

## **NOTICE OF CLASS ACTION SETTLEMENT**

### **TO: PARENTS AND GUARDIANS OF CHILDREN, INCLUDING TEENS, WHO PLAY GAMING APPS ON SMARTPHONES AND OTHER MOBILE DEVICES**

Separate class action settlements (the “Settlements”) have been reached with 15 Defendants affecting parents and guardians of children, including teens, who have played certain games on smartphones and other mobile devices. The Settlements resolve three separate lawsuits alleging that Defendants used or allowed tracking technology included in various mobile gaming apps played by children, including teens, to serve them targeted advertisements. Defendants deny the allegations in the lawsuits, and the Court has not made a determination regarding Plaintiffs’ allegations.

In each Settlement, the Defendant agrees to implement or continue certain business practices for covered gaming apps on mobile devices. The Settlements do not provide money compensation to the class members, and class members do not release any claims for monetary damages. Class Counsel will request that the Court award them reasonable attorneys’ fees and expenses as compensation for their obtaining Defendants’ agreements to make certain changes to their business practices.

You are not required to take any action. This Notice further explains the litigation, each Settlement, and how you may comment or object to any of the Settlements, if you want. Each of the 15 Defendants either creates or publishes mobile gaming apps or works with game publishers to provide or assist in providing advertisements within the apps. The 15 Defendants are listed below, including a link to the settlement agreement with each Defendant where you can learn more about that settlement.

### **Settlement Classes**

Generally, you may be affected by and may be interested in the Settlements if your minor child, including teens, plays one of the covered gaming apps and you live in one of the following 36 states: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Texas, Utah, Vermont, Washington, or West Virginia.

The Settlements cover apps including Subway Surfers, Where’s My Water?, Princess Palace Pets, Llama Spit, and others. However, each Settlement specifically defines the relevant Settlement Class (including the individuals making up the Class and the geographic scope of the Class). A precise description of the Settlement Class for each of the Settlements is available here.

### **Summary of the Actions**

Each Settlement stems from three related actions brought in the Northern District of California (San Francisco), regarding gaming apps that Plaintiffs allege are marketed for minors: (1) McDonald v. Kiloo, Case No. 17-4344 (“Kiloo Action”), involves the “Subway Surfers” app; (2) Rushing v. The Walt Disney Company, Case No. 17-4419 (“Disney Action”), involves the “Princess Palace Pets” app and the “Where’s My Water?” apps; and (3) Rushing v. ViacomCBS Inc., Case No. 17-4492 (“Viacom Action”), involves the “Llama Spit” app.

All of the cases were filed as class actions by the parents of children who played the gaming apps, and allege that the apps at issue included technology called Software Development Kits (“SDKs”) used to track an individual user’s online behavior on a mobile device, including their children’s online behavior, and that Defendants collected device data without disclosure or parental consent for targeted advertising and profiling purposes. Each of the cases alleged a common law claim of intrusion upon seclusion as well as violations of California’s Constitutional Right to Privacy. Additionally, the Disney action

asserted claims under California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq. (“UCL”), New York Gen. Bus. & Prof. Law § 349 (“NYGBL § 349”), and Massachusetts Gen. Laws ch. 214 § 1B; the Kiloo case asserted additional claims under NYGBL § 349.

The Court has not made a determination of any wrongdoing by any Defendant, and each Defendant denies the allegations and Plaintiffs’ claims. Between February and April 2020, the parties agreed to settle all claims in each Action to avoid the costs and disruption of further litigation.

### **Summary of the Proposed Settlements**

This notice summarizes the proposed Settlements. The precise terms and conditions of the Settlements are provided here, or can be obtained by contacting Class Counsel (see below section, “Contacting Class Counsel”), by accessing the Court docket in this case, 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, Phillip Burton Federal Building, 450 Golden Gate Ave., San Francisco, California, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

Each Settlement falls within one of two categories: (1) settlements with Defendants who published or developed the app(s) at issue (“Developer Defendant Settlements”) or (2) settlements with Defendants who developed the SDKs included within the app(s) at issue to collect device data (“SDK Defendant Settlements”). Each Developer Defendant Settlement and each SDK Defendant Settlement contains unique terms, and may be accessed individually in the links below. However, there are business changes that are applicable to each category of Settlement, and are summarized as follows:

Developer Defendant Settlements – each Developer Defendant in the Kiloo Action, Disney Action, and Viacom Action has agreed to implement or continue certain business practices to the apps at issue in order to better ensure that children do not have any of their data collected for certain advertising purposes.

SDK Defendant Settlements – each SDK Defendant in the Kiloo Action, Disney Action, and Viacom Action has agreed to make changes to its data practices and its client onboarding processes and/or dashboards (and, in certain instances, to continue to engage in its current best practices with the apps at issue) to further enhance the ability of the SDK or its developer client to limit the collection of data from children, including teens, under certain ages (which varies depending upon the specific Settlement) for certain advertising purposes.

A Detailed summary of the injunctive relief provided by the Settlements is provided here.

The precise terms of each Settlement are available through the following links, separated by case:

#### *Kiloo Action*

##### **Developer Defendant Settlements:**

Kiloo A/S (“Kiloo”) Settlement  
Sybo ApS (“Sybo”) Settlement

##### **SDK Defendant Settlements:**

AdColony, Inc. (AdColony”) Settlement  
Chartboost, Inc. (“Chartboost”) Settlement  
Flurry, Inc. (“Flurry”) Settlement  
InMobi PTE Ltd. (“InMobi”) Settlement  
ironSource USA Inc., ironSource Ltd., and ironSource Mobile (“ironSource”) Settlement  
Tapjoy, Inc. (“Tapjoy”) Settlement  
Vungle, Inc. (“Vungle”) Settlement

## *Disney Action*

### **Developer Defendant Settlement:**

The Walt Disney, Inc.; Disney Enterprises, Inc.; and Disney Electronic Content, Inc. (“Disney”) Settlement

### **SDK Defendant Settlements:**

Upsight Inc. (“Upsight”) Settlement

Unity Technologies, SF (“Unity”) Settlement

Comscore, Inc. and Full Circle Studies, Inc. (“Comscore”) Settlement

Twitter, Inc. and its MoPub service (“Twitter”) Settlement

## *Viacom Action*

### **Developer Defendant Settlement:**

ViacomCBS Inc. and Viacom International Inc. (“ViacomCBS”) Settlement

### **SDK Defendant Settlement:**

Upsight Settlement

## **Your Rights May Be Affected by the Settlements**

If you are the parent or guardian of children, including teens, who have played any of the apps at issue, your rights may be affected by one or more of these Settlements. You do not have to take any action to receive the benefits of the Settlements.

If approved by the Court, the Settlement(s) applicable to you will affect your right to seek injunctive, declaratory and other non-monetary equitable relief against each Defendant who is party to the Settlement(s) applicable to you for the alleged practices at issue in these Actions. The Settlements will not affect your right, if any, to seek monetary relief from any of the Defendants. You may obtain copies of each Settlement Agreement and related court filings, including the Attorneys’ Fees Application, by downloading them from the Settlement website at [www.mobileappchildprivacysettlements.com](http://www.mobileappchildprivacysettlements.com), or by making a written request to Mobile App Child Privacy Settlements, c/o Settlement Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103, or emailing [info@mobileappchildprivacysettlements.com](mailto:info@mobileappchildprivacysettlements.com), or by voicemail request at the toll-free number (833) 854-6577.

## **No Opt-Outs**

Because the Plaintiffs are seeking only injunctive relief (e.g., business practice changes or assurances that particular business practices will continue) and because each Defendant is only agreeing to injunctive relief, class members cannot opt out of the Settlements. This means that all members of the Settlement Classes will be bound by the Settlements, if the Court approves them.

## **Release**

If the Settlements are approved, Settlement Class members will be deemed to have released each Defendant from and for any and all claims, whether known or unknown, which you have or may have in the future, that were alleged or asserted against each Defendant in the Actions or that could have been alleged or asserted against each Defendant in the Actions.

Notwithstanding the foregoing, you will only be deemed to have released claims for declaratory, injunctive, and non-monetary equitable relief. You will not be deemed to have released any claims for monetary relief. The specific release provision in each Settlement Agreement is provided here.

### Service Awards

Class Counsel will also request that each of the seven named Plaintiffs in these Actions receives a service award of \$2,500 (or \$5000 for Plaintiff Rushing who filed suit in the Disney and Viacom Actions) to recognize the time and effort they invested in the Actions. Any requests for service awards were filed with the Court at preliminary approval and are available for review on the Settlement website at [www.mobileappchildprivacysettlements.com](http://www.mobileappchildprivacysettlements.com).

### Plaintiffs' Counsel's Request for Reasonable Attorneys' Fees and Expenses

The individual plaintiffs and the Settlement Classes are represented by Lief Cabraser Heimann & Bernstein, LLP, and Carney Bates & Pulliam, PLLC ("Class Counsel"). Class Counsel will request that the Court award them reasonable attorneys' fees and reimbursement of their costs and expenses, including expert fees, for their service to the Settlement Classes in litigating this Action and obtaining the Settlement for the benefit of the Settlement Class Members.

The Parties agreed to the equitable relief (e.g., business practice changes) that comprises the core benefit of the Settlements before negotiating any caps on the amounts of attorneys' fees and expenses Class Counsel could seek from any individual Defendant. The Parties also agreed that each Defendant may respond to or oppose Class Counsel's application, but that the Parties will accept and not appeal the Court's award of attorneys' fees and expenses.

Accordingly, the Settlement Agreements provide that Class Counsel's request for attorneys' fees and cost and expenses will not exceed the following total amounts for each case, which Class Counsel break down in the following way as between Attorneys' Fees and Costs and Expenses (including expert fees):

	<b>Attorneys' Fees</b>	<b>Costs and Expenses (including expert fees)</b>	<b>TOTAL</b>
<i>Kiloo</i> Action	\$5,206,234	\$503,776	\$5,710,000
<i>Disney</i> Action	\$2,152,865	\$247,135	\$2,400,000
<i>Viacom</i> Action	\$742,734	\$192,266	\$935,000

Class Counsel calculates its lodestar as follows:

	<b>Hours Billed To Date</b>	<b>TOTAL LODESTAR</b>	<b>MULTIPLIER</b>
<i>Kiloo</i> Action	#11,487	\$6,653,711	%0.85
<i>Disney</i> Action	#5,150	\$3,017,388	%0.79
<i>Viacom</i> Action	#2,896	\$1,679,001	%0.56

Class Counsel's request for attorneys' fees and cost and expenses will not exceed the following amounts for each Defendant in the Settlements:

Kiloo Action

	<b>Attorneys' Fees/Costs and Expenses (including expert fees)</b>
Kiloo Settlement	\$ 760,000
Sybo Settlement	\$ 525,000
AdColony Settlement	\$ 525,000
Chartboost Settlement	\$ 150,000
Flurry Settlement	\$ 750,000
InMobi Settlement	\$ 750,000
ironSource Settlement	\$ 750,000
Tapjoy Settlement	\$ 750,000
Vungle Settlement	\$ 750,000

Disney Action

	<b>Attorneys' Fees/Costs and Expenses (including expert fees)</b>
Disney Settlement	\$ 490,000
Upsight Settlement	\$ 500,000
Unity Settlement	\$ 750,000
Comscore Settlement	\$ 385,000
Twitter Settlement	\$ 275,000

Viacom Action

	<b>Attorneys' Fees/Costs and Expenses (including expert fees)</b>
Viacom Settlement	\$ 435,000
Upsight Settlement	\$ 500,000

The Parties have asked the Court to assess any requested fees and expenses in a separate attorneys' fees motion after (but on the same day as) considering the motion for final approval and the injunctive relief contained therein. Class Counsel's requests for an award of attorney's fees and costs will be filed with the Court on or before October 8, 2020, and will be available for review on the Settlement website at [www.mobileappchildprivacysettlements.com](http://www.mobileappchildprivacysettlements.com).

**Final Approval Hearing, Comments, and Objections**

The proposed Settlements will not be final unless and until the United States District Court approves them. The Court has set a final approval hearing about the proposed Settlements at 10:00 a.m., on December 17, 2020, before the Honorable James Donato, United States District Court Judge, in Courtroom 11, at the Phillip Burton Federal Building, 450 Golden Gate Ave., San Francisco, California, to determine whether: (1) the proposed Settlements are fair, reasonable, and adequate; (2) judgments and orders of final approval should be entered by the District Court to dismiss the Actions with prejudice; (3) Plaintiffs' request for Class Representative Service Awards be approved; and (4) Class Counsel's fees and expense application should be approved.

THE DATE OF THE FINAL APPROVAL HEARING IS CURRENTLY SET FOR DECEMBER 17, 2020 AND MAY CHANGE WITHOUT FURTHER NOTICE TO THE CLASS MEMBERS.

**Comments or Objections**

You can ask the Court to deny approval of the Settlement(s) applicable to you by filing an objection. You cannot ask the Court to order a different settlement; the Court can only approve or reject the Settlements.

If the Court denies approval of a Settlement, none of the agreed-upon business practice changes in that Settlement will be required to be implemented, and the lawsuit will continue. If you do not want the Court to approve a Settlement, you must object.

Any objection to the proposed Settlement(s) applicable to you must be in writing and made only to the Court. If you file a timely written objection, you may, but are not required to, 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 hiring and paying that attorney. All written objections and supporting papers must: (a) clearly identify the case name and number: (1) *McDonald v. Killoo A/S*, Case No. 3:17-4344-JD; (2) *Rushing v. The Walt Disney Company*, Case No. 3:17-4419-JD; and/or (3) *Rushing v. ViacomCBS Inc.*, Case No. 3:17-4492-JD, (b) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, Phillip Burton Federal Building, 450 Golden Gate Ave., San Francisco, California, or by filing them in person at any location of the United States District Court for the Northern District of California, and (c) be filed or postmarked on or before November 20, 2020. If you do not submit a timely written objection, or if you do not request participation in the final approval hearing, you will not be able to participate in the final approval hearing.

### **Contacting Class Counsel**

Class Counsel may be contacted as follows:

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### **More Information**

You may obtain more information by contacting the Settlement Administrator at Mobile App Child Privacy Settlements, c/o Settlement Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103, or by emailing [info@mobileappchildprivacysettlements.com](mailto:info@mobileappchildprivacysettlements.com), or by calling toll-free (833) 854-6577.

**PLEASE DO NOT CONTACT THE DISTRICT COURT OR THE CLERK'S OFFICE WITH QUESTIONS REGARDING THIS NOTICE.**

This Notice is not an expression of any opinion by the Court as to the merits of the lawsuits or as to the fairness of the Settlements. This notice is published to advise you of the pendency of the Actions, the Settlements, and your associated rights.

DATED: October 9, 2020

BY ORDER OF THE DISTRICT COURT,  
UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF CALIFORNIA