

**IN THE CIRCUIT COURT OF DUPAGE COUNTY, ILLINOIS  
18TH JUDICIAL CIRCUIT**

DANIEL O'MALLEY, LUCAS YOUNG, and  
CHARLES BUCKINGHAM, *individually and on  
behalf of all others similarly situated,*

Plaintiffs,

v.

FLOSPORTS, INC.,

Defendant.

Case No. 2023LA000516

**PLAINTIFFS' UNOPPOSED, SECOND AMENDED MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION SETTLEMENT**

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## I. INTRODUCTION

In this putative class action, Plaintiff Daniel O’Malley, a resident of Darien, Illinois, along with fellow Plaintiffs Lucas Young and Charles Buckingham, allege that Defendant FloSports, Inc. (“Defendant” or “FloSports”) engaged in an illegal “automatic renewal” scheme with respect to its subscription sports broadcasting and streaming services across its network sites (hereinafter, the “FS Subscriptions”). Defendant denies these and all allegations of wrongdoing with respect to the FS Subscriptions, and represents that it is agreeing to settle this litigation to avoid the uncertainties and expenses associated with ongoing litigation. After two arm’s length mediations facilitated by a neutral third party, the Parties have reached a proposed settlement (“Settlement” or “Agreement”). The important aspects of the Settlement are listed below and detailed herein:

**Settlement Class.** The Settlement Class consists of approximately 550,000 FloSports subscribers who, from August 29, 2018 through the date the settlement agreement is signed, enrolled in an automatically renewing FloSports subscription using a California, New York, North Carolina, Oregon, Florida, Illinois, Washington D.C., North Dakota, Virginia, Hawaii, or Vermont billing address and paid fee(s) in connection with such subscription. *See* Settlement § 1.38; Fisher Decl. ¶ 8 (“The class consists of approximately 550,000 subscribers.”).

**Monetary Benefit.** The Settlement creates a non-reversionary, cash Settlement Fund of \$1.55 million, which will be used to pay approved class member claims, notice and administration costs, service awards to the Plaintiffs, and attorneys’ fees, costs, and expenses to Proposed Class Counsel.<sup>1</sup> Settlement ¶ 1.40. Class Members will receive a prorated cash payment of up to \$30 for annual subscribers and up to \$6 for monthly subscribers. *Id.* ¶ 2.1.

**Non-Monetary Benefit.** In lieu of a cash payment, the Settlement also allows Class

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the same meaning as in the Agreement attached hereto.

Members to elect to receive non-monetary relief in the form of electronic vouchers for a free pay-per-view event from FloSports (valued at approx. \$30 each, *see* Fisher Decl. ¶ 9), and/or, for active subscribers only, a 10% discount to be redeemed on the next immediate renewal charge (valued at approx. \$3 if monthly subscription and \$15 if yearly subscription, *see* Fisher Decl. ¶ 10). *Id.* ¶ 1.4.

**Cy Pres Beneficiary.** All payments made to Settlement Class Members pursuant to the Settlement Agreement that are not cashed within one hundred eighty days of issuance shall be donated as *cy pres* to the Legal Aid Society, Inc. Settlement Ex. G, ¶ 14.

**Injunctive Relief.** The Settlement requires Defendant to present on the checkout page the automatic renewal offer terms (including cancellation policy) in a clear and conspicuous manner before the subscription or purchasing agreement and in visual proximity to the request for consent to the offer and obtain affirmative consent to the agreement containing the automatic renewal terms in a manner that complies with applicable automatic renewal laws. If approved, the Settlement will bring certainty, closure, and significant and valuable relief for individuals to what otherwise would likely be contentious and costly litigation regarding Defendant's allegedly deceptive automatic renewal practices. Settlement ¶ 2.2.

**Notice and Administration.** The parties propose AI Class Solutions, LLC ("AICS") as the claims administrator in this Settlement. AICS boasts 13 years of expertise and experience in class action settlement administration, and has been court-appointed to administer dozens of settlements. *See* Declaration of Mark Schey ("Schey Decl."), ¶¶ 3-7, attached as Exhibit 4 to Fisher Decl. AICS estimates notice and administration costs will be approximately \$170,000. Fisher Decl. ¶ 7.

Plaintiffs now seek preliminary approval of the Settlement, certification of a settlement class, appointment of class counsel, and approval of the proposed form and method of class notice.

As discussed in more detail below, the terms of the Settlement, which include providing Settlement Class Members the ability to receive meaningful cash compensation, or significant non-monetary benefits if they choose, and injunctive terms that require automatic renewal law compliance, meet and exceed the applicable standards of fairness. Accordingly, the Court should preliminarily approve the Settlement so that Settlement Class Members can receive notice of their rights and the claims administration process may begin.

## II. BACKGROUND OF THE LITIGATION

Prior to commencing litigation, Plaintiffs' counsel conducted an extensive pre-suit investigation. Declaration of L. Timothy Fisher ¶ 13. Thereafter, on August 29, 2022, Plaintiff Young filed a Class Action Complaint in the United States District Court for the Northern District of California (the "Federal Action"). *Id.* ¶ 14.<sup>2</sup> From the outset of the case, the Parties engaged in discussions aimed to resolve the claims, and, to that end, agreed to participate in a private mediation with Jill R. Sperber of Judicate West. *Id.* ¶ 16. Prior to the mediation, the Parties exchanged information regarding the claims and defenses and conferred about them at length. *Id.* ¶¶ 16-17. For example, Defendant provided critical information concerning its sales and pricing of its FS Subscriptions, refund policies, and the size of the putative class. *Id.* The Parties also engaged in pre-mediation settlement negotiations and exchanged detailed mediation statements airing their respective legal arguments. *Id.* Defendant also filed an extensive motion to dismiss the Complaint, setting forth several arguments for why the automatic renewal laws did not apply, and why the disclosures were clear and conspicuous, among other arguments.<sup>3</sup> *Id.* ¶ 15.

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<sup>2</sup> The Federal Action has since been voluntarily dismissed.

<sup>3</sup> FloSports is also named as a defendant in the action *Hill v. FloSports, Inc.*, U.S. District Court, Western District of New York Case No. 1:22-cv-00854, filed on November 11, 2022 (the "Hill Action"). The Hill Action is a putative class action asserting claims under New York and Federal law related to FloSports' online disclosures and billing practices. The *Hill* case is stayed

On January 9, 2023, the Parties participated in a full-day mediation with Ms. Sperber, but the mediation was unsuccessful. *Id.* ¶ 19. Thereafter, the Parties continued arm’s-length negotiations facilitated by Ms. Sperber, and agreed to participate in a second full-day mediation on February 1, 2023. *Id.* ¶ 20. At the conclusion of the second mediation, the Parties executed a binding term sheet setting out the material terms of the Settlement Agreement. *Id.* Thereafter, Defendant produced confirmatory discovery regarding the size and scope of the putative class, and the Parties ultimately drafted and executed the Settlement Agreement, which is annexed to the Fisher Declaration as Exhibit 1. *Id.* ¶ 21.

On May 19, 2023, Plaintiffs filed this case, asserting claims for (i) Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.*; (ii) Violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS 510/2, *et seq.*; (iii) unjust enrichment; (iv) Violation of the Electronic Funds Transfer Act, 15 U.S.C. § 1693, *et seq.*; (v) Conversion; (vi) Violation of New York’s GBL § 349; (vii) Violation of State Automatic Renewal Laws;<sup>4</sup> (viii) Violations of California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, *et seq.*; and (ix) Violations of California’s Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750, *et seq.* *Id.* ¶ 22.

### **III. TERMS OF THE PROPOSED SETTLEMENT**

The proposed Settlement Class consists of the approximately 550,000 FloSports subscribers who, from August 29, 2018 through the date the settlement agreement is signed, enrolled in an automatically renewing FloSports subscription using a California, New York, North

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pending resolution of settlement proceedings in the instant matter. *See* Dkt. No. 27 (Text Order granting unopposed motion to stay pending resolution of preliminary and final approval).

<sup>4</sup> Those states include California, Washington D.C., Florida, Hawaii, Illinois, New York, North Carolina, North Dakota, Oregon, Vermont, and Virginia.



Carolina, Oregon, Florida, Illinois, Washington D.C., North Dakota, Virginia, Hawaii, or Vermont billing address and paid fee(s) in connection with such subscription. Settlement Agreement ¶ 1.28.

**A. The Monetary and Non-Monetary Relief To The Settlement Class**

Defendant has agreed to pay \$1,550,000 to cover all claims filed by Class Members as well as the costs of settlement administration, service awards, and attorneys' fees, costs, and expenses. *Id.* ¶ 1.30. Class Members can receive a prorated cash payment of up to \$30.00 for annual subscribers and up to \$6 for monthly subscribers via check from the Settlement Fund. In the alternative, Class Members may also receive a 10% discount to be applied to the next immediate subscription charge (valued at approx. \$3 if monthly subscription and \$15 if yearly subscription, *see* Fisher Decl. ¶ 10), or an electronic voucher for a free pay-per-view event from FloSports (valued at approx. \$30, *see* Fisher Decl. ¶ 9). *Id.* ¶ 2.1. Electronic vouchers shall not expire and no payment or billing information will be required for a Settlement Class Member to use the vouchers. *Id.* ¶ 2.1(c). The total potential value of the in kind settlement is \$13.4 million. Fisher Decl. ¶ 10. Excluded from pay-per-view selections to Class Members are 12 out of over 16,000 total events offered by FloSports: College Baseball Showdown (Baseball), College National Cheerleading Championships (Cheerleading), Lucas Oil Chili Bowl Nationals (Auto Racing), The Cheerleading Worlds DCI World Championships (Marching), The Spring Games (Softball), Pop Warner Football Super Bowl, Women's Cayman Island Classics (Basketball), Tour De France (Cycling), Penn Relays Presented By Toyota (Track), UCA National High School Cheerleading Championship (Cheerleading), and Dirt Late Model Dream at Eldora Speedway (Auto Racing). Fisher Decl. ¶ 9.

**B. Cy Pres Beneficiary**

All payments made to Settlement Class Members pursuant to the Settlement Agreement

that are not cashed within one hundred eighty days of issuance shall be donated as *cy pres* to the Legal Aid Society, Inc. Settlement Ex. G, ¶ 14.

**C. The Injunctive Relief**

Prospectively, Defendant agrees to present on the checkout page the automatic renewal offer terms (including cancellation policy) in a clear and conspicuous manner before the subscription or purchasing agreement and in visual proximity to the request for consent to the offer and obtain affirmative consent to the agreement containing the automatic renewal terms in a manner that substantially complies with the automatic renewal laws of the states at issue. Defendant further agrees to disclose, in a manner that substantially complies with the automatic renewal laws of the states at issue, how to cancel and by when in an acknowledgment email that is capable of being retained by consumers. The costs to Defendant in maintaining compliance is estimated to be at least \$250,000. *Id.* ¶ 2.2.

**D. Notice And Administration**

The Parties have selected Artificial Intelligence Class Solutions (“AICS”) as Settlement Administrator. AICS has significant experience in administering class action settlements, and has been court-approved in dozens of matters. *See* Schey Decl. ¶¶ 3-7. The Settlement Fund will be used to pay the costs of sending Notice set forth in the Agreement and any other notice as required by the Court, as well as all costs of administration of the Settlement. *Id.* ¶ 1.30. AICS estimates notice and administration costs will be approximately \$170,000. Fisher Decl. ¶ 7.

**E. Service Awards**

Class Counsel shall submit to the Court an application seeking service awards to Plaintiffs in an amount of not more than \$5,000.00 to each as compensation for their efforts in bringing their claims and achieving the benefits of the Settlement on behalf of the Settlement Class. *Id.* ¶ 8.3.

Courts routinely approve service awards to compensate named plaintiffs for the services they provide and the risks they incur during the course of class action litigation. *See* 299 F.R.D. 160, NACA Guideline 5 (West 2014) (“Consumers who represent an entire class should be compensated reasonably when their efforts are successful and compensation would not present a conflict of interest.”). Here, Plaintiffs have assisted with the investigation of this action and the drafting of the complaint, have been in contact with counsel frequently, and have stayed informed of the status of the action, including settlement.

#### **F. Attorneys’ Fees**

Defendant has agreed that the Settlement Fund may also be used to pay Class Counsel reasonable attorneys’ fees and to reimburse costs and expenses in this Action, in an amount to be approved by the Court. *Id.* ¶ 3.1. Class Counsel has agreed to petition the Court for attorneys’ fees, costs, and expenses of no more than 1,000,000.00. *Id.* “If a statute or contractual agreement expressly authorizes an award of attorney fees, the court may award fees ‘so long as they are reasonable.’” *McNiff v. Mazda Motor of Am., Inc.*, 892 N.E.2d 598, 602 (Ill. 2008) (citing and quoting *Career Concepts, Inc. v. Synergy, Inc.*, 865 N.E.2d 385, 394 (Ill. App. Ct. 2007)). Indeed, where “an agreement is reached on the amount of a settlement fund and a separate amount for attorney fees and expenses, ... the sum of the two amounts ordinarily should be treated as a settlement fund for the benefit of the class, with the agreed-on fee amount constituting the upper limit on the fees that can be awarded to counsel.” *Manual for Complex Litigation (Fourth)* § 21.7 (2004). Thus, the Court should consider the value of the entire benefit conferred by the Settlement when deciding to grant preliminary approval.

#### **G. Release And Final Judgment**

Upon the entry of a final order approving the Settlement and following the expiration of the time for appeal or the entry of a decision on such appeal, then (i) Plaintiffs and each and every member of the Settlement Class who has not timely filed a request to be excluded from the Settlement Class will release and forever discharge the Released Parties as further explained in the Settlement Agreement, and (ii) the Court will be asked to enter final judgment, dismissing with prejudice all claims asserted in, or that could have been asserted in, this action.

#### **IV. THE SETTLEMENT AGREEMENT IS WITHIN THE RANGE OF POSSIBLE APPROVAL**

The settlement of class action litigation serves the public interest. *See Langendorf v. Irving Trust Co.*, 224 Ill. App. 3d 70, 78 (1992), *abrogated on other grounds, Brundidge v. Glendale Fed. Bank, F.S.B.*, 168 Ill. 2d 235, 659 N.E.2d 909 (1995). Courts have wide discretion in deciding whether to approve a settlement as “fair, reasonable, and adequate.” *People ex rel. Wilcox v. Equity Funding Life Ins. Co.*, 61 Ill.2d 303, 317 (1985). “Since the result is a compromise, the court in approving it should not judge the legal and factual questions by the same criteria applied in a trial on the merits. Nor should the court turn the settlement approval hearing into a trial. To do so would defeat the purposes of a compromise such as avoiding a determination of sharply contested issues and dispensing with expensive and wasteful litigation.” *GMAC Mortg. Corp. of Pa. v. Stapleton*, 603 N.E.2d 767, 773 (1992). In making a reasonableness determination, courts typically consider the following factors: “(1) the strength of the case for plaintiffs on the merits, balanced against the money or other relief offered in settlement; (2) the defendant's ability to pay; (3) the complexity, length and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the reaction of members of the class to the settlement; (7) the opinion of competent counsel; and (8) the stage of proceedings

and the amount of discovery completed.” *Id.* For each of the reasons described below, settlement is appropriate here.

**A. Strength Of The Case On The Merits**

Although Plaintiffs and Class Counsel feel that their claims would succeed on the merits, “a class that is suitable for settlement purposes might not be suitable for litigation purposes because the settlement might eliminate all of the contested issues that the court would have to resolve if the case went to trial.” *Lebanon Chiropractic Clinic, P.C. v. Liberty Mut. Ins. Co.*, 2016 Ill. App. 5th 150111 (Ill. App. Ct. 2016), ¶ 35. Here, Class Counsel engaged in arm’s-length negotiations with Defendant’s counsel before, during and after mediation; and Class Counsel was thoroughly familiar with the applicable facts, legal theories, and defenses on both sides. Although Plaintiffs and Class Counsel have confidence in their claims, a favorable outcome was not assured. They also recognize that they would face risks at class certification, summary judgment, and trial. Defendant vigorously denies Plaintiffs’ allegations and asserts that neither Plaintiffs nor the Class suffered any harm or damages. In addition, Defendant would no doubt present a vigorous defense during class certification procedures and at trial, and there is no assurance that the Class would prevail – or even if they did, that they would not be able to obtain an award of damages significantly more than achieved here absent such risks. The Settlement also abrogates the risks that might prevent them from obtaining any relief. These factors, “balanced against the money or other relief offered in settlement” show that the benefits recovered for the Class Members are substantial. *See GMAC Mortg. Corp. of Pa.*, 603 N.E.2d at 774.

**B. A Class-Wide Judgment Would Be Devastating To Defendant**

The second factor considers Defendant’s ability to satisfy a judgment at trial. *See City of Chicago v. Korshak*, 206 Ill. App. 3d 968, 972 (1990). Although Defendant operates a successful

business, few businesses could satisfy a judgment for hundreds of millions of dollars. Accordingly, the second factor weighs in favor of granting preliminary approval.

### **C. The Complexity Of This Litigation**

The third factor asks whether the settlement allows the class to avoid the inherent risk, complexity, time, and cost associated with continued litigation. *City of Chicago*, 206 Ill. App. 3d at 972.

This would be lengthy and very expensive litigation if it were to continue, involving extensive motion practice, including, *inter alia*, a motion for class certification (and possibly a motion for decertification), motions for summary judgment, and various pretrial motions, as well as the retention of experts, preparation of expert reports, and conducting expert depositions. *See Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977) (“[C]lass action suits have a well-deserved reputation as being most complex.”). The case would probably not go to trial for over a year. And even if Settlement Class Members recovered a judgment at trial greater than the up to monetary relief that Defendant has agreed to make available under the Settlement, post-trial motions and the appellate process would deprive them of any recovery for years, and possibly forever in the event of a reversal. Rather than embarking on years of protracted and uncertain litigation, Plaintiffs and their counsel negotiated a Settlement that provides immediate, certain, and meaningful relief to all Settlement Class members.

### **D. The Positive Reaction To The Settlement**

For the fourth and sixth factors, Plaintiffs have already had an opportunity to evaluate and provisionally approve of the Settlement’s benefits and the terms of the Settlement Agreement. The Settlement Agreement also provides a robust notice program that comports “with the requirements of 735 ILCS 5/2-803 and due process under the Illinois and United States Constitutions,

constitute[s] the best practicable notice under the circumstances, and provide[s] due and sufficient notice to all persons entitled to notice of settlement of this lawsuit.” *Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 Ill. App. 2d 150236 (Ill. App. Ct. 2016), ¶ 37, 52. Plaintiffs expect little to no opposition to the Settlement by any Settlement Class Member.

**E. The Lack Of Collusion In The Settlement Process**

For the fifth factor, the Settlement Agreement resulted from extensive arm’s-length negotiations by experienced class action attorneys, and there has been no collusion in the settlement process. On January 9 and February 1, 2023, the Parties participated in two full-day mediation sessions with Jill Sperber, Esq. of Judicate West, an experienced and well-respected class action mediator. At the conclusion of the second mediation session and after further negotiations coordinated by Ms. Sperber, the Parties executed a binding term sheet setting out the material terms of this Agreement.

**F. Counsels’ Opinions Favor Preliminary Approval**

For the seventh factor, by the time the Parties reached agreement on the terms of the Settlement Agreement, counsel for the Parties had conducted an independent investigation, analyzed informal discovery materials, and developed detailed theories of the case. Further, the Settlement was negotiated by counsel with extensive experience in consumer class action litigation, including cases similar to this one. *See* Fisher Decl. ¶¶ 11-12; *id.* Ex. 2 (firm resume of Bursor & Fisher). Accordingly, the Parties’ counsel were extremely knowledgeable about the factual and legal issues in the case and able to assess the merits of the proposed settlement. Plaintiffs’ counsel and Defendant’s counsel each independently concluded that the terms of the Settlement were fair, reasonable, and adequate.

**G. The Procedural Posture Of This Litigation**

The eighth and final factor considers the stage of the proceedings and the amount of discovery that has been completed at the time the settlement is reached. *City of Chicago*, 206 Ill. App. 3d at 972; *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012).

Prior to commencing this litigation, Plaintiffs' counsel conducted a wide-ranging investigation into every aspect of the case. *See* Fisher Decl. ¶ 9. The Parties collectively prepared multiple complaints and comprehensive pre-mediation briefs, among numerous other materials. *See id.* ¶¶ 16-18. The Parties engaged in informal discovery over the course of several months prior to entering into the proposed Settlement Agreement. *See id.* ¶¶ 16-18. Armed with this information, Plaintiffs and their counsel had a clear view of the strengths and weaknesses of their case and were in a strong position to negotiate a fair, reasonable, and adequate settlement on behalf of the Settlement Class, at mediation and beyond. *See* Fisher Decl. ¶ 18.

Additionally, Defendant filed a detailed Motion to Dismiss in the Federal Action on January 13, 2023. *See* Fisher Decl. ¶ 15. Defendant argued that the Plaintiff lacked statutory standing under California law because he had not incurred "damages" and that a reasonable consumer would have been adequately put on notice of FloSports' terms and conditions. *Id.* In response, the Plaintiff filed an amended complaint. *Id.* The Federal Action was then dismissed and the merits of Defendant's Motion were not adjudicated. *Id.*

Settlement negotiations were also hard fought. The parties engaged in multiple rounds of negotiation prior to mediation. Fisher Decl. ¶¶ 17-18. The parties then engaged in two full days of contentious, arm's-length negotiations before Jill Sperber via remote mediation, including negotiations over the time between the first and second mediations. Fisher Decl. ¶¶ 19-20.

Negotiations over the remaining terms continued for several weeks, and the final Settlement Agreement was not executed until Class Counsel had obtained further discovery to



confirm, *inter alia*, the size and scope of the Settlement Class. Fisher Decl. ¶ 21. Where, as here, a proposed settlement is the product of arm's-length negotiations between experienced counsel after significant discovery has occurred, the Court may presume the settlement to be fair, adequate, and reasonable. *See Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (“We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution.”). Accordingly, the eighth and final factor weighs in favor of finding the Settlement fair, reasonable and adequate, warranting its preliminary approval.

#### **V. THE PROPOSED CLASS NOTICE SHOULD BE APPROVED**

Under 735 ILCS 5/2-803, the Court may provide class members notice of any proposed settlement so as to protect the interests of the class and the parties. *See Cavoto v. Chicago Nat. League Ball Club, Inc.*, 2006 WL 2291181, at \*15 (Ill. App. 1st Dist. 2006) (collecting authorities and noting that “section 2-803 makes it clear that the statutory requirement of notice is not mandatory”). Notice must be provided to absent class members to the extent necessary to satisfy requirements of due process. *Id.* at \*15 (citing *Frank v. Teachers Ins. & Annuity Assoc. of America*, 71 Ill. 2d 583, 593 (1978)).

The proposed Notice in this case satisfies both the requirements of 735 ILCS 5/2-803 and due process. The Settlement Agreement contemplates a notice plan that provides email or traditional mail notice, which is designed to reach directly as many potential individuals in the Settlement Class as possible, but not less than 80% of the Class Members. The direct notice process should be very effective at reaching the Class Members given the direct purchaser relationship between Defendant and the Class Members. In addition, a settlement website will be created, and Google key word searches will be enabled to drive traffic to the settlement website. *Id.* The proposed Notice and Claim Form are attached to the Settlement Agreement as Exhibits

A-D, and should be approved by the Court.

**VI. THE COURT SHOULD PROVISIONALLY CERTIFY THE CLASS, AND ENTER THE PRELIMINARY APPROVAL ORDER**

The Parties stipulate to and request the certification of the Settlement Class as defined in the Settlement Agreement, for settlement purposes only, pursuant to 735 ILCS 5/2-801. Section 2–801 of the Illinois Code of Civil Procedure, which is patterned after Rule 23 of the Federal Rules of Civil Procedure, sets forth the prerequisites needed to maintain a class action. *Uesco Indus., Inc. v. Poolman of Wisconsin, Inc.*, 993 N.E.2d 97, 108 (Ill. App. Ct. 2013) (citing 735 ILCS 5/2–801 (West 2008)). Under section 2–801, a class may be certified only if the following four requirements are established: “(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members; (3) the representative parties will fairly and adequately protect the interests of the class; and (4) the class action is an appropriate method for the fair and efficient adjudication of the controversy.” *Id.* All are met here.

**Numerosity.** Numerosity is satisfied because there are approximately 550,000 class members. *See* Fisher Decl. ¶ 8.

**Commonality.** Certification requires only that there be either a predominating common issue of law or fact, not both. *Martin v. Heinold Commodities, Inc.*, 117 Ill.2d 67, 81 (1987). “A class action can properly be prosecuted where a defendant is alleged to have acted wrongfully in the same basic manner as to the entire class.” *Phillips v. Ford Motor Co.*, 2003 WL 23353492, at \*2 (Ill. Cir. Ct. Sept. 15, 2003). A common question may be shown when class members are aggrieved by the same or similar conduct. *Id.*

Here, Plaintiffs maintain that the common and predominate issues with respect to this Settlement Class are (a) whether Defendant failed to present the automatic renewal offer terms in

a clear and conspicuous manner before the subscription or purchasing agreement was fulfilled and in visual proximity to the request for consent to the offer, in violation of the counts asserted herein; (b) whether Defendant charged Plaintiffs' and the Class Members' Payment Method for an automatic renewal service without first obtaining their affirmative consent to the automatic renewal offer terms; (c) whether Defendant failed to provide an acknowledgement that included the automatic renewal terms, cancellation policy, and information on how to cancel in a manner that is capable of being retained by Plaintiff and the Class Members; and (d) whether Plaintiffs and the Class Members are entitled to damages and/or restitution.

**Adequacy.** Adequacy is met here. Plaintiffs' interests are the same as the Settlement Class members because each were allegedly harmed in the same way, and each has the same interest in recovering for Defendant's alleged misleading and/or unlawful automatic renewal practices.

**A class action is the appropriate method for the fair and efficient adjudication of the controversy.** A class action is appropriate here because, given the relatively small per-person dollar amount at issue, no individual Settlement Class member would have the resources to pursue his claims absent the class mechanism, in light of the amount in controversy for each claimant. *See Phillips*, 2003 WL 23353492, at \*9 ("The evidence presented to the Court supports the conclusion that, not only is a class action an appropriate method for the fair adjudication of the disputes between Ford and the Classes, but also that it may be the only means by which these disputes may be efficiently resolved.").

## **VII. CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully asks that the Court grant preliminary approval of the proposed Settlement Agreement, and enter the proposed order separately submitted herewith, and grant such further relief the Court deems reasonable and just.

Dated: September 21, 2023

Respectfully submitted,

By: s/ J. Dominick Larry

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*\* Pro Hac Vice Application Forthcoming*

*Proposed Settlement Class Counsel*

**CERTIFICATE OF SERVICE**

I, the undersigned attorney, hereby certify that on September 21, 2023, I e-filed the foregoing through an approved e-filing vendor, which will provide electronic copies to the counsel identified below:

Ana Tagvoryan  
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*Counsel for Defendant*

Dated: September 21, 2023

s/ J. Dominick Larry  
One of Plaintiff's Attorneys

**IN THE CIRCUIT COURT OF DUPAGE COUNTY, ILLINOIS  
18TH JUDICIAL CIRCUIT**

DANIEL O'MALLEY, LUCAS YOUNG, and  
CHARLES BUCKINGHAM, *individually and on  
behalf of all others similarly situated,*

Case No. 2023LA000516

Plaintiffs,

v.

FLOSPORTS, INC.,

Defendant.

**DECLARATION OF L. TIMOTHY FISHER IN SUPPORT OF PLAINTIFFS'  
UNOPPOSED, SECOND AMENDED MOTION FOR PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT**

I, L. Timothy Fisher, hereby aver, pursuant to 735 ILCS 5/1-109, that I am fully competent to make this Declaration, that I have personal knowledge of all matters set forth herein unless otherwise indicated, and that I would testify to all such matters if called as a witness in this matter.

1. I am a partner with the law firm of Bursor & Fisher, P.A., counsel of record for Plaintiffs in the above-entitled matter.

2. I make this Declaration in support of Plaintiffs' Unopposed, Second Amended Motion for Preliminary Approval of Settlement. The statements made in this Declaration are based on my personal knowledge and, if called as a witness, I could and would testify thereto.

3. I am a member in good standing of the California Bar; the United States District Courts for the Southern District of California, Eastern District of California, Northern District of California, Central District of California, Northern District of Illinois, Eastern District of Michigan, and Eastern District of Missouri; and the United States Courts of Appeals for the

Ninth Circuit, and I have submitted an application for admission on a *pro hac vice* basis to appear before the Court presiding over this matter.

4. Attached hereto as **Exhibit 1** is a true and correct copy of the Class Action Settlement Agreement And Release (the “Settlement Agreement”).

5. Attached hereto as **Exhibit 2** is a true and correct copy of the firm resume of Bursor & Fisher, P.A. Bursor & Fisher, P.A. is well suited to continue to represent the Representative Plaintiffs and Settlement Class in this matter.

6. Attached hereto as **Exhibit 3** is a true and correct copy of the firm resume of Gucovschi Rozenshteyn, PLLC (“GR Law”). GR Law is well suited to continue to represent the Representative Plaintiffs and Settlement Class in this matter.

7. Attached hereto as **Exhibit 4** is a true and correct copy of the Declaration of Mark Schey of AI Class Solutions, LLC (“AICS”), the proposed Settlement Claims Administrator in this Action. AICS estimates notice and administration costs will be approximately \$170,000.

8. The Settlement Class in this matter consists of approximately 550,000 subscribers.

9. Based on information exchanged during mediation sessions and settlement negotiations, the monetary value of an electronic voucher for a pay-per-view event from FloSports can be fairly estimated at \$30 each. 12 out of over 16,000 total events offered by FloSports are excluded from vouchers to Class Members: College Baseball Showdown (Baseball), College National Cheerleading Championships (Cheerleading), Lucas Oil Chili Bowl Nationals (Auto Racing), The Cheerleading Worlds DCI World Championships (Marching), The Spring Games (Softball), Pop Warner Football Super Bowl, Women’s Cayman Island Classics (Basketball), Tour De France (Cycling), Penn Relays Presented By Toyota (Track), UCA

National High School Cheerleading Championship (Cheerleading), and Dirt Late Model Dream at Eldora Speedway (Auto Racing).

10. A 10% discount for a monthly FloSports subscription is approximately \$3, and a 10% discount for a yearly FloSports subscription is approximately \$15. Taking into account the number of subscribers and the relief being offered to all Class Members, the total monetary value of the settlement can be estimated at approximately \$13.4 million.

11. My firm, Bursor & Fisher, P.A., has extensive experience litigating class actions of similar size, scope, and complexity to the instant action. We have been lead counsel in numerous consumer class actions across the United States. *See e.g. Gregorio v. Premier Nutrition Corp.*, Case No. 17-cv-05987-AT (S.D.N.Y) (\$9 million class wide settlement); *In re: NVIDIA GTX Graphics Chip Litig.*, Case No. 4:15-cv-00760 (N.D. Cal.) (\$4.5 million class wide settlement); *Retta v. Millennium Products, Inc.*, Case No. 2:15-cv-1801(C.D. Cal.) (\$8.25 million class wide settlement); *Gastelum v. Verizon*, Case No. CGC 11-511467 (S.F. Superior Court) (\$10.9 million class wide settlement); *Forcellati v. Hyland's*, Case No. 2:12-cv-01983 (C.D. Cal.) (nationwide class settlement valued at up to \$11.6 million); *Melgar v. Zicam*, Case No. 2:14-cv-00160 (E.D. Cal.) (\$16 million class wide settlement).

12. In addition, my firm has also been recognized by courts across the country for its expertise. (*See Ex. 2*); *see also Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561, 566 (S.D.N.Y. 2014) (Rakoff, J.) (“Bursor & Fisher, P.A., are class action lawyers who have experience litigating consumer claims. ... The firm has been appointed class counsel in dozens of cases in both federal and state courts, and has won multi-million dollar verdicts or recoveries in five class action jury trials since 2008.”); *Williams v. Facebook, Inc.*, Case No. 3:18-cv-01881, ECF No. 51 (N.D. Cal June 26, 2018) (appointing Bursor & Fisher class counsel to represent a putative



nationwide class of all persons who installed Facebook Messenger applications and granted Facebook permission to access their contact list).

13. Prior to commencing litigation, Plaintiffs' counsel conducted an extensive pre-suit investigation.

14. Thereafter, on August 29, 2022, Plaintiff Young filed a Class Action Complaint in the United States District Court for the Northern District of California (the "Federal Action").

15. The Parties then began to litigate the Federal Action, including pre-answer motion to dismiss briefing and the filing of an Amended Complaint. Specifically, Defendant filed a detailed Motion to Dismiss in the Federal Action on January 13, 2023. Defendant argued that the Plaintiff lacked statutory standing under California law because he had not incurred "damages" and that a reasonable consumer would have been adequately put on notice of FloSports' terms and conditions. In response, the Plaintiff filed an amended complaint. The Federal Action was subsequently voluntarily dismissed.

16. From the outset of the case, the Parties engaged in settlement discussions and to that end, agreed to participate in a private mediation with Jill Sperber, Esq. of Judicate West. Prior to the mediation, the Parties engaged in multiple rounds of pre-mediation negotiations and prepared comprehensive mediation briefs.

17. The Parties exchanged and met and conferred concerning a number of discovery requests in the context of mediation. In response, Defendant provided critical information concerning their sales and pricing of its subscription products, and the size of the putative class. Among various other pertinent information provided to my firm, we ascertained that the Settlement Class is comprised of approximately 550,000 subscribers. The Parties also exchanged detailed mediation statements, airing their respective legal arguments.

18. Given that the information exchanged would have been, in large part, the same information produced in formal discovery related to issues of class certification and summary judgment, the Parties had sufficient information to assess the strengths and weaknesses of the claims and defenses.

19. On January 9, 2023, the Parties participated in a full-day remote mediation with Jill Sperber, Esq. of Judicate West. The mediation was unsuccessful.

20. Thereafter, the Parties continued arm's-length negotiations facilitated by Ms. Sperber, and agreed to participate in a second full-day mediation on February 1, 2023.

21. At the conclusion of the second mediation, the Parties executed a binding term sheet setting out the material terms of the Settlement Agreement. However, negotiations over the remaining terms continued for several weeks, and the final Settlement Agreement was not executed until Class Counsel had obtained further discovery to confirm, *inter alia*, the size and scope of the Settlement Class. Defendant produced confirmatory discovery regarding the size and scope of the putative class, and the Parties ultimately drafted and executed the Settlement Agreement, which is annexed hereto as Exhibit 1.

22. On May 19, 2023, Plaintiffs filed this case. Plaintiffs asserted claims for Plaintiffs asserted claims for (i) Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.*; (ii) Violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS § 510/2, *et seq.*; (iii) unjust enrichment; (iv) Violation of the Electronic Funds Transfer Act, 15 U.S.C. 1693, *et seq.*; (v) Conversion; (vi) Violation of New York's GBL § 349; (vii) Violation of State Automatic Renewal Laws;<sup>1</sup> (viii) Violations of

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<sup>1</sup> Those states include California, Washington D.C., Florida, Hawaii, Illinois, New York, North Carolina, North Dakota, Oregon, Vermont, and Virginia.

California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.*;  
and (ix) Violations of California's Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code §§  
1750, *et seq.*

The above statements are of my own personal knowledge, and I make such statements  
under penalty of perjury under the laws of California and the United States of America.

Executed on September 21, 2023

By:   
\_\_\_\_\_  
L. Timothy Fisher



## **CLASS ACTION SETTLEMENT AGREEMENT**

This Agreement (“Agreement” or “Settlement Agreement”) is entered into by and among (i) Plaintiffs Lucas Young, Daniel O’Malley, and Charles Buckingham (“Plaintiffs”); (ii) the Settlement Class (as defined herein); and (iii) Defendant FloSports, Inc. (“Defendant” or “FloSports”). The Settlement Class and Plaintiffs are collectively referred to as “Plaintiffs” unless otherwise noted. Plaintiffs and Defendant are collectively referred to herein as the “Parties.” This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the complaints and the Released Claims (as defined herein), upon and subject to the terms and conditions of this Agreement, and subject to the final approval of the Court.

### **RECITALS**

A. Plaintiff Lucas Young filed a Class Action Complaint on August 29, 2022 in the United States District Court, Northern District of California, Case No. Case No. 3:22-cv-04920-JSC (“California Action”). The material allegations of the lawsuit arise out of Defendant’s automatically renewing subscriptions, including its annual subscriptions. Young complains that he was not placed on notice of certain material terms associated with his subscription purchase, including that he was enrolling in an automatically renewing annual subscription or the cancellation policy that applied to his subscription. Plaintiff Young claimed lack of affirmative acknowledgment and consent to the automatic renewal terms, payment charges, or clear and conspicuous disclosures, including with respect to Defendant’s cancellation policy. After the filing of a Class Action Complaint, the Parties engaged in private mediation with Jill R. Sperber, Esq. of Judicate West on January 9, 2023. The mediation was unsuccessful. Thereafter, the Parties continued to negotiate potential settlement at arm’s length, facilitated by

Ms. Sperber. The Parties agreed to participate in a second mediation with Ms. Sperber on February 1, 2023. That mediation was also unsuccessful, however, the Parties continued negotiations through Ms. Sperber and ultimately reached this compromise.

B. On February 13, 2023, Defendant filed a motion to dismiss the Class Action Complaint under Rule 12(b)(6) and Rule 12(b)(1). Plaintiff Lucas amended the Complaint on March 1, 2023, asserting an additional claim for violation of the Electronic Funds Transfer Act.

C. Plaintiff and Class Counsel have advised Defendant of additional claims including those brought by Plaintiffs Daniel O'Malley and Charles Buckingham, who assert damages and allege that FloSports engaged in similar unauthorized bank charges, unfair competition and false advertising arising out of its automatically renewing subscription offers, under various states' laws, including Illinois and New York.

D. At all times, Defendant has denied and continues to deny any wrongdoing whatsoever and has denied and continues to deny that it committed, or threatened or attempted to commit, any wrongful act or violation of law or duty alleged by Plaintiffs in the California Action, the parallel action pending in the Western District of New York entitled *Hill v. FloSports, Inc.*, Case No. 22-cv-00854, the claims referenced above in C, or otherwise. Defendant believes that the claims asserted by Plaintiffs do not have merit and that Defendant would have prevailed on a motion to dismiss, summary judgment, or at trial in this matter. Nonetheless, taking into account the uncertainty and risks inherent in any litigation, Defendant has concluded it is desirable and beneficial that Plaintiffs' asserted claims and any related claims, whether known or unknown, be fully and finally settled and terminated in the manner and upon the terms and conditions set forth in this Agreement. This Agreement is a compromise, and the Agreement, any related documents, and any negotiations resulting in it

will not be construed as or deemed to be evidence of or an admission or concession of liability or wrongdoing on the part of Defendant, or any of the Released Parties (defined below), with respect to any claim of any fault or liability or wrongdoing or damage whatsoever or with respect to the certifiability of a litigation class.

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

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiffs, the Settlement Class, and each of them, and Defendant, by and through its undersigned counsel that, subject to final approval of the Court after a hearing or hearings as provided for in this Settlement Agreement, in consideration of the benefits flowing to the Parties from the Agreement set forth herein, that the Action and the Released Claims will be finally and fully

compromised, settled, and released, and the Action (as defined below) will be dismissed with prejudice, upon and subject to the terms and conditions of this Agreement.

## **AGREEMENT**

### **1. DEFINITIONS.**

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

**1.1 “Action”** means the California Action, and *O’Malley, et al. v. FloSports, Inc.*, pending in the Circuit Court of DuPage County, Illinois, 18th Judicial District.

**1.2 “Active Class Members” or “Active Subscribers”** means Class Members, who as of the date a Claim is submitted, maintain an active, paid FloSports Subscription.

**1.3 “Alternate Judgment”** means a form of final judgment that may be entered by the Court herein but in a form that is materially or substantially different than the form of Final Judgment provided for in this Agreement and where none of the Parties elects to terminate this Settlement by reason of such variance as contemplated in Section 6 below.

**1.4 “Approved Claim”** means a Claim Form submitted by a Settlement Class Member for cash payment from the Settlement Fund, or a discount on the next FloSports renewal, or an Electronic Voucher for a pay-per-view event, that is: (a) submitted timely and in accordance with the directions on the Claim Form and the provisions of the Settlement Agreement as determined by the Settlement Administrator or the Court; (b) fully and truthfully completed by a Settlement Class Member with all of the information requested in the Claim Form; (c) signed by the Settlement Class Member, physically or electronically and under penalty of perjury; and (d) approved by the Settlement Administrator pursuant to the provisions of this Agreement.



**1.5** “**Claimant**” means a Settlement Class Member who submits a Claim Form pursuant to this Settlement Agreement.

**1.6** “**Claim Form**” means the document substantially in the form attached hereto as Exhibit A to be submitted by Settlement Class Members seeking a settlement benefit pursuant to this Settlement Agreement. The Claim Form will be available online at the Settlement Website (defined below) and the contents of the Claim Form will be approved by the Court.

**1.7** “**Claims Deadline**” means the date by which all Claim Forms must be postmarked or electronically submitted to be considered timely and will be set as a date no later than ninety (90) days following the dissemination of Notice to the Settlement Class by the Settlement Administrator, pursuant to the terms herein. The Claims Deadline will be clearly set forth in the Preliminary Approval Order and will be stated on the Notice and the Claim Form.

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

**1.9** “**Class Period**” means the period of time from August 29, 2018, to and through the day of the final execution of this Settlement Agreement.

**1.10** “**Class Representatives**” means the named Plaintiffs in the California Action and the Illinois Action.

**1.11** “**Court**” means the Circuit Court of DuPage County, Illinois, 18th Judicial District.

**1.12** “**Defendant**” or “**FloSports**” means FloSports, Inc.

**1.13** “**Defendant’s Counsel**” means counsel of record for Defendant, Ana Tagvoryan and Erica Graves of the law firm of Blank Rome LLP.

**1.14 “Effective Date”** means one business day following the latest of the following events: (i) the date upon which the time expires for filing or noticing any appeal of the Court’s Settlement Approval Order and Final Judgment approving the Settlement Agreement, if no appeal has been filed; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award, the date of completion, in a manner that finally affirms and leaves in place the Final Judgment without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration, writ of certiorari, or petitions for review, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (iii) the date of final dismissal of any appeal or writ.

**1.15 “Electronic Voucher”** means a redemption code for one free access to a pay per view event from FloSports provided to Inactive Subscribers who claim this option via the Claims Form.

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

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

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

**1.19 “Inactive Class Members” or “Inactive Subscribers”** means Settlement Class Members who, as of the date their Claim is submitted, no longer maintained an active, paid FloSports’ subscription.

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

**1.21 “Notice Plan”** means the Settlement Administrator’s plan to disseminate Notice to Settlement Class Members. The Notice Plan will include a short form notice, email notice, long form notice, and internet notice.

**1.22 “Net Settlement Fund”** means the amount of the Settlement Fund remaining after payment of claims administration and notice costs, incentive awards to the Class Representatives, and the Fee Award.

**1.23 “Notice”** means the notice of this proposed Class Action Settlement Agreement and Final Approval Hearing, which is to be given to the Settlement Class substantially in the manner set forth in this Agreement, and substantially in the form of **Exhibits B, C, and D** hereto.

**1.24 “Notice and Other Administrative Costs”** means all costs and expenses actually incurred by the Settlement Administrator in the publication of Class Notice, establishment of the Settlement Website, the processing, handling, reviewing, and paying of claims made by Claimants, paying taxes and tax expenses related to the Settlement Fund (including all federal, state, or local taxes of any kind and interest or penalties thereon, as well as expenses incurred in connection with determining the amount of and paying any taxes owed and expenses related to any tax attorneys and accountants).

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

**1.26 “FloSports Subscriptions”** means all of Defendant’s digital subscription offerings.

**1.27 “Objection/Exclusion Deadline”** means the date by which a written objection to this Settlement Agreement or a request for exclusion submitted by a Person within the Settlement Class must be made, which shall be designated as a date no later than ninety (90) days after the Notice Date and no sooner than fourteen (14) days after papers supporting the Fee Award are filed with the Court and posted to the settlement website, or such other date as ordered by the Court.

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

**1.29 “Plaintiffs”** means Lucas Young, Daniel O’Malley, and Charles Buckingham.

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

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

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

**1.33 “Released Claims”** means any and all causes of action, suits, claims, liens, demands, judgments, costs, damages, obligations, attorneys’ fees (except as provided for in the Class Settlement), and all other legal responsibilities in any form or nature relating to or arising out of state, local, or federal statute, ordinance, regulation, or claim at common law or in equity, whether past or present, known or Unknown Claims, asserted or unasserted, arising out of or in any way related to the facts, practices and allegations asserted in the California Action, and the Illinois Action.

**1.34 “Released Parties”** means FloSports, Inc. and all of its current, former, and future owners, shareholders, parents, predecessors, successors, affiliates, assigns, subsidiaries, divisions, or related corporate entities, and all of their respective current, future, and former employees, officers, directors, shareholders, assigns, agents, trustees, administrators, executors, insurers, attorneys, and customers.

**1.35 “Releasing Parties”** means Plaintiffs, those Settlement Class Members who do not timely opt out of the Settlement Class, and all of their respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies,

subsidiaries, associates, affiliates, employers, employees, agents, consultants, independent contractors, insurers, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns and companies, firms, trusts, and corporations.

**1.36 “Settlement Administration Expenses”** means the expenses incurred by the Settlement Administrator in providing Notice, processing claims, responding to inquiries from members of the Settlement Class, mailing checks for Approved Claims, and related services, paying taxes and tax expenses related to the Settlement Fund (including all federal, state or local taxes of any kind and interest or penalties thereon, as well as expenses incurred in connection with determining the amount of and paying any taxes owed and expenses related to any tax attorneys and accountants).

**1.37 “Settlement Administrator”** means a reputable administration company that has been selected jointly by the Parties and approved by the Court to perform the duties set forth in this Agreement.

**1.38 “Settlement Class”** means all FloSports subscribers who, from August 29, 2018 through the date the settlement agreement is signed, enrolled in an automatically renewing FloSports subscription using a California, New York, North Carolina, Oregon, Florida, Illinois, DC, N. Dakota, Virginia, Hawaii, Vermont billing address and paid fee(s) in connection with such subscription.

**1.39 “Settlement Class Member(s)”** means a Person who falls within the definition of the Settlement Class.

**1.40 “Settlement Fund”** means the non-reversionary total cash commitment of Defendant for purposes of this settlement, with a total value of \$1,550,000.00 USD. The Settlement Fund represents the total extent of Defendant’s monetary obligations under this Agreement. The Settlement Fund shall be used for payment of the following: (i) Approved Claims for cash benefits submitted by Settlement Class Members; (ii) the Notice and Other Administrative Costs actually incurred by the Settlement Administrator; (iii) the Fee Award; and (iv) any Incentive Award to the Plaintiffs, not to exceed \$5,000, as may be ordered by the Court. The Settlement Fund represents the total extent of Defendant’s monetary obligations under this Agreement. The payment of the Settlement Fund amount by Defendant fully discharges the Defendant and the other Released Parties’ financial obligations (if any) in connection with the Settlement. In no event shall Defendant’s total monetary obligation with respect to this settlement and agreement exceed \$1,550,000.00 USD.

**1.41 “Settlement Value”** means the Settlement Fund (\$1,550,000) plus the market value of the total amount of subscription discounts and electronic vouchers for a free pay-per-view event made available to Active and Inactive Settlement Class Members, plus the estimated value of the prospective changes to be implemented by Defendant (*see* Paragraph 2.2, below).

**1.42 “Settlement Website”** means a website to be established, operated, and maintained by the Settlement Administrator for purposes of providing notice and otherwise making available to the Settlement Class Members the documents, information, and online claims submission process as referenced herein.

**1.43 “Short Form Notice”** means the Court-approved form of postcard notice to Settlement Class Members, pursuant to the Notice Plan.

**1.44 “Unknown Claims”** means claims that could have been raised in the Action and that any or all of the Releasing Parties do not know or suspect to exist, which, if known by him or her, might affect his or her agreement to release the Released Parties or the Released Claims or might affect his or her decision to agree, object, or not to object to the Settlement. Upon the Effective Date, the Releasing Parties will be deemed to have, and will have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of § 1542 of the California Civil Code, which provides as follows:

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

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

## **2. SETTLEMENT RELIEF.**

**2.1 Payments to Settlement Class Members.** Settlement Class Members will be entitled to the following relief upon submitting a valid and approved Claim Form to the Settlement Administrator before the Claims Deadline:



**(a)** Active Class Members may elect to either:

1. Receive a 10% discount to be applied to the next immediate renewal charge. If, as of the Effective Date, the Class Member no longer maintains an active, paid FloSports subscription, this benefit will automatically convert to an electronic voucher for a free pay-per-view event from FloSports, with certain exceptions; or
2. Receive a prorated cash payment of up to \$30.00 for annual subscribers and up to \$6 for monthly subscribers via check from the Settlement Fund.

**(b)** Inactive Class Members may elect to either:

1. Receive an electronic voucher for a free pay-per-view event from FloSports, with certain exceptions; or
2. Receive a prorated cash payment of up to \$30.00 for annual subscribers and up to \$6 for monthly subscribers via check from the Settlement Fund.

**(c)** Settlement Class Members who so elect will receive their Electronic Vouchers within 60 days of the Effective Date, and such vouchers shall not expire and shall be available for use by the claimant during the pendency of FloSports' business for that particular vertical. No payment or billing information will be required for a Settlement Class Member to use the Electronic Voucher.

**(d)** Settlement Class Members wishing to receive cash must make an election to receive cash by submitting a valid Claim Form to the Settlement Administrator. Settlement Class Members shall have until the Claims Deadline to submit a Claim Form for approval by the

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

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

(f) Each claimant who submits an invalid Claim Form to the Claims Administrator must be given a notice of the Claim Form's deficiency and an opportunity to cure the deficiency within seven (7) days of the date of the deficiency notice.

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

**2.2 Prospective Relief - Practice Changes.** Prospectively, Defendant agrees to present on the checkout page the automatic renewal offer terms (including cancellation policy) in a clear and conspicuous manner before the subscription or purchasing agreement and in visual proximity to the request for consent to the offer and obtain affirmative consent to the agreement

containing the automatic renewal terms in a manner that substantially complies with the automatic renewal laws of the states at issue. Defendant further agrees to disclose, in a manner that substantially complies with the automatic renewal laws of the states at issue, how to cancel and by when in an acknowledgment email that is capable of being retained by consumers. The costs to Defendant in implementing these changes are estimated to be at least \$250,000.

### **3. RELEASE.**

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

**3.2** Upon the Effective Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties, and each of them.

**3.3** Plaintiffs, the Settlement Class Members, and the Releasing Parties each individually covenant not to bring any Released Claim and expressly agree that the release and consideration will be, and may be raised as, a complete defense to and will preclude any action or proceeding encompassed by the release(s) contained herein with respect to any FloSports' subscription offering associated with a Settlement Class Member.

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

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

**a.** *Settlement Class List.* Defendant shall produce an electronic list from its records that includes the names, email addresses, and last known U.S. Mail addresses, belonging to Persons within the Settlement Class. The electronic list shall also differentiate between Active Class Members and Inactive Class Members and shall include the Settlement Class Member's FloSports Subscriptions. This electronic document shall be called the "Class

List,” and shall be provided to the Settlement Administrator only. In no event shall the Class List be provided to the Settlement Administrator later than fourteen (14) days prior to the date notice shall be disseminated. This Class List is confidential and shall not be used for any purpose beyond providing notice to the Settlement Class and assisting with the determination of valid claims. Class Counsel’s assent to this Agreement shall constitute consent on behalf of each and every class member of the Settlement Class as defined herein to disclose this information as stated in this paragraph. The Settlement Administrator shall hold the Class List and all class member information confidential and not provide it or any portion thereof to Class Counsel absent Defendant’s written consent.

**b.** *Direct Notice to Settlement Class Members.* No later than the twenty-eight (28) days from entry of the Preliminary Approval Order, the Settlement Administrator shall send notice to Settlement Class Members with Active FloSports accounts via U.S. mail and email in the form attached as **Exhibit B**. At the same time, the Settlement Administrator shall send notice to those Settlement Class Members with Inactive FloSports’ accounts via U.S. mail and email substantially in the form attached as **Exhibit C**. The notice will be sent first by email and will only be sent by U.S. mail if the email is undeliverable or bounces back. Notice via U.S. mail to the Settlement Class Member’s billing or mailing address shall be accompanied by a postcard Claim Form with return postage prepaid.

**c.** If any Notice is returned as non-deliverable, and a forwarding address is provided, the Settlement Administrator shall re-mail the Notice to the forwarding address within five (5) business days. If any Notice is returned as non-deliverable, and no forwarding address is provided, the Settlement Administrator shall attempt to ascertain a valid address for the affected Settlement Class Member by seeking change of address information through the U.S.

Postal Service's National Change of Address Link, and shall re-mail the Notice within five (5) business days to the address(es) that are found. The Settlement Administrator shall have no obligation to send Notices beyond those obligations specified herein.

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

**4.2** The Notice shall advise the Settlement Class of their rights, including the rights to be excluded from or object to the Settlement Agreement or any of its terms. The Notice shall specify that any objection to the Settlement Agreement, and any papers submitted in support of said objection, shall be considered by the Court at the Final Approval Hearing only if, on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice, the Person making the objection files notice of an intention to do so and at the same time (a) files copies of such papers he or she proposes to be submitted at the Final Approval Hearing with the Clerk of the Court, or alternatively, if the objection is from a Class Member represented by counsel, files any objection through the Court's e-filing system, and (b) sends copies of such papers by mail, hand, or overnight delivery service to Class Counsel and Defendant's Counsel.

**4.3** Any Settlement Class Member who intends to object to this Agreement must present the objection in writing to the Settlement Administrator, postmarked on or before the Objection/Exclusion deadline approved by the Court and specified in the Notice, which must be

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

**4.4** A Settlement Class Member may request to be excluded from the Settlement Class by sending a written request postmarked on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice. To exercise the right to be excluded, a Person in the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing his/her name and address, a signature, the name and number of the case, and a statement that he or she wishes to be excluded from the Settlement Class for purposes of this Settlement. A request to be excluded that does not include all of this information, or that is sent to an address other than that designated in the Notice, or that is not postmarked within the time specified, shall be invalid, and the Person(s) serving such a request shall be a member(s) of the Settlement Class and shall be bound as a Settlement Class Member by this Agreement, if approved. Any member of the Settlement Class who validly elects to be excluded from this Agreement shall not: (i) be bound by any orders or the Final Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be entitled to object to any aspect of this Agreement. The request for exclusion must be personally

signed by each Person requesting exclusion. So-called “mass” or “class” opt-outs shall not be allowed. To be valid, a request for exclusion must be postmarked or received by the date specified in the Notice. A request for exclusion is also called an “opt out.”

**4.5** Upon receiving any request for exclusion, the Settlement Administrator shall stamp on the original the date it was received and shall promptly notify Class Counsel and Defendant’s Counsel of such request no later than two (2) calendar days after receiving any request. The Settlement Administrator shall indicate whether such request is timely received, and provide copies of the request for exclusion, the mailing envelope, and the accompanying documentation, by email.

## **5. SETTLEMENT ADMINISTRATION.**

**5.1** The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Settlement Agreement by processing Claim Forms in a rational, responsive, cost effective, and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices and such records will be made available to Class Counsel and Defendant’s Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall provide Class Counsel and Defendant’s Counsel with regular reports at weekly intervals containing information concerning Notice, administration, and implementation of the Settlement Agreement. Should the Court request, the Parties shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator, including a report of all

amounts from the Settlement Fund paid to Settlement Class Members on account of Approved Claims. Without limiting the foregoing, the Settlement Administrator shall:

(a) Provide Class Counsel and Defendant's Counsel with drafts of administration related documents, follow-up class notices or communications with Settlement Class Members, telephone scripts, website postings or language or other communications with the Settlement Class, at least five (5) days before the Settlement Administrator is required to or intends to publish or use such communications, unless Class Counsel and Defendant's Counsel agree to waive this requirement in writing on a case by case basis;

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

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

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

**5.2** The Settlement Administrator shall be obliged to employ reasonable procedures to screen claims for abuse or fraud and deny Claim Forms where there is evidence of abuse or fraud. The Settlement Administrator shall determine whether a Claim Form submitted by a Settlement Class Member is an Approved Claim by determining if the Person is on the Class List



and shall reject Claim Forms that fail to (a) comply with the instructions on the Claim Form or the terms of this Agreement, or (b) provide full and complete information as requested on the Claim Form. If a Person submits a timely Claim Form by the Claims Deadline where the Person appears on the Class List but the Claim Form is not otherwise complete, then the Settlement Administrator shall give such Person one (1) reasonable opportunity to provide any requested missing information, which information must be received by the Settlement Administrator as directed after the Claims Deadline. If the Settlement Administrator receives such information after the allotted time passed the Claims Deadline, then any such claim shall be denied. The Settlement Administrator may contact any Person who has submitted a Claim Form to obtain additional information necessary to verify the Claim Form.

**5.3** Defendant's Counsel and Class Counsel shall have the right to challenge the acceptance or rejection of a Claim Form submitted by Settlement Class Members. The Settlement Administrator shall follow any agreed decisions of Class Counsel and Defendant's Counsel as to the validity of any disputed submitted Claim Form. To the extent Class Counsel and Defendant's Counsel are not able to agree on the disposition of a challenge, the disputed claim shall be submitted to the Court for binding determination.

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

**5.5** Defendant, the Released Parties, and Defendant's Counsel shall have no responsibility for, interest in, or liability whatsoever with respect to: (i) any act, omission, or determination by Class Counsel, or the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the settlement or otherwise; (ii) the

management, investment, or distribution of the Settlement Fund; (iii) the allocation of Net Settlement Funds to Settlement Class Members or the implementation, administration, calculation or interpretation thereof; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in value of, the Settlement Fund; or (vi) the payment, reporting, or withholding of any taxes, tax expenses, or costs incurred in connection with the taxation of the Settlement Fund or the filing of any federal, state, or local returns.

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

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

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

**6.1** Subject to Paragraphs 9.2-9.4 below, Defendant or the Class Representatives on behalf of the Settlement Class, shall have the right to terminate this Agreement by providing written notice of the election to do so ("Termination Notice") to all other Parties hereto within

twenty-one (21) days of any of the following events: (i) the Court's refusal to grant Preliminary Approval of this Agreement in any material respect; (ii) the Court's refusal to grant final approval of this Agreement in any material respect; (iii) the Court's refusal to enter the Final Judgment in this Action in any material respect, including if the Court enters an Alternate Judgment as defined in Paragraph 1.3 above; (iv) the date upon which the Final Judgment is vacated, modified or reversed in any material respect by the Court, the Court of Appeals or the Supreme Court; or (v) the date upon which an Alternate Judgment, as defined in Paragraph 1.3 of this Agreement is vacated, modified or reversed in any material respect by the Court, the Court of Appeals or the Supreme Court.

**6.2** Defendant may elect, in its sole discretion, to terminate the settlement if there are more than 1000 opt outs from the Settlement Class. Defendant must exercise its right to terminate by giving notice as set forth in paragraph 6.1 above to Class Counsel within 7 days after the settlement administrator notifies the Parties of the total number of opt-out requests after the exclusion deadline. The Parties and/or their respective counsel shall not encourage objections and/or opt-outs.

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

**7.1** Promptly after the execution of this Settlement Agreement, Class Counsel shall submit this Agreement together with its Exhibits to the Court and shall move the Court for Preliminary Approval of the settlement set forth in this Agreement; certification of the Settlement Class for settlement purposes only; appointment of Class Counsel and the Class Representative; and entry of a Preliminary Approval Order substantially in the form of **Exhibit F** hereto, which order shall set a Final Approval Hearing date and approve the Notice and Claim Form for dissemination substantially in the form of **Exhibits A, B, C, and D** hereto. The

Preliminary Approval Order shall also authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and its implementing documents (including all Exhibits to this Agreement) so long as they are consistent in all material respects with the terms of the Settlement Agreement and do not limit or impair the rights of the Settlement Class or materially expand the obligations of Defendant.

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

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

(a) find that the Court has jurisdiction over the Settlement Class claims and to approve the Agreement and enter Final Judgment;

(b) approve the Settlement Agreement and the proposed settlement as fair, reasonable, and adequate as to, and in the best interests of, the Settlement Class Members; direct the Parties and their counsel to implement and consummate the Agreement according to its terms and provisions; and declare the Agreement to be binding on, and have *res judicata* and preclusive effect in, all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and Releasing Parties;

(c) find that the Notice Plan implemented pursuant to the Agreement (1) constituted the best practicable notice under the circumstances; (2) constituted notice that was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action, their right to object to or exclude themselves from the proposed Agreement, and to

appear at the Final Approval Hearing; (3) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (4) met all applicable requirements of the Illinois Code of Civil Procedure including those related to certification of a class, the Due Process Clauses of the United States and Illinois Constitutions, and the rules of the Court;

**(d)** find that the Class Representatives and Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Agreement;

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

**(f)** incorporate the Release set forth above in Sections 1.33 and 3, make the Release effective as of the Effective Date, and forever discharge the Released Parties as set forth herein;

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

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

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

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

**8.1** Defendant agrees that Class Counsel may receive from the Settlement Fund, subject to Court approval, attorneys’ fees, costs, and expenses not to exceed \$1,000,000.00 USD. Plaintiffs will petition the Court for an award of such attorneys’ fees, costs, and expenses, and Defendant agrees to not object to or otherwise challenge, directly or indirectly, Class Counsel’s petition for attorneys’ fees, costs, and expenses if limited to this amount. Class Counsel, in turn, agrees to seek no more than this amount from the Court in attorneys’ fees, costs, and expenses. Payment of the Fee Award shall be made from the Settlement Fund and should the Court award less than the amount sought by Class Counsel, the difference in the amount sought and the amount ultimately awarded pursuant to this Paragraph shall remain in the Settlement Fund for *pro rata* distribution to Settlement Class Members in distributions for Approved Claims.

**8.2** The Fee Award shall be payable by the Settlement Administrator within ten (10) days after entry of the Court’s Final Judgment, subject to Class Counsel executing the Undertaking Regarding Attorneys’ Fees and Costs (the “Undertaking”) attached hereto as **Exhibit E**. Payment of the Fee Award shall be made from the Settlement Fund by wire transfer to Bursor & Fisher, P.A., in accordance with wire instructions to be provided by Bursor & Fisher, P.A. and completion of necessary forms, including but not limited to W-9 forms. Notwithstanding the foregoing, if for any reason the Final Judgment is reversed, vacated, or rendered void as a result of an appeal(s) then Class Counsel shall return such funds to the Defendant within fourteen (14) days of such order. Additionally, should any parties to the Undertaking dissolve, merge, declare bankruptcy, become insolvent, or cease to exist prior to the final payment to Class Members, those parties shall execute a new undertaking guaranteeing repayment of funds within 14 days of such an occurrence.

**8.3** Defendant agrees that, subject to Court approval, the Settlement Administrator will pay incentive awards to from the Settlement Fund, in addition to any settlement payment pursuant to this Agreement, in the amount of up to five thousand dollars (\$5,000.00) per Class Representative, for a total of up to fifteen thousand dollars (\$15,000.00). Defendant shall not object to or otherwise challenge, directly or indirectly, Class Counsel's application for the incentive award to the three Class Representative if limited to this amount. Class Counsel, in turn, agrees to seek no more than this amount from the Court as the incentive award for the Class Representatives. Should the Court award less than this amount, the difference in the amount sought and the amount ultimately awarded pursuant to this Paragraph shall remain in the Settlement Fund for *pro rata* distribution to Settlement Class Members in Credit Awards or distributions for Approved Claims. Such incentive award shall be paid from the Settlement Fund (in the form of a check to the Class Representatives that is sent care of Class Counsel), within five (5) business days after entry of the Final Judgment if there have been no objections to the Settlement Agreement, and, if there have been such objections, within five (5) business days after the Effective Date.

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

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

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

following Notice to the Settlement Class and a Final Approval Hearing, as provided in the

Federal Rules of Civil Procedure, and has entered the Final Judgment, or a judgment consistent with this Agreement in all material respects; and

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

9.2 If some or all of the conditions specified in Paragraph 9.1 are not met, or if this Agreement is not approved by the Court, or the settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, then this Settlement Agreement shall be canceled and terminated subject to Paragraph 6.1 unless Class Counsel and Defendant's Counsel mutually agree in writing to proceed with this Agreement. If any Party is in material breach of the terms hereof, any other Party, provided that it is in substantial compliance with the terms of this Agreement, may terminate this Agreement on notice to all of the Settling Parties. Notwithstanding anything herein, the Parties agree that the Court's failure to approve, in whole or in part, Class Counsel's request for payment of attorneys' fees, costs and/or expenses and/or the request for incentive award payments set forth in Paragraph 8 above shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination.

9.3 If this Agreement is terminated or fails to become effective for the reasons set forth in Paragraphs 6.1-6.2 and 9.1-9.2 above, the Parties shall be restored to their respective positions in the Action as of the moment just prior to the signing of this Agreement. In such event, any Final Judgment or other order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the Action as if this Agreement had never been entered into.

9.4 Within five (5) business days after written notification of termination as provided in this Agreement is sent to the other Parties, the Settlement Fund, less any Settlement



Administration costs actually incurred, paid or payable shall be refunded by the Settlement Administrator to Defendant, based upon written instructions provided by Defendant's counsel.

**9.5** If the Final Settlement Order and Judgment or any part of it is vacated, overturned, reversed, or rendered void as a result of an appeal, or the Settlement Agreement is voided, rescinded, or otherwise terminated for any other reason, Class Counsel shall, within thirty (30) days repay to Defendant, based upon written instructions provided by Defendant's Counsel, the full amount of the attorneys' fees and costs paid to Class Counsel from the Settlement Fund, including any accrued interest. If the attorney fees and costs awarded by the Court or any part of them are vacated, modified, reversed, or rendered void as a result of an appeal, Class Counsel shall within thirty (30) days repay to Defendant, based upon written instructions provided by Defendant's Counsel, the attorneys' fees and costs paid to Class Counsel and/or Class Representatives from the Settlement Fund, in the amount vacated or modified, including any accrued interest.

## **10. MISCELLANEOUS PROVISIONS.**

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

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

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

**10.4** Whether or not the Effective Date occurs, or the Settlement Agreement is terminated, neither this Agreement nor the settlement contained herein or any term, provision or definition therein, nor any act or communication performed, or document executed in the course of negotiating, implementing or seeking approval pursuant to or in furtherance of this Agreement or the settlement:

(a) is, may be deemed, or shall be used, offered or received in any civil, criminal or administrative proceeding in any court, administrative agency, arbitral proceeding or other tribunal against the Released Parties, or each or any of them, as an admission, concession or evidence of, the validity of any Released Claims, the truth of any fact alleged by the Plaintiffs, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the definition or scope of any term or provision, the reasonableness of the settlement amount or the Fee Award, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or any of them. Defendant, while continuing to deny all allegations of wrongdoing and disclaiming all liability with respect to all

claims, considers it desirable to resolve the action on the terms stated herein to avoid further expense, inconvenience, and burden, and therefore has determined that this settlement is in Defendant's best interests. Any public statements made by Plaintiffs or Class Counsel will be consistent with this paragraph and Class Counsel will not issue any press release concerning this Agreement or the settlement contained herein;

(b) is, may be deemed, or shall be used, offered or received against any Released Party, as an admission, concession or evidence of any fault, misrepresentation or omission with respect to any statement or written document approved or made by the Released Parties, or any of them;

(c) is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them, as an admission or concession with respect to any liability, negligence, fault or wrongdoing or statutory meaning as against any Released Parties, or supporting the certification of a litigation class, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. However, the settlement, this Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Agreement and/or Settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Agreement. Further, if this Settlement Agreement is approved by the Court, any Party or any of the Released Parties may file this Agreement and/or the Final Judgment in any action that may be brought against such Party or Parties to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim;

(d) is, may be deemed, or shall be construed against Plaintiffs, the Settlement Class, the Releasing Parties, or each or any of them, or against the Released Parties, or each or any of them, as an admission or concession that the consideration to be given hereunder represents an amount equal to, less than or greater than that amount that could have or would have been recovered after trial; and

(e) is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiffs, the Settlement Class, the Releasing Parties, or each and any of them, or against the Released Parties, or each or any of them, that any of Plaintiffs' claims are with or without merit or that damages recoverable in the Action would have exceeded or would have been less than any particular amount.

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

the elements of class certification in any litigated certification proceedings, whether in the Action or any other judicial proceeding.

**10.6.** No person or entity shall have any claim against the Class Representatives, Class Counsel, the Settlement Administrator, or any other agent designated by Class Counsel, or the Released Parties and/or their counsel, arising from distributions made substantially in accordance with this Agreement. The Parties and their respective counsel, and all other Released Parties shall have no liability whatsoever for the investment or distribution of the Settlement Fund or the determination, administration, calculation, or payment of any claim or nonperformance of the Settlement Administrator, the payment or withholding of taxes (including interest and penalties) owed by the Settlement Fund, or any losses incurred in connection therewith.

**10.7.** All proceedings with respect to the administration, processing and determination of Claims and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of Claims, and the enforcement of the Release and Covenant not to Sue set forth herein, shall be subject to the jurisdiction of the Court.

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

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

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

**10.11** This Agreement and its Exhibits set forth the entire agreement of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements and undertakings with respect to the matters set forth herein. This Agreement may

be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

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

**10.13** Plaintiffs represent and warrant that they have not assigned any claim or right or interest therein as against the Released Parties to any other Person or Party and that they are fully entitled to release the same.

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

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

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

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

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

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

**10.20** Where this Agreement requires notice to the Parties, such notice shall be sent to the undersigned counsel: L. Timothy Fisher, Bursor & Fisher, P.A., 1990 N. California Blvd., Suite 940, Walnut Creek, California 94596, ltfisher@bursor.com; Ana Tagvoryan, Blank Rome LLP, 2029 Century Park East, Ste. 6, Los Angeles, CA 90067, ana.tagvoryan@blankrome.com

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

Dated: June <sup>8</sup> \_\_, 2023

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

By: DocuSigned by:  
L. TIMOTHY FISHER  
216CEEAF9EEB48A  
L. Timothy Fisher, Esq.

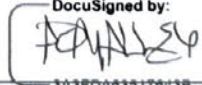
Dated: June <sup>12</sup> \_\_, 2023

**PLAINTIFF LUCAS YOUNG**

By: DocuSigned by:  
  
316597A43AE9401...  
Lucas Young, individually and for the Class

Dated: June <sup>09</sup> \_\_, 2023

**PLAINTIFF DANIEL O'MALLEY**

By: DocuSigned by:  
  
3A3FDA63317643B  
Daniel O'Malley, individually and for the Class

Dated: June <sup>08</sup> \_\_, 2023

**PLAINTIFF CHARLES BUCKINGHAM**

By: DocuSigned by:  
Charles Buckingham  
ASPABDA0E3114F1...  
Charles Buckingham, individually and  
for the Class

Dated: June \_\_, 2023

**FLOSPORTS, INC.**

By: \_\_\_\_\_  
Paul Hurdlow, as Corporate Secretary  
and Executive Vice President

Dated: June \_\_, 2023

**BLANK ROME LLP**

By: \_\_\_\_\_  
Ana Tagvoryan, Esq.



Dated: June \_\_, 2023

**PLAINTIFF CHARLES BUCKINGHAM**

By: \_\_\_\_\_  
Charles Buckingham, individually and  
for the Class

Dated: June 15, 2023

**FLOSPORTS, INC.**

DocuSigned by:  
*Paul Hurdlow*  
By: \_\_\_\_\_  
91DCF4DF58604A7...  
Paul Hurdlow, as Corporate Secretary  
and Executive Vice President

Dated: June \_\_, 2023

**BLANK ROME LLP**

By: \_\_\_\_\_  
Ana Tagvoryan, Esq.

Dated: June \_\_, 2023

**PLAINTIFF CHARLES BUCKINGHAM**

By: \_\_\_\_\_  
Charles Buckingham, individually and  
for the Class


Dated: June 15, 2023

**FLOSPORTS, INC.**

By: \_\_\_\_\_  
Paul Hurdlow, as Corporate Secretary  
and Executive Vice President

Dated: June 15, 2023

**BLANK ROME LLP**

By:  \_\_\_\_\_  
Ana Tagvoryan, Esq.

# **EXHIBIT A**

***Young, et al. v. FloSports, Inc.***

In the Circuit Court of DuPage County, Illinois, 18th Judicial Circuit

Case No. 2023LA000516

**Settlement Claim Form**

**If you are a Settlement Class Member and wish to receive a settlement benefit, your completed Claim Form must be postmarked on or before [\_\_\_\_], or submitted online at [www.FSRenewalSettlement.com](http://www.FSRenewalSettlement.com) on or before [\_\_\_\_].**

Please read the full notice of this settlement (available at [www.FSRenewalSettlement.com](http://www.FSRenewalSettlement.com)) carefully before filling out this Claim Form.

To be eligible to receive any benefits from the settlement obtained in this class action lawsuit, you must submit this completed Claim Form online or by mail:

**ONLINE:** Visit [www.FSRenewalSettlement.com](http://www.FSRenewalSettlement.com) and submit your claim online.

**MAIL:** [ADDRESS]

---

**PART ONE: CLAIMANT INFORMATION**

Provide your name and contact information below. It is your responsibility to notify the Settlement Administrator of any changes to your contact information after the submission of your Claim Form.

**FIRST NAME**

**LAST NAME**

**STREET ADDRESS**

**CITY**

**STATE**

**ZIP CODE**

**EMAIL ADDRESS**

---

**PART TWO: SUBSCRIPTION INFORMATION**

To qualify for a settlement benefit, you must have been a FloSports subscriber who, from August 29, 2018 through [DATE], enrolled in an automatically renewing FloSports subscription using a California, New York, North Carolina, Oregon, Florida, Illinois, Washington D.C., North Dakota, Virginia, Hawaii, Vermont billing address and paid fee(s) in connection with your subscription.

If you are an **ACTIVE SUBSCRIBER** to FloSports:

OPTION 1: Check here if you would like to receive a cash payment. Annual subscribers are eligible to receive **up to \$30.00**. Monthly subscribers are eligible to receive **up to \$6**.

QUESTIONS? VISIT [www.FSRenewalSettlement.com](http://www.FSRenewalSettlement.com) OR CALL [NUMBER] TOLL-FREE

OPTION 2: Check here if you would like to receive a **10% discount** on your next immediate renewal charge (or an electronic voucher for a free pay-per-view event from FloSports, with certain exceptions,<sup>1</sup> if your membership is no longer active when the settlement becomes final).

If you are an **INACTIVE SUBSCRIBER** to FloSports:

OPTION 1: Check here if you would like to receive a cash payment. Annual subscribers are eligible to receive **up to \$30.00**. Monthly subscribers are eligible to receive **up to \$6**.

OPTION 2: Check here if you would like to receive an **electronic voucher for one free pay-per-view event** from FloSports, with certain exceptions.<sup>2</sup>

**The cash payments set out herein represent the maximum that you can receive under the settlement. The actual cash paid may be reduced depending on the aggregate total of claims submitted by all class members.**

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### PART THREE: ATTESTATION UNDER PENALTY OF PERJURY

---

I declare under penalty of perjury under the laws of the State of Illinois and the United States of America that all of the information on this Claim Form is true and correct to the best of my knowledge. I understand that my Claim Form may be subject to audit, verification, and Court review.

**SIGNATURE**

**DATE**

**Please keep a copy of your Claim Form for your records.**

---

<sup>1</sup> The electronic vouchers should be available within ninety (90) days after the settlement becomes final. The vouchers will not expire. Exceptions apply.

<sup>2</sup> The electronic vouchers should be available within **ninety (90)** days after the settlement becomes final. The vouchers will not expire. Exceptions apply.

# **EXHIBIT B**

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

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**  
*Young, et al. v. FloSports, Inc.*, Case No. 2023LXXXXX  
(In the Circuit Court of DuPage County, Illinois, 18th Judicial Circuit)

This notice is to inform you of the settlement of a class action lawsuit against FloSports, Inc. (“FloSports”), the “Defendant,” filed by Plaintiffs Lucas Young, Daniel O’Malley, and Charles Buckingham (collectively, the “Plaintiffs”) in the Circuit Court of DuPage County, Illinois. The Class Plaintiffs allege that they were enrolled in automatically renewing subscriptions for FloSports’ content without adequate disclosures and notice regarding renewal charges and cancellation terms. FloSports claims its subscription renewal practices complied with all applicable laws and regulations and that it fairly disclosed all terms associated with its subscriptions. Thus, FloSports denies all allegations of wrongdoing, and the Court has not determined who is right. Rather, the Parties have agreed to settle the lawsuit to avoid the uncertainties and expenses associated with ongoing litigation.

**Am I a Class Member?** Yes. Our records indicate you are a Settlement Class Member. Class Members are persons who, from August 29, 2018 through [the date the settlement agreement is signed], enrolled in an automatically renewing FloSports subscription using a California, New York, North Carolina, Oregon, Florida, Illinois, Washington D.C., North Dakota, Virginia, Hawaii, Vermont billing address and paid fee(s) in connection with such subscription.

**What Can I Get?** You **must** submit a Claim Form (see instructions below) to receive a benefit from this Settlement. Class Members with **active subscriptions** to FloSports may choose to receive either (1) a pro rata cash payment of up to \$30.00 for annual subscribers, and up to \$6 for monthly subscribers via check; or (2) a 10% discount on the next immediate FloSports renewal charge (or an electronic voucher for a free pay-per-view event from FloSports, with certain exceptions, if your membership is no longer active when the settlement becomes final). If you are an **inactive subscriber** to FloSports, you may choose to receive either (1) a pro rata cash payment of up to \$30.00 for annual subscribers, and up to \$6 for monthly subscribers via check; or (2) an electronic voucher for a free pay-per-view event from FloSports, with certain exceptions.

Details on the electronic voucher option can be found on the settlement website at {address}.

The cash payments may be subject to *pro rata* adjustment depending on the number of valid claims that are filed. A Settlement Fund of up to \$1,550,000.00 will be established to pay all approved claims to the Settlement Class, together with notice and administration expenses, approved attorneys’ fees and costs to Class Counsel, and Service Awards to the Plaintiffs.

**How Do I Get a Cash Payment, Discount, or Voucher?** You **must** complete and submit a Claim Form to receive a benefit from the Settlement. You may submit a Claim Form either electronically on the Settlement Website by clicking [here](http://www.FSRenewalSettlement.com) www.FSRenewalSettlement.com, or by printing and mailing in a paper Claim Form, copies of which are available for download [here](#)

www.FSRenewalSettlement.com. Claim Forms must be submitted online by 11:59 p.m. EST on [date] or postmarked and mailed by [date].

**What are My Other Options?** You may exclude yourself from the Settlement Class by sending a letter to the settlement administrator no later than [objection/exclusion deadline]. If you exclude yourself, you cannot get a settlement payment, but you keep any rights you may have to sue FloSports over the legal issues in the lawsuit. You and/or your lawyer have the right to appear before the Court and/or to object to the proposed settlement. Your written objection must be filed no later than [objection/exclusion deadline]. Specific instructions about how to object to, or exclude yourself from, the Settlement are available at [URL]. If you do nothing, and the Court approves the Settlement, you will be bound by all of the Court's orders and judgments. In addition, your claims against FloSports and others will be released.

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

**When Will the Court Consider the Proposed Settlement?** The Court will hold the Final Approval Hearing at [time] on [date] at the 18th Judicial Circuit Courthouse, 505 N. County Farm Road, Wheaton, IL 60187. At that hearing, the Court will: hear any objections concerning the fairness of the settlement; determine the fairness of the settlement; decide whether to approve Class Counsel's request for attorneys' fees and costs; and decide whether to award the Plaintiffs \$5,000 each from the Settlement Fund for their services in helping to bring and settle this case. FloSports has agreed that Class Counsel may be paid reasonable attorneys' fees and costs from the Settlement Fund in an amount to be determined by the Court. Class Counsel is entitled to seek no more than \$1,000,000, but the Court may award less than this amount.

**How Do I Get More Information?** For more information, including a more detailed Class Notice, a copy of the Settlement Agreement and other documents, go to [URL], contact the settlement administrator by calling (800) 000-000 or by writing to FloSports Settlement Administrator, [address], or contact Class Counsel by calling (646) 837-7150.



# **EXHIBIT C**

COURT AUTHORIZED NOTICE OF CLASS  
ACTION AND PROPOSED SETTLEMENT

OUR RECORDS  
INDICATE YOU  
SUBSCRIBED TO  
FLOSPORTS AND MAY  
BE ENTITLED TO A  
PAYMENT FROM A  
CLASS ACTION  
SETTLEMENT.

FloSports Settlement  
Settlement Administrator  
P.O. Box 0000  
City, ST 00000-0000



Postal Service: Please do not mark barcode

XXX—«ClaimID» «MailRec»

«First1» «Last1»

«C/O»

«Addr1» «Addr2»

«City», «St» «Zip» «Country»

By Order of the Court Dated: [date]

## **FLOSPORTS SETTLEMENT**

A settlement has been reached in a class action lawsuit against Defendant FloSports, Inc. Plaintiffs Lucas Young, Daniel O'Malley, and Charles Buckingham (collectively, the "Plaintiffs") allege that they were enrolled in automatically renewing subscriptions for FloSports' content without adequate disclosures and notice regarding renewal charges and cancellation terms. FloSports claims its subscription renewal practices complied with all applicable laws and regulations and that it fairly disclosed all terms associated with its subscriptions. Thus, FloSports denies all allegations of wrongdoing, and the Court has not determined who is right. Rather, the Parties have agreed to settle the lawsuit to avoid the uncertainties and expenses associated with ongoing litigation.

**Am I a Settlement Class Member?** Our records indicate you are a Settlement Class Member. Class Members are persons who, from August 29, 2018 through [the date the settlement agreement is signed], enrolled in an automatically renewing FloSports subscription using a California, New York, North Carolina, Oregon, Florida, Illinois, Washington D.C., North Dakota, Virginia, Hawaii, Vermont billing address and paid fee(s) in connection with such subscription.

**What Can I Get?** You must submit a Claim Form (see instructions below) to receive a benefit from this Settlement. Class Members with **active subscriptions** to FloSports may choose to receive either (1) a pro rata cash payment of up to \$30.00 for annual subscribers, and up to \$6 for monthly subscribers via check; or (2) a 10% discount on the next immediate FloSports renewal charge (which will automatically convert to an electronic voucher for a free pay-per-view event from FloSports, with certain exceptions, if your membership is no longer active when the settlement becomes final). If you are an **inactive subscriber** to FloSports, you may choose to receive either (1) a pro rata cash payment of up to \$30.00 for annual subscribers, and up to \$6 for monthly subscribers via check; or (2) an electronic voucher for a free pay-per-view event from FloSports, with certain exceptions. Details on the electronic voucher option can be found on the settlement website at {address}. The cash payments may be subject to pro rata adjustment depending on the number of valid claims that are filed. A Settlement Fund of up to \$1,550,000.00 will be established to pay all approved claims to the Settlement Class, together with notice and administration expenses, approved attorneys' fees and costs to Class Counsel, and Service Awards to the Plaintiffs.

**How Do I Get a Payment?** You must complete and submit a Claim Form to receive a benefit from the Settlement. You may submit a Claim Form either electronically on the Settlement Website by visiting [www.FSRenewalSettlement.com](http://www.FSRenewalSettlement.com), or by printing and mailing in a paper Claim Form, copies of which are available for download [here](http://www.FSRenewalSettlement.com) [www.FSRenewalSettlement.com](http://www.FSRenewalSettlement.com). Claim Forms must be submitted online by 11:59 p.m. EST on [date] or postmarked and mailed by [date].

**What are My Other Options?** You may exclude yourself from the Settlement Class by submitting an online form on the Settlement Website no later than 11:59 p.m. on [objection/exclusion deadline] or by sending a letter to the settlement administrator no later than [objection/exclusion deadline]. If you exclude yourself, you cannot get a settlement payment, but you keep any rights you may have to sue FloSports over the legal issues in the lawsuit. You and/or your lawyer have the right to appear before the Court and/or object to the proposed settlement. Any written objection must be filed no later than [objection/exclusion deadline]. Specific instructions about how to object to, or exclude yourself from, the Settlement are available at [URL]. If you do nothing, and the Court approves the Settlement, you will be bound by all of the Court's orders and judgments. In addition, your claims against FloSports and others will be released.

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

**When Will the Court Consider the Proposed Settlement?** The Court will hold the Final Approval Hearing at [time] on [date] at the 18th Judicial Circuit Courthouse, 505 N. County Farm Road, Wheaton, IL 60187. At that hearing, the Court will: hear any objections concerning the fairness of the settlement; determine the fairness of the settlement; decide whether to approve Class Counsel's request for attorneys' fees and costs; and decide whether to award the Plaintiffs \$5,000 each from the Settlement Fund for their services in helping to bring and settle this case. FloSports has agreed that Class Counsel may be paid reasonable attorneys' fees from the Settlement Fund in an amount to be determined by the Court. Class Counsel is entitled to seek no more than \$1,000,000, but the Court may award less than this amount.

**How Do I Get More Information?** For more information, including the full Class Notice, Claim Form and Settlement Agreement go to [URL], contact the settlement administrator by calling (800) 000-0000 or writing to FloSports Settlement Administrator, [address], or contact Class Counsel by calling (646) 837-7150.

\_\_\_\_\_

FloSports Settlement Administrator  
c/o [Settlement Administrator]  
PO Box 0000  
City, ST 00000-0000

**XXX**

# **EXHIBIT D**

**CIRCUIT COURT OF DUPAGE COUNTY, ILLINOIS, 18TH JUDICIAL CIRCUIT**

*Young, et al v. FloSports, Inc.*, Case No. 2023LXXXX

IF YOU ENROLLED IN A FLOSPORTS SUBSCRIPTION BETWEEN AUGUST 29, 2018 AND [DATE] AND PAID FEES IN CONNECTION WITH THAT SUBSCRIPTION, YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.

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

- A settlement has been reached in a class action lawsuit against FloSports, Inc. Plaintiffs Lucas Young, Daniel O'Malley, and Charles Buckingham (collectively, the "Class Representatives") allege that they were enrolled in automatically renewing subscriptions for FloSports' content without adequate disclosures and notice regarding renewal charges and cancellation terms. FloSports claims its subscription renewal practices complied with all applicable laws and regulations and that it fairly disclosed all terms associated with its subscriptions. Thus, FloSports denies all allegations of wrongdoing, and the Court has not determined who is right. Rather, the Parties have agreed to settle the lawsuit to avoid the uncertainties and expenses associated with ongoing litigation.
- You are included if, from August 29, 2018 through [date], you enrolled in an automatically renewing FloSports subscription using a California, New York, North Carolina, Oregon, Florida, Illinois, Washington D.C., North Dakota, Virginia, Hawaii, Vermont billing address, and paid fee(s) in connection with such subscription.
- Those included in the settlement will be eligible to receive a cash payment (up to \$30 for annual subscribers and up to \$6 for monthly subscribers), a renewal discount, or an electronic voucher for a free pay-per-view event (with certain exceptions).
- Read this notice carefully. Your legal rights are affected whether you act, or don't act.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
<b>FILE A CLAIM BY [CLAIMS DEADLINE]</b>	The <b>only</b> way to receive a benefit from the settlement. By participating in the settlement, you will be bound by the terms of the Settlement Agreement and will give up certain rights.
<b>EXCLUDE YOURSELF BY [EXCLUSION DEADLINE]</b>	You will receive no benefits, but you will retain any rights you currently have to sue the Defendant about the claims in this case.
<b>OBJECT BY [OBJECTION DEADLINE]</b>	Write to the Court explaining why you don't like the settlement.
<b>GO TO THE FINAL APPROVAL HEARING ON [DATE]</b>	Ask to speak in Court about your opinion of the settlement.
<b>DO NOTHING</b>	You <b>will not</b> get a share of the settlement benefits and will give up your rights to sue Defendant about issues related to the claims and allegations in this case.

QUESTIONS? CALL (800) 000-0000 TOLL FREE, OR VISIT [WWW.FSRENEWALSETTLEMENT.COM](http://WWW.FSRENEWALSETTLEMENT.COM)

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

## BASIC INFORMATION

### 1. Why was this Notice issued?

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

The Honorable [REDACTED] of the Circuit Court of DuPage County, Illinois, 18th Judicial Circuit, is overseeing this case. The case is called *Young, et al. v. FloSports, Inc.*, Case No. 2023LXXXXX. The people who sued are called the Plaintiffs. The Defendant is FloSports, Inc.

### 2. What is a class action?

In a class action, one or more people called class representatives (in this case, Lucas Young, Daniel O'Malley, and Charles Buckingham) sue on behalf of a group or a "class" of people who have similar claims. In a class action, the court resolves the issues for all class members, except for those who exclude themselves from the Settlement Class.

### 3. What is this lawsuit about?

The Class Representatives allege that they were enrolled in automatically renewing subscriptions for FloSports' content without adequate disclosures and notice regarding renewal charges and cancellation terms. FloSports claims its subscription renewal practices complied with all applicable laws and regulations and that it fairly disclosed all terms associated with its subscriptions. Thus, FloSports denies all allegations of wrongdoing, and the Court has not determined who is right. Rather, the Parties have agreed to settle the lawsuit to avoid the uncertainties and expenses associated with ongoing litigation.

### 4. Why is there a settlement?

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

QUESTIONS? CALL (800) 000-0000 TOLL FREE, OR VISIT [WWW.FSRENEWALSETTLEMENT.COM](http://WWW.FSRENEWALSETTLEMENT.COM)

## WHO IS INCLUDED IN THE SETTLEMENT?

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

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

All persons who, from August 29, 2018 through [the date the settlement agreement is signed], enrolled in an automatically renewing FloSports subscription using a California, New York, North Carolina, Oregon, Florida, Illinois, Washington D.C., North Dakota, Virginia, Hawaii, Vermont billing address and paid fee(s) in connection with such subscription.

## THE SETTLEMENT BENEFITS

### 6. What does the settlement provide?

**Monetary Relief:** If approved, a Settlement Fund will be created totaling up to \$1,550,000.00. Settlement Class Member cash payments, the cost to administer the settlement, the cost to inform people about the settlement, attorneys' fees (inclusive of litigation costs), and awards to the Class Representatives will also come out of this fund (*see* Question 12). Settlement Class Members who are active subscribers to FloSports at the time of their claim also have the option to receive a 10% discount on their next immediate FloSports renewal charge—which will automatically convert to an electronic voucher for a free pay-per-view event from FloSports, with certain exceptions, if their membership is no longer active when the settlement becomes final (*see* Questions 7 and 8). Settlement Class Members who are inactive (or former) subscribers to FloSports have the option to receive an electronic voucher for a free pay-per-view event from FloSports with certain exceptions.

A detailed description of the settlement benefits can be found in the Settlement Agreement, a copy of which is accessible on the Settlement Website by clicking [here](http://www.FSRenewalSettlement.com). [www.FSRenewalSettlement.com](http://www.FSRenewalSettlement.com).

**Prospective Relief:** In addition to the monetary relief described above, Defendant has also agreed to present on the checkout page the automatic renewal offer terms (including cancellation policy) in a clear and conspicuous manner before the subscription or purchasing agreement and in visual proximity to the request for consent to the offer and obtain affirmative consent to the agreement containing the automatic renewal terms in a manner that complies with applicable automatic renewal laws. Defendant further agrees to disclose, in a manner that complies with applicable automatic renewal laws, how to cancel and by when in an acknowledgment email that is capable of being retained by consumers.



## 7. What settlement benefits am I entitled to?

Class Members with **active subscriptions** to FloSports may choose to receive either (1) a pro rata cash payment of up to \$30.00 for annual subscribers, and up to \$6 for monthly subscribers via check; or (2) a 10% discount on the next immediate FloSports renewal charge—which will automatically convert to an electronic voucher for a free pay-per-view event from FloSports, with certain exceptions, if your membership is no longer active when the settlement becomes final (*see* Question 8).

If you are an **inactive subscriber** to FloSports, you may choose to receive either (1) a pro rata cash payment of up to \$30.00 for annual subscribers, and up to \$6 for monthly subscribers via check; or (2) an electronic voucher for a free pay-per-view event from FloSports, with certain exceptions. Details on the electronic voucher option can be found [www.FSRenewalSettlement.com](http://www.FSRenewalSettlement.com).

## 8. When will I receive my settlement benefit?

The hearing to consider the fairness of the settlement is scheduled for [Final Approval Hearing Date]. If the Court approves the settlement, eligible Class Members will receive their benefit 30 days after the settlement has been finally approved and/or after any appeals process is complete. The cash payment will be made in the form of a check, and all checks will expire and become void 180 days after they are issued.

## HOW TO GET BENEFITS

### 9. How do I get a benefit from the settlement?

You **must** complete and submit a Claim Form to receive a benefit from the Settlement. You may submit a Claim Form either electronically on the Settlement Website by clicking [here](http://www.FSRenewalSettlement.com) [www.FSRenewalSettlement.com](http://www.FSRenewalSettlement.com), or by printing and mailing in a paper Claim Form, copies of which are available for download [here](http://www.FSRenewalSettlement.com) [www.FSRenewalSettlement.com](http://www.FSRenewalSettlement.com). Claim Forms must be submitted online by 11:59 p.m. CT on [date] or postmarked and mailed by [date].

## REMAINING IN THE SETTLEMENT

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

If the settlement becomes final, you will give up your right to sue the Defendant and other Released Parties for the claims being resolved by this settlement. The specific claims you are giving up against the Defendant are described in the Settlement Agreement. You will be “releasing” the Defendant and certain of its affiliates, employees and representatives as described in Sections 1.33 and 3 of the Settlement Agreement. Unless you exclude yourself (*see* Question 13), you are “releasing” the

claims, regardless of whether you submit a claim or not. The Settlement Agreement is available through the “court documents” link on the website.

The Settlement Agreement describes the released claims with specific descriptions, so read it carefully. If you have any questions you can talk to the lawyers listed in Question 11 for free or you can, of course, talk to your own lawyer if you have questions about what this means.

## THE LAWYERS REPRESENTING YOU

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

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

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

The Defendant has agreed that Class Counsel attorneys’ fees and costs may be paid out of the Settlement Fund in an amount to be determined by the Court. The fee petition will seek no more than \$1,000,000 of the Settlement Fund, inclusive of reimbursement of their costs and expenses; the Court may award less than this amount.

Subject to approval by the Court, Defendant has also agreed that the Class Representatives may be paid a Service Award of \$5,000 each from the Settlement Fund for their services in helping to bring and resolve this case.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

### 13. How do I get out of the settlement?

To exclude yourself from the settlement, you must submit a request for exclusion by 11:59 p.m. EST on **[objection/exclusion deadline]**. Requests for exclusion may be submitted either on the Settlement Website (via the online form accessible [here](#) [www.FSRenewalSettlement.com](http://www.FSRenewalSettlement.com) or by mailing or otherwise delivering a letter (or request for exclusion) stating that you want to be excluded from the *Young, et al. v. FloSports, Inc.*, Case No. 2023LXXXX settlement. Your letter or request for exclusion must also include your name, your email and billing addresses, that you enrolled in a paid FloSports subscription from August 29, 2018 to **[Date]** using a California, New York, North Carolina, Oregon, Florida, Illinois, DC, N. Dakota, Virginia, Hawaii, Vermont billing address and paid fee(s) in connection with such subscription, your signature, the name and number of this case, and a statement that you wish to be

**QUESTIONS? CALL (800) 000-0000 TOLL FREE, OR VISIT [WWW.FSRENEWALSETTLEMENT.COM](http://WWW.FSRENEWALSETTLEMENT.COM)**

excluded. If you choose to submit a request for exclusion by mail, you must mail or deliver your exclusion request, postmarked no later than [objection/exclusion deadline], to the following address:

FloSports Settlement  
0000 Street  
City, ST 00000

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

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

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

No. If you exclude yourself, you will not receive a payment from the Settlement Fund.

## OBJECTING TO THE SETTLEMENT

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

If you are a Class Member, you can object to the settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must file with the Court a letter or brief stating that you object to the settlement in *Young, et al. v. FloSports, Inc.*, Case No. 2023L00000 and identify all your reasons for your objections (including citations and supporting evidence) and attach any materials you rely on for your objections. Your letter or brief must be filed with the clerk of the court or must be e-filed if you are represented by your own attorney. Your letter or brief must also include your name, your address, the basis upon which you claim to be a Class Member (either verification under oath of the date and billing address of enrollment in a FloSports subscription within the Settlement Class Period, or a receipt reflecting such purchase), the name and contact information of any and all attorneys representing, advising, or in any way assisting you in connection with your objection, and your signature. If you, or an attorney assisting you with your objection, have ever objected to any class action settlement where you or the objecting attorney has asked for or received payment in exchange for dismissal of the objection (or any related appeal) without modification to the settlement, you must include a statement in your objection identifying each such case by full case caption. You must also mail or deliver a copy of your letter or brief to Class Counsel and Defendant's Counsel listed below.

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

If you want to appear and speak at the Final Approval Hearing to object to the settlement, with or without a lawyer (explained below in answer to Question Number 20), you must say so in your letter or brief. File the objection with the Court (or mail the objection to the Court) and mail a copy of the objection to Class Counsel and Defendant’s Counsel, at the addresses below, postmarked no later than **[objection deadline]**.

Court	Class Counsel	Defendant’s Counsel
The Honorable [redacted] Circuit Court for DuPage County, Illinois, 18th Judicial District 505 N. County Farm Road Wheaton, IL 60187	L. Timothy Fisher Bursor & Fisher P.A. 1990 N. California Blvd. Walnut Creek, CA 94596	Ana Tagvoryan Blank Rome LLP 2029 Century Park East Los Angeles, CA 90067

**17. What’s the difference between objecting and excluding myself from the settlement?**

Objecting simply means telling the Court that you don’t like something about the settlement. You can object only if you stay in the Settlement Class. Excluding yourself from the Class is telling the Court that you don’t want to be part of the Settlement Class. If you exclude yourself per the terms in the settlement agreement, you have no basis to object because the case no longer affects you.

**THE COURT’S FINAL APPROVAL HEARING**

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

The Court will hold the Final Approval Hearing at **[time]** on **[date]** at the 18th Judicial Circuit Courthouse, 505 N. County Farm Road, Wheaton, IL 60187. The purpose of the hearing will be for the Court to determine whether to approve the settlement as fair, reasonable, adequate, and in the best interests of the Settlement Class; to consider the Class Counsel’s request for attorneys’ fees and expenses; and to consider the request for Service Awards to the Class Representatives. At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the settlement.

The hearing may be postponed to a different date or time without notice, so it is a good idea to check for updates by visiting the Settlement Website at [www.FSRenewalSettlement.com](http://www.FSRenewalSettlement.com) or calling **(800) 000-0000**. If, however, you timely objected to the settlement and advised the Court that you intend to appear and speak at the Final Approval Hearing, and the Court has your contact information, you will receive notice of any change in the date of the Final Approval Hearing.



### **19. Do I have to come to the hearing?**

No. Class Counsel will answer any questions the Court may have. But, you are welcome to come at your own expense. If you serve or file an objection or comment, you don't have to come to Court to talk about it. As long as you filed and mailed your written objection on time, the Court will consider it. You may also pay another lawyer to attend, but it is not required.

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

Yes. You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must include in your letter or brief objecting to the settlement a statement saying that it is your "Notice of Intent to Appear in *Young, et al. v. FloSports, Inc.*, Case No. 2023L000XXX." It must include your name, address, telephone number and signature as well as the name and address of your lawyer, if one is appearing for you. Your objection and notice of intent to appear must be filed with the Court and postmarked no later than [objection deadline], and be sent to the addresses listed in Question 16.

## **GETTING MORE INFORMATION**

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

This Notice summarizes the settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement at [URL]. You may also write with questions to FloSports Settlement, P.O. Box 0000, City, ST 00000. You can call the Settlement Administrator at (800) 000-0000 or Class Counsel at (646) 837-7150, if you have any questions. Before doing so, however, please read this full Notice carefully. You may also find additional information elsewhere on the case website.

# **EXHIBIT E**

**IN THE CIRCUIT COURT OF DUPAGE COUNTY, ILLINOIS  
18TH JUDICIAL CIRCUIT**

DANIEL O'MALLEY, LUCAS YOUNG, and  
CHARLES BUCKINGHAM, individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

FLOSPORTS, INC.,

Defendant.

Case No. 2023LA000516

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

Plaintiffs Daniel O'Malley, Lucas Young, and Charles Buckingham ("Plaintiffs") and Defendant FloSports, Inc. ("FloSports") (collectively, "the Parties"), by and through and including their undersigned counsel, stipulate and agree as follows:

WHEREAS, Bursor & Fisher P.A. (the "Firm") desires to give an undertaking (the "Undertaking") for repayment of any and all award of attorneys' fees, costs, and expenses approved by the Court and paid to the Firm pursuant to Section 8.2 of the Settlement Agreement, and

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

NOW, THEREFORE, the undersigned counsel, on behalf of himself as an individual and as an agent for the Firm, hereby submits himself and the Firm to the jurisdiction of the Court for the purpose of enforcing the provisions of this Undertaking.

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

By receiving any payments pursuant to the Settlement Agreement, the Firm and its shareholders, members, and/or partners submit to the jurisdiction of the Circuit Court of DuPage County, Illinois, 18th Judicial District, for the enforcement of and any and all disputes relating to or arising out of the reimbursement obligation set forth herein and the Settlement Agreement.

In the event that the Settlement Approval Order and Final Judgment or any part of it is vacated, overturned, reversed, or rendered void as a result of an appeal, or the Settlement Agreement is voided, rescinded, or otherwise terminated for any other reason, the Firm shall, within thirty (30) days repay to Defendant, based upon written instructions provided by Defendant's Counsel, the full amount of the attorneys' fees and costs paid from the Settlement Fund, including any accrued interest.

In the event the Settlement Approval Order and Final Judgment are upheld, but the attorneys' fees, costs, and expenses awarded by the Court or any part of them are vacated, modified, reversed, or rendered void as a result of an appeal, the Firm shall within thirty (30) days repay to the Settlement Fund, based upon written instructions provided by the Settlement Administrator, all attorneys' fees and costs paid from the Settlement Fund in the amount vacated or modified, including any accrued interest.

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

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



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

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

The undersigned attorneys for Plaintiffs and the Settlement Class declare under penalty of perjury under the laws of the United States that they have read and understand the foregoing and that it is true and correct.

IT IS SO STIPULATED THROUGH COUNSEL OF RECORD:

DATED: \_\_\_\_\_, 2023

BURSOR & FISHER, P.A.

\_\_\_\_\_  
By: Scott A. Bursor, on behalf of Bursor & Fisher, P.A.  
Attorneys for Plaintiffs and the Settlement Class

DATED: \_\_\_\_\_, 2023

Blank Rome, LLP

\_\_\_\_\_  
By: Ana Tagvoryan  
Attorney for Defendant FloSports, Inc.

# **EXHIBIT F**

**IN THE CIRCUIT COURT OF DUPAGE COUNTY, ILLINOIS  
18TH JUDICIAL CIRCUIT**

DANIEL O’MALLEY, LUCAS YOUNG, and  
CHARLES BUCKINGHAM, *individually and  
on behalf of all others similarly situated,*

Case No. 2023L

Plaintiffs,

v.

FLOSPORTS, INC.,

Defendant.

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

WHEREAS, a class action is pending before the Court entitled *O’Malley, et al. v. FloSports, Inc.*, No. 2023L ; and

WHEREAS, Plaintiffs Daniel O’Malley, Lucas Young, and Charles Buckingham (collectively “Plaintiffs”) and Defendant FloSports, Inc. have entered into a Class Action Settlement Agreement, which, together with the exhibits attached thereto, sets forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice as to Defendant (the “Settlement Agreement”), and the Court having read and considered the Settlement Agreement and exhibits attached thereto, and the Motion for Preliminary Approval of Class Settlement, Certifying Settlement Class, Appointing Class Representatives, Appointing Class Counsel, and Approving Notice Plan; and

This matter coming before the Court upon the agreement of the parties, good cause being shown, and the Court being fully advised in the premises,

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

1. Terms and phrases in this Order shall have the same meaning as ascribed to them

in the Settlement Agreement except as otherwise noted.

2. The Parties have moved the Court for an order approving the settlement of the Action in accordance with the Settlement Agreement, which, together with the documents attached thereto, sets forth the terms and conditions for a proposed class settlement and dismissal of the Action with prejudice (“Settlement”), and the Court having read and considered the Settlement and having heard the parties and being fully advised in the premises, hereby preliminarily approves the multi-state Settlement in its entirety subject to the Final Approval Hearing referred to in paragraph 5 of this Order.

3. This Court finds that it has jurisdiction over the subject matter of this action and over all of the Parties to the Action as it relates to the subject matter of this action and this Settlement, only.

4. The Court finds that, subject to the Final Approval Hearing, the Settlement is fair, reasonable, and adequate, within the range of possible approval, and in the best interests of the Settlement Class set forth below. The Court further finds that the Settlement substantially fulfills the purposes and objectives of the Action, and provides substantial relief to the Settlement Class without the risks, burdens, costs, or delay associated with continued litigation, trial, and/or appeal. The Court also finds that the Settlement (a) is the result of arm’s-length negotiations between experienced class action attorneys; (b) is sufficient to warrant notice of the settlement and the Final Approval Hearing to be disseminated to the Settlement Class; (c) meets all applicable requirements of law, including 735 ILCS 5/2-801 to 807; and (d) is not a finding or admission of liability by the Defendant or any other person, nor a finding of the validity of any claims asserted in the Action, of certifying the class for litigation and trial, or of any wrongdoing or any violation of law.

**Final Approval Hearing**

5. The Final Approval Hearing shall be held before this Court on \_\_\_\_\_, at \_\_\_\_\_. [*suggested date of 90 days after entry of this Order*] at the DuPage County Courthouse, 505 N. County Farm Rd., Wheaton, Illinois to determine (a) whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate and should be given final approval by the Court; (b) whether a judgment and order of dismissal with prejudice should be entered; (c) whether to approve the method and amount of payment of attorneys’ fees, costs, and expenses to Class Counsel; and (d) whether to approve the payment of incentive awards to the Class Representatives. The Court may adjourn the Final Approval Hearing without further notice to members of the Settlement Class.

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

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

**Provisional Certification of the Settlement Class**

8. For purposes of settlement only: (a) Bursor & Fisher, P.A., Gucovschi Rozenshteyn, PLLC, and Nick Larry Law, LLC are appointed Class Counsel for the Settlement Class; and (b) Daniel O'Malley, Lucas Young, and Charles Buckingham are named Class Representatives. The Court finds that these attorneys are competent and capable of exercising the responsibilities of Class Counsel and that Plaintiffs will adequately protect the interests of the Settlement Class defined below.

9. For purposes of settlement only, the Court conditionally certifies the following Settlement Class as defined in the Settlement Agreement:

All FloSports subscribers who, from August 29, 2018 through [date], enrolled in an automatically renewing FloSports subscription using a California, New York, North Carolina, Oregon, Florida, Illinois, DC, N. Dakota, Virginia, Hawaii, Vermont billing address and paid fee(s) in connection with such subscription.

10. The Court finds, subject to the Final Approval Hearing referred to in Paragraph 5 above, that the Settlement Agreement is fundamentally fair, adequate, and reasonable, and, solely within the context of and for the purposes of settlement only, that the Settlement Class satisfies the requirements of 735 ILCS 5/2-801, specifically, that: the Settlement Class is so numerous that joinder of all members is impracticable; there are questions of fact and law common to the Settlement Class under the respective states' laws (*e.g.*, whether Defendant's order pages failed to present the automatic renewal offer terms in a clear and conspicuous manner before the subscription or purchasing agreement was fulfilled for each vertical offering on its website, and in visual proximity to the request for consent to the offer for such vertical; whether Defendant failed to provide an acknowledgement that included the automatic renewal terms, cancellation policy, and information on how to cancel in a manner that is capable of being retained by Plaintiff and the Class Members; whether Defendant's conduct alleged herein

constitutes conversion and/or unjust enrichment under each state's laws; whether Plaintiff and the Class Members are entitled to damages and/or restitution; and whether Plaintiffs and the Class Members are entitled to attorneys' fees and costs.); the claims of the Class Representatives are typical of the claims of the members of the Settlement Class for the states at issue; the Class Representatives and Class Counsel will fairly and adequately protect the interests of the members of the Settlement Class; common questions of law and fact with respect to the renewing subscription claims predominate over questions affecting individual members; and a class action is a superior method for fairly and efficiently adjudicating the Action.

11. If the Settlement does not receive the Court's final approval, or if final approval is reversed on appeal, or if the Settlement Agreement is terminated or otherwise fails to become effective, and/or as otherwise stated in Sections 6 and 9 of the Settlement Agreement, the Court's grant of class certification shall be vacated, and the Class Representatives will once again bear the burden of establishing the propriety of class certification. In such case, neither the certification of the Settlement Class for settlement purposes, nor any other act relating to the negotiation or execution of the Settlement Agreement shall be considered as a factor in connection with any class certification issue(s).

#### **Notice and Administration**

12. The Court approves, as to form, content, and distribution, the Notice Plan set forth in the Settlement Agreement, including the Notice Plan, Claim Form, and all forms of Notice to the Settlement Class as set forth in the Settlement Agreement and Exhibits A, B, C, and D thereto, and finds that such Notice is the best notice practicable under the circumstances, and that the Notice complies fully with the requirements of 735 ILCS 5/2-803. The Court also finds that the Notice constitutes valid, due and sufficient notice to all persons entitled thereto, and meets

the requirements of Due Process. The Court further finds that the Notice is reasonably calculated to, under all circumstances, reasonably apprise members of the Settlement Class of the pendency of this action, the terms of the Settlement Agreement, and the right to object to the Settlement and to exclude themselves from the Settlement Class. In addition, the Court finds that no notice other than that specifically identified in the Settlement Agreement is necessary in this Action. The Parties, by agreement, may revise the Notice and Claim Form in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting.

13. The Court approves the request for the appointment of [TBD] (“TBD”) as Settlement Administrator.

14. Pursuant to paragraph 4.1 of the Settlement Agreement, the Settlement Administrator is directed to publish the Notice and Claim Form on the Settlement Website and to send direct notice via E-Mail and U.S. Mail in accordance with the Notice Plan called for by the Settlement Agreement. The Settlement Administrator shall also maintain the Settlement Website to provide full information about the Settlement and allow for the filing of claims online.

#### **Requests for Exclusion from Class**

15. Any person falling within the definition of the Settlement Class may, upon valid and timely request, exclude themselves or “opt out” from the Class. Any such person may do so if, on or before the Objection/Exclusion Deadline of \_\_\_\_\_ [90 days from the Notice Date] they comply with the exclusion procedures set forth in the Settlement Agreement and Notice. Any members of the Class so excluded shall neither be bound by the terms of the Settlement Agreement nor entitled to any of its benefits.

16. Any members of the Settlement Class who elect to exclude themselves or “opt out” of the Settlement Agreement must file a written request with the Settlement Administrator,



received or postmarked no later than the Objection/Exclusion Deadline. The request for exclusion must comply with the exclusion procedures set forth in the Settlement Agreement and Notice and include the Settlement Class member's name and address, a signature, the name and number of the case, and a statement that he or she wishes to be excluded from the Settlement Class for the purposes of this Settlement. Each request for exclusion must be submitted individually and be personally signed. So called "mass" or "class" opt-outs shall not be allowed.

17. Individuals who opt out of the Class relinquish all rights to benefits under the Settlement Agreement and will not release their claims. However, members of the Settlement Class who fail to submit a valid and timely request for exclusion shall be bound by all terms of the Settlement Agreement and the Final Judgment, including the Release in Section 3, regardless of whether they have requested exclusion from the Settlement Agreement.

#### **Appearances and Objections**

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

19. Any members of the Settlement Class who have not timely filed a request for exclusion may object to the fairness, reasonableness, or adequacy of the Settlement Agreement or to a Final Judgment being entered dismissing the Action with prejudice in accordance with the terms of the Settlement Agreement, or to the attorneys' fees and expense reimbursement sought by Class Counsel in the amounts specified in the Notice, or to the award to the Class Representatives as set forth in the Notice and Settlement Agreement. At least fourteen (14) days

prior to the Objection/Exclusion Deadline, papers supporting the Fee Award shall be filed with the court and posted to the settlement website. Members of the Class may object on their own, or may do so through separate counsel at their own expense.

20. To object, members of the Class must sign and file a written objection no later than on or before the Objection/Exclusion Deadline of \_\_\_\_\_ [90 days the Notice Date]. To be valid, the objection must comply with the objection procedures set forth in the Settlement Agreement and Notice, and include his or her name and address; an explanation of the basis upon which he or she claims to be a Settlement Class Member; a signature; all grounds for the objection, including all citations to legal authority and evidence supporting the objection; the name and contact information of any and all attorneys representing, advising, or in any way assisting him or her in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the “Objecting Attorneys”); and a statement indicating whether he or she intends to appear at the Final Approval Hearing (either personally or through counsel who files an appearance with the Court in accordance with the Court Rules). If a Settlement Class Member or any of the Objecting Attorneys has objected to any class action settlement where the objector or the Objecting Attorneys asked for or received any payment in exchange for dismissal of the objection, or any related appeal, without any modification to the settlement, then the objection must include a statement identifying each such case by full case caption.

21. Members of the Class who fail to file and serve timely written objections in compliance with the requirements of this paragraph and the Settlement Agreement shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement or to any of the subjects listed in paragraph 5,

above, *i.e.* (a) whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate and should be given final approval by the Court; (b) whether a judgment and order of dismissal with prejudice should be entered; (c) whether to approve the payment of attorneys' fees and expenses to Class Counsel; and (d) whether to approve the payment of service awards to the Class Representatives.

22. To be valid, objections must be filed with the Court and sent to the following: FloSports Settlement 0000 Street City, ST 00000. In addition, any objections made by a Class Member represented by counsel must be filed through the Court's electronic filing system.

### **Further Matters**

23. All further proceedings in the Action are ordered stayed until Final Judgment or termination of the Settlement Agreement, whichever occurs earlier, except for those matters necessary to obtain and/or effectuate final approval of the Settlement and Judgment.

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

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

26. Any Settlement Class Member who does not timely and validly submit a claim: (a) shall be forever barred from participating in any distributions of the Settlement Fund; (b) shall be bound by the provisions of the Settlement Agreement and all proceedings, determinations, orders and judgments in the Action relating thereto, including, without

limitation, the Judgment or Alternate Judgment, if applicable, and the Releases provided for therein, whether favorable or unfavorable to the Class; and (c) shall forever be barred and enjoined from directly or indirectly filing, commencing, instituting, prosecuting, maintaining, or intervening in any action, suit, cause of action, arbitration, claim, demand, or other proceeding in any jurisdiction, whether in Illinois or elsewhere, on their own behalf or in a representative capacity, that is based upon or arises out of any or all of the Released Claims against any of the Defendant and the other Released Parties, as more fully described in the Settlement Agreement.

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

28. In the event that the Settlement Agreement is terminated pursuant to the provisions of the Settlement Agreement or for any reason whatsoever the approval of it does not become Final then (i) the Settlement Agreement shall be null and void, including any provision related to the award of attorneys' fees, and shall have no further force and effect with respect to any party in this Action, and shall not be used in this Action or in any other proceeding for any purpose; (ii) all negotiations, proceedings, documents prepared, and statements made in connection therewith shall be without prejudice to any person or party hereto, shall not be deemed or construed to be an admission by any party of any act, matter, or proposition, and shall not be used in any manner or for any purpose in any subsequent proceeding in this Action or in any other action in any court or other proceeding, provided, however, that the termination of the Settlement Agreement shall not shield from subsequent discovery any factual information

provided in connection with the negotiation of this Settlement Agreement that would ordinarily be discoverable but for the attempted settlement; (iii) other than as expressly preserved by the Settlement Agreement in the event of its termination, the Settlement Agreement shall have no further force and effect with respect to any party and shall not be used in the Action or any other proceeding for any purpose; and (iv) any party may elect to move the Court pursuant to the provisions of this paragraph, and none of the non-moving parties (or their counsel) shall oppose any such motion.

IT IS SO ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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Judge [Name]

# **EXHIBIT G**

**TIN THE CIRCUIT COURT OF DUPAGE COUNTY, ILLINOIS  
18TH JUDICIAL CIRCUIT**

DANIEL O’MALLEY, LUCAS YOUNG, and  
CHARLES BUCKINGHAM, *individually and  
on behalf of all others similarly situated,*

Case No. 2023L

Plaintiffs,

v.

FLOSPORTS, INC.,

Defendant.

**[PROPOSED] FINAL JUDGMENT AND  
ORDER OF DISMISSAL WITH PREJUDICE**

WHEREAS, a class action is pending before the Court entitled *O’Malley, et al. v. FloSports, Inc.*, No. 2023L ; and

WHEREAS, Plaintiffs Daniel O’Malley, Lucas Young, and Charles Buckingham (collectively “Plaintiffs”) and Defendant FloSports, Inc. have entered into a Class Action Settlement Agreement, which, together with the exhibits attached thereto, and this Court’s Preliminary Approval Order [Dkt. #], sets forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice as to Defendant upon the terms and conditions set forth therein (the “Settlement Agreement”), and

WHEREAS, on [date], the Court granted Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, conditionally certifying the Settlement Class pursuant to 735 ILCS 5/2-801 of “all FloSports subscribers who enrolled in an automatically renewing FloSports subscription using a California, New York, North Carolina, Oregon, Florida, Illinois, DC, N. Dakota, Virginia, Hawaii, Vermont billing address and paid fee(s) in connection with such subscription from August 29, 2018 to June , 2023;” and

WHEREAS, the Court has considered the Parties’ Class Action Settlement Agreement, as

well as Plaintiffs' Motion for Final Approval of the Settlement Agreement, Plaintiffs' Motion for Attorneys' Fees, Costs, Expenses, And Service Awards, together with all exhibits thereto, the arguments and authorities presented by the Parties, any objectors and their counsel at the Final Approval Hearing held on [date], and the record in the Action, and good cause appearing;

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

1. Terms and phrases in this Final Judgment shall have the same meaning as ascribed to them in the Parties' Class Action Settlement Agreement and in the Preliminary Approval Order.
2. This Court has jurisdiction over the subject matter of the Action and over all Parties to the Action, including all Settlement Class members, as it pertains to the claims in this case.
3. The notice provided to the Settlement Class pursuant to the Settlement Agreement and order granting Preliminary Approval – including (i) direct notice to Settlement Class Members via email and U.S. mail, based on the comprehensive data provided by Defendant, and (ii) the creation of the Settlement Website – fully complied with the requirements of 735 ILCS 5/2-803 and due process, and was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, their right to object to or to exclude themselves from the Settlement Agreement, and their right to appear at the Final Approval Hearing.
4. This Court now gives final approval to the Settlement Agreement, and finds that the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class. The settlement consideration provided under the Settlement Agreement constitutes fair value given in exchange for the release of the Released Claims against the Released Parties. The Court finds that the consideration to be paid to members of the Settlement Class is reasonable,



and in the best interests of the Settlement Class Members, considering the total value of their claims compared to (i) the disputed factual and legal circumstances of the Action, (ii) affirmative defenses asserted in the Action, and (iii) the potential risks and likelihood of success of pursuing litigation on the merits under the laws of the various states at issue. The complex legal and factual posture of this case, the amount of informal discovery completed, and the fact that the Settlement is the result of arms'-length negotiations between the Parties via mediation with Jill Sperber, Esq. support this finding. The Court finds that these facts, in addition to the Court's observations throughout the litigation, demonstrate that there was no collusion present in the reaching of the Settlement Agreement, implicit or otherwise.

5. The Court has specifically considered the factors relevant to class action settlement approval, including:

(1) the strength of the case for the plaintiffs on the merits, balanced against the money or other relief offered in settlement; (2) the defendant's ability to pay; (3) the complexity, length and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the reaction of members of the class to the settlement; (7) the opinion of competent counsel; and (8) the stage of proceedings and the amount of discovery completed.

*City of Chicago v. Korshak*, 206 Ill. App. 3d 968, 972 (1st Dist. 1990).

6. The Court finds that the Class Representatives and Class Counsel adequately represented the Settlement Class for the purposes of litigating this matter and entering into and implementing the Settlement Agreement.

7. Accordingly, the Settlement is hereby finally approved in all respects.

8. The Parties are hereby directed to implement the Settlement Agreement according to its terms and provisions. The Settlement Agreement is hereby incorporated into this Final Judgment in full and shall have the full force of an Order of this Court.

9. This Court hereby dismisses the Action, as identified in the Settlement Agreement, on the merits and with prejudice.

10. Upon the Effective Date of this Final Judgment, Plaintiffs and each and every Settlement Class Member who did not timely opt out of the Settlement Class (whether or not such members submit claims), including such individuals' respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, associates, affiliates, employers, employees, agents, consultants, independent contractors, insurers, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, underwriters, shareholders, lenders, auditors, as class members or otherwise, shall be deemed to have released and will be forever barred from filing, commencing, prosecuting, intervening in, asserting, instituting, or maintaining against Defendant, as well as any and all of its respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, divisions, related corporate entities, licensors, licensees, associates, affiliates, employers, agents, consultants, independent contractors, insurers, shareholders, investors, owners, and customers, including without limitation employees of the foregoing, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, underwriters, shareholders, owners, investors, trustees, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns and companies, firms, trusts, and corporation to the extent allowable under the law from, any and all causes of action, suits, claims, liens, demands, judgments, costs, damages, obligations, penalties, attorney fees (except as provided for in the Class Settlement), and all other legal responsibilities in any form or nature, including but not limited to, all claims relating to or arising out of state, local, or federal statute, ordinance,

regulation, or claim at common law or in equity, whether past, present, or future, known or unknown, asserted or unasserted, arising out of or in any way allegedly related to any FloSports' subscription offerings, including all facts, practices, or allegations asserted in the Action, and claims that were brought or could have been brought in the Action (the "Unknown Claims," as defined in the Settlement Agreement).

11. Upon the Effective Date of this Final Judgment, the above release of claims and the Settlement Agreement will be binding on, and will have *res judicata* and preclusive effect on, all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and all other Settlement Class Members and Releasing Parties in any jurisdiction or forum. All Settlement Class Members are hereby permanently barred and enjoined from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any lawsuit or other action in any jurisdiction based on or arising out of any of the Released Claims. Any pending lawsuits by or on behalf of a Settlement Class Member shall be dismissed forthwith.

12. The Court has also considered Plaintiffs' Unopposed Motion For Attorneys' Fees, Costs, Expenses, And Service Awards, as well as the supporting memorandum and declarations, and adjudges that the payment of attorneys' fees, costs, and expenses in the amount of \$1,000,000.00 is reasonable in light of the multi-factor test used to evaluate fee awards in Illinois. *See McNiff v. Mazda Motor of Am., Inc.*, 384 Ill. App. 3d 401, 407 (4th Dist. 2008). Such payment shall be made pursuant to and in the manner provided by the terms of the Settlement Agreement.

13. The Court has also considered Plaintiffs' Motion, memorandum of law, and supporting declarations for service awards to the Class Representatives, Daniel O'Malley, Lucas

Young, and Charles Buckingham. The Court adjudges that the payment of service awards in the following amounts: (i) \$5,000 to Mr. O'Malley; (ii) \$5,000 to Mr. Young; and (iii) \$5,000 to Mr. Buckingham; to compensate them for their efforts and commitment on behalf of the Settlement Class, is fair, reasonable, and justified under the circumstances of this case. Such payment shall be made pursuant to and in the manner provided by the terms of the Settlement Agreement.

14. All payments made to Settlement Class Members pursuant to the Settlement Agreement that are not cashed within one hundred eighty (180) days of issuance shall be donated as *cy pres* to **the Legal Aid Society Inc.**; a non-sectarian, not-for-profit pro bono legal organization; or another non-sectarian, not-for-profit organization(s) recommended by the parties and approved by the Court.

15. Except as otherwise set forth in this Order, the Parties shall bear their own costs and attorneys' fees.

16. The Parties, without further approval from the Court, are hereby permitted to agree and adopt such amendments, modifications, and expansions of the Settlement Agreement and its implementing documents (including all exhibits to the Settlement Agreement) so long as they are consistent in all material respects with this Final Judgment and do not limit the rights of Settlement Class Members.

17. Without affecting the finality of this Final Judgment for purposes of appeal, until the Effective Date the Court shall retain jurisdiction over all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement.

18. The Court finds that there is no just reason to delay, and therefore directs the Clerk of Court to enter this Final Approval Order and Judgment as the judgment of the Court forthwith.

IT IS SO ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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Judge [Name]





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## **FIRM RESUME**

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

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

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

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

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

1. *O'Brien v. LG Electronics USA, Inc.* (D.N.J. Dec. 16, 2010) to represent a certified nationwide class of purchasers of LG French-door refrigerators,
2. *Ramundo v. Michaels Stores, Inc.* (N.D. Ill. June 8, 2011) to represent a certified nationwide class of consumers who made in-store purchases at Michaels Stores using a debit or credit card and had their private financial information stolen as a result,
3. *In re Haier Freezer Consumer Litig.* (N.D. Cal. Aug. 17, 2011) to represent a certified class of purchasers of mislabeled freezers from Haier America Trading, LLC,
4. *Rodriguez v. CitiMortgage, Inc.* (S.D.N.Y. Nov. 14, 2011) to represent a certified nationwide class of military personnel against CitiMortgage for illegal foreclosures,
5. *Rossi v. The Procter & Gamble Co.* (D.N.J. Jan. 31, 2012) to represent a certified nationwide class of purchasers of Crest Sensitivity Treatment & Protection toothpaste,

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



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

due to the novel coronavirus, COVID-19, and whose tickets were not refunded,

41. *Kramer v. Alterra Mountain Co.* (D. Colo. July 31, 2020) to represent a proposed nationwide class of purchasers to recoup the unused value of their Ikon ski passes after Alterra suspended operations at its ski resorts due to the novel coronavirus, COVID-19,
42. *Qureshi v. American University* (D.D.C. July 31, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by American University due to the novel coronavirus, COVID-19,
43. *Hufford v. Maxim Inc.* (S.D.N.Y. Aug. 13, 2020) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
44. *Desai v. Carnegie Mellon University* (W.D. Pa. Aug. 26, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by Carnegie Mellon University due to the novel coronavirus, COVID-19,
45. *Heigl v. Waste Management of New York, LLC* (E.D.N.Y. Aug. 27, 2020) to represent a class of waste collection customers that were allegedly charged unlawful paper billing fees,
46. *Stellato v. Hofstra University* (E.D.N.Y. Sept. 18, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by Hofstra University due to the novel coronavirus, COVID-19,
47. *Kaupelis v. Harbor Freight Tools USA, Inc.* (C.D. Cal. Sept. 23, 2020), to represent consumers who purchased defective chainsaws,
48. *Soo v. Lorex Corporation* (N.D. Cal. Sept. 23, 2020), to represent consumers whose security cameras were intentionally rendered non-functional by manufacturer,
49. *Miranda v. Golden Entertainment (NV), Inc.* (D. Nev. Dec. 17, 2020), to represent consumers and employees whose personal information was exposed in a data breach,
50. *Benbow v. SmileDirectClub, Inc.* (Cir. Ct. Cook Cnty. Feb. 4, 2021), to represent a certified nationwide class of individuals who received text messages from SmileDirectClub, in alleged violation of the Telephone Consumer Protection Act,
51. *Suren v. DSV Solutions, LLC* (Cir. Ct. DuPage Cnty. Apr. 8, 2021), to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
52. *De Lacour v. Colgate-Palmolive Co.* (S.D.N.Y. Apr. 23, 2021), to represent a certified class of consumers who purchased allegedly “natural” Tom’s of Maine products,
53. *Wright v. Southern New Hampshire University* (D.N.H. Apr. 26, 2021), to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by Southern New Hampshire University due to the novel coronavirus, COVID-19,
54. *Sahlin v. Hospital Housekeeping Systems, LLC* (Cir. Ct. Williamson Cnty. May 21, 2021), to represent a certified class of employees who used a

- fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
55. *Landreth v. Verano Holdings LLC, et al.* (Cir. Ct. Cook Cnty. June 2, 2021), to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act.
  56. *Rocchio v. Rutgers, The State University of New Jersey*, (Sup. Ct., Middlesex Cnty. October 27, 201), to represent a certified nationwide class of students for fee refunds after their classes were moved online by Rutgers due to the novel coronavirus, COVID-19,
  57. *Malone v. Western Digital Corp.*, (N.D. Cal. Dec. 22, 2021), to represent a class of consumers who purchased hard drives that were allegedly deceptively advertised,
  58. *Jenkins v. Charles Industries, LLC*, (Cir. Ct. DuPage Cnty. Dec. 21, 2021) to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
  59. *Frederick v. 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 v. Henkel Corp.*, (D. Conn. Mar. 3, 2022) to represent a proposed class of purchasers of Right Guard antiperspirants that were allegedly contaminated with benzene,
  62. *McCall v. Hercules Corp.*, (N.Y. Sup. Ct., Westchester Cnty. Mar. 14, 2022) to represent a certified class of who laundry card purchasers who were allegedly subjected to deceptive practices by being 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.

### **SCOTT A. BURSOR**

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

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

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

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

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

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

### **Representative Cases**

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

Mr. Bursor negotiated and obtained court-approval for two landmark settlements in *Nguyen v. Verizon Wireless* and *Zill v. Sprint Spectrum* (the largest and 2nd largest classes ever certified). These settlements required Verizon and Sprint to open their wireless networks to third-party devices and applications. These settlements are believed to be the most significant legal development affecting the telecommunications industry since 1968, when the FCC's Carterfone decision similarly opened up AT&T's wireline telephone network.

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

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

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

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



Mr. Bursor was the lead trial lawyer in *In re: Pacific Bell Late Fee Litigation*. After filing the first class action challenging Pac Bell's late fees in April 2010, winning a contested motion to certify a statewide California class in January 2012, and defeating Pac Bell's motion for summary judgment in February 2013, Mr. Bursor obtained final approval of the \$38 million class settlement. The settlement, which Mr. Bursor negotiated the night before opening statements were scheduled to commence, included a \$20 million cash payment to provide refunds to California customers who paid late fees on their Pac Bell wireline telephone accounts, and an injunction that reduced other late fee charges by \$18.6 million.

### **L. TIMOTHY FISHER**

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

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

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

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

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

### Representative Cases

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

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

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

### Selected Published Decisions

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **Selected Class Settlements**

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

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

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

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

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

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

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

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

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



misleading representations concerning its specifications and performance.

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

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

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

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

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

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

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

### **JOSEPH I. MARCHESE**

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

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

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

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

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

**Selected Published Decisions:**

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

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

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

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

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

**Selected Class Settlements:**

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

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

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

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

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

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

### **JOSHUA D. ARISOHN**

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

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

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

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

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

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

**NEAL J. DECKANT**

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

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

States District Court for the Eastern District of New York, and the bars of the United States Courts of Appeals for the Second and Ninth Circuits.

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

**Selected Published Decisions:**

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

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

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

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

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

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

**Selected Class Settlements:**

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



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

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

### **Selected Publications:**

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

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

### **YITZCHAK KOPEL**

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

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

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

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

**Selected Published Decisions:**

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **FREDERICK J. KLORCZYK III**

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

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

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

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

### **Selected Published Decisions:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **YEREMEY O. KRIVOSHEY**

Yeremey O. Krivoshey is a Partner with Bursor & Fisher, P.A. Mr. Krivoshey has particular expertise in COVID-19 related consumer litigation, unlawful fees and liquidated

damages in consumer contracts, TCPA cases, product recall cases, and fraud and false advertising litigation. He has represented clients in a wide array of civil litigation, including appeals before the Ninth Circuit.

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

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

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

#### **Representative Cases:**

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

#### **Selected Published Decisions:**

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

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

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

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

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

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

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

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

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

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

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

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

*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<sup>®</sup> every year since 2019.

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

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

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

### **Selected Published Decisions:**



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **SARAH N. WESTCOT**

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

Ms. Westcot served as trial counsel in *Ayyad v. Sprint Spectrum L.P.*, where Bursor & Fisher won a jury verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

Ms. Westcot also has significant experience in high-profile, multi-district litigations. She currently serves on the Plaintiffs' Steering Committee in *In re Zantac (Ranitidine) Products Liability Litigation*, MDL No. 2924 (S.D. Florida).

Ms. Westcot is admitted to the State Bars of California and Florida, and is a member of the bars of the United States District Courts for the Northern, Central, Southern, and Eastern Districts of California and the Southern and Middle Districts of Florida.

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



**ALEC M. LESLIE**

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

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

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

**Selected Class Settlements:**

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

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

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

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

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

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

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

**STEPHEN BECK**

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

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

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

### **BRITTANY SCOTT**

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

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

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

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

### **Selected Class Settlements:**

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

**MAX ROBERTS**

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

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

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

Outside of the law, Max is an avid triathlete.

**Selected Published Decisions:**

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

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

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

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

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

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

**Selected Class Settlements:**

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

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

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

**CHRISTOPHER R. REILLY**

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

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

Chris received his Juris Doctor from Georgetown University Law Center in 2020. During law school, Chris clerked for the Senate Judiciary Committee, where he worked on antitrust and food and drug law matters under Senator Richard Blumenthal. He has also clerked for the Mecklenburg County District Attorney's Office, the ACLU Prison Project, and the Pennsylvania General Counsel's Office. Chris served as Senior Editor of Georgetown's Journal of Law and Public Policy. In 2017, Chris graduated from the University of Florida with a B.A. in Political Science.

**JULIA VENDITTI**

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

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

Julia received her Juris Doctor in 2020 from the University of California, Hastings College of the Law, where she graduated *cum laude* with two CALI Awards for the highest grade in her Evidence and California Community Property classes. During law school, Julia was a member of the UC Hastings Moot Court team and competed at the Evans Constitutional Law Moot Court Competition, where she finished as a national quarterfinalist and received a best brief award. Julia was also inducted into the UC Hastings Honors Society and was awarded Best Brief and an Honorable Mention for Best Oral Argument in her First-Year Moot Court section.

In addition, Julia served as a Research Assistant for her Constitutional Law professor, as a Teaching Assistant for Legal Writing & Research, and as a Law Clerk at the San Francisco Public Defender's Office. In 2017, Julia graduated *magna cum laude* from Baruch College/CUNY, Weissman School of Arts and Sciences, with a B.A. in Political Science.

### **SEAN L. LITTERAL**

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

Sean has represented clients in a variety of matters, including survivors against the Boy Scouts of America for covering up decades of sexual abuse; warehouse workers against Walmart for failing to comply with COVID-19 health and safety guidelines; and drivers against Corinthian International Parking Services for systematically violating California's wage and hour laws.

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

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

### **JULIAN DIAMOND**

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

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

### **MATTHEW GIRARDI**

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

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

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





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## **FIRM RESUME**

Headquartered in New York, NY, Gucovschi Rozenshteyn PLLC (“GR Firm”) represents consumers in state and federal courts nationwide. Our firm spearheads and prosecutes novel cases aimed at redressing injuries suffered by large and diverse groups of people. In the past two years alone, GR Firm has filed over 18 consumer protection class actions and prevailed in every single motion to dismiss—creating important precedent along the way.

Indeed, GR Firm was the first firm to file class action lawsuits against retail companies alleging deceptive marketing of their lidocaine products. With co-counsel, our firm has prevailed in 3 out of 3 motions to dismiss. *See Stevens v. Walgreen Co.*, No. 21-CV-10603 (JPO), 2022 U.S. Dist. LEXIS 152744 (S.D.N.Y. Aug. 24, 2022); *Rodriguez v. Walmart Inc.*, No. 22-CV-2991 (JPO), 2023 U.S. Dist. LEXIS 53253 (S.D.N.Y. Mar. 28, 2023); *Ary v. Target Corp.*, No. 22-cv-02625-HSG, 2023 U.S. Dist. LEXIS 49633 (N.D. Cal. Mar. 23, 2023).

Notably, GR Firm was also among the first firms to file a class action related to the CARES Act forbearance programs. *See Dutcher v. Newrez LLC*, No. 21-2062, 2022 U.S. Dist. LEXIS 194706 (E.D. Pa. Oct. 20, 2022) (granting final approval of a \$750,000 nationwide class action settlement and appointing GR Firm as class counsel in a lawsuit alleging violations of the Fair Debt Collection Practices Act (“FDCPA”) on behalf of CARES Act forbearance mortgagees.).





## **Biography of Adrian Gucovschi**

Adrian Gucovschi is the founding partner of GR Firm. He is a member in good standing of the New York State Bar and the United States District Courts for the Southern and Eastern District of New York. He received a Bachelor of Arts from Yeshiva University and a Juris Doctor, *cum laude*, from Fordham University School of Law. Before founding GR Firm, Mr. Gucovschi worked at various firms where he prosecuted, and subsequently defended, billion-dollar lawsuits brought by multiple institutional investors and banks arising from the 2008 mortgage-backed securities economic disaster. In early 2021, Mr. Gucovschi partnered with Benjamin A. Rozenshteyn to advance the firm's class action work. Mr. Rozenshteyn received a Bachelor of Arts from Yeshiva University, *magna cum laude*, an Executive Education degree in business analytics from Harvard Business School, and a Juris Doctor from Benjamin N. Cardozo School of Law. Mr. Rozenshteyn is a member in good standing of the New York State Bar.



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**IN THE CIRCUIT COURT OF DUPAGE COUNTY, ILLINOIS  
18<sup>th</sup> JUDICIAL CIRCUIT**

DANIEL O’MALLEY, LUCAS YOUNG  
and CHARLES BUCKINGHAM,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

FLOSPORTS, INC.,

Defendant.

CASE NO. 2023LA000516

**DECLARATION OF MARK SCHEY  
RE: CLASS NOTICE AND CLAIMS  
ADMINISTRATION**



- 1 c. *Pamela Miller, et al. v. Basic Research, LLC, et al.*, Case No.  
2 CV 2:07-cv-00871 (D. Utah) (Nationwide class of purchasers  
3 of dietary supplement products);
- 4 d. *Eggatz et al v. The Kellogg Company et al*, Case No. 1:12-cv-  
5 21678 (S.D. Fla.) ((Nationwide class of purchasers of Kashi  
6 brand cereal products);
- 7 e. *Jan Harrison, et al. v. E. I. Du Pont De Nemours and*  
8 *Company, et al.*, Case No. 5:13-cv-01180-BLF (N.D.  
9 Cal.)(Nationwide indirect purchase class of paint products);
- 10 f. *Iglesias vs. Ferrara Candy Co.*, Case No. 3:17-cv-00849-VC  
11 (N.D. Cal.) (Nationwide class of purchasers of candy  
12 products);
- 13 g. *Liptai v. Spectrum Brands Holdings, Inc., et al.*, Case No.  
14 2018CV000321 (Wis. Cir. Ct.) (Nationwide class of  
15 purchasers of coffee maker and household products);
- 16 h. *Mateski, et al. v. Just Born, Inc.*, Case No. CIVDS1926742  
17 (Cal. Super Ct.) (Nationwide class of purchasers of candy  
18 products).
- 19 i. *Cristie Ramirez v. HB USA Holdings Inc.*, Case No. 5:20-cv-  
20 01016 (N. D. Cal.) (Direct Notice Class)
- 21 j. *Ignacio Perez v. Rash Curtis & Associates*, (N. D. Cal.) (Direct  
22 Notice Class)

23 5. Courts have recognized the effectiveness of my class notice plans. For  
24 instance, in granting final approval of the settlement in *In Re: Wellnx Marketing & Sales*  
25 *Practices* (MDL No. 07-md-1861) (D. Mass) (a national, 18-state, multidistrict class  
26 action litigation with a substantial indirect purchaser class), Judge Richard G. Stearns  
27 stated at final approval:  
28

1 “[T]he effort to provide notice to the class went well beyond what due  
2 process would require at its minimum. In fact, it was both an intelligent  
3 and effusive, if I can use that word, notification process, which has  
4 given me new some ideas for similar cases in the future for the proper  
5 way of giving notice in a case like this where it is hard to otherwise  
6 ascertain the identity of the class members.” *In Re: Wellnx Marketing &*  
7 *Sales Practices*, MDL No. 07-md-1861-RGS, Dkt. No. 250 a p. 6 (D.  
8 Mass.) (Nov. 22, 2011).

9 6. The AICS team has over thirty years of marketing experience with a  
10 specialty in television and Internet advertising, including managing the official online  
11 sites for 20th Century Fox on behalf of News Corporation from 1993 to 1996. Our  
12 founders have served as marketing consultants to a variety of consumer product  
13 companies, where responsibilities included creative directing national marketing  
14 campaigns and producing and directing national television commercials (which have  
15 been featured in trade magazines, like *Advertising Age*, and generated hundreds of  
16 millions of dollars in retail revenue). They have personally managed hundreds of  
17 millions of dollars in advertising for consumer products and services.

18 7. Due to this extensive marketing experience, one area of specialty is  
19 providing Internet-based class notice in consumer products cases, particularly those  
20 where the identities of individual class members are not known. *See, e.g., Eggatz et al*  
21 *v. The Kellogg Company et al*, S.D. Fla., Case No. 1:12-cv-21678. (national purchaser  
22 class of Kashi products with no direct mail component); *Pearson, et al. v. NBTY, Inc.*,  
23 No. CV11-07972 (N.D. Ill.) (national class of purchasers of top-selling glucosamine  
24 supplements).

### 25 **NOTICE PLAN SUMMARY**

26 8. This litigation involves consumer purchasers of FloSports Subscriptions. I  
27 have been advised by Class Counsel that the subscriptions were available online via the  
28 FloSports website.



1 otherwise “bounces back” to AICS when the email notice is issued, AICS will mail  
2 postcard notices to those Class Members via U.S. Mail. AICS will utilize standard  
3 services, including national change of address databases, to ensure delivery of the mail  
4 notices to the most current physical address information for recipients.

### 5 Settlement Website

6 16. AICS will create and maintain a dedicated website for the Class Members  
7 to learn about the Settlement. It will feature the ability to download all relevant  
8 settlement and related court documents (in industry standard PDF format), including  
9 Claim Forms, Important Dates, Frequently Asked Questions, Long Form Notice, and the  
10 Short Form notice. The site will be designed for broad compatibility with browsers and  
11 platforms using best practices.

12 17. Class Members will be able to submit claims via the Settlement Website, as  
13 well as upload any required proof of purchase information. Class Members may choose  
14 to receive settlement payments as a paper check or a digital cash payment (e.g., Paypal,  
15 Venmo, etc.).

16 18. All traffic to the site will be monitored with proprietary fraud detection  
17 systems, similar to those used on e-commerce platforms, to help ensure legitimate Class  
18 Members receive the settlement benefits. The Settlement website will be updated in a  
19 timely manner, based upon the Court-approved schedule. For example, when the  
20 deadline for filing a claim has passed, that option will be removed from the site.

### 21 CONCLUSION

22 19. The notice plan has been designed to reach the target audience in a cost-  
23 efficient and timely manner. Provided the FloSports Inc data is produced to AICS, the  
24 direct notice component will reach a substantial portion of the Settlement Class and  
25 fulfill due process.

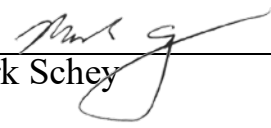
26 20. Based on AICS’s class action notice planning experiences, the methods  
27 utilized in this Notice Program are consistent with other effective class action settlement  
28 notice plans that our team has developed. And it is my professional opinion that the



1 Notice Plan will provide the best notice practicable under the circumstances and is fully  
2 in accordance with federal class action procedures as well as the guidelines published by  
3 the Federal Judicial Center, to fulfill due process.

4  
5 I declare under penalty of perjury under the laws of the United States of America  
6 that the foregoing is true and correct.

7 DATED: August 28, 2023

8 By:   
9 Mark Schey

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