

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

ANTONIO PAYERO and ADAM  
MALDONADO, individually and on behalf of  
all others similarly situated,

Plaintiffs,

v.

MATTRESS FIRM, INC. and GLOBAL HOME  
IMPORTS, INC.,

Defendants.

Case No. 7:21-cv-03061-VLB

Hon. Vincent L. Briccetti

**DECLARATION OF MAX S. ROBERTS IN SUPPORT OF  
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

I, Max S. Roberts, declare as follows:

1. I am a member of the bar of this Court and an attorney at Bursor & Fisher, P.A., counsel for Plaintiffs in this action. I make this declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("the motion"). I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would competently testify under oath concerning the matters set forth in this declaration.

2. Attached as **Exhibit 1** is a true and correct copy of the Settlement Agreement that the parties reached in this case, and which is the subject of the motion.

3. Attached as **Exhibit 2** is a true and correct copy of relevant excerpts of the transcript of the January 28, 2022 Initial Conference in this matter.

4. Attached as **Exhibit 3** is a true and correct copy of Bursor & Fisher's most up-to-date firm resume.

5. On January 13, 2022, in preparation for the status conference, Plaintiffs and MFI held a Fed. R. Civ. P. 26(f) conference. During the 26(f) conference, the Parties discussed their interest in settlement.

6. On May 11, 2022, the Parties attended a full-day mediation with the Hon. Frank Maas (Ret.) of JAMS, where they provided mediation statements setting forth their respective positions regarding the claims and defenses.

7. In advance of the mediation, the Parties exchanged information relevant to their claims and defenses, including (i) the number of Class Products sold to consumers that had been recalled, (ii) the number of consumers who requested metal clips pursuant to Defendants' recall, (iii) the average price of the Class Products, and (iv) any insurance available to either Defendant. This is largely the same information that would have been produced had the case proceeded to formal discovery. Accordingly, it is Plaintiffs' counsel's view that they were sufficiently informed at the time of the mediation of the strengths and weaknesses of their respective positions, the size of the putative class, and the damages at issue to negotiate a reasonable settlement.

8. While the Parties did not completely resolve the matter at the mediation, the Parties continued to negotiate a settlement in good faith and with the assistance of Judge Maas for several months after the mediation. In October 2022, the Parties came to an agreement on all material terms and began drafting a full settlement agreement.

9. Based on my research and information provided by Defendants, my understanding is that the Class includes up to 82,000 Class Products.

10. Class Counsel has devoted substantial resources to the prosecution of this action by investigating Plaintiffs' claims and that of the Class, aggressively pursuing those claims,

defeating a motion to dismiss, conducting informal discovery, participating in a private mediation with Judge Maas, and ultimately, negotiating a favorable class action settlement.

I declare under penalty of perjury that the foregoing is true and correct. Executed in New York, New York on January 9, 2023.

/s/ Max S. Roberts  
Max S. Roberts



## SETTLEMENT AGREEMENT

Subject to Court approval, all parties in *Payero et al. v. Mattress Firm, Inc.*, S.D.N.Y. Case No. 7:21-cv-03061-VLB (“the Action”) enter into this Settlement Agreement, providing for a class settlement of all claims that were and could have been asserted in the Action.

### **I. DEFINITIONS**

A. “**Action**” means *Payero et al. v. Mattress Firm, Inc.*, S.D.N.Y. Case No. 7:21-cv-03061-VLB, in the United States District Court for the Southern District of New York.

B. “**Agreement**” or “**Settlement Agreement**” means this document and its attached exhibits, including all subsequent amendments agreed to in writing by the Parties and any exhibits to such amendments.

C. “**Attorneys’ Fees and Expenses**” means such funds as may be awarded by the Court to Plaintiffs’ Counsel to compensate Plaintiffs’ Counsel for their fees and expenses in connection with the Action and the Settlement, as described more particularly below.

D. “**Award Issuance Date**” means the date when Gift Cards are distributed to eligible Class Members who submitted valid and timely Claim Forms, and MFI will begin accepting returns and providing refunds to eligible Class Members who return Class Product(s) and submitted valid and timely Claim Forms.

E. “**Claim Deadline**,” means the final time and date by which a valid Claim Form must be postmarked or received by the Settlement Administrator for a Class Member to be eligible for any of the settlement consideration contemplated in this Agreement. The Claim Deadline shall be clearly set forth in the Court orders granting preliminary and final approval of the Settlement, the Long Form Notice and Summary Notice, on the Settlement Website, and on the front page of the Claim Form.

F. “**Claim Form**” means the proof of claim and release form(s), substantially in the form attached hereto as Exhibit 5, the format of which may be modified to meet the requirements of the Settlement Administrator, to be submitted by Class Members seeking to recover settlement consideration pursuant to this Agreement.

G. **“Class”** means all residents of the United States who purchased a Bed Tech-brand HR Platform bed frame bearing the Model Nos. HR33, HR33XL, HR46, HR50, HR60, or HR66. Excluded from the Class are: (a) Defendants and their employees, principals, officers, directors, agents, affiliated entities, legal representatives, successors and assigns; (b) the judges to whom the Action has been or is assigned and any members of their immediate families; and (c) all persons who timely submit Request for Exclusion from the Class.

H. **“Class Counsel”** means Bursor & Fisher, P.A.

I. **“Class Member(s)”** means any member of the Class.

J. **“Class Notice”** means the forms and methods of notice to be provided to the Class as provided herein and directed by the Court, to be facilitated by the Settlement Administrator.

K. **“Class Period”** means April 8, 2015, through April 8, 2021.

L. **“Class Product(s)”** means HR Platform bed frames bearing the Model Nos. HR33, HR33XL, HR46, HR50, HR60, or HR66.

M. **“Court”** means the United States District Court for the Southern District of New York and all judges assigned to the Action.

N. **“Defendants”** means Mattress Firm, Inc. (aka “MFI”) and Global Home Imports, Inc. (aka “GHI”), and without limitation all of their respective related entities, including but not limited to parents, subsidiaries, agents, employees and assigns, predecessors, successors and affiliates of Defendants.

O. **“Defense Counsel”** means the law firms of Campbell Conroy & O’Neil, P.C. (for MFI) and Anderson Clarkson Johnson Brown PLLC (for GHI).

P. **“Effective Date”** means the first business day on which the Final Approval Order is entered, is no longer subject to review by any higher court, and has not been reversed.

Q. **“Fairness Hearing”** means the hearing that is to take place after the entry of the Preliminary Approval Order and after the Notice Date for purposes of: (a) determining the fairness, adequacy and reasonableness of the Agreement in accordance with applicable

jurisprudence; (b) if the Court so decides, entering the Final Order and Final Judgment and dismissing the Action with prejudice; (c) ruling upon an application by Class Counsel for Attorneys' Fees and Expenses and Plaintiffs' incentive awards. The Parties shall request that the Court schedule the Fairness Hearing for a date that complies with 28 U.S.C. § 1715(d).

R. **“Final Order and Final Judgment”** means the Court's order and judgment fully and finally approving the Settlement and dismissing the Action with prejudice, substantially in the form attached hereto as Exhibit 2.

S. **“Gift Cards”** means gift cards made available to certain eligible Class Members pursuant to this Settlement Agreement, and which have no expiration date, are freely transferrable, are redeemable for all GHI products. Such cards are not replaceable if lost.

T. **“Long Form Notice”** means the long form notice of settlement, substantially in the form attached hereto as Exhibit 3.

U. **“Notice Date”** means the first date upon which the Class Notice is disseminated and Class Members may submit Claims.

V. **“Objection Deadline”** means the date, to be set by the Court, by which Class Members must file objections, if any, to the Settlement. The Parties shall request that the Court set an Objection Deadline coinciding with the Opt-Out Date.

W. **“Opt-Out Date”** means the date, to be set by the Court, by which a Request For Exclusion must be sent to Settlement Administrator for a Class Member to be excluded from the Settlement Class. The Parties shall request that the Court set an Opt-Out Date coinciding with the Objection Deadline.

X. **“Parties”** means Plaintiffs and Defendants, as each of those terms are defined in this Agreement.

Y. **“Plaintiff(s)”** means Antonio Payero and Adam Maldonado.

Z. **“Preliminary Approval Order”** means the order, substantially in the form attached hereto as Exhibit 1, conditionally certifying, for settlement purposes only, the Class; appointing Plaintiffs' Counsel as counsel for the Class; setting the date of the Fairness Hearing;

preliminarily approving this Agreement; approving the Class Notice program and Claim Form; and setting dates for the Claim Deadline, Opt-Out Date, Objection Deadline, and Notice Date.

AA. **“Proof of Purchase”** means store receipts, records of purchases from either Defendant (*i.e.*, confirmatory emails, internet order confirmation pages, etc.), Class Product packaging. To be eligible for a refund, the Proof of Purchase must show the amount of sale.

BB. **“Released Claims”** means any and all claims, causes of action, demands, debts, suits, liabilities, obligations, damages, entitlements, losses, actions, rights of action and remedies of any kind, nature and description, whether known or unknown, asserted or unasserted, foreseen or unforeseen, regardless of any legal or equitable theory, existing now or arising in the future, by Plaintiffs and any and all Class Members (including their successors, heirs, assigns and representatives) which in any way relate to the propensity for the Class Products to collapse, including but not limited to all matters that were or could have been asserted in the Action, and all claims, causes of action, demands, debts, suits, liabilities, obligations, damages, entitlements, losses, actions, rights of action and remedies of any kind, nature and description, arising under any state, federal or local statute, law, rule and/or regulation, under any federal, state or local consumer protection, consumer fraud, unfair business practices or deceptive trade practices statutes or laws, under common law, and under any legal or equitable theories whatsoever including tort, contract, products liability, negligence, fraud, misrepresentation, concealment, consumer protection, restitution, quasi-contract, unjust enrichment, express and/or implied warranty, and any federal, state or local derivations thereof, and/or any other theory of liability and/or recovery, whether in law or in equity, and for any and all injuries, losses, damages, remedies, recoveries or entitlements of any kind, nature and description, in law or in equity, under statutory and/or common law, including, but not limited to, compensatory damages, economic losses or damages, exemplary damages, punitive damages, statutory damages, statutory penalties or rights, restitution, unjust enrichment, and any other legal or equitable relief. This Settlement Agreement exempts claims for personal injuries and property damage (other than damage to the Class Product).



CC. **“Released Parties”** means Defendants as defined above, and all designers, manufacturers, assemblers, distributors, importers, retailers, marketers, advertisers, testers, inspectors, sellers, suppliers, component suppliers, lessors, warrantors, dealers, repairers and servicers of the Class Products and each of their component parts and systems, all of their past and present directors, officers, shareholders, principals, partners, employees, agents, servants, assigns and representatives, and all of the aforementioned persons’ and entities’ attorneys, insurers, trustees, vendors, contractors, heirs, executors, administrators, successor companies, parent companies, subsidiary companies, affiliated companies, divisions, trustees and representatives.

DD. **“Releasing Parties”** means Plaintiffs and all Class Members, and any person claiming by or through each Class Member, including but not limited to spouses, children, wards, heirs, devisees, legatees, invitees, employees, associates, co-owners, attorneys, agents, administrators, predecessors, successors, assignees, representatives of any kind, shareholders, partners, directors, or affiliates.

EE. **“Request For Exclusion”** means the written communication that must be sent to the Settlement Administrator and postmarked on or before the Opt-Out Date by a Class Member who wishes to be excluded from the Class.

FF. **“Settlement”** means the settlement embodied in this Agreement, including all attached exhibits (which are an integral part of this Agreement and are incorporated in their entirety by reference).

GG. **“Settlement Administrator”** means RG2 Claims Administration, LLC, who has been selected, and which Defendants will pay for, to provide Class Notice, administer the Settlement and claims process, including the processing, reviewing, and approving of claims made by Claimants, communicating with Claimants, creating and maintaining a settlement website, distributing payments to qualified Claimants, and any other such work called for by this Settlement Agreement or otherwise customarily done when administering class settlements.

HH. **“Settlement Administration Expenses”** means the expenses incurred by the

Settlement Administrator assisting with the implementation of this Agreement, including administering the notice program and processing all claims made by Class Members.

II. “**Summary Notice**” means the summary notice of the proposed Settlement, substantially in the form attached hereto as Exhibit 4.

**II. SUBMISSION OF THE SETTLEMENT TO THE COURT FOR REVIEW AND APPROVAL**

- A. As soon as is practicable following the signing of this Agreement, Class Counsel shall apply to the Court for entry of the Preliminary Approval Order (substantially in the form attached as Exhibit 1), for the purpose of, among other things:
1. Approving the Class Notice, including the Long Form Notice and Summary Notice, substantially in the form set forth at Exhibits 3-4;
  2. Finding that the requirements for preliminary certification of the Class have been satisfied, appointing Plaintiffs as the representatives of the Class and their counsel as Class Counsel, and preliminarily approving the Settlement as being within the range of reasonableness such that the Class Notice should be provided pursuant to this Agreement;
  3. Scheduling the Fairness Hearing on a date ordered by the Court, provided in the Preliminary Approval Order, and in compliance with applicable law, to determine whether the Settlement should be approved as fair, reasonable, and adequate, and to determine whether a Final Order and Final Judgment should be entered dismissing the Action with prejudice.
  4. Determining that the notice of the Settlement and of the Fairness Hearing, as set forth in this Agreement, complies with all legal requirements, including but not limited to the Due Process Clause of the United States Constitution;
  5. Preliminarily approving the form of the Final Order and Final Judgment;
  6. Appointing RG2 Claims Administration, LLC as the Settlement Administrator;
  7. Directing that Class Notice shall be given to the Class as provided in this

Agreement.

8. Providing that Class Members will have until the Claim Deadline to submit Claim Forms;
9. Providing that any objections by any Class Member to the certification of the Class and the proposed Settlement contained in this Agreement, and/or the entry of the Final Order and Final Judgment, shall be heard and any papers submitted in support of said objections shall be considered by the Court at the Fairness Hearing only if, on or before the Objection Deadline set by the Court, such objector files with the Court a written objection and notice of the objector's intention to appear, and otherwise complies with the requirements in this Agreement;
10. Establishing dates by which the Parties shall file and serve all papers in support of the application for final approval of the Settlement and/or in response to any valid and timely objections;
11. Providing that all Class Members will be bound by the Final Order and Final Judgment dismissing the Action with prejudice unless such members of the Class timely file valid written Requests for Exclusion in accordance with this Agreement and the Class Notice;
12. Providing that Class Members wishing to exclude themselves from the Settlement will have until the Opt-Out Date to submit a valid written Request for Exclusion to the Settlement Administrator, in accordance with the procedures set forth in this Agreement;
13. Directing the Parties, pursuant to the terms and conditions of this Agreement, to take all necessary and appropriate steps to establish the means necessary to implement the Settlement;
14. Pending the Fairness Hearing, staying all proceedings in the Action, other than proceedings necessary to carry out or enforce the terms and conditions of this Agreement and the Preliminary Approval Order; and

15. Pending the Fairness Hearing, enjoining Plaintiffs and Class Members, or any of them, from commencing or prosecuting, either directly or indirectly, any action in any forum (state or federal) asserting any Released Claims.
- B. Following the entry of the Preliminary Approval Order, the Class Notice shall be given and published in the manner directed and approved by the Court, as set forth in this Agreement.
- C. At the Fairness Hearing, the Parties shall seek to obtain from the Court a Final Order and Final Judgment in the form substantially similar to Exhibit 2, respectively. The Final Order and Final Judgment shall, among other things:
1. Find that the Court has personal jurisdiction over all Class Members, the Court has subject matter jurisdiction over the claims asserted in the Action, and that venue is proper;
  2. Finally approve the Agreement and the Settlement pursuant to Rule 23 of the Federal Rules of Civil Procedure;
  3. Certify the Class for settlement purposes only;
  4. Find that the notice to the Class complied with all laws and requirements, including, but not limited to, the Due Process Clause of the United States Constitution;
  5. Incorporate and effectuate the release set forth in the Agreement and make the Release effective as of the date of the Final Order and Final Judgment;
  6. Authorize the Parties to implement the terms of the Settlement;
  7. Dismiss the Action with prejudice; and
  8. Notwithstanding the aforementioned dismissal with prejudice, retain jurisdiction relating to the administration, consummation, enforcement, and interpretation of the Agreement, the Final Order and Final Judgment, any final order approving Attorneys' Fees and Expenses and incentive awards, and for any other necessary purpose.

- D. The Parties acknowledge that each intends to implement the terms of this Agreement. The Parties shall, in good faith, cooperate and assist with and undertake all reasonable actions and steps to accomplish all required events on the schedule set by the Court, and shall use reasonable efforts to implement all terms and conditions of this Agreement. If the Court does not preliminarily or finally approve this Agreement, the Parties further agree to continue to cooperate in good faith in an attempt to address any deficiencies raised by the Court in an expeditious manner.
- E. Subject to approval of the Court, the Parties will seek the deadlines listed below in connection with approval of the Settlement. If any deadline below falls on a weekend or federal holiday, then such deadline shall extend to the next court day. Subject to approval of the Court, the Parties agree that deadlines may be extended by order of the Court, for good cause shown, without further notice to the Class.

<b><u>Event</u></b>	<b><u>Deadline</u></b>
Motion for Preliminary Approval	Within 14 days after execution of the Settlement Agreement
CAFA Notice pursuant to 28 U.S.C. § 1715(b)	Within 10 days of filing of motion for preliminary approval
Notice Date	30 days after Preliminary Approval Granted
Application for service awards and Attorneys' Fees and Expenses	14 days after Notice Date
Objection and Opt-Out Deadline	30 days after Notice Date
Final Approval Motion and response to any objections	70 days after Notice Date
Deadline to submit notices of appearance at the Final Approval Hearing	70 days after Notice Date
Claims Administrator submits declaration (1) stating the number of claims, requests for exclusion, and objections to date and (2) attesting that Notice was disseminated in a	90 days after Notice Date

manner consistent with the Settlement Agreement or otherwise required by the Court.	
Final Approval Hearing	100 days after Notice Date, or as soon thereafter as may be heard by the Court
Claim Deadline	120 days after Notice Date
Award Issuance Date	Begins 30 days after Effective Date or Claim Deadline, whichever is later

### III. THE SETTLEMENT CONSIDERATION

A. All settlement benefits are contingent on final approval of the Settlement Agreement.

#### B. Settlement Benefits Not Requiring A Claim Submission

1. Notice to the class as set forth in Section IV below.
2. Extended warranty for all Class Products – two years will be added to the standard warranty or two additional years from the date of the Effective Date, whichever is later.

#### C. Settlement Benefits Requiring A Claim Submission

1. Each Class Member who submits a valid and timely Claim Form may choose one of the following options if the Court grants final approval of the settlement:
  - i. Receive a \$125 Gift Card from GHI; or
  - ii. Return a Class Product to a physical MFI storefront within two years of the Effective Date in exchange for a full refund from MFI of the amount that the Class Member paid for the Class Product (including tax and delivery charges as applicable). For those Class Members who received their Class Product for free, return of a Class Product to a physical MFI storefront will be refunded according to the following matrix:

Product Number	Size	Refund Amount
V000099752	California King	\$115.68
V000099754	King	\$114.81

V000099755	Queen	\$91.69
V000099753	Full	\$87.32
V000099756	Twin	\$76.91
V000099757	Twin XL	\$73.98

2. If the total value of all valid claims exceeds \$4,900,000 (“the Settlement Sum”) made available for distribution to Class Members, then the amounts of the Gift Card payments and refunds will be reduced pro rata as necessary. The Settlement Sum does not include Settlement Administration Costs, any Fee Award and Service Awards, and any other costs, expenses, and fees associated with the Settlement pursuant to the terms set forth in this Agreement.

#### **IV. NOTICE TO THE CLASS**

A. The Parties shall jointly recommend RG2 Claims Administration, LLC as the Settlement Administrator. Following the entry of the Preliminary Approval Order and the Court’s appointment of the proposed Settlement Administrator, the Settlement Administrator shall disseminate the Class Notice as specified in the Preliminary Approval Order and in this Section, to comply with all applicable laws and requirements, including, but not limited to, the Due Process Clause of the United States Constitution. The Settlement Administrator shall develop a notice and claims administration program, subject to the approval of the Parties and the Court, designed to achieve at least 80% reach. The Settlement Administrator shall submit a declaration under the penalty of perjury attesting that the Class Notice was designed and intended to achieve at least 80% reach.

B. The settlement notice will include information that the Class Products are under recall and should not be used without a free repair kit made available from Defendants.

C. Direct Notice: The notice program shall include direct notice to people who are identified in Defendants’ records as a Class Product purchaser, and for whom either Defendant has contact information.

D. The Long Form Notice: The Long Form Notice shall be in a form substantially

similar to the document attached to this Agreement as Exhibit 3, and shall be made available on the Settlement Website, and to Class Members requesting a hard copy from the Settlement Administrator. The Long Form Notice will conform to the following requirements:

1. General Terms: The Long Form Notice shall contain a plain and concise description of the nature of the Action and the proposed Settlement, including information on the definition of the Class, the identity of eligible Class Members, how the proposed Settlement would provide relief to Class Members, what claims are released under the proposed Settlement, and other relevant information.
2. Opt Out Rights: The Long Form Notice shall inform Class Members that they have the right to opt out of the Settlement. The Long Form Notice shall provide the deadlines and procedures for exercising this right.
3. Objection to Settlement: The Long Form Notice shall inform Class Members of their right to object to the proposed Settlement and appear at the Fairness Hearing. The Class Notice shall provide the deadlines and procedures for exercising these rights.
4. Fees and Expenses: The Long Form Notice shall inform Class Members about the amounts being sought by Class Counsel as Attorneys' Fees and Expenses and Plaintiffs' incentive awards.
5. Claim Form: The Long Form Notice and Settlement Website shall include the Claim Form, which shall inform Class Members that they must fully complete and timely return the Claim Form prior to the Claim Deadline to be eligible to obtain a Gift Card pursuant to this Agreement.

D. The Summary Notice: Upon the Notice Date, the Settlement Administrator shall cause Summary Notice, in the form substantially similar to Exhibit 4, in accordance with the notice plan.

E. Settlement Website: No later than the Notice Date, the Settlement Administrator shall establish and cause to be published an Internet website (the "Settlement Website"). Any



internet advertising that is part of the Class Notice program will direct Class Members to the Settlement Website. The Settlement Website will allow Class Members to submit Claim Forms online and will contain information relevant to Class Members, including but not limited to all applicable deadlines, the Agreement, Class Notice, a downloadable Claim Form, all papers filed by the Parties in support of this Agreement (including Plaintiffs' anticipated motion for Attorneys' Fees and Expenses), orders of the Court pertaining to this Agreement, and contact information for reaching the Settlement Administrator via a toll-free telephone number, e-mail and U.S. mail. The website shall be rendered inactive one hundred fifty (150) days after the Award Issuance Date. Settlement Administration Expenses include the costs associated with maintenance of the Settlement Website.

F. Toll-Free Telephone Number: Prior to the dissemination of the Class Notice, the Settlement Administrator shall establish a toll-free telephone number that will provide Settlement-related information to Class Members, pursuant to the terms and conditions of this Agreement. Settlement Administration Expenses include the costs associated with maintenance of this toll-free telephone number. The Parties shall also create a protocol for the Settlement Administrator to refer Class Member inquiries to Class Counsel. The toll-free telephone number shall be rendered inactive one hundred fifty (150) calendar days after the Award Issuance Date.

G. Settlement Administration Expenses: Defendants shall pay the Settlement Administration Expenses in accordance with the terms and conditions of this Agreement. The Settlement Administrator shall invoice MFI and GHI each fifty percent (50%) of the Settlement Administration Expenses until such time that the aggregate Settlement Administration Expense equal \$150,000. Any Settlement Administration Expenses that exceed \$150,000 shall be paid in their entirety by GHI.

**V. ATTORNEYS' FEES AND EXPENSES AND CLASS REPRESENTATIVE INCENTIVE AWARD**

A. The Class Counsel fees and expenses, and Plaintiffs' incentive awards, if any, will

be paid separate and apart from any relief provided to the Class or notice costs, and be paid by GHI. MFI is not responsible for Class Counsel fees and expenses, or incentive awards.

B. Class Counsel may ask the Court for the payment of incentive awards to Plaintiffs. Plaintiffs and Class Counsel will submit, an application for an incentive award of five thousand dollars (\$5,000.00) to each Plaintiff. Any court-ordered incentive award will be paid no later than fifteen (15) calendar days after the Effective Date.

C. As part of the resolution of the Action, the Parties have agreed that Class Counsel may apply for an award of attorneys' fees, inclusive of costs and expenses, not to exceed \$825,000.

D. The Attorneys' Fees and Expenses ordered by the Court shall represent Class Counsel's sole compensation under the Settlement and shall be inclusive of all fees and costs of Class Counsel to be paid by Defendants. Any Attorneys' Fees and Expenses ordered to be paid to Class Counsel shall be paid by Defendant GHI to Class Counsel no later than thirty (30) calendar days after the Court's order awarding Attorneys' Fees and Expenses, provided that, pursuant to the terms of the undertaking attached as Exhibit 6 to this Agreement, any such Attorneys' Fees and Expenses will be repaid to Defendant GHI if the Court's order awarding Attorneys' Fees and Expenses or Final Approval Order is reversed on appeal.

## **VI. RELEASES AND DISMISSAL OF ACTION**

A. Upon the Effective Date, the Releasing Parties shall be deemed to have, and by operation of the Final Order and Final Judgment shall have, fully, finally and forever released, relinquished, and discharged all Released Claims against the Released Parties. In connection with the Released Claims, each Releasing Party shall be deemed as of the Effective Date to have expressly, knowingly, and voluntarily waived any and all provisions, rights, benefits conferred by Section 1542 of the California Civil Code, and any statute, rule, and legal doctrine similar, comparable, or equivalent to Section 1542, which 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.

In connection with such waiver and relinquishment, the Releasing Parties hereby acknowledge that they are aware that they or their attorneys may hereafter discover claims or facts in addition to or different from those that they now know or believe exist with respect to Released Claims, but that it is their intention to hereby fully, finally, and forever settle and release all of the Released Claims, whether known or unknown, suspected or unsuspected, that they have against the Released Parties. In furtherance of such intention, the release herein given by the Releasing Parties shall be and remain in effect as a full and complete general release notwithstanding the discovery or existence of any such additional different claims or facts. Each of the Releasing Parties expressly acknowledges that he/she/it has been advised by its attorney of the contents and effect of Section 1542, and with knowledge, each of the Parties hereby expressly waives whatever benefits he/she/it may have had pursuant to such section. Plaintiffs and Class Members are not releasing any claims for personal injuries. Plaintiffs acknowledge, and the Class Members shall be deemed by operation of the Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a material element of the Settlement of which this release is a part.

B. Upon the Effective Date, the Action shall be dismissed with prejudice. Plaintiffs and Class Counsel shall have the responsibility for ensuring that the Action is dismissed with prejudice in accordance with the terms of this Agreement.

C. The Court shall enter an order retaining jurisdiction over the Parties to this Agreement with respect to the future performance of the terms of this Agreement. In the event that any applications for relief are made, such applications shall be made to the Court.

D. Upon the Effective Date: (a) the Agreement shall be the exclusive remedy for any and all Released Claims of Plaintiffs and Class Members; and (b) Plaintiffs and the Class Members stipulate to be and shall be permanently barred and enjoined by Court order from

initiating, asserting, or prosecuting against the Released Parties in any federal or state court or tribunal any and all Released Claims.

## **VII. ADMINISTRATION OF THE SETTLEMENT**

A. Defendants shall, subject to the approval of Class Counsel, retain RG2 Claims Administration, LLC as the Settlement Administrator to help implement the terms of the Agreement.

B. In fulfilling its responsibilities, the Settlement Administrator shall be responsible for, without limitation: (a) consulting on and designing the notice to be disseminated to Class Members; (b) arranging for the publication of the Summary Notice and dissemination of Class Notice; (c) responding to requests from Class Counsel and/or Defense Counsel; (d) otherwise assisting with administration of the Settlement; and (e) providing CAFA Notice pursuant to 28 U.S.C. § 1715(b).

C. The Settlement Administrator also shall be responsible for, without limitation, the dissemination of Class Notice and implementing the terms of the claim process and related administrative activities that include communications with Class Members concerning the Settlement, claim process, and their options thereunder. In particular, the Settlement Administrator shall be responsible for: (a) printing, e-mailing, mailing or otherwise arranging for the mailing of the Class Notice in response to Class Members' requests; (b) making any mailings required under the terms of this Agreement; (c) establishing the Settlement Website; (d) establishing a toll-free voice line to which Class Members may refer for information about the Action and the Settlement; (e) receiving and maintaining any Class Member correspondence regarding requests for exclusion and objections to the Settlement; (f) forwarding inquiries from Class Members to Class Counsel or their designee for a response, if warranted; (g) establishing a post office box for the receipt of Claim Forms, exclusion requests, and any correspondence; (h) reviewing Claim Forms according to the review protocols agreed to by the Parties and standards set forth in this Agreement; and (i) otherwise implementing and/or assisting with the claim review process and payment of the claims.

D. The Settlement Administrator shall administer the Settlement in accordance with the terms of this Agreement and, without limiting the foregoing, shall: (a) treat any and all documents, communications and other information and materials received in connection with the administration of the Settlement as confidential and shall not disclose any or all such documents, communications or other information to any person or entity except as provided for in this Agreement or by court order; and (b) receive Requests for Exclusion and provide to Class Counsel and Defense Counsel a copy thereof within three (3) business days of receipt. If the Settlement Administrator receives any Requests for Exclusion after the deadline for the submission of such forms and requests, the Settlement Administrator shall promptly provide Class Counsel and Defense Counsel with copies thereof and receive and maintain all correspondence from any Class Member regarding the Settlement.

E. The Claim Form will be available for downloading and may be completed and submitted online at the Settlement Website. The Claim Form may also be requested by calling the toll-free number provided by the Settlement Administrator or by writing to the Settlement Administrator.

F. To be eligible for a Gift Card or refund, each Class Member must submit or postmark a Claim Form, on or before the Claim Deadline, containing his or her name, mailing address, e-mail address, and Proof of Purchase. The Claim Form will be deemed to have been submitted when the Claim Form, including any necessary Proof of Purchase, is posted, if received with a postmark, or equivalent mark by a courier company indicated on the envelope or mailer and if mailed with pre-paid postage and addressed in accordance with the instructions set out in the Claim Form. In the case of online claims, the Claim Form shall be deemed to have been submitted when it is fully uploaded, including any necessary Proof of Purchase, to the Settlement Website.

G. Any Class Member who, in accordance with the terms and conditions of this Agreement, neither seeks exclusion from the Class nor submits a valid and timely Claim Form, will not be entitled to receive any relief pursuant to this Agreement, but will be bound together

with all Class Members by all of the terms of this Agreement, including the terms of the Final Order and Final Judgment to be entered in the Action and the releases provided for herein, and will be barred from bringing any action in any forum (state or federal) against any of the Released Parties concerning the Released Claims.

H. The Settlement Administrator shall use adequate and customary procedures and standards to determine whether a Claim Form meets the requirements set forth in this Agreement and to prevent the payment of fraudulent claims and/or pay only valid and eligible claims. Each Claim Form shall be submitted to and reviewed by the Settlement Administrator, who shall determine the extent, if any, to which each claim shall be allowed. The Settlement Administrator shall use all reasonable efforts and means to identify and reject duplicate and/or fraudulent claims, including, without limitation, indexing all awards provided to Class Members.

I. Claim Forms that do not meet the terms and conditions of this Agreement shall be promptly rejected by the Settlement Administrator. The Settlement Administrator shall have forty-five (45) calendar days from the Effective Date to exercise the right of rejection. The Settlement Administrator shall notify the Class Member using the contact information provided in the Claim Form of the rejection, including via electronic mail. Class Counsel and Defense Counsel shall be provided with copies of all such notifications to Class Members. If any claimant whose Claim Form has been rejected, in whole or in part, desires to contest such rejection, the claimant must, within fifteen (15) business days from receipt of the rejection, transmit to the Settlement Administrator by e-mail or U.S. mail a notice and statement of reasons indicating the claimant's grounds for contesting the rejection, along with any supporting documentation, and requesting further review by the Settlement Administrator, in consultation with Class Counsel and Defense Counsel, of the denial of the claim. If Class Counsel and Defense Counsel cannot agree on a resolution of claimant's notice contesting the rejection, the disputed claim shall be presented to the Court or a referee appointed by the Court for summary and non-appealable resolution.

J. No person shall have any claim against Defendant, Defense Counsel, Plaintiffs,

Plaintiffs' Counsel, the Class, Class Counsel, and/or the Settlement Administrator based on any eligibility determinations, distributions, or awards made in accordance with this Agreement.

This provision does not affect or limit in any way the right of review by the Court or referee of any disputed Claim Forms as provided in this Agreement.

K. Class Counsel and Defense Counsel shall have the right to inspect the Claim Forms and supporting documentation received by the Settlement Administrator at any time upon reasonable notice.

L. Not later than ten (10) calendar days before the date of the Fairness Hearing, the Settlement Administrator shall file with the Court: (a) a list of those persons who have opted out or excluded themselves from the Settlement; and (b) the details regarding the number of valid Claim Forms received and processed by the Settlement Administrator. The Settlement Administrator shall also attest that Notice was disseminated in a manner consistent with the Settlement Agreement or otherwise required by the Court.

M. The Settlement Administrator may retain one or more persons to assist in the completion of its responsibilities.

N. For benefits requiring a claim submission, the Settlement Administrator shall distribute benefits to eligible Class Members only after the Effective Date and pursuant to the deadlines set forth in this Agreement.

O. If the Settlement is not approved or for any reason the Effective Date does not occur, no payments or distributions of any kind shall be made pursuant to this Agreement, except for the costs and expenses of the Settlement Administrator, for which Plaintiffs and/or Plaintiffs' Counsel are not responsible.

P. If the Settlement Administrator fails to perform its duties, and/or makes a material or fraudulent misrepresentation to, or conceals requested material information from, Class Counsel, Defendant, and/or Defense Counsel, then the party to whom the misrepresentation is made shall, in addition to any other appropriate relief, have the right to demand that the Settlement Administrator immediately be replaced. No party shall unreasonably withhold

consent to remove the Settlement Administrator. The Parties will attempt to resolve any disputes regarding the retention or dismissal of the Settlement Administrator in good faith, and, if they are unable to do so, will refer the matter to the Court for resolution.

Q. The Settlement Administrator shall coordinate with Defense Counsel to provide notice as required by 28 U.S.C. § 1715, and the costs of such notice shall be considered Settlement Administration Expenses.

### **VIII. REQUESTS FOR EXCLUSION**

A. Class Members may elect to opt out of the Settlement, relinquishing their rights to benefits hereunder. Class Members who opt out of the Settlement will not release their claims pursuant to this Agreement.

B. Class Members wishing to opt out of the Settlement must send to the Settlement Administrator by U.S. Mail a Request for Exclusion postmarked no later than the Opt-Out Date. The Request for Exclusion must be a personally signed letter from the Class Member including (a) their full name; (b) current address; (c) a clear statement communicating that they elect to be excluded from the Class, do not wish to be a Class Member, and elect to be excluded from any judgment entered pursuant to the Settlement; (d) their signature; and (e) the case name and case number of the Action. Class Members who fail to submit a valid Request for Exclusion on or before the Opt-Out Date shall be bound by all terms of this Agreement and the Final Order and Final Judgment, regardless of whether they have requested exclusion from the Settlement.

C. Any member of the Class who submits a timely Request for Exclusion or opt out may not file an objection to the Settlement and shall be deemed to have waived any rights or benefits under this Agreement. So-called “mass” or “class” opt outs shall not be allowed.

D. The Settlement Administrator shall promptly provide copies of all Requests for Exclusion, objections, and/or related correspondence from Class Members to Class Counsel and Defense Counsel. Not later than three (3) business days after the deadline for submission of Requests for Exclusion, the Settlement Administrator shall provide to Class Counsel and Defense Counsel a complete list of Class Members requesting exclusion from the Settlement



together with copies of the Requests for Exclusion.

## **IX. OBJECTIONS**

A. Any Class Member who has not filed a timely written Request for Exclusion and who wishes to object to the fairness, adequacy, or reasonableness of this Settlement Agreement or the Settlement, or to the requested award of attorneys' fees and expenses, or Plaintiffs' service awards, must file with the Clerk of the Court a written notice of objection by the Objection Deadline.

B. Members of the Class who fail to file, no later than the Objection Deadline, through the Court's Case Management/Electronic Case Files ("CM/ECF") system or through any other method in which the Court will accept objections, if any, and serve upon the Settlement Administrator, Class Counsel, and Defense Counsel, written objections in the manner specified in this Agreement and the Class Notice shall be deemed to have waived all objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

C. Any Class Member who intends to object to the fairness, reasonableness, and/or adequacy of the Settlement must, in addition to filing the written objection with the Court through the Court's CM/ECF system (or any other method in which the Court will accept filings, if any) no later than the Objection Deadline, provide a copy of the written objection by U.S. mail or e-mail to the Settlement Administrator with a copy by U.S. Mail or e-mail to Class Counsel and Defense Counsel (at the addresses set forth below) postmarked no later than the Objection Deadline.

D. Any objecting Class Member must include with his/her/their/its objection:

1. the objector's full name, address, and telephone number;
2. a statement, sworn to under penalty of perjury, attesting to the fact that (i) the objector purchased one or more of the Class Products during the Class Period, and (ii) the date and location of purchase;
3. a written statement of all grounds for the objection accompanied by any legal support for such objection;

4. copies of any papers, briefs, or other documents upon which the objection is based and are pertinent to the objection;
  5. the name, address and telephone number of any counsel representing said objector; and
  6. a list of all other objections submitted by the objector, or the objector's counsel, to any class action settlements submitted in any court in the United States in the previous five (5) years, including the full case name, the jurisdiction in which it was filed and the docket number. If the Class Member or his, her, their or its counsel has not objected to any other class action settlement in the United States in the previous five (5) years, he/she/they/it shall affirmatively so state in the objection.
- E. Objections must be served on Class Counsel and Defense Counsel as follows:

*Upon Class Counsel at:*

Joel D. Smith  
**BURSOR & FISHER P.A.**  
1990 North California Blvd., Suite 940  
Walnut Creek, California 94596  
ltfisher@bursor.com  
jsmith@bursor.com

*Upon Defense Counsel at:*

As to MFI:  
Christopher Parkerson  
John Angeloni  
**CAMPBELL CONROY & O'NEIL, PC**  
5 Penn Plaza, 19<sup>th</sup> Floor  
New York, NY 10001  
Jangeloni@campbell-trial-lawyers.com

As to GHI:  
Nat Clarkson  
**ANDERSON CLARKSON JOHNSON BROWN PLLC**  
2812 N Norwalk, Suite 2016  
Mesa, AZ 85215  
nclarkson@acjblaw.com

F. Subject to the approval of the Court, any objecting Class Member may appear, in person or by counsel, at the Final Fairness Hearing to explain why the proposed Settlement should not be approved as fair, reasonable and adequate, or to object to any motion for Class Counsel Fees and Expenses or Class representative service award. To appear, the objecting Class Member must, by the deadline set by the Court, file with the Clerk of the Court and serve upon all counsel designated in the Class Notice, a Notice of Intention to Appear at the final fairness hearing. The Notice of Intention to Appear must include copies of any papers, exhibits or other evidence and the identity of witnesses that the objecting Class Member (or the objecting Class Member's counsel) intends to present to the Court in connection with the final fairness hearing. Any Class Member who does not provide a Notice of Intention to Appear in accordance with the deadline and other requirements set forth in this Settlement Agreement and Class Notice shall be deemed to have waived any right to appear, in person or by counsel, at the Final Fairness Hearing.

**X. SCOPE AND EFFECT OF CONDITIONAL CERTIFICATION OF THE CLASS SOLELY FOR PURPOSES OF SETTLEMENT**

A. For purposes of settlement only, the Parties agree to seek preliminary certification, pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3), of a damages and injunctive relief Class on a nationwide basis, including United States territories. The Parties further agree that the Court should make preliminary findings and enter the Preliminary Approval Order (substantially in the form attached at Exhibit 1) granting preliminary certification of the Class subject to final findings and ratification in the Final Order and Final Judgment, and appointing Plaintiffs as the representative of the Class and Class Counsel as counsel for the Class.

B. Defendants do not consent to certification of the Class for any purpose other than to effectuate the Settlement of the Action or otherwise admit that the litigation of any claims that have or could have been asserted in the Action on a class-wide basis is appropriate under applicable laws and standards. Defendants' agreement to conditional certification does not

constitute an admission of wrongdoing, fault, liability, or damage of any kind to Plaintiffs or any of the putative class members.

## **XI. MODIFICATION OR TERMINATION OF THE SETTLEMENT**

A. If the preconditions necessary to trigger the Effective Date are not met, this Agreement shall be cancelled and terminated unless Defense Counsel and Class Counsel mutually agree in writing to proceed with and effectuate this Agreement.

B. The terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however that, after entry of the Final Order and Final Judgment, the Parties may by written agreement effect such amendments, modifications, or expansions of this Agreement and its implementing documents (including all exhibits hereto) without further notice to the Class or approval by the Court if such changes are consistent with the Court's Final Order and Final Judgment and do not materially alter, reduce or limit the rights of Class Members under this Agreement.

C. Any Party may terminate this Agreement by providing written notice to the other Party and the Court within ten (10) days of the occurrence of the following: (a) The preliminary or final approval of this Agreement is not obtained without substantial modification, which modification the Parties did not agree to and which modification the terminating Party deems in good faith to be material (e.g., because it significantly increases the costs of the settlement or deprives the terminating party of an expressly stated benefit of the settlement); or (b) The Final Order and Final Judgment is reversed, vacated, or modified in any material respect by another court, except that it is expressly agreed by the Parties that any reduction of the Court's award of Attorneys' Fees and Expenses shall not be grounds to terminate this Agreement.

D. If this Agreement is not approved by the Court or the settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, the Parties shall be restored to their respective pre-settlement positions in the Action, including with regard to any agreements concerning tolling and similar agreements, and this entire Agreement shall be null and void, shall have no further force and effect with respect to any Party in the Action, and

shall not be offered in evidence or used in any litigation for any purpose, including the existence, certification, or maintenance of any purported class or Defendant's liability with respect to the claims that are, were or could have been asserted in the Action. In the event of such, this Agreement and all negotiations, proceedings, documents prepared, and statements made in connection with it shall be without prejudice to the Parties, and shall not be deemed or construed to be an admission or confession by any Party of any fact, matter, or proposition of law, and shall not be used in any manner for any purpose, and all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court.

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

## **XII. BEST EFFORTS**

A. The Parties will work cooperatively to take all necessary actions to accomplish approval of the Settlement, the Class Notice, administration of claims, and dismissal of the Action. The Parties (including their counsel, successors, and assigns) agree to cooperate fully and in good faith with one another and to use their best efforts to effectuate the Settlement, including without limitation in seeking preliminary and final Court approval of the Agreement and the Settlement embodied herein, carrying out the terms of this Agreement, and promptly agreeing upon and executing all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement. In the event that the Court fails to approve the Settlement or fails to issue the Final Order and Final Judgment, the Parties agree to use all reasonable efforts, consistent with this Agreement and subject to Section XI, to cure any defect identified by the Court.

B. Each party will cooperate with the other party in connection with effectuating the Settlement or the administration of claims thereunder. Any requests for cooperation shall be narrowly tailored and reasonably necessary for the requesting party to recommend the Settlement to the Court, and to carry out its terms.

## **XIII. MISCELLANEOUS PROVISIONS**

C. This Agreement and its accompanying exhibits set forth the entire understanding of the Parties. No change or termination of this Agreement shall be effective unless in writing and signed by Plaintiffs' Counsel and Defense Counsel. No extrinsic evidence or parol evidence shall be used to interpret this Agreement.

D. Any and all previous agreements and understandings between or among the Parties regarding the subject matter of this Agreement, whether written or oral, are superseded and hereby revoked by this Agreement. The terms or conditions of this Agreement control over any other written or oral agreements.

E. All of the Parties warrant and represent that they are agreeing to the terms of this Agreement based upon the legal advice of their respective attorneys, that they have been afforded the opportunity to discuss the contents of this Agreement with their attorneys and that the terms and conditions of this document are fully understood and voluntarily accepted.

F. The waiver by any party of a breach of any term of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party. The failure of a party to insist upon strict adherence to any provision of the Agreement shall not constitute a waiver or thereafter deprive such party of the right to insist upon strict adherence.

G. The headings in this Agreement are inserted merely for the purpose of convenience and shall not affect the meaning or interpretation of this document.

H. This Agreement may be executed by facsimile signature and in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. Signatures may be obtained electronically via DocuSign, AdobeSign or similar service. The date of execution shall be the latest date on which any party signs the Agreement.

I. This Agreement should not be construed in favor of or against one party as to the drafter, and the Parties agree that the provisions of California Civil Code § 1654 and common law principles of construing ambiguities against the drafter shall have no application.

J. Defendants represent and warrant that the individual(s) executing this Agreement

are authorized to enter into this Agreement on behalf of that Defendant.

K. Any disagreement and/or action to enforce this Agreement shall be commenced and maintained only in the Court in which this Action is pending.


L. The Parties reserve the right, subject to the Court's approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

M. If any one of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions if Defense Counsel and Class Counsel, on behalf of the Parties, mutually elect to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

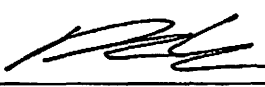
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IN WITNESS WHEREOF, the Parties hereto evidence their agreement by their signatures.

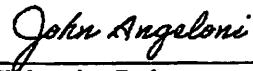
By:  Date: December 24, 2022  
Antonio Payero


By:  Date: December 22, 2022  
Adam Maldonado


By: DocuSigned by:  
 Date: 1/3/2023  
Mattress Firm, Inc.

By:  Date: 1.9.2023  
Global Homes Imports, Inc.

APPROVED AS TO FORM AND CONTENT:

By:  Date: January 4, 2023  
Christopher Parkerson  
John Angeloni  
CAMPBELL CONROY & O'NEIL, PC  
Attorneys for MFI

By:  Date: 1/9/23  
Nat Clarkson  
ANDERSON CLARKSON JOHNSON BROWN PLLC  
Attorneys for GHI

By:  Date: December 22, 2022  
Joel D. Smith  
BURSOR & FISHER, P.A.  
Attorneys for Plaintiffs



**EXHIBIT A**

**CLASS MEMBER IDENTIFIER: XXXXXXXXXXXX**

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK**

*Payero et al. v. Mattress Firm, Inc. et al.,  
Case No. 7:21-cv-03061-VLB (S.D.N.Y.)*

**If you purchased a Bed Tech HR Platform bed frame bearing Model Nos. HR33, HR33XL, HR46, HR60, HR50, HR60, or HR66 between April 8, 2015 and April 8, 2021, you may be entitled for benefits from a class action settlement.**

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

- A Settlement has been reached in a class action lawsuit. In the lawsuit, Plaintiffs Antonio Payero and Adam Maldonado (“Plaintiffs”) allege that Mattress Firm, Inc. and Global Home Imports, Inc. (“Defendants”) manufactured, distributed, and sold Bed Tech-brand bed frames that were defective and prone to collapse, posing a crush hazard that can result in severe injury or death. By entering the Settlement, Defendants do not concede the truth of any of the claims against them, Defendants maintain that their previously instituted recall was sufficient to alleviate any alleged defects with the Bed Tech bed frames, and Defendants deny that they did anything wrong. The Court has not decided who is right. Instead, the parties agreed to a compromise.
- The Settlement only impacts you if you are a Settlement Class Member. A Settlement Class Member is any resident of the United States who purchased a Class Product during the Class Period (*i.e.*, April 8, 2015-April 8, 2021). The “Class Product” means an HR Platform bed frame sold under the Bed Tech brand name, bearing the model numbers HR33, HR33XL, HR46, HR50, HR60, or HR66. Excluded from the Class are: (a) Defendants and their employees, principals, officers, directors, agents, affiliated entities, legal representatives, successors and assigns; (b) the judges to whom the Action has been or is assigned and any members of their immediate families; and (c) all persons who timely submit Request for Exclusion from the Class.
- Under the Settlement, Settlement Class Members may submit a claim to either (i) return their Class Product to any Mattress Firm store within two years of the Effective Date for a full cash refund, or (ii) keep their Class Product and receive a \$125 Bed Tech gift card. Claims for cash refunds or gift cards shall in no event exceed \$4.9 million, exclusive of Settlement Administration Costs, the Fee Award, any incentive awards, and other costs, expenses, and fees associated with the Settlement. If the total value of all valid claims exceeds \$4.9 million, then the amounts of the Gift Card payments and refunds will be reduced *pro rata* as necessary.
- Class Members will also automatically receive an extended warranty from the later of two years from the end of their standard warranty or two years from the Effective Date.
- To obtain any relief under the Settlement, you must submit a valid Claim Form **within 120** days of the Notice Date.

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

- Whether you act or not, your legal rights as a Settlement Class Member are affected by the Settlement. Your rights and options—and the deadlines to exercise them—are explained in this Class Notice. Please read this Class Notice carefully in its entirety. Defined terms have the meanings in the Settlement Agreement.

<b>SETTLEMENT CLASS MEMBERS' LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT</b>		
<b>YOUR RIGHTS AND OPTIONS</b>	<b>WHAT THEY MEAN</b>	<b>DEADLINES</b>
<b>DO NOTHING</b>	If you are a Settlement Class Member and do not take any action, you will receive an extended warranty from the later of two years from the end of your standard warranty or two years from the Effective Date. However, you will not receive any financial compensation under the Settlement. Further, if the Settlement is finally approved, you will be bound by the Court's Final Judgment and the release of claims explained in the Settlement Agreement.	None
<b>SUBMIT A CLAIM FORM</b>	You must submit a Valid Claim to select and receive either the full refund option (provided that you return your Class Product to a Mattress Firm store within two years of the Effective Date) or the gift card option. To find out how to submit a Claim Form, please read Question [redacted].	Received on or before [redacted], 2023 [120 days after Notice Date]
<b>EXCLUDE YOURSELF (OPT OUT)</b>	Get no benefits from the Settlement. Requesting exclusion from the Settlement (also called "opting out") would allow you to file or continue your own lawsuit against Defendants about the legal claims involved in the Settlement, individually. To find out how to opt out, please read Question [redacted].	Received on or before [redacted], 2023 [30 days after Notice Date]
<b>OBJECT OR COMMENT</b>	Write to the Court about why you do or do not like the Settlement. To find out how to object or comment, please read Question [redacted].	Filed and served on or before [redacted], 2023 [30 days after Notice Date]
<b>GO TO FINAL APPROVAL HEARING</b>	Whichever of the above options you choose, you may also ask to speak in Court about the Settlement. To find out how to do so, please read Question [redacted].	Served on or before [redacted], 2023 [70 days after Notice Date]

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

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

## **BASIC INFORMATION**

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

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

If you received an e-mail or a postcard concerning the Settlement, that means that Defendants’ records indicate you may be a Settlement Class Member who is affected by the Settlement.

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

Plaintiffs filed a lawsuit in which they allege that Defendants manufactured, distributed, and sold Bed Tech-brand bed frames that were defective and prone to collapse, posing a crush hazard that can result in severe injury or death. Defendants deny that they did anything wrong and maintain that their previously instituted recall was sufficient to alleviate any alleged defects with the Bed Tech bed frames. Accordingly, Defendants have vigorously defended Plaintiffs’ allegations. The Parties, however, have agreed to settle the Litigation to avoid the cost, delay, and uncertainty of continuing the Litigation.

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

In a class action, one or more “Class Representatives” or “Named Plaintiffs” sue on behalf of all those with the same types of claims arising from the same events. Here, the Class Representatives filed the Litigation as a proposed class action and asked to represent a class of all United States residents who purchased Bed Tech-brand HR Platform bed frames bearing the Model Nos. HR33, HR33XL, HR40, HR50, HR60, and HR66 between April 8, 2015 and April 8, 2021. They sue on behalf of people who have similar claims—called the “Settlement Class” or “Settlement Class Members”—which in this case may include you.

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

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

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

After extensive, arm’s-length negotiations overseen by a JAMS mediator, a former federal judge, the lawyers representing the Parties agreed to settle the Litigation to avoid the cost, delay, and risk of continuing

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

the Litigation. The Class Representatives and their lawyers think the Settlement is fair, reasonable, adequate, and in the best interests of all Settlement Class Members.

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

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

The Settlement Class under the Settlement includes: all residents of the United States who purchased Bed Tech-brand HR Platform bed frames bearing the Model Nos. HR33, HR33XL, HR40, HR50, HR60, and HR66 between April 8, 2015 and April 8, 2021.

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

The Settlement Class under the Settlement excludes: (i) Defendants and their employees, principals, officers, directors, agents, affiliated entities, legal representatives, successors and assigns; (ii) the judges to whom the Action has been or is assigned and any members of their immediate families; and (iii) all persons who timely submit Request for Exclusion from the Class.

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

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

### **THE SETTLEMENT BENEFITS AND OPTIONS**

If the Settlement is approved and becomes final, it will provide the benefits described below to Settlement Class Members. The benefit you may receive from the Settlement depends upon whether you return your Class Product to a Mattress Firm store or choose to keep the Class Product.

#### **8. What are the benefits of the Settlement for Settlement Class Members who return their Class Product to a Mattress Firm store?**

Each Settlement Class Member who returns their Class Product to a Mattress Firm store within two years of the Effective Date will receive a full refund of the purchase price of their Class Product. Class Members who elect this option must attach a proof of purchase (*e.g.*, sales receipt, statement on a credit card) to their claim form. To find the Mattress Firm store closest to you, please use the Mattress Firm store locator available [here](#).

If you received a Class Product for free (*e.g.*, it was included with the purchase of a mattress), you will receive a refund in accordance with the following schedule:

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

Product Number	Size	Refund Amount
V000099752	California King	\$115.68
V000099754	King	\$114.81
V000099755	Queen	\$91.69
V000099753	Full	\$87.32
V000099756	Twin	\$76.91
V000099757	Twin XL	\$73.98

The refund option, along with the gift card option listed below, are subject to a cap of \$4.9 million. The amount paid to each Settlement Class Member will be reduced *pro rata* if Valid Claims for refunds and gift cards exceed \$4.9 million.

**To receive the refund option, you must submit your Claim Form by the Claims Deadline – no later than [REDACTED], 2023 [120 days after the Class Notice Date], by following the directions set forth at [INSERT WEBSITE URL] and set forth in the next section of this Class Notice. You must then physically return your Class Product to a Mattress Firm store within two years after the Effective Date.**

Refunds will be made at the time of return.

**9. What are the benefits of the Settlement for Settlement Class Members who choose not to return their Class Product to a Mattress Firm store?**

Each Settlement Class Member who does not return their Class Product to a Mattress Firm store will receive, upon submission of a Valid Claim, a \$125 Bed Tech gift card. The gift card can be used to purchase any of the products listed [here](#).

The gift card option, along with the refund card option listed above, are subject to a cap of \$4.9 million. The amount paid to each Settlement Class Member will be reduced *pro rata* if Valid Claims for refunds and gift cards exceed \$4.9 million.

**To receive the gift card option, you must submit your Claim Form by the Claims Deadline – no later than [REDACTED], 2023 [120 days after the Class Notice Date], by following the directions set forth at [INSERT WEBSITE URL] and set forth in the next section of this Class Notice. You will automatically receive your extended warranty information after the effective date.**

Gift cards will be provided within thirty days of the Effective Date, as set forth below.

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

Settlement Class Members will also automatically receive an extended warranty for the later of two years from the end of their standard warranty or two years after the effective date. Submission of a Valid Claim is *not required* to receive an extended warranty.

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

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

If you are a Settlement Class Member who would like to receive either the refund option or the gift card option, you must submit a Claim Form by following the directions set forth at [INSERT WEBSITE URL]. If you submit a Claim Form and would like to receive the refund option, you must return your Class Product to a Mattress Firm store.

Settlement Class Members who fail to submit a Valid Claim will not receive either the refund option or the gift card option from the Settlement. However, you will still receive the extended warranty if you do not submit a Valid Claim but choose not to return your bed.

**To receive the refund or gift card option, you must submit your Claim Form by the Claims Deadline – no later than [REDACTED], 2023 [120 days after the Class Notice Date], by following the directions set forth at [INSERT WEBSITE URL] and set forth in the next section of this Class Notice. You must then physically return your Class Product to a Mattress Firm store within two years after the Effective Date to receive the refund option.**

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

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

The Effective Date is the date when all appeals are completed, and the Settlement becomes final. You can visit the Settlement Website at [INSERT WEBSITE URL] to check the progress of the Court-approval process and the Effective Date. Please be patient.

Settlement Consideration for all Valid Claims will be paid within forty-five (45) days of the Effective Date. The Court will have the power to enforce the terms of the Settlement Agreement.

**EXCLUDING YOURSELF FROM THE SETTLEMENT CLASS**

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

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

To exclude yourself from the Settlement, you must send a signed statement to RG/2 Claims Administration, LLC that includes your name, address, and telephone number stating that you wish to exclude yourself from the case and including your handwritten signature. Your written request should be mailed to:

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



[INSERT ADDRESS]

Your written request must be **received** by [REDACTED], 2023. If your request is not received by that date, your right to opt out will be waived and you will be bound by all orders and judgments entered in connection with the Settlement.

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

If you choose to exclude yourself from the Settlement Class: (1) you will not be entitled to receive the benefits of the Settlement; (2) you will not be legally bound by the Settlement Agreement; and (3) you will keep any rights you may have to sue Defendants individually for the Claims included in the Settlement Agreement, as long as suit is filed before the relevant statute of limitations expires.

**15. How do I tell the Court if I do not like the Settlement or the attorneys' fees request?**

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

Anyone who objects to the Settlement, the Settlement Agreement, the application for attorneys' fees, costs, or expenses, or service awards for the Class Representatives, or the other matters to be considered at the Final Approval Hearing may appear and present such objections. To be permitted to do so, however, you must, on or before [REDACTED], 2023, serve on the RG/2 Claims Administration, LLC (the Settlement Claims Administrator) your written objection and must include the following information:

- Your name, address, telephone number and, if represented by counsel, the name, address, and telephone number of your counsel;
- A statement, sworn to under penalty of perjury, attesting to the fact that (i) you purchased one or more of the Class Products during the Class Period, and (ii) the date and location of your purchase;
- A statement whether you intend to appear at the Final Approval Hearing, either in person or through counsel;
- All grounds for your objection, accompanied by any legal support for the objection known by you or your counsel;
- Copies of any papers, briefs, or other documents upon which the objection is based or upon which you or your counsel intend to rely; and
- The name, address and telephone number of any counsel representing you;

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

- A list of all other objections submitted by you, or the your counsel, to any class action settlements submitted in any court in the United States in the previous five (5) years, including the full case name, the jurisdiction in which it was filed and the docket number. If you or your counsel have not objected to any other class action settlement in the United States in the previous five (5) years, you shall affirmatively so state in the objection.

You must also serve the objection on Class Counsel and Defense Counsel as follows:

*Upon Class Counsel at:*

Joel D. Smith  
**BURSOR & FISHER P.A.**  
1990 North California Blvd., Suite 940  
Walnut Creek, California 94596  
jsmith@bursor.com

*Upon Defense Counsel at:*

As to Mattress Firm, Inc.:  
Christopher Parkerson  
John Angeloni  
**CAMPBELL CONROY & O'NEIL, PC**  
5 Penn Plaza, 19th Floor  
New York, NY 10001  
Jangeloni@campbell-trial-lawyers.com

As to Global Home Imports, Inc.:  
Nat Clarkson  
**ANDERSON CLARKSON JOHNSON BROWN PLLC**  
2812 N Norwalk, Suite 2016  
Mesa, AZ 85215  
nclarkson@acjblaw.com

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

### **THE LAWYERS REPRESENTING YOU**

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

The Court has appointed the law firm of Bursor & Fisher, P.A. as Class Counsel to represent the Settlement Class Members. The only fees, costs, and expenses these lawyers will seek are those described in Question 16 below. If you want to be represented by your own lawyer in this case, you may hire one at your own expense.

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

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

For almost two years, Class Counsel has worked without compensation on this case. In connection with the Final Approval Hearing on the Settlement, Class Counsel will apply to the Court for an award of expenses, costs, and attorneys' fees, with the total amount not to exceed \$825,000. This amount is being paid separately from, and in addition to, any relief paid to Class Members, and will not derogate in any way to the relief provided for.

In the event the Court declines to approve, in whole or in part, the payment of attorneys' fees, costs, and expenses in the amount requested by Class Counsel, the amount not awarded will be available to be claimed by Settlement Class Members.

Class Counsel will also apply to the Court for a service award for the Class Representatives in an amount not to exceed \$5,000 each. The service award compensates the Class Representatives for their efforts and commitment on behalf of the Settlement Class during the Litigation, including responding to discovery, and communicating with Class Counsel on behalf of Class Members. This amount is being paid separately from, and in addition to, any relief paid to Class Members, and will not derogate in any way to the relief provided for.

**THE COURT'S FINAL APPROVAL HEARING**

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

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

The Final Approval Hearing will be held before the Honorable Vincent L. Briccetti on [REDACTED], 2023 at [REDACTED] Eastern Time, at The Honorable Charles L. Briant Jr. Federal Building and United States Courthouse, 300 Quarropas Street, Courtroom 620, White Plains, New York 10601.

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

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

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

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

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

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

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

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

You or your lawyer may ask the Court for permission to speak at the Final Approval Hearing.

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

**IF YOU DO NOTHING**

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

If you are a Settlement Class Member, you must file a Claim Form by the Claims Deadline, **[INSERT DATE]**, as described in response to Question 10, to receive either the refund option or gift card option.

**IF YOU DO NOTHING AND THE SETTLEMENT IS FINALLY APPROVED, YOU WILL BE BOUND BY THE COURT'S FINAL JUDGMENT AND RELEASE OF CLAIMS EXPLAINED IN THE SETTLEMENT AGREEMENT.**

If, however, you are a Settlement Class Member, even if you do not fill out a Claim Form in a timely fashion, you will still automatically receive the extended warranty after the Effective Date of the Settlement.

**GETTING MORE INFORMATION**

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

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

The Settlement Website also contains answers to common questions about the Settlement, plus other information to help you determine whether you are a Settlement Class Member. In addition, some of the key documents in the case will be posted on the Settlement Website. If you would like this Class Notice,

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

the Claim Form, or the Settlement Agreement mailed to you, please call [PHONE NUMBER] or write to RG2 Administration, LLC at:

[INSERT ADDRESS]

Alternatively, all of the court documents in this case are on file and available for review during regular office hours at the Clerk of the Court, United States District Court for the Southern District of New York, 500 Pearl Street, New York, New York 10007.

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

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

**EXHIBIT B**

Class Member Identifier: XXXXXXXXXXXX

**UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK**

*Payero et al. v. Mattress Firm, Inc. et al., Case No. 7:21-cv-03061-VLB*

**If you purchased a Bed Tech-brand HR Platform bed frames bearing Model Nos. HR33, HR33XL, HR46, HR50, HR60, or HR66 between April 8, 2015 and April 8, 2021, you may be eligible for benefits from a class action settlement.**

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

A Settlement has been reached in a class action lawsuit. In the lawsuit, Plaintiffs Antonio Payero and Adam Maldonado (“Plaintiffs”) allege that Mattress Firm, Inc. and Global Home Imports, Inc. (“Defendants”) manufactured, distributed, and sold Bed Tech-brand bed frames that were defective and prone to collapse, posing a crush hazard that can result in severe injury or death. Defendants do not concede the truth of any of the claims against them, Defendants maintain that their previously instituted recall was sufficient to alleviate any alleged defects with the Bed Tech bed frames, and Defendants deny that they did anything wrong. The Court has not decided who is right. Instead, the Parties agreed to a Settlement. Defined terms (with initial capitals) used herein and not otherwise defined have the same meaning as set forth in the Settlement Agreement.

**Who is included?** You received this Summary Notice because Defendants’ records indicate that you may be a Settlement Class Member. The Settlement Class includes all residents of the United States who purchased a Bed Tech-brand HR Platform bed frames bearing Model Nos. HR33, HR33XL, HR46, HR50, HR60, or HR66 between April 8, 2015 and April 8, 2021.

**What are the Settlement Terms?** Under the Settlement, Settlement Class Members who submit a valid claim and return their Class Product to a Mattress firm store within two years of the Effective Date will receive a full refund of the purchase price of their Class Product, inclusive of taxes and delivery fees if applicable. Settlement Class Members who submit a valid claim and return their Class Product to a Mattress Firm store within two years of the Effective Date will receive a full refund of the purchase price. Settlement Class Members who submit a valid claim and do not return their Class Product to a Mattress Firm store will receive a \$125 Bed Tech gift card. Settlement Class Members will also automatically receive an extended warranty for their Class Product for the later of two years from the end of the standard warranty or two years from the Effective Date. You do not need to submit a claim form to receive the extended warranty. Settlement Class Members may submit a Claim Form through the mail or at **[INSERT WEBSITE URL]**.

**Your Other Options.** If you do not want to be legally bound by the Settlement, you must exclude yourself or “opt out” by **[REDACTED]**, 2023. If you do not opt out, you will release Claims that were or could have been made against Defendants related to this case (excluding claims for personal injury or damage to property other than the Class Products). If you stay in the Settlement, you may object to it by **[REDACTED]**, 2023. The Long Form Notice on the website explains how to opt out or object. The Court has scheduled a hearing on **[REDACTED]**, 2023 to consider whether to approve the Settlement. You can appear at the hearing, but you do not have to do so. More information, including the Long Form Notice and information about attorneys’ fees being sought, is available at the website and the toll-free number below.

**SETTLEMENT WEBSITE ADDRESS**

**PHONE NUMBER**

CLAIM ADMINISTRATOR ADDRESS

<<Claimant Name>>  
<<Addr1>>  
<<Addr2>>  
<<City>> <<State>> <<ZIP>>

**EXHIBIT C**



***Payero et al. v. Mattress Firm, Inc. et al.***

In the United States District Court for the Southern District of New York

Case No. 7:21-cv-03061-VLB

**Settlement Claim Form**

If you are a Class Member and wish to receive a payment, your completed Claim Form must be postmarked on or before [DATE], or submitted online at [www.\[INSERT URL\].com](http://www.[INSERT URL].com) on or before [DATE].

Please read the full notice of this settlement (available at [www.\[INSERT URL\].com](http://www.[INSERT URL].com)) carefully before filling out this Claim Form.

**ONLINE:** Visit [www.\[INSERT URL\].com](http://www.[INSERT URL].com) and submit your claim online.

**MAIL:** [ADDRESS]

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**PART ONE: CLAIMANT INFORMATION**

Provide your name and contact information below. It is your responsibility to notify the Claims Administrator of any changes to your contact information after the submission of your Claim Form.

FIRST NAME

LAST NAME

STREET ADDRESS

CITY

STATE

ZIP CODE

EMAIL ADDRESS

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**PART TWO: PURCHASE INFORMATION**

To qualify for cash or gift card relief under the Settlement Agreement, you must have purchased one or more Bed Tech-brand HR Platform bed frames bearing Model Nos. HR33, HR33XL, HR46, HR50, HR60, or HR66 (“Class Products”) from April 8, 2015 through April 8, 2021:

Check here if you are enclosing Proof of Purchase documentation with this claim form:

Please select from the below list of options for relief that you wish to receive. **Please select *either* the Cash Award *or* the Gift Card Award, *not* both.**

**You do not need to submit a claim form to receive the extended warranty mentioned in the Settlement.**

**PART THREE: RELIEF REQUIRING THE RETURN OF A CLASS PRODUCT**

**CASH AWARD:** You may return your Class Product to any Mattress Firm store within two years of the Effective Date to receive a **full refund** of the purchase price of your Class Product (including tax and delivery charges as applicable). If you received your Class Product for free (e.g., if it was included for free along with your purchase of a mattress), you may return your Class Product to a Mattress Firm store within two years of the Effective Date for a **cash refund** in accordance with the following schedule:

Product Number	Size	Refund Amount
V000099752	California King	\$115.68
V000099754	King	\$114.81
V000099755	Queen	\$91.69
V000099753	Full	\$87.32
V000099756	Twin	\$76.91
V000099757	Twin XL	\$73.98

All refunds shall be issued to the original form of payment.

**PART FOUR: RELIEF NOT REQUIRING THE RETURN OF A CLASS PRODUCT**

**GIFT CARD AWARD:** You are entitled to receive a **\$125.00** Bed Tech gift card award for the Class Product you purchased. You are **required to submit a proof of purchase** for your Class Product in order to receive a gift card award.

**PART FIVE: ATTESTATION UNDER PENALTY OF PERJURY**

I declare under penalty of perjury that (1) I purchased the products listed above between April 8, 2015 and April 8, 2021, and (2) all of the information on this Claim Form is true and correct to the best of my knowledge.

I understand that my Claim Form may be subject to audit, verification, and Court review.

SIGNATURE

DATE

**CLAIM FORM REMINDER CHECKLIST**

**Before submitting this Claim Form, please make sure you:**

1. Complete all fields in the Claimant Information section in Part One of this Claim Form.
2. Indicate whether you are enclosing Proof of Purchase documentation.
3. Indicate which form of relief you would like to receive.
4. Sign the Attestation under penalty of perjury in Part Three of this Claim Form. You must sign the Attestation in order to be eligible to receive settlement benefits.

**Please keep a copy of your Claim Form for your records.**

**EXHIBIT D**

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

ANTONIO PAYERO and ADAM MALDONADO,  
individually and on behalf of all others similarly  
situated,

Plaintiffs,

v.

MATTRESS FIRM, INC. and GLOBAL HOME  
IMPORTS, INC.,

Defendants.

Case No. 7:21-cv-03061-VLB

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

Plaintiffs Antonio Payero and Adam Maldonado (collectively, “Plaintiffs”), and Defendants Mattress Firm, Inc. and Global Home Imports, Inc. (“Defendants”) (with Plaintiffs, the “Parties”), by and through and including their undersigned counsel, stipulate and agree as follows:

WHEREAS, Bursor & Fisher, P.A. (the “Firm”) desires to give an undertaking (the “Undertaking”) for repayment of its share of the award of attorney fees and costs, approved by the Court, and

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

NOW, THEREFORE, each of the undersigned counsel, on behalf of themselves as individuals and as agents for their law firm, hereby submit themselves and their respective law firms to the jurisdiction of the Court for the purpose of enforcing the provisions of this Undertaking.

Capitalized terms used herein without definition have the meanings given to them in the Settlement.

By receiving any payments pursuant to the Settlement, the Firm and its shareholders, members, and/or partners submit to the jurisdiction of the United States District Court for the Southern District of New York, for the enforcement of and any and all disputes relating to or arising out of the reimbursement obligation set forth herein and the Settlement.

In the event that the Final Settlement Order and Judgment or any part of it is vacated, overturned, reversed, or rendered void as a result of an appeal, or the Settlement is voided, rescinded, or otherwise terminated for any other reason, the Firm shall, within fourteen (14) days repay to Defendants or Defendants' insurers, based upon written instructions provided by Defendants' Counsel, the full amount of the attorneys' fees and costs paid to the Firm from the Settlement Fund, including any accrued interest.

In the event the attorneys' fees and costs awarded by the Court or any part of them are vacated, modified, reversed, or rendered void as a result of an appeal, the Firm shall within fourteen (14) days repay to Defendants or Defendants' insurers, based upon written instructions provided by Defendants' Counsel, the attorneys' fees and costs and any other amounts paid to the Firm and/or the named plaintiffs and/or class representatives from the Settlement Fund in the amount vacated or modified, including any accrued interest.

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

In the event the Firm fails to repay to Defendants or Defendants' insurers any of attorneys' fees and costs that are owed to it pursuant to this Undertaking, the Court shall, upon application of Defendants, and notice to the Firm, summarily issue orders, including but not limited to judgments and attachment orders against each of the Firm, 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 the Firm.

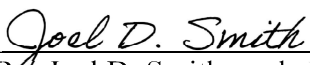
This Undertaking may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Signatures by facsimile shall be as effective as original signatures.

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

IT IS SO STIPULATED THROUGH COUNSEL OF RECORD:


Dated: January 9, 2023

BURSOR & FISHER, P.A.

  
By: Joel D. Smith, on behalf of Bursor & Fisher, P.A.  
Attorneys for Plaintiffs and Class Counsel

Dated: January 9, 2023

CAMPBELL CONROY O'NEIL, PC

  
By: John Angeloni  
Attorneys for Defendant Mattress Firm, Inc.

Dated: January 9, 2023

ANDERSON CLARKSON JOHNSON BROWN PLLC

  
Adam Anderson (Jan 9, 2023 14:34 MST)  
By: Adam Anderson  
Attorneys for Defendant Global Home Imports, Inc.

**EXHIBIT E**



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

ANTONIO PAYERO and ADAM MALDONADO,  
individually and on behalf of all others similarly  
situated,

Plaintiffs,

v.

MATTRESS FIRM, INC. and GLOBAL HOME  
IMPORTS, INC.,

Defendants.

Case No. 7:21-cv-03061-VLB

Hon. Vincent L. Briccetti

**[PROPOSED] FINAL ORDER AND  
JUDGMENT**

WHEREAS, the Parties have entered into the Stipulation of Class Action Settlement, with its attached exhibits (collectively, the “Agreement”), signed and filed with this Court on December 19, 2022, to settle *Payero et al. v. Mattress Firm, Inc. et al.*, Case No. 7:21-cv-03061-VLB, pending in the United States District Court for the Southern District of New York (the “Action”).

WHEREAS, by Order dated \_\_\_\_\_, 2023 (the “Preliminary Approval Order”), this Court granted preliminary approval of the proposed class action settlement between the parties in the Action, ordering the dissemination of Class Notice to potential Class Members, providing potential Class Members with an opportunity either to exclude themselves from the Class or to object to the proposed settlement, and issuing related Orders.

WHEREAS, the Court also preliminarily certified a Class, for settlement purposes only, approved the procedure for giving notice and forms of notice, and set a Fairness Hearing to take place on \_\_\_\_\_, 2023. On that date, the Court held a duly noticed Fairness Hearing to consider: (1) whether the terms and conditions of the Agreement are fair, reasonable, and adequate; (2) whether a judgment should be entered dismissing Plaintiffs’ complaint on the merits and with prejudice in favor of Defendants and the Released Parties and against all persons

who are Class Members pursuant and subject to the terms of the Agreement; (3) whether and in what amount to award incentive awards to Plaintiffs; and (4) whether and in what amount to award attorneys' fees and expenses to Plaintiffs' Counsel.

WHEREAS, the Court, having considered the papers submitted by the Parties and by all other persons who timely submitted papers in accordance with the Preliminary Approval Order, and having heard oral presentations by the Parties and all persons who complied with the Preliminary Approval Order, and based on all of the foregoing, together with this Court's familiarity with the Action, it is hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

1. Use of Capitalized Terms. Except where otherwise noted, all capitalized terms used in this Final Order Approving Class Action Settlement shall have the meanings attributed to them in the Agreement.

2. Incorporation of Other Documents. This Final Order Approving Class Action Settlement incorporates and makes a part hereof: (a) the Agreement, including all amendments and exhibits thereto, and definitions included therein, which was signed and filed with this Court on December 19, 2022; (b) the briefs, affidavits, declarations, and other materials filed in support of the Settlement and Plaintiffs' Counsel's request for a Fee Award; (c) the record at the Fairness Hearing; (d) the documents listed on the docket sheet or otherwise submitted to the Court; and (e) all prior proceedings in the Action.

3. Jurisdiction. The Court has personal jurisdiction over the Parties, and because due, adequate, and practicable notice has been disseminated and all potential Class Members have been given the opportunity to exclude themselves from or object to this Settlement, the Court has personal jurisdiction over all Class Members (as defined below and in the Agreement).

The Court has subject matter jurisdiction over the claims asserted in the Action pursuant to 28 U.S.C. §§ 1332 and 1367, including, without limitation, jurisdiction to approve the proposed Settlement and the Agreement and all exhibits attached thereto, grant final certification of the Class for settlement purposes, settle and release all claims arising out of the transactions alleged in this Action, dismiss the Action on the merits and with prejudice, and issue related orders. The Court finds that venue is proper in this district pursuant to 28 U.S.C. § 1391.

4. Final Class Certification for Settlement Purposes Only. The Class preliminarily certified by this Court is hereby finally certified, for settlement purposes only, under Fed. R. Civ. P. 23(a) and (b)(3), the Court finding that the Settlement Class fully satisfies all the applicable requirements of Fed. R. Civ. P. 23 and due process. The Settlement Class shall consist of all persons in the United States and United States Territories who purchased one or more of the Class Products during the Class Period. Specifically excluded from the Class are: (a) Defendants, their employees, principals, officers, directors, agents, affiliated entities legal representatives, successors, and assigns; (b) the judges to whom the Action has been or is assigned and any members of their immediate families; and (c) all persons who have filed a timely Request for Exclusion from the Class. The “Class Products” at issue in the Settlement are Bed Tech-brand HR Platform bed frames bearing the Model Nos. HR33, HR33XL, HR46, HR50, HR60, or HR66.

5. Requests for Exclusion. The Court finds that only those persons listed in Exhibit A to this Order have submitted timely and valid Requests for Exclusion from the Class and are therefore not bound by this Final Order and the accompanying Final Judgment. Plaintiffs’ Counsel and Defendants’ Counsel may mutually agree to allow additional Class Members to

exclude themselves or to withdraw their exclusion requests by filing an appropriate notice with the Court.

6. Adequacy of Representation. The Court designates Plaintiffs as representatives of the Class, and finds that these Plaintiffs have adequately represented the Class for purposes of entering into and implementing the Agreement. The Court appoints the law firm of Bursor & Fisher, P.A. as counsel for the Class (“Plaintiffs’ Counsel”). For purposes of these settlement approval proceedings only, the Court finds that Bursor & Fisher, P.A. is experienced and adequate Plaintiffs’ Counsel. Plaintiffs and Plaintiffs’ Counsel have satisfied the requirements of Fed. R. Civ. P. 23(a)(4) and 23(g).

7. Class Notice. The Court finds that the dissemination of the Class Notice in accordance with the terms of the Agreement and this Court’s Preliminary Approval Order, as described in the Settlement Administrator’s Declaration filed before the Fairness Hearing, a copy of which is incorporated herein and made a part hereof:

- a. constituted the best practicable notice to Class Members under the circumstances of the Action;
- b. constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of (i) the pendency of this class action; (ii) the terms of the proposed Settlement; (iii) their rights under the proposed Settlement; (iv) their right to exclude themselves from the Class and the proposed Settlement; (v) their right to object to any aspect of the proposed Settlement (including, but not limited to, final certification of the Class, the fairness, reasonableness or adequacy of the proposed Settlement, the adequacy of the Class’ representation by Plaintiffs or Plaintiffs’ Counsel, and/or the award of attorneys’ fees and expenses and representative awards); (vi) their right to appear at the Fairness Hearing—either on

their own or through counsel hired at their own expense—if they did not exclude themselves from the Class; and (vii) the binding effect of the Orders and Final Judgment in this Action, whether favorable or unfavorable, on all persons who did not request exclusion from the Class;

c. constituted notice that was reasonable, due, adequate, and sufficient to inform all persons and entities entitled to be provided with notice; and

d. constituted notice that fully satisfied all applicable requirements of the Federal Rules of Civil Procedure, including Rule 23(c)(2) and (e) of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Rules of this Court, and any other applicable law, and that complied with the Federal Judicial Center’s illustrative class action notices.

8. CAFA Notice. The Court finds that Defendants (through the Claims Administrator) provided notice of the proposed Settlement to the appropriate state and federal government officials pursuant to 28 U.S.C. § 1715. Furthermore, the Court has given the appropriate state and federal government officials the requisite ninety (90) day time period (pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715(d)) to comment or object to the proposed settlement before entering its Orders and Final Judgment, and no such objections or comments were received.

9. Final Settlement Approval. The terms and provisions of the Agreement, including any and all amendments and exhibits, have been entered into in good faith and are hereby fully and finally approved as fair, reasonable, and adequate as to, and in the best interests of, each of the Parties and the Class Members, and in full compliance with all applicable requirements of the Federal Rules of Civil Procedure, CAFA, the United States Constitution (including the Due Process Clause), and any other applicable law.

The Court finds that the Agreement is fair, adequate, and reasonable based on the following factors, among other things:

a. There was no fraud or collusion underlying this Settlement, and it was reached as a result of extensive arm's-length negotiations, occurring over the course of several months. This included a mediation before Hon. Frank Maas (Ret.) of JAMS New York on May 11, 2022. *See, e.g., Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) (“A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery.”).

b. The complexity, expense, and likely duration of the litigation favor settlement—which provides meaningful benefits on a much shorter time frame than otherwise possible—on behalf of the Settlement Class. *See, e.g., Pearlstein v. BlackBerry Ltd.*, 2022 WL 4554858, at \*3 (S.D.N.Y. Sept. 29, 2022) (“[C]lass action suits readily lend themselves to compromise because of the difficulties of proof, the uncertainties of the outcome, and the typical length of the litigation.”); *McLaughlin v. IDT Energy*, 2018 WL 3642627, at \*10 (E.D.N.Y. July 30, 2018) (finding the first complexity of the action weighed in favor of settlement approval where “the parties would likely need to brief motions for class certification, summary judgment, and potentially proceed to trial”). Based on the stage of the proceedings and the amount of investigation and discovery completed, the parties had developed a sufficient factual record to evaluate their chances of success at trial and the proposed settlement.

c. The support of Plaintiffs' Counsel, who are highly skilled in class action litigation such as this, and the Plaintiffs, who have participated in this litigation and evaluated the proposed settlement, also favors final approval. *In re GSE Bonds Antitrust Litig.*, 414 F. Supp.

3d 686, 693 (S.D.N.Y. 2019) (“If a class settlement is reached through arm’s-length negotiations between experienced, capable counsel knowledgeable in complex class litigation, the Settlement will enjoy a presumption of fairness.”).

d. The Settlement provides meaningful relief to the Class, including cash relief, and injunctive relief, and certainly falls within the range of possible recoveries by the Class.

The Settlement is approved [and all objections to the Settlement are overruled as without merit]. The Parties and Class Members are hereby directed to implement and consummate the Agreement in accordance with its terms and provisions. Plaintiffs’ Counsel shall take all steps necessary and appropriate to provide Class Members with the benefits to which they are entitled under the terms of the Agreement.

10. Settlement Consideration. As described in the Agreement, Defendant’s maximum financial commitment under the Settlement shall be four million nine-hundred thousand dollars and zero cents (\$4,900,000.00) (the “Settlement Sum”). This amount includes only refunds or gift cards paid to Settlement Class Members. It does not include any Court-ordered Fees Award, Plaintiffs’ incentive awards, any and all Settlement Administration Expenses, and the monetary value of all cash awards paid to Class Members. Compensation to Settlement Class Members under the Settlement shall be administered and implemented by \_\_\_\_\_ under the terms set forth in the Agreement. All Settlement Class Members who do not return their Class Product shall receive an extended warranty for their Class Product from the later of two years from the end of their standard warranty or two years from the effective date. Settlement Class Members

who wish to receive a refund shall have two years from the end of the effective date to return their Class Product to a Mattress Firm store.

11. Binding Effect. The terms of the Agreement and of this Final Order and the accompanying Final Judgment shall be forever binding on the Parties and all Class Members, as well as their heirs, guardians, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in interest, and assigns, and those terms shall have *res judicata* and other preclusive effect in all pending and future claims, lawsuits or other proceedings maintained by or on behalf of any such persons, to the extent those claims, lawsuits or other proceedings involve matters that were or could have been raised in the Action or are otherwise encompassed by the Release set forth in the Agreement.

12. Release. The following Release, which is also set forth in Section VI of the Agreement, is expressly incorporated herein in all respects, including all defined terms used therein, is effective as of the date of this Final Order and the accompanying Final Judgment, and forever discharges the Released Parties from any claims or liabilities arising from or related to the Release:

a. Upon the effective date of the release contained in this paragraph, the Class Representatives each waive or are deemed to have waived on their own behalf only the provisions, rights and benefits of California Civil Code section 1542 (and equivalent, comparable, or analogous provisions of the laws of the United States of America or any state or territory thereof, or of the common law or civil law). Section 1542 provides that:

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.



b. In connection with such waiver and relinquishment, the Releasing Parties hereby acknowledge that they are aware that they or their attorneys may hereafter discover claims or facts in addition to or different from those that they now know or believe exist with respect to Released Claims, but that it is their intention to hereby fully, finally, and forever settle and release all of the Released Claims, whether known or unknown, suspected or unsuspected, that they have against the Released Parties. In furtherance of such intention, the Release herein given by the Releasing Parties shall be and remain in effect as a full and complete general release notwithstanding the discovery or existence of any such additional different claims or facts. Each of the Releasing Parties expressly acknowledges that he/she/it has been advised by its attorney of the contents and effect of Section 1542, and with knowledge, each of the Parties hereby expressly waives whatever benefits he/she/it may have had pursuant to such section. Plaintiffs and Class Members are not releasing any claims for personal injuries. Plaintiffs acknowledge, and the Class Members shall be deemed by operation of the Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for and constitutes a material element of the Settlement of which this Release is a part. This release shall not be construed in any way to release claims for personal injury or damage to property other than the Class Product itself.

13. Permanent Injunction. All Class Members and/or their representatives who have not been timely excluded from the Class are hereby permanently barred and enjoined from bringing, filing, commencing, prosecuting, maintaining, intervening in, participating in, continuing or receiving any benefits from, as class members or otherwise, any lawsuit (including putative class actions), arbitration, administrative, regulatory or other proceeding in any jurisdiction that is covered by the Release. All Class Members and all persons in active concert

or participation with Class Members are permanently barred and enjoined from organizing or soliciting the participation of any Class Members who did not timely exclude themselves from the Class into a separate class or group for purposes of pursuing a putative class action, any claim or lawsuit in any jurisdiction that is covered by the Release. Pursuant to 28 U.S.C. §§ 1651(a) and 2283, the Court finds that issuance of this permanent injunction is necessary and appropriate in aid of the Court's continuing jurisdiction and authority over the Action. However, Class Members do not waive their right to contact, in any way or for any purpose, any state or federal agency regarding the activities of any Party, nor do they waive any right to enjoy any benefits obtained by a state or federal agency.

14. Enforcement of Settlement. Nothing in this Final Order or in the accompanying Final Judgment shall preclude any action to enforce the terms of the Agreement; nor shall anything in this Final Order or in the accompanying Final Judgment preclude Plaintiffs or other Class Members from participating in the claims process described in the Agreement if they are entitled to do so under the terms of the Agreement.

15. Attorneys' Fees and Expenses and Plaintiffs' Incentive Awards. The Court is concurrently issuing a separate Order with respect to the Fee Award and the incentive awards to the representative Plaintiffs, entitled Final Order Approving Attorneys' Fees and Expenses and Incentive Awards.

16. Modification of Settlement Agreement. The Parties are hereby authorized, without needing further approval from the Court, to agree to written amendments, modifications, or expansions of the Agreement and its implementing documents (including all exhibits) without further notice to the Class or approval by the Court if such changes are consistent with this Final

Order and the accompanying Final Judgment and do not materially alter, reduce, or limit the rights of Class Members under the Agreement.

17. Retention of Jurisdiction. The Court has jurisdiction to enter this Final Order, the Final Order Approving Attorneys' Fees and Expenses and Incentive Awards, and the accompanying Final Judgment. Without in any way affecting the finality of these Final Orders and/or the accompanying Final Judgment, this Court expressly retains jurisdiction as to all matters relating to the administration, consummation, enforcement, and interpretation of the Agreement, and of these Final Orders and the accompanying Final Judgment, and for any other necessary purpose, including, without limitation (*see Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 381-82 (1994)):

a. enforcing the terms and conditions of the Agreement and resolving any disputes, claims or causes of action that, in whole or in part, are related to or arise out of the Agreement, this Final Order, the Final Order Approving Attorneys' Fees and Expenses and Incentive Awards, or the accompanying Final Judgment (including, without limitation, whether a person or entity is or is not a Class Member; and whether claims or causes of action allegedly related to this case are or are not barred by this Final Order and the accompanying Final Judgment; and whether persons or entities are enjoined from pursuing any claims against Defendant);

b. entering such additional Orders, if any, as may be necessary or appropriate to protect or effectuate this Final Order, the Final Order Approving Attorneys' Fees and Expenses and Incentive Awards, the accompanying Final Judgment, and the Agreement (including, without limitation, orders enjoining persons or entities from pursuing any claims against Defendant), or dismissing all claims on the merits and with prejudice, and permanently

enjoining Class Members from initiating or pursuing related proceedings, or to ensure the fair and orderly administration of this settlement; and

c. entering any other necessary or appropriate Orders to protect and effectuate this Court's retention of continuing jurisdiction; provided, however, that nothing in this paragraph is intended to restrict the ability of the Parties to exercise their rights as provided in the Agreement.

18. No Admissions. Neither this Final Order, the accompanying Final Judgment, nor the Agreement (nor any other document referred to herein, nor any action taken to carry out this Final Order or the accompanying Final Judgment) is, may be construed as, or may be used as an admission or concession by or against Defendants or the Released Parties of the validity of any claim or defense or any actual or potential fault, wrongdoing, or liability whatsoever or the propriety of class certification. Defendants continue to deny that the Action meets the requisites for class certification under Fed. R. Civ. P. 23 for any purpose other than settlement. Entering into or carrying out the Agreement, and any negotiations or proceedings related to it, shall not in any event be construed as, or deemed evidence of, an admission or concession as to Defendants' denials or defenses and shall not be offered or received in evidence in any action or proceeding against any Party hereto in any court, administrative agency, or other tribunal for any purpose whatsoever, except as evidence of the Settlement or to enforce the provisions of this Final Order and the accompanying Final Judgment and the Settlement Agreement; provided, however, that this Final Order, the accompanying Final Judgment, and the Agreement may be filed in any action by or against Defendants or Released Parties to support a defense of *res judicata* or collateral estoppel.

19. Dismissal of Action. The Action (including all individual and Class claims presented therein) are hereby dismissed on the merits and with prejudice, without fees or costs to any Party except as otherwise provided in this Final Order, the Final Order Approving Attorneys' Fees and Expenses and Incentive Awards, the accompanying Final Judgment, and the Agreement.

20. Occurrence of Terminating Conditions. In the event that the Effective Date does not occur, certification shall be automatically vacated and this Final Order, the Final Order Approving Attorneys' Fees and Expenses and Incentive Awards, and the accompanying Final Judgment, and all other orders entered and releases delivered in connection herewith, shall be vacated and shall become null and void.

DATED: \_\_\_\_\_

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HON. VINCENT L. BRICCETTI  
UNITED STATES DISTRICT JUDGE



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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ANTONIO PAYERO and ADAM MALDONADO,

Plaintiffs,

-vs- 7:21-CV-03061 (VB)  
BENCH RULING

MATTRESS FIRM, INC.,

Defendant.

-----x

United States Courthouse  
White Plains, New York

Friday, January 28, 2022  
10:15 a.m.

B e f o r e:

HONORABLE VINCENT L. BRICCETTI,  
District Judge

A P P E A R A N C E S:

BURSOR & FISHER, P.A.  
Attorneys for Plaintiff  
BY: MAX S. ROBERTS, ESQ.  
JULIAN C. DIAMOND, ESQ.

CAMPBELL, CONROY & O'NEIL  
Attorneys for Defendant  
BY: JOHN ANGELONI, ESQ.

1 future that would affect that, including, for example, that  
2 you're not ready for a conference and you need more time to  
3 complete whatever discovery you need to complete before making a  
4 motion. Or here's another thought, you're trying to work out a  
5 settlement, which I'm going to talk about in a second, so  
6 there's a lot of reasons why we wouldn't do a conference at all  
7 on that date or we would do it remotely.

8 I hate remote conferences with a passion, I hate it,  
9 and I know there are some lawyers who like it, there's a lot of  
10 lawyers who also hate it because they feel it's not really the  
11 best way to do business, that the traditional way of doing  
12 business is in the courtroom and in the hallway outside of the  
13 courtroom, which was important as well, worked much better,  
14 so...initial conferences I'm doing, you know, by telephone  
15 conference, but pretty much anything else I'm doing in person  
16 unless there's a really good reason not to.

17 Okay, that's the plan.

18 And I know that other judges feel differently about  
19 it, but I don't care, so there you go.

20 All right, let's see, what else? Oh, settlement.

21 So, you know, these cases often resolve by settlement,  
22 not always, but often, so my first question is has there been  
23 any effort to try and settle this dispute, so I guess I'll ask  
24 Mr. Roberts that.

25 MR. ROBERTS: The answer is yes, your Honor. I think



1 all parties, including -- I guess they're not a party yet, but  
2 Global Home Imports, have expressed interest in attempting to  
3 resolve this action and we've begun settlement negotiations. I  
4 wouldn't say that they're very far along, obviously, you know,  
5 they've only been taking place since the Court ruled on the  
6 motion to dismiss, but we have gotten the ball rolling and we're  
7 seeing if there's something that we can do.

8 THE COURT: All right, well, that's music to my ears.

9 I want to add a line in the scheduling order giving  
10 you a date to submit a joint status report regarding your  
11 efforts to settle the case, but I would be guessing as to  
12 exactly -- or I would be guessing as to what a good date would  
13 be, so, you know, I'm not going to see you again until December.  
14 You've got other things going on, of course, during the interim  
15 and...you know, which is fine, of course.

16 So what do you think would be a good deadline for a  
17 status report on the efforts to settle this case? Three months  
18 from now, four months from now? I mean, give me a number which  
19 you think is a fair and reasonable time frame.

20 Mr. Roberts, I'll start with you.

21 MR. ROBERTS: I think three or four months would be  
22 fine, your Honor. April 2022 or May 2022, either is fine with  
23 us.

24 THE COURT: All right.

25 And, Mr. Angeloni, what about you?

1 bit of a dip in 2020 obviously, but 2021 it came roaring back.  
2 Anyway, it's a busy place, got a lot going on, we're just --  
3 like everybody else, we're trying to dig out in terms of trials  
4 and backlog and whatnot. All of that is another way of saying  
5 that we will do anything we possibly can to assist parties, and  
6 lawyers in particular, with settlement, such as referring you to  
7 a magistrate judge if that's what you think would be useful or  
8 referring you to our mediator from our pro bono mediation panel.  
9 Of course, I can leave you to your own discussions, and  
10 sometimes in these kinds of cases, parties go to private  
11 mediation. All of that is great, but I just want you to know  
12 that I will do anything I can to help, so don't be afraid to  
13 ask. That's really my point. Okay?

14 All right, I get it, I know what the case is about.  
15 You know, you buy a bed frame allegedly and it folds into itself  
16 and therefore, it's not really what you expected it to be, and  
17 more specifically it's inconsistent or there's no notice given  
18 by the manufacturer or the retailer that this could happen.

19 You know, the word 'recall,' I know that there's a lot  
20 of argument between you folks about the word 'recall,' it  
21 doesn't feel exactly like a recall. I mean, I think I know what  
22 a recall is because I get these notices all the time. You know,  
23 for my car, you gotta bring it in and replace the x, y, z widget  
24 and such-and-such valve whatever, bring it on in and we'll do it  
25 for free. That sounds like a recall. That's not really what

1 happened here. What happened was, you know, it didn't say  
2 anything about giving you your money back if you bring in the  
3 bed frame or bring it in and we'll fix it for you, it says,  
4 yeah, contact the manufacturer and they'll send you some clips  
5 that you can -- if you're handy, you can fix it yourself, so, I  
6 don't know, the word 'recall' doesn't seem to quite fit that,  
7 but I'm not sure that it really matters one way or the other.

8 Is there anything else that we need to do today?

9 Mr. Roberts?

10 MR. ROBERTS: No, your Honor. Thank you for your time  
11 and consideration on this matter.

12 THE COURT: No problem.

13 And, Mr. Angeloni, anything further?

14 MR. ANGELONI: No, your Honor, we're all set. Thank  
15 you for your time.

16 THE COURT: All right. Just -- I cannot emphasize  
17 enough that if there's something I can do or the Court generally  
18 can do to assist with settlement, please let me know because we  
19 will do it and we will be creative and...anyway, we're here to  
20 help.

21 All right, thank you, all. Have a good day. Stay  
22 safe. If you need me, you know where to find me. We're  
23 adjourned.

24 MR. ROBERTS: Thank you, Judge. Have a good one.

25 Certified to be a true and accurate transcript.

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*Tabitha Dente*

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TABITHA DENTE, SR. COURT REPORTER





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## **FIRM RESUME**

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

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

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

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

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

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

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

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



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

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

68. *D'Amario v. The University of Tampa*, (S.D.N.Y. June 3, 2022) to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by The University of Tampa due to the novel coronavirus, COVID-19,
69. *Fittipaldi v. Monmouth University*, (D.N.J. Sept. 22, 2022) to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by Monmouth University due to the novel coronavirus, COVID-19,
70. *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.

### **SCOTT A. BURSOR**

Mr. Bursor has an active civil trial practice, having won multi-million verdicts or recoveries in six of six civil jury trials since 2008. Mr. Bursor's most recent victory came in May 2019 in *Perez v. Rash Curtis & Associates*, in which Mr. Bursor served as lead trial counsel and won a \$267 million jury verdict against a debt collector for violations of the Telephone Consumer Protection Act (TCPA).

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

In *Thomas v. Global Vision Products, Inc.* (2009), the jury returned a \$50 million verdict in favor of the plaintiff and class represented by Mr. Bursor. The legal trade publication VerdictSearch reported that this was the second largest jury verdict in California in 2009.

Class actions are rarely tried to verdict. Other than Mr. Bursor and his partner Mr. Fisher, we know of no lawyer that has tried more than one class action to a jury. Mr. Bursor's perfect record of six wins in six class action jury trials, with recoveries ranging from \$21 million to \$299 million, is unmatched by any other lawyer. Each of these victories was hard-fought against top trial lawyers from the biggest law firms in the United States.

Mr. Bursor graduated from the University of Texas Law School in 1996. He served as Articles Editor of the Texas Law Review, and was a member of the Board of Advocates and Order of the Coif. Prior to starting his own practice, Mr. Bursor was a litigation associate at a large New York based law firm where he represented telecommunications, pharmaceutical, and technology companies in commercial litigation.

Mr. Bursor is a member of the state bars of New York, Florida, and California, as well as the bars of the United States Court of Appeals for the Second, Third, Fourth, Sixth, Ninth and Eleventh Circuits, and the bars of the United States District Courts for the Southern and Eastern Districts of New York, the Northern, Central, Southern and Eastern Districts of California, the Southern and Middle Districts of Florida, and the Eastern District of Michigan.

### Representative Cases

Mr. Bursor was appointed lead or co-lead class counsel to the largest, 2nd largest, and 3rd largest classes ever certified. Mr. Bursor has represented classes including more than 160 million class members, roughly 1 of every 2 Americans. Listed below are recent cases that are representative of Mr. Bursor's practice:

Mr. Bursor negotiated and obtained court-approval for two landmark settlements in *Nguyen v. Verizon Wireless* and *Zill v. Sprint Spectrum* (the largest and 2nd largest classes ever certified). These settlements required Verizon and Sprint to open their wireless networks to third-party devices and applications. These settlements are believed to be the most significant legal development affecting the telecommunications industry since 1968, when the FCC's Carterfone decision similarly opened up AT&T's wireline telephone network.

Mr. Bursor was the lead trial lawyer in *Ayyad v. Sprint Spectrum, L.P.* representing a class of approximately 2 million California consumers who were charged an early termination fee under a Sprint cellphone contract, asserting claims that such fees were unlawful liquidated damages under the California Civil Code, as well as other statutory and common law claims. After a five-week combined bench-and-jury trial, the jury returned a verdict in June 2008 and the Court issued a Statement of Decision in December 2008 awarding the plaintiffs \$299 million in cash and debt cancellation. Mr. Bursor served as lead trial counsel for this class again in 2013 during a month-long jury trial in which Sprint asserted a \$1.06 billion counterclaim against the class. Mr. Bursor secured a verdict awarding Sprint only \$18.4 million, the exact amount calculated by the class's damages expert. This award was less than 2% of the damages Sprint sought, less than 6% of the amount of the illegal termination fees Sprint charged to class members. In December 2016, after more than 13 years of litigation, the case was settled for \$304 million, including \$79 million in cash payments plus \$225 million in debt cancellation.

Mr. Bursor was the lead trial lawyer in *White v. Cellco Partnership d/b/a Verizon Wireless* representing a class of approximately 1.4 million California consumers who were charged an early termination fee under a Verizon cellphone contract, asserting claims that such fees were unlawful liquidated damages under the California Civil Code, as well as other statutory and common law claims. In July 2008, after Mr. Bursor presented plaintiffs' case-in-chief, rested, then cross-examined Verizon's principal trial witness, Verizon agreed to settle the case for a \$21 million cash payment and an injunction restricting Verizon's ability to impose early termination fees in future subscriber agreements.

Mr. Bursor was the lead trial lawyer in *Thomas v. Global Visions Products Inc.* Mr. Bursor represented a class of approximately 150,000 California consumers who had purchased the Avacor® hair regrowth system. In January 2008, after a four-week combined bench-and-jury trial. Mr. Bursor obtained a \$37 million verdict for the class, which the Court later increased to \$40 million.

Mr. Bursor was appointed class counsel and was elected chair of the Official Creditors' Committee in *In re Nutraquest Inc.*, a Chapter 11 bankruptcy case before Chief Judge Garrett E. Brown, Jr. (D.N.J.) involving 390 ephedra-related personal injury and/or wrongful death claims, two consumer class actions, four enforcement actions by governmental agencies, and multiple

adversary proceedings related to the Chapter 11 case. Working closely with counsel for all parties and with two mediators, Judge Nicholas Politan (Ret.) and Judge Marina Corodemus (Ret.), the committee chaired by Mr. Bursor was able to settle or otherwise resolve every claim and reach a fully consensual Chapter 11 plan of reorganization, which Chief Judge Brown approved in late 2006. This settlement included a \$12.8 million recovery to a nationwide class of consumers who alleged they were defrauded in connection with the purchase of Xenadrine® dietary supplement products.

Mr. Bursor was the lead trial lawyer in *In re: Pacific Bell Late Fee Litigation*. After filing the first class action challenging Pac Bell's late fees in April 2010, winning a contested motion to certify a statewide California class in January 2012, and defeating Pac Bell's motion for summary judgment in February 2013, Mr. Bursor obtained final approval of the \$38 million class settlement. The settlement, which Mr. Bursor negotiated the night before opening statements were scheduled to commence, included a \$20 million cash payment to provide refunds to California customers who paid late fees on their Pac Bell wireline telephone accounts, and an injunction that reduced other late fee charges by \$18.6 million.

#### **L. TIMOTHY FISHER**

L. Timothy Fisher has an active practice in consumer class actions and complex business litigation and has also successfully handled a large number of civil appeals.

Mr. Fisher has been actively involved in numerous cases that resulted in multi-million dollar recoveries for consumers and investors. Mr. Fisher has handled cases involving a wide range of issues including nutritional labeling, health care, telecommunications, corporate governance, unfair business practices and consumer fraud. With his partner Scott A. Bursor, Mr. Fisher has tried five class action jury trials, all of which produced successful results. In *Thomas v. Global Vision Products*, Mr. Fisher obtained a jury award of \$50,024,611 — the largest class action award in California in 2009 and the second-largest jury award of any kind. In 2019, Mr. Fisher served as trial counsel with Mr. Bursor and his partner Yeremey Krivoshey in *Perez v. Rash Curtis & Associates*, where the jury returned a verdict for \$267 million in statutory damages under the Telephone Consumer Protection Act.

Mr. Fisher was admitted to the State Bar of California in 1997. He is also a member of the bars of the United States Court of Appeals for the Ninth Circuit, the United States District Courts for the Northern, Central, Southern and Eastern Districts of California, the Northern District of Illinois, the Eastern District of Michigan, and the Eastern District of Missouri. Mr. Fisher taught appellate advocacy at John F. Kennedy University School of Law in 2003 and 2004. In 2010, he contributed jury instructions, a verdict form and comments to the consumer protection chapter of Justice Elizabeth A. Baron's *California Civil Jury Instruction Companion Handbook* (West 2010). In January 2014, Chief Judge Claudia Wilken of the United States District Court for the Northern District of California appointed Mr. Fisher to a four-year term as a member of the Court's Standing Committee on Professional Conduct.

Mr. Fisher received his Juris Doctor from Boalt Hall at the University of California at Berkeley in 1997. While in law school, he was an active member of the Moot Court Board and



participated in moot court competitions throughout the United States. In 1994, Mr. Fisher received an award for Best Oral Argument in the first-year moot court competition.

In 1992, Mr. Fisher graduated with highest honors from the University of California at Berkeley and received a degree in political science. Prior to graduation, he authored an honors thesis for Professor Bruce Cain entitled “The Role of Minorities on the Los Angeles City Council.” He is also a member of Phi Beta Kappa.

### **Representative Cases**

*Thomas v. Global Vision Products, Inc.* (Alameda County Superior Court). Mr. Fisher litigated claims against Global Vision Products, Inc. and other individuals in connection with the sale and marketing of a purported hair loss remedy known as Avacor. The case lasted more than seven years and involved two trials. The first trial resulted in a verdict for plaintiff and the class in the amount of \$40,000,000. The second trial resulted in a jury verdict of \$50,024,611, which led to a \$30 million settlement for the class.

*In re Cellphone Termination Fee Cases - Handset Locking Actions* (Alameda County Superior Court). Mr. Fisher actively worked on five coordinated cases challenging the secret locking of cell phone handsets by major wireless carriers to prevent consumers from activating them on competitive carriers’ systems. Settlements have been approved in all five cases on terms that require the cell phone carriers to disclose their handset locks to consumers and to provide unlocking codes nationwide on reasonable terms and conditions. The settlements fundamentally changed the landscape for cell phone consumers regarding the locking and unlocking of cell phone handsets.

*In re Cellphone Termination Fee Cases - Early Termination Fee Cases* (Alameda County Superior Court and Federal Communications Commission). In separate cases that are a part of the same coordinated litigation as the Handset Locking Actions, Mr. Fisher actively worked on claims challenging the validity under California law of early termination fees imposed by national cell phone carriers. In one of those cases, against Verizon Wireless, a nationwide settlement was reached after three weeks of trial in the amount of \$21 million. In a second case, which was tried to verdict, the Court held after trial that the \$73 million of flat early termination fees that Sprint had collected from California consumers over an eight-year period were void and unenforceable.

### **Selected Published Decisions**

*Melgar v. Zicam LLC*, 2016 WL 1267870 (E.D. Cal. Mar. 30, 2016) (certifying 10-jurisdiction class of purchasers of cold remedies, denying motion for summary judgment, and denying motions to exclude plaintiff’s expert witnesses).

*Salazar v. Honest Tea, Inc.*, 2015 WL 7017050 (E.D. Cal. Nov. 12, 2015) (denying motion for summary judgment).

*Dei Rossi v. Whirlpool Corp.*, 2015 WL 1932484 (E.D. Cal. Apr. 27, 2015) (certifying California class of purchasers of refrigerators that were mislabeled as Energy Star qualified).

*Bayol v. Zipcar, Inc.*, 78 F.Supp.3d 1252 (N.D. Cal. 2015) (denying motion to dismiss claims alleging unlawful late fees under California Civil Code § 1671).

*Forcellati v. Hyland's, Inc.*, 2015 WL 9685557 (C.D. Cal. Jan. 12, 2015) (denying motion for summary judgment in case alleging false advertising of homeopathic cold and flu remedies for children).

*Bayol v. Zipcar, Inc.*, 2014 WL 4793935 (N.D. Cal. Sept. 25, 2014) (denying motion to transfer venue pursuant to a forum selection clause).

*Forcellati v. Hyland's Inc.*, 2014 WL 1410264 (C.D. Cal. Apr. 9, 2014) (certifying nationwide class of purchasers of homeopathic cold and flu remedies for children).

*Hendricks v. StarKist Co.*, 30 F.Supp.3d 917 (N.D. Cal. 2014) (denying motion to dismiss in case alleging underfilling of 5-ounce cans of tuna).

*Dei Rossi v. Whirlpool Corp.*, 2013 WL 5781673 (E.D. Cal. October 25, 2013) (denying motion to dismiss in case alleging that certain KitchenAid refrigerators were misrepresented as Energy Star qualified).

*Forcellati v. Hyland's Inc.*, 876 F.Supp.2d 1155 (C.D. Cal. 2012) (denying motion to dismiss complaint alleging false advertising regarding homeopathic cold and flu remedies for children).

*Clerkin v. MyLife.com*, 2011 WL 3809912 (N.D. Cal. August 29, 2011) (denying defendants' motion to dismiss in case alleging false and misleading advertising by a social networking company).

*In re Cellphone Termination Fee Cases*, 186 Cal.App.4th 1380 (2010) (affirming order approving \$21 million class action settlement).

*Gatton v. T-Mobile USA, Inc.*, 152 Cal.App.4th 571 (2007) (affirming order denying motion to compel arbitration).

#### **Selected Class Settlements**

*Melgar v. Zicam* (Eastern District of California) - \$16 million class settlement of claims alleging cold medicine was ineffective.

*Gastelum v. Frontier California Inc.* (San Francisco Superior Court) - \$10.9 million class action settlement of claims alleging that a residential landline service provider charged unlawful late fees.

*West v. California Service Bureau, Inc.* (Northern District of California) - \$4.1 million class settlement of claims under the Telephone Consumer Protection Act.

*Gregorio v. Premier Nutrition Corp.* (Southern District of New York) - \$9 million class settlement of false advertising claims against protein shake manufacturer.

*Morris v. SolarCity Corp.* (Northern District of California) - \$15 million class settlement of claims under the Telephone Consumer Protection Act.

*Retta v. Millennium Products, Inc.* (Central District of California) - \$8.25 million settlement to resolve claims of bottled tea purchasers for alleged false advertising.

*Forcellati v. Hyland's* (Central District of California) – nationwide class action settlement providing full refunds to purchasers of homeopathic cold and flu remedies for children.

*Dei Rossi v. Whirlpool* (Eastern District of California) – class action settlement providing \$55 cash payments to purchasers of certain KitchenAid refrigerators that allegedly mislabeled as Energy Star qualified.

*In Re NVIDIA GTX 970 Graphics Chip Litigation* (Northern District of California) - \$4.5 million class action settlement of claims alleging that a computer graphics card was sold with false and misleading representations concerning its specifications and performance.

*Hendricks v. StarKist Co.* (Northern District of California) – \$12 million class action settlement of claims alleging that 5-ounce cans of tuna were underfilled.

*In re Zakskorn v. American Honda Motor Co. Honda* (Eastern District of California) – nationwide settlement providing for brake pad replacement and reimbursement of out-of-pocket expenses in case alleging defective brake pads on Honda Civic vehicles manufactured between 2006 and 2011.

*Correa v. Sensa Products, LLC* (Los Angeles Superior Court) - \$9 million settlement on behalf of purchasers of the Sensa weight loss product.

*In re Pacific Bell Late Fee Litigation* (Contra Costa County Superior Court) - \$38.6 million settlement on behalf of Pac Bell customers who paid an allegedly unlawful late payment charge.

*In re Haier Freezer Consumer Litigation* (Northern District of California) - \$4 million settlement, which provided for cash payments of between \$50 and \$325.80 to class members who purchased the Haier HNCM070E chest freezer.

*Thomas v. Global Vision Products, Inc.* (Alameda County Superior Court) - \$30 million settlement on behalf of a class of purchasers of a hair loss remedy.

*Guyette v. Viacom, Inc.* (Alameda County Superior Court) - \$13 million settlement for a class of cable television subscribers who alleged that the defendant had improperly failed to share certain tax refunds with its subscribers.

### **JOSEPH I. MARCHESE**

Joseph I. Marchese is a Partner with Bursor & Fisher, P.A. Joe focuses his practice on consumer class actions, employment law disputes, and commercial litigation. He has represented corporate and individual clients in a wide array of civil litigation, and has substantial trial and appellate experience.

Joe has diverse experience in litigating and resolving consumer class actions involving claims of mislabeling, false or misleading advertising, privacy violations, data breach claims, and violations of the Servicemembers Civil Relief Act.

Joe also has significant experience in multidistrict litigation proceedings. Recently, he served on the Plaintiffs' Executive Committee in *In Re: Blue Buffalo Company, Ltd. Marketing*



*And Sales Practices Litigation*, MDL No. 2562, which resulted in a \$32 million consumer class settlement. Currently, he serves on the Plaintiffs' Steering Committee for Economic Reimbursement in *In Re: Valsartan Products Liability Litigation*, MDL No. 2875.

Joe is admitted to the State Bar of New York and is a member of the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, and the Eastern District of Michigan, as well as the United States Court of Appeals for the Second Circuit.

Joe graduated from Boston University School of Law in 2002 where he was a member of The Public Interest Law Journal. In 1998, Joe graduated with honors from Bucknell University.

**Selected Published Decisions:**

*Boelter v. Hearst Communications, Inc.*, 269 F. Supp. 3d 172 (S.D.N.Y. Sept. 7, 2017), granting plaintiff's motion for partial summary judgment on state privacy law violations in putative class action.

*Boelter v. Hearst Communications, Inc.*, 192 F. Supp. 3d 427 (S.D.N.Y. June 17, 2016), denying publisher's motion to dismiss its subscriber's allegations of state privacy law violations in putative class action.

*In re Scotts EZ Seed Litigation*, 304 F.R.D. 397 (S.D.N.Y. 2015), granting class certification of false advertising and other claims brought by New York and California purchasers of grass seed product.

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

*In re Michaels Stores Pin Pad Litigation*, 830 F. Supp. 2d 518 (N.D. Ill. 2011), denying retailer's motion to dismiss its customers' state law consumer protection and privacy claims in data breach putative class action.

**Selected Class Settlements:**

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

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

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

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

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

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

### **JOSHUA D. ARISOHN**

Joshua D. Arisohn is a Partner with Bursor & Fisher, P.A. Josh has litigated precedent-setting cases in the areas of consumer class actions and terrorism. He participated in the first ever trial to take place under the Anti-Terrorism Act, a statute that affords U.S. citizens the right to assert federal claims for injuries arising out of acts of international terrorism. Josh's practice continues to focus on terrorism-related matters as well as class actions.

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

Josh previously practiced at Dewey & LeBoeuf LLP and DLA Piper LLP. He graduated from Columbia University School of Law in 2006, where he was a Harlan Fiske Stone Scholar, and received his B.A. from Cornell University in 2002. Josh has been honored as a 2015, 2016 and 2017 Super Lawyer Rising Star.

### **Selected Published Decisions:**

*Fields v. Syrian Arab Republic*, Civil Case No. 18-1437 (RJL), entering a judgment of approximately \$850 million in favor of the family members of victims of terrorist attacks carried out by ISIS with the material support of Syria.

*Farwell v. Google LLC*, 2022 WL 1568361 (C.D. Ill. Mar. 31, 2022), denying social media defendant's motion to dismiss BIPA claims brought on behalf of Illinois school students using Google's Workspace for Education platform on laptop computers.

*Weiman v. Miami University*, Case No. 2020-00614JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

*Smith v. The Ohio State University*, Case No. 2020-00321JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

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

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

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

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

**Selected Class Settlements:**

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

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

**JOEL D. SMITH**

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

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

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

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

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

**Selected Published Decisions:**

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

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

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

**Selected Class Settlements:**

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

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

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

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

**NEAL J. DECKANT**

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

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

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

**Selected Published Decisions:**

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

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

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

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

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

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

**Selected Class Settlements:**

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

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

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

**Selected Publications:**

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

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

**YITZCHAK KOPEL**

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

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



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

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

**Selected Published Decisions:**

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

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

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

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

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

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

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

*Hart v. BHH, LLC*, 323 F. Supp. 3d 560 (S.D.N.Y. 2018), denying defendants' motion for summary judgment in certified class action involving the sale of ultrasonic pest repellents.

*Hart v. BHH, LLC*, 2018 WL 3471813 (S.D.N.Y. July 19, 2018), denying defendants' motion to exclude plaintiffs' expert in certified class action involving the sale of ultrasonic pest repellents.

*Penrose v. Buffalo Trace Distillery, Inc.*, 2018 WL 2334983 (E.D. Mo. Feb. 5, 2018), denying bourbon producers' motion to dismiss fraud and consumer protection claims in putative class action.

*West v. California Service Bureau, Inc.*, 323 F.R.D. 295 (N.D. Cal. 2017), certifying a nationwide class of “wrong-number” robocall recipients.

*Hart v. BHH, LLC*, 2017 WL 2912519 (S.D.N.Y. July 7, 2017), certifying nationwide class of purchasers of ultrasonic pest repellents.

*Browning v. Unilever United States, Inc.*, 2017 WL 7660643 (C.D. Cal. Apr. 26, 2017), denying motion to dismiss fraud and warranty claims in putative class action concerning facial scrub product.

*Brenner v. Procter & Gamble Co.*, 2016 WL 8192946 (C.D. Cal. Oct. 20, 2016), denying motion to dismiss warranty and consumer protection claims in putative class action concerning baby wipes.

*Hewlett v. Consolidated World Travel, Inc.*, 2016 WL 4466536 (E.D. Cal. Aug. 23, 2016), denying telemarketer’s motion to dismiss TCPA claims in putative class action.

*Bailey v. KIND, LLC*, 2016 WL 3456981 (C.D. Cal. June 16, 2016), denying motion to dismiss fraud and warranty claims in putative class action concerning snack bars.

*Hart v. BHH, LLC*, 2016 WL 2642228 (S.D.N.Y. May 5, 2016) denying motion to dismiss warranty and consumer protection claims in putative class action concerning ultrasonic pest repellents.

*Marchuk v. Faruqi & Faruqi, LLP, et al.*, 100 F. Supp. 3d 302 (S.D.N.Y. 2015), granting clients’ motion for judgment as a matter of law on claims for retaliation and defamation in employment action.

*In re Scotts EZ Seed Litigation*, 304 F.R.D. 397 (S.D.N.Y. 2015), granting class certification of false advertising and other claims brought by New York and California purchasers of grass seed product.

*Brady v. Basic Research, L.L.C.*, 101 F. Supp. 3d 217 (E.D.N.Y. 2015), denying diet pill manufacturers’ motion to dismiss its purchasers’ allegations for breach of express warranty in putative class action.

*Ward v. TheLadders.com, Inc.*, 3 F. Supp. 3d 151 (S.D.N.Y. 2014), denying online job board’s motion to dismiss its subscribers’ allegations of consumer protection law violations in putative class action.

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

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



**Selected Class Settlements:**

*Hart v. BHH, LLC*, Case No. 1:15-cv-04804 (S.D.N.Y. Sept. 22, 2020), resolving class action claims regarding ultrasonic pest repellents.

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

*West v. California Service Bureau*, Case No. 4:16-cv-03124-YGR (N.D. Cal. Jan. 23, 2019), resolving class action claims against debt-collector for wrong-number robocalls for \$4.1 million.

**FREDERICK J. KLORCZYK III**

Frederick J. Klorczyk III is a Partner with Bursor & Fisher, P.A. Fred focuses his practice on complex business litigation and consumer class actions.

Fred has substantial experience in successfully litigating and resolving consumer class actions involving claims of mislabeling, false or misleading advertising, and privacy violations. In 2019, Fred certified both a California and a 10-state express warranty class on behalf of purchasers of a butter substitute. In 2014, Fred served on the litigation team in *Ebin v. Kangadis Food Inc.* At class certification, Judge Rakoff adopted Fred's choice of law fraud analysis and research directly into his published decision certifying a nationwide fraud class.

Fred is admitted to the State Bars of California, New York, and New Jersey, and is a member of the bars of the United States District Courts for the Northern, Central, Eastern, and Southern Districts of California, the Southern, Eastern, and Northern Districts of New York, the District of New Jersey, the Northern District of Illinois, the Eastern District of Missouri, the Eastern District of Wisconsin, and the Eastern District of Michigan, as well as the bars of the United States Court of Appeals for the Second and Ninth Circuits.

Fred received his Juris Doctor from Brooklyn Law School in 2013, graduating *magna cum laude* with two CALI Awards for the highest grade in his classes on conflict of laws and criminal law. During law school, Fred served as an Associate Managing Editor for the Brooklyn Journal of Corporate, Financial and Commercial Law and as an intern to the Honorable Alison J. Nathan of the United States District Court for the Southern District of New York and the Honorable Janet Bond Arterton of the United States District Court for the District of Connecticut. In 2010, Fred graduated from the University of Connecticut with a B.S. in Finance.

**Selected Published Decisions:**

*Revitch v. New Moosejaw, LLC*, 2019 WL 5485330 (N.D. Cal. Oct. 23, 2019), denying defendants' motions to dismiss consumer's allegations of state privacy law violations in putative class action.

*In re Welspun Litigation*, 2019 WL 2174089 (S.D.N.Y. May 20, 2019), denying retailers' and textile manufacturer's motion to dismiss consumers' allegations of false advertising relating to purported "100% Egyptian Cotton" linen products.

*Martinelli v. Johnson & Johnson*, 2019 WL 1429653 (E.D. Cal. Mar. 29, 2019), granting class certification of California false advertising claims and multi-state express warranty claims brought by purchasers of a butter substitute.

*Porter v. NBTY, Inc.*, 2016 WL 6948379 (N.D. Ill. Nov. 28, 2016), denying supplement manufacturer's motion to dismiss consumers' allegations of false advertising relating to whey protein content.

*Weisblum v. Prophase Labs, Inc.*, 88 F. Supp. 3d 282 (S.D.N.Y. 2015), denying supplement manufacturer's motion to dismiss consumers' allegations of false advertising relating to a homeopathic cold product.

*In re Scotts EZ Seed Litigation*, 304 F.R.D. 397 (S.D.N.Y. 2015), granting class certification of false advertising and other claims brought by New York and California purchasers of grass seed product.

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

*Ebin v. Kangadis Food Inc.*, Case No. 13-4775 (2d Cir. Apr. 15, 2015), denying olive oil manufacturer's Rule 23(f) appeal following grant of nationwide class certification.

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

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

**Selected Class Settlements:**

*Gregorio v. Premier Nutrition Corp.*, Case No. 17-cv-05987-AT (S.D.N.Y. 2019) – final approval granted for \$9 million class settlement to resolve claims of protein shake purchasers for alleged false advertising.

*Ruppel v. Consumers Union of United States, Inc.*, Case No. 16-cv-02444-KMK (S.D.N.Y. 2018) – final approval granted for \$16.375 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

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

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

### **YEREMEY O. KRIVOSHEY**

Yeremey O. Krivoshey is a Partner with Bursor & Fisher, P.A. Mr. Krivoshey has particular expertise in COVID-19 related consumer litigation, unlawful fees and liquidated damages in consumer contracts, TCPA cases, product recall cases, and fraud and false advertising litigation. He has represented clients in a wide array of civil litigation, including appeals before the Ninth Circuit.

Mr. Krivoshey served as trial counsel with Mr. Bursor in *Perez v. Rash Curtis & Associates*, where, in May 2019, the jury returned a verdict for \$267 million in statutory damages under the Telephone Consumer Protection Act. Since 2017, Mr. Krivoshey has secured over \$200 million for class members in consumer class settlements. Mr. Krivoshey has been honored multiple times as a Super Lawyers Rising Star.

Mr. Krivoshey is admitted to the State Bar of California. He is also a member of the bars of the United States Court of Appeals for the Ninth Circuit and the United States District Courts for the Northern, Central, Southern, and Eastern Districts of California, as well as the District of Colorado.

Mr. Krivoshey graduated from New York University School of Law in 2013, where he was a Samuel A. Herzog Scholar. Prior to Bursor & Fisher, P.A., Mr. Krivoshey worked as a Law Clerk at Vladeck, Waldman, Elias & Engelhard, P.C, focusing on employment discrimination and wage and hour disputes. In law school, he has also interned at the American Civil Liberties Union and the United States Department of Justice. In 2010, Mr. Krivoshey graduated *cum laude* from Vanderbilt University.

### **Representative Cases:**

*Perez v. Rash Curtis & Associates*, Case No. 16-cv-03396-YGR (N.D. Cal. May 13, 2019). Mr. Krivoshey litigated claims against a national health-care debt collection agency on behalf of people that received autodialed calls on their cellular telephones without their prior express consent. Mr. Krivoshey successfully obtained nationwide class certification, defeated the defendant’s motion for summary judgment, won summary judgment as to the issue of prior express consent and the use of automatic telephone dialing systems, and navigated the case towards trial. With his partner, Scott Bursor, Mr. Krivoshey obtained a jury verdict finding that the defendant violated the Telephone Consumer Protection Act (“TCPA”) 534,712 times. Under the TCPA, class members are entitled to \$500 per each call made in violation of the TCPA – in this case, \$267 million for 534,712 unlawful calls.

**Selected Published Decisions:**

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

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

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

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

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

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

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

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

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

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

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

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

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

**Selected Class Settlements:**

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

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

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

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

*Retta v. Millennium Prods., Inc.*, 2017 WL 5479637 (C.D. Cal. Aug. 22, 2017) granting final approval to \$8.25 million settlement to resolve claims of kombucha purchasers for alleged false advertising.

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

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

**PHILIP L. FRAIETTA**

Philip L. Fraietta is a Partner with Bursor & Fisher, P.A. Phil focuses his practice on data privacy, complex business litigation, consumer class actions, and employment law disputes. Phil has been named a “Rising Star” in the New York Metro Area by Super Lawyers<sup>®</sup> every year since 2019.

Phil has significant experience in litigating consumer class actions, particularly those involving privacy claims under statutes such as the Michigan Preservation of Personal Privacy Act, the Illinois Biometric Information Privacy Act, and Right of Publicity statutes. Since 2016, Phil has recovered over \$100 million for class members in privacy class action settlements. In addition to privacy claims, Phil has significant experience in litigating and settling class action claims involving false or misleading advertising.

Phil is admitted to the State Bars of New York, New Jersey, Illinois, and Michigan, the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, the Western District of New York, the Northern District of New York, the District of New Jersey, the Eastern District of Michigan, the Western District of Michigan, the

Northern District of Illinois, the Central District of Illinois, and the United States Court of Appeals for the Second, Third, and Ninth Circuits. Phil was a Summer Associate with Bursor & Fisher prior to joining the firm.

Phil received his Juris Doctor from Fordham University School of Law in 2014, graduating cum laude. During law school, Phil served as an Articles & Notes Editor for the Fordham Law Review, and published two articles. In 2011, Phil graduated cum laude from Fordham University with a B.A. in Economics.

**Selected Published Decisions:**

*Fischer v. Instant Checkmate LLC*, 2022 WL 971479 (N.D. Ill. Mar. 31, 2022), certifying class of Illinois residents for alleged violations of Illinois' Right of Publicity Act by background reporting website.

*Kolebuck-Utz v. Whitepages Inc.*, 2021 WL 157219 (W.D. Wash. Apr. 22, 2021), denying defendant's motion to dismiss for alleged violations of Ohio's Right to Publicity Law.

*Bergeron v. Rochester Institute of Technology*, 2020 WL 7486682 (W.D.N.Y. Dec. 18, 2020), denying university's motion to dismiss for failure to refund tuition and fees for the Spring 2020 semester in light of the COVID-19 pandemic.

*Porter v. NBTY, Inc.*, 2019 WL 5694312 (N.D. Ill. Nov. 4, 2019), denying supplement manufacturer's motion for summary judgment on consumers' allegations of false advertising relating to whey protein content.

*Boelter v. Hearst Communications, Inc.*, 269 F. Supp. 3d 172 (S.D.N.Y. 2017), granting plaintiff's motion for partial summary judgment on state privacy law violations in putative class action.

**Selected Class Settlements:**

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

*Ruppel v. Consumers Union of United States, Inc.*, Case No. 16-cv-02444-KMK (S.D.N.Y. 2018) – final approval granted for \$16.375 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

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

*Benbow v. SmileDirectClub, LLC*, Case No. 2020-CH-07269 (Cir. Ct. Cook Cnty. 2021) – final approval granted for \$11.5 million class settlement to resolve claims for alleged TCPA violations.



*Gregorio v. Premier Nutrition Corp.*, Case No. 17-cv-05987-AT (S.D.N.Y. 2019) – final approval granted for \$9 million class settlement to resolve claims of protein shake purchasers for alleged false advertising.

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

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

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

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

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

### **SARAH N. WESTCOT**

Sarah N. Westcot is a Partner with Bursor & Fisher, P.A. Ms. Westcot focuses her practice on complex business litigation, consumer class actions, and employment law disputes. She has represented clients in a wide array of civil litigation, and has substantial trial and appellate experience.

Ms. Westcot 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.

Ms. Westcot 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).

Ms. Westcot 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 and the Southern and Middle Districts of Florida.

Ms. Westcot received her Juris Doctor from the University of Notre Dame Law School in 2009. During law school, Ms. Westcot 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. She graduated with honors from the University of Florida in 2005.

**ALEC M. LESLIE**

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

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

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

**Selected Class Settlements:**

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

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

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

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

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

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

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



**STEPHEN BECK**

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

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

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

**BRITTANY SCOTT**

Brittany Scott is an Associate with Bursor & Fisher, P.A. Brittany focuses her practice on data privacy, complex civil litigation, and consumer class actions. Brittany was an intern with Bursor & Fisher prior to joining the firm.

Brittany has substantial experience litigating consumer class actions, including those involving data privacy claims under statutes such as the Illinois Biometric Information Privacy Act, the Fair Credit Reporting Act, and the Michigan Preservation of Personal Privacy Act. In addition to data privacy claims, Brittany has significant experience in litigating class action claims involving false and misleading advertising.

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

Brittany received her Juris Doctor from the University of California, Hastings College of the Law in 2019, graduating cum laude. During law school, Brittany was a member of the Constitutional Law Quarterly, for which she was the Executive Notes Editor. Brittany published a note in the Constitutional Law Quarterly entitled “Waiving Goodbye to First Amendment Protections: First Amendment Waiver by Contract.” Brittany also served as a judicial extern to the Honorable Andrew Y.S. Cheng for the San Francisco Superior Court. In 2016, Brittany graduated from the University of California Berkeley with a B.A. in Political Science.

**Selected Class Settlements:**

*Morrissey v. Tula Life, Inc.*, Case No. 2021L0000646 (18th Judicial Circuit Court DuPage County 2021) – final approval granted for \$4 million class settlement to resolve claims of cosmetics purchasers for alleged false advertising.

**MAX S. ROBERTS**

Max Roberts is an Associate with Bursor & Fisher, P.A. Max focuses his practice on complex civil litigation, data privacy, and class actions. Max was a Summer Associate with Bursor & Fisher prior to joining the firm.

Max is admitted to the State Bar of New York and is a member of the bars of the United States District Courts for the Northern, Southern, and Eastern Districts of New York, the Northern and Central Districts of Illinois, the Eastern District of Michigan, the District of Colorado, and the United States Court of Appeals for the Seventh and Ninth Circuits.

Max received his Juris Doctor from Fordham University School of Law in 2019, graduating *cum laude*. During law school, Max was a member of Fordham's Moot Court Board, the Brennan Moore Trial Advocates, and the Fordham Urban Law Journal, for which he published a note entitled *Weaning Drug Manufacturers Off Their Painkiller: Creating an Exception to the Learned Intermediary Doctrine in Light of the Opioid Crisis*. In addition, Max served as an intern to the Honorable Vincent L. Briccetti of the Southern District of New York and the Fordham Criminal Defense Clinic. Max graduated from Johns Hopkins University in 2015 with a B.A. in Political Science.

Outside of the law, Max is an avid triathlete.

**Selected Published Decisions:**

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

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

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

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

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

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

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

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

**Selected Class Settlements:**

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

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

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

**CHRISTOPHER R. REILLY**

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

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

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

**JULIA K. VENDITTI**

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

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

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

**SEAN L. LITTERAL**

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

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

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

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

**JULIAN DIAMOND**

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

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

**MATTHEW GIRARDI**

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

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

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