	Case 4:24-cv-03229-HSG	Document 55-1	Filed 03/14/25	Page 1 of 114		
1 2 3 4 5 6 7	BURSOR & FISHER, P.A. L. Timothy Fisher (State Bar No. Joshua B. Glatt (State Bar No. 3 1990 North California Blvd., 9t Walnut Creek, CA 94596 Telephone: (925) 300-4455 Facsimile: (925) 407-2700 E-mail: ltfisher@bursor.com jglatt@bursor.com <i>Attorneys for Plaintiffs</i>	354064)				
8	UN	NITED STATES D	DISTRICT COURT			
9	NOR'	THERN DISTRIC	CT OF CALIFORN	NIA		
10	In re VNGR BEVERAGE, LLC	CLITIGATION	Case No. 4:24-cv-	-03229-HSG		
11	,			N OF L. TIMOTHY		
12				PORT OF PLAINTIFFS'		
13				APPROVAL OF CLASS		
14 15	This Document Relates to:		Date: May 8, 2025 Time: 2:00 p.m.			
16	Case No. 4:24-cv-03612-HSG Case No. 4:24-cv-06666-HSG					
17			Dept: Courtroom Judge: Hon. Hay	2 wood S. Gilliam, Jr.		
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28	FISHER DECLARATION					
	CASE NO. 4:24-CV-03229-HSG					

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I, L. Timothy Fisher, declare as follows:

 I am a partner at Bursor & Fisher, P.A., counsel of record for Plaintiffs and co-lead interim class counsel in this matter. I am an attorney at law licensed to practice in the State of California, and I am a member of the bar of this Court. I have personal knowledge of the facts contained in this declaration, and if called upon to testify I could and would testify competently thereto.

2. I make this declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement filed herewith.

3. Attached hereto as Exhibit 1 is a true and correct copy of Parties' Class ActionSettlement Agreement, and the exhibits attached thereto.

4. On May 28, 2024, Plaintiff Cobbs, by and through counsel, sent a letter to Defendant VNGR Beverage LLC d/b/a Poppi ("Defendant" or "Poppi") via certified mail, return receipt requested, alleging that Defendant violated California's Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750, *et seq.*, by intentionally making and disseminating statements concerning its Poppi sodas' (the "Product") prebiotic qualities and positive health effects to consumers in California and the general public, which are untrue and misleading on their face and by omission.

18 5. On May 29, 2024, Plaintiff Cobbs filed her class action lawsuit against Poppi in the 19 United States District Court for the Northern District of California, captioned Cobbs v. VNGR 20 Beverage, LLC, No. 4:24-cv-03229-HSG (the "Cobbs Action"), alleging violations of California's 21 False Advertising Law, Cal. Bus. and Prof. Code § 17500, et seq. ("FAL"); Consumers Legal 22 Remedies Act, Cal. Civ. Code § 1750, et seq. (the "CLRA"); California's Unfair Competition Law, 23 Cal. Bus. and Prof. Code § 17200, et seq. ("UCL"); and Unjust Enrichment claim, arising from 24 Poppi's allegedly unlawful, misleading, and deceptive labeling of the Products. The initial 25 complaint alleged that Poppi unlawfully, misleadingly, and deceptively marketed and labeled its 26 Products as gut healthy. (ECF No. 1). The Cobbs Action was assigned to the Honorable Haywood 27 S. Gilliam, Jr.

1	6. On June 14, 2024, a substantially similar complaint, involving the same questions of				
2	law and fact, was filed in the Northern District of California, captioned Lesh, et al. v. VNGR				
3	Beverage, LLC, No. 4:24-cv-03612-SK (the "Lesh Action").				
4	7. The Court related and consolidated the <i>Lesh</i> Action to the <i>Cobbs</i> Action,				
5	recaptioned as In re VNGR Beverage LLC, Litigation (the "Consolidated Action"), and set				
6	deadlines for filing a consolidated amended complaint and related responsive filings. ECF Nos.				
7	18, 22.				
8	8. On July 19, 2024, a third substantially similar putative class action, involving the				
9	same questions of law and fact as in the Consolidated Action, was filed in the Northern District of				
10	California, captioned Wheeler v. VNGR Beverage LLC, No. 4:24-cv-04396-LB (the "Wheeler				
11	Action").				
12	9. On July 25, 2024, Plaintiffs in the <i>Cobbs</i> and <i>Lesh</i> Actions filed a Consolidated				
13	Amended Complaint in the Consolidated Action. ECF No. 29.				
14	10. On August 20, 2024, Plaintiffs in the <i>Cobbs</i> , <i>Lesh</i> , and <i>Wheeler</i> Actions filed a				
15	Second Consolidated Amended Complaint. ECF No. 35.				
16	11. On August 21, 2024, the Court consolidated the <i>Wheeler</i> Action into the				
17	Consolidated Action. The Court also appointed Bursor & Fisher, P.A., and Gutride Safier LLP as				
18	co-lead Interim Class Counsel. ECF No. 36.				
19	12. On September 23, 2024, Poppi filed a Motion to Dismiss the Second Consolidated				
20	Amended Complaint under Federal Rules of Civil Procedure 9(b), 12(b)(1), and 12(b)(6). ECF No.				
21	37.				
22	13. That same day, September 23, 2024, nearly four months after the initial Complaint				
23	was filed, a substantially similar putative class action involving the same questions of law and fact				
24	as in the Consolidated Action was filed in the Northern District of California, captioned <i>Jackson v</i> .				
25	<i>VNGR Beverage LLC</i> , No. 3:24-cv-06666-HSG (the "Jackson Action"). ECF No. 38. The <i>Jackson</i>				
26	Action was subsequently stayed until forty-five (45) days after Poppi's Motion to Dismiss was				
27	decided in the Consolidated Action. ECF Nos. 40, 42.				
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14. From the outset of the case, including during the pendency of the motion to dismiss, the Parties engaged in direct communications to discuss the prospect of an early resolution. Those discussions eventually led to an agreement between the Parties to engage in mediation. Prior to the mediation, the Parties exchanged in informal discovery related to sales relevant to the Products at issue.

15. On December 4, 2024, the Parties took part in an all-day Zoom mediation with Judge Jay C. Gandhi (Ret.) of JAMS. The Parties were unable to come to an agreement on resolution at that mediation. The Parties continued to work with Judge Gandhi and with each other toward resolution. In the weeks that followed, the Parties had several phone calls to continue negotiations. The Parties ultimately reached agreement on a class wide settlement which consists of cash benefits with a total value of \$8,900,000.00 ("Gross Settlement Amount").

16. On December 16, 2024, the Court granted the Parties' request to stay the Action until February 14, 2025 to allow the Parties to finalize and execute the formal class settlement agreements. ECF No. 49. During that time, the Parties continued to negotiate aspects of the released claims, class notice, and timelines. On February 13, 2025, the Court granted an additional stay until March 10, 2025. ECF No. 51.

17. Pursuant to the terms of the Settlement Agreement, Plaintiffs sought, and the Court granted, leave to file a Third Amended Complaint adding a breach of implied warranty claim. ECF No. 53. The Third Amended Consolidated Complaint was filed on March 6, 2025. ECF No. 54.

18. The Proposed Settlement only relates to the labeling, advertising, or formulation of the Products between January 23, 2020 and the Settlement Notice Date and does not release any personal injury claims.

19. The damages in this case is based on a price premium theory of damages. Based upon my experience in comparable litigation, the price premium damages associated with the gut health claim are likely between five and ten percent of the product's sales price.

20. Pursuant to the terms of the Proposed Settlement, every Settlement Class Member shall receive a pro rata distribution of the Net Settlement Amount based on the overall payments

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claimed by each Class Member for his or her purchase of the Products between January 23, 2020 and the Settlement Notice Date. Subject to pro rata adjustments, the minimum Class Payment for any Approved Claim shall be five dollars (\$5.00) per Household, even if the Class Member purchased fewer units. Class Members without proofs of purchase can receive a maximum payment of sixteen dollars (\$16.00). Class Members with proof of purchase have no cap on recovery.

21. Class Members will be required to fill out and submit a Claim Form either online orin hard copy, and each will be given the option of providing information to the SettlementAdministrator as to how the Class Member wants to receive their Class Payment.

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22. Class Counsel will apply for a Service Award for each named Plaintiff of not more than five thousand dollars each to compensate them for the work performed on behalf of the class and for financial and reputational risks for bringing the action. Unused funds will be redistributed to Claimant awards on a pro rata basis.

23. In total, Class Counsel has a lodestar of approximately 600,000 dollars as of moving for preliminary approval.

24. Class Counsel estimates that it has incurred not more than \$30,000 in expenses.Class Counsel will seek an award of attorneys' fees up to 30% of the Gross Settlement Amount.

25. The Parties have agreed to designate Feeding America as the *cy pres* recipient of unclaimed funds. My firm has previously used Feeding America for *cy pres*. Feeding America is a nonprofit organization that assists nutrition education and providing meals. Their mission of providing nutrition education is in line with the gut health benefit representations and "healthier" soda representations at issue in this case.

26. My firm, Bursor & Fisher, P.A., has significant experience litigating class actions of similar size, scope, and complexity to the instant action. See Firm Resume of Bursor & Fisher,
P.A., a true and accurate copy of which is attached hereto as Exhibit 2. My firm has served as plaintiff's counsel in a number of substantially similar putative class actions. *See, e.g., Bayol v. Health-Ade*, Case No. 3:18-cv-01462-MMC (N.D. Cal. Aug. 23, 2018); *Retta v. Millennium*

1 Products, Inc., Case No. 2:15-cv-01801-PSG-AJW (C.D. Cal. Jan. 31, 2017); Gregorio v. Premier 2 Nutrition Corp., Case No. 1:17-cv-5987 (S.D.N.Y. Sept. 14, 2018); Martinelli v. Johnson & 3 Johnson, Case No. 2:15-cv-1733-MCE-EFB (E.D. Cal. March 29, 2019); In re Trader Joe's Tuna 4 Litig., Case No. 2:16-cv-01371-ODW (C.D. Cal. December 21, 2016); Hendricks v. StarKist Co., 5 Case No. 13-cv-00729-HSG (N.D. Cal. July 23, 2015); and Ebin v. Kangadis Family Mgmt. LLC, 6 et al., Case No. 14-cv-1324-JSR (S.D.N.Y. Sept. 18, 2014). Further, since December 2010, my 7 firm has been court-appointed Class Counsel or Interim Class Counsel by numerous courts across 8 the country, including in this Circuit. See, e.g., In re: Apple Data Privacy Litig., Case No. 5:22-cv-9 07069-EJD (N.D. Cal. July 5, 2023); Malone v. Western Digital Corp., Case No. 5:20-cv-03584-10 NC (N.D. Cal. Dec. 22, 2021); Soo v. Lorex Corp., Case No. 3:20-cv-01437-JSC (N.D. Cal. Sept. 11 23, 2020); In re Sensa Weight Loss Litig., Case No. 4:11-cv-01650-YGR (N.D. Cal. Mar. 2, 2012); 12 In re Haier Freezer Consumer Litig., 2013 WL 2237890 (N.D. Cal. May 21, 2013); In re NVIDIA 13 GTX 970 Graphics Card Litig., Case No. 3:15-cv-00760-CRB (N.D. Cal. May 8, 2015); McMillion 14 v. Rash Curtis & Assocs., Case No. Case 4:16-cv-03396-YGR (N.D. Cal. Sep. 6, 2017); Lucero v. 15 Solarcity Corp., Case No. 3:15-CV-05107-RS (N.D. Cal. Sep. 15, 2017); Gasser v. Kiss My Face, 16 LLC (N.D. Cal. Oct. 23, 2017); Williams v. Facebook, Inc., Case No. 3:18-cv-01881-RS (N.D. Cal. 17 Jun. 26, 2018); West v. California Serv. Bureau, Case No. 4:16-cv-03124-YGR (N.D. Cal. Sep. 12, 18 2018). My firm has also been recognized by courts across the country for its expertise in litigating 19 Rule 23 class action claims to trial. See, e.g., Ex. 2; see also Ebin v. Kangadis Food Inc., 297 20 F.R.D. 561, 566 (S.D.N.Y. Feb. 25, 2014) ("Bursor & Fisher, P.A., are class action lawyers who 21 have experience litigating consumer claims. ... The firm has been appointed class counsel in 22 dozens of cases in both federal and state courts, and has won multi-million dollar verdicts or 23 recoveries in five class action jury trials since 2008."); In re Welspun Litig., Case No. 16-cv-24 06792-RJS (S.D.N.Y. Jan. 26, 2017) (appointing Bursor & Fisher interim lead counsel to represent 25 a proposed nationwide class of purchasers of mislabeled Egyptian cotton bedding products). 26

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27. 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 arm's length and with the assistance of a neutral mediator.

28. Defendant is represented by highly experienced attorneys who have made clear that absent a settlement, they were prepared to continue their vigorous defense of this case, including by moving for summary judgment after discovery. Plaintiffs and proposed Class Counsel recognize that despite our belief in the strength of Plaintiffs' claims, and Plaintiffs' and the Class's ability to ultimately secure a favorable judgment at trial, the expense, duration, and complexity of protracted litigation would be substantial and the outcome of trial uncertain.

29. Plaintiffs and Class Counsel are also mindful that absent a settlement, the success of Defendant's various defenses in this case could deprive the Plaintiffs and the Settlement Class Members of any potential relief. Indeed, the Court has yet to rule on Defendant's Motion to Dismiss. Plaintiffs are also mindful that they face significant hurdles in getting a class certified, which could be decertified or reversed on appeal.

30. Plaintiffs and Class Counsel are also aware that Defendant would continue to challenge liability, as well as assert a number of defenses on the merits, including that Plaintiff's allegations are insufficient under Fed. R. Civ. P. 8 and 12(b)(6). Plaintiffs are also aware Defendant will continue to challenge Plaintiff's standing under Article III of the Constitution as well as pursuant to California's consumer protection statutes, including Plaintiff's ability to show economic injury or causation and her ability to sue on behalf of unnamed class members. Looking beyond trial, Plaintiffs are also keenly aware of the fact that Defendant could appeal the merits of any adverse decision.

The Parties have selected Verita Global, LLC ("Verita") to act as the Settlement
Administrator. Verita is a prominent and well-respected claims administrator who has the
expertise to provide the best practicable notice in the circumstances and to ensure a smooth claims
process. During the selection process, I received four competing bids from other settlement

1	administrators. Verita was selected based on its quoted price, claims estimate, proposed notice				
2	plan, fraud detection program, and previous experience in handling comparable settlements.				
3	32. Verita will implement the Settlement and Notice Plan agreed to by the Parties. The				
4	actual costs incurred by Verita for effectuating Class Notice and other administrative costs for				
5	administering the Settlement will be paid from the Settlement Fund.				
6	33. Plaintiffs and Class Counsel believe that the relief provided by the settlement				
7	weighs heavily in favor of a finding that the settlement is fair, reasonable, and adequate, and well				
8	within the range of approval.				
9	I declare under penalty of perjury under the laws of the State of California that the				
10	foregoing is true and correct.				
11	Executed this 14th day of March, 2025 at Walnut Creek, California.				
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13	<u>/s/ L. Timothy Fisher</u> L. Timothy Fisher				
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	FISHER DECLARATION7CASE NO. 4:24-CV-03229-HSG7				

**EXHIBIT 1** 

### SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement" or "Agreement") is made as of March 5, 2025, by and between Kristin Cobbs, Carol Lesh, Sarah Coleman, and Megan Wheeler ("Plaintiffs"), on behalf of themselves and the Class (as defined below), and VNGR Beverage, LLC d/b/a Poppi, and all its past, present, and future affiliates, subsidiaries, parent companies, and related companies ("Poppi") (collectively, the "Parties," and individually a "Party").

### DEFINITIONS

As used herein, the following terms have the meanings set forth below:

- A. "Administrative and Notice Costs" means all fees, costs, and expenses incurred by the Settlement Administrator while carrying out its duties under this Agreement, including, without limitation: all aspects of the Notice Plan, including issuing Email Notice, Publication Notice, and Website Notice; reviewing and approving claims; and administering, calculating, and distributing the Net Settlement Amount to Class Members.
- B. "Approved Claim" means a claim approved by the Settlement Administrator, according to the terms of this Agreement.
- C. "Attorneys' Fees and Costs" means the amount of attorneys' fees and reimbursement of costs and expenses awarded to Class Counsel by the Court from the Gross Settlement Amount.
- D. "Claim" means a request for relief submitted by or on behalf of a Class Member on a Claim Form, in the form attached hereto as Exhibit A, submitted to the Settlement Administrator in accordance with the terms of this Agreement.
- E. "Claim Form" means the document to be submitted by Claimants seeking direct monetary benefits pursuant to this Agreement.
- F. "Claimant" means any Class Member who submits a Claim Form for the purpose of claiming benefits, in the manner described in Section 6 of this Agreement.
- G. "Claims Deadline" means the date by which a Claimant must submit a Claim Form to be considered timely. The Claims Deadline shall be sixty (60) calendar days after the Settlement Notice Date.
- H. "Claims Process" means the process by which Class Members may make claims for relief, as described in Section 6 of this Agreement.
- I. "Class" means all persons in the United States who, between January 23, 2020 and the Settlement Notice Date, purchased in the United States, for household use and not for resale or distribution, one or more of the Products, as defined below.

- J. "Class Counsel" means:
  - a. L. Timothy Fisher, of Bursor & Fisher, P.A., 1990 North California Blvd., 9th Floor, Walnut Creek, CA 94596; and
  - b. Marie A. McCrary, of Gutride Safier LLP, 100 Pine Street, Suite 1250, San Francisco, CA 94111.
- K. "Class Member" means any person who is a member of the Class.
- L. "Class Payment" means the distributions from the Net Settlement Amount to each Class Member as set forth in Section 6.
- M. "Class Representatives" means Kristin Cobbs, Carol Lesh, Sarah Coleman, and Megan Wheeler.
- N. "Consolidated Action" means the following class actions filed in the United States District Court for the Northern District of California and thereafter consolidated into the litigation styled *In re VNGR Beverage, LLC Litigation*, No. 4:24-cv-03229-HSG (N.D. Cal.): *Cobbs v. VNGR Beverage, LLC*, No. 4:24-cv-03229; *Lesh, et al. v. VNGR Beverage, LLC*, No. 3:24-cv-03612; and *Wheeler v. VNGR Beverage LLC*, No. 4:24-cv-04396.
- O. "Court" means the United States District Court for the Northern District of California, where the Consolidated Action is pending.
- P. "Effective Date" means the date which all of the following events and conditions of this Agreement have occurred or have been met: (1) the Court has entered a Final Approval Order approving the Settlement, and (2) the Court has entered Final Judgment that has become final such that the time for any and all appeals or writ of certiorari has expired or, if an appeal or writ of certiorari is taken and the Settlement is affirmed, the time period during which further petition for hearing, appeal, or writ of certiorari can be taken has expired. If the Final Judgment is set aside, materially modified, or overturned by the trial court or on appeal, and is not fully reinstated on further appeal, the Final Judgment shall not become final. In the event of an appeal or other effort to obtain review, the Parties may agree jointly in writing to deem the Effective Date to have occurred; however, there is no obligation to agree to advance the Effective Date.
- Q. "Email Notice" means the notice of the Settlement to be emailed to Class Members for whom a valid email address is available in connection with the Settlement, in the form attached hereto as Exhibit B, and as set forth in Section 7 below.
- R. "Excluded Persons" means (1) the Honorable Judge Haywood S. Gilliam, Jr., the Honorable Maxine M. Chesney, Magistrate Judge Sallie Kim, the Honorable Jay C. Gandhi (Ret.), and any member of their immediate families; (2) any government entity; (3) Poppi; and (4) any persons who timely opt-out of the Settlement.

- S. "Final Approval Hearing" means the Court hearing where the Parties will request the Final Approval Order be entered approving this Agreement, and where Class Counsel will request that the Court enter Final Judgment.
- T. "Final Approval Order" means the final order to be entered by the Court, following the Final Approval Hearing, approving the Settlement. A proposed Final Approval Order is attached hereto as Exhibit 2.
- U. "Final Judgment" means a document labeled by the Court as such and that has the effect of a judgment under Fed. R. Civ. P. 54. The Final Judgment will set the amounts of the Attorneys' Fees and Costs award and Service Award and allow for the distributions of Class Payments.
- V. "Gross Settlement Amount" means the amount of eight million and nine hundred thousand dollars (\$8,900,000.00), which constitutes the total amount of non-reversionary funds that will comprise the Class Payment, Class Counsel's Attorneys' Fees and Costs, Administrative and Notice Costs, Service Award to Plaintiffs, and any distribution to the *cy pres* recipient as outlined in Section 1.6. Poppi shall not, under any circumstances be obligated to pay more than the Gross Settlement Amount.
- W. "Household" means any number of persons occupying the same dwelling unit.
- X. "Interim Class Counsel" means Bursor & Fisher, P.A. and Gutride Safier LLP, as appointed by the Court on August 21, 2024.
- Y. "Minimum Class Payment" means the minimum Class Payment for any Approved Claim and shall be five dollars (\$5.00) per Household, even if the Class Member purchased fewer units, subject to the availability of funds remaining in the Settlement Fund.
- Z. "Net Settlement Amount" means the Gross Settlement Amount reduced by the sum of the following amounts: (1) Administrative and Notice Costs; (2) any Attorneys' Fees and Costs payment to Class Counsel, and (3) any Service Award to the Plaintiffs, as set forth below.
- AA. "Notice Plan" means the procedure for providing notice to the Class, as prepared by the Settlement Administrator, subject to review and approval by the Parties, including Email Notice, Publication Notice, and Website Notice.
- BB. "Objection" means the written notice that a Class Member may file with the Court objecting to the Settlement.
- CC. "Objection and Exclusion Deadline" means the date by which a Class Member must file an Objection, if any, to the Court and the date by which a Class Member Opt-Out must be postmarked, as set forth in Sections 4 and 5. The Objection and Exclusion Deadline shall be sixty (60) days after the Settlement Notice Date.
- DD. "Objector" means a person or entity who is a Class Member who files an Objection with the Court.

- EE. "Opt-Out" means a Class Member's request to be excluded from the Settlement by submitting a written request to be excluded to the Settlement Administrator containing their name, address, and email address, as set forth in Section 5.
- FF. "Plaintiffs" means Kristin Cobbs, Carol Lesh, Sarah Coleman, and Megan Wheeler.
- GG. "Poppi Counsel" means Cooley LLP.
- HH. "Preliminary Approval Order" means the Court's order preliminarily approving the Settlement and ordering the Notice Plan to proceed.
- II. "Proof of Purchase" means a receipt or other documentation from a third-party commercial source (*i.e.*, a store or online retailer) that reasonably establishes the fact and date of purchase of Products by a Class Member between January 23, 2020 and the Settlement Notice Date.
- JJ. "Products" means all flavors and package sizes of Poppi's beverages sold between January 23, 2020 and the Settlement Notice Date.
- KK. "Publication Notice" means the notice of the Settlement to be provided to Class Members to be disseminated by the Settlement Administrator, in the form attached hereto as Exhibit C and as set forth in Section 7 below.
- LL. "Released Claims" means any and all claims, demands, actions, causes of action, lawsuits, arbitrations, damages, liabilities, or penalties, whether federal or state, known or unknown, asserted or unasserted, regardless of legal theory, legal, equitable, or otherwise, that were or could have been asserted in the Consolidated Action or that arise out of or relate to the labeling, advertising, or formulation of the Products between January 23, 2020 and the Settlement Notice Date. The Released Claims shall not release any Class Member's rights to enforce this Agreement. The Released Claims shall not release any Class Member's personal injury claims.
- MM. "Released Persons" means Poppi and each of its past, present or future direct or indirect parents, subsidiaries, divisions, affiliates and related entities, stockholders, shareholders, officers, directors, partners, insurers, investors, employees, agents, attorneys, advisors, consultants, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, related companies, divisions, and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors, purchasers, and assigns of each of the foregoing).
- NN. "Releasing Persons" means Plaintiffs and all Class Members, including any and all of their respective heirs, executors, administrators, or assigns, provided that any Class Member who timely and properly excludes themselves under Section 5 below shall not be included herein.
- OO. "Second Amended Complaint" means the Second Consolidated Amended Class Action Complaint filed in the Consolidated Action (ECF No. 35 in the Consolidated Action).

- PP. "Service Award" means the award sought by Plaintiffs in consideration for their service during the course of the Consolidated Action and approved by the Court. Any such Service Award is separate and apart from any Class Payment the Plaintiffs may receive as a Class Member.
- QQ. "Settlement Administrator" means Verita Global, LLC, an independent settlement administrator as agreed to by the Parties, or any such administrator approved by the Court to provide all notice and administration of the settlement process and claims in the Consolidated Action.
- RR. "Settlement Fund" means an interest-bearing account at a financial institution that constitutes a qualified settlement fund pursuant to 26 CFR 1.468B-1 *et seq.* established to maintain the Gross Settlement Amount.
- SS. "Settlement Notice Date" means the date set forth in the Preliminary Approval Order for commencing the transmission of the Notice Plan.
- TT. "Single Can Unit" means a single quantity of a 12-ounce or 16-ounce can of the Products as sold at retail.
- UU. "4-pack Unit" means a single quantity of a 4-pack of the Products as sold at retail.
- VV. "8-pack Unit" means a single quantity of an 8-pack of the Products as sold at retail.
- WW. "12-pack Unit" means a single quantity of a 12-pack of the Products as sold at retail.
- XX. "15-pack Unit" means a single quantity of a 15-pack of the Products as sold at retail.
- YY. "Website" means a publicly accessible website located at the web address www.poppisettlement.com created and maintained by the Settlement Administrator for the purpose of providing the Class with notice of and information about the proposed Settlement, as well as the option of providing information within a specified time period to the Settlement Administrator to receive the Class Payment.
- ZZ. "Website Notice" means the notice of the Settlement on the Website maintained by the Settlement Administrator, in the form attached hereto as Exhibit D, and as set forth in Section 7 below.

# RECITALS

This Agreement is made for the following purposes and with reference to the following facts:

WHEREAS, on May 29, 2024, Plaintiff Kristin Cobbs filed a putative class action against Poppi, captioned *Cobbs v. VNGR Beverage*, *LLC*, No. 4:24-cv-03229-HSG (the "*Cobbs* Action"), alleging violations of California's False Advertising Law, Business and Professions Code § 17500, *et seq.* ("FAL"); Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.* (the "CLRA"); Common Law Fraud, Deceit and/or Misrepresentation; Unlawful, unfair, and fraudulent trade practices violation of Business and Professions Code § 17200, *et seq.* ("UCL"); and Unjust Enrichment, arising from Poppi's allegedly unlawful, misleading, and deceptive labeling of the Products. The initial complaint alleged that Poppi unlawfully, misleadingly, and deceptively marketed and labeled its Products as gut healthy based on the presence of putatively prebiotic fiber and the Products' sugar content.

WHEREAS, on June 14, 2024, a substantially similar putative class action, involving the same questions of law and fact, was filed in the Northern District of California, captioned *Lesh*, *et al. v. VNGR Beverage, LLC*, No. 4:24-cv-03612 (the "*Lesh* Action").

WHEREAS, on June 25 and 27, 2024, the Court entered orders relating and then consolidating the *Lesh* Action to the *Cobbs* Action, recaptioned as *In re VNGR Beverage LLC, Litigation* (the "Consolidated Action"), and set deadlines for filing a consolidated amended complaint and related responsive filings.

WHEREAS, on July 19, 2024, a third substantially similar putative class action, involving the same questions of law and fact as in the Consolidated Action, was filed in the Northern District of California, captioned *Wheeler v. VNGR Beverage LLC*, No. 4:24-cv-04396 (the "*Wheeler Action*").

WHEREAS, on July 25, 2024, Plaintiffs in the *Cobbs* and *Lesh* Actions filed a Consolidated Amended Complaint in the Consolidated Action.

WHEREAS, on August 20, 2024, Plaintiffs in the *Cobbs*, *Lesh*, and *Wheeler* Actions filed a Second Consolidated Amended Complaint in the Consolidated Action.

WHEREAS, on August 21, 2024, the Court consolidated the *Wheeler* Action into the Consolidated Action. The Court also appointed Bursor & Fisher, P.A., and Gutride Safier LLP as co-lead Interim Class Counsel in the Consolidated Action.

WHEREAS, on September 23, 2024, Poppi filed a Motion to Dismiss the Second Consolidated Amended Complaint under Federal Rules of Civil Procedure 9(b), 12(b)(1), and 12(b)(6). That same day, a substantially similar putative class action, involving the same questions of law and fact as in the Consolidated Action, was filed in the Northern District of California, captioned *Jackson v. VNGR Beverage LLC*, No. 3:24-cv-06666 (the "*Jackson Action*").

WHEREAS, on October 11, 2024, the *Jackson* Action was related to the Consolidated Action and on October 15, 2024, the Court extended Poppi's deadline to respond to the *Jackson* Action until forty-five (45) days after Poppi's Motion to Dismiss in the Consolidated Action is decided.

WHEREAS, on December 4, 2024, the Parties attended an all-day private mediation with the Honorable Judge Jay C. Gandhi (Ret.) and subsequently have continued to discuss a potential resolution of the Consolidate Action.

WHEREAS, on December 16, 2024, the Court granted a sixty (60) calendar day stay of the Consolidated Action given that the Parties had reached a resolution in principle and requested a stay of proceedings to finalize and execute formal class settlement agreements, as well as preserve

judicial resources given Poppi's pending Motion to Dismiss.

WHEREAS, Class Counsel and Plaintiffs believe that the claims asserted in the Consolidated Action have merit and have examined and considered the benefits to be obtained under this Settlement, the risks associated with the continued prosecution of this complex and time-consuming litigation, and the likelihood of ultimate success on the merits, and have concluded that the Settlement is fair, adequate, reasonable, and in the best interests of the Class Members.

WHEREAS Poppi has at all times denied and continues to deny any and all alleged wrongdoing or liability. Specifically, Poppi denies that it has unlawfully, misleadingly, or deceptively marketed and labeled its Products. Additionally, Poppi represents that it elected to revise the Products' label to remove any and all references to gut health in late 2023. Even so, taking into account the uncertainty and risks inherent in litigating this case through trial, Poppi has concluded that continuing to defend the Consolidated Action would be burdensome and expensive.

WHEREAS the Parties desire to settle the Consolidated Action in its entirety as to the Plaintiffs, the Class, and Poppi with respect to all claims arising out of the facts underlying the Consolidated Action. The Parties intend this Agreement to bind Plaintiffs (both as the class representative and individually), Poppi, Class Counsel, and all Class Members.

In light of the foregoing, for good and valuable consideration, the Parties, and each of them, hereby warrant, represent, acknowledge, covenant, and agree, subject to approval by the Court, as follows:

# 1. CONSIDERATION FOR SETTLEMENT AND CLASS PAYMENTS

- 1.1 Subject to the terms of this Agreement, Poppi's total financial commitment under this Agreement shall not exceed the Gross Settlement Amount of \$8,900,000.00. Poppi shall have no other financial obligations under this Agreement. Poppi shall pay a deposit for the initial Administrative and Notice Costs from the Gross Settlement Amount into the Settlement Fund within seven (7) days of a grant of Preliminary Approval for payment of claims administration expenses. The remainder of the Gross Settlement Payment shall be paid within fifteen (15) days of the Effective Date. The Settlement Fund shall be maintained as a qualified settlement fund pursuant to 26 CFR 1.468B-1 *et seq.*, in an interest-bearing account at a financial institution approved by Class Counsel and subject to the oversight of the Settlement Administrator.
- 1.2 <u>Creation and Administration of Settlement Fund.</u> The Settlement Administrator is authorized to act as the "administrator" of the settlement claims in the Consolidated Action and to undertake all duties as administrator in accordance with the Treasury Regulations promulgated under § 1.468B of the Internal Revenue Code of 1986. All costs incurred by the Settlement Administrator while carrying out its duties under this Agreement shall be construed as Administrative and Notice Costs, as defined above, and shall be borne solely by the Gross Settlement Amount.
- 1.3 The Settlement Fund shall be applied to pay, in the following order: (1) all Administrative and Notice Costs, including the costs and payments associated with the Notice Plan and

administration of the Settlement, including all payments to the Settlement Administrator; (2) any necessary taxes and tax expenses on the Settlement Fund; (3) any award of Attorneys' Fees and Costs made by the Court to Class Counsel under this Agreement; (4) any Service Award made by the Court to Plaintiffs; and (5) Class Payments for Approved Claims.

- 1.4 <u>Class Payment to Class Members</u>. Class Members shall receive a pro rata distribution of the Net Settlement Amount based on the overall payments claimed by each Class Member for his or her purchase of the Products between January 23, 2020 and the Settlement Notice Date.
- 1.5 <u>Payment Method.</u> Within ninety (90) days of the Effective Date, subject to such supervision and direction of the Court and the Parties as may be necessary or as circumstances may require, the Class Payment shall be distributed to Class Members. Pursuant to the Notice Plan, Class Members will be notified of the Settlement and each will be given the option of providing information to the Settlement Administrator as to how the Class Member wants to receive their Class Payment.
- 1.6 Distribution of Any Remainder. It is the intent of the Parties that the entire Net Settlement Amount be distributed to the Class Members. Nevertheless, the Parties recognize that even Class Members who receive a payment may not cash or deposit their payment check or that certain checks may be undeliverable due to, inter alia, incorrect addresses. The Settlement Administrator shall twice attempt to follow up and communicate with Class Members who have not cashed their Class Payment checks. Any remaining funds from the Gross Settlement Amount after the Administrative and Notice Costs, Class Payment, Attorneys' Fees and Costs, and Service Award are distributed, including, but not limited to, those resulting from uncashed checks, will be distributed to the cy pres recipient. If any distribution is not administratively and economically feasible, any remaining amount will be distributed to the cy pres recipient. In no event shall the remainder be returned to Poppi. Any funds that remain unclaimed or remain unused after the initial distribution, including interest thereon, will be donated cy pres to Feeding America. If the organization is not acceptable to the Court, the parties shall meet and confer in good faith, and consult with the Court, to identify one or more suitable alternatives.

# 2. CLASS SETTLEMENT PROCEDURES

- 2.1 <u>Conditional Certification</u>. The Parties reached this Settlement before Plaintiffs filed a motion for class certification. Accordingly, Plaintiffs shall include a request for conditional certification as part of the motion for approval that seeks certification of the Class for settlement purposes only.
- 2.2 As a material part of this Settlement, Poppi, while reserving all defenses if this Agreement is not finally approved, hereby stipulates and consents, solely for purposes of and in consideration of the Settlement, to provisional certification of the Class. Poppi's stipulation and consent to class certification is expressly conditioned upon the entry of a Preliminary Approval Order, a Final Approval Order and Final Judgment, and as otherwise set forth in this Settlement. As part of the provisional stipulation, Poppi further consents

to (1) the appointment of Interim Class Counsel as Class Counsel and (2) the Class Representatives to represent the Class. The provisional certification of the Class, the appointment of the Class Representatives, and the appointment of Class Counsel shall be binding only with respect to this Settlement and this Agreement. If the Court fails to enter a Preliminary Approval Order or a Final Approval Order and Final Judgment, or if this Agreement and the Settlement proposed herein is terminated, canceled, or fails to become effective for any reason whatsoever, or the Court enters any order that increases the cost or burden of the Settlement on Poppi beyond what is set forth in this Agreement, the class certification, to which the Parties have stipulated solely for the purposes of this Settlement, this Agreement, and all of the provisions of any Preliminary Approval Order or any Final Approval Order shall be vacated by its own terms and the Consolidated Action will revert to its status as it existed prior to the date of this Agreement with respect to class certification, the appointment of the Class Representatives, and the appointment of Class Counsel. In that event, Poppi shall retain all rights it had immediately preceding the execution of this Agreement to object to the maintenance of the Consolidated Action as a class action, the appointment of the Class Representatives, and the appointment of Class Counsel and, in that event, nothing in this Agreement or other papers or proceedings related to this Settlement shall be used as evidence or argument by any of the Parties concerning whether the Consolidated Action may properly be maintained as a class action under applicable law, whether the Class Representatives are adequate or typical, or whether Class Counsel is adequate or may be appointed to represent the Class or any Class Members.

2.3 <u>Leave to File Third Amended Complaint.</u> Within seven (7) days of the execution of the Settlement, the Parties shall also file with the Court a stipulation providing for the filing of a Third Consolidated Amended Class Action Complaint ("TAC") and providing that upon the filing of the TAC all response dates will be stayed pending the resolution of the motions associated with the Settlement. The TAC shall add a claim for breach of implied warranty of merchantability.

# **3. OBTAINING COURT APPROVAL OF THE AGREEMENT**

- 3.1 <u>Preliminary Approval.</u> The Parties agree to recommend approval of the Settlement to the Court as fair and reasonable and to undertake their best efforts to obtain such approval. The Parties therefore agree that Plaintiffs shall submit this Agreement, together with its exhibits, to the Court and shall apply for entry of a Preliminary Approval Order in the form attached as Exhibit 1 hereto. The approval motion may be made by way of a calendared motion.
- 3.2 Class Counsel shall draft and file the motion requesting issuance of the Preliminary Approval Order and shall provide that draft to Poppi Counsel no later than ten (10) days before filing. Poppi shall have the right to provide feedback concerning the motion, and Class Counsel will meet and confer with Poppi in good faith regarding Poppi's feedback. Additionally, Poppi may file supplemental briefing in support of Plaintiffs' approval motion.
- 3.3 Upon filing of the motion requesting issuance of the Preliminary Approval Order, the Settlement Administrator, on behalf of Poppi, shall provide timely notice of such motion

to the appropriate officials as required by the Class Action Fairness Act, 28 U.S.C. § 1711, et seq.

- 3.4 <u>Final Approval and Final Judgment</u>. In accordance with the schedule set forth in the Preliminary Approval Order, Class Counsel shall request final approval of the Settlement, the Proposed Final Approval Order, and the Proposed Final Judgment and shall provide drafts of that filing to Poppi's Counsel at least ten (10) days before filing such a brief with the Court. Poppi shall have the right to provide feedback concerning the filing, and Class Counsel will meet and confer with Poppi in good faith regarding Poppi's feedback. Additionally, Poppi may file supplemental briefing in support of Plaintiffs' request for final approval of the Settlement.
- 3.5 In the event that the Settlement is not approved, or in the event that its approval is conditioned on any modifications (including modifications to the proposed form and method of notice) that are not acceptable to Poppi, then (1) this Agreement shall be null and void and of no force and effect and (2) any release shall be of no force or effect. In such event, the Consolidated Action will revert to the status that existed before the Agreement's execution date, the Parties shall each be returned to their respective procedural postures so that the Parties may take such litigation steps that they otherwise would have been able to take absent the pendency of this Settlement, and neither the Agreement nor any facts concerning its negotiation, discussion, terms, or documentation shall be admissible in evidence for any purpose in these Consolidated Action or in any other litigation.

# 4. **OBJECTIONS**

- 4.1 <u>Objections</u>. Any Class Member who has not submitted a timely written Opt-Out request and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, the Attorneys' Fees and Costs award, or the Service Award must comply with the below requirements.
- 4.2 <u>Content of Objections</u>. All Objections and supporting papers must be in writing and must:
  - 4.2.1 Clearly identify the case name and number, *In re VNGR Beverage, LLC Litigation*, No. 4:24-cv-03229-HSG;
  - 4.2.2 Include the full name, address, telephone number, and email address of the person objecting;
  - 4.2.3 Include the full name, address, telephone number, and email address of the Objector's counsel (if the Objector is represented by counsel);
  - 4.2.4 Include documents or testimony sufficient to establish that the person objecting is a member of the Class;
  - 4.2.5 State the grounds for the Objection;

- 4.2.6 A statement confirming whether the Objector intends to personally appear and/or testify at the Final Approval Hearing; and
- 4.2.7 The Objector's signature (an attorney's signature is not sufficient).
- 4.3 <u>Filing of Objections</u>. Any Objections from Class Members regarding the proposed Agreement must be filed with the Court. If a Class Member does not file a timely written Objection, the Class Member will not be able to participate in the Final Approval Hearing.
- 4.4 <u>Deadline for Objections</u>. Objections must be filed by the Objection and Exclusion Deadline, which is sixty (60) days after the Settlement Notice Date.
  - 4.4.1 If filed through ECF, Objections must be filed no later than 11:59 p.m. PT of the date of the Objection and Exclusion Deadline.
  - 4.4.2 If submitted by U.S. mail or other mail services to the Clerk of the Court, Objections must be postmarked by the Objection and Exclusion Deadline. The date of the postmark on the envelope containing the written statement objecting to the Settlement shall be the exclusive means used to determine whether an Objection has been timely submitted. In the event a postmark is illegible or unavailable, the date of mailing shall be deemed to be three (3) days prior to the date that the Court scans the Objection into the electronic case docket.
- 4.5 The Parties will be permitted to respond in writing to any Objections filed with the Court before the Objection and Exclusion Deadline. Class Members who fail to file timely written Objections in the manner specified above shall be deemed to have waived any Objections and shall be foreclosed from making any Objection to the Agreement and the proposed Settlement by appearing at the Final Approval Hearing, or through appeal, collateral attack, or otherwise.
- 4.6 <u>Attendance at Final Approval Hearing</u>. Any Objector who timely files an Objection has the option to appear and request to be heard at the Final Approval Hearing, either in person or through the Objector's counsel. Any Objector wishing to appear and be heard at the Final Approval Hearing must include a request to appear and provide notice of his or her intention to appear in the body of the Objector's Objection.
- 4.7 <u>Objector's Attorneys' Fees and Costs</u>. If an Objector makes an Objection through an attorney, the Objector shall be solely responsible for the Objector's attorneys' fees and costs unless the Court orders otherwise. In no event shall Poppi be responsible for more than the Gross Settlement Amount.
- 4.8 <u>No Solicitation of Settlement Objections</u>. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written Objections to the Settlement or encourage an appeal from the Court's Final Approval Order.

# 5. EXCLUSIONS

- 5.1 <u>Opt-Out</u>. The Notice Plan shall advise all Class Members of their right to exclude themselves from the Settlement. This Agreement will not bind Class Members who timely Opt-Out to exclude themselves from the Settlement.
- 5.2 <u>How to Request Exclusion</u>. To request to be excluded from the Settlement, Class Members must timely submit a completed Opt-Out. The Opt-Out must be sent by postal mail to the Settlement Administrator.
- 5.3 <u>Content of Opt-Out</u>. All Opt-Outs and supporting papers must be in writing and must:
  - 5.3.1 Clearly identify the case name and number, *In re VNGR Beverage, LLC Litigation*, No. 4:24-cv-03229-HSG;
  - 5.3.2 Clearly state the Class Member's desire to be excluded from the Settlement; and
  - 5.3.3 Include the full name, address, telephone number, email address, and signature of the Class Member requesting exclusion.
- 5.4 <u>Deadline to Request Exclusion</u>. To be excluded from the Settlement, the completed Opt-Out must be postmarked by the Objection and Exclusion Deadline, which is sixty (60) days after the Settlement Notice Date.
- 5.5 <u>Effect of Exclusion</u>. Any person or entity who falls within the definition of the Class and who validly and timely requests exclusion from the Settlement shall not be a Class Member; shall not be bound by the Agreement; shall not be eligible to apply for any benefit under the terms of the Agreement; and shall not be entitled to file an Objection to the Settlement. In the event that a Class Member timely submits both an Objection and an Opt-Out, the Opt-Out shall prevail.
- 5.6 <u>Exclusion List</u>. No later than fourteen (14) days after the Objection and Exclusion Deadline, the Settlement Administrator shall provide Class Counsel and Poppi Counsel with the number and identity of the persons who have timely and validly excluded themselves from the Settlement.

# 6. CLAIMS PROCESS

- 6.1 <u>General Process</u>. To obtain monetary relief as part of the Settlement, a Class Member must fill out and submit a Claim Form, completed online or in hard copy mailed to the Settlement Administrator. The Claim made via the Claim Form will proceed through the following general steps:
  - 6.1.1 The Claimant will be asked to provide identifying information.
  - 6.1.2 The Claimant will be asked to certify, under penalty of perjury, which and how many units of the Products he or she has purchased for personal or household consumption since January 23, 2020 and to certify that such Products were purchased for personal or household consumption and not for distribution or resale.

- 6.1.3 The Claimant will be asked to provide Proof of Purchase if he or she has any. A Claimant does not need to submit Proof of Purchase to submit a Claim Form.
- 6.1.4 The Claimant will have the option of electing to receive the Class Payment by digital payment, ACH transfer, or by check.
- 6.1.5 The Claimant who submits an Approved Claim will be entitled to a Class Payment of seventy-five cents (\$0.75) per each Single Can Unit of the Products purchased, three dollars (\$3.00) per 4-pack Unit of the Products purchased, six dollars (\$6.00) per 8-pack Unit of the Products purchased, nine dollars (\$9.00) per 12-pack or 15-pack Unit of the Products purchased, subject to the following minimums and maximums:
  - (a) The Minimum Class Payment for any Approved Claim shall be five dollars
     (\$5.00) per Household, even if the Class Member purchased fewer units, subject to the availability of funds remaining in the Settlement Fund.
  - (b) The maximum Class Payment for any Approved Claim without a Proof of Purchase shall be sixteen dollars (\$16.00) per Household, even if the Class Member claimed to have purchased more units, subject to the availability of funds remaining in the Settlement Fund.
- 6.1.6 A maximum of one Claim Form may be submitted for a single household. If more than one Claim is submitted per Household, all such Claims shall be combined and treated as a single Claim for purposes of the limits set forth herein. All the amounts outlined in Section 6.1 shall be subject to being increased or decreased pro rata, pursuant to the terms of Section 6.4.
- 6.1.7 Each Settlement Class Member who wishes to submit a Claim shall submit a Claim individually using the procedures specified in the Website Notice. Other than a parent or guardian acting on behalf of a minor or other individual, or a duly authorized legal representative, no Person may submit a Claim on behalf of any other Person. For clarity, Claims submitted by third-party claims aggregators shall not be accepted by the Settlement Administrator.
- 6.2 <u>The Claim Form and Timing.</u> The Claim Form will be available on the Website, and may be submitted to the Settlement Administrator online. A maximum of one Claim Form may be submitted for a single household. Claim Forms must be submitted online or postmarked on or before the Claims Deadline to be considered timely. The Claims Deadline shall be clearly and prominently stated in the Preliminary Approval Order, Email Notice, Publication Notice, and Website Notice, and on the Claim Form.
- 6.3 <u>Claim Validation.</u> The Settlement Administrator shall be responsible for reviewing all Claims to determine their validity. The Settlement Administrator shall reject any Claim that does not comply in any material respect with the instructions on the Claim Form or with the terms of Section 6, that is submitted after the Claims Deadline, or that the Settlement Administrator identifies as fraudulent. The Settlement Administrator shall retain discretion in accepting or rejecting claims.

- 6.4 <u>Pro Rata Adjustment of Class Payments.</u> If the total value of all Approved Claims either exceeds or falls short of the funds available for distribution to Class Members, then the amounts of the Class Payments will be reduced or increased pro rata, as necessary, to use as much of the funds available for distribution to Class Members as possible. Any such pro rata adjustment will be calculated prior to distribution of funds (*i.e.*, all funds will be made in a single distribution). Any pro rata upward adjustment for claims without Proof of Purchase shall be capped at five times the claimed amount. For avoidance of doubt, this means that under no circumstances shall a person who submits a Claim without a Proof of Purchase for \$16 or more in Class Payment receive more than \$80.
- 6.5 Any remaining funds from the Gross Settlement Amount after the Settlement has been administered will be distributed in accordance with Section 1.6.
- 6.6 <u>Taxes on Distribution.</u> Any Claimant who receives a Class Payment will be solely responsible for any taxes or tax-related expenses owed or incurred by that Claimant by reason of that award. Such taxes and tax-related expenses will not be paid from the Settlement Fund. In no event will Poppi, the Class Representatives, Class Counsel, the Settlement Administrator, or any of the other Released Parties have any responsibility or liability for taxes or tax-related expenses arising in connection with the issuance of Class Payments or other payments made from the Settlement Fund to Class Representatives, Class Members, or any other person or entity.

# 7. SETTLEMENT ADMINISTRATION

- 7.1 Subject to Court approval, the Parties agree to the following procedures for giving notice of this Settlement to Class Members. The Parties also agree that providing notice to the Class Members in the manner described herein is the best and most fair and reasonable notice practicable under the circumstances.
- 7.2 Poppi will provide to the Settlement Administrator the names and valid email addresses for potential Class Members it may have in its records. The Settlement Administrator shall keep their identities and contact information strictly confidential and shall only use them for purposes of administering this Settlement.
- 7.3 The Settlement Administrator shall administer the Notice Plan described herein and pursuant to the Preliminary Approval Order.
- 7.4 The Parties agree upon and will request the Court's approval of the following forms and methods of notice to the Class:
  - 7.4.1 The Settlement Administrator shall email to each Class Member for whom Poppi provides an email address a copy of the Email Notice substantially in the form attached hereto as Exhibit B. The Email Notice shall inform Class Members of the fact of the Settlement and that further information is available on the Website.
  - 7.4.2 Publication Notice shall be provided as described in the Notice Plan. Publication Notice will conform to all applicable requirements of the California Constitution,

the United States Constitution (including the Due Process Clauses), and any other applicable law, and be in the manner and form approved by the Parties and Court.

- 7.4.3 The Settlement Administrator shall establish and maintain the Website. The Website shall be optimized for viewing on both mobile devices and personal computers. The Website will include case-related documents, including, but not limited to, the operative complaint, this Agreement, the Website Notice, the Preliminary Approval Order, Plaintiffs' motion for approval and request for Attorneys' Fees and Costs, a set of frequently asked questions, information on how to submit an Objection or request exclusion, and contact information for Class Counsel, Poppi Counsel, and the Settlement Administrator.
- 7.4.4 Website Notice will also be available to all Class Members on the Website.
- The Settlement Administrator has agreed to perform all settlement administration duties 7.5 required by the Agreement, and pursuant to Section 1.1, Poppi will deposit funds from the Gross Settlement Amount into the Settlement Fund for initial payment of the Administrative and Notice Costs. The Administrative and Notice Costs shall cover all costs and expenses related to the settlement administration functions to be performed by the Settlement Administrator, including providing all aspects of the Notice Plan (including issuing Email Notice, Publication Notice, and Website Notice and performing the other administration processes described in this Agreement). The Administrative and Notice Costs shall be paid from the Settlement Fund Account. In the event that unanticipated costs and expenses arise in connection with the notice and/or administration process prior to final approval, such that they exceed the initial deposit into the Settlement Fund, the Settlement Administrator shall promptly raise the matter with Poppi Counsel and Class Counsel as soon as practicable after becoming aware of the unanticipated costs and expenses. If both Poppi Counsel and Class Counsel, acting in good faith, agree that unanticipated costs and expenses justify an increase to the amount payable to the Settlement Administrator in excess of the deposited funds, then the amount in excess of the deposited funds shall be paid for exclusively from the Gross Settlement Amount. If unanticipated costs and expenses arise following final approval, if both Poppi Counsel and Class Counsel, acting in good faith, agree that unanticipated costs and expenses justify an increase to the amount payable to the Settlement Administrator in excess of the deposited funds, the amount in excess of the capped amount shall be paid exclusively from the Settlement Fund by way of any funds represented by checks that remain uncashed after two hundred ten (210) days, as contemplated under Section 1. Poppi shall, under no circumstances, be responsible for any Administration and Notice Costs in excess of its contribution to the Gross Settlement Amount under Section 1.
- 7.6 The Email Notice, Publication Notice, and Website Notice shall provide information on the procedure by which Class Members may request to Opt-Out from the Class or submit an Objection to the Settlement.
- 7.7 No later than fourteen (14) days after the Objection and Exclusion Deadline, the Settlement Administrator shall give written notice to Poppi and Class Counsel of the total number and identity of Class Members who have elected to exclude themselves from the Class. If the

number of Class Members who request exclusion from the Class exceeds more than one thousand (1,000) Class Members, Poppi, in its sole discretion, may elect to terminate this Settlement, in which case the entire Agreement shall be null and void. Alternatively, Poppi may elect to waive this condition and proceed with the Settlement. Any such waiver by Poppi must be unambiguous and in writing and provided to Class Counsel within fourteen (14) days after the Settlement Administrator provides Poppi and Class Counsel the total number and identity of Class Members who have elected to exclude themselves from the Class.

## 8. ATTORNEYS' FEES AND COSTS AND SERVICE AWARD

- 8.1 Class Counsel will apply to the Court seeking an award of up to 30% of the Gross Settlement Amount as payment for their Attorneys' Fees and Costs incurred in connection with prosecuting the Consolidated Action (the "Fee Application"). Class Counsel's Fee Application shall be filed at least thirty-five (35) days before the Objection and Exclusion Deadline and shall be posted on the Website within three (3) days of it being filed. Poppi expressly reserves the right to oppose the Fee Application for any reason at its discretion. Any award of attorneys' fees, costs, or expenses, shall come solely from the Settlement Fund and be paid to Class Counsel no later than thirty (30) calendar days after the Effective Date.
- 8.2 Class Counsel may also apply for a Service Award of no more than five thousand dollars (\$5,000.00) for each of the Plaintiffs. The Service Award is not a measure of damages whatsoever, but is solely an award for the Plaintiffs' service. For tax purposes, the Service Award will be treated as a 100% non-wage claim payment. Such Service Award shall come solely from the Settlement Fund. Within thirty (30) days after the Effective Date, the Settlement Administrator shall pay the Court-approved Service Award from the Settlement Fund to Class Counsel for distribution to the Plaintiffs.
- 8.3 Poppi shall not be liable for any additional fees or expenses of Plaintiffs or any Class Member in connection with the Consolidated Action. Class Counsel agree that they will not seek any additional fees or costs from Poppi in connection with the Consolidated Action or the Settlement of the Consolidated Action beyond the approved Attorneys' Fees and Costs award. Poppi agrees that it will not seek to recover its Court costs, attorneys' fees, or expenses once the Court enters a Final Approval Order and Final Judgment.
- 8.4 In the event that, after the Court grants preliminary approval the Settlement does not become final or final approval is not granted, Poppi agrees that it shall be responsible for, and will not seek to recover any of the costs incurred by the Settlement Administrator for the notice and settlement administration tasks undertaken by the Settlement Administrator since the time preliminary approval was granted. Notwithstanding the foregoing, Poppi may seek to recover such costs if the cause of the Settlement not becoming final or obtaining final approval is attributable to a breach of this Agreement by Plaintiffs or Class Counsel.

# 9. **RELEASES AND WARRANTIES**

- 9.1 As of the Effective Date, the Releasing Persons release and forever discharge and covenant not to sue, and are permanently enjoined from suing the Released Persons and including Poppi's past, present or future direct or indirect parents, subsidiaries, divisions, affiliates and related entities, stockholders, shareholders, officers, directors, partners, insurers, investors, employees, agents, attorneys, advisors, consultants, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, related companies, divisions, and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors, purchasers, and assigns of each of the foregoing) from the Released Claims.
- 9.2 With respect to the Released Claims, the Releasing Persons expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits of California Civil Code § 1542, or any other similar provision under federal or state law. The Releasing Persons understand that California Civil Code § 1542 states:

# 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.

The Releasing Persons expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of Section 1542 of the California Civil Code, or any other law of any state or territory that is similar, comparable, or equivalent to Section 1542, to the fullest extent that they may lawfully waive such rights or benefits pertaining to the Released Claims. In connection with such waiver and relinquishment, the Releasing Persons hereby acknowledge that they are aware that they or their attorneys may hereafter discover claims or facts in addition to or different from those that they now know or believe exist with respect to the Released Claims, but that it is their intention to hereby fully, finally, and forever settle and release all of the Released Claims known or unknown, suspected or unsuspected, that they have against the Released Persons. In furtherance of such intention, the release herein given by the Releasing Persons to the Released Persons shall be and remain in effect as a full and complete general release notwithstanding the discovery or existence of any such additional different claims or facts. Each Releasing Person and Released Person expressly acknowledges that he/she/it has been advised by his/her/its attorney of the contents and effect of Section 1542, and with knowledge, each of the Releasing Persons and Released Persons hereby expressly waives whatever benefits he/she/it may have had pursuant to such section. Plaintiffs and Class Members shall be deemed by operation of the Final Approval Order and Final Judgment to have acknowledged that the foregoing waiver was separately bargained for and a material element of the Settlement of which this release is a part.

9.3 In addition to the release contained in paragraphs 9.1 and 9.2, Plaintiffs on behalf of each of their respective spouses, children, executors, representatives, guardians, wards, heirs, estates, bankruptcy estates, bankruptcy trustees, successors, predecessors, attorneys, agents and assigns, and all those who claim through them or who assert claims (or could assert

claims) on their behalf, release and forever discharge the Released Parties from any actions, causes of action (in law, equity, or administratively), suits, debts, liens, or claims, known or unknown, suspected or unsuspected, fixed or contingent, which they may have or claim to have that arise before entry of the Final Approval Order and Judgement. With respect to the release in this paragraph 9.3, Plaintiffs, on behalf of each of their respective spouses, children, executors, representatives, guardians, wards, heirs, estates, bankruptcy estates, bankruptcy trustees, successors, predecessors, attorneys, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf, shall be deemed to have, and by operation of the Settlement Agreement shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code (to the extent applicable, or any other similar provision under federal, state, or local law to the extent any such provision is applicable), which reads:

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 Plaintiff expressly waives and relinquishes, to the fullest extent permitted by law all rights and benefits under Section 1542 of the California Civil Code, and any law or legal principle of similar effect in any jurisdiction, whether federal or state, with respect to the release and/or discharge granted in this Agreement. Each Plaintiff fully understands that the facts upon which this Agreement is executed may hereafter be other than or different from the facts now believed by Plaintiffs and/or Plaintiffs' Counsel to be true and expressly accepts and assumes the risk of such possible difference in facts and agrees that this Agreement shall remain effective notwithstanding any such difference in facts.

- 9.4 The amount of the Class Payment pursuant to this Agreement shall be deemed final and conclusive against all Class Members who shall be bound by all of the terms of this Agreement, including the terms of the Final Judgment to be entered in the Consolidated Action and the releases provided for herein.
- 9.5 No person shall have any claim of any kind against the Parties, their counsel, or the Settlement Administrator with respect to the matters set forth in Section 6 hereof, or based on determinations or distributions made substantially in accordance with this Agreement, the Final Approval Order, the Final Judgment, or further order(s) of the Court.

# 10. POPPI'S DENIAL OF LIABILITY; AGREEMENT AS DEFENSE IN FUTURE PROCEEDINGS

10.1 Poppi has indicated its intent to vigorously contest each and every claim in the Consolidated Action and continues to vigorously deny all of the material allegations in the Consolidated Action. Poppi enters into this Agreement without in any way acknowledging

any fault, liability, or wrongdoing of any kind. Poppi nonetheless has concluded that it is in its best interests that the Consolidated Action be settled on the terms and conditions set forth herein in light of the expense that would be necessary to defend the Consolidated Action, the benefits of disposing of protracted and complex litigation, and the desire of Poppi to conduct its business unhampered by the distractions of continued litigation.

- 10.2 Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Poppi of the truth of any of the allegations in the Consolidated Action, or of any liability, fault, or wrongdoing of any kind, nor as an admission or concession by Plaintiffs of any lack of merit of their claims against Poppi.
- 10.3 To the extent permitted by law, neither this Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be offered as evidence or received in evidence in any pending or future civil, criminal, or administrative action or proceeding to establish any liability or admission by Poppi.
- 10.4 To the extent permitted by law, the Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding which may be instituted, prosecuted, or attempted for the Released Claims.

# 11. MISCELLANEOUS

- 11.1 <u>Extensions of Time</u>. All time periods and dates described in this Agreement are subject to the Court's approval. Unless otherwise ordered by the Court, the Parties through their counsel may jointly agree to reasonable extensions of time to carry out any of the provisions of this Agreement. These time periods and dates may be changed by the Court or the Parties' counsel's written consent without notice to the Class Members.
- 11.2 <u>Integration</u>. This Agreement, including all exhibits, constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.
- 11.3 <u>Governing Law</u>. This Agreement shall be construed in accordance with, and be governed by, the laws of the State of California, without regard to the principles thereof regarding choice of law.
- 11.4 <u>Gender and Plurals</u>. As used in this Agreement, the masculine, feminine, or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.
- 11.5 <u>Survival of Warranties and Representations</u>. The warranties and representations of this Agreement are deemed to survive the date of execution hereof.
- 11.6 <u>Representative Capacity</u>. Each person executing this Agreement in a representative capacity represents and warrants that he or she is empowered to do so.

- 11.7 <u>Counterparts</u>. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts.
- 11.8 <u>Cooperation of Parties</u>. The Parties to this Agreement and their counsel agree to prepare and execute all documents, to seek Court approvals, to defend Court approvals, and to do all things reasonably necessary to complete the Settlement.
- 11.9 <u>Execution Voluntary</u>. This Agreement is executed voluntarily by each of the Parties without any duress or undue influence on the part, or on behalf, of any of them. The Parties represent and warrant to each other that they have read and fully understand the provisions of this Agreement and have relied on the advice and representation of legal counsel of their own choosing. Each of the Parties has cooperated in the drafting and preparation of this Agreement and has been advised by counsel regarding the terms, effects, and consequences of this Agreement. Accordingly, in any construction or interpretation to be made of this Agreement, this Agreement shall not be construed as having been drafted solely by any one or more of the Parties or their counsel. The Agreement has been, and must be construed to have been, drafted by all Parties and their counsel, so that any rule that construes ambiguities against the drafter will have no force or effect.
- 11.10 Notices.
  - 11.10.1 All Notices to Class Counsel provided for herein shall be sent by email and a hard copy sent by overnight mail to: Class Counsel as identified in Definition J.
  - 11.10.2 All Notices to Poppi provided for herein shall be sent by email and a hard copy sent by overnight mail to: Michelle C. Doolin, Cooley LLP, 10265 Science Center Drive, San Diego, CA 92121, mdoolin@cooley.com.
  - 11.10.3 The notice recipients and addresses designated above may be changed by written notice pursuant to this section.
- 11.11 <u>Modification and Amendment</u>. This Agreement may be amended or modified only by a written instrument signed by the Parties' counsel and approved by the Court.
- 11.12 Any and all disputes arising out of or related to the Settlement or this Agreement must be brought by the Parties and/or each member of the Class exclusively in this Court. The Parties and each member of the Class hereby irrevocably submit to the exclusive and continuing jurisdiction of the Court for any suit, action, proceeding or dispute arising out of or related to the Settlement or this Agreement.

[Signatures on next page]

The Parties have agreed to the terms of this Agreement and have signed below.

Dated: <u>March 3</u> , 2025	KRISTIN COBBS Levisfin collos Kristin Cobbs Named Plaintiff and Class Representative
Dated:, 2025 03 / 05 / 2025	CAROL LESH N/A - Deceased Multi Multing Gutride Safier LLP Carol Lesh Named Plaintiff and Class Representative
Dated:, 2025 03 / 04 / 2025	SARAH COLEMAN ZQLA Sarah Coleman Named Plaintiff and Class Representative
Dated: <u>3-3</u> , 2025	MEGAN WHEELER Megan Wheeler (Mar 3, 2025 12:05 PST) Megan Wheeler Named Plaintiff and Class Representative
Dated: <u>3/1</u> , 2025	VNGR BEVERAGE, LLC (luris Hall Chris Hall Chief Executive Officer Defendant VNGR Beverage, LLC

# **EXHIBIT** A

### **IMPORTANT LEGAL MATERIALS**

### **CLAIM FORM**

### **GENERAL INSTRUCTIONS**

You can submit a Claim for a Class Payment under this Settlement if you purchased any Poppi beverage in the United States between January 23, 2020, and [Settlement Notice Date]. A maximum of one Claim Form may be submitted for a single Household.

To obtain a Class Payment from the Settlement you must complete and return this Claim Form. Completed Claim Forms must be mailed to the Settlement Administrator at [address/telephone number] or can be submitted via the settlement Website, www.poppisettlement.com. Claim Forms must be POSTMARKED or SUBMITTED ONLINE NO LATER THAN sixty (60) calendar days after [the Settlement Notice Date].

Before you complete and submit this Claim Form by mail or online, you should read and be familiar with the Settlement Notice available at www.poppisettlement.com. Defined terms (with initial capitals) used in these General Instructions have the same meaning as set forth in the Settlement. By submitting this Claim Form, you acknowledge that you have read and understand the Settlement Notice at issue, and you agree to release the Released Claims which is included as a material term of the Settlement.

If you fail to timely submit a Claim Form, you will be precluded from any recovery from the Settlement. If you are a member of the Class and you do not timely and validly seek to Opt-Out from the Class, you will be bound by any judgment entered by the Court approving the Settlement regardless of whether you submit a Claim Form. To receive the most current information and receive regular updates, please visit the settlement Website at www.poppisettlement.com.

The information you provide will not be disclosed to anyone other than the Court, the Settlement Administrator, and the Parties in this case, and will be used only for purposes of administering this Settlement (such as to audit and review a claim for completeness, truth, and accuracy).

Claimant Information					
Claimant Name: First Name		MI Last Nam	e		
Street Address:					
Street Address2:					
City:			State:	Zip Code:	
[optional] Daytime Phone Number: (					
[optional] Evening Phone Number: (	)	<u>-</u>			
E-mail Address:					

#### **Class Payment Information**

All claimants may receive a Class Payment of up to the following: seventy-five cents (\$0.75) per Single Can Unit of the Product purchased; three dollars (\$3.00) per 4-pack Unit of the Product purchased; six dollars (\$6.00) per 8-pack Unit of the Product purchased; and nine dollars (\$9.00) per 12-pack or 15-pack Unit of the Product purchased. All Claimants that submit a valid Claim are entitled to a Minimum Class Payment of five dollars (\$5.00). However, the actual Class Payment received may be reduced or increased pro rata depending on the number of valid Claims and the cost of other expenses paid out of the Settlement Fund.

If you do not provide Proof of Purchase, you can claim a maximum Class Payment of \$16.00 per Household.

"Proof of Purchase" means a receipt or other documentation from a third-party commercial source (*i.e.*, a store or online retailer) that reasonably establishes the fact and date of purchase of Products by a Class Member between January 23, 2020 and the [Settlement Notice Date].

"Single Can Unit" means a single quantity of a 12-ounce or 16-ounce can of the Products as sold at retail; "4-pack Unit" means a single quantity of a 4-pack of the Products as sold at retail; "8-pack Unit" means a single quantity of an 8-pack of the Products as sold at retail; "12-pack Unit" means a single quantity of a 12-pack of the Products as sold at retail; and "15-pack Unit" means a single quantity of a 15-pack of the Products as sold at retail.

#### **Purchase Information**

1. Did you purchase any Poppi beverages in the United States between January 23, 2020, and [Settlement Notice Date]?



2. How many Single Can Unit(s) did you purchase?

3 How many 4-pack Unit(s) did you purchase?

4. How many 8-pack Unit(s) did you purchase?
5. How many 12-pack Unit(s) did you purchase?

6. How many 15-pack Unit(s) did you purchase?

### To provide Proof of Purchase, attach it to this form.

If you **are not** providing Proof of Purchase, you must answer question 7:

7. Please provide the following information about specific Product(s) you purchased. (Complete this section if you are not including proof of purchase). You may attach additional sheets of paper if necessary to provide all requested information.

Poppi Product	Approximate	Place of Purchase	Number of
purchased	Month & Year of		Units
	Purchase		Purchased
(Single Can Unit,			
4-pack Unit, 8-			
pack Unit, 12-			
pack Unit, or 15-			

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pack Unit)		
	TOTAL	

I wish to receive my payment by:

	PayPal – Provide your PayPal email address:						
	Venmo – Provide the mobile number associated with your Venmo account:						
	<b>Zelle</b> – Provide the email address or mobile number associated with your Zelle account:						
	ACH Transfer – Provide the acc	ount number, routing num	ber, and type of acco	unt associated with your bank account:			
			Account Type:	Checking Savings			
	Account Number	Routing Number		Business			
	Physical Check – Payment will be mailed to the address provided above.						
Certifica	tion under Penalty of Perjury	Y					

### I hereby certify under penalty of perjury that:

- 1. The information provided in this Claim Form is accurate and complete to the best of my knowledge, information, and belief;
- 2. Any additional documentation information I provided with this Claim Form to support my Claim is original or else a complete and true copy of the original(s);
- 3. I am not (a) a person who purchased or acquired the Product for resale or distribution; (b) a government entity; nor (c) a judge to whom this Action is assigned, or any member of the judge's immediate family;
- 4. I have not submitted any other Claim for the same purchases and have not authorized any other person or entity to do so, and know of no other person or entity having done so on my behalf;
- I understand that by not opting out of the Settlement, I have given a complete release of all Released Claims; and 5.
- I understand that Claims will be audited for veracity, accuracy, and fraud. Claims Forms that are not valid and/or illegible can be 6. rejected.

### I hereby certify under penalty of perjury, under the laws of the United States, that the above is correct.

Signature: Dated: / /

Location:

# **EXHIBIT B**

### If you purchased Poppi Products, a class action Settlement may affect you.

A proposed class action Settlement has been reached in cases alleging Poppi beverages (the "Products") were improperly labeled as "gut healthy." Poppi contends that the label claims are expressly true and denies that it did anything wrong. Notwithstanding, the parties have agreed to settle the cases on a nationwide basis, and Defendant has agreed to provide Class Payments to Class Members. The cases are *In re VNGR Beverage, LLC Litigation,* No. 4:24-cv-03229-HSG filed in the United States District Court for the Northern District of California; *Cobbs v. VNGR Beverage, LLC,* No. 4:24-cv-03229 filed in the United States District Court for the Northern District of California; *Lesh, et al. v. VNGR Beverage, LLC,* No. 3:24-cv-03612 filed in the United States District Court for the Northern District of California; and *Wheeler v. VNGR Beverage LLC,* No. 4:24-cv-04396 filed in the United States District Court for the Northern District of California.

### **Does The Class Include Me?**

You are a Class Member if you purchased any flavor or packaging of Poppi beverage for household use and not for resale or distribution in the United States between January 23, 2020, and [Settlement Notice Date].

### What are the Settlement Benefits?

To settle the case, Defendant will create a Settlement Fund of \$8,900,000.00. This fund will be used to pay Class Payments for Approved Claims as well as Administrative and Notice Costs, Attorneys' Fees and Costs, and Service Awards to the Class Representatives. If you make an Approved Claim in the Settlement, you will receive a Class Payment for each unit of any Product that you purchased, subject to the maximums and minimums set forth below. "Single Can Unit" means a single quantity of a 12-ounce or 16-ounce can of the Products as sold at retail; "4-pack Unit" means a single quantity of a 4-pack of the Products as sold at retail; "8-pack Unit" means a single quantity of an 8-pack of the Products as sold at retail; "12-pack Unit" means a single quantity of a 12-pack of the Products as sold at retail; and "15-pack Unit" means a single quantity of a 15-pack of the Products as sold at retail.

If you make an Approved Claim, you are entitled to a Class Payment up to as follows: seventy-five cents (\$0.75) per Single Can Unit of the Product purchased; three dollars (\$3.00) per 4-pack Unit of the Product purchased; six dollars (\$6.00) per 8-pack Unit of the Product purchased; and nine dollars (\$9.00) per 12-pack or 15-pack Unit of the Product purchased. Each Approved Claim shall receive a Minimum Class Payment of five dollars (\$5.00), though the Class Payment may be less or more depending upon, among other things, the number of Approved Claims received, the amount of Attorneys' Fees and Costs paid to the Plaintiffs' lawyers, the amount of Service Awards paid to the Plaintiffs, and the costs of providing notice and administering the Settlement. If you do not have Proof of Purchase, you may obtain a maximum Class Payment of up to sixteen dollars (\$16.00) per Household. "Proof of Purchase" means a receipt or other documentation from a third-party commercial source (*i.e.*, a store or online retailer) that reasonably establishes the fact and date of purchase of Products by a Class Member between January 23, 2020 and the Settlement Notice Date.

If there is money left over in the Settlement Fund after payment of all Class Payments, Attorneys' Fees and Costs, Service Awards to the Class Representatives, and Administrative and Notice Costs, the money will be donated to a charity.

### How Do I Make A Claim?

**To file a claim, click** <<u>link>here</u></<u>link></u> and fill out the form. You can also obtain a claim form by contacting the Settlement Administrator.
### What are my rights?

You may make a Claim, Object, Opt-Out, or do nothing. To receive a Class Payment, you must link>submit a Claim</link>, online or by mail, by the Claims Deadline, which is [date 60 days after the Settlement Notice Date]. If you Opt-Out of the Settlement, you may pursue a separate lawsuit, but you will receive no Class Payment. Your Opt-Out request must be mailed to the Settlement Administrator and postmarked by the Objection and Exclusion Deadline, which is [date 60 days after the Settlement Notice Date]. If you do not Opt-Out, you give up your right to bring a separate lawsuit. To object, you must file a written Objection that complies with the requirements in the Long Form Notice available at www.poppisettlement.com. Your Objection must be filed with the Court by the Objection and Exclusion Deadline, which is [date 60 days after the Settlement Notice Date]. Do nothing, and you will not receive a Class Payment and you will release the Released Claims against Defendant that relate to the allegations in the lawsuits.

#### What will happen next?

The Court will hold a hearing on [DATE] at [] p.m. to consider whether to finally approve the Settlement. Class Counsel will ask the Court to award them no more than 30% of the Settlement Fund in attorneys' fees and approximately \$30,000 in out-of-pocket expenses and up to \$20,000 total in Service Awards to the four individuals who pursued the lawsuit, out of the Settlement Fund. Note that the hearing date may change without further notice to you. Consult the Website at www.poppisettlement.com or for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at https://ecf.cand.uscourts.gov, for updated information on the hearing date and time.

### How can I get more information?

For more information, please visit <u>www.poppisettlement.com</u> or contact the Settlement Administrator at [] or by telephone at [telephone]. Please do not telephone the Court or the Court's Clerk's Office to inquire about this Settlement.

# **EXHIBIT C**

### If you purchased Poppi Products, a class action Settlement may affect you.

A proposed class action Settlement has been reached in cases alleging Poppi beverages (the "Products") were improperly labeled as "gut healthy." Poppi contends that the label claims are expressly true and denies that it did anything wrong. Notwithstanding, the parties have agreed to settle the cases on a nationwide basis, and Defendant has agreed to provide Class Payments to Class Members. The cases are *In re VNGR Beverage, LLC Litigation,* No. 4:24-cv-03229-HSG filed in the United States District Court for the Northern District of California; *Cobbs v. VNGR Beverage, LLC,* No. 4:24-cv-03229 filed in the United States District Court for the Northern District of California; *Lesh, et al. v. VNGR Beverage, LLC,* No. 3:24-cv-03612 filed in the United States District Court for the Northern District of California; and *Wheeler v. VNGR Beverage LLC,* No. 4:24-cv-04396 filed in the United States District Court for the Northern District of California.

### **Does The Class Include Me?**

You are a Class Member if you purchased any flavor or packaging of Poppi beverage for household use and not for resale or distribution in the United States between January 23, 2020, and [Settlement Notice Date].

### What are the Settlement Benefits?

To settle the case, Defendant will create a Settlement Fund of \$8,900,000.00. This fund will be used to pay Class Payments for Approved Claims as well as Administrative and Notice Costs, Attorneys' Fees and Costs, and Service Awards to the Class Representatives. If you make an Approved Claim in the Settlement, you will receive a Class Payment for each unit of any Product that you purchased, subject to the maximums and minimums set forth below. "Single Can Unit" means a single quantity of a 12-ounce or 16-ounce can of the Products as sold at retail; "4-pack Unit" means a single quantity of a 4-pack of the Products as sold at retail; "8-pack Unit" means a single quantity of an 8-pack of the Products as sold at retail; "12-pack Unit" means a single quantity of a 12-pack of the Products as sold at retail; and "15-pack Unit" means a single quantity of a 15-pack of the Products as sold at retail.

If you make an Approved Claim, you are entitled to a Class Payment up to as follows: seventy-five cents (\$0.75) per Single Can Unit of the Product purchased; three dollars (\$3.00) per 4-pack Unit of the Product purchased; six dollars (\$6.00) per 8-pack Unit of the Product purchased; and nine dollars (\$9.00) per 12-pack or 15-pack Unit of the Product purchased. Each Approved Claim shall receive a Minimum Class Payment of five dollars (\$5.00), though the Class Payment may be less or more depending upon, among other things, the number of Approved Claims received, the amount of Attorneys' Fees and Costs paid to the Plaintiffs' lawyers, the amount of Service Awards paid to the Plaintiffs, and the costs of providing notice and administering the Settlement. If you do not have Proof of Purchase, you may obtain a maximum Class Payment of up to sixteen dollars (\$16.00) per Household. "Proof of Purchase" means a receipt or other documentation from a third-party commercial source (*i.e.*, a store or online retailer) that reasonably establishes the fact and date of purchase of Products by a Class Member between January 23, 2020 and the Settlement Notice Date.

If there is money left over in the Settlement Fund after payment of all Class Payments, Attorneys' Fees and Costs, Service Awards to the Class Representatives, and Administrative and Notice Costs, the money will be donated to a charity.

### How Do I Make A Claim?

**To file a claim, click** <<u>link>here</u></<u>link></u> and fill out the form. You can also obtain a claim form by contacting the Settlement Administrator.

### What are my rights?

You may make a Claim, Object, Opt-Out, or do nothing. To receive a Class Payment, you must link>submit a Claim</link>, online or by mail, by the Claims Deadline, which is [date 60 days after the Settlement Notice Date]. If you Opt-Out of the Settlement, you may pursue a separate lawsuit, but you will receive no Class Payment. Your Opt-Out request must be mailed to the Settlement Administrator and postmarked by the Objection and Exclusion Deadline, which is [date 60 days after the Settlement Notice Date]. If you do not Opt-Out, you give up your right to bring a separate lawsuit. To object, you must file a written Objection that complies with the requirements in the Long Form Notice available at www.poppisettlement.com. Your Objection must be filed with the Court by the Objection and Exclusion Deadline, which is [date 60 days after the Settlement Notice Date]. Do nothing, and you will not receive a Class Payment and you will release the Released Claims against Defendant that relate to the allegations in the lawsuits.

#### What will happen next?

The Court will hold a hearing on [DATE] at [] p.m. to consider whether to finally approve the Settlement. Class Counsel will ask the Court to award them no more than 30% of the Settlement Fund in attorneys' fees and approximately \$30,000 in out-of-pocket expenses and up to \$20,000 total in Service Awards to the four individuals who pursued the lawsuit, out of the Settlement Fund. Note that the hearing date may change without further notice to you. Consult the Website at www.poppisettlement.com or for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at https://ecf.cand.uscourts.gov, for updated information on the hearing date and time.

### How can I get more information?

For more information, please visit <u>www.poppisettlement.com</u> or contact the Settlement Administrator at [] or by telephone at [telephone]. Please do not telephone the Court or the Court's Clerk's Office to inquire about this Settlement.

## **EXHIBIT D**

### Attention purchasers of Poppi sodas Between January 23, 2020 and [Settlement Notice Date]

### This notice may affect your rights. Please read it carefully.

A court has authorized this notice. This is not a solicitation from a lawyer.

- The notice concerns the following cases: *In re VNGR Beverage, LLC Litigation*, No. 4:24-cv-03229-HSG filed in the United States District Court for the Northern District of California; *Cobbs v. VNGR Beverage, LLC*, No. 4:24-cv-03229 filed in the United States District Court for the Northern District of California; *Lesh, et al. v. VNGR Beverage, LLC*, No. 3:24-cv-03612 filed in the United States District Court for the Northern District of California; *and Wheeler v. VNGR Beverage LLC*, No. 4:24-cv-04396 filed in the United States District Court for the Northern District of California.
- This class action Settlement will completely resolve this lawsuit against VNGR Beverage, LLC d/b/a Poppi ("Defendant"), on behalf of all individuals in the United States who purchased any flavor or package size of Poppi beverages (the "Products") for household use and not for resale or distribution between January 23, 2020, and [Settlement Notice Date]. The Settlement affects all persons in that category (the "Class Members").
- To settle the case, Defendant has agreed to pay \$8,900,000 into a Settlement Fund.
- Each member of the Class who submits an Approved Claim will receive a Class Payment up to as follows: seventy-five cents (\$0.75) per Single Can Unit of the Product purchased; three dollars (\$3.00) per 4-pack Unit of the Product purchased; six dollars (\$6.00) per 8-pack Unit of the Product purchased; and nine dollars (\$9.00) per 12-pack or 15-pack Unit of the Product purchased. A Class Member who does not provide valid Proof of Purchase shall recover a maximum of sixteen dollars (\$16.00). The Minimum Class Payment for any Approved Claim shall be five dollars (\$5.00) per Household. However, the Class Payment amount may be reduced or increased pro rata depending on the number of Approved Claims and the cost of other expenses paid out of the Settlement Fund. Any leftover funds after payment of Administrative and Notice Costs, Attorneys' Fees and Expenses, payments to the Class Representatives, and payment of Approved Claims will go to a charitable organization.
- The lawyers who brought the lawsuit will ask the Court to set aside some of the Settlement Fund for reimbursement of their out-of-pocket expenses of up to \$30,000 and no more than 30% of the Settlement Fund in attorneys' fees for investigating the facts, litigating the case, and negotiating the Settlement. They will additionally ask for up to \$20,000 in total for the four named Plaintiffs who brought this lawsuit. These payments are called "Service Awards." If the Court approves, these amounts would be paid to Plaintiffs and the lawyers out of the Settlement Fund.
- The parties will also ask the Court to set aside an initial amount of the Settlement Fund to pay the Claim Administrator, Verita Global LLC, for its services and costs for administering the Settlement (e.g., disseminating notice of the Settlement, processing Claims, and distributing Class Payments).
- Your legal rights are affected whether you act or don't act. Read this notice carefully.

This notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the settlement agreement available at www.poppisettlement.com. Alternatively, you can contact the Settlement Administrator at: [ADDRESS], or Class Counsel:

Gutride Safier LLP 100 Pine Street, Suite 1250 San Francisco, CA 94111 poppi@gutridesafier.com

### Bursor & Fisher, P.A. 1990 N. California Blvd., 9th Floor Walnut Creek, CA 94596 info@bursor.com

### PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

YOUR RIGH	DEADLINE		
Submit a Claim Form			
Opt-Out	<b>Opt-Out</b> Exclude yourself from the lawsuit and the Settlement. This is the only option that allows you to ever bring or join another lawsuit raising the same legal claims against Defendant. You will receive no payment from this Settlement. (If you wish to exclude yourself from the Settlement, you must submit a completed Opt-Out by postal mail to the Settlement Administrator by the Objection and Exclusion Deadline.)		
File Objection	Write to the Court about any aspect of the Settlement you do not like or you do not think is fair, adequate, or reasonable. (If you object to any aspect of the Settlement, you must file a written Objection with the Court by the Objection and Exclusion Deadline.)	[sixty (60) calendar days after the Settlement Notice Date]	
<b>Go to a Hearing</b> Speak in Court about the Settlement. (Only if you submit a written Objection by the Objection and Exclusion Deadline noted above.)		[ ] at [ ]pm	
Do Nothing	You will not receive any Class Payment; also, you will have no right to sue later for the claims released by the Settlement.		

- These rights and options—and the deadlines to exercise them—are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Class Payments will be sent to Class Members only if the Court approves the Settlement. If there are appeals, Class Payments will not be made until the appeals are resolved and the Settlement becomes effective. Please be patient and continue to check the Website for updates.

• Fairness Hearing: On [], at [] p.m., the Court will hold hearings to determine (1) whether the proposed Settlement is fair, reasonable, and adequate and should receive final approval; (2) whether to grant the applications for Attorneys' Fees and Costs brought by the Class Counsel; and (3) whether to grant the application for Service Awards to the Plaintiffs who brought the lawsuit. The hearing will be held in the United States District Court of the Northern District of California, before the Honorable Judge Haywood S. Gilliam, Jr. in the Oakland Courthouse, Courtroom 2 – 4th Floor, located at 1301 Clay Street, Oakland, CA 94612. This hearing date may change without further notice to you. Consult the settlement website at www.poppisettlement.com, or the Court docket in this case available through Public Access to Court Electronic Records ("PACER") (http://www.pacer.gov), for updated information on the hearing date and time.

### **Important Dates**



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### 1. How Do I Know If I Am Affected By The Settlement?

This case involves all Poppi beverages, including all flavors and package sizes (the "Products") purchased for household use and not for resale or distribution in the United States between January 23, 2020, and [Settlement Notice Date].

For purposes of Settlement only, the Court has conditionally certified the following Settlement Class: "All persons in the United States who, between January 23, 2020 and the Settlement Notice Date, purchased in the United States, for household use and not for resale or distribution, one or more of the Products." Excluded from the Class are: (1) the Honorable Judge Haywood S. Gilliam, Jr., the Honorable Maxine M. Chesney, Magistrate Judge Sallie Kim, the Honorable Jay C. Gandhi (Ret.), and any member of their immediate families; (2) any government entity; (3) Poppi; and (4) any persons who timely opt-out of the Settlement.

If the Settlement does not become effective (for example, because it is not finally approved, or the approval is reversed on appeal), then this lawsuit will continue.

### 2. What Is The Lawsuit About?

Plaintiffs brought this lawsuit alleging Defendant improperly marketed and labeled the Products with "gut healthy" representations. Plaintiffs allege that, as a result, consumers purchased Products that they would not have otherwise purchased and/or paid more for the Products as a result of the "gut healthy" claims.

Defendant denies there is any factual or legal basis for Plaintiffs' allegations. Defendant contends that its Product labeling is truthful and accurate, denies making any misrepresentations and, therefore, denies any liability. Defendant also denies that Plaintiffs or any other members of the Class have suffered any injury or are entitled to monetary or other relief.

The Court has not determined who is correct.

### 3. Why Is This Case Being Settled?

This lawsuit was originally filed on May 29, 2024, in the Northern District of California. Defendant filed a motion to dismiss Plaintiffs' claims on September 23, 2024. The Plaintiffs opposed. The Court has not decided the motion to dismiss.

Counsel for both Plaintiffs and Defendant have determined, as with any lawsuit, that there is risk in continuing the litigation. Among the risks of continued litigation for Plaintiffs are the risks of failing to prove liability or restitution and damages on a class-wide or individual basis. In particular, there may be difficulties establishing: (1) that Defendant's statements on the Product labels (and other advertising and marketing materials), as challenged by Plaintiffs, were likely to deceive reasonable persons; (2) that the alleged misrepresentations and omissions were material to reasonable persons; and (3) that damages or restitution should be awarded or, if so, that the amount of the award would be more than nominal.

On December 4, 2024, the Parties participated in an all-day mediation conducted by Honorable Jay Gandhi (Ret.), at JAMS. After considering the risks and costs of further litigation, the Parties have concluded that it is desirable to settle Plaintiffs' claims on the terms of the Settlement Agreement.

Plaintiffs and their counsel believe that the terms and conditions of the Settlement are fair, reasonable, adequate, and equitable, and that the Settlement is in the best interest of the Class Members. The Settlement creates a Settlement Fund of \$8,900,000 and allows Class Members to file a Claim to obtain a Class Payment up to as follows: seventy-five cents (\$0.75) per Single Can Unit of the Product purchased; three dollars (\$3.00) per 4-pack Unit of the Product purchased; six dollars (\$6.00) per 8-pack Unit of the Product purchased; and nine dollars (\$9.00) per 12-pack or 15-pack Unit of the Product purchased. This exceeds the damages that might be recovered at trial on a per-Unit basis. Furthermore, even if Plaintiffs succeeded at trial, it would be necessary for Class Members to make claims, because Defendant does not have records identifying the Class Members.

### 4. What Can I Get In The Settlement?

Class Members may file Claims to obtain a Class Payment for Products purchased between January 23, 2020, and [Settlement Notice Date], regardless of the price the Class Member paid. All Approved Claims will be paid according to the following procedures:

- (a) Settlement Class Members who submit an Approved Claim shall receive up to the following: seventy-five cents (\$0.75) per Single Can Unit of the Product purchased; three dollars (\$3.00) per 4-pack Unit of the Product purchased; six dollars (\$6.00) per 8-pack Unit of the Product purchased; and nine dollars (\$9.00) per 12-pack or 15-pack Unit of the Product purchased, subject to the restrictions set forth below, though the Class Payment may be reduced or increased depending upon the number of Approved Claims and the amount of the Settlement Fund devoted to other costs, such as Administrative and Notice Costs, Attorneys' Fees and Costs, and Service Awards to the Class Representatives. "Single Can Unit" means a single quantity of a 12-ounce or 16-ounce can of the Products as sold at retail; "4-pack Unit" means a single quantity of an 8-pack of the Products as sold at retail; "12-pack Unit" means a single quantity of a 12-pack of the Products as sold at retail; and "15-pack Unit" means a single quantity of a 15-pack of the Products as sold at retail.
- (b) A Class Member who does not provide valid Proof of Purchase may recover a maximum Class Payment of sixteen dollars (\$16.00), per Household.
- (c) All Claims submitted from the same Household shall be treated as a single Claim including for the purposes of meeting these maximums and the Proof of Purchase requirements.

"Proof of Purchase" means a receipt or other documentation from a third-party commercial source (*i.e.*, a store or online retailer) that reasonably establishes the fact and date of purchase of Products by a Class Member between January 23, 2020 and the Settlement Notice Date.

Claims will be paid as a Class Payment only if the claim is deemed valid and only after the Court approves the Settlement.

### 5. How Do I Make A Claim?

To make a Claim, you must fill out the Claim Form available on this Website, www.poppisettlement.com. You can submit the Claim Form online, or you can print it and mail it to the

Settlement Administrator at: [ADDRESS]. If submitted online, Claim Forms must be submitted no later than [sixty (60) calendar days after the Settlement Notice Date]. If mailed, claim forms must be postmarked no later than [sixty (60) calendar days after the Settlement Notice Date]. Class Payments for Approved Claims will be issued only if the Court gives final approval to the proposed Settlement and after the final approval is no longer subject to appeal. Please be patient as this may take months or even years in the event of an appeal.

### 6. When Do I Get My Class Payment?

Filing a Claim does not provide a guaranteed Class Payment to you. A Final Approval Hearing will be held on [DATE] at [TIME]. If the Court approves the Settlement and there are no appeals, then Class Payments on Approved Claims will be distributed within 90 days after the Settlement is no longer subject to appeal or review, unless otherwise ordered by the Court. If the Court does not approve the Settlement, or if the Settlement is overturned on appeal, no Class Payments will be issued.

### 7. What Do Plaintiffs And Their Lawyers Get?

To date, Plaintiffs' lawyers have not been compensated for any of their work on this case. Plaintiffs' lawyers will present evidence to the Court that they have spent nearly [XX] hours litigating this case. In addition, Plaintiffs' lawyers will present evidence that they have paid out-of-pocket expenses (including filing fees, service costs, and copying costs) of more than []. None of these expenses has yet been reimbursed. As part of the Settlement, Plaintiffs' lawyers may apply to the Court to award them up to 30% of the Settlement Fund to pay their attorneys' fees and approximately [] in out-of-pocket expenses. Defendant has reserved the right to object to an award of fees, at its discretion.

In addition, each of the named Plaintiffs in this case may apply to the Court for a Service Award of \$5,000 each, for a combined total of not more than \$20,000. These payments are designed to compensate the Plaintiffs for the time, effort, and risks they undertook in pursuing this litigation and for executing a broader release of claims than other Class Members.

Plaintiffs and their lawyers will file a motion with the Court in support of their applications for Attorneys' Fees and Costs and payment of Service Awards to the Plaintiffs. A copy of that motion will be available on the Website. The Court will determine what amounts of fees, costs, expenses, and Service Awards to award.

The award of Attorneys' Fees and Costs will be paid to Plaintiffs' lawyers within 30 days after the Effective Date of the Settlement.

### 8. What Happens If I Do Not Opt-Out From The Settlement?

If you are a Class Member and you do not Opt-Out from the Settlement, you will be legally bound by all orders and judgments of the Court, and you will also be legally bound to release the Released Claims as provided in the Settlement, even if you do not file an Approved Claim or receive a Class Payment. This means that in exchange for being a Class Member and being eligible for the Class Payment, you will not be able to sue, continue to sue, or be part of any other lawsuit against VNGR Beverage, LLC d/b/a Poppi and/or any of the Released Persons that involves the marketing, labeling, or formulation of the Products from January 23, 2020 to the present.

### You will not be responsible for any out-of-pocket costs or attorneys' fees concerning this case if you stay in the Class.

Staying in the Class means that you agree to the following terms of the Settlement that describe exactly the legal claims that you give up:

- (a) As of the Effective Date, Class Members release and forever discharge and covenant not to sue, and are permanently enjoined from suing the Released Persons, including Poppi and each of its past, or present or future direct or indirect parents, subsidiaries, divisions, affiliates and related entities, stockholders, shareholders, officers, directors, partners, insurers, investors, employees, agents, attorneys, advisors, consultants, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, related companies, divisions, and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors, purchasers, and assigns of each of the foregoing) from the Released Claims. "Released Claims" means any and all claims, demands, actions, causes of action, lawsuits, arbitrations, damages, liabilities, or penalties, whether federal or state, known or unknown, asserted or unasserted, regardless of legal theory, legal, equitable, or otherwise, that were or could have been asserted in the Consolidated Action or that arise out of or relate to the labeling, advertising, or formulation of the Products between January 23, 2020 and the Settlement Notice Date. The Released Claims shall not release any Class Member's rights to enforce this Agreement. The Released Claims shall not release any Class Member's personal injury claims.
- (b) With respect to the Released Claims, the Class Member expressly waives and relinquishes, to the fullest extent permitted by law, the provisions, rights, and benefits of California Civil Code § 1542, or any other similar provision under federal or state law. The Class Member understands that California Civil Code § 1542 states:

### 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.

(c) The Class Member expressly waives and relinquishes any and all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of Section 1542 of the California Civil Code, or any other law of any state or territory that is similar, comparable, or equivalent to Section 1542, to the fullest extent that they may lawfully waive such rights or benefits pertaining to the Released Claims. In connection with such waiver and relinquishment, the Class Member hereby acknowledges that they are aware that they or their attorneys may hereafter discover claims or facts in addition to or different from those that they now know or believe exist with respect to the Released Claims, but that it is their intention to hereby fully, finally, and forever settle and release all of the Released Claims known or unknown, suspected or unsuspected, that they have against the Released Persons. In furtherance of such intention, the release herein given by the Class Member to the Released Persons shall be and remain in effect as a full and complete general release notwithstanding the discovery or existence of any such additional different claims or facts. Each Releasing Person and Released Person expressly acknowledges that he/she/it has been advised by his/her/its attorney of the contents and effect of Section 1542, and with knowledge, each of the Releasing Persons and Released Persons hereby expressly waives whatever benefits he/she/it may have had pursuant to such section. Plaintiffs and Class Members shall be deemed by operation of the Final Approval Order and Final Judgment to have acknowledged that the foregoing waiver was separately bargained for and a material element of the Settlement of which this release is a part.

(d) The Class Members shall be deemed to have agreed that the release set forth herein will be and may be raised as a complete defense to and will preclude any action or proceeding based on the Released Claims.

### 9. How Do I Opt-Out From The Settlement?

You can Opt-Out if you wish to retain the right to sue Defendant separately for the Released Claims. If you Opt-Out, you cannot file a Claim, receive a Class Payment from the Settlement Fund, or file an Objection to the Settlement. You need **not** exclude yourself if you merely want to retain a right to sue for personal injury arising out of your use of the Products.

To Opt-Out, you must mail an Opt-Out request to the Settlement Administrator at [ADDRESS]. The Opt-Out request must be signed by you, clearly identify the case name and number, *In re VNGR Beverage, LLC Litigation*, No. 4:24-cv-03229-HSG, contain your full name, address, phone number(s), email address, and the following statement: "I/We request to Opt-Out from the settlement in the Poppi Class Action." The Opt-Out request must be postmarked by the Objection and Exclusion Deadline set forth above, which is [sixty (60) calendar days after the Settlement Notice Date].

### 10. How Do I Object To The Settlement?

You can ask the Court to deny approval of the Settlement by timely filing an Objection with the Court. You cannot ask the Court to order a larger Settlement; the Court can only approve or disallow the Settlement. If the Court denies approval to the entire Settlement, no Class Payments will be sent out, and the lawsuit will continue. If that is what you want to happen, you must object.

If you file an Objection by [sixty (60) calendar days after the Settlement Notice Date], you may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney.

To file an Objection, you must submit that Objection in writing to the Clerk for the Northern District of California, by the Objection and Exclusion Deadline set forth above. Any Objection must: (1) clearly identify the case name and number, *In re VNGR Beverage, LLC Litigation*, No. 4:24-cv-03229-HSG; (2) include your full name, address, telephone number, and email address; (3) include the full name, address, telephone number, and email address (if any) who (a) are representing you in making the objection, (b) may be entitled to compensation in connection with your objection, and/or (c) will appear on your behalf at the Final Approval Hearing; (4) include documents or testimony sufficient to establish that you are a member of the Class; (5) provide a detailed statement of your objection(s), including the grounds and legal support for those objection(s); (6) provide a statement as to whether you

are requesting the opportunity to appear and be heard at the Final Approval Hearing; and (7) add your signature as objector, in addition to the signature of your attorney, if an attorney is representing you with the objection. Failure to include this information and documentation may be grounds for overruling and rejecting your objection.

All the information listed above must be filed as a written objection, either electronically via the Northern District of California's electronic filing system no later than 11:59 p.m. PT on [sixty (60) calendar days after the Settlement Notice Date] or via mail to the Clerk of the Northern District of California, postmarked by mail, express mail, or personal delivery on or before the Objection and Exclusion Deadline, which is [sixty (60) calendar days after the Settlement Notice Date]. By filing an objection, you consent to the jurisdiction of the Court, including to any order of the Court to produce documents or provide testimony prior to the Final Approval Hearing.

If you file an Objection to the Settlement but still want to submit a Claim in the event the Court approves the Settlement, you must still timely submit a Claim Form according to the instructions described above.

### 11. When Will The Court Decide If The Settlement Is Approved?

The Court will hold a hearing on [] at [] p.m., to consider whether to approve the Settlement. The hearing will be held in the United States District Court of the Northern District of California, before the Honorable Judge Haywood S. Gilliam, Jr. in the Oakland Courthouse, Courtroom 2 – 4th Floor, located at 1301 Clay Street, Oakland, CA 94612, or such other judge assigned by the Court.

The hearing is open to the public. This hearing date may change without further notice to you. For updated information on the hearing date and time, consult the Website at www.poppisettlement.com or the Court docket in this case available for a fee through the Court's Public Access to Court Electronic Records (PACER) system at https://ecf.cand.uscourts.gov, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, Oakland Courthouse, 1301 Clay Street, Oakland, CA 94612, Suite 400S, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

### 12. How Do I Get More Information?

You can inspect many of the court documents connected with this case on the Website. Other papers filed in this lawsuit are available by accessing the Court docket in this case available for a fee through the Court's Public Access to Court Electronic Records (PACER) system at https://ecf.cand.uscourts.gov, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, Oakland Courthouse, 1301 Clay Street, Oakland, CA 94612, Suite 400S, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

You can contact the Settlement Administrator at [ADDRESS], or by telephone at [number].

You can also obtain additional information by contacting Class Counsel:

Marie A. McCrary, Esq. GUTRIDE SAFIER LLP 100 Pine Street, Suite 1250 San Francisco, CA 94111 Tel: (415) 639-9090 poppi@gutridesafier.com www.gutridesafier.com L. Timothy Fisher BURSOR & FISHER, P.A. 1990 North California Blvd. 9th Floor Walnut Creek, CA 94596 Tel: (925) 300-4455 info@bursor.com www.bursor.com

# **EXHIBIT 1**

C	ase 4:24-cv-03229-HSG	Document 55-1	Filed 03/14/25	Page 53 of 114
1	GUTRIDE SAFIER LLP	107427)		
2	Seth A. Safier (State Bar N Marie A. McCrary (State B	,		
3	Anthony J. Patek (State Ba 100 Pine Street, Suite 1250			
4	San Francisco, CA 94111			
5	E-mail: seth@gutridesafier marie@gutridesafie			
6	anthony@gutridesa	fier.com		
7	BURSOR & FISHER, P.A			
8	L. Timothy Fisher (State B Joshua B. Glatt (State Bar 1	/		
9	1990 North California Blvc Walnut Creek, CA 94596	l., 9th Floor		
	Telephone: (925) 300-4455			
10	Facsimile: (925) 407-2700 E-mail: ltfisher@bursor.co			
11	jglatt@bursor.com			
12	Attorneys for Plaintiffs			
13	Additional counsel listed on	Signature Page		
14		0 0		
15			FRICT COURT FO	
16			Case No. 4:24-	cv-03229-HSG (lead)
17			Case No. 4:24-	cv-03612-SK
18			[PLAINTIFFS'	UNOPPOSED PROPOSED]
19	In re VNGR BEVERAGE, TION	LLC LITIGA-		TING PRELIMINARY AP- CLASS ACTION SETTLE-
20			MENT; GRAN	TING LEAVE TO FILE OLIDATED AMENDED
21			COMPLAINT;	PROVISIONALLY CERTI-
22				LASS; AND DIRECTING ION OF CLASS NOTICE
23			MOTION HEA	ARING
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25				DATE] ]pm
26			Judge: Hon. H	aywood S. Gilliam, Jr.
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[PROPOSED] ORDER GRANTING MTN FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT Case No. 4:24-cv-03229-HSG

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### RECITALS

Plaintiffs Kristin Cobbs, Carol Lesh, Sarah Coleman, and Megan Wheeler (collectively
"Plaintiffs" or "Class Representatives") have moved the Court for preliminary approval of a
proposed class action settlement with Defendant VNGR Beverage, LLC d/b/a Poppi ("Defendant"
or "Poppi"), the terms and conditions of which are set forth in the settlement agreement filed with
the Court on [], 2025 ("Agreement"). The capitalized terms used in this Order shall have the same
meaning as defined in the Agreement except as otherwise expressly provided.

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### A. Procedural History

This case concerns the marketing and labeling of Defendant's Poppi brand beverage 9 products (all flavors and package sizes) ("Products") from January 23, 2020, to the date of this 10 order. Plaintiffs allege that the Products are improperly labeled as "gut healthy" and that this claim 11 misleads consumers about the health benefits of the Products. Plaintiffs allege that, as a result, 12 people purchased the Products who would not otherwise have done so. Plaintiffs also allege that 13 the Products were sold at a higher price than they would have been sold without the "gut healthy" 14 claims. Plaintiffs alleged claims for violations of California's False Advertising Law, Business and 15 Professions Code § 17500, et seq. ("FAL"); Consumers Legal Remedies Act, California Civil Code 16 § 1750, et seq. (the "CLRA"); Common Law Fraud, Deceit and/or Misrepresentation; Unlawful, 17 unfair, and fraudulent trade practices violation of Business and Professions Code § 17200, et seq. 18 ("UCL"); Unjust Enrichment; and Breach of Express Warranty. They sought to pursue these claims 19 on behalf of themselves and a class of purchasers of the Products and sought money damages and 20 an injunction. 21

Defendant denies Plaintiffs' allegations. It contends that the "gut healthy" claims on the Product labeling are expressly true. In addition, Defendant contends that the claim has always been lawful and not misleading. Defendant also disputes that the "gut healthy" claims induced consumers to purchase the Products. Defendant also represents that in late 2023, it elected to revise the Products' label to remove any and all reference to gut health. Defendant therefore denies any liability and denies that Plaintiffs or any class members have suffered injury as a result of the Products' labeling. Defendant further denies that this case meets the requirements for class 1 certification under Fed. R. Civ. P. 23, except for purposes of settlement.

The history of this litigation is summarized in Part I of the Agreement. In brief, on May 29, 2 2024, Plaintiff Kristin Cobbs filed a putative class action against Poppi, captioned Cobbs v. VNGR 3 Beverage, LLC, No. 4:24-cv-03229-HSG (the "Cobbs Action") in the Northern District of 4 California. On June 14, 2024, a substantially similar putative class action, involving the same 5 questions of law and fact, was filed in the Northern District of California, captioned Lesh, et al. v. 6 VNGR Beverage, LLC, No. 4:24-cv-03612 (the "Lesh Action"). On June 25 and 27, 2024, the Court 7 entered orders relating and then consolidating the Lesh Action to the Cobbs Action, recaptioned as 8 In re VNGR Beverage LLC, Litigation (the "Consolidated Action"). On July 19, 2024, a third 9 substantially similar putative class action, involving the same questions of law and fact as in the 10 Consolidated Action, was filed in the Northern District of California, captioned Wheeler v. VNGR 11 Beverage LLC, No. 4:24-cv-04396 (the "Wheeler Action"). On August 20, 2024, Plaintiffs in the 12 Cobbs, Lesh, and Wheeler Actions filed a Second Consolidated Amended Complaint in the 13 Consolidated Action. On September 23, 2024, Defendant filed a Motion to Dismiss the Second 14 Consolidated Amended Complaint. That same day, a substantially similar putative class action, 15 involving the same questions of law and fact as in the Consolidated Action, was filed in the 16 Northern District of California, captioned Jackson v. VNGR Beverage LLC, No. 3:24-cv-06666 (the 17 "Jackson Action"). The Jackson Action was related to the Consolidated Action on October 11, 18 2024. 19

20 On December 4, 2024, the parties participated in an all-day private mediation with the 21 Honorable Judge Jay C. Gandhi (Ret.) at JAMS. That mediation resulted in the settlement that is 22 the subject of this Order.

On [], the Parties submitted a stipulation to file a Third Amended Consolidated Class Action
 Complaint, adding a claim for Breach of Implied Warranty of Merchantability.

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B.

### Summary of Settlement Terms

The terms of the Settlement are summarized in the proposed Website Notice to Class Members, which is attached as Exhibit D to the Agreement. Under the proposed Settlement, Defendant has agreed to create a Settlement Fund of \$8,900,000.00 from which consumers who submit Approved Claims can receive a Class Payment as follows: seventy-five cents (\$0.75) per
Single Can Unit of the Product purchased; three dollars (\$3.00) per 4-pack Unit of the Product
purchased; six dollars (\$6.00) per 8-pack Unit of the Product purchased; and nine dollars (\$9.00)
per 12-pack and 15-pack Unit of the Product purchased. Class Members' Class Payments are
subject to the following restrictions as outlined in the Agreement:

- The Minimum Class Payment to any Class Member who submits an Approved Claim shall be five dollars (\$5.00) per Household.
  - Class Members who do not provide Proof of Purchase may obtain a maximum Class Payment of sixteen dollars (\$16.00) per Household.
- The Class Payment may be reduced on a pro-rata basis if, after accounting for all
   other expenses deducted from the Settlement Fund (*e.g.*, Administrative and Notice
   Costs, Attorneys' Fees and Costs, and Service Awards), there are insufficient funds
   in the Settlement Fund to pay all Class Payments on Approved Claims.
- The Class Payment may be increased on a pro-rata basis, if, after accounting for all 14 other expenses deducted from the Settlement Fund (e.g., Administrative and Notice 15 Costs, Attorneys' Fees and Costs, and Service Awards), there are excess funds in 16 the Settlement Fund to pay all Class Payments on Approved Claims. Any pro rata 17 upward adjustment for claims without Proof of Purchase shall be capped at five 18 times the claimed amount. This means that under no circumstances shall a person 19 who submits an Approved Claim without a Proof of Purchase receive more than 20 eighty dollars (\$80.00). 21

The amount offered per Approved Claim represents approximately 30% of the purchase price of the Product which Plaintiffs anticipate exceeds, on a per-Unit basis, the payments that Plaintiffs would be awarded if successful at trial. And the Settlement Fund is reasonable in light of the risks of proceeding to trial. Moreover, even if Plaintiffs won at trial, Class Members would still need to file claims to receive compensation as Defendant does not have records of individual purchases, and the recovery would likely be lower on a per-Unit basis.

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Any remaining funds from the Gross Settlement Amount after the Administrative and

Notice Costs, Attorneys' Fees and Costs, Service Awards, and Class Payments for Approved 1 Claims are distributed, including, but not limited to, those resulting from uncashed checks, will be 2 distributed to the cy pres beneficiary, Feeding America. Feeding America is the nation's largest 3 domestic hunger-relief organization. Feeding America's network of food banks, pantries, and meal 4 programs serves communities across the United States. 5

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As part of the Settlement, Plaintiffs' Attorneys may apply to this Court to award them up to 30% of the Settlement Fund to pay their attorneys' fees, exclusive of their actual expenses 7 (currently estimated at \$30,000), as well as up to \$20,000 in total from the Settlement Fund in 8 Service Award payments to the Class Representatives. Such amounts must be approved by the 9 Court, and the Court will defer any ruling on the appropriateness of such awards until the Final 10 Approval Hearing. 11

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#### С. **Notice and Administration**

Notice is to be provided as described in the Agreement consistent with the Notice Plan 13 designed by Verita Global, LLC (the "Settlement Administrator"), a well-known and experienced 14 class action administrator. The Settlement Administrator will also receive and process Claim Forms 15 and distribute Class Payments. In brief, Website Notice will be provided on a settlement Website, 16 located at www.poppisettlement.com. In addition, a Publication Notice will be published in USA 17 Today (California Regional edition). Further, the Website Notice shall be made available on 18 websites accessible to desktop and mobile users, including social media sites such as Facebook and 19 Instagram, through an appropriate programmatic network, social media, and a paid search 20 campaign so that overall notice of the Settlement (including the Website Notice and Publication 21 Notice) is reasonably calculated to apprise Class Members of the Settlement. These websites have 22 been chosen based on reliable demographic information about those social media platforms and 23 about likely Class Members. Further, Poppi will provide the names and valid email addresses for 24 potential Class Members it may have in its records, and the Settlement Administrator shall email 25 to each such potential Class Member a copy of the Email Notice, which is attached to the 26 Agreement as Exhibit B. There will be a toll-free number for people to obtain more information 27 about the Settlement and to request a printed version of the Claim Form and Website Notice. No 28

later than fourteen (14) days prior to the hearing on Final Approval, the Settlement Administrator
 shall submit a declaration to the Court attesting to the number of impressions delivered and the
 number of click-throughs to the Website.

All of the notices will link or point to the Website, which will include: the Website Notice (explaining the procedures for Class Members to submit a Claim or exclude themselves), a contact information page that includes address and telephone numbers for the Settlement Administrator and Class Counsel, the Agreement, this signed Preliminary Approval Order, online and printable versions of the Claim Form, and answers to frequently asked questions. In addition, the motion papers filed in connection with the Settlement and Plaintiffs' request for Attorneys' Fees and Costs and Service Awards will be placed on the Website after they are filed.

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### FINDINGS AND CONCLUSIONS

Having considered all matters submitted to it at the hearing on the motion and otherwise, including the complete record of this action, and good cause appearing therefore, the Court hereby finds that there is a sufficient basis for granting preliminary approval of the Agreement, authorizing dissemination of the Class Notice, and authorizing the steps needed to determine whether the Agreement should be finally approved and the Consolidated Action dismissed.

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### Accordingly, it is HEREBY ORDERED that:

The Court accepts the Third Consolidated Amended Complaint as the operative
 pleading.

20 2. The Court preliminarily approves the Agreement (Dkt. \_\_) as likely to be
21 approved under Rule 23(e)(2) and as meriting notice to the Class for its consideration. Considering
22 the factors set forth in Rule 23(e)(2), the Court preliminarily finds for settlement purposes only as
23 follows:

- 24a. Class Representatives and Class Counsel have adequately represented the25Class.
- b. The Settlement was negotiated at arm's length with the assistance of a wellrespected and experienced private mediator.
  - c. The relief provided to the Class in the form of monetary relief is adequate

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given the risks and uncertainty of trial and the monetary recovery offered by the Settlement is higher on a per Unit basis than Plaintiffs anticipate that evidence would have allowed for at trial.

d. The proposal treats all class members equally relative to each other.

- 53. The Settlement also complies with the Northern District of California's6ProceduralGuidanceforClassActionSettlements,7https://www.cand.uscourts.gov/ClassActionSettlementGuidance.
- 8 4. For purposes of the settlement only, the Court provisionally stays all case9 deadlines pending a final ruling on the Settlement.
- 5. The Court preliminarily finds, solely for purposes of considering this Settlement, 10 that the requirements of Rule 23 of the Federal Rules of Civil Procedure are conditionally satisfied, 11 including requirements that the Class Members are too numerous to be joined in a single action; 12 that common issues of law and fact exist and predominate; that the claims of the Class 13 Representatives are typical of the claims of the Class Members; that the Class Representatives and 14 Class Counsel can adequately protect the interests of the Class Members; and that a settlement class 15 is superior to alternative means of resolving the claims and disputes at issue in this Consolidated 16 Action. 17
- For purposes of the settlement only, the Court provisionally certifies the Class,
   which consists of all persons in the United States who, between January 23, 2020 and [the date of
   the Settlement Notice Date], purchased in the United States, for household use and not for resale
   or distribution, any Poppi beverage. "Excluded Persons" from the Class are: (1) the Honorable
   Judge Haywood S. Gilliam, Jr., the Honorable Maxine M. Chesney, Magistrate Judge Sallie Kim,
   the Honorable Jay C. Gandhi (Ret.), and any member of their immediate families; (2) any
   government entity; (3) Defendant; and (4) any persons who timely opt-out of the Settlement.
- 7. The Court conditionally designates the law firms of Bursor & Fisher, P.A. and
  Gutride Safier LLP as Class Counsel and Kristin Cobbs, Carol Lesh, Sarah Coleman, and Megan
  Wheeler as Class Representatives for purposes of this Settlement. The Court preliminarily finds
  that the Class Representatives and Class Counsel fairly and adequately represent and protect the

1 interests of the absent Class Members.

8. A Final Approval Hearing shall be held before this Court at [] pm. on [] to
address: (a) whether the proposed Settlement should be finally approved as fair, reasonable, and
adequate, and whether the Final Approval Order should be entered, and (b) whether Class Counsel's
application for Attorneys' Fees and Costs and a payment of Service Awards to the Class
Representative should be approved. The Final Approval Hearing may be postponed, adjourned, or
continued by further order of this Court.

9. The Court finds that the terms of the Agreement are sufficiently fair, reasonable,
and adequate to allow dissemination of the Class Notice to members of the Class. This
determination is not a final finding that the Settlement is fair, reasonable and adequate, but it is a
determination that probable cause exists to disseminate Class Notice to the Class Members and
hold a hearing on final approval of the proposed Settlement.

10. The Court finds that the Parties' plan for providing notice to the Class (the Notice 13 Plan) is reasonably calculated to provide notice to the Class of the pendency of the terms of the 14 Agreement, the Final Approval hearing, and applicable deadlines, and complies fully with the 15 requirements of the Due Process Clause of the United States Constitution, Rule 23 of the Rules of 16 Civil Procedure, and any other applicable law. The Parties and the Settlement Administrator shall 17 comply with the Notice Plan and other deadlines as set forth in the Agreement and this Order. The 18 Court designates and approves Verita Global, LLC to serve as Settlement Administrator. The 19 Administrative and Notice Costs shall be paid from the Settlement Fund, under the direction of the 20 Parties' Counsel. 21

11. The Court approves, as to form and content, the Claim Form and the notices,
substantially similar to the forms attached as Exhibits A, B, C, and D to the Agreement. The Claim
Form and all of the notices are written in plain English, are easy to comprehend, and fully comply
with the requirements of the Due Process Clause of the United States Constitution, Rule 23 of the
Rules of Civil Procedure, and any other applicable law. The Parties shall have discretion to jointly
make non-material minor revisions to the Claim Form or Notices. Responsibility regarding
settlement administration, including, but not limited to, notice and related procedures, shall be

performed by the Settlement Administrator, subject to the oversight of the Parties and this Court as
 described in the Agreement and this Order.

- 12. Any member of the Class who desires to be excluded from the Settlement, and 3 therefore not be bound by the terms of the Agreement, must submit a timely request for exclusion 4 to the Settlement Administrator, by mailing an Opt-Out request to the Settlement Administrator at 5 [ADDRESS]. The request must be postmarked no later than [sixty (60) days after the Settlement 6 Notice Date]. No one shall be permitted to exercise any exclusion rights on behalf of any other 7 person, whether as an agent or representative of another or otherwise, except upon proof of a legal 8 power of attorney, conservatorship, trusteeship, or other legal authorization, and no one may 9 exclude other persons within the Class as a group, class, or in the aggregate. 10
- 11 13. No later than [DATE], the Settlement Administrator shall prepare a list of the
  12 names of the persons who, pursuant to the Class Notice described herein, have excluded themselves
  13 from the Class in a valid and timely manner, and Class Counsel shall file that list with the Court.
  14 The Court retains jurisdiction to resolve any disputed exclusion requests.
- 14. Any member of the Class who elects to be excluded shall not receive a Class 15 Payment, shall not be bound by the terms of the Agreement, and shall have no standing to object 16 to the Settlement or intervene in the Consolidated Action. Class Members who do not wish to be 17 bound by a judgment in favor of or against the Class must exclude themselves from the Settlement. 18 Any Class Member who does not submit a valid and timely request for exclusion may submit an 19 objection to the Agreement ("Objection"). The Objection must satisfy the requirements set forth 20 below and must be filed as a written objection with the Clerk of the Court, postmarked by mail, 21 express mail, or personal delivery, to the Clerk on or before the Objection and Exclusion Deadline 22 or it will be rejected. 23
- 15. Any Objection must include: (1) Clearly identify the case name and number, *In re VNGR Beverage, LLC Litigation*, No. 4:24-cv-03229-HSG; (2) Include the full name, address,
  telephone number, and email address of the Objector; (3) Include the full name, address, telephone
  number, and email address of the all lawyers (if any) who (a) are representing the Objector in
  making the objection, (b) may be entitled to compensation in connection with the objection, and/or

(c) will appear on the Objector's behalf at the Final Approval Hearing; (4) documents or testimony
sufficient to establish that the Objector is a member of the Class; (5) a detailed statement of the
Objector's objection(s), including the grounds and legal support for those objection(s); (6) a
statement as to whether the Objector is requesting the opportunity to appear and be heard at the
Final Approval Hearing; and (7) the Objector's signature, in addition to the signature of their
attorney, if any. Failure to include this information and documentation may be grounds for
overruling and rejecting the Objection.

8 16. Any Class Member that filed a valid Objection has the right to appear and be
9 heard at the Final Approval Hearing, either personally or through an attorney retained at the Class
10 Member's own expense.

11 17. Plaintiffs shall file any reply in support of Final Approval and for any award of
12 Attorneys' Fees and Costs and a Class Representative Service Awards (including responses to
13 objections) no later than [DATE]. All such filings and supporting documentation shall be posted to
14 the Website within one day of filing.

15 18. Any Class Member wishing to make a Claim must submit a Claim Form to the
16 Settlement Administrator, pursuant to the instructions set forth in the Website Notice. The Claim
17 Form must be submitted online by no later than sixty (60) calendar days after the Settlement Notice
18 Date, or, if mailed, it must be postmarked and sent to the Settlement Administrator by no later than
19 [sixty (60) calendar days after the Settlement Notice Date].

19. No later than [DATE], the Settlement Administrator shall provide a declaration
to the Court regarding the provision of notice and as required by the Agreement and as to the
number and dollar amount of claims received.

23 20. In the event that the proposed Settlement is not finally approved by the Court, or 24 in the event that the Agreement becomes null and void or terminates pursuant to its terms, this 25 Preliminary Approval Order and all orders entered in connection herewith shall become null and 26 void, shall be of no further force and effect, and shall not be used or referred to for any purposes 27 whatsoever in this Consolidated Action or in any other case or controversy, in such event the 28 Agreement and all negotiations and proceedings directly related thereto shall be deemed to be without prejudice to the rights of any and all of the Parties, who shall be restored to their respective
 positions as of the date and time immediately preceding the execution of the Agreement.

3 21. This Order shall not be construed as an admission or concession by Defendant of
4 the truth of any allegations made by the Plaintiff or of liability or fault of any kind.

5 22. The Court may, for good cause, extend any of the deadlines set forth in this Order 6 without further notice to Class Members, though such extensions shall be posted to the Website. 7 The Final Approval Hearing may, from time to time and without further notice to Class Members 8 beyond updates to the Court's docket and the Website, be continued by Order of the Court.

9 23. If the Court grants Final Approval to the Agreement, then Class Members who
10 have not timely requested to be excluded, including persons who objected to the Agreement, shall
11 be deemed to have released any and all claims as set forth in the Agreement.

12 24. Counsel for the Parties are hereby authorized to utilize all reasonable procedures
13 in connection with the administration of the settlement which are not materially inconsistent with
14 either this Order or the terms of the Agreement.

15 25. All further proceedings and deadlines in this action are hereby stayed except for
16 those required to effectuate the Agreement and this Order.

26. Pending final determination of whether the Settlement should be approved, 17 Plaintiffs and each Class Member, and any person purportedly acting on behalf of any Class 18 Member(s), are hereby enjoined from commencing, pursuing, maintaining, enforcing, or 19 proceeding, either directly or indirectly, any Released Claims in any judicial, administrative, 20 arbitral, or other forum, against any of the Released Parties, provided that this injunction shall not 21 apply to the claims of Class members who have timely and validly requested to be excluded from 22 the Class. This injunction will remain in force until the Effective Date or until such time as the 23 Parties notify the Court that the Settlement has been terminated. This injunction is necessary to 24 protect and effectuate the Settlement, this Order, and this Court, authority regarding the Settlement, 25 and is ordered in aid of this Court's jurisdiction and to protect its judgments. 26

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1       IT IS SO ORDERED thisth day of, 2025.         3	C	Case 4:24-cv-03229-HSG Document 55-1 Filed 03/1	L4/25 Page 64 of 114
2         3         4         5         HON. HAYWOOD S. GILLIAM, JR.         UNITED STATES DISTRICT COURT JUDGE         6         7         8         9         10         11         12         13         14         15         16         17         18         19         20         21         22         23         24         25         26         27			
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## EXHIBIT 2

1       GUTRIDE SAFIER LLP         2       Seth A. Safier (State Bar No. 197427)         3       Marie A. McCrary (State Bar No. 228964)         4       100 Pine Street, Suite 1250         5       San Francisco, CA 94111         5       E-mail: seth@gutridesafier.com         6       anthony@gutridesafier.com         7       BURSOR & FISHER, P.A.         8       L. Timothy Fisher (State Bar No. 191626)         9       Joshua B. Glatt (State Bar No. 191626)         9       Pachatt Creek, CA 94596         7       Flexphone: (925) 300-4455         9       Facsimile: (925) 407-2700         20       E-mail: Itfishe@bursor.com         12       jglatt@bursor.com         13       Attorneys for Plaintiffs         Additional counsel listed on Signature       Page         16       UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA         17       In re VNGR BEVERAGE, LLC LITIGA-         18       Action Set TLEMENT         19       MOTION HEARING         20       In re VNGR BE	C	ase 4:24-cv-03229-HSG	Document 55-1	Filed 03/14/25	Page 66 of 114
2       GUTRIDE SAFIER LLP         2       Seth A. Safier (State Bar No. 197427)         3       Marie A. McCarry (State Bar No. 228964)         4       100 Pine Street, Suite 1250         5       San Francisco, CA 94111         5       E-mail: seth@gutridesafier.com         6       anthony/@gutridesafier.com         7       BURSOR & FISHER, P.A.         8       L. Timothy Fisher (State Bar No. 191626)         Joshua B. Glatt (State Bar No. 354064)         9       1990 North California Bivd., 9th Floor         Walnut Creek, CA 94596         7       Telephone: (925) 300-4455         7       Facsimile: (925) 407-2700         8       Lattreey for Plaintiffs         4       Additional counsel listed on Signature         9age       Page         16       UNITED STATES DISTRICT COURT FOR THE         17       Northern DISTRICT OF CALIFORNIA         18       Case No. 4:24-ev-03612-5K         19       In re VNGR BEVERAGE, LLC LITIGA-TION         10       In re VNGR BEVERAGE, LLC LITIGA-TION         12       PROPOSEDJ ORDER GRANTING         13       Attorneys of Plaintiffs         14       Additional counsel istet on Signature         15 <t< td=""><td></td><td></td><td></td><td></td><td></td></t<>					
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Plaintiffs Kristin Cobbs, Carol Lesh, Sarah Coleman, and Megan Wheeler ("Class Representatives") have moved the Court for final approval of a proposed class action settlement with Defendant VNGR Beverage, LLC d/b/a Poppi ("Defendant"), the terms and conditions of which are set forth in the settlement agreement filed with the Court on [DATE] ("Agreement") (Dkt.\_\_\_\_).<sup>1</sup> For the reasons described more fully below, the Court GRANTS final approval of the Settlement.

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### PROCEDURAL HISTORY

8 This case concerns the marketing and labeling of Defendant's Poppi beverage products (all 9 flavors and package sizes) ("Products") from January 23, 2020 to [Settlement Notice Date] ("Class 10 Period"). The procedural history is summarized in the Order Granting Preliminary Approval (Dkt.

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### SUMMARY OF SETTLEMENT TERMS

The Class consists of all persons in the United States who, between January 23, 2020 and 13 the date of this Order, purchased in the United States, for household use and not for resale or 14 distribution, one or more of the Poppi beverages, all flavors and package sizes. The Settlement 15 creates a fund of \$8,900,000.00 from which Class Members may file a claim to receive a Class 16 Payment for each Unit of the Product purchased between January 23, 2020 and Settlement Notice 17 Date]. Those who filed a timely Approved Claim will receive a Class Payment of: seventy-five 18 cents (\$0.75) per Single Can Unit of the Product purchased; three dollars (\$3.00) per 4-pack Unit 19 of the Product purchased; six dollars (\$6.00) per 8-pack Unit of the Product purchased; and nine 20 dollars (\$9.00) per 12-pack and 15-pack Unit of the Product purchased, respectively. The maximum 21 Class Payment for any Approved Claim without a valid Proof of Purchase is sixteen-dollars 22 (\$16.00) per Household. The Minimum Payment for any Approved Claim is five dollars (\$5.00) 23 per Household. The Class Payment may be reduced on a pro-rata basis if, after accounting for all 24 other expenses deducted from the Settlement Fund (e.g., Administrative and Notice Costs, 25 Attorneys' Fees and Costs, and Service Awards), there are insufficient funds in the Settlement Fund 26

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<sup>28 &</sup>lt;sup>1</sup> Capitalized terms herein have the same meaning as set forth in the Settlement Agreement.

to pay all Class Payments on Approved Claims. The Class Payment may be increased on a pro-rata
basis if, after accounting for all other expenses deducted from the Settlement Fund (*e.g.*,
Administrative and Notice Costs, Attorneys' Fees and Costs, and Service Awards), there are excess
funds in the Settlement Fund to pay all Class Payments on Approved Claims. Under no
circumstances shall a person who submits an Approved Claim without a Proof of Purchase receive
more than eighty dollars (\$80.00).

Finally, the Settlement provides that Plaintiffs may seek an award of up to 30% of the
Settlement Fund in Attorneys' Fees, actual costs, and up to \$20,000 in total Service Awards for the
Class Representatives.

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### NOTICE AND SETTLEMENT ADMINISTRATION

The Agreement is being administered by a well-known, independent claims administrator, 11 Verita Global, LLC. Following the Court's preliminary approval and conditional certification of 12 the nationwide settlement, the Settlement Administrator established a settlement website (the 13 "Website") at http://www.poppisettlement.com, which contained the Website Notice (explaining 14 the procedures for Class Members to submit Claims or exclude themselves), a contact information 15 page that includes address and telephone numbers for the Settlement Administrator and counsel for 16 the parties, the Agreement, the signed Preliminary Approval Order, online and printable versions 17 of the Claim Form, answers to frequently asked questions, and the motion papers filed in connection 18 with the Agreement and Plaintiffs' request for Attorneys' Fees and Costs and Service Awards. The 19 published notices, email notices, and online notices directed Class Members to the Website. The 20 Settlement Administrator also operated a toll-free number for Class Member inquiries. 21

Notice was published in multiple media, all of which referred Class Members to the
Website. ([record citations]). Advertisements were published in the print version of USA Today
(California Regional edition) that went on the market on \_\_\_\_\_. ([record cites]) This magazine
has a circulation of approximately \_\_\_\_\_\_ with total readership of the print editions of
approximately \_\_\_\_\_\_.

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The Settlement Administrator also provided Email Notice to potential Class Members,
 based on email addresses provided by Defendant. The Email Notice was sent to [] potential Class
 Members.

Class Members were given until [sixty (60) calendar days after the Settlement Notice Date]
to object to or exclude themselves from the Settlement. A total of \_\_\_\_\_ claims were received by
the administrator, for a total of \_\_\_\_\_ Units. Of these, \_\_\_\_\_ claims were deemed valid, for a total
of \_\_\_\_\_ units, or a total dollar value to be paid to claimants of \$\_\_\_\_\_.

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### ANALYSIS

- 9 A. JURISDICTION
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This court has jurisdiction under 28 U.S.C. § 1332(d)(2).

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B.

### **CERTIFICATION OF THE CLASS**

The Court finds that the prerequisites of Rule 23 of the Federal Rules of Civil Procedure 12 have been satisfied for certification of the Class for settlement purposes because: Class Members 13 are so numerous that joinder of all members is impracticable; there are questions of law and fact 14 common to the Class; the claims and defenses of the Class Representatives are typical of the claims 15 and defenses of the Class they represent; the Class Representatives have fairly and adequately 16 protected the interests of the Class with regard to the claims of the Class they represent; common 17 questions of law and fact predominate over questions affecting only individual Class Members, 18 rendering the Class sufficiently cohesive to warrant a class settlement; and the certification of the 19 Class is superior to individual litigation and/or settlement as a method for the fair and efficient 20 resolution of this matter. The Court additionally finds, for the reasons set forth in Plaintiffs' Motion 21 for Approval of Class Settlement and for the purposes of settlement, that despite any differences 22 among the laws of the various states, common issues of law and fact predominate, making 23 certification of a nationwide class for settlement purposes appropriate. In particular, the identical 24 challenged marketing and labeling was provided to all Class Members; the various states require 25 similar elements of proof with respect to the asserted claims in the Third Consolidated Amended 26 Complaint and common issues under those laws predominate. 27

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For purposes of the settlement and this Final Approval Order and Judgment, the Court

hereby finally certifies the following Class: all persons in the United States who, between January 1 23, 2020 and the date of this Order, purchased in the United States, for household use and not for 2 resale or distribution, any Poppi beverage. "Excluded Persons" from the Class are: (1) the 3 Honorable Judge Haywood S. Gilliam, Jr., the Honorable Maxine M. Chesney, Magistrate Judge 4 Sallie Kim, the Honorable Jay C. Gandhi (Ret.), and any member of their immediate families; (2) 5 any government entity; (3) Defendant; and (4) any persons who timely opted-out of the Settlement. 6 For the purpose of this settlement, the Court hereby finally certifies Plaintiffs Kristin Cobbs, 7 Carol Lesh, Sarah Coleman, and Megan Wheeler as Class Representatives and designates the law 8 firms of Bursor & Fisher, P.A. and Gutride Safier LLP as Class Counsel. 9

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### C. NOTICE AND CLAIMS ADMINISTRATION

The Notice Plan provided direct notice to potential Class Members where possible, based 11 on the emails of potential Class Members provided by Defendant. In addition, the Notice Plan 12 provided notice to Class Members by publication, which is appropriate here where the evidence is 13 undisputed that the parties do not know the names or contact information for Class Members, as 14 the purchases were made at retail and Defendant is a wholesaler. Under these circumstances, 15 individualized notice was not required or reasonably practicable. See, e.g., Briseno v. ConAgra 16 Foods, Inc., 844 F.3d 1121, 1129 (9th Cir. 2017) (recognizing that Rule 23 "does not insist on 17 actual notice to all class members;" and "courts have routinely held that notice by publication in a 18 periodical, on a website, or even at an appropriate physical location is sufficient to satisfy due 19 process"); In re Toys R Us-Delaware, Inc. FACTA Litigation, 295 F.R.D. 438, 449 (C.D. Cal. 2014) 20 ("When the court certifies a nationwide class of persons whose addresses are unknown, notice by 21 publication is reasonable."). The Court reaffirms the finding it made in the order granting 22 preliminary approval that the Notice Plan provided the best practicable notice to the members of 23 the Class and satisfied the requirements of due process. The Court also finds, based on the evidence 24 provided in support of this motion seeking approval of the Settlement, that the Notice Plan comports 25 with due process. See, e.g., Ellison v. Steven Madden, Ltd., 2013 WL 12124432, at \*3 (C.D. Cal. 26 May 7, 2013) (approving a notice plan reaching 77%); In re: Whirlpool Corp. Front-Loading 27 Washer Prod. Liab. Litig., 2016 WL 5338012, at \*9 (N.D. Ohio Sept. 23, 2016) (approving notice 28

plan reaching approximately 77.5% of class members); *see also Miller v. Ghirardelli Chocolate Co.*, 2015 WL 758094, at \*3 (N.D. Cal. Feb. 20, 2015) (approving similar publication notice plan
in class action regarding grocery store item); *Arnold v. Fitflop USA, LLC*, , 2014 WL 1670133, at
\*5 (S.D. Cal. Apr. 28, 2014) (same for class action regarding shoes).

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### D. FINAL APPROVAL OF SETTLEMENT AGREEMENT

A court may approve a proposed class action settlement of a certified class only "after a 6 hearing and on finding that it is fair, reasonable, and adequate after considering whether: (A) the 7 class representatives and class counsel have adequately represented the class; (B) the proposal was 8 negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) 9 the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of 10 distributing relief to the class, including the method of processing class-member claims; (iii) the 11 terms of any proposed award of attorneys' fees, including timing of payment; and (iv) any 12 agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members 13 equitably relative to each other." Fed. R. Civ. P. 23(e)(2).<sup>2</sup> In reviewing the proposed settlement, 14 the Court need not address whether the settlement is ideal or the best outcome, but only whether 15 the settlement is fair, free of collusion, and consistent with plaintiff's fiduciary obligations to the 16 class. See Hanlon v. Chrysler Corp., 150 F.3d 1011,1027 (9th Cir. 1998). 17

For the reasons further detailed below and discussed at the Final Approval hearing, the
Court finds that the Settlement is fair and appropriate under the Rule 23(e)(2) factors. Plaintiffs'

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<sup>21</sup> <sup>2</sup> Prior to the amendments to Rule 23, which took effect December 1, 2018, the Ninth Circuit had enumerated a similar list of factors to consider in evaluating a proposed class settlement. See 22 Churchill Vill., L.L.C. v. Gen. Elec., 361 F.3d 566, 575 (9th Cir. 2004) (enumerating the following factors: "(1) the strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration 23 of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the 24 proceedings; (6) the experience and views of counsel; (7) the presence of a governmental 25 participant; and (8) the reaction of the class members to the proposed settlement"). In the notes accompanying the Rule 23 amendments, the Advisory Committee explained that the amendments 26 were not designed "to displace any factor, but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the 27 proposal." Accordingly, this Court applies the framework of Rule 23 while "continuing to draw 28 guidance from the Ninth Circuit's factors and relevant precedent." Hefler v. Wells Fargo & Co., 2018 WL 6619983, at \*4 (N.D. Cal. Dec. 18, 2018).

claims are based on the "gut healthy" claims on the front label and packaging of the Products. 1 Defendant filed a motion to dismiss that this Court has not yet been ruled upon. Even if Plaintiffs' 2 claims survived Defendant's motion to dismiss, there would be a battle of the experts regarding 3 consumer understanding, materiality of the representations, and the computation of damages, if 4 any. Proceeding to trial would have been costly; recovery was not guaranteed; and there was the 5 possibility of protracted appeals. Even if Plaintiffs succeeded, Class Counsel anticipates that the 6 best-case recovery per Unit after trial was less than the amount provided for in the Settlement, and 7 a claims process would be required even after trial, because Class Members could not otherwise be 8 identified. The Settlement was reached only after contested litigation and private mediation with 9 the assistance of a well-respected and experienced mediator. Counsel for both parties were highly 10 experienced; Class Counsel provided detailed declarations explaining why they supported the 11 settlement, and there is no factual basis to support any allegation of collusion or self-dealing. 12

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## 1. Class Representatives and Class Counsel Have Adequately Represented the Class.

In the Preliminary Approval Order, this Court found that the Class Representatives and Class Counsel adequately represented the interests of the Class. The Court sees no evidence to contradict its previous finding, and reconfirms it here. Class Counsel has vigorously prosecuted this action through dispositive motion practice and formal mediation.

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2.

### The Settlement Was Negotiated at Arm's Length.

This Court finds that the Settlement is the product of serious, non-collusive, arms' length 20 negotiations by experienced counsel with the assistance of a well-respected and experienced 21 mediator, Honorable Jay Gandhi (Ret.) of JAMS. See, e.g., G. F. v. Contra Costa Ctv., 2015 WL 22 4606078, at \*13 (N.D. Cal. July 30, 2015) (noting that "[t]he assistance of an experienced mediator 23 in the settlement process confirms that the settlement is non-collusive"); Hefler, 2018 WL 6619983, 24 at \*6 ("[T]he Settlement was the product of arm's length negotiations through two full-day 25 mediation sessions and multiple follow-up calls supervised by former U.S. District Judge Layn 26 Phillips."). Further, before agreeing upon the terms of the Settlement, the Parties also debated 27 various important legal issues in connection with the motions to dismiss. The record was thus 28
sufficiently developed that the Parties were fully informed as to the viability of the claims and able
 to adequately evaluate the strengths and weaknesses of their respective positions and the risks to
 both sides if the case did not settle.

The Court has independently and carefully reviewed the record for any signs of collusion
and self-dealing and finds that no collusion or self-dealing occurred. Specifically, the Court finds
that Class Counsel did not compromise the claims of the Class in exchange for higher fees.

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### **3.** The Relief to the Class is Adequate Recovery to the Class.

8 Although not articulated as a separate factor in Rule 23(e), "[t]he relief that the settlement 9 is expected to provide to Class Members is a central concern." Fed. R. Civ. P. 23(e)(2)(C)–(D) 10 advisory committee's note to 2018 amendment. "The Court therefore examines 'the amount offered 11 in settlement." *Hefler*, 2018 WL 6619983, at \*8 (quoting *Hanlon*, 150 F.3d at 1026).

Defendant agreed to create a settlement fund of \$8,900,000.00 from which Class Members may file a Claim to receive a Class Payment as follows: seventy-five cents (\$0.75) per Single Can Unit of the Product purchased; three dollars (\$3.00) per 4-pack Unit of the Product purchased; six dollars (\$6.00) per 8-pack Unit of the Product purchased; and nine dollars (\$9.00) per 12-pack Unit and 15-pack Unit, respectively, of the Product purchased.

The Minimum Payment for any Approved Claim is five dollars (\$5.00) per Household. 17 However, the actual Class Payment received may be reduced pro rata depending on the number 18 of Approved Claims and the cost of other expenses paid out of the Settlement Fund. If a Class 19 Member does not provide Proof of Purchase, the claimant can claim a maximum Class Payment 20 of sixteen (\$16.00) per Household. Additionally, the actual Class Payment may be increased on 21 a pro-rata basis, if, after accounting for all other expenses deducted from the Settlement Fund 22 (e.g., Administrative and Notice Costs, Attorneys' Fees and Costs, and Service Awards), there 23 are excess funds in the Settlement Fund to pay all Class Payments on Approved Claims. However, 24 under no circumstances shall a person who submits a Claim without a Proof of Purchase receive 25 more than eighty dollars (\$80.00). If after distributions of Class Payments and payment of 26 Administrative and Notice Costs, Attorneys' Fees and Costs, and Service Awards, any money 27 remains in the Settlement Fund, that shall be paid to a cy pres recipient, Feeding America. 28

The Settlement provides Class Members with a substantial recovery, and there were 1 substantial obstacles to any recovery at all. In particular, Defendant's motion to dismiss has not yet 2 been ruled on by the Court. Even if Plaintiffs' claims survived the motion to dismiss, there would 3 be difficulties establishing: (1) that Defendant's statements on the Product Labeling (and other 4 advertising and marketing materials), as challenged by Plaintiffs, were likely to mislead reasonable 5 persons; (2) that the alleged misrepresentations and omissions were material to reasonable persons; 6 and (3) that damages or restitution should be awarded or, if so, that the amount of the award would 7 be more than nominal. Also, prior to settlement, no class had been certified, and the Court had not 8 yet decided whether claimants in states other than California could state a claim for relief. 9

Based on the record evidence and argument the Parties submitted in connection with the Settlement, as well as the familiarity the Court has developed with this case, the Court finds that this monetary recovery is fair, reasonable, and adequate, particularly given the overall claimed actual damages amount, risks of proceeding to trial, and the amount made available to the Class.

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# 4. The Strength and Weakness of Plaintiffs' Case and Risk of Continuing Litigation.

Plaintiffs' claims had not yet survived Defendant's motion to dismiss and no classes or
subclasses had been certified. Plaintiffs face serious risk at a trial. Both class certification and trial
likely would have required expert analysis to establish, among other things, Plaintiffs' allegation
that the "gut healthy" claims were misleading, material to consumer purchasing decisions, and that
Plaintiffs suffered any damages. Each of these expert methodologies was subject to criticism of
cross-examination and could have been discounted by the jury.

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5.

# Effectiveness of Distribution Method.

As noted above, the Court concludes that the distribution method and claims process is reasonable. Class Members who seek benefits under the Settlement were required only to submit a relatively simple claim form with basic questions about class membership. The process would be no different than that required after trial, as Defendant is a wholesaler and has no means of directly identifying retail-purchasing class members.

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# The Terms of the Proposed Award of Attorneys' Fees.

2 As noted in section E below, the Court finds the proposed award of attorneys' fees
3 reasonable.

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# 7. Other Agreements.

The Court is required to consider "any agreements required to be identified under Rule
23(e)(3)." *Fitzhenry-Russell v. Coca-Cola Co.*, 2019 WL 11557486, at \*7 (N.D. Cal. Oct. 3, 2019).
The Parties have attested, and the Court finds, that there are no such agreements.

8

# The Proposal Treats Class Members Equitably Relative to Each Other.

All Class Members who submit an Approved Claim are entitled to the same relief under the
Settlement. This proposal is fair and equitable because the Class Payment amounts (*e.g.*, \$.75 per
Single Unit) are approximately 30% of the purchase price. Even though the Products may have
been sold at different prices based on retail location, the uniform relief makes it unnecessary for
Claimants to testify how much they paid for each purchase and makes the Settlement
administratively efficient. The Service Awards for the Plaintiffs are appropriate for the reasons
stated below.

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#### The Response of Class Members.

17 Out of an estimated million Class Members, there were opt-outs and objections. 18 In comparison, there were Approved Claims, according to the report of the Settlement 19 Administrator, This is an overwhelmingly positive response. See Churchill Village, LLC v. General 20 *Electric*, 361 F.3d 566, 577 (9th Cir. 2004) (explaining that a court may infer appropriately that a 21 class action settlement is fair, adequate, and reasonable when few class members object to it); 22 Zepeda v. PayPal, Inc., 2017 WL 1113293, at \*16 (N.D. Cal. Mar. 24, 2017) (holding "the 23 indisputably low number of objections and opt-outs, standing alone, presents a sufficient basis upon 24 which a court may conclude that the reaction to settlement by the class has been favorable); Cruz 25 v. Sky Chefs, Inc., 2014 WL 7247065, at \*5 (N.D. Cal. Dec. 19, 2014) ("A court may appropriately 26 infer that a class action settlement is fair, adequate, and reasonable when few class members object 27 to it."); see also, e.g., In re Carrier IO, Inc., Consumer Privacy Litig., 2016 WL 4474366, at \*4 28 (N.D. Cal. Aug. 25, 2016) (stating that, "[i]n an analysis of settlements where notice relied on media

notice exclusively, the claims rate ranged between 0.002% and 9.378%, with a median rate of
0.023%") (emphasis added).

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# 10. Costs of Administering the Settlement.

The Settlement Administrator has submitted an invoice for its expenses incurred to date and expected to be incurred through the completion of its work, in the amount of \$\_\_\_\_\_. Included in this invoice is the amount for all taxes due from the Settlement Fund. The Court finds that such amounts are reasonable and authorizes payment of the invoices, in full, from the Settlement Fund.

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E.

## ATTORNEYS' FEES

Class Counsel requests an award of 30% of the Settlement Fund in attorneys' fees. Hav-9 ing reviewed the Motion for an Award of Attorneys' Fees, the Court finds that the hours Class 10 Counsel claimed were reasonably worked and that the rates charged are reasonable and commen-11 surate with those charged by attorneys with similar experience who appear in this Court, and that 12 the multiplier is warranted. The Court also finds that Class Counsel represented their clients with 13 skill and diligence and obtained an excellent result for the Class, taking into account the possible 14 outcomes at, and risks of proceeding to, trial. Accordingly, the following amount shall be paid to 15 Class Counsel from the Settlement Fund, as attorneys' fees pursuant to the terms of the Settle-16 ment Agreement: **\$[**]. 17

18 **F.** LIT

# LITIGATION COSTS

Class Counsel also are entitled to reimbursement of reasonable out-of-pocket expenses. 19 Fed. R. Civ. P. 23(h); see Harris v. Marhoefer, 24 F.3d 16, 19 (9th Cir. 1994) (holding that attor-20 neys may recover reasonable expenses that would typically be billed to paying clients in non-con-21 tingency matters.); Van Vranken v. Atl. Richfield Co., 901 F. Supp. 294, 299 (N.D. Cal. 1995) 22 (approving reasonable costs in class action settlement). Costs compensable under Rule 23(h) in-23 clude "nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 24 23(h). 25 Here, Class Counsel seeks reimbursement of \$ in litigation expenses and provide 26

- 27 records that document their claim. (McCrary Decl. ¶¶\_\_\_\_; Fisher Decl. ¶¶\_\_\_\_). No objection
- 28 has been made to any cost item or amount. Accordingly, the Court finds that these submissions

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support an award \$\_\_\_\_\_

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# CLASS REPRESENTATIVE SERVICE AWARDS

in costs.

The district court must evaluate named plaintiffs' awards individually, using relevant fac-3 tors including "the actions the plaintiff has taken to protect the interests of the class, the degree to 4 which the class has benefitted from those actions, ... [and] the amount of time and effort the 5 plaintiff expended in pursuing the litigation." Staton, 327 F.3d at 977. "Such awards are discre-6 tionary... and are intended to compensate class representatives for work done on behalf of the 7 class, to make up for financial or reputational risk undertaken in bringing the action, and, some-8 times, to recognize their willingness to act as a private attorney general." Rodriguez v. West Pub-9 lishing Corp., 563 F.3d 948, 958-959 (9th Cir. 2009). The Ninth Circuit recently emphasized that 10 district courts must "scrutiniz[e] all incentive awards to determine whether they destroy the ade-11 quacy of the class representatives." Radcliffe v. Experian Info. Solutions, 715 F.3d 1157, 1163 12 (9th Cir. 2013). Here Plaintiffs are seeking a service award of \$5,000 each, for a total of \$20,000 13 in service awards. 14

Plaintiffs Kristin Cobbs, Carol Lesh, Sarah Coleman, and Megan Wheeler, the named 15 plaintiffs in the Actions, took on substantial risk, most importantly the risk of publicity and noto-16 riety. (McCrary Decl. ¶¶ ; Fisher Decl. ¶¶ ). They remained actively involved in the 17 Consolidated Actions prior to and after settlement. Id. The other named Plaintiffs all provided 18 Class Counsel with sufficient information regarding their experiences and claims to enable them 19 to join this case and represent a nationwide class. Id. Finally, all the Plaintiffs agreed to a broader 20 general release than the release applicable to the other Class Members. See Settlement Agreement 21 § 9. 22

# For the reasons stated above, the following amounts shall be paid from the Settlement Fund as Service Awards to the Plaintiffs:

- a. to Plaintiff Kristin Cobbs: \$5,000;
- b. to Plaintiff Carol Lesh: \$5,000;
  - c. to Plaintiff Sarah Coleman: \$5,000; and
  - d. to Plaintiff Megan Wheeler: \$5,000.

# 1 H. CY PRES AWARD

If after payment of the Class Payments, Administrative and Notice Costs, Attorneys' Fees 2 and Costs, and Service Awards, money remains in the Settlement Fund, that remainder shall be 3 paid to Feeding America. Feeding America is the nation's largest domestic hunger-relief 4 organization. Feeding America's network of food banks, pantries, and meal programs serves 5 communities across the United States. The *cy pres* doctrine is appropriate for a case like this one, 6 where Class Members who did not make claims cannot be easily located or identified, to "put the 7 unclaimed fund to its next best compensation use, e.g., for the aggregate, indirect, prospective 8 benefit of the class." Nachshin v. AOL, LLC, 663 F.3d 1034, 1038 (9th Cir. 2011) (citing Masters 9 v. Wilhelmina Model Agency, Inc., 473 F.3d 423, 436 (2d Cir.2007)). A cy pres remedy must "bear[] 10 a substantial nexus to the interests of class members." Lane v. Facebook, 696 F.3d 811, 821 (9th 11 Cir. 2012) cert. denied, 134 S. Ct. 8 (U.S. 2013). In evaluating a cy pres component of a class action 12 settlement, courts look to factors set forth in Six (6) Mexican Workers, 904 F.2d at 13 1305. Specifically, the cy pres remedy "must account for the nature of the plaintiffs' lawsuit, the 14 objectives of the underlying statutes, and the interests of the silent class members[.]" Nachshin, 663 15 F.3d at 1036 (citing Six (6) Mexican Workers, 904 F.2d at 1307-08). The Court finds the cy pres 16 recipient appropriate. 17

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# I. COMPLIANCE WITH CLASS ACTION FAIRNESS ACT

**RELEASES; EFFECT OF THIS ORDER** 

The record establishes that the Settlement Administrator served the required notices under
the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, with the documentation required by 28
U.S.C. § 1715(b)(1-8).

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# Releases by Class Representatives and Class Members

By operation of this Order and Judgment, upon the Effective Date, Plaintiffs and all Class Members, including any and all of their respective heirs, executors, administrators, or assigns, provided that any Class Member who timely and properly excludes themselves under Section 5 below shall not be included herein, the Releasing Persons, release and forever discharge and covenant not to sue, and are permanently enjoined from suing, Poppi and each of its past, present, or future direct or indirect parents, subsidiaries, divisions, affiliates and related entities,
stockholders, shareholders, officers, directors, partners, insurers, investors, employees, agents,
attorneys, advisors, consultants, joint venturers, independent contractors, wholesalers, resellers,
distributors, retailers, related companies, divisions, and any of their legal representatives (and the
predecessors, heirs, executors, administrators, successors, purchasers, and assigns of each of the
foregoing) from the Released Claims.

"Released Persons" means Poppi and each of its past, present or future direct or indirect
parents, subsidiaries, divisions, affiliates and related entities, stockholders, shareholders, officers,
directors, partners, insurers, investors, employees, agents, attorneys, advisors, consultants, joint
venturers, independent contractors, wholesalers, resellers, distributors, retailers, related companies,
divisions, and any of their legal representatives (and the predecessors, heirs, executors,
administrators, successors, purchasers, and assigns of each of the foregoing).

"Released Claims" means any and all claims, demands, actions, causes of action, lawsuits,
arbitrations, damages, liabilities, or penalties, whether federal or state, known or unknown, asserted
or unasserted, regardless of legal theory, legal, equitable, or otherwise, that were or could have been
asserted in the Consolidated Action or that arise out of or relate to the labeling, advertising, or
formulation of the Products between January 23, 2020 and [Settlement Notice Date]. The Released
Claims shall not release any Class Member's rights to enforce the Agreement. The Released Claims
shall not release any Class Member's personal injury claims.

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### 2. Additional Releases by Class Representatives

21 By operation of this Order and Judgment, in addition to the releases granted by Plaintiffs in the prior section, upon the Effective Date, Plaintiffs on behalf of each of their respective spouses, 22 children, executors, representatives, guardians, wards, heirs, estates, bankruptcy estates, 23 bankruptcy trustees, successors, predecessors, attorneys, agents and assigns, and all those who 24 claim through them or who assert claims (or could assert claims) on their behalf, release and forever 25 26 discharge the Released Parties from any actions, causes of action (in law, equity, or administratively), suits, debts, liens, or claims, known or unknown, suspected or unsuspected, fixed 27 or contingent, which they may have or claim to have that arise before entry of the Final Approval 28

1 Order and Judgement.

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# 3. Waiver of Provisions of California Civil Code § 1542.

By operation of this Order and Judgment, with respect to the released claims set forth above,
the Releasing Persons shall be deemed to have waived and relinquished, to the fullest extent
permitted by law, the provisions, rights and benefits conferred by any law of any state of the United
States, or principle of common law or otherwise, which is similar, comparable, or equivalent to
section 1542 of the California Civil Code, which provides:

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

The Releasing Persons understand and acknowledge the significance of these waivers of
California Civil Code section 1542 and any other applicable federal or state statute, case law, rule
or regulation relating to limitations on releases.

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# 4. Other Effects of This Order

16 No action taken by the Parties, either previously or in connection with the negotiations or 17 proceedings connected with the Agreement, shall be deemed or construed to be an admission of the 18 truth or falsity of any claims or defenses heretofore made or an acknowledgment or admission by 19 any Party of any fault, liability or wrongdoing of any kind whatsoever to any other Party. Neither 20 the Agreement nor any act performed or document executed pursuant to or in furtherance of the 21 settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the 22 validity of any claim made by the Class Members or Class Counsel, or of any wrongdoing or 23 liability of the persons or entities released under this Order and Judgment and the Agreement, or 24 (b) is or may be deemed to be, or may be used as an admission of, or evidence of, any fault or 25 omission of any of the persons or entities released under this Order and Judgment and the 26 Agreement, in any proceeding in any court, administrative agency, or other tribunal. Any decision 27 by Defendant not to oppose the entry of this Order and Judgment shall not be construed as an 28 admission or concession by Defendant that class certification was appropriate in the Consolidated

1 Action or would be appropriate in any other action.

Except as provided in this Order, Plaintiffs shall take nothing against Defendant by their
Complaint. This order shall constitute a final judgment binding the Parties and Class Members with
respect to the Consolidated Action.

5 The Consolidated Action is hereby dismissed on the merits and with prejudice and final6 judgment shall be entered thereon, as set forth in this Order.

Without affecting the finality of the judgment hereby entered, the Court reserves jurisdiction over the implementation of the Agreement. In the event the Effective Date does not occur in accordance with the terms of the Agreement, then this Order and any judgment entered thereon shall be rendered null and void and shall be vacated, and in such event, all orders and judgments entered and releases delivered in connection herewith shall be null and void and the Parties shall be returned to their respective positions *ex ante*.

Without further order of the Court, the parties may agree to reasonable extensions of time tocarry out any provisions of the Agreement.

There is no just reason for delay in the entry of this Judgment, and immediate entry by theClerk of the Court is expressly directed.

IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

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HON. HAYWOOD S. GILLIAM, JR. UNITED STATES DISTRICT JUDGE

**EXHIBIT 2** 

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www.bursor.com

701 BRICKELL AVENUE **MIAMI, FL 33131** 

1330 AVENUE OF THE AMERICAS 1990 NORTH CALIFORNIA BLVD. NEW YORK, NY 10019

WALNUT CREEK, CA 94596

# FIRM RESUME

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

The lawyers at our firm have an active civil trial practice, having won multi-milliondollar 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<sup>™</sup>, Hydroxycut, and Sensa<sup>™</sup> 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,

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- 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,

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- 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,
- 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,

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- 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,

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- 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 clockin 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,

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- 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,
- Cruz v. The Connor Group, A Real Estate Investment Firm, LLC, (N.D. Ill. Oct. 26, 2022) to represent a certified class of workers who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
- 72. *Delcid et al. v. TCP HOT Acquisitions LLC et al.* (S.D.N.Y. Oct. 28, 2022) to represent a certified nationwide class of purchasers of Sure and Brut-brand antiperspirants that were allegedly contaminated with benzene,
- 73. *Kain v. The Economist Newspaper NA, Inc.* (E.D. Mich. Dec. 15, 2022) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
- 74. *Strano v. Kiplinger Washington Editors, Inc.* (E.D. Mich. Jan. 6, 2023) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
- 75. *Moeller v. The Week Publications, Inc.* (E.D. Mich. Jan. 6, 2023) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
- 76. *Ambrose v. Boston Globe Media Partners, LLC* (D. Mass. May 25, 2023) to represent a nationwide class of newspaper subscribers who were also Facebook users under the Video Privacy Protection Act,
- 77. *In re: Apple Data Privacy Litigation*, (N.D. Cal. July 5, 2023) to represent a putative nationwide class of all persons who turned off permissions for data tracking and whose mobile app activity was still tracked on iPhone mobile devices,
- 78. Young v. Military Advantage, Inc. d/b/a Military.com (Cir. Ct. DuPage Cnty. July 26, 2023) to represent a nationwide class of website subscribers who were also Facebook users under the Video Privacy Protection Act,
- 79. *Whiting v. Yellow Social Interactive Ltd.* (Cir. Ct. Henderson Cnty. Aug. 15, 2023) to represent a certified class of Kentucky residents who lost money playing mobile applications games that allegedly constituted illegal gambling under Kentucky law,
- 80. *Kotila v. Charter Financial Publishing Network, Inc.* (W.D. Mich. Feb. 21, 2024) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,

- 81. Schreiber v. Mayo Foundation for Medical Education and Research (W.D. Mich. Feb. 21, 2024) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
- 82. Norcross v. Tishman Speyer Properties, et al. (S.D.N.Y. May 17, 2024) to represent a class of online ticket purchasers under New York Arts & Cultural Affairs Law § 25.07(4).

#### **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 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).

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*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, unlawful and junk fees, data breach claims, and violations of the Telephone Consumer Protection Act and 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 Courts of Appeals for the First, Second and Sixth Circuits.

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:

*Farwell v. Google, LLC*, 595 F. Supp. 3d 702 (C.D. Ill. Mar. 31, 2022), denying defendant's motion to dismiss BIPA claims brought on behalf of Illinois students using Google's Workspace for Education platform.

*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:

*Schreiber v. Mayo Foundation*, Case No. 22-cv-0188-HYJ-RSK (W.D. Mich. 2024) – final approval granted for \$52.5 million class settlement to resolve claims of periodical subscribers for alleged statutory privacy violations.

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

*Benbow v. SmileDirectClub, LLC*, Case No. 2020-CH-07269 (Cir. Ct. Cook Cnty. 2022) – final approval granted for \$11.5 million class settlement to resolve claims for alleged TCPA violations.

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*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 on the Google Photos platform.

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

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

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

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

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

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

#### SARAH N. WESTCOT

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

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

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

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

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

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

### 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 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.

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

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

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

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

#### Selected Class Settlements:

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

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

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

#### Selected Publications:

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

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

#### YITZCHAK KOPEL

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

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

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

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

#### Selected Published Decisions:

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

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

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

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

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

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

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

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*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 repellers.

*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 repellers.

*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 repellers.

*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 repellers.

*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.

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*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 repellers.

*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.

#### 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, Michigan, and California, 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. Case 4:24-cv-03229-HSG Document 55-1 Filed 03/14/25 Page 102 of 114 BURSOR FISHER PAGE 20

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.

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

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

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

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

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

#### ALEC M. LESLIE

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

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

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

#### Selected Class Settlements:

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

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

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*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.

*D'Amario et al. v. Univ. of Tampa*, Case No. 7:20-cv-07344 (S.D.N.Y. 2022) – final approval granted for class settlement to resolve claims over COVID-19 fee refunds to students.

*Olin et al. v. Meta Platforms, Inc.*, Case No. 3:18-cv-01881-RS (N.D. Cal. 2022) – final approval granted for class settlement involving invasion of privacy claims.

*Croft v. SpinX Games et al.*, Case No. 2:20-cv-01310-RSM (W.D. Wash. 2022) – final approval granted for class settlement involving allegedly deceptive and/or illegal gambling practices.

*Armstead v. VGW Malta Ltd. et al.*, Case No. 22-CI-00553 (Henderson Cnty. Ky. 2023) – final approval granted for class settlement involving allegedly deceptive and/or illegal gambling practices.

*Barbieri v. Tailored Brands, Inc.*, Index No. 616696/2022 (Nassau Cnty. N.Y.) – final approval granted for class settlement involving untimely wage payments to employees.

*Metzner et al. v. Quinnipiac Univ.*, Case No. 3:20-cv-00784 (D. Conn.) – final approval granted for class settlement to resolve claims over COVID-19 fee refunds to students.

*In re GE/Canon Data Breach*, Case No. 1:20-cv-02903 (S.D.N.Y.) – final approval granted for class settlement to resolve data breach claims.

*Davis v. Urban Outfitters, Inc.,* Index No. 612162/2022 (Nassau Cnty. N.Y.) – final approval granted for class settlement involving untimely wage payments to employees.

*Armstead v. VGW Malta LTD et al.*, Civil Action No. 22-CI-00553 (Henderson Cir. Ct. Ky.) – final approval granted for class settlement involving allegedly deceptive and/or illegal gambling practices.

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*Casler et al. v. Mclane Company, Inc. et al.,* Index No. 616432/2022 (Nassau Cnty. N.Y.) – final approval granted for class settlement involving untimely wage payments to employees.

*Wyland v. Woopla, Inc.*, Civil Action No. 2023-CI-00356 (Henderson Cir. Ct. Ky.) – final approval granted for class settlement involving allegedly deceptive and/or illegal gambling practices.

*Graziano et al. v. Lego Systems, Inc.,* Index No. 611615/2022 (Nassau Cnty. N.Y.) – final approval granted for class settlement involving untimely wage payments to employees.

*Lipsky et al. v. American Behavioral Research Institute, LLC,* Case No. 50-2023-CA-011526-XXXX-MB (Palm Beach Cnty. Fl.) – final approval granted to resolve allegedly deceptive automatic renewal and product efficacy claims.

*Whiting v. Yellow Social Interactive Ltd.*, Civil Action No. 2023-CI-00358 (Henderson Cir. Ct. Ky.) – final approval granted for class settlement involving allegedly deceptive and/or illegal gambling practices.

#### <u>STEPHEN BECK</u>

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, the Eastern District of Missouri, and the Northern District of Illinois.

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

#### **STEFAN BOGDANOVICH**

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

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

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

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

#### MAX S. ROBERTS

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

In 2023, Max was named "Rising Star" in the New York Metro Area by Super Lawyers®.

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 <u>Weaning Drug Manufacturers Off Their Painkiller: Creating an</u> <u>Exception to the Learned Intermediary Doctrine in Light of the Opioid Crisis</u>. 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:

*Huertas v. Bayer US LLC*, 120 F.4th 1169 (3d Cir. 2024), reversing district court and holding plaintiffs had alleged an injury-in-fact sufficient for Article III standing. Max personally argued the appeal before the Third Circuit, which can be listened to <u>here</u>.

*Jackson v. Amazon.com, Inc.*, 65 F.4th 1093 (9th Cir. 2023), affirming district court's denial of motion to compel arbitration. Max personally argued the appeal before the Ninth Circuit, which can be viewed <u>here</u>.

*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 <u>here</u>.

*Mora v. J&M Plating, Inc.*, 213 N.E.3d 942 (Ill. App. Ct. 2d Dist. 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 <u>here</u>.

Shah v. Fandom, Inc., --- F. Supp. 3d ---, 2024 WL 4539577 (N.D. Cal. Oct. 21, 2024), denying motion to dismiss alleged violations of California pen register statute.

*Yockey v. Salesforce, Inc.*, --- F. Supp. 3d ---, 2024 WL 3875785 (N.D. Cal. Aug. 16, 2024), denying motion dismiss alleged violations of California and Pennsylvania wiretapping statutes.

*Gladstone v. Amazon Web Services, Inc.,* --- F. Supp. 3d ---, 2024 WL 3276490 (W.D. Wash. July 2, 2024), denying motion to dismiss alleged violations of California wiretapping statute.

*Rancourt v. Meredith Corp.*, 2024 WL 381344 (D. Mass. Jan. 11, 2024), denying motion to dismiss alleged violations of federal Video Privacy Protection Act, and finding personal jurisdiction over operator of mobile application.

Saunders v. Hearst Television, Inc., 711 F. Supp. 3d 24 (D. Mass. 2024), denying motion to dismiss alleged violations of federal Video Privacy Protection Act.

*Cristostomo v. New Balance Athletics, Inc.*, 647 F. Supp. 3d 1 (D. Mass. 2022), denying motion to dismiss and motion to strike class allegations in case involving sneakers marketed as "Made in the USA."

# Selected Class Settlements:

*Sholopa v. Turk Hava Yollari A.O. (d/b/a Turkish Airlines)*, Case No. 1:20-cv-3294-ALC (S.D.N.Y. 2023) – final approval granted for \$14.1 million class settlement to resolve claims of passengers whose flights with Turkish Airlines were cancelled due to COVID-19 and who did not receive refunds.

*Payero v. Mattress Firm, Inc.*, Case No. 7:21-cv-3061-VB (S.D.N.Y. 2023) – final approval granted for \$4.9 million class settlement to resolve claims of consumers who purchased allegedly defective bed frames.

*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.

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#### **Bar** Admissions

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

#### <u>JULIA K. VENDITTI</u>

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

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

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

#### JULIAN DIAMOND

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

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

#### **MATTHEW GIRARDI**

Matt Girardi is an Associate with Bursor & Fisher, P.A. Matt focuses his practice on complex civil litigation and class actions, and has focused specifically on consumer class actions involving privacy violations, illegal gambling, financial misconduct, and false advertising. 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, the Eastern District of Michigan, the Western District of Michigan, the First Circuit Court of Appeals, and the Ninth Circuit Court of Appeals.

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. 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 prior to law school.

#### Selected Class Settlements:

*Armstead v. VGW Malta Ltd. et al.*, Case No. 22-CI-00553 (Henderson Cnty. Ky. 2023) – final approval granted for \$11.75 million class settlement involving allegedly deceptive and/or illegal gambling practices.

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

*Fischer, et al. v. Instant Checkmate LLC, et al.*, No. 19-cv-04892 (N.D. Ill. 2024) – final approval granted for state-by-state non-reversionary cash settlements involving alleged violations of right of publicity statutes totaling in excess of \$10.1 million.

*Wyland v. Woopla, Inc.,* Civil Action No. 2023-CI-00356 (Henderson Cir. Ct. Ky. 2023) – final approval granted for \$835,000 class settlement involving allegedly deceptive and/or illegal gambling practices.

*Whiting v. Yellow Social Interactive Ltd.*, Civil Action No. 2023-CI-00358 (Henderson Cir. Ct. Ky. 2023) – final approval granted for \$1.32 million class settlement involving allegedly deceptive and/or illegal gambling practices.

#### JENNA GAVENMAN

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

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

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

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

#### **EMILY HORNE**

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

Emily is admitted to the State Bar of California.

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

#### **IRA ROSENBERG**

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

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

#### **LUKE SIRONSKI-WHITE**

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

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

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

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

#### **INES DIAZ**

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

Ines is admitted to the State Bar of California.

Ines received her Juris Doctor in 2023 from the University of California, Berkeley School of Law. During law school, Ines served as an Executive Editor of the California Law Review. She also served as an intern with the East Bay Community Law Center's Immigration Clinic and as a Fellow of the Berkeley Law Academic Skills Program. Additionally, Ines served as an instructor with the University of California, Berkeley Extension, Legal Studies Global Access Program where she taught legal writing to international law students. In 2021, Ines was selected for a summer externship at the California Supreme Court where she served as a judicial extern for the Honorable Mariano-Florentino Cuéllar.

#### **CAROLINE C. DONOVAN**

Caroline C. Donovan is an Associate with Bursor & Fisher, P.A. Caroline focuses her practice on complex civil litigation, data protection, mass arbitration, and class actions. Caroline interned with Bursor & Fisher during her third year of law school before joining full time in Fall 2023.

Caroline is admitted to the State Bar of New York.

Caroline received her Juris Doctor in 2023 from Brooklyn Law School. During law school, Caroline was a member of the Moot Court Honor Society Trial Division, where she was chosen to serve as a National Team Member. Caroline competed and coached in numerous competitions across the country, and placed second at regionals in AAJ's national competition in

both her second and third year of law school. Caroline was also the President of the Art Law Association, and the Treasurer of the Labor and Employment Law Association.

During law school, Caroline was a judicial intern for Judge Kenneth W. Chu of the National Labor Relations Board. She also interned at the United States Attorney's Office in the Eastern District of New York, as well as a securities class action firm.

#### JOSHUA B. GLATT

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

Joshua earned his Juris Doctor from the University of California College of the Law, San Francisco (formerly U.C. Hastings). While there, he received a CALI Award for earning the highest grade in Constitutional Law II and served on the executive boards of the Jewish Law Students Association and the American Constitution Society. Prior to law school, Joshua graduated *summa cum laude* from the Walter Cronkite School of Journalism and Mass Communication at Arizona State University in 2016 and earned a master's degree from the University of Southern California in 2018.

#### JOSHUA R. WILNER

Joshua Wilner is an Associate with Bursor & Fisher, P.A. Joshua focuses his practice on complex civil litigation, data privacy, consumer protection, and class actions. Joshua was a Summer Associate at Bursor & Fisher prior to joining the firm full time in Fall 2023.

Joshua is admitted to the State Bar of California.

Joshua received his Juris Doctor in 2023 from Berkeley Law. During law school, he received the American Jurisprudence Award for Constitutional Law.

During law school, Joshua served on the board of the Berkeley Journal of Employment and Labor Law. Joshua also interned at Disability Rights California, Legal Aid at Work, and a private firm that worked closely with the ACLU of Northern California to enforce the California Racial Justice Act. In 2022 and 2023, Joshua worked as a research assistant for Professor Abbye Atkinson.

#### VICTORIA ZHOU

Victoria Zhou is an Associate in Bursor & Fisher's New York office. Victoria focuses her practice on class actions concerning data privacy and consumer protection.

Victoria is admitted to the State Bar of New York.

Victoria received her Juris Doctor from Fordham Law School in 2023. During law school, Victoria served as an Associate Editor of the Moot Court Board and competed in multiple mock trial competitions as a member of the Brendan Moore Trial Advocates. In

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addition, Victoria served as a judicial extern to Chief Judge Mark A. Barnett of the United States Court of International Trade. In 2019, Victoria graduated *magna cum laude* from Fei Tian College with a B.F.A. in Classical Dance.

#### KYLE D. GORDON

Kyle Gordon is an Associate with Bursor & Fisher, P.A. Kyle focuses his practice on class actions concerning data privacy and consumer protection. Kyle was a Summer Associate with Bursor & Fisher prior to joining the firm.

Kyle is admitted to the State Bar of New York.

Kyle received his Juris Doctor from Columbia Law School in 2023, where he was a Harlan Fiske Stone Scholar. During law school, Kyle was a Staff Editor for the Columbia Science and Technology Law Review. In 2020, Kyle graduated *summa cum laude* from New York University with a B.A. in Politics and became a member of Phi Beta Kappa. Prior to law school, Kyle interned in the Clerk's Office of the United States District Court for the District of Columbia.

#### **ELEANOR R. GRASSO**

Eleanor Grasso is an Associate with Bursor & Fisher, P.A. Eleanor focuses her practice on complex civil litigation, including data privacy and consumer protection class actions.

Eleanor is admitted to the State Bar of New York.

Eleanor earned her Juris Doctor from Fordham University School of Law. During law school, Eleanor was a member of the Fordham Journal of Intellectual Property, Media & Entertainment Law, serving as Symposium Editor for Volume XXXIV. Eleanor was also a member of the Brendan Moore Trial Advocacy Team, served as a Research Assistant, and was a member of the Board of Student Advisors.

Throughout her time in law school, Eleanor interned for the Office of the Public Defender for the Sixth Judicial Circuit of Florida in the Misdemeanor Unit, the Office of the Federal Public Defender for the Middle District of Tennessee in the Capital Habeas Unit, the ACLU of Florida, and for the Honorable Kiyo A. Matsumoto in the United States District Court for the Eastern District of New York. Eleanor was a Summer Associate with Bursor & Fisher and also interned part-time during her third year of law school.

Eleanor earned her Bachelors from the University of Florida, with a double-major in Criminology & Law and Political Science and a minor in French & Francophone studies.

#### RYAN B. MARTIN

Ryan Martin is an Associate with Bursor & Fisher, P.A. Ryan focuses his practice on complex civil litigation and consumer class actions. He was a Summer Associate and part-time law clerk with Bursor & Fisher prior to joining the firm as a full time Associate in August 2024.

Ryan is admitted to the State Bar of California. He earned his Juris Doctor from the University of California College of the Law, San Francisco (formerly U.C. Hastings), graduating *Cum Laude* with a Concentration in Environmental Law and as a member of the Honors Society. While there, he was a Senior Production Editor of the *U.C. Law Journal*, was President of the Hastings Environmental Law Association, and was a Torts Teaching Fellow.

Prior to law school, Ryan graduated from the W.A. Franke College of Business at Northern Arizona University with a Bachelors of Science in Hotel and Restaurant Management and a minor in Business. Ryan also studied Sustainable Business and Hotel Management at the Internationale Hochschule of Applied Sciences in Bad Honnef Germany and is a certified yoga instructor.

#### LOGAN HAGERTY

Logan Hagerty is an Associate with Bursor & Fisher, P.A. Logan is admitted to the State Bar of New York.

Logan received his Juris Doctor from Boston College Law School in 2024, where he received a certificate in Land & Environmental Law.

During law school, Logan was President of the Environmental Law Society. In addition, Logan worked for a class action firm, a general practice firm, and interned at a Massachusetts state agency.

Logan earned his Bachelors from St. Lawrence University, where he graduated magna cum laude with a double major in History and Environmental Studies and a minor in African Studies. He is also a member of Phi Beta Kappa.

#### KAREN VALENZUELA

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

Karen is admitted to the State Bar of California.

Karen received her Juris Doctor in 2024 from the University of California, Berkeley School of Law. During law school, Karen was part of the Consumer Protection Public Policy Order, and interned for the Los Angeles County Public Defender's Office. Karen also participated in the International Human Rights Law Clinic, La Alianza Workers' and Tenants' Rights Clinic, and the Death Penalty Clinic.

Prior to law school, Karen graduated from the University of California, Berkeley with a B.A. in Gender and Women's Studies and a minor in Global Poverty and Practice.