IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JUDY KIRKBRIDE and BEETA LEWIS, individually and on behalf of all others similarly situated, Plaintiffs, vs. THE KROGER CO., Defendant.	)	Case No. 2:21-cv-00022-ALM-EPD Chief Judge Algenon L. Marbley Magistrate Judge Elizabeth Deavers

PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL

Plaintiffs Judy Kirkbride and Beeta Lewis, through their undersigned attorneys, hereby move this Court for an Order, pursuant to Federal Rule of Civil Procedure 23(e): (i) granting preliminary approval of the Class Action Settlement Agreement, inclusive of exhibits thereto (the "Settlement Agreement"); (ii) preliminarily certifying the Settlement Class[1]; (iii) preliminarily appointing Bursor & Fisher, P.A., Arisohn LLC, and Smith Krivoshey, P.C. as Class Counsel; (iv) preliminarily appointing Judy Kirkbride and Beeta Lewis as class representatives of the Settlement Class; (v) appointing a Settlement Administrator and Escrow Agent; (vi) approving the form and manner of Notice to the Settlement Class; (vii) preliminarily approving the Plan of Allocation and Distribution; and (viii) scheduling a Fairness Hearing to consider final approval of the Settlement.

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[1] All capitalized terms not defined herein have the meanings ascribed to them in the Class Action Settlement Agreement, including the exhibits thereto, dated March 12, 2026, which is attached as Exhibit 1 to the Declaration of Joseph I. Marchese in Support of Plaintiffs' Unopposed Motion for Preliminary Approval, filed concurrently herewith.

This motion is based upon the Settlement Agreement, the Declaration of Joseph I. Marchese in Support of Plaintiffs' Unopposed Motion for Preliminary Approval, Plaintiffs' Memorandum of Law in Support of Their Unopposed Motion for Preliminary Approval, the Declaration of Eric Schachter of Angeion Group, LLC Re: Angeion Group Qualifications and Proposed Notice Plan, and all other papers and proceedings herein. A proposed Preliminary Approval Order is submitted herewith.

DATED: March 12, 2026

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PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR UNOPPOSED MOTION FOR PRELIMINARY APPROVAL

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I. INTRODUCTION

Plaintiffs Judy Kirkbride and Beeta Lewis ("Plaintiffs") respectfully move this Court for preliminary approval of the Class Action Settlement Agreement, inclusive of exhibits thereto (the "Settlement Agreement"), which will resolve all claims against Defendant The Kroger Co. related to this Action[2] in exchange for a non-reversionary $17,000,000 all-cash common fund for the benefit of the Settlement Class. Each Settlement Class Member who submits a simple Claim Form, and in limited circumstances required documentation, will receive a *pro rata* cash payment based on his or her estimated or actual total out-of-pocket expenditure for prescription drugs at Kroger during the Settlement Class Period for transactions in which he or she used an insurance benefit.

This is an excellent result for the Settlement Class because it provides substantial cash relief in the face of considerable litigation risk. This Settlement compares favorably to other cases based on similar subject matter. For example, in *Russo, et al. v. Walgreen Co.*, No. 1:17-cv-02246 (N.D. Ill.), the court preliminarily approved a settlement creating a $20 million common fund for the consumer class[3] where the class period spanned 17 years (as opposed to just over seven years in this case) and where the consumer class size was roughly double the size of the Settlement Class here. This excellent result was achieved in the face of considerable litigation risk. Indeed, in the only other factually analogous consumer class action to proceed beyond class certification, a jury entered a complete defense verdict, which was upheld on appeal. *See Washington v. CVS Pharmacy, Inc.*, 2022 WL 17430289 (9th Cir. Dec. 6, 2022). Against this backdrop, a $17 million

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[2] All capitalized terms not defined herein have the meanings ascribed to them in the Class Action Settlement Agreement, including the exhibits thereto, dated March 12, 2026, which is attached as Exhibit 1 to the Declaration of Joseph I. Marchese ("Marchese Dec.") in Support of Plaintiffs' Unopposed Motion for Preliminary Approval, filed concurrently herewith.

[3] Unlike this case, *Russo* involved both a consumer class and third-party payer class, with a portion of the total settlement fund being divided between them. *Russo, et al. v. Walgreen Co.*, No. 1:17-cv-02246 (N.D. Ill.), ECF No. 683-2 ¶ 11.

non-reversionary common fund is more than a fair, reasonable, and adequate result for the Settlement Class.

After approximately five years of hard-fought litigation, Plaintiffs and Class Counsel were aware of the strengths and weaknesses of Plaintiffs' claims and made a well-informed evaluation of the risks of continued litigation against the benefits of settlement at this time. This Settlement follows numerous significant litigation events, including Defendant's motion to dismiss, written discovery, fact and expert depositions, a three-day evidentiary hearing and argument regarding Plaintiffs' class certification motion and Defendant's *Daubert* motions, and Kroger's petition to the Sixth Circuit to appeal the District Court's grant of class certification. The Settlement is the product of extensive arm's-length negotiations, including a full-day, in-person mediation session and numerous follow-up negotiations with experienced mediator Miles N. Ruthberg of Phillips ADR.

Accordingly, Plaintiffs respectfully request that the Court: (i) grant preliminary approval of the Settlement Agreement; (ii) preliminarily certify the Settlement Class; (iii) preliminarily appoint Bursor & Fisher, P.A., Arisohn LLC, and Smith Krivoshey, P.C. as Class Counsel; (iv) preliminarily appoint Judy Kirkbride and Beeta Lewis as class representatives of the Settlement Class; (v) appoint a Settlement Administrator and Escrow Agent; (vi) approve the form and manner of Notice to the Settlement Class; (vii) preliminarily approve the Plan of Allocation and Distribution; and (viii) schedule a Fairness Hearing to consider final approval of the Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Overview of the Action

On January 5, 2021, Plaintiff Judy Kirkbride filed the initial Class Action Complaint in this matter. ECF No. 1. On April 29, 2021, Plaintiff Kirkbride, along with Plaintiff Lewis and others, filed a First Amended Class Action Complaint ("FAC"). ECF No. 30. Plaintiffs' central allegation is that Defendant improperly reported its usual and customary ("U&C") prices for prescription medications for insured transactions, resulting in insured customers (like Plaintiffs) paying more for prescription medications than they should have. FAC ¶¶ 1-2. Plaintiffs allege that Kroger should have reported its discounted Rx Savings Club ("Savings Club") prices as its U&C prices for insured transactions instead of its higher "retail" prices. *Id.* ¶¶ 1-2, 4, 8, 24-25. Plaintiffs brought claims against Kroger for fraud, unjust enrichment, and negligent misrepresentation. *Id.* ¶¶ 38-64. Kroger denies Plaintiffs' allegations. Kroger filed a motion to strike the initial complaint and the FAC. ECF No. 28; ECF No. 35.

On July 12, 2022, this Court substantially denied Kroger's motion to dismiss the FAC. ECF No. 42. The parties proceeded to engage in extensive fact and expert discovery. Plaintiffs issued and Kroger responded to 16 requests for production, 11 interrogatories, and 4 requests for admission. Marchese Dec. ¶ 7. Kroger issued and Plaintiffs responded to 30 requests for production, 10 interrogatories, and 13 requests for admission. *Id.* Kroger issued six non-party subpoenas and Plaintiffs issued two non-party subpoenas for documents, and the Parties received documents and data in response. *Id.* ¶ 8. Plaintiffs reviewed over 22,000 pages of documents. *Id.* ¶ 9. Plaintiffs took or defended nine party and non-party depositions pursuant to Federal Rules of Civil Procedure 30(b)(6) and 45, including depositions of six of the parties' seven experts, Kroger, and the two named Plaintiffs. *Id.* ¶ 10. Each Plaintiff also produced documents, including information reflecting purchases of prescriptions from Kroger. *Id.* ¶ 11.

On February 16, 2024, Plaintiffs filed their motion for class certification and expert reports, ECF Nos. 72, 72-1. On May 28, 2024, Kroger filed its opposition to Plaintiffs' motion for class certification and its expert reports. ECF Nos. 84, 84-1, 84-2. Defendant also filed Rule 702 motions. ECF Nos. 84, 84-1, 84-2; ECF No. 93-94, 110-11. Class certification briefing concluded following the filing of Plaintiffs' reply papers, including rebuttal expert reports, and Defendant's additional sur-reply and sur-rebuttal expert report. ECF Nos. 101, 101-1, 147, 149. On October 3, 2024, the Parties completed all briefing related to Kroger's Rule 702 motions. ECF Nos. 85, 85-1, 85-2, 86, 86-1, 86-2, 98, 98-1, 99, 99-1, 99-2, 99-3, 99-4, 99-5, 108, 108-1, 108-2, 109, 110, 110-1, 110-2, 111, 115, 116, 118, 119.

On March 19-21, 2025, the Court held a three-day evidentiary hearing and oral argument on Plaintiffs' motion for class certification and Kroger's Rule 702 motions (the "March Evidentiary Hearing"). ECF No. 85; ECF No. 86; ECF No. 101; ECF No. 110; ECF No. 111; ECF No. 144; ECF No. 145; ECF No. 147; ECF No. 156. On April 9, 2025, the Court granted Plaintiffs' motion for class certification and denied Defendant's Rule 702 motions. ECF No. 142.

Kroger filed a petition for permission to appeal the District Court's grant of class certification with the Sixth Circuit ("Petition"). *Kirkbride et al. v. The Kroger Co.*, No. 25-0302 (6th Cir. Apr. 11, 2025), ECF No. 1-2. On April 21, 2025, Plaintiffs filed an opposition to Defendant's Petition. *Id.*, ECF No. 9. The Sixth Circuit has not ruled on the Petition. On May 22, 2025, the Parties filed a joint motion to hold the case in abeyance pending mediation, which the Sixth Circuit granted. *See id.*, ECF Nos. 16, 17-2.

B. Settlement Negotiations

Following the March Evidentiary Hearing, the court's ruling on class certification, and the close of briefing on Defendant's Petition, the parties retained Miles Ruthberg of Phillips ADR as mediator. Marchese Dec. ¶ 16. The settlement negotiations occurred at arm's-length and were hard fought. In advance of mediation, the Parties exchanged detailed mediation submissions, which included extensive evidence developed through fact and expert discovery. *Id.* ¶ 17. As a result of pre-mediation negotiations, Kroger produced additional data for purposes of mediation (beyond the claims data already produced for the litigation classes) regarding sales of prescription drugs nationwide, which allowed Plaintiffs to reasonably estimate damages for the Settlement Class. *Id.* ¶ 18. The parties participated in a pre-mediation call with Mr. Ruthberg. *Id.* ¶ 19.

The parties attended an in-person mediation on August 21, 2025 and engaged in additional negotiations for several months thereafter, ultimately agreeing to settle the Action pursuant to a mediator's recommendation on the terms set forth in the Settlement Agreement. *Id.* ¶ 20. The Parties memorialized their agreement in a Settlement Term Sheet executed on November 21, 2025. *Id.* Thereafter, the Parties further negotiated and executed the Settlement Agreement dated March 12, 2026. *Id.* ¶ 22. Following a competitive bidding process, Plaintiffs engaged a Settlement Administrator to provide notice to Settlement Class Members and to administrate distribution of the Settlement Fund. *Id.* ¶ 21.

III. SUMMARY OF KEY SETTLEMENT TERMS

The key terms of the Settlement are briefly summarized as follows:

A. Settlement Class Definition

The "Settlement Class" is defined as:

> All individuals in the United States and its territories who, at any point in time during the Settlement Class Period, paid in whole or in part for one or more prescription drugs from Kroger using their insurance.[4]

[4] The Settlement Class contains five exclusions set forth in detail in the Settlement Agreement (Settlement ¶ 1.38), summarized as follows: (1) any Judge presiding over any portion of the Action and immediate family members of any such Judge, and any such Judge's staff; (2) officers and directors of Kroger and its related entities; (3) any individuals who timely and validly opt out; (4) legal representatives, successors and assigns of any opt outs; and (5) all individuals that have sued (other than through this Action), filed an arbitration demand, or participated in a settlement in a suit against Kroger regarding its U&C pricing determinations in connection with the Savings Club (this exclusion does not apply to individuals that have voluntarily dismissed their claims without prejudice).

Settlement ¶ 1.38. The "Settlement Class Period" is defined as "December 9, 2018 through the date on which Class Notice is disseminated." Settlement ¶ 1.37.

B. Settlement Consideration

The Settlement Amount consists of a non-reversionary, all-cash "common fund" in the amount of $17,000,000. Settlement ¶ 1.35. The Settlement Class will receive the full Settlement Amount, plus interest, after deduction of any Attorneys' Fees and Expenses, any Service Awards, Notice and Administration Expenses, Taxes, Tax Expenses, Escrow Fees, and other Court-approved deductions (the "Net Settlement Fund"). Settlement ¶ 1.20. After the Settlement becomes Final, the Net Settlement Fund will be distributed among Settlement Class Members who submit valid claims in accordance with a Court-approved Plan of Allocation and Distribution. Settlement ¶ 1.28; *see also* Settlement, Exhibit A, Proposed Plan of Allocation and Distribution.

C. Release Of Claims

In exchange for the relief described above, upon the Effective Date, Defendant and each of "Defendant's Released Persons" (Settlement ¶ 1.9) will receive a full release of all claims arising out of or related to the conduct challenged in the Action, including any claims relating to reporting of U&C prices for pharmaceuticals, with certain exceptions pertaining to enforcement of the Settlement Agreement and other agreements between the Parties. Settlement ¶ 1.26. *See* Settlement ¶¶ 4.1-4.4 for full release language.

D. The Notice Program

Notice and Administration Expenses will be paid from the Settlement Fund. Settlement ¶¶ 1.20, 1.23, 5.6. Plaintiffs recommend this Court appoint Angeion Group ("Angeion") to serve as Settlement Administrator to implement the Notice Plan and all aspects of Settlement administration, including the claims process. Settlement ¶¶ 1.34, 5.1-5.8, 6.1-6.14.

The Notice is reasonably calculated to apprise the Settlement Class of: (i) the material Settlement terms; (ii) the date and method by which Settlement Class members may exclude themselves from the Settlement Class; (iii) a date and method by which Settlement Class Members may object to the Settlement; (iv) the manner in which Settlement Class Members must submit a Claim Form to receive their Distribution; (v) the Fairness Hearing date; and (vi) the Settlement Website address where the Settlement Class may access the Settlement Agreement, the Notice, the online Claim Form, the toll-free Settlement telephone number, and other important documents. The proposed Summary Notices and Long Form Notice are attached to the Class Action Settlement Agreement as Exhibits C1, C2 and D.

Angeion, in consultation with the Parties, has devised a Notice Plan setting forth the manner of Notice to the Settlement Class, which consists of direct email notice, a robust and state-of-the-art digital media campaign, a press release, and a dedicated Settlement Website. *See* Declaration of Eric Schachter of Angeion Group, LLC Re: Angeion Group Qualifications and Proposed Notice Plan ("Schachter Dec."), ¶ 15. As to the direct email notice, Kroger will provide Angeion with a list of all known Settlement Class Members ("List of Known Claimants"), including email addresses for all Settlement Class Members for which Kroger has email addresses. Settlement ¶¶ 1.5, 6.1. For those Settlement Class Members for whom Kroger does not have an email address, it will provide Angeion with other identifying information (such as date of birth, phone number, and address) which Angeion will then use to attempt to discern valid email addresses to send direct email notices. *Id.*; *see also* Schachter Dec., ¶¶ 18-20. Angeion will take steps to maximize deliverability of Notice. Schachter Dec., ¶¶ 21-24. Reminder emails will be sent to those Settlement Class Members whose initial email was successfully delivered but not opened. *Id.* ¶ 24. As to media notice, Angeion will use targeted internet advertising to reach

Settlement Class Members, including targeted social media advertising and search engine marketing. *Id.* ¶¶ 26-40. Angeion will distribute a press release through a national newswire service (*id.* ¶ 43) and will maintain a dedicated Settlement Website and call center (*id.* ¶¶ 44-46).

Angeion will take appropriate steps regarding maintaining data security related to Settlement Class Member information and maintains appropriate insurance coverage regarding the same. *Id.* ¶¶ 8-12. Angeion has been appointed to provide notice and administration services in hundreds of complex class action matters like this one. *Id.* ¶¶ 5-7.

E. The Claims Process and Plan of Allocation and Distribution

To receive a Distribution, Settlement Class Members must submit a Claim Form by the Claims Deadline. Settlement, Ex. A, Plan of Allocation and Distribution, ¶ 3. A Claim Form may be submitted online via the Settlement Website or completed in hard copy. *See* Settlement, Exhibit E, Claim Form. The Claim Form provides the address to which physical Claim Forms must be sent and clearly apprises Settlement Class Members of the deadline for doing so. *Id.* The Claim Form requests that Settlement Class Members estimate their out-of-pocket expenditure in one of five monetary ranges. *Id.*; *see also* Ex. A, Plan of Allocation and Distribution, ¶ 7. Known Claimants (i.e. Settlement Class Members who receive direct email notice, or those that do not receive direct email notice but are in the List of Known Claimants) may submit a Claim Form without supporting documentation, unless the claim exceeds $8,000, in which case supporting documentation must be provided. Plan of Allocation and Distribution, ¶¶ 5, 7-9. Unknown Claimants (i.e. Settlement Class Members who do not receive direct email notice and are not on the List of Known Claimants) may submit a Claim Form but must provide supporting documentation. *Id.* ¶ 6. After all claims are received, Angeion will identify those who are

Unknown Claimants and will notify them of the need to supply supporting documentation. Schachter Dec., ¶ 48.

The Net Settlement Fund shall be distributed to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Claims. Settlement, Ex. A, Plan of Allocation and Distribution ¶¶ 7, 10. The Distribution Amount for each Authorized Claimant shall be each Authorized Claimant's Recognized Claim divided by the total Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. *Id.* ¶ 10. The initial Distribution will be completed no later than 120 days after the Effective Date. *Id.* ¶ 11.

If any monies remain in the Net Settlement Fund after the initial Distribution from the Net Settlement Fund, the Settlement Administrator will confer with Class Counsel to determine if a second distribution would be feasible and, if feasible, the Settlement Administrator will conduct a re-distribution of the funds remaining in the Net Settlement Fund, after payment of specified expenses, to Authorized Claimants who have received initial Distributions. *Id.*

F. Exclusion and Objection Procedures

A Settlement Class member wishing to opt out must do so within 120 days of the Preliminary Approval Order (60 days after the Notice Deadline) in accordance with the instructions outlined in the Settlement Agreement (Settlement ¶ 9.4 and ¶ 9.5) and the proposed Preliminary Approval Order.

Any Settlement Class Member wishing to object to the Settlement must do so within the same time period (60 days after the Notice Deadline) in accordance with the instructions outlined in the Settlement Agreement and Preliminary Approval Order. Settlement ¶¶ 9.1-9.3.

G. Attorneys' Fees and Expenses and Plaintiffs' Service Awards[5]

Defendant has agreed that, upon final approval of the Settlement, the Settlement Fund may be used to pay Class Counsel's Attorneys' Fees and Expenses approved by the Court. Settlement ¶ 1.2, 7.1. Class Counsel will petition the Court for attorneys' fees of one-third of the Settlement Fund, in addition to out-of-pocket costs and expenses in connection with prosecuting the Action, not to exceed $610,325.71, plus interest (if any). *Id.*; *see also* Settlement, Ex. D, Long-Form Notice.

In recognition of Plaintiffs' substantial efforts on behalf of the Settlement Class (including producing substantial documents, sitting for depositions, and actively participating in the Action), Plaintiffs request that they each receive a Service Award of up to $5,000 to be paid from the Settlement Fund. Settlement ¶¶ 1.32, 7.2.

IV. THE PROPOSED SETTLEMENT SHOULD BE PRELIMINARILY APPROVED

The Sixth Circuit has noted "the federal policy favoring settlement of class actions." *Int'l Union, United Auto., Aerospace, & Agr. Implement Workers of Am. v. Gen. Motors Corp.*, 497 F.3d 615, 632 (6th Cir. 2007). "Courts typically use a three-step procedure for approving settlements." *Hafley v. Amtel, LLC*, 2023 WL 11715512 at *3 (S.D. Ohio Oct. 13, 2023) (Marbley, J.). "A court must: (1) preliminarily approve the proposed settlement; (2) distribute notice of the proposed settlement to the class; and finally, (3) hold a fairness hearing and determine whether the settlement is fair, reasonable, and adequate." *Caddell v. Campbell*, 2025 WL 3563198, at *5 (S.D. Ohio Dec. 12, 2025). This motion concerns the first step, wherein this Court must determine whether: (1) it will likely be able to approve the Settlement as fair, reasonable, and adequate, and

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[5] Plaintiffs will separately move for approval of an award of Attorneys' Fees and Expenses and Service Awards before the Opt-Out Deadline and Objection Deadline and ask the Court to set a deadline for such a motion in the Preliminary Approval Order.

(2) certify the Settlement Class. *Lurry v. Pharmerica Corp.*, 2026 WL 87121, at *3 (W.D. Ky. Jan. 12, 2026). As set forth below, every relevant factor supports preliminary approval of the Settlement and certification of the Settlement Class. Therefore, this Court should preliminarily approve the Settlement and direct that notice be issued to the Settlement Class.

A. The Proposed Settlement Is Fair, Reasonable, And Adequate

To determine if the settlement is "fair, reasonable, and adequate" under Fed. R. Civ. P. ("Rule") 23(e)(2), the Court will consider whether: (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's-length; (C) the relief provided for the class is adequate, taking into account (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other. *See Lurry*, 2026 WL 87121, at *3. The Court will also consider the following factors established by the Sixth Circuit: (1) the risk of fraud or collusion; (2) the complexity, expense, and likely duration of the litigation; (3) the amount of discovery completed; (4) the likelihood of success on the merits; (5) the opinion of class counsel and representatives; (6) the reaction of absent class members[6]; and (7) public interest in the settlement. *Ostendorf v. Grange Indemnity Insurance Co.*, 2020 WL 5366380 at *2 (S.D. Ohio Sept. 8, 2020) (Marbley, J.); *see also Lurry*, 2026 WL 87121, at *3. "The court need not make an affirmative determination of each factor but, rather, should

[6] The sixth factor regarding "the reaction of absent class members" is inapplicable in the context of preliminary approval because notice of the settlement has not yet been approved and disseminated. *Green v. Platinum Restaurants Mid-Am. LLC*, 2022 WL 1240432, at *5 (W.D. Ky. Apr. 27, 2022).

grant preliminary approval if the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls with the range of possible approval." *Id.* (internal quotation omitted).

1. Adequate Representation (Rule 23(e)(2)(A)); Arm's-Length Negotiation (Rule 23(e)(2)(B)); Equitable Treatment of Class Members (Rule 23(e)(2)(D); and Non-Collusion (Sixth Circuit Factor 1)

Class Counsel and the class representatives have adequately and vigorously represented the class's interests throughout five years of hard-fought litigation, which included successfully opposing Defendant's motion to dismiss, participating in document and deposition discovery, and prevailing at class certification. Class Counsel and the class representatives have also adequately represented the class throughout the settlement negotiations and have reached an agreement that treats all class members equitably. As set forth in the Plan of Allocation and Distribution, all class members are entitled to a *pro rata* share of the Net Settlement Fund weighted based on their total out-of-pocket expenditure for prescription medications at Kroger during the Settlement Class Period for which an insurance benefit was used. Ex. A, ¶¶ 7, 10. This framework of distribution was preliminarily approved by the Court in the analogous *Russo* matter. *Russo, et al. v. Walgreen Co.*, No. 1:17-cv-02246 (N.D. Ill.), ECF No. 689 ¶ 1; *see also Lurry*, 2026 WL 87121, at *6 (finding *pro rata* "allocation of relief appears fair and reasonable, which is all that is required at this stage"). While Plaintiffs seek Service Awards of $5,000 each for their roles here, a reasonable service award does not impact the fairness of the settlement. *Johnson v. Midwest Logistics Sys., Ltd.*, 2013 WL 2295880, at *5 (S.D. Ohio May 24, 2013) (Marbley, J.) (finding "the incentive award does not undermine the fairness of the settlement").

As to non-collusion and arm's-length dealings, this Court "begins from a presumption that there was no fraud or collusion, absent evidence to the contrary." *Hafley*, 2023 WL 11715512 at *4 (internal citation omitted). Further, "[t]he participation of an independent mediator in settlement negotiations virtually ensures that the negotiations were conducted at arm's length and without collusion between the parties." *Employees Retirement System of the City of St. Louis v. Jones*, 2022 WL 14160253 at *7 (S.D. Ohio Aug. 23, 2022) (Marbley, J.). Here, the settlement negotiations occurred during a full-day, in-person mediation session with Miles N. Ruthberg of Phillips ADR and continued for several months thereafter. Marchese Dec. ¶ 20. The settlement negotiations were just as hard fought and adversarial as the litigation that preceded it. *In re Telectronics Pacing Sys., Inc.*, 137 F. Supp. 2d 985, 1016 (S.D. Ohio 2001) (finding no collusion where the settlement "reflects real concessions from all sides" and was reached after six years of litigation); *In re Whirlpool Corp. Front-loading Washer Prods. Liability Litig.*, 2016 WL 5338012 at *10 (N.D. Ohio Sept. 23, 2016) ("*In re Whirlpool*") (lengthy litigation period that preceded settlement was evidence of non-collusion).

2. Adequacy of Relief (Rule 23(e)(2)(C)(i)-(iv)); Complexity, Expense, And Likely Duration of Litigation (Sixth Circuit Factor 2); and Likelihood Of Success on The Merits (Sixth Circuit Factor 4)

This Court has noted that "[m]ost class actions are inherently complex, and settlement avoids the costs, delays, and multitude of other problems associated with them." *Ostendorf*, 2020 WL 5366380, at *3 (quoting *Telectronics*, 137 F. Supp. 2d at 1013). Here, Settlement Class Members will receive meaningful cash relief while avoiding the pitfalls of litigation in the thorny context of U&C pricing class actions. Settlement Class Members will receive the certainty of a $17,000,000 common fund, which compares favorably to the only other consumer class action settlement in the U&C context (*Russo*). This is an excellent result when weighed against the risk of continued litigation, including Defendant's Petition (held in abeyance pending settlement)[7], summary judgment, renewed *Daubert* motions on the merits, trial, and then a likely appeal. If the Settlement Class were to suffer defeat at any one of those steps[8], it would mean that the Settlement Class would recover nothing. Indeed, in a class action involving similar allegations against CVS, the jury found in favor of the defendant, and the defendant prevailed on appeal. *See Washington*, 2022 WL 17430289.

In addition to litigation risk, this matter is also more complex and expensive than the typical class action. As this Court explained: "[i]t took over a thousand pages of expert-related briefing, reports, and deposition testimony—along with six live experts testifying at a two-day evidentiary hearing—for counsel to explain the labyrinthine drug pricing system under which Kroger operates." *Kirkbride v. Kroger Co.*, 349 F.R.D. 160, 188 (S.D. Ohio Apr. 9, 2025). If settlement approval were denied and litigation were to resume, this matter would continue to be costly, complex, and time consuming.

In evaluating the likelihood of success on the merits, the "Court must conclude whether Plaintiffs' likelihood of success on the merits is outweighed by the benefits of the proposed settlement." *Hafley*, 2023 WL 11715512, at *5. "Where factual and legal complexities cut against a clear determination that plaintiffs will prevail on the merits, settlement will be desirable." *Id.* Although Plaintiffs believe their case is strong, it is subject to real risk, as described above. This case is replete with factual and legal complexities (many of which were covered during the

[7] The Sixth Circuit has granted review under Rule 23(f) and vacated class certification rulings on several occasions in the last two years. *See, e.g.*, *In re FirstEnergy Corp. Secs. Litig.*, 149 F.4th 587 (6th Cir. 2025); *Speerly v. Gen. Motors, LLC*, 143 F.4th 306 (6th Cir. 2025); *In re Nissan N. Am., Inc. Litig.*, 122 F.4th 239 (6th Cir. 2024).

[8] At minimum, these steps would delay an already uncertain recovery by several years.

evidentiary hearing and at oral argument), and therefore the likelihood of success on the merits does not outweigh the certainty of real cash relief now to Settlement Class Members.

None of the other subfactors under Rule 23(e)(2)(C) impact the fairness of the settlement. *First*, as to Rule 23(e)(2)(C)(ii), the proposed method of processing Settlement Class Members' claims and distributing relief is fair and equitable, as set forth Sections III.E. and IV.A.1., above. *Second*, as to Rule 23(e)(2)(C)(iii), the anticipated request for attorneys' fees is reasonable because Class Counsel will seek an award of no more than one third of the Settlement Fund, which is a standard percentage awarded in the Sixth Circuit. *Macaluso v. Zirtual Startups, LLC*, 2021 WL 3639665, at *4 (S.D. Ohio Aug. 17, 2021) (Marbley, J.) ("When using the percentage-of-the-fund method, courts in this Circuit generally approve of awards that are one-third of the total settlement."); *In re Auto. Parts Antitrust Litig.*, 2021 WL 12318996, at *2 (E.D. Mich. Nov. 18, 2021) (collecting cases). *Third*, as to Rule 23(e)(2)(C)(iv), the parties have identified the Term Sheet and Settlement Agreement, and the parties have entered into a standard, confidential side agreement that gives Kroger the option to terminate the Settlement in the event that requests for exclusion from the Settlement Class exceed certain agreed-upon conditions, which can be provided *in camera* to the Court upon request. Settlement ¶ 8.3. The side agreement is standard in class action settlements and has no negative impact on the fairness of the Settlement. *See, e.g., Hefter v. Wells Fargo & Co.,* 2018 WL 4207245, at *11 (N.D. Cal. Sept. 4, 2018) ("The existence of a termination option triggered by the number of class members who opt out of the Settlement does not by itself render the Settlement unfair.").

3. The Amount of Discovery Completed (Sixth Circuit Factor 3)

"Courts must assess the progression of litigation to ensure that Plaintiffs have adequate information to assess their case and the desirability of a settlement agreement." *Hafley*, 2023 WL

11715512, at *5. As set forth in Section II.A., above, discovery in this case has been substantial. Over the course of approximately five years of litigation, the parties engaged in substantial written and document discovery, conducted nine party and non-party depositions of fact witnesses and experts, and exchanged voluminous expert reports across seven expert witnesses. That discovery, combined with litigation over Kroger's motion to dismiss and Plaintiffs' motion for class certification, provided more than sufficient information to evaluate the strengths and weaknesses of the case. Many courts have approved settlements with far less discovery and case progression. *See id.* (approving settlement even though "the parties have not engaged in significant discovery").

4. Opinion of Class Counsel and Representatives (Sixth Circuit Factor 5)

When evaluating settlements, "this Court gives significant weight to the beliefs of experienced counsel." *Hafley*, 2023 WL 11715512, at *6; *Ostendorf*, 2020 WL 5366380, at *2. Here, each of the three law firms representing Plaintiffs practice almost exclusively in complex class actions. *See* Marchese Dec., Ex. 2-4 (firm resumes). Each firm has been actively involved in litigating this matter and in the months-long settlement discussions which culminated in the Settlement. Each firm believes that this is a strong result for the Settlement Class and represents a fair, reasonable, and adequate outcome. Plaintiffs, as class representatives, agree with Class Counsel's assessment.

5. Public Interest (Sixth Circuit Factor 7)

Settlement of this case, a complex class action, furthers the public interest. *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 530 (E.D. Mich. 2003) (noting "there is a strong public interest in encouraging settlement of complex litigation and class action suits because they are notoriously difficult and unpredictable and settlement conserves judicial resources") (internal citation omitted); *Ostendorf*, 2020 WL 5366380, at *3 (there is a "public interest favoring settlement ... as the proposed settlement ends potentially long and protected litigation") (internal quotation omitted); *Andrews v. State Auto Mutual Ins. Co.*, 2023 WL 11104245 at *3 (S.D. Ohio May 22, 2023) (Marbley, J.).

B. The Court Should Preliminarily Certify the Settlement Class

Where, as here, the Court has already certified litigation classes when the parties seek preliminary approval, the certification analysis is simplified. *Caddell*, 2025 WL 3563198 at *5 n.6 (explaining in a preliminary approval order that there was no need to consider whether the court was "likely" to certify a class because "the Court has already certified the class"); *Pansiera v. Home City Ice Co.*, 2024 WL 813759 at *2-3 (S.D. Ohio Feb. 27, 2024) (incorporating prior class certification order when approving settlement class). "If the court has already certified a class, the only information ordinarily necessary is whether the proposed settlement calls for any change in the class certified, or of the claims, defenses, or issues regarding which certification was granted." Fed. R. Civ. P. 23, *Advisory Committee's Note* (2018).

Here, the Settlement Class is broader than the certified litigation classes because it is nationwide, encapsulates all pharmacy benefit managers, and encapsulates both brand and generic drugs. The Settlement Class is defined similarly to the settlement class in *Russo*, which was preliminarily approved. *See Russo, et al. v. Walgreen Co.*, No. 1:17-cv-02246 (N.D. Ill.), ECF No. 689 ¶ 3. These changes in scope should not change the Court's prior analysis under Rule 23(a). *See Kirkbride*, 349 F.R.D. at 170-89. The Settlement Class is even more numerous than the certified litigation classes, the Settlement Class shares the same core common questions regarding the appropriateness of Kroger's alleged failure to report its Savings Club prices as U&C, Plaintiffs' claims are typical of those of other Settlement Class Members as they are insured consumers who allegedly overpaid for prescription drugs at Kroger when using insurance, and the adequacy of the class representatives and Class Counsel is unchanged.

As for Rule 12(b)(3), the manageability and predominance concerns that can arise when different state laws apply to different class members "are in fact minimized by the proposed settlement[.]" *Gascho v. Global Fitness Holdings, LLC*, 2014 WL 1350509 at *15 (S.D. Ohio Apr. 4, 2014); *see also*, *e.g.*, *Amchem Prods, Inc. v. Windsor,* 521 U.S. 591, 619–20, 622 (1997) ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems ... for the proposal is that there be no trial."); *In re Inter–Op Hip Prosthesis Liab. Litig*., 204 F.R.D. 330, 347 (N.D. Ohio 2001) ("[W]hen taking the proposed settlement [ ] into consideration for purposes of determining class certification, individual issues which are normally present in ... litigation become irrelevant, allowing the common issues to predominate."). Given the settlement context, the increased scope of the Settlement Class does not affect the Court's prior analysis under Rule 23(b)(3), finding predominance and superiority met. *Kirkbride*, 349 F.R.D. at 160-194. Therefore, this Court should preliminarily certify the Settlement Class.

C. The Court Should Preliminarily Appoint Bursor & Fisher, P.A., Smith Krivoshey P.C., and Arisohn LLC as Class Counsel for The Settlement Class

A court certifying a class must appoint class counsel who "must fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B); Fed. R. Civ. P. 23(g)(1)(A) (i-iv). As set forth above, the attorneys at Bursor & Fisher, P.A., Smith Krivoshey P.C., and Arisohn LLC have worked hard prosecuting this action and have a strong record of litigating class actions through jury trials and appeal. Marchese Dec., Exs. 2-4. Each firm has been appointed Class Counsel in this case and in many other cases. *See* Marchese Dec., Ex. 2-4; *Kirkbride*, 349 F.R.D. at 189 (". . . Plaintiffs and counsel have met the adequacy requirement of Rule 23(a)(4)."). Each firm has demonstrated that they have the necessary resources to litigate this case and have deployed those resources for the benefit of the class. The results they have achieved together demonstrate their adequacy as counsel for the Settlement Class. Accordingly, the Court should appoint Bursor & Fisher, P.A., Smith Krivoshey P.C., and Arisohn LLC as Class Counsel for the Settlement Class.

V. NOTICE TO THE SETTLEMENT CLASS SHOULD BE APPROVED

A court must "'direct notice in a reasonable manner to all class members who would be bound'" by the settlement. *Loschiavo v. Advanced Drainage Sys., Inc.*, 2025 WL 3736436, at *8 (S.D. Ohio May 16, 2025) (quoting Fed. R. Civ. P. 23(e)(1)(B)). Under Rule 23(c)(2)(B), "notice to the class must contain the following information: (1) a statement of the nature of the class action; (2) a definition of the certified class; (3) a statement of the class claims; (4) information regarding class members' individual right to enter an appearance through counsel of their choice; (5) information regarding class members' right to opt-out of the class and the procedure for doing so; and (6) information regarding the binding effect of class judgment on class members." *Smith v. Ajax Magnethermic Corp.*, 2007 WL 3355080, at *7 (N.D. Ohio Nov. 7, 2007) (citing Fed. R. Civ. P. 23(c)(2)(B)).

Consistent with Rules 23(c)(2)(B) and 23(e)(1)(B), collectively, the proposed Summary Notices and Long Form Notice, attached to the Settlement Agreement as Exhibits C1, C2 and D, objectively and neutrally apprise Settlement Class Members of all required information. Therefore, this Court should approve the form of Notice to the Settlement Class.

As to the manner of notice to the Settlement Class, as discussed in Section III.D., above, Angeion and the Parties have developed a comprehensive Notice Plan designed to provide direct notice, robust media notice, and additional notice through a nationwide press release and Settlement Website. *See generally* Schachter Dec. This Court, and courts within the Sixth Circuit, have approved email notice plans. *Nazih v. Cafe Istanbul of Columbus, LLC*, 2018 WL 4334613, at *5 (S.D. Ohio Sept. 11, 2018) (Marbley, J.) ("The trend in the Southern District of Ohio, however, is to allow notice by mail and email to ensure that putative class members receive notice of the pending action.") (internal quotation marks and citation omitted); *In re Fam. Dollar Stores, Inc., Pest Infestation Litig.*, 2023 WL 7112838, at *13 (W.D. Tenn. Oct. 27, 2023) (approving similar notice plan to that described here, namely direct email notice, digital advertising, paid Google advertising, a settlement website, and a toll-free telephone line). Courts from outside the Sixth Circuit have also approved email notice plans. *Russo, et al. v. Walgreen Co.*, No. 1:17-cv-02246 (N.D. Ill.), ECF No. 689 ¶ 10 (approving similar notice plan); *In re TikTok, Inc., Consumer Priv. Litig.*, 617 F. Supp. 3d 904, 928 (N.D. Ill. 2022) (same). Angeion has also provided myriad examples where its robust media notice plan was approved by federal courts across the country. Schachter Dec. ¶ 27.

Accordingly, Plaintiffs respectfully request that the proposed Notice Plan be approved, together with the Notices and Claim Form.

VI. CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully request that the Court grant the Unopposed Motion for Preliminary Approval and enter the proposed Preliminary Approval Order.

DATED: March 12, 2026

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CERTIFICATE OF SERVICE

This certifies that all counsel of record were served via the Electronic Case Filing ("ECF") System on March 12, 2026.

/s/ *Scott D. Simpkins*
Scott D. Simpkins

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JUDY KIRKBRIDE and BEETA LEWIS, individually and on behalf of all others similarly situated, Plaintiffs, vs. THE KROGER CO., Defendant.	)	Case No. 2:21-cv-00022-ALM-EPD Chief Judge Algenon L. Marbley Magistrate Judge Elizabeth Deavers

DECLARATION OF JOSEPH I. MARCHESE IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL

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

1. I am a partner at Bursor & Fisher, P.A., counsel of record for Plaintiffs Judy Kirkbride and Beeta Lewis. I am an attorney at law licensed to practice in the States of New York and Michigan and am admitted *pro hac vice* in this matter. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would testify competently thereto.

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

3. Attached hereto as **Exhibit 1** is a true and correct copy of the Parties' Class Action Settlement Agreement and exhibits thereto (the "Settlement Agreement").

I. FACTUAL BACKGROUND AND OVERVIEW OF THE ACTION

4. On January 5, 2021, Plaintiff Judy Kirkbride filed the initial Class Action Complaint in this matter. ECF No. 1.

5. On April 29, 2021, Plaintiff Kirkbride, along with Plaintiff Lewis and others, filed a First Amended Class Action Complaint ("FAC"). ECF No. 30. Plaintiffs' central allegation is that Defendant improperly reported its usual and customary ("U&C") prices for prescription medications in insured transactions, resulting in insured customers (such as Plaintiffs) paying more for prescription medications than they should have. FAC ¶¶ 1-2. In short, Plaintiffs allege that Kroger should have reported its discounted Rx Savings Club ("Savings Club") prices as U&C for insured transactions instead of its higher "retail" prices. *Id.* ¶¶ 1-2, 4, 8, 24-25. Plaintiffs brought claims against Kroger for fraud, unjust enrichment, and negligent misrepresentation. *Id.* ¶¶ 38-64. Kroger denies Plaintiffs' allegations.

6. Kroger filed a motion to strike the initial complaint and the FAC. ECF No. 28; ECF No. 35. On July 12, 2022, this Court substantially denied Kroger's motion to dismiss the FAC. ECF No. 42.

7. The parties engaged in extensive fact and expert discovery. Plaintiffs issued and Kroger responded to 16 requests for production, 11 interrogatories, and 4 requests for admission. Kroger issued and Plaintiffs responded to 30 requests for production, 10 interrogatories, and 13 requests for admission.

8. Kroger issued six non-party subpoenas and Plaintiffs issued two non-party subpoenas for documents, and the Parties received documents and data in response.

9. Plaintiffs reviewed over 22,000 pages of documents.

10. Plaintiffs took or defended nine party and non-party depositions pursuant to Federal Rules of Civil Procedure 30(b)(6) and 45, including depositions of six of the parties' seven experts, Kroger, and the two named Plaintiffs.

11. Each Plaintiff also produced documents, including information reflecting purchases of prescriptions from Kroger.

12. On February 16, 2024, Plaintiffs filed their motion for class certification and expert reports, ECF Nos. 72, 72-1. On May 28, 2024, Defendant filed its opposition to Plaintiffs' motion for class certification and its expert reports. ECF Nos. 84, 84-1, 84-2. Defendant also filed Rule 702 motions. ECF Nos. 84, 84-1, 84-2; ECF No. 93-94, 110-11.

13. Class certification briefing concluded following the filing of Plaintiffs' reply papers, including rebuttal expert reports, and Defendant's additional sur-reply and sur-rebuttal expert report. ECF Nos. 101, 101-1, 147, 149.

14. On March 19-21, 2025, the Court held a three-day evidentiary hearing and oral argument on Plaintiffs' motion for class certification and Defendant's Rule 702 motions. ECF No. 85; ECF No. 86; ECF No. 101; ECF No. 110; ECF No. 111; ECF No. 144; ECF No. 145; ECF No. 147; ECF No. 156. On April 9, 2025, the Court granted Plaintiffs' motion for class certification and denied Defendant's Rule 702 motions. ECF No. 142.

15. Following the Court's April 9, 2025 order, Kroger filed a petition for permission to appeal the District Court's grant of class certification in the Sixth Circuit ("Petition") pursuant to Federal Rule of Civil Procedure 23(f). *Kirkbride et al. v. The Kroger Co.*, No. 25-0302 (6th Cir. Apr. 11, 2025), ECF No. 1-2. On April 21, 2025, Plaintiffs filed an opposition to Defendant's Rule 23(f) petition. *Id.*, ECF No. 9. The Sixth Circuit has not ruled on the Petition. On May 22, 2025, the Parties filed a joint motion to hold the case in abeyance pending mediation, which the Sixth Circuit granted. *See id.*, ECF Nos. 16, 17-2.

II. SETTLEMENT NEGOTIATIONS

16. Following the Court's ruling on class certification and Kroger filing the Petition with the Sixth Circuit, the parties retained Miles N. Ruthberg of Phillips ADR as a mediator.

17. The settlement negotiations occurred at arm's-length and were hard fought. In advance of mediation, the Parties exchanged detailed mediation submissions, which included extensive evidence developed through fact and expert discovery.

18. As a result of pre-mediation negotiations, Kroger produced additional data (beyond the claims data already produced for the litigation classes) regarding sales of prescription drugs nationwide for purposes of mediation, which allowed Plaintiffs to reasonably estimate damages for the Settlement Class.

19. The parties participated in a pre-mediation call with Mr. Ruthberg.

20. The parties attended an in-person mediation on August 21, 2025 and engaged in additional negotiations in the months thereafter, ultimately agreeing to settle the Action[1] pursuant to a mediator's recommendation on the terms set forth in the Settlement Agreement. The Parties memorialized their agreement in a Settlement Term Sheet executed on November 21, 2025.

21. In the weeks following the signing of a binding Settlement Term Sheet, proposed Class Counsel selected a Settlement Administrator (Angeion Group) following a competitive bidding process. Angeion Group was mutually agreeable to Plaintiffs and Defendant.

22. The Parties executed the full Settlement Agreement on March 12, 2026.

23. The Parties agreed to the terms of the Settlement through experienced counsel who possessed all the information necessary to evaluate the case, determine all the contours of the

[1] All capitalized terms not defined herein have the meanings ascribed to them in the Class Action Settlement Agreement, including the exhibits thereto, dated March 12, 2026.

proposed Settlement Class, and reach a fair and reasonable compromise after negotiating the terms of the Settlement at arm's-length and with the assistance of a neutral mediator.

24. The resulting non-reversionary, common fund $17,000,000 Settlement secures substantial monetary relief to the Settlement Class while avoiding the risks of litigation, as set forth below.

III. LITIGATION RISKS

25. Had the Action continued, Plaintiffs faced significant and ongoing risks to recovery.

26. The core of Plaintiffs' claims concerned allegations that Kroger improperly reported the U&C prices charged to insured customers for prescription drugs by failing to report its Savings Club prices when determining the U&C prices it charged in connection with insured transactions for prescription drugs. One of Kroger's primary defenses is that Savings Club prices are not "cash prices" and thus are excluded when reporting or otherwise determining an accurate U&C price. Further, Kroger argued that its contracts with pharmacy benefit managers ("PBMs"), the companies that administer prescription drug benefits on behalf of health plans, do not require Kroger to report Savings Club prices as its U&C prices. Kroger also argued that Plaintiff Kirkbride "has no qualifying transaction" resulting in damages because, according to Kroger, "some portion of the Savings Club membership fee must be allocated when determining the actual Savings Club price for a drug."

27. While Plaintiffs substantially prevailed on Kroger's motion to dismiss and were successful in their motion for class certification, there is no guarantee that Plaintiffs would prevail at summary judgment, trial, or a subsequent appeal. *See Washington v. CVS Pharmacy, Inc.*, 2022 WL 17430289, at *2 (9th Cir. Dec. 6, 2022) (affirming defense verdict on similar claims by insured

drug buyers that pharmacy chain overcharged them for prescription drugs by failing to report prescription drug program prices as U&C prices). Additionally, Kroger filed a petition for permission to appeal the Court's grant of class certification pursuant to Federal Rule of Civil Procedure 23(f), creating additional risk to the classes.

28. Plaintiffs risked no recovery at all if they had continued to litigate and lost at any subsequent stage of this litigation, including if Kroger were to prevail on its Rule 23(f) petition and any subsequent appeal, at summary judgment, at trial, or on post-trial appeal.

29. Defendant is represented by highly experienced and qualified attorneys who have made clear that absent a settlement, they were prepared to continue their vigorous defense of this case.

30. Plaintiffs and proposed Class Counsel recognize that despite our belief in the strength of Plaintiffs' claims, and Plaintiffs and the classes' 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.

31. Plaintiffs and proposed Class Counsel believe that the relief provided by the Settlement weighs heavily in favor of a finding that the settlement is fair, reasonable, and adequate, and well within the range of approval.

IV. PROPOSED PLAN OF ALLOCATION

32. Proposed Class Counsel have taken measures to ensure that the Settlement does not unjustly favor any Settlement Class Member and that it will equitably distribute relief to the Settlement Class. The proposed Plan of Allocation and Distribution, attached to the Settlement Agreement as Exhibit A, provides a fair and efficient means of distributing the Net Settlement Fund. To receive a distribution under the Plan of Allocation and Distribution, Settlement Class

Members must submit a timely and valid Claim Form. Settlement Class Members who receive direct notice via email, and those who do not receive direct notice via email but appear on the List of Known Claimants to be provided by Kroger, do not need to provide Claim Documentation unless the value of their claim exceeds $7,999, in which case Claim Documentation must be provided. Settlement Class Members who do not receive direct notice and are not listed on the List of Known Claimants will be required to submit Claim Documentation to support and verify their claim. Claims will be valued based on the estimated or actual dollars spent to purchase or pay for some or all of the purchase price of one or more prescription drugs from Kroger during the Settlement Class Period where an insurance benefit was used. The Settlement Administrator will calculate a Recognized Claim for each claim pursuant to the Plan of Allocation and Distribution. The "Distribution Amount" shall be, for each Authorized Claimant, each Authorized Claimant's Recognized Claim divided by the total Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund.

V. CLASS COUNSEL

33. My firm, Bursor & Fisher, P.A., has significant experience in 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 **<u>Exhibit 2</u>**. My firm regularly engages in major complex class action litigation, has the resources necessary to conduct litigation of this nature, and has frequently been appointed lead class counsel by courts throughout the country. My firm has also been recognized by courts across the country for its expertise. *See* Ex. 2; *see also Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561, 566 (S.D.N.Y. Feb. 25, 2014) ("Bursor & Fisher, P.A., are class action lawyers who have experience litigating consumer claims. … The firm has

been appointed class counsel in dozens of cases in both federal and state courts, and has won multi-million dollar verdicts or recoveries in five class action jury trials since 2008.").

34. My co-counsel, Arisohn LLC and Smith Krivoshey, P.C., also each have significant experience in litigating class actions of similar size, scope, and complexity to the instant action. *See* Firm Resume of Arisohn LLC, a true and accurate copy of which is attached hereto as **Exhibit 3**, and Firm Resume of Smith Krivoshey, P.C., a true and accurate copy of which is attached hereto as **Exhibit 4**.

I declare under penalty of perjury that the above and foregoing is true and accurate. Executed this 12th day of March, 2026 at New York, New York.

Joseph Marchese (Mar 12, 2026 13:46:51 EDT)

Joseph I. Marchese

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JUDY KIRKBRIDE and BEETA LEWIS, individually and on behalf of all others similarly situated, Plaintiffs, vs. THE KROGER CO., Defendant.	)	Case No. 2:21-cv-00022-ALM-EPD Chief Judge Algenon L. Marbley Magistrate Judge Elizabeth Deavers

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement, including its exhibits (collectively, the "Settlement Agreement") is entered into as of March 12, 2026 by and among Plaintiffs Judy Kirkbride and Beeta Lewis ("Plaintiffs"), the Settlement Class[1], Bursor & Fisher, P.A., Arisohn LLC, and Smith Krivoshey, PC as Class Counsel, on the one hand, and Defendant The Kroger Co., on the other hand. Defendant and Plaintiffs are referred to individually as "Party" and collectively as the "Parties." Together, Plaintiffs, the Settlement Class, and Defendant are referred to for purposes of this Settlement Agreement as the "Settling Parties."

I. THE LITIGATION

On January 5, 2021, one of the current Plaintiffs filed the initial class action complaint. ECF No. 1. Plaintiffs' central allegation is that Defendant should have considered the prices it charged under its Rx Savings Club or Health Savings Club ("Savings Club") when determining its usual and customary ("U&C") prices, resulting in some insured customers paying more for prescription drugs. Defendant denies Plaintiffs' allegations and maintains that it acted appropriately in reporting its retail prices as its U&C prices. On April 16, 2021, Defendant filed a motion to strike the complaint. ECF No. 28. On April 29, 2021, before the District Court could rule, certain Plaintiffs filed an amended complaint ("Amended Complaint"). ECF No. 30. On July 12, 2022, the District Court denied Kroger's motion to dismiss the Amended Complaint. ECF No. 42. On July 26, 2022, Kroger filed its answer to the Amended Complaint, and on July 27, 2022, Plaintiffs filed a motion to strike Kroger's affirmative defenses. ECF No. 44; ECF No. 45. On January 1, 2023, Kroger then filed its amended answer to the Amended Complaint. ECF No. 55. On January 23, 2023, Plaintiffs filed a renewed motion to strike Defendant's affirmative

[1] Capitalized terms not defined in the introductory paragraph are defined in § IV.1, *infra*.

defenses. ECF No. 57. On September 5, 2023, the District Court struck, without prejudice, certain of Kroger's affirmative defenses. ECF No. 62.

Over the course of over five years of hard-fought litigation, the Parties engaged in extensive fact and expert discovery. Plaintiffs issued and Kroger responded to 16 requests for production, 11 interrogatories, and 4 requests for admission. Kroger issued and Plaintiffs responded to 30 requests for production, 10 interrogatories, and 13 requests for admission. Kroger issued six non-party subpoenas and Plaintiffs issued two non-party subpoenas for documents, and the Parties received documents and data in response. Defendants reviewed over 18,000 documents and produced nearly 4,000 documents; and Plaintiffs reviewed over 22,000 pages of documents. Plaintiffs took or defended nine Party and non-party depositions pursuant to Federal Rules of Civil Procedure 30(b)(6) and 45, including depositions of six of the Parties' seven experts,[2] Kroger, and the two named Plaintiffs. The Parties' experts issued opening, responsive, and rebuttal reports relating to Plaintiffs' motion for class certification. Each Plaintiff also produced documents, including information reflecting purchases of prescriptions from Kroger.

On February 16, 2024, Plaintiffs filed their motion for class certification and expert reports, ECF Nos. 72, 72-1. On May 17, 2024, Kroger filed its second amended answer to the Amended Complaint, and reinstated certain of its affirmative defenses. ECF No. 82; ECF No. 83. On May 28, 2024, Defendant filed its opposition to Plaintiffs' motion for class certification and its expert reports. ECF Nos. 84, 84-1, 84-2.[3] Plaintiffs filed a reply and Defendant filed a surreply and Rule 702 motions. Class certification briefing concluded following the filing of Plaintiffs' reply papers,

[2] Plaintiffs introduced an additional expert, Dr. Susan Hayes, during class certification briefing, so Kroger did not have an opportunity to depose her prior to her testimony at the March 19-21, 2025 evidentiary hearing.

[3] Kroger also served on Plaintiffs at that time, but did not file on the docket, one additional expert report. Kroger also served one amended expert report on Plaintiffs on June 20, 2024, which was filed on the docket. ECF No. 150.

including rebuttal expert reports, and Defendant's additional sur-reply and sur-rebuttal expert report. ECF Nos. 101, 101-1, 147, 149. On October 3, 2024, the Parties completed all briefing related to Defendant's Rule 702 motions. ECF Nos. 85, 85-1, 85-2, 86, 86-1, 86-2, 98, 98-1, 99, 99-1, 99-2, 99-3, 99-4, 99-5, 108, 108-1, 108-2, 109, 110, 110-1, 110-2, 111, 115, 116, 118, 119.

On March 19-21, 2025, the District Court held a three-day evidentiary hearing and oral argument on the motion for class certification and Rule 702 motions. ECF No. 85; ECF No. 86; ECF No. 101; ECF No. 110; ECF No. 111; ECF No. 144; ECF No. 145; ECF No. 147; ECF No. 156. On April 9, 2025, the District Court granted Plaintiffs' motion for class certification and denied the Rule 702 motions. ECF No. 142.

Following the District Court's April 9, 2025 order, Kroger filed a petition for permission to appeal the District Court's grant of class certification in the Sixth Circuit ("Petition"). *Kirkbride et al. v. The Kroger Co.*, No. 25-0302 (6th Cir. Apr. 11, 2025), ECF No. 1-2. The Sixth Circuit has not ruled on the Petition. On May 22, 2025, the Parties filed a joint motion to hold the case in abeyance pending mediation, which the Sixth Circuit granted. *See id.*, ECF Nos. 16, 17-2.

II. DEFENDANT'S DENIAL OF WRONGDOING AND LIABILITY

Defendant contends that the claims and allegations of wrongdoing or liability by Plaintiffs and the Settlement Class in the Action are without merit. Defendant expressly denies all allegations of wrongdoing or liability. The Parties are settling this matter with no findings of liability or wrongdoing by Kroger as to any of Plaintiffs' allegations. Further, the Settling Parties' agreement as to certification of the Settlement Class is only for purposes of effectuating a Settlement and for no other purpose. Defendant retains all of its objections, arguments, and/or defenses with respect to the merits of the Action and class certification if the Settlement Agreement does not receive approval or if it is terminated. The Settling Parties acknowledge that there has been no stipulation to any class for any purposes other than effectuating the Settlement, and, although the District Court certified three litigation classes, Kroger has requested permission to appeal that certification to the Sixth Circuit, and if the District Court declines to approve the Settlement Agreement in whole, including the class definition provided herein, or if the Settlement Agreement is voided, terminated pursuant to ¶ 8.3, or fails to become effective for any reason, then, in addition to the provisions of ¶¶ 8.1-8.4, this Settlement Agreement becomes null and void *ab initio*, and no Party may cite this Settlement Agreement, the negotiations that led to the Settlement Agreement, or any related documents filed in connection with the Settlement Agreement for any purpose related to the Action, including arguing the merits of class certification and/or any Party's claims or defenses.

It is expressly agreed that neither this Settlement Agreement nor any action taken to carry out this Settlement Agreement is, may be construed as, or may be used as an admission by Defendant of any fault, wrongdoing, or liability whatsoever with respect to the subject matter of the Action.

III. THE BENEFITS OF SETTLEMENT

The Parties to this Action engaged in extensive arm's-length settlement negotiations. The Parties retained Miles N. Ruthberg of Phillips ADR as the mediator. Kroger provided additional data to Plaintiffs sufficient to allow Plaintiffs to reliably estimate damages to the Settlement Class, and the Parties submitted written mediation briefs and exhibits, and participated in numerous pre-mediation conferences with the mediator. On August 21, 2025, the Parties attended an all-day in-person mediation, and engaged in additional negotiations thereafter, and ultimately agreed in principle (subject to certain terms set forth below) to settle the Action in exchange for a total cash payment by Kroger of $17,000,000.00 for the benefit of the Settlement Class and other terms as further described below.

The Settling Parties know that further prosecution and defense of the Action would be protracted and expensive and, having taken into account the uncertainty and risks inherent in any such litigation, have determined that it is desirable to compromise and settle all claims in the Action with respect to the Settlement Class described in this Settlement Agreement and to proceed to seek approval, implementation, and administration of this Settlement in the Southern District of Ohio.

Plaintiffs, on behalf of themselves and as representatives of the Settlement Class, and Defendant have worked to resolve their differences, and have elected to settle those differences under the terms of this Settlement Agreement rather than continue litigating their respective positions to conclusion.

The Settling Parties intend by this Settlement Agreement to resolve all claims of the Settlement Class against Defendant, and vice versa, and to resolve all other Plaintiffs' Released Claims and Defendant's Released Claims (as defined below) in accordance with the terms of this Settlement Agreement.

IV. TERMS OF AGREEMENT

NOW, THEREFORE, Plaintiffs, on behalf of themselves and as representatives of the Settlement Class, the Settlement Class, and Defendant, in consideration of the execution of this Settlement Agreement, the mutual promises contained herein, the benefits to be received hereunder, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by all Settling Parties, hereby agree as follows:

1. Definitions

The following terms and phrases shall have the following meanings under the provisions of this Settlement Agreement, whether used in the singular or plural, and whether in the possessive or non-possessive:

1.1 "Action" means *Kirkbride et al. v. The Kroger Co.*, No. 2:21-cv-00022 (S.D. Ohio).

1.2 "Attorneys' Fees and Expenses" means attorneys' fees and out-of-pocket litigation expenses and charges (including expert and consulting fees) submitted by Class Counsel in an amount to be determined by the District Court. Attorneys' Fees and Expenses shall be paid from the Settlement Fund.

1.3 "Claim Form" means the claim form attached as Exhibit E as approved by the District Court.

1.4 "Class Counsel" means Bursor & Fisher, P.A., Arisohn LLC, and Smith Krivoshey, PC.

1.5 "Contact Information" means any potential Settlement Class Members' names, dates of birth, phone numbers, physical addresses (including zip code), and email addresses that are in Defendant's possession and reasonably accessible as of the date of this Settlement Agreement.

1.6 "Defendant" or "Kroger" means The Kroger Co., including all pharmacies owned and/or operated by The Kroger Co. or any of its affiliates.

1.7 "Defendant's Counsel" means Reed Smith LLP.

1.8 "Defendant's Released Claims" means all claims, demands, damages, harm, injuries, actions, causes of action, suits, proceedings, matters, disputes, obligations, costs, and losses of any kind whatsoever, whether known or Unknown Claims, suspected or unsuspected, accrued or unaccrued, and contingent or non-contingent, which now exist or have existed upon any theory of law or equity (whether contractual, common law, statutory, federal, state, local, or otherwise), against Plaintiffs' Released Persons arising out of or related to the institution, prosecution, or Settlement of the claims asserted in the Action, except for claims relating to the enforcement of the Settlement Agreement, the filed stipulated undertaking referenced in ¶ 7.1 ("Stipulated Undertaking"), and the side agreement referenced in ¶ 8.3 ("Side Agreement").

1.9 "Defendant's Released Persons" means Kroger and its respective legal representatives, predecessors, successors and assigns, present and former parents and subsidiaries and affiliated entities, and present and former employees, partners, agents, representatives, independent contractors, officers, directors, shareholders, attorneys, accountants, managers, and all other legally associated individuals or entities.

1.10 "Distribution" means an electronic disbursement or disbursement by check payable to the order of a Settlement Class Member as the distribution of the Settlement Class Member's share of the Net Settlement Fund pursuant to the approved Plan of Allocation and Distribution.

1.11 "Distribution Date" means the date of the initial disbursement of the Net Settlement Fund to Settlement Class Members. No Distribution shall be made to Settlement Class Members until the Effective Date.

1.12 "Effective Date" means the date on which the Judgment becomes Final and Non-Appealable.

1.13 "Escrow Account" means the interest-bearing account controlled by the Escrow Agent into which the sum of $17,000,000.00, paid to the Escrow Agent by Defendant, in the manner and amounts as set forth in ¶ 2.1, shall be deposited.

1.14 "Escrow Agent" means Angeion Group.

1.15 "Escrow Fees" means any fees, costs, and expenses incurred by the Escrow Agent other than Taxes and Tax Expenses.

1.16 "Fairness Hearing" means the proceedings to be held before the District Court to determine whether the Settlement should be approved as fair, reasonable and adequate pursuant to

Rule 23(e)(2) of the Federal Rules of Civil Procedure; whether the Judgment should be entered; and whether the motion for award of Attorneys' Fees and Expenses and Service Awards should be granted.

1.17 "Final and Non-Appealable" means, with respect to the Judgment approving this Settlement Agreement and the proposed class settlement contemplated under this Settlement Agreement, when the Judgment has been entered and the time has expired to file: (a) a notice of appeal; or (b) any motion which would legally extend the time to appeal the Judgment or challenge or seek reconsideration, modification or vacation of the Judgment. If a notice of appeal is filed, the Judgment becomes Final and Non-Appealable when the appellate court enters an order or judgment dismissing or overruling the relief requested and that order or judgment itself becomes final and no longer subject to further review in any court, or on the date all the appellants dismiss with prejudice any appeal. For the avoidance of doubt, any appeal or proceeding seeking subsequent judicial review of an order solely with respect to Attorneys' Fees and Expenses shall not in any way delay or preclude the Judgment from becoming Final and Non-Appealable.

1.18 "Judgment" means the order of the District Court giving final approval to this Settlement in accordance with the terms of this Settlement Agreement, substantially in the form of the attached Exhibit F.

1.19 "Plaintiffs" means collectively: Judy Kirkbride and Beeta Lewis.

1.20 "Net Settlement Fund" means the Settlement Fund less: (a) Attorneys' Fees and Expenses, including Service Awards, as awarded by the District Court; (b) Notice and Administration Expenses; (c) Taxes, Tax Expenses, and Escrow Fees; and (d) other Court-approved deductions.

1.21 "Notice" means the Notices of Settlement of Class Action and Fairness Hearing, which are to be sent to the Settlement Class after the District Court determines them to be consistent with the requirements of Due Process and Rule 23, and is substantially in the forms of the attached Exhibits C1, C2, and D.

1.22 "Notice Plan" means the plan created by the Parties and Settlement Administrator for the purpose of providing Notice to the Settlement Class, as described in ¶¶ 5.1-5.8, below.

1.23 "Notice and Administration Expenses" means the reasonable expenses of the Settlement Administrator incurred or charged in connection with the following, as approved by the District Court:

(a) Providing notice of the Settlement to Settlement Class Members pursuant to the Notice Plan, including through digital communications and publication of the Notice (including the cost of print and digital communications and publications, as well as making certain efforts to locate Settlement Class Members);

(b) Maintenance of a dedicated Settlement Website to facilitate communications with Settlement Class Members and to provide access to Settlement-related documents and information;

(c) Responding to inquiries regarding the Settlement by Settlement Class Members;

(d) Implementation of the Plan of Allocation and Distribution (including the processing of claims, calculating the allocations and distributions, and providing disbursements);

(e) Costs of preparing and dispersing Distributions and tax documentation to the Settlement Class Members; and

(f) Any other reasonable fees and expenses of the Settlement Administrator.

1.24 "Opt-Out Deadline" means the date by which Settlement Class Members must elect to opt out of the Settlement Class as set forth in the Preliminary Approval Order.

1.25 "Plaintiffs' Related Parties" means Plaintiffs' respective legal representatives, including Class Counsel, heirs, executors, administrators, beneficiaries, trustees, predecessors, successors in interest, transferees and assignees, in their capacities as such.

1.26 "Plaintiffs' Released Claims" means all claims, demands, damages, harm, injuries, actions, causes of action, suits, proceedings, matters, disputes, obligations, costs, and losses of any kind whatsoever, whether known or Unknown Claims, suspected or unsuspected, accrued or unaccrued, and contingent or non-contingent, which now exist or have existed upon any theory of law or equity (whether contractual, common law, statutory, federal, state, local, or otherwise), including any claims for compensatory or punitive damages, or for attorneys' fees, costs, or disbursements of any kind, against Defendant's Released Persons arising out of or related to the conduct challenged in the Action, including any and all claims relating to the reporting of U&C prices for pharmaceuticals, regardless of whether "usual and customary" or "U&C" appears as a defined contractual term in any relevant contract, except for claims relating to the enforcement of the Settlement Agreement, the Stipulated Undertaking, and the Side Agreement.

1.27 "Plaintiffs' Released Persons" means Plaintiffs, Settlement Class Members, and Plaintiffs' Related Parties.

1.28 "Plan of Allocation and Distribution" means the methodology for allocating and distributing the Net Settlement Fund to Settlement Class Members, attached as Exhibit A.

1.29 "Preliminary Approval Order" means the order (or orders) of the District Court: (a) preliminarily approving this Settlement Agreement; (b) preliminarily certifying the Settlement Class; (c) preliminarily appointing class representatives; (d) preliminarily appointing Class

Counsel; (e) appointing the Settlement Administrator and Escrow Agent; (f) approving the form and manner of disseminating the Notice to Settlement Class Members; (g) approving the Notice Plan; (h) preliminarily approving the Plan of Allocation and Distribution; and (i) scheduling a Fairness Hearing. The Preliminary Approval Order shall also provide that, if this Settlement Agreement is not approved in whole, is voided, terminated pursuant to ¶ 8.3, or fails to become effective for any reason, the Settling Parties shall be returned to the *status quo* that existed immediately prior to May 23, 2025, when the Sixth Circuit first held the case in abeyance so that the Parties could engage in settlement discussions. *See Kirkbride et al. v. The Kroger Co.*, No. 25-0302 (6th Cir. Apr. 11, 2025), ECF No. 17-2. The Preliminary Approval Order shall be substantially in the form of the order attached as Exhibit B.

1.30 "Released Persons" means Defendant's Released Persons and Plaintiffs' Released Persons.

1.31 "Released Claims" means Defendant's Released Claims and Plaintiffs' Released Claims.

1.32 "Service Awards" means payments, to be approved by the District Court, to Plaintiffs in their capacity as representatives of the Settlement Class to compensate them for their work on behalf of the Settlement Class, including participating in the litigation, performing work in support of the litigation, and undertaking the risks of litigation.

1.33 "Settlement" means the settlement between the Settling Parties in the Action on the terms and conditions set forth in this Settlement Agreement.

1.34 "Settlement Administrator" means Angeion Group. Angeion Group will administer this Settlement Agreement and the Plan of Allocation and Distribution.

1.35 "Settlement Amount" means $17,000,000.00 in cash to be paid by Defendant into the Escrow Account for the benefit of the Settlement Class. The Settlement Amount will be paid in the manner set forth in ¶ 2.1.

1.36 "Settlement Class Member" means a person who is a member of the Settlement Class who does not opt out.

1.37 "Settlement Class Period" means from December 9, 2018 through the date on which Class Notice is disseminated.

1.38 "Settlement Class" means the following:

> All individuals in the United States and its territories who, at any point in time during the Settlement Class Period, paid in whole or in part for one or more prescription drugs from Kroger using their insurance.

The following individuals are excluded from the Settlement Class: (1) any Judge presiding over any portion of this Action, including appeals, and immediate members of the Judges' families, any members of the Judges' respective staffs (but not members of the immediate families of judicial staff); (2) officers and directors of Kroger, its subsidiaries, parent companies, successors, predecessors, affiliates, and any entity in which Kroger has a controlling interest; (3) individuals who timely and validly request exclusion from the Settlement Class; (4) the legal representatives, successors, or assigns of any such excluded individuals; and (5) all individuals that have sued (other than through this Action), filed an arbitration demand, or participated in a settlement in a suit against Kroger relating to its determination of U&C prices in connection with the Savings Club (this exclusion from the Settlement Class does not apply to individuals that have voluntarily dismissed their claims without prejudice in any suit or arbitration).

1.39 "Settlement Fund" means the Settlement Amount, plus all interest and accretions thereto.

1.40 "Settlement Website" means the dedicated website created, administered, and maintained by the Settlement Administrator in connection with the Settlement, at an available URL (such as, for example, www.krogersavingsclubsettlement.com).

1.41 "Tax" or "Taxes" mean any and all taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any governmental authority.

1.42 "Tax Expenses" means expenses and costs incurred in connection with the implementation and administration of the "qualified settlement fund" described in ¶¶ 2.8-2.13 (including expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in ¶¶ 2.8-2.13).

1.43 "Unknown Claims" means: (a) any Plaintiffs' Released Claims that Plaintiffs or any Settlement Class Member does not know or suspect to exist in his or her favor at the time of the release of Defendant's Released Persons which, if known by him or her, might have affected such Plaintiff's or Settlement Class Member's settlement or decisions with respect to the Settlement, including the release of Defendant's Released Persons or the decision not to object to or opt out of this Settlement; and (b) any Defendant's Released Claims that Defendant does not know or suspect to exist in its favor at the time of the release of Plaintiffs' Released Persons, which if known by it, might have affected its settlement or decision with respect to the Settlement, including the release of Plaintiffs' Released Persons. With respect to: (i) any and all Plaintiffs' Released Claims against Defendant's Released Persons and (ii) any and all Defendant's Released Claims against Plaintiffs' Released Persons, the Settling Parties stipulate and agree that, upon the Effective Date, they shall expressly waive, and each of the Settlement Class Members shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, any and all provisions, rights, and benefits conferred by the law of any state or territory or other jurisdiction or principle of common law or foreign law that is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

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

The Settling Parties and the Settlement Class Members may hereafter discover facts in addition to or different from those that he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but the Settling Parties shall expressly fully, finally, and forever settle and release, and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released, any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or have existed, upon any theory of law or equity now existing or coming into existence in the future, including conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Settling Parties acknowledge, and Settlement Class Members shall be deemed by operation of law (including by operation of the Judgment) to have acknowledged, that the foregoing waiver was separately bargained for and is a key element of the Settlement.

1.44 The term "including" means including but not limited to.

2. The Settlement

a. Payments to Settlement Class Members

2.1 **Payment by Defendant**. Defendant agrees to pay $17,000,000.00 into a non-reversionary common fund for the benefit of Settlement Class Members. Within 45 days after the District Court enters a Judgment, Defendant will pay the Settlement Amount into the Escrow Account, which the Escrow Agent will control. No disbursements shall be made to Settlement Class Members until the Effective Date. If this Settlement Agreement is not approved in whole, is voided, or is terminated pursuant to ¶ 8.3, or if the Settlement Agreement fails to become effective for any reason: (a) the balance in the Settlement Fund, including interest accrued thereon and the amounts returned to the Settlement Fund pursuant to ¶ 7.3, but less Taxes, Tax Expenses, Escrow Fees, and any Notice and Administration Expenses actually paid or incurred, shall be promptly returned to Defendant not later than 35 days after the Settlement Agreement is not approved, is voided, terminated pursuant to ¶ 8.3, or fails to become effective for any reason; and (b) the Settling Parties shall be returned to the *status quo* that existed in the Action immediately prior to May 23, 2025, when the Sixth Circuit first stayed the case so that the Parties could engage in settlement discussions.

2.2 Distributions to Settlement Class Members shall be in accordance with this Settlement Agreement, the Plan of Allocation and Distribution as approved by the District Court, and the Judgment.

2.3 The obligations incurred pursuant to this Settlement Agreement shall be in full and final disposition and settlement of all the Released Claims. Except with regard to the amount Kroger agrees to pay in the event that the Settlement fails to become effective for any reason prior to entry of the Judgment as stated in ¶ 5.6, below, the Settlement Amount paid by Defendant is its sole monetary responsibility under this Settlement Agreement, and Settlement Class Members who do not timely seek to exclude themselves from the Settlement Class shall not look to any of Defendant's Released Persons for satisfaction of any Plaintiffs' Released Claims. Defendant is not responsible for payment of Attorneys' Fees and Expenses, Notice and Administration Expenses, Escrow Fees, or any out-of-pocket expenses, other than indirectly through its payment of the Settlement Amount, or as provided for in this Settlement Agreement.

b. The Escrow Agent

2.4 The Escrow Agent shall invest the Settlement Amount deposited pursuant to ¶ 2.1 in United States Agency or Treasury Securities or other instruments backed by the Full Faith & Credit of the United States Government or an Agency thereof, or fully insured by the United States Government or an Agency thereof, and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. All risks related to the investment of the Settlement Fund shall be borne by the Settlement Fund. The Released Persons shall have no responsibility for, interest in, or liability whatsoever with respect to the investment decisions or the actions of the Escrow Agent, or any transactions executed by the Escrow Agent.

2.5 The Escrow Agent shall not disburse the Settlement Fund except as provided in the Settlement Agreement or by an order of the District Court.

2.6 Subject to further order(s) and/or directions as may be made by the District Court, the Escrow Agent is authorized to execute such transactions as are consistent with the terms of the Settlement Agreement. Neither the Parties nor their respective counsel shall be liable for the loss of any portion of the Settlement Fund, nor have any liability, obligation, or responsibility for (a) the payment of claims, taxes (including interest and penalties), legal fees, or any other expenses payable from the Settlement Fund; (b) the investment of any Settlement Fund assets; or (c) any act, omission, or determination of the Escrow Agent.

2.7 All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the District Court, and shall remain subject to the jurisdiction of the District Court, until such time as such funds shall be distributed pursuant to the Settlement Agreement and/or further order(s) of the District Court.

c. Taxes and Tax Expenses

2.8 The Settling Parties and the Escrow Agent agree to treat the Settlement Fund as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. §1.468B-1. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this paragraph, including the "relation-back election" (as defined in Treas. Reg. §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary Parties, and thereafter to cause the appropriate filing to occur.

2.9 For the purpose of § 1.468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "administrator" shall be the Escrow Agent. The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including the returns described in Treas. Reg. §1.468B-2(k)). Such returns (as well as the election described in ¶ 2.8 hereof) shall be consistent with this ¶ 2.9 and in all events shall reflect that all Taxes (including any estimated Taxes, interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in ¶ 2.10 hereof. Defendant's Released Persons shall have no responsibility or liability for the Settlement Fund's tax returns or other filings. Plaintiffs' Released Persons shall have no responsibility or liability for the Settlement Fund's tax returns or other filings, other than indirectly through the Settlement Fund.

2.10 All: (a) Taxes (including any estimated Taxes, interest, or penalties) arising with respect to the income earned by the Settlement Fund, including any Taxes or tax detriments that may be imposed upon the Released Persons or their counsel with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a "qualified settlement fund" for federal or state income tax purposes; and (b) Tax Expenses, shall be paid out of the Settlement Fund; in all events Defendant's Released Persons and their counsel shall have no liability or responsibility for the Taxes or the Tax Expenses, and Plaintiffs' Released Persons, the Settling Parties, and their counsel shall have no liability or responsibility for the Taxes or the Tax Expenses other than indirectly through the Settlement Fund. Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the District Court and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from Distribution to Settlement Class Members any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-2(l)(2)). The Settling Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this paragraph.

2.11 The Settlement Administrator will be responsible for the filing of forms related to all Taxes (including any interest or penalties thereon), including all federal, state, local, or any other Taxes of any kind, that may be owed on any income earned by the Settlement Fund.

2.12 Defendant's Released Persons and Defendant's Counsel shall have no liability for or obligations with regard to Taxes and Tax Expenses, including with respect to acts or omissions of the Settlement Administrator or its agents. The Escrow Agent, through the Settlement Fund, shall indemnify and hold each Defendant's Released Persons and Defendant's Counsel harmless for any Taxes and Tax Expenses (including, without limitation, taxes payable by reason of such indemnification).

2.13 Plaintiffs' Released Persons and Class Counsel shall have no liability for or obligations with regard to Taxes and Tax Expenses, including with respect to acts or omissions of the Settlement Administrator or its agents, other than indirectly through the Settlement Fund. The Escrow Agent, through the Settlement Fund, shall indemnify and hold Plaintiffs' Released Persons and Class Counsel harmless for any Taxes and Tax Expenses (including, without limitation, taxes payable by reason of such indemnification).

d. Refund of Settlement Payment Upon Termination of Settlement

2.14 In the event that the Settlement Agreement is not approved, is voided, terminated pursuant to ¶ 8.3, or fails to become effective for any reason, the balance in the Settlement Fund, including interest accrued thereon and the amounts returned to the Settlement Fund pursuant to ¶ 7.3, but less Taxes, Tax Expenses, Escrow Fees, and any Notice and Administration Expenses actually paid or incurred, shall be promptly returned to Defendant pursuant to written instructions from Defendant's Counsel, not later than 35 days after the Settlement Agreement is not approved, is voided, terminated pursuant to ¶ 8.3, or fails to become effective for any reason.

3. Preliminary Approval Order, CAFA Notice, and Fairness Hearing

3.1 Promptly after execution of the Settlement Agreement, Class Counsel shall submit the Settlement Agreement to the District Court and shall apply for entry of the Preliminary Approval Order, requesting, among other things, the preliminary approval of the Settlement set forth in the Settlement Agreement, approval of the Notice, preliminary appointment of Plaintiffs as class representatives for the Settlement Class, and preliminary appointment of Bursor & Fisher, P.A., Arisohn LLC, and Smith Krivoshey, PC as Class Counsel, substantially in the form of the attached Exhibit B. The Notice shall include the general terms of the Settlement set forth in the Settlement Agreement, a description of the proposed Plan of Allocation and Distribution, the general terms of the application for a Fee and Expense Award (as defined in ¶ 7.1), and the date of the Fairness Hearing. Defendant agrees not to oppose appointment of Plaintiffs as class representatives for the Settlement Class and appointment of Bursor & Fisher, P.A., Arisohn LLC, and Smith Krivoshey, PC as Class Counsel for the Settlement Class.

3.2 At the time of the submission of this Settlement Agreement to the District Court as described above, Class Counsel shall request that after notice is given, the District Court hold the Fairness Hearing and approve the Settlement of the Action as set forth herein. At the Fairness Hearing, Class Counsel also will request that the District Court: (1) grant final approval of this Settlement and direct its implementation pursuant to the terms and conditions of the Settlement Agreement; (2) confirm that the Notice Plan complies in all respects with the requirements of due process and Rule 23 by providing due, adequate, and sufficient notice to the Settlement Class; (3) determine that this Settlement is fair, reasonable, and adequate; (4) approve the proposed Plan of Allocation and Distribution; (5) grant Plaintiffs' application for an award of Attorneys' Fees and Expenses, including Plaintiffs' request for Service Awards in connection with their representation of the Settlement Class; (6) direct that the Action be dismissed with prejudice; (7) state pursuant to Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and direct that the Judgment is a final, appealable order; and (8) retain the District Court's continuing and exclusive jurisdiction over the Parties for purposes of the administration, interpretation, implementation, and enforcement of the Settlement, and over the Settlement Class Members for all matters relating to the Action.

3.3 After Notice is given, the Parties shall request and seek to obtain from the District Court a Judgment, in the form attached as Exhibit F.

3.4 Pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, *et seq.* ("CAFA"), no later than 10 calendar days after this Settlement Agreement is filed with the District Court, Defendant shall serve or cause to be served proper notice of the proposed Settlement upon those who are entitled to notice pursuant to CAFA.

4. Releases and Dismissal

4.1 Upon the Effective Date, Plaintiffs' Released Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Plaintiffs' Released Claims against Defendant's Released Persons with prejudice, whether or not any such Plaintiffs' Released Person shares in the Settlement Fund. Claims to enforce the terms of this Settlement Agreement, the Stipulated Undertaking, and the Side Agreement are not released.

4.2 Upon the Effective Date, Plaintiffs' Released Persons and anyone claiming through or on behalf of any of them will be forever barred and enjoined from commencing, instituting, prosecuting or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, or administrative forum, asserting any of the Plaintiffs' Released Claims against any of Defendant's Released Persons.

4.3 Upon the Effective Date, Defendant's Released Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Defendant's Released Claims against Plaintiffs' Released Persons with prejudice. Claims to enforce the terms of this Settlement Agreement, the Stipulated Undertaking, and the Side Agreement are not released.

4.4 As part of Plaintiffs' motion for final approval, and in consideration of the promises set forth in this Settlement Agreement, including payment of the Settlement Fund, the Plaintiffs, through their counsel and on behalf of themselves and the Settlement Class, shall request that the District Court dismiss the Action with prejudice.

5. Notice To The Class

5.1 In their motion for preliminary approval, Plaintiffs will propose that the District Court appoint Angeion Group as the Settlement Administrator. The parties have agreed upon Angeion Group to serve as the Settlement Administrator.

5.2 The Parties will work in good faith to assist the Settlement Administrator with developing an appropriate and reasonable Notice Plan, to be completed as soon as practicable after, but no later than fourteen (14) days after, execution of this Settlement Agreement. In the event the Parties and the Settlement Administrator cannot agree on a Notice Plan, the Parties will bring the issue before the District Court for a ruling. The Notice is designed to provide clear and concise notice of the terms of this Settlement Agreement in plain, easily understood language. Plaintiffs will recommend to the District Court the Notice Plan, to be approved in the Preliminary Approval Order, which will be administered by the Settlement Administrator.

5.3 The Settlement Administrator will facilitate the notice process by providing professional guidance and support in the implementation of the Notice Plan and by overseeing the Claim Form submission process and validating claims.

5.4 The duties undertaken by the Settlement Administrator shall be as described in this Settlement Agreement, the Court-approved Plan of Allocation and Distribution, the Court-approved Notice Plan, and orders of the District Court. The Settlement Administrator shall (a) administer the issuance of Notice to the Settlement Class in accordance with the terms of the Preliminary Approval Order and any other orders of the District Court; (b) determine the validity of submitted claims; (c) calculate the Recognized Claim amounts (defined in the Plan of Allocation and Distribution) of Authorized Claimants (defined in the Plan of Allocation and Distribution) that shall be allowed; (d) administer the Distribution of the Net Settlement Fund to Authorized Claimants (defined in the Plan of Allocation and Distribution); and (e) otherwise provide such claims administration services as are customary in settlements of this type, subject to such supervision of Class Counsel and (as appropriate or as circumstances may require) the District Court.

5.5 The Settlement Administrator shall also post on the Settlement Website a copy of this Settlement Agreement, the long-form Notice, substantially in the form of Exhibit D, hereto, the Claim Form, substantially in the form of Exhibit E, hereto, and other pertinent documents and Court filings pertaining to the settlement (including the motion for attorneys' fees upon its filing).

5.6 Notice and Administration Expenses will not exceed $325,000 prior to the Effective Date. Notice and Administration Expenses incurred prior to the District Court entering a Judgment will be paid by Class Counsel, or the Settlement Administrator may agree to defer receiving payment pending final approval of the Settlement, to be reimbursed out of the Settlement Fund once it is funded. In the event that the Settlement fails to become effective for any reason prior to entry of a Judgment and, therefore, the Settlement Fund is not funded, Kroger will pay the Settlement Administrator and/or reimburse Class Counsel (to the extent Class Counsel has already paid the Settlement Administrator) for the Notice and Administration Expenses actually incurred up to $150,000, and Class Counsel will pay the Settlement Administrator for the Notice and Administration Expenses actually incurred above $150,000 up to the cap of $325,000. Once a Judgment is entered, all Notice and Administration Expenses will be paid and/or reimbursed (to the extent Class Counsel has previously paid the Settlement Administrator) from the Settlement

Fund, regardless of whether the Judgment becomes Final and Non-Appealable. In no event shall Plaintiffs or Class Counsel be responsible to pay any amount for Notice and Administration Expenses other than as specified in this paragraph or indirectly through the Settlement Fund.

5.7 The Settlement Administrator shall provide Class Counsel and Defendant's Counsel with regular reports at weekly intervals containing information concerning Notice (including any opt outs or objections), administration, and implementation of the Settlement Agreement, including the approved Plan of Allocation and Distribution.

5.8 The Settlement Administrator shall provide a declaration to the District Court attesting to the Notice to the Settlement Class and all measures undertaken to provide notice of the Settlement to the Settlement Class upon request by the Parties or as ordered by the District Court.

6. Claims Administration

6.1 No later than April 9, 2026, Defendant shall produce to the Settlement Administrator, with a copy to Class Counsel, an electronic list from its records that includes the Contact Information for Settlement Class Members. This electronic document shall be called the "List of Known Claimants."

6.2 Each Settlement Class Member wishing to participate in the Settlement, and who has not timely and properly elected to opt out of this Settlement, shall be required to submit to the Settlement Administrator a Claim Form. Each Claim Form must be submitted under penalty of perjury under the procedures outlined in the Plan of Allocation and Distribution and instructions contained in the Claim Form or otherwise given by the Settlement Administrator.

6.3 All Claim Forms must be received by the Settlement Administrator within the time prescribed in the Preliminary Approval Order unless otherwise ordered by the District Court. Any Settlement Class Member who fails to submit a properly completed Claim Form within such period authorized by the District Court shall be forever barred from receiving any payments pursuant to this Settlement Agreement or from the Net Settlement Fund (unless Class Counsel in its discretion deems such late submission to be a formal or technical defect and waives the lateness of the submission in the interest of achieving substantial justice, or unless, by order, the District Court approves that Settlement Class Member's untimely submitted Claim Form), but will in all other respects be subject to the provisions of this Settlement Agreement.

6.4 Claim Forms that do not meet the submission requirements may be rejected. Prior to rejecting a Claim Form for other than lack of timeliness, the Settlement Administrator shall communicate with the claimant to give the claimant the opportunity to remedy any curable deficiencies in the Claim Form submitted. The Settlement Administrator, under the supervision of Class Counsel, shall notify in a timely fashion and in writing, all claimants whose Claim Forms they propose to reject in whole or in part, setting forth the reasons thereof, and shall indicate in such deficiency notice that the claimant whose claims are to be rejected has the right to review by the District Court if the claimant so desires and complies with the requirements of this Settlement Agreement.

6.5 If any claimant whose Claim Form has been rejected in whole or in part desires to contest such rejection, the claimant must, within twenty (20) calendar days after the date of notice required by ¶ 6.4 above, serve upon the Settlement Administrator a written statement of reasons indicating the claimant's ground(s) for contesting the rejection along with copies of any supporting documentation, and requesting a review thereof by the District Court. If a dispute concerning whether a claim should be accepted or rejected cannot be otherwise resolved, Class Counsel shall thereafter present the request for review to the District Court.

6.6 Without regard to whether a Claim Form is submitted or allowed, each claimant who declines to be excluded from the Settlement Class shall be deemed to have submitted to the jurisdiction of the District Court with respect to such claimant's claim, and such claimant's claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to that claimant's status as a Settlement Class Member and the validity and amount of the claimant's claim. No discovery shall be allowed on the merits of the Action or Settlement in connection with the processing of Claim Forms.

6.7 Payment pursuant to this Settlement Agreement shall be deemed final and conclusive against all Settlement Class Members. All Settlement Class Members whose claims are not approved shall be barred from participating in distributions from the Net Settlement Fund, but shall otherwise be bound by all of the terms of the Judgment to be entered in the Action and the releases provided for in this Settlement Agreement, and will be barred from bringing any action against the Defendant's Released Persons arising out of or relating to Plaintiffs' Released Claims. All proceedings with respect to the administration, processing, and determination of claims described in this Settlement Agreement and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of and decided by the District Court. All Plaintiffs' Released Persons expressly waive trial by jury (to the extent any such right may exist) and any right of appeal or review with respect to such determinations as provided herein. The decision of the District Court with respect to objections to the Settlement Administrator's claim determinations shall be final and binding on all Plaintiffs' Released Persons, and there shall be no appeal to any court, including the United States Court of Appeals for the Sixth Circuit, such right of appeal having been knowingly and intentionally waived by each Plaintiffs' Released Persons.

6.8 Subject to the terms of the Settlement Agreement and order(s) of the District Court, the Settlement Fund shall be applied as follows:

(a) to pay all Notice and Administration Expenses;

(b) to pay the Taxes and Tax Expenses described in ¶¶ 2.8-2.13 hereof;

(c) to pay Escrow Fees;

(d) to pay Attorneys' Fees and Expenses to Class Counsel to the extent allowed by the District Court;

(e) after the Effective Date, to pay Service Awards to Plaintiffs to the extent allowed by the District Court; and

(f) after the Effective Date, to distribute the Net Settlement Fund to Settlement Class Members as allowed by the Judgment, the Settlement Agreement, and the Plan of Allocation and Distribution, as approved by the District Court.

6.9 Any Distribution of monies or funds to Settlement Class Members shall be in accordance with the Settlement Agreement, the Plan of Allocation and Distribution approved by the District Court, and the Judgment.

6.10 Defendant and Plaintiffs agree that the Net Settlement Fund shall be only for the benefit of the Settlement Class, which by definition does not include those who timely and properly opt out of the Settlement Class after receiving the Notice as contemplated under this Settlement Agreement.

6.11 Defendant, Plaintiffs, and Class Counsel shall provide reasonable cooperation to the Settlement Administrator in connection with the information reasonably needed by them to perform the activities contemplated under this Settlement Agreement, including the dissemination of the Notice and the implementation of the Plan of Allocation and Distribution.

6.12 This Settlement is not reversionary, and, if the Settlement becomes Final and Non-Appealable, no portion of the Settlement Fund will be returned to Defendant. Defendant's

Released Persons shall have no responsibility for, interest in, or liability whatsoever with respect to the Distribution of the Net Settlement Fund, the Plan of Allocation and Distribution, the determination, administration, or calculation of claims, the payment or withholding of Taxes or Tax Expenses, or any losses incurred in connection therewith.

6.13 Defendant's Released Persons shall have no responsibility for allocation or Distribution of the Settlement Amount, whether to the Settlement Class Members or to Class Counsel.

6.14 No person or entity shall have any claim against any Released Persons or the Settlement Administrator based on Distributions made in accordance with the Settlement Agreement and the Settlement contained herein, the Court-approved Plan of Allocation and Distribution, the Judgment, or further order(s) of the District Court. This does not include any claim by any Party for breach of this Settlement Agreement or to enforce the terms of this Settlement Agreement, the Stipulated Undertaking, or the Side Agreement.

7. Class Counsel's Attorneys' Fees and Expenses and Plaintiffs' Service Awards

7.1 Class Counsel will submit an application or applications for: (a) an award of attorneys' fees not to exceed one third of the Settlement Fund; plus (b) out-of-pocket costs and expenses in connection with prosecuting the Action; plus (c) any interest on such Attorneys' Fees and Expenses at the same rate and for the same periods as earned by the Settlement Fund (until paid) as may be awarded by the District Court (the "Fee and Expense Award"). Plaintiffs agree to move for an award of attorneys' fees and an award of fees, costs, and expenses at least 14 days before the objection deadline, or as otherwise ordered by the District Court. If awarded, any Fee and Expense Award will be paid from the Settlement Fund to Class Counsel within 50 days following the District Court's entry of a Judgment approving the Settlement and Fee and Expense

Award, subject to the terms of the separate Stipulated Undertaking entered into by Class Counsel and Defendant and filed with the District Court, in the form attached hereto as Exhibit G, notwithstanding the existence of timely filed objections, or potential appeal therefrom, or any other circumstance jeopardizing the finality of the District Court's Judgment. Class Counsel, in their sole discretion, shall allocate and distribute the Fee and Expense Award among Plaintiffs' counsel of record.

7.2 Plaintiffs may request Service Awards in connection with their representation of the Settlement Class in the amount of $5,000 to each Plaintiff. If awarded, any Service Award will be paid from the Settlement Fund.

7.3 In the event that the Effective Date does not occur, or the Judgment or the order granting the Fee and Expense Award is reversed or modified, or the Settlement Agreement is canceled or terminated for any other reason, and such reversal, modification, cancellation or termination becomes Final and Non-Appealable, and in the event that the Fee and Expense Award has been paid to any extent, then Class Counsel who received any payment of the Fee and Expense Award shall be obligated, within 30 days from receiving notice from Defendant's Counsel or from a court of appropriate jurisdiction, to refund to the Settlement Fund such fees and expenses previously paid to them from the Settlement Fund plus interest actually accrued, in an amount consistent with such reversal or modification. Each such Class Counsel's law firm receiving fees and expenses, as a condition of receiving the Fee and Expense Award, on behalf of itself and each equity partner and/or shareholder of it, agrees that the law firm and its equity partners and/or shareholders are subject to the jurisdiction of the District Court for the purpose of enforcing this provision, and are each jointly and severally liable and responsible for any required repayment.

7.4 Any Fee and Expense Award and/or Service Awards awarded by the District Court shall be paid solely from the Settlement Fund. Defendant's Released Persons shall have no responsibility for any payment of Service Awards to Plaintiffs and/or Attorneys' Fees and Expenses to Class Counsel, other than indirectly through Defendant's payment of the Settlement Amount, as provided for in this Settlement Agreement.

8. Failure to Obtain Approval of Settlement or Termination of Settlement

8.1 If the District Court enters an order denying approval of the Settlement with an opportunity to resubmit, the Parties will meet and confer in good faith to try to resolve any issues raised by the District Court through an amended settlement agreement, although neither Party shall have any obligation to agree to any material modifications to this Settlement Agreement.

8.2 This Settlement Agreement will automatically terminate if the District Court enters an order denying approval of the Settlement, in whole or in part, including if the District Court declines to approve the class definition herein, without an opportunity to resubmit or if any appellate court denies approval of the Settlement and such order becomes Final and Non-Appealable.

8.3 Defendant has the right and option, in its sole discretion, to withdraw from and terminate the Settlement in the event that Settlement Class Members who opt out from the Settlement on or before the Opt-Out Deadline satisfy a certain set of criteria that the Parties have agreed upon, the terms of which are set forth in a separate, confidential Side Agreement ("Triggering Criteria"), which can be provided *in camera* to the District Court upon request. If the Triggering Criteria are met, as soon as practicable but not later than 60 days after the Opt-Out Deadline, Defendant must decide whether it preliminarily intends to terminate the Settlement pursuant to this paragraph. If Defendant makes such preliminary determination to terminate the

Settlement, it will notify Class Counsel by email thereof, and Class Counsel will have 60 days from the date they receive Defendant's notice of preliminary determination to terminate the Settlement to communicate with any opt-outs to attempt to have such Settlement Class Members withdraw their opt-outs and remain in the Settlement Class. Defendant agrees to cooperate in good faith to encourage opt-outs to revoke their opt-out request and remain in the Settlement Class. If any Settlement Class Member withdraws his or her opt-out request, any Claim Form submitted by such Settlement Class Member will be deemed to be timely filed. If the Triggering Criteria continue to be met after 60 days from the date Class Counsel receives Defendant's notice of preliminary determination to terminate the Settlement, the settlement agreement will automatically terminate absent Kroger revoking its notice of intention to terminate prior to the end of the 60-day period following the date Class Counsel receives Defendant's notice of preliminary determination to terminate the Settlement. In the event that Defendant terminates the Settlement pursuant to this paragraph, (a) Class Counsel shall direct the Escrow Agent to return to Defendant, not later than 30 days after such termination, the balance in the Settlement Fund, including interest accrued thereon and the amounts returned to the Settlement Fund pursuant to ¶ 7.3, but less Taxes, Tax Expenses, and Escrow Fees, and any Notice and Administration Expenses actually paid or incurred, and (b) the Settling Parties shall be returned to the *status quo* that existed in the Action immediately prior to May 23, 2025, when the Sixth Circuit first held the case in abeyance so that the Parties could engage in settlement discussions.

8.4 If this Settlement Agreement is terminated pursuant to the terms hereof, or fails to become effective for any reason, then: (a) all orders of the District Court preliminarily or otherwise approving the Settlement and/or preliminarily or otherwise certifying the Settlement Class shall be vacated; (b) the Settling Parties shall be returned to the *status quo* that existed in the Action immediately prior to May 23, 2025, when the Sixth Circuit first held the case in abeyance so that the Parties could engage in settlement discussions; and (c) the Settling Parties shall retain all of their respective rights and defenses as of immediately prior to May 23, 2025. The Settling Parties shall then proceed in all respects as if this Settlement Agreement and any related orders had not been executed and/or entered.

9. Objections to the Settlement and Requests for Exclusion

9.1 The Notice shall require that any objection to (i) the Settlement, or any part of this Settlement Agreement, including Class Counsel's request for Attorneys' Fees and Expenses and/or Plaintiffs' request for Service Awards, and/or (ii) to the Court-approved Plan of Allocation and Distribution, be in writing and comply with all the requirements set forth herein and by the District Court in the Preliminary Approval Order and Notice.

9.2 The Notice shall require that any Settlement Class Member who elects to object to this Settlement Agreement (including any part thereof) or to the motion for Attorneys' Fees and Expenses or Service Awards shall do so in writing, signed in ink by the member of the Settlement Class who is objecting, and sent via first-class U.S. mail to, or filed with, the District Court a prescribed number of days before the Fairness Hearing as provided for in the Preliminary Approval Order with a copy also sent to Class Counsel.

9.3 The written objection shall provide the following information: (a) the objector's name, address, and any attorney representing the objector; (b) the legal or factual basis for the objection; (c) documentation sufficient to prove the objector's membership in the Settlement Class (such as evidence of relevant prescription purchases or payments); (d) a list of any witnesses, exhibits, or legal authority that the objector intends to offer; (e) whether the objector intends to appear, either in person or through counsel, at the Fairness Hearing; (f) whether the objection applies only to the objector, to a subset of the Settlement Class, or to the Settlement Class as a whole; and (g) a list of all class action settlements to which the objector and/or their counsel have previously objected. Any potential Settlement Class Member who fails to timely file and serve such written statement and provide the required information will not be permitted to present any objections at the Fairness Hearing and such failure will render any such attempted objection untimely and of no effect, unless otherwise ordered by the District Court. All presentations of objections will be further limited by the information listed. A potential Settlement Class Member's mere compliance with the foregoing requirements does not in any way guarantee a potential Settlement Class Member the ability to present evidence or testimony at the Fairness Hearing. The decision whether to allow any testimony, argument, or evidence, as well as the scope and duration of any and all presentations of objections at the Fairness Hearing, will be in the sole discretion of the District Court.

9.4 A Settlement Class Member may request to be excluded from the Settlement Class by sending a timely written request postmarked on or before the Opt-Out Deadline specified in the Notice. To exercise the right to be excluded, a member of the Settlement Class must timely send a letter via first-class U.S. mail with postage prepaid or overnight delivery to the address specified in the Notice and include the following: (1) the individual's full name, current mailing address, telephone number, and social security number; (2) a statement that the individual purchased and paid for one or more prescription drugs from Kroger using insurance during the Settlement Class Period; (3) a statement that the individual wishes to be excluded from the Settlement Class (e.g., "I request that I be excluded from the *Kirkbride et al. v. The Kroger Co.* settlement."); and (4) the individual's signature. A request for exclusion that does not include all of the foregoing information, that does not contain the proper signature, that is sent to an address other than the one designated in the Notice, or that is not sent within the time specified shall be invalid and the individual filing such an invalid request shall be a Settlement Class Member and shall be bound by the Settlement, if approved.

9.5 Settlement Class Members shall not be permitted to exclude other Settlement Class Members. Moreover, group or class-wide exclusions shall not be permitted. A request for exclusion must be submitted by each Settlement Class Member on an individual basis, and any request for exclusion by a purported authorized agent or representative of a Settlement Class Member must include proof of the representative's legal authority and authorization to act and request exclusion on behalf of each Settlement Class Member they seek to opt out.

10. Miscellaneous

10.1 While denying liability, Defendant agrees that the Action is being settled voluntarily by Defendant after consultation with competent legal counsel.

10.2 The Settling Parties agree to settle the Released Claims and to execute this Settlement Agreement solely to compromise and settle protracted, complicated, and expensive litigation. The Settling Parties agree that nothing in this Settlement Agreement or the Side Agreement, or the negotiations thereof and the actions taken in compliance thereof, including payment of the Settlement Amount, (i) shall be construed as, deemed to be evidence of, or constitute an admission or concession by any of the Settling Parties as to the merits, or lack of merits, of any allegation or defense asserted in this Action, and (ii) shall be offered or received in evidence in any action or proceeding by or against any Settling Party in any court, administrative agency or other tribunal for any purpose whatsoever, other than to enforce the provisions of the Settlement and this Settlement Agreement, the Stipulated Undertaking, the Side Agreement, or the provisions of any related order, judgment, or release.

10.3 Except as otherwise stated in this Settlement Agreement, Plaintiffs and Defendant shall use their best efforts to cause this Settlement Agreement to be approved and consummated.

Except as otherwise stated in this Settlement Agreement, Plaintiffs, Defendant, and Class Counsel shall also promptly take such actions as may be reasonably required to obtain final approval by the District Court of this Settlement Agreement and to carry out the terms of this Settlement Agreement.

10.4 The District Court shall retain jurisdiction and its traditional equitable powers over the Action as those powers pertain to this Settlement Agreement to resolve any disputes or controversies regarding the enforcement of the Settlement Agreement until the monies and funds in the Escrow Account are fully and finally distributed.

10.5 The Parties agree to mediate any dispute or claim arising out of or relating to the enforcement of the Settlement Agreement with Miles N. Ruthberg of Phillips ADR. In the event the Parties are unable to resolve any such dispute or claim through mediation, any Party may seek relief from the District Court.

10.6 This Settlement Agreement and the Side Agreement constitutes the entire agreement among the Settling Parties related to the Settlement and supersedes all prior agreements, understandings, discussions, negotiations, communications, representations, warranties, or inducements concerning this Settlement Agreement and the Side Agreement, and no Settling Party has relied on any agreements, understandings, discussions, negotiations, communications, representations, warranties, or inducements concerning this Settlement Agreement or the Side Agreement other than those contained and memorialized in this Settlement Agreement and the Side Agreement. The exhibits to this Settlement Agreement are:

Exhibit A [Proposed] Plan of Allocation and Distribution;

Exhibit B [Proposed] Class Settlement Preliminary Approval Order;

Exhibit C1 [Proposed] Short-Form Notice of Settlement;

Exhibit C2 [Proposed] Direct Email Notice of Settlement

Exhibit D [Proposed] Long-Form Notice of Settlement;

Exhibit E [Proposed] Claim Form;

Exhibit F [Proposed] Form of Judgment; and

Exhibit G Stipulated Undertaking.

10.7 To the extent there is a conflict between the provisions of this Settlement Agreement, the Preliminary Approval Order, the Judgment, and/or the Court-approved Plan of Allocation and Distribution, each such document shall have controlling effect in the following rank order: (i) the Judgment; (ii) the Preliminary Approval Order; (iii) this Settlement Agreement; and (iv) the approved Plan of Allocation and Distribution.

10.8 This Settlement Agreement may be executed in one or more counterparts, and may be exchanged by mail, facsimile, or electronic mail, which shall be as effective as original signatures. All executed counterparts taken together shall be deemed to be one and the same instrument. If executed in counterparts, the Settlement Agreement shall not be binding until all Parties have signed and delivered a counterpart of this Settlement Agreement by mail, facsimile, or electronic mail. Counsel for the Settling Parties shall exchange among themselves signed counterparts, and a complete, assembled Settlement Agreement with all executed counterparts shall be filed with the District Court.

10.9 The Parties and their respective counsel have mutually contributed to the preparation of this Settlement Agreement. Accordingly, no provision of this Settlement Agreement shall be construed against any Party on the grounds that one of the Parties or its counsel drafted the provision. Except as otherwise provided herein, each Party shall bear its own attorneys' fees and other litigation expenses and costs.

10.10 This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties.

10.11 Each of the undersigned represents that he or she is fully authorized to execute this Settlement Agreement on behalf of the Party for which he or she signs. Class Counsel has reviewed this Settlement Agreement and the Side Agreement with Plaintiffs and is authorized to sign this Settlement Agreement, the Stipulated Undertaking, and the Side Agreement on behalf of Plaintiffs and putative Settlement Class Members.

10.12 This Settlement Agreement shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of Ohio, and the rights and obligations of the Parties to the Settlement Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Ohio without giving effect to that State's choice-of-law principles.

10.13 If the provisions of this Settlement Agreement (or any portion thereof) are held unenforceable in any jurisdiction, then such provisions shall be severable, and the Settling Parties agree that the enforceability of the remaining provisions of this Settlement Agreement shall not in any way be affected or impaired thereby and shall continue in full force and effect.

10.14 The Parties agree that they will not at any time make, publish, or communicate to any person or entity, including in any public forum, any defamatory or disparaging remarks, comments, or statements concerning each other or any of each others' agents, employees, officers, or other associated third parties, that are related to this Action or the underlying facts alleged in this Action.

10.15 The Parties agree to jointly request that the Sixth Circuit continue to hold in abeyance Kroger's petition to appeal the District Court's grant of class certification pending final approval of the Settlement. Kroger agrees to dismiss with prejudice its petition to appeal after the District Court's entry of a Final and Non-Appealable order granting approval of the Settlement.

10.16 Except as stated in ¶ 10.5, the exclusive forum for any dispute arising under or related to this Settlement Agreement, or to enforce the terms of this Settlement Agreement, shall be the United States District Court for the Southern District of Ohio.

10.17 No delay or omission by any Settling Party in exercising any rights under this Settlement Agreement will operate as a waiver of that or any other right. A waiver or consent given by a Settling Party on any one occasion is effective only in that instance and will not be construed as a bar or waiver of any right on any other occasion, unless otherwise agreed in writing.

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JUDY KIRKBRIDE

Judy Kirkbride (Mar 10, 2026 18:35:08 EDT)

DATED: Mar 10, 2026, 2026

BEETA LEWIS

Beeta Lewis

Beeta Lewis (Mar 11, 2026 09:16:00 MDT)

DATED: Mar 11, 2026, 2026

DATED: Mar 10, 2026, 2026

Joseph Marchese (Mar 10, 2026 17:56:20 EDT)

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DATED: Mar 10, 2026, 2026

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Counsel for Plaintiffs and Proposed Class Counsel

THE KROGER CO.

By: Antonio L. Matthews

Its: Senior Counsel - Litigation

DATED: March12, 2026

EXHIBIT A

[PROPOSED] PLAN OF ALLOCATION AND DISTRIBUTION

1. This Plan of Allocation and Distribution ("Plan of Allocation") will govern distributions from the Net Settlement Fund[1] created by the March 12, 2026 Class Action Settlement Agreement ("Settlement Agreement") between named Plaintiffs, Class Counsel, and The Kroger Co. ("Kroger").

2. The objective of the Plan of Allocation is to equitably distribute the entirety of the Net Settlement Fund to Settlement Class Members who suffered economic losses as a result of Kroger's alleged practices regarding reporting usual and customary ("U&C") prices as asserted in named Plaintiffs' Amended Complaint. The calculations made pursuant to the Plan of Allocation are not intended to be estimates of, nor indicative of, the amounts that Settlement Class Members might have been able to recover after a trial. The calculations under the Plan of Allocation are only a method for making *pro rata* allocations of the Net Settlement Fund between Authorized Claimants.[2]

3. To receive a Distribution under this Plan of Allocation, individuals must be a member of the Settlement Class and must submit a timely and valid Claim Form. Individuals who opt out are not Settlement Class Members and shall not receive any distributions pursuant to this Plan of Allocation.

4. The timeliness and validity of all claims submitted by Settlement Class Members shall be determined by the Settlement Administrator, subject to review by Class Counsel. All determinations under this Plan of Allocation shall be made by the Settlement Administrator, subject to review by Class Counsel.

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[1] Unless otherwise defined herein, capitalized terms shall be those defined in the Settlement Agreement.

[2] "Authorized Claimant" means any person that is a Settlement Class Member and submits a valid claim pursuant to the requirements set forth in the Settlement Agreement, this Plan of Allocation, and other exhibits to the Settlement Agreement.

5. "Known Claimants" means those Settlement Class Members who are individuals that either (i) receive direct notice of the Settlement from the Settlement Administrator and submit a Claim Form, or (ii) do not receive direct notice of the Settlement from the Settlement Administrator, but submit a Claim Form and are on a list Kroger provides to the Settlement Administrator of individuals who are known to have purchased one or more prescription drugs from Kroger during the Settlement Class Period where insurance benefits were used in filling the prescription(s).

6. "Unknown Claimants" means those Settlement Class Members who are individuals that (i) do not receive direct notice of the Settlement from the Settlement Administrator and submit a Claim Form, and (ii) submit a Claim Form but are not on a list Kroger provides to the Settlement Administrator of individuals who are known to have purchased one or more prescription drugs from Kroger during the Settlement Class Period where insurance benefits were used in filling the prescription(s). Settlement Class Members that submit Claim Forms and are determined by the Settlement Administrator to be an Unknown Claimant will be contacted to provide Claim Documentation, as provided below.

7. Recognized Claim: An Authorized Claimant's "Recognized Claim" shall be calculated based on the estimated or actual total dollars spent by the Settlement Class Member to purchase or pay for some or all of the purchase price of one or more prescription drugs from Kroger[3] during the Settlement Class Period, where prescription insurance benefits were used in filling the prescription(s). Known and Unknown Claimants may identify the total dollars spent by them out of pocket, during the Settlement Class Period, toward the purchase of any prescription

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[3] "Kroger" is defined to include The Kroger Co. and any pharmacies owned and/or operated by The Kroger Co. or any of its affiliates. Companies other than Kroger that meet this definition are listed in the attached Exhibit A.

drug(s) from Kroger where prescription insurance benefits were used in filling the prescription(s) in the following estimate categories: (a) $1-$500; (b) $501-$1,000; (c) $1,001-$4,000; (d) $4,001-$7,999; and (e) $8,000 and over. Known and Unknown Claimants' individual estimated claims will be valued for purposes of determining their Recognized Claim as follows: claims estimated at $1-$500 will be valued at $500; claims estimated at $501-$1,000 will be valued at $1,000; claims estimated at $1,001-$4,000 will be valued at $4,000; and claims estimated at $4,001-$7,999 will be valued at $7,999, provided that Unknown Claimants must submit Claim Documentation, described in ¶ 9 below, sufficient to support that the Unknown Claimant paid at least the minimum amount for the claimed estimate category. Known Claimants who submit claims for $8,000 or more must also submit Claim Documentation, described in ¶ 9 below. Known and Unknown Claimants claims submitted for $8,000 or more will be valued at the amount demonstrated by that Settlement Class Member's Claim Documentation, described in ¶ 9 below.

8. Documentation Requirement: Known Claimants are required to provide the following information: 1) Contact information: the Settlement Class Member's name and contact information, including a physical address and working telephone number; 2) an attestation of the Settlement Class Member's estimated payments during the Settlement Class Period; and 3) if the Known Claimant elects payment to be made electronically as opposed to by check, payment information necessary to complete the payment via the Settlement Class Member's payment method of choice (either Zelle, PayPal, Venmo, or other direct deposit via ACH transfer). (1) Known Claimants submitting claims for $8,000 or more, and (2) Unknown Claimants submitting claims in any amount are required to provide the same information required for Known Claimants, and also Claim Documentation, as defined in ¶ 9 below. In addition, claims below the $8,000 threshold may be determined by the Settlement Administrator to require Claim Documentation, as defined in ¶ 9 below, where the Settlement Administrator reasonably disputes a material fact

concerning the Claim Form. Absent acceptable Claim Documentation (where required), the Settlement Administrator may, in consultation with Class Counsel, deny all or part of a claim.

9. "Claim Documentation" means itemized receipts, cancelled checks, bank statements, credit card statements, invoices, insurance records, or other business or transaction records documenting the Known Claimant's (where applicable) or Unknown Claimant's payment for some or all of the purchase price of one or more prescription drugs from Kroger, where prescription insurance benefits were used in filling the prescription(s) during the Settlement Class Period.

10. Determination of Distribution Amount: The Net Settlement Fund shall be distributed to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Claims. Specifically, a "Distribution Amount" shall be, for each Authorized Claimant, each Authorized Claimant's Recognized Claim divided by the total Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund.

11. Distributions shall be paid via Zelle, PayPal, Venmo, or other direct deposit via ACH, or by check, as selected by the Authorized Claimant when submitting a claim. Authorized Claimants choosing to be paid by check shall be provided 180 days from issuance to cash the check. The initial Distribution will be completed no later than 120 days after the Effective Date. To the extent any monies remain in the Net Settlement Fund after the initial Distribution from the Net Settlement Fund, the Settlement Administrator will confer with Class Counsel to determine if a second distribution (and if applicable, a third distribution) would be feasible and, if feasible, the Settlement Administrator, no less than seven months after the initial Distribution, will, consistent with the terms of Paragraph 10, above, conduct a re-distribution of the funds remaining in the Net Settlement Fund, after payment of any unpaid Notice and Administration Expenses, to Authorized Claimants who have received initial Distributions. Any remaining unclaimed amount deemed by

the Parties to be *de minimis* after the Distributions shall be distributed to one or more to-be-determined *cy pres* recipients, to be agreed upon by the Parties and subject to separate approval by the Court.

12. The Plan of Allocation is the plan that is being proposed by named Plaintiffs to the Court for its approval. The Court may approve this Plan of Allocation as proposed or it may amend or modify the Plan of Allocation without further notice to the Settlement Class. Any orders regarding any amendment or modification of the Plan of Allocation will be posted on the Settlement Website.

<u>Exhibit A</u>

1) Kroger owns or operates:

- Baker's
- City Market
- Dillons
- Food 4 Less
- Foods Co
- Fred Meyer
- Fry's
- Gerbes
- Jay C Food Store
- King Soopers
- Kroger
- Mariano's
- Metro Market
- Pay-Less Super Markets
- Pick'n Save
- QFC
- Ralphs
- Ruler
- Smith's Food and Drug

2) Purchases of prescription drugs made at these entities during the Settlement Class Period are included as purchases of prescription drugs made at Kroger for purposes of this Plan of Allocation.

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JUDY KIRKBRIDE and BEETA LEWIS, individually and on behalf of all others similarly situated, Plaintiffs, vs. THE KROGER CO., Defendant.	)	Case No. 2:21-cv-00022-ALM-EPD Chief Judge Algenon L. Marbley Magistrate Judge Elizabeth Deavers

[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT, PRELIMINARILY CERTIFYING SETTLEMENT CLASS, PRELIMINARILY APPOINTING CLASS REPRESENTATIVES, PRELIMINARILY APPOINTING CLASS COUNSEL, APPOINTING SETTLEMENT ADMINISTRATOR AND ESCROW AGENT, APPROVING NOTICE PLAN, PRELIMINARILY APPROVING THE PLAN OF ALLOCATION AND DISTRIBUTION, AND SCHEDULING A FAIRNESS HEARING

WHEREAS, the Court has considered the Class Action Settlement Agreement between Plaintiffs, Class Counsel, and Kroger, including the exhibits, dated March 12, 2026 ("Settlement Agreement")[1], which sets forth the terms and conditions for a proposed Settlement[2] of the Action, *Kirkbride et al. v. The Kroger Co.*, No. 2:21-cv-00022 (S.D. Ohio), and the termination and dismissal with prejudice of all causes of action against Defendant in the Action;

WHEREAS, the Court has considered Plaintiffs' Unopposed Motion for Preliminary Approval, requesting an Order: (1) Granting Preliminary Approval of the Settlement Agreement;

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[1] The Settlement Agreement is attached as Exhibit 1 to the Declaration of Joseph I. Marchese in Support of Plaintiffs' Unopposed Motion for Preliminary Approval ("Marchese Declaration").

[2] Unless otherwise defined, capitalized terms shall be those defined in the Settlement Agreement.

(2) Preliminarily Certifying a Settlement Class; (3) Preliminarily Appointing Class Representatives; (4) Preliminarily Appointing Class Counsel; (5) Appointing a Settlement Administrator and Escrow Agent; (6) Approving the Form and Manner of Notice to the Settlement Class; (7) Preliminarily Approving the Plan of Allocation and Distribution; and (8) Scheduling a Fairness Hearing, the memorandum of law and exhibits filed in support thereof, and all other papers submitted in connection with the Settlement Agreement and the motion for preliminary approval;

WHEREAS, the Court held a hearing on __________________, 2026, at which the Court heard argument on whether the Settlement Agreement should be preliminarily approved;

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

IT IS HEREBY ORDERED AND DECREED as follows:

1. The Court preliminarily approves the Settlement Agreement. The Court has considered and determined that the Settlement Agreement preliminarily satisfies the class action settlement requirements of Rule 23 of the Federal Rules of Civil Procedure and is "a 'fair, reasonable, and adequate' disposition of the case" in order to "preliminarily approve[] the agreement." *Thomas v. Mitsubishi Elec. Auto. Am., Inc.*, No. 1:24-cv-422, 2025 U.S. Dist. LEXIS 206121, at *13 (S.D. Ohio Oct. 20, 2025). Based on its consideration, the Court also preliminarily approves the Settlement Agreement for class action settlement purposes, including specifically the Plan of Allocation and Distribution attached as Exhibit A to the Settlement Agreement, as within the range of a fair, reasonable, and adequate settlement within the meaning of Rule 23 and applicable law, and consistent with due process. The Court further finds that the Settlement Agreement substantially fulfills the purposes and objectives of the class action and provides

substantial relief to the Settlement Class without the risks, burdens, costs, or delay associated with continued litigation, trial, and/or appeal. The Court also finds that the Settlement Agreement: (a) is the result of arm's-length negotiations between experienced class action attorneys; (b) is sufficient to warrant notice of the Settlement and the Fairness Hearing to be disseminated to the Settlement Class; and (c) meets all applicable requirements of law, including Federal Rule of Civil Procedure 23 and the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715.

2. The Court has subject matter and personal jurisdiction over Plaintiffs, all members of the Settlement Class preliminarily certified below, and Defendant.

Preliminary Certification of the Settlement Class

3. Pursuant to Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, and based on the record before the Court, the Court preliminarily certifies, for the purposes of settlement only, the following Settlement Class as defined in the Settlement Agreement:

> All individuals in the United States and its territories who, at any point in time during the Settlement Class Period, paid in whole or in part for one or more prescription drugs from Kroger using their insurance.

Notwithstanding the above, the following individuals are excluded from the Settlement Class:

> (1) any Judge presiding over any portion of this Action, including appeals, and immediate members of the Judges' families, and any members of the Judges' respective staffs (but not members of the immediate families of judicial staff); (2) officers and directors of Kroger, its subsidiaries, parent companies, successors, predecessors, affiliates, and any entity in which Kroger has a controlling interest; (3) individuals who timely and validly request exclusion from the Settlement Class; (4) the legal representatives, successors, or assigns of any such excluded individuals; and (5) all individuals that have sued (other than through this Action), filed an arbitration demand, or participated in a settlement in a suit against Kroger relating to its determination of usual and customary prices in connection with the Savings Club (this exclusion from the Settlement Class does not apply to individuals that have voluntarily dismissed their claims without prejudice in any suit or arbitration).

4. The Court preliminarily finds that the requirements of Rules 23(a), 23(b)(3), and 23(g) of the Federal Rules of Civil Procedure are satisfied for settlement purposes as follows:

(a) Pursuant to Rule 23(a)(1) of the Federal Rules of Civil Procedure, the Court preliminarily determines that the Settlement Class Members are so numerous that their joinder before the Court would be impracticable;

(b) Pursuant to Rule 23(a)(2) of the Federal Rules of Civil Procedure, the Court preliminarily determines that there are one or more questions of fact or law common to the Settlement Class;

(c) Pursuant to Rule 23(a)(3) of the Federal Rules of Civil Procedure, the Court preliminarily determines that Plaintiffs' claims are typical of the claims of the Settlement Class;

(d) Pursuant to Rule 23(a)(4) of the Federal Rules of Civil Procedure, the Court preliminarily determines that Plaintiffs and Class Counsel fairly and adequately protected the interests of the Settlement Class for purposes of litigating this matter and entering into and implementing the Settlement Agreement;

(e) Pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, the Court preliminarily determines that common questions of law and fact predominate over individual questions affecting Settlement Class Members; and

(f) Pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, the Court preliminarily determines that a class action is superior to other available methods for the fair and efficient adjudication of this Action.

5. The Court preliminarily appoints Judy Kirkbride and Beeta Lewis as representatives of the Settlement Class and finds and preliminarily concludes that Judy Kirkbride

and Beeta Lewis will fairly and adequately represent and protect the interests of the Settlement Class.

6. For purposes of settlement only, the Court preliminarily appoints the law firms of Bursor & Fisher, P.A., Arisohn LLC, and Smith Krivoshey, PC to serve as Class Counsel, preliminarily finding and concluding that they meet the requirements to be Class Counsel pursuant to Rule 23(g) and are competent and capable of exercising the responsibilities of Class Counsel.

7. In the event the Settlement Agreement is terminated pursuant to the terms thereof, or fails to become effective for any reason, then: (a) all orders of the Court preliminarily or otherwise approving the Settlement and/or preliminarily or otherwise certifying the Settlement Class shall be vacated; (b) the Settling Parties shall be returned to the *status quo* that existed in the Action immediately prior to May 23, 2025, when the Sixth Circuit first held the case in abeyance so that the Parties could engage in settlement discussions; and (c) the Settling Parties shall retain all of their respective rights and defenses as of immediately prior to May 23, 2025, when the Sixth Circuit first held the case in abeyance so that the Parties could engage in settlement discussions. The Settling Parties shall then proceed in all respects as if the Settlement Agreement and any related orders had not been executed and/or entered.

<u>Notice and Administration</u>

8. The Court appoints Angeion Group as the Settlement Administrator to effectuate and administer the Notice Plan delineated in the Declaration of Eric Schachter[3] and the exclusion process for opt-outs, and to effectuate and administer the claims process for members of the Settlement Class.

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[3] *See* Declaration of Eric Schachter in Support of Settlement Notice Plan ("Schachter Declaration").

9. The Settlement Administrator shall (a) administer the issuance of Notice to the Settlement Class in accordance with the terms of this Order and any other orders of the Court; (b) review each Claim Form and determine, under the supervision of Class Counsel, in accordance with this Settlement Agreement and any applicable orders of the Court, the validity of each claim; (c) calculate the Recognized Claim amounts (defined in the Plan of Allocation and Distribution) of Authorized Claimants (defined in the Plan of Allocation and Distribution) that shall be allowed; (d) administer the Distribution of the Net Settlement Fund to Authorized Claimants; and (e) otherwise provide such claims administration services as are customary in settlements of this type, subject to such supervision of Class Counsel and (as appropriate or as circumstances may require) the Court.

10. Within fourteen (14) days from the entry of this Order, the Settlement Administrator shall post on the Settlement Website the Settlement Agreement, Notice, Claim Form, and other pertinent documents and Court filings pertaining to the Settlement (including the motion for attorneys' fees, expenses, and service awards, upon its filing).

11. The Settlement Administrator shall provide such reports, declarations, and such other information to the Court as the Court may require or as Class Counsel or Defendant requests.

12. The Court appoints Angeion Group to serve as Escrow Agent.

13. The Court determines that Notice should be provided to members of the Settlement Class with opt-out rights afforded to them as to their participation in the Settlement Class.

14. The Court approves, as to form, content, and distribution, the Notice set forth in the Settlement Agreement and the Notice Plan set forth in the Schachter Declaration, including the Claim Form attached to the Settlement Agreement as Exhibit E and all forms of Notice to the Settlement Class as set forth in Exhibits C1, C2, and D to the Settlement Agreement, and finds that

such Notice is the best notice practicable under the circumstances, and that the Notice complies fully with the requirements of the Federal Rules of Civil Procedure. The Court also finds that the Notice constitutes valid, due, and sufficient notice to all persons entitled thereto, and meets the requirements of Due Process. The Court further finds that the Notice is reasonably calculated to, under all circumstances, apprise members of the Settlement Class of the pendency of this Action, the terms of the Settlement Agreement, and the right to object to the Settlement and to exclude themselves from the Settlement Class. In addition, the Court finds that no notice other than that specifically identified in the Settlement Agreement and Schachter Declaration is necessary in this Action. The Parties, by agreement, may revise the Notice and Claim Form in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting.

15. The Settlement Administrator is directed to implement notice in accordance with the Settlement Agreement and Notice Plan. The Settlement Administrator shall also maintain the Settlement Website to provide full information about the Settlement and allow for the filing of claims online. The Settlement Administrator is further directed to establish a post office box, and toll-free telephone line for providing notice and information to members of the Settlement Class and receiving opt-out requests and other filings or communications from members of the Settlement Class. All Notice and Administration Expenses shall be paid as set forth in the Settlement Agreement.

16. Within 60 days following the Court's entry of this Preliminary Approval Order, ("Notice Deadline") the Settlement Administrator shall complete publication and dissemination of notice to members of the Settlement Class that are described in the Notice Plan using the summary

notice, email notice, and long-form notice contained in Exhibits C1, C2, and D attached to the Settlement Agreement.

Submission of Claims and Requests for Exclusion from Class

17. Members of the Settlement Class who wish to receive benefits under the Settlement Agreement must complete and submit a timely and valid Claim Form(s) in accordance with the instructions contained therein. All Claim Forms must be postmarked or submitted electronically no later than 180 days after the Court's entry of this Preliminary Approval Order (i.e. 120 days after the Notice Deadline (the "Settlement Claims Period" or "Claim Filing Deadline")).

18. Any member of the Settlement Class that does not wish to participate in the Settlement shall have until 120 days after the Court's entry of this Preliminary Approval Order (the "Opt-Out Deadline") – *i.e.*, 60 days after the Notice Deadline – to submit a request to become an opt-out and be excluded from the Settlement Class. Settlement Class Members shall not be permitted to exclude other Settlement Class Members. Moreover, group or class-wide exclusions shall not be permitted. A request for exclusion must be submitted by each Settlement Class Member on an individual basis, and any request for exclusion by a purported authorized agent or representative of a Settlement Class Member must include proof of the representative's legal authority and authorization to act and request exclusion on behalf of each Settlement Class Member for which the representative requests exclusion.

19. (a) A member of the Settlement Class may affect such an opt-out by sending a written request to the Settlement Administrator: *Kroger Savings Club Litigation Settlement* Settlement Administrator, EXCLUSIONS c/o Angeion Group, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103, by (i) first-class U.S. mail with postage prepaid and postmarked no later than the Opt-Out Deadline, or (ii) overnight delivery shown as sent no later than the Opt-Out

Deadline. The written request must be signed by a person authorized to do so and must provide all of the following information: (1) the individual's full name, current mailing address, telephone number, and social security number; (2) a statement that the individual purchased and paid for one or more prescription drugs from Kroger using insurance during the Settlement Class Period; (3) a statement that the individual wishes to be excluded from the Settlement Class, and (4) the individual's signature.

(b) A request for exclusion that does not include all of the foregoing information, that does not contain the proper signature, that is sent to an address other than the one designated above, or that is not sent within the time specified shall be invalid; the individual filing such an invalid request shall be a Settlement Class Member and shall be bound by the Settlement, if the Settlement is approved.

20. Individuals who validly opt out of the Settlement Class relinquish all rights to benefits under the Settlement Agreement and will not release their claims.

Objections and Appearances

21. Any Settlement Class Member shall have until 120 days after the Court's entry of this Preliminary Approval Order (the "Class Objection Deadline") – *i.e.*, 60 days after the Notice Deadline – to submit an objection to (i) the Settlement Agreement, (ii) any request for Attorneys' Fees and Expenses, and/or (iii) any request for Service Awards (be an "Objector"), and to file any notice to appear.

22. Such an Objector must (i) file or send a written statement of objections by first-class U.S. mail and postmarked on or before the Class Objection Deadline to the Clerk of the United States District Court for the Southern District of Ohio, United States Courthouse, 85 Marconi Boulevard, Room 121, Columbus, OH 43215, and (ii) send a copy of the statement of

objections to the following designees of Class Counsel and Defendant's Counsel, by first-class U.S. mail and postmarked on or before the Class Objection Deadline:

Designees of Class Counsel:

Joseph I. Marchese (*pro hac vice*)
Andrew Obergfell (*pro hac vice*)
BURSOR & FISHER, P.A.
1330 Avenue of the Americas
New York, NY 10019
Telephone: (646) 837-7150
Facsimile: (212) 989-9163
E-Mail: jmarchese@bursor.com
aobergfell@bursor.com

Joshua D. Arisohn
ARISOHN LLC
94 Blakeslee Rd.
Litchfield, CT 06759
Telephone: (917) 656-0569
Email: josh@arisohnllc.com

Joel D. Smith (*pro hac vice*)
SMITH KRIVOSHEY, PC
867 Boylston Street
5th Floor #1520
Boston, MA 02116
Telephone: (415) 202-6109
E-mail: joel@skclassactions.com

Designee of Defendant's Counsel:

Selina Coleman
REED SMITH LLP
1301 K Street, N.W.
Suite 1000 – East Tower
Washington, D.C. 20005-3373

Michael Scott Leib
REED SMITH LLP
10 S. Wacker Dr. # 4000
Chicago, IL 60606
Telephone: (312) 207-1000
mleib@reedsmith.com

23. The Objector's written statement of objections shall provide the following information: (a) the objector's name, address, email address, and the identity of and contact information for any attorney representing the objector; (b) the legal or factual basis for the objection; (c) documentation sufficient to prove the objector's membership in the Settlement Class (such as evidence of relevant prescription purchases or payments); (d) a list of any witnesses, exhibits, or legal authority that the objector intends to offer; (e) whether the objector intends to appear, either in person or through counsel, at the Fairness Hearing; (f) whether the objection applies only to the objector, to a subset of the Settlement Class, or to the Settlement Class as a

whole; and (g) a list of all class action settlements to which the objector and/or their counsel have previously objected.

24. In addition, any Objector or counsel for an Objector that desires to appear at the Fairness Hearing must file with the Court on or before the Class Objection Deadline, and send to the designees of Class Counsel and Defendant's Counsel identified above, by first-class mail and postmarked on or before the Class Objection Deadline, a separate notice of intention to appear in *Kirkbride et al. v. The Kroger Co.*, No. 2:21-cv-00022 (S.D. Ohio) that identifies by name, position, address, email address, and telephone number each person who intends to appear at the Fairness Hearing on behalf of the Objector as well as the Objector's signature.

25. Members of the Settlement Class who fail to file and serve timely written objections in compliance with the requirements of this Order and the Settlement Agreement shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement Agreement or to any of the subjects listed above, i.e. (a) whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate and should be given final approval by the Court; (b) whether a judgment and order of dismissal with prejudice should be entered; (c) whether to approve the Attorneys' Fees and Expenses to Class Counsel; and (d) whether to approve the payment of the Service Awards.

Fairness Hearing

26. The Fairness Hearing shall be held before this Court on ________________, at ____________. [*suggested 201 days after entry of this Order*] Courtroom 1, Room 331 at the United States District Court for the Southern District of Ohio, Kinneary U.S. Courthouse, 85 Marconi Boulevard, Columbus, OH 43215 to: (1) determine whether to grant final approval of this

Settlement and direct its implementation pursuant to the terms and conditions of the Settlement Agreement; (2) confirm that the Notice Plan complies in all respects with the requirements of due process and Rule 23 by providing due, adequate, and sufficient notice to the Settlement Class; (3) determine whether this Settlement is fair, reasonable, and adequate; (4) finally approve the proposed Plan of Allocation and Distribution; (5) determine whether to finally appoint Class Counsel and approve the application for an award of Attorneys' Fees and Expenses; (6) determine whether to finally appoint Class Representatives and approve Plaintiffs' request for Service Awards in connection with their representation of the Settlement Class; (7) determine whether to direct that the Action be dismissed with prejudice; (8) determine whether to state pursuant to Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and direct that the Judgment is a final, appealable order; and (9) determine whether to retain the Court's continuing and exclusive jurisdiction over the Parties for purposes of the administration, interpretation, implementation, and enforcement of the Settlement, and over the Settlement Class Members for all matters relating to the Action.

27. At the Fairness Hearing, the Court also will address any objections to the foregoing matters. The Court may continue or adjourn the Fairness Hearing without further notice to members of the Settlement Class. The Court may approve the proposed Settlement with such modifications as the Parties may agree to, if appropriate, without further notice to the Settlement Class. The Court may decide to hold the Fairness Hearing by telephone or video conference without further notice to the Settlement Class. If the Court continues or adjourns the Fairness Hearing or orders that the Fairness Hearing be conducted telephonically or by video conference, that decision will be posted on the Settlement Website. Any Settlement Class Member (or his or

her counsel) who wishes to appear at the Fairness Hearing should consult the Court's docket and/or the Settlement Website for any change in date, time, or format of the hearing.

28. No later than 14 days before the Opt-Out Deadline and Class Objection Deadline, Class Counsel will file all motions and supporting papers seeking the Court's approval of Class Counsel's Fee and Expense Award and Service Awards ("Fee Brief") with respect to their representation of Plaintiffs that culminated in the Settlement Agreement.

29. Papers in support of final approval of the Settlement Agreement, and any supplementation to the Fee Brief shall be filed with the Court on or before _________. [*suggested date of 14 days before Fairness Hearing*]. Class Counsel will cause the above-referenced motions and supporting papers to be promptly posted on the Settlement Website.

30. Provided Defendant has not terminated the Settlement pursuant to the terms of the Settlement Agreement, the Parties may file papers responding to objections ("Response to Objections"), if any, on or before _________. [*suggested date of 14 days before Fairness Hearing*].

Further Matters

31. To the extent the Triggering Criteria referenced in ¶ 8.3 of the Settlement Agreement are met, Defendant shall have 60 days from the Opt-Out Deadline to notify Class Counsel whether or not Defendant decides to make a final decision to terminate the Settlement ("Termination Deadline").

32. Within 14 days after the Opt-Out Deadline and conclusion of the Class Objection Period, the Settlement Administrator shall prepare a declaration ("Settlement Administrator Declaration") and provide it to the designees of Class Counsel and Defendant's Counsel as listed

above. Class Counsel shall file the declaration with the Court in connection with its motion for final approval.

33. The Settlement Administrator's Declaration shall:

(a) Confirm that the Notice Plan was carried out and that Notice to members of the Settlement Class was provided in the manner directed by the Court, and provide information regarding the reach of the Notice;

(b) Identify the date on which content on the Settlement Website was made available to members of the Settlement Class and identify the dates on which Notice occurred;

(c) Confirm the date on which the Settlement Administrator established a toll-free telephone number for the Settlement and a postal mailing address;

(d) Confirm that the notice required by the Federal Class Action Fairness Act of 2005 (CAFA), 28 U.S.C. § 1715 was carried out, and the date on which CAFA notice was carried out;

(e) Identify the total number of Settlement Class Members that timely sought to be excluded from the Settlement Class, and the total number of any untimely requests for exclusion; and

(f) Confirm that Distribution of the Settlement will be carried out in accordance with the approved Plan of Allocation and Distribution and the Settlement Agreement.

34. The Settlement Administrator's expenses for the foregoing Notice and Administration activities, including those of any third-party vendors it uses to perform tasks necessary for the implementation or effectuation of its duties, shall be paid from the Settlement Fund. In no event shall Defendant's Released Persons have any obligation, responsibility, or liability with respect to the Settlement Administrator, the Notice Plan, or the Administration

procedures for members of the Settlement Class, including with respect to the costs, Notice and Administration Expenses, or any other charges for any notice and exclusion procedures, except indirectly through payment of the Settlement Amount or as specifically provided for in the Settlement Agreement.

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

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

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

38. As described above, the following deadlines are set:

Notice Deadline:		[60 days after entry of this Order]
Objection Deadline:		[120 days after entry of this Order]
Opt-Out Deadline:		[120 days after entry of this Order]
Claim Filing Deadline:		180 days after entry of this Order
Fee Brief Deadline:		[14 days before Objection Deadline / Opt-Out Deadline]
Termination Deadline:		60 days after Opt-Out Deadline
Final Approval Brief, Updated Fee Brief, and Responses to Objections Deadline:		[14 days prior to the Fairness Hearing]
Fairness Hearing		[Suggested 201 days after entry of this Order]

IT IS SO ORDERED.

DATED: ______________________ ______________________________

THE HONORABLE ALGENON L. MARBLEY
UNITED STATES DISTRICT JUDGE

EXHIBIT C1

QUESTIONS? CALL [PHONE NUMBER] OR VISIT [WEBSITE]

LEGAL NOTICE

If You Paid for One or More Prescription Drugs with Insurance At Kroger,[1] A Class Action Settlement Could Affect You

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

A proposed Settlement[2] has been reached in a class action lawsuit against Defendant The Kroger Co. ("Kroger") regarding Kroger's usual and customary ("U&C") pricing practices on behalf of individuals who paid for one or more prescription drugs using their insurance. The class action lawsuit, *Kirkbride et al. v. The Kroger Co.*, No. 2:21-cv-00022 (S.D. Ohio), relates to how Kroger determined its U&C prices in submitting claims for prescription reimbursement, including whether it should have considered its Savings Club prices in determining its U&C prices. Kroger denies any wrongdoing and maintains that it correctly reported its retail prices as its U&C prices. The Court has not decided who is right.

The Court has preliminarily approved the proposed Settlement. To resolve the claims, the proposed Settlement provides for $17,000,000 to be paid by Kroger ("Settlement Fund"). As discussed below, all Court-approved attorneys' fees and expenses, the costs of notice and administering the Settlement, service awards, and other Court-allowed costs will be deducted from this amount. The remaining amount (the "Net Settlement Fund") will be paid to members of the Settlement Class (defined below) who submit valid claims.

The Court has scheduled a Fairness Hearing to decide whether to approve the Settlement, the plan for allocating the Net Settlement Fund among claimants, Class Counsel's request for attorneys' fees and payment of litigation expenses out of the Settlement Fund, and the named Plaintiffs' request for payment of services awards. The Fairness Hearing is scheduled for **MONTH DAY**, 2026, at ___ EST, before Judge Algenon L. Marbley of the U.S. District Court for the Southern District of Ohio at the United States Courthouse, 85 Marconi Boulevard, Columbus, OH 43215. The time and date of the Fairness Hearing may change. For up-to-date information on the Fairness Hearing, check [website].

Who Is Included?

The Settlement Class is defined as follows:

- All individuals in the United States and its territories who, at any point in time during the Settlement Class Period, paid in whole or in part for one or more prescription drugs from Kroger using their insurance.

[1] Kroger includes The Kroger Co. and all pharmacies owned and/or operated by The Kroger Co. or any of its affiliates. A list of all companies whose pharmacies are owned and/or operated by Kroger is set forth in Exhibit A of the Plan of Allocation and Distribution, which is available at [website].

[2] Unless otherwise defined, capitalized terms shall be those defined in the Class Action Settlement Agreement and Plan of Allocation and Distribution, both of which can be found at [website].

- The following individuals are excluded from the Settlement Class: (1) any Judge presiding over any portion of this Action, including appeals, and immediate members of the Judges' families, any members of the Judges' respective staffs (but not members of the immediate families of judicial staff); (2) officers and directors of Kroger, its subsidiaries, parent companies, successors, predecessors, affiliates, and any entity in which Kroger has a controlling interest; (3) individuals who timely and validly request exclusion from the Settlement Class; (4) the legal representatives, successors, or assigns of any such excluded individuals; and (5) all individuals that have sued (other than through this Action), filed an arbitration demand, or participated in a settlement in a suit against Kroger relating to its determination of usual and customary prices in connection with the Savings Club (this exclusion from the Settlement Class does not apply to individuals that have voluntarily dismissed their claims without prejudice in any suit or arbitration).

What Does The Class Action Settlement Provide?

Kroger will pay $17,000,000 into a Settlement Fund to settle all claims in the lawsuit brought on behalf of Settlement Class Members.

The Settlement Fund will be distributed pursuant to a Plan of Allocation and Distribution, the latest version of which can be reviewed at [website]. Class Counsel will ask the Court to award attorneys' fees not to exceed one third of the Settlement Fund, as well as out-of-pocket costs, expenses, and charges not to exceed $ 610,325.71, and interest, as well as Service Award payments to the named Plaintiffs not to exceed $5,000 to each named Plaintiff, each to be paid out of the Settlement Fund. Notice and Administration Expenses also will be paid out of the Settlement Fund.

The Net Settlement Fund will be distributed to Settlement Class Members who file valid Claim Forms. Payments will be calculated based on the amount a claimant paid, in whole or in part, during the Settlement Class Period, for the purchase of one or more prescription drugs from Kroger, where prescription insurance benefits were used in filling the prescription(s). The precise amount that you might receive from the Net Settlement Fund will depend on how much you (and other members of the Settlement Class) paid, in whole or in part, during the Settlement Class Period, for the purchase of prescription drug(s) from Kroger, where prescription insurance benefits were used in filling the prescription(s).

To be entitled to a payment from the Net Settlement Fund, you must submit a Claim Form (and documentation, if required) found at [link to claim form] by MONTH DAY, 2026.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

PARTICIPATE IN THE SETTLEMENT BY COMPLETING AND RETURNING A CLAIM FORM	To exercise your right to obtain a share of the Net Settlement Fund, you will need to complete, sign, and submit a Claim Form (and documentation, if required) by MONTH DAY, 2026. You may fill out and submit the Claim Form found at the [website]. For further information about whether you qualify, the payment you may obtain, and the documentation and data

	you may need to submit, you may access the detailed notice at [link to long notice] or you may visit [website] or call **[phone number].**
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS	If you believe you are a member of the Settlement Class, you may choose to exclude yourself, or "opt out," from the Settlement Class. If you decide to exclude yourself, you will not be bound by any decision in this lawsuit relating to Kroger. This is the only option that allows you to ever be part of any lawsuit (other than this lawsuit) against Kroger relating to the legal claims against Kroger in this case. To exclude yourself, you will need to inform the Settlement Administrator (Angeion Group) of your decision by MONTH DAY, 2026, and provide the information set forth in the Notice found at [link to long notice]. If the Settlement is approved by the Court and you do not notify the Settlement Administrator by the deadline of your election to "opt out" of the Settlement Class, you will be bound by the Settlement. If you opt-out, you may not submit a Claim Form.
STAY IN THE LAWSUIT BUT OBJECT TO THE SETTLEMENT	If you object to all or any part of the proposed Settlement, Plan of Allocation, and/or requested attorneys' fees, expenses, or service awards, you may write to the Court and object. You may only object to the proposed Settlement, Plan of Allocation, and/or requested attorneys' fees, expenses, or service awards if you have not excluded yourself from the Settlement Class. Any objections must be submitted to the Court by MONTH DAY, 2026, and provide the information set forth in the Notice found at [link to long notice].
DO NOTHING	If you are a member of the Settlement Class and do not file a valid claim, you will not receive any payment from the Settlement. Moreover, even if you do not file a valid claim, unless you exclude yourself from the Settlement Class, you will nevertheless be bound by past and any future Court rulings, including rulings on the Settlement, if approved, and Settlement releases, but will not be eligible to receive any payment from the Settlement.
GET MORE INFORMATION	If you have any questions, or would like to receive more information about the case or the Settlement, please contact the Settlement Administrator in the following ways: • By mail at [address] • By email at [email] • By phone at **[phone number]**.

FOR MORE INFORMATION AND TO SUBMIT A CLAIM:
CALL: [phone number] OR VISIT [WEBSITE]

EXHIBIT C2

From: SettlementAdministrator@www.krogersavingsclubsettlement.com

To: JonQClassMember@domain.com

Re: Legal Notice of Class Action Settlement

QUESTIONS? CALL [PHONE NUMBER] OR VISIT [WEBSITE]

LEGAL NOTICE

If You Paid for One or More Prescription Drugs with Insurance At Kroger,[1] A Class Action Settlement Could Affect You

[SUBMIT A CLAIM HERE]

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

A proposed Settlement[2] has been reached in a class action lawsuit against Defendant The Kroger Co. ("Kroger") regarding Kroger's usual and customary ("U&C") pricing practices on behalf of individuals who paid for one or more prescription drugs using their insurance. The class action lawsuit, *Kirkbride et al. v. The Kroger Co.*, No. 2:21-cv-00022 (S.D. Ohio), relates to how Kroger determined its U&C prices in submitting claims for prescription reimbursement, including whether it should have considered its Savings Club prices in determining its U&C prices. Kroger denies any wrongdoing and maintains that it correctly reported its retail prices as its U&C prices. The Court has not decided who is right.

The Court has preliminarily approved the proposed Settlement. To resolve the claims, the proposed Settlement provides for $17,000,000 to be paid by Kroger ("Settlement Fund"). As discussed below, all Court-approved attorneys' fees and expenses, the costs of notice and administering the Settlement, service awards, and other Court-allowed costs will be deducted from this amount. The remaining amount (the "Net Settlement Fund") will be paid to members of the Settlement Class (defined below) who submit valid claims.

The Court has scheduled a Fairness Hearing to decide whether to approve the Settlement, the plan for allocating the Net Settlement Fund among claimants, Class Counsel's request for attorneys' fees and payment of litigation expenses out of the Settlement Fund, and the named Plaintiffs' request for payment of services awards. The Fairness Hearing is scheduled for **MONTH DAY**, 2026, at ___ EST, before Judge Algenon L. Marbley of the U.S. District Court for the Southern District of Ohio at the United States Courthouse, 85 Marconi Boulevard, Columbus, OH 43215. The time and date of the Fairness Hearing may change. For up-to-date information on the Fairness Hearing, check [website].

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[1] Kroger includes The Kroger Co. and all pharmacies owned and/or operated by The Kroger Co. or any of its affiliates. A list of all companies whose pharmacies are owned and/or operated by Kroger is set forth in Exhibit A of the Plan of Allocation and Distribution, which is available at [website].

[2] Unless otherwise defined, capitalized terms shall be those defined in the Class Action Settlement Agreement and Plan of Allocation and Distribution, both of which can be found at [website].

Who Is Included?

The Settlement Class is defined as follows:

- All individuals in the United States and its territories who, at any point in time during the Settlement Class Period, paid in whole or in part for one or more prescription drugs from Kroger using their insurance.

- The following individuals are excluded from the Settlement Class: (1) any Judge presiding over any portion of this Action, including appeals, and immediate members of the Judges' families, any members of the Judges' respective staffs (but not members of the immediate families of judicial staff); (2) officers and directors of Kroger, its subsidiaries, parent companies, successors, predecessors, affiliates, and any entity in which Kroger has a controlling interest; (3) individuals who timely and validly request exclusion from the Settlement Class; (4) the legal representatives, successors, or assigns of any such excluded individuals; and (5) all individuals that have sued (other than through this Action), filed an arbitration demand, or participated in a settlement in a suit against Kroger relating to its determination of usual and customary prices in connection with the Savings Club (this exclusion from the Settlement Class does not apply to individuals that have voluntarily dismissed their claims without prejudice in any suit or arbitration).

What Does The Class Action Settlement Provide?

Kroger will pay $17,000,000 into a Settlement Fund to settle all claims in the lawsuit brought on behalf of Settlement Class Members.

The Settlement Fund will be distributed pursuant to a Plan of Allocation and Distribution, the latest version of which can be reviewed at [website]. Class Counsel will ask the Court to award attorneys' fees not to exceed one third of the Settlement Fund, as well as out-of-pocket costs, expenses, and charges not to exceed $610,325.71, and interest, as well as Service Award payments to the named Plaintiffs not to exceed $5,000 to each named Plaintiff, each to be paid out of the Settlement Fund. Notice and Administration Expenses also will be paid out of the Settlement Fund.

The Net Settlement Fund will be distributed to Settlement Class Members who file valid Claim Forms. Payments will be calculated based on the amount a claimant paid, in whole or in part, during the Settlement Class Period, for the purchase of one or more prescription drugs from Kroger, where prescription insurance benefits were used in filling the prescription(s). The precise amount that you might receive from the Net Settlement Fund will depend on how much you (and other members of the Settlement Class) paid, in whole or in part, during the Settlement Class Period, for the purchase of prescription drug(s) from Kroger, where prescription insurance benefits were used in filling the prescription(s).

To be entitled to a payment from the Net Settlement Fund, you must submit a Claim Form (and documentation, if required) found at [link to claim form] by MONTH DAY, 2026.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

PARTICIPATE IN THE SETTLEMENT BY COMPLETING AND RETURNING A CLAIM FORM	To exercise your right to obtain a share of the Net Settlement Fund, you will need to complete, sign, and submit a Claim Form (and documentation, if required) by MONTH DAY, 2026. You may fill out and submit the Claim Form found at the [website]. For further information about whether you qualify, the payment you may obtain, and the documentation and data you may need to submit, you may access the detailed notice at [link to long notice], or you may visit [website] or call **[phone number].**
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS	If you believe you are a member of the Settlement Class, you may choose to exclude yourself, or "opt out," from the Settlement Class. If you decide to exclude yourself, you will not be bound by any decision in this lawsuit relating to Kroger. This is the only option that allows you to ever be part of any lawsuit (other than this lawsuit) against Kroger relating to the legal claims against Kroger in this case. To exclude yourself, you will need to inform the Settlement Administrator (Angeion Group) of your decision by MONTH DAY, 2026, and provide the information set forth in the Notice found at [link to long notice]. If the Settlement is approved by the Court and you do not notify the Settlement Administrator by the deadline of your election to "opt out" of the Settlement Class, you will be bound by the Settlement. If you opt-out, you may not submit a Claim Form.
STAY IN THE LAWSUIT BUT OBJECT TO THE SETTLEMENT	If you object to all or any part of the proposed Settlement, Plan of Allocation, and/or requested attorneys' fees, expenses, or service awards, you may write to the Court and object. You may only object to the proposed Settlement, Plan of Allocation, and/or requested attorneys' fees, expenses, or service awards if you have not excluded yourself from the Settlement Class. Any objections must be submitted to the Court by MONTH DAY, 2026, and provide the information set forth in the Notice found at [link to long notice].
DO NOTHING	If you are a member of the Settlement Class and do not file a valid claim, you will not receive any payment from the Settlement. Moreover, even if you do not file a valid claim, unless you exclude yourself from the Settlement Class, you will nevertheless be bound by past and any future Court rulings, including rulings on the Settlement, if approved, and Settlement releases, but will not be eligible to receive any payment from the Settlement.
GET MORE INFORMATION	If you have any questions, or would like to receive more information about the case or the Settlement, please contact the Settlement Administrator in the following ways:

	• By mail at [address] • By email at [email] • By phone at **[phone number]**.

FOR MORE INFORMATION AND TO SUBMIT A CLAIM:
CALL: [phone number] OR VISIT [WEBSITE]

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

If You Paid for One or More Prescription Drugs with Insurance At Kroger,[1] A Class Action Settlement Could Affect You

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

INFORMATION REGARDING CLASS ACTION SETTLEMENT

A proposed Settlement[2] has been reached in a class action lawsuit regarding The Kroger Co.'s ("Kroger") usual and customary ("U&C") pricing practices on behalf of individuals who paid for one or more prescription drugs at Kroger using their insurance. The class action lawsuit, *Kirkbride et al. v. The Kroger Co.*, No. 2:21-cv-00022 (S.D. Ohio), relates to how Kroger determined its U&C prices in submitting claims for prescription reimbursement, specifically whether it should have considered its Savings Club prices in determining its U&C prices. Kroger denies any wrongdoing and maintains that it correctly reported its retail prices as its U&C prices. The Court has not decided who is right.

The Court has preliminarily approved the proposed Settlement described in this Notice. To resolve the claims, the proposed Settlement provides for $17,000,000 to be paid by Kroger. As discussed below, all Court-approved attorneys' fees and expenses, the costs of notice and administering the Settlement, service awards, and other Court-allowed costs will be deducted from this amount. The remaining amount (the "Net Settlement Fund") will be paid to members of the Settlement Class (defined below) who submit valid claims.

The Court has scheduled a Fairness Hearing to decide whether to approve the Settlement, the plan for allocating the Net Settlement Fund among claimants, Class Counsel's request for attorneys' fees and payment of litigation expenses out of the Settlement Fund, and the named Plaintiffs' request for payment of services awards. The Fairness Hearing is scheduled for **MONTH DAY**, 2026, at ___ EST, before Judge Algenon L. Marbley of the U.S. District Court for the Southern District of Ohio at the United States Courthouse, 85 Marconi Boulevard, Columbus, OH 43215. The time and date of the Fairness Hearing may change. For up-to-date information on the Fairness Hearing, check [website].

What is this action about?

Plaintiffs allege that Kroger inflated its U&C prices by not considering the prices it charged under its Savings Club in determining the U&C price, allegedly resulting in insured customers

[1] Kroger includes The Kroger Co. and all pharmacies owned and/or operated by The Kroger Co. or any of its affiliates. A list of all pharmacies owned and/or operated by Kroger is set forth in Exhibit A of the Plan of Allocation and Distribution, available at [website].

[2] Unless otherwise defined, capitalized terms shall be those defined in the Class Action Settlement Agreement ("Settlement Agreement") and Plan of Allocation and Distribution, both of which can be found at [website].

paying inflated amounts for prescription drugs. Plaintiffs brought claims against Kroger for fraud, negligent misrepresentation, and unjust enrichment.

Kroger denies Plaintiffs' allegations and maintains that it acted appropriately in reporting its retail prices as its U&C prices, as Kroger contends the special prices available to club members who elected to join the Savings Club, pay an annual membership fee, and satisfy other terms and conditions are not Kroger's "usual" or "customary" prices. This matter has settled with no findings of liability or wrongdoing by Kroger as to any of Plaintiffs' allegations.

Who Is Included?

The Settlement Class is defined as follows:

- All individuals in the United States and its territories who, at any point in time during the Settlement Class Period, paid in whole or in part for one or more prescription drugs from Kroger using their insurance.

- The following individuals are excluded from the Settlement Class: (1) any Judge presiding over any portion of this Action, including appeals, and immediate members of the Judges' families, any members of the Judges' respective staffs (but not members of the immediate families of judicial staff); (2) officers and directors of Kroger, its subsidiaries, parent companies, successors, predecessors, affiliates, and any entity in which Kroger has a controlling interest; (3) individuals who timely and validly request exclusion from the Settlement Class; (4) the legal representatives, successors, or assigns of any such excluded individuals; and (5) all individuals that have sued (other than through this Action), filed an arbitration demand, or participated in a settlement in a suit against Kroger relating to its determination of usual and customary prices in connection with the Savings Club (this exclusion from the Settlement Class does not apply to individuals that have voluntarily dismissed their claims without prejudice in any suit or arbitration).

What Does The Class Action Settlement Provide?

Kroger will pay $17,000,000 into a Settlement Fund to settle all claims in the lawsuit brought on behalf of Settlement Class Members.

The Settlement Fund will be distributed pursuant to a Plan of Allocation and Distribution, the latest version of which can be reviewed at [website]. Class Counsel will ask the Court to award attorneys' fees not to exceed one third of the Settlement Fund, as well as out-of-pocket costs, expenses, and charges not to exceed $610,325.71, and interest, as well as Service Award payments to the named Plaintiffs not to exceed $5,000 to each named Plaintiff, each to be paid out of the Settlement Fund. Notice and Administration Expenses also will be paid out of the Settlement Fund.

The Net Settlement Fund will be distributed to Settlement Class Members who file valid Claim Forms. Payments will be calculated based on the amount a claimant paid, in whole or in part, during the Settlement Class Period, for the purchase of one or more prescription drugs from Kroger, where prescription insurance benefits were used in filling the prescription(s), as described below. The precise amount that you might receive from the Net Settlement Fund will depend on how much you (and other members of the Settlement Class) paid, in whole or in part, during the Settlement Class Period, for the purchase of prescription drug(s) from Kroger, where prescription insurance benefits were used in filling the prescription(s).

The Plan of Allocation and Distribution provides for distribution of the Settlement Fund as follows:

- The Settlement Administrator will first calculate the Net Settlement Fund amount by subtracting any Court-approved Attorneys' Fees and Expenses, Service Awards, Notice and Administration Expenses, and any other Court-approved deductions (which may include taxes, tax expenses, and escrow fees) from the total Settlement Fund.

- The Net Settlement Fund amount will be shared by all Settlement Class Members who submit valid claims. Each Settlement Class Member's claim on the Settlement Fund will be distributed on a *pro rata* basis based on the relative size of the Recognized Claims and determined as follows:

  - The Distribution Amount shall be that Authorized Claimant's Recognized Claim divided by the total Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund, *i.e.*:

$$\frac{\textit{Authorized Claimant's Recognized Claim Amount}}{\textit{Sum of All Authorized Claimant's Recognized Claim Amounts}} \; x \; \textit{Net Settlement Fund}$$

The proposed Plan of Allocation and Distribution groups those submitting claims into Known Claimants and Unknown Claimants based on whether Kroger identified the claimant as a potential member of the Settlement Class. There are different documentation requirements for each category of claimants, as discussed below. This is a summary of the Plan of Allocation and Distribution. For additional details, the latest version of the Plan of Allocation and Distribution can be reviewed at [website].

The proposed Plan of Allocation and Distribution is subject to change until the Court approves it. To view the most current version, visit [website].

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

PARTICIPATE IN THE SETTLEMENT BY SUBMITTING A CLAIM FORM	To exercise your right to obtain a share of the Net Settlement Fund, you will need to complete, sign and submit a Claim Form (and documentation, if required) by MONTH DAY, 2026. You may fill out and submit the Claim Form found at the website [website]. The Claim Form asks you to attest to your estimated and/or actual payments to Kroger for one or more prescription drugs during the Settlement Class Period where insurance benefits were used in

	filling the prescription(s). All individuals submitting a Claim Form where the total amount claimed is $8,000 or more will be required to submit supporting documentation or data sufficient to identify that individual's payments to Kroger for prescription drug purchases during the Settlement Class Period. In addition, those individuals submitting a Claim Form where the total amount claimed is less than $8,000, who the Settlement Administrator determines is not on a list of individuals known to have purchased one or more prescription drugs from Kroger during the Settlement Class Period where insurance benefits were used in filling the prescription(s), will be contacted by the Settlement Administrator and also asked to submit supporting documentation or data sufficient to identify that individual's payments to Kroger for prescription drug purchases during the Settlement Class Period. Please see the Claim Form (available at [website]) for further details about these documentation requirements.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS	If you believe you are a member of the Settlement Class, you may choose to exclude yourself, or "opt out," from the Settlement Class. If you decide to exclude yourself, you will not be bound by any decision in this lawsuit relating to Kroger. This is the only option that allows you to ever be part of any lawsuit (other than this lawsuit) against Kroger relating to the legal claims against Kroger in this case. To exclude yourself, you will need to inform the Settlement Administrator of your decision by MONTH DAY, 2026, and provide the information set forth below in this Notice. If the Settlement is approved by the Court and you do not notify the Settlement Administrator by the deadline of your election to "opt out" of the Settlement Class, you will be bound by the Settlement. If you opt out, you may not submit a Claim Form.
OBJECT TO THE SETTLEMENT	If you object to all or any part of the proposed Settlement, plan of allocation, and/or requested attorneys' fees, expenses, or service awards, you may write to the Court and object. You may only object to the proposed Settlement, plan of allocation, and/or requested attorneys' fees, expenses, or service awards if you have not excluded yourself from the Settlement Class. Any objections must be submitted to the Court by MONTH DAY, 2026, and provide the information set forth below in this Notice.
DO NOTHING	If you are a member of the Settlement Class and do not file a valid claim, you will not receive any payment from the Settlement. Moreover, even if you do not file a valid claim, unless you exclude yourself from the Settlement Class, you will nevertheless be bound by past and any future Court rulings, including rulings on the Settlement, if approved, and settlement releases but will not be eligible to receive any payment from the Settlement.

GET MORE INFORMATION	If you have any questions, or would like to receive more information about the case or the Settlement, please contact the Settlement Administrator in the following ways: • By mail at [address] • By email at [email] • By phone at **[phone number]**.

How Do I Get A Payment?

You must submit a Claim Form by **[DATE]** to be eligible for a payment.

- If you received a notice and a claim identification number from the Settlement Administrator you are a Known Claimant, as defined in the Plan of Allocation and Distribution. If you want to participate in the Settlement, then you will need to submit a Claim Form in order to be eligible to obtain a share of the proposed Settlement. Please visit [website] for more information and to submit a Claim Form. You will be asked to provide information proving that you are a member of the Settlement Class. You also may be asked to provide supporting documentation or data sufficient to identify your eligible purchases. If you are unable to access the Settlement Website identified above, please contact the Settlement Administrator by mail at [address], by email at [email], or by phone at **[phone number]**.

- If you did not receive a notice and a claim identification number from the Settlement Administrator, but believe you are a potential Settlement Class Member, then you will need to submit a Claim Form in order to be eligible to obtain a share of the proposed Settlement. Please visit [website] for more information and to submit a Claim Form. You will be asked to provide information proving that you are a member of the Settlement Class. After you submit the Claim Form, if the Settlement Administrator determines you are not on a list of individuals known to have purchased one or more prescription drugs from Kroger during the Settlement Class Period where insurance benefits were used in filling the prescription(s), you will be an Unknown Claimant, as defined in the Plan of Allocation and Distribution. You will be contacted by the Settlement Administrator and asked to provide supporting documentation or data sufficient to identify your eligible purchases. If you are unable to access the Settlement Website identified above, please contact the Settlement Administrator by mail at [address], by email at [website], or by phone at **[phone number]**.

- When and whether you receive your payment depends on several matters, including whether your claim is approved and whether and when the Court grants final approval of the Settlement. The initial Distribution of the Net Settlement Fund will be allocated to Settlement Class Members within 120 days after the Effective Date. If the proposed Settlement is given final approval, but there is an appeal of the final approval, the appeal could take several years to resolve. In the event the Settlement is finally approved by all necessary courts, any accrued interest on the Settlement Fund will be included, consistent with the Plan of Allocation and Distribution, in the amount paid to Settlement Class Members.

What am I giving up to receive a payment?

Unless you exclude yourself, you remain a Settlement Class Member. That means you cannot sue, continue to sue, or be part of any other lawsuit about the Plaintiffs' Released Claims in this case against Kroger or any of the Defendant's Released Persons. Upon the Effective Date of the Settlement, Plaintiffs and all Settlement Class Members, on behalf of themselves and each of the Plaintiffs' Released Persons, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Plaintiffs' Released Claims against Kroger and the Defendant's Released Persons, regardless of whether Plaintiffs and Settlement Class Members execute and deliver Claim Forms. The capitalized terms used in this paragraph are defined in the Settlement Agreement. For easy reference, the relevant parts of those terms are copied below:

- "Defendant's Released Persons" means Kroger and its respective legal representatives, predecessors, successors and assigns, present and former parents and subsidiaries and affiliated entities, present and former employees, partners, agents, representatives, independent contractors, officers, directors, shareholders, attorneys, accountants, managers, and all other legally associated individuals or entities.

- "Plaintiffs' Released Persons" means Plaintiffs, Settlement Class Members, and Plaintiffs' Related Parties. In turn, "Plaintiffs' Related Parties" means Plaintiffs' respective legal representatives, including Class Counsel, heirs, executors, administrators, beneficiaries, trustees, predecessors, successors in interest, transferees and assignees, in their capacities as such.

- "Plaintiffs' Released Claims" means all claims, demands, damages, harm, injuries, actions, causes of action, suits, proceedings, matters, disputes, obligations, costs, and losses of any kind whatsoever, whether known or Unknown Claims[3], suspected or unsuspected, accrued or unaccrued, and contingent or non-contingent, which now exist or have existed upon any theory of law or equity (whether contractual, common law, statutory, federal, state, local, or otherwise), including any claims for compensatory or punitive damages, or for attorneys' fees, costs, or disbursements of any kind, against Defendant's Released Persons arising out of or related to the conduct challenged in the Action, including any and all claims relating to the reporting of U&C prices for pharmaceuticals, regardless of whether

[3] The complete definition of "Unknown Claims" is set forth at Section 1.43 of the Settlement Agreement and includes "(a) any Plaintiffs' Released Claims that Plaintiffs or any Settlement Class Member does not know or suspect to exist in his or her favor at the time of the release of Defendant's Released Persons which, if known by him or her, might have affected such Plaintiff's or Settlement Class Member's settlement or decisions with respect to the Settlement, including the release of Defendant's Released Persons or the decision not to object to or opt out of this Settlement; and (b) any Defendant's Released Claims that Defendant does not know or suspect to exist in its favor at the time of the release of Plaintiffs' Released Persons, which if known by it, might have affected its settlement or decision with respect to the Settlement, including the release of Plaintiffs' Released Persons."

"usual and customary" or "U&C" appears as a defined contractual term in any relevant contract, except for claims relating to the enforcement of the Settlement Agreement.

What Are My Other Rights?

If you are a member of the Settlement Class and you do not want to be legally bound by the Settlement, you must exclude yourself. The exclusion deadline is **[DATE]**. If you do not timely exclude yourself, you will not be able to sue Kroger or Defendant's Released Persons for any claims relating to the lawsuit and will be bound by the Settlement, if finally approved.

To exclude yourself from the Settlement Class, you must send a letter via first-class U.S. mail with postage prepaid or overnight delivery to: [address]. You must include the following: (1) your full name, current mailing address, telephone number, and social security number; (2) a statement that you purchased and paid for one or more prescription drugs from Kroger using insurance during the Settlement Class Period; (3) a statement that you wish to be excluded from the Settlement Class (e.g., "*I request that I be excluded from the Kirkbride et al. v. The Kroger Co. settlement.")*; and (4) your signature.

Settlement Class Members shall not be permitted to exclude other Settlement Class Members. Moreover, group or class-wide exclusions shall not be permitted. A request for exclusion must be submitted by each Settlement Class Member on an individual basis, and any request for exclusion by a purported authorized agent or representative of a Settlement Class Member must include proof of the representative's legal authority and authorization to act and request exclusion on behalf of each Settlement Class Member they seek to opt out. If you exclude yourself from the Settlement Class, you will not receive any benefits of the Settlement, you will not be legally bound by anything that happens in the lawsuit, and you may be able to sue (or continue to sue) Kroger in the future about the legal issues in this case.

Your letter requesting exclusion must be postmarked no later than **[DATE]**.

A request for exclusion that does not include all of the foregoing information, that does not contain the proper signature, that is sent to an address other than the one designated above, or that is not sent within the time specified shall be invalid and the individual filing such an invalid request shall be a Settlement Class Member and shall be bound by the Settlement, if approved.

If you do not exclude yourself from the Settlement Class, you may object to the Settlement by **[DATE]**.

To object to the Settlement: If you are a Settlement Class Member and you have not excluded yourself from the Settlement Class, you can object to all or any part of the proposed Settlement, Plan of Allocation and Distribution, and/or requested attorneys' fees, expenses, or service awards. You can give reasons why you think the Court should not approve it, and the Court will consider your views.

To object to the proposed Settlement, you must file or send a letter via first-class U.S. mail (or file electronically with the Court) saying that you object to the Settlement in *Kirkbride et al. v. The Kroger Co.*, No. 2:21-cv-00022 (S.D. Ohio), with the following information:

> (a) your name, address, email address, and the identity of and contact information for any attorney representing you; (b) the legal or factual bases for your objection; (c) documentation sufficient to prove your membership in the Settlement Class (such as evidence of your relevant prescription purchases or payments); (d) a list of any witnesses, exhibits, or legal authority that you intend to offer; (e) whether you intend to appear, either in person or through counsel, at the Fairness Hearing; (f) whether your objection applies only to yourself, to a subset of the Settlement Class, or to the Settlement Class as a whole; and (g) a list of all class action settlements to which you and/or your counsel have previously objected.

File or mail any objections to the Clerk of the United States District Court for the Southern District of Ohio, United States Courthouse, 85 Marconi Boulevard, Columbus, OH 43215, with a copy to Joseph I. Marchese, Andrew Obergfell, Bursor & Fisher, P.A., 1330 Avenue of the Americas, New York, NY 10019; Joshua D. Arisohn, Arisohn LLC, 94 Blakeslee Road, Litchfield, CT 06759; Joel D. Smith, Smith Krivoshey, PC, 867 Boylston Street, 5th Floor #1520, Boston, MA 02116; Selina Coleman, Reed Smith LLP, 1301 K Street, N.W., Suite 1000 – East Tower, Washington, D.C. 20005-3373, and Michael S. Leib, Reed Smith LLP, 10 S. Wacker Dr. #4000, Chicago, IL 60606.

You also may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter via first-class U.S. mail saying that it is your "Notice of Intention to Appear in *Kirkbride et al. v. The Kroger Co.*, No. 2:21-cv-00022 (S.D. Ohio)." Be sure to include your name, address, email address, telephone number, and your signature. Your Notice of Intention to Appear must be postmarked no later than [**DATE**] and must be filed or sent to the Clerk of the Court and to counsel at the addresses listed in the prior paragraph. You may not be able to speak at the Fairness Hearing if you have excluded yourself from the Settlement Class or if you do not send a Notice of Intention to Appear.

The Lawyers Representing the Settlement Class

The Court has appointed Bursor & Fisher, P.A., Arisohn LLC, and Smith Krivoshey, PC as Class Counsel. You may contact the following lawyers regarding questions: Joseph I. Marchese, Andrew Obergfell, Bursor & Fisher, P.A., 1330 Avenue of the Americas, New York, NY 10019; Joshua D. Arisohn, Arisohn LLC, 94 Blakeslee Road, Litchfield, CT 06759; Joel D. Smith, Smith Krivoshey, PC, 867 Boylston Street, 5th Floor #1520, Boston, MA 02116.

The Lawyers for the Defendant

Defendant is represented by Reed Smith LLP, including Selina Coleman, 1301 K Street, N.W., Suite 1000 – East Tower, Washington, D.C. 20005-3373 and Michael S. Leib, 10 S. Wacker Dr. #4000, Chicago, IL 60606.

If You Want More Information

If you have questions about this case or want additional information, you may visit [website]; call [phone number]; or contact Class Counsel. This Notice is only a summary of the proposed Settlement and is qualified in its entirety by the terms of the Settlement Agreement. Copies of the Settlement Agreement are on public file with the United States District Court for the Southern District of Ohio Courthouse, 85 Marconi Boulevard, Columbus, OH 43215. The Settlement Agreement is also available on the Settlement Website: [website].

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

FOR MORE INFORMATION AND TO SUBMIT A CLAIM:
CALL: [phone number] OR VISIT [WEBSITE].

EXHIBIT E

MUST BE SUBMITTED ONLINE OR POSTMARKED ON OR BEFORE MONTH 00, 2026

Kirkbride et al. v. The Kroger Co.
No. 2:21-cv-00022 (S.D. Ohio.)

FOR OFFICIAL USE ONLY

Claim Form Instructions

If you are a Settlement Class Member, you may file a claim requesting a share of the Settlement Fund. You must complete this Claim Form and mail it to the Settlement Administrator at the address provided below or submit it online at [website]. A mailed form must be postmarked, and an online form must be submitted, by no later than **[Month 00, 2026]**.

You must complete all required sections of the attached Claim Form:

1. Complete *Section A*. Provide your name and contact information.
2. Review *Section B*. Confirm you qualify to file a claim.
3. Complete *Section C*. Provide information about your purchase(s) of prescription drug(s) you paid for while using insurance at Kroger[1] from December 9, 2018 through [Month 00, 2026].
4. Review *Section D* and provide documentation (if required).
5. Review *Section E* and sign the Claim Form. If you sign the Claim Form, you certify (or swear under penalty of perjury) that the information you provided is true and correct to the best of your knowledge and that you qualify to submit a claim (as described in *Section B*).

You have two options to submit your Claim Form:

- You can mail your completed and signed Claim Form, and any supporting documents (if required), postmarked no later than **[Month 00, 2026]**, to:

Kroger Savings Club Litigation Settlement
c/o Angeion Group
1650 Arch Street, Suite 2210, Philadelphia, PA 19103

OR

- You can complete and submit the Claim Form and upload supporting documents (if required) on the Settlement Website, [website], no later than **[Month 00, 2026]**. After you complete the online Claim Form, you will receive a receipt saying that your claim was submitted.

If your completed Claim Form is not postmarked or received online by **[Month 00, 2026]**, you will not receive a payment from this Settlement. Submitting a Claim Form does not guarantee that you will receive a payment from the Settlement.

[1] Kroger includes The Kroger Co. and all pharmacies owned and/or operated by The Kroger Co. or any of its affiliates. A list of all pharmacies owned and/or operated by Kroger is set forth in Exhibit A of the [Proposed] Plan of Allocation and Distribution, available at [website].

MUST BE SUBMITTED ONLINE OR POSTMARKED ON OR BEFORE MONTH 00, 2026

CLAIM FORM

Use Blue or Black Ink Only

Section A: Claimant Identification

Claimant's Name

Agent/Legal Representative (if any)

Street Address

City | State | Zip Code

Mobile Telephone Number* | Email Address*

Notice Identification Number (if provided by Settlement Administrator)

*By providing your email address and mobile telephone number, you authorize the Settlement Administrator to use that mobile telephone number and email address to send you information relevant to this claim.

Settlement payments will be sent digitally unless you request a paper check, as set forth below. Please ensure you provide a current, valid email address and mobile telephone number with your claim submission. If the email address or mobile telephone number you provide becomes invalid for any reason, you must notify the Settlement Administrator. It is your responsibility to provide accurate contact information to the Settlement Administrator to make sure you receive your payment. When you receive the email and/or mobile phone communication notifying you about your settlement payment, you will be provided with a number of digital payment options, such as PayPal, Venmo, Zelle, ACH transfers, and virtual pre-paid cards. You will be able to select from these options to receive your settlement payment. The email and/or mobile phone communication will also give you the option to request a paper check.

Section B: Should I File a Claim Form?

To be eligible to file a Claim Form and receive a cash distribution from the proposed Settlement, you must be a person, in the United States or its territories, who paid for some or all of the purchase price of one or more prescription drugs from Kroger (which includes The Kroger Co. and all pharmacies owned and/or operated by The Kroger Co. or any of its affiliates), where you used prescription insurance benefits when filling the prescription, at any time from December 9, 2018 through [Month 00, 2026].

Several individuals are not included in the Settlement Class and are not eligible to file a Claim Form and receive a cash distribution from the proposed Settlement, even if they otherwise meet the definition above. The following individuals are excluded from the Settlement Class: (1) any Judge presiding over any portion of this Action, including appeals, and immediate members of the Judges' families, and any members of the Judges' respective staffs (but not members of the immediate families of judicial staff); (2) officers and directors of Kroger, its subsidiaries, parent companies, successors, predecessors, affiliates, and any entity in which Kroger has a controlling interest; (3) individuals who timely and validly request exclusion from the Settlement Class; (4) the legal representatives, successors, or assigns of any such excluded individuals; and (5) all individuals that have sued (other than through this Action), filed an arbitration demand, or participated in a settlement in a suit against Kroger relating to its determination of usual and customary prices in connection with the Savings Club (this exclusion from the Settlement Class does not apply to individuals that have voluntarily dismissed their claims without prejudice in any suit or arbitration).

If you are excluded from the Settlement Class, you may not file a claim.

Section C: Purchase Information

Please estimate the total amount of money that you, and NOT insurance, paid out-of-pocket for one or more prescription drugs from Kroger, where insurance benefits were used in filling the prescription(s), from December 9, 2018 through [Month 00, 2026].

Estimated total amount of money you, and NOT insurance, paid out-of-pocket for one or more prescription drugs from Kroger, where insurance benefits were used in filling the prescription(s), from December 9, 2018 through [Month 00, 2026]: (Please check ONE.)

☐ $1-$500
☐ $501-$1,000
☐ $1,001-$4,000
☐ $4,001-$7,999
☐ $8,000 or more

Section D: Proof of Payment and Note Regarding Documentation

You do not need to provide any documentation at this time if the estimated total amount of your out-of-pocket expenditures for one or more prescription drugs purchased from Kroger from December 9, 2018 through [Month 00, 2026], where prescription benefits were used in filling the prescription(s), is less than $8,000. However, the Settlement Administrator may ask for additional proof supporting your claim.

If the total amount of your out-of-pocket expenditures for one or more prescription drugs purchased from Kroger from December 9, 2018 through [Month 00, 2026], where prescription benefits were used in filling the prescription(s), is $8,000 or more, or if the Settlement Administrator contacts you and asks for additional proof supporting your claim, you must provide documents as proof to support your claim.

You can submit any of the following documents to support the purchase information you put in Section C (above): itemized receipts, cancelled checks, invoices, statements, insurance documents, or other business or transaction records showing the amount you paid for purchases of one or more prescription drugs from Kroger, where prescription insurance benefits were used in filling the prescription(s), from December 9, 2018 through [Month 00, 2026].

If the estimated total amount of your out-of-pocket expenditures for one or more prescription drugs purchased from Kroger from December 9, 2018 through [Month 00, 2026], where prescription benefits were used in filling the prescription(s), is $8,000 or more, please submit your supporting documents with your completed Claim Form.

Section E: Certification

I have read and am familiar with the contents of this Claim Form. I certify that the information I have set forth above is true, correct, accurate, and complete to the best of my knowledge. I certify that I, to the best of my knowledge, paid a total amount within the estimate I provided in Section C (above) in out-of-pocket expenditures for one or more prescription drugs from Kroger, where prescription insurance benefits were used in filling the prescription(s), from December 9, 2018 through [Month 00, 2026]. I further certify that I did not opt out of the Settlement Class in this Action.

In addition: (a) I am not a Judge presiding over any portion of this Action, including appeals, or an immediate member of the Judges' families, or any member of the Judges' respective staffs; (b) I am not an officer or director of Kroger, its subsidiaries, parent companies, successors, predecessors, affiliates, or any entity in which Kroger has a controlling interest; (c) I am not opting out of the Settlement, and I am not a legal representative, successor, or assign of any such excluded individual; (d) I did not pay for all of my prescription drugs from Kroger from December 9, 2018 through [Month 00, 2026] without using insurance benefits; and (e) with the exception of individuals that have voluntarily dismissed their claims without prejudice in any suit or arbitration, I am not an individual that has sued (other than through this Action), filed an arbitration demand, or participated in a settlement in a suit against Kroger relating to its determination of usual and customary prices in connection with the Savings Club.

To the extent I have been given authority to submit this Claim Form by a Settlement Class Member on his or her behalf, and accordingly am submitting this Claim Form in the capacity of an authorized agent with authority to submit it by the Settlement Class Member identified on this form, and to the extent I have been authorized to receive on behalf of this Settlement Class Member(s) any and all amounts that may be allocated to him or her from the Settlement Fund, I certify that such authority has been properly vested in me and that I will fulfill all duties I may owe the Settlement Class Member. In the event amounts from the Settlement Fund are distributed to me and a Settlement Class Member later claims that I did not have the authority to claim and/or receive such amounts on his or her behalf, I and/or my employer will hold the Settlement Class, counsel for the Settlement Class, and the Settlement Administrator harmless with respect to any claims made by the Settlement Class Member.

I hereby submit to the jurisdiction of the United States District Court for the Southern District of Ohio for all purposes connected with this Claim Form, including resolution of disputes relating to this Claim Form. I acknowledge that any false information or representations contained herein may subject me to sanctions, including the possibility of criminal prosecution. I agree to supplement this Claim Form by providing documents as proof for the information I provided herein, upon request of the Settlement Administrator.

I certify that the above information supplied by the undersigned is true and correct to the best of my knowledge, and this Claim Form was executed this ________ day of ____________________, 2026.

Signature	Print or Type Name

Authorized Agent Signature (if applicable)	Print or Type Name

If you did not complete this Claim Form online through the Settlement Website, you must mail your completed Claim Form postmarked on or before [**Month 00, 2026**], to the following address:

Kroger Savings Club Litigation Settlement
c/o Angeion Group
1650 Arch Street, Suite 2210, Philadelphia, PA 19103

Toll-Free Telephone: **[phone number]** Website: [website]

REMINDER CHECKLIST:

1. Please complete, sign, and mail the above Claim Form or complete the online Claim Form. Attach or upload any documents supporting your claim (if applicable).

2. Keep a copy of your Claim Form and supporting documents for your records.

3. If you would like a receipt acknowledging your Claim Form was received, please complete the form online or mail this form via Certified Mail, Return Receipt Requested.

4. If you move, your name changes, and/or your contact information changes, please send your new address, your new name, and/or your new contact information to the Settlement Administrator at [Settlement email address] or via U.S. Mail at the address above.

EXHIBIT F

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JUDY KIRKBRIDE and BEETA LEWIS, individually and on behalf of all others similarly situated,	)	Case No. 2:21-cv-00022-ALM-EPD
	)	
Plaintiffs,	)	Chief Judge Algenon L. Marbley
	)	Magistrate Judge Elizabeth Deavers
vs.	)	
	)	
THE KROGER CO.,	)	
	)	
Defendant.	)	
	)	

[PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiffs Judy Kirkbride and Beeta Lewis, on behalf of themselves and the Settlement Class,[1] and Defendant The Kroger Co. ("Defendant," collectively with Plaintiffs, the "Parties") have determined to settle all claims asserted against Defendant in this Action with prejudice on the terms and conditions set forth in the Class Action Settlement Agreement, including all of its attached Exhibits (the "Settlement Agreement") (ECF No. XX), subject to approval of this Court (the "Settlement");

WHEREAS, by the Class Action Settlement Preliminary Approval Order dated __________________, 2026 (the "Preliminary Approval Order"), this Court: (1) preliminarily approved the Settlement; (2) preliminarily certified the Settlement Class; (3) preliminarily appointed class representatives; (4) preliminarily appointed Class Counsel; (5) appointed a Settlement Administrator and Escrow Agent; (6) approved the form and manner of Notice to the

[1] Unless otherwise defined, capitalized terms in this Judgment have the same meaning as in the March 12, 2026 Settlement Agreement (ECF No. XX), Plan of Allocation and Distribution (ECF No. XX), and the DATE, 2026 Preliminary Approval Order (ECF No. XX).

Settlement Class, which provided Settlement Class Members with the opportunity to object to the proposed Settlement and exclude themselves from the Settlement Class; (7) preliminarily approved the Plan of Allocation and Distribution; and (8) scheduled a Fairness Hearing regarding final approval of the Settlement;

WHEREAS, nothing has occurred since the entry of the Preliminary Approval Order which causes this Court to alter the findings it made in the Preliminary Approval Order approving the Settlement entered into between the Parties;

WHEREAS, due and adequate notice has been given to the Settlement Class;

WHEREAS, the Court conducted a hearing on _________________, 2026 (the "Fairness Hearing") to: (1) determine whether to grant final approval of this Settlement and direct its implementation pursuant to the terms and conditions of the Settlement Agreement; (2) confirm that the Notice Plan complies in all respects with the requirements of due process and Rule 23 by providing due, adequate, and sufficient notice to the Settlement Class; (3) determine whether this Settlement is fair, reasonable, and adequate; (4) finally approve the proposed Plan of Allocation and Distribution; (5) determine whether to finally appoint Class Counsel and approve the application for an award of Attorneys' Fees and Expenses; (6) determine whether to finally appoint Class Representatives and approve Plaintiffs' request for Service Awards in connection with their representation of the Class; (7) determine whether to direct that the Action be dismissed with prejudice; (8) determine whether to state pursuant to Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and direct that the Judgment is a final, appealable order; and (9) determine whether to retain the Court's continuing and exclusive jurisdiction over the Parties for purposes of the administration, interpretation, implementation, and enforcement of the Settlement, and over the Settlement Class Members for all matters relating to the Action; and

WHEREAS, the Court having reviewed and considered the Settlement Agreement (ECF No. XX), as well as Plaintiffs' Motion for Final Approval of the Settlement Agreement (ECF No. XX), Plaintiffs' Motion for Attorneys' Fees, Costs, Expenses, And Service Awards (ECF No. XX), together with all exhibits thereto, and all other papers filed and proceedings held herein in connection with the Settlement, all oral and written comments received regarding the Settlement, and the record in the Action, and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. **Jurisdiction**: The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over the Parties and each of the Settlement Class Members.

2. **CAFA Notice**: The notice requirements of the Class Action Fairness Act, 28 U.S.C. § 1715, have been satisfied.

3. **Incorporation of Settlement Documents**: This Judgment incorporates and makes a part hereof: (i) the Settlement Agreement dated March 12, 2026 (ECF No. XX); (ii) the Plan of Allocation and Distribution approved by the Court on _____________, 2026 (ECF No. XX); and (iii) the Short-Form Notice of Settlement, the Email Notice of Settlement, and the Long Form Notice of Settlement approved by the Court on _________, 2026 (ECF No. XX).

4. **Class Certification for Settlement Purposes**: Pursuant to Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, and based on the record before the Court, the Court certifies, for the purposes of settlement only, the following Settlement Class:

> All individuals in the United States and its territories who, at any point in time during the Settlement Class Period, paid in whole or in part for one or more prescription drugs from Kroger using their insurance.

The following individuals are excluded from the Settlement Class: (1) any Judge presiding over any portion of this Action, including appeals, and immediate members of the Judges' families, and any members of the Judges' respective staffs (but not members of the immediate families of judicial staff); (2) officers and directors of Kroger, its subsidiaries, parent companies, successors, predecessors, affiliates, and any entity in which Kroger has a controlling interest; (3) individuals who timely and validly request exclusion from the Settlement Class; (4) the legal representatives, successors, or assigns of any such excluded individuals; and (5) all individuals that have sued (other than through this Action), filed an arbitration demand, or participated in a settlement in a suit against Kroger relating to its determination of usual and customary prices in connection with the Savings Club (this exclusion from the Settlement Class does not apply to individuals that have voluntarily dismissed their claims without prejudice in any suit or arbitration).

5. The Court finds that the requirements of Rules 23(a), 23(b)(3), and 23(g) of the Federal Rules of Civil Procedure are satisfied for settlement purposes as follows:

6. Pursuant to Rule 23(a)(1) of the Federal Rules of Civil Procedure, the Court determines that the Settlement Class Members are so numerous that their joinder before the Court would be impracticable;

7. Pursuant to Rule 23(a)(2) of the Federal Rules of Civil Procedure, the Court determines that there are one or more questions of fact or law common to the Settlement Class;

8. Pursuant to Rule 23(a)(3) of the Federal Rules of Civil Procedure, the Court determines that Plaintiffs' claims are typical of the claims of the Settlement Class;

9. Pursuant to Rule 23(a)(4) of the Federal Rules of Civil Procedure, the Court determines that Plaintiffs and Class Counsel fairly and adequately protected the interests of the Settlement Class for the purposes of litigating this matter and entering into and implementing the

Settlement Agreement. Plaintiffs Judy Kirkbride and Beeta Lewis are appointed class representatives of the Settlement Class;

10. Pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, the Court determines that common questions of law and fact predominate over individual questions affecting Settlement Class Members;

11. Pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, the Court determines that a class action is superior to other available methods for the fair and efficient adjudication of this Action; and

12. Pursuant to Rule 23(g) of the Federal Rules of Civil Procedure, Bursor & Fisher, P.A., Arisohn LLC, and Smith Krivoshey, PC are appointed as class counsel for the Settlement Class.

13. **Settlement Notice**: The Court finds that the dissemination of the Short-Form Notice of Settlement, the Email Notice of Settlement, and the Long Form Notice of Settlement, and the creation of the Settlement Website: (i) were implemented in accordance with the Preliminary Approval Order; (ii) constituted the best notice practicable under the circumstances; (iii) constituted notice that was reasonably calculated under the circumstances to apprise Settlement Class Members of (a) the effect of the proposed Settlement (including Defendant's Released Claims and Plaintiffs' Released Claims), (b) their right to object to or opt out of the Settlement, and (c) their right to appear at the Fairness Hearing; (iv) constituted due, adequate, and sufficient notice to all individuals entitled to receive notice of the proposed Settlement; and (v) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), and all other applicable laws and rules.

14. **Settlement Distribution**: All payments made to Settlement Class Members will be made consistent with the Plan of Allocation and Distribution attached as Exhibit A to the Settlement Agreement, which Plan of Allocation and Distribution is finally approved in full.

15. **Final Settlement Approval and Dismissal of Claims**: Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, this Court hereby fully and finally approves the Settlement Agreement in all respects, and finds that the Settlement is, in all respects, fair, reasonable, and adequate, and in the best interests of the Settlement Class after considering the factors set out in Rule 23(e)(2) and *UAW v. Gen. Motors Corp.,* 497 F.3d 615, 631 (6th Cir. 2007); *see also Hawes v. Macy's*, No. 1:17-cv-754, 2023 U.S. Dist. LEXIS 226617, at *10 (S.D. Ohio Dec. 20, 2023) (finding that the *UAW* factors, which predate the factors listed in Rule 23(e)(2), are "largely subsumed" by Rule 23(e)(2)'s factors). The settlement consideration provided under the Settlement Agreement constitutes fair value given in exchange for the release of the Released Claims against the Released Parties. The Court finds that the consideration to be paid to members of the Settlement Class is reasonable, and in the best interests of the Settlement Class Members, considering the total value of their claims compared to (i) the disputed factual and legal circumstances of the Action, (ii) affirmative defenses asserted in the Action, and (iii) the potential risks and likelihood of success of pursuing litigation on the merits. The complex legal and factual posture of this case, the parties' exchange of relevant information, and the fact that the Settlement is the result of arms-length negotiations between the Parties aided by mediator Miles Ruthberg of PhillipsADR support this finding. The Court finds that these facts, in addition to the Court's observations throughout the litigation, demonstrate that there was no collusion present in the reaching of the Settlement Agreement, implicit or otherwise.

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

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

18. **Dismissal With Prejudice**: All of the claims asserted against Defendant in the Action by Plaintiffs and the other Settlement Class Members are hereby dismissed with prejudice. The Parties shall bear their own costs and expenses, except as otherwise expressly provided in this Judgment, the Settlement Agreement, and/or by other order of the Court.

19. **Binding Effect**: The terms of the Settlement Agreement and of this Judgment shall be binding on Defendant's Released Persons and Plaintiffs' Released Persons. The individuals listed on Exhibit 1 hereto are excluded from the Settlement Class pursuant to request.

20. **Releases**: The releases set forth in Section 4 of the Settlement Agreement, together with the definitions contained in Section 1 of the Settlement Agreement relating thereto, are expressly incorporated herein in all respects. The releases are effective as of the Effective Date. Accordingly, this Court orders that:

(a) Without further action by anyone, upon the Effective Date, Plaintiffs' Released Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Plaintiffs' Released Claims against Defendant's Released Persons with prejudice, whether or not any such Plaintiffs' Released Person shares in the Settlement Fund, and Plaintiffs' Released Persons and anyone claiming through or on behalf of any of them will be forever barred and enjoined from commencing, instituting, prosecuting or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, or administrative forum, asserting any of the Plaintiffs' Released Claims against any of Defendant's Released Persons.

(b) Without further action by anyone, upon the Effective Date, Defendant's Released Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Defendant's Released Claims against Plaintiffs' Released Persons with prejudice.

21. Although the foregoing release is not a general release, such release constitutes a waiver of § 1542 of the California Civil Code and any similar statutes (to the extent they apply to the Action). Section 1542 provides as follows:

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

22. Notwithstanding ¶¶ 20(a)-(b) of this Judgment, nothing in this Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of the Settlement Agreement or this Judgment.

23. **Rule 11 Findings**: The Court finds and concludes that the Parties and their respective counsel have complied in all respects with the requirements of Federal Rule of Civil Procedure 11 in connection with the institution, prosecution, defense, and settlement of the Action.

24. **No Admissions**: Neither this Judgment, nor the Settlement Agreement (whether or not consummated), nor the negotiations leading to the execution of the Settlement Agreement, nor any proceedings taken pursuant to or in connection with the Settlement Agreement and/or approval of the Settlement (including any arguments proffered in connection therewith) shall be:

(a) offered against any of Defendant's Released Persons as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of Defendant's Released Persons of the truth of any fact alleged by Plaintiffs, the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind on the part of any of Defendant's Released Persons; or

(b) offered against any of the Plaintiffs' Released Persons as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Plaintiffs' Released Persons that any of their claims are without merit or that any of Defendant's Released Persons had meritorious defenses.

(c) Notwithstanding the above, nothing in this ¶ 24 shall prevent this Judgment (including its exhibits), the Settlement Agreement, the negotiations leading to the execution of the Settlement Agreement, or any proceedings taken pursuant to or in connection with the Settlement Agreement and/or approval of the Settlement (including any arguments proffered in connection therewith) from being used, offered, or received in evidence in any proceeding to enforce any or all of the terms of the Settlement Agreement or this Judgment.

25. **Retention of Jurisdiction**: Without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over: (i) the Parties for purposes of the administration, interpretation, implementation, and enforcement of the Settlement; and (ii) the Settlement Class Members for all matters relating to the Action.

26. **Award of Attorneys' Fees, Costs, and Expenses, and Service Awards**: The Court has also considered Plaintiffs' Motion for Attorneys' Fees and Expenses, and for Service Awards (ECF No. [XX]), as well as the supporting memorandum of law and declarations, and adjudges that the payment of attorneys' fees to Class Counsel (Bursor & Fisher, P.A., Arisohn LLC, and Smith Krivoshey, PC) in the amount of $_____________, and costs and expenses in the amount of $______, is reasonable in light of the multi-factor test used to evaluate fee awards in

the Sixth Circuit, and hereby awards said amounts to Class Counsel (Bursor & Fisher, P.A., Arisohn LLC, and Smith Krivoshey, PC). *Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188, 1196 (6th Cir. 1974). The payment of the amounts awarded in this ¶ 26 shall be made pursuant to and in the manner provided by the terms of the Settlement Agreement, subject to Class Counsel executing the undertaking attached to the Settlement Agreement as Exhibit G and filing it with the Court.

27. The Court has also considered Plaintiffs' motion, memorandum of law, and supporting declarations for Service Awards to Plaintiffs Judy Kirkbride and Beeta Lewis. The Court adjudges that the payment of a Service Award in the amount of $________ each to Plaintiffs Judy Kirkbride and Beeta Lewis, to compensate them for their efforts and commitment on behalf of the Settlement Class, is fair, reasonable, and justified under the circumstances of this case. Such payment shall be made pursuant to and in the manner provided by the terms of the Settlement Agreement.

28. The Court GRANTS Plaintiffs' Motion for Attorneys' Fees and Expenses, and for Service Awards (ECF No. [XX]) in full.

29. **Modification of the Settlement Agreement**: Without further approval from the Court, Plaintiffs and Defendant are authorized to agree to and adopt such amendments or modifications of the Settlement Agreement to effectuate the Settlement provided that such amendments or modifications: (i) are not materially inconsistent with this Judgment; and (ii) do not materially limit the rights of Settlement Class Members in connection with the Settlement. Without further order of the Court, Plaintiffs and Defendant may agree to reasonable extensions of time to carry out any provisions of the Settlement.

30. **Entry of Final Judgment**: There is no just reason to delay the entry of this Judgment as a final judgment in this Action. Accordingly, the Clerk of the Court is expressly directed to immediately enter this final judgment in this Action.

IT IS SO ORDERED.

DATED: ______________________ ______________________________

THE HONORABLE ALGENON L. MARBLEY
UNITED STATES DISTRICT JUDGE

EXHIBIT G

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JUDY KIRKBRIDE and BEETA LEWIS, individually and on behalf of all others similarly situated, Plaintiffs, vs. THE KROGER CO., Defendant.	))))))))))))	Case No. 2:21-cv-00022-ALM-EPD Chief Judge Algenon L. Marbley Magistrate Judge Elizabeth Deavers

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

Plaintiffs Judy Kirkbride and Beeta Lewis ("Plaintiffs"), by and through their undersigned counsel, Defendant The Kroger Co. ("Kroger," and with Plaintiffs, "the Parties"), and Plaintiffs' undersigned counsel, stipulate, and agree as follows:

WHEREAS, Bursor & Fisher P.A., Arisohn LLC, and Smith Krivoshey, P.C., and their shareholders and/or equity partners (collectively, the "Firms"), desire to give an undertaking (the "Undertaking") for repayment of their shares of the award of attorneys' fees, costs, and expenses approved by the Court, and

WHEREAS, Kroger does not object to the Undertaking.

NOW, THEREFORE, capitalized terms used herein without definition have the meanings given to them in the Settlement Agreement between the Parties dated March 12, 2026 (the "Settlement Agreement").

By receiving any payments pursuant to the Settlement Agreement, the Firms and their shareholders and/or equity partners hereby submit to the jurisdiction of the United States District

Court for the Southern District of Ohio for the purpose of enforcing the provisions of this Undertaking, including resolving any and all disputes relating to or arising out of the reimbursement obligation set forth herein and in the Settlement Agreement.

If there is an objection and appeal of the Judgment, the Firms shall place their share of the attorneys' fees and costs paid from the Settlement Amount in an interest-bearing account pending the outcome of the appeal and any subsequent relevant proceedings. In the event that the Judgment or any part of it is vacated, overturned, reversed, or rendered void as a result of an appeal, or the Settlement Agreement is voided, rescinded, or otherwise terminated for any other reason, the Firms (and, if necessary, their shareholders and/or equity partners) shall, within thirty (30) days, repay to the Settlement Fund, their share of the attorneys' fees and costs paid to the Firms from the Settlement Amount, including any interest actually accrued.

In the event the Judgment is upheld, but the attorneys' fees, costs, and expenses awarded by the Court or any part of them are vacated, modified, reversed, or rendered void as a result of an appeal, the Firms (and, if necessary, their shareholders and/or equity partners) shall, within thirty (30) days, repay to the Settlement Fund their share of the attorneys' fees and costs paid to the Firms from the Settlement Amount in the amount vacated or modified, including any accrued interest.

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

In the event the Firms and/or their shareholders and/or equity partners fail to repay to Kroger any of attorneys' fees and costs that are owed pursuant to this Undertaking, the Court shall, upon application of Kroger, and notice to the Firms, summarily issue orders, including but not limited to judgments and attachment orders against the Firms (and, if necessary, their shareholders and/or equity partners), award attorneys' fees and costs to Kroger for their collection efforts, and may make appropriate findings for sanctions for contempt of court.

The undersigned stipulate, warrant, and represent that they have both actual and apparent authority to enter into this stipulation, agreement, and undertaking on behalf of their respective law firms.

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

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

IT IS SO STIPULATED THROUGH COUNSEL OF RECORD:

DATED: __________, 2026 BURSOR & FISHER, P.A.

____

By: Scott A. Bursor, on behalf of Bursor & Fisher, P.A. and its shareholders and/or equity partners
Attorneys for Plaintiffs and Class Counsel

DATED: __________, 2026 ARISOHN LLC

____

By: Joshua D. Arisohn, on behalf of Arisohn LLC and its shareholders and/or equity partners
Attorneys for Plaintiffs and Class Counsel

DATED: __________, 2026 SMITH KRIVOSHEY, P.C.

____
By: Joel D. Smith, on behalf of Smith Krivoshey, P.C. and its shareholders and/or equity partners
Attorneys for Plaintiffs and Class Counsel

DATED: __________, 2026 REED SMITH LLP

____
By: Michael S. Leib
Attorney for Defendant The Kroger Co.

EXHIBIT 2

BURSOR & FISHER
P.A.

www.bursor.com

50 MAIN STREET
WHITE PLAINS, NY 10606

1990 N. CALIFORNIA BLVD.
WALNUT CREEK, CA 94596

1330 AVE. OF THE AMERICAS
NEW YORK, NY 10019

701 BRICKELL AVENUE
MIAMI, FL 33131

FIRM RESUME

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

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

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

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

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

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

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

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

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

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

68. *D'Amario v. The University of Tampa*, (S.D.N.Y. June 3, 2022) to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by The University of Tampa due to the novel coronavirus, COVID-19,

69. *Fittipaldi v. Monmouth University*, (D.N.J. Sept. 22, 2022) to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by Monmouth University due to the novel coronavirus, COVID-19,

70. *Armstead v. VGW Malta Ltd. et al.* (Cir. Ct. Henderson Cnty. Oct. 3, 2022) to present a certified class of Kentucky residents who lost money playing mobile applications games that allegedly constituted illegal gambling under Kentucky law,

71. *Cruz v. The Connor Group, A Real Estate Investment Firm, LLC*, (N.D. Ill. Oct. 26, 2022) to represent a certified class of workers who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,

72. *Delcid et al. v. TCP HOT Acquisitions LLC et al.* (S.D.N.Y. Oct. 28, 2022) to represent a certified nationwide class of purchasers of Sure and Brut-brand antiperspirants that were allegedly contaminated with benzene,

73. *Kain v. The Economist Newspaper NA, Inc.* (E.D. Mich. Dec. 15, 2022) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,

74. *Strano v. Kiplinger Washington Editors, Inc.* (E.D. Mich. Jan. 6, 2023) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,

75. *Moeller v. The Week Publications, Inc.* (E.D. Mich. Jan. 6, 2023) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,

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).

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.

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.

PHILIP L. FRAIETTA

Philip L. Fraietta is the Managing Partner of Bursor & Fisher, P.A.'s White Plains office. Phil focuses his practice on data privacy, complex business litigation, and consumer class actions. Phil has been named a "Rising Star" in the New York Metro Area by Super Lawyers® 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.

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:

Garner v. Me-TV National Limited Partnership, 132 F.4th 1022 (7th Cir. Mar. 28, 2025), reversing grant of motion to dismiss under federal Video Privacy Protection Act and specifying standard for being a "consumer" under the Act.

Jancik v. WebMD LLC, 2025 WL 560705 (N.D. Ga. Feb 20, 2025), certifying the first ever contested class under the federal Video Privacy Protection Act.

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.

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:

Ramos v. ZoomInfo Technologies, LLC, Case No. 21-cv-02032-CPK (N.D. Ill. 2024) – final approval granted for $29.5 million class settlement to resolve claims for alleged statutory right of publicity violations.

Awad v. AMC Entertainment Holdings, Inc., Index No. 607322/2024 (Sup. Ct. Nassau Cnty. 2024) – final approval granted for $12.3 million class settlement to resolve claims for alleged New York ticket fee claims.

Schreiber v. Mayo Foundation for Medical Education and Research, Case No. 22-cv-00188-HYJ (W.D. Mich. 2024) – final approval granted for $52.5 million class settlement to resolve claims of newsletter subscribers for alleged statutory privacy violations.

Fischer v. Instant Checkmate LLC, Case No. 19-cv-04892-MSS (N.D. Ill. 2024) – final approval granted for $10.1 million class settlement to resolve claims for alleged statutory right of publicity violations.

Young v. Military Advantage, Inc., Case No. 2023LA000535 (Cir. Ct. DuPage Cnty. 2023) – final approval granted for $7.35 million class settlement to resolve claims of newsletter subscribers for alleged federal Video Privacy Protection Act claims.

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

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.

NEAL J. DECKANT

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

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

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

Selected Published Decisions:

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

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

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

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

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

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

Selected Class Settlements:

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

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

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

Selected Publications:

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

Neal Deckant, *Criticisms of Collateralized Debt Obligations in the Wake of the Goldman Sachs Scandal*, 30 Rev. Banking & Fin. L. 407 (2010) (cited in *Quadrant Structured Products Co., Ltd. v. Vertin*, 16 N.E.3d 1165, 1169 n.8 (N.Y. 2014); *Lyon Village Venetia, LLC v. CSE Mortgage LLC*, 2016 WL 476694, at *1 n.1 (Md. Ct. Spec. App. Feb. 4, 2016); Ivan Ascher, Portfolio

Society: On the Capitalist Mode of Prediction, at 141, 153, 175 (Zone Books / The MIT Press 2016); Devon J. Steinmeyer, *Does State National Bank of Big Spring v. Geithner Stand a Fighting Chance?*, 89 Chi.-Kent. L. Rev. 471, 473 n.13 (2014)).

YITZCHAK KOPEL

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

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

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

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

Selected Published Decisions:

Bassaw v. United Industries Corp., 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.

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.

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.

ALEC M. LESLIE

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

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

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

Selected Class Settlements:

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

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

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

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

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

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

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

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.

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.

STEPHEN BECK

Stephen is a Partner 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.

MAX S. ROBERTS

Max Roberts is a Partner 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.

Since 2023, Max has been 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 *Weaning Drug Manufacturers Off Their Painkiller: Creating an Exception to the Learned Intermediary Doctrine in Light of the Opioid Crisis*. In addition, Max served as an intern to the Honorable Vincent L. Briccetti of the Southern District of New York and worked as an intern in 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 here.

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 here.

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

Mora v. J&M Plating, Inc., 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 here.

Newman v. Bayer Corp., 348 F.R.D. 567 (S.D.N.Y. 2025), certifying class of New York purchases of "One A Day" gummy multivitamins.

Deivaprakash v. Condé Nast Digital, 798 F. Supp. 3d 1100 (N.D. Cal. 2025), denying motion to dismiss alleged violations of California pen register statute.

Shah v. Fandom, Inc., 754 F. Supp. 3d 924 (N.D. Cal. 2024), denying motion to dismiss alleged violations of California pen register statute.

Yockey v. Salesforce, Inc., 745 F. Supp. 3d 945 (N.D. Cal. 2024), denying motion dismiss alleged violations of California and Pennsylvania wiretapping statutes.

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.

Bar Admissions

- New York State
- California
- Massachusetts
- Southern District of New York
- Eastern District of New York
- Northern District of New York
- Northern District of California
- Central District of California
- Eastern District of California
- Southern District of California
- District of Massachusetts
- Northern District of Illinois
- Central District of Illinois
- Eastern District of Michigan
- District of Colorado
- First Circuit Court of Appeals
- Second Circuit Court of Appeals
- Third Circuit Court of Appeals
- Seventh Circuit Court of Appeals
- Ninth Circuit Court of Appeals

ANDREW J. OBERGFELL

Andrew Obergfell is Counsel with Bursor & Fisher, P.A. Andrew focuses his practice on complex civil litigation and class actions.

Andrew graduated from Drew University with *summa cum laude* distinction. While at Drew University, Andrew was captain of the varsity baseball team. Andrew was inducted into the Phi Beta Kappa honor society and was President of the college's chapter of the Pi Sigma Alpha political science honor society.

Andrew attended Seton Hall University School of Law, where he obtained his law degree with *magna cum laude* distinction, and was inducted into the prestigious Order of the Coif honor society. While in law school, Andrew was an editor and published author for the Seton Hall Law Review, participated in the Impact Litigation Clinic, and was a member of the Interscholastic Moot Court Board. As part of the Interscholastic Moot Court Board, Andrew received the national best-brief award in the 2015 ABA National Appellate Advocacy Competition, as well as the 2015 best student-written brief of the year award as recognized by Scribes, the American Society of Legal Writers.

Prior to joining the firm, Andrew practiced at an AmLaw 100 law firm. He also clerked for The Honorable Douglas M. Fasciale in the New Jersey Superior Court, Appellate Division, in Newark, New Jersey.

Selected Published Decisions:

Kirkbride, et al. v. The Kroger Co., 349 F.R.D. 160 (S.D. Ohio April 9, 2025), granting class certification of three consumer classes of insured purchasers of prescription drugs at Kroger who allegedly overpaid for prescription drugs due to Kroger's usual and customary price reporting practices, and denying Defendant's *Daubert* motions directed at certain of Plaintiffs' experts.

DANIEL GUERRA

Daniel Guerra is Counsel with Bursor & Fisher, P.A. Dan focuses his practice on complex civil litigation and consumer class actions.

Prior to working at Bursor & Fisher, Dan practiced at a national law firm in San Francisco. He helped represent various companies during internal investigations and in complex civil litigation, including product liability litigation and commercial disputes. He also advised clients on a range of matters including regulatory compliance, litigation risk assessment, and product counseling.

Dan is admitted to the State Bar of California, all California Federal District Courts, and the United States District Court for the Western District of Texas.

Dan received his Juris Doctor from the University of California Law, San Francisco (formerly U.C. Hastings College of the Law) in 2009.

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.

SPENCER N. MIGOTSKY

Spencer Migotsky is an Associate with Bursor & Fisher, P.A. Spencer focuses his practice on data privacy, complex commercial litigation, and consumer class actions. He has experience litigating data privacy class actions under the California Invasion of Privacy Act, the federal Video Privacy Protection Act, and the Arizona Telephone, Utility, and Communication Service Records Act.

Prior to joining Bursor & Fisher, Spencer practiced at a national law firm in New York City. He 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 and the Eastern District of New York. Spencer received his J.D. from Harvard Law School in 2019. In 2014, Spencer graduated magna cum laude from New York University with a B.A. in Economics.

JULIA K. VENDITTI

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.

KAILI LYNN

Kaili Lynn is an Associate in Bursor & Fisher's Walnut Creek office, where she focuses her practice on complex civil litigation and class actions involving data privacy and consumer protection. She is admitted to the State Bars of California and Kentucky.

Kaili earned her Juris Doctor from the University of Southern California, Gould School of Law in 2020. During law school, she was a member of the Hale Moot Court Honors Program and the International Human Rights Clinic. In 2016, Kaili graduated from the Georgia Institute of Technology with highest honors earning a Bachelor of Science in International Affairs and Modern Languages.

Prior to joining Bursor & Fisher, Kaili served as a trial attorney for the Kentucky Department of Public Advocacy, where she litigated cases involving indigent juveniles and adults charged with misdemeanor and felony offenses. Kaili also worked for two law firms in Southern California, gaining experience in appellate practice and class action litigation.

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.

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 and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts 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 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.

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 and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts 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 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 Bars of New York and Florida, and is a member of the bars of the United States District Courts for the Southern District of New York and Eastern District 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 and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts 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 and the Southern District 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 and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts 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.

KEVIN A. KAPRAL

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

Kevin is admitted to the State Bar of Florida.

Kevin received his Juris Doctor in 2025 from the University of Florida Levin College of Law, where he was enrolled as a Governor's Scholar. During law school, Kevin was a Forum Editor for the Florida Law Review and served as a research assistant for Professor Lynn LoPucki. Kevin was a Summer Associate with Bursor & Fisher prior to joining the firm full time.

Kevin earned his B.A. in 2021 from the University of North Carolina at Chapel Hill, where he graduated with a double major in Political Science and Philosophy.

LAUREN A. VANHEMEL

Lauren A. VanHemel is an Associate with Bursor & Fisher, P.A. Lauren focuses her practice on complex civil litigation, data privacy, and class actions. She was a Summer Associate and part-time law clerk with Bursor & Fisher before joining the firm full time in Fall 2025.

Lauren is admitted to the State Bar of Florida. She received her Juris Doctor in 2025 from the University of Florida Levin College of Law. During law school, Lauren served as internal vice president of the Florida Moot Court Team and notes & comments editor of the UF Journal of Law and Public Policy. Lauren competed and coached numerous moot court competitions, winning best brief and second overall at the 2023-2024 McGee National Civil Rights Moot Court Competition and second-best brief at the 2024-2025 NAAC ABA Philadelphia Regional Competition.

Prior to law school, Lauren graduated cum laude from the University of Florida with a B.A. in Criminology in 2022.

EXHIBIT 3

ARISOHN LLC

FIRM RESUME

Joshua D. Arisohn is the owner and founder of Arisohn LLP. Josh has litigated precedent-setting cases in the areas of consumer class actions and terrorism. He participated in the first ever trial to take place under the Anti-Terrorism Act, a statute that affords U.S. citizens the right to assert federal claims for injuries arising out of acts of international terrorism. He also obtained an $850 million judgment in favor of the family members of victims of terrorist attacks carried out by ISIS with the material support of Syria.

Josh is also experienced in prosecuting class actions and has won several contested motions for class certification, including in *Kirkbride v. The Kroger Co.*, No. 2:21-cv-00022 (S.D. Ohio) on behalf of consumers who purchased prescription medication and in *Ninivaggi v. University of Delaware*, 20-cv-1478-SB (D. Del.) on behalf of students who attended the school during the COVID shutdown. Josh has also settled numerous class actions, including the following:

- ***Marquez v. Google LLC,*** Case No. 2021-CH-1460 (Cir. Ct. Cook Cnty. 2022) – $100 million class settlement to resolve alleged BIPA violations of Illinois residents appearing in photos on the Google Photos platform.
- ***Beauford v. The Johns Hopkins Hospital, Inc.*****,** Case No.: C-03-CV-23-000501 (Cir. Ct. Baltimore Cnty.) – settlement making over $17 million available to class members to resolve claims that medical data was improperly shared using Facebook Tracking Pixel.
- ***Morris v. SolarCity Corp.,*** Case No. 3:15-cv-05107-RS (N.D. Cal.) – $15 million class settlement to resolve claims under the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 et seq.
- ***Young v. Military Advantage, Inc.***, 2023LA000535 (Dupage Cnty. Ill.) - settlement making over $7 million available to class members to resolve claims that video data was improperly shared using Facebook Tracking Pixel.
- ***Ninivaggi v. University of Delaware,*** Case No. 20-cv-1478-SB (D. Del.) – $6.3 million class settlement to resolve breach of contract based on school's failure to provide a full semester of in-person classes.
- ***Richardson v. Verde Energy USA, Inc.*****,** Case No.: 5:15-cv-06325-WB (E.D. Pa.) - $5 million class settlement to resolve claims under the TCPA.
- ***Ambrose v. Boston Globe Media Partners, LLC,*** Case No. 1:22-cv-10195-RGS (D. Mass.) – $4 million class settlement (and up to $1 million in in kind relief) to resolve claims under the Video Privacy Protection Act, 18 U.S.C. § 2710, *et seq.* based on alleged use of the Facebook Tracking Pixel.

- ***Metzner v. Quinnipiac University,*** Case No. 3:20-cv-00784-KAD (D. Conn.) – $2.5 million class settlement to resolve breach of contract based on school's failure to provide a full semester of in-person classes.

Josh is admitted to the State Bar of New York and is a member of the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, the District Court for the District of Columbia, the District Court for the District of Connecticut and the United States Courts of Appeals for the Second and Ninth Circuits.

Josh previously practiced at Bursor & Fisher, P.A., DLA Piper LLP and Dewey & LeBoeuf LLP. He graduated from Columbia University School of Law in 2006, where he was a Harlan Fiske Stone Scholar, and received his B.A. from Cornell University in 2002.

EXHIBIT 4

SMITH KRIVOSHEY, PC

28 GEARY STREET
SAN FRANCISCO, CA 94108

867 BOYLSTON STREET
BOSTON, MA 02116

FIRM RESUME

The attorneys of Smith Krivoshey, PC have decades of experience litigating complex, record-breaking cases to trial and have secured hundreds of millions in class recoveries in the process. They have secured well publicized trial victories, verdicts, and settlements on behalf of both plaintiffs and defendants. With offices in San Francisco and Boston, they run a busy class action practice spanning the country, in both state and federal courts.

The founders of Smith Krivoshey have never lost a trial, having won every case tried to verdict. In 2019, Mr. Krivoshey secured a $267 million class action verdict in *Perez v. Rash Curtis & Associates* after a jury trial in the Northern District of California, which was the 12th largest verdict in the United States in all practice areas that year, and the 3rd highest class action verdict. In 2021, the case settled for $75.6 million while on appeal, still the largest consumer class action settlement in the history of the Telephone Consumer Protection Act. Mr. Smith has trial experience on both sides of the aisle. In a highly publicized trial against a Sacramento subsidiary of Entercom Communications Corp., Mr. Smith was part of a trial team that secured a successful outcome for his client (a radio station manager) despite his client's employer being hit with a $16.5 million jury award. With a proven trial track record, the founders of Smith Krivoshey have also secured numerous favorable settlements on the eve of trial.

Judges throughout the country have commended Smith Krivoshey and its attorneys on their experience and qualifications. For instance, in appointing Smith Krivoshey as Class Counsel in July 2024 in a case against the University of Southern California, Judge Kenneth Freeman noted that "the experience of [Smith Krivoshey] in representing consumers in class actions is extensive." In August 2025, Judge Michael Hammer found in granting final approval of a class action settlement that "it is manifest that [Smith Krivoshey] are well-experienced in complex class action litigation. That ability manifested itself here in their negotiation of a very beneficial resolution for the settlement class."

Prior to forming Smith Krivoshey, Mr. Krivoshey and Mr. Smith were partners at Bursor & Fisher, P.A., a prestigious class action law firm, for over a decade. The attorneys at Smith Krivoshey have also represented some of the largest Fortune 500 companies, public entities, and privately held companies in the world working at firms including Folger Levin & Kahn, Crowell & Morning, Dentons, and Littler Mendelson.

Mr. Smith and Mr. Krivoshey have served as lead or co-lead class counsel in dozens of class actions throughout the country. In the process, they have obtained hundreds of millions in recoveries for class members, including settlements of $83.6 million in a class case against *Six Flags*, $75.6 million in *Perez* (paid out by the Indian Harbor Insurance Company, a defendant in a spin-off bad faith insurance case), $74 million in a class case against BMW, $40 million in a class case against Harbor Freight Tools, $35 million in a class case against Western Dental, $20.4 million in a class case against Alterra Mountain Company, and many more millions in class settlements against Turkish Airlines, Kimberly-Clark, National Credit Adjusters, The Regents of the University of California, Jaguar Land Rover North America, Mattress Firm, Health-Ade, and others.

Most recently, in August 2025, Smith Krivoshey obtained final approval of a $30 million settlement in a TCPA class action brought against Momentum Solar. As the Court noted at final approval, the settlement is the "largest nonreversionary cash common fund in a pure TCPA case and the largest nonreversionary cash common fund in any TCPA action after [*Facebook, Inc. v. Duguid*, 592 U.S. 395 (2021)]," which effectively gutted the TCPA's restrictions on the use of automatic telephone dialing systems. The Court went on to find that the settlement "very well might be the maximum that Momentum can pay while still staying in business, particularly given that many of Momentum's biggest competitors have filed for bankruptcy. But for counsel's diligent efforts, I am not sure that the relief would have been obtained. This is a very significant recovery for the settlement class."

Smith Krivoshey is well funded and staffed to take cases the distance. The firm is efficient, and does not overbill. Its attorneys have repeatedly proven that they excel at the highest levels of civil litigation, and have the determination, skill, experience, and knowledge necessary to maximize recoveries for class members. They are passionate about what they do, and they do it well.

JOEL D. SMITH

Joel D. Smith is a founding member of Smith Krivoshey. Joel is a trial and appellate attorney who has practiced in lower court and appeals courts across the country, as well as the U.S. Supreme Court.

A no-nonsense, hardworking, and well-organized litigator, Joel has been appointed lead or co-lead counsel in numerous class actions across the country, including in cases against Facebook, major automotive manufacturers, and public entities. He is skilled at managing complex, multi-party litigation and works well with co-counsel and opposing counsel alike. For example, Joel represented four major U.S. retailers in a highly publicized case arising from an arson fire and ensuing state of emergency in Roseville, California, which settled on the eve of a trial that was expected to last several months and involve more than forty witnesses. He managed the litigation in *In re Welspun*, a case against five corporate giants arising from what one journalist described as the "biggest counterfeit story in retail history." He has obtained hundreds of millions of dollars for class members in class settlements.

Joel co-founded Smith Krivoshey after nearly twenty years of experience on both sides of the aisle at Folger Levin & Kahn, Crowell & Moring, and Bursor & Fisher. He has both represented, and litigated against, some of the largest Fortune 500 companies, public entities, and privately held companies in the United States.

A graduate of U.C. Berkeley's School of Law, Joel is admitted in Massachusetts, New Jersey, and California, as well as numerous district and circuit courts across the country. He is a member of the Massachusetts Chapter of the Federal Bar Association, where he volunteers in the FBA's Lift Up Leaders Mentorship Program and serves on the Professional Development Committee. He also is a member of the American Association for Justice, and the Public Justice Foundation.

Selected Published Decisions:

Krikbridge et al. v. The Kroger Co., Case No. 2:21-cv-00022 (S.D. Oh. Mar. 28, 2025), granting class certification in class action concerning Kroger's alleged overcharging for prescription mediation.

Stoffel v. Regents of the University of California, 2024 WL 3155551 (Cal. App. June 25, 2024), reversing dismissal in class action concerning the U.C. system's transition to remote learning during the COVID-19 pandemic.

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

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

Foot Locker Retail, Inc. v. Madison Bay Fair LLC, 2018 WL 6191353 (Cal. App. Nov. 28, 2018), reversing a bench trial judgement and award of costs and fees against Mr. Smith's client.

Sarkissian Mason, Inc. v. Enterprise Holdings, Inc., 572 Fed. Appx. 19 (2nd Cir. 2014), affirming summary judgment in favor of Mr. Smith's client in breach of contract and trade secrets case.

Ecological Rights Foundation v. Pacific Gas & Elec. Co., 713 F.3d 502 (9th Cir. 2013), affirming dismissal in favor of Mr. Smith's client in Clean Water Act case.

Chaisson, et al. v. University of Southern California (Cal. Sup. Ct. July 25, 2024), granting class certification of class of students that were charged late fees and appointing Smith Krivoshey as class counsel.

In re Nissan N. America, Inc. Litig., 2023 WL 2749161 (M.D. Tenn. Mar. 31, 2023), granting certification of ten state damages classes in automotive defect case.

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

Revich v. New Moosejaw, LLC, 2019 WL 5485330 (N.D. Cal. Oct. 23, 2019), highly-cited order denying in part a motion to dismiss in matter alleging internet wiretapping

Selected Class Settlements:

In re Beyond Meat, Inc. Protein Content Marketing & Sales Practices Litigation, Case No. 1:23-cv-00669 (N.D. Ill.) – final approval granted for settlement resolving claims that Beyond Meat misled customers about the protein content of its products.

George et al. v. Jaguar Land Rover N. America, LLC, Case No. 2:20-cv-17561-JSA (D.N.J.) – final approval granted for settlement providing relief for Jaguar and Land Rover owners to resolve allegations that the vehicle's infotainment systems were defective.

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

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

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

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

Payero et al. v. Mattress Firm, Case No. 7:21-cv-03061-VLB (S.D.N.Y.) final approval granted for $4.9 million settlement resolving allegations that Mattress Firm sold dangerously defective bed frames.

YEREMEY KRIVOSHEY

Yeremey Krivoshey is a founding partner at Smith Krivoshey. He is one of the leading class action litigation attorneys in the country and has achieved extraordinarily rare results in the field. Mr. Krivoshey has extensive expertise litigating class cases concerning unlawful fees and liquidated damages in consumer contracts, statutory damages class actions, TCPA cases, product recall cases, privacy cases, and fraud and false advertising class actions. He has represented clients in a wide array of civil litigation in state and federal courts throughout the country, including appeals before the Ninth Circuit.

In 2021, Mr. Krivoshey secured the largest-ever consumer class action settlement in a case brought under the Telephone Consumer Protection Act. The settlement followed a class action trial win in the Northern District of California, where the federal court awarded a $267 million judgment after a jury trial. While many class action attorneys *claim* to be trial attorneys, very few have actually litigated a certified class action through trial, and won.

Mr. Krivoshey has routinely drawn praise from judges for his work as class counsel. For instance, in January 2024, Judge Michael A. Hammer (D.N.J.) appointed Mr. Krivoshey as lead interim class counsel in a putative class action against one of the top private solar companies (Momentum Solar) in the country, finding that he had the "requisite experience in handling class actions" and "clearly has established a knowledge of the applicable law." The Court was also "satisfied from its oversight of this matter that proposed interim class counsel have committed, and will continue to commit, the necessary resources to represent the class." As noted above, the class action against Momentum later settled for a record non-reversionary class fund. When awarding a $28 million attorneys' fees award in 2021 at the conclusion of the *Perez* case, which Mr. Krivoshey spearheaded from its inception, Judge Yvonne Gonzalez Rogers (N.D. Cal.) remarked: "This Court does not often offer praise, expecting high performance from all counsel. Here though, experienced counsel has done an excellent job on behalf of plaintiff and the class and vigorously pursued the claim despite numerous hurdles." Similarly, in January 2023, Judge Raymond P. Moore (D. Co.) commended Mr. Krivoshey's "high level of skill and expertise" in navigating a class action through "uncharted legal territory" as appointed class counsel against one of the top two ski resort companies in the country.

Mr. Krivoshey brings a diverse and unique perspective to class action litigation. He emigrated from Belarus as a refugee at 8 years old, and spent the first years in America living in a tiny basement apartment with a large family, pets included. Though the accent is long gone, the connection to underrepresented and distressed communities continues to fuel his passion for consumer advocacy. Consumer class actions provide a tremendous tool to fight the feeling of being taken advantage of when facing corporate power as an individual. This work is personal, and uplifting.

Mr. Krivoshey sought to experience as much of America's immensely rich and diverse culture as possible from an early age. He grew up in Louisville, Kentucky, received undergraduate degrees in Political Science and Psychology from Vanderbilt University in Nashville, Tennessee, and graduated from New York University School of Law. In that span, he worked for the Department of Justice on bankruptcy and employment cases, at the ACLU focused on first and fourth amendment issues, and at an environmental NGO in Honolulu, Hawaii.

After law school, Mr. Krivoshey spent over a decade litigating consumer class actions at Bursor & Fisher, P.A. San Francisco Bay Area office. Mr. Krivoshey made partner in 2018, and gained a national reputation through victories and class settlements in federal and state courts throughout the country. Mr. Krivoshey then co-founded Smith Krivoshey to pursue his vision of a modern, diverse, and responsible class action litigation firm.

Selected Published Decisions:

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

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

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

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

Chaisson, et al. v. University of Southern California (Cal. Sup. Ct. July 25, 2024), granting class certification of class of students that were charged late fees and appointing Smith Krivoshey as class counsel.

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

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

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

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

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

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

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

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

Sholopa v. Turk Hava Yollari A.O., Inc. (d/b/a Turkish Airlines), 2022 WL 976825 (S.D.N.Y. Mar. 31, 2022), denying airline's motion to dismiss its customers claims for failure to refund flights cancelled due to COVID-19.

Selected Class Settlements:

Perez v. Rash Curtis & Associates, Case No. 16-cv-03396-YGR (N.D. Cal. Oct. 1, 2021) granting final approval to a $75.6 million non-reversionary cash common fund settlement, the largest ever consumer class action settlement stemming from a violation of the Telephone Consumer Protection Act.

Strassburger v. Six Flags Theme Parks Inc., et al. (Ill. Cir. Ct. 2022) granting final approval to $83.6 million settlement to resolve claims of theme park members for alleged wrongful charging of fees during the COVID-19 pandemic.

Juarez-Segura, et al. v. Western Dental Services, Inc. (Cal. Sup. Ct. Aug. 9, 2021) granting final approval to $35 million settlement to resolve claims of dental customers for alleged unlawful late fees.

Niemczyk v. Pro Custom Solar LLC (D.N.J. Sep. 20, 2024) $22-30 million non-reversionary cash common fund settlement to resolve claims of class members receiving unsolicited telemarketing calls.

Goodrich v. Alterra Mountain Company (D. Colo. Jan. 27, 2023) granting final approval to $20.4 million settlement to resolve claims of ski pass customers for alleged wrongful withholding of refunds due to shortened 2019-2020 ski season.

Sholopa v. Turkish Airlines (S.D.N.Y. Aug. 25, 2023) granting final approval to $14.1 million settlement to resolve claims of airline passengers for alleged late or missing refunds for flights cancelled due to COVID-19.

Moore v. Kimberly-Clark Worldwide, Inc. (Ill. Cir. Ct. July 22, 2020) granting final approval to $11.2 million settlement to resolve claims of tampon purchasers for alleged defective products.

Cortes v. National Credit Adjusters, L.L.C. (E.D. Cal. Dec. 7, 2020) granting final approval to $6.8 million settlement to resolve claims of persons who received alleged autodialed calls without prior consent in violation of the TCPA.

Bayol et al. v. Health-Ade LLC, et al. (N.D. Cal. Oct. 11, 2019) – granting final approval to $3,997,500 settlement to resolve claims of kombucha purchasers for alleged false advertising.

BRITTANY SCOTT

Brittany is a partner at Smith Krivoshey. Brittany is admitted to the State Bar of California and is a member of the bars of the United States District Court for the Northern, Central, Eastern, and Southern Districts of California, the Eastern District of Wisconsin, the Northern District of Illinois, the Western District of Michigan, the Second Circuit Court of Appeals, the Seventh Circuit Court of Appeals, and the Ninth Circuit Court of Appeals.

She is skilled at efficiently managing complex litigation and moving cases forward expediently for the benefit of her clients and class members. Brittany's practice has spanned the breadth of consumer protection litigation from false and misleading advertising to data privacy claims under statutes such as the Illinois Biometric Information Privacy Act, California Invasion of Privacy Act, and the Fair Credit Reporting Act. Brittany has been lead and co-lead counsel in class actions across the country, including *In Re: Apple Data Privacy Litigation*, Case No. 5:22-cv-07069 (N.D. Cal.). She has recovered millions of dollars for consumers in state and federal courts throughout the United States.

Prior to joining Smith Krivoshey, Brittany worked for Bursor & Fisher, P.A. During that time, she litigated hundreds of consumer class cases with a focus on false and misleading advertising and data privacy.

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

Selected Published Decisions:

Gibson v. Albertsons Companies, Inc., 2024 WL 4514041 (N.D. Ill. Oct. 17, 2024), denying cough suppressant retailer's motion to dismiss purchaser's false advertising claims.

Ramirez v. Trusper, Inc., 2024 WL 4479862 (N.D. Cal. Oct. 11, 2024), denying health care provider's motion to compel arbitration in putative class action alleging wiretapping under California's Invasion of Privacy Act.

St. Aubin v. Carbon Health Techs., Inc., 2024 WL 4369675 (N.D. Cal. Oct. 1, 2024), denying health care provider's motion to dismiss its patient's allegations of wiretapping.

Mitchell v. Sonesta Int'l Hotels Corp., 2024 WL 4471772 (C.D. Cal. Oct. 4, 2024), adopted as modified, 2024 WL 4474491 (C.D. Cal. Oct. 4, 2024), denying hotel's motion to dismiss its guest's allegation of wiretapping.

Lawrence v. Finicity Corp., 716 F. Supp. 3d 851, 870 (E.D. Cal. 2024), denying motion to dismiss and motion to compel arbitration of claims under California's Anti-Phishing Act.

Natale v. 9199-4467 Quebec Inc., 2023 WL 4850531 (E.D.N.Y. July 28, 2023), denying pet supply company's motion to dismiss purchaser's false advertising claims.

Locklin v. StriVectin Operating Co., Inc., 2022 WL 867248 (N.D. Cal. Mar. 23, 2022), denying sunscreen manufacturer's motion to dismiss purchaser's false advertising claims.

Selected Class Settlements:

Morrissey v. Tula Life, Inc., Case No. 2021L0000646 (Cir. Ct. DuPage Cnty. 2021) – final approval granted for $4 million class settlement to resolve claims of cosmetics purchasers for alleged false advertising.

Clarke et al. v. Lemonade Inc., Case No. 2022LA000308 (Cir. Ct. DuPage Cnty. 2022) – final approval granted for $4 million class settlement to resolve claims for alleged BIPA violations.

Whitlock v. Jabil Inc., Case No. 2021CH00626 (Cir. Ct. Cook Cnty. 2022) – final approval granted for $995,000 class settlement to resolve claims for alleged BIPA violations.

Darnall et al. v. Dude Products Inc., Case No. 2023LA000761 (Cir. Ct. Cook Cnty. 2023) – final approval granted for $9 million class settlement to resolve claims of wipe purchasers for alleged false advertising.

Natale et al. v. 9199-4467 Quebec Inc. d/b/a Earth Rated, Case No. 2:21-cv-6775 (S.D.N.Y. 2023) – final approval granted for $825,000 class settlement to resolve claims of dog waste bag purchasers for false advertising.

ALEKSANDR LITVINOV

Aleksandr Litvinov works for Smith Krivoshey as Counsel. He is an ardent trial lawyer, advisor, and problem solver. Prior to Smith Krivoshey, Mr. Litvinov spent nearly a decade advising and defending corporations with a primary focus on employment litigation and compliance. He has worked at some of the world's largest corporate law firms and employment boutiques, including Dentons, Hogan Lovells, Fisher Phillips, and Littler Mendelson. Mr. Litvinov has helped guide industry giants such as Amazon, FedEx, Uber, Kroger, and Humana through a variety of legal claims in jurisdictions across the country. This experience has developed Mr. Litvinov's understanding of litigation strategies and how corporations and insurance adjusters investigate, value, and defend claims.

Mr. Litvinov has successfully litigated harassment, discrimination, and retaliation claims, wage and hour claims, employment-related torts, and contract claims. He has secured dismissal and summary judgment on behalf of public employers as well as private employers in the retail, supply chain, distribution, manufacturing, tech, healthcare, energy, and hospitality industries. For example, in *Lainhart, et al. v. Louisville-Jefferson County Metro Government*, Mr. Litvinov assisted a trial team who saved the city of Louisville over $150 million in alleged back pay in a high-profile, multi-plaintiff wage and hour dispute involving uncompensated "on call" time. Mr. Litvinov has likewise successfully handled administrative actions before the EEOC, state civil rights agencies, and state labor departments, and enjoys working on administrative and judicial appeals and issues of first impression. In *Kentucky Restaurant Association, et al. v. Louisville-Jefferson County Metro Government*, Mr. Litvinov saved all Kentucky employers from perpetual increased payroll costs by challenging and defeating an unprecedented local minimum wage ordinance at the Kentucky Supreme Court on behalf of retail and restaurant trade associations. And in *Collins v. Tyson Foods, Inc.*, Mr. Litvinov set a new precedent throughout Kentucky when he successfully argued that Tyson Foods was shielded from employment discrimination claims relating to its COVID vaccine mandate.

At Smith Krivoshey, in addition to a busy employment practice, Mr. Litvinov has devoted himself to the firm's consumer class action practice. Mr. Litvinov has handled dozens of class actions for false advertising, product defect and recalls, gambling, and the TCPA. He is involved in every facet of the firm's litigation practice, working on cases from inception through class resolution.

A graduate of The George Washington University Law School, Mr. Litvinov is admitted in Kentucky and Indiana, and has been permitted to practice in numerous district and circuit courts around the United States. He is a member of the National Employment Lawyers Association, and the Employment Law sections of the Kentucky and Indiana Bar Associations. Mr. Litvinov dedicates time each year to pro bono efforts benefiting workers with workplace issues who are unable to afford counsel.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JUDY KIRKBRIDE and BEETA LEWIS, individually and on behalf of all others similarly situated,	)	Case No. 2:21-cv-00022-ALM-EPD
Plaintiffs,	)	Chief Judge Algenon L. Marbley Magistrate Judge Elizabeth Deavers
v.	)	
THE KROGER CO.,	)	
Defendant.	)	

DECLARATION OF ERIC SCHACHTER OF ANGEION GROUP, LLC
<u>RE: ANGEION GROUP QUALIFICATIONS AND PROPOSED NOTICE PLAN</u>

I, Eric Schachter, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am an Executive Vice President at the class action notice and claims administration firm Angeion Group, LLC ("Angeion"). Angeion specializes in designing, developing, analyzing, and implementing large-scale, unbiased, legal notification plans.

2. Subject to Court approval, Class Counsel[1] retained Angeion after a competitive bidding process to provide notice and related administrative services.

3. I am submitting this Declaration at the request of Class Counsel in connection with the above-captioned action ("Action") to provide the Court with information about the procedures and methods that Angeion proposes to use to provide notice to Settlement Class Members.

4. I am over 21 years of age and am not a party to this action. The statements in this declaration are based on my personal knowledge and information provided by counsel, my associates, and other Angeion employees working under my supervision, and if called on to do so, I could and would testify competently thereto.

5. I have implemented and coordinated some of the largest and most complex class action notice and administration plans in the country. The scope of my work includes notification, claims processing, and distribution plans in all types of class actions, including, but not limited to, consumer, antitrust, securities, ERISA, insurance, and government agency settlements.

6. Angeion has also been appointed as notice, claims, and/or settlement administrator in hundreds of high-volume class action and other cases. In addition, members of our team have administered many noteworthy consumer settlements in recent years, including:

> **<u>In re: Facebook, Inc. Consumer Privacy User Profile Litigation</u>**
> Case No. 3:18-md-02843-VC (N.D. Cal.)
> Meta agreed to pay $725 million to settle allegations that the social media company allowed third parties, including Cambridge Analytica, to access personal information. Angeion undertook an integrated in-app notification and media campaign to a class in the hundreds of millions of individuals and processed 28.6 million claims, the most claims filed in the history of class action. In fact, during the September 7, 2023, Final Approval Hearing, U.S.

[1] Unless otherwise defined, capitalized terms in this Declaration have the same meaning as in the parties' March 12, 2026, Class Action Settlement Agreement, including its exhibits.

District Judge Chhabria acknowledged the record number of claims filed, stating, "I was kind of blown away by how many people made claims."

In re Apple Inc. Device Performance Litigation
Case No. 5:18-cv-02827-EJD (N.D. Cal.)
Apple agreed to pay $310 million to settle allegations of diminished performance in iPhone 6's and 7's. Angeion's direct notification efforts were recognized as reaching 99%+ of the current and former owners of 129 million class devices. Millions of claims were processed.

City of Long Beach, et al. v. Monsanto, et al.
Case No. 2:16-cv-03493-FMO-AS (C.D. Cal.)
Bayer agreed to pay $650 million to settle allegations of waterbodies impaired by PCBs. Angeion's notice administration was extraordinarily successful with direct notice delivered to 99.7% of the class. The claims administration includes multiple complex claims filing workflows for different funding allocations, including separate fund for "special needs" claimants.

Beckett v. Aetna Inc.
Case No. 2:17-cv-03864-JS (E.D. Pa.)
A consolidated data breach class action that arose from the alleged improper disclosure of Protected Health Information by a health insurer and previous claims administrator, including confidential HIV-related information. Angeion provided specialized training to our support team concerning the sensitive nature of the case and underlying health information. Angeion implemented robust privacy protocols to communicate with and verify the claims of the affected class members, including anonymized notice packets and allowing claimants to lodge objections under pseudonyms.

7. Additional information regarding Angeion's background, qualifications and experience can be found on our website at www.angeiongroup.com. A comprehensive summary of judicial recognition Angeion has received is attached hereto as **Exhibit A**.

DATA SECURITY & INSURANCE

8. Angeion recognizes the critical need to secure our physical and network environments and protect data in our custody. It is our commitment to these matters that has made us the go-to administrator for many of the most prominent data security matters of this decade. Our team is ever improving upon our robust policies, procedures, and infrastructure by periodically updating data security policies as well as our approach to managing data security in response to changes to physical environment, new threats and risks, business circumstances, legal and policy implications, and evolving technical environments.

9. Angeion's privacy practices are compliant with the California Consumer Privacy Act, as

currently drafted. Consumer data obtained for the delivery of each project is used only for the purposes intended and agreed in advance by all contracted parties, including compliance with orders issued by State or Federal courts as appropriate. Angeion imposes additional data security measures for the protection of Personally Identifiable Information (PII) and Personal Health Information (PHI), including redaction, restricted network and physical access on a need-to-know basis, and network access tracking. Angeion requires background checks of all employees, requires background checks and ongoing compliance audits of its contractors, and enforces standard protocols for the rapid removal of physical and network access in the event of an employee or contractor termination.

10. Data is transmitted using Transport Layer Security (TLS) 1.3 protocols. Network data is encrypted at rest with the government and financial institution standard of AES 256-bit encryption. We maintain an offline, air-gapped backup copy of all data, ensuring that projects can be administered without interruption.

11. Further, our team conscientiously monitors the latest compliance requirements, such as GDPR, HIPAA, PCI DSS, and others, to ensure that our organization meets all necessary regulatory obligations as well as aligning to industry best practices and standards set forth by frameworks like CIS and NIST. Angeion is cognizant of the ever-evolving digital landscape and continually improves its security infrastructure and processes, including partnering with best-in-class security service providers. Angeion's robust policies and processes cover all aspects of information security to form part of an industry leading security and compliance program, which is regularly assessed by independent third parties. Angeion is also committed to a culture of security mindfulness. All employees routinely undergo cybersecurity training to ensure that safeguarding information and cybersecurity vigilance is a core practice in all aspects of the work our teams complete.

12. Angeion currently maintains a comprehensive insurance program, including sufficient Errors & Omissions coverage.

OVERVIEW OF THE NOTICE PLAN

13. The objective of the proposed Notice Plan ("Notice Plan") is to provide notice to the Settlement Class, which is defined as:

> All individuals in the United States and its territories who, at any point in time during the Settlement Class Period, paid in whole or in part for one or more prescription drugs from Kroger using their insurance.[2]

14. This declaration will describe the Notice Plan that we will implement in this matter, including the considerations that informed the development of the plan and why it will provide due process to the Settlement Class. In my professional opinion, the Notice Plan described herein is the best practicable notice under the circumstances and fulfills all due process requirements, fully complying with Fed. R. Civ. P. 23.

15. The Notice Plan provides for individual direct notice via email to Settlement Class Members with a known email address, a robust, state-of-the-art digital media campaign, a press release, and a dedicated website where Settlement Class Members can learn more about their rights and options pursuant to the terms of the Settlement.

16. As discussed in greater detail below, the media campaign is designed to deliver an approximate 80.02% reach with an average frequency of 3.07 times. This number is calculated using objective syndicated advertising data relied upon by most advertising agencies and brand advertisers. It is further verified by sophisticated media software and calculation engines that cross reference which media is being purchased with the media habits of our specific Target Audience (defined below). We estimate that 80.02% of our Target Audience will see a digital advertisement concerning the Settlement on an average of 3.07 times each.

17. The Federal Judicial Center states that a publication notice plan that reaches 70% of class members is one that reaches a "high percentage" and is within the "norm." Barbara J. Rothstein & Thomas E. Willging, Federal Judicial Center, "Managing Class Action Litigation: A Pocket Guide for Judges," at 27 (3d Ed. 2010).

DIRECT NOTICE

18. For purposes of direct notice, Angeion understands that Kroger will provide the name, date of birth, mobile phone number, and in some instances an email address, for all individuals that Kroger identifies as having purchased at least one prescription drug from Kroger during the

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[2] "Kroger" is defined in the settlement documents as The Kroger Co., including all pharmacies owned and/or operated by The Kroger Co. or any of its affiliates.

Settlement Class Period using their insurance. Angeion will receive and programmatically review and analyze the data to identify duplicative records, as well as missing/incomplete data fields. Angeion will then assign identification numbers to each unique record, which will comprise the Settlement Class Member list ("Class List").

19. As part of the Notice Plan, Angeion will send direct notice via email ("Email Notice") to all Settlement Class Members with a known email address. Specifically, the Notice Plan provides for direct notice via email to all Settlement Class Members for whom Kroger has email address information. For any Settlement Class Members for whom Kroger does not have email address information, Angeion will effectuate reverse lookup searches to locate email addresses for those Settlement Class Members (discussed in greater detail below). Direct notice via email will be sent to those Settlement Class Member email addresses located via the reverse searches.

20. Angeion will cause an email address append process to be performed to locate email addresses using the other contact information ("data points") provided by the Defendant (e.g. name, date of birth, and/or phone number) for all Settlement Class Member records without email addresses. To accomplish this, the append search utilizes data garnered from commercially available first party and third-party data providers to match those data points as a validity check to identify email addresses associated with the data points from the Class List. Angeion will update the Class List with the Settlement Class Member email address information it obtains via this append process.

21. Angeion follows best practices to both validate emails and increase deliverability. Specifically, prior to distributing the Email Notice, Angeion subjects the email addresses on the Class List to a cleansing and validation process. The email cleansing and validation process removes extra spaces and compares each email address to known bad email addresses.[3] Email addresses that are not designated as a known bad address will then be further verified by contacting the Internet Service Provider ("ISP") to determine if the email address exists.

22. Further, Angeion designs the email notice to avoid many common "red flags" that might otherwise cause an email recipient's spam filter to block or identify the email notice as spam. For

[3] Angeion maintains a database of email addresses that were returned as permanently undeliverable, commonly referred to as a hard bounce, from prior campaigns. Where an address has been returned as a hard bounce within the last year, that email is designated as a known bad email address.

example, Angeion does not include attachments like the Long Form Notice to the Email Notice, because attachments are often interpreted by various Internet Service Providers ("ISP") as spam.

23. Angeion also accounts for the real-world reality that some emails will inevitably fail to be delivered during the initial delivery attempt. Therefore, after the initial noticing campaign is complete, Angeion, after an approximate 24- to 72-hour rest period (which allows any temporary block at the ISP level to expire) causes a second round of email noticing to continue to any email addresses that were previously identified as soft bounces and not delivered. In our experience, this minimizes emails that may have erroneously failed to deliver due to sensitive servers and optimizes delivery.

24. The Notice Plan provides for the issuance of a reminder email notice to Settlement Class Members whose initial Email Notice was successfully delivered but not opened. The reminder email notice will utilize simplified messaging to inform Settlement Class Members of their rights and options in the Settlement and the deadline to exercise those rights.

25. Between the email addresses Kroger provides and the email addresses Angeion will obtain through the reverse append process described above, Angeion estimates that it will send direct email notice to approximately 30 to 50% of Settlement Class Members. After completion of the email campaign, as part of Angeion's declaration to be submitted to the Court in conjunction with the motion for final approval, Angeion will report to the Court concerning the rate of delivered emails accounting for any emails that are blocked at the ISP level. In short, the Court will possess a detailed, verified account of the success rate of the entire direct email notice campaign.

MEDIA NOTICE

26. Since direct notice is not expected to be sent to all Settlement Class Members, the Notice Plan provides for a robust, state-of-the-art digital media notice campaign that is independently designed to deliver an approximate 80.02% reach to the Target Audience (defined below). Courts have regularly approved notice plans where media notice was the primary form of notice available, *i.e.*, where direct contact information was not available at all, or there was very limited contact information available for a small percentage of the class.

27. Below is a representative list of cases Angeion has administered where media notice (similar to the proposed media notice campaign described herein) was the primary form of notice and determined to be adequate: *Biegel v. Blue Diamond Growers*, Case No. 7:20-cv-03032 (S.D.N.Y.); *Holve v. McCormick & Company, Inc.*, Case No. 6:16-cv-06702 (W.D.N.Y.); *DiFrancesco v. Utz Quality Foods, Inc.*, Case No. 1:14-cv-14744 (D. Mass.); *Matthew v. KAS Direct, LLC*, Case No. 7:16-cv-06981 (S.D.N.Y.); *Retta v. Millennium Products, Inc*., Case No. 2:15-cv-01801 (C.D. Cal.); *Goldemberg v. Johnson & Johnson Consumer Companies, Inc.,* Case No. 7:13-cv-03073 (S.D.N.Y.); *In re: Ashley Madison Customer Data Security Breach Litigation*, Case No. 4:15-md-02669 (E.D. Mo.); *Ferrera v. Snyder's-Lance, Inc.*, Case No. 0:13-cv-62496 (S.D. Fla.); *Petersen v. CJ America, Inc.,* Case No. 3:14-cv-02570 (S.D. Cal.); *Vincent v. People Against Dirty PBC and Method Products PBC*, Case No. 7:16-cv-06936 (S.D.N.Y.); *In re: Honest Marketing Litigation, Case No. 1:16-cv-01125* (S.D.N.Y.); *Koller v. Med Foods, Inc. and Deoleo USA, Inc.*, Case No. 3:14-cv-02400 (N.D. Cal.); *In re: Dial Complete Marketing and Sales Litigation*, Case No. 1:11-md-02263 (D.N.H.); *Connary v. S.C. Johnson & Son, Inc.*, Case No. RG20061675 (Cal. Super. Ct.); *Neversink General Store v. Mowi USA, LLC*, Case No. 1:20-cv-09293 (S.D.N.Y.); *Bangoura v. Beiersdorf Inc. and Bayer Healthcare LLC,* Case No. 1:22-cv-00291 (E.D.N.Y.); *Delcid v. TCP Hot Acquisition LLC & Idelle Labs, LTD*, Case No. 1:21-cv-09569 (S.D.N.Y.); *Salerno v. Kirk's Natural LLC*, Case No. 1:21-cv-04987 (E.D.N.Y.); *Marek v. Molson Coors Beverage Company USA, LLC,* Case No. 3:21-cv-07174 (N.D. Cal.); *Goldstein v. Henkel Corporation and Thriving Brands LLC*, Case No. 3:22-cv-00164 (D. Conn.); *Evans v. Church & Dwight Co. Inc.*, Case No. 1:22-cv-06301 (N.D. Ill.); *Brodowicz v. Virgin Scent, Inc.*, Case No. 0:21-cv-60643 (S.D. Fla.); *Catalano v. Lyons Magnus LLC and TRU Aseptics LLC*, 7:22-cv-06867 (S.D.N.Y.); *Blankenship v. Dole Packaged Foods, LLC*, Case No. 23-LA-0361 (Ill. Cir. Ct.); *Swetz v. Clorox Co.*, Case No. 7:22-cv-09374 (S.D.N.Y.); *In re: Seresto Flea and Tick Collar Marketing, Sales Practices and Products Liability Litigation*, Case No. 1:21-cv-04447 (N.D. Ill.); *Patora v. Colgate-Palmolive Co*., Case No. 7:23-cv-01118 (S.D.N.Y.); *Henning v. Luxury Brand Partners LLC*, Case No. 3:22-cv-07011 (N.D. Cal.); *Barnes et al. v. Unilever United States Inc.*, Case No. 1:21-cv-06191 (N.D. Ill.); *Vance v. Church & Dwight Co. Inc.*, 2:22-cv-00044 (E.D. Cal.); *Counts v. Arkk Food Company*, Case No. 1:23-cv-

00236 (N.D. Ill.); *Kessler v. The Quaker Oats Company*, Case No. 7:24-cv-00526 (S.D.N.Y.); *Plowden v. Similasan Corporation*, 1:23-cv-02511 (D. Colo.); *Pompilio v. Boar's Head Provisions Co., Inc.*, Case No. 7:24-cv-08220 (S.D.N.Y.); *Jimenez v. Artsana USA, Inc.*, Case No. 7:21-cv-07933 (S.D.N.Y.).

28. Angeion will utilize a form of internet advertising known as Programmatic Display Advertising, which is the leading method of buying digital advertisements in the United States.[4] In laymen's terms, programmatic advertising is a method of advertising where an algorithm identifies and examines demographic profiles and uses advanced technology to place advertisements on the websites where members of the audience are most likely to visit (these websites are accessible on computers, mobile phones and tablets). The media notice efforts outlined below are strategically designed to provide notice of the Settlement to potential Settlement Class Members by driving them to the dedicated website where they can file a claim and learn more about the Settlement, including their rights and options.

29. To develop the media notice campaign and to verify its effectiveness, our media team analyzed data from 2025 comScore Multi-Platform/MRI Simmons USA Fusion[5] to profile the Settlement Class and arrive at an appropriate Target Audience based on criteria pertinent to this litigation. MRI-Simmons research is a leading U.S.-based consumer insights company that provides comprehensive data and insights into consumer demographics (*i.e.*, age, income, lifestyle), media consumption (*i.e.*, TV, digital, print, social, streaming), brand preferences and purchase behavior

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[4] Programmatic advertising accounts for over 90% of US digital display ad spending, automating the buying and selling of ad inventory through real-time technology. *See* https://www.emarketer.com/content/faq-on-programmatic-advertising--keeping-up-with-automated-ad-buying. Programmatic digital display ad spending in the United States is projected to exceed $203 billion in 2026. *See* US Programmatic Digital Display Ad Spending Forecasts: EMARKETER Estimates and Historical Data (Last visited February 19, 2026)

[5] GfK MediaMark Research and Intelligence LLC ("GfK MRI") provides demographic, brand preference and media-use habits, and captures in-depth information on consumer media choices, attitudes, and consumption of products and services in nearly 600 categories. comSCORE, Inc. ("comSCORE") is a leading cross-platform measurement and analytics company that precisely measures audiences, brands, and consumer behavior, capturing 1.9 trillion global interactions monthly. comSCORE's proprietary digital audience measurement methodology allows marketers to calculate audience reach in a manner not affected by variables such as cookie deletion and cookie blocking/rejection, allowing these audiences to be reach more effectively. comSCORE operates in more than 75 countries, including the United States, serving over 3,200 clients worldwide.

across hundreds of product categories, and psychographics and attitude, (*i.e.*, how consumers think, feel, and make decisions).[6]

30. Specifically, the following syndicated research definition from 2025 comScore Multi-Platform/MRI Simmons USA Fusion was used to profile potential Settlement Class Members:

> **Food Stores, Grocery & Warehouse/Club Stores/Times Shopped Grocery Stores/ Kroger in last 6 months, AND used a prescription medication to treat a condition in the last 12 months, AND have any form of medical insurance**

31. Based on the target definition used, the size of the Target Audience for the media notice campaign is approximately 24.141 million individuals. Digital media platforms provide numerous data segments dedicated to consumer goods. We will rely heavily on that data to help us ensure we are reaching potential Settlement Class Members.

32. It is important to note that the Target Audience is distinct from the class definition, as is commonplace in class action notice plans. Utilizing an overinclusive proxy audience maximizes the efficacy of the notice plan and is considered a best practice among media planners and class action notice experts alike. Using proxy audiences is also commonplace in both class action litigation and advertising generally.[7]

33. Additionally, the Target Audience is based on objective syndicated data, which is routinely used by advertising agencies and experts to understand the demographics, shopping habits and attitudes of the consumers that they are seeking to reach.[8] Using this form of objective data will allow the parties to report the reach and frequency to the Court, with the confidence that the reach percentage and the number of exposure opportunities comply with due process and exceed the

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[6] https://www.mrisimmons.com/ (Last visited February 19, 2026).

[7] If the total population base (or number of class members) is unknown, it is accepted advertising and communication practice to use a proxy-media definition, which is based on accepted media research tools and methods that will allow the notice expert to establish that number. The percentage of the population reached by supporting media can then be established. Duke Law School, *Guidelines and Best Practices—Implementing 2018 Amendments to Rule 23 Class Action Settlement Provisions*, at 56, available at https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1003&context=bolch. (Last visited February 19, 2026).

[8] The notice plan should include an analysis of the makeup of the class. The target audience should be defined and quantified. This can be established through using a known group of customers, or it can be based on a proxy-media definition. Both methods have been accepted by the courts and, more generally, by the advertising industry, to determine a population base. *Id.*

Federal Judicial Center's threshold as to reasonableness in notification programs. Virtually all professional advertising agencies and commercial media departments use objective syndicated data tools, like the ones described above, to quantify net reach. Sources like these guarantee that advertising placements can be measured against an objective basis and confirm that reporting statistics are not overstated. They are ubiquitous tools in a media planner's arsenal and are regularly accepted by courts in evaluating the efficacy of a media plan, or its component parts. Understanding the socio-economic characteristics, interests and practices of a target group aids in the proper selection of media to reach that target. Here, the Target Audience has been reported to have the following characteristics:

- 64.51% are ages 45+, with a median age of 54.5 years old;
- 57.51% are female;
- 54.76% are married;
- 29.34% have children;
- 29.29% have graduated high school or equivalent;
- 43.88% are currently employed full time;
- The median household income is $97,020; and
- 84.25% have used social media in the last 30 days.

34. To identify the best vehicles to deliver messaging to the Target Audience, the media quintiles, which measure the degree to which an audience uses media relative to the general population were reviewed. Here, the objective syndicated data shows that members of the Target Audience are average internet users, spending an average of approximately 28.5 hours per week on the internet.

35. Given the strength of digital advertising, as well as our Target Audience's consistent internet use, we recommend utilizing a robust internet advertising campaign to reach potential Settlement Class Members. This media schedule will allow us to deliver an effective reach level and a vigorous frequency, which will provide due and proper notice to Settlement Class Members.

36. Multiple targeting layers will be implemented into the programmatic campaign to help ensure delivery to the most appropriate users, inclusive of the below tactics.

- <u>Look-a-like Modeling</u>: This technique uses data methods to build a look-a-like audience against known Settlement Class Members.

- Predictive Targeting: This technique allows technology to "predict" which users will be served advertisement about the Settlement.
- Site Retargeting: This technique is a targeting method used to reach potential Settlement Class Members who have already visited the dedicated case website while browsing other pages. This allows for sufficient exposure to an advertisement regarding the Settlement.
- Context Targeting: This technique leverages contextual on-site data to identify and place advertisements about the Settlement on sites with relevant topics/articles.
- Geotargeting: The campaign will be national, and we will weight delivery based on how the audience is geographically spread throughout the country.

Social Media Advertising

37. The social media campaign component of the proposed Notice Plan will utilize leading social media platforms Facebook, Instagram, and Threads. The social media campaign uses an interest-based approach which focuses on the interests that users exhibit while on these social media platforms, capitalizing on the Target Audience's propensity to engage in social media (84.25% of the Target Audience have used social media in the last 30 days).

38. The social media campaign will utilize specific tactics to further qualify and deliver impressions to the Target Audience. For example, we will leverage the Meta Marketing platform and its technology to serve ads on Facebook, Instagram and Threads to reach members of the Target Audience. Look-a-like modeling allows the use of consumer characteristics to serve ads. Based on these characteristics, we can build different consumer profile segments to ensure that the Notice Plan messaging is delivered to the proper audience. The social media ads will likewise be targeted nationally, and we will weight delivery based on how the audience is geographically spread throughout the country.

39. The social media campaign will engage with the Target Audience via a mix of news feed and story units to optimize performance via the social media platforms' desktop sites, mobile sites, and mobile apps.

Search Engine Marketing

40. The Notice Plan also includes a paid search campaign on Google to help drive Settlement Class Members who are actively searching for information about the Settlement to the dedicated website. Paid search ads will complement the programmatic and social media campaigns, as search engines are frequently used to locate a specific website, rather than a person typing in the URL. Search terms would relate to the subject matter of the Settlement. In other words, the paid search ads

are driven by the individual user's search activity, such that if that individual searches for (or has recently searched for) the Settlement or other terms related to the litigation, that individual could be served with an advertisement directing them to the dedicated website.

REACH AND FREQUENCY

41. This declaration describes the reach and frequency evidence which courts systemically rely upon in reviewing class action publication notice programs for adequacy. The reach percentage exceeds the guidelines as set forth in the Federal Judicial Center's Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide to effectuate a notice program which reaches a high degree of class members.

42. Specifically, the state-of-the-art media portion of the Notice Plan is designed to independently deliver an approximate 80.02% reach with an average frequency of 3.07 times each by serving approximately 24.141 million impressions.

PRESS RELEASE

43. The Notice Plan also provides for a press release to be distributed via PR Newswire or similar national newswire service to further diffuse news of the Settlement. This distribution will help garner "earned media" separate and apart from the notice efforts outlined herein, which will lead to increased awareness and participation amongst members of the Settlement Class.

DEDICATED WEBSITE AND CALL CENTER

44. The Notice Plan will also implement the creation of a case-specific website, where Settlement Class Members can submit a claim, easily view general information about this Settlement, including answers to frequently asked questions, and view important dates and deadlines pertinent to the Settlement. Settlement Class Members will also be able to view or download important documents pertinent to the Settlement, including the Settlement Agreement, Court Orders, the long form notice (in both English and Spanish), the claim form, and other documents as agreed upon by the Parties or as required by the Court. The website will be designed to be user-friendly and make it easy for Settlement Class Members to securely submit a Claim Form via a customized online portal available on the website.

45. The website will be ADA-compliant and optimized for mobile visitors so that information loads quickly on mobile devices. Additionally, the website will be designed to maximize search engine optimization through Google and other search engines. Keywords and natural language search terms will be included in the website's metadata to maximize search engine rankings.

46. A toll-free hotline devoted to this case will be created and provided on the Settlement Website to further apprise Settlement Class Members of the rights and options in the Settlement. The toll-free hotline will utilize an interactive voice response ("IVR") system to provide Settlement Class Members with responses to frequently asked questions and other essential information regarding the Settlement. The toll-free hotline will be accessible 24 hours a day, 7 days a week. Settlement Class Members will have the ability to request a copy of the Notice and/or Claim Form via the toll-free hotline and speak with a live operator during normal business hours.

NOTICE PURSUANT TO THE CLASS ACTION FAIRNESS ACT OF 2005

47. Within ten (10) days of the filing of the Settlement Agreement with this Court, Angeion will cause notice to be disseminated to the appropriate state and federal officials pursuant to the requirements of the Class Action Fairness Act, 28 U.S.C. §1715.

CLAIMS ADMINISTRATION

Claim Form Review

48. Angeion shall receive and process all Claim Form submissions. Angeion will review all Claim Forms to determine their validity and each claimant's eligibility and shall employ reasonable procedures to screen claims for abuse or fraud (discussed in greater detail below). Angeion will use the Class List to validate and verify that a Claim Form was actually submitted by a known Settlement Class Member. If a claimant does not match a Settlement Class Member on the Class List, then Angeion will contact that claimant requesting supporting documentation to verify the claim. Claimants that do not match the Class List and do not provide the requested supporting documentation submitted, or are deemed to be duplicative or fraudulent, shall be rejected.

49. Pursuant to the terms of the Settlement Agreement, Angeion will establish an interest-bearing bank account at a financial institution to be approved by Class Counsel to hold and administer the Settlement Fund prior to distribution (the "Escrow Account"). The Settlement Fund will be treated

as a qualified settlement fund ("QSF") and will be invested pursuant to the requirements in the Settlement Agreement. Angeion will serve as both the Settlement Administrator and Escrow Agent.

50. Angeion will be responsible for filing requisite tax returns for the QSF and will disseminate payments to eligible Settlement Class Members from the QSF in accordance with the terms of the Settlement Agreement.

Class Member Payment Options

51. Claimants can select from a variety of payment options, including digital payment options such as Venmo, PayPal, Zelle, ACH transfers, and virtual pre-paid cards.[9] The digital payment options will be presented in a neutral manner without preferencing any form of digital payment.

52. The digital payment options are reliable, secure, and meet evolving claimant preferences and contemporary payment methodologies. This includes banking solutions (Zelle/ACH), digital-first (Venmo/PayPal), as well as a pre-paid card option for the "unbanked" and "underbanked."

53. According to a 2019 report by the Federal Reserve, millions of Americans are either unbanked or underbanked.[10] Six (6) percent of adults did not have a checking, savings, or money market account (often referred to as the "unbanked"). Two-fifths of unbanked adults used some form of alternative financial service during 2018—such as a money order, check cashing service, pawn shop loan, auto title loan, payday loan, paycheck advance, or tax refund advance. In addition, sixteen (16) percent of adults were "underbanked": they have a bank account but also used an alternative financial service product associated with unbanked adults.

54. A 2023 FDIC National Survey of Unbanked and Underbanked Households found that minority households were disproportionately affected compared to white households, with Hispanic and Black Households five times as likely to be unbanked and twice as likely (or more) to be underbanked.[11] The pre-paid card product being offered is designed specifically for class action

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[9] Settlement Class Members will be provided with appropriate disclosures when selecting a payment method.

[10] *See* https://www.federalreserve.gov/publications/2019-economic-well-being-of-us-households-in-2018-banking-and-credit.htm (Last visited February 19, 2026).

[11] *See* https://www.fdic.gov/household-survey/2023-fdic-national-survey-unbanked-and-underbanked-households-executive-summary (Last visited February 19, 2026).

usage to provide a viable alternative for unbanked and underbanked individuals to receive their Settlement payment without the necessity of having a bank account.

55. The pre-paid digital payment card product offered to Settlement Class Members in this case has many of the features of pre-paid digital payment cards offered outside the class action context, but also includes certain additional consumer-friendly features designed specifically for class action usage, including:

a) No activation or load fees;
b) The ability of the cardholder to transfer balances at any time and at no cost to the cardholder;
c) No inactivity fees to the cardholder until after 12 consecutive months of inactivity;
d) Proactive email reminder to cardholders at 11 months to encourage use; and,
e) Refund of inactivity fees if the cardholder re-engages through a use of value on the card following service fee assessment.

56. Settlement Class Members may elect to have a traditional check mailed to them. The payment transmission notice (*e.g.*, whether sent digitally or in the form of a check stub) will include information about the payment so Settlement Class Members are able to identify that the payment is from this Settlement.

Fraud Detection and Prevention

57. Angeion has developed and deployed its real-time fraud detection and prevention system, AngeionAffirm2.0 ("AngeionAffirm"), which is a comprehensive solution to identify fraud in real time based on both state-of-the-art technology and analysis of over a decade of historical claims data. AngeionAffirm was developed to combat the rising tide of fraudulent claims in class action settlements and the increasingly sophisticated technologies and techniques used by nefarious actors in their attempt to perpetuate fraud. AngeionAffirm will be implemented to detect any fraudulent claim submissions in this Settlement.

58. The success of AngeionAffirm has been recognized by Courts. In the Court's July 26, 2024, Report and Recommendation, United States Magistrate Judge Stewart D. Aaron stated, "The Court finds that the claims process administered by Angeion has integrity and has been carried out in a diligent and thorough manner…Based upon the Court's review of the record, the Court finds that Angeion has taken prudent and necessary steps to address the fraudulent claims submitted in this case… Angeion's fraud detection system is robust and appropriately designed to weed out fraudulent

claims." (*See In re: Novartis and Par Antitrust Litigation*, No. 1:18-cv-04361-AKH-SDA, S.D.N.Y, Report and Recommendation, ECF No. 667).

59. During the April 8, 2025, Fairness Hearing, the Honorable Vincent L. Briccetti recognized "the extensive work and sophisticated technology that Angeion utilized in addressing the unprecedented programmatic fraud issues in connection with [claims in] this settlement," further stating that "absent Angeion's work in this rather extraordinary case, it's likely that the settlement would never have been approved and the class members would never have been paid." *See Jimenez v. Artsana USA, Inc.*, No. 7:21-cv-07933-VB (S.D.N.Y.).

ESTIMATED NOTICE AND ADMINISTRATION COSTS & DISCLOSURE

60. Angeion has agreed to provide notice and administration services as described herein for an amount not to exceed $325,000 before the Effective Date and $1,140,000 in total.[12] The pricing details comprising the administration cost estimate are competitively sensitive. Upon request, Angeion will provide its itemized estimate to the Court for *in camera* review.

61. Angeion has negotiated agreements with certain vendors and other service providers that facilitate various aspects of the administration process, including vendors of digital payment solutions.[13] In certain circumstances, some of these agreements may provide revenue to Angeion. Any such revenue to Angeion does not reduce the Settlement Fund or the amounts distributed to Settlement Class Members, nor is any such income to Angeion dependent on the extent to which Settlement Class Members in this case use or do not use their balances. Each Settlement Class Member will receive the full value of their payment under the Settlement Agreement, regardless of these agreements or the payment method chosen.

62. One of the reasons that Angeion is able to offer its highly labor and cost-intensive administration services in this Settlement (such as the comprehensive notice and claims management program described herein) at the not-to-exceed price is based on Angeion's expectation that

[12] The estimate was created based on certain specifications provided to Angeion, such as the size of the Settlement Class, the method of disseminating notice and corresponding assumptions made, including but not limited to issuing payments in a single distribution with 90% of payments issued via a digital payment method. Actual costs may vary based on deviations from these assumptions.

[13] Angeion's agreements contain competitively sensitive business information. On request of the Court, Angeion will make any such revenue-generating agreements applicable to administration of this Settlement available to the Court for its *in camera* review.

Angeion's agreements with vendors will generate additional revenue to Angeion at no additional cost to the Settlement Fund.

63. Angeion's agreements with these vendors and service providers do not alter Angeion's compliance with both the strict terms of the Settlement and any plan of distribution negotiated by counsel for the Parties and approved by the Court.

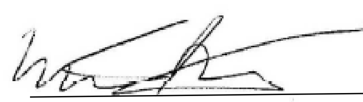
CONCLUSION

64. The Notice Plan outlined above provides for the dissemination of direct notice via email, supplemented by a robust state-of-the-art digital media notice campaign, a press release, and the implementation of a dedicated website to further inform Settlement Class Members of their rights and options under the terms of the Settlement.

65. In my professional opinion, the Notice Plan described herein will provide full and proper notice to Settlement Class Members. Moreover, it is my opinion that Notice Plan is the best notice that is practicable under the circumstances, fully comporting with due process and Fed. R. Civ. P. 23. After the Notice Plan has concluded, Angeion will provide a final report verifying its effective implementation to this Court.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: March 12, 2026



Eric Schachter

EXHIBIT A

ANGEION GROUP
Writing the Rules

INNOVATION
IT'S PART OF OUR DNA

Class Action Administration | Mass Arbitration Administration
Mass Tort Services | Regulatory Remediation

Judicial Recognition

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IN RE: NOVARTIS AND PAR ANTITRUST LITIGATION

Case No. 1:18-cv-04361-AKH-SDA (S.D.N.Y.)

The Honorable Stewart D. Aaron, United States Magistrate Judge (July 26, 2024): The Court finds that the claims process administered by Angeion has integrity and has been carried out in a diligent and thorough manner…Based upon the Court's review of the record, the Court finds that ***Angeion has taken prudent and necessary steps to address the fraudulent claims submitted in this case… Angeion's fraud detection system is robust and appropriately designed to weed out fraudulent claims.***

IN RE: FACEBOOK, INC. CONSUMER PRIVACY USER PROFILE LITIGATION

Case No. 3:18-md-02843 (N.D. Cal.)

Meta agreed to pay $725 million to settle allegations that the social media company allowed third parties, including Cambridge Analytica, to access personal information. Angeion undertook an integrated in-app notification and media campaign to a class in the hundreds of millions of individuals and processed 28.6 million claims, the most claims filed in the history of class action. In fact, during the September 7, 2023, Final Approval Hearing, U.S. District Judge Chhabria acknowledged the record number of claims filed, stating, ***"I was kind of blown away by how many people made claims."***

IN RE: FAMILY DOLLAR STORES, INC. PEST INFESTATION LITIGATION

Case No. 2:22-md-03032-SHL-TMP (W.D. Tenn.)

The Honorable Sheryl H. Lipman (May 6, 2024): ***The Declaration of Steven Weisbrot of Angeion highlighted the success of the notice program.*** (ECF No. 199 (sealed).) Angeion sent an email to 444,382 potential class members, along with a reminder email to 440,889 potential class members who had not yet filed a claim form. Approximately 80.62% of the target audience of the Class saw the advertisements that were part of the digital media campaign. The Settlement Website had more than 1,263,103 visits with 1,190,744 unique visitors. The toll-free telephone line received 1,123 calls totaling 4,830 minutes. (*Id*.) ***This high engagement rate supports the Court's previous finding that notice was adequate in this case.***

IN RE: PHILLIPS RECALLED CPAP, BI-LEVEL PAP, AND MECHANICAL VENTILATOR PRODUCTS LITIGATION

Case No. 2:21-mc-01230 (MDL No. 3014) (W.D. Pa.)

The Honorable Joy Flowers Conti (April 25, 2024): Here, before granting preliminary approval, ***the court closely scrutinized the Notice Program and notice forms***…Based on the declaration of Steven Weisbrot, Esq, President and Chief Executive Officer of the claims administrator, Angeion Group, LLC, "the Notice Plan was designed to target a wide variety of geographic and demographic markets to reach User members of the Settlement Class and deliver an approximate 86.70% reach." (ECF No. 2657-1 ¶ 31). As part of a multi-faceted approach, the Notice Plan included: mailed notice to 4,981,572 eligible users, whose addresses were verified through the United States Postal Service's National Change of Address database; emailed notice to the 2,912,887 valid email addresses identified for registered users and 2,556 valid email addresses identified as potential third-party Payers; user media notice through advertisements on Spotify, Pandora, and Sirius XM; publication notice in magazines, *i.e.,* Southern Living, Sports Illustrated, and People; media notice to Payers consisting of "digital programmatic display advertising, social media advertising via Facebook and LinkedIn, and an additional paid search campaign via Google, all of which were separate and apart from the User media campaign and were specifically designed to reach Payer Settlement Class Members;" publication notice directed toward Payers in HR Magazine; mailed notice via first-class mail to Durable Medical Equipment providers; and press releases. (*Id*. at 2–8). These efforts exceeded the desired threshold of 86.7% and reached approximately 90% of the class. (ECF No. 2657-1 ¶ 31). The Notice Plan meets all the requirements of Rule 23…Under these circumstances, the notice was directed to the putative class members in the best way practicable under the circumstances.

DECOSTANZO v. GLAXOSMITHKLINE PLC AND GLAXOSMITHKLINE LLC

Case No. 2:21-cv-04869-NJC-AYS (E.D.N.Y.)

The Honorable Nusrat J. Choudhury (February 16, 2026): The Court finds that the Notice Plan…(a) will constitute the best notice practicable under the circumstances; (b) are reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Litigation, the terms of the proposed settlement, and their rights under the proposed settlement, including, but not limited to, their rights to object to or exclude themselves from the proposed settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; (d) meet all applicable requirements of law, including, but not limited to, 28 U.S.C. § 1715, Rule 23(c), the Due Process Clause(s) of the United States Constitution, and any other applicable laws…The Court further finds that all of the notices are written in simple terminology, are clear and readily understandable, and are materially consistent with the Federal Judicial Center's illustrative class action notices.

RUGG-HARRELL v. TREEHOUSE FOODS, INC.

Case No. 1:24-cv-10992 (N.D. Ill.)

The Honorable Sharon Johnson Coleman (February 13, 2026): The Court finds that the publication of the Notice, Summary Notice, and Claim Form: (i) complied with the Preliminary Approval Order; (ii) constituted the best notice practicable under the circumstances; (iii) constituted notice that was reasonably calculated to apprise Settlement Class Members of the effect of the Settlement, of the proposed Plan of Allocation, of Lead Counsel's request for an award of attorneys' fees and payment of Litigation Expenses incurred in connection with the prosecution of the Action, of Settlement Class Members' right to object or seek exclusion from the Settlement Class, and of their right to appear at the Settlement Hearing; (iv) constituted due, adequate, and sufficient notice to all Persons entitled to receive notice of the proposed Settlement; and (v) satisfied the notice requirements of Rule 23 of the Federal Rules of Civil Procedure, and the United States Constitution (including the Due Process Clause).

NOBEL v. SOUTH FLORIDA STADIUM d/b/a HARD ROCK STADIUM

Case No. 1:24-cv-22751-BB (S.D. Fla.)

The Honorable Beth Bloom (November 25, 2025): The Court approves, in form and content, the Class Notice and Claim Form, attached to the Settlement Agreement as Exhibits A, B, C, and D, and finds that they meet the requirements of the Rules of Civil Procedure and satisfy Due Process requirements under the U.S. Constitution… The Court finds that the Class Notice Program as set forth in the Settlement Agreement, (a) is the best practicable notice, (b) is reasonable and constitutes due, adequate and sufficient notice to all Persons entitled to receive notice, (c) is reasonably calculated, under the circumstances, to apprise the Settlement Classes of the pendency of the Litigation and of their rights with respect to the Settlement, and (d) meets all applicable requirements of applicable law. The Class Notice Program satisfies the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process.

CAMPBELL v. SIRIUS XM RADIO, INC.

Case No. 2:22-cv-02261-CSB-EIL (C.D. Ill.)

The Honorable Colin S. Bruce (November 10, 2025): The Court finds that the proposed notice program set forth in the Settlement Agreement satisfies the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States (including the Due Process Clause), and all other applicable law and rules. The notice program provides the best notice practicable under the circumstances. It is reasonably calculated under the circumstances to apprise Settlement Class Members of the pendency and nature of this Litigation, the scope of the Settlement Class, the terms and effect of the Settlement Agreement…

MARBLE v. HALO INNOVATIONS, INC.

Case No. 1:23-cv-11048-JGLC (S.D.N.Y.)

The Honorable Jessica G.L. Clarke (October 14, 2025): [T]he settlement administrator, Angeion, has notified Settlement Class Members of the Settlement by (a) direct notice via emailing each member of the Settlement Class for whom Angeion has an email address; (b) direct notice via mailing postcard notice to each member of the Settlement Class who did not have a valid email address but had a mailing address; (c) implementing a media campaign consisting of targeted internet banner notice, social media notice, and a paid search campaign; and (d) implementing a dedicated settlement website and toll-free telephone line where Settlement Class Members can learn about their rights and options pursuant to the terms of the Settlement. The form and methods of notifying the Settlement Class of the terms and conditions of the proposed Settlement Agreement met the requirements of Fed R. Civ. P. 23, due process, and any other applicable law, and constituted the best notice practicable under the circumstances.

LOPEZ v. APPLE INC.

Case No. 4:19-cv-04577-JSW (N.D. Cal.)

The Honorable Jeffrey S. White (September 4, 2025): The form, manner, and content of the Email Notice, Full Class Notice, Publication Notice, and Settlement Website were the best notice practicable under the circumstances, satisfied due process, provided adequate information to the Settlement Class of all matters relating to the Settlement, and fully satisfied the requirements of Federal Rules of Civil Procedure 23(c)(2) and (e)(1) and due process.

LE v. ZUFFA, LLC

Case No. 2:15-cv-01045 (D. Nev.)

The Honorable Richard F. Boulware, II (March 3, 2025): Upon review of the record, the Court now finds that the program for providing notice to the Class was effectuated in accordance with the Court's approved Notice Plan and thus constituted due, adequate, and sufficient notice of the Settlement; was the best notice practicable under the circumstances; and satisfied the requirements of Federal Rules of Civil Procedure 23(c)(2)(B) and 23(e)(1), due process, and any other applicable law. Therefore, the form and manner of dissemination of the notice of the Settlement to the Class are finally approved.

BROOKS v. THOMSON REUTERS CORPORATION

Case No. 3:21-cv-01418-EMC (N.D. Cal.)

The Honorable Edward M. Chen (February 21, 2025): The notice was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, the terms of the proposed Settlement...Further, the Notice Plan constituted due, adequate, and sufficient notice to all persons entitled to receive notice, and satisfied due process and provided adequate information to the Settlement Class of all matters relating to the Settlement, and fully satisfied the requirements of Federal Rules of Civil Procedure 23(c)(2) and (e)(1) and any other applicable state and/or federal laws.

IN RE: SERESTO FLEA AND TICK COLLAR MARKETING, SALES PRACTICES AND PRODUCT LIABILITY LITIGATION

Case No. 1:21-cv-04447, MDL No. 3009 (N.D. Ill.)

The Honorable John Robert Black (January 6, 2025): The Court finds that the Class Notice Program implemented pursuant to the Settlement Agreement and the Order preliminarily approving the Settlement (ECF No. 192): (i) constituted the best practicable notice, (ii) constituted notice that was reasonably calculated under the circumstances to apprise Class Members of the pendency of the Litigation, of their right to object to or exclude themselves from the proposed Settlement, of their right to appear at the Fairness Hearing, and of their right to seek monetary and other relief, (iii) constituted reasonable, due, adequate, and sufficient notice to all persons entitled to receive notice, and (iv) met all applicable requirements of due process and any other applicable law.

KATZ-LACABE v. ORACLE AMERICA, INC.

Case No. 3:22-cv-04792-RS (N.D. Cal.)

The Honorable Richard Seeborg (November 15, 2024): The Notice Plan constituted sufficient notice practicable under the circumstances to all Settlement Class Members and was successfully implemented by the Settlement Administrator, effecting Class Notice that fully complied with the requirements of Federal Rule of Civil Procedure 23 and due process....The Settlement Administrator effectively administered the Claims program pursuant to the Settlement Agreement and the Order Granting Preliminary Approval and that the Claims process was fair, reasonable and adequate.

BRAUN v. THE PHILADELPHIA INQUIRER, LLC

Case No. 2:22-cv-04185 (E.D. Pa.)

The Honorable John M. Younge (August 8, 2024): The proposed form and manner of notice to members of the Settlement Class set forth in the Weisbrot Declaration…along with the proposed methods of dissemination of notice described therein, satisfy the requirements of Rule 23(e) and due process, are otherwise fair and reasonable, and therefore are approved.

GUIDA v. GAIA, INC.

Case No. 1:22-cv-02350 (D. Colo.)

The Honorable Gordon P. Gallagher (July 19, 2024): The Court has carefully considered the forms and methods of notice to the Settlement Class set forth in the Settlement ("Notice Plan"). The Court finds that the Notice Plan constitutes the best notice practicable under the circumstances and fully satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, the requirements of due process, and the requirements of any other applicable law…The Court further finds that the Notice constitutes valid, due, and sufficient notice to all persons entitled thereto, and meets the requirements of Due Process. Accordingly, the Court finds that no notice other than that specifically identified in the Settlement is necessary in this Action.

FERNANDEZ v. CORELOGIC CREDCO, LLC

Case No. 3:20-cv-01262 (S.D. Cal.)

The Honorable Jeffrey T. Miller (June 20, 2024): The court approved notice of this class action and proposed settlement in the June 16, 2024, Preliminary Approval Order. The Agreement called for sending the Notice directly to class members through email ("email notice") and/or via U.S. Mail. ("notice packet"). In support of his Motions, Plaintiff has filed the Declaration of Lacey Rose, who is employed as a "Senior Project Manager with Angeion," and the Declaration of Steven Weisbrot, the President and Chief Executive Officer of Angeion, the Settlement Administrator retained in this matter. See generally, Doc. No. 316-5, Doc. No. 329. Both declarations detail the actions taken by the Administrator…Accordingly, ***the court determines that the Notice in the case was copious, impressive, more than adequate***, and satisfied both the requirements of Rule 23 and due process, giving the settlement class members adequate notice of the Settlement.

JONES v. VARSITY BRANDS, LLC

Case No. 2:20-cv-02892 (W.D. Tenn.)

The Honorable Sheryl H. Lipman (June 18, 2024): Indirect Purchasers have retained Angeion to serve as Settlement Administrator…***Angeion has designed a multi-layered sophisticated plan*** using a combination of Internet, email, publication, social media…The Notice Plan adequately apprises all potential class members of the terms of the Settlement Agreement, provides the opportunity to make informed decisions, and comports with due process.

SALINAS v. BLOCK, INC.

Case No. 3:22-cv-04823 (N.D. Cal.)

The Honorable Sallie Kim (June 3, 2024): The Court…(b) finds and determines that emailing the Summary Notice, reminder emails to Class Members (if available), and publication of the Settlement Agreement, Long Form Notice, Summary Notice, and Claim Form on the Settlement Website, supplemented by any social media and print media advertisements deemed appropriate by the Parties (i) constitutes the best notice practicable under the circumstances; (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action…(iii) constitutes due, adequate, and sufficient notice to all Persons entitled to receive notice of the proposed Settlement; and (iv) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States (including the Due Process Clause), and all other applicable laws and rules.

ESPOSITO v. CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS

Case No. MID-L-006360-23 (N.J. Super. Ct.)

The Honorable Ana C. Viscomi (April 26, 2024): The Court finds that such Notice program, including the approved forms of notice: (a) constituted the best notice that is practicable under the circumstances; (b) included direct individual notice to all Settlement Class Members who could be identified through reasonable effort, as well as appropriate reminder notices; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members...(d) constituted due, adequate and sufficient notice to all persons entitled to notice; and (e) met all applicable requirements of N.J. Ct. R. R. 4:32-1 and 4:32-2, Due Process under the U.S. Constitution, and any other applicable law.

KUKORINIS v. WALMART, INC.

Case No. 8:22-cv-02402 (M.D. Fla.)

The Honorable Virginia M. Hernandez Covington (January 19, 2024): The Notice Plan, including the form of the notices and methods for notifying the Settlement Class of the Settlement and its terms and conditions...a. meet the requirements of the Federal Rules of Civil Procedure (including Rule 23 (c)-(e)), the United States Constitution (including the Due Process Clause), and the Rules of this Court; b. constitute the best notice to Settlement Class Members practicable under the circumstances...

IN RE: KIA HYUNDAI VEHICLE THEFT MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION

Case No. 8:22-ml-03052 (C.D. Cal.)

The Honorable James V. Selna (October 31, 2023): The Court has considered the form and content of the Class notice program and finds that the Class notice program and methodology as described in the Settlement Agreement (a) meet the requirements of due process and Federal Rules of Civil Procedure 23(c) and (e); (b) constitute the best notice practicable under the circumstances to all persons entitled to notice; and (c) satisfies the constitutional requirements regarding notice.

AMANS v. TESLA, INC.

Case No. 3:21-cv-03577 (N.D. Cal.)

The Honorable Vince Chhabria (October 20, 2023): The Court further finds that the Notice is the best notice practicable under the circumstances, and that the Notice complies fully with the requirements of the Federal Rules of Civil Procedure. The Court also finds that the Notice constitutes valid, due, and sufficient notice to all persons entitled thereto, and meets the requirements of Due Process. The Court further finds that the Notice is reasonably calculated, under all circumstances, to apprise members of the Settlement Class of the pendency of this case, the terms of the Settlement Agreement, the right to object to the Settlement, and the right to exclude themselves from the Settlement Class.

IN RE: AQUEOUS FILM-FORMING FOAMS PRODUCTS LIABILITY LITIGATION

Case No. 2:18-mn-02873 (D.S.C.)

The Honorable Richard Mark Gergel (August 29, 2023): The Court also approves the proposed Notice Plan set forth in Exhibit C to the Settlement Agreement...The proposed Notice Plan is the best practicable notice under the circumstances of this case; is reasonably calculated under the circumstances to apprise potential Class Members of the Settlement Agreement and of their right to object to or exclude themselves from the proposed Settlement Class; is reasonable and constitutes due, adequate, and sufficient notice to all Persons entitled to receive it; and meets all applicable requirements of Federal Rule of Civil Procedure 23, the United States Constitution, and other applicable laws and rules.

LUNDY v. META PLATFORMS, INC.

Case No. 3:18-cv-06793 (N.D. Cal.)

The Honorable James Donato (April 26, 2023): For purposes of Rule 23(e), the Notice Plan submitted with the Motion for Preliminary Approval and the forms of notice attached thereto are approved...The form, content, and method of giving notice to the Settlement Class as described in the Notice Plan submitted with the Motion for Preliminary Approval are accepted at this time as practicable and reasonable in light of the rather unique circumstances of this case.

IN RE: FACEBOOK INTERNET TRACKING LITIGATION

Case No. 5:12-md-02314 (N.D. Cal.)

The Honorable Edward J. Davila (November 10, 2022): The Court finds that Plaintiffs' notice meets all applicable requirements of due process and is particularly impressed with Plaintiffs' methodology and use of technology to reach as many Class Members as possible. Based upon the foregoing, the Court finds that the Settlement Class has been provided adequate notice.

MEHTA v. ROBINHOOD FINANCIAL LLC

Case No. 5:21-cv-01013 (N.D. Cal.)

The Honorable Susan van Keulen (August 29, 2022): The proposed notice plan, which includes direct notice via email, will provide the best notice practicable under the circumstances. This plan and the Notice are reasonably calculated, under the circumstances, to apprise Class Members…The plan and the Notice constitute due, adequate, and sufficient notice to Class Members and satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, and all other applicable laws and rules.

IN RE: TIKTOK, INC., CONSUMER PRIVACY LITIGATION

Case No. 1:20-cv-04699 (N.D. Ill.)

The Honorable John Z. Lee (August 22, 2022): The Class Notice was disseminated in accordance with the procedures required by the Court's Order Granting Preliminary Approval…in accordance with applicable law, satisfied the requirements of Rule 23(e) and due process, and constituted the best notice practicable…

ADTRADER, INC. v. GOOGLE LLC

Case No. 5:17-cv-07082 (N.D. Cal.)

The Honorable Beth L. Freeman (May 13, 2022): The Court approves, as to form, content, and distribution, the Notice Plan set forth in the Settlement Agreement, including the Notice Forms attached to the Weisbrot Declaration, subject to the Court's one requested change as further described in Paragraph 8 of this Order, and finds that such Notice is the best notice practicable under the circumstances, and that the Notice complies fully with the requirements of the Federal Rules of Civil Procedure. The Court further finds that the Notice is reasonably calculated to, under all circumstances, reasonably apprise members…The Court also finds that the Notice constitutes valid, due and sufficient notice to all persons entitled thereto, and meets the requirements of Due Process. The Court further finds that the Notice Plan fully complies with the Northern District of California's Procedural Guidance for Class Action Settlements.

CITY OF LONG BEACH v. MONSANTO COMPANY

Case No. 2:16-cv-03493 (C.D. Cal.)

The Honorable Fernando M. Olguin (March 14, 2022): The court approves the form, substance, and requirements of the class Notice, (Dkt.278-2, Settlement Agreement, Exh. I). The proposed manner of notice of the settlement set forth in the Settlement Agreement constitutes the best notice practicable under the circumstances and complies with the requirements of due process.

STEWART v. LEXISNEXIS RISK DATA RETRIEVAL SERVICES, LLC

Case No. 3:20-cv-00903 (E.D. Va.)

The Honorable John A. Gibney Jr. (February 25, 2022): The proposed forms and methods for notifying the proposed Settlement Class Members of the Settlement and its terms and conditions meet the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled to notice…Based on the foregoing, the Court hereby approves the notice plans developed by the Parties and the Settlement Administrator and directs that they be implemented according to the Agreement and the notice plans attached as exhibits.

WILLIAMS V. APPLE INC.

Case No. 3:19-cv-04700 (N.D. Cal.)

The Honorable Laurel Beeler (February 24, 2022): The Court finds the Email Notice and Website Notice (attached to the Agreement as Exhibits 1 and 4, respectively), and their manner of transmission, implemented pursuant to the Agreement (a) are the best practicable notice, (b) are reasonably calculated, under the circumstances, to apprise the Subscriber Class of the pendency of the Action and of their right to object to or to exclude themselves from the proposed settlement, (c) are reasonable and constitute due, adequate and sufficient notice to all persons entitled to receive notice, and (d) meet all requirements of applicable law.

CLEVELAND V. WHIRLPOOL CORPORATION

Case No. 0:20-cv-01906 (D. Minn.)

The Honorable Wilhelmina M. Wright (December 16, 2021): It appears to the Court that the proposed Notice Plan described herein, and detailed in the Settlement Agreement, comports with due process, Rule 23, and all other applicable law. Class Notice consists of email notice and postcard notice when email addresses are unavailable, which is the best practicable notice under the circumstances…The proposed Notice Plan complies with the requirements of Rule 23, Fed. R. Civ. P., and due process, and Class Notice is to be sent to the Settlement Class Members as set forth in the Settlement Agreement and pursuant to the deadlines above.

RASMUSSEN V. TESLA, INC. D/B/A TESLA MOTORS, INC.

Case No. 5:19-cv-04596 (N.D. Cal.)

The Honorable Beth Labson Freeman (December 10, 2021): The Court has carefully considered the forms and methods of notice to the Settlement Class set forth in the Settlement Agreement ("Notice Plan"). The Court finds that the Notice Plan constitutes the best notice practicable under the circumstances and fully satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, the requirements of due process, and the requirements of any other applicable law, such that the terms of the Settlement Agreement, the releases provided for therein, and this Court's final judgment will be binding on all Settlement Class Members.

CAMERON V. APPLE INC.

Case No. 4:19-cv-03074 (N.D. Cal.)

The Honorable Yvonne Gonzalez Rogers (November 16, 2021): The parties' proposed notice plan appears to be constitutionally sound in that plaintiffs have made a sufficient showing that it is: (i) the best notice practicable; (ii) reasonably calculated, under the circumstances, to apprise the Class members of the proposed settlement and of their right to object or to exclude themselves as provided in the settlement agreement; (iii) reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) meet all applicable requirements of due process and any other applicable requirements under federal law.

RISTO V. SCREEN ACTORS GUILD - AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS

Case No. 2:18-cv-07241 (C.D. Cal.)

The Honorable Christina A. Snyder (November 12, 2021): The Court approves the publication notice plan presented to this Court as it will provide notice to potential class members through a combination of traditional and digital media that will consist of publication of notice via press release, programmatic display digital advertising, and targeted social media, all of which will direct Class Members to the Settlement website…The notice plan satisfies any due process concerns as this Court certified the class under Federal Rule of Civil Procedure 23(b)(1)…

JENKINS v. NATIONAL GRID USA SERVICE COMPANY, INC.

Case No. 2:15-cv-01219 (E.D.N.Y.)

The Honorable Joanna Seybert (November 8, 2021): Pursuant to Fed. R. Civ. P. 23(e)(1) and 23(c)(2)(B), the Court approves the proposed Notice Plan and procedures set forth at Section 8 of the Settlement...The Court finds that the proposed Notice Plan meets the requirements of due process under the United States Constitution and Rule 23, and that such Notice Plan—which includes direct notice to Settlement Class Members sent via first class U.S. Mail and email; the establishment of a Settlement Website (at the URL, www.nationalgridtcpasettlement.com) where Settlement Class Members can view the full settlement agreement, the detailed long-form notice (in English and Spanish), and other key case documents; publication notice in forms attached as Exhibits E and F to the Settlement sent via social media (Facebook and Instagram) and streaming radio (e.g., Pandora and iHeart Radio). The Notice Plan shall also include a paid search campaign on search engine(s) chosen by Angeion (e.g., Google) in the form attached as Exhibits G and the establishment of a toll-free telephone number where Settlement Class Members can get additional information—is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

NELLIS v. VIVID SEATS, LLC

Case No. 1:20-cv-02486 (N.D. Ill.)

The Honorable Robert M. Dow, Jr. (November 1, 2021): The Notice Program, together with all included and ancillary documents thereto, (a) constituted reasonable notice; (b) constituted notice that was reasonably calculated under the circumstances to apprise members of the Settlement Class of the pendency of the Litigation...(c) constituted reasonable, due, adequate and sufficient notice to all Persons entitled to receive notice; and (d) met all applicable requirements of due process and any other applicable law. The Court finds that Settlement Class Members have been provided the best notice practicable of the Settlement and that such notice fully satisfies all requirements of law as well as all requirements of due process.

PELLETIER v. ENDO INTERNATIONAL PLC

Case No. 2:17-cv-05114 (E.D. Pa.)

The Honorable Michael M. Baylson (October 25, 2021): The Court approves, as to form and content, the Notice of Pendency and Proposed Settlement of Class Action (the “Notice”), the Proof of Claim and Release form (the “Proof of Claim”), and the Summary Notice, annexed hereto as Exhibits A-1, A-2, and A-3, respectively, and finds that the mailing and distribution of the Notice and publishing of the Summary Notice, substantially in the manner and form set forth in ¶¶7-10 of this Order, meet the requirements of Rule 23 and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all Persons entitled thereto.

BIEGEL v. BLUE DIAMOND GROWERS

Case No. 7:20-cv-03032 (S.D.N.Y.)

The Honorable Cathy Seibel (October 25, 2021): The Court finds that the Notice Plan, set forth in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order: (i) was the best notice practicable under the circumstances; (ii) was reasonably calculated to provide, and did provide, due and sufficient notice to the Settlement Class regarding the existence and nature of the Action...and (iii) satisfied the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and all other applicable law.

QUINTERO v. SAN DIEGO ASSOCIATION OF GOVERNMENTS

Case No. 37-2019-00017834-CU-NP-CTL (Cal. Super. Ct.)

The Honorable Eddie C. Sturgeon (September 27, 2021): The Court has reviewed the class notices for the Settlement Class and the methods for providing notice and has determined that the parties will employ forms and methods of notice that constitute the best notice practicable under the circumstances; are reasonably calculated to apprise class members of the terms of the Settlement and of their right to participate in it, object, or opt-out; are reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and meet all constitutional and statutory requirements, including all due process requirements and the California Rules of Court.

HOLVE v. MCCORMICK & COMPANY, INC.

Case No. 6:16-cv-06702 (W.D.N.Y.)

The Honorable Mark W. Pedersen (September 23, 2021): The Court finds that the form, content and method of giving notice to the Class as described in the Settlement Agreement and the Declaration of the Settlement Administrator: (a) will constitute the best practicable notice; (b) are reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action…(c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including but not limited to 28 U.S.C. § 1715, Rule 23(c) and (e), and the Due Process Clause(s) of the United States Constitution.

CULBERTSON v. DELOITTE CONSULTING LLP

Case No. 1:20-cv-03962 (S.D.N.Y.)

The Honorable Lewis J. Liman (August 27, 2021): The notice procedures described in the Notice Plan are hereby found to be the best means of providing notice under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed Settlement Agreement and the Final Approval Hearing to all persons affected by and/or entitled to participate in the Settlement Agreement, in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure and due process of law.

PULMONARY ASSOCIATES OF CHARLESTON PLLC v. GREENWAY HEALTH, LLC

Case No. 3:19-cv-00167 (N.D. Ga.)

The Honorable Timothy C. Batten, Sr. (August 24, 2021): Under Rule 23(c)(2), the Court finds that the content, format, and method of disseminating Notice, as set forth in the Motion, the Declaration of Steven Weisbrot filed on July 2, 2021, and the Settlement Agreement and Release, including notice by First Class U.S. Mail and email to all known Class Members, is the best notice practicable under the circumstances and satisfies all requirements provided in Rule 23(c)(2)(B) and due process.

IN RE: BROILER CHICKEN GROWER ANTITRUST LITIGATION (NO II)

Case No. 6:20-md-02977 (E.D. Okla.)

The Honorable Robert J. Shelby (August 23, 2021): The Court approves the method of notice to be provided to the Settlement Class as set forth in Plaintiffs' Motion and Memorandum of Law in Support of Motion for Approval of the Form and Manner of Class Notice and Appointment of Settlement Administrator and Request for Expedited Treatment and the Declaration of Steven Weisbrot on Angeion Group Qualifications and Proposed Notice Plan…The Court finds and concludes that such notice: (a) is the best notice that is practicable under the circumstances, and is reasonably calculated to reach the members of the Settlement Class and to apprise them of the Action, the terms and conditions of the Settlement, their right to opt out and be excluded from the Settlement Class, and to object to the Settlement; and (b) meets the requirements of Federal Rule of Civil Procedure 23 and due process.

ROBERTS v. AT&T MOBILITY, LLC

Case No. 3:15-cv-03418 (N.D. Cal.)

The Honorable Edward M. Chen (August 20, 2021): The Court finds that such Notice program, including the approved forms of notice: (a) constituted the best notice that is practicable under the circumstances; (b) included direct individual notice to all Settlement Class Members who could be identified through reasonable effort, as well as supplemental notice via a social media notice campaign and reminder email and SMS notices; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the nature of this Action …(d) constituted due, adequate and sufficient notice to all persons entitled to notice; and (e) met all applicable requirements of Federal Rule of Civil Procedure 23, Due Process under the U.S. Constitution, and any other applicable law.

PYGIN v. BOMBAS, LLC

Case No. 4:20-cv-04412 (N.D. Cal.)

The Honorable Jeffrey S. White (July 12, 2021): The Court also concludes that the Class Notice and Notice Program set forth in the Settlement Agreement satisfy the requirements of due process and Rule 23 and provide the best notice practicable under the circumstances. The Class Notice and Notice Program are reasonably calculated to apprise Settlement Class Members of the nature of this Litigation, the Scope of the Settlement Class, the terms of the Settlement Agreement, the right of Settlement Class Members to object to the Settlement Agreement or exclude themselves from the Settlement Class and the process for doing so, and of the Final Approval Hearing. Accordingly, the Court approves the Class Notice and Notice Program and the Claim Form.

WILLIAMS v. RECKITT BENCKISER LLC

Case No. 1:20-cv-23564 (S.D. Fla.)

The Honorable Jonathan Goodman (April 23, 2021): The Court approves, as to form and content, the Class Notice and Internet Notice submitted by the parties (Exhibits B and D to the Settlement Agreement or Notices substantially similar thereto) and finds that the procedures described therein meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, and provide the best notice practicable under the circumstances. The proposed Class Notice Plan -- consisting of (i) internet and social media notice; and (ii) notice via an established a Settlement Website -- is reasonably calculated to reach no less than 80% of the Settlement Class Members.

IN RE: APPLE INC. DEVICE PERFORMANCE LITIGATION

Case No. 5:18-md-02827 (N.D. Cal.)

The Honorable Edward J. Davila (March 17, 2021): Angeion undertook a comprehensive notice campaign…The notice program was well executed, far-reaching, and exceeded both Federal Rule of Civil Procedure 23(c)(2)(B)'s requirement to provide the "best notice that is practicable under the circumstances" and Rule 23(e)(1)(B)'s requirement to provide "direct notice in a reasonable manner."

IN RE: GOOGLE PLUS PROFILE LITIGATION

Case No. 5:18-cv-06164 (N.D. Cal.)

The Honorable Edward J. Davila (January 25, 2021): The Court further finds that the program for disseminating notice to Settlement Class Members provided for in the Settlement, and previously approved and directed by the Court (hereinafter, the "Notice Program"), has been implemented by the Settlement Administrator and the Parties, and such Notice Program, including the approved forms of notice, is reasonable and appropriate and satisfies all applicable due process and other requirements, and constitutes best notice reasonably calculated under the circumstances to apprise Settlement Class Members.

NELSON v. IDAHO CENTRAL CREDIT UNION

Case No. CV03-20-00831, CV03-20-03221 (Idaho Jud. Dist.)

The Honorable Robert C. Naftz (January 19, 2021): The Court finds that the Proposed Notice here is tailored to this Class and designed to ensure broad and effective reach to it…The Parties represent that the operative notice plan is the best notice practicable and is reasonably designed to reach the settlement class members. The Court agrees.

IN RE: HANNA ANDERSSON AND SALESFORCE.COM DATA BREACH LITIGATION

Case No. 3:20-cv-00812 (N.D. Cal.)

The Honorable Edward M. Chen (December 29, 2020): The Court finds that the Class Notice and Notice Program satisfy the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure and provide the best notice practicable under the circumstances.

IN RE: PEANUT FARMERS ANTITRUST LITIGATION

Case No. 2:19-cv-00463 (E.D. Va.)

The Honorable Raymond A. Jackson (December 23, 2020): The Court finds that the Notice Program...constitutes the best notice that is practicable under the circumstances and is valid, due and sufficient notice to all persons entitled thereto and complies fully with the requirements of Rule 23(c)(2) and the due process requirements of the Constitution of the United States.

BENTLEY v. LG ELECTRONICS U.S.A., INC.

Case No. 2:19-cv-13554 (D.N.J.)

The Honorable Madeline Cox Arleo (December 18, 2020): The Court finds that notice of this Settlement was given to Settlement Class Members in accordance with the Preliminary Approval Order and constituted the best notice practicable of the proceedings and matters set forth therein, including the Litigation, the Settlement, and the Settlement Class Members' rights to object to the Settlement or opt out of the Settlement Class, to all Persons entitled to such notice, and that this notice satisfied the requirements of Federal Rule of Civil Procedure 23 and of due process.

IN RE: ALLURA FIBER CEMENT SIDING PRODUCTS LIABILITY LITIGATION

Case No. 2:19-mn-02886 (D.S.C.)

The Honorable David C. Norton (December 18, 2020): The proposed Notice provides the best notice practicable under the circumstances. It allows Settlement Class Members a full and fair opportunity to consider the proposed settlement. The proposed plan for distributing the Notice likewise is a reasonable method calculated to reach all members of the Settlement Class who would be bound by the settlement. There is no additional method of distribution that would be reasonably likely to notify Settlement Class Members who may not receive notice pursuant to the proposed distribution plan.

ADKINS v. FACEBOOK, INC.

Case No. 3:18-cv-05982 (N.D. Cal.)

The Honorable William Alsup (November 15, 2020): Notice to the class is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Tr. Co., 399 U.S. 306, 314 (1650).*

IN RE: 21ST CENTURY ONCOLOGY CUSTOMER DATA SECURITY BREACH LITIGATION

Case No. 8:16-md-02737 (M.D. Fla.)

The Honorable Mary S. Scriven (November 2, 2020): The Court finds and determines that mailing the Summary Notice and publication of the Settlement Agreement, Long Form Notice, Summary Notice, and Claim Form on the Settlement Website, all pursuant to this Order, constitute the best notice practicable under the circumstances, constitute due and sufficient notice of the matters set forth in the notices to all persons entitled to receive such notices, and fully satisfies the of due process, Rule 23 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1715, and all other applicable laws and rules. The Court further finds that all of the notices are written in plain language and are readily understandable by Class Members.

MARINO v. COACH INC.

Case No. 1:16-cv-01122 (S.D.N.Y.)

The Honorable Valerie Caproni (August 24, 2020): The Court finds that the form, content, and method of giving notice to the Settlement Class as described in paragraph 8 of this Order: (a) will constitute the best practicable notice; (b) are reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, the terms of the proposed Settlement, and their rights under the proposed Settlement, including but not limited to their rights to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including but not limited to 28 U.S.C. § 1715, Rule 23(c) and (e), and the Due Process Clause(s) of the United States Constitution. The Court further finds that all of the notices are written in plain language, are readily understandable by Settlement Class Members, and are materially consistent with the Federal Judicial Center's illustrative class action notices.

BROWN v. DIRECTV, LLC

Case No. 2:13-cv-01170 (C.D. Cal.)

The Honorable Dolly M. Gee (July 23, 2020): Given the nature and size of the class, the fact that the class has no geographical limitations, and the sheer number of calls at issue, the Court determines that these methods constitute the best and most reasonable form of notice under the circumstances.

IN RE: SSA BONDS ANTITRUST LITIGATION

Case No. 1:16-cv-03711 (S.D.N.Y.)

The Honorable Edgardo Ramos (July 15, 2020): The Court finds that the mailing and distribution of the Notice and the publication of the Summary Notice substantially in the manner set forth below meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process and constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all Persons entitled to notice.

KJESSLER v. ZAAPPAAZ, INC.

Case No. 4:18-cv-00430 (S.D. Tex.)

The Honorable Nancy F. Atlas (July 14, 2020): The Court also preliminarily approves the proposed manner of communicating the Notice and Summary Notice to the putative Settlement Class, as set out below, and finds it is the best notice practicable under the circumstances, constitutes due and sufficient notice to all persons and entities entitled to receive such notice, and fully satisfies the requirements of applicable laws, including due process and Federal Rule of Civil Procedure 23.

HESTER v. WALMART, INC.

Case No. 5:18-cv-05225 (W.D. Ark.)

The Honorable Timothy L. Brooks (July 9, 2020): The Court finds that the Notice and Notice Plan substantially in the manner and form set forth in this Order and the Agreement meet the requirements of Federal Rule of Civil Procedure 23 and due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all Persons entitled thereto.

CLAY v. CYTOSPORT INC.

Case No. 3:15-cv-00165 (S.D. Cal.)

The Honorable M. James Lorenz (June 17, 2020): The Court approves the proposed Notice Plan for giving notice to the Settlement Class through publication, both print and digital, and through the establishment of a Settlement Website, as more fully described in the Agreement and the Claims Administrator's affidavits (docs. no. 222-9, 224, 224-1, and 232-3 through 232-6). The Notice Plan, in form, method, and content, complies with the requirements of Rule 23 and due process, and constitutes the best notice practicable under the circumstances.

GROGAN v. AARON'S INC.

Case No. 1:18-cv-02821 (N.D. Ga.)

The Honorable J.P. Boulee (May 1, 2020): The Court finds that the Notice Plan as set forth in the Settlement Agreement meets the requirements of Fed. R. Civ. P. 23 and constitutes the best notice practicable under the circumstances, including direct individual notice by mail and email to Settlement Class Members where feasible and a nationwide publication website-based notice program, as well as establishing a Settlement Website at the web address of www.AaronsTCPASettlement.com, and satisfies fully the requirements the Federal Rules of Civil Procedure, the U.S. Constitution, and any other applicable law, such that the Settlement Agreement and Final Order and Judgment will be binding on all Settlement Class Members.

CUMMINGS v. BOARD OF REGENTS OF THE UNIVERSITY OF NEW MEXICO

Case No. D-202-CV-2001-00579 (N.M. Jud. Dist.)

The Honorable Carl Butkus (March 30, 2020): The Court has reviewed the Class Notice, the Plan of Allocation and Distribution and Claim Form, each of which it approves in form and substance. The Court finds that the form and methods of notice set forth in the Agreement: (i) are reasonable and the best practicable notice under the circumstances; (ii) are reasonably calculated to apprise Settlement Class Members of the pendency of the Lawsuit, of their rights to object to or opt-out of the Settlement, and of the Final Approval Hearing; (iii) constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) meet the requirements of the New Mexico Rules of Civil Procedure, the requirements of due process under the New Mexico and United States Constitutions, and the requirements of any other applicable rules or laws.

SCHNEIDER v. CHIPOTLE MEXICAN GRILL, INC.

Case No. 4:16-cv-02200 (N.D. Cal.)

The Honorable Haywood S. Gilliam, Jr. (January 31, 2020): Given that direct notice appears to be infeasible, the third-party settlement administrator will implement a digital media campaign and provide for publication notice in People magazine, a nationwide publication, and the East Bay Times. SA § IV.A, C; Dkt. No. 205-12 at ¶¶ 13–23...The Court finds that the proposed notice process is "'reasonably calculated, under all the circumstances,' to apprise all class members of the proposed settlement." Roes, 944 F.3d at 1045 (citation omitted).

HANLEY v. TAMPA BAY SPORTS AND ENTERTAINMENT LLC

Case No. 8:19-cv-00550 (M.D. Fla.)

The Honorable Charlene Edwards Honeywell (January 7, 2020): The Court approves the form and content of the Class notices and claim forms substantially in the forms attached as Exhibits A-D to the Settlement. The Court further finds that the Class Notice program described in the Settlement is the best practicable under the circumstances. The Class Notice program is reasonably calculated under the circumstances to inform the Settlement Class of the pendency of the Action, certification of a Settlement Class, the terms of the Settlement, Class Counsel's attorney's fees application and the request for a service award for Plaintiff, and their rights to opt-out of the Settlement Class or object to the Settlement. The Class notices and Class Notice program constitute sufficient notice to all persons entitled to notice. The Class notices and Class Notice program satisfy all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the Constitutional requirement of Due Process.

CORCORAN v. CVS HEALTH

Case No. 4:15-cv-03504 (N.D. Cal.)

The Honorable Yvonne Gonzalez Rogers (November 22, 2019): Having reviewed the parties' briefings, plaintiffs' declarations regarding the selection process for a notice provider in this matter and regarding Angeion Group LLC's experience and qualifications, and in light of defendants' non-opposition, the Court APPROVES Angeion Group LLC as the notice provider...Having considered the parties' revised proposed notice program, the Court agrees that the parties' proposed notice program is the "best notice that is practicable under the circumstances." The Court is satisfied with the representations made regarding Angeion Group LLC's methods for ascertaining email addresses from existing information in the possession of defendants. Rule 23 further contemplates and permits electronic notice to class members in certain situations. See Fed. R. Civ. P. 23(c)(2)(B).

PATORA v. TARTE, INC.

Case No. 7:18-cv-11760 (S.D.N.Y.)

The Honorable Kenneth M. Karas (October 2, 2019): The Court finds that the form, content, and method of giving notice to the Class as described in Paragraph 9 of this Order: (a) will constitute the best practicable notice; (b) are reasonably calculated, under the circumstances, to apprise the Settlement Class Members...(c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including but not limited to 28 U.S.C. § 1715, Rule 23(c) and (e), and the Due Process Clauses of the United States Constitution. The Court further finds that all of the notices are written in simple terminology, are readily understandable by Settlement Class Members, and are materially consistent with the Federal Judicial Center's illustrative class action notices.

CARTER v. GENERAL NUTRITION CENTERS, INC., AND GNC HOLDINGS, INC.

Case No. 2:16-cv-00633 (W.D. Pa.)

The Honorable Mark R. Hornak (September 9, 2019): The Court finds that the Class Notice and the manner of its dissemination described in Paragraph 7 above and Section VII of the Agreement constitutes the best practicable notice under the circumstances and is reasonably calculated, under all the circumstances, to apprise proposed Settlement Class Members of the pendency of this action, the terms of the Agreement, and their right to object to or exclude themselves from the proposed Settlement Class. The Court finds that the notice is reasonable, that it constitutes due, adequate and sufficient notice to all persons entitled to receive notice, and that it meets the requirements of due process, Rule 23 of the Federal Rules of Ci vii Procedure, and any other applicable laws.

CORZINE v. MAYTAG CORPORATION

Case No. 5:15-cv-05764 (N.D. Cal.)

The Honorable Beth L. Freeman (August 21, 2019): The Court, having reviewed the proposed Summary Notice, the proposed FAQ, the proposed Publication Notice, the proposed Claim Form, and the proposed plan for distributing and disseminating each of them, finds and concludes that the proposed plan will provide the best notice practicable under the circumstances and satisfies all requirements of federal and state laws and due process.

MEDNICK v. PRECOR, INC.

Case No. 1:14-cv-03624 (N.D. Ill.)

The Honorable Harry D. Leinenweber (June 12, 2019): Notice provided to Class Members pursuant to the Preliminary Class Settlement Approval Order constitutes the best notice practicable under the circumstances, including individual email and mail notice to all Class Members who could be identified through reasonable effort, including information provided by authorized third-party retailers of Precor. Said notice provided full and adequate notice of these proceedings and of the matter set forth therein, including the proposed Settlement set forth in the Agreement, to all persons entitled to such notice, and said notice fully satisfied the requirements of F.R.C.P. Rule 23 (e) and (h) and the requirements of due process under the United States and California Constitutions.

GONZALEZ v. TCR SPORTS BROADCASTING HOLDING LLP

Case No. 1:18-cv-20048 (S.D. Fla.)

The Honorable Darrin P. Gayles (May 24, 2019): The Court finds that notice to the class was reasonable and the best notice practicable under the circumstances, consistent with Rule 23(e)(1) and Rule 23(c)(2)(B).

ANDREWS v. THE GAP, INC.

Case No. CGC-18-567237 (Cal. Super. Ct.)

The Honorable Richard B. Ulmer Jr. (May 10, 2019): The Court finds that (a) the Full Notice, Email Notice, and Publication constitute the best notice practicable under the circumstances, (b) they constitute valid, due, and sufficient notice to all members of the Class, and (c) they comply fully with the requirements of California Code of Civil Procedure section 382, California Rules of Court 3.766 and 3.769, the California and United States Constitutions, and other applicable law.

COLE v. NIBCO, INC.

Case No. 3:13-cv-07871 (D.N.J.)

The Honorable Freda L. Wolfson (April 11, 2019): The record shows, and the Court finds, that the Notice Plan has been implemented in the manner approved by the Court in its Preliminary Approval Order. The

Court finds that the Notice Plan constitutes: (i) the best notice practicable to the Settlement Class under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of this..., (iii) due, adequate, and sufficient notice to all Persons entitled to receive notice; and (iv) notice that fully satisfies the requirements of the United States Constitution (including the Due Process Clause), Fed. R. Civ. P. 23, and any other applicable law.

DIFRANCESCO V. UTZ QUALITY FOODS, INC.

Case No. 1:14-cv-14744 (D. Mass.)

The Honorable Douglas P. Woodlock (March 15, 2019): The Court finds that the Notice plan and all forms of Notice to the Class as set forth in the Settlement Agreement and Exhibits 2 and 6 thereto, as amended (the "Notice Program"), is reasonably calculated to, under all circumstances, apprise the members of the Settlement Class of the pendency of this action, the certification of the Settlement Class, the terms of the Settlement Agreement, and the right of members to object to the settlement or to exclude themselves from the Class. The Notice Program is consistent with the requirements of Rule 23 and due process, and constitutes the best notice practicable under the circumstances.

IN RE: CHRYSLER-DODGE-JEEP ECODIESEL MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION

Case No. 3:17-md-02777 (N.D. Cal.)

The Honorable Edward M. Chen (February 11, 2019): Also, the parties went through a sufficiently rigorous selection process to select a settlement administrator. See Proc. Guidance for Class Action Sett. ¶ 2; see also Cabraser Decl. ¶¶ 9-10. While the settlement administration costs are significant – an estimated $1.5 million – they are adequately justified given the size of the class and the relief being provided.

In addition, the Court finds that the language of the class notices (short and long-form) is appropriate and that the means of notice – which includes mail notice, electronic notice, publication notice, and social media “marketing” – is the “best notice...practicable under the circumstances.” Fed. R. Civ. P. 23(c)(2)(B); see also Proc. Guidance for Class Action Sett. ¶¶ 3-5, 9 (addressing class notice, opt-outs, and objections). The Court notes that the means of notice has changed somewhat, as explained in the Supplemental Weisbrot Declaration filed on February 8, 2019, so that notice will be more targeted and effective. See generally Docket No. 525 (Supp. Weisbrot Decl.) (addressing, inter alia, press release to be distributed via national newswire service, digital and social media marketing designed to enhance notice, and “reminder” first-class mail notice when AEM becomes available).

Finally, the parties have noted that the proposed settlement bears similarity to the settlement in the Volkswagen MDL. See Proc. Guidance for Class Action Sett. ¶ 11.

RYSEWYK V. SEARS HOLDINGS CORPORATION

Case No. 1:15-cv-04519 (N.D. Ill.)

The Honorable Manish S. Shah (January 29, 2019): The Court holds that the Notice and notice plan as carried out satisfy the requirements of Rule 23(e) and due process. This Court has previously held the Notice and notice plan to be reasonable and the best practicable under the circumstances in its Preliminary Approval Order dated August 6, 2018. (Dkt. 191) Based on the declaration of Steven Weisbrot, Esq. of Angeion Group (Dkt. No. 209-2), which sets forth compliance with the Notice Plan and related matters, the Court finds that the multi-pronged notice strategy as implemented has successfully reached the putative Settlement Class, thus constituting the best practicable notice and satisfying due process.

MAYHEW V. KAS DIRECT, LLC, AND S.C. JOHNSON & SON, INC.

Case No. 7:16-cv-06981 (S.D.N.Y.)

The Honorable Vincent J. Briccetti (June 26, 2018): In connection with their motion, plaintiffs provide the declaration of Steven Weisbrot, Esq., a principal at the firm Angeion Group, LLC, which will serve as the notice and settlement administrator in this case. (Doc. #101, Ex. F: Weisbrot Decl.) According to Mr.

Weisbrot, he has been responsible for the design and implementation of hundreds of class action administration plans, has taught courses on class action claims administration, and has given testimony to the Judicial Conference Committee on Rules of Practice and Procedure on the role of direct mail, email, and digital media in due process notice. Mr. Weisbrot states that the internet banner advertisement campaign will be responsive to search terms relevant to "baby wipes, baby products, baby care products, detergents, sanitizers, baby lotion, [and] diapers," and will target users who are currently browsing or recently browsed categories "such as parenting, toddlers, baby care, [and] organic products." (Weisbrot Decl. ¶ 18). According to Mr. Weisbrot, the internet banner advertising campaign will reach seventy percent of the proposed class members at least three times each. (Id. ¶ 9). Accordingly, the Court approves of the manner of notice proposed by the parties as it is reasonable and the best practicable option for confirming the class members receive notice.

IN RE: OUTER BANKS POWER OUTAGE LITIGATION

Case No. 4:17-cv-00141 (E.D.N.C.)

The Honorable James C. Dever III (May 2, 2018): The court has reviewed the proposed notice plan and finds that the notice plan provides the best practicable notice under the circumstances and, when completed, shall constitute fair, reasonable, and adequate notice of the settlement to all persons and entities affected by or entitled to participate in the settlement, in full compliance with the notice requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process. Thus, the court approves the proposed notice plan.

GOLDEMBERG v. JOHNSON & JOHNSON CONSUMER COMPANIES, INC.

Case No. 7:13-cv-03073 (S.D.N.Y.)

The Honorable Nelson S. Roman (November 1, 2017): Notice of the pendency of the Action as a class action and of the proposed Settlement, as set forth in the Settlement Notices, was given to all Class Members who could be identified with reasonable effort, consistent with the terms of the Preliminary Approval Order. The form and method of notifying the Class of the pendency of the Action as a class action and of the terms and conditions of the proposed Settlement met the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, and any other applicable law in the United States. Such notice constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

HALVORSON v. TALENTBIN, INC.

Case No. 3:15-cv-05166 (N.D. Cal.)

The Honorable Joseph C. Spero (July 25, 2017): The Court finds that the Notice provided for in the Order of Preliminary Approval of Settlement has been provided to the Settlement Class, and the Notice provided to the Settlement Class constituted the best notice practicable under the circumstances, and was in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, the United States Constitution, and any other applicable law.

IN RE: ASHLEY MADISON CUSTOMER DATA SECURITY BREACH LITIGATION

MDL No. 2669/Case No. 4:15-md-02669 (E.D. Mo.)

The Honorable John A. Ross (July 21, 2017): The Court further finds that the method of disseminating Notice, as set forth in the Motion, the Declaration of Steven Weisbrot, Esq. on Adequacy of Notice Program, dated July 13, 2017, and the Parties' Stipulation—including an extensive and targeted publication campaign composed of both consumer magazine publications in People and Sports Illustrated, as well as serving 11,484,000 highly targeted digital banner ads to reach the prospective class members that will deliver approximately 75.3% reach with an average frequency of 3.04 —is the best method of notice practicable under the circumstances and satisfies all requirements provided in Rule 23(c)(2)(B) and all Constitutional requirements including those of due process.

The Court further finds that the Notice fully satisfies Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process; provided, that the Parties, by agreement, may revise the Notice, the Claim

Form, and other exhibits to the Stipulation, in ways that are not material or ways that are appropriate to update those documents for purposes of accuracy.

TRAXLER v. PPG INDUSTRIES INC.

Case No. 1:15-cv-00912 (N.D. Ohio)

The Honorable Dan Aaron Polster (April 27, 2017): The Court hereby approves the form and procedure for disseminating notice of the proposed settlement to the Settlement Class as set forth in the Agreement. The Court finds that the proposed Notice Plan contemplated constitutes the best notice practicable under the circumstances and is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and their right to object to the proposed settlement or opt out of the Settlement Class in full compliance with the requirements of applicable law, including the Due Process Clause of the United States Constitution and Rules 23(c) and (e). In addition, Class Notice clearly and concisely states in plain, easily understood language: (i) the nature of the action; (ii) the definition of the certified Settlement Class; (iii) the claims and issues of the Settlement Class; (iv) that a Settlement Class Member may enter an appearance through an attorney if the member so desires; (v) that the Court will exclude from the Settlement Class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

IN RE: THE HOME DEPOT, INC., CUSTOMER DATA SECURITY BREACH LITIGATION

Case No. 1:14-md-02583 (N.D. Ga.)

The Honorable Thomas W. Thrash Jr. (March 10, 2017): The Court finds that the form, content, and method of giving notice to the settlement class as described in the settlement agreement and exhibits: (a) constitute the best practicable notice to the settlement class; (b) are reasonably calculated, under the circumstances, to apprise settlement class members of the pendency of the action, the terms of the proposed settlement, and their rights under the proposed settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to those persons entitled to receive notice; and (d) satisfy the requirements of Federal Rule of Civil Procedure 23, the constitutional requirement of due process, and any other legal requirements. The Court further finds that the notice is written in plain language, uses simple terminology, and is designed to be readily understandable by settlement class members.

ROY v. TITEFLEX CORPORATION t/a GASTITE and WARD MANUFACTURING, LLC

Case No. 384003V (Md. Cir. Ct.)

The Honorable Ronald B. Rubin (February 24, 2017): What is impressive to me about this settlement is in addition to all the usual recitation of road racing litanies is that there is going to be a) public notice of a real nature and b) about a matter concerning not just money but public safety and then folks will have the knowledge to decide for themselves whether to take steps to protect themselves or not. And that's probably the best thing a government can do is to arm their citizens with knowledge and then the citizens can make decision. To me that is a key piece of this deal. ***I think the notice provisions are exquisite.***

IN RE: LG FRONT LOADING WASHING MACHINE CLASS ACTION LITIGATION

Case No. 2:08-cv-00051 (D.N.J.)

The Honorable Madeline Cox Arleo (June 17, 2016): This Court further approves the proposed methods for giving notice of the Settlement to the Members of the Settlement Class, as reflected in the Settlement Agreement and...finds that the Members of the Settlement Class will receive the best notice practicable under the circumstances. The Court specifically approves the Parties' proposal to use reasonable diligence to identify potential class members and an associated mailing and/or email address in the Company's records, and their proposal to direct the ICA to use this information to send absent class members notice both via first class mail and email. The Court further approves the plan for the Publication Notice's publication in two national print magazines and on the internet. The Court also approves payment of notice costs as provided in the Settlement. The Court finds that these procedures, carried out with reasonable diligence, will constitute the best notice practicable under the circumstances and will satisfy.

FENLEY v. APPLIED CONSULTANTS, INC.

Case No. 2:15-cv-00259 (W.D. Pa.)
The Honorable Mark R. Hornak (June 16, 2016): The Court would note that it approved notice provisions of the settlement agreement in the proceedings today. That was all handled by the settlement and administrator Angeion. The notices were sent. The class list utilized the Postal Service's national change of address database along with using certain proprietary and other public resources to verify addresses. the requirements of Fed.R.Civ.P. 23(c)(2), Fed.R.Civ.P. 23(e) (l), and Due Process....

The Court finds and concludes that the mechanisms and methods of notice to the class as identified were reasonably calculated to provide all notice required by the due process clause, the applicable rules and statutory provisions, and that the results of ***the efforts of Angeion were highly successful and fulfilled all of those requirements*.**

FUENTES v. UNIRUSH, LLC d/b/a UNIRUSH FINANCIAL SERVICES

Case No. 1:15-cv-08372 (S.D.N.Y.)
The Honorable J. Paul Oetken (May 16, 2016): The Court approves, as to form, content, and distribution, the Claim Form attached to the Settlement Agreement as Exhibit A, the Notice Plan, and all forms of Notice to the Settlement Class as set forth in the Settlement Agreement and Exhibits B-D, thereto, and finds that such Notice is the best notice practicable under the circumstances, and that the Notice complies fully with the requirements of the Federal Rules of Civil Procedure. The Court also finds that the Notice constitutes valid, due and sufficient notice to all persons entitled thereto, and meets the requirements of Due Process. The Court further finds that the Notice is reasonably calculated to, under all circumstances, reasonably apprise members of the Settlement Class of the pendency of the Actions, the terms of the Settlement Agreement, and the right to object to the settlement and to exclude themselves from the Settlement Class. The Parties, by agreement, may revise the Notices and Claim Form in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting for publication.

IN RE: WHIRLPOOL CORP. FRONTLOADING WASHER PRODUCTS LIABILITY LITIG.

MDL No. 2001/Case No. 1:08-wp-65000 (N.D. Ohio)
The Honorable Christopher A. Boyko (May 12, 2016): The Court, having reviewed the proposed Summary Notices, the proposed FAQ, the proposed Publication Notice, the proposed Claim Form, and the proposed plan for distributing and disseminating each of them, finds and concludes that the proposed plan for distributing and disseminating each of them will provide the best notice practicable under the circumstances and satisfies all requirements of federal and state laws and due process.

SATERIALE v. R.J. REYNOLDS TOBACCO CO.

Case No. 2:09-cv-08394 (C.D. Cal.)
The Honorable Christina A. Snyder (May 3, 2016): The Court finds that the Notice provided to the Settlement Class pursuant to the Settlement Agreement and the Preliminary Approval Order has been successful, was the best notice practicable under the circumstances and (1) constituted notice that was reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Action, their right to object to the Settlement, and their right to appear at the Final Approval Hearing; (2) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (3) met all applicable requirements of the Federal Rules of Civil Procedure, Due Process, and the rules of the Court.

FERRERA v. SNYDER'S-LANCE, INC.

Case No. 0:13-cv-62496 (S.D. Fla.)
The Honorable Joan A. Lenard (February 12, 2016): The Court approves, as to form and content, the Long-Form Notice and Short- Form Publication Notice attached to the Memorandum in Support of Motion for Preliminary Approval of Class Action Settlement as Exhibits 1 and 2 to the Stipulation of Settlement. The Court also approves the procedure for disseminating notice of the proposed settlement to the Settlement

Class and the Claim Form, as set forth in the Notice and Media Plan attached to the Memorandum in Support of Motion for Preliminary Approval of Class Action Settlement as Exhibits G. The Court finds that the notice to be given constitutes the best notice practicable under the circumstances, and constitutes valid, due, and sufficient notice to the Settlement Class in full compliance with the requirements of applicable law, including the Due Process Clause of the United States Constitution.

SOTO v. THE GALLUP ORGANIZATION, INC.

Case No. 0:13-cv-61747 (S.D. Fla.)

The Honorable Marcia G. Cooke (June 16, 2015): The Court approves the form and substance of the notice of class action settlement described in ¶ 8 of the Agreement and attached to the Agreement as Exhibits A, C and D. The proposed form and method for notifying the Settlement Class Members of the settlement and its terms and conditions meet the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled to the notice. The Court finds that the proposed notice is clearly designed to advise the Settlement Class Members of their rights.

OTT v. MORTGAGE INVESTORS CORPORATION OF OHIO, INC.

Case No. 3:14-cv-00645 (D. Or.)

The Honorable Janice M. Stewart (July 20, 2015): The Notice Plan, in form, method, and content, fully complies with the requirements of Rule 23 and due process, constitutes the best notice practicable under the circumstances, and is due and sufficient notice to all persons entitled thereto. The Court finds that the Notice Plan is reasonably calculated to, under all circumstances, reasonably apprise the persons in the Settlement Class of the pendency of this action, the terms of the Settlement Agreement, and the right to object to the Settlement and to exclude themselves from the Settlement Class.

IN RE: POOL PRODUCTS DISTRIBUTION MARKET ANTITRUST LITIGATION

MDL No. 2328/Case No. 2:12-md-02328 (E.D. La.)

The Honorable Sarah S. Vance (December 31, 2014): To make up for the lack of individual notice to the remainder of the class, the parties propose a print and web-based plan for publicizing notice. The Court welcomes the inclusion of web- based forms of communication in the plan. The Court finds that the proposed method of notice satisfies the requirements of Rule 23(c)(2)(B) and due process. The direct emailing of notice to those potential class members for whom Hayward and Zodiac have a valid email address, along with publication of notice in print and on the web, is reasonably calculated to apprise class members of the settlement. Moreover, the plan to combine notice for the Zodiac and Hayward settlements should streamline the process and avoid confusion that might otherwise be caused by a proliferation of notices for different settlements. Therefore, the Court approves the proposed notice forms and the plan of notice.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JUDY KIRKBRIDE and BEETA LEWIS, individually and on behalf of all others similarly situated, Plaintiffs, vs. THE KROGER CO., Defendant.	)	Case No. 2:21-cv-00022-ALM-EPD Chief Judge Algenon L. Marbley Magistrate Judge Elizabeth Deavers

[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT, PRELIMINARILY CERTIFYING SETTLEMENT CLASS, PRELIMINARILY APPOINTING CLASS REPRESENTATIVES, PRELIMINARILY APPOINTING CLASS COUNSEL, APPOINTING SETTLEMENT ADMINISTRATOR AND ESCROW AGENT, APPROVING NOTICE PLAN, PRELIMINARILY APPROVING THE PLAN OF ALLOCATION AND DISTRIBUTION, AND SCHEDULING A FAIRNESS HEARING

WHEREAS, the Court has considered the Class Action Settlement Agreement between Plaintiffs, Class Counsel, and Kroger, including the exhibits, dated March 12, 2026 ("Settlement Agreement")[1], which sets forth the terms and conditions for a proposed Settlement[2] of the Action, *Kirkbride et al. v. The Kroger Co.*, No. 2:21-cv-00022 (S.D. Ohio), and the termination and dismissal with prejudice of all causes of action against Defendant in the Action;

WHEREAS, the Court has considered Plaintiffs' Unopposed Motion for Preliminary Approval, requesting an Order: (1) Granting Preliminary Approval of the Settlement Agreement;

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[1] The Settlement Agreement is attached as Exhibit 1 to the Declaration of Joseph I. Marchese in Support of Plaintiffs' Unopposed Motion for Preliminary Approval ("Marchese Declaration").

[2] Unless otherwise defined, capitalized terms shall be those defined in the Settlement Agreement.

(2) Preliminarily Certifying a Settlement Class; (3) Preliminarily Appointing Class Representatives; (4) Preliminarily Appointing Class Counsel; (5) Appointing a Settlement Administrator and Escrow Agent; (6) Approving the Form and Manner of Notice to the Settlement Class; (7) Preliminarily Approving the Plan of Allocation and Distribution; and (8) Scheduling a Fairness Hearing, the memorandum of law and exhibits filed in support thereof, and all other papers submitted in connection with the Settlement Agreement and the motion for preliminary approval;

WHEREAS, the Court held a hearing on __________________, 2026, at which the Court heard argument on whether the Settlement Agreement should be preliminarily approved;

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

IT IS HEREBY ORDERED AND DECREED as follows:

1. The Court preliminarily approves the Settlement Agreement. The Court has considered and determined that the Settlement Agreement preliminarily satisfies the class action settlement requirements of Rule 23 of the Federal Rules of Civil Procedure and is "a 'fair, reasonable, and adequate' disposition of the case" in order to "preliminarily approve[] the agreement." *Thomas v. Mitsubishi Elec. Auto. Am., Inc.*, No. 1:24-cv-422, 2025 U.S. Dist. LEXIS 206121, at *13 (S.D. Ohio Oct. 20, 2025). Based on its consideration, the Court also preliminarily approves the Settlement Agreement for class action settlement purposes, including specifically the Plan of Allocation and Distribution attached as Exhibit A to the Settlement Agreement, as within the range of a fair, reasonable, and adequate settlement within the meaning of Rule 23 and applicable law, and consistent with due process. The Court further finds that the Settlement Agreement substantially fulfills the purposes and objectives of the class action and provides

substantial relief to the Settlement Class without the risks, burdens, costs, or delay associated with continued litigation, trial, and/or appeal. The Court also finds that the Settlement Agreement: (a) is the result of arm's-length negotiations between experienced class action attorneys; (b) is sufficient to warrant notice of the Settlement and the Fairness Hearing to be disseminated to the Settlement Class; and (c) meets all applicable requirements of law, including Federal Rule of Civil Procedure 23 and the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715.

2. The Court has subject matter and personal jurisdiction over Plaintiffs, all members of the Settlement Class preliminarily certified below, and Defendant.

Preliminary Certification of the Settlement Class

3. Pursuant to Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, and based on the record before the Court, the Court preliminarily certifies, for the purposes of settlement only, the following Settlement Class as defined in the Settlement Agreement:

> All individuals in the United States and its territories who, at any point in time during the Settlement Class Period, paid in whole or in part for one or more prescription drugs from Kroger using their insurance.

Notwithstanding the above, the following individuals are excluded from the Settlement Class:

> (1) any Judge presiding over any portion of this Action, including appeals, and immediate members of the Judges' families, and any members of the Judges' respective staffs (but not members of the immediate families of judicial staff); (2) officers and directors of Kroger, its subsidiaries, parent companies, successors, predecessors, affiliates, and any entity in which Kroger has a controlling interest; (3) individuals who timely and validly request exclusion from the Settlement Class; (4) the legal representatives, successors, or assigns of any such excluded individuals; and (5) all individuals that have sued (other than through this Action), filed an arbitration demand, or participated in a settlement in a suit against Kroger relating to its determination of usual and customary prices in connection with the Savings Club (this exclusion from the Settlement Class does not apply to individuals that have voluntarily dismissed their claims without prejudice in any suit or arbitration).

4. The Court preliminarily finds that the requirements of Rules 23(a), 23(b)(3), and 23(g) of the Federal Rules of Civil Procedure are satisfied for settlement purposes as follows:

(a) Pursuant to Rule 23(a)(1) of the Federal Rules of Civil Procedure, the Court preliminarily determines that the Settlement Class Members are so numerous that their joinder before the Court would be impracticable;

(b) Pursuant to Rule 23(a)(2) of the Federal Rules of Civil Procedure, the Court preliminarily determines that there are one or more questions of fact or law common to the Settlement Class;

(c) Pursuant to Rule 23(a)(3) of the Federal Rules of Civil Procedure, the Court preliminarily determines that Plaintiffs' claims are typical of the claims of the Settlement Class;

(d) Pursuant to Rule 23(a)(4) of the Federal Rules of Civil Procedure, the Court preliminarily determines that Plaintiffs and Class Counsel fairly and adequately protected the interests of the Settlement Class for purposes of litigating this matter and entering into and implementing the Settlement Agreement;

(e) Pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, the Court preliminarily determines that common questions of law and fact predominate over individual questions affecting Settlement Class Members; and

(f) Pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, the Court preliminarily determines that a class action is superior to other available methods for the fair and efficient adjudication of this Action.

5. The Court preliminarily appoints Judy Kirkbride and Beeta Lewis as representatives of the Settlement Class and finds and preliminarily concludes that Judy Kirkbride

and Beeta Lewis will fairly and adequately represent and protect the interests of the Settlement Class.

6. For purposes of settlement only, the Court preliminarily appoints the law firms of Bursor & Fisher, P.A., Arisohn LLC, and Smith Krivoshey, PC to serve as Class Counsel, preliminarily finding and concluding that they meet the requirements to be Class Counsel pursuant to Rule 23(g) and are competent and capable of exercising the responsibilities of Class Counsel.

7. In the event the Settlement Agreement is terminated pursuant to the terms thereof, or fails to become effective for any reason, then: (a) all orders of the Court preliminarily or otherwise approving the Settlement and/or preliminarily or otherwise certifying the Settlement Class shall be vacated; (b) the Settling Parties shall be returned to the *status quo* that existed in the Action immediately prior to May 23, 2025, when the Sixth Circuit first held the case in abeyance so that the Parties could engage in settlement discussions; and (c) the Settling Parties shall retain all of their respective rights and defenses as of immediately prior to May 23, 2025, when the Sixth Circuit first held the case in abeyance so that the Parties could engage in settlement discussions. The Settling Parties shall then proceed in all respects as if the Settlement Agreement and any related orders had not been executed and/or entered.

Notice and Administration

8. The Court appoints Angeion Group as the Settlement Administrator to effectuate and administer the Notice Plan delineated in the Declaration of Eric Schachter[3] and the exclusion process for opt-outs, and to effectuate and administer the claims process for members of the Settlement Class.

3 *See* Declaration of Eric Schachter in Support of Settlement Notice Plan ("Schachter Declaration").

9. The Settlement Administrator shall (a) administer the issuance of Notice to the Settlement Class in accordance with the terms of this Order and any other orders of the Court; (b) review each Claim Form and determine, under the supervision of Class Counsel, in accordance with this Settlement Agreement and any applicable orders of the Court, the validity of each claim; (c) calculate the Recognized Claim amounts (defined in the Plan of Allocation and Distribution) of Authorized Claimants (defined in the Plan of Allocation and Distribution) that shall be allowed; (d) administer the Distribution of the Net Settlement Fund to Authorized Claimants; and (e) otherwise provide such claims administration services as are customary in settlements of this type, subject to such supervision of Class Counsel and (as appropriate or as circumstances may require) the Court.

10. Within fourteen (14) days from the entry of this Order, the Settlement Administrator shall post on the Settlement Website the Settlement Agreement, Notice, Claim Form, and other pertinent documents and Court filings pertaining to the Settlement (including the motion for attorneys' fees, expenses, and service awards, upon its filing).

11. The Settlement Administrator shall provide such reports, declarations, and such other information to the Court as the Court may require or as Class Counsel or Defendant requests.

12. The Court appoints Angeion Group to serve as Escrow Agent.

13. The Court determines that Notice should be provided to members of the Settlement Class with opt-out rights afforded to them as to their participation in the Settlement Class.

14. The Court approves, as to form, content, and distribution, the Notice set forth in the Settlement Agreement and the Notice Plan set forth in the Schachter Declaration, including the Claim Form attached to the Settlement Agreement as Exhibit E and all forms of Notice to the Settlement Class as set forth in Exhibits C1, C2, and D to the Settlement Agreement, and finds that

such Notice is the best notice practicable under the circumstances, and that the Notice complies fully with the requirements of the Federal Rules of Civil Procedure. The Court also finds that the Notice constitutes valid, due, and sufficient notice to all persons entitled thereto, and meets the requirements of Due Process. The Court further finds that the Notice is reasonably calculated to, under all circumstances, apprise members of the Settlement Class of the pendency of this Action, the terms of the Settlement Agreement, and the right to object to the Settlement and to exclude themselves from the Settlement Class. In addition, the Court finds that no notice other than that specifically identified in the Settlement Agreement and Schachter Declaration is necessary in this Action. The Parties, by agreement, may revise the Notice and Claim Form in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting.

15. The Settlement Administrator is directed to implement notice in accordance with the Settlement Agreement and Notice Plan. The Settlement Administrator shall also maintain the Settlement Website to provide full information about the Settlement and allow for the filing of claims online. The Settlement Administrator is further directed to establish a post office box, and toll-free telephone line for providing notice and information to members of the Settlement Class and receiving opt-out requests and other filings or communications from members of the Settlement Class. All Notice and Administration Expenses shall be paid as set forth in the Settlement Agreement.

16. Within 60 days following the Court's entry of this Preliminary Approval Order, ("Notice Deadline") the Settlement Administrator shall complete publication and dissemination of notice to members of the Settlement Class that are described in the Notice Plan using the summary

notice, email notice, and long-form notice contained in Exhibits C1, C2, and D attached to the Settlement Agreement.

Submission of Claims and Requests for Exclusion from Class

17. Members of the Settlement Class who wish to receive benefits under the Settlement Agreement must complete and submit a timely and valid Claim Form(s) in accordance with the instructions contained therein. All Claim Forms must be postmarked or submitted electronically no later than 180 days after the Court's entry of this Preliminary Approval Order (i.e. 120 days after the Notice Deadline (the "Settlement Claims Period" or "Claim Filing Deadline")).

18. Any member of the Settlement Class that does not wish to participate in the Settlement shall have until 120 days after the Court's entry of this Preliminary Approval Order (the "Opt-Out Deadline") – *i.e.*, 60 days after the Notice Deadline – to submit a request to become an opt-out and be excluded from the Settlement Class. Settlement Class Members shall not be permitted to exclude other Settlement Class Members. Moreover, group or class-wide exclusions shall not be permitted. A request for exclusion must be submitted by each Settlement Class Member on an individual basis, and any request for exclusion by a purported authorized agent or representative of a Settlement Class Member must include proof of the representative's legal authority and authorization to act and request exclusion on behalf of each Settlement Class Member for which the representative requests exclusion.

19. (a) A member of the Settlement Class may affect such an opt-out by sending a written request to the Settlement Administrator: *Kroger Savings Club Litigation Settlement* Settlement Administrator, EXCLUSIONS c/o Angeion Group, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103, by (i) first-class U.S. mail with postage prepaid and postmarked no later than the Opt-Out Deadline, or (ii) overnight delivery shown as sent no later than the Opt-Out

Deadline. The written request must be signed by a person authorized to do so and must provide all of the following information: (1) the individual's full name, current mailing address, telephone number, and social security number; (2) a statement that the individual purchased and paid for one or more prescription drugs from Kroger using insurance during the Settlement Class Period; (3) a statement that the individual wishes to be excluded from the Settlement Class, and (4) the individual's signature.

(b) A request for exclusion that does not include all of the foregoing information, that does not contain the proper signature, that is sent to an address other than the one designated above, or that is not sent within the time specified shall be invalid; the individual filing such an invalid request shall be a Settlement Class Member and shall be bound by the Settlement, if the Settlement is approved.

20. Individuals who validly opt out of the Settlement Class relinquish all rights to benefits under the Settlement Agreement and will not release their claims.

<u>Objections and Appearances</u>

21. Any Settlement Class Member shall have until 120 days after the Court's entry of this Preliminary Approval Order (the "Class Objection Deadline") – *i.e.*, 60 days after the Notice Deadline – to submit an objection to (i) the Settlement Agreement, (ii) any request for Attorneys' Fees and Expenses, and/or (iii) any request for Service Awards (be an "Objector"), and to file any notice to appear.

22. Such an Objector must (i) file or send a written statement of objections by first-class U.S. mail and postmarked on or before the Class Objection Deadline to the Clerk of the United States District Court for the Southern District of Ohio, United States Courthouse, 85 Marconi Boulevard, Room 121, Columbus, OH 43215, and (ii) send a copy of the statement of

objections to the following designees of Class Counsel and Defendant's Counsel, by first-class U.S. mail and postmarked on or before the Class Objection Deadline:

Designees of Class Counsel:

Joseph I. Marchese (*pro hac vice*)
Andrew Obergfell (*pro hac vice*)
BURSOR & FISHER, P.A.
1330 Avenue of the Americas
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Telephone: (646) 837-7150
Facsimile: (212) 989-9163
E-Mail: jmarchese@bursor.com
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Joshua D. Arisohn
ARISOHN LLC
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Litchfield, CT 06759
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Joel D. Smith (*pro hac vice*)
SMITH KRIVOSHEY, PC
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5th Floor #1520
Boston, MA 02116
Telephone: (415) 202-6109
E-mail: joel@skclassactions.com

Designee of Defendant's Counsel:

Selina Coleman
REED SMITH LLP
1301 K Street, N.W.
Suite 1000 – East Tower
Washington, D.C. 20005-3373

Michael Scott Leib
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10 S. Wacker Dr. # 4000
Chicago, IL 60606
Telephone: (312) 207-1000
mleib@reedsmith.com

23. The Objector's written statement of objections shall provide the following information: (a) the objector's name, address, email address, and the identity of and contact information for any attorney representing the objector; (b) the legal or factual basis for the objection; (c) documentation sufficient to prove the objector's membership in the Settlement Class (such as evidence of relevant prescription purchases or payments); (d) a list of any witnesses, exhibits, or legal authority that the objector intends to offer; (e) whether the objector intends to appear, either in person or through counsel, at the Fairness Hearing; (f) whether the objection applies only to the objector, to a subset of the Settlement Class, or to the Settlement Class as a

whole; and (g) a list of all class action settlements to which the objector and/or their counsel have previously objected.

24. In addition, any Objector or counsel for an Objector that desires to appear at the Fairness Hearing must file with the Court on or before the Class Objection Deadline, and send to the designees of Class Counsel and Defendant's Counsel identified above, by first-class mail and postmarked on or before the Class Objection Deadline, a separate notice of intention to appear in *Kirkbride et al. v. The Kroger Co.*, No. 2:21-cv-00022 (S.D. Ohio) that identifies by name, position, address, email address, and telephone number each person who intends to appear at the Fairness Hearing on behalf of the Objector as well as the Objector's signature.

25. Members of the Settlement Class who fail to file and serve timely written objections in compliance with the requirements of this Order and the Settlement Agreement shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement Agreement or to any of the subjects listed above, i.e. (a) whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate and should be given final approval by the Court; (b) whether a judgment and order of dismissal with prejudice should be entered; (c) whether to approve the Attorneys' Fees and Expenses to Class Counsel; and (d) whether to approve the payment of the Service Awards.

<u>Fairness Hearing</u>

26. The Fairness Hearing shall be held before this Court on ________________, at ____________. [*suggested 201 days after entry of this Order*] Courtroom 1, Room 331 at the United States District Court for the Southern District of Ohio, Kinneary U.S. Courthouse, 85 Marconi Boulevard, Columbus, OH 43215 to: (1) determine whether to grant final approval of this

Settlement and direct its implementation pursuant to the terms and conditions of the Settlement Agreement; (2) confirm that the Notice Plan complies in all respects with the requirements of due process and Rule 23 by providing due, adequate, and sufficient notice to the Settlement Class; (3) determine whether this Settlement is fair, reasonable, and adequate; (4) finally approve the proposed Plan of Allocation and Distribution; (5) determine whether to finally appoint Class Counsel and approve the application for an award of Attorneys' Fees and Expenses; (6) determine whether to finally appoint Class Representatives and approve Plaintiffs' request for Service Awards in connection with their representation of the Settlement Class; (7) determine whether to direct that the Action be dismissed with prejudice; (8) determine whether to state pursuant to Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and direct that the Judgment is a final, appealable order; and (9) determine whether to retain the Court's continuing and exclusive jurisdiction over the Parties for purposes of the administration, interpretation, implementation, and enforcement of the Settlement, and over the Settlement Class Members for all matters relating to the Action.

27. At the Fairness Hearing, the Court also will address any objections to the foregoing matters. The Court may continue or adjourn the Fairness Hearing without further notice to members of the Settlement Class. The Court may approve the proposed Settlement with such modifications as the Parties may agree to, if appropriate, without further notice to the Settlement Class. The Court may decide to hold the Fairness Hearing by telephone or video conference without further notice to the Settlement Class. If the Court continues or adjourns the Fairness Hearing or orders that the Fairness Hearing be conducted telephonically or by video conference, that decision will be posted on the Settlement Website. Any Settlement Class Member (or his or

her counsel) who wishes to appear at the Fairness Hearing should consult the Court's docket and/or the Settlement Website for any change in date, time, or format of the hearing.

28. No later than 14 days before the Opt-Out Deadline and Class Objection Deadline, Class Counsel will file all motions and supporting papers seeking the Court's approval of Class Counsel's Fee and Expense Award and Service Awards ("Fee Brief") with respect to their representation of Plaintiffs that culminated in the Settlement Agreement.

29. Papers in support of final approval of the Settlement Agreement, and any supplementation to the Fee Brief shall be filed with the Court on or before _________. [*suggested date of 14 days before Fairness Hearing*]. Class Counsel will cause the above-referenced motions and supporting papers to be promptly posted on the Settlement Website.

30. Provided Defendant has not terminated the Settlement pursuant to the terms of the Settlement Agreement, the Parties may file papers responding to objections ("Response to Objections"), if any, on or before _________. [*suggested date of 14 days before Fairness Hearing*].

<u>Further Matters</u>

31. To the extent the Triggering Criteria referenced in ¶ 8.3 of the Settlement Agreement are met, Defendant shall have 60 days from the Opt-Out Deadline to notify Class Counsel whether or not Defendant decides to make a final decision to terminate the Settlement ("Termination Deadline").

32. Within 14 days after the Opt-Out Deadline and conclusion of the Class Objection Period, the Settlement Administrator shall prepare a declaration ("Settlement Administrator Declaration") and provide it to the designees of Class Counsel and Defendant's Counsel as listed

above. Class Counsel shall file the declaration with the Court in connection with its motion for final approval.

33. The Settlement Administrator's Declaration shall:

(a) Confirm that the Notice Plan was carried out and that Notice to members of the Settlement Class was provided in the manner directed by the Court, and provide information regarding the reach of the Notice;

(b) Identify the date on which content on the Settlement Website was made available to members of the Settlement Class and identify the dates on which Notice occurred;

(c) Confirm the date on which the Settlement Administrator established a toll-free telephone number for the Settlement and a postal mailing address;

(d) Confirm that the notice required by the Federal Class Action Fairness Act of 2005 (CAFA), 28 U.S.C. § 1715 was carried out, and the date on which CAFA notice was carried out;

(e) Identify the total number of Settlement Class Members that timely sought to be excluded from the Settlement Class, and the total number of any untimely requests for exclusion; and

(f) Confirm that Distribution of the Settlement will be carried out in accordance with the approved Plan of Allocation and Distribution and the Settlement Agreement.

34. The Settlement Administrator's expenses for the foregoing Notice and Administration activities, including those of any third-party vendors it uses to perform tasks necessary for the implementation or effectuation of its duties, shall be paid from the Settlement Fund. In no event shall Defendant's Released Persons have any obligation, responsibility, or liability with respect to the Settlement Administrator, the Notice Plan, or the Administration

procedures for members of the Settlement Class, including with respect to the costs, Notice and Administration Expenses, or any other charges for any notice and exclusion procedures, except indirectly through payment of the Settlement Amount or as specifically provided for in the Settlement Agreement.

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

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

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

38. As described above, the following deadlines are set:

Notice Deadline:		[60 days after entry of this Order]
Objection Deadline:		[120 days after entry of this Order]
Opt-Out Deadline:		[120 days after entry of this Order]
Claim Filing Deadline:		180 days after entry of this Order
Fee Brief Deadline:		[14 days before Objection Deadline / Opt-Out Deadline]
Termination Deadline:		60 days after Opt-Out Deadline
Final Approval Brief, Updated Fee Brief, and Responses to Objections Deadline:		[14 days prior to the Fairness Hearing]
Fairness Hearing		[Suggested 201 days after entry of this Order]

IT IS SO ORDERED.

DATED: ______________________

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THE HONORABLE ALGENON L. MARBLEY
UNITED STATES DISTRICT JUDGE