

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

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**SUPERIOR COURT OF CALIFORNIA**

**FOR THE COUNTY OF MONTEREY**

C.J., individually and on behalf of all others  
similarly situated,

Plaintiff,

v.

COGNOSPHERE PTE. LTD.,

Defendant.

Case No. 23CV001405

**CASE DEEMED COMPLEX**

ASSIGNED FOR ALL PURPOSES TO  
JUDGE THOMAS W. WILLS

**DECLARATION OF L. TIMOTHY  
FISHER IN SUPPORT OF  
PLAINTIFF'S MOTION FOR FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

Action Filed: May 3, 2023  
Trial Date: None assigned

Date: January 26, 2024  
Time: 8:30 a.m.  
Dept.: 15

1 **DECLARATION OF L. TIMOTHY FISHER**

2 I, L. Timothy Fisher, declare as follows:

3 1. I am an attorney at law licensed to practice in the State of California. I am a partner  
4 at Bursor & Fisher, P.A., counsel for Plaintiff in this action. I am a member of the bar of this  
5 Court. I make this declaration in support of Plaintiff’s motion for final approval of the class action  
6 settlement. I have personal knowledge of the facts set forth in this declaration, and, if called as a  
7 witness, could and would competently testify thereto under oath.

8 2. Pursuant to the terms of the Settlement, Cognosphere Pte. Ltd. (“Cognosphere” or  
9 “Defendant”) has agreed to substantial changes that achieve the precise relief Plaintiff sought to  
10 accomplish with this litigation: the ability to seek a refund for purchases made as a minor pursuant  
11 to Cal. Fam. Code § 6701 and § 6710 and to make this ability reasonably apparent to the minors  
12 who made and continue to make these purchases. Pursuant to the Settlement, absent Settlement  
13 Class Members would release claims for declaratory, injunctive, and non-monetary equitable relief  
14 only—claims for monetary damages are specifically excluded from the proposed Settlement Class  
15 Members’ Released Claims. Service awards and attorneys’ fees and costs that may be awarded  
16 will be paid by Cognosphere.

17 3. Over the last seven months, my firm has engaged in significant, arm’s-length  
18 negotiations with counsel for Defendant, including with the assistance of a certified mediator,  
19 Gregory Lindstrom of Phillips ADR. These negotiations included a full-day mediation with  
20 Gregory Lindstrom of Phillips ADR on March 16, 2023, which culminated in a mediator’s  
21 proposal and near-final term sheet. The term sheet was executed by the Parties on March 29, 2023.  
22 Over the next month, the parties exchanged edits to the draft long form settlement agreement,  
23 which was executed on May 1, 2023.

24 4. Thus, the Settlement was reached after said informed, extensive arm’s-length  
25 negotiations. First, the Settlement was reached after a thorough investigation into and discovery of  
26 the legal and factual issues in this action. In particular, my firm conducted an extensive pre-suit  
27 investigation into the factual underpinnings of the practices challenged in this action, as well as the  
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1 applicable law. My firm reviewed, inter alia, Defendant's terms of service, Plaintiff's purchase  
2 history documents, and the refund policies of the platforms where Plaintiff made his purchases of  
3 in-game currency and virtual items, and the parties engaged in informal discovery. Further, my  
4 firm thoroughly investigated Defendant's publicly available corporate information, financial  
5 information, and player demographics. Prior to bringing suit, my firm also researched complex  
6 legal and factual issues that were specific to bringing suit against an entity based in Singapore for  
7 violations of California law.

8           5.       Based upon the information that Defendant produced to my firm, we estimate that  
9 the value of the change in practices provided for under the Settlement is in the millions of dollars  
10 based upon the money spent by minors in the United States during the class period. Additionally,  
11 under the Settlement, Class Members do not give up their right to pursue damages claims in the  
12 future.

13           6.       The parties' March 16, 2023 mediation was held only after the exchange of  
14 confidential mediation statements, which discussed the strengths and weaknesses of both Plaintiff's  
15 allegations and Defendant's potential defenses and relevant documents related thereto. Throughout  
16 the mediation session, counsel vigorously advocated for their respective clients' positions.

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

23           8.       The maximum recovery that each Class Member could receive as part of the  
24 Settlement for the claims in the operative complaint would depend on the amount that he or she  
25 spent on in-game currency and virtual items. The total amount made available to Class Members  
26 under the Settlement is in the millions of dollars, and, in any event, represents 100% of the amount  
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1 that minors in the United States spent on Defendant's in-game currency and virtual items. None of  
2 this value will revert to Defendant under any circumstances.

3 9. Nothing in the course of the negotiations or in the substance of the proposed  
4 Settlement presents any reason to doubt the Settlement's fairness. Thus, in my professional  
5 opinion, this Settlement is fair, reasonable, and adequate.

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

8 11. Other than the Settlement Agreement itself, there are no additional agreements to be  
9 identified.

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

20 13. My firm began investigating Defendant's refund policies with respect to minors in  
21 July 2021.

22 14. My firm filed *A.T. v. Cognosphere, LLC*, 2:22-cv-01761 (C.D. Cal.) in March 16,  
23 2022 which is a case that was premised on the same conduct and the same laws at issue as the  
24 instant case.

25 15. In *A.T.*, Defendant's motion to dismiss briefing raised jurisdictional arguments that  
26 my firm found difficult to overcome because the plaintiff in that case was domiciled in Virginia  
27 and Defendant's presence in California was limited.





1 **CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

2 This Class Action Settlement Agreement and Release, including Exhibits A-B hereto  
3 (“Settlement Agreement” or “Agreement”), is made and entered into by, between, and among  
4 Plaintiff C.J., a minor, through Juanita James, her mother and legal guardian (“Settlement Class  
5 Representative”), on behalf of herself and the Settlement Class as defined below, and Defendant  
6 Cognosphere, Pte. Ltd. (“Defendant” or “Cognosphere”). Settlement Class Representative, the  
7 Settlement Class, and Cognosphere (collectively, the “Parties”) enter into this Agreement to  
8 effectuate a full and final settlement and dismissal of *C.J. v. Cognosphere, Pte. Ltd.*, to be filed in  
9 the Superior Court of California, County of Monterey (the “Action”).

10 **I. RECITALS**

11 1. WHEREAS, on February 20, 2023, Plaintiff’s counsel informed Cognosphere of  
12 Settlement Class Representative’s potential claims against Cognosphere, on behalf of herself and  
13 a class of similarly situated minors, including for declaratory, equitable and monetary relief under  
14 the Declaratory Judgment Act, California’s contract laws, Consumers Legal Remedies Act Cal.  
15 Civ. Code § 1750, et seq., , Business and Professions Code Sections 17200 *et seq.*

16 2. WHEREAS, the Parties agreed to mediate, prior to Settlement Class Representative  
17 filing her claims against Cognosphere.

18 3. WHEREAS, the Parties mediated their dispute with Gregory Lindstrom of Phillips  
19 ADR on March 16, 2023, culminating in a mediator’s proposal that was accepted in principle by  
20 the parties that day. The Parties executed a on March 29, 2023;

21 4. WHEREAS, Settlement Class Representative believes that her claims are  
22 meritorious and that she would be successful at trial, but nevertheless agreed to resolve the Action  
23 on the terms set forth in this Settlement Agreement solely to eliminate the uncertainties and delay  
24 of further protracted litigation;

25 5. WHEREAS, Cognosphere, while continuing to deny all allegations of wrongdoing  
26 and disclaiming all liability with respect to all claims in the Action, considers it desirable to resolve  
27 the Action on the terms stated herein solely to avoid further expense, inconvenience, and burden,  
28 and therefore has determined that this settlement on the terms set forth herein is in Defendant’s

1 best interests. Neither the Settlement Agreement nor any actions taken to carry out the settlement  
2 are intended to be, nor may they be deemed or construed to be, an admission or concession of  
3 liability, or of the validity of any claim, defense, or of any point of fact or law on the part of any  
4 party. Defendant denies all allegations of the complaint in the Action. Neither the Settlement  
5 Agreement, nor the fact of settlement, nor settlement proceedings, nor the settlement negotiations,  
6 nor any related document, shall be used as an admission of any fault or omission by Defendant, or  
7 be offered or received in evidence as an admission, concession, presumption, or inference of any  
8 wrongdoing by Defendant in any proceeding;

9           6.       WHEREAS, Settlement Class Representative, Cognosphere, and the Settlement  
10 Class intend for this Settlement Agreement fully and finally to compromise, resolve, discharge,  
11 and settle the Released Claims, as defined and on the terms set forth below, and to the full extent  
12 reflected herein, subject to the approval of the Court; and

13           7.       NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND  
14 AGREED, by the Settlement Class Representative, for herself and on behalf of the Settlement  
15 Class, and by Cognosphere that, subject to the approval of the Court, the Action shall be settled,  
16 compromised, and dismissed, on the merits and with prejudice, and the Released Claims shall be  
17 finally and fully compromised, settled, and dismissed as to the Released Parties, in the manner and  
18 upon the terms and conditions hereafter set forth in this Agreement.

19 **II.     DEFINITIONS**

20           8.       In addition to the terms defined elsewhere in this Agreement, the following terms,  
21 used in this Settlement Agreement, shall have the meanings specified below:

22           9.       “Attorneys’ Fees and Costs Award” means such funds as may be awarded by the  
23 Court to Class Counsel to compensate Class Counsel for its fees, costs, and expenses in connection  
24 with the Action and the Settlement, as described in Paragraphs VII.49-VII.50.

25           10.      “Business Days” means Monday, Tuesday, Wednesday, Thursday, and Friday,  
26 excluding holidays observed by California and/or the federal government.

27           11.      “Class Counsel” means L. Timothy Fisher, Philip L. Fraietta, and Alec M. Leslie  
28 of Bursor & Fisher, P.A.



1           12.       “Court” means the Superior Court of California, County of Monterey.

2           13.       “Defense Counsel” means the law firm of Kecker, Van Nest & Peters LLP and all  
3 of Cognosphere’s attorneys of record in the Action.

4           14.       “Effective Date” means seven (7) days after which both of the following events  
5 have occurred: (i) the Final Approval Order and Final Judgment have been entered and (ii) the  
6 Final Approval Order and Final Judgment have become Final.

7           15.       “Cognosphere” means (i) Cognosphere, Pte. Ltd. and its past, present, and future  
8 parents, subsidiaries, affiliates, divisions, joint ventures, licensees, franchisees, and any other legal  
9 entities, whether foreign or domestic, that are owned or controlled by Cognosphere, and (ii) the  
10 past, present, and future shareholders, officers, directors, members, agents, employees,  
11 independent contractors, consultants, representative, fiduciaries, insurers, attorneys, legal  
12 representative, predecessors, successors, and assigns of the entities in Part (i) of this definition.

13           16.       “Fairness Hearing” means the hearing that is to take place after the entry of the  
14 Preliminary Approval Order for purposes of: (i) entering the Final Approval Order and Final  
15 Judgment and dismissing the Action with prejudice; (ii) determining whether the Settlement  
16 should be approved as fair, reasonable, and adequate pursuant to applicable California Code of  
17 Civil Procedure; (iii) ruling upon an application for Service Awards by the Settlement Class  
18 Representative; (iv) ruling upon an application by Class Counsel for an Attorneys’ Fees and Costs  
19 Award; and (v) entering any final order awarding Attorneys’ Fees and Costs and Service Awards.

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

1           18.     “Final Approval Order and Final Judgment” means the order finally approving the  
2 terms of this Settlement Agreement and a separate judgment to be entered by the Court after the  
3 Fairness Hearing, dismissing the Action against Cognosphere with prejudice, without material  
4 variation from the Parties’ agreed-upon final approval order and judgment attached hereto as  
5 Exhibit A.

6           19.     “Legally Authorized Representative” means an administrator/administratrix,  
7 personal representative, or executor/executrix of a deceased Settlement Class Member’s estate;  
8 guardian, conservator, or next friend of an incapacitated Settlement Class Member; or any other  
9 legally appointed Person responsible for handling the business affairs of a Settlement Class  
10 Member.

11           20.     “Person” means any individual, corporation, partnership, association, affiliate, joint  
12 stock company, estate, trust, unincorporated association, entity, government and any political  
13 subdivision thereof, or any other type of business or legal entity.

14           21.     “Preliminary Approval Order” means the order that preliminarily approves the  
15 Settlement and sets a date for the Final Approval Hearing, without material variation from the  
16 Parties’ agreed-upon proposed preliminary approval order attached hereto as Exhibit B. Entry of  
17 the Preliminary Approval Order shall constitute preliminary approval of the Settlement  
18 Agreement.

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

24           23.     “Released Claims” include Settlement Class Representative’ Released Claims and  
25 Settlement Class Members’ Released Claims.

26           24.     “Released Parties” means (i) Cognosphere and its past, present, and future parents,  
27 subsidiaries, affiliates, divisions, joint ventures, licensees, franchisees, and any other legal entities,  
28 whether foreign or domestic, that are owned or controlled by Cognosphere; and (ii) the past,

1 present, and future shareholders, officers, directors, members, agents, employees, independent  
2 contractors, consultants, administrators, representative, fiduciaries, insurers, attorneys, legal  
3 representative, advisors, creditors, predecessors, successors, and assigns of the entities in Part (i)  
4 of this Paragraph.

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

9 26. “Service Award” means the amount approved by the Court to be paid to the  
10 Settlement Class Representative as described further in Paragraph VII.51.

11 27. “Settlement” means the settlement of the Action between and among the Settlement  
12 Class Representative, the Settlement Class Members, and Cognosphere, as set forth in this  
13 Settlement Agreement, including all attached Exhibits (which are an integral part of this  
14 Settlement Agreement and are incorporated in their entirety by reference).

15 28. “Settlement Class” has the meaning set forth in Paragraph III.34.

16 29. “Settlement Class Member(s)” means any and all persons who fall within the  
17 definition of the Settlement Class.

18 30. “Settlement Class Representative” means C.J., through her mother and legal  
19 guardian, Juanita James.

20 31. “Settlement Class Representative’s Releasing Parties” means each Settlement  
21 Class Representative, and each of her heirs, estates, trustees, principals, beneficiaries, guardians,  
22 executors, administrators, Representative, agents, attorneys, insurers, subrogees, partners,  
23 successors, predecessors-in-interest, and assigns and/or anyone other than Class Members  
24 claiming through them or acting or purporting to act for them or on their behalf.

25 **III. SETTLEMENT CLASS CERTIFICATION**

26 32. For purposes of settlement only, the Parties agree to seek provisional certification  
27 of the Settlement Class, pursuant to Code of Civil Procedure § 382 and Civil Code § 1781.

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1           33.     The Parties further agree that the Court should make preliminary findings and enter  
2 the Preliminary Approval Order granting provisional certification of the Settlement Class subject  
3 to the final findings and approval in the Final Approval Order and Final Judgment, and appointing  
4 Settlement Class Representative as the Representative of the Settlement Class and Class Counsel  
5 as counsel for the Settlement Class.

6           34.     For purposes of the provisional certification, the Settlement Class shall be defined  
7 as follows:

8                     All persons in the United States of America who made a purchase in Genshin  
9                     Impact while under the age of 18.

10          35.     Excluded from the Settlement Class are (i) all Persons who are directors, officers,  
11 and agents of Cognosphere or its subsidiaries and affiliated companies or are designated by  
12 Cognosphere as employees of Cognosphere or its subsidiaries and affiliated companies; (ii) any  
13 entity in which Cognosphere has a controlling interest; and (iii) the Court, the Court's immediate  
14 family, and Court staff, as well as any appellate court to which this matter is ever assigned, and its  
15 immediate family and staff.

16          36.     Cognosphere does not consent to certification of the Settlement Class (or to the  
17 propriety of class treatment) for any purpose other than to effectuate the settlement of this Action.  
18 Cognosphere's agreement to provisional certification does not constitute an admission of  
19 wrongdoing, fault, liability, or damage of any kind to Settlement Class Representative or any of  
20 the provisional Settlement Class Members.

21          37.     Class Notice will be provided via the following information posted on Class  
22 Counsel's website: the Settlement Agreement, Plaintiff's motion for preliminary approval, and  
23 plaintiff's motion for attorneys' fees and incentive awards (including any opposition and reply  
24 papers).

25          38.     If this Settlement Agreement is terminated pursuant to its terms, disapproved by  
26 any court (including any appellate court), and/or not consummated for any reason, or the Effective  
27 Date for any reason does not occur, the order certifying the Settlement Class for purposes of  
28 effectuating the Settlement, and all preliminary and/or final findings regarding that class

1 certification order, shall be automatically vacated upon notice of the same to the Court, the Action  
2 shall proceed as though the Settlement Class had never been certified pursuant to this Settlement  
3 Agreement and such findings had never been made, and the Action shall return to the procedural  
4 posture as it existed on March 30, 2023, in accordance with this Paragraph. No Party nor counsel  
5 shall refer to or invoke the vacated findings and/or order relating to class settlement if this  
6 Settlement Agreement is not consummated and the Action is later litigated and contested by  
7 Cognosphere.

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

9 39. In consideration for the dismissal of the Action with prejudice and the releases  
10 provided in this Settlement Agreement, and as a result of the Action and Settlement, Cognosphere  
11 agrees to the following for U.S. residents for three years following the effective date:

12 a) Cognosphere will agree to include language in substantially the following  
13 form in its Terms of Service applicable to U.S. players (currently at  
14 <https://genshin.hoyoverse.com/en/company/terms>):

15 i) “You acknowledge and agree that you are not entitled to a refund  
16 for any Virtual Currency, except as otherwise required by applicable  
17 law.”

18 b) Cognosphere will, in processing any direct requests for refunds of in-game  
19 purchases:

20 i) For platforms that process refund requests independently from  
21 Cognosphere (e.g., Apple App Store, Google Play Store,  
22 PlayStation Store), in its standard response redirecting users to those  
23 platforms, add language in substantially the following form: “Please  
24 note that store refund policies may vary based on the location of user  
25 and the age of user, including legal minority, at the time of purchase,  
26 as may be required by applicable law,” provided, however, that  
27 Cognosphere may include other language as well while redirecting  
28 users to those platforms.

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ii) For all other platforms , and refund requests for which Cognosphere elects to process itself, in its standard response for U.S. users seeking a refund who indicate that a minor was involved in the situation that led to the refund request, Cognosphere will implement policies to determine whether the in-game purchase was made when the user was a minor without parental consent, except as prohibited by local law.

c) Cognosphere will create a public-facing “help page” (or add to existing pages to the extent relevant) referencing assistance with refunds for virtual money and/or virtual goods purchases:

i) Add specific links to platforms that process refund requests independently from Cognosphere In-App/In-Game Purchase refund policies for reference;

ii) Add language in substantially the following form: “Please note that store refund policies may vary based on the location of user and the age of user, including legal minority, at the time of purchase, as may be required by applicable law,” provided, however, that Cognosphere may include other language as well while redirecting users to those platforms so long as the additional language does not conflict with the quoted required language in this Paragraph 39(c)(ii).

d) Cognosphere will link to these “help pages” on the website within its FAQ section or on any section on its website that is easily accessible to general public.

e) For all refund requests processed by Cognosphere referenced in ¶ 39(b)(ii), Cognosphere will implement a dedicated process to address refund requests to determine whether a refund is appropriate, which may include, but are not limited to, the following considerations:

- 1 i) reasonable confirmation that the purchaser is a minor;
- 2 ii) The minor’s legal guardian agrees that Cognosphere may terminate
- 3 the minor’s account and will prohibit future gameplay by the minor
- 4 and agrees to be financially responsible for any future purchases by
- 5 the minor;
- 6 iii) Cognosphere may require identification of the minor and the
- 7 minor’s legal guardian to prevent the minor’s access to further
- 8 gameplay.
- 9 iv) Cognosphere is not required to provide refunds for purchases made
- 10 on an adult’s account. The personnel staffing this dedicated process
- 11 will receive further training regarding how to analyze and process
- 12 such refund requests in accordance with applicable law.
- 13 f) The parties acknowledge that Cognosphere’s refund policies and practices
- 14 with respect to U.S. minors comply with the California Family Code Sections 6701(c) and 6710.

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

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

- 21 41. Among other things, the Preliminary Approval Order shall:
- 22 a) find that the requirements for provisional certification of the Settlement
  - 23 Class have been satisfied, appointing Settlement Class Representative as the Representative of the
  - 24 provisional Settlement Class and Class Counsel as counsel for the provisional Settlement Class;
  - 25 b) preliminarily enjoin all Settlement Class Members and their Legally
  - 26 Authorized Representative(s) from filing or otherwise participating in any other suit based on the
  - 27 Released Claims;

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1 c) establish dates by which the Parties shall file and serve all papers in support  
2 of the application for final approval of the Settlement;

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

7 e) provide that all Settlement Class Members will be bound by the Final  
8 Approval Order and Final Judgment dismissing the Action with prejudice; and

9 f) pending the Fairness Hearing, stay all proceedings in the Action, other than  
10 the proceedings necessary to carry out or enforce the terms and conditions of this Settlement  
11 Agreement and Preliminary Approval Order.

12 42. In advance of the Fairness Hearing, Class Counsel shall request entry of a Final  
13 Approval Order and Final Judgment, without material variation from Exhibit A, the entry of which  
14 is a material condition of this Settlement Agreement, and that shall, among other things:

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

18 b) finally approve this Settlement Agreement and the Settlement pursuant to  
19 California Code of Civil Procedure;

20 c) certify the Settlement Class under applicable California Code of Civil  
21 Procedure for purposes of settlement only;

22 d) find that direct notice to the class is not necessary, and that notice on Class  
23 Counsel's public website, as provided in this Settlement Agreement, is sufficiently within the  
24 range of reasonableness;

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

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

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



1           h)       dismiss the Action with prejudice and enter a separate judgment pursuant to  
2 applicable California Code of Civil Procedure; and

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

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

12           43.     Upon the Effective Date, Settlement Class Representative's Releasing Parties will  
13 be deemed to have, and by operation of the Final Approval Order and Final Judgment will have  
14 fully, finally, and forever released, relinquished, and discharged any and all past, present, and  
15 future claims, actions, demands, causes of action, suits, debts, obligations, damages, rights or  
16 liabilities, of any nature and description whatsoever, known or unknown, recognized now or  
17 hereafter, existing or preexisting, expected or unexpected, pursuant to any theory of recovery  
18 (including, but not limited to, those based in contract or tort, common law or equity, federal, state,  
19 or local law, statute, ordinance, or regulation), against the Released Parties, up until and including  
20 the Effective Date, that result from, arise out of, are based on, or relate in any way to the practices  
21 and claims that were alleged in the Action, for any type of relief that can be released as a matter  
22 of law, including, without limitation, claims for monetary relief, damages (whether compensatory,  
23 consequential, punitive, exemplary, liquidated, and/or statutory), costs, penalties, interest,  
24 attorneys' fees, litigation costs, restitution, or equitable relief under Cal. Family Code §§ 6701 and  
25 6710 ("Settlement Class Representative' Released Claims"). Settlement Class Representative's  
26 Releasing Parties are forever enjoined from taking any action seeking any relief against the  
27 Released Parties based on any of Settlement Class Representative' Released Claims.

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

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

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

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

5           47.    By operation of the Final Approval Order and Final Judgment, the Action will be  
6 dismissed with prejudice.

7           48.    Upon the Effective Date: (a) this Settlement Agreement shall be the exclusive  
8 remedy for any and all Released Claims of Class Representative and Settlement Class Members;  
9 and (b) Class Representative and Settlement Class Members stipulate to be and shall be  
10 permanently barred and enjoined by Court order from initiating, asserting, or prosecuting against  
11 Released Parties in any federal or state court or tribunal any and all Released Claims.

12 **VII. ATTORNEYS' FEES, COSTS, AND SERVICE AWARD**

13           49.    Class Counsel may apply to the Court for an award of reasonable attorneys' fees  
14 and costs not to exceed \$400,000. Class Counsel approximates that it will seek \$25,000 in costs  
15 and \$375,000 in fees, but may apply in different amounts not to exceed \$400,000. Cognosphere  
16 will take no position on Class Counsel's application and agrees to pay the amount of fees and costs  
17 determined by the Court, up to \$400,000. These terms regarding fees and costs were negotiated  
18 and agreed to by the Parties only after full agreement was reached as to all other material terms.

19           50.    Any Attorneys' Fees and Costs Award, as awarded by the Court up to \$400,000,  
20 shall be payable by Cognosphere, as ordered, within the later of (a) twenty-one (21) days after the  
21 Court's order awarding fees and expenses, or (b) final approval of the settlement and the expiration  
22 of all deadlines in which a class member or any person may challenge final approval. In no event  
23 shall Cognosphere be required to make a payment of attorneys' fees if the Settlement Agreement  
24 is not finally approved.

25           51.    The Parties agree that the Class Representative may apply to the Court for a Service  
26 Award, which shall not exceed \$1,000, for her services as Class Representative. The Parties agree  
27 that the decision whether or not to award any such payment, and the amount of that payment, rests  
28 in the exclusive discretion of the Court. Cognosphere agrees to pay the amount determined by the

1 Court, up to \$1,000. Class Representative understands and acknowledges that she may receive no  
2 monetary payment, and her agreement to the Settlement is not conditioned on the possibility of  
3 receiving monetary payment. Any Service Award, as awarded by the Court, shall be payable by  
4 Cognosphere as ordered, within the later of (a) twenty-one (21) days after the Court's order  
5 awarding fees and expenses, or (b) final approval of the settlement and the expiration of all  
6 deadlines in which a class member or any person may challenge final approval. In no event shall  
7 Cognosphere be required to make a payment of an incentive award if the Settlement Agreement is  
8 not finally approved.

9 **VIII. MODIFICATION OR TERMINATION OF SETTLEMENT AGREEMENT AND**  
10 **COGNOSPHERE'S RESERVATION OF RIGHTS**

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

19 53. This Settlement Agreement and any Exhibits attached hereto constitute the entire  
20 agreement among the Parties, and no representations, warranties, or inducements have been made  
21 to any Party concerning this Settlement Agreement or its Exhibits other than the representations,  
22 warranties, and covenants covered and memorialized in such documents.

23 54. In the event the terms or conditions of this Settlement Agreement are materially  
24 modified by any court, any Party in its sole discretion to be exercised within thirty (30) days after  
25 such modification may declare this Settlement Agreement null and void. For purposes of this  
26 Paragraph, material modifications include any modifications to the definitions of the Settlement  
27 Class, Settlement Class Members, Released Parties, or Released Claims, any modifications to the  
28 terms of the Settlement consideration described in Paragraph IV.39 and/or any requirement of

1 notice to the Settlement Class. In the event of any material modification by any court, and before  
2 exercising their unilateral option to withdraw from this Settlement Agreement pursuant to this  
3 Paragraph, the Parties shall meet and confer within seven (7) days of such ruling to attempt to  
4 reach an agreement as to how best to effectuate the court-ordered modification.

5         55. In the event that a Party exercises his/her/its option to withdraw from and terminate  
6 this Settlement Agreement pursuant to Paragraph 54, then the Settlement proposed herein shall  
7 become null and void and shall have no force or effect, the Parties shall not be bound by this  
8 Settlement Agreement, and the Parties will be returned to their respective positions existing on  
9 March 30, 2023.

10         56. If this Settlement Agreement is not approved by the Court or the Settlement  
11 Agreement is terminated or fails to become effective in accordance with the terms of this  
12 Settlement Agreement, the Parties will be restored to their respective positions in the Action  
13 existing on March 30, 2023. In such event, the terms and provisions of this Settlement Agreement  
14 and the memorandum of understanding will have no further force and effect with respect to the  
15 Parties and will not be used in this Action or in any other proceeding for any purpose, and any  
16 Judgment or order entered by the Court in accordance with the terms of this Settlement Agreement  
17 will be treated as vacated.

18         57. The procedure for and the allowance or disallowance by the Court of any  
19 application for attorneys' fees, costs, expenses, and/or reimbursement to be paid to Class Counsel,  
20 and the procedure for any payment to the class representative, are not part of the settlement of the  
21 Released Claims as set forth in the Settlement Agreement, and are to be considered by the Court  
22 separately from the Court's consideration of the fairness, reasonableness, and adequacy of the  
23 settlement of the Released Claims as set forth in the Settlement Agreement. Any such separate  
24 order, finding, ruling, holding, or proceeding relating to any such applications for attorneys' fees  
25 and costs and/or payment to the class representative, or any separate appeal from any separate  
26 order, finding, ruling, holding, or proceeding relating to them or reversal or modification of them,  
27 shall not operate to terminate or cancel the Settlement Agreement or otherwise affect or delay the  
28 finality of the final approval order and final judgment approving the Settlement.

1           58.     The terms of this Agreement relating to the Attorneys' Fees and Costs Award and  
2 Service Awards were negotiated and agreed to by the Parties only after full agreement was reached  
3 as to all other material terms of the proposed Settlement, including, but not limited to, any terms  
4 relating to the relief to the Settlement Class.

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

25 **IX. MISCELLANEOUS PROVISIONS**

26           60.     The Parties intend the Settlement Agreement to be a final and complete resolution  
27 of all disputes between them with respect to the Action. The Settlement Agreement compromises  
28

1 claims that are contested and will not be deemed an admission by Cognosphere or Class  
2 Representative as to the merits of any claim or defense.

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

5 To Class Representative and the Settlement Class:

6 L. Timothy Fisher  
7 ltfisher@bursor.com  
8 Bursor & Fisher, P.A.  
9 1990 N. California Blvd.  
10 Walnut Creek, CA 94596

11 Philip L. Fraietta  
12 pfraietta@bursor.com  
13 Alec M. Leslie  
14 aleslie@bursor.com  
15 888 7th Ave.  
16 New York, NY 10019

17 To Counsel for Cognosphere:

18 Ajay S. Krishnan  
19 Keker, Van Nest & Peters LLP  
20 633 Battery Street  
21 San Francisco, CA 94111-1809  
22 akrishnan@keker.com

23 Michelle Ybarra  
24 Keker, Van Nest & Peters LLP  
25 633 Battery Street  
26 San Francisco, CA 94111-1809  
27 mybarra@keker.com

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

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

64. No extrinsic evidence or parol evidence shall be used to interpret, explain, construe,  
contradict, or clarify this Agreement, its terms, the intent of the Parties or their counsel, or the  
circumstances under which this Settlement Agreement was made or executed. This Settlement  
Agreement supersedes all prior negotiations and agreements. The Parties expressly agree that the

1 terms and conditions of this Settlement Agreement will control over any other written or oral  
2 agreements.

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

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

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

26 68. The Parties agree that the consideration provided to the Settlement Class and the  
27 other terms of the Settlement Agreement were negotiated at arm’s length, in good faith by the  
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1 Parties, and reflect a settlement that was reached voluntarily, after consultation with competent  
2 legal counsel, and with the assistance of an independent, neutral mediator.

3 69. The Class Representative and Class Counsel have concluded that the Settlement set  
4 forth herein constitutes a fair, reasonable, and adequate resolution of the claims that the Class  
5 Representative asserted against Cognosphere, including the claims on behalf of the Settlement  
6 Class, and that it promotes the best interests of the Settlement Class.

7 70. To the extent permitted by law, all agreements made and orders entered during the  
8 course of the Action relating to the confidentiality of information shall survive this Settlement  
9 Agreement.

10 71. The waiver by one Party of any breach of this Settlement Agreement by any other  
11 Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement  
12 Agreement.

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

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

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

24 75. This Settlement Agreement was jointly drafted by the Parties. Class  
25 Representative, Settlement Class Members, and/or Cognosphere shall not be deemed to be the  
26 drafters of this Settlement Agreement or of any particular provision, nor shall they argue that any  
27 particular provision should be construed against its drafter or otherwise resort to the *contra*  
28 *proferentem* canon of construction. Accordingly, this Settlement Agreement should not be

1 construed in favor of or against one Party as to the drafter, and the Parties agree that the provisions  
2 of California Civil Code § 1654 and common law principles of construing ambiguities against the  
3 drafter shall have no application.

4 76. Any and all Exhibits to this Settlement Agreement, which are identified in the  
5 Settlement Agreement and attached hereto, are material and integral parts hereof and are fully  
6 incorporated herein by this reference.

7 77. This Settlement Agreement shall be governed by and construed in accordance with  
8 the laws of the State of California, without regard to choice of law principles. Any action to  
9 enforce the terms of this Settlement Agreement shall be filed in the Superior Court of the State of  
10 California.

11 78. The headings used in this Settlement Agreement are inserted merely for the  
12 convenience of the reader, and shall not affect the meaning or interpretation of this Settlement  
13 Agreement.

14 79. In construing this Settlement Agreement, the use of the singular includes the plural  
15 (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

16 80. Class Representative and Class Counsel will not issue any press release or  
17 communicate with the media regarding the Settlement or the Action without prior approval of  
18 Cognosphere. However, if Class Representative or Class Counsel receive an inquiry from any  
19 third party (excluding Settlement Class Members who identify themselves as such), they may only  
20 make affirmative statements relating to the Settlement as follows: "The parties have reached a  
21 mutually agreeable resolution to a disputed set of class claims that is fair, adequate, and  
22 reasonable." Class Counsel reserves all rights to communicate with individual members of the  
23 Settlement Class to assist them in understanding the Settlement and nothing herein shall be  
24 construed as restricting those rights and responsibilities. Similarly, nothing in this Agreement will  
25 affect Cognosphere's right to communicate with individual members of the Settlement Class  
26 relating to matters other than the Action or the proposed Settlement.

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1           81.     The provision of the confidentiality agreement entered into with respect to the  
2 mediation process concerning this matter is waived for the limited purpose of permitting the Parties  
3 to confirm the details of the mediation process that are included in this Agreement.

4           82.     The Class Representative further acknowledges, agrees, and understands that: (i)  
5 she has read and understands the terms of this Agreement; (ii) she has been advised in writing to  
6 consult with an attorney before executing this Agreement; and (iii) she has obtained and considered  
7 such legal counsel as she deems necessary. The Class Representative enters into this Settlement  
8 Agreement with the full ratification and authorization of her guardian, Juanita James.

9           83.     All of the Parties warrant and represent that they are agreeing to the terms of this  
10 Settlement Agreement based upon the legal advice of their respective attorneys, that they have  
11 been afforded the opportunity to discuss the contents of this Settlement Agreement with their  
12 attorneys, and that the terms and conditions of this document are fully understood and voluntarily  
13 accepted.

14           84.     Each Party to this Settlement Agreement warrants that he or it is acting upon her or  
15 its independent judgment and upon the advice of her or its counsel, and not in reliance upon any  
16 warranty or representation, express or implied, of any nature or any kind by any other Party, other  
17 than the warranties and representations expressly made in this Settlement Agreement.

18           85.     Each Counsel or other person executing this Settlement Agreement or any of its  
19 Exhibits on behalf of any Party hereby warrants that such person has the full authority to do so.  
20 Class Counsel, on behalf of the Settlement Class, is expressly authorized by the Class  
21 Representative to take all appropriate action required or permitted to be taken by the Settlement  
22 Class pursuant to this Settlement Agreement to effectuate its terms, and is expressly authorized to  
23 enter into any modifications or amendments to this Settlement Agreement on behalf of the  
24 Settlement Class that Class Counsel and Class Representative deem appropriate.

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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.

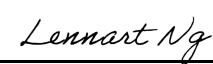
Dated: May 1, 2023

KEKER, VAN NEST & PETERS LLP

By: 


Dated: April 28, 2023

COGNOSPHERE, PTE. LTD.

By: 

Dated: Apr 28, 2023, 2023

PLAINTIFF C.J.

By:   
Juanita M. James (Apr 28, 2023 07:35 PDT)

Dated: Apr 28, 2023, 2023

BURSOR & FISHER, P.A.

By: 

**EXHIBIT A**

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF MONTEREY**

C.J., a minor, individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

COGNOSPHERE PTE. LTD.,

Defendant.

Case No.

**[PROPOSED] FINAL ORDER  
AND JUDGMENT**

1 The Court has considered the Class Action Settlement Agreement and Release between  
2 Plaintiff C.J. (“Plaintiff”) and Defendant Cognosphere, Pte. Ltd., (“Defendant” or  
3 “Cognosphere”), dated \_\_\_\_, 2023 (“Settlement Agreement”), the motion for an order finally  
4 approving the Settlement Agreement, the record in this Action, the arguments and  
5 recommendations made by counsel, and the requirements of the law. The Court finds and orders  
6 as follows:

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

8 1. The Settlement Agreement is approved under California Rules of Court Rule 3.769  
9 and Code of Civil Procedure § 382. The Court finds that the Settlement Agreement and the  
10 Settlement it incorporates appear fair, reasonable, and adequate, and its terms are within the range  
11 of reasonableness. The Settlement Agreement was entered into at arm’s-length by experienced  
12 counsel after extensive negotiations spanning months, including with the assistance of a third-  
13 party mediator. The Court finds that the Settlement Agreement is not the result of collusion.

14 **II. DEFINED TERMS**

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

17 **III. NO ADMISSIONS AND NO EVIDENCE**

18 3. This Order, the Settlement Agreement, the Settlement provided for therein, and  
19 any proceedings taken pursuant thereto, are not, and should not in any event be offered, received,  
20 or construed as evidence of, a presumption, concession, or an admission by any Party or any of  
21 the Released Parties of wrongdoing, to establish a violation of any law or duty, an admission that  
22 any of the practices at issue violate any laws or require any disclosures, any liability or non-  
23 liability, the certifiability or non-certifiability of a litigation class in this case, or any  
24 misrepresentation or omission in any statement or written document approved or made by any  
25 Party.  
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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 Agreement only, the proposed Settlement Class meets the requirements for certification under  
9 California Code of Civil Procedure § 382: (a) the Settlement Class is so numerous that joinder of  
10 all members is impracticable; (b) there are questions of law or fact common to the Settlement  
11 Class; (c) the claims or defenses of the Settlement Class Representative are typical of the claims  
12 or defenses of the Settlement Class; (d) Settlement Class Representative and Class Counsel will  
13 fairly and adequately protect the interests of the Settlement Class because Settlement Class  
14 Representative have no interests antagonistic to the Settlement Class, and have retained counsel  
15 who are experienced and competent to prosecute this matter on behalf of the Settlement Class;  
16 and (e) the Defendant has acted on grounds that apply generally to the Settlement Class, so that  
17 final injunctive relief is appropriate respecting the Settlement Class as a whole.

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

11 7. The Court accordingly certifies, for settlement purposes only, a class consisting of  
12 all persons in the United States of America who made a purchase in Genshin Impact while under  
13 the age of 18. Excluded from the Settlement Class are (i) all Persons who are directors, officers,  
14 and agents of Cognosphere or its subsidiaries and affiliated companies or are designated by  
15 Cognosphere as employees of Cognosphere or its subsidiaries and affiliated companies; (ii) any  
16 entity in which Cognosphere has a controlling interest; and (iii) the Court, the Court's immediate  
17 family, and Court staff, as well as any appellate court to which this matter is ever assigned, and its  
18 immediate family and staff..

19 **VI. NOTICE**

20 8. Direct notice of the settlement is not required here because the Settlement  
21 Agreement only releases claims for injunctive and/or declaratory relief and does not release the  
22 monetary or damages claims of the Class, and thus the settlement expressly preserves the  
23 individual rights of class members to pursue monetary claims against the defendant. Nonetheless,  
24 pursuant to the Settlement Agreement, documents pertaining to the Settlement, preliminary  
25 approval, and final approval (including Plaintiffs' motion for attorneys' fees and incentive awards  
26 and any opposition or reply papers thereto), were posted on Class Counsel's public website.  
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1 **VII. CLAIMS COVERED AND RELEASES**

2 9. This Order constitutes a full, final and binding resolution between the Class  
3 Representative's Releasing Parties, on behalf of themselves and the Settlement Class Members,  
4 and the Released Parties. This Release shall be applied to the maximum extent permitted by law.

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

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

23 12. The Settlement Agreement and this Order shall be the exclusive remedy for any  
24 and all Released Claims of the Settlement Class Representatives, Settlement Class Members, and  
25 Cognosphere.

26 **VIII. INJUNCTIVE RELIEF**

1           13.     Cognosphere will agree to include language in substantially the following form in  
2 its Terms of Service applicable to U.S. players (currently at  
3 <https://genshin.hoyoverse.com/en/company/terms>):

- 4           **a.**     “You acknowledge and agree that you are not entitled to a refund for any Virtual  
5 Currency, except as otherwise required by applicable law.”

6           14.     Cognosphere will, in processing any direct requests for refunds of in-game  
7 purchases:

- 8           **a.**     For platforms that process refund requests independently from Cognosphere (e.g.,  
9 Apple App Store, Google Play Store, PlayStation Store), in its standard response  
10 redirecting users to those platforms, add language in substantially the following  
11 form: “Please note that store refund policies may vary based on the location of  
12 user and the age of user, including legal minority, at the time of purchase, as may  
13 be required by applicable law,” provided, however, that Cognosphere may include  
14 other language as well while redirecting users to those platforms.

- 15           **b.**     For all other platforms , and refund requests for which Cognosphere elects to  
16 process itself, in its standard response for U.S. users seeking a refund who indicate  
17 that a minor was involved in the situation that led to the refund request,  
18 Cognosphere will implement policies to determine whether the in-game purchase  
19 was made when the user was a minor without parental consent, except as  
20 prohibited by local law.

21           15.     Cognosphere will create a public-facing “help page” (or add to existing pages to  
22 the extent relevant) referencing assistance with refunds for virtual money and/or virtual goods  
23 purchases:

- 24           **a.**     Add specific links to platforms that process refund requests independently from  
25 Cognosphere In-App/In-Game Purchase refund policies for reference;  
26           **b.**     Add language in substantially the following form: “Please note that store refund  
27 policies may vary based on the location of user and the age of user, including legal  
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1 minority, at the time of purchase, as may be required by applicable law,” provided,  
2 however, that Cognosphere may include other language as well while redirecting  
3 users to those platforms so long as the additional language does not conflict with  
4 the quoted required language in this Paragraph.

5 16. Cognosphere will link to these “help pages” on the website within its FAQ section.

6 17. For all refund requests processed by Cognosphere referenced in ¶ 5(b)(ii),  
7 Cognosphere will implement a dedicated process to address refund requests to determine whether  
8 a refund is appropriate, which may include, but are not limited to, the following considerations:

- 9 a. reasonable confirmation that the purchaser is a minor;  
10 b. The minor’s legal guardian agrees that Cognosphere may terminate the minor’s  
11 account and will prohibit future gameplay by the minor and agrees to be  
12 financially responsible for any future purchases by the minor;  
13 c. Cognosphere may require identification of the minor and the minor’s legal  
14 guardian to prevent the minor’s access to further gameplay.  
15 d. Cognosphere is not required to provide refunds for purchases made on an adult’s  
16 account. The personnel staffing this dedicated process will receive further training  
17 regarding how to analyze and process such refund requests in accordance with  
18 applicable law.

19 18. The parties will acknowledge that Cognosphere’s refund policies and practices  
20 with respect to U.S. minors comply with the California Family Code Sections 6701(c) and 6710.

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

22 19. The Court has also considered Plaintiff’s Motion for Attorneys’ Fees, Costs,  
23 Expenses, and Incentive Award, as well as the supporting declarations, and adjudges that the  
24 payment of attorneys’ fees, costs, and expenses in the amount of \$400,000 is reasonable under  
25 California law. *In re Consumer Privacy Cases*, 175 Cal.App.4th 545, 551 (2009); *Wershba v.*  
26 *Apple Computer*, 91 Cal.App.4th 224, 254-255 (2001); *Lealao v. Benefit Cal.*, 82 Cal.App.4th 19,  
27 26-34 (2000); *Serrano v. Priest*, 20 Cal.3d 25, 34-48 (1977). This award includes Class  
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1 Counsel's unreimbursed litigation expenses. Such payment shall be made pursuant to and in the  
2 manner provided by the terms of the Settlement Agreement.

3 20. The Court has also considered Plaintiff's Motion and supporting declarations for  
4 an incentive award to the Class Representative, C.J. The Court adjudges that the payment of an  
5 incentive award in the amount of \$1,000 to C.J. to compensate her for her efforts and  
6 commitment on behalf of the Settlement Class, is fair, reasonable, and justified under the  
7 circumstances of this case. Such payment shall be made pursuant to and in the manner provided  
8 by the terms of the Settlement Agreement.

9 **X. AUTHORIZATION TO PARTIES TO IMPLEMENT AGREEMENT AND**  
10 **MODIFICATIONS OF AGREEMENT**

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

17 **XI. TERMINATION**

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

**XII. RETENTION OF JURISDICTION**

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

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

24. By operation of this Order, this Action is hereby dismissed with prejudice.

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

**EXHIBIT B**

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF MONTEREY**

C.J., a minor, individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

COGNOSPHERE PTE. LTD.,

Defendant.

Case No.

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



1           WHEREAS, pursuant to California Rules of Court 3.769, the parties seek entry of an  
2 order preliminarily approving the Settlement of this Action pursuant to the settlement  
3 agreement fully executed on or about \_\_\_\_\_ (the “Agreement”), which, together with its  
4 attached exhibits, sets forth the terms and conditions for a proposed Settlement of the Action;  
5 and WHEREAS, the Court has read and considered the Settlement Agreement and its exhibits,  
6 and Plaintiff’s Unopposed Motion for Preliminary Approval; IT IS HEREBY **ORDERED** as  
7 follows:

8           1.       The motion is GRANTED.

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

11           3.       All proceedings in the Action, other than proceedings necessary to carry out or  
12 enforce the terms and conditions of the Agreement and this Order, are hereby stayed.

13           4.       The Court has subject matter jurisdiction over the Action, and personal  
14 jurisdiction over the Parties before it. Additionally, venue is proper pursuant to Cal. Civ. Code  
15 § 395.

16           5.       The Action is preliminarily certified as a class action, for settlement purposes  
17 only, pursuant to California Rules of Court Rule 3.769 and Code of Civil Procedure § 382. The  
18 Court preliminarily finds for settlement purposes that: (a) the Class certified herein is  
19 sufficiently numerous that joinder of all such persons would be impracticable; (b) there are  
20 questions of law and fact that are common to the Class, and those questions of law and fact  
21 common to the Class predominate over any questions affecting any individual Class Member;  
22 (c) the claims of the Plaintiff are typical of the claims of the Class they seek to represent for  
23 purposes of settlement; (d) a class action on behalf of the Class is superior to other available  
24 means of adjudicating this dispute; and (e) as set forth below, Plaintiff and Plaintiff’s Counsel  
25 are adequate representatives of the Class. Defendant retains all rights to assert that the Action  
26 may not be certified as a class action, other than for settlement purposes. The Court also  
27 concludes that, because the Action is being settled rather than litigated, the Court “need not  
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1 inquire whether the case, if tried, would present intractable management problems.” *See*  
2 *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

3           6.       The Settlement Class shall consist of “All persons in the United States of  
4 America who made a purchase in Genshin Impact while under the age of 18.”

5           7.       Upon preliminary review, the Court finds that the Agreement, and the  
6 Settlement it incorporates is fair, reasonable, and adequate. *See Manual for Complex Litigation*  
7 (Fourth) § 21.632 (2004). Accordingly, the Agreement is preliminarily approved and is  
8 sufficient to warrant sending notice to the Class.

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

13           9.       The Court hereby appoints Plaintiff C.J. as Class Representative to represent the  
14 Settlement Class.

15           10.      The Court hereby appoints Philip L. Fraietta and Alec M. Leslie of Bursor &  
16 Fisher, P.A. as Class Counsel for the Settlement Class.

17           11.      Direct notice of the settlement is not required here because the Settlement  
18 Agreement only releases claims for injunctive and/or declaratory relief and does not release the  
19 monetary or damages claims of the Class, and thus the settlement expressly preserves the  
20 individual rights of class members to pursue monetary claims against the Defendant.  
21 Nonetheless, pursuant to the Settlement Agreement, documents pertaining to the Settlement,  
22 preliminary approval, and final approval (including Plaintiff’s motion for attorneys’ fees and  
23 incentive award and any opposition or reply papers thereto), shall be posted on Class Counsel’s  
24 public website (<http://www.https://www.bursor.com/>).

25           12.      Each Settlement Class Member shall be given a full opportunity to comment on  
26 or object to the Settlement Agreement, and to participate at a Final Approval Hearing.  
27 Comments or objections must be in writing, and must include (1) the name and case number of  
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1 the Action (*C.J. v. Cognosphere Pte. Ltd.*, Case No. \_\_\_\_\_); (2) the Settlement Class  
2 Member's full legal name and mailing address; (3) the personal signature of the Settlement  
3 Class member; (4) the grounds for any objection; (5) the name and contact information of any  
4 and all attorneys representing, advising, or assisting with the comment or objection, or who  
5 may profit from pursuing any objection; and (6) a statement indicating whether the Settlement  
6 Class Member intends to appear at the Final Approval Hearing, either personally or through  
7 counsel. Written objections must be served on the Settlement Administrator as follows:

8 C.J. v. Cognosphere Pte. Ltd.  
9 c/o [Settlement Administrator]  
[Insert Settlement Administrator address]

10 The Settlement Administrator, Defense Counsel, and Class Counsel shall promptly furnish each  
11 other copies of any and all objections that might come into their possession.

12  
13 Class Members may also appear at the final approval hearing to state their objections,  
14 whether or not they have made a written objection or given a notice to appear.

15 13. To be considered, written comments or objections must be submitted within 60  
16 days after the entry of this Order. No Class Member shall be entitled to be heard at the Final  
17 Approval Hearing, whether individually or through counsel, unless written notice of the Class  
18 Member's intention to appear at the Final Approval Hearing is timely filed, or postmarked for  
19 mail to the Court within 60 days after date of entry of this Order.

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

26 15. The Court will hold a final approval hearing on \_\_\_\_\_, 2023 at \_\_\_\_\_  
27 a.m./p.m, in the Superior Court of California, County of Monterey, located at ADDRESS, in  
28 Courtroom \_\_\_\_\_. The purposes of the final approval hearing will be to: (i) determine whether

1 the proposed Settlement Agreement should be finally approved by the Court as fair, reasonable,  
2 adequate, and in the best interests of the Settlement Class; (ii) determine whether judgment  
3 should be entered pursuant to the Settlement Agreement, dismissing the Action with prejudice  
4 and releasing the Released Persons of all claims as stated in the Settlement Agreement; (iii)  
5 determine whether the Settlement Class should be finally certified; (iv) rule on Class Counsel's  
6 motion for attorneys' fees, costs and service awards; (v) consider any properly filed objections;  
7 and (vi) consider any other matters necessary in connection with the final approval of the  
8 Settlement Agreement.

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

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

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

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

6 20. Pending final determination of whether the Settlement Agreement should be  
7 finally approved, Plaintiff and all Settlement Class Members are barred and enjoined from  
8 filing, commencing, prosecuting, or enforcing any action against the Released Parties insofar as  
9 such action asserts claims stated in Section VI of the Settlement Agreement, directly or  
10 indirectly, in any judicial, administrative, arbitral, or other forum. This bar and injunction is  
11 necessary to protect and effectuate the Settlement Agreement and this Preliminary Approval  
12 Order, and this Court's authority to effectuate the Settlement, and is ordered in aid of this  
13 Court's jurisdiction.

14 21. This Preliminary Approval Order, the Settlement Agreement, the fact that a  
15 settlement was reached and filed, and all negotiations, statements, agreements, and proceedings  
16 relating to the Settlement, and any matters arising in connection with settlement negotiations,  
17 proceedings, or agreements shall not constitute, be described as, construed as, used as, offered  
18 or received against Cognosphere as evidence or an admission or concession of: (a) the truth of  
19 any fact alleged by Plaintiff in the Action; (b) any liability, negligence, fault, or wrongdoing of  
20 Cognosphere or breach of any duty on the part of Cognosphere; or (c) that this Action or any  
21 other action may be properly certified as a class action for litigation, non-settlement purposes.  
22 This order is not a finding of the validity or invalidity of any of the claims asserted or defenses  
23 raised in the Action.

24 22. The Court shall retain jurisdiction over any claim relating to the Settlement  
25 Agreement (including all claims for enforcement of the Settlement Agreement and/or all claims  
26 arising out of a breach of the Settlement Agreement) as well as any future claims by any  
27 Settlement Class Member relating in any way to the Released Claims.  
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1           23.     The Court may, for good cause, extend any of the deadlines set forth in this  
2 Preliminary Approval Order without further notice to Settlement Class Members. Without  
3 further order of the Court, the Parties may agree to make non-material modifications in  
4 implementing the Settlement that are not inconsistent with this Preliminary Approval Order.  
5

6 IT IS SO ORDERED.

7 Date: \_\_\_\_\_

8 \_\_\_\_\_





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

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## **FIRM RESUME**

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

### **JOSEPH I. MARCHESE**

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

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

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

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

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

### **Selected Published Decisions:**

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

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

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

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

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

**Selected Class Settlements:**

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

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

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

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

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

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

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

**SARAH N. WESTCOT**

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

She has represented clients in a wide array of civil litigation, and has substantial trial and appellate experience. Sarah served as trial counsel in *Ayyad v. Sprint Spectrum L.P.*, where

Bursor & Fisher won a jury verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

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

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

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

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

### **JOSHUA D. ARISOHN**

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

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

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

### **Selected Published Decisions:**

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

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

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

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

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

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

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

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

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

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

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

#### **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:**

*Javier v. Assurance IQ, LLC*, --- Fed App'x --- 2022 WL 1744107 (9th Cir. May 31, 2022), reversing dismissal in a class action alleging surreptitious monitoring of internet communications.

*Revitch v. DIRECTV, LLC*, 977 F.3d 713 (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:**

*Recinos et al. v. The Regents of the University of California*, Superior Court for the State of California, County of Alameda, Case No. RG19038659 – final approval granted for a settlement providing debt relief and refunds to University of California students who were charged late fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **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.

*Sholopa v. Turk Hava Yollari A.O., Inc. (d/b/a Turkish Airlines)*, 2022 WL 976825 (S.D.N.Y. Mar. 31, 2022), denying airline's motion to dismiss its customers claims for failure to refund flights cancelled due to COVID-19.

#### **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. 2022) granting final 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® every year since 2019.

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

Phil is admitted to the State Bars of New York, New Jersey, Illinois, 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.



**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.

**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.

### **STEFAN BOGDANOVICH**

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

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

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

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

### **BRITTANY SCOTT**

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

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

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

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

**Selected Class Settlements:**

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

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

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

**MAX S. ROBERTS**

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

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

Outside of the law, Max is an avid triathlete.

**Selected Published Decisions:**

*Jackson v. Amazon.com, Inc.*, --- F.4th ---, 2023 WL 2997031 (9th Cir. Apr. 19, 2023), affirming district court’s denial of motion to compel arbitration. Max personally argued the appeal before the Ninth Circuit, which can be viewed [here](#).

*Javier v. Assurance IQ, LLC*, 2022 WL 1744107 (9th Cir. May 31, 2022), reversing district court and holding that Section 631 of the California Invasion of Privacy Act requires prior consent to

wiretapping. Max personally argued the appeal before the Ninth Circuit, which can be viewed [here](#).

*Mora v. J&M Plating, Inc.*, --- N.E.3d ---, 2022 WL 17335861 (Ill. App. Ct. 2d Dist. Nov. 30, 2022), reversing circuit court and holding that Section 15(a) of Illinois' Biometric Information Privacy Act requires an entity to establish a retention and deletion schedule for biometric data at the first moment of possession. Max personally argued the appeal before the Second District, which can be listened to [here](#).

*Cristostomo v. New Balance Athletics, Inc.*, 2022 WL 17904394 (D. Mass. Dec. 23, 2022), denying motion to dismiss and motion to strike class allegations in case involving sneakers marketed as "Made in the USA."

*Carroll v. Myriad Genetics, Inc.*, 2022 WL 16860013 (N.D. Cal. Nov. 9, 2022), denying in part motion to dismiss in case involving non-invasive prenatal testing product.

*Louth v. NFL Enterprises LLC*, 2022 WL 4130866 (D.R.I. Sept. 12, 2022), denying motion to dismiss alleged violations of the Video Privacy Protection Act.

*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.

*Saleh v. Nike, Inc.*, 562 F. Supp. 3d 503 (C.D. Cal. 2021), denying in part motion to dismiss alleged violations of California Invasion of Privacy Act.

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

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

*Miranda v. Golden Entertainment (NV), Inc.*, Case No. 2:20-cv-534-AT (D. Nev. 2021) – final approval granted for class settlement valued at over \$4.5 million to resolve claims of customers and employees of casino company stemming from data breach.

*Malone v. Western Digital Corp.*, Case No. 5:20-cv-3584-NC (N.D. Cal. 2021) – final approval granted for class settlement valued at \$5.7 million to resolve claims of hard drive purchasers for alleged false advertised.

*Frederick v. ExamSoft Worldwide, Inc.*, Case No. 2021-L-001116 (18th Judicial Circuit Court DuPage County, Illinois 2021) – final approval granted for \$2.25 million class settlement to resolve claims of Illinois students for alleged violations of the Illinois Biometric Information Privacy Act.

#### **Bar Admissions**

- New York State
- Southern District of New York
- Eastern District of New York
- Northern District of New York
- Northern District of Illinois
- Central District of Illinois
- Eastern District of Michigan
- District of Colorado
- Ninth Circuit Court of Appeals
- Seventh Circuit Court of Appeals

### **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.

### **JULIA K. 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, Eastern, Central, and Southern Districts of California.

Julia received her Juris Doctor in 2020 from the University of California, Hastings College of the Law, where she graduated *cum laude* with two CALI Awards for the highest grade in her Evidence and California Community Property classes. During law school, Julia was a member of the UC Hastings Moot Court team and competed at the Evans Constitutional Law Moot Court Competition, where she finished as a national quarterfinalist and received a best brief award. Julia was also inducted into the UC Hastings Honors Society and was awarded Best Brief and an Honorable Mention for Best Oral Argument in her First-Year Moot Court section. In addition, Julia served as a Research Assistant for her Constitutional Law professor, as a Teaching Assistant for Legal Writing & Research, and as a Law Clerk at the San Francisco Public Defender's Office. In 2017, Julia graduated *magna cum laude* from Baruch College/CUNY, Weissman School of Arts and Sciences, with a B.A. in Political Science.

**JULIAN DIAMOND**

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

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

**MATTHEW GIRARDI**

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

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

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

**JENNA GAVENMAN**

Jenna Gavenman is an Associate with Bursor & Fisher, P.A. Jenna focuses her practice on complex civil litigation and consumer class actions. Jenna was a Summer Associate and a part-time intern with Bursor & Fisher prior to joining the firm as a full-time Associate in September 2022.

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

Jenna received her Juris Doctor in 2022 from the University of California, Hastings College of the Law (now named UC Law SF). During law school, she was awarded an Honorable Mention for Best Oral Argument in her First-Year Moot Court section. Jenna also participated in both the Medical Legal Partnership for Seniors (MLPS) and the Lawyering for Children Practicum at Legal Services for Children—two of UC Hastings's nationally renowned clinical programs. Jenna was awarded the Clinic Award for Outstanding Performance in MLPS



for her contributions to the clinic. In addition, Jenna volunteered with her law school's Legal Advice and Referral Clinic and as a LevelBar Mentor.

In 2018, Jenna graduated *cum laude* from Villanova University with a B.A. in Sociology and Spanish (double major). Jenna was a Division I athlete, competing on the Villanova Women's Water Polo varsity team for four consecutive years.

### **EMILY HORNE**

Emily Horne is an Associate with Bursor & Fisher, P.A. Emily focuses her practice on complex civil litigation and consumer class actions. Emily was a Summer Associate with Bursor & Fisher prior to joining the firm.

Emily is admitted to the State Bar of California.

Emily received her Juris Doctor from the University of California, Hastings College of the Law in 2022 (now UC, Law SF). During law school, Emily served as Editor-in-Chief for the UC Hastings Communications and Entertainment Law Journal, and she competed on the Moot Court team. Emily also served as a judicial extern in the Northern District of California and as a Teaching Assistant for Legal Writing & Research. In 2015, Emily graduated from Scripps College with a B.A. in Sociology.

### **IRA ROSENBERG**

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

Ira received his Juris Doctor in 2022 from Columbia Law School. During law school, Ira served as a Student Honors Legal Intern with Division of Enforcement at the U.S. Securities and Exchange Commission. Ira also interned during law school in the Criminal Division at the United States Attorney's Office for the Southern District of New York and with the Investor Protection Bureau at the Office of the New York State Attorney General. Ira graduated in 2018 from Beth Medrash Govoha with a B.A. in Talmudic Studies.

### **LUKE SIRONSKI-WHITE**

Luke Sironski-White is an Associate with Bursor & Fisher, P.A., focusing on complex civil litigation and consumer class actions. Luke joined the firm as a full-time Associate in August 2022.

Luke is admitted to the State Bar of California.

Luke received his Juris Doctor in 2022 from the University of California, Berkeley School of Law. During law school, Luke was on the board of the Consumer Advocacy and Protection Society (CAPS), edited for the Berkeley Journal of Employment and Labor Law, and volunteered with the Prisoner Advocacy Network.

In 2017, Luke graduated from the University of Chicago with a B.A. in Anthropology. Before entering the field of law Luke was a professional photographer and filmmaker.

**JONATHAN L. WOLLOCH**

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

Jonathan is admitted to the State Bar of Florida and the bars of the United States District Courts for the Southern and Middle Districts of Florida.

Jonathan received his Juris Doctor from the University of Miami School of Law in 2022, graduating magna cum laude. During law school, Jonathan served as a judicial intern to the Honorable Beth Bloom for the Southern District of Florida. He received two CALI Awards for earning the highest grade in his Trusts & Estates and Substantive Criminal Law courses, and he was elected to the Order of the Coif. Jonathan was also selected for participation in a semester long externship at the Florida Supreme Court, where he served as a judicial extern to the Honorable John D. Couriel. In 2018, Jonathan graduated from the University of Michigan with a B.A. in Political Science.