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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LAWRENCE OLIN, HAROLD NYANJOM,  
SHERON SMITH-JACKSON, JANICE VEGA-  
LATKER, MARC BOEHM, and RAVEN  
WINHAM, individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

FACEBOOK, INC.,

Defendant.

Case No. 3:18-cv-01881-RS

**DECLARATION OF NEAL J.  
DECKANT IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Date: July 14, 2022  
Time: 1:30 p.m.  
Court: Courtroom 3, 17th Floor

Hon. Richard Seeborg

**DECLARATION OF NEAL J. DECKANT**

I, Neal J. Deckant, declare as follows:

1. I am an attorney at law licensed to practice in the States of California and New York. I am a partner at Bursor & Fisher, P.A., counsel for Plaintiffs in this action. I am a member of the bar of this Court. I make this declaration in support of Plaintiffs’ motion for preliminary approval of the class action settlement. 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. Pursuant to the terms of the Settlement, Facebook has agreed to substantial changes that achieve the precise relief Plaintiffs sought to accomplish with this litigation: the cessation of Facebook’s practices of call and text log scraping through the Facebook Messenger application, and the deletion of all call and text log data uploaded from persons in the United States using Android devices. Pursuant to the Settlement, absent Settlement Class Members would release claims for declaratory, injunctive, and non-monetary equitable relief only—claims for monetary damages are specifically excluded from the proposed Settlement Class Members’ Released Claims. Service awards and attorneys’ fees and costs that may be awarded will be paid by Facebook.

3. Over the last eight to nine months, my firm has engaged in significant, arm’s-length negotiations with counsel for Defendant, including with the assistance of a certified mediator, Hon. Wayne R. Andersen (Ret.) of JAMS.

4. Thus, the Settlement was reached after said informed, extensive arm’s-length negotiations. First, the Settlement was reached after a thorough investigation into and discovery of the legal and factual issues in the Action. In particular, my firm conducted an extensive pre-suit investigation into the factual underpinnings of the practices challenged in the Action, as well as the applicable law. In addition to these pre-filing efforts, my firm engaged in extensive motion practice and the exchange of hundreds of pages of written discovery requests and responses, including discovery motion practice.

5. My firm also engaged in the review of several rounds of the production of electronic documents, as well as expert discovery into Facebook’s source code regarding the complained-of

1 conduct. The source code review spanned many months and encompassed highly technical  
2 documentation relevant to the alleged data scraping functions and the inner workings of  
3 Facebook's mobile applications.

4 6. Additionally, on June 15, 2021, the parties participated a mediation session before  
5 Judge Andersen. Although the mediation was not successful, it was held only after the exchange of  
6 confidential mediation statements, which discussed the strengths and weaknesses of both Plaintiffs'  
7 allegations and Defendant's potential defenses and relevant documents related thereto. Throughout  
8 the mediation session, counsel vigorously advocated for their respective clients' positions. Only  
9 after many months of subsequent negotiations—with the continued assistance of Judge Andersen—  
10 including numerous phone calls and email exchanges, were counsel able to reach an agreement.

11 7. In sum, the Settlement was reached only after my firm conducted an extensive  
12 factual investigation and discovery into the Defendant's alleged misconduct, and thoroughly  
13 researched the law pertinent to Plaintiffs' and Class Members' claims and Defendant's defenses  
14 thereto. Consequently, my firm had a wealth of information at its disposal before entering into  
15 settlement negotiations, which allowed my firm to adequately assess the strengths and weaknesses  
16 of the case and to balance the benefits of settlement against the risks of further litigation.

17 8. Nothing in the course of the negotiations or in the substance of the proposed  
18 Settlement presents any reason to doubt the Settlement's fairness. Thus, in my professional  
19 opinion, this Settlement is fair, reasonable, and adequate.

20 9. All terms regarding fees and costs were negotiated and agreed to by the parties only  
21 after full agreement was reached as to all other material terms.

22 10. Other than the Settlement Agreement itself, there are no additional agreements to be  
23 identified by Fed. R. Civ. P. 23(e)(2)(C).

24 11. As of May 16, 2022, my firm has billed a total of 1712.1 hours at a blended rate of  
25 \$548 per hour. Accordingly, my firm's lodestar to date is \$1,108,875.00. Should the Court award  
26 the requested attorneys' fees, my firm would receive a negative multiplier based on its current  
27 lodestar. However, my firm anticipates spending 100 additional hours before final approval, thus  
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1 lowering the lodestar multiplier even further.

2 12. My firm has vigorously and competently pursued the Class Members' claims. The  
3 arm's-length settlement negotiations that took place with the assistance of a certified mediator and  
4 the investigation they undertook demonstrate that my firm adequately represent the Class.  
5 Moreover, the named Plaintiffs and my firm have no conflicts of interests with the Class. Rather,  
6 the named Plaintiffs, like each absent Class Member, have a strong interest in proving Defendant's  
7 common course of conduct, and obtaining redress. In pursuing this litigation, my firm, as well as  
8 the named Plaintiffs, have advanced and will continue to advance and fully protect the common  
9 interests of all members of the Class. My firm has extensive experience and expertise in  
10 prosecuting complex class actions. My firm is comprised of active practitioners who are highly  
11 experienced in consumer class action litigation.

12 13. Attached hereto as **Exhibit 1** is a true and correct copy of the Stipulation of Class  
13 Action Settlement and exhibits thereto.

14 14. Attached hereto as **Exhibit 2** is a true and correct copy of the firm resume of Bursor  
15 & Fisher, P.A.

16 I declare under penalty of perjury under the laws of the United States and the States of  
17 California that the foregoing is true and correct. Executed on May 18, 2022 in Walnut Creek,  
18 California.

19 /s/ Neal J. Deckant

20 Neal J. Deckant



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*Attorneys for Defendant Meta Platforms,  
Inc. (formerly Facebook, Inc.)*

*Interim Class Counsel*

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

LAWRENCE OLIN, HAROLD NYANJOM,  
SHERON SMITH-JACKSON, JANICE  
VEGA-LATKER, MARC BOEHM, and  
RAVEN WINHAM, individually and on  
behalf of all others similarly situated,

Case No. 3:18-cv-01881-RS (TSH)

**CLASS ACTION SETTLEMENT  
AGREEMENT AND RELEASE**

Plaintiffs,

Hon. Richard Seeborg

v.

FACEBOOK, INC.,

Defendant.

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1 2018); *Tracy v. Facebook, Inc.*, Case No. 3:18-cv-02128 (filed April 9, 2018); *Sternemann, et al.*  
2 *v. Facebook, Inc.*, Case No. 3:18-cv-02677 (filed May 7, 2018); and *Condelles v. Facebook, Inc.*,  
3 Case No. 3:18-cv-02727 (filed May 9, 2018);

4 3. WHEREAS, the Court related the other four complaints to this Action (*see*  
5 Dkts. 18, 27, 42, 44), and on June 26, 2018, consolidated them and appointed Bursor & Fisher,  
6 P.A. as interim lead counsel (Dkt. 51);

7 4. WHEREAS, on July 13, 2018, the plaintiffs filed a First Amended Consolidated  
8 Class Action Complaint asserting CLRA, UCL, CDAFA, California Constitutional Right to  
9 Privacy, Intrusion Upon Seclusion, Trespass to Personal Property, GBL § 349, and unjust  
10 enrichment claims on behalf of themselves and a proposed class of “all persons in the United States  
11 who installed the Facebook Messenger and Facebook Lite apps for Android, and granted Facebook  
12 permission to access their ‘Contact List’” (*see* Dkt. 52);

13 5. WHEREAS, on December 18, 2018, the Court issued an order granting Meta’s  
14 motion to dismiss the First Amended Consolidated Class Action Complaint, dismissing the claims  
15 under Trespass to Personal Property, UCL, CLRA, and GBL § 349 without leave to amend, and  
16 dismissing all other claims with leave to amend (*see* Dkt. 85);

17 6. WHEREAS, on January 22, 2019, Settlement Class Representatives Lawrence  
18 Olin, Harold Nyanjom, Sheron Smith-Jackson, and Janice Vega-Latker filed a Second Amended  
19 Consolidated Class Action Complaint asserting claims under the CDAFA, California  
20 Constitutional Right to Privacy, Intrusion Upon Seclusion, unjust enrichment, and fraud on behalf  
21 of themselves and a proposed class of “all persons in the United States who installed the Facebook  
22 Messenger and Facebook Lite apps for Android, and granted Facebook permission to access their  
23 ‘Contacts’” (Dkt. 88);

24 7. WHEREAS, on August 29, 2019, the Court issued an order granting in part and  
25 denying in part Meta’s motion to dismiss the Second Amended Consolidated Class Action  
26 Complaint, dismissing the allegations relating to the Facebook Lite application without prejudice  
27 and otherwise denying the motion (*see* Dkt. 128);

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1           8.       WHEREAS, on September 13, 2019, Plaintiffs Williams, Brumfield, and Burnett  
2 voluntarily dismissed their claims pursuant to Federal Rule of Civil Procedure 41(a), which action  
3 was unopposed by Meta (Dkt. 137);

4           9.       WHEREAS, on December 18, 2020, Settlement Class Representatives Lawrence  
5 Olin, Harold Nyanjom, Sheron Smith-Jackson, Janice Vega-Latker, Blake Carlyle, Marc Boehm,  
6 and Raven Winham filed a Third Amended Consolidated Class Action Complaint asserting claims  
7 under the CDAFA, California Constitutional Right to Privacy, Intrusion Upon Seclusion, unjust  
8 enrichment, fraud, and the California Invasion of Privacy Act (“CIPA”; Cal. Pen. Code §§ 631,  
9 632, 635) on behalf of themselves and a proposed class of “all persons in the United States who  
10 installed the Facebook Messenger app for Android, and granted Facebook permission to access  
11 their ‘Contacts’” (Dkt. 184);

12           10.      WHEREAS, on May 14, 2021, the Court issued an order granting Meta’s motion  
13 to dismiss the Third Amended Consolidated Class Action Complaint, dismissing the CIPA claims  
14 with leave to amend within 21 days (*see* Dkt. 208), and Settlement Class Representatives did not  
15 file an amended complaint to renew their CIPA claims;

16           11.      WHEREAS, on September 7, 2021, Plaintiff Carlyle voluntarily dismissed his  
17 claims pursuant to Federal Rule of Civil Procedure 41(a), which action was unopposed by Meta  
18 (Dkt. 217);

19           12.      WHEREAS, the Parties engaged in extensive discovery, including inspection by  
20 Settlement Class Representatives’ software expert of the source code relating to uploading of call  
21 and text logs through the Messenger for Android app, including full revision history of the code;  
22 the production of documents reflecting Settlement Class Representatives’ call and text history  
23 uploading and settings, and other internal documents regarding the in-app consent screen and  
24 functionality of the feature at issue; informal conferences and discussions; substantial discovery  
25 motion practice; and the exchange of written discovery requests and responses;

26           13.      WHEREAS, the Parties agreed to mediate their dispute, participated in a mediation  
27 with the Honorable Wayne Andersen (Ret. N.D. Ill.) on June 15, 2021, which was unsuccessful,  
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1 and thereafter engaged in continued arm's length negotiations through Judge Andersen,  
2 culminating in a mediator's proposal approximately eight months later that both sides accepted;

3 14. WHEREAS, Settlement Class Representatives believe that their claims are  
4 meritorious and that they would be successful at trial, but nevertheless agreed to resolve the Action  
5 on the terms set forth in this Settlement Agreement solely to eliminate the uncertainties and delay  
6 of further protracted litigation;

7 15. WHEREAS, Meta denies the allegations in the Third Amended Complaint, denies  
8 that it has engaged in any wrongdoing, denies that Settlement Class Representatives' allegations  
9 state valid claims, denies that the Court has subject matter jurisdiction over Plaintiffs' claims,  
10 denies that Plaintiffs can maintain a class action for purposes of litigation, and vigorously disputes  
11 that Settlement Class Representatives and the Class are entitled to any relief, but Meta nevertheless  
12 agreed to resolve the Action on the terms set forth in this Settlement Agreement solely to eliminate  
13 the uncertainties, burden, expense, and delay of further protracted litigation;

14 16. WHEREAS, Settlement Class Representatives, Meta, and the Settlement Class  
15 intend for this Settlement Agreement fully and finally to compromise, resolve, discharge, and settle  
16 the Released Claims, as defined and on the terms set forth below, and to the full extent reflected  
17 herein, subject to the approval of the Court; and

18 17. NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND  
19 AGREED, by the Settlement Class Representatives, for themselves and on behalf of the Settlement  
20 Class, and by Meta that, subject to the approval of the Court, the Action shall be settled,  
21 compromised, and dismissed, on the merits and with prejudice, and the Released Claims shall be  
22 finally and fully compromised, settled, and dismissed as to the Released Parties, in the manner and  
23 upon the terms and conditions hereafter set forth in this Agreement.

24 **II. DEFINITIONS**

25 18. In addition to the terms defined elsewhere in this Agreement, the following terms,  
26 used in this Settlement Agreement, shall have the meanings specified below:

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1           19.     “Attorneys’ Fees and Costs Award” means such funds as may be awarded by the  
2 Court to Class Counsel to compensate Class Counsel for its fees, costs, and expenses in connection  
3 with the Action and the Settlement, as described in Paragraphs 61-63.

4           20.     “Business Days” means Monday, Tuesday, Wednesday, Thursday, and Friday,  
5 excluding holidays observed by the federal government.

6           21.     “Call and Text History Data” means (a) the following information for all calls on  
7 an Android device: telephone number; contact name (if available); whether the call was incoming,  
8 outgoing or missed; call time and duration; and aggregate counts of calls; and (b) the following  
9 information for all texts (SMS or MMS messages) on an Android device: telephone number;  
10 contact name (if available); whether the text was sent or received; the text time; and aggregate  
11 counts of texts. Call and Text History Data does not include any content of the call or text.

12           22.     “Class Counsel” means the law firm of Bursor & Fisher, P.A. and Plaintiffs’  
13 attorneys of record in this Action who are members of the firm.

14           23.     “Court” means the United States District Court for the Northern District of  
15 California and the Judge assigned to the Action, United States District Judge Richard Seeborg.

16           24.     “Defense Counsel” means the law firm of Latham & Watkins LLP and all of  
17 Meta’s attorneys of record in the Action.

18           25.     “Effective Date” means seven (7) days after which both of the following events  
19 have occurred: (i) the Final Approval Order and Final Judgment have been entered and (ii) the  
20 Final Approval Order and Final Judgment have become Final.

21           26.     “Meta” means (i) Meta Platforms, Inc. and its past, present, and future parents,  
22 subsidiaries, affiliates, divisions, joint ventures, licensees, franchisees, and any other legal entities,  
23 whether foreign or domestic, that are owned or controlled by Meta, and (ii) the past, present, and  
24 future shareholders, officers, directors, members, agents, employees, independent contractors,  
25 consultants, representatives, fiduciaries, insurers, attorneys, legal representatives, predecessors,  
26 successors, and assigns of the entities in Part (i) of this definition.

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1           27.     “Final Approval Hearing” means the hearing that is to take place after the entry of  
2 the Preliminary Approval Order for purposes of: (i) entering the Final Approval Order and Final  
3 Judgment and dismissing the Action with prejudice; (ii) determining whether the Settlement  
4 should be approved as fair, reasonable, and adequate pursuant to Federal Rule of Civil  
5 Procedure 23; (iii) ruling upon an application for Service Awards by the Settlement Class  
6 Representatives; (iv) ruling upon an application by Class Counsel for an Attorneys’ Fees and Costs  
7 Award; and (v) entering any final order awarding Attorneys’ Fees and Costs and Service Awards.  
8 The Parties shall request that the Court schedule the Final Approval Hearing for a date that is in  
9 compliance with the provisions of 28 U.S.C. § 1715(d).

10           28.     “Final” means, with respect to any judicial ruling or order, that: (1) if no appeal,  
11 motion for reconsideration, reargument and/or rehearing, or petition for writ of certiorari has been  
12 filed, the time has expired to file such an appeal, motion, and/or petition; or (2) if an appeal, motion  
13 for reconsideration, reargument and/or rehearing, or petition for a writ of certiorari has been filed,  
14 the judicial ruling or order has been affirmed with no further right of review, or such appeal,  
15 motion, and/or petition has been denied or dismissed with no further right of review. Any  
16 proceeding or order, or any appeal or petition for a writ of certiorari pertaining solely to any  
17 application for attorneys’ fees or expenses will not in any way delay or preclude the Judgment  
18 from becoming Final.

19           29.     “Final Approval Order and Final Judgment” means the order finally approving the  
20 terms of this Settlement Agreement and a separate judgment to be entered by the Court after the  
21 Final Approval Hearing, pursuant to Federal Rule of Civil Procedure 58(a), dismissing the Action  
22 against Meta with prejudice, without material variation from the Parties’ agreed-upon final  
23 approval order and judgment attached hereto as Exhibit A.

24           30.     “Legally Authorized Representative” means an administrator/administratrix,  
25 personal representative, or executor/executrix of a deceased Settlement Class Member’s estate;  
26 guardian, conservator, or next friend of an incapacitated Settlement Class Member; or any other  
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1 legally appointed Person responsible for handling the business affairs of a Settlement Class  
2 Member.

3 31. “Person” means any individual, corporation, partnership, association, affiliate, joint  
4 stock company, estate, trust, unincorporated association, entity, government and any political  
5 subdivision thereof, or any other type of business or legal entity.

6 32. “Preliminary Approval Order” means the order that preliminarily approves the  
7 Settlement and sets a date for the Final Approval Hearing, without material variation from the  
8 Parties’ agreed-upon proposed preliminary approval order attached hereto as Exhibit B. Entry of  
9 the Preliminary Approval Order shall constitute preliminary approval of the Settlement  
10 Agreement.

11 33. “Releases” mean the releases and waivers set forth in this Settlement Agreement  
12 and in the Final Approval Order and Final Judgment. The Releases are a material part of the  
13 Settlement for Meta. The Releases shall be construed as broadly as possible to effect complete  
14 finality over this Action involving claims that result from, arise out of, are based on, or relate in  
15 any way to the practices and claims that were alleged in the Action.

16 34. “Released Claims” include Settlement Class Representatives’ Released Claims and  
17 Settlement Class Members’ Released Claims.

18 35. “Released Parties” means (i) Meta and its past, present, and future parents,  
19 subsidiaries, affiliates, divisions, joint ventures, licensees, franchisees, and any other legal entities,  
20 whether foreign or domestic, that are owned or controlled by Meta; and (ii) the past, present, and  
21 future shareholders, officers, directors, members, agents, employees, independent contractors,  
22 consultants, administrators, representatives, fiduciaries, insurers, attorneys, legal representatives,  
23 advisors, creditors, predecessors, successors, and assigns of the entities in Part (i) of this Paragraph.

24 36. “Releasing Parties” means Settlement Class Members, and each of their heirs,  
25 estates, trustees, principals, beneficiaries, guardians, executors, administrators, representatives,  
26 agents, attorneys, partners, successors, predecessors-in-interest, and assigns and/or anyone  
27 claiming through them or acting or purporting to act for them or on their behalf.

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1           37.     “Service Award” means the amount approved by the Court to be paid to the  
2 Settlement Class Representatives as described further in Paragraph 64.

3           38.     “Settlement” means the settlement of the Action between and among the Settlement  
4 Class Representatives, the Settlement Class Members, and Meta, as set forth in this Settlement  
5 Agreement, including all attached Exhibits (which are an integral part of this Settlement  
6 Agreement and are incorporated in their entirety by reference).

7           39.     “Settlement Class” has the meaning set forth in Paragraph 45.

8           40.     “Settlement Class Member(s)” means any and all persons who fall within the  
9 definition of the Settlement Class.

10          41.     “Settlement Class Representatives” means Plaintiffs Lawrence Olin, Harold  
11 Nyanjom, Sheron Smith-Jackson, Janice Vega-Latker, Marc Boehn and Raven Winham.

12          42.     “Settlement Class Representatives’ Releasing Parties” means each Settlement  
13 Class Representative, and each of his heirs, estates, trustees, principals, beneficiaries, guardians,  
14 executors, administrators, representatives, agents, attorneys, insurers, subrogees, partners,  
15 successors, predecessors-in-interest, and assigns and/or anyone other than Class Members  
16 claiming through them or acting or purporting to act for them or on their behalf.

17 **III. SETTLEMENT CLASS CERTIFICATION**

18          43.     For purposes of settlement only, the Parties agree to seek provisional certification  
19 of the Settlement Class, pursuant to Federal Rule of Civil Procedure 23(b)(2).

20          44.     The Parties further agree that the Court should make preliminary findings and enter  
21 the Preliminary Approval Order granting provisional certification of the Settlement Class subject  
22 to the final findings and approval in the Final Approval Order and Final Judgment, and appointing  
23 Settlement Class Representatives as the representatives of the Settlement Class and Class Counsel  
24 as counsel for the Settlement Class.

25          45.     For purposes of the provisional certification, the Settlement Class shall be defined  
26 as follows:

27                   All persons in the United States who installed the Facebook Messenger and  
28                   Facebook Lite apps for Android, and granted Meta permission to access their

1 contacts.

2 46. Excluded from the Settlement Class are (i) all Persons who are directors, officers,  
3 and agents of Meta or its subsidiaries and affiliated companies or are designated by Meta as  
4 employees of Meta or its subsidiaries and affiliated companies; and (ii) the Court, the Court's  
5 immediate family, and Court staff, as well as any appellate court to which this matter is ever  
6 assigned, and its immediate family and staff.

7 47. Meta does not consent to certification of the Settlement Class (or to the propriety  
8 of class treatment) for any purpose other than to effectuate the settlement of this Action. Meta's  
9 agreement to provisional certification does not constitute an admission of wrongdoing, fault,  
10 liability, or damage of any kind to Settlement Class Representatives or any of the provisional  
11 Settlement Class Members.

12 48. If this Settlement Agreement is terminated pursuant to its terms, disapproved by  
13 any court (including any appellate court), and/or not consummated for any reason, or the Effective  
14 Date for any reason does not occur, the order certifying the Settlement Class for purposes of  
15 effectuating the Settlement, and all preliminary and/or final findings regarding that class  
16 certification order, shall be automatically vacated upon notice of the same to the Court, the Action  
17 shall proceed as though the Settlement Class had never been certified pursuant to this Settlement  
18 Agreement and such findings had never been made, and the Action shall return to the procedural  
19 posture on March 3, 2022, in accordance with this Paragraph. No Party nor counsel shall refer to  
20 or invoke the vacated findings and/or order relating to class settlement or Rule 23 of the Federal  
21 Rules of Civil Procedure if this Settlement Agreement is not consummated and the Action is later  
22 litigated and contested by Meta under Rule 23 of the Federal Rules of Civil Procedure.

23 **IV. SETTLEMENT CONSIDERATION AND INJUNCTIVE RELIEF**

24 49. In consideration for the dismissal of the Action with prejudice and the releases  
25 provided in this Settlement Agreement, Meta agrees to the following:

26 a) After the filing of this lawsuit, Meta ceased uploading Call and Text History  
27 Data from persons in the United States through the Facebook Messenger or Facebook Lite apps  
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1 for Android. Meta confirms that it has not uploaded Call and Text History Data from persons in  
2 the United States through the Facebook Messenger or Facebook Lite apps for Android since March  
3 2019.

4           b) Meta shall delete all Call and Text History Data uploaded from persons in  
5 the United States through the Facebook Messenger or Facebook Lite apps for Android devices that  
6 Meta is not otherwise legally obligated to preserve by jurisdictions outside of the United  
7 States within 45 days of the effective date (which shall be seven (7) days after the final settlement  
8 approval order and final judgment have been entered and become Final). Any data retained  
9 because of continuing legal obligations will be quarantined in access-controlled data warehouse  
10 tables that are segregated from any systems used or accessed in the ordinary course of Meta's  
11 business, and access to this data is limited to Meta's Legal team. Any such data will be preserved  
12 and used solely in connection with any legal obligations and not for any business use, and Meta  
13 will delete all such data within 45 days of the expiration of any legal obligation to preserve it.

14 **V. SUBMISSION OF THE SETTLEMENT AGREEMENT TO THE COURT FOR**  
15 **REVIEW AND APPROVAL**

16           50. Solely for purposes of implementing this Agreement and effectuating the proposed  
17 Settlement, the Parties agree and stipulate that Class Counsel shall submit to the Court a motion  
18 for preliminary approval of the settlement together with the [Proposed] Preliminary Approval  
19 Order (Exhibit B) and [Proposed] Final Approval Order and Final Judgment (Exhibit A).

20           51. Among other things, the Preliminary Approval Order shall:

21           a) find that the requirements for provisional certification of the Settlement  
22 Class have been satisfied, appointing Settlement Class Representatives as the representatives of  
23 the provisional Settlement Class and Class Counsel as counsel for the provisional Settlement Class;

24           b) find that the CAFA Notice sent by Meta complied with 28 U.S.C. § 1715  
25 and all other provisions of the Class Action Fairness Act of 2005;

1 c) preliminarily enjoin all Settlement Class Members and their Legally  
2 Authorized Representatives from filing or otherwise participating in any other suit based on the  
3 Released Claims;

4 d) establish dates by which the Parties shall file and serve all papers in support  
5 of the application for final approval of the Settlement;

6 e) schedule the Final Approval Hearing on a date ordered by the Court,  
7 provided in the Preliminary Approval Order, and in compliance with applicable law, to determine  
8 whether the Settlement should be approved as fair, reasonable, adequate, and to determine whether  
9 a Final Approval Order and Final Judgment should be entered dismissing the Action with  
10 prejudice;

11 f) provide that all Settlement Class Members will be bound by the Final  
12 Approval Order and Final Judgment dismissing the Action with prejudice; and

13 g) pending the Final Approval Hearing, stay all proceedings in the Action,  
14 other than the proceedings necessary to carry out or enforce the terms and conditions of this  
15 Settlement Agreement and Preliminary Approval Order.

16 52. In advance of the Final Approval Hearing, Class Counsel shall request entry of a  
17 Final Approval Order and Final Judgment, without material variation from Exhibit A, the entry of  
18 which is a material condition of this Settlement Agreement, and that shall, among other things:

19 a) find that the Court has personal jurisdiction over all Settlement Class  
20 Members, that the Court has subject matter jurisdiction over the claims asserted in the Action, and  
21 that the venue is proper;

22 b) finally approve this Settlement Agreement and the Settlement pursuant to  
23 Rule 23 of the Federal Rules of Civil Procedure;

24 c) certify the Settlement Class under Federal Rule of Civil Procedure 23(b)(2)  
25 for purposes of settlement only;

26 d) find that direct notice to the Rule 23(b)(2) class is not necessary, and that  
27 notice on Class Counsel's public website, as provided in this Settlement Agreement, is sufficiently  
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1 within the range of reasonableness;

2 e) incorporate the Releases set forth in this Settlement Agreement and make  
3 the Releases effective as of the Effective Date;

4 f) issue the injunctive relief described in this Settlement Agreement;

5 g) authorize the Parties to implement the terms of the Settlement;

6 h) dismiss the Action with prejudice and enter a separate judgment pursuant to  
7 Rule 58 of the Federal Rules of Civil Procedure; and

8 i) determine that the Agreement and the Settlement provided for herein, and  
9 any proceedings taken pursuant thereto, are not, and should not in any event be offered, received,  
10 or construed as evidence of, a presumption, concession, or an admission by any Party of liability  
11 or non-liability or of the certifiability or non-certifiability of a litigation class, or of any  
12 misrepresentation or omission in any statement or written document approved or made by any  
13 Party; provided, however, that reference may be made to this Agreement and the Settlement  
14 provided for herein in such proceedings as may be necessary to effectuate the provisions of this  
15 Agreement, as further set forth in this Agreement.

16 **VI. RELEASES AND DISMISSAL OF ACTION**

17 53. Upon the Effective Date, Settlement Class Representatives' Releasing Parties will  
18 be deemed to have, and by operation of the Final Approval Order and Final Judgment will have  
19 fully, finally, and forever released, relinquished, and discharged any and all past, present, and  
20 future claims, actions, demands, causes of action, suits, debts, obligations, damages, rights or  
21 liabilities, of any nature and description whatsoever, known or unknown, recognized now or  
22 hereafter, existing or preexisting, expected or unexpected, pursuant to any theory of recovery  
23 (including, but not limited to, those based in contract or tort, common law or equity, federal, state,  
24 or local law, statute, ordinance, or regulation), against the Released Parties, from the Settlement  
25 Class Representatives' first interaction with Meta up until and including the Effective Date, that  
26 result from, arise out of, are based on, or relate in any way to the practices and claims that were  
27 alleged in the Action, for any type of relief that can be released as a matter of law, including,

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1 without limitation, claims for monetary relief, damages (whether compensatory, consequential,  
2 punitive, exemplary, liquidated, and/or statutory), costs, penalties, interest, attorneys' fees,  
3 litigation costs, restitution, or equitable relief ("Settlement Class Representatives' Released  
4 Claims"). Settlement Class Representatives' Releasing Parties are forever enjoined from taking  
5 any action seeking any relief against the Released Parties based on any of Settlement Class  
6 Representatives' Released Claims.

7 54. Upon the Effective Date, the Releasing Parties will be deemed to have, and by  
8 operation of the Final Approval Order and Final Judgment will have fully, finally, and forever  
9 released, relinquished, and discharged any and all past, present, and future claims, actions,  
10 demands, causes of action, suits, debts, obligations, and rights or liabilities for injunctive and/or  
11 declaratory relief, of any nature and description whatsoever, known or unknown, existing or  
12 preexisting, recognized now or hereafter, expected or unexpected, pursuant to any theory of  
13 recovery (including, but not limited to, those based in contract or tort, common law or equity,  
14 federal, state, or local law, statute, ordinance, or regulation) against the Released Parties, from the  
15 Releasing Parties' first interaction with Meta up until and including the Effective Date, that result  
16 from, arise out of, are based on, or relate in any way to the practices and claims that were alleged  
17 in the Action ("Settlement Class Members' Released Claims"), except that, notwithstanding the  
18 foregoing, the Releasing Parties do not release claims for monetary relief or damages. The  
19 Releasing Parties are forever enjoined from taking any action seeking injunctive and/or declaratory  
20 relief against the Released Parties based on any Settlement Class Members' Released Claims.

21 55. Upon the Effective Date, Meta will be deemed to have, and by operation of the  
22 Final Approval Order and Final Judgment will have fully, finally, and forever released,  
23 relinquished, and discharged any and all past, present, and future claims, actions, demands, causes  
24 of action, suits, debts, obligations, and rights or liabilities for injunctive and/or declaratory relief,  
25 of any nature and description whatsoever, known or unknown, existing or preexisting, recognized  
26 now or hereafter, expected or unexpected, pursuant to any theory of recovery (including, but not  
27 limited to, those based in contract or tort, common law or equity, federal, state, or local law, statute,  
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1 ordinance, or regulation) against the Settlement Class Representatives’ Releasing Parties, from the  
2 Settlement Class Representatives’ first interaction with Meta up until and including the Effective  
3 Date, that result from, arise out of, are based on, or relate in any way to the practices and claims  
4 that were alleged in the Action (“Meta’s Released Claims”). Meta is forever enjoined from taking  
5 any action seeking any relief against the Settlement Class Representatives’ Releasing Parties based  
6 on any of Meta’s Released Claims.

7           56. After entering into this Settlement Agreement, the Parties may discover facts other  
8 than, different from, or in addition to, those that they know or believe to be true with respect to the  
9 claims released by this Settlement Agreement, but they intend to release fully, finally and forever  
10 the Released Claims, and in furtherance of such intention, the Releases will remain in effect  
11 notwithstanding the discovery or existence of any such additional or different facts. With respect  
12 to the Released Claims, Settlement Class Representatives (on behalf of themselves and the  
13 Settlement Class Members), through their counsel, expressly, knowingly, and voluntarily waive  
14 any and all provisions, rights, and benefits conferred by California Civil Code Section 1542 and  
15 any statute, rule, and legal doctrine similar, comparable, or equivalent to California Civil Code  
16 Section 1542, which reads as follows:

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

21           57. The Parties acknowledge, and by operation of law shall be deemed to have  
22 acknowledged, that the waiver of the provisions of Section 1542 of the California Civil Code (and  
23 any similar State laws) with respect to the claims released by this Settlement Agreement was  
24 separately bargained for and was a key element of the Settlement.

25           58. By operation of the Final Approval Order and Final Judgment, the Action will be  
26 dismissed with prejudice.

1           59.     Upon the Effective Date: (a) this Settlement Agreement shall be the exclusive  
2 remedy for any and all Released Claims of Class Representatives and Settlement Class Members;  
3 and (b) Class Representatives and Settlement Class Members stipulate to be and shall be  
4 permanently barred and enjoined by Court order from initiating, asserting, or prosecuting against  
5 Released Parties in any federal or state court or tribunal any and all Released Claims.

6 **VII. NOTICE PURSUANT TO 28 U.S.C. § 1715**

7           60.     Meta shall serve notice of the Settlement Agreement that meets the requirements of  
8 28 U.S.C. § 1715, on the appropriate federal and state officials no later than ten (10) days following  
9 the filing of this Settlement Agreement with the Court. The Parties agree that direct notice to the  
10 class is not necessary in this action. *See, e.g., Stathakos v. Columbia Sportswear Co., et al.*, No  
11 .4:15-cv-04543-YGR, 2018 WL 582564, at \*3-4 (N.D. Cal. Jan. 25, 2018); *Lilly v. Jamba Juice*  
12 *Co.*, No. 13-cv-02998-JST, 2015 WL 1248027, at \*9 (N.D. Cal. Mar. 18, 2015); *Kim v. Space*  
13 *Pencil, Inc.*, No. 11-cv-03796-LB, 2012 WL 5948951, at \*4 (N.D. Cal. Nov. 28, 2012). Class  
14 Counsel shall post information about the settlement—including the Settlement Agreement,  
15 Plaintiffs’ motion for preliminary approval, Plaintiffs’ motion for attorneys’ fees and incentive  
16 awards, any opposition or reply papers related to these motions—on Class Counsel’s public  
17 website (<http://www.https://www.bursor.com/>).

18 **VIII. ATTORNEYS’ FEES AND COSTS**

19           61.     Class Counsel may apply to the Court for an award of reasonable attorneys’ fees  
20 and costs not to exceed \$1,080,000. Class Counsel approximates that it will seek \$76,937.84 in  
21 costs and \$1,003,062.16 in fees, but may apply in different amounts not to exceed \$1,080,000.  
22 Meta has been provided a copy of summaries of Class Counsel’s time records, and as a result of  
23 that review, Meta will take no position on Class Counsel’s application and agrees to pay the  
24 amount of fees and costs determined by the Court. These terms regarding fees and costs were  
25 negotiated and agreed to by the Parties only after full agreement was reached as to all other material  
26 terms.

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1           62. Any Attorneys' Fees and Costs Award, as awarded by the Court, shall be payable  
2 by Meta, as ordered, within the later of (a) thirty (30) calendar days after the Effective Date, or  
3 (b) ten (10) Business Days after Class Counsel, following the Effective Date, has transmitted to  
4 Meta instructions for payment.

5           63. Class Counsel shall have the sole and absolute discretion to allocate the Attorneys'  
6 Fees and Costs Award amongst Class Counsel and any other attorneys. Meta shall have no liability  
7 or other responsibility for allocation of any such Attorneys' Fees and Costs awarded. The amount  
8 ordered by the Court shall be the sole monetary obligation paid by Meta pursuant to this Settlement  
9 Agreement, and in no event shall Meta be obligated to pay any amount in excess of \$1,089,000.

10           64. The Parties agree that the Class Representatives may apply to the Court for a  
11 Service Award to each of the Class Representatives, each of which shall not exceed \$1,500, for  
12 their services as class representatives. The Parties agree that the decision whether or not to award  
13 any such payment, and the amount of that payment, rests in the exclusive discretion of the Court.  
14 Meta agrees to pay the amount determined by the Court. Class Representatives understand and  
15 acknowledge that they may receive no monetary payment, and their agreement to the Settlement  
16 is not conditioned on the possibility of receiving monetary payment. Any Service Awards, as  
17 awarded by the Court, shall be payable by Meta as ordered, within the later of (a) thirty (30)  
18 calendar days after the Effective Date, or (b) ten (10) Business Days after Class Counsel, following  
19 the Effective Date, has transmitted to Meta instructions for payment.

20 **IX. MODIFICATION OR TERMINATION OF SETTLEMENT AGREEMENT AND**  
21 **META'S RESERVATION OF RIGHTS**

22           65. This Settlement Agreement may be amended or modified only by a written  
23 instrument signed by or on behalf of all Parties or their respective successors-in-interest and  
24 approval of the Court; provided, however that, after entry of the Final Approval Order and Final  
25 Judgment, the Parties may by written agreement effect such amendments, modifications, or  
26 expansions of this Settlement Agreement and its implementing documents (including all  
27 Exhibits hereto) without further approval by the Court if such changes are consistent with the  
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1 Court's Final Approval Order and Final Judgment and do not materially alter, reduce, or limit the  
2 rights of Settlement Class Members under this Settlement Agreement.

3 66. This Settlement Agreement and any Exhibits attached hereto constitute the entire  
4 agreement among the Parties, and no representations, warranties, or inducements have been made  
5 to any Party concerning this Settlement Agreement or its Exhibits other than the representations,  
6 warranties, and covenants covered and memorialized in such documents.

7 67. In the event the terms or conditions of this Settlement Agreement are materially  
8 modified by any court, any Party in its sole discretion to be exercised within thirty (30) days after  
9 such modification may declare this Settlement Agreement null and void. For purposes of this  
10 Paragraph, modifications include any modifications to the definitions of the Settlement Class,  
11 Settlement Class Members, Released Parties, or Released Claims, any modifications to the terms  
12 of the Settlement consideration described in Paragraph 49 and/or any requirement of notice to the  
13 Settlement Class. In the event of any material modification by any court, and in the event the  
14 Parties do not exercise their unilateral option to withdraw from this Settlement Agreement pursuant  
15 to this Paragraph, the Parties shall meet and confer within seven (7) days of such ruling to attempt  
16 to reach an agreement as to how best to effectuate the court-ordered modification.

17 68. In the event that a Party exercises his/her/its option to withdraw from and terminate  
18 this Settlement Agreement pursuant to Paragraph 67, then the Settlement proposed herein shall  
19 become null and void and shall have no force or effect, the Parties shall not be bound by this  
20 Settlement Agreement, and the Parties will be returned to their respective positions existing on  
21 March 3, 2022.

22 69. If this Settlement Agreement is not approved by the Court or the Settlement  
23 Agreement is terminated or fails to become effective in accordance with the terms of this  
24 Settlement Agreement, the Parties will be restored to their respective positions in the Action on  
25 March 3, 2022. In such event, the terms and provisions of this Settlement Agreement and the  
26 memorandum of understanding will have no further force and effect with respect to the Parties and  
27 will not be used in this Action or in any other proceeding for any purpose, and any Judgment or  
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1 order entered by the Court in accordance with the terms of this Settlement Agreement will be  
2 treated as vacated.

3 70. The procedure for and the allowance or disallowance by the Court of any  
4 application for attorneys' fees, costs, expenses, and/or reimbursement to be paid to Class Counsel,  
5 and the procedure for any payment to Class Representatives, are not part of the settlement of the  
6 Released Claims as set forth in this Settlement Agreement, and are to be considered by the Court  
7 separately from the Court's consideration of the fairness, reasonableness, and adequacy of the  
8 settlement of the Released Claims as set forth in this Settlement Agreement. Any such separate  
9 order, finding, ruling, holding, or proceeding relating to any such applications for Attorneys' Fees  
10 and Costs and/or payment to Class Representatives, or any separate appeal from any separate  
11 order, finding, ruling, holding, or proceeding relating to them or reversal or modification of them,  
12 shall not operate to terminate or cancel this Settlement Agreement or otherwise affect or delay the  
13 finality of the Final Approval Order and Final Judgment approving the Settlement. The terms of  
14 this Agreement relating to the Attorneys' Fees and Costs Award and Service Awards were  
15 negotiated and agreed to by the Parties only after full agreement was reached as to all other material  
16 terms of the proposed Settlement, including, but not limited to, any terms relating to the relief to  
17 the Settlement Class.

18 71. Meta denies the material factual allegations and legal claims asserted in the Action,  
19 including any and all charges of wrongdoing or liability arising out of any of the conduct,  
20 statements, acts or omissions alleged in the Action. Similarly, this Settlement Agreement provides  
21 for no admission of wrongdoing or liability by any of the Released Parties. This Settlement is  
22 entered into solely to eliminate the uncertainties, burdens, and expenses of protracted litigation.  
23 For the avoidance of doubt, Meta does not acknowledge the propriety of certifying the Settlement  
24 Class for any purpose other than to effectuate the Settlement of the Action. If this Settlement  
25 Agreement is terminated pursuant to its terms, or the Effective Date for any reason does not occur,  
26 Meta does not waive, but rather expressly retains and reserves, all rights it had prior to the  
27 execution of this Settlement Agreement to challenge all claims and allegations in the Action upon  
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1 all procedural and factual grounds, including, without limitation, the right to challenge the  
2 certifiability of any class claims certified in the Action, and to assert any and all other potential  
3 defenses or privileges that were available to it at that time, including but not limited to challenging  
4 the Court's subject matter jurisdiction over any claims asserted in the Action. Meta's agreement  
5 to this Settlement does not constitute an admission that certification is appropriate outside of the  
6 context of this Settlement. The Settlement Class Representatives and Class Counsel agree that  
7 Meta retains and reserves these rights, and agree not to take a position to the contrary. Class  
8 Counsel shall not refer to or invoke Meta's decision to accept the certified class for purposes of  
9 settlement if the Effective Date does not occur and the Action is later litigated and certification is  
10 contested by Meta under Rule 23 of the Federal Rules of Civil Procedure.

11 **X. MISCELLANEOUS PROVISIONS**

12 72. The Parties intend the Settlement Agreement to be a final and complete resolution  
13 of all disputes between them with respect to the Action. The Settlement Agreement compromises  
14 claims that are contested and will not be deemed an admission by Meta or Class Representatives  
15 as to the merits of any claim or defense.

16 73. Unless otherwise specifically provided herein, all notices, demands, or other  
17 communications given hereunder shall be sent by email and First Class mail to the following:

18 To Class Representatives and the Settlement Class:

19 L. Timothy Fisher  
20 ltfisher@bursor.com  
21 Neal J. Deckant  
22 ndeckant@bursor.com  
23 Bursor & Fisher, P.A.  
24 1990 N. California Blvd.  
25 Walnut Creek, CA 94596

24 To Counsel for Meta:

25 Elizabeth L. Deeley  
26 elizabeth.deeley@lw.com  
27 Nicole C. Valco  
28 nicole.valco@lw.com  
Latham & Watkins LLP  
505 Montgomery Street, Suite 2000  
San Francisco, CA 94111

1           74. All of the Exhibits to this Agreement are an integral part of the Settlement and are  
2 incorporated by reference as though fully set forth herein.

3           75. The Parties agree that the recitals are contractual in nature and form a material part  
4 of this Settlement Agreement.

5           76. No extrinsic evidence or parol evidence shall be used to interpret, explain, construe,  
6 contradict, or clarify this Agreement, its terms, the intent of the Parties or their counsel, or the  
7 circumstances under which this Settlement Agreement was made or executed. This Settlement  
8 Agreement supersedes all prior negotiations and agreements. The Parties expressly agree that the  
9 terms and conditions of this Settlement Agreement will control over any other written or oral  
10 agreements.

11           77. Unless otherwise noted, all references to “days” in this Agreement shall be to  
12 calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or  
13 federal legal holiday, such date or deadline shall be on the first Business Day thereafter.

14           78. The Settlement Agreement, the Settlement, all documents, orders, and other  
15 evidence relating to the Settlement, the fact of their existence, any of their terms, any press release  
16 or other statement or report by the Parties or by others concerning the Settlement Agreement, the  
17 Settlement, their existence, or their terms, any negotiations, proceedings, acts performed, or  
18 documents drafted or executed pursuant to or in furtherance of the Settlement Agreement or the  
19 Settlement shall not be offered, received, deemed to be, used as, construed as, and do not constitute  
20 a presumption, concession, admission, or evidence of (i) the validity of any Released Claims or of  
21 any liability, culpability, negligence, or wrongdoing on the part of the Released Parties; (ii) the  
22 Court’s subject matter jurisdiction over any Released Claims; (iii) any fact alleged, defense  
23 asserted, or any fault, misrepresentation, or omission by the Released Parties; (iv) the propriety of  
24 certifying a litigation class or any decision by any court regarding the certification of a class, and/or  
25 (v) whether the consideration to be given in this Settlement Agreement represents the relief that  
26 could or would have been obtained through trial in the Action, in any trial, civil, criminal,  
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1 administrative, or other proceeding of the Action or any other action or proceeding in any court,  
2 administrative agency, or other tribunal.

3 79. The Parties to this Action or any other Released Parties shall have the right to file  
4 the Settlement Agreement and/or the Final Approval Order and Final Judgment in any action that  
5 may be brought against them in order to support a defense or counterclaim based on principles of  
6 res judicata, collateral estoppel, release, good-faith settlement, judgment bar, reduction, or any  
7 other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

8 80. The Parties agree that the consideration provided to the Settlement Class and the  
9 other terms of the Settlement Agreement were negotiated at arm's length, in good faith by the  
10 Parties, and reflect a settlement that was reached voluntarily, after consultation with competent  
11 legal counsel, and with the assistance of an independent, neutral mediator.

12 81. The Class Representatives and Class Counsel have concluded that the Settlement  
13 set forth herein constitutes a fair, reasonable, and adequate resolution of the claims that the Class  
14 Representatives asserted against Meta, including the claims on behalf of the Settlement Class, and  
15 that it promotes the best interests of the Settlement Class.

16 82. To the extent permitted by law, all agreements made and orders entered during the  
17 course of the Action relating to the confidentiality of information shall survive this Settlement  
18 Agreement.

19 83. The waiver by one Party of any breach of this Settlement Agreement by any other  
20 Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement  
21 Agreement.

22 84. This Settlement Agreement may be executed in counterparts, each of which shall  
23 be deemed an original and all of which, when taken together, shall constitute one and the same  
24 instrument. Signatures submitted by email or facsimile shall also be considered originals. The  
25 date of execution shall be the latest date on which any Party signs this Settlement Agreement.

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1           85.     The Parties hereto and their respective counsel agree that they will use their best  
2 efforts to obtain all necessary approvals of the Court required by this Settlement Agreement,  
3 including to obtain a Final Approval Order and Final Judgment approving the Settlement.

4           86.     This Settlement Agreement shall be binding upon and shall inure to the benefit of  
5 the successors and assigns of the Parties hereto, including any and all Released Parties and any  
6 corporation, partnership, or other entity into or with which any Party hereto may merge,  
7 consolidate, or reorganize, each of which is entitled to enforce this Settlement Agreement.

8           87.     This Settlement Agreement was jointly drafted by the Parties. Class  
9 Representatives, Settlement Class Members, and/or Meta shall not be deemed to be the drafters of  
10 this Settlement Agreement or of any particular provision, nor shall they argue that any particular  
11 provision should be construed against its drafter or otherwise resort to the *contra proferentem*  
12 canon of construction. Accordingly, this Settlement Agreement should not be construed in favor  
13 of or against one Party as to the drafter, and the Parties agree that the provisions of California Civil  
14 Code § 1654 and common law principles of construing ambiguities against the drafter shall have  
15 no application.

16           88.     Any and all Exhibits to this Settlement Agreement, which are identified in the  
17 Settlement Agreement and attached hereto, are material and integral parts hereof and are fully  
18 incorporated herein by this reference.

19           89.     This Settlement Agreement shall be governed by and construed in accordance with  
20 the laws of the State of California, without regard to choice of law principles.

21           90.     The headings used in this Settlement Agreement are inserted merely for the  
22 convenience of the reader, and shall not affect the meaning or interpretation of this Settlement  
23 Agreement.

24           91.     In construing this Settlement Agreement, the use of the singular includes the plural  
25 (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

26           92.     Class Representatives and Class Counsel will not issue any press release or  
27 communicate with the media regarding the Settlement or the Action without prior approval of  
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1 Meta. However, if Class Representatives or Class Counsel receive an inquiry from any third party  
2 (excluding Settlement Class Members who identify themselves as such), they may only make  
3 affirmative statements relating to the Settlement as follows: “The parties have reached a mutually  
4 agreeable resolution to a disputed set of class claims that is fair, adequate, and reasonable.” Class  
5 Counsel reserves all rights to communicate with individual members of the Settlement Class to  
6 assist them in understanding the Settlement and nothing herein shall be construed as restricting  
7 those rights and responsibilities. Similarly, nothing in this Agreement will affect Meta’s right to  
8 communicate with individual members of the Settlement Class relating to matters other than the  
9 Action or the proposed Settlement.

10 93. The provision of the confidentiality agreement entered into with respect to the  
11 mediation process concerning this matter is waived for the limited purpose of permitting the Parties  
12 to confirm the details of the mediation process that are included in this Agreement.

13 94. The Class Representatives further acknowledge, agree, and understand that: (i) each  
14 has read and understands the terms of this Agreement; (ii) each has been advised in writing to  
15 consult with an attorney before executing this Agreement; and (iii) each has obtained and  
16 considered such legal counsel as he deems necessary.

17 95. All of the Parties warrant and represent that they are agreeing to the terms of this  
18 Settlement Agreement based upon the legal advice of their respective attorneys, that they have  
19 been afforded the opportunity to discuss the contents of this Settlement Agreement with their  
20 attorneys, and that the terms and conditions of this document are fully understood and voluntarily  
21 accepted.

22 96. Each Party to this Settlement Agreement warrants that he or it is acting upon his or  
23 its independent judgment and upon the advice of his or its counsel, and not in reliance upon any  
24 warranty or representation, express or implied, of any nature or any kind by any other Party, other  
25 than the warranties and representations expressly made in this Settlement Agreement.

26 97. Each Counsel or other person executing this Settlement Agreement or any of its  
27 Exhibits on behalf of any Party hereby warrants that such person has the full authority to do so.

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1 Class Counsel, on behalf of the Settlement Class, is expressly authorized by the Class  
2 Representatives to take all appropriate action required or permitted to be taken by the Settlement  
3 Class pursuant to this Settlement Agreement to effectuate its terms, and is expressly authorized to  
4 enter into any modifications or amendments to this Settlement Agreement on behalf of the  
5 Settlement Class that Class Counsel and Class Representatives deem appropriate.

6 [Signature page follows]  
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IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have  
duly executed this Settlement Agreement as of the date set forth below.

PLAINTIFFS

Dated: May 11, 2022

By: *Lawrence D. Olin*  
Lawrence D. Olin (May 11, 2022 11:34 EDT)  
Lawrence Olin

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Harold Nyanjom

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Sheron Smith-Jackson

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Janice Vega-Latker

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Marc Boehm

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Raven Winham

Dated: \_\_\_\_\_, 2022

META PLATFORMS, INC.  
By: \_\_\_\_\_

Dated: \_\_\_\_\_, 2022

COUNSEL TO META PLATFORMS, INC.  
By: \_\_\_\_\_

Dated: \_\_\_\_\_, 2022

COUNSEL TO PLAINTIFFS  
By: \_\_\_\_\_  
Neal J. Deckant, Bursor & Fisher, P.A.

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IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have  
duly executed this Settlement Agreement as of the date set forth below.

PLAINTIFFS

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Lawrence Olin

Dated: May 9, 2022

By:   
Harold M. Nyanjom (May 9, 2022 11:39 CDT)  
Harold Nyanjom

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Sheron Smith-Jackson

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Janice Vega-Latker

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Marc Boehm

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Raven Winham

Dated: \_\_\_\_\_, 2022

META PLATFORMS, INC.

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

Dated: \_\_\_\_\_, 2022

COUNSEL TO META PLATFORMS, INC.

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

COUNSEL TO PLAINTIFFS

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Neal J. Deckant, Bursor & Fisher, P.A.

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IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have  
duly executed this Settlement Agreement as of the date set forth below.

PLAINTIFFS

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Lawrence Olin

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Harold Nyanjom

Dated: May 9, 2022

By: *sheron smith-Jackson*  
sheron smith-Jackson (May 9, 2022 18:26 CDT)  
Sheron Smith-Jackson

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Janice Vega-Latker

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Marc Boehm

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Raven Winham

Dated: \_\_\_\_\_, 2022

META PLATFORMS, INC.

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

Dated: \_\_\_\_\_, 2022

COUNSEL TO META PLATFORMS, INC.

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

COUNSEL TO PLAINTIFFS

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Neal J. Deckant, Bursor & Fisher, P.A.

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By: \_\_\_\_\_  
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Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Harold Nyanjom

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Sheron Smith-Jackson

Dated: May 9, 2022

By: Janice Latker  
Janice Vega-Latker

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Marc Boehm

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Raven Winham

Dated: \_\_\_\_\_, 2022

META PLATFORMS, INC.

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

Dated: \_\_\_\_\_, 2022

COUNSEL TO META PLATFORMS, INC.

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

COUNSEL TO PLAINTIFFS

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Neal J. Deckant, Bursor & Fisher, P.A.

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By: \_\_\_\_\_  
Lawrence Olin

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Harold Nyanjom

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Sheron Smith-Jackson

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Janice Vega-Latker

Dated: May 13, 2022

By: *Marc Boehm*  
Marc Boehm (May 13, 2022 10:12 PDT)  
Marc Boehm

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Raven Winham

Dated: \_\_\_\_\_, 2022

META PLATFORMS, INC.

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

Dated: \_\_\_\_\_, 2022

COUNSEL TO META PLATFORMS, INC.

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

COUNSEL TO PLAINTIFFS

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Neal J. Deckant, Bursor & Fisher, P.A.

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By: \_\_\_\_\_  
Lawrence Olin

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Harold Nyanjom

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Sheron Smith-Jackson

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Janice Vega-Latker

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Marc Boehm

Dated: May 12, 2022

By:   
Raven Winham (May 12, 2022 07:24 PDT)  
Raven Winham

Dated: \_\_\_\_\_, 2022

META PLATFORMS, INC.

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

Dated: \_\_\_\_\_, 2022

COUNSEL TO META PLATFORMS, INC.

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

COUNSEL TO PLAINTIFFS

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Neal J. Deckant, Bursor & Fisher, P.A.



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PLAINTIFFS

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Lawrence Olin

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Harold Nyanjom

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Sheron Smith-Jackson

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Janice Vega-Latker

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Marc Boehm

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Raven Winham

Dated: May 10, 2022, 2022

META PLATFORMS, INC.

By: *Nikki Stitt Sokol*  
Nikki Stitt Sokol (May 10, 2022 08:36 PDT)

Dated: \_\_\_\_\_, 2022

COUNSEL TO META PLATFORMS, INC.

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

COUNSEL TO PLAINTIFFS

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Neal J. Deckant, Bursor & Fisher,

P.A.

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PLAINTIFFS

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By: \_\_\_\_\_  
Lawrence Olin

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Harold Nyanjom

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Sheron Smith-Jackson

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Janice Vega-Latker

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Marc Boehm

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
Raven Winham

Dated: \_\_\_\_\_, 2022

META PLATFORMS, INC.

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

Dated: May 12, 2022

COUNSEL TO META PLATFORMS, INC.

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

Dated: May 12, 2022

COUNSEL TO PLAINTIFFS

By:  \_\_\_\_\_  
Neal J. Deckant, Bursor & Fisher, P.A.

**EXHIBIT A**

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

LAWRENCE OLIN, HAROLD NYANJOM,  
SHERON SMITH-JACKSON, JANICE  
VEGA-LATKER, MARC BOEHM, and  
RAVEN WINHAM, individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

FACEBOOK, INC.,

Defendant.

Case No. 3:18-cv-01881-RS (TSH)

**[PROPOSED] FINAL ORDER  
AND JUDGMENT**

1           The Court has considered the Class Action Settlement Agreement (“Settlement  
2 Agreement”) between Plaintiffs Lawrence Olin, Harold Nyanjom, Sheron Smith-Jackson, Janice  
3 Vega-Latker, Marc Boehm, and Raven Winham (“Plaintiffs”) and Defendant Facebook, Inc., now  
4 known as Meta Platforms, Inc. (“Defendant” or “Meta”), dated \_\_\_\_, 2022, the motion for an  
5 order finally approving the Settlement Agreement, the record in this Action, the arguments and  
6 recommendations made by counsel, and the requirements of the law. The Court finds and orders  
7 as follows:

8           **I. FINAL APPROVAL OF THE SETTLEMENT AGREEMENT**

9           1.       The Settlement Agreement is approved under Rule 23 of the Federal Rules of Civil  
10 Procedure. The Court finds that the Settlement Agreement and the Settlement it incorporates  
11 appear fair, reasonable, and adequate, and its terms are within the range of reasonableness. The  
12 Settlement Agreement was entered into at arm’s-length by experienced counsel after extensive  
13 negotiations spanning months, including with the assistance of a third-party mediator. The Court  
14 finds that the Settlement Agreement is not the result of collusion.

15           **II. DEFINED TERMS**

16           2.       For the purposes of this Final Approval Order and Final Judgment (“Order”), the  
17 Court adopts all defined terms as set forth in the Settlement Agreement.

18           **III. NO ADMISSIONS AND NO EVIDENCE**

19           3.       This Order, the Settlement Agreement, the Settlement provided for therein, and  
20 any proceedings taken pursuant thereto, are not, and should not in any event be offered, received,  
21 or construed as evidence of, a presumption, concession, or an admission by any Party or any of  
22 the Released Parties of wrongdoing, to establish a violation of any law or duty, an admission that  
23 any of the practices at issue violate any laws or require any disclosures, any liability or non-  
24 liability, the certifiability or non-certifiability of a litigation class in this case, or any  
25 misrepresentation or omission in any statement or written document approved or made by any  
26 Party.

1 **IV. JURISDICTION**

2 4. For the purposes of the Settlement of the Action, the Court finds it has subject  
3 matter and personal jurisdiction over the Parties, including all Settlement Class Members, and  
4 venue is proper.

5 **V. CLASS CERTIFICATION OF RULE 23(B)(2) CLASS FOR SETTLEMENT**  
6 **PURPOSES ONLY**

7 5. The Court finds and concludes that, for the purposes of approving this Settlement  
8 only, the proposed Rule 23(b)(2) Settlement Class meets the requirements for certification under  
9 Rule 23 of the Federal Rules of Civil Procedure: (a) the Settlement Class is so numerous that  
10 joinder of all members is impracticable; (b) there are questions of law or fact common to the  
11 Settlement Class; (c) the claims or defenses of the Settlement Class Representatives are typical of  
12 the claims or defenses of the Settlement Class; (d) Settlement Class Representatives and Class  
13 Counsel will fairly and adequately protect the interests of the Settlement Class because Settlement  
14 Class Representatives have no interests antagonistic to the Settlement Class, and have retained  
15 counsel who are experienced and competent to prosecute this matter on behalf of the Settlement  
16 Class; and (e) the Defendant has acted on grounds that apply generally to the Settlement Class, so  
17 that final injunctive relief is appropriate respecting the Settlement Class as a whole.

18 6. The Settlement Agreement was reached after extensive investigation and motion  
19 practice in the Action, and was the result of protracted negotiations conducted by the Parties, over  
20 the course of several months, including with the assistance of a neutral mediator. Settlement  
21 Class Representatives and Class Counsel maintain that the Action and the claims asserted therein  
22 are meritorious and that Settlement Class Representatives and the Class would have prevailed at  
23 trial. Defendant denies the material factual allegations and legal claims asserted by Settlement  
24 Class Representatives in this Action, maintains that a class would not be certifiable under any  
25 Rule, and that the Settlement Class Representatives and Class Members would not prevail at trial.  
26 Notwithstanding the foregoing, the Parties have agreed to settle the Action pursuant to the  
27 provisions of the Settlement Agreement, after considering, among other things: (a) the benefits to  
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1 the Settlement Class Representatives and the Settlement Class under the terms of the Settlement  
2 Agreement; (b) the uncertainty of being able to prevail at trial; (c) the uncertainty relating to  
3 Defendant's defenses and the expense of additional motion practice in connection therewith;  
4 (d) obstacles to establishing entitlement to class-wide relief; (e) the attendant risks of litigation,  
5 especially in complex actions such as this, as well as the difficulties and delays inherent in such  
6 litigation and appeals; and (f) the desirability of consummating the Settlement promptly in order  
7 to provide effective relief to the Settlement Class Representatives and the Settlement Class.

8           7.       The Court accordingly certifies, for settlement purposes only, a class under Rule  
9 23(b)(2), consisting of all persons in the United States who installed the Facebook Messenger and  
10 Facebook Lite apps for Android, and granted Meta permission to access their contacts. Excluded  
11 from the Settlement Class are (i) all Persons who are directors, officers, and agents of Meta or its  
12 subsidiaries and affiliated companies or are designated by Meta as employees of Meta or its  
13 subsidiaries and affiliated companies; and (ii) the Court, the Court's immediate family, and Court  
14 staff, as well as any appellate court to which this matter is ever assigned, and its immediate family  
15 and staff.

## 16 **VI.    NOTICE**

17           8.       Notice of the settlement is not required here. *See* Fed. R. Civ. P. 23(c)(2)(A)  
18 (stating that under Rule 23(b)(2) the court "*may* direct appropriate notice to the class") (emphasis  
19 added). The Court finds that notice also is not required because the Settlement Agreement only  
20 releases claims for injunctive and/or declaratory relief and does not release the monetary or  
21 damages claims of the Class, and thus the settlement expressly preserves the individual  
22 rights of class members to pursue monetary claims against the defendant. *See, e.g., Stathakos v.*  
23 *Columbia Sportswear Co., et al.*, 2018 WL 582564, at \*3-4 (N.D. Cal. Jan. 25, 2018); *Lilly v.*  
24 *Jamba Juice Co.*, 2015 WL 1248027, at \*8-9 (N.D. Cal. Mar. 18, 2015); *Kim v. Space Pencil,*  
25 *Inc.*, 2012 WL 5948951, at \*4, 17 (N.D. Cal. Nov. 28, 2012). Nonetheless, pursuant to the  
26 Settlement Agreement, all documents pertaining to the Settlement, preliminary approval, and  
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1 final approval (including Plaintiffs’ motion for attorneys’ fees and incentive awards and any  
2 opposition or reply papers thereto), were posted on Class Counsel’s public website.

3 **VII. CLAIMS COVERED AND RELEASES**

4 9. This Order constitutes a full, final and binding resolution between the Class  
5 Representatives’ Releasing Parties, on behalf of themselves and the Settlement Class Members,  
6 and the Released Parties. This Release shall be applied to the maximum extent permitted by law.

7 10. Upon the Effective Date and by operation of this Order, the Settlement Class  
8 Representatives’ Releasing Parties will fully, finally, and forever release, relinquish, and  
9 discharge any and all Settlement Class Representatives’ Released Claims, including claims for  
10 monetary relief and damages, known and unknown, as well as provide a waiver under California  
11 Civil Code Section 1542. Settlement Class Representatives’ Releasing Parties are forever  
12 enjoined from taking any action seeking any relief against the Released Parties based on any  
13 Settlement Class Representatives’ Released Claims.

14 11. Upon the Effective Date and by operation of this Order, the Releasing Parties will  
15 fully, finally, and forever release, relinquish, and discharge the Settlement Class Members’  
16 Released Claims (as well as provide a waiver under California Civil Code Section 1542),  
17 including any and all claims for injunctive and/or declaratory relief of any kind or character, at  
18 law or equity, known or unknown, preliminary or final, under Federal Rule of Civil Procedure  
19 23(b)(2) or any other federal or state law or rule of procedure, from the Releasing Parties’ first  
20 interaction with Meta up until and including the Effective Date, that result from, arise out of, are  
21 based on, or relate in any way to the practices and claims that were alleged in the Action, except  
22 that, notwithstanding the foregoing, the Releasing Parties do not release claims for monetary  
23 relief or damages. The Releasing Parties are forever enjoined from taking any action seeking  
24 injunctive and/or declaratory relief against the Released Parties based on any Settlement Class  
25 Members’ Released Claims.

26 12. Upon the Effective Date and by operation of this Order, Meta will fully, finally,  
27 and forever release, relinquish, and discharge any and all Meta’s Released Claims against the  
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1 Settlement Class Representatives’ Releasing Parties, from the Settlement Class Representatives’  
2 first interaction with Meta up until and including the Effective Date, that result from, arise out of,  
3 are based on, or relate in any way to the practices and claims that were alleged in the Action.  
4 Meta is forever enjoined from taking any action seeking any relief against the Settlement Class  
5 Representatives’ Releasing Parties based on any of Meta’s Released Claims.

6 13. The Settlement Agreement and this Order shall be the exclusive remedy for any  
7 and all Released Claims of the Settlement Class Representatives, Settlement Class Members, and  
8 Meta.

9 **VIII. INJUNCTIVE RELIEF**

10 14. Meta shall delete all Call and Text History Data uploaded from persons in the  
11 United States through the Facebook Messenger or Facebook Lite apps for Android devices that  
12 Meta is not otherwise legally obligated to preserve by jurisdictions outside of the United States  
13 within 45 days of the effective date (which shall be seven (7) days after the final settlement  
14 approval order and final judgment have been entered and become Final). Any data retained  
15 because of continuing legal obligations will be quarantined in access-controlled data warehouse  
16 tables that are segregated from any systems used or accessed in the ordinary course of Meta’s  
17 business, and access to this data is limited to Meta’s Legal team. Any such data will be preserved  
18 and used solely in connection with any legal obligations and not for any business use, and Meta  
19 will delete all such data within 45 days of the expiration of any legal obligation to preserve it.

20 **IX. ATTORNEYS’ FEES AND EXPENSES AND INCENTIVE AWARDS**

21 15. The Court’s decision regarding the payment of attorneys’ fees and expenses to  
22 Class Counsel and incentive awards to the Settlement Class Representatives is addressed in a  
23 separate order.

24 **X. AUTHORIZATION TO PARTIES TO IMPLEMENT AGREEMENT AND**  
25 **MODIFICATIONS OF AGREEMENT**

26 16. By this Order, the Parties are hereby authorized to implement the terms of the  
27 Settlement Agreement. After the date of entry of this Order, the Parties may by written  
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1 agreement effect such amendments, modifications, or expansions of the Settlement Agreement  
2 and its implementing documents (including all exhibits thereto) without further approval by the  
3 Court if such changes are consistent with terms of this Order and do not materially alter, reduce,  
4 or limit the rights of Settlement Class Members under the Settlement Agreement.

5 **XI. TERMINATION**

6 17. In the event that the Settlement Agreement is terminated pursuant to the terms of  
7 the Settlement Agreement, (a) the Settlement Agreement and this Order shall become void, shall  
8 have no further force or effect, and shall not be used in any action or other proceedings for any  
9 purpose other than as may be necessary to enforce the terms of the Settlement Agreement that  
10 survive termination; (b) this matter will revert to the status that existed before execution of the  
11 Settlement Agreement; and (c) no term or draft of the Settlement Agreement or any part of the  
12 Parties' settlement discussions, negotiations, or documentation (including any briefs filed in  
13 support of preliminary or final approval of the Settlement) shall (i) be admissible into evidence  
14 for any purpose in any action or other proceeding other than as may be necessary to enforce the  
15 terms of the Settlement Agreement that survive termination, (ii) be deemed an admission or  
16 concession by any Party regarding the validity of any Released Claim or the propriety of  
17 certifying any class against Meta, or (iii) be deemed an admission or concession by any Party  
18 regarding the truth or falsity of any facts alleged in the Action or the availability or lack of  
19 availability of any defense to the Released Claims.

20 **XII. RETENTION OF JURISDICTION**

21 18. The Court shall retain jurisdiction over any claim relating to the Settlement  
22 Agreement (including all claims for enforcement of the Settlement Agreement and/or all claims  
23 arising out of a breach of the Settlement Agreement) as well as any future claims by any  
24 Settlement Class Member relating in any way to the Released Claims.

25 **XIII. FINAL JUDGMENT AND DISMISSAL WITH PREJUDICE**

26 19. By operation of this Order, this Action is hereby dismissed with prejudice.  
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DATED: \_\_\_\_\_

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Hon. Richard Seeborg  
Chief United States Magistrate Judge

**EXHIBIT B**

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

LAWRENCE OLIN, HAROLD NYANJOM,  
SHERON SMITH-JACKSON, JANICE  
VEGA-LATKER, MARC BOEHM, and  
RAVEN WINHAM, individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

FACEBOOK, INC.,

Defendant.

Case No. 3:18-cv-01881-RS (TSH)

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF CLASS  
SETTLEMENT AGREEMENT**

1 Before the Court is the Motion for Preliminary Approval of Class Settlement  
2 Agreement (“Motion”), filed by Plaintiffs Lawrence Olin, Harold Nyanjom, Sheron Smith-  
3 Jackson, Janice Vega-Latker, Marc Boehm, and Raven Winham (“Plaintiffs”). Plaintiffs and  
4 Defendant Facebook, Inc., now known as Meta Platforms, Inc. (“Defendant” or “Meta”), have  
5 entered into a Class Settlement Agreement, dated \_\_\_\_\_, 2022 (“Settlement Agreement”).  
6 Having thoroughly reviewed the Settlement Agreement and exhibits thereto, the Motion, and  
7 the papers and arguments in connection therewith, and good cause appearing, the Court hereby  
8 ORDERS as follows:

9 1. Capitalized terms not otherwise defined herein have the meanings set forth in  
10 the Settlement Agreement.

11 2. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C.  
12 § 1332(d), and has personal jurisdiction over the Parties and the Settlement Class Members.  
13 Venue is proper in this District.

14 3. The Motion is GRANTED.

15 4. The Court hereby preliminarily approves the Settlement Agreement and the  
16 terms embodied therein pursuant to Fed. R. Civ. P. 23(e)(1). The Court finds that it will likely  
17 be able to approve the Settlement Agreement under Fed. R. Civ. P. 23(e)(2) and to certify the  
18 Settlement Class for purposes of judgment on the proposed Settlement. The Court  
19 preliminarily finds that the Settlement Agreement is fair, reasonable, and adequate as to the  
20 Settlement Class Members under the relevant considerations. The Court finds that the  
21 Settlement Class Representatives and Interim Class Counsel have adequately represented, and  
22 will continue to adequately represent, the Settlement Class. The Court further finds that the  
23 Settlement Agreement is the product of arms’ length negotiations by the Parties through the use  
24 of an experienced mediator, Judge Wayne R. Andersen (Ret.) of JAMS Chicago, and an  
25 additional eight months of extensive settlement discussions. The Court preliminarily finds that  
26 the relief provided is adequate taking into account, *inter alia*, the costs, risks, and delay of trial  
27 and appeal, and the alleged harm to Settlement Class Members. The Court preliminarily finds  
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1 that the Settlement Agreement treats the Settlement Class Members equitably relative to each  
2 other.

3 5. The Court hereby provisionally certifies, for settlement purposes only, a  
4 “Settlement Class,” pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2), consisting of:

5 All persons in the United States who installed the Facebook  
6 Messenger and Facebook Lite apps for Android, and granted Meta  
7 permission to access their contacts.

8 6. The Court finds that for settlement purposes only, the Settlement Class, as  
9 defined above, meets the requirements for class certification under Fed. R. Civ. P. 23(a) and  
10 23(b)(2)—namely, that (1) the Settlement Class Members are sufficiently numerous such that  
11 joinder is impracticable; (2) there are common questions of law and fact; (3) the Settlement  
12 Class Representatives’ claims are typical of those of the Settlement Class Members; (4) the  
13 Settlement Class Representatives and Interim Class Counsel have adequately represented, and  
14 will continue to adequately represent, the interests of the Settlement Class Members; and (5)  
15 for purposes of settlement, the Settlement Class meets the predominance and superiority  
16 requirements of Fed. R. Civ. P. 23(b).

17 7. Certification of the Settlement Class shall be solely for settlement purposes,  
18 without prejudice to the Parties, and with no other effect upon the Action. In the event the  
19 Settlement Agreement is not finally approved by this Court or otherwise does not take effect,  
20 the Parties preserve all rights and defenses regarding class certification.

21 8. The Court hereby appoints Plaintiffs Lawrence Olin, Harold Nyanjom, Sheron  
22 Smith-Jackson, Janice Vega-Latker, Marc Boehm, and Raven Winham as Class  
23 Representatives to represent the Settlement Class.

24 9. The Court hereby appoints the law firm of Bursor & Fisher, P.A. as Class  
25 Counsel for the Settlement Class.

26 10. Notice of the settlement is not required here. *See* Fed. R. Civ. P. 23(c)(2)(A)  
27 (stating that under Rule 23(b)(2) the court “*may* direct appropriate notice to the class”)  
28 (emphasis added). The Court finds that notice also is not required because the Settlement

1 Agreement only releases claims for injunctive and/or declaratory relief and does not release the  
2 monetary or damages claims of the Class, and thus the settlement expressly preserves the  
3 individual rights of class members to pursue monetary claims against the Defendant. *See, e.g.,*  
4 *Stathakos v. Columbia Sportswear Co., et al.*, 2018 WL 582564, at \*3-4 (N.D. Cal. Jan. 25,  
5 2018); *Lilly v. Jamba Juice Co.*, 2015 WL 1248027, at \*8-9 (N.D. Cal. Mar. 18, 2015); *Kim v.*  
6 *Space Pencil, Inc.*, 2012 WL 5948951, at \*4, 17 (N.D. Cal. Nov. 28, 2012). Nonetheless,  
7 pursuant to the Settlement Agreement, all documents pertaining to the Settlement, preliminary  
8 approval, and final approval (including Plaintiffs' motion for attorneys' fees and incentive  
9 awards and any opposition or reply papers thereto), shall be posted on Class Counsel's public  
10 website (<http://www.https://www.bursor.com/>).

11 11. The Court finds that the CAFA Notice sent by Meta complied with 28 U.S.C. §  
12 1715 and all other provisions of the Class Action Fairness Act of 2005.

13 12. Each Settlement Class Member shall be given a full opportunity to comment on  
14 or object to the Settlement Agreement, and to participate at a Final Approval Hearing.  
15 Comments or objections must be in writing, and must include (1) the name and case number of  
16 the Action (*Olin et al. v. Facebook, Inc.*, Case No. 18-cv-01881-RS); (2) the Settlement Class  
17 Member's full legal name and mailing address; (3) the personal signature of the Settlement  
18 Class member; (4) the grounds for any objection; (5) the name and contact information of any  
19 and all attorneys representing, advising, or assisting with the comment or objection, or who  
20 may profit from pursuing any objection; and (6) a statement indicating whether the Settlement  
21 Class Member intends to appear at the Final Approval Hearing, either personally or through  
22 counsel.

23 13. To be considered, written comments or objections must be submitted to the  
24 Court either by mailing them to Class Action Clerk, United States District Court for the  
25 Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102, or by  
26 filing them in person at any location of the United States District Court for the Northern  
27 District of California, within 60 days after the entry of this Order. No Class Member shall be  
28

1 entitled to be heard at the Final Approval Hearing, whether individually or through counsel,  
2 unless written notice of the Class Member's intention to appear at the Final Approval Hearing  
3 is timely filed, or postmarked for mail to the Court within 60 days after date of entry of this  
4 Order.

5 14. The date of the postmark on the envelope containing the written objection shall  
6 be the exclusive means used to determine whether an objection has been timely submitted.  
7 Class Members who fail to mail timely written objections in the manner specified above shall  
8 be deemed to have waived any objections and shall be forever barred from objecting to the  
9 Settlement Agreement and the proposed settlement by appearing at the Final Approval Hearing,  
10 appeal, collateral attack, or otherwise.

11 15. The Court will hold a final approval hearing on \_\_\_\_\_, 2022 at \_\_\_\_\_  
12 a.m./p.m, in the United States District Court for the Northern District of California, San  
13 Francisco Courthouse, Courtroom 3 – 17<sup>th</sup> Floor, 450 Golden Gate Avenue, San Francisco, CA  
14 94102. The purposes of the final approval hearing will be to: (i) determine whether the  
15 proposed Settlement Agreement should be finally approved by the Court as fair, reasonable,  
16 adequate, and in the best interests of the Settlement Class; (ii) determine whether judgment  
17 should be entered pursuant to the Settlement Agreement, dismissing the Action with prejudice  
18 and releasing the Released Persons of all claims stated in Section 6.1 of the Settlement  
19 Agreement; (iii) determine whether the Settlement Class should be finally certified; (iv) rule on  
20 Class Counsel's motion for attorneys' fees, costs and service awards; (v) consider any properly  
21 filed objections; and (vi) consider any other matters necessary in connection with the final  
22 approval of the Settlement Agreement.

23 16. Class Counsel's application for attorneys' fees, costs and expenses shall be filed  
24 and served no later than thirty (30) days after the Court's order of preliminary approval. Any  
25 opposition, comment, or objection shall be filed no later than sixty (60) days after the Court's  
26 order of preliminary approval. Any reply shall be filed no later than seventy-four (74) days  
27 after the Court's order of preliminary approval.  
28

1           17.     The motion in support of final approval of the settlement shall be filed and  
2 served no later than thirty (30) days after the Court's order of preliminary approval. Any  
3 opposition or objection shall be filed no later than sixty (60) days after the Court's order of  
4 preliminary approval. Any reply shall be filed no later than seventy-four (74) days after the  
5 Court's order of preliminary approval.

6           18.     The Court may, in its discretion, modify the date and/or time of the final  
7 approval hearing, and may order that this hearing be held remotely or telephonically. In the  
8 event the Court changes the date, time, and/or the format of the final approval hearing, the  
9 Parties shall ensure that the updated information is posted on the Class Counsel's public  
10 website.

11           19.     If the Settlement Agreement, including any amendment made in accordance  
12 therewith, is not approved by the Court or shall not become effective for any reason  
13 whatsoever, the Settlement Agreement and any actions taken or to be taken in connection  
14 therewith (including this Preliminary Approval Order and any judgment entered herein), shall  
15 be terminated and shall become null and void and of no further force and effect except for  
16 (i) any obligations to pay for any expense incurred in connection with Notice and Other  
17 Administration Costs as set forth in the Settlement Agreement, and (ii) any other obligations or  
18 provisions that are expressly designated in the Settlement Agreement to survive the termination  
19 of the Settlement Agreement.

20           20.     Other than such proceedings as may be necessary to carry out the terms and  
21 conditions of the Settlement Agreement, all proceedings in the Action are hereby stayed and  
22 suspended until further order of this Court.

23           21.     Pending final determination of whether the Settlement Agreement should be  
24 finally approved, Plaintiffs and all Settlement Class Members are barred and enjoined from  
25 filing, commencing, prosecuting, or enforcing any action against the Released Parties insofar as  
26 such action asserts claims stated in Section VI of the Settlement Agreement, directly or  
27 indirectly, in any judicial, administrative, arbitral, or other forum. This bar and injunction is  
28

1 necessary to protect and effectuate the Settlement Agreement and this Preliminary Approval  
2 Order, and this Court’s authority to effectuate the Settlement, and is ordered in aid of this  
3 Court’s jurisdiction.

4 22. This Preliminary Approval Order, the Settlement Agreement, the fact that a  
5 settlement was reached and filed, and all negotiations, statements, agreements, and proceedings  
6 relating to the Settlement, and any matters arising in connection with settlement negotiations,  
7 proceedings, or agreements shall not constitute, be described as, construed as, used as, offered  
8 or received against Meta as evidence or an admission or concession of: (a) the truth of any fact  
9 alleged by Plaintiffs in the Action; (b) any liability, negligence, fault, or wrongdoing of Meta or  
10 breach of any duty on the part of Meta; or (c) that this Action or any other action may be  
11 properly certified as a class action for litigation, non-settlement purposes. This order is not a  
12 finding of the validity or invalidity of any of the claims asserted or defenses raised in the  
13 Action.

14 23. The Court retains jurisdiction over this Action to consider all further matters  
15 arising out of or connected with the Settlement, including enforcement of the Release provided  
16 for in the Settlement Agreement.

17 24. The Parties are directed to take all necessary and appropriate steps to establish  
18 the means necessary to implement the Settlement Agreement according to its terms should it be  
19 finally approved.

20 25. The Court may, for good cause, extend any of the deadlines set forth in this  
21 Preliminary Approval Order without further notice to Settlement Class Members. Without  
22 further order of the Court, the Parties may agree to make non-material modifications in  
23 implementing the Settlement that are not inconsistent with this Preliminary Approval Order.

24  
25 IT IS SO ORDERED.

26 Date: \_\_\_\_\_

27 \_\_\_\_\_  
28 Hon. Richard Seeborg  
Chief United States District Judge





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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.

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. Examssoft 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 v. Henkel Corp.*, (D. Conn. Mar. 3, 2022) to represent a proposed class of purchasers of Right Guard 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 denying 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. *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.

### **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 and his partner Yeremey Krivoshey in *Perez v. Rash Curtis & Associates*, where the jury returned a verdict for \$267 million in statutory damages under the Telephone Consumer Protection Act.

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

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

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

### **Representative Cases**

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

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

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

#### **Selected Published Decisions**

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Selected Class Settlements**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **JOSEPH I. MARCHESE**

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

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

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

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

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

### **Selected Published Decisions:**

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

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

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

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

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

**Selected Class Settlements:**

*Edwards v. 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.

**JOSHUA D. ARISOHN**

Joshua D. Arisohn is a Partner with Bursor & Fisher, P.A. Josh has litigated precedent-setting cases in the areas of consumer class actions and terrorism. He participated in the first ever

trial to take place under the Anti-Terrorism Act, a statute that affords U.S. citizens the right to assert federal claims for injuries arising out of acts of international terrorism. Josh's practice continues to focus on terrorism-related matters as well as class actions.

Josh is admitted to the State Bar of New York and is a member of the bars of the United States District Courts for the Southern District of New York and the Eastern District of New York.

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

**Selected Published Decisions:**

*Morris v. SolarCity Corp.*, 2016 WL 1359378 (N.D. Cal. Apr. 4, 2016), denying defendant's motion to dismiss claims that solar company illegally called consumers using an artificial or prerecorded voice and an automatic telephone dialing system.

*Boelter v. Hearst Commc'ns, Inc.*, 192 F. Supp. 3d 427 (S.D.N.Y. 2016), denying defendant's motion to dismiss and finding that the Michigan Video Rental Privacy Act does not violate the First Amendment.

*Edwards v. Oportun, Inc.*, 193 F. Supp. 3d 1096 (N.D. Cal. 2016), denying defendant's motion dismiss and rejecting its argument that providing a class representative with a cashier's check for his individual damages mooted his individual and class claims.

**Selected Class Settlements:**

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

**JOEL D. SMITH**

Joel D. Smith is a Partner with Bursor & Fisher, P.A. Joel is a trial attorney who has practiced in lower court and appeals courts across the country, as well as the U.S. Supreme Court.

Prior to joining Bursor & Fisher, Joel was a litigator at Crowell & Moring, where he represented Fortune 500 companies, privately held businesses, and public entities in a wide variety of commercial, environmental, and class action matters. Among other matters, Joel served as defense counsel for AT&T, Enterprise-Rent-A-Car, Flowers Foods, and other major U.S. businesses in consumer class actions, including a class action seeking to hold U.S. energy companies accountable for global warming. Joel represented four major U.S. retailers in a case arising from a devastating arson fire and ensuing state of emergency in Roseville, California, which settled on the eve of a trial that was expected to last several months and involve several

dozen witnesses. Joel also was part of the trial team in a widely publicized trial over the death of a contestant who died after participating in a Sacramento radio station's water drinking contest.

More recently, Joel's practice focuses on consumer class actions involving automotive and other product defects, financial misconduct, false advertising, and privacy violations.

Joel received both his undergraduate and law degrees from the University of California at Berkeley. While at Berkeley School of Law, he was a member of the California Law Review, received several academic honors, externed for the California Attorney General's office and published an article on climate change policy and litigation.

Joel is admitted to the State Bar of California, as well as the United States Courts of Appeals for the Second, Third and Ninth Circuits; all California district courts; the Eastern District of Michigan; and the Northern District of Illinois.

**Selected Published Decisions:**

*Revitch v. DIRECTV, LLC*, --- F.3d --- (9th Cir. 2020), affirming denial of motion to compel arbitration in putative class action alleging unlawful calls under the Telephone Consumer Protection Act.

*Kaupelis v. Harbor Freight Tools USA, Inc.*, 2020 WL 5901116 (C.D. Cal. Sept. 23, 2020), granting class certification of consumer protection claims brought by purchasers of defective chainsaws.

**Selected Class Settlements:**

*Crandell et al. v. Volkswagen Group of America*, Case No. 2:18-cv-13377-JSA (D.N.J.) – final approval granted for a settlement providing relief for Volkswagen Touareg owners to resolve allegations that defects in Touareg vehicles caused the engines to ingest water when driving in the rain.

*Isley et al. v. BMW of N. America, LLC*, Case No. 2:19-cv-12680-ESK (D.N.J.) – final approval granted for settlement providing BMW owners with reimbursements and credit vouchers to resolve allegations that defects in the BMW N63TU engine caused excessive oil consumption.

*Kaupelis v. Harbor Freight Tools USA, Inc.*, 8:19-cv-01203-JVS-DFM (C.D. Cal.) – final approval granted for a settlement valued up to \$40 million to resolve allegations that Harbor Freight sold chainsaws with a defective power switch that could prevent the chainsaws from turning off.

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

**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.*, --- F. Supp. 3d ---, 2020 WL 5117916 (S.D.N.Y. Aug. 31, 2020), denying motion to dismiss claims in putative class action concerning insect foggers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Selected Class Settlements:**

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

*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.

**FREDERICK J. KLORCZYK III**

Frederick J. Klorczyk III is a Partner with Bursor & Fisher, P.A. Fred focuses his practice on complex business litigation and consumer class actions.

Fred has substantial experience in successfully litigating and resolving consumer class actions involving claims of mislabeling, false or misleading advertising, and privacy violations. In 2019, Fred certified both a California and a 10-state express warranty class on behalf of purchasers of a butter substitute. In 2014, Fred served on the litigation team in *Ebin v. Kangadis Food Inc.* At class certification, Judge Rakoff adopted Fred's choice of law fraud analysis and research directly into his published decision certifying a nationwide fraud class.

Fred is admitted to the State Bars of California, New York, and New Jersey, and is a member of the bars of the United States District Courts for the Northern, Central, Eastern, and Southern Districts of California, the Southern, Eastern, and Northern Districts of New York, the District of New Jersey, the Northern District of Illinois, the Eastern District of Missouri, the Eastern District of Wisconsin, and the Eastern District of Michigan, as well as the bars of the United States Court of Appeals for the Second and Ninth Circuits.

Fred received his Juris Doctor from Brooklyn Law School in 2013, graduating *magna cum laude* with two CALI Awards for the highest grade in his classes on conflict of laws and criminal law. During law school, Fred served as an Associate Managing Editor for the Brooklyn Journal of Corporate, Financial and Commercial Law and as an intern to the Honorable Alison J. Nathan of the United States District Court for the Southern District of New York and the Honorable Janet Bond Arterton of the United States District Court for the District of Connecticut. In 2010, Fred graduated from the University of Connecticut with a B.S. in Finance.

**Selected Published Decisions:**

*Revitch v. New Moosejaw, LLC*, 2019 WL 5485330 (N.D. Cal. Oct. 23, 2019), denying defendants' motions to dismiss consumer's allegations of state privacy law violations in putative class action.

*In re Welspun Litigation*, 2019 WL 2174089 (S.D.N.Y. May 20, 2019), denying retailers' and textile manufacturer's motion to dismiss consumers' allegations of false advertising relating to purported "100% Egyptian Cotton" linen products.

*Martinelli v. Johnson & Johnson*, 2019 WL 1429653 (E.D. Cal. Mar. 29, 2019), granting class certification of California false advertising claims and multi-state express warranty claims brought by purchasers of a butter substitute.

*Porter v. NBTY, Inc.*, 2016 WL 6948379 (N.D. Ill. Nov. 28, 2016), denying supplement manufacturer's motion to dismiss consumers' allegations of false advertising relating to whey protein content.

*Weisblum v. Prophase Labs, Inc.*, 88 F. Supp. 3d 282 (S.D.N.Y. 2015), denying supplement manufacturer's motion to dismiss consumers' allegations of false advertising relating to a homeopathic cold product.

*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.

*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.*, Case No. 13-4775 (2d Cir. Apr. 15, 2015), denying olive oil manufacturer's Rule 23(f) appeal following grant of nationwide class certification.

*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:**

*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.

*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.

*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.

*In re: Kangadis Food Inc.*, Case No. 8-14-72649 (Bankr. E.D.N.Y. Dec. 17, 2014) – resolved 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.

### **YEREMEY O. KRIVOSHEY**

Yeremey O. Krivoshey is a Partner with Bursor & Fisher, P.A. Mr. Krivoshey has particular expertise in COVID-19 related consumer litigation, unlawful fees and liquidated damages in consumer contracts, TCPA cases, product recall cases, and fraud and false advertising litigation. He has represented clients in a wide array of civil litigation, including appeals before the Ninth Circuit.

Mr. Krivoshey served as trial counsel with Mr. Bursor in *Perez v. Rash Curtis & Associates*, where, in May 2019, the jury returned a verdict for \$267 million in statutory damages under the Telephone Consumer Protection Act. Since 2017, Mr. Krivoshey has secured over \$200 million for class members in consumer class settlements. Mr. Krivoshey has been honored multiple times as a Super Lawyers Rising Star.

Mr. Krivoshey is admitted to the State Bar of California. He is also a member of the bars of the United States Court of Appeals for the Ninth Circuit and the United States District Courts for the Northern, Central, Southern, and Eastern Districts of California, as well as the District of Colorado.

Mr. Krivoshey graduated from New York University School of Law in 2013, where he was a Samuel A. Herzog Scholar. Prior to Bursor & Fisher, P.A., Mr. Krivoshey worked as a Law Clerk at Vladeck, Waldman, Elias & Engelhard, P.C, focusing on employment discrimination and wage and hour disputes. In law school, he has also interned at the American Civil Liberties Union and the United States Department of Justice. In 2010, Mr. Krivoshey graduated *cum laude* from Vanderbilt University.

### **Representative Cases:**

*Perez v. Rash Curtis & Associates*, Case No. 16-cv-03396-YGR (N.D. Cal. May 13, 2019). Mr. Krivoshey litigated claims against a national health-care debt collection agency on behalf of people that received autodialed calls on their cellular telephones without their prior express consent. Mr. Krivoshey successfully obtained nationwide class certification, defeated the defendant’s motion for summary judgment, won summary judgment as to the issue of prior express consent and the use of automatic telephone dialing systems, and navigated the case towards trial. With his partner, Scott Bursor, Mr. Krivoshey obtained a jury verdict finding that the defendant violated the Telephone Consumer Protection Act (“TCPA”) 534,712 times. Under the TCPA, class members are entitled to \$500 per each call made in violation of the TCPA – in this case, \$267 million for 534,712 unlawful calls.

**Selected Published Decisions:**

*Goodrich, et al. v. Alterra Mountain Co., et al.*, 2021 WL 2633326 (D. Col. June 25, 2021), denying ski pass company's motion to dismiss its customers' allegations concerning refunds owed due to cancellation of ski season due to COVID-19.

*Bayol v. Zipcar, Inc.*, 2014 WL 4793935 (N.D. Cal. Sept. 25, 2014), denying enforcement of forum selection clause based on public policy grounds.

*Bayol v. Zipcar, Inc.*, 78 F. Supp. 3d 1252 (N.D. Cal. Jan. 29, 2015), denying car-rental company's motion to dismiss its subscriber's allegations of unlawful late fees.

*Brown v. Comcast Corp.*, 2016 WL 9109112 (C.D. Cal. Aug. 12, 2016), denying internet service provider's motion to compel arbitration of claims alleged under the Telephone Consumer Protection Act.

*Chaisson, et al. v. University of Southern California* (Cal. Sup. Ct. Mar. 25, 2021), denying university's demurrer as to its students' allegations of unfair and unlawful late fees.

*Choi v. Kimberly-Clark Worldwide, Inc.*, 2019 WL 4894120 (C.D. Cal. Aug. 28, 2019), denying tampon manufacturer's motion to dismiss its customer's design defect claims.

*Horanzy v. Vemma Nutrition Co.*, Case No. 15-cv-298-PHX-JJT (D. Ariz. Apr. 16, 2016), denying multi-level marketer's and its chief scientific officer's motion to dismiss their customer's fraud claims.

*McMillion, et al. v. Rash Curtis & Associates*, 2017 WL 3895764 (N.D. Cal. Sept. 6, 2017), granting nationwide class certification of Telephone Consumer Protection Act claims by persons receiving autodialed and prerecorded calls without consent.

*McMillion, et al. v. Rash Curtis & Associates*, 2018 WL 692105 (N.D. Cal. Feb. 2, 2018), granting plaintiffs' motion for partial summary judgment on Telephone Consumer Protection Act violations in certified class action.

*Perez v. Indian Harbor Ins. Co.*, 2020 WL 2322996 (N.D. Cal. May 11, 2020), denying insurance company's motion to dismiss or stay assigned claims of bad faith and fair dealing arising out of \$267 million trial judgment.

*Perez v. Rash Curtis & Associates*, 2020 WL 1904533 (N.D. Cal. Apr. 17, 2020), upholding constitutionality of \$267 million class trial judgment award.

*Salazar v. Honest Tea, Inc.*, 2015 WL 7017050 (E.D. Cal. Nov. 12, 2015), denying manufacturer's motion for summary judgment as to customer's false advertising claims.

**Selected Class Settlements:**

*Perez v. Rash Curtis & Associates*, Case No. 16-cv-03396-YGR (N.D. Cal. Oct. 1, 2021) granting final approval to a \$75.6 million non-reversionary cash common fund settlement, the

largest ever consumer class action settlement stemming from a violation of the Telephone Consumer Protection Act.

*Strassburger v. Six Flags Theme Parks Inc., et al.* (Ill. Cir. Ct. 2021) pending approval to \$83.6 million settlement to resolve claims of theme park members for alleged wrongful charging of fees during the COVID-19 pandemic.

*Juarez-Segura, et al. v. Western Dental Services, Inc.* (Cal. Sup. Ct. Aug. 9, 2021) granting final approval to \$35 million settlement to resolve claims of dental customers for alleged unlawful late fees.

*Moore v. Kimberly-Clark Worldwide, Inc.* (Ill. Cir. Ct. July 22, 2020) granting final approval to \$11.2 million settlement to resolve claims of tampon purchasers for alleged defective products.

*Retta v. Millennium Prods., Inc.*, 2017 WL 5479637 (C.D. Cal. Aug. 22, 2017) granting final approval to \$8.25 million settlement to resolve claims of kombucha purchasers for alleged false advertising.

*Cortes v. National Credit Adjusters, L.L.C.* (E.D. Cal. Dec. 7, 2020) granting final approval to \$6.8 million settlement to resolve claims of persons who received alleged autodialed calls without prior consent in violation of the TCPA.

*Bayol et al. v. Health-Ade LLC, et al.* (N.D. Cal. Oct. 11, 2019) – granting final approval to \$3,997,500 settlement to resolve claims of kombucha purchasers for alleged false advertising.

### **PHILIP L. FRAIETTA**

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

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

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

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

**Selected Published Decisions:**

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

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

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

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

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

**Selected Class Settlements:**

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

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

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

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

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

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

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

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

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

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

#### **SARAH N. WESTCOT**

Sarah N. Westcot is a Partner with Bursor & Fisher, P.A. Ms. Westcot focuses her practice on complex business litigation, consumer class actions, and employment law disputes. She has represented clients in a wide array of civil litigation, and has substantial trial and appellate experience.

Ms. Westcot 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.

Ms. Westcot 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).

Ms. Westcot 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 and the Southern and Middle Districts of Florida.

Ms. Westcot received her Juris Doctor from the University of Notre Dame Law School in 2009. During law school, Ms. Westcot 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. She graduated with honors from the University of Florida in 2005.

**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.

**ANDREW OBERGFELL**

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

Andrew graduated from Drew University with *summa cum laude* distinction. While at Drew University, Andrew was captain of the varsity baseball team. Andrew was inducted into the Phi Beta Kappa honor society and was President of the college's chapter of the Pi Sigma Alpha political science honor society.

Andrew attended Seton Hall University School of Law, where he obtained his law degree with *magna cum laude* distinction, and was inducted into the prestigious Order of the Coif honor society. While in law school, Andrew was an editor and published author for the Seton Hall Law Review, participated in the Impact Litigation Clinic, and was a member of the Interscholastic Moot Court Board. As part of the Interscholastic Moot Court Board, Andrew received the national best-brief award in the 2015 ABA National Appellate Advocacy Competition, as well as the 2015 best student-written brief of the year award as recognized by Scribes, the American Society of Legal Writers.

Prior to joining the firm, Andrew practiced at an AmLaw 100 law firm. He also clerked for The Honorable Douglas M. Fasciale in the New Jersey Superior Court, Appellate Division, in Newark, New Jersey.

**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.

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.

**BRITTANY SCOTT**

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

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

addition to data privacy claims, Brittany has significant experience in litigating class action claims involving false and misleading advertising.

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

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

**Selected Class Settlements:**

*Morrissey v. Tula Life, Inc.*, Case No. 2021L0000646 (18th Judicial Circuit Court DuPage County 2021) – final approval granted for \$4 million class settlement to resolve claims of cosmetics purchasers for alleged false advertising.

**MAX ROBERTS**

Max Roberts is an Associate with Bursor & Fisher, P.A. Max focuses his practice on complex civil litigation, data privacy, and class actions. Max was a Summer Associate with Bursor & Fisher prior to joining the firm.

Max is admitted to the State Bar of New York and is a member of the bars of the United States District Courts for the Northern, Southern, and Eastern Districts of New York, the Northern and Central Districts of Illinois, the Eastern District of Michigan, the District of Colorado, and the United States Court of Appeals for the Ninth Circuit.

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:**

*Soo v. Lorex Corp.*, 2020 WL 5408117 (N.D. Cal. Sept. 9, 2020), denying defendants' motion to compel arbitration and denying in part motion dismiss consumer protection claims in putative class action concerning security cameras.

*Salerno v. Florida Southern College*, 488 F. Supp. 3d 1211 (M.D. Fla. 2020), denying motion to dismiss student's allegations that university committed a breach of contract by failing to refund students after it shifted to online learning during the COVID-19 pandemic.

*Saleh v. Nike, Inc.*, --- F. Supp. 3d ---, 2021 WL 4437734 (C.D. Cal. Sept. 27, 2021), denying in part motion to dismiss alleged violations of California Invasion of Privacy Act.

*Bugarin v. All Nippon Airways Co.*, 2021 WL 4974978 (N.D. Cal. Oct. 26, 2021), denying motion to compel arbitration of airline passenger's breach of contract claims.

*Sholopa v. Turk Hava Yollari A.O., Inc. d/b/a Turkish Airlines*, 2022 WL 976825 (S.D.N.Y. Mar. 31, 2022), denying motion to dismiss passenger's allegations that airline committed a breach of contract by failing to refund passengers for cancelled flights during the COVID-19 pandemic.

**Selected Class Settlements:**

*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.

**CHRISTOPHER R. REILLY**

Chris Reilly is an Associate with Bursor & Fisher, P.A. Chris focuses his practice on consumer class actions and complex business litigation.

Chris is admitted to the State Bar of Florida and is a member of the bar of the United States District Courts for the Southern and Middle Districts of Florida.

Chris received his Juris Doctor from Georgetown University Law Center in 2020. During law school, Chris clerked for the Senate Judiciary Committee, where he worked on antitrust and food and drug law matters under Senator Richard Blumenthal. He has also clerked for the Mecklenburg County District Attorney's Office, the ACLU Prison Project, and the

Pennsylvania General Counsel's Office. Chris served as Senior Editor of Georgetown's Journal of Law and Public Policy. In 2017, Chris graduated from the University of Florida with a B.A. in Political Science.

**RACHEL MILLER**

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

Rachel is admitted to the State Bar of Florida and is a member of the bar of the United States District Court for the Southern District of Florida.

Rachel received her Juris Doctor from the University of Chicago Law School in 2015. During law school, Rachel participated in the Criminal & Juvenile Justice Clinic and received the 2014 Public Interest Law Society Award for Public Service. Rachel graduated *cum laude* from the University of Florida in 2012 with a B.A. in Political Science.

**JULIA VENDITTI**

Julia 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 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.

**SEAN L. LITTERAL**

Sean L. Litteral is an Associate with Bursor & Fisher, P.A. Sean focuses his practice on complex business litigation, consumer class actions, and employment law disputes. He holds degrees from Berea College, the London School of Economics and Political Science, and Berkeley Law.

Sean has represented clients in a variety of matters, including survivors against the Boy Scouts of America for covering up decades of sexual abuse; warehouse workers against Walmart

for failing to comply with COVID-19 health and safety guidelines; and drivers against Corinthian International Parking Services for systematically violating California's wage and hour laws.

Sean clerked for the Alaska Supreme Court and served as a fellow for the U.S. House Committee on Education and Labor and the Atlanta City Council. He previously externed for the Special Litigation Section, Civil Rights Division of the U.S. Department of Justice; the Berkeley Environmental Law Clinic; and the Corporate Sustainability Program at the Pontificia Universidad Católica de Chile.

He has published in the UC Davis Environmental Law & Policy Journal, the Harvard Latinx Law Review, and the Stanford Law and Policy Review on a broad scope of matters, including corporate sustainability, international trade, and national security.

### **JULIAN DIAMOND**

Julian Diamond is an Associate with Bursor & Fisher, P.A. Julian focuses his practice on privacy law and class actions. Julian was a Summer Associate with Bursor & Fisher prior to joining the firm.

Julian received his Juris Doctor from Columbia Law School, where he was a Harlan Fiske Stone Scholar. During law school, Julian was Articles Editor for the Columbia Journal of Environmental Law. Prior to law school, Julian worked in education. Julian graduated from California State University, Fullerton with a B.A. in History and a single subject social science teaching credential.

### **MATTHEW GIRARDI**

Matt Girardi is an Associate with Bursor & Fisher, P.A. Matt focuses his practice on complex civil litigation and class actions, and has focused specifically on consumer class actions involving product defects, financial misconduct, false advertising, and privacy violations. Matt was a Summer Associate with Bursor & Fisher prior to joining the firm.

Matt is admitted to the State Bar of New York, and is a member of the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, and the Eastern District of Michigan

Matt received his Juris Doctor from Columbia Law School in 2020, where he was a Harlan Fiske Stone Scholar. During law school, Matt was the Commentary Editor for the Columbia Journal of Tax Law, and represented fledgling businesses for Columbia's Entrepreneurship and Community Development Clinic. In addition, Matt worked as an Honors Intern in the Division of Enforcement at the U.S. Securities and Exchange Commission. Prior to law school, Matt graduated from Brown University in 2016 with a B.A. in Economics, and worked as a Paralegal Specialist at the U.S. Department of Justice in the Antitrust Division.