

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

<p>ELIZABETH MOELLER, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>THE WEEK PUBLICATIONS, INC.,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No. 22-cv-10666-TLL-PTM</p> <p>Hon. Thomas L. Ludington</p> <p>Mag. Judge Patricia T. Morris</p>
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**PLAINTIFF'S UNOPPOSED MOTION FOR  
ATTORNEYS' FEES, COSTS, EXPENSES, AND SERVICE AWARD**

The undersigned counsel certifies that counsel communicated with opposing counsel via telephone call on April 10, 2023, explaining the nature of the relief to be sought by way of this Motion and seeking concurrence in the relief; Defendant's counsel answered that Defendant does not object to the motion and relief requested herein.

Plaintiff, pursuant to the Court's Order Granting Plaintiff's Motion for Preliminary Approval in which the Court set May 22, 2023 as the deadline for Plaintiff's Motion for Attorney's Fees, Expenses, and Service Awards (ECF No. 23, PageID.1873),<sup>1</sup> files this Motion and respectfully requests that the Court (1) approve attorneys' fees, costs, and expenses in the amount of 35% of the settlement fund of \$5,082,879, or \$1,779,004; (2) grant Ms. Moeller a service award of \$1,000 in recognition of her efforts on behalf of the class; and (3) award such other and further relief as the Court deems reasonable and just.

Dated: April 10, 2023

Respectfully submitted,

By: /s/ Philip L. Fraietta  
One of Plaintiff's Attorneys

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<sup>1</sup> Plaintiff's Counsel files this Motion on April 10, 2023—two weeks prior to the objection or exclusion date (PageID.1873). *See In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 993–94 (9th Cir. 2010) (finding that class counsel should file its fee petition at a time prior to the objection date so that class members are provided with the opportunity to respond to the motion for fees).

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**PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR  
ATTORNEYS' FEES, COSTS, EXPENSES, AND SERVICE AWARD**

## STATEMENT OF ISSUES PRESENTED

1. Whether this Court should award Class Counsel and Plaintiff's other counsel attorneys' fees, costs, and expenses in the amount of \$1,779,004 – 35% of the \$5,082,879 settlement fund created for the benefit of the class – to compensate and reimburse them for achieving a substantial cash benefit for a class of consumers under Michigan's Preservation of Personal Privacy Act, M.C.L. §§ 445.1711-1715, *et seq*?

**Plaintiff's Answer: Yes.**

2. Whether this Court should award Plaintiff Elizabeth Moeller a service award of \$1,000 in recognition of her zealous efforts on behalf of the class?

**Plaintiff's Answer: Yes.**

## CONTROLLING AND MOST APPROPRIATE AUTHORITIES

- Fed. R. Civ. P. 23(h)
- *Gascho v. Global Fitness Holdings, LLC*, 822 F.3d 269 (6th Cir. 2016)
- *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508 (E.D. Mich. 2003)
- *In re Delphi Corp. Sec., Derivative & “ERISA” Litig.*, 248 F.R.D. 483 (E.D. Mich. 2008)
- *In re Rio Hair Naturalizer Prods. Liab. Litig.*, 1996 WL 780512 (E.D. Mich. Dec. 20, 1996)
- *Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188 (6th Cir. 1974)

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The Settlement Agreement (“SA”) negotiated by Plaintiff and Class Counsel with The Week Publications, Inc. (“TWP” or “Defendant”) brought under the Michigan Preservation of Personal Privacy Act (the “PPPA”), and preliminarily approved by this Court on 1/6/23, represents an excellent result in a PPPA settlement. ECF No. 23. The SA—the result of a full-day mediation with the Honorable Gerald E. Rosen (Ret.) (former E.D. Mich. Chief Judge, now a mediator at JAMS (Detroit))—creates a \$5,082,870 non-reversionary cash Settlement Fund (“SF”) which equates to a per-Class Member aggregate recovery of \$390, from which every Settlement Class Member (“SCM”) (except for those who request exclusion from the SA) will automatically receive (i.e., without filing a claim form) a *pro rata* cash payment of roughly \$248. On a monetary basis, the SA amount recovered for each class member outperforms all but one prior PPPA settlement.<sup>2</sup> And, significantly, the SA was achieved without the benefit of any Defendant insurance coverage. Moreover, unlike prior PPPA settlements, this SA does not require SCMs to submit claim forms; instead it provides them with *automatic* payments. Thus, unlike in past PPPA settlements where 80%-90% of settlement class members did not submit claim forms and thus did not receive cash payments, here every non-excluded SCM will receive a monetary payment upon final approval

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<sup>2</sup> *Kain v. The Economist Newspaper NA, Inc.*, No. 4:21-cv-11807 (E.D. Mich.), where settlement provided an aggregate recovery of roughly \$412 per class member.

of the proposed SA. The automatic, per-class member relief secured by the SA is an exceptional result in a PPPA action for the Settlement Class (“Class”).

Obtaining this relief did not come easily. Plaintiff shouldered significant risk, conducted a lengthy pre-filing investigation, engaged in informal discovery, and conducted contentious, arm’s-length negotiations, including mediation with a neutral, Judge Rosen. TWP argues that Plaintiff failed to state a claim upon which relief can be granted, the claims are time-barred pursuant to a 3-year statute of limitations, and alleged disclosures of customer information were permissible under the PPPA’s exemptions, including its “direct marketing” exemption. TWP made clear that absent a settlement, it would raise those defenses – and if unsuccessful on a motion to dismiss – move for summary judgment and contest class certification.

The excellent result, and the efficiency in which it was obtained, would not have been possible without the significant investments of time and resources in the prosecution of PPPA actions over the past decade by Class Counsel and Plaintiff’s other counsel (together, “Plaintiff’s Counsel”), providing knowledge, experience, and well-developed body of PPPA jurisprudence necessary to achieve the SA.<sup>3</sup> This

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<sup>3</sup> In granting final approval to a similar class in *Loftus v. Outside Integrated Media, LLC*, No. 2:21-cv-11809 (E.D. Mich. Aug. 9, 2022), the Honorable Mark A. Goldsmith commended the work of the attorneys representing the class – the same counsel here – and noted that “the class has benefited in a concrete way” from the “very effective work” done by Plaintiff’s counsel. *See* Fraietta Decl. Ex. D, 8/9/22 Hearing Tr. at 7:9-8:2 (approving Class Counsel’s attorneys’ fees request for 35% “where the lawyers did produce significant results for the class in very short order”).

accumulated knowledge and experience, in a niche area of law, to efficiently obtain this SA weighs strongly in favor of the reasonableness of the requested fee.

Accordingly, Plaintiff respectfully requests pursuant to Rule 23(h) that the Court approve attorneys' fees, costs, and expenses of 35% of the SF, or \$1,779,004, and a service award of \$1,000 for Plaintiff for service as a class representative. The requested fee is an equal percentage to that approved by this Court in another PPPA class settlement. *See Kinder v. Meredith Corp.*, 1:14-cv-11284 PageID.2766-72 (E.D. Mich. May 18, 2016) (awarding 35% of \$7.5 million settlement in PPPA case which paid roughly \$50 per claimant). And it is a lesser percentage than other courts in this District have approved. *Perlin v. Time Inc.*, No. 2:16-cv-10635 PageID.1087-95 (E.D. Mich. Oct. 15, 2018) (awarding 40% of \$7.4 million settlement resolving PPPA claim which paid between \$25-\$50 per claimant). The SA here outperforms nearly all approved PPPA settlements in structure and per-class member recovery. This Court should approve the requested fees, costs, expenses, and service award.

## **I. BACKGROUND**

On 3/28/22, former plaintiff Colin Custard initiated this class action. ECF No. 1. As alleged, TWP is an international media company that publishes *The Week* magazine, and that, before 7/31/16, TWP disclosed information related to its customers' magazine subscription histories and personal reading habits without their consent in violation of the PPPA. *Id.* ¶¶ 1-2, 10, 5-8, 41-48. On 8/5/22, Mr. Custard

filed a First Amended Complaint making the same allegations and adding Frederick Vogt and Ella Norman as named plaintiffs in the action. ECF No. 11. On 11/3/22, Plaintiff Moeller filed a Second Amended Complaint, alleging the same and replacing the previous plaintiffs as named plaintiff in the action. ECF No. 15.

From the outset, the Parties engaged in direct communication, and, as part of their obligation under Rule 26, discussed the prospect of resolution. Declaration of Philip L. Fraietta (“PF Decl.”) at ¶ 14 (Ex. 1). And before TWP would answer or respond to the FAC, the Parties agreed to engage in mediation before Judge Rosen. PF Decl., ¶ 15. The Parties then sought and obtained stays of all case deadlines; exchanged informal discovery, including about the size and scope of the putative class, which includes roughly 13,033 persons; and exchanged lengthy mediation briefing pertaining to the merits, including the sufficiency of the pleadings and the applicable statute of limitations. *Id.* ¶¶ 16-17. Given that the information exchanged would contain the same information produced in formal discovery related to issues of class certification and summary judgment, the Parties had sufficient information to meaningfully assess the strengths and weaknesses of the claims and defenses and to negotiate a SA that is fair, reasonable, and adequate. *Id.* ¶ 17. Plaintiff’s Counsel’s experience in similar matters, as well as efforts made by counsel on both sides, ensured they were sufficiently well apprised of the facts, strengths, and weaknesses of their cases to make an intelligent analysis of the proposed SA. *Id.* ¶¶ 17-18.

The mediation took place on 10/24/22, lasting an entire day. At the conclusion of it, the Parties reached agreement on all material terms of a class action settlement and executed a term sheet. *Id.* ¶ 19. In the weeks following, the Parties negotiated and finalized the full-form SA, attached to the PF Decl. as Ex. 1. *Id.* ¶ 21.

On 1/6/23, the Court preliminary approved the SA. ECF No. 23. Since then, Plaintiff's Counsel has worked with the Settlement Administrator to administer the Notice Plan. PF Decl. ¶¶ 29-31; Declaration of Frank S. Hedin (**Ex. 2**) ("FH Decl.").

**A. The Litigation and Work Performed to Benefit the Class**

Beginning in 2015, Plaintiff's Counsel began investigating and litigating cases against publishers for alleged violations of the PPPA. The theory of liability was novel. Although a few other cases had been filed against publishers, none had progressed through class certification or summary judgment. PF Decl. ¶ 4. Despite the uncertainty, Plaintiff's Counsel litigated numerous PPPA issues of first impression, including, but not limited to: (i) whether an alleged violation of the statute was sufficient to confer Article III standing; (ii) whether the statute violated the First Amendment on its face or as applied; (iii) whether plaintiffs could pursue class action claims for statutory damages in federal court under Rule 23 in light of MCR 3.501(A)(5); and (iv) whether a 2016 amendment to the statute applied retroactively. *See, e.g., Boelter v. Hearst Commc'ns, Inc.*, 192 F. Supp. 3d 427 (S.D.N.Y. 2016); *Boelter v. Advance Magazine Publishers Inc.*, 210 F. Supp. 3d 579

(S.D.N.Y. 2016). *Id.* ¶ 5. Plaintiff’s Counsel then conducted vigorous discovery, including in-depth research into data industry practices, such as data appending and data cooperatives, and ultimately third-party discovery from those companies. Through that discovery, Plaintiff’s Counsel amassed a wealth of institutional knowledge regarding the data industry. *Id.* ¶ 6; FH Decl. ¶ 21. Plaintiff’s Counsel won a motion for summary judgment in *Boelter v. Hearst Commc’ns, Inc.*, 269 F. Supp. 3d 172 (S.D.N.Y. 2017). This summary judgment victory provided a roadmap to liability for publishers based on the above data industry practices. PF Decl. ¶ 7.

Plaintiff’s Counsel then successfully argued that the amended version of the PPPA does not apply to claims that accrued prior to its effective date of 7/31/16. *Horton v. GameStop, Corp.*, 380 F. Supp. 3d 679, 683 (W.D. Mich. 2018) (holding amended version of the PPPA does not apply to claims filed after its effective date of 7/31/16 where the alleged disclosures occurred prior to the effective date). FH Decl. ¶¶ 13-14; PF Decl. ¶ 8. And, in the above PPPA litigation, it was assumed that PPPA cases were governed by a 3-year statute of limitations. FH Decl. ¶ 30; PF Decl. ¶ 9; *see, e.g., Hearst*, 269 F. Supp. 3d at 172; *Edwards v. Hearst Commc’ns, Inc.*, 2016 WL 6651563 (S.D.N.Y. Nov. 9, 2016). Nonetheless, shortly before filing this case, Plaintiff’s Counsel recognized that the Sixth Circuit’s opinion in *Palmer Park Square, LLC v. Scottsdale Ins. Co.*, 878 F.3d 530 (6th Cir. 2017), and relevant Michigan authority, arguably provided a basis for applying a 6-year limitation period



to PPPA claims, and thus may provide an avenue for class recovery under the original PPPA, and conducted extensive pre-suit investigative analysis and work prior to the decision in *Pratt v. KSE Sportsman Media, Inc.*, 586 F. Supp. 3d 666 (E.D. Mich. 2022) on statute of limitations. FH Decl. ¶¶ 18, 30; PF Decl. ¶ 9.

Finally, a few days before the mediation, in *Nashel v. New York Times Co.*, 2022 WL 6775657 (E.D. Mich. Oct. 11, 2022), a publisher's motion to dismiss was granted pursuant to Rule 12(b)(6) for failure to state a claim, adding risk for a similar result here—depriving the Class of any recovery. FH Decl. ¶ 31; PF Decl. ¶¶ 10, 27.

## **II. SUMMARY OF THE SETTLEMENT**

The SA delivers an instant benefit to roughly 13,033 SCMs as it creates a non-reversionary \$5,082,879 SF, with a per-Class Member aggregate recovery of \$390, and SCMs will *automatically* be mailed a *pro rata* check of roughly \$248, SA ¶¶ 1.33, 2.1, providing meaningful relief to SCMs, in a timely and streamlined manner.

## **III. THE REQUESTED SERVICE AWARD REFLECTS MS. MOELLER'S ACTIVE INVOLVEMENT HERE AND SHOULD BE APPROVED**

Service awards are often awarded in common-fund cases in the 6th Circuit. *Hadix v. Johnson*, 322 F.3d 895, 898 (6th Cir. 2003). The following factors are used in approving such an award: (1) actions to protect the class's interests and if that resulted in a substantial benefit to the class; (2) financial risk the class representative assumed; and (3) time and effort the class representative dedicated. *Lasalle Town Houses Coop Assoc. v. City of Detroit*, 2016 WL 1223354, at \*7 (E.D. Mich. Mar.

29, 2016). Based on these, a service award of \$1,000 for Ms. Moeller is reasonable and is less than the amount awarded to the class representatives in other PPPA cases. *See Kokoszki v. Playboy Enterprises, Inc.*, 2:19-cv-10302 PageID.1066 (E.D. Mich. Aug. 19, 2020), *Loftus*, 2:21-cv-11809 PageID.1957, and *Kain*, 4:21-cv-11807 PageID.1369 (awarding \$5,000 on 3/16/23)— and a fraction of the amounts awarded in comparable settlements. *See, e.g., In re CMS Energy ERISA Litig.*, 2006 WL 2109499, at \*3 (E.D. Mich. June 27, 2006) (awarding class representatives \$15,000).

Ms. Moeller spent considerable time protecting the class’s interests. *See* Declaration of Elizabeth Moeller (“EM Decl.,” ECF No. 20-1). Ms. Moeller assisted in investigating her claims, by detailing her magazine subscription histories, and aiding in drafting the SAC. EM Decl. ¶¶ 3-4; PF Decl. ¶ 39-41. She searched for and preserved documents that would need to be turned over to TWP in discovery. EM Decl. ¶ 6; PF Decl. ¶ 40. And Ms. Moeller has been actively consulted throughout the settlement process, even through this filing. EM Decl. ¶¶ 4-7; PF Decl. ¶¶ 39-41. Thus, this Service Award is fair, reasonable, and should be approved. *See also* Order, ECF No. 23, PageID.1866 (“Lead Plaintiff’s incentive award is only \$1,000 . . . so there are no concerns about the incentive award creating inequality.”).

#### **IV. THE REQUESTED ATTORNEYS’ FEES AND COSTS ARE REASONABLE AND SHOULD BE APPROVED**

The requested fee and cost award of \$1,779,004, 35% of the common fund, is reasonable and merits approval. Courts may award “reasonable attorney’s fees and

nontaxable costs that are authorized by law or the parties' agreement." Fed. R. Civ. P. 23(h). The SA provides that Plaintiff's Counsel may petition the Court for an award of attorneys' fees, costs, and expenses up to 35% of the SF. SA, ¶ 8.1.

As set forth below, the Court should calculate Plaintiff's Counsel's fee using the "percentage-of-the-fund" method and find that the requested award of 35% of the SF is reasonable and well supported by applicable Sixth Circuit law.

**A. The Percentage Method Should Be Used to Calculate Fees**

"When awarding attorney fees in a class action, district courts generally have discretion to choose whether to calculate fees based on the lodestar method—multiplying the number of hours reasonably expended by a reasonable hourly rate—or based on the percentage method—awarding class counsel a percentage of the monies recovered." *Lyngaas v. Curaden AG*, 2020 WL 5249203, at \*1 (E.D. Mich. Sept. 3, 2020) (citing *Gascho v. Global Fitness Holdings, LLC*, 822 F.3d 269, 279 (6th Cir. 2016)). "As the two methods measure the fairness of the fee . . . , it is necessary that district courts be permitted to select the more appropriate method for calculating attorney's fees in light of the unique characteristics of class actions in general, and of the unique circumstances of the actual cases before them." *Id.*, at \*1.

In "choosing between the percentage and lodestar approaches," courts "look to the calculation method most commonly used in the marketplace at the time such a negotiation would have occurred." *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 500-

01 (N.D. Ill. 2015); *see also, e.g., Nilsen v. York Cty.*, 400 F. Supp. 2d 266, 278 (D. Me. 2005) (“There is good reason for using a market-oriented approach. If a consumer wanted to determine a reasonable plumber’s, mechanic’s or dentist’s fee, the consumer would have to look to the market. Why should lawyers be different?”).

With respect to consumer class actions in particular, where “the normal practice . . . is to negotiate a fee arrangement based on a percentage of the plaintiffs’ ultimate recovery,” *Kolinek*, 311 F.R.D. at 501, the federal judiciary is in near unanimous agreement that the percentage-of-the-fund approach best yields the fair market price for the services provided by counsel to the class for purposes of determining a reasonable attorneys’ fee award at settlement. *See Kirchoff v. Flynn*, 786 F.2d 320, 324 (7th Cir. 2006) (“When the prevailing method of compensating lawyers for similar services is the contingent fee, then the contingent fee *is* the market rate.”); *see, e.g., In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 532 (E.D. Mich. 2003) (“This Court’s decision to apply the percentage-of-the-fund method is consistent with the majority trend[.]”). This is especially true where, as in this case, a settlement establishes a non-reversionary common fund for the benefit of the Class. *See Fournier v. PFS Invs., Inc.*, 997 F. Supp. 828, 831-32 (E.D. Mich. 1998) (“the percentage of the fund method...allows for a more accurate approximation of a reasonable award for fees.”). Thus, in recent non-reversionary common fund cases, like here, district courts of the Sixth Circuit have applied the

percentage-of-the-fund method in determining a reasonable attorneys' fee award. *See In re Delphi Corp. Sec., Derivative & "ERISA" Litig.*, 248 F.R.D. 483, 502 (E.D. Mich. 2008) ("the Sixth Circuit has observed a 'trend towards adoption of a percentage of the fund method in common fund cases'").

And the percent-of-the-fund method best replicates the *ex ante* market value of the services that counsel provided to the Class. It is the means by which an informed Class and counsel would have established counsel's fee at the outset of the litigation. *See Kolinek*, 311 F.R.D. at 501 (in consumer class-action litigation, "the normal practice [is] to negotiate a fee arrangement based on a percentage of the plaintiffs' ultimate recovery"). The percentage-of-the-fund method also better aligns counsel's interests with those of the Class because it bases the fee on the results the lawyers achieve for their clients rather than on the number of motions they file, documents they review, or hours they work, and it avoids some of the problems the lodestar-times-multiplier method can foster (such as encouraging counsel to delay resolution of the case when an early resolution may be in their clients' best interests). *N.Y.S. Teachers' Ret. Sys. v. Gen. Motors Co.*, 315 F.R.D. 226, 243 (E.D. Mich. 2016) (explaining that while "[t]he lodestar method better accounts for the amount of work done . . . the percentage of the fund method more accurately reflects the results achieved"). It is also simpler to apply. *See also, e.g., Fournier*, 997 F. Supp. at 832 (noting that the percentage-of-the-fund method provides the "benefit" of

“readily ascertainable fee amounts”); *Hillson v. Kelly Servs. Inc.*, 2017 WL 3446596, at \*2 (E.D. Mich. Aug. 11, 2017) (stating that “[t]he percentage-of-recovery approach is ‘easy to calculate’” and “‘establishes reasonable expectations on the part of plaintiffs’ attorneys.’”) (citation omitted).<sup>4</sup> As explained in *Cardizem*:

The lodestar [method] remains difficult and burdensome to apply, and it positively encourages counsel to run up the bill, expending hours that are of no benefit to the class. Moreover, use of the lodestar may result in undercompensation of talented attorneys. Experienced practitioners know that a highly qualified and dedicated attorney may do more for a class in an hour than another attorney could do in ten. The lodestar can end up prejudicing lawyers who are more efficient with a less expenditure of time.

*In re Cardizem CD Antitrust Litig.* (E.D. Mich. Nov. 26, 2002)<sup>5</sup>. For these reasons, the percentage-of-the-fund method (rather than the lodestar method) has been used to calculate a reasonable attorneys’ fee award in all other PPPA class actions to have settled in this District, including by this Court. *See, e.g., Kinder*, 1:14-cv-11284 PageID.2771; *Higgins v. TV Guide Magazine, LLC*, 2:15-cv-13769 PageID.1201 (E.D. Mich. Dec. 19, 2018); *Kokoszki*, 2:19-cv-10302 PageID.1066.

Accordingly, consistent with the recent trend in the Sixth Circuit, including the fee decisions in the PPPA cases cited above, this Court should calculate

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<sup>4</sup> The lodestar approach would create a perverse incentive for Class Counsel to reject or delay accepting the Settlement now before the Court merely to bill more hours through a litigation strategy that would be more wasteful, unnecessary, and risky.

<sup>5</sup> By contrast, the lodestar approach is most appropriately applied in federal fee-shifting cases. *See, e.g., Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 551 (2010).

Plaintiff's Counsel's fee using the percentage-of-the-fund method.

**B. The Reasonableness of the Requested Fees and Costs Is Supported by This Circuit's Six-Factor Test**

The Sixth Circuit in *Ramey* articulates six “germane” factors to determining reasonableness of a requested percentage to award as attorneys’ fees: (1) value of benefit to the class; (2) society’s stake in rewarding attorneys who produce the settlement’s benefits, to maintain an incentive to others; (3) whether the work was performed on a contingent fee basis; (4) complexity of the litigation; (5) skill and standing of counsel on both sides; and (6) the value of the legal services performed on an hourly basis. *Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188, 1196 (6th Cir. 1974); *Gascho*, 822 F.3d at 280 (describing these factors as “germane” to the fee inquiry); *Moulton v. U.S. Steel Corp.*, 581 F.3d 344, 352 (6th Cir. 2009).

A “reasonable” fee in common-fund case typically ranges “from 20 to 50 percent.” *Shane Grp. v. BCBS of Mich.*, 2015 WL 1498888, at \*15 (E.D. Mich. Mar. 31, 2015); *see also Mathias v. Accor Econ. Lodging, Inc.*, 347 F.3d 672, 677 (7th Cir. 2003) (Posner, J.) (referring to “usual 33-40 percent contingent fee” charged by plaintiff’s lawyers). The award is calculated as percentage “from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Gascho*, 822 F.3d at 282 (the “[a]ttorney’s fees are the numerator” and “the dollar amount of the Total Benefit to the class (including the benefit to class members, attorney’s fees, and [potentially] the costs of administration)” is the denominator). Courts in this District,

and this Court in *Kinder*, have awarded 35%-40% of common funds in PPPA cases: *Kinder*, 1:14-cv-11284 PageID.2771; *Higgins*, 2:15-cv-13769 PageID.1201; *Perlin*, 2:16-cv-10635 PageID.1093; *Kokoszki*, 2:19-cv-10302 PageID.1066; *Loftus*, 2:21-cv-11809 PageID.1957; *Kain*, 4:21-cv-11807 PageID.1368.

Here, where Plaintiff's Counsel achieved the second best per-class member recovery in a PPPA case despite early risk, the requested award is reasonable.

### **1. Counsel Have Secured a Valuable Benefit For The Class**

The value of the benefit to the class is the most vital factor in assessing the reasonableness of fees. *Dick v. Sprint Commc'ns Co. L.P.*, 297 F.R.D. 283, 299 (W.D. Ky. 2014). This includes considering tangible and intangible benefits. *See Gascho*, 822 F.3d at 282 (must consider cash and noncash settlement components). The risk of continued litigation is also a factor. *Dick*, 297 F.R.D. at 299.

The SA here provides for an excellent recovery, creating a \$5,082,879 non-reversionary cash SF for the benefit of 13,033 SCMs. Deducting notice and administration costs and the requested attorneys' fees and service award, SCMs will *automatically* be mailed a check for roughly \$248, a payment far in excess, per-class member, of nearly all previous PPPA settlements, and in those, class members were required to file claims and, accordingly, 80-90% did not receive any payment.

Weighed against the risks of continued litigation – including the Court's decisions on dispositive motions, additional fact and expert discovery necessary for



trial, and other potential obstacles that could strip the class of any recovery – the value of the immediate monetary recovery that the SA affords thus supports the reasonableness of the requested attorneys’ fees. The first factor is well satisfied.

## **2. Societal Stake in Complex Consumer Privacy Litigation**

Society has a strong stake in rewarding attorneys who produce the type of benefits achieved by the SA here. *See In re Cardizem*, 218 F.R.D. at 533; *see also Gascho*, 822 F.3d at 287 (“Consumer class actions . . . have value to society . . . as deterrents to unlawful behavior . . . and as private law enforcement regimes that free public sector resources.”). It is thus in society’s interest to encourage litigation that protects important consumer privacy rights that would not otherwise be safeguarded. *See In re Rio Hair Naturalizer Prods. Liab. Litig.*, 1996 WL 780512, at \*17 (E.D. Mich. Dec. 20, 1996) (“Without compensation to those who are willing to undertake the inherent complexities and unknowns of consumer class action litigation, enforcement of the federal and state consumer protection laws would be jeopardized.”); *In re Cardizem*, 218 F.R.D. at 534 (“Encouraging qualified counsel to bring inherently difficult and risky but beneficial class actions . . . benefits society.”). When individual class members seek relatively small statutory damages, “[e]conomic reality dictates that [their] suit proceed as a class action or not at all.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 161 (1974).

Society has a vital interest in incentivizing complex litigation to protect

consumer privacy. Class actions are the most realistic means of safeguarding this privacy under the PPPA, especially given that consumers are often unaware of the ongoing privacy rights violations (here, it was alleged that TWP secretly disclosed its customers' personal reading information). The alternative would have been no enforcement, and the allegedly unlawful conduct would have continued unabated.

Finally, the Class's reaction to the requested fee award also confirms its fairness and reasonableness. *See In re Delphi*, 248 F.R.D. at 504 ("The Class's overwhelming favorable response lends further support to the conclusion that the requested fee award is fair and reasonable."). The Notices here specifically stated that counsel intends to apply for a fee of up to 35% of the SF. Since dissemination, not one SCM has submitted an objection to the SA. Thus, the Class, as a microcosm of society, has recognized the societal value of this litigation by giving the SA a resounding stamp of approval. This factor thus supports the requested award.

### **3. Counsel Took the Case on a Contingent Basis, Confronting Significant Risk of Nonpayment**

Undertaking an action on a contingency basis lends additional support to the reasonableness of a requested fee award. *See In re Cardizem*, 218 F.R.D. at 533; *Stanley v. U.S. Steel Co.*, 2009 WL 4646647, at \*3 (E.D. Mich. Dec. 8, 2009) ("Numerous cases recognize that the contingent fee risk is an important factor in determining the fee award."). When attorneys invest significant time and resources in pursuing the litigation, despite the risk they will not be compensated, this factor

is generally satisfied. *In re Rio*, 1996 WL 780512, at \*18; *Kogan v. AIMCO Fox Chase L.P.*, 193 F.R.D. 496, 504 (E.D. Mich. 2000). The contingent nature of the case is amplified where class counsel face a formidable defendant.

Plaintiff's Counsel pursued the action on a contingency basis. PF Decl. ¶ 32; FH Decl. ¶ 36. Plaintiff's Counsel conducted an extensive pre-filing investigation into the relevant facts and legal issues, which was informed by the vast experience and expertise they had accumulated during their prosecution of numerous other PPPA litigations and guided by the well-established body of PPPA jurisprudence those efforts had produced. FH Decl. ¶¶ 12-21, 37; PF Decl. ¶ 12. And during the litigation, Plaintiff's Counsel invested significant time, effort, and resources to the case without any compensation. FH Decl. ¶ 36; PF Decl. ¶ 32. Cognizant of the risk of nonpayment, Plaintiff's Counsel nonetheless embarked on a fact-intensive investigation of TWP's practices, filed the case, and exchanged informal discovery. PF Decl. ¶¶ 6, 12-13, 16; FH Decl. ¶¶ 21-25. Plaintiff's Counsel also paid for and participated in a full-day mediation with Chief Judge Rosen. PF Decl. ¶¶ 15, 19; FH Decl. ¶¶ 25, 40. Plaintiff's Counsel fronted this investment of time and resources, despite the significant risk of nonpayment inherent in this case. PF Decl. ¶¶ 9-10; 25-26; FH Decl. ¶¶ 36, 29, 40. And given the defenses mounted by TWP—led by experienced defense counsel—success on the legal issues presented here was far from certain. PF Decl. ¶ 26-27; FH Decl. ¶¶ 29-32.

Even if Plaintiff survived dispositive motions, Plaintiff would still have to overcome numerous defenses, such as: (i) the PPPA does not prohibit the disclosure of the magazine subscriptions information at issue (because third-party recipients of the disclosures are TWP's agents), (ii) that TWP also provided proper notice of its practices, and (iii) that the PPPA does not apply to subscriptions that were not sold by TWP "at retail," as required under the statute. PF Decl. ¶ 27; FH Decl. ¶ 32.

In considering the reasonableness of a fee request in a contingency class action settlement, courts consider how the legal market would have assessed the case's risk at its inception and, in turn, how the market's risk assessment would have affected a hypothetical *ex ante* fee negotiation between counsel and potential client. *See Goodell v. Charter Commc'ns, LLC*, 2010 WL 3259349, at \*1 (W.D. Wis. Aug. 17, 2010) ("The question is not how risky the case looks when it is at an end but how the market would have assessed the risks at the outset."). Here, Plaintiff's Counsel began their pre-filing investigation here in early 2021, when there were no other PPPA claims being prosecuted against TWP (or others) by any attorneys in the country. FH Decl. ¶¶ 20-21. Plaintiff's claims here depended on counsel successfully arguing that a six-year limitation period applied. *See id.* ¶¶ 17-20, 30. And Plaintiff faced risk on a Rule 12(b)(6) motion for failure to state a claim. *See Nashel*, 2022 WL 6775657; *see also Bozung*, 2023 WL 2385004. FH Decl. ¶ 31; PF Decl. ¶ 10. Considering these significant, threshold risks, this litigation was likely viewed as too

risky to pursue by other counsel. Plaintiff's Counsel nonetheless plowed forward and negotiated the SA presently before the Court for approval. And no other counsel came forward to compete for control, to propose to the Court that it be appointed lead counsel at a lower fee structure, or to offer to share in the case's risk and expense with Plaintiff's Counsel—establishing that Plaintiff's Counsel would have been able to obtain the requested Fee Award of 35% of the SF in an *ex ante* negotiation with the Class. Moreover, despite the serious risk of non-recovery to the Class, at the outset, Plaintiff's Counsel nevertheless expended a significant amount of attorney time and expenses investigating, prosecuting, and resolving the claims without any guarantee of payment. *See* PF Decl. ¶¶ 6, 12, 16, 18, 27, 33; FH Decl. ¶¶ 30-33, 36-40. And their law firms were forced to forgo representing clients in other matters they otherwise would have taken on. *See* PF Decl. ¶ 32; FH Decl. ¶ 39. Plaintiff's Counsel should be rewarded for devoting substantial resources investigating and prosecuting the case on behalf of the Class. Thus, the requested Fee Award reasonably compensates Plaintiff's Counsel for assuming the risk at the outset and embarking on time-consuming and expensive litigation for the Class's benefit.

#### **4. The Complexity of the Litigation Supports the Requested Fees**

The complexity of the litigation reinforces the reasonableness of the requested fee award. *In re Cardizem*, 218 F.R.D. at 533. “[M]ost class actions are inherently complex.” *In re Telectronics Pacing Sys., Inc.*, 137 F. Supp. 2d 985, 1013 (S.D. Ohio

2001). This case is no exception. It involved multiple layers of factual complexity, much of which was obscured at the outset due to TWP's alleged concealment of its practices from consumers. This required extensive preliminary investigation into TWP's business practices, its methods of data collection and aggregation, and the nature of its relationships with various third-party data companies.

The case also involved complex legal issues. TWP challenged the merits of the claims, raising a statute of limitations defense and were prepared to assert numerous other defenses to the merits and the propriety of class certification. FH Decl. ¶¶ 31-32. This further supports the reasonableness of the requested fees.

#### **5. The Parties Are Both Represented by Skilled Counsel**

The skill of the Parties' counsel, including professionalism and experience, also validates the reasonableness of the requested fee award. *In re Rio*, 1996 WL 780512, at \*18. And "the ability of [counsel] to negotiate a favorable settlement in the face of formidable legal opposition further evidences the reasonableness of the fee award requested." *In re Delphi*, 248 F.R.D. at 504. Plaintiff's Counsel have significant experience litigating class actions of similar size, scope, and complexity to the instant action. PF Decl. ¶¶ 4-8, 35-38; FH Decl. ¶¶ 2-20; Declaration of E. Powell Miller (**Ex. 3**). They regularly engage in major complex litigation involving consumer privacy, including PPPA cases. *See* PF Decl. ¶¶ 5-9, 33-35; FH Decl. ¶¶ 2-20. Plaintiff's Counsel faced highly skilled counsel here. TWP is represented by a

well-experienced law firm and it made clear that, but for the Settlement, it would dispute its liability and assert multiple defenses. *See id.* Given the skill and standing of counsel on both sides, the reasonableness of the requested fee award is apparent.

#### **6. The Hourly Value of the Legal Services Is Reasonable**

The final factor assesses the value of the legal services performed on an hourly basis, also known as the “lodestar.” *See Isabel v. City of Memphis*, 404 F.3d 404, 415 (6th Cir. 2005). Here, as discussed, the percentage-of-the-fund method, not the lodestar method, is the appropriate method for computing a reasonable fee. The potential use for counsel’s lodestar here would be to “cross-check” that amount with the amount of fees requested by counsel as a percentage of the fund. Even then, however, a cross-check of counsel’s lodestar is “not required.” *Arp v. Hohla & Wyss Enterprises, LLC*, 2020 WL 6498956, at \*7 (S.D. Ohio Nov. 5, 2020); *see also Van Horn v. Nationwide Prop. & Cas. Ins. Co.*, 436 F. App’x 496, 501 (6th Cir. 2011); *Est. of McConnell v. EUBA Corp.*, 2021 WL 1966062, at \*6 (S.D. Ohio May 17, 2021) (“lodestar cross-check” is “not required”). Rather, where the percentage-of-the-fund method is used to compute counsel’s fee, a lodestar cross-check is optional and discretionary. *See Van Horn*, 436 F. App’x at 501 (finding that district courts have complete discretion when deciding to calculate attorneys’ fees based on the percentage-of-the-fund or lodestar methods; thus a cross-check analysis is optional). *In re Delphi*, 248 F.R.D. at 503 (applying percentage-of-the-fund-method in

awarding fees in common-fund settlement, without addressing *Ramey* factor pertaining to “the value of the services on an hourly basis”); *Fournier*, 997 F. Supp. at 833; *Arp*, 2020 WL 6498956, at \*7.

Here, like in *Delphi*, *Fournier*, and *Arp*, the SA’s background demonstrates that there is no need to “cross-check” the requested fee (35% of the SF) with the lodestar value of the time Plaintiff’s Counsel expended on the prosecution of solely this case. As outlined, the non-reversionary common-fund SA achieved here is a direct result of Plaintiff’s Counsel’s multi-year investigation into certain disclosure practices in effect in segments of the publishing industry in 2015-16, Plaintiff’s Counsel’s extensive months-long analysis of the law governing the applicable statute of limitations (and other threshold issues), and the significant time (thousands of hours) and other resources that Plaintiff’s Counsel expended prosecuting related litigations and developing favorable bodies of PPPA jurisprudence on issues of critical importance to the claims alleged in this case. *See* PF Decl. ¶¶ 4-11; FH Decl. ¶¶ 12-32. This included methodically reviewing historical data cards found in cached Internet archives to identify companies whose practices violated the PPPA, FH Decl. ¶ 21, and litigating (and prevailing on) critically important issues such as the retroactivity of the Michigan legislature’s amendment to the PPPA that became effective on 7/31/16 and the applicability of the catch-all six-year limitation period to these claims. *See id.* ¶¶ 12-20; PF Decl. ¶¶ 5-9. Thus, the SA, or this case, should



not be viewed in a vacuum, but rather as part of a multi-year project in which counsel devoted substantial time, money, and other resources for the benefit of Michigan consumers (such as the SCMs) – all on a contingency basis without any guarantee of recovering fees for their work or being reimbursed their out-of-pocket expenses. *See* PF Decl. ¶ 11; FH Decl. ¶ 37 (“The excellent result we obtained in this case, and the efficiency with which we obtained it, would not have been possible without the significant investments of time and other resources that we made towards the prosecution of the PPPA actions outlined above over the better part of the past decade, which provided us with the knowledge, experience, and well-developed body of PPPA jurisprudence necessary to achieve this Settlement.”).

In *Arp*, the court awarded counsel a percentage of a common settlement fund as a fee, based on circumstances similar to those here. Noting that “courts have broad discretion when it comes to awarding a reasonable fee and when weighing the *Ramey* factors,” the court explained why “a lodestar cross-check is not required” in all cases:

What the lodestar . . . case does not reflect is Class Counsel’s work in other [similar] cases that directly benefited the class. . . . A firm’s expertise in a niche area provides important context when analyzing the reasonableness of fees.

It would be inequitable for a court to reduce a fee award based on a lodestar cross-check without considering a law firm’s work in other cases raising the same or similar issues. That work may. . . substantially enhance the result Class Counsel is able to achieve [because] (1) successfully litigating a particular issue may improve the settlement prospects of cases raising the same issue, (2) developing

expertise in a specific niche improves the firm's ability to effectively litigate within that niche, and (3) the work product from one case can be used in a case raising the same issue, resulting in value that is not adequately reflected in a lodestar.

...the percentage-of-the-fund approach automatically factors into the award any enhancement to the settlement derived from Class Counsel's work in similar cases [and] encourages efficiency, judicial economy, and aligns interests of the lawyers with the class.

*Arp*, 2020 WL 6498956, at \*7-8 (cleaned up and citations and quotations omitted).

And in *Loftus*, Judge Goldsmith adopted the same rationale in approving Class Counsel's request for 35% of the fund without undertaking a lodestar cross-check:

[T]he request for 35 percent is in line with what other courts have approved and especially in this context where the lawyers did produce significant results for the class in very short order...they should be rewarded appropriately for having done a very effective job as class counsel.

PF Decl. Ex. D, 8/9/22 Hearing Tr., 7:21-8:1; *Kain*, 4:21-cv-11807 PageID.1368.

Plaintiff's Counsel's request for a 35% fee here rests on the same set of circumstances that supported awarding a percentage-of-the-fund fee in *Arp*, *Loftus*, and *Kain*. Similarly, Plaintiff's Counsel should be rewarded for efficiently achieving the second best per-class member settlement ever in a PPPA case, and for negotiating a non-reversionary structure that automatically provides *meaningful* relief to all SCMs. This result would not have been possible without the thousands of hours of time Plaintiff's Counsel devoted, over several years, investigating the publishing

industry's disclosure practices, developing law on each of the critically important issues underlying the PPPA claim alleged here, and protecting the ability of consumers to continue prosecuting these cases under the prior version of the statute. *See* PF Decl. ¶¶ 4-11, 35-38; FH Decl. ¶¶ 11-30. In this context, the requested fee of 35% of the common fund is reasonable and appropriate, regardless of the hours expended solely on the prosecution of this case. *See id.* (“A firm’s expertise in a niche area provides important context when analyzing the reasonableness of a fee”).

Accordingly, this factor also confirms the reasonableness of the requested fee.

## V. CONCLUSION

Based on the above, Plaintiff respectfully requests that the Court (1) approve attorneys’ fees, costs, and expenses in the amount of 35% of the SF, or \$1,779,004; (2) grant Ms. Moeller a service award of \$1,000 in recognition of her efforts on behalf of the class; and (3) award any other relief as the Court deems reasonable and just.

Dated: April 10, 2023

Respectfully submitted,

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*Other Plaintiff's Counsel*

**CERTIFICATE OF SERVICE**

I, Philip L. Fraietta, an attorney, hereby certify that on April 10, 2023, I served the above and foregoing *Plaintiff's Motion for Attorneys' Fees, Costs, Expenses, and Service Award* on all counsel of record by filing it electronically with the Clerk of the Court using the CM/ECF filing system.

/s Philip L. Fraietta  
Philip L. Fraietta

## **INDEX OF EXHIBITS**

<u>Exhibit</u>	<u>Description</u>
1	Declaration of Philip L. Fraietta in Support of Motion for Attorneys' Fees, Costs, Expenses, and Service Award
2	Declaration of Frank Hedin in Support of Motion for Attorneys' Fees, Costs, Expenses, and Service Award
3	Declaration of E. Powell Miller in Support of Motion for Attorneys' Fees, Costs, Expenses, and Service Award



**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

<p>ELIZABETH MOELLER, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>THE WEEK PUBLICATIONS, INC.,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No. 22-cv-10666-TLL-PTM</p> <p>Hon. Thomas L. Ludington</p> <p>Mag. Judge Patricia T. Morris</p>
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**DECLARATION OF PHILIP L. FRAIETTA  
IN SUPPORT OF PLAINTIFF’S MOTION FOR  
ATTORNEYS’ FEES, COSTS, EXPENSES, AND SERVICE AWARD**

I, Philip L. Fraietta, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a partner at Bursor & Fisher, P.A., Class Counsel in this action. I am an attorney at law licensed to practice in the States of Michigan, New York, New Jersey, and Illinois, and I am a member of the bar of this Court. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would testify competently thereto.

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

3. Attached hereto as **Exhibit A** is a true and correct copy of the Parties’



Class Action Settlement Agreement, and the exhibits attached thereto.

4. Beginning in 2015, my firm and my co-counsel (together, “Plaintiff’s Counsel”) began investigating and litigating cases against publishers for alleged violations of the Michigan Preservation of Personal Privacy Act (the “PPPA”). The theory of liability was novel. Although a few other cases had been filed against publishers, none had progressed through class certification or summary judgment.

5. Despite the uncertainty, Plaintiff’s Counsel took on the cases and litigated numerous issues of first impression under the statute, including, but not limited to: (i) whether an alleged violation of the statute was sufficient to confer Article III standing; (ii) whether the statute violated the First Amendment on its face or as applied; (iii) whether plaintiffs could pursue class action claims for statutory damages in federal court under Fed. R. Civ. P. 23 in light of MCR 3.501(A)(5); and (iv) whether a 2016 amendment to the statute applied retroactively. *See, e.g., Boelter v. Hearst Communications, Inc.*, 192 F. Supp. 3d 427 (S.D.N.Y. 2016); *Boelter v. Advance Magazine Publishers Inc.*, 210 F. Supp. 3d 579 (S.D.N.Y. 2016).

6. Thereafter, Plaintiff’s Counsel conducted vigorous discovery, which included in-depth research into several data industry practices, including data appending and data cooperatives, and ultimately third-party discovery from those

companies. Through that discovery, my firm and my co-counsel amassed a wealth of institutional knowledge regarding the data industry.

7. Next, Plaintiff's Counsel won a motion for summary judgment for the named plaintiff in the *Hearst* case. *See Boelter v. Hearst Communications, Inc.*, 269 F. Supp. 3d 172 (S.D.N.Y. 2017). The *Hearst* summary judgment victory provided a roadmap to liability for publishers based on the aforementioned data industry practices.

8. Then, Plaintiff's Counsel were successful in arguing that the amended version of the PPPA does not apply to claims that accrued prior to its effective date of July 31, 2016. *See Horton v. GameStop, Corp.*, 380 F. Supp. 3d 679, 683 (W.D. Mich. 2018) (holding amended version of the PPPA does not apply to claims that accrued prior to its effective date of July 31, 2016).

9. Finally, in the aforementioned PPPA litigation it was assumed that PPPA cases were governed by a three-year statute of limitations. *See, e.g., Hearst*, 269 F. Supp. 3d at 172; *Edwards v. Hearst Communications, Inc.*, 2016 WL 6651563 (S.D.N.Y. Nov. 9, 2016). Nonetheless, shortly before filing this lawsuit, Plaintiff's Counsel recognized that the Sixth Circuit's opinion in *Palmer Park Square, LLC v. Scottsdale Insurance Company*, 878 F.3d 530 (6th Cir. 2017) may provide for a six-year statute of limitations for PPPA claims, and therefore may provide an avenue for class recovery under the original PPPA. Thus, despite the

uncertainty regarding the statute of limitations, Plaintiff's Counsel took on this case and others.

10. In addition, a few days before the mediation took place, Judge Murphy issued a decision in *Nashel v. New York Times Company*, 2022 WL 6775657 (E.D. Mich. Oct. 11, 2022) granting a publisher defendant's motion to dismiss pursuant to Rule 12(b)(6) for failure to state a claim. The *Nashel* decision added additional risk that this case could similarly be dismissed for failure to state a claim, thereby depriving the Settlement Class of any recovery whatsoever. *See also Bozung v. Christianbook, LLC*, 2023 WL 2385004 (W.D. Mich. Mar. 6, 2023) (granting similar motion to dismiss).

11. In sum, this Settlement was only made possible by Plaintiff's Counsel's exemplary record litigating other PPPA cases against other publisher defendants for over seven years.

12. Aside from Plaintiff's Counsel's work related to analyzing complex legal questions under the PPPA, Plaintiff's Counsel also conducted comprehensive pre-filing investigations concerning every aspect of the factual and legal issues underlying this action. These extensive pre-filing efforts included:

- Researching the nature of Defendant's business, including its practices of selling *The Week*, its consumer-privacy practices, and public statements concerning the foregoing;
- Interviewing numerous individuals in Michigan who subscribed to *The Week* in 2015 and 2016, including about their process of purchasing a

subscription and any disclosures they received or agreed to during the purchase process;

- Performing research and analysis regarding Defendant's list rental and other disclosure practices, including data cards and other public information available online concerning the practices during the relevant 2015–2016 timeframe;
- Performing an in-depth analysis of the various versions of Defendant's Privacy Policy, Terms of Service, and other publicly accessible documents available on its websites during the relevant time period;
- Researching the relevant law and examining the pertinent facts to assess the merits of a potential PPPA claim against Defendant and defenses that Defendant might assert thereto; and
- Investigating Defendant's financial condition in order to assess the likelihood of ultimately recovering a class-wide statutory damages award from Defendant.

13. On March 28, 2022, former plaintiff Colin Custard initiated this action with the Class Action Complaint. ECF No. 1. On August 5, 2022, Mr. Custard filed a First Amended Complaint making the same allegations and adding Frederick Vogt and Ella Norman as named plaintiffs in the action. *See generally* FAC (ECF No. 11). On November 3, 2022, Plaintiff Moeller filed a Second Amended Complaint making the same allegations and replacing Mr. Custard, Mr. Vogt, and Ms. Norman as named plaintiff in the action. *See generally* SAC (ECF No. 15).

14. From the outset of the case, the Parties engaged in direct communication, and as part of their obligation under Fed. R. Civ. P. 26(f),

discussed the prospect of resolution.

15. Those discussions led to an agreement between the Parties to engage in mediation, which the Parties agreed would take place before The Honorable Gerald E. Rosen (Ret. Chief Judge), who is a neutral mediator at JAMS in Detroit. Plaintiff's Counsel paid for Plaintiff's share of the mediation fees. The Parties sought and obtained stays of all case deadlines to accommodate the mediation.

16. As part of the mediation, the Parties exchanged informal discovery, including on issues such as the size and scope of the putative class.

17. Given that the information exchanged would have been 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.

18. In preparation for the mediation, Plaintiff's Counsel prepared a detailed mediation statement outlining the strength and weaknesses of the Plaintiff's case, and comparing his case with other PPPA cases against magazine publishers that had settled, to help evaluate any potential settlement. My firm also thoroughly reviewed the informal discovery produced by Defendant.

19. The mediation took place on October 24, 2022 and lasted the entire day. At the conclusion of the mediation, the Parties reached agreement on all material terms of a class action settlement and executed a term sheet.

20. The resulting \$5,082,870 non-reversionary Settlement secures an excellent recovery for the Settlement Class. Based on Defendant's records the proposed Settlement Class includes approximately 13,033 persons who purchased a subscription directly from the publisher of *The Week* for delivery to a Michigan street address or electronically, and who subscribed to such publication between December 24, 2015, and July 30, 2016. With a \$5,082,870 non-reversionary Settlement Fund, each Class Member who does not exclude him or herself from the Settlement should receive a *pro rata* cash payment of approximately \$248.

21. After reaching an agreement in principle on the Settlement, Plaintiff's Counsel worked extensively with defense counsel to finalize and memorialize the agreement into a formal Class Action Settlement Agreement, including proposed class notice documents. That process included rounds of revisions.

22. After finalizing and executing the Class Action Settlement Agreement, Plaintiff's Counsel prepared Plaintiff's Unopposed Motion For Preliminary Approval (ECF No. 17) and a Revised Unopposed Motion for Preliminary Approval of Class Action Settlement on December 21, 2022. (ECF No. 22).

23. On January 6, 2023, the Court granted Plaintiff's Motion For Preliminary Approval. ECF No. 23.

24. The Parties agreed to the terms of the Settlement through experienced

counsel who possessed all the information necessary to evaluate the case, determine all the contours of the proposed class, and reach a fair and reasonable compromise after negotiating the terms of the Settlement at arm's length and with the assistance of a neutral mediator.

25. Plaintiff and Plaintiff's Counsel recognize that despite our belief in the strength of Plaintiff's claims, and Plaintiff's and the Class's ability to ultimately each secure a \$5,000 statutory award under the PPPA, the expense, duration, and complexity of protracted litigation would be substantial and the outcome uncertain.

26. Plaintiff and Plaintiff's Counsel are also mindful that absent a settlement, the success of Defendant's various defenses in this case could deprive the Plaintiff and the Settlement Class Members of any potential relief whatsoever. Defendant is represented by highly experienced attorneys who have made clear that absent a settlement, they were prepared to continue their vigorous defense of this case. Plaintiff and Plaintiff's Counsel are also aware that Defendant would continue to challenge liability, as well as assert several defenses, including the applicable statute of limitations. Defendant has argued that this action is subject to a three-year statute of limitations, which would render the action time barred. Plaintiff argues for a six-year statute of limitations. An adverse decision on the statute of limitations would have resulted in the Settlement Class receiving

nothing.

27. Defendant had also indicated that it would continue to assert numerous defenses on the merits. More specifically, Plaintiff is aware that Defendant would continue to assert that the SAC should be dismissed for failure to state a claim pursuant to Rule 12(b)(6) – and indeed, a similar motion to dismiss was granted by another court in this District just a few days before the mediation. *See Nashel v. New York Times Company*, 2022 WL 6775657 (E.D. Mich. Oct. 11, 2022) (granting publisher defendant’s motion to dismiss for failure to state a claim); *see also Bozung v. Christianbook, LLC*, 2023 WL 2385004 (W.D. Mich. Mar. 6, 2023) (granting similar motion to dismiss). Defendant would also likely argue that the PPPA does not prohibit the disclosure of the magazine subscriptions information at issue (because the third-party recipients of the disclosures are Defendant’s agents), that Defendant also provided appropriate notice of its practices, and that the PPPA does not apply to subscriptions that were not sold by Defendant “at retail,” as is required to come under the scope of the statute. Plaintiff and Plaintiff’s Counsel are also aware that if its motion to dismiss was unsuccessful, Defendant would oppose class certification vigorously, and that Defendant would prepare a competent defense at trial. Looking beyond trial, Plaintiff is also keenly aware that Defendant could appeal the merits of any adverse decision, and that considering the statutory damages in play it would argue – in



both the trial and appellate courts – for a reduction of damages based on due process concerns.

28. Plaintiff and Plaintiff’s Counsel believe that the relief provided by the settlement weighs heavily in favor of a finding that the settlement is fair, reasonable, and adequate, and well within the range of approval.

29. Since the Court granted preliminary approval, Plaintiff’s Counsel has worked with the Settlement Administrator, JND Legal Administration (“JND”), to carry out the Court-ordered notice plan. Specifically, Plaintiff’s Counsel helped compile and review the contents of the required notice to State Attorney Generals pursuant to 28 U.S.C. § 1715, reviewed the final claim and notice forms, and reviewed and tested the settlement website before it launched live.

30. Plaintiff’s Counsel also worked with Defendant and JND to secure the class list and effectuate the Notice Plan.

31. Since class notice has been disseminated, Plaintiff’s Counsel has worked with JND on a weekly basis to monitor settlement claims and any other issues that may arise. Plaintiff’s Counsel has also fielded calls from Settlement Class Members and assisted with their requests.

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

action matters.

33. To date, my firm has also spent \$6,106.59 in out-of-pocket costs and expenses in connection with the prosecution of this case. Attached as **Exhibit B** is an itemized list of those costs and expenses. These costs and expenses are reflected in the records of my firm, and were necessary to prosecute this litigation. Cost and expense items are billed separately, and such charges are not duplicated in my firm's billing rates.

34. Attached hereto as **Exhibit C** is a current firm resume for Bursor & Fisher, P.A.

35. As aforementioned, my firm, Bursor & Fisher, P.A., has significant experience in litigating class actions of similar size, scope, and complexity to the instant action. (See **Ex. C**; Firm Resume of Bursor & Fisher, P.A.). We were Class Counsel in *Moeller v. American Media, Inc.*, Case No. 16-cv-11367-JEL (E.D. Mich.), a case brought under the PPPA wherein we reached a class-wide settlement for \$7.6 million. We were also Class Counsel in *Kokoszki v. Playboy Enterprises, Inc.*, Case No. 19-cv-10302-BAF (E.D. Mich.), a case brought under the PPPA wherein we reached a class-wide settlement for \$3.85 million. We were also Class Counsel in *Taylor v. Trusted Media Brands, Inc.*, Case No. 16-cv-01812-KMK (S.D.N.Y.), a case brought under the PPPA wherein we reached a class-wide settlement for \$8.225 million. We were Class Counsel in *Ruppel v.*

*Consumers Union of United States, Inc.*, Case No. 16-cv-02444-KMK (S.D.N.Y.), a case brought under the PPPA wherein we reached a class-wide settlement for \$16.375 million. We were Class Counsel in *Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast*, Case No. 15-cv-05671-NRB (S.D.N.Y.), a case brought under the PPPA wherein we reached a class-wide settlement for \$13.75 million. We were Class Counsel in *Edwards v. Hearst Communications, Inc.*, Case No. 15-cv-09279-AT (S.D.N.Y.), a case brought under the PPPA wherein we reached a class-wide settlement for \$50 million.

36. Recently, we were appointed Class Counsel in another PPPA case – *Loftus v. Outside Integrated Media, LLC*, Case No. 2:21-cv-11809 (E.D. Mich.) – where The Honorable Mark A. Goldsmith approved our request for 35% of the settlement fund in attorneys’ fees, costs, and expenses, while commending our work and noting that “the class has benefited in a concrete way” from the “very effective work” done by Plaintiff’s counsel. *See* August 9, 2022, Hearing Transcript at 7:9-8:2 (approving Class Counsel’s attorneys’ fees request of 35 percent “where the lawyers did produce significant results for the class in very short order”). Attached hereto as **Exhibit D** is a true and correct copy of the August 9, 2022, Final Approval Hearing Transcript in *Loftus*. Similarly, in *Kain v. The Economist Newspaper NA, Inc.*, Case No. 4:21-cv-11807-MFL-CI (E.D. Mich.), as Class Counsel in another PPPA case, we were awarded 35% of the \$9.5

million settlement fund in attorneys' fees, costs, and expenses.

37. Additionally, my firm has also been recognized by courts across the country for its expertise in consumer class action lawsuits. (*See Ex. C*); *see also Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561, 566 (S.D.N.Y. Feb. 25, 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.”)<sup>1</sup>; *In re Michaels Stores Pin Pad Litigation*, Case No. 11-cv-03350, ECF No. 22 (N.D. Ill. June 8, 2011) (appointing Bursor & Fisher class counsel to represent a putative nationwide class of consumers who made in-store purchases at Michaels using a debit or credit card and had their private financial information breached as a result).

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

39. I am of the opinion that Ms. Moeller's active involvement in this case was critical to its ultimate resolution. She took her role as class representative seriously, devoting time and effort to protecting the interests of the class. Without

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<sup>1</sup> Bursor & Fisher has since won a sixth jury verdict in *Perez v. Rash Curtis & Associates*, Case No. 4:16-cv-03396-YGR (N.D. Cal.), for \$267 million.

her willingness to assume the risks and responsibilities of serving as class representative, I do not believe such a strong result could have been achieved.

40. Ms. Moeller equipped my firm with critical details regarding her experiences with Defendant. She assisted my firm in investigating her claims, detailing her subscription histories, searching for and preserving documents, and aiding in drafting the SAC. Ms. Moeller also actively participated in the initial steps for document discovery and for deposition preparation. And she actively consulted with counsel during the settlement process.

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

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

Executed this 10th day of April 2023 at New York, New York.

*/s Philip L. Fraietta*  
Philip L. Fraietta

**EXHIBIT A**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

ELIZABETH MOELLER, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

THE WEEK PUBLICATIONS, INC.,

Defendant.

Case No. 22-cv-10666-TLL-PTM

**CLASS ACTION SETTLEMENT AGREEMENT**

This Agreement (“Agreement” or “Settlement Agreement”) is entered into by and among (i) Plaintiff, Elizabeth Moeller (“Plaintiff”); (ii) the Settlement Class (as defined herein); and (iii) Defendant, The Week Publications, Inc. (“Defendant” or “The Week”). The Settlement Class and Plaintiff are collectively referred to as the “Plaintiffs” unless otherwise noted. The Plaintiff and the Defendant are collectively referred to herein as the “Parties.” This Agreement is intended by the Parties to fully, finally and forever resolve, discharge, and settle the Released Claims (as defined herein), upon and subject to the terms and conditions of this Agreement, and subject to the final approval of the Court.

**RECITALS**

A. On March 28, 2022, Mr. Colin Custard filed a putative class action in the United States District Court for the Eastern District of Michigan. The material allegations of the complaint centered on Defendant’s alleged disclosure of its customers’ personal information and magazine choices to third parties before July 30, 2016, which Mr. Custard claimed was without permission and in violation of Michigan’s Preservation of Personal Privacy Act, H.B. 5331, 84th Leg. Reg. Sess., P.A. No. 378 §§ 1-4, *id.* § 5, added by H.B. 4694, 85th Leg. Reg. Sess., P.A.

No. 206, § 1 (Mich. 1989) (the “PPPA”). (Dkt. 1.)

B. On August 5, 2022, Mr. Custard filed a First Amended Complaint making the same allegations and adding Frederick Vogt and Ella Norman as named plaintiffs in the putative class action (Dkt. 11).

C. In connection with this Settlement Agreement, prior to the filing of the Motion for Preliminary Approval, Plaintiff Moeller will file a Second Amended Complaint substituting for Mr. Custard, Mr. Vogt, and Ms. Norman as Class Representative, and Defendant consents to the filing of a Second Amended Complaint.

D. From the outset of the case, the Parties engaged in direct communication, and as part of their obligation under Fed. R. Civ. P. 26, discussed the prospect of resolution. To that end, before Defendant would answer or otherwise respond to the First Amended Complaint, the Parties agreed to participate in a mediation with former United States District Judge Gerald E. Rosen (of the U.S. District Court for the Eastern District of Michigan), who is a neutral mediator affiliated with JAMS Detroit.

E. The Parties sought and obtained stays of all case deadlines to accommodate the mediation (Dkt. 13).

F. In advance of the mediation, the Parties exchanged informal discovery, including on the size and scope of the putative class, which includes approximately 13,033 persons, and also exchanged lengthy mediation briefing pertaining to the merits of the case, including the applicable statute of limitations.

G. On October 24, 2022, the Parties participated in a mediation with Judge Rosen. The mediation lasted approximately 9 hours. At the conclusion of the mediation, the Parties



reached an agreement on all material terms of a class action settlement and executed a term sheet.

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

I. Plaintiff believes that the claims asserted in the Action against Defendant have merit and that he would have prevailed at summary judgment and/or trial. Nonetheless, Plaintiff and Class Counsel recognize that Defendant has raised factual and legal defenses that present a risk that Plaintiff may not prevail. Plaintiff and Class Counsel also recognize the expense and delay associated with continued prosecution of the Action against Defendant through a motion to dismiss, summary judgment, class discovery, class certification, trial, and any subsequent appeals. Plaintiff and Class Counsel also have taken into account the uncertain outcome and

risks of litigation, especially in complex class actions, as well as the difficulties inherent in such litigation. Therefore, Plaintiff believes it is desirable that the Released Claims be fully and finally compromised, settled, and resolved with prejudice. Based on its evaluation, Class Counsel has concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate to the Settlement Class, and that it is in the best interests of the Settlement Class to settle the claims raised in the Action pursuant to the terms and provisions of this Agreement.

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

### **AGREEMENT**

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

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

**1.1** “**Action**” means *Moeller v. The Week Publications, Inc.*, Case No. 22-cv-10666-TLL-PTM, pending in the United States District Court for the Eastern District of Michigan.

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

**1.3** “**Cash Award**” means the cash compensation, payable by the Settlement Administrator from funds provided by Defendant on a pro rata basis, that each Settlement Class

Member who has not opted-out of the Settlement shall be entitled to receive, which estimated amount shall be specified in the Notice. Settlement Class Members shall have the option to elect to receive their Cash Awards via check, PayPal, or Venmo, provided however that the default payment method shall be check.

**1.4 “Claim Deadline”** means 11:59 p.m., Eastern Time, on the date by which Unidentified Class Members must submit Claim Forms (either electronically on the Settlement Website or by mailing in a paper Claim Form) to be eligible for the benefits described herein, which date and time shall be specified in the Notice.

**1.5 “Claim Form”** means the claim form attached hereto as Exhibit D, or its substantially similar form, as approved by the Court, that any Unidentified Class Members must complete and submit on or before the Claim Deadline to be eligible for the benefits described herein, which document shall be submitted to the Court when preliminary approval of the Settlement is sought.

**1.6 “Class Counsel”** means Joseph I. Marchese and Philip L. Fraietta of Bursor & Fisher, P.A., Frank S. Hedin and Arun G. Ravindran of Hedin Hall LLP, and E. Powell Miller of The Miller Law Firm, P.C.

**1.7 “Class List”** means an electronic list or lists from Defendant’s available records that includes the names, last known U.S. Mail addresses, and email addresses, to the extent available, belonging to Persons within the Settlement Class, which shall be provided to the Settlement Administrator with a copy to Class Counsel in accordance with Paragraph 4.1(a).

**1.8 “Class Representative”** means the named Plaintiff in this Action, Elizabeth Moeller.

**1.9** “**Court**” means the United States District Court for the Eastern District Michigan, the Honorable Thomas L. Ludington presiding, or any judge who shall succeed him as the Judge in this Action.

**1.10** “**Defendant**” means The Week Publications, Inc.

**1.11** “**Defendant’s Counsel**” means Walter E. Diercks of Rubin, Winston, Diercks, Harris & Cooke, LLP.

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

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

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

**1.15** “**Final**” means one business day following the latest of the following events: (i) the date upon which the time expires for filing or noticing any appeal of the Court’s Final Judgment approving the Settlement Agreement; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award, the date of completion, in a manner that finally affirms and leaves in place the Final Judgment without any material modification, of all

proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or *certiorari*, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on *certiorari*.

**1.16 “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 service award to the Class Representative.

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

**1.18 “Michigan Subscriber Information”** means the combination of each of a Person’s name, address in the State of Michigan and the title(s) and/or interest information derived solely from the title of *The Week* to which such Person currently subscribes and/or previously subscribed.

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

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

**1.21 “Objection/Exclusion Deadline”** means the date by which a written objection to this Settlement Agreement or a request for exclusion submitted by a Person within the Settlement Class must be made, which shall be designated as a date no later than forty-five (45) days after

the Notice Date and no sooner than fourteen (14) days after papers supporting the Fee Award are filed with the Court and posted to the settlement website listed in Paragraph 4.1(d), or such other date as ordered by the Court.

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

**1.23** “**Plaintiffs**” means Elizabeth Moeller and the Settlement Class Members.

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

**1.25** “**Preliminary Approval Order**” means the order preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes, and directing notice thereof to the Settlement Class, which will be agreed upon by the Parties and submitted to the Court in conjunction with Plaintiffs’ motion for preliminary approval of the Agreement.

**1.26** “**Released Claims**” means any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action, contracts or agreements, extra contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, attorneys’ fees and or obligations (including “Unknown Claims,” as defined below), whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, whether based on the PPPA or other state, federal, local, statutory or common law or any other law, rule or regulation, against the Released Parties, or any of them, arising out of any facts, transactions,

events, matters, occurrences, acts, disclosures, statements, representations, omissions or failures to act regarding the alleged disclosure of the Settlement Class Members' personal information or Michigan Subscriber Information, including but not limited to all claims that were brought or could have been brought in the Action relating to any and all Releasing Parties.

**1.27 “Released Parties”** means The Week Publications, Inc., as well as any and all of its respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, licensors, licensees, associates, affiliates, employers, agents, consultants, independent contractors, including without limitation employees of the foregoing, owners, 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, including without limitation Future US, LLC

**1.28 “Releasing Parties”** means Plaintiff, those Settlement Class Members who do not timely opt out of the Settlement Class, and all of their respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, associates, affiliates, employers, employees, agents, consultants, independent contractors, 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.

**1.29 “Settlement Administration Expenses”** means the expenses incurred by the Settlement Administrator in providing Notice (including CAFA notice), processing claims, responding to inquiries from members of the Settlement Class, mailing checks, and related

services, paying taxes and tax expenses related to the Settlement Fund (including all federal, state or local taxes of any kind and interest or penalties thereon, as well as expenses incurred in connection with determining the amount of and paying any taxes owed and expenses related to any tax attorneys and accountants), as well as all expenses related to the resolution of any disputed claims by Judge Rosen (as described below in Paragraph 5.3).

**1.30 “Settlement Administrator”** means JND Legal Administration, or such other reputable administration company that has been selected jointly by the Parties and approved by the Court to perform the duties set forth in this Agreement, including but not limited to serving as Escrow Agent for the Settlement Fund, overseeing the distribution of Notice, as well as the processing and payments to the Settlement Class as set forth in this Agreement, handing all approved payments out of the Settlement Fund, and handling the determination, payment and filing of forms related to all federal, state and/or local taxes of any kind (including any interest or penalties thereon) that may be owed on any income earned by the Settlement Fund. Class Counsel’s assent to this Agreement shall constitute consent on behalf of each and every member of the Settlement Class as defined herein to disclose all information required by the Settlement Administrator to perform the duties and functions ascribed to it herein, consistent with the written consent provisions of the PPPA.

**1.31 “Settlement Class”** means all Persons who purchased a subscription directly from the publisher of *The Week* for delivery to a Michigan street address, and who subscribed to such publication between December 17, 2015, and July 31, 2016. Excluded from the Settlement Class are (1) all Persons whose subscription information was not disclosed to third parties, including without limitation to Persons who were on Defendant’s “do not rent list;” (2) any Judge or Magistrate presiding over this Action and members of their families; (3) the Defendant,



Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers, directors, agents, attorneys, and employees; (4) persons who properly execute and file a timely request for exclusion from the class; and (5) the legal representatives, successors or assigns of any such excluded persons.

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

**1.33 “Settlement Fund”** means the non-reversionary cash fund that shall be established by Defendant in the total amount of five million eighty-two thousand eight hundred and seventy dollars (\$5,082,870.00 USD) to be deposited into the Escrow Account, according to the schedule set forth herein, plus all interest earned thereon. From the Settlement Fund, the Settlement Administrator shall pay all Cash Awards to Settlement Class Members, Settlement Administration Expenses, any service award to the Class Representative, any Fee Award to Class Counsel, and any other costs, fees or expenses approved by the Court. The Settlement Fund shall be kept in the Escrow Account with permissions granted to the Settlement Administrator to access said funds until such time as the listed payments are made. The Settlement Fund includes all interest that shall accrue on the sums deposited in the Escrow Account. The Settlement Administrator shall be responsible for all tax filings with respect to any earnings on the Settlement Fund and the payment of all taxes that may be due on such earnings. The Settlement Fund represents the total extent of Defendant's monetary obligations under this Agreement. The payment of the Settlement Amount by Defendant fully discharges the Defendant and the other Released Parties' financial obligations (if any) in connection with the Settlement, meaning that no Released Party shall have any other obligation to make any payment into the Escrow Account

or to any Class Member, or any other Person, under this Agreement. The total monetary obligation with respect to this Agreement shall not exceed five million eighty-two thousand eight hundred and seventy dollars (\$5,082,870.00 USD), unless the final count of Settlement Class Members on the Class List following de-duplication by the Settlement Administrator exceeds 13,033 Persons, in which case Defendant shall increase the Settlement Fund by \$390 per additional Settlement Class Member.

**1.34 “Settlement Website”** means the dedicated website created and maintained by the Settlement Administrator, which will contain relevant documents and information about the Settlement, including the Settlement Agreement, the long-form Notice and the Claim Form, as well as web-based forms for Settlement Class Members and Unidentified Class Members to submit electronic Claim Forms, requests for exclusion from the Settlement, elections to receive Cash Awards by PayPal or Venmo, or updated postal addresses to which Cash Awards should be sent after the Settlement becomes Final.

**1.35 “Unidentified Class Member”** means a member of the Settlement Class for whom the Settlement Administrator has *not* been able to identify a postal address that it determines is reasonably likely to be the current place of residence for such member of the Settlement Class.

**1.36 “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 shall be deemed to have, and shall have, expressly waived

and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of § 1542 of the California Civil Code, which provides as follows:

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

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

## **2. SETTLEMENT RELIEF.**

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

(a) Defendant shall pay into the Escrow Account the amount of the Settlement Fund (\$5,082,870.00), specified in Paragraph 1.33 of this Agreement, within twenty-eight (28) days after Preliminary Approval.

(b) Each Settlement Class Member shall receive as a Cash Award a *pro rata* portion of the Settlement Fund, calculated by the Settlement Administrator, after deducting all Settlement Administration Expenses, any Fee Award to Class Counsel, any service award to the Class Representative, and any other costs, fees, or expenses approved by the Court, unless the Settlement Class Member excludes himself or herself from the Settlement.

(c) Except for any Settlement Class Member for whom the Settlement Administrator is unable to identify a postal address or e-mail address that it determines is reasonably likely to be the current place of residence (or an active e-mail address) for such Settlement Class Member, after taking measures reasonably necessary to identify such an address (as detailed further in Paragraph 4.1(b)), each Settlement Class Member will be sent via U.S. postal mail (and/or e-mail to the extent a postal address is unavailable for a Settlement Class Member) a copy of the Class Notice, which will also indicate the estimated amount of the Cash Award that the Settlement Class Member will be paid upon final approval of the Settlement unless the Settlement Class Member opts out of the Settlement.

(d) *Payments to Identified Settlement Class Members.* After final approval of the Settlement, a direct payment by check will be made to each Settlement Class Member who did not exclude himself or herself and for whom at least one postal address has been identified by the Settlement Administrator that the Settlement Administrator concludes is reasonably likely to reflect the current residence of such Settlement Class Member, after taking measures reasonably necessary to identify such an address, as set forth more fully in Paragraph 4.1(b); to the extent multiple such postal addresses are identified by the Settlement Administrator for a particular Settlement Class Member, such check shall be sent to the address that the Settlement Administrator concludes is the most likely among such multiple addresses to reflect the current residence of such Settlement Class Member. The foregoing direct payment procedure shall apply for all Settlement Class Members for whom a postal address has been identified unless: (i) the Settlement Class Member submits an updated address to which their check should be sent on a web-based form on the Settlement Website, in which case such check will be sent to the updated address that was provided, or (ii) the Settlement Class Members elects to receive

payment by PayPal or Venmo by following the procedures on the Settlement Website to make such a request.

(e) *Payments to Unidentified Class Members.* To the extent the Settlement Administrator is unable to identify at least one postal address for any Settlement Class Member that the Settlement Administrator concludes is reasonably likely to reflect the current residence of such Settlement Class Member, then in that event, and only in that event, shall any such Settlement Class Member be required to submit, as clearly explained in the website Notice and the e-mail Notice(s) that the Settlement Administrator will have attempted to send such Settlement Class Member, a qualifying claim form that will include their (1) name; (2) postal address at which they subscribed to *The Week*; (3) postal address to which their check shall be sent or instructions for payment via PayPal or Venmo; and (4) a telephone number and/or email address at which the Settlement Administrator may contact him or her to obtain any additional information that may be required to verify such Person's claim.

(f) Each check issued will state on its face that the check will expire and become null and void unless cashed within 180 Days of the date of issuance. To the extent that a check issued to a Settlement Class Member is not cashed within 180 Days after the date of issuance (which issuance shall be no sooner than 5 Days prior to such check's mailing), the check will be void. Payments to all Settlement Class Members who do not exclude themselves from the Settlement shall be made within twenty-eight (28) days after Final Judgment.

(g) To the extent that any checks issued to a Settlement Class Member are not cashed within one-hundred eighty (180) days after the date of issuance, such uncashed check funds shall be redistributed on a *pro rata* basis (after first deducting any necessary settlement administration expenses from such uncashed check funds) to all Settlement Class Members who

cash checks during the initial distribution, but only to the extent each Settlement Class Member would receive at least \$5.00 in any such secondary distribution and if otherwise feasible. To the extent each Settlement Class Member would receive less than \$5.00 in any such secondary distribution or if a secondary distribution would be otherwise infeasible, any uncashed check funds shall, subject to Court approval, revert to the Michigan Bar Foundation's Access to Justice Fund, a non-sectarian, not-for-profit organization, or another non-sectarian, not-for-profit organization(s) recommended by Class Counsel and approved by the Court.

(h) Subject to the provisions pertaining to the termination or cancellation of the Settlement, as set forth in Paragraph 9, no portion of the Settlement Fund shall revert back to Defendant.

**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.

**4. NOTICE TO THE CLASS.**

4.1 The Notice Plan shall consist of the following:

(a) *Settlement Class List.* No later than twenty-eight (28) days after the execution of this Agreement, Defendant shall, to the best of its ability, produce an electronic list or lists from its available records that includes the names, last known U.S. Mail addresses, and email addresses, to the extent available, belonging to Persons within the Settlement Class. Class Counsel's assent to this Agreement shall constitute consent on behalf of each and every member of the Settlement Class as defined herein to disclose this information as stated in this paragraph,

consistent with the written consent provisions of the PPPA. This electronic document shall be called the “Class List,” and shall be provided to the Settlement Administrator with a copy to Class Counsel.

**(b)** *Method for Providing Notice.*

**i.** The Notice shall provide information to each Settlement Class Member regarding (a) the specific amount of the Cash Award that will be paid to each Settlement Class Member upon final approval; (b) the requirements for the filing of Claim Forms by any Unidentified Settlement Class Members; (c) the amount of the Service Award and the Fee Award to be requested by Plaintiff and Class Counsel; (d) the Objection/Exclusion Deadline and the requirements and process for filing an objection to or a request for exclusion from the Settlement; and (e) the URL of the Settlement Website, where additional information and documents concerning the Settlement may be obtained.

**ii.** For every Settlement Class Member for whom the Settlement Administrator has been able to identify a postal address that it concludes has a reasonable likelihood of reflecting the current residence of such Settlement Class Member, as identified by the Settlement Administrator after taking measures reasonably necessary to identify such an address, the Settlement Administrator shall send the Notice to the Settlement Class Member at such address via postal mail.

**iii.** To the extent multiple postal addresses are identified by the Settlement Administrator as having a reasonable likelihood of reflecting the current residence of a particular Settlement Class Member, Notice shall be sent to all such postal addresses, and each such Notice shall indicate the address to which the Settlement Class Member’s Cash Award check will be sent by check at the conclusion of the Settlement administration process; such

address shall be the one that the Settlement Administrator concludes is the most likely among such multiple addresses to reflect the current residence of such Settlement Class Member.

**iv.** For any Settlement Class Member for whom the Settlement Administrator is unable to identify at least one postal address that it concludes has a reasonable likelihood of reflecting the current residence of such Settlement Class Member, the Notice will be delivered to any and all e-mail addresses specified in the Class List or otherwise identified by the Settlement Administrator as being reasonably likely to belong to such Settlement Class Member (after taking measures reasonably necessary to identify such e-mail address(es)).

**v.** If any Notice sent to a Settlement Class Member is returned as undeliverable, the Settlement Administrator shall redeliver the Notice to any alternative postal address(es) identified by the Settlement Administrator as having a reasonable likelihood of being the current place of residence for such Settlement Class Member (or, if none is available, to any e-mail address(es) believed to belong to the Settlement Class Member), after taking measures reasonably necessary to locate such addresses.

**(c)** *Settlement Website.* Within ten (10) days from entry of the Preliminary Approval Order, Notice shall be provided on a website at an available settlement URL (such as, for example, [www.theweeksettlement.com](http://www.theweeksettlement.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 C hereto.

**(d)** *CAFA Notice.* Pursuant to 28 U.S.C. § 1715, not later than ten (10) days after the Agreement is filed with the Court, the Settlement Administrator shall cause to be served



upon the Attorney General of the United States, and any other required government officials, notice of the proposed settlement as required by law, subject to Paragraph 5.1 below.

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

**4.3** Any Settlement Class Member who intends to object to this Agreement must present on a timely basis pursuant to the Court's anticipated Order preliminarily approving the settlement the objection in writing, 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, including the title of the publication to which he or she is or was a subscriber; (3) all grounds for the objection, including all citations to legal authority and evidence supporting the objection; (4) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the "Objecting Attorneys"); and (5) a statement indicating whether the objector intends to

appear at the Final Approval Hearing (either personally or through counsel who files an appearance with the Court in accordance with the Local Rules).

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

**4.5** A Settlement Class Member may request to be excluded from the Settlement Class by sending a timely written request postmarked on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice. To exercise the right to be excluded, a Person in the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing (1) his/her name and address; (2) the title of the publication to which he or she is a subscriber; (3) a signature; (4) the name and number of the case; (5) and a statement that he or she wishes to be excluded from the Settlement Class for purposes of this Settlement. A request to be excluded that does not include all of this information, or that is sent to an address other than that designated in the Notice, or that is not postmarked within the time specified, shall be invalid, and the Person(s) serving such a request shall be a member(s) of the Settlement Class and shall be bound as a Settlement Class Member by this Agreement, if approved. Any member of the Settlement Class who validly elects to be excluded from this Agreement shall not: (i) be bound by any orders or the Final Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be entitled to object to any aspect of this Agreement. The request for exclusion must be personally signed by each Person requesting exclusion. So-called “mass” or “class” opt-outs shall not be

allowed. To be valid, a request for exclusion must be postmarked or received by the date specified in the Notice.

**4.6** The Final Approval Hearing shall be no earlier than ninety (90) days after the Notice described in Paragraph 4.1 is provided.

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

**5. SETTLEMENT ADMINISTRATION.**

**5.1** The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Settlement Agreement by processing Claim Forms submitted by Unidentified Class Members, processing requests for exclusion from the Settlement, and disbursing funds from the Settlement Fund 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) Forward to Defendant's Counsel, with copies to Class Counsel, all original documents and other materials received in connection with the administration of the Settlement, and all copies thereof, within thirty (30) days after the date on which all Claim Forms have been finally approved or disallowed in accordance with the terms of this Agreement;

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

(c) Receive Claim Forms from Unidentified Class Members and promptly provide to Class Counsel and Defendant's counsel copies thereof. If the Settlement Administrator receives any Claim Forms after the Claim Deadline, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant's Counsel;

(d) Receive requests to be excluded from the Settlement Class and other requests and promptly provide to Class Counsel and Defendant's Counsel copies thereof, along with a weekly report of the number of such requests received. 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 and await guidance from Counsel as to treatment thereof;

(e) 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

(f) 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. In the event a Person submits a timely Claim Form by the Claims Deadline where the Person appears on the Class List but the Claim Form is not otherwise complete, then the Settlement Administrator shall give such Person one (1) reasonable opportunity to provide any requested missing information, which information must be received by the Settlement Administrator no later than thirty (30) calendar days after the Claims Deadline. In the event the Settlement Administrator receives such information more than thirty (30) days after the Claims Deadline, then any such claim shall be denied. The Settlement Administrator may contact any Person who has submitted a Claim Form to obtain additional information necessary to verify the Claim Form.

**5.3** Defendant's Counsel and Class Counsel shall have the right to challenge the acceptance or rejection of a Claim Form submitted by an Unidentified Settlement Class Member, as well as any request for exclusion. 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 or request for exclusion. 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 Honorable Gerald E. Rosen (Ret.) of JAMS Detroit for a binding determination. Judge Rosen will charge his JAMS hourly rate for providing such services to the Settlement Class, and all expenses related thereto will be paid by the Settlement Administrator from the Settlement Fund.

**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 Settlement 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 Settlement Funds to Settlement Class Members or the implementation, administration, 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 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.

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

**6. TERMINATION OF SETTLEMENT.**

**6.1** Subject to Paragraphs 9.1-9.3 below, Defendant or the Class Representative on behalf of the Settlement Class, shall have the right to terminate this Agreement by providing written notice of the election to do so (“Termination Notice”) to all other Parties hereto within twenty-one (21) days of any of the following events: (i) the Court’s refusal to grant Preliminary Approval of this Agreement in any material respect; (ii) the Court’s refusal to grant final approval of this Agreement in any material respect; (iii) the Court’s refusal to enter the Final Judgment in this Action in any material respect; (iv) the date upon which the Final Judgment is modified or reversed in any material respect by an Appellate Court or the Supreme Court; or (v) the date upon which an Alternate Judgment, as defined in Paragraph 9.1(d) of this Agreement is modified or reversed in any material respect by the Court of Appeals or the Supreme Court.

**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, 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, which will among other things:

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

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



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

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

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

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

(g) permanently bar and enjoin all Settlement Class Members who have not been properly excluded from the Settlement Class from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in, any lawsuit or other action in any jurisdiction based on the Released Claims;

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

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

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

**8.1** Defendant agrees that Class Counsel is entitled to reasonable attorneys’ fees and unreimbursed expenses incurred as the Fee Award from the Settlement Fund. The amount of the Fee Award shall be determined by the Court based on petition from Class Counsel. Class Counsel has agreed, with no consideration from Defendant, to limit their request for attorneys’ fees and unreimbursed expenses to thirty-five percent (35%) of the Settlement Fund. Defendant may challenge the amounts requested. 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 Section shall remain in the Settlement Fund.

**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 Exhibits E-1, E-2, and E-3, and providing all payment routing information and tax I.D. numbers for Class Counsel. Payment of the Fee Award shall be made from the Settlement Fund by wire transfer to Class Counsel, in accordance with the instructions to be jointly provided by Class Counsel, after completion of necessary forms by Class Counsel, including but not limited to W-9 forms. Notwithstanding the foregoing, if for any reason the Final Approval Order is reversed or rendered void as a result of an appeal(s) then any persons or firms who shall have received such funds shall be severally liable for payments made pursuant to this subparagraph, and shall return such funds to the Defendant, based upon written instructions provided by Defendant’s Counsel. To effectuate this provision, Bursor & Fisher, P.A., Hedin Hall LLP, and The Miller Law Firm,

P.C. shall each execute a guarantee of repayment in the forms attached hereto as Exhibits E-1, E-2, and E-3. Additionally, should any parties to the Undertaking dissolve, merge, declare bankruptcy, become insolvent, or cease to exist prior to the final payment to Class Members, those parties shall execute a new undertaking guaranteeing repayment of funds within fourteen (14) days of such an occurrence.

**8.3** In addition to any payment to which she may be entitled under this Agreement, and in recognition of the time and effort she expended on behalf the Settlement Class, the Class Representative shall be paid an incentive award of five thousand dollars (\$5,000), subject to the Court's approval. 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. Such award shall be paid from the Settlement Fund (in the form of a check to the Class Representative that is sent to the 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 each of the following events occurs and shall be the date upon which the last (in time) of the following events occurs:

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

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

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

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

9.2 If some or all of the conditions specified in Paragraph 9.1 are not met, or in the event that this Agreement is not approved by the Court, or the settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, then this Settlement Agreement shall be canceled and terminated subject to 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, the attorneys' fees payment to Class Counsel and/or the service award 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 and 9.1-9.2 above, the Parties shall be restored to their respective positions in the Action as of the date of the signing of this Agreement, unless Class Counsel and Defendant's Counsel mutually agree in writing to proceed with the Agreement. In such event, any Final Judgment or other order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the Action as if this Agreement had never been entered into. Within five (5) business days after written notification of termination as provided in this

Agreement is sent to the other Parties, the Settlement Fund (including accrued interest thereon), less any Settlement Administration costs actually incurred, paid or payable and less any taxes and tax expenses paid, due or owing, shall be refunded by the Settlement Administrator to Defendant based upon written instructions provided by Defendant's Counsel. In the event that 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. In the event the attorney fees and costs awarded by the Court or any part of them are vacated, modified, reversed, or rendered void as a result of an appeal, 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 Representative Plaintiff 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 Plaintiff, the Settlement Class and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand. Accordingly, the Parties agree not to assert in any forum that the Action was brought by Plaintiffs or defended by Defendant, or each or any of them, in bad faith or without a reasonable basis. Nothing herein, however, shall be construed to prevent any employee of Defendant or any Released Party, or any independent contractor working in a reporting or newsgathering capacity for Defendant or any Released Party, from reporting on the Action or this Settlement.

**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;

(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 (including but not limited to the definitions of Michigan Subscriber Information and Settlement Class) as against any Released Parties, or supporting the certification of a litigation class, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. However, the settlement, this Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Agreement and/or Settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Agreement. Further, if this Settlement Agreement is approved by the Court, any Party or any of the Released Parties may file this Agreement and/or the Final Judgment in any action that may be brought against such Party or Parties in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good

faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim;

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

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

**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 Plaintiff, any person in the Settlement Class, or any other person to establish any of the elements of class certification in any litigated certification proceedings, whether in the Action or any other judicial proceeding.

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

**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, 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 and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations,

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

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

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

**10.14** 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 laws of the State of Michigan.

**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: Philip L. Fraietta, Bursor & Fisher, P.A., 888 Seventh Avenue, New York, NY 10019; Walter E. Diercks, Rubin, Winston, Diercks, Harris & Cooke, LLP, 1250 Connecticut Avenue, NW, Suite 700, Washington, DC 20036.

**[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK, SIGNATURE  
PAGE(S) TO FOLLOW]**

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

Dated: Nov 11, 2022

**ELIZABETH MOELLER**

By:   
Elizabeth Moeller (Nov 11, 2022 16:32 EST)

Elizabeth Moeller, individually and as representative of the Class

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

**THE WEEK PUBLICATIONS, INC.**

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

Name

Its:

The Week Publications, Inc.

**IT IS SO STIPULATED BY COUNSEL:**

Dated: November 11, 2022

**BURSOR & FISHER, PA**

By: 

Joseph I. Marchese

[jmarchese@bursor.com](mailto:jmarchese@bursor.com)

Philip L. Fraietta

[pfraietta@bursor.com](mailto:pfraietta@bursor.com)

BURSOR & FISHER, PA

888 Seventh Avenue

New York, New York 10019

Tel: (646) 837-7150

Fax: (212) 989-9163

Frank S. Hedin

[fhedin@hedinhall.com](mailto:fhedin@hedinhall.com)

Arun G. Ravindran

[aravindran@hedinhall.com](mailto:aravindran@hedinhall.com)

HEDIN HALL LLP

1395 Brickell Avenue, Suite 1140

Miami, Florida 33131

Tel: (305) 357-2107  
Fax: (305) 200-8801

E. Powell Miller  
epm@millerlawpc.com  
THE MILLER LAW FIRM, P.C.  
950 W. University Drive, Suite 300  
Rochester, MI 48307  
Tel: (248) 841-2200

*Attorneys for Class Representative and the  
Settlement Class*

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

**RUBIN, WINSTON, DIERCKS, HARRIS & COOKE, LLP**

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

Walter E. Diercks  
wdiercks@rwdhc.com  
RUBIN, WINSTON, DIERCKS, HARRIS & COOKE, LLP  
1250 Connecticut Avenue, NW, Suite 700  
Washington, DC 20036  
Tel: (202) 861-0870

*Attorney for Defendant The Week Publications, Inc.*

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

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

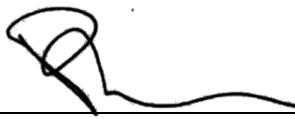
**ELIZABETH MOELLER**

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

Elizabeth Moeller, individually and as representative of the Class

Dated: 21 November 2022

**THE WEEK PUBLICATIONS, INC.**

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

Name Penny Ladkin-Brand  
Its: CFO  
The Week Publications, Inc.

**IT IS SO STIPULATED BY COUNSEL:**

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

**BURSOR & FISHER, PA**

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

Joseph I. Marchese  
jmarshese@bursor.com  
Philip L. Fraietta  
pfraietta@bursor.com  
BURSOR & FISHER, PA  
888 Seventh Avenue  
New York, New York 10019  
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epm@millerlawpc.com  
THE MILLER LAW FIRM, P.C.  
950 W. University Drive, Suite 300  
Rochester, MI 48307  
Tel: (248) 841-2200

*Attorneys for Class Representative and the  
Settlement Class*

Dated: November 17, 2022

**RUBIN, WINSTON, DIERCKS, HARRIS & COOKE, LLP**

By: 

Walter E. Diercks  
wdiercks@rwdhc.com  
RUBIN, WINSTON, DIERCKS, HARRIS & COOKE, LLP  
1250 Connecticut Avenue, NW, Suite 700  
Washington, DC 20036  
Tel: (202) 861-0870

*Attorney for Defendant The Week Publications, Inc.*

**EXHIBIT A**



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

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**  
*Moeller v. The Week Publications, Inc.*, Case No. 1:22-cv-10666-TLL-PTM  
(United States District Court for the Eastern District of Michigan)

This notice is to inform you of the settlement of a class action lawsuit with publisher The Week Publications, Inc. (“Defendant” or “The Week”), the Defendant in this case. Plaintiff Elizabeth Moeller alleges that Defendant disclosed its customers’ subscription information to third parties which is alleged to violate Michigan privacy law.

**Am I a Class Member?** Yes. Our records indicate you are a Class Member. Class Members are persons who purchased a subscription directly from the publisher of *The Week* for delivery to a Michigan street address, and who subscribed to such publication between December 17, 2015, and July 31, 2016. Excluded from the Settlement Class are (1) all Persons whose subscription information was not disclosed to third parties, including without limitation to Persons who were on Defendant’s “do not rent list;” (2) any Judge or Magistrate presiding over this Action and members of their families; (3) the Defendant, Defendant’s subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers, directors, agents, attorneys, and employees; (4) persons who properly execute and file a timely request for exclusion from the class; and (5) the legal representatives, successors or assigns of any such excluded persons.

**What Can I Get?** A Settlement Fund of \$5,082,870 has been established to pay all claims to the Settlement Class, together with notice and administration expenses, approved attorneys’ fees and costs to Class Counsel, and a service award to the Plaintiff. Unless you received a postcard Notice concerning the Settlement sent to you by postal mail, you **must** submit a Claim Form (see instructions below) in order to receive a share of the Settlement Fund. **If you submit a Claim Form**, you will receive a *pro rata* share of the Settlement Fund, which Class Counsel estimates to will be for approximately \$248 per class member. The exact amount of the share of the Settlement Fund that you will receive depends on the number of requests for exclusion that are received.

**How Do I Get a Payment?** Unless you received a postcard Notice concerning the Settlement sent to you by postal mail, you **must** complete and submit a Claim Form to receive a *pro rata* share of the Settlement Fund, which Class Counsel estimates will be approximately \$248. You may submit a Claim Form either electronically on the Settlement Website by clicking [here](#) [insert hyperlink], or by printing and mailing in a paper Claim Form, copies of which are available for download [here](#) [insert hyperlink]. 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 Class by sending a letter to the settlement administrator postmarked 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 the Defendant over the legal issues in the lawsuit. You and/or your lawyer have the right to

appear before the Court and/or object to the proposed settlement. Your written objection must be filed no later than [**objection/exclusion deadline**]. Specific instructions about how to object to, or exclude yourself from, the Settlement are available at [**www.TheWeekSettlement.com**]. 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 relating to the alleged disclosure of subscriber information in this case against the Defendant will be released.

**Who Represents Me?** The Court has appointed Joseph I. Marchese and Philip L. Fraietta of Bursor & Fisher, P.A., Frank S. Hedin and Arun G. Ravindran of Hedin Hall LLP, and E. Powell Miller of The Miller Law Firm, P.C. 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 United States Post Office Building, 1000 Washington Avenue, Room 214, Bay City, MI 48708. At that hearing, the Court will: hear any objections concerning the fairness of the settlement; determine the fairness of the settlement; decide whether to approve Class Counsel's request for attorneys' fees and costs; and decide whether to award the Class Representative \$5,000 from the Settlement Fund for her services in helping to bring and settle this case. Defendant 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 35% of the Settlement Fund, but the Court may award less than this amount.

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

**EXHIBIT B**

COURT AUTHORIZED NOTICE OF CLASS  
ACTION AND PROPOSED SETTLEMENT

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

OUR RECORDS  
INDICATE YOU HAVE  
SUBSCRIBED TO *THE*  
*WEEK* AND MAY BE  
ENTITLED TO A  
PAYMENT FROM A  
CLASS ACTION  
SETTLEMENT.



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]

**THE WEEK SETTLEMENT**

A settlement has been reached in a class action lawsuit claiming that Defendant, publisher The Week Publications, Inc. (“The Week”), disclosed its customers’ subscription information to third parties, which is alleged to violate Michigan privacy law.

**Am I a Class Member?** Our records indicate you are a Class Member. Class Members are persons who purchased a subscription directly from the publisher of *The Week* for delivery to a Michigan street address, and who subscribed to such publication between December 17, 2015, and July 31, 2016.

**What Can I Get?** If approved by the Court, a Settlement Fund of \$5,082,870.00 has been established to pay all claims to the Settlement Class, together with notice and administration expenses, approved attorneys’ fees and costs to Class Counsel, and a service award to Plaintiff. Once the Settlement becomes Final, you will receive a *pro rata* share of the Settlement Fund, which Class Counsel estimates will be approximately \$248 per class member, although the final amount you receive will also depend on the number of requests for exclusion submitted.

**How Do I Get a Payment?** If you are a Class Member, you will automatically receive a *pro rata* share of the Settlement Fund, so long as you do not request to be excluded from the Settlement Class. Your payment will come by check, sent to the following address: [insert Settlement Class Member’s address to which check will be sent]. If you no longer reside at this address or are planning to change addresses prior to [insert date 28 days after final approval hearing date], please complete and submit a change of address form accessible on the Settlement Website so that your check is sent to the correct address. If you wish to receive your payment via PayPal or Venmo, you may do so by submitting an Election Form on the Settlement Website.

**What are My Other Options?** You may exclude yourself from the 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 postmarked 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 the Defendant 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 [www.TheWeekSettlement.com](http://www.TheWeekSettlement.com). 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 relating to the alleged disclosure or subscriber information in this case against the Defendant and others will be released.

**Who Represents Me?** The Court has appointed The Court has appointed Joseph I. Marchese and Philip L. Fraietta of Bursor & Fisher, P.A., Frank S. Hedin and Arun G. Ravindran of Hedin Hall LLP, and E. Powell Miller of The Miller Law Firm, P.C. 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 United States Post Office Building, 1000 Washington Avenue, Room 214, Bay City, MI 48708. At that hearing, the Court will: hear any objections concerning the fairness of the settlement; determine the fairness of the settlement; decide whether to approve Class Counsel’s request for attorneys’ fees and costs; and decide whether to award the Class Representative \$5,000 from the Settlement Fund for her services in helping to bring and settle this case. Defendant has agreed to pay Class Counsel reasonable attorneys’ fees in an amount to be determined by the Court. Class Counsel is entitled to seek no more than 35% of the Settlement Fund, but the Court may award less than this amount.

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

XXX



**EXHIBIT C**

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN**  
*Moeller v. The Week Publications, Inc.*, Case No. 1:22-cv-10666-TLL-PTM

***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 publisher The Week Publications, Inc. (“The Week”). The class action lawsuit involves whether The Week disclosed its customers’ subscription information to third parties, which is alleged to violate Michigan privacy law.
- You are included if you purchased a subscription directly from the publisher of *The Week* for delivery to a Michigan street address, and who subscribed to such publication between December 17, 2015, and July 31, 2016. Excluded from the Settlement Class are (1) all Persons whose subscription information was not disclosed to third parties, including without limitation to Persons who were on Defendant’s “do not rent list;” (2) any Judge or Magistrate presiding over this Action and members of their families; (3) the Defendant, Defendant’s subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers, directors, agents, attorneys, and employees; (4) persons who properly execute and file a timely request for exclusion from the class; and (5) the legal representatives, successors or assigns of any such excluded persons.
- Those included in the Settlement will be eligible to receive a *pro rata* (meaning equal) portion of the Settlement Fund, which Class Counsel anticipates to be approximately \$248.
- Read this notice carefully. Your legal rights are affected whether you act, or don’t act.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>DO NOTHING</b>	You will receive a <i>pro rata</i> share of the Settlement benefits – estimated to be approximately \$248 – and will give up your rights to sue the Defendant about the claims in this case.
<b>EXCLUDE YOURSELF</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</b>	Write to the Court explaining why you don’t like the Settlement.
<b>GO TO THE HEARING</b>	Ask to speak in Court about your opinion of the Settlement.

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 Thomas L. Ludington, of the U.S. District Court for the Eastern District of Michigan, is overseeing this case. The case is called *Moeller v. The Week Publications, Inc.*, Case No. 1:22-cv-10666-TLL-PTM. The person who sued is called the Plaintiff. The Defendant is The Week Publications, Inc.

### 2. What is a class action?

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

### 3. What is this lawsuit about?

This lawsuit claims that Defendant violated Michigan’s Preservation of Personal Privacy Act, H.B. 5331, 84th Leg. Reg. Sess., P.A. No. 378 §§ 1-4, *id.* § 5, added by H.B. 4694, 85th Leg. Reg. Sess., P.A. No. 206, § 1 (Mich. 1989) (the “PPPA”), by disclosing information related to its customers’ magazine subscriptions to third parties before July 30, 2016. The Defendant denies it violated any law. 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 Plaintiff 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 Class Members will get compensation sooner rather than, if at all, after the completion of a trial.

## WHO’S INCLUDED IN THE SETTLEMENT?

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

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

All Persons who purchased a subscription directly from the publisher of *The Week* for delivery to a Michigan street address, and who subscribed to such publication between December 17, 2015, and July 31, 2016.

Excluded from the Settlement Class are (1) all Persons whose subscription information was not disclosed to third parties, including without limitation to Persons who were on Defendant's "do not rent list;" (2) any Judge or Magistrate presiding over this Action and members of their families; (3) the Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers, directors, agents, attorneys, and employees; (4) persons who properly execute and file a timely request for exclusion from the class; and (5) the legal representatives, successors or assigns of any such excluded persons.

## THE SETTLEMENT BENEFITS

### 6. What does the Settlement provide?

**Monetary Relief:** A Settlement Fund has been created totaling \$5,082,870.00. Class Member payments, and the cost to administer the Settlement, the cost to inform people about the Settlement, attorneys' fees (inclusive of litigation costs), and an award to the Class Representative will also come out of this fund (*see* Question 12).

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](#).  
[insert hyperlink]

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

The amount of this payment will depend on how many requests for exclusion are submitted. Each Class Member will receive a proportionate share of the Settlement Fund, which Class Counsel anticipates will be approximately \$248. You can contact Class Counsel at (646) 837-7150 to inquire as to the number of requests for exclusion that have been received to date.

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

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 payment 28 days after the Settlement has been finally approved and/or after any appeals process is complete. The payment will be made in the form of a check, and all checks will expire and become void 180 days after they are issued. Alternatively, you may request that the payment is issued through PayPal or Venmo (see Question 9 below for further details).

## HOW TO GET BENEFITS

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

If you are a Class Member who received a Notice via postcard and you want to get a payment, do nothing and you will automatically receive a *pro rata* share of the Settlement Fund, which Class Counsel anticipates will be approximately \$248. Your check for a *pro rata* share of the Settlement Fund will be sent to the postal address identified in the Notice you received. If you have changed addresses or are planning to change addresses prior to [insert date 28 days after final approval hearing date], please click [here](#) [insert hyperlink] to complete and submit a change of address form on the Settlement Website. If you wish to receive your payment via PayPal or Venmo, you may do so by submitting an Election Form on the Settlement Website.

If you are a Settlement Class Member who did not receive a Notice via postcard and you want to get a payment, you **must** complete and submit a Claim Form. You may submit a Claim Form either electronically on the Settlement Website by clicking [here](#) [insert hyperlink], or by printing and mailing in a paper Claim Form, copies of which are available for download [here](#) [insert hyperlink]. Claim Forms must be submitted online by 11:59 p.m. EST 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 Section 1.28 of the Settlement Agreement. Unless you exclude yourself (*see* Question 13), you are “releasing” the claims. 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 The Court has appointed Joseph I. Marchese and Philip L. Fraietta of Bursor & Fisher, P.A., Frank S. Hedin and Arun G. Ravindran of Hedin Hall LLP, and E. Powell Miller of The Miller Law Firm, P.C. to represent the 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 35% of the Settlement Fund, inclusive of reimbursement of their costs and expenses; the Court may award less than this amount. Under the Settlement Agreement, any amount awarded to Class Counsel will be paid out of the Settlement Fund.

Subject to approval by the Court, Defendant has agreed that the Class Representative may be paid a service award of \$5,000 from the Settlement Fund for her 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 [insert hyperlink]) or by mailing or otherwise delivering a letter (or request for exclusion) stating that you want to be excluded from the *Moeller v. The Week Publications, Inc.*, Case No. 1:22-cv-10666-TLL-PTM settlement. Your letter or request for exclusion must also include your name, your address, the title of the publication(s) to which you subscribed, your signature, the name and number of this case, and a statement that you wish to be 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:

The Week 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.

QUESTIONS? CALL (800) 000-0000 TOLL FREE, OR VISIT WWW.THEWEEKSETTLEMENT.COM

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

No. If you exclude yourself, you will not receive a *pro rata* share of 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 *Moeller v. The Week Publications, Inc.*, Case No. 1:22-cv-10666-TLL-PTM and identify all your reasons for your objections (including citations and supporting evidence) and attach any materials you rely on for your objections. Your letter or brief must also include your name, your address, the basis upon which you claim to be a Class Member (including the title of the publication(s) which you purchased or to which you subscribed), the name and contact information of any and all attorneys representing, advising, or in any way assisting you in connection with your objection, and your signature. If you, or an attorney assisting you with your objection, have ever objected to any class action settlement where you or the objecting attorney has asked for or received payment in exchange for dismissal of the objection (or any related appeal) without modification to the settlement, you must include a statement in your objection identifying each such case by full case caption. You must also mail or deliver a copy of your letter or brief to Class Counsel and Defendant's Counsel listed below.

Class Counsel will file with the Court and post on this website its request for attorneys' fees 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 Thomas L. Ludington United States District Court for the Eastern District of Michigan 1000 Washington Avenue, Room 214, Bay City, MI 48708	Philip L. Fraietta Bursor & Fisher P.A. 888 Seventh Avenue New York, NY 10019	Walter E. Diercks Rubin, Winston, Diercks, Harris & Cooke, LLP 1250 Connecticut Avenue, NW, Suite 700, Washington, DC 20036

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

**17. What's the difference between objecting and excluding myself from the Settlement?**

Objecting simply means telling the Court that you don't like something about the Settlement. You can object only if you stay in the Class. Excluding yourself from the Class is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the 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 United States Post Office Building, 1000 Washington Avenue, Room 214, Bay City, MI 48708. The purpose of the hearing will be for the Court to determine whether to approve the Settlement as fair, reasonable, adequate, and in the best interests of the Class; to consider the Class Counsel's request for attorneys' fees and expenses; and to consider the request for a service award to the Class Representative. At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the Settlement.

The hearing may be postponed to a different date or time without notice, so it is a good idea to check for updates by visiting the Settlement Website at [www.TheWeekSettlement.com](http://www.TheWeekSettlement.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, 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 send an objection or comment, you don't have to come to Court to talk about it. As long as you filed and mailed your written objection on time, the Court will consider it. You may also pay another lawyer to attend, but it's not required.

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

Yes. You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must include in your letter or brief objecting to the settlement a statement saying that it is your "Notice of Intent to Appear in *Moeller v. The Week Publications, Inc.*, Case No. 1:22-cv-10666-TLL-PTM." 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 [www.TheWeekSettlement.com](http://www.TheWeekSettlement.com). You may also write with questions to **The Week 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 D**



Moeller v. The Week Publications, Inc., Case No. 1:22-cv-10666-TLL-PTM (E.D. Mich.)

**CLAIM FORM FOR UNIDENTIFIED CLASS MEMBERS**

This Claim Form may be submitted online at [www.TheWeekSettlement.com](http://www.TheWeekSettlement.com) or completed and mailed to the address below. Submit your completed Claim Form online or mail it so it is postmarked no later than **DATE**. If you received a Notice by mail, you do NOT need to submit a Claim Form, and your Cash Award will be sent to you by check at the address identified on the Notice once the Settlement is finally approved. If your address has changed, please submit a change of address form online at [www.TheWeekSettlement.com](http://www.TheWeekSettlement.com) to ensure your check is mailed to your current address.

**I. CLAIMANT INFORMATION (all fields required)**

The Settlement Administrator will use this information for communications and payments. If this information changes before settlement payments are issued, contact the Settlement Administrator at the address below.

First Name M.I. Last Name  
[Grid for name information]

Current Mailing Address, Line 1: Street Address/P.O. Box  
[Grid for address line 1]

Current Mailing Address, Line 2:  
[Grid for address line 2]

City: State: Zip Code:  
[Grid for city, state, and zip code]

Preferred Telephone Number  
[Grid for telephone number]

Preferred Email address  
[Grid for email address]

**II. CLAIM INFORMATION**

Mailing address at which you received your subscription to *The Week* between December 17, 2015 and July 30, 2016:

Mailing Address, Line 1: Street Address/P.O. Box  
[Grid for mailing address line 1]

Mailing Address, Line 2:  
[Grid for mailing address line 2]

City: State: Zip Code:  
[Grid for city, state, and zip code]

**III. PREFERRED PAYMENT METHOD**

- Check
- PayPal (Associated Email Address: \_\_\_\_\_)
- Venmo (Associated Email Address: \_\_\_\_\_)

**IV. SIGNATURE: Sign and date the Claim Form below.**

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Submit this Claim Form online or mail it to the address below postmarked no later than [DATE].

*The Week Class Action Settlement Administrator*  
c/o JND Legal Administration  
[address]



**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

ELIZABETH MOELLER, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

THE WEEK PUBLICATIONS, INC.,

Defendant.

Case No. 22-cv-10666-TLL-PTM

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

Plaintiff Elizabeth Moeller and Defendant The Week Publications, Inc. (“The Week”) (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 its share of the award of attorneys’ fees, costs, and expenses approved by the Court, and

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

NOW, THEREFORE, the undersigned counsel, on behalf of himself as individual and as agent for his law firm, hereby submits himself and his law 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 United States District

Court for the Eastern District of Michigan for the enforcement of and any and all disputes relating to or arising out of the reimbursement obligation set forth herein and the Settlement Agreement.

In the event that the Final 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, the Firm shall, within thirty (30) days repay to Defendant, based upon written instructions provided by Defendant's Counsel, the full amount of the attorneys' fees and costs paid to the Firm from the Settlement Fund, including any accrued interest.

In the event the Final Settlement Order and 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, the attorneys' fees and costs paid to the Firm from the Settlement Fund in the amount vacated or modified, including any accrued interest.

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

In the event the Firm fails to repay to Defendant or to the Settlement Fund any of attorneys' fees and costs that are owed to either pursuant to this Undertaking, the Court shall, upon application of The Week, 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 stipulate, warrant, and represent that he has both actual and apparent authority to enter into this stipulation, agreement, and undertaking on behalf of the Firm.

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

Signatures by facsimile shall be as effective as original signatures.

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

IT IS SO STIPULATED THROUGH COUNSEL OF RECORD:

DATED: November 11, 2022

BURSOR & FISHER, P.A.



By: Scott A. Bursor, on behalf of Bursor & Fisher, P.A.  
Attorneys for Plaintiff Elizabeth Moeller and Class Counsel

DATED: \_\_\_\_\_, 2022

RUBIN, WINSTON, DIERCKS, HARRIS & COOKE, LLP

By: Walter E. Diercks  
Attorneys for Defendant The Week Publications, Inc.

The undersigned stipulate, warrant, and represent that he has both actual and apparent authority to enter into this stipulation, agreement, and undertaking on behalf of the Firm.

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

Signatures by facsimile shall be as effective as original signatures.

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

IT IS SO STIPULATED THROUGH COUNSEL OF RECORD:

DATED: \_\_\_\_\_, 2022

BURSOR & FISHER, P.A.

By: Scott A. Bursor, on behalf of Bursor & Fisher, P.A.  
Attorneys for Plaintiff Elizabeth Moeller and Class Counsel

DATED: November 17, 2022

RUBIN, WINSTON, DIERCKS, HARRIS & COOKE, LLP



By: Walter E. Diercks  
Attorneys for Defendant The Week Publications, Inc.





**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

ELIZABETH MOELLER, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

THE WEEK PUBLICATIONS, INC.,

Defendant.

Case No. 22-cv-10666-TLL-PTM

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

Plaintiff Elizabeth Moeller and Defendant The Week Publications, Inc. (“The Week”) (collectively, “the Parties”), by and through and including their undersigned counsel, stipulate and agree as follows:

WHEREAS, Hedin Hall LLP (the “Firm”) desires to give an undertaking (the “Undertaking”) for repayment of its share of the award of attorneys’ fees, costs, and expenses approved by the Court, and

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

NOW, THEREFORE, the undersigned counsel, on behalf of himself as individual and as agent for his law firm, hereby submits himself and his law 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 United States District

Court for the Eastern District of Michigan for the enforcement of and any and all disputes relating to or arising out of the reimbursement obligation set forth herein and the Settlement Agreement.

In the event that the Final 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, the Firm shall, within thirty (30) days repay to Defendant, based upon written instructions provided by Defendant's Counsel, the full amount of the attorneys' fees and costs paid to the Firm from the Settlement Fund, including any accrued interest.

In the event the Final Settlement Order and 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, the attorneys' fees and costs paid to the Firm from the Settlement Fund in the amount vacated or modified, including any accrued interest.

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

In the event the Firm fails to repay to Defendant or to the Settlement Fund any of attorneys' fees and costs that are owed to either pursuant to this Undertaking, the Court shall, upon application of The Week, 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 stipulate, warrant, and represent that he has both actual and apparent authority to enter into this stipulation, agreement, and undertaking on behalf of the Firm.

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

Signatures by facsimile shall be as effective as original signatures.

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

IT IS SO STIPULATED THROUGH COUNSEL OF RECORD:

DATED: Nov 11, 2022, 2022

HEDIN HALL LLP



By: Frank S. Hedin, on behalf of Hedin Hall LLP  
Attorneys for Plaintiff Elizabeth Moeller and Class Counsel

DATED: \_\_\_\_\_, 2022

RUBIN, WINSTON, DIERCKS, HARRIS & COOKE, LLP

By: Walter E. Diercks  
Attorneys for Defendant The Week Publications, Inc.

The undersigned stipulate, warrant, and represent that he has both actual and apparent authority to enter into this stipulation, agreement, and undertaking on behalf of the Firm.

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

Signatures by facsimile shall be as effective as original signatures.

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

IT IS SO STIPULATED THROUGH COUNSEL OF RECORD:


DATED: \_\_\_\_\_, 2022

HEDIN HALL LLP

\_\_\_\_\_  
By: Frank S. Hedin, on behalf of Hedin Hall LLP  
Attorneys for Plaintiff Elizabeth Moeller and Class Counsel

DATED: November 17, 2022

RUBIN, WINSTON, DIERCKS, HARRIS & COOKE, LLP

  
\_\_\_\_\_  
By: Walter E. Diercks  
Attorneys for Defendant The Week Publications, Inc.



**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

ELIZABETH MOELLER, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

THE WEEK PUBLICATIONS, INC.,

Defendant.

Case No. 22-cv-10666-TLL-PTM

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

Plaintiff Elizabeth Moeller and Defendant The Week Publications, Inc. (“The Week”) (collectively, “the Parties”), by and through and including their undersigned counsel, stipulate and agree as follows:

WHEREAS, The Miller Law Firm, P.C. (the “Firm”) desires to give an undertaking (the “Undertaking”) for repayment of its share of the award of attorneys’ fees, costs, and expenses approved by the Court, and

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

NOW, THEREFORE, the undersigned counsel, on behalf of himself as individual and as agent for his law firm, hereby submits himself and his law 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 United States District

Court for the Eastern District of Michigan for the enforcement of and any and all disputes relating to or arising out of the reimbursement obligation set forth herein and the Settlement Agreement.

In the event that the Final 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, the Firm shall, within thirty (30) days repay to Defendant, based upon written instructions provided by Defendant's Counsel, the full amount of the attorneys' fees and costs paid to the Firm from the Settlement Fund, including any accrued interest.

In the event the Final Settlement Order and 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, the attorneys' fees and costs paid to the Firm from the Settlement Fund in the amount vacated or modified, including any accrued interest.

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

In the event the Firm fails to repay to Defendant or to the Settlement Fund any of attorneys' fees and costs that are owed to either pursuant to this Undertaking, the Court shall, upon application of The Week, 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 stipulate, warrant, and represent that he has both actual and apparent authority to enter into this stipulation, agreement, and undertaking on behalf of the Firm.

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

Signatures by facsimile shall be as effective as original signatures.

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

IT IS SO STIPULATED THROUGH COUNSEL OF RECORD:

DATED: Nov 11, 2022, 2022

THE MILLER LAW FIRM, P.C.



E. Powell Miller (Nov 11, 2022 18:58 EST)

By: E. Powell Miller, on behalf of The Miller Law Firm,  
P.C.  
Attorneys for Plaintiff Elizabeth Moeller and Class Counsel

DATED: \_\_\_\_\_, 2022

RUBIN, WINSTON, DIERCKS, HARRIS & COOKE, LLP

By: Walter E. Diercks  
Attorneys for Defendant The Week Publications, Inc.



The undersigned stipulate, warrant, and represent that he has both actual and apparent authority to enter into this stipulation, agreement, and undertaking on behalf of the Firm.

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

Signatures by facsimile shall be as effective as original signatures.

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

IT IS SO STIPULATED THROUGH COUNSEL OF RECORD:


DATED: \_\_\_\_\_, 2022

THE MILLER LAW FIRM, P.C.

\_\_\_\_\_  
By: E. Powell Miller, on behalf of The Miller Law Firm,  
P.C.  
Attorneys for Plaintiff Elizabeth Moeller and Class Counsel

DATED: November 17, 2022

RUBIN, WINSTON, DIERCKS, HARRIS & COOKE, LLP

  
\_\_\_\_\_  
By: Walter E. Diercks  
Attorneys for Defendant The Week Publications, Inc.

**EXHIBIT B**

**Bursor & Fisher, P.A. - The Week Expenses**

\$5,584.09	Mediation Fees
\$423.00	Service of Process Fees
\$99.50	Transportation Expenses
<b>\$6,106.59</b>	<b>Total The Week Expenses</b>

**Mediation Expenses**

<b>DATE</b>	<b>MATTER</b>	<b>AMOUNT</b>	<b>DESCRIPTION</b>
2022.09.15	The Week	\$4,250.00	JAMS, Inc.
2022.11.07	The Week	\$1,334.09	JAMS, Inc.
		<b>\$5,584.09</b>	<b>Total Mediation Expenses</b>

**Service of Process Fees**

<b>DATE</b>	<b>MATTER</b>	<b>AMOUNT</b>	<b>DESCRIPTION</b>
2022.05.09	The Week	\$423.00	First Legal Network
		<b>\$423.00</b>	<b>Total Service of Process Fees</b>

**Transportation Expenses**

<b>DATE</b>	<b>MATTER</b>	<b>AMOUNT</b>	<b>DESCRIPTION</b>
2022.09.19	The Week	\$70.00	888 Seventh Garage LLC
2022.10.25	The Week	\$29.50	MTA MetroNorth
		<b>\$99.50</b>	<b>Total Ground Transportation Expenses</b>

**EXHIBIT C**



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

701 BRICKELL AVENUE  
MIAMI, FL 33131

888 SEVENTH AVENUE  
NEW YORK, NY 10019

1990 NORTH CALIFORNIA BLVD.  
WALNUT CREEK, CA 94596

## **FIRM RESUME**

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

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

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

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

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

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

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

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

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



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

68. *D'Amario v. The University of Tampa*, (S.D.N.Y. June 3, 2022) to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by The University of Tampa due to the novel coronavirus, COVID-19,
69. *Fittipaldi v. Monmouth University*, (D.N.J. Sept. 22, 2022) to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by Monmouth University due to the novel coronavirus, COVID-19,
70. *Armstead v. VGW Malta Ltd. et al.* (Cir. Ct. Henderson Cnty. Oct. 3, 2022) to present a certified class of Kentucky residents who lost money playing mobile applications games that allegedly constituted illegal gambling under Kentucky law,
71. *Cruz v. The Connor Group, A Real Estate Investment Firm, LLC*, (N.D. Ill. Oct. 26, 2022) to represent a certified class of workers who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act;
72. *Delcid et al. v. TCP HOT Acquisitions LLC et al.* (S.D.N.Y. Oct. 28, 2022) to represent a certified nationwide class of purchasers of Sure and Brut-brand antiperspirants that were allegedly contaminated with benzene,
73. *Kain v. The Economist Newspaper NA, Inc.* (E.D. Mich. Dec. 15, 2022) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
74. *Strano v. Kiplinger Washington Editors, Inc.* (E.D. Mich. Jan. 6, 2023) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
75. *Moeller v. The Week Publications, Inc.* (E.D. Mich. Jan. 6, 2023) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act.

### **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.

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

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

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

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

**Selected Class Settlements:**

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

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

**JOEL D. SMITH**

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

Prior to joining Bursor & Fisher, Joel was a litigator at Crowell & Moring, where he represented Fortune 500 companies, privately held businesses, and public entities in a wide variety of commercial, environmental, and class action matters. Among other matters, Joel served as defense counsel for AT&T, Enterprise-Rent-A-Car, Flowers Foods, and other major U.S. businesses in consumer class actions, including a class action seeking to hold U.S. energy companies accountable for global warming. Joel represented four major U.S. retailers in a case arising from a devastating arson fire and ensuing state of emergency in Roseville, California, which settled on the eve of a trial that was expected to last several months and involve several dozen witnesses. Joel also was part of the trial team in a widely publicized trial over the death of a contestant who died after participating in a Sacramento radio station’s water drinking contest.

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

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

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

**Selected Published Decisions:**

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

*Revitch v. DIRECTV, LLC*, 977 F.3d 713 (9th Cir. 2020), affirming denial of motion to compel arbitration in putative class action alleging unlawful calls under the Telephone Consumer Protection Act.

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

**Selected Class Settlements:**

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

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

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

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

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

**NEAL J. DECKANT**

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

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

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

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

**Selected Published Decisions:**

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

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

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

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

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

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

**Selected Class Settlements:**

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

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

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

### **Selected Publications:**

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

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

### **YITZCHAK KOPEL**

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

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

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

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

**Selected Published Decisions:**

*Bassaw v. United Industries Corp.*, --- 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 the Managing Partner of Bursor & Fisher’s Miami office. She focuses her practice on consumer class actions, complex business litigation, and mass torts.

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

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

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

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

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

**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 S. 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 Seventh and Ninth Circuits.

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 Section 631 of the California Invasion of Privacy Act requires prior consent to wiretapping. Max personally argued the appeal before the Ninth Circuit, which can be viewed [here](#).

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

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

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

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

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

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

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

**Selected Class Settlements:**

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

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

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

**CHRISTOPHER R. REILLY**

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

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

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

**JULIA K. VENDITTI**

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

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

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

**JULIAN DIAMOND**

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

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

**MATTHEW GIRARDI**

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

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

Matt received his Juris Doctor from Columbia Law School in 2020, where he was a Harlan Fiske Stone Scholar. During law school, Matt was the Commentary Editor for the Columbia Journal of Tax Law, and represented fledgling businesses for Columbia's

Entrepreneurship and Community Development Clinic. In addition, Matt worked as an Honors Intern in the Division of Enforcement at the U.S. Securities and Exchange Commission. Prior to law school, Matt graduated from Brown University in 2016 with a B.A. in Economics, and worked as a Paralegal Specialist at the U.S. Department of Justice in the Antitrust Division.

**EXHIBIT D**

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JOHN LOFTUS, individually and  
on behalf of all others  
similarly situated,

Plaintiff,

-v-

Case No. 21-cv-11809

OUTSIDE INTEGRATED MEDIA, LLC,

Defendant.

\_\_\_\_\_ /

MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT and  
FOR ENTRY OF FINAL JUDGMENT

BEFORE JUDGE MARK A. GOLDSMITH

All Parties Appearing Via Zoom Teleconference

Tuesday, August 9th, 2022.

APPEARANCES:

FOR THE PLAINTIFF: PHILIP L. FRAIETTA  
Bursor & Fisher, P.A.  
888 Seventh Avenue  
New York, NY 10019

FOR THE PLAINTIFF: FRANK S. HEDIN  
Hedin Hall, LLP  
1395 Brickell Avenue  
Suite 1140  
Miami, FL 33131

1 (Appearances, continued):

2

FOR THE PLAINTIFF: GREGORY A. MITCHELL  
The Miller Law Firm, P.C.  
950 West University Drive  
Suite 300  
Rochester, MI 48307

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FOR THE DEFENDANT: KRISTEN C. RODRIGUEZ  
Dentons, US LLP  
233 South Wacker Drive  
Suite 5900  
Chicago, IL 60606

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FOR THE DEFENDANT: PETER B. KUPELIAN  
Clark Hill PLC  
151 South Old Woodward Avenue  
Suite 200  
Birmingham, MI 48009

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David B. Yarbrough, CSR, RMR, FCRR  
Official Court Reporter  
(313) 234-2619

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WITNESSES:

NONE

EXHIBITS

NONE

1 Detroit, Michigan.

2 Tuesday, August 9th, 2022

3 At or about 10:07 a.m.

4 -- --- --

5 THE CLERK OF THE COURT: Calling case number  
6 21-11809, Loftus versus Outside Integrated Media, LLC.  
7 Counsel, please place your appearances on the record.

8 MR. FRAIETTA: Good morning, your Honor. Phil  
9 Fraietta of Bursor and Fisher for plaintiff in the class.

10 MR. HEDIN: Good morning. Frank Hedin also for the  
11 plaintiff in the class.

12 MR. MITCHELL: Gregory Mitchell from the Miller Law  
13 Firm, plaintiff in the class.

14 MS. RODRIGUEZ: Good morning, your Honor. Kristen  
15 Rodriguez for defendant.

16 MR. KUPELIAN: Good morning, your Honor. Peter  
17 Kupelian, Clark Hill for the defendant as well.

18 THE COURT: All right. Good morning, everybody. We  
19 are conducting this Zoom hearing today on a motion to approve  
20 the settlement, final approval and also there's a motion for  
21 attorney's fees and costs, so I'll let plaintiffs lead off.

22 MR. FRAIETTA: Yes. Thank you, your Honor. I'll be  
23 brief. As you said, we're here to finally approve this  
24 class-action settlement. The settlement provides for a  
25 non-reversionary common fund just under a million dollars, it

1 as \$998,406.92 to be exact.

2 THE COURT: Just a moment, pardon me. I see our  
3 court reporter is having little difficulty hearing. Let's go  
4 off the record for a second.

5 (Off the record)

6 THE COURT: Okay. Let's try this again. Let's go  
7 back on the record. Go ahead.

8 MR. FRAIETTA: Yes, thank you. Your Honor, so as I  
9 was saying we're here on final approval of a class-action  
10 settlement. The settlement provides for non-reversionary  
11 common fund of just under a million dollars. It's 998,00 and  
12 change to be exact. The court-approved notice plan was  
13 administered and 99.75 percent, nearly 100 percent of the class  
14 received direct notice of the settlement and the reaction was  
15 overwhelmingly positive. Zero class members objected; zero  
16 asked to be excluded.

17 We are projecting that each class member will  
18 automatically receive 50 dollars. This settlement did not  
19 require class members to file claims so unlike most class  
20 action settlements where northwards of 90 percent of class  
21 members receive nothing, that's not the case here. Everybody's  
22 going to automatically receive 50 dollars as long as they did  
23 not opt out and because nobody opted out, everyone's going to  
24 receive about 50 bucks. So we believe the settlement is well  
25 within the reasonable. Papers point two a number of prior

1 settlements that have been reached under this statute. We  
2 believe that this settlement outperforms those both in total  
3 compensation and structure on a per-class-member basis.

4 In connection with the settlement, we also requested  
5 attorney's fees of 35 percent of the settlement fund. That  
6 percentage is also consistent with precedent in this district.  
7 We cited a number of cases including Kinder v. Meredith,  
8 Kokosvki v. Playboy and Perlin v. Time where requests are of 35  
9 percent or in the case of Time, 40 percent were approved by  
10 courts in this district so we believe that our fee request is  
11 justified here especially in light of the substantial result  
12 that we were able to negotiate for class members in an  
13 efficient manner as well.

14 As the Court noted at the preliminary approval  
15 hearing, this is not a matter where plaintiff's counsel and  
16 defense counsel spent needless effort on litigation. We  
17 recognized this case could settle, we proceeded to mediation  
18 promptly and were able to work it out on terms that I believe  
19 are very favorable for the class, so we submit that this  
20 settlement and attorney's fee request should be approved.

21 We submitted a proposed order which if the Court  
22 signs the proposed order will approve the settlement and fee  
23 request and everything in connection with that, so we, we  
24 respect the Court sign that order and we can begin  
25 administering the payments to the class members.

1 THE COURT: All right. Do we need to hear from any  
2 other plaintiffs' attorneys?

3 MR. HEDIN: No, your Honor.

4 THE COURT: All right. Let's turn it over to the  
5 defense. Anything for the defense side?

6 MS. RODRIGUEZ: Your Honor, Kristen Rodriguez for the  
7 record. We have nothing further to add to Mr. Fraietta's  
8 comments. We support final approval of the settlement.

9 THE COURT: All right. Well, I have reviewed the  
10 papers that have been submitted and I do approve the  
11 settlement. I think both sides have done very good work in  
12 trying to bring this matter to a very prompt conclusion without  
13 unnecessary attorney time and I think the class has benefited  
14 in a concrete way and the extent of the class participation is  
15 impressive and the attorneys representing the class are to be  
16 congratulated on their very effective work on behalf of the  
17 class. I do think the settlement is a fair and reasonable one.

18 I also think the attorney fee request is reasonable  
19 as well. The attorneys did work very hard pre-suit and after  
20 suit. I know there were mediation efforts that obviously bore  
21 fruit here and I think the request for 35 percent is in line  
22 with what other courts have approved and especially in this  
23 context where the lawyers did produce significant results for  
24 the class in very short order. I think they should be rewarded  
25 appropriately for having done a very effective job as class

1 counsel, so I'm going to approve the request for fees and costs  
2 and the costs were reasonable as well. Is there anything else  
3 that we need to address on the record at this time?

4 MR. FRAIETTA: No, nothing further from plaintiffs,  
5 your Honor. Thank you.

6 MR. HEDIN: Your Honor, this is frank Hedin, if I may  
7 be heard? The named class representative additionally  
8 requested a service award. That's also before the Court for  
9 approval as well I believe.

10 THE COURT: Yes, I'm approving that as well. I did  
11 not mention that expressly, but I did see that request and I  
12 think it's appropriate. The class representative was effective  
13 and did work along side the lawyers to bring about this result  
14 for the class and the request for 5,000 dollars is an  
15 appropriate request under all the circumstances, so I'll  
16 approve that as well. All right. I think then anything for  
17 the defense that we need to address?

18 MS. RODRIGUEZ: Nothing for the defense, your Honor.  
19 Thank you for allowing us to conduct this hearing via Zoom.

20 THE COURT: All right. My pleasure and again I want  
21 to thank the lawyers for doing a very professional job on all  
22 sides here. I think you folks are the role models for your  
23 colleagues out there. I think when lawyers work together, they  
24 can bring about resolution in an effective and prompt way and I  
25 think that's a great benefit to their clients' benefit and I

1 think that also serves administration of justice. So  
2 congratulations for bringing that about.

3 I do want to thank Mr. Yarbrough for his fine work as  
4 always as our court reporter and to Ms. Roat whose seat I'm now  
5 occupying actually. My little name plate up there  
6 misidentifies me, but I'm filling a very big seat here. She's  
7 been a terrific law clerk for me and I want to thank her  
8 publicly for her assistance in this matter. Thank you all.  
9 Have a great day. That concludes our hearing. Thank you.

10 MR. FRAIETTA: Thank you, your Honor.

11 MS. RODRIGUEZ: Thank you, your Honor.

12 (Hearing concluded at 10:17 a.m.)

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C E R T I F I C A T E

I, David B. Yarbrough, Official Court Reporter, do hereby certify that the foregoing pages comprise a true and accurate transcript of the proceedings taken by me in this matter on Tuesday, August 9th, 2022.

9/8/2022

Date

/s/ David B. Yarbrough

David B. Yarbrough,  
(CSR, RPR, FCRR, RMR)  
231 W. Lafayette Blvd.  
Detroit, MI 48226



# **Exhibit 2**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

<p>ELIZABETH MOELLER, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>THE WEEK PUBLICATIONS, INC.,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No. 22-cv-10666-TLL-PTM</p> <p>Hon. Thomas L. Ludington</p> <p>Mag. Judge Patricia T. Morris</p>
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**DECLARATION OF FRANK S. HEDIN  
IN SUPPORT OF PLAINTIFF’S MOTION FOR  
ATTORNEYS’ FEES, COSTS, EXPENSES, AND SERVICE AWARD**

I, Frank S. Hedin declare under penalty of perjury, pursuant to 28 U.S.C. § 1746 and based on my own personal knowledge, that the following statements are true:

1. I am a partner at Hedin Hall LLP and Plaintiff’s other counsel in this action. I submit this declaration in support of Plaintiff’s Motion for Attorneys’ Fees, Costs, Expenses, And Service Award, filed concurrently herewith.

**BACKGROUND AND EXPERIENCE**

2. I am a member in a good standing of the Florida Bar and the State Bar of California; the United States District Courts for the Southern District of Florida,

Middle District of Florida, Northern District of California, Southern District of California, Central District of California, Eastern District of California, Western District of Michigan, Eastern District of Michigan, and Western District of Wisconsin; and the United States Courts of Appeals for the Second Circuit, Seventh Circuit, and Ninth Circuit, and am admitted to practice on a *pro hac vice* basis before several other federal district courts.

3. I received my Bachelor of Arts from University of Michigan in 2008 and my Juris Doctor, *magna cum laude*, from Syracuse University College of Law in 2012.

4. From August 2012 through November 2013, I served as law clerk to the Honorable William Q. Hayes, United States District Judge for the Southern District of California. During my clerkship with Judge Hayes, I managed half of the Court's civil docket and drafted orders and opinions at all stages of litigation in a wide range of matters, including numerous class actions.

5. In early 2014, I began working as an associate attorney at Carey Rodriguez Milian Gonya LLP, a boutique litigation firm in Miami, Florida, where I focused my practice on the prosecution of consumer class actions. *See, e.g., Farnham v. Caribou Coffee Co.*, No. 16-cv-295-wmc (W.D. Wisc.); *Chimeno-Buzzi v. Hollister Co., et al.*, No. 14-23120-CIV, 2015 WL 9269266 (S.D. Fla. Dec. 18, 2015); *Edwards v. Hearst Communications Inc.*, No. 15-cv-9279-AT

(S.D.N.Y. Nov. 9, 2016); *Norberg v. Shutterfly, Inc.*, No. 15-cv-5351 (N.D. Ill. Dec. 29, 2015); *Rivera, et al. v. Google, Inc.*, No. 16-cv-2714 (N.D. Ill. Feb. 27, 2017). I also represented both plaintiffs and defendants in intellectual property, employment, and general commercial litigation matters, on both hourly and contingent-fee arrangements. I was partner and head of the firm's class action litigation practice at the time of my departure at the end of February 2018.

6. My partner David W. Hall and I formed Hedin Hall LLP in March 2018. With offices in Miami, Florida and San Francisco, California, Hedin Hall focuses on consumer privacy and securities class actions.

7. My firm has successfully prosecuted dozens of consumer data-privacy class action lawsuits in state and federal courts nationwide as court-appointed class counsel, including in matters alleging claims for violation of Michigan's Preservation of Personal Privacy Act ("PPPA"). *E.g.*, *Kokoszki v. Playboy Enterprises, Inc.*, No. 19-cv-10302-BAF (E.D. Mich. May 18, 2020) (class counsel in action alleging sale of *Playboy* subscribers' personal information in violation of the Michigan PPPA, obtained \$3.8 million non-reversionary class settlement); *Rivera et al. v. Google, LLC*, No. 2019-CH-00990 (Cir. Ct. Cook Cnty. Ill., Apr. 5, 2022) (class counsel in action alleging violations of Illinois's Biometric Information Privacy Act ("BIPA"), obtained \$100 million non-reversionary class settlement); *Olsen, et al. v. ContextLogic Inc.*, No. 19CH06737 (Cir. Ct. Cook

Cnty. Ill., Jan 7, 2020) (class counsel in action alleging violations of the federal Telephone Consumer Protection Act (“TCPA”), successfully defeated defendant’s motion to compel arbitration and obtained \$16 million non-reversionary class settlement); *Donahue v. Everi Payments, Inc., et al.*, No. 2018-CH-15419 (Cook Cnty., Ill. Cir. Ct.) (class counsel in action alleging disclosure of consumers’ credit and debit card information on printed transaction receipts in violation of the federal Fair and Accurate Credit Transactions Act, obtained \$14 million non-reversionary class settlement); *Owens, et al. v. Bank of America, N.A., et al.*, No. 19-cv-20614-MGC (S.D. Fla.) (class counsel in action alleging the improper assessment of overdraft fees when accounts were not actually overdrawn, obtained \$4.95 million class settlement); *Liggio v. Apple Federal Credit Union*, No. 18-cv-1059-LO (E.D. Va.) (class counsel in action alleging the improper assessment of overdraft fees for “non-recurring” debit card transactions misclassified as “recurring” debit card transactions, obtained \$2.7 million class settlement).

8. My firm also represents investors in securities class actions in state and federal courts across the country. *E.g., In re Menlo Therapeutics Inc. Sec. Litig.*, Case No. 18CIV06049 (Cal. Sup Ct., San Mateo Cnty.) (\$9.5 million class settlement on behalf of IPO investors); *In re EverQuote, Inc. Sec. Litig.*, (N.Y. Supreme, New York Cnty.), Case No. 651177/2019 (\$4.74 million class settlement on behalf of IPO investors); *Plymouth County Retirement System v. Impinj, Inc., et*

*al.*, Index No. 650629/2019 (N.Y. Sup. Ct., N.Y. Cnty.) (co-lead counsel for plaintiff class of investors asserting Securities Act claims arising from initial and secondary public offerings, obtained aggregate \$20 million class settlement); *In re PPD AI Grp. Sec. Litig.*, (N.Y. Sup. Ct., N.Y. Cnty.) (\$9 million settlement for investor class); *In re Altice USA, Inc. Sec. Litig.*, 711788/2018 (N.Y. Sup. Ct., Queens Cnty.) (\$4.75 million settlement for investor class); *Plutte v. Sea Ltd.*, No. 655436/2018 (N.Y. Sup. Ct., N.Y. Cnty.) (\$10.75 million settlement for investor class).

9. And we frequently represent indigent litigants in civil rights and housing matters on a *pro bono* basis. *E.g.*, *Groover v. U.S. Corrections, LLC, et al.*, No. 15-cv-61902-BB (S.D. Fla. July 16, 2018) (representing plaintiff and putative class against country's largest private prisoner extradition companies in Section 1983 civil rights action alleging violations of the Eighth Amendment).

10. Over the past five years alone, my firm has helped recover over \$350 million in all-cash relief for the classes of consumers and investors that we have represented.

11. Attached hereto as **Exhibit A** is a current firm resume for Hedin Hall LLP.

## RELEVANT PPPA LITIGATION EXPERIENCE

12. My firm and I have successfully litigated claims against numerous defendants for alleged violations of Michigan’s PPPA, beginning in 2016 with the action titled *Edwards v. Hearst Communications, Inc.* in the Southern District of New York, where I served as one of plaintiff’s counsel along with my co-counsel in this action at Bursor & Fisher, P.A.

13. On May 29, 2018, shortly after Mr. Hall and I founded Hedin Hall, and nearly two years after the July 31, 2016 effective date of the Michigan legislature’s amendment to the PPPA (an amendment which, *inter alia*, made “actual damages” a prerequisite to stating a claim and removed a prevailing plaintiff’s entitlement to statutory damages), my firm initiated *Horton v. GameStop Corp.*, 380 F. Supp. 3d 679 (W.D. Mich. 2018), a PPPA class action alleging that the defendant had disclosed the plaintiff’s and other Michigan residents’ personal reading information between May 29, 2015 and July 31, 2016 (the effective date of the amendment to the PPPA) – in violation of the unamended version of the PPPA that existed up until July 30, 2016. The defendant moved to dismiss on the grounds that, *inter alia*, the complaint failed to state a claim for violation of the unamended PPPA because the case had been filed after the amendment’s July 31, 2016 effective date. In successfully defeating this motion, my firm obtained the first decision in the country holding that, regardless of the date on which a PPPA action

is commenced, “the unamended [PPPA] applies to . . . claims that accrued prior to July 31, 2016, and, consequently, [a] plaintiff [asserting such a claim] [is] not required to plead actual damages.” *Horton*, 380 F. Supp. 3d at 683. The *Horton* decision paved the way for Plaintiff’s Counsel’s successful prosecution of the instant action against TWP on behalf of the Settlement Class, because here, as in *Horton*, the Complaint alleges violations of the unamended, pre-July 31, 2016 version of the statute, arising from Defendant’s disclosures of personal reading information that pre-dated the statutory amendment’s July 31, 2016 effective date. Indeed, invoking the pre-July 31, 2016 version of the statute in this case enabled Plaintiff to seek statutory damages for the putative class, without showing “actual damages,” and thus was instrumental in securing the Settlement presently before the Court.

14. After obtaining the *Horton* decision on September 28, 2018, my firm and co-counsel initiated numerous additional PPPA actions against publishers of written materials between May and June of 2019 (sometimes referred to as “wave two” of PPPA litigation), further refining our skills for prosecuting such claims and, in the process, prevailing on other important legal issues implicated by the statute. *E.g.*, *Huguelet, et al. v. Maxim Inc.*, No. 19-cv-4452-ALC (S.D.N.Y., filed May 15, 2019); *Kokoszki v. Playboy Enterprises, Inc.*, No. 19-cv-10302-BAF-RSW (E.D. Mich., filed Jan. 30, 2019); *Chelone, et al. v. America's Test Kitchen*



*LP*, No. 2:19-cv-11757-TGB-MKM (E.D. Mich., filed June 19, 2019); *Lin v. Crain Commc'ns Inc.*, No. 19-cv-11889 (E.D. Mich., filed June 25, 2019); *Forton v. TEN: Publishing Media, LLC*, No. 1:19-cv-11814-JEL-PTM (E.D. Mich., filed June 19, 2019).

15. For example, in *Lin v. Crain Communications, Inc.*, my firm brought the first ever PPPA class action against a Michigan-based defendant on behalf of a non-Michigan-resident plaintiff and a proposed nationwide class. Specifically, the complaint alleged that a Michigan-based company had disclosed, from its headquarters in Michigan, the personal reading information of the plaintiff (a resident of Virginia) and all of its other subscribers nationwide to third parties prior to July 31, 2016, in violation of the unamended version of the PPPA. The defendant moved to dismiss on the grounds that the PPPA only protects and is only enforceable by Michigan residents, to the exclusion of out-of-state residents – presenting an issue of first impression concerning the territorial reach of the PPPA. We defeated defendant’s motion, and in so doing obtained the first decision in the country holding that the PPPA “allow[s] non-Michigan residents to pursue claims against Michigan resident-defendants.” *Lin*, 2020 WL 248445, at \*4. Although the extraterritoriality issue in *Lin* does not directly bear on the claims alleged in this case, my firm’s successful prosecution of the *Lin* action (together with our co-counsel) further cemented our ability to prevail on complex and novel issues under

the PPPA and strengthened both our knowledge of the statute and our reputation litigating claims under it.

16. In this “second wave” of PPPA litigation, which spanned from September 2018 (when *Horton* was decided) through the end of July 2019, the consensus across the federal judiciary and the plaintiffs and defense bars alike was that the statute was governed by a three-year limitation period, and it was thus universally understood at that time that claims for violation of the pre-amended version of the statute would no longer be actionable as of July 31, 2019 (three years after the amendment’s effective date). *See Edwards*, 2016 WL 6651563, at \*1 (noting that “a three- year statute of limitations admittedly governs [the plaintiff’s PPPA] claims”).

17. Nonetheless, on June 15, 2021, nearly five years after the effective date of the PPPA’s amendment, and after performing an extensive pre-suit investigation and an in-depth legal analysis of relevant issues, including the Sixth Circuit’s decision in *Palmer Park Square, LLC v. Scottsdale Insurance Company*, 878 F.3d 530 (6th Cir. 2017), my firm, together with our co-counsel in this case, initiated the action *Pratt et al v. KSE Sportsman Media, Inc.*, No. 21-cv-11404-TLL-PTM (E.D. Mich.), which alleged violations of the pre-amended version of the statute that accrued between June 15, 2015 (*six* years prior to the filing of the action) and July 30, 2016 – based on an argument developed by my firm that the

PPPA was actually subject to the six-year limitation period found in M.C.L. §5813, rather than the three-year period found in M.C.L. § 5805(2) (which up until that point had been universally applied in every prior PPPA case).

18. After extensive additional pre-suit investigative work, the *Pratt* action was followed by dozens of additional PPPA actions filed by my firm and co-counsel – including the instant matter (discussed further below) – each of which depended on the application of the six-year limitation period. *See, e.g., Owen v. Kalmbach Media Co.*, No. 21-cv-11814-VAR-KGA (E.D. Mich.); *Devroy v. Annie’s Publishing, LLC*, No. 21-cv-11815-TGB-EAS (E.D. Mich.); *Krassick v. Archaeological Institute of America*, No. 21-cv-00180-HYJ-RSK (W.D. Mich.); *Loftus v. Outside Integrated Media, LLC*, No. 2:21-cv-11809-MAG-DRG (E.D. Mich. Aug. 9, 2022).

19. On November 24, 2021, the defendant in *Pratt* moved to dismiss the complaint on the ground that, *inter alia*, plaintiff’s claim was time-barred by section 5805(2)’s three-year limitation period. On February 15, 2022, following full briefing on the limitation-period question, the court presiding over *Pratt* issued an opinion denying defendant’s motion to dismiss in full, rejecting defendant’s argument that the three-year period governs PPPA claims and holding that the six-year limitation period found in section 5813 governs such claims. *Pratt v. KSE Sportsman Media, Inc.*, No. 1:21-CV-11404, 2022 WL 469075, at \*5 (E.D. Mich.

Feb. 15, 2022) (holding that “[a] six-year statute of limitations applies to PPPA claims”).

20. After the decision in *Pratt*, my firm and our co-counsel briefed and prevailed on the same statute of limitations issue in two of our other PPPA cases filed in this so-called “third wave,” all before different judges, in both the Eastern and Western Districts. *See, e.g., Krassick v. Archaeological Inst. of Am.*, No. 2:21-CV-180, 2022 WL 2071730, at \*5 (W.D. Mich. June 9, 2022); *Hall v. Farm Journal, Inc.*, No. 21-cv-11811-DML-APP (E.D. Mich.) (docket entries 24 & 26 (April 5, 2022 decision denying motion to dismiss) & docket entry 28 (June 21, 2022 order denying defendant’s motion for reconsideration and reaffirming prior decision on motion to dismiss)).

### **THE INSTANT LITIGATION**

21. As discussed above, prior to initiating the instant action (or any of the other “third wave” PPPA cases), my firm and Class Counsel (together, “Plaintiff’s Counsel”) performed a lengthy, several-months-long factual investigation into subscriber list disclosure practices in effect during the relevant pre-July 31, 2016 time period of The Week Publications, Inc. (“TWP”) and other defendants. This investigative work began in December 2020 when my firm reviewed and analyzed relevant legal authorities addressing Michigan’s statutory scheme concerning limitation periods. Due to the confidential nature of Defendant’s alleged

disclosures, our pre-suit investigation into the facts underlying this case (as well as industry-wide list disclosure practices generally) was extensive and involved in-depth research into several publishing industry practices, including data appending and data cooperatives. Part of this research included locating and obtaining years' worth of archived versions of webpages containing statements made by Defendant and its affiliates concerning their data-sharing practices and practices of renting lists of *The Week* magazine subscribers, as well as historical copies of data cards reflecting such practices that were publicly accessible online prior to July 31, 2016.

22. On March 28, 2022, former plaintiff Colin Custard initiated this action with the Class Action Complaint on behalf of *The Week* newspaper subscribers alleging violations of the PPPA that accrued between December 24, 2015 and July 30, 2016. (ECF No. 1). On August 5, 2022, Mr. Custard filed a First Amended Complaint making the same allegations and adding Frederick Vogt and Ella Norman as named plaintiffs in the action. *See generally* FAC (ECF No. 11). On November 3, 2022, Plaintiff Moeller filed a Second Amended Complaint making the same allegations and replacing Mr. Custard, Mr. Vogt, and Ms. Norman as named plaintiff in the action. *See generally* SAC (ECF No. 15).

23. After lengthy preliminary negotiations with Defendant's counsel, the parties agreed to attend private mediation on October 24, 2022 to explore potential resolutions to this matter. In advance of the mediation, the Parties exchanged

informal discovery, including on issues such as the size and scope of the putative class; given that the information exchanged would have been 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.

24. In preparation for the mediation, Plaintiff's Counsel prepared a detailed mediation statement outlining the strength of the Plaintiff's case and comparing this matter case with other PPPA cases against magazine publishers that had settled, to properly evaluate any potential settlement proposals and structures. My firm also thoroughly reviewed the informal discovery produced by Defendant in advance of the mediation.

25. On October 24, 2022, the Parties attended a full day of mediation before the Honorable Gerald E. Rosen (Ret.), a former chief judge for the Eastern District of Michigan now with JAMS. At the conclusion of the mediation, the parties reached agreement on all material terms of a class action settlement and executed a term sheet.

26. The resulting \$5,082,870 non-reversionary Settlement represents the second best per-class member recovery in a PPPA case. Based on Defendant's records, the proposed Settlement Class includes 13,033 persons who purchased a subscription directly from Defendant to *The Week* for delivery to a Michigan street

address or electronically, and who subscribed to such publication between December 24, 2015 and July 30, 2016. With a \$5,082,870 non-reversionary Settlement Fund – and notably, an automatic claims distribution process in which claim forms need not be submitted by Class Members to receive payment – each Class Member who does not exclude him or herself from the Settlement will automatically receive a *pro rata* cash payment of approximately \$248.

27. After reaching an agreement in principle on the Settlement, Plaintiff’s Counsel worked extensively with defense counsel to finalize and memorialize the agreement into a formal Class Action Settlement Agreement, including proposed class notice documents. That process included rounds of revisions. Plaintiff’s Counsel then prepared Plaintiff’s Unopposed Motion for Preliminary Approval (ECF No. 17) and a Revised Unopposed Motion for Preliminary Approval (ECF No. 22), the latter of which was approved by the Court on January 6, 2023. (ECF No. 23).

28. The Parties agreed to the terms of the Settlement through experienced counsel who possessed all the information necessary to evaluate the case, determine all the contours of the proposed class, and reach a fair and reasonable compromise after negotiating the terms of the Settlement at arm’s length and with the assistance of a neutral mediator.

29. Plaintiff and Plaintiff’s Counsel recognize that, despite our belief in

the strength of Plaintiff's claims and Plaintiff's and the Class's ability to ultimately each secure a \$5,000 statutory award under the PPPA, the expense, duration, and complexity of protracted litigation would be substantial and the outcome uncertain considering the significant risks of non-recovery posed by continued litigation.

30. In the aforementioned PPPA litigation it was assumed that PPPA cases were governed by a three-year statute of limitations. *See, e.g., Hearst*, 269 F. Supp. 3d at 172; *Edwards v. Hearst Communications, Inc.*, 2016 WL 6651563 (S.D.N.Y. Nov. 9, 2016). Nonetheless, shortly before filing this lawsuit, Plaintiff's Counsel recognized that the Sixth Circuit's opinion in *Palmer Park Square, LLC v. Scottsdale Insurance Company*, 878 F.3d 530 (6th Cir. 2017) may provide for a six-year statute of limitations for PPPA claims, and therefore may provide an avenue for class recovery under the original PPPA. Thus, despite the uncertainty regarding the statute of limitations, Plaintiff's Counsel took on this case and others.

31. In addition, Plaintiff's Counsel was mindful that several days before the mediation took place, Judge Murphy issued a decision in *Nashel v. New York Times Company*, 2022 WL 6775657 (E.D. Mich. Oct. 11, 2022) granting a publisher defendant's motion to dismiss pursuant to Rule 12(b)(6) for failure to state a claim. The *Nashel* decision added additional risk that this case could similarly be dismissed for failure to state a claim, thereby depriving the Settlement Class of any recovery whatsoever. *See also Bozung v. Christianbook, LLC*, 2023



WL 2385004 (W.D. Mich. Mar. 6, 2023) (granting similar motion to dismiss).

32. Plaintiff and Plaintiff's Counsel are also mindful that Defendant is represented by highly experienced attorneys and that, based on Plaintiff's Counsel's interactions with Defendant's counsel in both this case and prior PPPA matters, Defendant would have asserted numerous defenses to both the merits of Plaintiff's claim and the propriety of class certification absent the Settlement. Specifically, Defendant would likely have asserted that the PPPA does not prohibit the disclosure of the newspaper subscriptions information at issue (involving agent intermediaries), that Defendant provided appropriate notice of its practices, and that the PPPA does not apply to subscriptions that were not sold by Defendant "at retail" within the meaning of the statute. Defendant would also have mounted a vigorous defense at trial and beyond, including in any appeal from an adverse judgment or an order certifying a class, and that considering the statutory damages at stake, Defendant would argue – in both the trial and appellate courts – for a reduction of any class-wide damages award on substantive due process grounds.

33. Plaintiff and Plaintiff's Counsel believe that the relief provided by the settlement weighs heavily in favor of a finding that the Settlement is fair, reasonable, and adequate, and well within the range of approval.

34. Since the Court granted preliminary approval, Plaintiff's Counsel has worked with the Settlement Administrator, JND Legal Administration ("JND"), to

carry out the Court-ordered notice plan. Specifically, Plaintiff's Counsel helped compile and review the contents of the required notice to State Attorney Generals pursuant to 28 U.S.C. § 1715, reviewed the final claim and notice forms, and reviewed and tested the settlement website before it launched live.

35. Plaintiff's Counsel also has worked with Defendant and JND to secure the class list and effectuate the Notice Plan, as well as fielded calls from Settlement Class Members and assisted with their requests.

### **HEDIN HALL'S TIME AND COSTS EXPENDITURES**

36. My firm undertook this matter, as with each of the other PPPA cases outlined above, on a contingency basis. My firm and I have devoted a significant amount of time to these matters, including to the investigation, preparation, prosecution, and resolution of the instant matter.

37. The excellent result we obtained in this case, and the efficiency with which we obtained it, would not have been possible without the significant investments of time and other resources that we made towards the prosecution of the PPPA actions outlined above over the better part of the past decade, which provided us with the knowledge, experience, and well-developed body of PPPA jurisprudence necessary to achieve this Settlement.

38. We will continue to spend time on future work in connection with the fairness hearing, coordinating with JND, monitoring settlement administration, and

responding to Settlement Class Member inquiries.

39. Due to the commitment of time and capital investment required to litigate this action and the other PPPA actions outlined above, my firm had to forego other consumer class-action work.

40. To date, my firm has expended \$4,250.00 in out-of-pocket costs and expenses in connection with the prosecution of this case. Attached as **Exhibit B** is an itemized list of those costs and expenses. These costs and expenses are reflected in the records of my firm and were necessary to prosecute this litigation. Cost and expense items are billed separately, and such charges are not duplicated in my firm's billing rates.

I declare under penalty of perjury that the above and foregoing is true and accurate. Executed this 10th day of April 2023 at Miami, Florida.

*/s/ Frank S. Hedin*

Frank S. Hedin

# **EXHIBIT A**

# HEDIN HALL LLP

## FIRM RÉSUMÉ

With offices in Miami, Florida and San Francisco, California, Hedin Hall LLP represents consumers and shareholders in data-privacy, financial services, and securities class actions in state and federal courts nationwide.

Our firm prosecutes difficult cases aimed at redressing injuries suffered by large, diverse groups of people. Over the past decade alone, our work has helped secure billions of dollars in relief for consumers and investors and facilitated important changes in business practices across a wide range of industries.

## **Representative Matters**

Notable examples of our work include:

### Consumer & Data-Privacy Matters

- *Owens, et al. v. Bank of America, N.A., et al.*, No. 19-CV-20614-MGC (S.D. Fla.) (class counsel in overdraft fee class action, non-reversionary \$4.95 million settlement pending final approval);
- *Liggio v. Apple Federal Credit Union*, No. 18-cv-1059-LO (E.D. Va.) (class counsel in overdraft fee class action, non-reversionary \$2.7 million settlement granted final approval);
- *Olsen, et al. v. ContextLogic Inc.*, No. 2019CH06737 (Ill. Cir. Ct. Jan. 7, 2020) (class counsel in action alleging violation of Telephone Consumer Protection Act (“TCPA”), non-reversionary \$16 million settlement finally approved);
- *In re Everi Holdings, Inc. FACTA Litigation*, No. 18CH15419 (Ill. Cir. Ct. Jan. 7, 2020) (class counsel in 14 related actions alleging violations of Fair and Accurate Credit Transactions Act against various casino entities and common payment processor, \$14 million non-reversionary class settlement recently reached);
- *Chimeno-Buzzi v. Hollister Co.* (S.D. Fla.) (class counsel in action alleging violation of TCPA, non-reversionary \$10 million settlement finally approved);
- *Farnham v. Caribou Coffee Co., Inc.* (W.D. Wisc.) (class counsel in action alleging violation of TCPA, non-reversionary \$8.5 million settlement finally approved);

# HEDIN HALL LLP

- *Lin v. Crain Communications, Inc.*, No. 2:19-cv-11889-VAR-APP (E.D. Mich.) (counsel for putative nationwide class in action alleging violation of Michigan’s Personal Privacy Preservation Act against Michigan-based publishing conglomerate);
- *Norberg v. Shutterfly, Inc.* (N.D. Ill.) (putative class action alleging the collection of individuals’ immutable “scans of face geometry” in violation of Illinois’ Biometric Information Privacy Act (“BIPA”));
- *Rivera v. Google, Inc.* (N.D. Ill.) (putative class action arising from Google’s alleged collection of individuals’ immutable “scans of face geometry” in violation of BIPA);
- *In re Facebook Biometric Privacy Litig.* (N.D. Cal.) (first-of-its-kind data privacy class action arising from Facebook’s alleged collection of individuals’ immutable “scans of face geometry” in violation of BIPA);
- *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices and Products Liability Litig.* (N.D. Cal.) (class action alleging claims in connection with the Volkswagen diesel-cheating scandal, resulting in over \$17 billion recovery).

## Securities Matters

- *City of Sterling Heights General Employees’ Retirement System v. Prudential Financial, Inc.* (D. N.J.) (\$33 million settlement for class of aggrieved investors);
- *Louisiana Municipal Police Employees’ Pension Fund v. KPMG, LLP, et al.* (N.D. Ohio) (\$32.6 million settlement for class of aggrieved investors);
- *Cyan v. Beaver County Employees Retirement Fund*, (U.S. Supreme Court) (contributed to *certiorari*, merits, and *amici* briefing in 9-0 plaintiffs’ victory on issues of first impression pertaining to concurrent jurisdiction and dual sovereignty, the PSLRA and SLUSA, and the Securities Act removal bar);
- *Wiley v. Envivio, Inc., et al.* (Cal. Sup. Ct., San Mateo Cnty.) (\$8.5 million settlement for class of aggrieved investors);
- *In re MobileIron Shareholder Litig.* (Cal. Sup. Ct., Santa Clara Cnty.) (\$7.5 million settlement for class of aggrieved investors);
- *In re Model N Shareholder Litig.* (Cal. Sup. Ct., San Mateo Cnty.) (\$8.55 million settlement for class of aggrieved investors);
- *Silverman v. Motorola, et al.* (N.D. Ill.) (\$200 million settlement for class of aggrieved investors);
- *United Food and Commercial Workers Union Local 880 v. Chesapeake Energy Corp., et al.* (W.D. Okla.) (obtained multiple favorable precedent-setting decisions related to

# HEDIN HALL LLP

typicality, tracing, adequacy, materiality, and negative causation under the Securities Act of 1933);

- *Xiang v. Inovalon Holdings, Inc., et al.* (S.D.N.Y.) (obtained favorable precedent-setting decisions related to statute of limitations, falsity, causation, and materiality under the Securities Act of 1933);
- *Buelow v. Alibaba Group Holding Ltd., et al.* (Cal. Sup. Ct., San Mateo Cnty.) (\$75 million settlement, obtained several favorable precedent-setting decisions related to statute of limitations, the relation-back doctrine, falsity, causation, and materiality under the Securities Act of 1933);
- *In re Herald, Primeo, and Thema Funds Sec. Litig.* (S.D.N.Y.) (\$62.5 million settlement for victims of Madoff Ponzi scheme).

## Biographies of Principal Attorneys

### Frank S. Hedin

Frank S. Hedin manages the firm's Miami office. He is a member in good standing of the Florida Bar and the State Bar of California. Mr. Hedin received his Bachelor of Arts from University of Michigan and his Juris Doctor, *magna cum laude*, from Syracuse University College of Law. After graduating from law school, he served for fifteen months as law clerk to the Honorable William Q. Hayes, United States District Judge for the Southern District of California. Prior to establishing Hedin Hall LLP, Mr. Hedin was a partner at a litigation boutique in Miami, Florida, where he represented both plaintiffs and defendants in consumer and data-privacy class actions, employment-related collective actions, and patent and trademark litigation, and served as head of the firm's class action practice.

### David W. Hall

David W. Hall manages the firm's San Francisco office. Before founding Hedin Hall LLP, Mr. Hall managed cases for one of the largest plaintiffs' firm in the United States, where he pioneered and developed, inter alia, the firm's state court Securities Act and data privacy

# HEDIN HALL LLP

practices. Earlier in his legal career, he served as judicial law clerk to the Honorable Irma E. Gonzalez, United States District Judge for the Southern District of California. Mr. Hall is a graduate of the University of California, Hastings College of the Law, *cum laude*, and the New England Conservatory of Music. At Hastings College of the Law, he served as Staff Editor of the Hastings Business Law Journal, teaching assistant in the Legal Writing & Research Department, and extern to the Honorable Joyce L. Kennard of the California Supreme Court.

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# **EXHIBIT B**

**Hedin Hall LLP – Moeller v. The Week Publications, Inc. Expenses Thru 6/24/2022**

<b>Expense</b>	<b>Amount</b>
Hedin Hall LLP share of October 24, 2022 mediation fee to JAMS	\$4,250.00
<b>Total:</b>	\$4,250.00

# **Exhibit 3**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

<p>ELIZABETH MOELLER, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>THE WEEK PUBLICATIONS, INC.,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No. 22-cv-10666-TLL-PTM</p> <p>Hon. Thomas L. Ludington</p> <p>Mag. Judge Patricia T. Morris</p>
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**DECLARATION OF E. POWELL MILLER  
IN SUPPORT OF PLAINTIFF’S MOTION FOR  
ATTORNEYS’ FEES, COSTS, EXPENSES, AND SERVICE AWARD**

I, E. Powell Miller, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746 and based on my own personal knowledge, that the following statements are true:

1. I am the Founding Partner of The Miller Law Firm, P.C. (“The Miller Law Firm”) located in Rochester and Detroit, Michigan.

2. I submit this Declaration in further support of the contemporaneously-filed Plaintiff’s Motion for Attorneys’ Fees, Costs, Expenses, and Service Award (the “Fee Petition”).

3. I am a member in a good standing of the Michigan Bar and am a

member of the bar of this Court. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, I could and would testify competently thereto.

4. I have substantial expertise in leading the prosecution of complex class actions.

5. The Miller Law firm has extensive experience litigating such cases, continuously since 1995, recovering billions of dollars for class members. *See Exhibit A*, The Miller Law Firm Resume.

6. The Miller Law Firm has established a national reputation for the successful prosecution of complex class actions throughout the United States and, particularly, in the Eastern District of Michigan.

7. To date, my firm has also spent \$555.91 in out-of-pocket costs and expenses in connection with the prosecution of this case. Attached as **Exhibit B** is an itemized list of those costs and expenses. These costs and expenses are reflected in the records of my firm, and were necessary to prosecute this litigation. Cost and expense items are billed separately, and such charges are not duplicated in my firm's billing rates.

8. I hereby incorporate paragraphs 9-10, 12-32, 36, and 39-41 of the April 10, 2023 Declaration of Philip L. Fraietta in Support of Plaintiffs' Motion For Attorneys' Fees, Costs, Expenses, and Service Award, as if fully set forth

herein.

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

Executed this 10th day of April, 2023 at Rochester, Michigan.

/s/ E. Powell Miller

E. Powell Miller

# Exhibit A

# **THE MILLER LAW FIRM**

## **A Professional Corporation**

**950 W. University Dr., Ste. 300  
Rochester, MI 48307  
(248) 841-2200**

**[www.millerlawpc.com](http://www.millerlawpc.com)**



## THE MILLER LAW FIRM, P.C. | FIRM RESUME

The Miller Law Firm, P.C. (the “Firm”) is one of the premier litigation law firms in the United States and Michigan’s leading class action firm. The Firm is ranked Tier 1 in Detroit by *U.S. News-Best Lawyers* “Best Law Firms” for commercial litigation. Since the Firm’s founding in 1994, the Firm has developed a national reputation for successfully prosecuting securities fraud, antitrust, product liability, data breach and privacy, and consumer class actions on behalf of its clients. As Lead Counsel or Co-Lead Counsel appointed by judges throughout the United States—in some of the country’s largest and most complex cases—the Firm has achieved over \$3 billion in settlements, recoveries, and/or verdicts on behalf of injured class members.

### Highlights of Results Obtained

2022      *In re EpiPen (Epinephrine Injection, USP) Marketing, Sales Practices and Antitrust Litig.*,  
(United States District Court, District of Kansas)  
(Case No. 2:17-md-02785) (Plaintiffs’ Steering Committee)

Result: \$609 million settlement

*Wood, et al. v. FCA US LLC*  
(United States District Court, Eastern District of Michigan)  
(Case No. 5:20-cv-11054) (Co-Lead Counsel)

Result: Over \$108 million settlement

*Persad, et al. v. Ford Motor Company*  
(United States District Court, Eastern District of Michigan)  
(Case No. 2:17-cv-12599) (Co-Lead Counsel)

Result: Over \$42 million settlement

*Graham, et al. v. University of Michigan, et al.*,  
(United States District Court, Eastern District of Michigan)  
(Case No. 2:21-cv-11168) (Co-Lead Counsel)

Result: Injunctive relief settlement mandating University reforms to address and prevent sexual misconduct

2021      *Simmons, et al. v. Apple, Inc.*  
(Superior Court of the State of California, County of Santa Clara)  
(Case No. 17CV312251) (Co-Lead Counsel)

Result: \$9.75 million settlement

2019 *Carl Palazzolo, et al. Fiat Chrysler Automobiles N.V., et al.*  
(United States District Court, Eastern District of Michigan)  
(Case No. 16-cv-12803) (Co-Lead Counsel)

Result: \$14.75 million settlement

*Zimmerman v. Diplomat Pharmacy, Inc., et al.*  
(United States District Court, Eastern District of Michigan)  
(Case No. 2:16-cv-14005) (Liaison Counsel)

Result: \$14.1 million settlement

2018 *In re Freight Forwarders Antitrust Litigation*  
(United States District Court, Eastern District of New York)  
(Case No. 08-cv-00042) (Counsel for Class Representative)

Result: \$1 billion settlement

2017 *Foster v. L3 Communications, EO Tech*  
(United States District Court, Western District of Missouri)  
(Case No. 15-cv-03519) (Co-Lead Counsel)

Result: \$51 million settlement (100% recovery)

2016 *In re Automotive Parts Antitrust Litigation*  
(United States District Court, Eastern District of Michigan)  
(Case No. 12-md-02311) (Liaison Counsel)

Result: Over \$1 billion in settlements

*GM Securities Class Action/New York Teachers Retirement System v.  
General Motors Company*  
(United States District Court, Eastern District of Michigan)  
(Case No. 4:14-cv-11191) (Local Counsel)

Result: \$300 million settlement

*ERISA Class Action/Davidson v. Henkel Corporation*  
(United States District Court, Eastern District of Michigan)  
(Case No. 12-cv-14103) (Lead Counsel)

Result: \$3.35 million settlement (100% Recovery for 41-member class)

*Pat Cason-Merenda and Jeffrey A. Suhre v. VHS of Michigan, Inc., dba Detroit Medical Center (Antitrust)*  
(United States District Court, Eastern District of Michigan)  
(Case No. 2:06-cv-15601) (Special Trial Counsel)

Result: \$42 million settlement

2015 *In re AIG 2008 Securities Litigation*  
(United States District Court, Southern District of New York)  
(Case No. 08-cv-04772) (Co-Lead Counsel)

Result: \$970.5 million settlement

2014 *City of Farmington Hills Employees Retirement System v. Wells Fargo Bank, N.A.*  
(United States District Court, District of Minnesota)  
(Case No. 10-cv-04372) (Co-Lead Counsel and Primary Trial Counsel)

Result: \$62.5 million settlement approved

*The Shane Group, Inc., et al. v. Blue Cross Blue Shield of Michigan*  
(United States District Court, Eastern District of Michigan)  
(Case No. 2:10-cv-14360) (Co-Lead Counsel)

Result: \$30 million settlement pending final approval

*In re Refrigerant Compressors Antitrust Litigation*  
(United States District Court, Eastern District of Michigan)  
(Case No. 09-md-02042) (Co-Lead Counsel)

Result: \$30 million settlement

2013 *The Board of Trustees of the City of Birmingham Employees et. al. v. Comerica Bank et. al.*  
(United States District Court, Eastern District of Michigan)  
(Case No. 2:09-13201) (Co-Lead Counsel)

Result: \$11 million settlement

*In Re Caraco Pharmaceutical Laboratories, Ltd. Securities Litigation*  
(United States District Court, Eastern District of Michigan)  
(Case No. 2:09-cv-12830) (Co-Lead Counsel)

Result: \$2.975 million settlement

*In Re TechTeam Global Inc. Shareholder Litigation*  
(Oakland County Circuit Court, State of Michigan)  
(Case No. 10-114863-CB) (Liaison Counsel)

Result: \$1.775 million settlement

*General Retirement System of the City of Detroit and Police and Fire Retirement System of the City of Detroit vs. UBS Securities, LLC (Structured Investment Vehicle)*  
(United States District Court, Eastern District of Michigan)  
(Case No. 2:10-cv-13920) (Lead Counsel)

Result: Confidential settlement

2010 *Epstein, et al. v. Heartland Industrial Partners, L.P., et al.*  
(United States District Court, Eastern District of Michigan)  
(Case No. 2:06-CV-13555) (Substantial role)

Result: \$12.2 million settlement

*In Re Skilled Healthcare Group, Inc. Securities Litigation*  
(United States District Court, Central District of California)  
(Case No. 09-5416) (Substantial role)

Result: \$3 million settlement

2009 *In Re Proquest Company Securities Litigation*  
(United States District Court, Eastern District of Michigan)  
(Case No. 4:06-CV-11579) (Substantial role; argued Motion to Dismiss)

Result: \$20 million settlement

*In Re Collins & Aikman Corporation Securities Litigation*  
(United States District Court, Eastern District Michigan)  
(Case No. 03-CV-71173) (Substantial role)

Result: \$10.8 million settlement

*In re IT Group Securities Litigation*  
(United States District Court, Western District of Pennsylvania)  
(Civil Action No. 03-288) (Co-Lead Counsel)

Result: \$3.4 million settlement

2008 *In re Mercury Interactive Securities Litigation*  
(United States District Court, Northern District of California)  
(Civil Action No. 03:05-CV-3395-JF) (Substantial role)

Result: \$117 million settlement

*In Re General Motors Corporation Securities and Derivative Litigation*  
(United States District Court, Eastern District of Michigan)  
(Master Case No. 06-MD-1749) (Co-Lead Counsel)

Status: Obtained major corporate governance reforms to address accounting deficiencies

2007 *Wong v. T-Mobile USA, Inc.*  
(United States District Court, Eastern District of Michigan)  
(Case No. 05-CV-73922) (Co-Lead)

Result: Settlement for 100% of damages

*In re CMS Energy Corporation Securities Litigation*  
(United States District Court, Eastern District Michigan)  
(Master File No. 2:02 CV 72004) (Substantial role)

Result: \$200 million settlement

2005 *In re Comerica Securities Fraud Litigation*  
(United States District Court, Eastern District of Michigan)  
(Case No. 2:02-CV-60233) (Substantial role)

Result: \$21 million in total settlements

*Street v. Siemens*  
(Philadelphia State Court)  
(Case No. 03-885) (Co-Lead Counsel)

Result: \$14.4 million (100% recovery)

*Redmer v. Tournament Players Club of Michigan*  
(Wayne County Circuit Court) (Case No. 02-224481-CK) (Co-Lead)

Result: \$3.1 million settlement

2004 *Passucci v. Airtouch Communications, Inc.*  
(Wayne County Circuit Court) (Case No. 01-131048-CP) (Co-Lead)

Result: Estimated settlement valued between \$30.9 and \$40.3 million

*Johnson v. National Western Life Insurance*  
(Oakland County Circuit Court)  
(Case No. 01-032012-CP) (Substantial role)

Result: \$10.7 million settlement

2003

*Felts v. Starlight*  
(United States District Court, Eastern District Michigan)  
(Case No. 01-71539) (Co-Lead)

Result: Starlight agrees to stop selling ephedrine as an ingredient in its weight loss dietary supplement product

*In re Lason Securities Litigation*  
(United States District Court, Eastern District Michigan)  
(Case No. 99-CV-76079) (Co-Lead)

Result: \$12.68 million settlement

2001

*Mario Gasperoni, et al. v. Metabolife International, Inc.*  
(United States District Court, Eastern District Michigan)  
(Case No. 00-71255) (Co-Lead)

Result: Nationwide settlement approved mandating changes in advertising and labeling on millions of bottles of dietary supplement, plus approximately \$8.5 million in benefits

1999

*Pop v. Art Van Furniture and Alexander Hamilton Insurance Company*  
(Wayne County Circuit Court) (Case No. 97-722003-CP) (Co-Lead)

Result: Changes in sales practices and \$9 million in merchandise.

*Schroff v. Bombardier*  
(United States District Court, Eastern District Michigan)  
(Case No. 99-70327) (Co-Lead)

Result: Recall of more than 20,000 defective Seadoos throughout North America; repair of defect to reduce water ingestion problem; extended warranties; and approximately \$4 million in merchandise.

*In re National Techteam Securities Litigation*  
(United States District Court, Eastern District Michigan)  
(Master File No. 97-74587) (Substantial role)

Result: \$11 million settlement

*In Re F&M Distributors, Inc., Securities Litigation*  
(United States District Court, Eastern District Michigan)  
(Case No. 95-CV-71778-DT) (Minor role)

Result: \$20 million settlement

1998 *In Re Michigan National Corporation Securities Litigation*  
(United States District Court, Eastern District Michigan)  
(Case No 95 CV 70647 DT) (Substantial role)

Result: \$13.3 million settlement

1995 *In re Intel Pentium Processor Litigation*  
(Superior Court, Santa Clara County, California) (Master File No. 745729)  
(Substantial role)

Result: Intel agreed to replace millions of defective Pentium chips on demand without any cost to consumers

# **SELECTED RESUMES**





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## E. POWELL MILLER, PARTNER



✉ [EPM@millerlawpc.com](mailto:EPM@millerlawpc.com)

Powell Miller has been recognized as Michigan’s number one ranked attorney by Super Lawyers Magazine for 2020. He has also been named one of the Top 10 lawyers in Michigan for fourteen consecutive years, from 2009-2022, by Super Lawyers Magazine, and in 2010, 2015, 2019, and 2020 he was the recipient of the Best Lawyers – Lawyer of the Year in the category of Bet-The-Company Litigation. In 2017, Mr. Miller was the recipient of the Judge Friedman and Cook Civility Award, which is awarded to only one lawyer each year. He has been named as one of the Best Lawyers in America every year since 2005. Mr. Miller has earned

Martindale-Hubbell’s highest rating, AV® Preeminent™ 5/5.0 for legal ethics and ability and a 10/10 from AVVO a public rating system. Mr. Miller is also ranked as only one of nine in Michigan to receive the highest Band 1 rating by Chambers USA, describing Mr. Miller as a “Superb trial lawyer” who “routinely acts for high-profile clients based across the [United] states.”

Mr. Miller focuses his practice on all aspects of litigation. He has been retained by many Fortune 500 and other clients to represent them in litigation throughout the United States, including in Michigan, New York, New Jersey, Pennsylvania, Arkansas, Florida, Texas, Kentucky, Ohio, California, Colorado, Indiana, and Illinois.

Mr. Miller recently won an arbitration against Jimmy Johns in the amount of \$4.8 million including a \$1 million attorney fee award. He has never lost a trial, including verdicts in excess of \$5 million, \$10 million and \$23 million. Mr. Miller has also obtained in excess of \$5 billion in settlements. These settlements are regularly among the top ten in Michigan each year.

Mr. Miller has previously served as Co-President of the Detroit Chapter of the Federal Bar Association Antitrust and Securities Committees. He also serves on the Executive Committee for the Wayne State University Law School Board of Visitors and has served a Co-Chair of the American Bar Association Procedures Subcommittee on class actions and multi-district litigation. He lectures regularly on securities litigation at the University of Michigan School of Law. He has also served as an Adjunct Professor at the University of Detroit Law School teaching trial practice. In addition, Mr. Miller regularly speaks at continuing legal education seminars on securities fraud class actions. Mr. Miller also serves as a Master member of The Oakland County Bar Association Inns of Court.

Mr. Miller graduated third in his class from Wayne State University Law School, magna cum laude, in 1986. He was named to the honor society, Order of the Coif, and he was an Editor of the Wayne Law Review. In 1986, Mr. Miller joined the Detroit law firm of Honigman Miller Schwartz and Cohn, where he was elected partner in 1990. In 1994, he formed his own firm.

Mr. Miller has been recognized as a top debater in the United States. He won first place at the Harvard University National Debate Tournament as a freshman at Georgetown University. He also represented Georgetown in a special international debating exhibition against the Oxford Debating Union of Great Britain.



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Mr. Miller is a proud supporter of the Detroit Urban Debate League, a nonprofit that supports the creation of debate programs in under-served high schools; the University of Detroit Jesuit High School and Academy; The Joe Niekro Foundation, which is committed to aiding in the research and treatment of aneurysm patients and families; and Charlotte's Wings, a nonprofit that is dedicated to supporting ailing children in Southeast Michigan through donations of new books to the children and their families in hospital and hospice care.

**EDUCATION:**

**UNIVERSITY OF DETROIT JESUIT HIGH SCHOOL, 1979**

**GEORGETOWN UNIVERSITY, B.A., 1983**

**WAYNE STATE UNIVERISTY LAW SCHOOL, J.D., 1986**



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## SHARON S. ALMONRODE, PARTNER

✉ [SSA@millerlawpc.com](mailto:SSA@millerlawpc.com)

Sharon S. Almonrode is a partner at The Miller Law Firm, where she is also the Chair of the Firm's Class Action and Multi-District Litigation Department.. She has a complex litigation practice with an emphasis on prosecuting large, high-risk, significant damage exposure cases on behalf of clients. Her practice includes ERISA and pension fund litigation, breach of fiduciary duty, consumer products and commercial litigation. She has represented commercial clients in products liability and patent and trademark related litigation. She has successfully represented clients in multi-million dollar cases, including the successful resolution of an actuarial claim for \$110 million dollars.

Ms. Almonrode was appointed to the Plaintiffs' Steering Committee in litigation against Mylan Pharmaceuticals and other drug companies regarding their anti-competitive conduct in the sale of EpiPen epinephrine auto-injectors, resulting in a monopoly that has made them billions of dollars at the expense of consumers and third-party payors. *See In Re: EpiPen (Epinephrine Injection, UPS) Marketing, Sales Practices and Antitrust Litigation*, No. 17-md-02785 (D. Kan.). The case settled in 2022 for approximately \$609 million for class members. Ms. Almonrode also served as co-lead counsel in *In Re: Foster v. L3 Communications, EO Tech*, No. 15-cv-03519 (E.D. Mich.) which settled in excess of \$51 million, as well as co-lead counsel in the ERISA class action *Davidson v. Henkel Corporation*, No. 12-cv-14103 (E.D. Mich.) which settled for \$3.35 million, resulting in a 100% recovery for the class.

In 2010, she received the special distinction of Michigan Leader in the Law, awarded by *Michigan Lawyers' Weekly*. For the past eleven years, Ms. Almonrode has been named a Super Lawyer. For the past ten years, she has been named one of the top 50 Women Super Lawyers in the State of Michigan (out of approximately 11,000 women practicing in the state). For the past nine years, she has been named one of the top 100 Lawyers in Michigan (out of 34,204 lawyers in the state). She was named one of the top five Consumer Lawyers in the State of Michigan for 2016. Ms. Almonrode was named among the most notable women lawyers in Michigan by *Crain's Detroit Business* for 2017. Recently, she was admitted to the inaugural class of the Michigan Lawyers' Weekly Hall of Fame. She has earned Martindale-Hubbell's highest rating, AV<sup>®</sup>Preeminent<sup>™</sup> 5/5.0 for legal ethics and ability.

Ms. Almonrode was admitted to practice in the State of Michigan in 1982. She is also admitted to practice in the U.S. District Court Eastern District of Michigan, U.S. District Court Western District of Michigan, U.S. Bankruptcy Court Eastern District of Michigan, U.S. Bankruptcy Court Western District of Michigan, U.S. District Court – Northern District of Illinois, U.S. Court of Appeals 6th Circuit, the State of New York, the U.S. District Court for Southern District of New York, the U.S. District Court for the Eastern District of New York, the U.S. Court of Appeals 2nd Circuit, and the U.S. Supreme Court.

Before joining The Miller Law Firm, P.C. in 2012, Ms. Almonrode was a Partner at Sullivan, Ward, Asher & Patton, P.C., and Supervisor-Salaried Personnel at General Motors Corp.

Ms. Almonrode's pro bono activities have included working with the Detroit Institute of Arts and the Detroit Film Theatre Board.

**Oakland University, B.S., 1978**

**University of Detroit Mercy School of Law, J.D. 1981**

# Exhibit B

**The Miller Law Firm, P.C.**Date Printed: 4/10/2023  
Time Printed: 4:57PM  
Printed By: SSR**Detail Work in Progress**

<b>Date</b>	<b>Client Reference</b>	<b>Staff Description</b>	<b>Billing Code</b>	<b>Dur/Qty</b>	<b>Rate/Price</b>	<b>Amount</b>
3/28/2022	MS/The Week C/A	Samantha S Stenq Filing Fee		1.00	402.00	402.00
11/22/2022	MS/The Week C/A	Samantha S Stenq Postage		1.00	10.20	10.20
11/30/2022	MS/The Week C/A	Samantha S Stenq Westlaw-database research for the month of November 2022		1.00	88.17	88.17
12/31/2022	MS/The Week C/A	Samantha S Stenq Westlaw-database research for the month of December 2022		1.00	8.04	8.04
12/31/2022	MS/The Week C/A	Samantha S Stenq Copying charges for the month of December 2022		190.00	0.25	47.50
<b>Report Total</b>				<b>194.00</b>		<b>\$555.91</b>