

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

RONA KOMINS, on behalf of herself, her  
children, B.K. and M.K, and all others  
similarly situated,

Plaintiff,

v.

DAVE YONAMINE, JOHN LIBBY,  
MOBILITYWARE, LLC; DOES 1-100,  
inclusive, and ROES Software Development  
Kit Business Entities 1-100, inclusive,

Defendants.

Case No. 19STCV24865

**CLASS LITIGATION SETTLEMENT  
AGREEMENT**

This Class Litigation Settlement Agreement (the “Settlement Agreement” or “Agreement”) is made and entered into by and among (1) Plaintiff Rona Komins (“Plaintiff”) on behalf of herself, her children, B.K. and M.K, and the settlement class that she purports to represent, (2) counsel for Plaintiff, Law Offices of Ronald A. Marron, APLC (“Class Counsel”), and (3) Defendants MobilityWare, LLC (“MobilityWare”), Dave Yonamine, and John Libby (collectively, “Defendants”). Plaintiff and Defendants are referred to hereinafter as the “Settling Parties.” This settlement is intended to fully, finally, and forever to resolve, discharge, release, and settle the lawsuit captioned *Rona Komins v. Dave Yonamine, et al.*, Case No. 19STCV24865 (Los Angeles Superior Court) (the “Litigation”), upon and subject to the terms and conditions herein.

**1. RECITALS**

1.1 On July 17, 2019, Plaintiff filed a Class Action Complaint in the Superior Court of California for the County of Los Angeles (the “Court”), captioned *Rona Komins v. Dave Yonamine, et al.*, Case No. 19STCV24865.

1.2 On July 19, 2019, Plaintiff filed a First Amended Complaint (“FAC”) to correct an error in the caption of the Complaint.

1.3 Plaintiff’s current complaint alleges that as children and users download and play MobilityWare’s gaming apps, Defendants automatically collect personal information about the users and track online behavior to sell to third parties and to profile for targeted advertising. *See* Third Amended Complaint (“TAC”). Plaintiff’s Third Amended Complaint alleges causes of action for (a) violations of California’s Constitutional Right to Privacy, (b) Intrusion Upon Seclusion, (c) violations of California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, (d) Fraud by Omission, (e) Negligent Misrepresentation, and (f) Quasi-Contract. *See* TAC.

1.4 On February 11, 2020, Defendants filed a Motion to Compel Arbitration, arguing that Plaintiff was required to arbitrate her claims. *See* Feb. 11, 2020 Motion to Compel Arbitration. Defendants’ Motion to Compel Arbitration was denied on August 20, 2020. *See* Aug. 20, 2020 Order Denying Motion to Compel Arbitration.

1.5 On September 30, 2020, Defendants filed a Joint Brief regarding Defendants’ Demurrer to Plaintiff’s First Amended Complaint. *See* Sept. 30, 2020 Joint Brief re Demurrer to Plaintiff’s First

Amended Complaint. On October 20, 2020, the Court entered an Order declining to rule on the demurrer and permitting Plaintiff to file a further amended complaint.

1.6 On October 26, 2020, Plaintiff filed a Second Amended Complaint. *See* Second Amended Complaint (“SAC”).

1.7 On November 25, 2020, Defendants Dave Yonamine and John Libby demurred to Plaintiff’s Second Amended Complaint, and all Defendants filed a Motion to Strike Plaintiff’s Second Amended Complaint. *See* Nov. 25, 2020 Demurrer to SAC; Nov. 25, 2020 Motion to Strike. On February 9, 2021, the Court overruled Defendants’ Demurrer and Motion to Strike in their entirety, except that it *sua sponte* struck Plaintiff’s claim for unjust enrichment with leave to amend to file a claim for quasi-contract. *See* Feb. 9, 2021 Order.

1.8 On March 1, 2021, Plaintiff filed a Third Amended Complaint which substituted a claim for quasi-contract for the claim for unjust enrichment. *See* TAC.

1.9 On March 31, 2021, Defendants filed a Notice of Removal to federal court, and filed a Motion to Dismiss on April 7, 2021. *See Komins v. Yonamine, et al.*, Case No. 2:21-cv-02757-MCS-RAO (C.D. Cal.), at Dkt. Nos. 1, 9. On April 19, 2021, Plaintiff filed a Motion to Remand, and on April 21, 2021, Plaintiff filed an opposition to Defendants’ Motion to Dismiss. *See id.* at Dkt. Nos. 11-12. On May 17, 2021, the action was remanded to Superior Court. *See id.* at Dkt. No. 28 [Order Granting Motion to Remand].

1.10 On May 28, 2021, Defendants filed a Motion to Transfer Venue. *See* May 28, 2021 Motion to Transfer Venue. On July 2, 2021, the Court denied Defendants’ Motion to Transfer Venue. *See* July 2, 2021 Order.

1.11 On July 7, 2021, Defendants filed an Answer to Plaintiff’s Third Amended Complaint in which they denied Plaintiff’s allegations and asserted affirmative defenses.

1.12 The parties exchanged multiple rounds of written discovery and have attended multiple informal discovery conferences with the Court concerning the written discovery. Specifically, Defendants propounded three sets of Requests for Production (34 total Requests for Production), four sets of Special Interrogatories (20 total Special Interrogatories), three sets of Form Interrogatories (24 total Form Interrogatories), and two sets of Requests for Admission (22 total Requests for Admission)

on Plaintiff. Plaintiff propounded three sets of Requests for Production (43 total Requests for Production), one set of Form Interrogatories (31 Form Interrogatories), one set of Special Interrogatories (20 Special Interrogatories), and one set of Requests for Admission (9 Requests for Admission) on MobilityWare. Plaintiff also propounded one set of Form Interrogatories (40 Form Interrogatories), one set of Requests for Production of Documents (9 Requests for Production), and one set of Special Interrogatories (7 Special Interrogatories) on Defendants Dave Yonamine and John Libby. Plaintiff and Defendants responded to such discovery.

1.13 Plaintiff took the depositions of MobilityWare's persons most qualified on October 5, 2021 and October 6, 2021.

1.14 Defendants took the deposition of Plaintiff Komins on October 13, 2021.

1.15 On September 3, 2021, Defendants served a deposition subpoena for production of business records on Apple, Inc., and Apple, Inc. produced documents responsive to the subpoena on October 8, 2021. On September 28, 2021, Plaintiff served deposition subpoenas for production of business records on 20 third-party SDK entities. On October 14, 2021, Defendants served a deposition subpoena for production of business records on Verizon Wireless Services, LLC.

On November 2, 2021, the Parties attended a full-day mediation session before the Honorable Jay C. Gandhi (Ret.) of JAMS where they agreed to several principal terms of an injunctive-relief-only class action settlement. For several weeks following the mediation, the Parties continued to negotiate terms of a settlement with the help of Judge Gandhi.

1.16 The Settling Parties and their counsel have extensively investigated the facts and issues raised in the Litigation, and they have sufficient information to evaluate an appropriate settlement and the terms and conditions of this Settlement Agreement.

1.17 Prior to mediation and negotiating the Settlement, Plaintiff obtained through formal written discovery and depositions of Defendant MobilityWare's persons most knowledgeable, information regarding the types of data collected by the MobilityWare Gaming Apps, MobilityWare's data collection practices, and information regarding the ascertainability of class members. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168

Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

1.18 Through discovery, Class Counsel determined that calculating actual economic harm in this case would be complex and uncertain, and would rest upon a risky and unpredictable jury determination regarding the value of personal information. Any damage award was likely to have been nominal for most class members. Discovery also revealed that MobilityWare at the relevant times did not collect, use, or disclose certain data, and while MobilityWare’s apps initially appeared to target children based on the apps’ animations and graphics, third-party analytical data showed that MobilityWare apps were primarily used by women aged 35 and older.

1.19 Based upon the discovery taken to date, investigation, and evaluation of the facts and law relating to the matters alleged in the pleadings, plus the risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, the Parties have agreed to settle the claims asserted in the Litigation pursuant to the provisions of this Agreement.

1.20 Based on their experience and knowledge of the strength of the claims and defenses in the Litigation, and the costs and risks of litigation, counsel for the Settling Parties have concluded and are satisfied that the terms and conditions of this Settlement Agreement are fair, reasonable, adequate, and in the best interest of the Settling Parties and the Settlement Class Members.

1.21 **NOW, THEREFORE**, pursuant to the terms set forth herein and subject to the Court’s approval of this Settlement Agreement, the Parties hereby stipulate and agree, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, that any Released Injunctive Claims against any Released Persons shall be settled, compromised and forever released upon the following terms and conditions.

## **2. DEFINITIONS**

Capitalized terms in this Settlement Agreement are defined by the terms set forth in this Section. If and to the extent that definitions in this Section conflict with other terms set forth in this Settlement Agreement, the definitions in this Section shall govern.

2.1 “Class Counsel” means the Law Offices of Ronald A. Marron, APLC.

2.2 “Class Period” means July 17, 2015 until the date the court grants preliminary approval

of the Settlement.

2.3 “Court” means the Superior Court of California, County of Los Angeles.

2.4 “Defendants” means Dave Yonamine, John Libby, and MobilityWare, LLC.

2.5 “Defense Counsel” means Defendants’ counsel of record in the Litigation, Pillsbury Winthrop Shaw Pittman LLP.

2.6 “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Settlement Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Settlement Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

2.7 “Fee Application” means Class Counsel’s application for fee award and expenses, and for an Incentive Award to Plaintiff.

2.8 “Fees and Costs” means an award of Plaintiff’s attorneys’ fees, costs, expenses and Incentive Award, up to the amount approved by the Court but not to exceed \$800,000.00.

2.9 “Final Approval” means issuance of a Court order granting final approval of the settlement and this Settlement Agreement as binding on the Settling Parties and the Settlement Class.

2.10 “Final Approval Hearing” means a hearing in Department 14 of the Spring Street Courthouse before the Honorable Kenneth R. Freeman on whether the Settlement should be granted final approval and whether the Fee Application should be granted.

2.11 “Final Judgment” means the Final Judgment to be entered by the Court, which, among other things, will fully and finally approve this Settlement Agreement and dismiss the Litigation with prejudice.

2.12 “Incentive Award” means the award that will be sought by application and, if approved by the Court, will be payable to Plaintiff for her role as the class representative and her responsibility and work attendant to that role.

2.13 “Long Form Notice” refers to a document, substantially in the form of **Exhibit A** hereto,

to be disseminated in accordance with the Preliminary Approval Order, informing Persons who fall within the Settlement Class definition of, among other things, the pendency of the Litigation, the material terms of the proposed Settlement and their options with respect thereto.

2.14 “MobilityWare Gaming Apps” means the mobile gaming apps that are offered by MobilityWare for download through the iOS App Store, the Android Google Play store, or the Android Amazon store, namely, (a) Solitaire, (b) Tripeaks Solitaire, (c) Pyramid Solitaire, (d) FreeCell Solitaire, (e) Crown Solitaire, (f) Spider Solitaire, (g) Spider Go Solitaire, (h) Castle Solitaire, (i) Addiction Solitaire, (j) Mahjong Solitaire, (k) Yukon Russian Solitaire Game, (l) Aces Up Solitaire, (m) Destination Solitaire, (n) Hearts Card Game, (o) Puzzle Cats, (p) Sudoku Simple, (q) Spades Card Game, (r) Tropical Treats, (s) Word Wiz, (t) Word Warp, (u) Sunny Shapes, (v) Word Search, (w) Tetra Block – Puzzle Game, (x) Dice Merge Puzzle Master, (y) Blackjack, (z) Match & Rescue – Match 3 Game, (aa) Vegas Blvd Slots, (bb) Block Party Bingo, (cc) 52 Card Pick-up, (dd) Excite Bear – Animal Bikers, and (ee) Monopoly Solitaire.

2.15 “Notice” means the Long Form Notice and the Summary Notice.

2.16 “Notice Date” means the date in which Notice is to be disseminated, as set forth in Section 6.3 of this Settlement Agreement.

2.17 “Notice Plan” means the method of providing the Settlement Class with notice of the Settlement, as approved by the Court.

2.18 “Notice Administrator” means the company selected by Plaintiff and approved by the Court to provide notice to the Settlement Class.

2.19 “Objection” means the written communication that must be provided to the Notice Administrator on or before the Objection/Exclusion Deadline by a Settlement Class member who wishes to object to the terms of the Settlement.

2.20 “Objection/Exclusion Deadline” means the date by which a written Objection or Request for Exclusion by a Settlement Class member must be postmarked, as established by the Court in the Preliminary Approval Order and referred to in Section 5 of this Settlement Agreement.

2.21 “Operative Complaint” means Plaintiff’s Third Amended Complaint filed on March 1, 2021.

2.22 “Parties” means Plaintiff and Defendants.

2.23 “Person” means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, any business or legal entity, and such individual’s or entity’s parents, subsidiaries, spouse, heirs, predecessors, successors, representatives, and assignees.

2.24 “Plaintiff” means the proposed class representative and Plaintiff, Rona Komins.

2.25 “Plaintiff’s Released Claims” means the claims to be released by Plaintiff as set forth in Section 10.2 of this Settlement Agreement.

2.26 “Preliminary Approval Order” means an order, providing for, among other things, preliminary approval of the Settlement and dissemination of the Notice to the Settlement Class according to the Notice Plan.

2.27 “Released Injunctive Claims” means the claims to be released by Settlement Class Members as set forth in Section 10.1 of this Settlement Agreement.

2.28 “Released Persons” means Defendants, and each of their past, present and future agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers, alter-egos, and affiliated organizations, and all of their past, present and future employees, directors, officers, agents, attorneys, stockholders, fiduciaries, parents, subsidiaries, and assigns, and all third-party vendors contracting with MobilityWare but only to the extent that claims are based upon such vendors’ dealings with MobilityWare.

2.29 “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.

2.30 “Settlement” or “Settlement Agreement” means this Class Litigation Settlement Agreement, including all exhibits thereto.

2.31 “Settlement Class” means all persons who played any of the following MobilityWare Gaming Apps on a mobile device in the United States at any time between July 17, 2015 and until the date preliminary approval is granted:

- Solitaire,



- Tripeaks Solitaire,
- Pyramid Solitaire,
- FreeCell Solitaire,
- Crown Solitaire,
- Spider Solitaire,
- Spider Go Solitaire,
- Castle Solitaire,
- Addiction Solitaire,
- Mahjong Solitaire,
- Yukon Russian Solitaire Game,
- Aces Up Solitaire,
- Destination Solitaire,
- Hearts Card Game,
- Puzzle Cats,
- Sudoku Simple,
- Spades Card Game,
- Tropical Treats,
- Word Wiz,
- Word Warp,
- Sunny Shapes,
- Word Search,
- Tetra Block – Puzzle Game,
- Dice Merge Puzzle Master,
- Blackjack,
- Match & Rescue – Match 3 Game,
- Vegas Blvd Slots,
- Block Party Bingo,
- 52 Card Pick-up,
- Excite Bear – Animal Bikers, and
- Monopoly Solitaire.

2.32 “Settlement Class Members” means all persons who are members of the Settlement Class.

2.33 “Summary Notice” refers to a document, substantially in the form of **Exhibit B** hereto, to be disseminated in accordance with the Preliminary Approval Order, informing Persons who fall within the Settlement Class definition of, among other things, the pendency of the Litigation, the material terms of the proposed Settlement and their options with respect thereto

2.34 The plural of any defined term includes the singular, and the singular of any defined term includes the plural, as the case may be.

### **3. STIPULATION TO CLASS CERTIFICATION**

3.1 The Settling Parties hereby stipulate, for purposes of this Settlement only, that the

requirements of California Code of Civil Procedure Section 382 are satisfied and, subject to Court approval, the Settlement Class shall be conditionally certified pursuant to the terms and conditions set forth in this Settlement Agreement, for purposes of this Settlement only. Should the Court not grant Final Approval of the Settlement, for whatever reason, this stipulation to class certification shall become null and void.

3.2 Neither this Settlement Agreement nor any statement, transaction, or proceeding in connection with the negotiation, execution, or implementation of this Settlement Agreement shall be construed as, or deemed as evidence of, an admission or concession by Defendants that a class should or could have been certified in the Litigation for any purpose other than settlement. If the Court fails to grant Final Approval of the Settlement, the Settling Parties agree and stipulate that the Parties shall and do retain all of the rights, defenses, and arguments they had preceding execution of this Settlement Agreement, and that nothing in this Settlement Agreement may be used as evidence or argument by Plaintiff or putative Settlement Class Members concerning any aspect of the Litigation, including whether the alleged claims properly may be maintained as a class action.

#### **4. PRELIMINARY APPROVAL AND FINAL APPROVAL**

4.1 Preliminary Approval. On or before December 15, 2023, Plaintiff will submit this Agreement together with its exhibits to the Court and will request that the Court: (a) grant preliminary approval of the Settlement; (b) issue the Preliminary Approval Order; and (c) schedule a Final Approval Hearing. Plaintiff shall request the Court schedule the Fee Application to be filed no later than fourteen (14) calendar days prior to the Objection/Exclusion Deadline, or earlier, if the Court deems it necessary.

4.1.1 Defendants shall cooperate in good faith in Plaintiff's preparation of the motion for preliminary approval of the Settlement.

4.1.2 Defendants shall not oppose Plaintiff's assertion, in papers filed in furtherance of this Settlement, that: (a) the Settlement Class is appropriate for certification under California Code of Civil Procedure Section 382; (b) the Settlement Class is so numerous that joinder of all members is impracticable; (c) questions of law or fact predominate; (d) the claims of Plaintiff are typical of the Settlement Class; or (e) Plaintiff and Class Counsel will fairly and adequately protect the interests of the Settlement Class.

4.1.3 The Parties agree to the form and substance of the proposed Preliminary Approval Order, attached hereto as **Exhibit D**, to be lodged with the Court with the motion for preliminary approval of the Settlement Agreement.

4.2 Final Approval. In accord with the Court's schedule for the Final Approval Hearing, as set forth in the Preliminary Approval Order, Plaintiff shall file a motion for final approval of the Settlement Agreement, in consultation with Defendants, and Defendants agree not to oppose such motion.

4.2.1 Defendants shall cooperate in good faith with Plaintiff's preparation of the motion for final approval of the Settlement Agreement.

4.2.2 Defendants shall not oppose Plaintiffs' assertion, in papers filed in furtherance of the Settlement Agreement, that the Court should affirm its rulings granting Preliminary Approval of the Settlement and grant final approval of the Settlement.

4.2.3 The Parties agree to the form and substance of the proposed Final Judgment and Order, attached hereto as **Exhibit E**, to be lodged with the Court with the motion for final approval of the Settlement Agreement.

## **5. REQUESTS FOR EXCLUSION AND OBJECTIONS TO THE SETTLEMENT**

5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Notice Administrator a signed written Request for Exclusion not later than 30 calendar days prior to the Final Approval Hearing (or such other deadline as may be set by the Court). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement in *Komins v. Yonamine, et al.*, Case No. 19STCV24865 and includes the Class Member's name, address, and telephone number. To be valid, a Request for Exclusion must be timely postmarked no later than thirty (30) calendar days prior to the Final Approval Hearing (or such other deadline as may be set by the Court). The Notice Administrator shall accept any Request for Exclusion as valid if the Notice Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. Any Settlement Class member whose request to be excluded from the Settlement Class is approved by the Court will not be bound by the Settlement and will have no right to object, appeal, or comment thereon.

5.2 Settlement Class Members may object to the Settlement and/or this Agreement, including contesting the fairness of the Settlement and/or amounts requested for Class Counsel's Fees and Costs or the Class Representative's Incentive Award. Written objections must be sent to the Notice Administrator at the address listed in the Notice, and must be postmarked no later than 30 calendar days prior to the Final Approval Hearing (or such other deadline for any such objection as may be set by the Court). All written objections and supporting papers should contain information sufficient to identify and contact the Settlement Class Member (or his or her attorney, if any), and should reasonably communicate the Settlement Class Member's desire to object to the Settlement in *Komins v. Yonamine, et al.*, Case No. 19STCV24865.

5.3 In the alternative, Settlement Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. In general, the Court will hear from any Settlement Class Member who attends the final approval hearing in Department 14 of the Spring Street Courthouse before Judge Kenneth R. Freeman and asks to speak regarding his or her objection. If an objecting party intends to appear at the Final Approval Hearing, the objector may file with the Court, at least thirty (30) days before the Final Approval Hearing (or such other deadline as may be set by the Court), a notice of intent to appear. The notice of intent to appear should list the name, address and telephone number of the attorney, if any, who will appear on behalf of that party.

5.4 Class Counsel and Defendants shall have the right, but not the obligation, to respond to any written Objection, by filing opposition papers no later than seven (7) calendar days prior to the Final Approval Hearing (or on such other date as set forth in the Preliminary Approval Order or in any subsequent Court order(s) modifying the briefing schedule for the Final Approval Hearing). The Party responding shall file a copy of the response with the Court, and shall serve a copy, by regular mail, hand or overnight delivery, in the Party's discretion, to the objector (or counsel for the objector), Class Counsel and Defense Counsel, to the extent the objector or their counsel do not receive notice of electronic filing via CaseAnywhere.

## **6. NOTICE TO SETTLEMENT CLASS MEMBERS**

6.1 Class Notice shall conform to all applicable requirements of the California Code of Civil Procedure, the California Rules of Court, and any other applicable law, and shall otherwise be in the

manner and form agreed upon by the Parties and approved by the Court.

6.2 Plaintiff shall retain a Notice Administrator to help implement the terms of the Settlement Agreement.

6.3 Within thirty (30) days after entry of the Preliminary Approval Order, or on such other date as may be established by the Court in the Preliminary Approval Order, the Notice Administrator shall commence providing Notice to the Class according to the Notice Plan as attached in **Exhibit C**, except that the Class Settlement Website shall require earlier publication, as discussed in Section 6.3.1:

6.3.1 Settlement Website. The Notice Administrator will create and maintain a class settlement website (the “Class Settlement Website”), to be activated on or before the Notice Date. The Notice Administrator’s responsibilities will also include securing an appropriate URL, such as [www.MobilityWareClassAction.com](http://www.MobilityWareClassAction.com). The Class Settlement Website will contain Settlement information and case-related documents such as the Agreement, the Long Form Notice, the Preliminary Approval Order, the Third Amended Complaint, and notices from the Court. In addition, the Class Settlement Website will include procedural information regarding the status of the Court-approval process, such as an announcement of the Final Approval Hearing date, when the Court has entered an order granting Final Approval and entered the Final Judgment, and when the Effective Date has been reached, including any appeal(s), if any. The Website shall be operative no later than the Notice Date and shall be accessible for a period of not less than sixty (60) days following the Effective Date.

6.3.2 Social Media Notice: Within thirty (30) days after entry of the Preliminary Approval Order, the Notice Administrator will launch a digital media notice using banner ads placed on the Google Display network, social media notice using paid banner ads on the Facebook and Instagram social media platforms, and paid search notice ads placed on the Google and Bing search engines to appear in response to targeted search terms. This multi-channel digital campaign is designed to obtain millions of individual notice impressions directed to the target audience.

6.3.3 Toll-Free Helpline: Prior to the launch of the social media notice campaign, the Notice Administrator will establish a toll-free Settlement helpline to assist potential Class

Members and any other persons seeking information about the Settlement. The helpline will be staffed by live operators during normal business hour and callers will also have the option to leave a message in order to speak with the Settlement Administrator if a live operator is not available.

6.4 The Parties agree to the content of the Notice, substantially in the forms attached to this Agreement as **Exhibit A** (Long Form Notice) and **Exhibit B** (Summary Notice), and as approved by the Court.

6.5 All costs and expenses of providing Notice in accordance with the Preliminary Approval Order shall be paid by Class Counsel to the Notice Administrator as approved by the Court through its approval of the Notice Plan.

## 7. **SETTLEMENT CONSIDERATION**

7.1 Class Benefits. Class Counsel and Plaintiff believe the Settlement confers substantial benefits upon the Settlement Class, as identified below, particularly as weighed against the risks associated with the inherent uncertain nature of a litigated outcome; the complex nature of the Litigation in which Class Counsel have reviewed internal and confidential documents; the difficulty and complexity of calculating actual economic harm, if any, allegedly attributable to Defendants' conduct; the length and expense of continued proceedings through additional fact depositions, expert depositions, third-party document productions and depositions, class certification briefing, summary judgment briefing, trial, and appeals. Based on their evaluation of such factors, Class Counsel and Plaintiff have determined the Settlement, based on the terms set forth herein, is in the best interests of the Settlement Class.

7.2 Injunctive Relief. Within the time frames set forth below, MobilityWare agrees to implement the following injunctive relief, to the extent that it has not already been implemented:

7.2.1 MobilityWare shall update each of the MobilityWare Gaming Apps to include a permanent, clear, and conspicuous pop-up notification to be served to app users whose device settings indicate that they are in the United States that cannot be skipped, closed, or bypassed and that: (i) informs app users of MobilityWare's privacy policy and collection of personal information, and of app users' ability to opt out of selling of their personal information as

applicable based on their regional privacy laws; (ii) informs app users that MobilityWare will delete personal information collected by app users upon request; and (iii) asks users to confirm that they are at least 18 years of age. MobilityWare will not collect, share, or sell personal information from new app users whose device settings indicate that they are in the United States unless and until the app users have (i) scrolled through the entirety of the notification, (ii) confirmed that they have read the notification, and (iii) confirmed that they are at least 18 years of age.

7.2.2 MobilityWare will provide exemplars and/or additional details to Class Counsel regarding what the notification in Section 7.2.1 will look like.

7.2.3 While the great majority of active MobilityWare Gaming App users typically update their apps within a few weeks of an update, there are some users who do not update their apps. MobilityWare has no practicable way to require users to update the MobilityWare Gaming Apps or to stop users from continuing to play their apps on their devices without updating them, and users who do not update the apps will not receive the popup notification. This Article shall not prevent MobilityWare from collecting, sharing, or selling personal information from existing MobilityWare Gaming App users who do not update their apps or from MobilityWare Gaming Apps that cannot practicably be updated, provided, however, that MobilityWare shall not collect, share, or sell personal information except as disclosed in MobilityWare's Privacy Policy.

7.2.4 Nothing in this Agreement shall preclude MobilityWare from discontinuing any MobilityWare Gaming App. In the event that MobilityWare discontinues any MobilityWare Gaming App prior to the date set forth in this Article for completing implementation of changes, MobilityWare shall not be required to update such app as set forth in this Article.

7.2.5 The injunctive relief set forth in this Article shall be permanent unless prohibited by applicable laws, regulations, and/or Apple, Google, or Amazon app store mandatory standards; provided, however, that nothing herein shall prevent MobilityWare from asking the Court to modify such injunctive relief on the ground that there has been a change in the applicable laws, regulations, and/or prevailing industry practices such that the injunctive relief is no longer required under federal law or the law of any state in the United States and/or is contrary to Apple,

Google, or Amazon app store mandatory standards.

7.2.6 The injunctive relief set forth in this Article shall not apply to the downloading of MobilityWare Gaming Apps through services, such as Apple Arcade, that have their own privacy policies governing the collection, sharing, or selling of personal information and that implement their own age gating requirements.

7.2.7 The injunctive relief set forth in this Article shall apply only within the United States, as MobilityWare may need to comply with different and conflicting obligations imposed by the laws of other jurisdictions, including the European Union's General Data Protection Regulation and the Brazilian General Data Protection Law.

7.2.8 MobilityWare will begin to implement these changes commencing within ten (10) days following the Court's entry of an order granting Final Approval, prioritizing updates of its most popular apps first, and continuing on an app-by-app basis as quickly as practicable, to be completed within twelve (12) months of the Court's entry of the order granting Final Approval.

7.2.9 Within twenty (20) days following complete implementation of the changes required by this Article, MobilityWare shall provide Class Counsel with an affidavit certifying compliance with the terms described herein. At the request of Class Counsel, MobilityWare's counsel will provide periodic updates concerning the status of implementation of such changes.

7.2.10 Defendant MobilityWare estimates that it will spend in excess of \$800,000.00 to comply with the injunctive relief provided by this Settlement Agreement, and estimates that it will incur a substantial amount of development time related to the agreed-upon injunctive relief.

7.3 Cy Pres Award: Due to the difficulty in proving damages for Plaintiff's claims and because any distribution of damages would be impracticable, MobilityWare has agreed to a *cy pres* remedy wherein class members receive an indirect benefit rather than a direct monetary payment. To that end, MobilityWare has agreed to make a \$100,000.00 *cy pres* payment, split equally between the Electronic Frontier Foundation, a non-profit digital rights group that champions user privacy (*see* <https://www.eff.org/about>), and the Electronic Privacy Information Center, a public interest non-profit research and advocacy organization established to "secure the fundamental right to privacy in the digital age for all people..." *See* <https://epic.org/about/>. No counsel or party has any interest or involvement in



the governance of work of the *cy pres* recipients.

7.3.1 The *cy pres* payment shall be made by MobilityWare within 30 days after the Effective Date. Within twenty (20) days following the *cy pres* payment, MobilityWare shall provide Class Counsel with an affidavit certifying compliance with the terms described herein.

**8. AWARD OF FEES AND EXPENSES TO CLASS COUNSEL AND INCENTIVE AWARD TO PLAINTIFF**

8.1 Defendants have agreed to pay Class Counsel reasonable attorneys' fees as determined by the Court. Attorneys' fees will be based on the lodestar method. Class Counsel will petition the Court for Fees and Costs (including the cost of notice and the Incentive Award) in the total amount of \$800,000.00. The specific deductions from this total amount are as follows:

- Class Counsel's attorney fees: \$732,100.00
- Class Counsel's Costs and Expenses: \$31,400.00
- Notice Administration Costs: \$29,000.00
- Incentive Award: \$7,500.00

Subject to the terms and conditions of this Settlement Agreement and any order of the Court, Class Counsel's Fees and Costs shall be paid by Defendants within ten (10) days after the Effective Date.

8.2 As part of the petition in Section 8.1, Class Counsel will specifically petition the Court for an Incentive Award to Plaintiff in the amount of \$7,500.00. The Incentive Award will be paid by Class Counsel to Plaintiff from Class Counsel's Fees and Costs within twenty (20) days after the Effective Date.

8.3 Defendants shall bear their own attorneys' fees and costs.

**9. CONDITIONS OF THE SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION**

9.1 In the event this Settlement Agreement is not approved by the Court or the Settlement set forth herein is terminated or fails to become effective in accordance with its terms (including by reason of appellate proceedings), the Settling Parties shall be restored to their respective pre-settlement positions in the Litigation, including with regard to any agreements concerning tolling and similar agreements, and this entire Settlement Agreement shall become null and void.

9.2 The Parties and their counsel agree to cooperate fully with one another and to use their best efforts to effectuate the Settlement, including, without limitation, in seeking Preliminary Approval and Final Approval of the Settlement, carrying out the terms of this Settlement 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. The Parties shall cooperate in good faith and undertake all reasonable actions and steps in order to accomplish the events described in this Settlement Agreement.

## **10. RELEASES**

10.1 Settlement Class Released Injunctive Claims. As of the date the injunctive relief described in Section 7.2 above is fully provided, the Settlement Class, and each member of the Settlement Class, in consideration of the relief set forth herein, does fully and finally release, acquit, and discharge the Released Persons from the Released Injunctive Claims, defined as any and all claims for injunctive or equitable relief brought for, by, or on behalf of, Settlement Class Members, that are asserted in the Operative Complaint. “Released Injunctive Claims” do not include any claims for damages or other monetary relief (whether actual, nominal, punitive, exemplary, statutory, or otherwise) for any Settlement Class Member. The Parties acknowledge and agree that the Settlement Class Released Injunctive Claims do not include any claims from minors who are under the age of 18 as of the Effective Date.

10.2 Plaintiff’s Released Claims. As of the date the injunctive relief described in Section 7.2 above is fully provided, Plaintiff, in consideration of the relief set forth herein, does fully and finally release, acquit, and discharge the Released Persons from Plaintiff’s Released Claims, defined as: (a) any and all claims for injunctive or equitable relief that are asserted in the Operative Complaint; and (b) any claims for damages or other monetary relief (whether actual, nominal, punitive, exemplary, statutory, or otherwise) for Plaintiff.

10.3 Settlement Class Members are not releasing any claims for monetary relief and may pursue individual claims for monetary relief. The Parties acknowledge and agree that the statute of limitations for individual claims for monetary relief by members of the putative class were tolled as of the date of filing of the Complaint. The Parties acknowledge and agree that with respect to minors, the statute of limitations are tolled until the minor turns 18. As such, the statute of limitations are tolled as

of the date of the filing of the Complaint in this action, or, with respect to minors, until a minor settlement class member turns 18, whichever is later.

## **11. REPRESENTATIONS AND WARRANTIES**

11.1 Class Counsel represent and warrant on behalf of themselves, and on behalf of all others acting on their behalf, that they: (a) have not been retained by any other individuals or entities with claims against Defendants that are the same as or similar to the claims asserted in the Litigation; (b) are not aware of, and have not been informed of, any other person, potential plaintiff, class member or attorney who intends to bring claims against Defendants that are the same as or similar to the claims asserted in the Litigation; and (c) will not disclose confidential facts concerning the underlying claims in the Litigation to an attorney or to any person that Class Counsel believe may file a lawsuit against Defendants asserting claims that are the same as or similar to the claims asserted in this Litigation. Nothing in this Section restricts Class Counsel's right to practice. *See* California Rule of Professional Conduct 5.6.

11.2 Plaintiff represents and warrants that she: (a) is not aware of, and has not been informed of, any other plaintiff or class members who intend to bring claims against Defendants that are the same as or similar to the claims asserted in the Litigation; and (b) will not disclose confidential facts concerning the underlying claims in the Litigation to an attorney or to any person Plaintiff believes may file a lawsuit against Defendants asserting claims that are the same as or similar to the claims asserted in the Litigation.

## **12. MISCELLANEOUS PROVISIONS**

12.1 The Parties acknowledge that it is their intent to consummate this Agreement, and they agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of this Agreement.

12.2 The Parties intend the Settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The Settlement compromises claims that are contested and will not be deemed an admission by any Settling Party as to the merits of any claim or defense or as to the propriety of any relief.

12.3 The Parties agree that the consideration provided to the Settlement Class and the other terms of the Settlement were negotiated at arm's length, in good faith by the Parties, and reflect a settlement that was reached voluntarily, after consultation with competent legal counsel, and with the extensive assistance of an independent, neutral mediator, the Honorable Jay C. Gandhi (Ret.) of JAMS. Plaintiff contends that the Litigation was filed in good faith and was not frivolous. This Agreement is entered solely to eliminate the uncertainties, burdens, and expenses of protracted litigation.

12.4 Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Injunctive Claims or of any Plaintiff's Released Claims, or of any wrongdoing or liability of Defendants; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of Defendants in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal. Any party to this Litigation may file this Agreement and/or the Final Judgment in any action that may be brought against it in order to support any defense or counterclaim, including without limitation those based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

12.5 The Court shall retain continuing jurisdiction over the Parties and the Settlement Agreement with respect to the future performance of the terms of the Settlement Agreement, and to assure that all payments and other actions required of any of the Parties by the Settlement are properly made or taken. All Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the terms embodied in this Settlement Agreement.

12.6 Any and all Exhibits to this Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

12.7 This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

12.8 This Agreement and any exhibits attached hereto constitute the entire agreement among the Parties, and no representations, warranties, or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, and covenants covered and

memorialized in such documents. Except as otherwise provided herein, the Parties will bear their own respective costs.

12.9 Class Counsel, on behalf of the Settlement Class, is expressly authorized by Plaintiff to take all appropriate action required or permitted to be taken by the Settlement Class pursuant to this Agreement to effectuate its terms, and is expressly authorized to enter into any modifications or amendments to this Agreement on behalf of the Settlement Class that Class Counsel deems appropriate.

12.10 Each counsel or other Person executing this Agreement or any of its Exhibits on behalf of any Party hereby warrants that such Person has the full authority to do so.

12.11 This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument. A complete set of original counterparts will be filed with the Court.

12.12 This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties.

12.13 The Court will retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement.

12.14 None of the Settling Parties, or their respective counsel, will be deemed the drafter of this Agreement or its exhibits for purposes of construing the provisions thereof. The language in all parts of this Agreement and its exhibits will be interpreted according to its fair meaning, and will not be interpreted for or against any of the Settling Parties as the drafter thereof.

12.15 This Agreement and any exhibits hereto will be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of California without giving effect to that State's choice-of-law principles. Any provision of California Evidence Code Sections 1115-1128 notwithstanding, this Agreement may be enforced by any Party hereto by a motion under California Code of Civil Procedure Section 664.6 or by any other procedure permitted by California law. The provisions of the confidentiality agreement entered into with respect to the mediation process concerning this matter are waived solely for purposes of such enforcement.

12.16 If the Agreement is rejected by the Court, the Parties agree to negotiate in good faith,

including through the engagement of a mediator, regarding the elimination or revision of any provisions in the Agreement that resulted in Court rejection, with the goal of reaching a formal settlement agreement that will be accepted by the Court and thereafter to submit a revised settlement agreement to the Court for approval as soon as is practicable; all other terms and conditions herein shall continue in full force and effect until approval by the Court of any such revised settlement agreement. The fees and expenses of the mediator incurred pursuant to this section shall be shared equally between Defendants and the Litigation Class. Each Party shall bear its own attorneys' fees and costs of such renegotiation.

**IN WITNESS THEREOF**, the Settling Parties hereto have caused this Settlement Agreement to be executed by their duly authorized representatives.

**UNDERSTOOD AND AGREED:**

Dated: 3/28/2024

DocuSigned by:  
*John Libby*  
By: AD6F52962DE24E0...  
Representative of MobilityWare, LLC

Dated: 3/28/2024

DocuSigned by:  
*John Libby*  
By: AD6F52962DE24E0  
Defendant John Libby

Dated: 3/27/2024

DocuSigned by:  
*Dave Yonamine*  
By: 5E820777CCD6445  
Defendant Dave Yonamine

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Plaintiff Rona Komins

**APPROVED AS TO FORM AND CONTENT AND AGREED AS TO REPRESENTATIONS UNDER SECTION 11.1:**

**LAW OFFICES OF RONALD A. MARRON**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Ronald A. Marron

including through the engagement of a mediator, regarding the elimination or revision of any provisions in the Agreement that resulted in Court rejection, with the goal of reaching a formal settlement agreement that will be accepted by the Court and thereafter to submit a revised settlement agreement to the Court for approval as soon as is practicable; all other terms and conditions herein shall continue in full force and effect until approval by the Court of any such revised settlement agreement. The fees and expenses of the mediator incurred pursuant to this section shall be shared equally between Defendants and the Litigation Class. Each Party shall bear its own attorneys' fees and costs of such renegotiation.

**IN WITNESS THEREOF**, the Settling Parties hereto have caused this Settlement Agreement to be executed by their duly authorized representatives.

**UNDERSTOOD AND AGREED:**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Representative of MobilityWare, LLC

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Defendant John Libby

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Defendant Dave Yonamine


Dated: March 27, 2024

By:  \_\_\_\_\_  
Plaintiff Rona Komins

**APPROVED AS TO FORM AND CONTENT AND AGREED AS TO REPRESENTATIONS UNDER SECTION 11.1:**

**LAW OFFICES OF RONALD A. MARRON**


Dated: March 27, 2024

By:  \_\_\_\_\_  
Ronald A. Marron

651 Arroyo Drive  
San Diego, California 92103  
Telephone: (619) 696-9006  
Email: [ron@consumersadvocates.com](mailto:ron@consumersadvocates.com)  
*Counsel for Plaintiff and the Class*

**PILLSBURY WINTHROP SHAW  
PITTMAN LLP**

Dated: 3/28/24

By:   
Robert L. Wallan, Esq.  
725 South Figueroa Street, Suite 3600  
Los Angeles, CA 90017-5524  
Telephone: (213) 488-7100  
Email: [robert.wallan@pillsburylaw.com](mailto:robert.wallan@pillsburylaw.com)  
*Counsel for Defendants Dave Yonamine,  
John Libby, and MobilityWare, LLC*



**EXHIBITS**

Exhibit A	Long Form Notice to the Class
Exhibit B	Summary Notice to the Class
Exhibit C	Notice Plan
Exhibit D	Proposed Preliminary Approval Order
Exhibit E	Proposed Final Approval Order