal. 2024), denying motion to dismiss alleged violations of California pen register statute.

*Yockey v. Salesforce, Inc.*, 745 F. Supp. 3d 945 (N.D. Cal. 2024), denying motion dismiss alleged violations of California and Pennsylvania wiretapping statutes.

*Gladstone v. Amazon Web Services, Inc.*, 739 F. Supp. 3d 846 (W.D. Wash. 2024), denying motion to dismiss alleged violations of California wiretapping statute.

*Rancourt v. Meredith Corp.*, 2024 WL 381344 (D. Mass. Jan. 11, 2024), denying motion to dismiss alleged violations of federal Video Privacy Protection Act, and finding personal jurisdiction over operator of mobile application.

*Saunders v. Hearst Television, Inc.*, 711 F. Supp. 3d 24 (D. Mass. 2024), denying motion to dismiss alleged violations of federal Video Privacy Protection Act.

*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.”

**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
- First Circuit Court of Appeals
- Second Circuit Court of Appeals
- 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 privacy violations, illegal gambling, financial misconduct, and false advertising. 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, the Eastern District of Michigan, the Western District of Michigan, the First Circuit Court of Appeals, and the Ninth Circuit Court of Appeals.

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. 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 prior to law school.

**Selected Class Settlements:**

*Armstead v. VGW Malta Ltd. et al.*, Case No. 22-CI-00553 (Henderson Cnty. Ky. 2023) – final approval granted for \$11.75 million class settlement involving allegedly deceptive and/or illegal gambling practices.

*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.

*Fischer, et al. v. Instant Checkmate LLC, et al.*, No. 19-cv-04892 (N.D. Ill. 2024) – final approval granted for state-by-state non-reversionary cash settlements involving alleged violations of right of publicity statutes totaling in excess of \$10.1 million.

*Wyland v. Woopla, Inc.*, Civil Action No. 2023-CI-00356 (Henderson Cir. Ct. Ky. 2023) – final approval granted for \$835,000 class settlement involving allegedly deceptive and/or illegal gambling practices.

*Whiting v. Yellow Social Interactive Ltd.*, Civil Action No. 2023-CI-00358 (Henderson Cir. Ct. Ky. 2023) – final approval granted for \$1.32 million class settlement involving allegedly deceptive and/or illegal gambling practices.

**XAVIER JOHNSON**

Xavier Johnson is a Staff Attorney at Bursor & Fisher, where they focus their practice on complex civil litigation and consumer class actions. They are admitted to the State Bar of California. Xavier is a former Director of Policy Justice at the Just Cities Institute where their work focused on Fair Chance Housing policies, re-entry policy, as well as tenants' rights. Previously, Xavier worked as a Tenants' Rights Attorney at Centro Legal de la Raza. Their work at Centro Legal de la Raza centered on representing tenants in hearings with the Oakland Rent Adjustment Program. Xavier provided assistance to tenants through all stages of the petition process including providing representation on the day of the hearings. Xavier successfully advocated for more than one million dollars in rent reductions. Xavier engaged with the community through outreach and documented how tenants are being impacted by the housing crisis and what steps we can take to ensure that our tenant communities are protected. Xavier Johnson is also an elected official serving as a Commissioner on the Berkeley Rent Stabilization Board.

Over their career, Xavier has worked with law firms, non-profits, and governmental entities in the realms of policy advocacy, research and community organizing. Xavier spent two

years as a Congressional Aide in Congresswoman Barbara Lee's District Office with a focus on housing and housing justice.

Xavier holds a Juris Doctorate from University of California Berkeley School of Law and a Bachelor of Arts in Sociology from University of Texas at San Antonio.

### **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.

### **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.

### **MUJGHAN AHMAD**

Mujghan Ahmad is a Staff Attorney at Bursor & Fisher, where she focuses her practice on complex civil litigation and consumer class actions. She is admitted to the State Bar of California.

Mujghan earned her Juris Doctor from Golden Gate University, School of Law in 2022, with specializations in Intellectual Property and Public Interest. During law school, she received a CALI Award in Intellectual Property Law Survey, wrote for the Environmental Law Journal, and was a member of the Moot Court Board and the Pro Bono Honor Society. She also served as a teaching assistant for Criminal Law Professor Thomas Schaaf. In 2017, Mujghan received a Bachelor of Arts in Political Science from the University of California, Irvine.

Her prior legal experience includes internships with the Los Angeles County Counsel's Property Division, Homeless Advocacy Project, Bay Area Legal Aid's Economic Justice Unit, and California Lawyers for the Arts. Before joining Bursor & Fisher, Mujghan served as a Foreclosure Prevention Attorney at Legal Assistance to the Elderly, where she litigated cases involving wrongful foreclosure and financial elder abuse, and provided pro bono estate planning services to low-income seniors in San Francisco.

### **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 and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts 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 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.

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 and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts 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.

### **ELEANOR R. GRASSO**

Eleanor Grasso is an Associate with Bursor & Fisher, P.A. Eleanor focuses her practice on complex civil litigation, including data privacy and consumer protection class actions.

Eleanor is admitted to the State Bars of New York and Florida, and is a member of the bars of the United States District Courts for the Southern District of New York and Eastern District of New York.

Eleanor earned her Juris Doctor from Fordham University School of Law. During law school, Eleanor was a member of the Fordham Journal of Intellectual Property, Media & Entertainment Law, serving as Symposium Editor for Volume XXXIV. Eleanor was also a member of the Brendan Moore Trial Advocacy Team, served as a Research Assistant, and was a member of the Board of Student Advisors.

Throughout her time in law school, Eleanor interned for the Office of the Public Defender for the Sixth Judicial Circuit of Florida in the Misdemeanor Unit, the Office of the Federal Public Defender for the Middle District of Tennessee in the Capital Habeas Unit, the ACLU of Florida, and for the Honorable Kiyoo A. Matsumoto in the United States District Court for the Eastern District of New York. Eleanor was a Summer Associate with Bursor & Fisher and also interned part-time during her third year of law school.

Eleanor earned her Bachelors from the University of Florida, with a double-major in Criminology & Law and Political Science and a minor in French & Francophone studies.

#### **RYAN B. MARTIN**

Ryan Martin is an Associate with Bursor & Fisher, P.A. Ryan focuses his practice on complex civil litigation and consumer class actions. He was a Summer Associate and part-time law clerk with Bursor & Fisher prior to joining the firm as a full time Associate in August 2024.

Ryan 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.

He earned his Juris Doctor from the University of California College of the Law, San Francisco (formerly U.C. Hastings), graduating *Cum Laude* with a Concentration in Environmental Law and as a member of the Honors Society. While there, he was a Senior Production Editor of the *U.C. Law Journal*, was President of the Hastings Environmental Law Association, and was a Torts Teaching Fellow.

Prior to law school, Ryan graduated from the W.A. Franke College of Business at Northern Arizona University with a Bachelors of Science in Hotel and Restaurant Management and a minor in Business. Ryan also studied Sustainable Business and Hotel Management at the Internationale Hochschule of Applied Sciences in Bad Honnef Germany and is a certified yoga instructor.

#### **LOGAN HAGERTY**

Logan Hagerty is an Associate with Bursor & Fisher, P.A. Logan is admitted to the State Bar of New York.

Logan received his Juris Doctor from Boston College Law School in 2024, where he received a certificate in Land & Environmental Law.

During law school, Logan was President of the Environmental Law Society. In addition, Logan worked for a class action firm, a general practice firm, and interned at a Massachusetts state agency.

Logan earned his Bachelors from St. Lawrence University, where he graduated magna cum laude with a double major in History and Environmental Studies and a minor in African Studies. He is also a member of Phi Beta Kappa.

### **KAREN VALENZUELA**

Karen Valenzuela is an Associate with Bursor & Fisher, P.A. Karen focuses her practice on complex civil litigation and class actions. Karen was a Summer Associate and a part-time intern with Bursor & Fisher prior to joining the firm as a full-time Associate.

Karen 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.

Karen received her Juris Doctor in 2024 from the University of California, Berkeley School of Law. During law school, Karen was part of the Consumer Protection Public Policy Order, and interned for the Los Angeles County Public Defender's Office. Karen also participated in the International Human Rights Law Clinic, La Alianza Workers' and Tenants' Rights Clinic, and the Death Penalty Clinic.

Prior to law school, Karen graduated from the University of California, Berkeley with a B.A. in Gender and Women's Studies and a minor in Global Poverty and Practice.

COMMONWEALTH OF KENTUCKY  
HENDERSON COUNTY CIRCUIT COURT  
CIVIL ACTION NO. 24-CI-00062

BROOKE KINGSTON,  
on behalf of herself and all others similarly situated,

PLAINTIFF,

v.

SPINX GAMES LTD.,

DEFENDANT.

**PRELIMINARY ORDER APPROVING AMENDED CLASS ACTION SETTLEMENT,  
AND APPROVING NOTICE PLAN**

WHEREAS, the above-captioned matter came before this Court upon the Parties' Joint Renewed Motion for Preliminary Approval of Class Action Settlement. Based upon the memoranda, exhibits, and all the files and proceedings herein, the Court finds as follows:

1. The Court grants preliminary approval of the Settlement based upon the terms set forth in the Amended Settlement Agreement.
2. The settlement terms set forth in the Amended Settlement Agreement appear to be fair, adequate and reasonable to the Settlement Class, and the Court preliminarily approves the terms of the Amended Settlement Agreement, including:
  - a. The creation of a Settlement Fund of \$285,500.00 should the Court ultimately grant final approval;
  - b. An Incentive Award, which shall not exceed \$5,000 for Plaintiff Brooke Kingston;
  - c. Attorneys' fees, costs, and expenses to Class Counsel, which shall not exceed one-third of the Settlement Fund; and
  - d. Reasonable settlement administration expenses to be drawn from the Settlement Fund.

- e. Defendant shall pay no fee or cost other than paying or causing to be paid \$285,500.00 to the Settlement Fund.

3. This Court approves, as to form and content, the notice of proposed class action settlement (the “Notice”), in substantially the form attached to the Settlement Agreement as Exhibits B, C and D. The Court approves the procedure for Settlement Class Members to opt out of, or object to, the Settlement as set forth in the Settlement Agreement Notice.

4. The Court directs the mailing of the Settlement Class Notice by email to the Settlement Class Members in accordance with the schedule set forth below. The Court finds the dates selected for the distribution of the Notice, as set forth below, meet the requirements of due process and provide the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

<b>Event</b>	<b>Proposed Deadline</b>
Settlement Administrator to disseminate class notice pursuant to Settlement Agreement § 4.2	No later than October 17, 2025
Settlement Administrator to send Reminder Notice via email	Both thirty (30) days prior to the Claims Deadline and seven (7) days prior to the Claims Deadline
Settlement Administrator to provide updated Notice on the settlement website	No later than seven (7) days after entry of Preliminary Approval

5. The Court adopts the following additional dates and deadlines:

- a. The deadline for Settlement Class Members to submit claims shall be February 16, 2026, which is no fewer than fifty-six (56) days following the Final Approval Hearing.
- b. Any Settlement Class Member wishing to be excluded from the Settlement Class shall have until December 1, 2025 to do so, which is no more than 45 days after the dissemination of the class notice and claims forms but no sooner than 14 days after Class Counsel submits papers supporting a Fee Award.
- c. Any Settlement Class Member wishing to object to the terms of the Settlement Agreement shall have until December 1, 2025 to do so, which is no more than 45 days after the dissemination of the class notice and claims forms but no sooner than 14 days after Class Counsel submits papers supporting a Fee Award.
- d. Class Counsel shall file a memorandum of points and authorities in support of their motion for approval of attorneys' fees, costs, and expenses no later than November 17, 2025 (*suggested date 14 days prior to the Objection/Exclusion Deadline*).
- e. Settlement Class Counsel shall file a memorandum of points and authorities in support of the final approval of the Settlement Agreement no later than December 8, 2025, fourteen (14) prior to the Final Approval Hearing.
- f. A final settlement approval fairness hearing on the question of whether the proposed Settlement Agreement, attorneys' fees to Class Counsel, and the Settlement Class Representative's Incentive Award should be finally approved as fair, reasonable and adequate as to the members of the Settlement Class is scheduled for December 22, 2025 at 1:00 p.m. local time.



SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

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**HON.**

Henderson County Circuit Judge