

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

MONIQUE BELL, TREE ANDERSON, and  
MELISSA CONKLIN, individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

CVS PHARMACY, INC.,

Defendant.

Case No. 1:21-cv-06850-PK

Hon. Peggy Kuo

**DECLARATION OF JOSEPH I. MARCHESE IN SUPPORT OF PLAINTIFFS’  
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

I, Joseph I. Marchese, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am an attorney and partner at Bursor & Fisher, P.A., the court-appointed Class Counsel for purposes of the proposed Class Action Settlement. I am an attorney at law licensed to practice in the State of New York, and I am a member of the Bar of this Court. I have personal knowledge of all matters set forth herein unless otherwise indicated, and, if called upon to testify, I could and would competently do so.

2. I make this Declaration in support of Plaintiffs’ Motion for Final Approval of Class Action Settlement Agreement filed herewith.

3. Attached hereto as **Exhibit 1** is a true and correct copy of the Parties’ Class Action Settlement Agreement.

**LITIGATION AND SETTLEMENT HISTORY**

4. On December 11, 2021, Plaintiff Monique Bell filed the original class action complaint in the United States District Court for the Eastern District of New York. The material

allegations of the complaint were that the packaging of Defendant's Lidocaine Patches was false and deceptive in that it led purchasers to believe that the Lidocaine Patches delivered a "maximum strength" amount of lidocaine and could reliably adhere to consumer bodies for up to 8 or 12 hours, depending on the product. (ECF No. 1). Plaintiff Bell alleges that CVS Pharmacy, Inc. ("CVS" or "Defendant") violated state consumer protection statutes, state warranty acts, New York General Business Law ("GBL") §§ 349-350, New York Warranty Act, N.Y. U.C.C. § 2-313, The Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, et seq., and were unjustly enriched. *Id.*

5. On February 14, 2022, Defendant filed an answer to Plaintiff Bell's operative class action complaint, in which it asserted 15 affirmative defenses. (ECF No. 14).

6. On April 7, 2022, Defendant filed two letters seeking a pre-motion conference regarding its anticipated motion for judgment on the pleadings (ECF No. 26) and requesting adjournment of the Court's Initial Scheduling Conference (ECF No. 27). On April 12, 2022, Plaintiff Bell filed two letters in opposition to the above-referenced letters. (ECF Nos. 28, 29).

7. On April 13, 2022, the Court denied Defendant's request for a pre-motion conference and directed the parties to agree on a briefing schedule in anticipation of Defendant's motion for judgment on the pleadings. Furthermore, on April 13, 2022, the Court also denied Defendant's letter to adjourn the Court's Initial Scheduling Conference.

8. On May 10, 2022, Plaintiff Bell and Defendant, by and through their counsel of record, attended an in-person hearing before Judge Peggy Kuo to discuss the Parties' anticipated motion for judgment on the pleadings and discovery schedule. During the hearing, the Parties also discussed the prospect of settlement and agreed to participate in a settlement conference before the Court on August 23, 2022. Since that time, the Parties continued to engage in informal settlement discussions.

9. On May 18, 2022, Defendant served, and subsequently filed, its motion for judgment on the pleadings (ECF Nos. 37, 41-43). On June 17, 2022, Plaintiff Bell filed her opposition to Defendant's motion (ECF No. 44), and Defendant filed its reply in further support of its motion on July 1, 2022 (ECF No. 45).

10. On May 20, 2022, Plaintiff Bell and Defendant filed, and the Court adopted, a joint confidentiality order. Throughout that time, the Parties continued to engage in settlement meetings and discussions, including exchanging written discovery on issues such as the size and scope of the putative class and Plaintiff Bell's use of Defendant's Lidocaine Patches. To that end, the Parties agreed in July 2022 to participate in a private mediation before The Honorable Frank Maas (Ret.) of JAMS New York, an experienced class action mediator.

11. In the weeks leading up to the mediation, the Parties were in regular communication with each other and with Judge Maas, as the Parties sought to crystallize the disputed issues, produce focal information and data, and narrow potential frameworks for resolution. During this period and in connection with the mediation proceedings, Defendant provided Class Counsel with detailed transactional data regarding Defendant's sales of the Lidocaine Products; the Parties exchanged briefing on the key facts, legal issues, litigation risks, and potential settlement structures; and the Parties supplemented that briefing with extensive telephonic correspondence mediated by Judge Maas and in-person meetings in order to clarify the Parties' positions in advance of the mediation. This permitted the Parties to competently assess the strengths and weakness of their claims and defenses and their relative negotiating positions.

12. On September 28, 2022, the Parties attended a full-day, in-person mediation before Judge Maas in JAMS New York. While the Parties engaged in good faith arms-length negotiations, they failed to reach an agreement that day. However, the mediation culminated in a

mediator's proposal on October 4, 2022, that both Parties accepted. After accepting the mediator's proposal, the Parties memorialized the material terms of the class action settlement in an executed term sheet. (ECF No. 48). Class Counsel has also worked with defense counsel to collect and analyze bids from multiple settlement administration companies for notice and administration services. After agreeing to use Kroll Settlement Administration ("Kroll"), Class Counsel collaborated with defense counsel and Kroll to formulate the Court-ordered Notice Program.

13. Based on my research and information provided by Defendant, a total of approximately 11,400,000 Product Units have been sold during the Class period.

14. Class Counsel has devoted substantial resources to the prosecution of this action by investigating Plaintiffs' claims and that of the Class, aggressively pursuing those claims, conducting discovery, participating in a private mediation with Judge Maas (Ret.) of JAMS, and ultimately, negotiating a favorable class action settlement.

15. During the mediation process, Class Counsel noted the existence of additional plaintiffs, who purchased other CVS-branded maximum strength lidocaine products, which they intended to add to this suit. Defendant agreed to permit Plaintiff Bell to file her First Amended Complaint, which was filed on April 21, 2023, adding Plaintiffs Tree Anderson and Melissa Conklin (collectively "Plaintiffs"). (ECF No. 54).

16. The resulting Settlement provides that Defendant shall pay up to \$3,800,000 in refunds in the amount of \$4.50 per Unit (Class Members with proof of purchase have no limitations on the amount they may recover and Class Members without proof of purchase may claim up to three units), plus payment of notice and administration costs approximating \$500,000, for an estimated total settlement value of \$4,300,000. Attorneys' fees, costs, and expenses shall be paid by Defendant from the Settlement Sum.

17. Defendant also agreed to have the labels on the covered Products changed to clearly identify that the Products contain the “maximum strength” of lidocaine available over the counter (“OTC”) without a prescription and to remove any language concerning the length of time the Products in patch form will adhere.

18. Pursuant to the terms of the Proposed Settlement, Plaintiffs request a fee and expense award not to exceed \$1,140,000, which represents 26.5% of the total value of the Settlement (\$4,300,000).

19. This percentage does not take into account the value of the non-monetary relief for the Product label changes Class Counsel has procured.

20. After finalizing and executing the Class Action Settlement Agreement, Class Counsel prepared Plaintiffs’ Motion for Preliminary Approval, which was filed on May 24, 2023 (ECF No. 56).

21. On July 18, 2023, the Court granted Plaintiffs’ Motion for Preliminary Approval (ECF No. 61).

#### **FACTORS SUPPORTING FINAL APPROVAL**

22. The Parties agreed to the terms of the Settlement through experienced counsel who possessed all the information necessary to evaluate the case, determined all the contours of the proposed class, and reached a fair and reasonable compromise after negotiating the terms of the Settlement at arms’ length.

23. Plaintiffs and Class Counsel recognize that despite their belief in the strength of Plaintiffs’ claims, and Plaintiffs’ and the Class’s ability to secure an award of damages, the expense, duration, and complexity of protracted litigation would be substantial and the outcome of trial uncertain. Thus, the Settlement secures a more proximate and more certain monetary

benefit to the Class than continued litigation.

24. Plaintiffs and Class 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.

25. Defendant is also represented by highly experienced attorneys who have made clear that absent a settlement, they were prepared to continue their vigorous defense of this case, including by moving for summary judgment should the motion for judgment on the pleadings be denied. Plaintiffs and Class Counsel are also aware that Defendant would continue to challenge liability as well as assert a number of defenses, including challenges to (i) whether a nationwide class could be certified; (ii) whether damages could be calculated on a classwide basis; and (iii) whether the reasonable consumer could be deceived and injured by the challenged advertising under these circumstances. Defendant's success on any one of those issues could have precluded many if not most Class Members from recovering anything. Defendant would have also vigorously contested the certification of a litigation class, including the right to appeal the Court's order pursuant to Fed. R. Civ. P. 23(f). And, even success at class certification would not preclude a victory for Defendant on Daubert motions, on the merits at summary judgment, on a decertification motion, at trial, or on appeal. Thus, there was a significant risk of delay in achieving final resolution of this matter.

26. Plaintiffs and Class Counsel believe that the monetary and injunctive 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.

27. Since the Court granted preliminary approval, Class Counsel has worked with the Settlement Administrator, Kroll, to carry out the Court-ordered Notice Program. Specifically,

Class Counsel helped compile and review the contents of the required notices 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.

28. Since class notice has been disseminated, Class Counsel has worked with Kroll on a regular basis to monitor settlement claims, and to discuss and monitor the claims verification process, as well as any other settlement notice and administration issues that arose.

29. Pursuant to the Court's Preliminary Approval Order (ECF No. 61), the deadline to opt-out of or object to the Settlement was October 6, 2023. As detailed in the Fenwick Declaration, there were only two requests for exclusion from the settlement and there were zero objections. Moreover, the Settlement Administrator currently estimates that approximately 183,868 Valid Claims have been filed, representing an estimated total Settlement Benefit payment of \$2,176,078 (calculated multiplying the current estimated Valid Claims by 2.63 average number of Products per claimant and by \$4.50 per Product).

30. Attached hereto as **Exhibit 2** is a current firm resume for Bursor & Fisher, P.A.

31. My firm, Bursor & Fisher, P.A., has significant experience in litigating class actions of similar size, scope, and complexity to the instant action.

32. My firm has also been recognized by courts across the country for its expertise and skilled and effective representation. Ex. 2; *see also Mogull v. Pete and Gerry's Organics, LLC*, 2022 WL 4661454, at \*2 (S.D.N.Y. Sept. 30, 2022) (Briccetti, J.) ("Bursor & Fisher ... has represented other plaintiffs in more than one hundred class action lawsuits, including several consumer class actions that proceeded to jury trials in which Bursor & Fisher achieved favorable results for the plaintiffs. Thus, Bursor & Fisher has experience in class actions as well as knowledge of the applicable law in this case."); *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 [now six] class action jury trials since 2008.”). My firm has zealously represented the interests of this Class and committed substantial resources to the resolution of the class claims.

33. Based on Class Counsel’s experience litigating similar consumer class actions, Class Counsel is of the opinion that the Settlement is fair, reasonable, and adequate.

34. As discussed above and throughout Plaintiffs’ Motion for Final Approval of Class Action Settlement, the Settlement reached in this case was the product of informed negotiations conducted at arms’ length through an experienced mediator and by experienced counsel representing adversarial parties, such that there is no indicia or evidence of fraud or collusion.

35. There are no separate agreements to be identified pursuant to Federal Rule of Civil Procedure 23(e)(3).

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

Executed on January 25, 2024 in New York, New York.

/s/ Joseph I. Marchese  
Joseph I. Marchese





**CLASS ACTION SETTLEMENT AGREEMENT**

This Agreement (“Agreement” or “Settlement Agreement” or “Settlement”) is entered into by and among: (i) Monique Bell, Tree Anderson, and Melissa Conklin (“Named Plaintiffs”); (ii) the Settlement Class (as defined herein); and (iii) Defendant CVS Pharmacy, Inc. (“Defendant” or “CVS”). The Settlement Class and the Named Plaintiffs are collectively referred to as “Plaintiffs” unless otherwise noted. Plaintiffs and Defendant are collectively referred to herein as the “Parties.” Capitalized terms used herein are defined in Section 2 of this Agreement or indicated in parentheses elsewhere in this Agreement. 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.

**1. RECITALS**

A. On December 11, 2021, Named Plaintiff Monique Bell filed the original putative class action complaint in the United States District Court for the Eastern District of New York, and this matter was assigned case number 21-cv-06850 (the “Action”) (ECF No. 1).

B. On February 14, 2022, Defendant filed an answer to Named Plaintiff Bell’s operative putative class action complaint, in which it asserted 15 affirmative defenses. (ECF No. 14).

C. On April 7, 2022, Defendant filed two letters seeking a pre-motion conference regarding its anticipated motion for judgment on the pleadings (ECF No. 26) and requesting adjournment of the Court’s Initial Scheduling Conference (ECF No. 27). On April 12, 2022, Named Plaintiff Bell filed two letters in opposition to the above-referenced letters. (ECF Nos. 28, 29).

D. On April 13, 2022, the Court denied Defendant’s request for a pre-motion

conference and directed the parties to agree on a briefing schedule in anticipation of Defendant's motion for judgment on the pleadings. Furthermore, on April 13, 2022, the Court also denied Defendant's letter to adjourn the Court's Initial Scheduling Conference.

E. On May 10, 2022, Named Plaintiff Bell and Defendant, by and through their counsel of record, attended an in-person hearing before Judge Peggy Kuo to discuss the Parties' anticipated motion for judgment on the pleadings and discovery schedule. During the hearing, the Parties also discussed the prospect of settlement and agreed to participate in a settlement conference before the Court on August 23, 2022. Since that time, the Parties continued to engage in informal settlement discussions.

F. On May 18, 2022, Defendant served, and subsequently filed, its motion for judgment on the pleadings (ECF Nos. 37, 41-43). On June 17, 2022, Named Plaintiff Bell filed her opposition to Defendant's motion (ECF No. 44), and Defendant filed its reply in further support of its motion on July 1, 2022 (ECF No. 45).

G. On May 20, 2022, Named Plaintiff Bell and Defendant filed, and the Court adopted, a joint confidentiality order (ECF Nos. 39-40). Throughout that time, the Parties continued to engage in settlement discussions, including exchanging information on issues such as the size and scope of the putative class and Named Plaintiff Bell's use of Defendant's Products (as defined herein). To that end, the Parties agreed in July 2022 to participate in a private mediation before The Honorable Frank Maas (Ret.) of JAMS New York, an experienced class action mediator.

H. In the weeks leading up to the mediation, the Parties were in regular communication with each other and with Judge Maas, as the Parties sought to crystallize the disputed issues, produce focal information and data, and narrow potential frameworks for resolution. During this period and in connection with the mediation proceedings, Defendant

provided counsel for Plaintiffs (“Class Counsel”) with detailed transactional data regarding Defendant’s sales of the Products (as defined herein); the Parties exchanged briefing on the key facts, legal issues, litigation risks, and potential settlement structures; and the Parties supplemented that briefing with extensive telephonic correspondence mediated by Judge Maas and in-person meetings in order to clarify the Parties’ positions in advance of the mediation. This permitted the Parties to competently assess the strengths and weakness of their claims and defenses and their relative negotiating positions.

I. On September 28, 2022, the Parties attended a full-day mediation before Judge Maas in JAMS New York. While the Parties engaged in good-faith arms’ length negotiations, they failed to reach an agreement. However, the mediation culminated in a mediator’s proposal on October 4, 2022, that the Parties later accepted. After accepting the mediator’s proposal, the Parties continued to negotiate all of the material terms of the class action settlement and executed a term sheet. (ECF No. 48).

J. During the mediation, Class Counsel noted the existence of additional plaintiffs, who purchased other CVS-branded maximum strength lidocaine products, which they intended to add to this suit. Defendant agreed to permit Named Plaintiff Bell to file her First Amended Complaint, which was filed on April 21, 2023, naming Named Plaintiffs Tree Anderson and Melissa Conklin (ECF No. 53-1). The Parties also agreed to stay all non-settlement deadlines (ECF No. 53).

K. 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. Defendant believes that the claims asserted in the Action do not have merit and that Defendant would have prevailed

at summary judgment or 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 will not be construed as or deemed to be evidence of or an admission or concession of liability or wrongdoing on the part of Defendant, or any of the Released Parties (as defined herein), 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.

L. Plaintiffs believe that the claims asserted in the Action against Defendant have merit and that they would have prevailed at summary judgment and/or trial. Nonetheless, Plaintiffs and Class Counsel recognize that Defendant has raised factual and legal defenses that present a risk that Plaintiffs may not prevail. Plaintiffs and Class Counsel also recognize the expense and delay associated with continued prosecution of the Action against Defendant through class certification, summary judgment, trial, and any subsequent appeals. Plaintiffs 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, Plaintiffs and Class Counsel believe it is desirable that the Released Claims (as defined herein) 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 Named Plaintiffs, the Settlement Class, and Defendant, by and through their undersigned counsel,

that, subject to final approval of the Court, after a hearing or hearings as provided for in this Settlement Agreement, and in consideration of the benefits flowing to the Parties from the Agreement set forth herein, the Action and the Released Claims will be finally and fully compromised, settled, and released, and the Action will be dismissed with prejudice, upon and subject to the terms and conditions of this Agreement.

## **2. DEFINITIONS**

As used in this Settlement Agreement and the attached exhibits (which are an integral part of the Settlement and are incorporated in their entirety by reference), the following terms shall have the meanings set forth below, unless this Settlement specifically provides otherwise. Other capitalized terms in this Settlement but not defined in this section shall have the meanings ascribed to them elsewhere in this Agreement.

**2.1 “Administration Expenses”** means reasonable fees and expenses incurred by the Settlement Administrator for all tasks the Settlement Administrator performs in furtherance of the notice and administration of the Settlement, except as otherwise noted herein. The Administration expenses will be paid by Defendant separate and apart from the Settlement Sum.

**2.2 “Application”** means the application to be filed by Class Counsel in this Action by which they will seek an award of attorneys’ fees, Class Representative Service Awards, and reimbursement of expenses they incurred prosecuting this Action.

**2.3 “Attorneys’ Fees and Expenses” or “Fee Award”** means such funds as may be awarded by the Court based on the Settlement described herein to compensate Class Counsel as determined by the Court and described more particularly in Section 7 of this Settlement. This award will also include a reimbursement of expenses incurred by Class Counsel arising from their representation in the Action, and disbursements incurred by them and their experts, staff,

and consultants in connection with the Action. Class Counsel will not request, and will not accept, a Fee Award in excess of \$1,140,000.00. The Fee Award will be paid out of the Settlement Sum.

**2.4** “**Benefit**” means the cash payment available to a Claimant who files a Valid Claim under this Agreement. The specific Benefit paid is subject to review, validation, and adjustments by the Settlement Administrator based upon the terms and conditions of this Agreement.

**2.5** “**Benefit Payments**” are the payments issued for Valid Claims as determined by the Settlement Administrator and in accordance with this Agreement.

**2.6** “**Claim**” means a request for relief pursuant to this Settlement submitted by Settlement Class Members on a Claim Form filed with the Settlement Administrator in accordance with the terms of this Settlement. One Claim is allowed per Settlement Class Member.

**2.7** “**Claim Form**” means the proposed claim form in substantially the form attached hereto as Exhibit A to be used by Settlement Class Members to make a Claim under the Settlement (described at Section 4, below), which form is to be approved by the Court and to be posted online in accordance with Section 8 of this Settlement.

**2.8** “**Claimant**” means a Settlement Class Member who files a Claim seeking a Benefit under this Agreement.

**2.9** “**Claims Deadline**” means the date by which a Claim Form must be postmarked (if sent by mail) or received (if submitted electronically) to be considered timely and shall be no later than 90 days after the Notice Date. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the Class Notice Program and the Claim Form.

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

**2.11** “**Class Notice Program**” or “**Notice Program**” means the Court-approved notice, detailed in Section 8, and consists of the: (i) Direct Notice; (ii) Long-Form Notice (iii) Publication Notice; and (iv) Settlement Website.

**2.12** “**Class Period**” means the period of December 11, 2017 through and including the date of entry of the Preliminary Approval Order.

**2.13** “**Class Representatives**” means Named Plaintiffs Monique Bell, Tree Anderson, and Melissa Conklin.

**2.14** “**Class Representative Service Awards**” means any award sought by Application and approved by the Court that is payable to the Class Representatives, up to a maximum total amount of three thousand dollars and zero cents (\$3,000.00) per Class Representative to compensate the Class Representatives for their efforts in bringing the Action and achieving the benefits of this Settlement on behalf of the Settlement Class.

**2.15** “**Court**” means the United States District Court for the Eastern District of New York.

**2.16** “**Defendant**” or “**CVS**” means CVS Pharmacy, Inc.

**2.17** “**Defendant’s Counsel**” means the law firm of Benesch, Friedlander, Coplan & Aronoff LLP.

**2.18** “**Direct Notice**” means the email notice, substantially in the form attached hereto as Exhibit C-1 and detailed in Section 8.1, that will be sent to Defendant’s loyalty program members for which an email address is readily available in Defendant’s records.

**2.19** “**Effective Date**” means one business day after the last of the following dates: (a)



all Parties have executed this Settlement; (b) the Court has entered the Final Approval Order finally certifying the Settlement Class, finally approving the Agreement, and dismissing the Action with prejudice as to Named Plaintiffs' and Settlement Class Members' claims against Defendant; and (c) the date on which the time to appeal or to seek permission to appeal from the Court's approval of the Settlement Agreement has expired or, if appealed, approval of the Settlement Agreement has been affirmed in its entirety by the Court of last resort to which such appeal has been taken and such affirmance is no longer subject to further appeal or review, or upon the denial of a writ of certiorari to review the order and final judgment from any court, thus making the Final Approval Order a final, non-appealable judgment.

**2.20 "Fairness Hearing" or "Final Approval Hearing"** means the final hearing to be conducted by the Court on such date as the Court may order to determine the fairness, adequacy, and reasonableness of the Settlement in accordance with applicable jurisprudence, to be held after notice has been provided to the Settlement Class in accordance with this Settlement, and where the Court will: (a) determine whether to grant final approval to the certification of the Settlement Class; (b) determine whether to designate Named Plaintiffs as the representatives of the Settlement Class; (c) determine whether to designate Class Counsel as counsel for the Settlement Class; (d) determine whether to grant final approval to the Settlement; (e) rule on Class Counsel's Application for Attorneys' Fees and Expenses and Class Representative Service Awards; and (f) consider whether to enter the Final Approval Order.

**2.21 "Final Approval Order"** means an order to be entered by the Court granting, among other things, final approval of the Settlement and entry of final judgment with respect thereto.

**2.22 "Labeling"** means the display of written, printed, or graphic matter upon the

outside packaging of Product(s).

**2.23 “Long-Form Notice”** means the notice substantially in the form attached as Exhibit B, to be posted on the Settlement Website.

**2.24 “Media Plan”** means the Settlement Administrator’s plan to disseminate the Publication Notice to Settlement Class Members, which will be designed to achieve no less than 70% reach to Settlement Class Members and will be designed to comport with due process requirements, Fed. R. Civ. P. 23, and any governing local rules, standing orders, or judicial requirements.

**2.25 “Motion for Preliminary Approval of Settlement”** means the motion, to be filed by Plaintiffs, seeking entry by the Court of the Preliminary Approval Order, and includes all supporting papers. This Motion shall be provided to counsel for Defendant no fewer than 7 days prior to filing.

**2.26 “Motion for Final Approval of Settlement”** means the motion, to be filed by Plaintiffs, seeking entry by the Court of the Final Approval Order, and includes all supporting papers. This Motion shall be provided to counsel for Defendant no fewer than 7 days prior to filing.

**2.27 “Named Plaintiffs”** means the named Plaintiffs in this Action: Monique Bell, Tree Anderson, and Melissa Conklin.

**2.28 “Notice Date”** means the date by which the Class Notice Program must be effectuated pursuant to Section 8 of this Agreement, which is to be thirty-five (35) days after the entry of the Preliminary Approval Order.

**2.29 “Opt-Out / Objection Deadline”** means the date by which Settlement Class Members must mail their written request for exclusion or objection to the Settlement, meeting

the requirements detailed at Section 9. The postmark date shall constitute evidence of the date of mailing for these purposes. This deadline shall be no later than 45 days after the Notice Date.

**2.30 “Parties”** (or **“Party”** individually) means Plaintiffs and Defendant.

**2.31 “Plaintiffs”** (or **“Plaintiff”** individually) means Named Plaintiffs and Settlement Class Members.

**2.32 “Preliminary Approval Order”** means the Order preliminarily approving the Settlement Agreement, conditionally certifying the Settlement Class for settlement purposes, and directing notice thereof to the Settlement Class using the Class Notice Program detailed in Section 8, which is substantially in the form attached hereto as Exhibit D.

**2.33 “Product”** and/or **“Products”** means all CVS-branded “maximum strength” lidocaine patches, creams, roll-ons, and spray products, including, but not limited to, the products listed in the First Amended Complaint (ECF No. 53-1). The Products include the following SKU numbers: 376649, 405343, 977934, 328522, 405623, 250483, 385037, 249024, 235554, 383998, 238921, 197229, 450467, 371271, 188721, 256563, 196728, 256518, 384034, 234274, 834344, 388642.

**2.34 “Proof of Purchase”** means a receipt or other documentation which reasonably establishes the fact of purchase of the Product during the Class Period in the United States.

**2.35 “Publication Notice”** means the proposed short form notice, in substantially the form attached as Exhibit C-2 hereto, to be approved by the Court and to be published in accordance with the Media Plan.

**2.36 “Releases”** means the release of all claims contained in Section 12 of this Agreement.

**2.37 “Released Claims”** are defined in Section 12.

**2.38 “Released Parties”** means CVS Pharmacy, Inc., and its current, former, and future parents, predecessors, successors, affiliates, assigns, subsidiaries, divisions, or related corporate entities, employees, officers, directors, shareholders, equity holders, consultants, assigns, suppliers, manufacturers, agents, independent contractors, trustees, administrators, executors, insurers, attorneys, customers, wholesalers, retailers, vendors, distributors, and dealers, and each and all of their respective current, future, and former managers, members, directors, officers, consultants, affiliated entities and corporations, subsidiaries, divisions, franchisees, partners, joint venturers, agents, investors, creditors, insurers, attorneys, employees, representatives, successors, licensees, customers, and assigns. For the avoidance of doubt, Released Parties shall include all persons or entities in the stream of commerce for the marketing, sale, and/or distribution of the Products.

**2.39 “Releasing Parties”** means Plaintiffs, all Settlement Class Members, Class Counsel, and any person claiming by or through him/her/it, including any Person claiming to be his/her/its spouse, parent, child, heir, guardian, associate, co-owner, attorney, agent, administrator, devisee, predecessor, successor, assignee, representative of any kind, shareholder, partner, director, employee or affiliate.

**2.40 “Settlement Administrator”** means Kroll Settlement Administration, who has been selected jointly by the Parties and approved by the Court to perform the duties set forth in this Agreement.

**2.41 “Settlement Class” or “Settlement Class Members”** means all persons who purchased Products in the United States during the Class Period. Excluded from the Settlement Class are: (a) all persons who purchased or acquired the Products for resale; (b) Defendant and its employees, principals, affiliated entities, legal representatives, successors, and assigns; (c) any

person who makes a valid, timely opt-out request; (d) federal, state, and local governments (including all agencies and subdivisions thereof, but excluding employees thereof), and (e) the judges to whom this Action is assigned and any members of his/her/their immediate family.

**2.42 “Settlement Sum”** means the maximum of three million eight hundred thousand dollars and zero cents (\$3,800,000) that Defendant will make available to resolve the Action. The Settlement Sum represents Defendant’s all-inclusive, sole, exclusive, and full payment for all monetary consideration of any kind whatever to Plaintiffs, Class Representatives, Settlement Class Members, and Class Counsel, including the total amount of monetary relief available to Settlement Class Members for payment of all Valid Claims, for Class Representative Service Awards, and for Class Counsel’s Fee Award. The Settlement Sum does not include reasonable Administration Expenses. Defendant shall not, under any circumstances, be obligated to pay any other additional amounts beyond the Settlement Sum and the Administration Expenses. Defendant need not segregate funds or otherwise create special accounts to hold the Settlement Sum and will not relinquish control of any money until payments are due as set forth in the Settlement Agreement. The Parties agree that any and all undistributed funds—that is, funds not used to pay the Valid Claims, awarded Class Representative Incentive Awards, and the awarded Fee Award—will remain with Defendant and uncashed checks will promptly revert to Defendant. The Settlement Sum amount and structure are material terms of this Agreement.

**2.43 “Settlement Website”** means a website to be established, operated, and maintained by the Settlement Administrator, utilizing the URL [lidocainesettlement.com](http://lidocainesettlement.com), for purposes of providing notice and otherwise making available to the Settlement Class Members the documents, information, and online claims submission process referenced in Section 8.3, below.

**2.44 “Unit”** means a single unit sold of the Product.

**2.45 “Valid Claim”** means a Claim Form submitted by a Settlement Class Member that is: (a) submitted in accordance with the directions accompanying the Claim Form and the provisions of the Settlement; (b) accurately, fully and truthfully completed and executed, with all of the information requested in the Claim Form, by a Settlement Class Member; (c) signed physically or by e-signature by a Settlement Class Member personally, subject to the penalty of perjury; (d) returned via mail and postmarked by the Claims Deadline, or, if submitted online, is submitted by 11:59 p.m. EST on the Claims Deadline; and (e) determined to be valid by the Settlement Administrator.

**3. PRELIMINARY APPROVAL AND CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS**

**3.1** The Parties agree that the Action may be certified as a class action in accordance with the terms of this Agreement, with the understanding of all Parties that should this Agreement fail to become effective or is not fully implemented in accordance with its terms, no class shall be deemed certified unless and until Named Plaintiffs prevail on a motion for class certification, and without prejudice to Defendant’s right to contest class certification in that event. If the Settlement is not approved or this Agreement fails to be fully implemented for any reason, Defendant reserves all rights to object to any subsequent motion to certify a class in this or any other lawsuit, and no representation or concession made in connection with the Settlement or this Agreement shall be admissible or considered law of the case or an admission by Defendant or to have any kind of preclusive effect against Defendant or to give rise to any form of estoppel or waiver by Defendant in these actions or any other proceeding.

**3.2** Defendant expressly denies any and all liability and/or wrongdoing with respect to any and all of the claims alleged in this lawsuit and any similar lawsuits and enters into this Settlement solely to compromise a disputed claim. Accordingly, any references to the alleged

business practices or actions of Defendant or any Released Party in this Settlement or the related Court hearings and processes shall raise no inference or admission respecting the propriety of those business practices or any other business practices of Defendant. If this Agreement is deemed void or the Effective Date does not occur for any reason, Defendant does not waive, but rather expressly reserves, all rights to challenge all such claims and allegations in the Action on all procedural, evidentiary, and factual grounds, including, without limitation, the ability to challenge on any grounds whether any class can be certified and to assert any and all defenses or privileges. The Class Representatives and Class Counsel agree that Defendant retains and reserves all these rights and agree not to take a position to the contrary.

**3.3** As soon as practicable after the execution of this Agreement, Plaintiffs shall file in the Action this Agreement and a Motion for Preliminary Approval seeking entry of the Preliminary Approval Order substantially in the form of Exhibit D, which order by its terms shall accomplish all of the following: (i) preliminarily approve the Settlement as fair, reasonable, and adequate; (ii) conditionally certify the Settlement Class for the purpose of effectuating the Settlement; (iii) preliminarily designate Named Plaintiffs Monique Bell, Tree Anderson, and Melissa Conklin as the Class Representatives of the Settlement Class; (iv) preliminarily designate Class Counsel as counsel for the Settlement Class; (v) approve the Settlement Administrator and instruct the Settlement Administrator to perform its functions in accordance with the terms of this Agreement and the Preliminary Approval Order; and (vi) approve the form, contents, and method of the Class Notice Program, as detailed in Section 8 of this Agreement.

**4. SETTLEMENT CONSIDERATION AND PROCEDURES FOR PROVIDING BENEFITS TO SETTLEMENT CLASS MEMBERS**

**4.1 Benefit Available to Settlement Class Members**

In order to qualify for a Benefit, Settlement Class Members must timely submit a

completed and valid Claim Form, which shall be substantially the form attached hereto as Exhibit A. This can be done on the Settlement Website or by mail, submitted by or postmarked by the Claims Deadline. In consideration for the Settlement and Releases given herein and subject to the rights, terms, and conditions of this Agreement, Defendant will make available the Settlement Sum to pay Valid Claims subject to Section 4.4.

Settlement Class Members will be able to choose between two mutually exclusive Benefit options.

- (a) Settlement Class Members who elect to fill out the Claim Form and who do not provide valid Proof of Purchase(s) may recover four dollars and fifty cents (\$4.50) per Unit, limited to up to three (3) total Units (the “Simple Claim”); or
- (b) Settlement Class Members who elect to fill out the Claim Form and who provide valid Proof of Purchase(s) dated within the Class Period may recover four dollars and fifty cents (\$4.50) for each Unit included in the Proof of Purchase(s), without limitation (the “Proof Claim”).

For the avoidance of doubt, a Settlement Class Member may file a Claim Form electing either option, but not both. If no proof or inadequate proof is submitted along with a Proof Claim, but the claim is otherwise a Valid Claim, it will be treated as a Simple Claim and subject to the Unit limitations therein. No single Proof of Purchase can support a Proof Claim for more than one Settlement Class Member.

#### **4.2 Claim Form Requirements**

The Settlement Administrator shall validate that all sections of the Claim Form are complete and that the Settlement Class Member provided and certified the truth and accuracy of the following information under the penalty of perjury, including by signing the Claim Form



physically or by e-signature, or the Claim will not be considered a Valid Claim by the Settlement Administrator. The absence of any of the following information, or the provision of incorrect information, will result in the rejection of the Claim:

- (a) The Settlement Class Member's name and mailing address;
- (b) The Settlement Class Member's email address (unless the Settlement Class Member requests a claim form by mail, in which case an email address is optional);
- (c) The name of the Product(s) purchased, the store name where the Product(s) were purchased, and the number of Units purchased during the Class Period;
- (d) For Proof Claims, valid Proof of Purchase(s);
- (e) That the claimed purchases were not made for purposes of resale;
- (f) The payment preference of the Settlement Class Member (*i.e.*, via check or electronic payment); and
- (g) A security code or control number provided by the Settlement Administrator at the time the Class Member requests a Claim Form on the Settlement Website (if the Settlement Class Member requests a Claim Form by mail).

#### **4.3 Claim Submission**

At the election of the Settlement Class Member, the Settlement Administrator shall accept Claim Forms submitted on paper via United States First Class Mail or online at the Settlement Website. Claim Forms must be either postmarked (if sent by mail) or received (if submitted electronically) by the Settlement Administrator by no later than the Claims Deadline. Claim Forms postmarked or submitted online after that date will not be considered Valid Claims, but any such Settlement Class Member submitting a late Claim Form shall nevertheless be bound

by all of the terms in this Agreement, including the terms of the Final Approval Order and the Releases in this Agreement, and shall be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against any Released Parties concerning any Released Claims.

#### **4.4 Only Valid Claims Paid; No Unclaimed Property Rights**

The Settlement Sum will be used to pay the Benefit Payments as determined by the Settlement Administrator subject to the number of Valid Claims and other adjustments pursuant to the terms and conditions of this Agreement. Notwithstanding anything to the contrary, Defendant, through the Settlement Sum, shall pay Valid Claims only. This Agreement does not create any vested property interest or unclaimed property rights for Settlement Class Members who do not file Valid Claims.

#### **4.5 Invalid Claims**

Any Settlement Class Member who fails to submit a timely, accurate, completed Valid Claim, or who otherwise submits a Claim Form determined to be invalid for any reason, shall not be entitled to receive a Benefit Payment, but shall otherwise be bound by all of the terms in this Agreement, including the terms of the Final Approval Order and the Releases in this Agreement, and shall be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against any Released Parties concerning any Released Claims.

#### **4.6 Cap and Proportionate Reduction**

The actual amount paid to Settlement Class Members will depend upon the number of Valid Claims. If the total amount to be paid as a result of Valid Claims exceeds the amount of the Settlement Sum that remains after the payment of Class Representative Service Awards, and Class Counsel's Fee Award, then the Benefit payable to each Claimant shall be proportionately

reduced, such that Defendant's maximum liability under this Agreement shall not exceed the Settlement Sum.

**5. THE SETTLEMENT ADMINISTRATOR**

**5.1** The Parties shall jointly ask the Court to approve a Settlement Administrator. The Settlement Administrator shall, subject to the supervision of the Court, administer the relief provided by this Agreement by processing Claim Forms in a rational, responsive, cost-effective, and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices, and such records will be made available to Class Counsel, Defendant's Counsel, and the Parties promptly upon request. The foregoing notwithstanding, the Class List (as defined herein) will be kept confidential and will not be shared with Plaintiffs or any Settlement Class Member.

**5.2** Defendant will pay all Administration Expenses, except as otherwise set forth in this Agreement, and shall pay such expenses separate and apart from the Settlement Sum. Defendant shall not be obligated to compute, estimate, or pay any taxes on behalf of Plaintiffs, any Settlement Class Member, Class Counsel, or the Settlement Administrator. The Settlement Administrator will invoice Defendant directly as agreed upon between the Settlement Administrator and Defendant. The Settlement Administrator will complete and provide to Defendant any W9 forms necessary for Defendant to pay for the Administration Expenses.

**5.3** Defendant shall not be responsible for any cost that may be incurred by, on behalf of, or at the direction of, Plaintiffs or Class Counsel in: (a) responding to inquiries about the Agreement, the Settlement, or the Action; or (b) posting the Publication Notice on Class Counsel's website, should that occur subject to the mutual agreement of the Parties.

**5.4** The Settlement Administrator will track Claim Forms with unique security identifiers or control numbers issued to Persons who seek to file a Claim. For Claim Forms that are submitted online, the Settlement Class Member shall have the opportunity to upload Proof of Purchase image files (*e.g.*, jpg, tif, pdf), to preview and confirm information entered in the Claim Form prior to submitting the claim, and to print a page immediately after the Claim Form has been submitted showing the information entered, the names of image file(s) uploaded, and the date and time the Claim Form was received.

**5.5** The Settlement Administrator shall be responsible for, among other things, implementing the Class Notice Program, processing Claim Forms, and administering the Settlement Website, toll-free telephone support line, objection process, and claims process described herein (including receiving and maintaining on behalf of the Court and the Parties any Settlement Class Member correspondence regarding requests to opt-out from the Settlement Class). The Settlement Administrator will use mutually agreed upon security procedures and standards to prevent the filing and payment of false or fraudulent claims, and to pay only Valid Claims. The Settlement Administrator and Parties shall have the right to audit claims, and the Settlement Administrator may request additional information from Claimants.

**5.6** The Settlement Administrator will determine whether Claims are Valid Claims and issue Benefit Payments based upon the terms and conditions of the Agreement or may reject Claims which are invalid or evidence waste, fraud, or abuse. The determination of validity of claims shall occur, if feasible, at least 7 days prior to the Final Approval Hearing. Should the Settlement Administrator need additional time, the Parties agree to work together in good faith to determine how much additional time is necessary to validate claims. The Settlement Administrator shall approve or deny all claims after consultation with Class Counsel and

Defendant's Counsel. Neither Plaintiffs nor Defendant, nor their counsel, shall have any liability whatsoever for any act or omission of the Settlement Administrator, including the denial of Claims. The Settlement Administrator shall not receive any incentive for denying claims.

**5.7** The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall promptly and on a weekly basis provide Class Counsel and Defendant's Counsel with information concerning notice, administration, and implementation of the Agreement. Without limiting the foregoing, the Settlement Administrator shall:

- (a) promptly forward, upon request, to Defendant's Counsel and Class Counsel, copies of all documents and other materials relating to the administration of the Settlement;
- (b) cause notice, pursuant to 28 U.S.C. § 1715, to be served not later than ten (10) days after this Agreement is filed with the Court, on the Attorneys General of each U.S. State in which Settlement Class members reside, the Attorney General of the United States, and other required government officials, as required by law;
- (c) receive requests from Settlement Class Members to opt out from or object to the Settlement Class and promptly provide to Class Counsel and Defendant's Counsel a copy thereof upon receipt. If the Settlement Administrator receives any opt-out requests or objections from Settlement Class Members after the Opt-Out / Objection Deadline, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant's Counsel;

- (d) provide reports and summaries on a weekly basis throughout the Claim Period to Class Counsel and Defendant's Counsel, including and without limitation, reports regarding the number of Claim Forms received;
- (e) employ reasonable procedures to screen Claims Forms for waste, fraud, and abuse and shall reject a Claim Form, or any part of a Claim for a payment reflected therein, where the Settlement Administrator determines that there is evidence of waste, fraud, or abuse. The Settlement Administrator will review each Claim Form and ensure that each is complete, properly substantiated, and, based on the substantiation, determine the appropriate benefit to be paid, if any, in accordance with the terms of this Agreement. The Settlement Administrator is empowered to pay legitimate and Valid Claims only;
- (f) prepare a declaration attesting to the implementation of and compliance with the Class Notice Program requirements set forth below and identifying all opt-outs and/or objectors. Such declaration shall be provided to Defendant's Counsel and Class Counsel for filing with the Court no later than seven (7) days prior to the filing of the Motion for Final Approval;
- (g) distribute Benefit Payments for payment of Valid Claims. Defendant is obligated to pay Valid Claims only. To the extent that a Benefit Payment is made by check, as opposed to other forms of payment that may be available to Settlement Class Members, such checks shall bear in the legend that they expire if not negotiated within 150 days of their date of

issue. Benefit Payment checks issued to a Settlement Class Member not cashed within 150 days after the date of issue shall be void. Any undistributed or unclaimed monies from the Settlement Sum and any monies remaining as a result of uncashed checks shall remain with (and, for uncashed checks, promptly revert to) Defendant; and

- (h) Obtain any and all tax documents needed to process or may any payments required as a result of this Agreement.

## **6. FUNDING & DISTRIBUTION OF THE SETTLEMENT SUM**

**6.1** As described herein, the Settlement Sum shall be used to provide the exclusive recovery and relief for the Settlement Class, any Fee Award, and any Class Representative Incentive Awards. The Settlement Sum and the Administration Expenses shall be the sole and exclusive monetary contribution or consideration paid or provided by Defendant under this Settlement Agreement and Defendant shall not, under any circumstances, be obligated to pay any other additional amounts beyond the Settlement Sum and the Administration Expense. Any part of the Settlement Sum that is not used for Valid Claims, the Fee Award, and the Class Representative Incentive Awards shall remain with Defendant, including any uncashed checks.

**6.2** From the Settlement Sum, Defendant, within 35 days after the Effective Date, shall fund all amounts required by the Settlement Administrator for distribution of: (i) any Benefit Payments to Settlement Class Members who submit Valid Claims, and (ii) any Class Representative Incentive Awards awarded by the Court.

**6.3** The Settlement Administrator shall pay any Benefit Payments to Settlement Class Members who submit Valid Claims within 49 days after the Effective Date. If the Court awards Class Representative Incentive Awards, the Settlement Administrator shall effectuate the

payment as directed by Class Counsel within 49 days of the Effective Date.

**6.4** The funding and payment of any Fee Award is detailed in Section 7.2.

**6.5** The payments made by Defendant to the Settlement Administrator to fund the Settlement, at such times as payments are required by this Agreement, as described herein will be maintained by an escrow agent as a Court-approved Qualified Settlement Fund pursuant to Section 1.468B-1, *et seq.*, of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended, and shall be deposited in an interest-bearing account.

**6.6** This Agreement is conditioned on the entry of the Final Approval Order without material modification of this Agreement by the Court. If the Court does not enter the Final Approval Order or if the Effective Date does not occur for any reason, Defendant shall not be obligated to make any payments or provide any monetary or non-monetary relief to Plaintiffs or the Settlement Class Members or any Class Representative Incentive Award. Further, if the Final Approval Order is not entered, Defendant shall not be obligated to pay any Fee Award to Class Counsel. If the Final Approval Order is entered, but the Effective Date does not occur, the payment of the Fee Award will be governed by the stipulated undertaking, a sample of which is attached hereto as Exhibit E.

**7. CLASS COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND CLASS REPRESENTATIVE SERVICE AWARDS**

**7.1** The Parties agree, subject to Court approval, that the law firms of Bursor & Fisher, P.A. and Gucovschi Rozenshteyn, PLLC shall be appointed Class Counsel, without prejudice to Defendant's right to contest the appointment in the event that this Agreement is not fully implemented in accordance with its terms. If the Settlement is not approved or this Agreement



fails to be implemented, this Agreement and any filings or orders relating thereto shall not constitute admissible evidence and Defendant reserves all rights to object to any subsequent motion to appoint class counsel in these or any other actions.

**7.2** At least 14 days prior to the Opt-Out / Objection Deadline, Class Counsel will submit to the Court an Application seeking a Fee Award which shall not exceed \$1,140,000.00. In addition, Class Representatives may seek a Class Representative Service Award for each Named Plaintiff in the amount of three thousand dollars and zero cents (\$3,000.00) as compensation for their efforts in bringing the Action and achieving the benefits of the Settlement on behalf of the Settlement Class. The Fee Award and Class Representative Service Awards shall be paid from the Settlement Sum.

**7.3** Class Counsel and the Class Representatives, respectively, shall not seek, and will not accept, a Fee Award or Class Representative Service Award in excess of that set forth above, nor will Class Counsel or the Class Representatives appeal the award of any amounts lower than what was sought.

**7.4** Court approval of Class Counsel's Fee Award and Class Representative Service Awards will not be a condition of the Settlement. If the Court denies, in whole or part, Class Counsel's Application for a Fee Award, the remainder of the terms of this Agreement shall remain in effect. In addition, no interest will accrue on such amounts at any time, except as provided in the stipulated undertaking attached as Exhibit E. Neither Class Counsel nor Plaintiffs will request nor will they accept any award inconsistent with these terms.

**7.5** Defendant agrees that it will not object to the amount of Class Counsel's Application for a Fee Award up to the amounts set forth in the preceding paragraphs and will not solicit or encourage others to do so.

7.6 Within 7 business days of the entry of the Final Approval Order, Defendant shall transmit to the Settlement Administrator the amounts awarded by the Court for the Fee Award, provided that Class Counsel first provide signed stipulated undertakings in substantially the form attached as Exhibit E. Within 3 business days thereafter, the Settlement Administrator shall effectuate payment to Class Counsel.

7.7 Class Counsel shall provide the Settlement Administrator with all necessary accounting and tax information, including W-9 forms, with reasonable advance notice to allow Settlement Administrator to make the Fee Award payment as set forth above, as well as the Class Representative Service Awards. Once the Settlement Administrator makes the Fee Award payment as directed in writing by Class Counsel, Defendant shall have no further obligation to pay any additional sums to Class Counsel and shall be held harmless and indemnified by Class Counsel for the division and disbursements of the Fee Award amongst and between Class Counsel.

**8. NOTICE AND DISSEMINATION TO THE SETTLEMENT CLASS**

The Class Notice Program shall consist of the Direct Notice, Publication Notice, Long-Form Notice, and Settlement Website, defined above and detailed below. No notice other than as set forth herein shall be conducted by the Parties.

The Parties agree that the Class Notice Program shall be in the manner and form agreed upon by the Parties and approved by the Court. Collectively, the Settlement Notice shall in general terms set forth and sufficiently inform the Settlement Class Members of: (a) a short, plain statement of the background of the Action, the Settlement Class certification, and the essential terms of the Settlement; (b) appropriate means for obtaining additional information regarding the Settlement and the Action; (c) appropriate information concerning the procedure for objecting or opting-out from the Settlement, if they should wish to do so; and (d) that any

relief to Settlement Class Members is contingent on the Court's final approval of the Settlement and reaching the Effective Date. The Parties will request that the Court approve the Class Notice Program in the Preliminary Approval Order.

### **8.1 Direct Notice**

No later than fourteen (14) days after the entry of the Preliminary Approval Order, Defendant shall produce an electronic list from its records that includes all of the names and email addresses, to the extent the foregoing exists in Defendant's records, belonging to Persons within the Settlement Class who are members of Defendant's loyalty program, known as the ExtraCare program. This electronic document shall be called the "Class List," and shall be provided to the Settlement Administrator. The Class List, and any information derived therefrom, shall be kept confidential and will be produced subject to the Protective Order entered in the Action, which must be executed by the Settlement Administrator.

Using the information provided from the Class List, the Settlement Administrator shall, within thirty-five (35) days from entry of the Preliminary Approval Order, cause Direct Notice to be disseminated via email only, substantially in the form attached as Exhibit C-1, along with an electronic link to the Claim Form and Settlement Website, to all Settlement Class Members for whom a valid email address is in the Class List. In the event transmission of the email notice results in any "bounce-backs," the Settlement Administrator will resend a second attempt.

### **8.2 Publication Notice**

Similarly, within thirty-five (35) days after the entry of the Preliminary Approval Order, the Settlement Administrator will cause the Publication Notice, substantially in the form of Exhibit C-2, to be published in accordance with the Media Plan. The Media Plan will be implemented on a single occasion. The Parties agree to mutually consider, if necessary,

conducting a supplemental Publication Notice at the expense of Class Counsel, and consent to conducting a second implementation of such supplemental Publication Notice will not be unreasonably withheld.

### **8.3 Settlement Website**

Within thirty-five (35) days after the entry of the Preliminary Approval Order, the Settlement Administrator will establish a Settlement Website that will contain the complaint in the Action, the Motion for Preliminary Approval, the Preliminary Approval Order, the Settlement Agreement, the Direct Notice, the Long-Form Notice, the Publication Notice, and the Claim Form. The Settlement Website will also identify key deadlines (e.g., the Claims Deadline, the Opt-Out Deadline, Objection Deadline, the date of the Final Approval Hearing), and it will direct Settlement Class Members on how to submit Claim Forms and will include a “Frequently Asked Questions” section. Settlement Class Members will be able to submit claims electronically through the Settlement Website.

### **8.4 Toll-Free Telephone Support Line**

Within thirty-five (35) days after the entry of the Preliminary Approval Order, the Settlement Administrator will establish a toll-free telephone support line that will provide Settlement Class Members with general information about the Action and will respond to frequently asked questions about the Action and claim procedure. Should Class Counsel desire to implement a live operator function for the toll-free telephone support line, Class Counsel may request that the Settlement Administrator implement that function at the sole expense of Class Counsel.

### **8.5 Declaration of Compliance**

The Settlement Administrator shall prepare a declaration attesting to compliance with the

Class Notice Program requirements set forth above, detailing the scope of the Media Plan, and providing a statement of the percentage of Settlement Class Members the Class Notice Program reached. Such declaration shall be provided to Defendant's Counsel and Class Counsel no later than seven (7) days prior to the deadline to file the Motion for Final Approval.

**9. OPT-OUT REQUESTS AND OBJECTIONS**

The Class Notice will advise all Settlement Class Members of their rights to be excluded from the Settlement or to object to the Settlement.

**9.1 Opt-Out Requests**

(a) Any person who falls within the definition of the Settlement Class but wishes to be excluded from the Settlement may do so by timely mailing a valid opt-out notice, as described in the Class Notice Program, by the Opt-Out / Objection Deadline. Any person who is excluded from the Settlement will not be bound by this Settlement Agreement, will not be eligible to make a claim for any benefit under the terms of this Settlement Agreement, and will not be permitted to object to the Settlement or to intervene in the Action. At least seven (7) calendar days before the deadline to file the Motion for Final Approval, Class Counsel will prepare or cause the Settlement Administrator to prepare a list of the persons who have excluded themselves in a valid and timely manner from the Settlement Class, and Class Counsel will file that list with the Court.

(b) In order to exercise the right to be excluded, a Settlement Class Member must timely send a written request for exclusion to the Settlement Administrator at the address provided in the Class Notice Program, providing: (i) his/her/their name, address, and telephone number; (ii) the name and number of this case; (iii) documents or information sufficient to establish the person's standing as a Settlement Class Member (including the Product purchased and date and

location of purchase); (iv) a statement that he/she/they wishes/wish to be excluded from the Settlement Class; and (v) a signature. No mass or class opt-outs will be permitted.

(c) Any Settlement Class Member who validly opts out of the Settlement Class shall not: (a) be bound by any orders or judgments relating to the Settlement; (b) be entitled to relief under, or be affected by, this Agreement; (c) gain any rights by virtue of this Agreement; or (d) be entitled to object to any aspect of the Settlement. Except for those Settlement Class Members who timely and properly file a request for exclusion, all other Settlement Class Members will be deemed to be Settlement Class Members for all purposes under the Agreement, and upon the Effective Date, will be bound by its terms.

## **9.2 Objections**

(a) Any person who is a Settlement Class Member and who wishes to object to the Settlement Agreement must timely serve a written objection on the Court and simultaneously with the Settlement Administrator, Defense Counsel, and Class Counsel, at the addresses described in the Class Notice Program, by the Opt-Out / Objection Deadline. Any person who submits both an opt-out request and an objection will be treated as opted out of the Settlement and will not be able to object.

(b) In order to object, the objection must contain: (i) a caption or title that identifies it as “Objection to Class Settlement in *Bell v. CVS Pharmacy, Inc.*”; (ii) contact and address information for the objecting Settlement Class Member; (iii) documents sufficient to establish the person’s standing as a Settlement Class Member (including the Product purchased and date and location of purchase); (iv) the facts supporting the objection; (v) the legal grounds on which the objection is based, including all citations to legal authority and evidence supporting the objection; (vi) the name and contact information of any and all attorneys representing, advising, or in any

way assisting the objecting Settlement Class Member in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the “Objecting Attorneys”), and (vii) the objecting Settlement Class Member’s signature (an attorney signature is not sufficient). If a Settlement Class Member or any of the Objecting Attorneys has objected to any class action settlement within the last five years, then the objection must include a statement identifying each such case by full case caption and amount of payment received. No mass or class objections will be permitted.

(c) Any Settlement Class Member who fails to object to the Settlement in the manner consistent with this Section shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from seeking any review of the Settlement or the terms of this Agreement by appeal or other means.

(d) If an objecting person chooses to appear at the Final Approval Hearing, a notice of intention to appear must be filed with the Court no later than the Opt-Out / Objection Deadline. The notice of intention to appear must identify: (i) whether the appearance will be through counsel, (ii) any witnesses the objecting person may call to testify at the Final Approval Hearing; and (iii) all exhibits the objecting person intends to introduce into evidence at the Final Approval Hearing, which must also be attached to, or included with, the written objection. Only Settlement Class Members who submit timely objections including notices of intention to appear may speak at the Final Approval Hearing. If a Settlement Class Member makes an objection through an attorney, the Settlement Class Member will be responsible for his/her/their personal attorney’s fees and costs.

(e) The Parties shall have the right to take discovery without further leave of court consistent with the Federal Rules of Civil Procedure from any person who claims to be a Settlement Class Member who objects to the Settlement. If the person who objects to the Settlement is represented by counsel, the Parties shall also have the right to take discovery consistent with the Federal Rules of Civil Procedure from the Objecting Attorney without further leave of court.

**10. LABEL CHANGE**

**10.1** As part of the consideration of this Agreement, and without admitting that the previous labels had any deceptive aspects to a reasonable consumer or were otherwise actionable, Defendant agrees to have the Labeling changed on the Products to clearly identify that the Products contain the “maximum strength” of lidocaine available over the counter (“OTC”) without a prescription and to remove any language concerning the length of time the Products in patch form will adhere.

**10.2** Nothing in this Agreement requires Defendant to withdraw, change, or otherwise modify labeling, components, packing cases, or advertising of the Products already manufactured, in distribution or storage, and/or stocked in stores.

**10.3** Defendant agrees to implement the changes described in Section 10.1 within 12 months following the Effective Date (the “Label Deadline”). For the avoidance of any doubt, none of the Products’ labels modified pursuant to Section 10.1 shall require review or pre-clearance by Plaintiffs or Class Counsel. Defendant shall maintain complete discretion as it relates to Labeling, notwithstanding its agreement to implement the changes described herein.

**10.4** Nothing in this Agreement shall preclude Defendant from making further changes to any labels or advertising for the Products so long as those changes are not inconsistent with



Section 10.1. Further, nothing in this Agreement shall preclude Defendant from making any changes that Defendant, in its sole discretion, determines to be necessary to, or required to, comply with any law, regulation or administrative guidance, even if such changes are different from those specified in Section 10.1.

**11. FINAL JUDGMENT AND SETTLEMENT APPROVAL**

This Agreement is subject to and conditioned upon the issuance by the Court of the Final Approval Order that, without material alteration to this Agreement or its exhibits, finally certifies the Settlement Class for the purposes of this Settlement, grants final approval of the Agreement, and provides the relief specified herein, which relief shall be subject to the terms and conditions of the Agreement and the Parties' performance of their continuing rights and obligations hereunder. If the Settlement is approved, the Court will enter a judgment dismissing the claims against Defendant with prejudice. The Parties waive any right to appeal or collaterally attack a Final Approval Order entered by the Court that does not materially alter this Agreement.

**12. RELEASES**

**12.1** Upon the Effective Date and without any further action by the Court or by any Party to this Agreement, the Releasing Parties, for good and sufficient consideration, the receipt and adequacy of which is acknowledged, shall be deemed to, and shall, in fact, have remised, released, and forever discharged any and all Released Claims, which they, or any of them, had or has or may in the future have or claim to have against any of the Released Parties.

**12.2** The Releasing Parties hereby fully release and forever discharge the Released Parties from any and all claims, demands, rights, damages, obligations, suits, debts, liens, contracts, agreements, judgments, expenses, costs, liabilities, and causes of action of every nature

and description, including claims for attorneys' fees, expenses and costs, whether known or unknown, suspected or unsuspected, existing now or arising in the future that: (a) is or are based on, related to, or arise out of, any act, omission, inadequacy, misstatement, representation, harm, matter, cause, or event pertaining to the Products that has occurred at any time from the beginning of time up to and including the entry of the Preliminary Approval Order, (b) arise from or are related in any way to this Action or the marketing, advertising, promoting, or Labeling of the Products, or (c) were or could have been asserted in the Action ("Released Claims").

**12.3** The Releasing Parties also agree to release, waive, and not pursue any claims whatsoever concerning or relating to the Labeling of the Products that arise between the date of the Preliminary Approval Order and the Label Deadline.

**12.4** With respect to any and all Released Claims against any and all Released Parties, the Parties stipulate and agree that each Releasing Party shall have expressly waived the provisions, rights, and benefits of Cal. Civ. Code § 1542 or any federal, state, or foreign law, rule, regulation, or common-law doctrine that is similar, comparable, equivalent, or identical to, or that has the effect in whole or part of, Section 1542 of the California Civil Code, which provides: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY." Each of the Releasing Parties shall be deemed to have acknowledged, and by operation of the entry of a Final Approval Order acknowledges, that he/she/they/it is/are aware that he/she/they/it may hereafter discover facts other than or different from those that they know or believe to be true with respect to the

subject matter of the Released Claims, but it is his/her/their/its intention to, and each of them shall be deemed upon the Effective Date to have, waived and fully, finally, and forever settled and released any and all Released Claims, whether known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

**12.5** The Releasing Parties understand and acknowledge the significance of these waivers and any other applicable federal or state statute, case law, rule, or regulation relating to limitations on releases. In connection with such waivers and relinquishment, the Releasing Parties acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts that they now know or believe to be true with respect to the subject matter of the Settlement, but that it is their intention to release fully, finally, and forever all Released Claims with respect to the Released Parties, and in furtherance of such intention, the release of the Released Claims will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

**12.6** The Final Approval Order shall further provide for and effect the release of the Released Claims by the Releasing Parties, and all actions, causes of action, claims, administrative claims, demands, debts, damages, costs, attorney's fees, obligations, judgments, expenses, compensation, or liabilities, in law or in equity, whether now known or unknown, contingent or absolute, that Releasing Parties now have or may have against the Released Parties by reason of any act, omission, harm, matter, cause, or event whatsoever arising out of or relating to the Action, the initiation, prosecution, or settlement of the Action or the claims and defenses asserted in or could have been asserted in the Action.

**12.7** Notwithstanding the above, the Court shall retain jurisdiction over the Parties and

the Agreement with respect to the future performance of the terms of the Agreement, and to assure that all payments and other actions required of any of the Parties by the Settlement are properly made or taken.

**13. REPRESENTATIONS AND WARRANTIES**

Each Party represents and warrants to, and agrees with, the other Party as follows:

**13.1** Each Party has had the opportunity to receive, and has received, independent legal advice from his, her, their, or its attorneys regarding the advisability of making the Settlement, the advisability of executing this Agreement, and the legal and income tax consequences of this Agreement, and fully understands and accepts the terms of this Agreement.

**13.2** Defendant represents and warrants that: (a) it has the requisite corporate power and authority to execute, deliver, and perform the Agreement and to consummate the transactions contemplated hereby; (b) the execution, delivery, and performance of the Agreement and the consummation by it of the actions contemplated herein have been duly authorized by necessary corporate action on the part of Defendant; and (c) the Agreement has been duly and validly executed and delivered by Defendant and constitutes its legal, valid, and binding obligation.

**13.3** Named Plaintiffs represent and warrant that they are entering into the Agreement on behalf of themselves individually and as proposed representatives of the Settlement Class Members, of their own free will and without the receipt of any consideration other than what is provided in the Agreement or disclosed to, and authorized by, the Court. Named Plaintiffs represent and warrant that they have reviewed the terms of the Agreement in consultation with Class Counsel and believe them to be fair and reasonable, and covenant that they will not file an opt-out request from the Settlement Class or object to the Agreement.

**13.4** Named Plaintiffs represent and warrant that no portion of any claim, right,

demand, action, or cause of action against any of the Released Parties that Named Plaintiffs have or may have arising out of or relating to the Action or pertaining to their purchase and/or use of the Product and/or the design, manufacture, testing, marketing, Labeling, packaging, or sale of the Product otherwise referred to in this Agreement, and no portion of any recovery or settlement to which Named Plaintiffs may be entitled, has been assigned, transferred, or conveyed by or for Named Plaintiffs in any manner, and that no Person other than Named Plaintiffs have any legal or equitable interest in their claims, demands, actions, or causes of action referred to in this Agreement.

**13.5** Named Plaintiffs represent and warrant that to their knowledge, they have no surviving claim or cause of action against any of the Released Parties that is not being released by this Agreement.

**13.6** Class Counsel represent and warrant that they know of no other persons with claims against Defendant that could have been asserted in the Action who are not included in the Settlement Class and whose claims will not be released upon the Effective Date of this Agreement.

**13.7** No Party relies or has relied on any statement, representation, omission, inducement, or promise of the other party (or any officer, agent, employee, representative, or attorney for any other party) in executing this Agreement, or entering the Settlement provided for herein, except as expressly stated in this Agreement.

## **14. MISCELLANEOUS PROVISIONS**

### **14.1 Termination of Agreement**

This Agreement may be terminated at the election of either Party: (a) if the Court fails to approve the Agreement; (b) in the event of any proposed material modification of this Agreement

as a condition to approval of the Settlement, to which the Parties do not mutually agree; (c) if 200 or more persons opt out; or (d) prior to approval of this Agreement by the Court, upon the mutual agreement of the Parties by and through their respective counsel.

#### **14.2 Entire Agreement**

This Agreement, together with the Exhibits hereto, constitutes the entire agreement between the Parties with respect to the subject matter of the Settlement and supersedes all prior negotiations, communications, memoranda, and agreements between the Parties. Neither Plaintiffs nor Defendant are entering into this Agreement in reliance upon any representations, warranties, or inducements other than those contained in this Agreement.

#### **14.3 Change of Time Periods**

The time periods and/or dates described in this Agreement with respect to the giving of notices and hearings are subject to approval and change by the Court or by the written agreement of Class Counsel and Defendant's Counsel, without notice to Class Members, except that the Settlement Administrator shall ensure that such dates are posted on the Settlement Website.

#### **14.4 Extension of Time**

The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Agreement.

#### **14.5 Media and Contact of Class Members**

Other than public court filings, court-ordered notice to the class, and communications with Settlement Class Members, there shall be no other publication or dissemination of the terms of this Settlement by Named Plaintiffs, Class Counsel, or the Administrator,

including, but not limited to, in the form of press releases or in response to inquiry from any media. For the avoidance of any doubt, nothing in this Agreement prevents the Parties from making any disclosures required to effectuate this Agreement or as required by law, nor does anything in this Agreement prevent Class Counsel from answering any inquiries initiated by Settlement Class Members or communicating with Named Plaintiffs.

#### **14.6 Cooperation**

Defendant, Named Plaintiffs, and their respective counsel agree to prepare and execute any additional documents that may reasonably be necessary to effectuate the terms of this Agreement. The Parties shall cooperate with the Settlement Administrator to the extent reasonably necessary to assist and facilitate the Settlement Administrator in carrying out its duties and responsibilities.

#### **14.7 Plaintiffs' Authority**

Class Counsel represent and warrant that they are authorized to take all appropriate actions required or permitted to be taken by or on behalf of Named Plaintiffs and, subsequent to an appropriate Court Order, the Settlement Class, in order to effectuate the terms of this Agreement and are also authorized to enter into appropriate modifications or amendments to this Agreement on behalf of Named Plaintiffs and, subsequent to an appropriate Court Order, the Settlement Class Members.

#### **14.8 Governing Law**

This Agreement shall be construed and governed in accordance with the laws of the State of New York, without regard to New York's conflict-of-laws principles.

#### **14.9 Stay Pending Court Approval**

Class Counsel and Defendant's Counsel agree to stay all proceedings, other than those

proceedings necessary to carry out or enforce the terms and conditions of the Settlement, until the Effective Date of the Settlement has occurred. If for any reason the Settlement does not receive final, complete, and non-appealable approval, the First Amended Complaint (ECF No. 53-1) will be withdrawn and the Parties shall proceed solely on the basis of the original Complaint (ECF No. 1), and from the point in this Action immediately preceding the signing of this Settlement, including the reinstatement of the briefing on the motion for judgment on the pleadings,(ECF No. 37. 41-43. 44. 45).

#### **14.10 Construing the Agreement**

This Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it may have been initially drafted by counsel for only one of the Parties. It is recognized that this Agreement is the result of arm's-length negotiations between the Parties and it is acknowledged that all Parties have contributed substantially to the preparation of this Agreement. Accordingly, the doctrine of *contra proferentum* shall not apply in construing this Agreement, nor shall any other such similar doctrine apply.

#### **14.11 Modifications Suggested by the Court**

If the Court suggests any modifications to the Settlement Agreement or seeks to condition entry of the Preliminary Approval Order or Final Approval Order on modifications to the Agreement, the Parties shall, working in good faith and consistent with the Agreement, endeavor to cure any such deficiencies identified by the Court. However, Defendant shall not be obligated to make any additions or modifications to the Agreement that would affect the Benefits provided to Settlement Class Members, the structure of the Settlement Sum, the cost to or burden on Defendant, or the scope of any of the Released Claims contemplated in this Agreement.

#### **14.12 Evidentiary Preclusion**



The Parties agree that, to the fullest extent permitted by law, neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any claim or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any Released Party or the appropriateness of class certification in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. In addition, any failure of the Court to approve the Settlement and/or any objections or interventions may not be used as evidence in the Action or any other proceeding for any purpose whatsoever. However, the Parties may file the Agreement and/or the Final Approval Order in any action or proceeding that may be brought against them 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.

#### **14.13 Effect of Non-Approval**

This Agreement is conditioned on entry of a Final Approval Order without material modification by the Court and reaching the Effective Date. In the event that this Agreement is not approved by the Court in substantially its present form, any Objection to the Settlement is sustained by the Court, or the Effective Date is not reached for any reason, including termination pursuant to paragraph 15.1 above, the terms and provisions of this Agreement shall have no further force and effect with respect to the Parties or the Class Members, except as may be required by the stipulated undertaking attached as Exhibit E (which would occur if, and only if, the Final Approval Order is entered, but the Effective

Date is not reached), and shall not be used in this Action or in any other action or proceeding for any purpose, and any order or judgment entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*. In such event, this Agreement and all negotiations, proceedings, documents prepared, and statements made in connection with this Agreement shall be without prejudice to any Party or Class Member and shall not be admissible or offered into evidence in any action or proceeding, and shall not be deemed, asserted, or construed to be an admission or confession by any Party or any other person or entity of any fact, matter, or proposition of law, and shall not be used or asserted in any other manner or for any purpose, and all Parties and Class Members shall stand in the same position as if this Agreement and Settlement had not been negotiated, made, or submitted to the Court.

#### **14.14 Signatures**

This Agreement may be executed in counterparts, and, when so executed, shall constitute a binding original, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile signatures or signatures sent by email shall be deemed original signatures and shall be binding.

#### **14.15 Notices**

Whenever this Agreement requires or contemplates that one Party shall or may give notice to the other, notice shall be provided in writing by United States First Class Mail and email to:

##### **14.5.1 If to Plaintiffs or Class Counsel:**

Joseph I. Marchese  
Bursor & Fisher, P.A.  
888 Seventh Ave.  
New York, NY 10019

jmarchese@bursor.com

And

Adrian Gucovschi, Esq.  
Gucovschi Rozenshteyn, PLLC  
630 Fifth Avenue, Suite 2000  
New York, NY 10111  
Telephone: (212) 884-4230  
E-Mail: adrian@gr-firm.com

**14.5.2** If to Defendant or Defendant’s counsel (“Defendant’s Counsel”):

Emily N. Dillingham  
Mark S. Eisen  
Benesch Friedlander Coplan &  
Aronoff LLP  
71 S. Wacker Dr.  
16th Floor  
Chicago, IL 60606  
312-212-4949  
Fax: 312-767-9192  
Email: edillingham@beneschlaw.com  
meisen@beneschlaw.com

**14.16 Good Faith**

The Parties agree that they will act in good faith and will not engage in any conduct that will or may frustrate the purpose of this Agreement.

**14.17 Protective Orders**

All orders, settlement agreements, and designations regarding the confidentiality of documents and information (“Protective Orders”) remain in effect, and all Parties and counsel remain bound to comply with the Protective Orders, including the provisions to certify the destruction of “Confidential” documents.

**14.18 Binding on Successors**

This Agreement shall be binding upon the heirs, executors, administrators, successors, and assigns of the Plaintiffs, Settlement Class Members, and Defendant.

#### **14.19 Arm's-Length Negotiations**

The determination of the terms and conditions contained herein and the drafting of the provisions of this Agreement have been by mutual understanding after negotiation, with consideration by, and participation of, the Parties hereto and their counsel.

#### **14.20 Waiver**

The waiver by one Party of any provision or breach of the Agreement shall not be deemed a waiver of any other provision or breach of the Agreement.

#### **14.21 Variance**

In the event of any variance between the terms of this Agreement and any of the Exhibits hereto, the terms of this Agreement shall control and supersede the Exhibit(s).

#### **14.22 Modification or Amendment**

This Agreement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by the Parties who executed this Agreement or their successors-in-interest.

#### **14.23 Severability**

Should any part, term, or provision of this Agreement be declared or determined by any court or tribunal to be illegal or invalid, the Parties agree that the Court may modify such provision to the extent necessary to make it valid, legal, and enforceable, if mutually agreed upon by the Parties. In any event, such provision shall, if mutually agreed upon, be separable and shall not limit or affect the validity, legality, or enforceability of any other provision hereunder. The claims-made structure of this Settlement is material term and Defendant represents that it would not have agreed to the Settlement but for the claims-made structure.

#### **14.24 Exhibits**

All Exhibits to this Agreement are material and integral parts hereof, and are incorporated

by reference as if fully rewritten herein.

#### **14.25 Taxes**

No opinion concerning the tax consequences of the Agreement to any Settlement Class Member is given or will be given by Defendant, Defendant's Counsel, or Class Counsel; nor is any Party or their counsel providing any representation or guarantee regarding the tax consequences of the Agreement as to any Settlement Class Member. Each Settlement Class Member is responsible for his/her/their tax reporting and other obligations respecting the Agreement, if any. The Parties and Releasees shall bear no responsibility for tax liabilities. The Settlement Administrator will handle all tax reporting with respect to the Settlement Fund and payments made pursuant to this Settlement and shall report payments pursuant to applicable law.

#### **14.26 No Fine or Penalty**

The Parties agree that no part of any payments by Defendant pursuant to this Agreement constitutes: (i) a fine or penalty under any law; or (ii) a payment to settle any actual or potential liability for a fine or penalty under any law.

#### **14.27 Retain Jurisdiction**

The Court shall retain jurisdiction with respect to the 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 agreements embodied in this Agreement.

#### **14.28 Exclusive Remedy; Permanent Injunction**

Upon issuance of the Final Approval Order: (i) the Agreement shall be the exclusive remedy for any and all Settlement Class Members, except those who have properly requested exclusion (opted out) in accordance with the terms and provisions hereof; (ii) the Released Parties shall not be subject to liability or expense for any of the Released Claims to any

Settlement Class Member(s); (iii) Settlement Class Members who have not opted out shall be permanently barred and enjoined from asserting any Released Claims in any action or from filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise) any action based on or relating to any of the Released Claims or the facts and circumstances relating thereto; and (iv) Settlement Class Members who have not opted out shall be permanently barred and precluded from organizing Settlement Class Members, or soliciting the participation of Settlement Class Members, for purposes of pursuing any action (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending or future action) based on or relating to any of the Released Claims or the facts and circumstances relating thereto. The Parties agree that upon the entry of the Final Approval Order, the Action shall be dismissed with prejudice and judgment shall be entered.

#### **14.29 Enforcement**

The provisions of this Settlement Agreement, and any orders, pleadings, or other documents entered in furtherance of this Settlement Agreement, may be offered or received in evidence solely: (a) to enforce the terms and provisions hereof or thereof; (b) to establish payment, or an affirmative defense of preclusion or bar in a subsequent case; (c) in connection with any motion to enjoin, stay, or dismiss any other action; or (d) for approval of the Settlement.

#### **14.30 Support From The Parties**

After a full investigation, discovery, and arm's-length negotiations, the Parties and their counsel agree that they: (a) have independently determined that this Settlement is in the best interest of the Settlement Class; and (b) shall support motions for entry of the Preliminary Approval Order and Final Approval Order, so long as there is no material modification of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

Dated this 24<sup>th</sup> day of April, 2023.

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

Dated: \_\_\_\_\_, 2023

**MONIQUE BELL**

By: \_\_\_\_\_  
Individually and as representative of the Class

Dated: \_\_\_\_\_, 2023

**TREE ANDERSON**

By: \_\_\_\_\_  
Individually and as representative of the Class

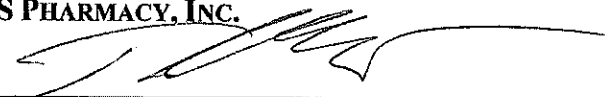
Dated: \_\_\_\_\_, 2023

**MELISSA CONKLIN**

By: \_\_\_\_\_  
Individually and as representative of the Class

Dated: April 24, 2023

**CVS PHARMACY, INC.**

By: 

Name: **Thomas S. Moffatt**  
~~Vice President and Corporate Secretary~~

Title: \_\_\_\_\_

**IT IS SO STIPULATED BY COUNSEL:**

Dated: \_\_\_\_\_, 2023

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

By: \_\_\_\_\_  
Joseph I. Marchese  
jmarchese@bursor.com  
888 Seventh Avenue  
New York, NY 10019  
Tel: (646) 837-7410

Dated: \_\_\_\_\_, 2023

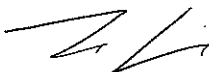
**GUCOVSKI ROZENSHTEYN, PLLC**

By: \_\_\_\_\_  
Adrian Gucovski, Esq.  
630 Fifth Avenue, Suite 2000  
New York, NY 10111  
Telephone: (212) 884-4230  
E-Mail: adrian@gr-firm.com

*Attorneys for Plaintiffs and the Settlement Class*

Dated: April 24, 2023

**BENESCH FRIEDLANDER COPLAN &  
ARONOFF LLP**

By:  \_\_\_\_\_  
Mark S. Eisen  
meisen@beneschlaw.com  
71 S. Wacker Dr.  
16th Floor  
Chicago, IL 60606  
312-212-4949  
Fax: 312-767-9192

*Attorneys for Defendant CVS Pharmacy, Inc.*




IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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

Dated: 04/20/, 2023

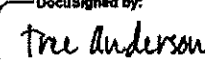
**MONIQUE BELL**  
DocuSigned by:

By:   
988162F962904A8...

Individually and as representative of the Class

Dated: 4/20, 2023


**TREE ANDERSON**  
DocuSigned by:

By:   
972E53FB289142D...

Individually and as representative of the Class

Dated: 4/20, 2023

**MELISSA CONKLIN**  
DocuSigned by:

By:   
C1753FD006424ED...

Individually and as representative of the Class

Dated: \_\_\_\_\_, 2023

**CVS PHARMACY, INC.**

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

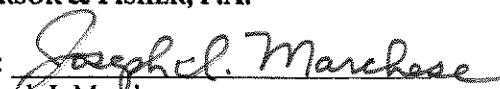
Name: \_\_\_\_\_

Title: \_\_\_\_\_

**IT IS SO STIPULATED BY COUNSEL:**

Dated: April 24, 2023

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

By:   
Joseph I. Marchese  
jmarchese@bursor.com  
888 Seventh Avenue  
New York, NY 10019

Dated: April 24, 2023

**GUCOVSKI ROZENSHTEYN, PLLC**

By:   
\_\_\_\_\_  
Adrian Gucovski, Esq.  
630 Fifth Avenue, Suite 2000  
New York, NY 10111  
Telephone: (212) 884-4230  
E-Mail: adrian@gr-firm.com

*Attorneys for Plaintiffs and the Settlement Class*

Dated: \_\_\_\_\_, 2023

**BENESCH FRIEDLANDER COPLAN &  
ARONOFF LLP**

By: \_\_\_\_\_  
Mark S. Eisen  
meisen@beneschlaw.com  
71 S. Wacker Dr.  
16th Floor  
Chicago, IL 60606  
312-212-4949  
Fax: 312-767-9192

*Attorneys for Defendant CVS Pharmacy, Inc.*

Exhibits to attach:

Exhibit A – Claim Form

Exhibit B – Long Form Notice

Exhibit C-1 – Direct Notice

Exhibit C-2 – Publication Notice

Exhibit D – Proposed Preliminary Approval Order

Exhibit E – Stipulated Undertaking

**EXHIBIT A**

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**CLAIM FORM INSTRUCTIONS**

If you purchased a CVS store-brand maximum strength lidocaine patch, cream, roll-on or spray product between December 11, 2017 and [DATE] you may complete this Claim Form to be eligible to receive a cash payment under the Settlement. Claim forms may be completed online at [www.lidocainesettlement.com](http://www.lidocainesettlement.com) or submitted by U.S. mail, postmarked no later than [DATE] to the following:

*Settlement Name*  
c/o Kroll Settlement Administration  
PO Box  
New York, NY 10150-5391

***NOTE: If you wish to receive payment electronically for an approved claim, you must complete the Claim Form online. All approved paper claims will receive checks mailed to the address you provide below.***

***For a list of Products covered by this Settlement, please review the Product list at [www.lidocainesettlement.com](http://www.lidocainesettlement.com).***

**CLAIMANT INFORMATION**

\_\_\_\_\_  
First Name MI Last Name

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City State Zip

(\_\_\_\_\_)\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
E-mail Address (e-mail address is optional if your claim is submitted by mail)

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Page 1 of 3

**CLAIM AND POTENTIAL CASH BENEFIT**

**You may select one option below. If you select Option 2 but do not provide a Proof of Purchase, your claim will be treated as though submitted under Option 1.**

**Option 1: I purchased one or more of the CVS store-brand maximum strength lidocaine patch, cream, roll-on, or spray Products, but I do not have proof of purchase.**

Please provide how many Units of each Product(s) you purchased, along with the name of the Product(s) purchased (descriptions of the Product(s) will not suffice), the store name and the year of the purchase(s) between December 11, 2017 through [DATE].

**NOTE:** You will be paid for up to three (3) total Units (single containers) of the lidocaine Products without Proof of Purchase, up to a maximum of \$4.50 per Unit.

Product(s) Name	Number of product(s)	Store Name	Purchase Year

**Option 2: I purchased one or more of the CVS store-brand maximum strength lidocaine patch, cream, roll-on, or spray Products and I do have Proof of Purchase.**

Please provide how many units of each Product(s) you purchased, along with the name of the Product purchased, the store name and the year of the purchase between December 11, 2017 through [DATE]. You must include your Proof of Purchase, which can be any receipt, copies of receipts, paid invoice, or other similar types of documentation showing your purchase of the Lidocaine Products.

**NOTE:** If you select this option and provide valid Proof of Purchase, you will be paid up to a maximum of \$4.50 per Unit supported by your valid Proof of Purchase.

Product(s) Name	Number of product(s)	Store Name	Purchase Year

If additional space is needed, use the back of the Claim Form.

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\*Page 2 of 3\*

Page 2 of 3

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**CERTIFICATION**

By submitting this Claim Form, I declare under penalty of perjury that: (i) I purchased one or more CVS store-brand Products (as defined in the Settlement Agreement), (ii) in the United States, (iii) between December 11, 2017 and **[DATE]**, (iv) and that such purchase(s) was not for purposes of resale. This Claim Form may be researched and verified by the Settlement Administrator.

Additional information regarding the Settlement can be found at visit [www.lidocainesettlement.com](http://www.lidocainesettlement.com)

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

**ACCURATE CLAIMS PROCESSING TAKES TIME. THANK YOU FOR YOUR PATIENCE**

Reminder Checklist:

1. Please sign the above Claim Form and complete all of the information requested above.
2. If filing under Option 2, enclose a copy of your Proof(s) of Purchase.
3. Keep a copy of your Claim Form and supporting documentation for your records.

**EXHIBIT B**



UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

*Bell v. CVS Pharmacy, Inc.,*  
Case No. 1:21-cv-06850-PK (E.D.N.Y.)

**If you purchased a CVS branded maximum strength lidocaine patch, cream, roll-on, or spray product between December 11, 2017, and [the date of entry of the Preliminary Approval Order], you may be entitled to benefits from a class action settlement.**

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

- A settlement has been reached in a class action lawsuit. In the lawsuit, Plaintiffs Monique Bell, Tree Anderson, and Melissa Conklin (“Plaintiffs”) allege that packaging of Defendant’s Lidocaine Products (as defined below) was false and deceptive in that it led purchasers to believe that the Lidocaine Products delivered a “maximum strength” amount of lidocaine, and that the Products in patch form could reliably adhere to consumer bodies for up to 8 or 12 hours. Defendant does not concede the truth of any of the claims against it, and denies that it did anything wrong. The Court has not decided who is right. Instead, the parties agreed to a compromise (“Settlement”).
- The Settlement offers payments to Settlement Class Members who file Valid Claims.
- Your legal rights will be affected even if you do not act. Your rights and options — and the deadlines to exercise them — are explained in this Class Notice. Please read this Notice carefully in its entirety. Defined terms have the meanings given to them in the Settlement Agreement.

SETTLEMENT CLASS MEMBERS’ LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT		
YOUR RIGHTS AND OPTIONS	WHAT THEY MEAN	DEADLINES
<b>DO NOTHING</b>	If you are a Settlement Class Member and do not take any action, you will not receive any financial compensation under the Settlement. Further, if the Settlement is finally approved, you will be bound by the Court’s final judgment and the release of claims explained in the Settlement Agreement.	None
<b>SUBMIT A CLAIM FORM</b>	If you are a member of the Settlement Class, you must submit a Valid Claim, choosing between the two claim options detailed in the Settlement and herein, to receive a payment. If the Court approves the Settlement and it becomes final and effective, and you remain in the Settlement Class, you will receive your payment by check or electronic payment. To find out how to submit a Claim Form, please read Question 11.	Received on or before ____, 2023 [90 days after Notice Date]

QUESTIONS? CALL 1-800-xxx-xxx TOLL-FREE OR VISIT WWW. \_\_\_\_\_.COM

<p><b>EXCLUDE YOURSELF (OPT OUT)</b></p>	<p>Get no benefits from the Settlement. Requesting exclusion from the Settlement (also called “opting out”) would allow you to file or continue your own lawsuit against Defendant about the legal claims involved in the Settlement. To find out how to opt out, please read Question 13.</p>	<p>Received on or before ____, 2023 [45 days after Notice Date]</p>
<p><b>OBJECT OR COMMENT</b></p>	<p>Write to the Court about why you do or do not like the Settlement. To find out how to object or comment, please read Question 15.</p>	<p>Filed and served on or before ____, 2023 [45 days after Notice Date]</p>
<p><b>GO TO FINAL APPROVAL HEARING</b></p>	<p>Ask to speak in court about the fairness of the Settlement. To find out how to do so, please read Question 18.</p>	<p>Served on or before ____, 2023</p>

QUESTIONS? CALL 1-800-xxx-xxx TOLL-FREE OR VISIT WWW. \_\_\_\_\_.COM

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QUESTIONS? CALL 1-800-xxx-xxx TOLL-FREE OR VISIT WWW. .COM

## **BASIC INFORMATION**

### **1. Why did you receive this notice?**

This notice (“Class Notice” or “Notice”) has been sent and published because the Court has given its preliminary approval to the Settlement of the Action.

If you received an e-mail concerning the Settlement, that means that Defendant’s records indicate you may be a Settlement Class Member who is affected by the Settlement. You may still be a Settlement Class Member even if you did not receive an e-mail concerning the Settlement. You may also have received or seen a publication notice concerning this case.

### **2. What is this case about?**

Plaintiffs filed a lawsuit in which they allege that the packaging of Defendant’s Lidocaine Products was false and deceptive in that it led purchasers to believe that the Lidocaine Products delivered a “maximum strength” amount of lidocaine, and that the Products in patch form could reliably adhere to the body for up to 8 or 12 hours. Defendant denies that it did anything wrong. Accordingly, Defendant has vigorously defended Plaintiffs’ allegations. The Parties, however, have agreed to settle the Action to avoid the cost, delay, and uncertainty of continuing the Action.

### **3. Why is this a class action?**

In a class action, one or more Class Representatives or Named Plaintiffs sue on behalf of all those with the same types of claims arising from the same events. Here, the Class Representatives filed the Action as a proposed class action and asked to represent the class detailed at Question 5. They sue on behalf of people who have similar claims—called the “Settlement Class” or “Settlement Class Members”—which in this case may include you.

When this case settled, the Court had not yet decided whether the case could be a class action. Defendant disputes that a class is appropriate for trial purposes, but the Parties have agreed to the certification of the Settlement Class, as detailed at Question 5, for purposes of the Settlement, and the Court has certified a class action for settlement purposes only. More information about why this is a class action can be found in the Court’s Class Certification Order, which is available at [www.\[INSERT URL\].com](http://www.[INSERT URL].com).

### **4. Why is there a settlement?**

The Court has not decided which side is right or wrong in the Action. Instead, both sides agreed to a settlement to avoid the costs and risks of a lengthy trial and appeals process.

QUESTIONS? CALL [1-800-xxx-xxx](tel:1-800-xxx-xxx) TOLL-FREE OR VISIT [WWW.\[INSERT URL\].COM](http://WWW.[INSERT URL].COM)

After extensive, arm's-length negotiations overseen by a JAMS mediator, a former federal judge, the lawyers representing the Parties agreed to settle the Action. The Class Representatives and their lawyers think the Settlement is fair, reasonable, adequate, and in the best interests of all Settlement Class Members.

## **WHO DOES THE SETTLEMENT APPLY TO?**

### **5. Who is in the Settlement Class?**

The Settlement Class under the Settlement includes all persons who purchased Products in the United States during the Class Period, which is from December 11, 2017 through and including **the date of entry of the Preliminary Approval Order**.

“Products” means all CVS-branded “maximum strength” lidocaine patches, creams, roll-ons and spray products, including, but not limited to, the products listed in the First Amended Complaint. (ECF No. [XX].) The Products include the following SKU numbers: 376649, 405343, 977934, 328522, 405623, 250483, 385037, 249024, 235554, 383998, 238921, 197229, 450467, 371271, 188721, 256563, 196728, 256518, 384034, 234274, 834344, 388642.

### **6. Are there exceptions to being included in the Settlement Class?**

The Settlement Class under the Settlement excludes: (a) anyone who purchased or acquired the Products for resale; (b) Defendant and its employees, principals, affiliated entities, legal representatives, successors and assigns; (c) any person who makes a valid, timely opt-out request; (d) federal, state, and local governments (including all agencies and subdivisions thereof, but excluding employees thereof); and (e) the judges to whom this Action is assigned and any members of their immediate families.

### **7. I'm still not sure if I am included.**

If you are not sure whether you are included in the Settlement Class, you can call toll-free **[INSERT PHONE NUMBER]** or visit **[INSERT SETTLEMENT WEBSITE]** for more information.

## **THE SETTLEMENT BENEFITS AND OPTIONS**

If the Settlement is approved and becomes final, it will provide the benefits described below to Settlement Class Members. The benefit you may receive from the Settlement depends upon the particular claim option you choose.

### **8. What is the Settlement Sum?**

QUESTIONS? CALL **1-800-xxx-xxx TOLL-FREE OR VISIT WWW. .COM**

To resolve the Action, and in consideration for the Settlement and Releases agreed to therein, Defendant will make available the Settlement Sum, which is up to three million eight hundred thousand dollars and zero cents (\$3,800,000).

The Settlement Sum represents Defendant's all-inclusive, sole, exclusive, and full payment for all monetary consideration of any kind whatever to Plaintiffs, Class Representatives, Settlement Class Members, and Class Counsel, including the total amount of monetary relief available (a) to Settlement Class Members for payment of all Valid Claims, (b) for Class Representative Service Awards, and (c) for Class Counsel's Fee Award. The Settlement Sum does not include reasonable Administration Expenses, which Defendant is also paying for the benefit of the Plaintiffs, Class Representatives and Settlement Class Members.

### **9. What are the benefits of the Settlement for Settlement Class Members?**

Each Settlement Class Member will be able to choose between one of the two mutually exclusive Benefit options. One Claim is allowed per Settlement Class Member.

- (a) Settlement Class Members who fill out the Claim Form and do not provide valid Proof of Purchase(s) may recover four dollars and fifty cents (\$4.50) per Unit, limited to up to three (3) total Units (the "Simple Claim"); or
- (b) Settlement Class Members who fill out the Claim Form and provide valid Proof of Purchase(s) in the Class Period may recover four dollars and fifty cents (\$4.50) for each Unit included in the Proof of Purchase(s), without limitation on the number of Units (the "Proof Claim").

"Proof of Purchase" means a receipt or other documentation which reasonably establishes the fact of purchase of the Product during the Class Period in the United States.

A Settlement Class Member may file a Claim Form electing either option, but not both. If no proof or inadequate proof is submitted along with a Proof Claim, but the claim is otherwise a Valid Claim, it will be treated as a Simple Claim and subject to the Unit limitations therein.

The actual amount paid to each Settlement Class Member who makes a Valid Claim will depend upon the number of Valid Claims. If the total amount to be paid as a result of Valid Claims exceeds the amount of the Settlement Sum that remains after the payment of the Class Representative Service Awards and Class Counsel's Fee Award, then the Benefit payable to each Claimant shall be proportionately reduced, such that Defendant's maximum liability under this Agreement shall not exceed the Settlement Sum.

### **10. Am I entitled to any other relief under the Settlement?**

As part of the consideration for this Agreement, and without admitting that the previous labels had any deceptive aspects to a reasonable consumer, Defendant has agreed to have changed the Labeling on the Products (a) to clearly identify that the Products contain the "maximum strength" of lidocaine available over the counter ("OTC") without a prescription, and (b) to remove any language concerning the length of time the Products in patch form will adhere.

**11. What do I need to do to participate in the Settlement?**

In order to qualify for a Benefit, a Settlement Class Member must timely submit a completed and valid Claim Form before the deadline. This can be done on the Settlement Website [INSERT WEBSITE URL] (submitted by the Claims Deadline) or by mail (postmarked by the Claims Deadline). Settlement Class Members must satisfy each of the Claim Form requirements.

**To receive a cash payment, you must submit your Claim Form by the Claims Deadline – no later than \_\_\_\_\_, 2023 [90 days after the Class Notice Date], by following the directions set forth at [INSERT WEBSITE URL]. Only Valid Claims will be paid.**

**12. When will the Settlement go into effect?**

The Court will hold a Final Approval Hearing on \_\_\_\_\_, 2023 to decide whether to approve the Settlement. Even if the Court approves the Settlement, there could be appeals. The time for an appeal varies and could be more than a year.

The Effective Date is the date one business day after the last of the following dates: (a) all Parties have executed the Settlement; (b) the Court has entered the Final Approval Order finally certifying the Settlement Class, finally approving the Agreement, and dismissing the Action with prejudice as to Named Plaintiffs' and Settlement Class Members' claims against Defendant; and (c) the date on which the time to appeal or to seek permission to appeal from the Court's approval of the Settlement Agreement has expired or, if appealed, approval of the Settlement Agreement has been affirmed in its entirety by the Court of last resort to which such appeal has been taken and such affirmance is no longer subject to further appeal or review, or upon the denial of a writ of certiorari to review the order and final judgment from any court, thus making the Final Approval Order a final, non-appealable judgment.

You can visit the Settlement Website at [INSERT WEBSITE URL] to check the progress of the Court approval process and the setting of the Effective Date. Please be patient.

Valid Claims will be paid within forty-nine (49) days of the Effective Date. The Court will have the power to enforce the terms of the Settlement Agreement.

**EXCLUDING YOURSELF FROM THE SETTLEMENT CLASS**

If you do not want to participate in the Settlement and instead you want to keep all of your rights to sue Defendant individually about the claims being resolved in the Settlement, then you must take steps to get out of the Settlement Class. This is called asking to be excluded from, or "opting out" of, the Settlement Class.

**13. If I do not want to participate in the Settlement, what must I do?**

QUESTIONS? CALL 1-800-xxx-xxx TOLL-FREE OR VISIT WWW. \_\_\_\_\_ .COM

In order to exercise the right to be excluded, a Settlement Class Member must send, by [DATE], a written request for exclusion to the Settlement Administrator at the address provided in the Class Notice Program (also provided below), providing: (1) his/her/their name, address, and telephone number; (2) the name and number of this case; (3) documents or information sufficient to establish the person's standing as a Settlement Class Member (including the Product purchased and date and location of purchase); (4) a statement that he/she/they wishes/wish to be excluded from the Settlement Class; and (5) a signature. No mass or class opt-outs will be permitted.

Your written request for exclusion from the Class should be mailed to:

[INSERT ADDRESS]

If your request is not received by [DATE], your right to opt out will be waived and you will be bound by all orders and judgments entered in connection with the Settlement. In that case, you will not be entitled to any benefits unless you have filed a Valid Claim.

#### **14. If I exclude myself, can I get anything from the Settlement?**

No. Any Settlement Class Member who validly opts out of the Settlement Class shall not: (a) be bound by any orders or judgments relating to the Settlement; (b) be entitled to relief under, or be affected by, this Agreement; (c) gain any rights by virtue of this Agreement; or (d) be entitled to object to any aspect of the Settlement. Except for those Settlement Class Members who timely and properly file a request for exclusion, all other Settlement Class Members will be deemed to be Settlement Class Members for all purposes under the Agreement, and upon the Effective Date, will be bound by its terms even if they file no Valid Claim. If you exclude yourself, you will receive no payment from the Settlement but will retain the ability to sue Defendant later, subject to the applicable statute of limitations or other defenses..

#### **15. How do I tell the Court if I do not like the Settlement?**

If you are a Settlement Class Member, you can object to the Settlement if you do not like any part of it. You can also object to Class Counsel's request for attorneys' fees, expenses, and costs, and the service awards for the Class Representatives. You can give reasons why you think the Court should not approve the Settlement or award the requested fees, costs, or expenses. The Court will consider your views.

Anyone who objects to the Settlement, the Settlement Agreement, the application for attorneys' fees, costs, or expenses, or service awards for the Class Representatives, or the other matters to be considered at the Final Approval Hearing must, on or before [REDACTED], 2023, serve a written objection. The written objection must include the following information:

- A caption or title that identifies it as "Objection to Class Settlement in Bell v. CVS Pharmacy, Inc.";
- Name, address, and telephone number for the objecting Settlement Class Member;

QUESTIONS? CALL 1-800-xxx-xxx TOLL-FREE OR VISIT WWW. [REDACTED].COM



- Documents sufficient to establish the person’s standing as a Settlement Class Member (including the Product purchased and date and location of purchase);
- The facts supporting the objection;
- The legal grounds on which the objection is based, including all citations to legal authority and evidence supporting the objection;
- The name and contact information of any and all attorneys representing, advising, or in any way assisting 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
- The objector’s signature (an attorney signature is not sufficient).

If a Settlement Class Member or any of the Objecting Attorneys has objected to any class action settlement within the last five years, then the objection must include a statement identifying each such case by full case caption and the amount of any payment received. No mass or class objections will be permitted.

Any Settlement Class Member who fails to object to the Settlement in the manner described in this Section shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from seeking any review of the Settlement or the terms of this Agreement by appeal or other means.

If an objecting person chooses to appear at the Final Approval Hearing, a notice of intention to appear must be filed with the Court no later than the Opt-Out / Objection Deadline. The notice of intention to appear must identify: (i) whether the appearance will be through counsel, (ii) any witnesses the objecting person may call to testify at the Final Approval Hearing; and (iii) copies of all exhibits the objecting person intends to introduce into evidence at the Final Approval Hearing. Only Settlement Class Members who submit timely objections including notices of intention to appear may speak at the Final Approval Hearing. If a Settlement Class Member makes an objection through an attorney, the Settlement Class Member will be responsible for his/her/their personal attorney’s fees and costs.

You must also serve the objection and notice of intention to appear (if any) on the Settlement Administrator, Class Counsel, and Defense Counsel, as follows:

*Upon the Settlement Administrator at:*

[ADD ADMINISTRATOR ADDRESS AND CONTACT]

*Upon Class Counsel at:*

Joseph I. Marchese  
Bursor & Fisher, P.A.  
888 Seventh Ave.  
New York, New York 10019  
jmarchese@bursor.com

and

QUESTIONS? CALL 1-800-xxx-xxx TOLL-FREE OR VISIT WWW. .COM

Adrian Gucovschi, Esq.  
GUCOVSCHI ROZENSHTeyN, PLLC  
630 Fifth Avenue, Suite 2000  
New York, NY 10111  
Telephone: (212) 884-4230  
E-Mail: adrian@gr-firm.com

*Upon Defense Counsel at:*

Mark S. Eisen  
Emily N. Dillingham  
Benesch Friedlander Coplan & Aronoff LLP  
71 S. Wacker Dr.  
16<sup>th</sup> Floor  
Chicago, IL 60606  
312-212-4949  
Fax: 312-767-9192  
meisen@beneschlaw.com  
edillingham@beneschlaw.com

**If you do not comply with the foregoing procedures and deadlines for submitting written objections, you may lose substantial legal rights to contest the orders or judgments of the Court entered in connection with the Settlement, including the ability to object.**

### **THE LAWYERS REPRESENTING YOU**

#### **16. Do I have a lawyer in this case?**

If you are a Settlement Class Member and do not opt out, you have a lawyer in this case. The Court has appointed the law firms of Bursor & Fisher, P.A. and Gucovschi Rozenshteyn, PLLC as Class Counsel to represent the Settlement Class Members. The only fees, costs, and expenses these lawyers will seek are those described in Question 17 below. If you want to be represented by your own lawyer in this case, you may hire one at your own expense.

#### **17. How will the lawyers be paid?**

Class Counsel has worked without compensation on this case since it was filed. In connection with the Final Approval Hearing on the Settlement, Class Counsel will apply to the Court for an award of expenses, costs, and attorneys' fees, with the total amount not to exceed \$1,140,000.00. This amount is being paid from the Settlement Sum.

Class Counsel will also apply to the Court for a service award for the Class Representatives in an amount not to exceed \$3,000 each. The service award compensates the Class Representatives for their efforts and

QUESTIONS? CALL 1-800-xxx-xxx TOLL-FREE OR VISIT WWW. .COM

commitment on behalf of the Settlement Class during the Action. This amount is being paid from the Settlement Sum.

## **THE COURT'S FINAL APPROVAL HEARING**

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

The Court will hold a Final Approval Hearing to decide whether to approve the Settlement and whether to grant Class Counsel's motion for attorneys' fees, costs, and expenses. You may attend and you may ask to speak if you have filed a timely and compliant notice of intention to appear, but you do not have to do either one.

The Final Approval Hearing will be held before the Honorable Peggy Kuo on \_\_\_\_\_, 2023 at \_\_\_\_\_ **Eastern Time**, at **United States District Court, Eastern District of New York 225 Cadman Plaza East Brooklyn, Room 8D South, New York 11201.**

**Do not write or call the judge or the clerk concerning this Class Notice or the Action.**

The purpose of the Final Approval Hearing will be for the Court to determine whether the Settlement should be finally approved as fair, reasonable, and adequate, and in the best interests of the Settlement Class, and to consider awarding attorneys' fees, costs, and expenses to Class Counsel and service awards to the Class Representatives. At the hearing, the Court will hear any objections and arguments that have properly been submitted, as set forth above, concerning the fairness of the Settlement or the fees.

The date of the Final Approval Hearing may change without further notice to the Settlement Class. Settlement Class Members should be advised to check the Settlement Website at **[INSERT WEBSITE URL]** to check on the date of the Final Approval Hearing, the Court-approval process, and the Effective Date.

### **19. Do I have to come to the Final Approval Hearing?**

No, you are not required to come to the Final Approval Hearing. Class Counsel will answer any questions the Court may have.

If you send an objection, you do not have to come to the Court to talk about it. As long as you served your written objection on time and complied with the other requirements for a proper objection, the Court will consider it.

### **20. May I speak at the Final Approval Hearing?**

You or your lawyer may ask the Court for permission to speak at the Final Approval Hearing if you have filed a timely and compliant notice of intention to appear.

QUESTIONS? CALL **1-800-xxx-xxx TOLL-FREE OR VISIT WWW. \_\_\_\_\_ .COM**

**You may not be able to speak at the hearing if you do not comply with the procedures set out in this Notice and the Settlement Agreement.**

### **IF YOU DO NOTHING**

#### **21. What happens if I do nothing?**

If you are a Settlement Class Member, you must file a Valid Claim by the Claims Deadline, **[INSERT DATE]**, as described in response to Question 11, to receive a cash payment.

**IF YOU DO NOTHING OR YOUR CLAIM FORM IS INVALID AND THE SETTLEMENT IS FINALLY APPROVED, YOU WILL BE BOUND BY THE COURT'S FINAL JUDGMENT AND RELEASE OF CLAIMS EXPLAINED IN THE SETTLEMENT AGREEMENT, AND WILL NOT BE ENTITLED TO COMPENSATION.**

### **GETTING MORE INFORMATION**

#### **22. How do I get more information?**

This Class Notice is only a summary of the terms of the Settlement. More details about the Settlement, the Effective Date, the deadlines, and your options are available in a longer document called the Settlement Agreement. This Settlement Agreement can be reviewed by clicking here: **[INSERT WEBSITE URL]**.

The Settlement Website also contains answers to common questions about the Settlement, plus other information to help you determine whether you are a Settlement Class Member. In addition, some of the key documents in the case will be posted on the Settlement Website. If you would like this Class Notice, the Claim Form, or the Settlement Agreement mailed to you, please call **[PHONE NUMBER]** or write to **[Settlement Administrator]** at:

**[INSERT ADDRESS]**

Alternatively, all of the court documents in this case are on file and available for review during regular office hours at the Clerk of the Court, United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201.

**Please do not call the Court or the Court Clerk's Office to inquire about this Settlement or the Claims Process.**

QUESTIONS? CALL **1-800-xxx-xxx TOLL-FREE OR VISIT WWW. .COM**



**UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK**  
***Bell v. CVS Pharmacy, Inc., Case No. 1:21-cv-06850-PK***

*A federal court authorized this Notice. This is not a solicitation from a lawyer.*

A Settlement has been reached in a class action lawsuit. In the lawsuit, Plaintiffs Monique Bell, Tree Anderson, and Melissa Conklin (“Named Plaintiffs”) allege that the packaging of Defendant’s Lidocaine Products was false and deceptive in that it led purchasers to believe that the Lidocaine Products delivered a “maximum strength” amount of lidocaine, and that the Products in patch form could reliably adhere to the body for up to 8 or 12 hours. Defendant does not concede the truth of any of the claims against it and denies that it did anything wrong. The Court has not decided who is right. Instead, the parties agreed to a compromise (“Settlement”). Defined terms have the meanings given to them in the Settlement Agreement.

**Who’s Included?** The Settlement Class is defined all persons who purchased Products in the United States during the Class Period, which is from December 11, 2017 through and including the date of entry of the Preliminary Approval Order. You received this notice because records show that you may be a Settlement Class Member.

“Products” means all CVS-branded “maximum strength” lidocaine patches, creams, roll-ons and spray products, including, but not limited to, the products listed in the First Amended Complaint. (ECF No. [XX].) The Products include the following SKU numbers: 376649, 405343, 977934, 328522, 405623, 250483, 385037, 249024, 235554, 383998, 238921, 197229, 450467, 371271, 188721, 256563, 196728, 256518, 384034, 234274, 834344, 388642. If the product you bought was sold under the CVS brand and says “maximum strength” on the box, you may qualify as a Settlement Class Member.

**What Are the Settlement Terms?** In consideration for the Settlement and Releases agreed to as part of the Settlement and subject to the rights, terms, and conditions of the Settlement, Defendant will make available the Settlement Sum, which is the maximum of up to three million eight hundred thousand dollars and zero cents (\$3,800,000) that Defendant will make available to resolve the Action. The Settlement Sum represents Defendant’s all-inclusive, sole, exclusive, and full payment to constitute all monetary consideration of any kind whatsoever for Plaintiffs, Class Representatives, Settlement Class Members, and Class Counsel, including (a) the total amount of monetary relief available to Settlement Class Members for payment of all Valid Claims, (b) Class Representative Service Awards, and (c) Class Counsel’s Fee Award. The Settlement Sum does not include reasonable Administration Expenses, which are also being paid by Defendant.

Each Settlement Class Member who submits a timely and valid Claim Form by the Claim Deadline in the manner required by the Agreement, shall receive a Benefit Payment as detailed below and in greater detail in the Settlement. Settlement Class Members will be able to choose between two Benefit options (but cannot choose both).

- (a) Settlement Class Members who fill out the Claim Form and do not provide valid Proof of Purchase(s) (as defined below), may

recover four dollars and fifty cents (\$4.50) per Unit, limited to up to three (3) total Units (the “Simple Claim”); or

(b) Settlement Class Members who fill out the Claim Form and provide a valid Proof of Purchase(s) for each Unit dated in the Class Period may recover four dollars and fifty cents (\$4.50) for each Unit contained in the Proof of Purchase(s), for any number of documented Units (the “Proof Claim”).

“Proof of Purchase” means a receipt or other documentation which reasonably establishes the fact of purchase of the Product during the Class Period in the United States.

A Settlement Class Member may file a Claim Form electing a Simple Claim (up to three total Units) or a Proof Claim (unlimited Units for which the Proof(s) of Purchase supports), but not both. If no proof or inadequate proof is submitted along with a Proof Claim, but the claim is otherwise a Valid Claim, it will be treated as a Simple Claim and subject to the limit of three total Units. The actual total amount paid to Settlement Class Members will depend upon the number of Valid Claims. If the total amount to be paid as a result of Valid Claims exceeds the amount of the Settlement Sum that remains after the payment of Class Representative Service Awards and the Class Counsel’s Fee Award, then the Benefit Payment payable to each Claimant shall be proportionately reduced, that Defendant’s maximum liability under this Agreement shall not exceed the Settlement Sum plus the Administration Expenses.

Settlement Class Members who file a Valid Claim will be sent their Benefit Payments to the address or electronic payment method they submit or select on their Claim Form within 49 days following the Effective Date.

**How Do I Submit a Claim Form?** To get a payment, you must submit a Claim Form by the deadline stated below. You may download and submit a Claim Form at the Settlement Website, [www.XXXXX.com](http://www.XXXXX.com), or request a Claim Form by calling the Settlement Administrator at the toll-free number below. To be valid, a Claim Form must be completed fully and accurately and submitted on time. You may submit a Claim Form by U.S. mail or file it online. If you send in a Claim Form by U.S. mail, it must be postmarked by **XXXXXXXXXX**. Claim Forms submitted online must be submitted by **11:59 p.m. EST on XXXXXXXXXXXX**.

**Exclude Yourself.** If you do not want to be legally bound by the Settlement, you must exclude yourself from the Settlement Class by **XXXXXXXXXX**. If you do not exclude yourself, you will release any claims you may have, as more fully described in the Settlement Agreement, available at the Settlement Website. If you exclude yourself, you will receive no payment from the Settlement but will retain the ability to sue Defendant later, subject to the applicable statute of limitations or other defenses. The Settlement and the Long-Form Notice available on the Settlement Website explain the requirements for excluding yourself.

**Object.** If there is something about the Settlement you do not like, you may object to the Settlement by **XXXXXXXXXX**. You may only object if you do not exclude yourself from the Settlement Class. Objections must be signed, provide the reasons for the objection, and comply

with the other requirements set forth in the Settlement and by the Court in its order granting preliminary approval of the Settlement, a copy of which is accessible at [www.XXXXXXXXXX.com](http://www.XXXXXXXXXX.com). The Settlement and the Long Form Notice available on the Settlement Website explain the requirements for objecting.

**Final Approval Hearing.** The Court will hold a Final Approval Hearing on [XXXXXXXXXX](#) to consider whether to approve the Settlement (including the Application for Attorneys' Fees and Expenses of up to \$1,140,000 of the Settlement Sum and service awards of \$3,000 to each Named Plaintiff, all of which are to be paid from the Settlement Sum). You may appear at the hearing, either yourself or through an attorney you hire, but you don't have to. If you intend to appear, either yourself or through an attorney you hire, you must file and serve a notice of intention to appear satisfying the requirements set forth in the Settlement Agreement and detailed in the Long Form Notice. For more information, call 1-xxx-xxx-xxxx or visit the Settlement Website. [www.XXXXXXXXXX.com](http://www.XXXXXXXXXX.com)





BELL V. CVS CREATIVE

BANNER AD

**MAX STRENGTH CVS-BRAND LIDOCAINE SETTLEMENT**

**If You Purchased CVS-Brand Maximum Strength Lidocaine Products**

You Could Get Money From a Settlement.



**LEARN MORE >>**

**EXHIBIT D**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

MONIQUE BELL, TREE ANDERSON, and  
MELISSA CONKLIN, individually and on behalf  
of all others similarly situated,

Plaintiffs,

v.

CVS PHARMACY, INC.,

Defendant.

Case No. 1:21-cv-06850-PK

Hon. Peggy Kuo

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

The Plaintiffs in this action have filed an unopposed motion for preliminary approval of a Class Action Settlement Agreement (“Settlement Agreement”), conditional certification of the Settlement Class for settlement purposes, approval of the Notice Program for providing notice to the Settlement Class, and approval of the proposed Settlement Administrator. The Court has reviewed and considered the Settlement Agreement and the accompanying exhibits.

IT IS HEREBY ORDERED as follows:

1. Defined Terms. This Order incorporates by reference the definitions in the Settlement Agreement, and all terms used in this Order shall have the same meanings as set forth in the Settlement Agreement.

2. Preliminary Approval of Settlement: The Court preliminarily approves the Settlement Agreement, and its terms, as fair, reasonable, and adequate under Rule 23, subject to further consideration at the Final Approval Hearing described below. The Court also

preliminarily finds that the Settlement Agreement has been reached as a result of arm's-length negotiations of disputed claims.

3. Class Definition: Pursuant to Fed. R. Civ. P. 23, the Court preliminarily certifies, solely for purposes of effectuating the Settlement Agreement, the following Settlement Class:

All persons who purchased Products in the United States during the Class Period. Excluded from the Settlement Class are: (a) all persons who purchased or acquired the Products for resale; (b) Defendant and its employees, principals, affiliated entities, legal representatives, successors and assigns; (c) any person who makes a valid, timely opt-out request; (d) federal, state, and local governments (including all agencies and subdivisions thereof, but excluding employees thereof), and (e) the judges to whom this Action is assigned and any members of their immediate families.

4. Class Representatives and Class Counsel: The Court preliminarily appoints the law firm of Bursor & Fisher, P.A. and Gucovschi Rozenshteyn, PLLC as Class Counsel for the Settlement Class. The Court preliminarily appoints Monique Bell, Tree Anderson, and Melissa Conklin as Class Representatives.

5. Preliminary Class Certification for Settlement Purposes Only: The Court preliminarily finds, solely for purposes of the Settlement, that the Rule 23 criteria for certification of the Settlement Class have been met in that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members in the Action is impracticable; (b) there are questions of law and fact common to the Settlement Class that predominate over any individual questions; (c) the claims of the Class Representatives are typical of the claims of the Settlement Class; (d) the Class Representatives and Class Counsel have and will continue to fairly and adequately represent and protect the interests of the Settlement Class; and (e) a class action is superior to all other available methods for the fair and efficient adjudication of the controversy.

6. In addition, the Court finds that preliminary certification of the Settlement Class is appropriate when balanced against the risks and delays of further litigation.

7. Class Notice: The Court approves the form and content of the proposed Long Form Notice and Direct Notice (Exhibits B and C-1 to the Settlement Agreement) and Claim Form (Exhibit A to the Settlement Agreement). The Court further finds that the method of dissemination of the Notice Program (including the Media Plan), in the manner set forth in the Settlement Agreement, as well as the establishment of a Settlement Website, satisfy Rule 23 and due process, and constitutes the best notice practicable under the circumstances. The Notice Program set forth in the Settlement Agreement is reasonably calculated to apprise the Settlement Class of the pendency of the Action, the class certification for settlement purposes only, the terms of the Settlement and benefits afforded, the Settlement Class Members' rights including the right to opt-out of or object to the Settlement and the deadlines and procedures for doing so, the deadline, procedures and requirements for submitting a Claim pursuant to the Settlement, Class Counsel's Application for Attorneys' Fees and Expenses and Class Representative Service Awards for the Class Representatives, the time, place, and right to appear at the Final Fairness hearing, and other pertinent information about the Settlement and the Settlement Class Members' rights. The Court authorizes the Parties to make non-material modifications to the notice documents and Claim Form if they jointly agree that any such changes are appropriate.

8. No later than the date specified in Paragraph 23 below, the Settlement Administrator shall effectuate the Notice Program pursuant to the terms of the Agreement.

9. Administration: The Court appoints Kroll Settlement Administration as Settlement Administrator. The Settlement Administrator is directed to perform all settlement administration duties set forth in, and pursuant to the terms and time periods of, the Settlement

Agreement, including mailing of the CAFA Notice, implementing and maintaining the Settlement Website, effectuating the Notice Program, the Media Plan, the processing, review and determination of timely submitted and proper Claims under the Settlement, and the preparation of any declarations and other necessary materials to be submitted to the Court, as well as any other duties required under the Settlement Agreement.

10. Exclusion from Class. Any Settlement Class Member who wishes to be excluded from the Class must send to the Settlement Administrator by U.S. Mail a request for exclusion postmarked no later than the Opt-Out / Objection Deadline. The request for exclusion must be a personally signed request from the Settlement Class Member including (1) his/her/their name, address, and telephone number; (2) the name and number of this case; (3) documents or information sufficient to establish the person's standing as a Settlement Class Member (including the Product purchased and date and location of purchase); (4) a statement that he/she/they wishes/wish to be excluded from the Settlement Class; and (5) a signature. A Class Member can exclude only himself/herself/themselves from the Class, and shall not be allowed to request that another individual or group be excluded. "Mass" or "class" opt-outs are not permitted. At least seven (7) calendar days before the deadline to file the Motion for Final Approval, Class Counsel will prepare or cause the Settlement Administrator to prepare a list of the persons who have excluded themselves in a valid and timely manner from the Settlement Class, and Class Counsel will file that list with the Court.

11. If the proposed Settlement is finally approved, any Settlement Class Member who has not submitted a timely written request for exclusion on or before the Opt-Out / Objection Deadline shall be bound by all terms of the Agreement and the Final Approval Order and final judgment, even if the Settlement Class Member previously initiated or subsequently initiates any

litigation against any or all of the Released Parties relating to Released Claims. All persons or entities who properly exclude themselves from the Settlement Class shall not be Settlement Class Members and shall relinquish their rights or benefits under the Settlement Agreement, should it be approved, and may not file an objection to the Settlement or be entitled to any settlement benefits.

12. Objections: Any Settlement Class Member who has not filed a timely written request for exclusion may object to the fairness, adequacy, or reasonableness of the Settlement Agreement, the requested award of Attorneys' Fees and Expenses, and/or Class Representative Service Awards.

13. In order to object, the objection must contain: (i) a caption or title that identifies it as "Objection to Class Settlement in *Bell v. CVS Pharmacy, Inc.*"; (ii) contact and address information for the objecting Settlement Class Member; (iii) documents sufficient to establish the person's standing as a Settlement Class Member (including the Product purchased and date and location of purchase); (iv) the facts supporting the objection; (v) the legal grounds on which the objection is based, including all citations to legal authority and evidence supporting the objection; (vi) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objecting Settlement Class Member in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the "Objecting Attorneys"), and (vii) the objecting Settlement Class Member's signature (an attorney signature is not sufficient). If a Settlement Class Member or any of the Objecting Attorneys has objected to any class action settlement within the last five years, then the objection must include a statement identifying each such case by full case caption and amount of payment received. No mass or class objections will be permitted.



14. Any objecting Class Member may appear, in person or by counsel, at the Final Approval Hearing to explain why the proposed Settlement should not be approved as fair, reasonable, and adequate, or to object to any motion for Attorneys' Fees and Expenses or Class Representative Service Awards. To appear, the objecting Settlement Class Member must, by the Opt-Out / Objection Deadline, file with the Clerk of the Court a notice of intention to appear at the Final Approval Hearing. The notice of intention to appear must identify: (i) whether the appearance will be through counsel, (ii) any witnesses the objecting person may call to testify at the Final Approval Hearing; and (iii) all exhibits the objecting Settlement Class Member intends to introduce into evidence at the Final Approval Hearing, which must also be attached to, or included with, the written objection. Only Settlement Class Members who submit timely objections including notices of intention to appear may speak at the Final Approval Hearing. If a Settlement Class Member makes an objection through an attorney, the Settlement Class Member will be responsible for his/her/their personal attorney's fees and costs.

15. Any Settlement Class Member who has not properly filed a timely objection in accordance with the deadline and requirements set forth in this Order and the Settlement Agreement shall be deemed to have waived any objections to the Settlement Agreement and any adjudication or review of the Settlement Agreement by appeal or otherwise.

16. The Parties shall have the right to take discovery without further leave of court consistent with the Federal Rules of Civil Procedure from any person who claims to be a Settlement Class Member who objects to the Settlement. If the person who objects to the Settlement is represented by counsel, the Parties shall also have the right to take discovery consistent with the Federal Rules of Civil Procedure from the Objecting Attorney without further leave of court.

17. Preliminary Injunction. All Settlement Class Members and/or their representatives who do not timely and properly exclude themselves from the Settlement Class are barred and enjoined from directly, indirectly, derivatively, in a representative capacity, or in any other capacity filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting, or continuing any action in any forum (state or federal) as individuals, class members, putative class members, or otherwise against the Released Parties (as defined in the Agreement) asserting any of the Released Claims (as defined in the Agreement), and/or from receiving any benefits from any lawsuit other than this one, administrative or regulatory proceeding, or order in any jurisdiction, arising out of, based on, or relating to the Released Claims. In addition, all such persons are hereby barred and enjoined from filing, commencing, or prosecuting a lawsuit against Defendant (or against any of the Released Parties) in any form, including as a class action, a separate class, or group for purposes of pursuing a putative class action (including by seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending action in any jurisdiction) on behalf of Settlement Class Members who do not timely exclude themselves from the Class, arising out of, based on, or relating to the Released Claims. Pursuant to 28 U.S.C. §§ 1651(a) and 2283, the Court finds that issuance of this preliminary injunction is necessary and appropriate in aid of the Court's continuing jurisdiction and authority over the Action.

18. Termination of Settlement. If the Court does not enter a Final Approval Order, or for any reason the parties fail to obtain a Final Approval Order and final judgement as contemplated in the Settlement Agreement, or the Settlement Agreement is terminated pursuant to its terms for any reason, or the Effective Date does not occur for any reason, then the Parties shall be restored to their respective pre-settlement positions in the Action, including with regard

to any agreements concerning tolling and similar agreements, and this entire Agreement shall be null and void, shall have no further force and effect with respect to any Party in the Action, and shall not be offered in evidence or used in any litigation for any purpose, including the existence, certification, or maintenance of any purported class or Defendant's or any Released Party's liability with respect to the claims that are, were or could have been asserted in the Action. In the event of such, this Settlement and all negotiations, proceedings, documents prepared, and statements made in connection with it shall be without prejudice to the Parties, and shall not be deemed or construed to be an admission or confession by any Party of any fact, matter, or proposition of law, and shall not be used in any manner for any purpose, and all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court.

19. In the event of termination, the terminating Party shall cause the Settlement Administrator to post information regarding the termination on the Settlement Website

20. Alteration of Exhibits. Plaintiffs' Counsel and Defense Counsel are hereby authorized to use all reasonable procedures to further the administration of the Settlement that are not materially inconsistent with this Order or the Agreement, including making, without further approval of the Court, minor changes to the form or content of the Long Form Notice, Direct Notice, Claim Form, and other exhibits that they jointly agree are reasonable or necessary.

21. Retaining Jurisdiction. This Court shall maintain continuing jurisdiction over these settlement proceedings to ensure the effectuation thereof for the benefit of the Class, and for any other necessary purpose.

22. All discovery and other proceedings in this action as between Plaintiffs and Defendant are stayed and suspended until further order of the Court except such actions as may be necessary to implement the Settlement Agreement and this Order.

23. Settlement Deadlines. Based on the foregoing, the Court sets the schedule below for the Final Approval Hearing and the actions which must precede it. If any deadline set forth in this Order falls on a weekend or federal holiday, then such deadline shall extend to the next business day. These deadlines may be extended by order of the Court, for good cause shown, without further notice to the Settlement Class. Settlement Class Members must check the Settlement website regularly for updates and further details regarding this Settlement:

<u>Event</u>	<u>Deadline Pursuant To Settlement Agreement</u>	<u>Date Ordered By Court</u>
Notice Date	35 days after Preliminary Approval Granted	
Application for Class Representative Service Awards and Attorneys' Fees and Expenses	14 days prior to Opt-Out/Objection Deadline	
Opt-Out and Objection Deadline	45 days after Notice Date	
Deadline to submit notices of intention to appear at the Final Approval Hearing	45 days after Notice Date	
Claims Deadline	90 days after Notice Date	
Final Approval Motion and response to any objections	100 days after Notice Date	
Final Approval Hearing	120 days after Notice Date, or as soon thereafter as may be heard by the Court	

IT IS SO ORDERED, on \_\_\_\_\_  
(date)

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The Honorable Peggy Kuo  
United States Magistrate Judge



**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

MONIQUE BELL, individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

CVS PHARMACY, INC.,

Defendant.

Civil Action No. 1:21-cv-06850

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

Plaintiff (“Plaintiff”) and Defendant (“Defendant”) (collectively, “the Parties”), by and through and including their undersigned counsel, stipulate and agree as follows:

WHEREAS, Scott A. Bursor and his law firm Bursor & Fisher P.A. (the “Firm”)<sup>1</sup> desire to give an undertaking (the “Undertaking”) for repayment of their share of the award of attorney 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, each of the undersigned Class Counsel, on behalf of themselves as individuals and as agents for their law firm, hereby submit themselves and their respective law firms to the jurisdiction of the Court for the purpose of enforcing the provisions of this Undertaking.

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<sup>1</sup> The Parties understand that a separate undertaking will also be provided by the Gucovschi firm for its share of the award of attorney fees, costs and expenses approved by the Court.

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, Bursor & Fisher, P.A. and its shareholders, members, and/or partners submit to the jurisdiction of the United States District Court for the Eastern District of New York 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 portion of the total attorneys' fees and costs paid to the Firm from the Settlement Fund, including any accrued interest (calculated using the then-current short term applicable federal rate).

In the event the attorney fees and costs awarded by the Court or any part of them are vacated, modified, reversed, or rendered void as a result of an appeal, the Firm shall within thirty (30) days repay to Defendant, based upon written instructions provided by Defendant's Counsel, the portion of the total attorneys' fees and costs paid to the Firm from the Settlement Fund in the amount vacated or modified, including any accrued interest (calculated using the then-current short term applicable federal rate).

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 Class Counsel fails to repay to Defendant any of the attorneys' fees and costs that are owed to it pursuant to this Undertaking, the Court shall, upon application of Defendant, and notice to Class Counsel, summarily issue orders, including but not limited to judgments and attachment orders against each of Class Counsel, and may make appropriate findings for sanctions for contempt of court. Defendant shall also, in such event, be entitled to its reasonable attorneys' fees and reimbursement of costs in pursuing any such relief.

The undersigned stipulate, warrant, and represent that they have both actual and apparent authority to enter into this stipulation, agreement, and undertaking on behalf of Bursor & Fisher, P.A.

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, individually and  
on behalf of Bursor & Fisher, P.A.  
Attorneys for Plaintiffs

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

DEFENDANT'S LAW FIRM

\_\_\_\_\_  
By: Attorney Name  
Attorneys for Defendant





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## **FIRM RESUME**

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

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

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

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

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

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

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

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

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

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

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

### **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.

**SEAN L. LITTERAL**

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

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

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

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

**JULIAN DIAMOND**

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

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

**MATTHEW GIRARDI**

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

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

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