

**COMMONWEALTH OF KENTUCKY  
HENDERSON COUNTY CIRCUIT COURT**

BROOKE KINGSTON, individually and on behalf of  
all others similarly situated,

Plaintiff,

v.

SPINX GAMES LTD.

Defendant.

Case No. 24-CI-00062

**CLASS ACTION SETTLEMENT AGREEMENT**

This Agreement (“Agreement” or “Settlement Agreement”) is entered into by and among (i) Plaintiff, Brooke Kingston (“Plaintiff”); (ii) the Settlement Class (as defined herein); and (iii) Defendant, SpinX Games Ltd. (“Defendant” or “SpinX”). The Settlement Class and Plaintiff are collectively referred to as the “Plaintiffs” unless otherwise noted. The Plaintiff and SpinX are collectively referred to herein as the “Parties.” This Agreement is intended by the Parties to fully, finally and forever resolve, discharge, and settle the Released Claims (as defined herein), upon and subject to the terms and conditions of this Agreement, and subject to the final approval of the Court.

**RECITALS**

A. On March 9, 2023, Plaintiff, through her counsel, sent a demand letter to SpinX alleging that its Games (defined below) fall within the definition of an illegal gambling game and that players can recover their losses under Kentucky law, setting forth claims for violations of Ky. Rev. Stat. § 372.020, based on Plaintiff’s use of and purchases of virtual items in SpinX’s Games.

B. Over the next several months, counsel for the Parties had numerous telephone calls and discussed the prospect of resolution.

C. Those discussions eventually led to an agreement between the Parties to engage in mediation, which the Parties agreed would take place before Ms. Niki Mendoza, Esq., a neutral affiliated with Phillips ADR Enterprises (“Phillips ADR”).

D. In the weeks leading up to the mediation, the Parties were in regular communication with each other and with Phillips ADR, as the Parties sought to crystallize the disputed issues, produce focal information and data, and narrow potential frameworks for resolution.

E. During this period and in connection with the mediation proceedings, SpinX provided Class Counsel with transaction data for virtual coin purchases made by the Settlement Class; the Parties exchanged briefing on the key facts, legal issues, litigation risks, and potential settlement structures; and the Parties supplemented that briefing with extensive telephonic correspondence, mediated by Phillips ADR, in order to clarify the Parties’ positions in advance of the mediation.

F. On July 12, 2023, the Parties participated in a full-day mediation via Zoom videoconference before Ms. Mendoza. At the conclusion of the mediation, Ms. Mendoza made a mediator’s proposal to settle the case, which all Parties accepted. The Parties then executed a binding term sheet to settle the case on a class action basis.

G. On January 29, 2024, Plaintiff filed a putative class action complaint against SpinX in the Henderson County Circuit Court, Case No. 24-CI-00062.

H. Plaintiff and Class Counsel have conducted a comprehensive examination of the law and facts regarding the claims against SpinX, and the potential defenses available. Plaintiff believes that the claims asserted in the Action against SpinX have merit and that Plaintiff would

have prevailed at summary judgment and/or trial. Nonetheless, Plaintiff and Class Counsel recognize that SpinX has raised factual and legal defenses that present a risk that Plaintiff may not prevail. Plaintiff and Class Counsel also recognize the expense and delay associated with continued prosecution of the Action against SpinX through class certification, summary judgment, trial, and any subsequent appeals. Plaintiff and Class Counsel also have taken into account the uncertain outcome and risks of litigation, especially in complex class actions, as well as the difficulties inherent in such litigation. Therefore, Plaintiff believes it is desirable that the Released Claims be fully and finally compromised, settled, and resolved with prejudice. Based on its evaluation, Class Counsel has concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate to the Settlement Class, and that it is in the best interests of the Settlement Class to settle the claims raised in the Action pursuant to the terms and provisions of this Agreement.

I. At all times, SpinX has denied and continues to deny any wrongdoing and liability and denies all material allegations in the Action. Specifically, SpinX denies that the Games constitute or constituted illegal gambling, and it opposes certification of a litigation class. SpinX is prepared to continue its vigorous defense. Nonetheless, taking into account the uncertainty and risks inherent in a motion to dismiss, class certification, summary judgment, and trial, SpinX has concluded that continuing to defend the Action would be burdensome and expensive. SpinX has further concluded that it is desirable and beneficial that the Action be fully and finally settled and terminated in the manner and upon the terms and conditions set forth in this Agreement. This Agreement is a compromise, and the Agreement, any related documents, and any negotiations resulting in it shall not be construed as or deemed to be evidence of or an admission or concession of liability or wrongdoing on the part of SpinX, or any of the Released

Parties (defined below), with respect to any claim of any fault or liability or wrongdoing or damage whatsoever or with respect to the certifiability of a litigation class.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiff, the Settlement Class, and each of them, and SpinX, by and through its undersigned counsel that, subject to final approval of the Court after a hearing or hearings as provided for in this Settlement Agreement, in consideration of the benefits flowing to the Parties from the Agreement set forth herein, that the Action and the Released Claims shall be finally and fully compromised, settled, and released, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions of this Agreement.

## **AGREEMENT**

### **1. DEFINITIONS.**

As used in this Settlement Agreement, the following terms have the meanings specified below:

**1.1 “Action”** means the case captioned *Kingston v. SpinX Games Ltd.*, Case No. 24-CI-00062, pending in the Henderson County Circuit Court.

**1.2 “Approved Claim”** means a Claim Form submitted by a Settlement Class Member that: (a) is submitted timely and in accordance with the directions on the Claim Form and the provisions of the Settlement Agreement; (b) is fully and truthfully completed by a Settlement Class Member with all of the information requested in the Claim Form; (c) is signed by the Settlement Class Member, physically or electronically; and (d) is approved by the Settlement Administrator pursuant to the provisions of this Agreement.

**1.3 “Claim Form”** means the document substantially in the form attached hereto as Exhibit A, as approved by the Court. The Claim Form, to be completed by Settlement Class

Members who wish to file a Claim for a payment, shall be available in electronic and paper format in the manner described below.

**1.4 “Claims Deadline”** means the date by which all Claim Forms must be postmarked or received to be considered timely and shall be set as a date no later than fifty-six (56) days after the Final Approval Hearing. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the Notice and the Claim Form.

**1.5 “Class Counsel”** means Philip L. Fraietta and Alec M. Leslie of Bursor & Fisher, P.A.

**1.6 “Class Representative”** means the named Plaintiff in this Action, Brooke Kingston.

**1.7 “Court”** means the Henderson County Circuit Court, the Honorable Karen L. Wilson presiding, or any judge who shall succeed her as the Judge in this Action.

**1.8 “Defendant”** means SpinX Games Ltd.

**1.9 “Defendant’s Counsel”** means Keker, Van Nest & Peters LLP.

**1.10 “Effective Date”** means the date ten (10) days after which all of the events and conditions specified in Paragraph 9.1 have been met and have occurred.

**1.11 “Escrow Account”** means the separate, interest-bearing escrow account to be established by the Settlement Administrator under terms acceptable to all Parties at a depository institution insured by the Federal Deposit Insurance Corporation. The Settlement Fund shall be deposited by SpinX into the Escrow Account in accordance with the terms of this Agreement and the money in the Escrow Account shall be invested in the following types of accounts and/or instruments and no other: (i) demand deposit accounts and/or (ii) time deposit accounts and certificates of deposit, in either case with maturities of forty-five (45) days or less. The costs of establishing and maintaining the Escrow Account shall be paid from the Settlement Fund.

**1.12 “Fee Award”** means the amount of attorneys’ fees, costs, and expenses awarded by the Court to Class Counsel, which will be paid out of the Settlement Fund.

**1.13 “Final”** means one business day following the latest of the following events: (i) the date upon which the time expires for filing or noticing any appeal of the Court’s Final Judgment approving the Settlement Agreement; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award, the date of completion, in a manner that finally affirms and leaves in place the Final Judgment without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or *certiorari*, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on *certiorari*, leaving the Final Judgment intact in all material respects.

**1.14 “Final Approval Hearing”** means the hearing before the Court where the Parties will request the Final Judgment to be entered by the Court approving the Settlement Agreement, the Fee Award, and the incentive award to the Class Representative.

**1.15 “Final Judgment”** means the Final Judgment and Order to be entered by the Court approving the Agreement after the Final Approval Hearing.

**1.16 “Games”** means Cash Frenzy, Lotsa Slots, Jackpot World (previously known as Jackpot Mania and/or DAFU Casino), Jackpot Crush, and Vegas Friends.

**1.17 “Net Settlement Fund”** means the Settlement Fund, plus any interest or investment income earned on the Settlement Fund, less any Fee Award, incentive award of the Class Representative, taxes, and Settlement Administration Expenses.

**1.18 “Notice”** means the notice of this proposed Class Action Settlement Agreement and Final Approval Hearing, which is to be sent to the Settlement Class substantially in the manner set forth in this Agreement, is consistent with the requirements of Due Process, Rule 23, and is substantially in the form of Exhibits B, C, and D hereto.

**1.19 “Notice Date”** means the date by which the Notice set forth in Paragraph 4.1 is complete, which shall be no later than twenty-eight (28) days after Preliminary Approval.

**1.20 “Objection/Exclusion Deadline”** means the date by which a written objection to this Settlement Agreement or a request for exclusion submitted by a Person within the Settlement Class must be made, which shall be designated as a date no later than forty-five (45) days after the Notice Date and no sooner than fourteen (14) days after papers supporting the Fee Award are filed with the Court and posted to the settlement website listed in Paragraph 4.1(d), or such other date as ordered by the Court.

**1.21 “Person”** shall mean, without limitation, any individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assigns.

**1.22 “Plaintiffs”** means Brooke Kingston and the Settlement Class Members.

**1.23 “Platform Provider(s)”** means Amazon, Apple, Facebook, and/or Google.

**1.24 “Platform ID”** means the unique identifier assigned by a Platform Provider to a person who has a Platform Provider account and/or login. For avoidance of doubt, Platform IDs are not assigned/generated by Defendants.

**1.25 “Player ID”** means the unique identifier assigned by SpinX to a person who has an account or log-in with any of the Games referenced in Section 1.16 of this agreement.

**1.26 “Preliminary Approval”** means the Court’s certification of the Settlement Class for settlement purposes, preliminary approval of this Settlement Agreement, and approval of the form and manner of the Notice.

**1.27 “Preliminary Approval Order”** means the order preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes, and directing notice thereof to the Settlement Class, which will be agreed upon by the Parties and submitted to the Court in conjunction with Plaintiff’s motion for preliminary approval of the Agreement.

**1.28 “Released Claims”** means any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action, contracts or agreements, extra contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, attorneys’ fees and or obligations (including “Unknown Claims,” as defined below), whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, whether based on the Kentucky or other state, federal, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside the United States against the Released Parties, or any of them, arising out of any facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions, or failures to act relating to the operation of the Games and/or the sale of virtual coins in the Games, such as claims that the Games are illegal gambling games, that virtual coins in the Games are “something of value,” that aspects of the Games are deceptive or unfair, or that SpinX has been unjustly enriched by the operation of the Games, including but not limited to all claims that were brought or could have been brought in the Action relating to any and all Releasing Parties. For the avoidance of doubt, this release: (i) includes claims potentially subject to arbitration agreements;



and (ii) does not extend to other games owned and/or operated by SpinX and/or the Released Parties.

**1.29 “Released Parties”** means SpinX Games Ltd., as well as any of its parents, subsidiaries, divisions, corporate affiliates, predecessors, successors, agents, consultants, associates, affiliates, licensors, licensees, vendors, or independent contractors and any of their respective present and former officers, directors, owners, shareholders, insurers, agents, affiliates, representatives, employees, and assigns.

**1.30 “Releasing Parties”** means Plaintiff, those Settlement Class Members who do not timely opt out of the Settlement Class, and all of their and their respective past, present, and future heirs; children; spouses; next of kin; beneficiaries; conservators; executors; estates; administrators; assigns; agents; consultants; independent contractors; insurers; attorneys; accountants; financial and other advisors; investment bankers; underwriters; lenders; and any other representatives of any of these persons and entities.

**1.31 “Relevant Spending Amount”** means the total amount of money a Settlement Class Member spent on games including Cash Frenzy on the dates between December 18, 2018 and February 24, 2021, Lotsa Slots on the dates between March 27, 2019 and February 4, 2021, Jackpot World (previously known as Jackpot Mania and/or DAFU Casino) on the dates between May 18, 2018 and March 8, 2021, Jackpot Crush on the dates between November 26, 2019 and February 24, 2021, and Vegas Friends on the dates between April 13, 2019 and March 2, 2021, in amounts of \$5.00 or more within a 24-hour period, while located in the Commonwealth of Kentucky (as reasonably determined by billing address information, IP address information, or other information furnished by SpinX), minus thirty percent (which the Parties agree represents a reasonable approximation of the fees collected by the Platform Providers).

**1.32 “Settlement Administration Expenses”** means the expenses incurred by the Settlement Administrator in providing Notice, processing claims, responding to inquiries from members of the Settlement Class, distributing funds for Approved Claims, and related services, paying taxes and tax expenses related to the Settlement Fund (including all federal, state or local taxes of any kind and interest or penalties thereon, as well as expenses incurred in connection with determining the amount of and paying any taxes owed and expenses related to any tax attorneys and accountants), as well as all expenses related to the resolution of any disputed claims (as described below in paragraph 5.4), and all expenses, excluding the fees and expenses of Class Counsel and Defendant’s Counsel, related to any work required by the Court to confirm that Notice is consistent with Due Process and Rule 23.

**1.33 “Settlement Administrator”** means JND Legal Administration, or such other reputable administration company that has been selected jointly by the Parties and approved by the Court to perform the duties set forth in this Agreement, including but not limited to serving as Escrow Agent for the Settlement Fund, overseeing the distribution of Notice, as well as the processing and payment of Approved Claims to the Settlement Class as set forth in this Agreement, handing all approved payments out of the Settlement Fund, and handling the determination, payment and filing of forms related to all federal, state and/or local taxes of any kind (including any interest or penalties thereon) that may be owed on any income earned by the Settlement Fund.

**1.34 “Settlement Class”** means all individuals who, in Kentucky (as reasonably determined by billing address information, IP address information, or other information furnished by SpinX), spent \$5.00 or more within a 24-hour period on games on Cash Frenzy on the dates between December 18, 2018 and February 24, 2021, Lotsa Slots on the dates between March 27, 2019 and February 4, 2021, Jackpot World (previously known as Jackpot Mania

and/or DAFU Casino) on the dates between May 18, 2018 and March 8, 2021, Jackpot Crush on the dates between November 26, 2019 and February 24, 2021, and Vegas Friends on the dates between April 13, 2019 and March 2, 2021. Excluded from the Settlement Class are (1) any Judge or Magistrate presiding over this Action and members of their families; (2) SpinX, SpinX's subsidiaries, parent companies, successors, predecessors, and any entity in which the SpinX or its parents have a controlling interest and their current or former officers, directors, agents, attorneys, and employees; (3) persons who properly execute and file a timely request for exclusion from the class; and (4) the legal representatives, successors or assigns of any such excluded persons.

**1.35 “Settlement Class Member”** means a Person who falls within the definition of the Settlement Class as set forth above and who has not submitted a valid request for exclusion.

**1.36 “Settlement Fund”** means the non-reversionary cash fund that shall be established by SpinX in the total amount of two hundred and eighty-five thousand five hundred dollars (\$285,500.00 USD) to be deposited into the Escrow Account, according to the schedule set forth herein, plus all interest earned thereon. From the Settlement Fund, the Settlement Administrator shall pay all Approved Claims made by Settlement Class Members, Settlement Administration Expenses, any incentive award to the Class Representative, any Fee Award to Class Counsel, taxes, and any other costs, fees, or expenses approved by the Court. The Settlement Fund shall be kept in the Escrow Account with permissions granted to the Settlement Administrator to access said funds until such time as the listed payments are made. The Settlement Fund includes all interest that shall accrue on the sums deposited in the Escrow Account. The Settlement Administrator shall be responsible for all tax filings with respect to any earnings on the Settlement Fund and the payment of all taxes that may be due on such earnings. The Settlement Fund represents the total extent of SpinX's monetary obligations under this

Agreement. The payment of the amount of the Settlement Fund by SpinX into the escrow account fully discharges SpinX and the other Released Parties' financial obligations (if any) in connection with the Settlement, meaning that no Released Party shall have any other obligation to make any payment into the Escrow Account or to any Settlement Class Member, or any other Person, under this Agreement. In no event shall SpinX's total monetary obligation with respect to this Agreement exceed two hundred and eighty-five thousand five hundred dollars (\$285,500.00 USD).

**1.37 “Settlement Payment(s)”** means the payments from the Net Settlement Fund to be made to Settlement Class Members with Approved Claims according to the plan of allocation attached as Exhibit E (the “Plan of Allocation”).

**1.38 “Settlement Website”** means the website to be created, launched, and maintained by the Settlement Administrator which shall allow for the electronic submission of Claim Forms and shall provide access to relevant case documents including the Notice, information about the submission of Claim Forms, and other relevant documents. The Settlement Website shall also advise the Settlement Class of the total value of the Settlement Fund and give Settlement Class Members the ability to estimate their Settlement Payment. The Settlement Website shall remain accessible at least thirty (30) days after the Effective Date.

**1.39 “Unknown Claims”** means claims that could have been raised in the Action and that any or all of the Releasing Parties do not know or suspect to exist, which, if known by him or her, might affect his or her agreement to release the Released Parties or the Released Claims or might affect his or her decision to agree, object or not to object to the Settlement or to seek exclusion from the Settlement Class. Upon the Effective Date, the Releasing Parties shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent

permitted by law, the provisions, rights and benefits of § 1542 of the California Civil Code (if applicable), 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.

Upon the Effective Date, the Releasing Parties also shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to § 1542 of the California Civil Code. The Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention to finally and forever settle and release the Released Claims, notwithstanding any Unknown Claims they may have, as that term is defined in this Paragraph.

## **2. SETTLEMENT RELIEF.**

### **2.1 Payments to Settlement Class Members.**

(a) SpinX shall pay or cause to be paid into the Escrow Account the amount of the Settlement Fund (\$285,500.00), specified in Section 1.36 of this Agreement, within ten (10) days after entry of the Final Judgment.

(b) Settlement Class Members shall have until the Claims Deadline to submit a Claim Form. Each Settlement Class Member with an Approved Claim shall be entitled to a Settlement Payment from the Net Settlement Fund, calculated by the Settlement Administrator, by check or electronic payment.

(c) The Settlement Payment will be determined according to the Plan of Allocation attached as Exhibit E.

(d) If the total Approved Claims do not exhaust the Net Settlement Fund under the baseline marginal recovery percentages in the Plan of Allocation, the marginal recovery percentages will be increased pro rata so that the Settlement Payments will exhaust or leave only *de minimis* funds in the Net Settlement Fund.

(e) Within thirty (30) days after the Claims Deadline, the Settlement Administrator shall determine proration of amounts due to Settlement Class Members from the Settlement Fund.

(f) Within the later of sixty (60) days after the Claims Deadline or the date on which the Final Judgment becomes Final, the Settlement Administrator shall pay from the Settlement Fund all Approved Claims by check or electronic payment, provided, however, that the default payment method will be check, unless a Settlement Class Member elects for an electronic payment.

(g) All cash payments issued to Settlement Class Members via check will state on the face of the check that it will expire and become null and void unless cashed within one hundred eighty (180) days after the date of issuance.

(h) In the event that an electronic deposit to a Settlement Class Member is unable to be processed, the Settlement Administrator shall attempt to contact the Settlement Class Member within thirty (30) days to correct the problem.

(i) To the extent that a check issued to a Settlement Class Member is not cashed within one hundred eighty (180) days after the date of issuance, or an electronic deposit is unable to be processed one hundred eighty (180) days after the first attempt, such funds shall remain in the Net Settlement Fund and shall be apportioned *pro rata* to participating Settlement Class Members in a second distribution, if practicable. To the extent that any second distribution is impracticable, or that any second-distribution funds remain in the Net Settlement Fund after an

additional one hundred and eighty (180) calendar days, such funds shall, subject to Court approval, revert to the Civil Rule 23 Account maintained by the Kentucky IOLTA Fund Board of Trustees pursuant to Supreme Court Rule 3.830(20).

(j) No amount paid by Defendant into the Escrow Account shall revert to Defendant unless the Settlement is terminated in accordance with Section 6.

**2.2 Prospective Measures.** In connection with this Settlement and within fifty-six (56) days after the Preliminary Approval Order, SpinX shall take the following steps:

(a) SpinX will continue to maintain a webpage on the Games sites that (1) encourages responsible gameplay; (2) describes what video game behavior disorders are; (3) provides or links to resources relating to video game behavior disorders; and (4) includes a link to SpinX's self-exclusion policy. SpinX will maintain a policy, and will make commercially reasonable efforts to enforce that policy, such that customer service representatives will provide the same information to any player who contacts them and references or exhibits video game behavior disorders, and will face no adverse employment consequences for providing players with this information.

(b) SpinX shall continue to publish on its website a voluntary self-exclusion policy in which players may terminate their ability to purchase virtual coins in the Games or close their Game accounts entirely. That policy shall provide that, when a player self-excludes by specifying the relevant Player ID, SpinX shall use commercially reasonable efforts to implement the player's request with respect to all account(s) associated with those Player ID(s). SpinX shall retain discretion as to the particular method by which players may self-exclude; for example, SpinX may permit players to self-exclude by contacting SpinX customer support, completing a form on SpinX's website, or any other reasonably accessible means. SpinX shall use commercially reasonable efforts to prevent any use of the Games specified by the player, for

the duration of the requested account disablement (either permanently or temporarily). After a self-exclusion request is addressed in full by SpinX, SpinX shall not remove these restrictions for the period identified in the self-exclusion policy at the time the self-exclusion is requested.

(c) SpinX will maintain its changes to the game mechanics for the Games – implemented in Cash Frenzy on February 25, 2021, in Lotsa Slots on February 5, 2021, in Jackpot World (previously known as Jackpot Mania and/or DAFU Casino) on March 9, 2021, in Jackpot Crush on February 25, 2021 and in Vegas Friends on March 3, 2021 – to ensure that players who run out of sufficient virtual coins are able to continue to play games within the Games without needing to purchase additional virtual coins or wait until they would have otherwise received free additional virtual coins in the ordinary course. Specifically, players who run out of coins will be able to continue to play at least one game within the Games.

(d) SpinX retains the authority on how to specifically implement the measures described in (a)-(c) above, but agrees to consider in good faith suggestions by Class Counsel on these issues, as well as any suggestions for further changes to the game modifications described in (c).

(e) Notwithstanding the above, the settlement will not require that SpinX state or imply that it is engaged in gambling activities, and SpinX will not implement any game modifications or enhancements that either directly or indirectly imply that SpinX admits that Claimant's legal claims have merit. SpinX denies all of Claimant's allegations and claims and that it is liable to Claimant, and will memorialize this in the Settlement Agreement.

### **3. RELEASES.**

**3.1** The obligations incurred pursuant to this Settlement Agreement shall be a full and final disposition of the Action and any and all Released Claims, as against all Released Parties.



**3.2** Upon the Effective Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Judgment shall have, finally, fully, and forever released, relinquished, and discharged all Released Claims against the Released Parties and each of them.

**3.3** Upon the Effective Date, the Released Parties, and each of them, further shall by operation of the Final Judgment have, fully, finally, and forever released, relinquished, and discharged all claims against Plaintiff, the Settlement Class, and Class Counsel that arise out of or relate in any way to the commencement, prosecution, settlement, or resolution of the Action, except for claims to enforce the terms of the Settlement.

**3.4** Plaintiffs and all Settlement Class Members stipulate that, with the changes delineated in Section 2.2(c) above, virtual coins in the Games are gameplay enhancements, not “something of value” as defined by Ky. Rev. Stat. Ann. § 528.010(11). As long as those prospective measures remain implemented in the Games as described, Settlement Class Members are estopped from contending that virtual coins in the Games are “something of value” under current Kentucky law, or that aspects of the Games are deceptive or unfair and, for the avoidance of doubt, the release will include but will not be limited to (1) claims potentially subject to arbitration agreements; and (2) claims for amounts spent on in-game purchases within the Games.

#### **4. NOTICE TO THE CLASS.**

**4.1** The Notice Plan shall consist of the following:

**(a) *Settlement Class List.*** To effectuate the Notice Plan, Defendants shall provide Class Counsel and the Settlement Administrator with a Class List which will identify Settlement Class Members by Kentucky IP address that will contain the Player ID, email address on file (where reasonably available), and Relevant Spending Amount for each Player ID for all Applications, as of March 8, 2021. All information for the Class List will be provided by

Defendants, except that the following information, and the following information only, shall be obtained by subpoena issued from Plaintiff to each of the Platforms, with a rider substantially in the form attached hereto as Exhibit G, within thirty (30) days of signing of the Settlement Agreement, provided that Defendants may request additional time if needed due to vendor delays, as follows:

For Player IDs that made a purchase in the Applications with a Kentucky IP address for whom Defendants do not have an associated email address on file, the Platforms will be asked to identify the name, postal address, and email address for each Platform ID provided by Defendants. The Platform IDs shall be provided to Plaintiff by Defendants within fourteen (14) days of signing of the Settlement Agreement.

**(b)** The Parties will provide the completed Class List to Class Counsel and the Settlement Administrator within fourteen (14) days after receiving the last data requested in Paragraph 4.1(a) from the Platforms. Such information shall be provided pursuant to FRE 408 until Preliminary Approval; and at that time, shall be treated as Confidential and not subject to public filing.

**(c)** Defendants shall provide the Settlement Administrator the information reflected in any opt-out letters from the Dispute Resolution and Arbitration Provision or any part thereof received by Defendants before the date of the execution of this Settlement Agreement.

Defendants will fulfill this obligation by providing a spreadsheet listing, to the extent provided in the opt-out letter, the first, middle, and last name; date on the letter; and address.

**(d)** The Settlement Administrator shall keep the Class List and all personal information obtained therefrom, including the identity, and e-mail addresses of all persons, strictly confidential. To prepare the Class List for potential Settlement Payments, the Settlement

Administrator shall (1) first, attach to each unique and identifiable person all of his/her associated Application accounts (e.g., by Player IDs), (2) second, use Claim Forms to supplement, amend, verify, adjust, and audit the foregoing data, as necessary, (3) third, calculate the total Relevant Spending Amount for each unique and identifiable person, and (4) finally, categorize each unique and identifiable person according to the appropriate Relevant Spending Amount levels identified in the Plan of Allocation. The Class List may not be used by the Settlement Administrator for any purpose other than advising specific individual Settlement Class Members of their rights, distributing Settlement Payments, and otherwise effectuating the terms of the Settlement Agreement or the duties arising thereunder, including the provision of Notice of the Settlement

**4.2 Notice Plan.** The Notice Plan shall consist of the following:

(a) *Direct Notice.* No later than the Notice Date, the Settlement Administrator shall send Notice via email substantially in the form attached as Exhibit B, along with an electronic link to the Claim Form, to all Settlement Class Members for whom a valid email address is available in the Class List. In the event transmission of email notice results in any “bounce-backs,” the Settlement Administrator shall, where reasonable: (i) correct any issues that may have caused the “bounce-back” to occur and make a second attempt to re-send the email notice., and (ii) send Notice substantially in the form attached as Exhibit C via First Class U.S. Mail. The Settlement Administrator shall also, where practicable, send Notice substantially in the form attached as Exhibit C via First Class U.S. Mail to all Settlement Class Members with a Relevant Spending Amount greater than \$100.00, provided an associated U.S. Mail address is contained in the Class List.

(b) *Update Addresses.* Prior to mailing any Notice, the Settlement Administrator will update the U.S. mail addresses of persons on the Class List using the National Change of

Address database and other available resources deemed suitable by the Settlement Administrator. The Settlement Administrator shall take all reasonable steps to obtain the correct address of any Settlement Class members for whom Notice is returned by the U.S. Postal Service as undeliverable and shall attempt re-mailings.

(c) *Reminder Notice.* Both thirty (30) days prior to the Claims Deadline and seven (7) days prior to the Claims Deadline, the Settlement Administrator shall again send Notice via email substantially in the form attached as Exhibit B (with minor, non-material modifications to indicate that it is a reminder email rather than an initial notice), along with an electronic link to the Claim Form, to all Settlement Class Members for whom a valid email address is available in the Class List.

(d) *Settlement Website.* Within seven (7) days from entry of the Preliminary Approval Order, Notice shall be provided on a website such as [www.SpinXgamesettlement.com](http://www.SpinXgamesettlement.com), which shall be obtained, administered and maintained by the Settlement Administrator and shall include the ability to file Claim Forms on-line, provided that such Claim Forms, if signed electronically, will be binding for purposes of applicable law and contain a statement to that effect. The Notice provided on the Settlement Website shall be substantially in the form of Exhibit D hereto. The Settlement Website will also advise the Settlement Class of the total value of the Settlement Fund and provide Settlement Class Members the ability to approximate their Settlement Payments.

(e) *Digital Publication Notice.* The Settlement Administrator will supplement the direct notice program with a digital publication notice program that will deliver more than three hundred thousand (300,000) impressions to likely Settlement Class Members. The digital publication notice campaign will run for at least one month and will contain active hyperlinks to the Settlement Website. The final digital notice advertisements, and the overall digital

publication notice program to be used, shall be subject to the final approval of Defendants, which approval shall not be unreasonably withheld.

(f) *Contact from Class Counsel.* Class Counsel, in their capacity as counsel to Settlement Class Members, may from time to time contact Settlement Class Members to provide information about the Settlement Agreement and to answer any questions Settlement Class Members may have about the Settlement Agreement.

**4.3** The Notice shall advise the Settlement Class of their rights, including the right to be excluded from, comment upon, and/or object to the Settlement Agreement or any of its terms. The Notice shall specify that any objection to the Settlement Agreement, and any papers submitted in support of said objection, shall be considered by the Court at the Final Approval Hearing only if, on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice, the Person making the objection files notice of an intention to do so and at the same time (a) files copies of such papers he or she proposes to be submitted at the Final Approval Hearing, and (b) sends copies of such papers by mail, hand, or overnight delivery service to Class Counsel and Defendant's Counsel. A Class Member represented by counsel *must* timely file any objection through the Court's electronic filing system.

**4.4** Any Settlement Class Member who intends to object to this Agreement must present on a timely basis the objection in writing, which must be personally signed by the objector, and must include: (1) the objector's name and address; (2) any Player ID(s); (3) an explanation of the basis upon which the objector claims to be a Settlement Class Member, including any email address(es) associated with the Games; (4) all grounds for the objection, stated with specificity, including all citations to legal authority and evidence supporting the objection; (5) all documents or writings that the Settlement Class Member desires the Court to consider; (6) the name and contact information of any and all attorneys representing, advising, or

in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the “Objecting Attorneys”); and (7) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel who must file an appearance with the Court in accordance with the Local Rules). All written objections must be filed with, or otherwise received by the Court, and emailed or delivered to Class Counsel and Defendant’s Counsel, no later than the Objection/Exclusion Deadline. Any Settlement Class Member who fails to timely file or submit a written objection with the Court and notice of his or her intent to appear at the Final Approval Hearing in accordance with the terms of this Section and as detailed in the Notice, and at the same time provide copies to designated counsel for the Parties, shall not be permitted to object to this Settlement Agreement or appear at the Final Approval Hearing, and shall be foreclosed from seeking any review of this Settlement by appeal or other means and shall be deemed to have waived his or her objections and be forever barred from making any such objections in the Action or any other action or proceeding.

**4.5** If a Settlement Class Member or any of the Objecting Attorneys has objected to any class action settlement where the objector or the Objecting Attorneys asked for or received any payment in exchange for dismissal of the objection, or any related appeal, without any modification to the settlement, then the objection must include a statement identifying each such case by full case caption and amount of payment received.

**4.6** A Class Member may request to be excluded from the Settlement Class by sending a timely written request postmarked on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice. To exercise the right to be excluded, a Person in the Settlement Class must timely send a written request for exclusion, physically signed by the individual seeking exclusion, to the Settlement Administrator providing his/her name and

address, any Player ID(s) and any email address(es) associated with the Games, the name and number of the case, “*Brooke Kingston v. SpinX Games Ltd.*, No. 24-CI-00062 (Cir. Ct. Henderson Cnty.)” and a statement that he or she wishes to be excluded from the Settlement Class for purposes of this Settlement. A request to be excluded that does not include all of this information, or that is sent to an address other than that designated in the Notice, or that is not postmarked within the time specified, shall be invalid, and the Person(s) serving such a request shall be a member(s) of the Settlement Class and shall be bound as a Settlement Class Member by this Agreement, if approved. Any member of the Settlement Class who validly elects to be excluded from this Agreement shall not: (i) be bound by any orders or the Final Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be entitled to object to any aspect of this Agreement. The request for exclusion must be personally signed by each Person requesting exclusion. So-called “mass” or “class” opt-outs shall not be allowed. To be valid, a request for exclusion must be postmarked or received by the date specified in the Notice.

**4.7** The Final Approval Hearing shall be no earlier than ninety (90) days after the Notice described in Paragraph 4.2(a) is provided.

**4.8** Any Settlement Class Member who does not, in accordance with the terms and conditions of this Agreement, seek exclusion from the Settlement Class or timely file a valid Claim Form shall not be entitled to receive any payment or benefits pursuant to this Agreement, but will otherwise be bound by all of the terms of this Agreement, including the terms of the Final Judgment to be entered in the Action and the Releases provided for in the Agreement, and will be barred from bringing any action against any of the Released Parties concerning the Released Claims.

## **5. SETTLEMENT ADMINISTRATION.**

**5.1** The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Settlement Agreement by processing Claim Forms in a rational, responsive, cost effective, and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices and such records will be made available to Class Counsel and Defendant's Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall provide Class Counsel and Defendant's Counsel with information concerning Notice, administration, and implementation of the Settlement Agreement. Should the Court request, the Parties shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator, including a post-distribution accounting of all amounts from the Settlement Fund paid to Settlement Class Members, the number and value of checks not cashed, the number and value of electronic payments unprocessed, and the amount distributed to any *cy pres* recipient. Without limiting the foregoing, the Settlement Administrator shall:

**(a)** Receive requests to be excluded from the Settlement Class and promptly provide Class Counsel and Defendant's Counsel copies thereof. If the Settlement Administrator receives any exclusion forms after the deadline for the submission of such forms, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant's Counsel;

**(b)** Provide Class Counsel and Defendant's Counsel with drafts of all administration related documents, including but not limited to follow-up class notices or communications with Settlement Class Members, telephone scripts, website postings or language or other communications with the Settlement Class, at least five (5) business days before the Settlement Administrator is required to or intends to publish or use such communications, unless



Class Counsel and Defendant's Counsel agree to waive this requirement in writing on a document-by-document basis;

(c) Provide weekly reports to Class Counsel and Defendant's Counsel regarding the number of Claim Forms received, the amount of the Settlement Payments associated with those Claim Forms, and the categorization and description of Claims Form rejected, in whole or in part, by the Settlement Administrator; and

(d) Make available for inspection by Class Counsel or Defendant's Counsel the Claim Forms received by the Settlement Administrator at any time upon reasonable notice.

**5.2** The Settlement Administrator shall distribute the Settlement Payments according to the provisions enumerated in Section 2.1.

**5.3** The Settlement Administrator shall be obliged to employ reasonable procedures to screen claims for abuse or fraud and deny Claim Forms where there is evidence of abuse or fraud, including by cross-referencing Approved Claims with the Class List. The Settlement Administrator shall determine whether a Claim Form submitted by a Settlement Class Member is an Approved Claim and shall reject Claim Forms that fail to (a) comply with the instructions on the Claim Form or the terms of this Agreement, or (b) provide full and complete information as requested on the Claim Form. In the event a person submits a timely Claim Form by the Claims Deadline but the Claim Form is not otherwise complete, then the Settlement Administrator shall give such person reasonable opportunity to provide any requested missing information, which information must be received by the Settlement Administrator no later than twenty-eight (28) calendar days after the Claims Deadline. In the event the Settlement Administrator receives such information more than twenty-eight (28) calendar days after the Claims Deadline, then any such claim shall be denied. The Settlement Administrator may contact any person who has submitted a Claim Form to obtain additional information necessary to verify the Claim Form.

**5.4** Class Counsel and Defendant's Counsel shall both have the right to challenge the Settlement Administrator's acceptance or rejection of any particular Claim Form or the amount proposed to be paid on account of any particular Settlement Class Member's claim. The Settlement Administrator shall follow any joint decisions of Class Counsel and Defendant's Counsel as to the validity or amount of any disputed claim. Where Class Counsel and Defendant's Counsel disagree, the Settlement Administrator will finally resolve the dispute and the claim will be treated in the manner designated by the Settlement Administrator.

**5.5** In the exercise of its duties outlined in this Agreement, the Settlement Administrator shall have the right to reasonably request additional information from the Parties or any Settlement Class Member.

**5.6** All taxes and tax expenses shall be paid out of the Settlement Fund, and shall be timely paid by the Settlement Administrator pursuant to this Agreement and without further order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with this Agreement and in all events shall reflect that all taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein. The Released Parties shall have no responsibility or liability for the acts or omissions of the Settlement Administrator or its agents with respect to the payment of taxes or tax expenses.

## **6. TERMINATION OF SETTLEMENT.**

**6.1** Each Party additionally shall have the right, but not the obligation, to terminate the Settlement Agreement if 5% or more of the members of the Settlement Class exclude themselves from or object to the Settlement. Notification of intent to terminate the Settlement Agreement must be provided with ten (10) calendar days after the *earlier* of: (1) the date the Parties agree in good faith that they have received a final tabulation from the Settlement

Administrator of the objections and requests for exclusion timely received by the Objection/Exclusion Deadline, or (2) the date the Parties receive sufficient evidence from the Settlement Administrator to establish beyond a reasonable doubt that the threshold for a Section 6.1 Termination Notice has been or will be met. For example, if the Settlement Administrator – after the Objection/Exclusion Deadline – notifies the Parties that there were no objections and just a single opt-out, that evidence would be sufficient to establish beyond a reasonable doubt that no threshold for a Section 6.1 Termination Notice has been or will be met. If this Settlement Agreement is terminated, it will be deemed null and void *ab initio*.

**6.2** Subject to Paragraphs 9.1-9.3 below, Defendant or the Class Representative on behalf of the Settlement Class, shall have the right to terminate this Agreement by providing written notice of the election to do so (“Termination Notice”) to all other Parties hereto within twenty-one (21) days of any of the following events: (i) the Court’s refusal to grant Preliminary Approval of this Agreement in any material respect; (ii) the Court’s refusal to grant final approval of this Agreement in any material respect; (iii) the Court’s refusal to enter the Final Judgment in this Action in any material respect; (iv) the date upon which the Final Judgment is modified or reversed in any material respect by the Kentucky Court of Appeals, Kentucky Supreme Court or any federal court.

**6.3** In the event of termination pursuant to Section 6, Class Counsel shall cause the prompt return of the Settlement Fund in full to SpinX, including any interest accrued while in the Escrow Account, minus one-half (50%) of any amounts reasonably incurred by the Settlement Administrator until the date of termination.

**6.4 Confirmatory Discovery.** SpinX has represented that the total combined Relevant Spending Amount of all Class members is less than or equal to \$1,143,489.20. Simultaneous with the execution of this Agreement, SpinX has provided a declaration, from a

person with sufficient knowledge, of SpinX's best estimate attesting to the total combined Relevant Spending Amount of all Class Members. In the event that the declaration shows that amount exceeds \$1,143,489.20 by more than two percent (2%), the Parties further agree that they shall execute an amended settlement agreement that adjusts the amount of the Settlement Fund proportionally to the increase in amount to account for this error.

## **7. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER.**

**7.1** Promptly after the execution of this Settlement Agreement, Class Counsel shall submit this Agreement together with its Exhibits to the Court and shall move the Court for Preliminary Approval of the settlement set forth in this Agreement; preliminary certification of the Settlement Class for settlement purposes only; preliminary appointment of Class Counsel to represent the class; preliminary appointment of Brooke Kingston as the Class Representative of the Settlement Class; and entry of a Preliminary Approval Order, which order shall set a Final Approval Hearing date and approve the form and contents of the Notice and Claim Forms for dissemination substantially in the form of Exhibits A, B, C, and D hereto. The Preliminary Approval Order shall also authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and its implementing documents (including all exhibits to this Agreement) so long as they are consistent in all material respects with the terms of the Settlement Agreement and do not limit or impair the rights of the Settlement Class or materially expand the obligations of SpinX.

**7.2** At the time of the submission of this Agreement to the Court as described above, Class Counsel shall request that, after Notice is given, the Court hold a Final Approval Hearing where the Court will review comments and/or objections regarding the Settlement, consider its fairness, reasonableness and adequacy, consider the application for any Fee Award and incentive

awards to the Class Representative, and consider whether the Court shall issue a Final Judgment approving this Agreement and dismissing the Action with prejudice.

**7.3** After Notice is given, the Parties shall request and seek to obtain from the Court a Final Judgment, which will:

(a) find that the Court has personal jurisdiction over all Settlement Class Members and that the Court has subject matter jurisdiction to approve the Agreement, including all exhibits thereto;

(b) approve the Settlement Agreement and the proposed settlement as fair, reasonable, and adequate as to, and in the best interests of, the Settlement Class Members; direct the Parties and their counsel to implement and consummate the Agreement according to its terms and provisions; and declare the Agreement to be binding on, and have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and Releasing Parties with respect to the Released Claims;

(c) find that the Notice implemented pursuant to the Agreement (1) constitutes the best practicable notice under the circumstances; (2) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action, their right to object to or exclude themselves from the proposed Agreement, and to appear at the Final Approval Hearing; (3) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and (4) meets all applicable requirements of the Kentucky Rules of Civil Procedure, the Due Process Clause of the United States and Kentucky Constitutions, and the rules of the Court;

(d) find that the Class Representative and Class Counsel adequately represent the Settlement Class for purposes of entering into and implementing the Agreement;

(e) dismiss the Action (including all individual claims and Settlement Class Claims presented thereby) on the merits and with prejudice, without fees or costs to any party except as provided in the Settlement Agreement;

(f) incorporate the Release set forth above, make the Release effective as of the date of the Effective Date, and forever discharge the Released Parties as set forth herein;

(g) permanently bar and enjoin all Settlement Class Members who have not been properly excluded from the Settlement Class from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in, any lawsuit or other action in any jurisdiction based on the Released Claims;

(h) without affecting the finality of the Final Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and the Final Judgment, and for any other necessary purpose; and

(i) incorporate any other provisions as necessary or appropriate to effectuate the terms and conditions of the Settlement Agreement.

**7.4** The Parties shall, in good faith, cooperate, assist, and undertake all reasonable actions and steps in order to accomplish these required events on the schedule set by the Court, subject to the terms of this Settlement Agreement.

## **8. CLASS COUNSEL'S ATTORNEYS' FEES, COSTS, AND EXPENSES; INCENTIVE AWARD.**

**8.1** Pursuant to Ky. R. Civ. P. 23.08, SpinX agrees that Class Counsel shall be entitled to an award of reasonable attorneys' fees and costs out of the Settlement Fund in an amount determined by the Court as the Fee Award. With no consideration given or received, Class Counsel will limit its petition for attorneys' fees, costs, and expenses to no more than one third of the Settlement Fund (i.e., \$95,166.67). Payment of any Fee Award shall be made from

the Settlement Fund and should the Court award less than the amount sought by Class Counsel, the difference in the amount sought and the amount ultimately awarded pursuant to this Paragraph shall remain in the Settlement Fund for distribution to eligible Settlement Class Members.

**8.2** The Fee Award shall be payable by the Settlement Administrator within thirty (30) days after entry of the Court's Final Judgment, subject to Class Counsel executing the Undertaking Regarding Attorneys' Fees and Costs (the "Undertaking") attached hereto as Exhibit F, and providing all payment routing information and tax I.D. numbers for Class Counsel. Payment of the Fee Award shall be made from the Settlement Fund by wire transfer pursuant to instructions provided by Bursor & Fisher, P.A., and completion of necessary forms, including but not limited to W-9 forms. Notwithstanding the foregoing, if for any reason the Final Judgment is reversed or rendered void as a result of an appeal(s) or otherwise does not become Final, then Class Counsel shall return such funds to SpinX. Additionally, should any parties to the Undertaking dissolve, merge, declare bankruptcy, become insolvent, or cease to exist prior to the final payment to Class Members, those parties shall execute a new undertaking guaranteeing repayment of funds within fourteen (14) days of such an occurrence.

**8.3** Class Counsel intends to file a motion for Court approval of an incentive award to the Class Representative, to be paid from the Settlement Fund, in addition to any funds the Class Representative stands to otherwise receive from the Settlement. With no consideration having been given or received for this limitation, Brooke Kingston will seek no more than \$5,000 as an incentive award. Should the Court award less than this amount, the difference in the amount sought and the amount ultimately awarded pursuant to this Paragraph shall remain in the Settlement Fund for distribution to eligible Settlement Class Members. Such award shall be paid from the Settlement Fund (in the form of a check to the Class Representative that is sent care of

Class Counsel), within thirty (30) business days after entry of the Final Judgment if there have been no objections to the Settlement Agreement, and, if there have been such objections, within thirty (30) business days after the Effective Date

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

**9.1** The Effective Date of this Settlement Agreement shall not occur unless and until each of the following events occurs and shall be the date upon which the last (in time) of the following events occurs:

- (a) The Parties and their counsel have executed this Agreement;
- (b) The Court has entered the Preliminary Approval Order;
- (c) The Court has entered an order finally approving the Agreement,

following Notice to the Settlement Class and a Final Approval Hearing, as provided in the Kentucky Rules of Civil Procedure, and has entered the Final Judgment, or a judgment consistent with this Agreement in all material respects;

- (d) SpinX has funded the Settlement Fund; and
- (e) The Final Judgment has become Final, as defined above.

**9.2** If some or all of the conditions specified in Section 9.1 are not met, or in the event that 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, then this Settlement Agreement shall be canceled and terminated subject to Section 6 unless Class Counsel and Defendant's Counsel mutually agree in writing to proceed with this Agreement. If any Party is in material breach of the terms hereof, any other Party, provided that it is in substantial compliance with the terms of this Agreement, may terminate this Agreement on notice to all of the Settling Parties. Notwithstanding anything herein, the Parties agree that the Court's failure to approve, in whole or in part, the attorneys' fees payment to Class Counsel and/or the incentive



award set forth in Section 8 above shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination.

**9.3** If this Agreement is terminated or fails to become effective for the reasons set forth above, and unless Class Counsel and Defendant's Counsel mutually agree in writing to proceed with this Agreement, the Parties shall be restored to their respective positions in the Action as of the date of the signing of this Agreement. In such event, any Final Judgment or other order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the Action as if this Agreement had never been entered into. Within five (5) business days after written notification of termination as provided in this Agreement is sent to the other Parties, the Settlement Fund (including accrued interest thereon), less one-half (50%) of any amounts reasonably incurred by the Settlement Administrator until the date of termination (including costs and any taxes and tax expenses paid, due or owing), shall be refunded by the Settlement Administrator to SpinX, based upon written instructions provided by Defendant's Counsel. In the event that the Final Judgment or any part of it is vacated, overturned, reversed, or rendered void as a result of an appeal, or the Settlement Agreement is voided, rescinded, or otherwise terminated for any other reason, Class Counsel shall, within thirty (30) days repay to SpinX, based upon written instructions provided by Defendant's Counsel, the full amount of the Fee Award paid to Class Counsel from the Settlement Fund, including any accrued interest. In the event the Fee Award awarded by the Court or any part of them are vacated, modified, reversed, or rendered void as a result of an appeal, Class Counsel shall within thirty (30) days repay to SpinX, based upon written instructions provided by Defendant's Counsel, the attorneys' fees and costs paid to Class Counsel and/or Class Representative from the Settlement Fund, in the amount vacated or modified, including any accrued interest.

## **10. CONFIDENTIALITY AND PUBLIC STATEMENTS**

**10.1** Except as otherwise agreed by Class Counsel and Defendant's Counsel in writing and/or as required by legal disclosure obligations, all terms of this Agreement will remain confidential and subject to Rule 408 of the Kentucky Rules of Evidence until presented to the Court along with Plaintiff's motion for preliminary approval.

## **11. MISCELLANEOUS PROVISIONS.**

**11.1** The Parties (a) acknowledge that it is their intent to consummate this Settlement Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement, to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Agreement, to secure final approval, and to defend the Final Judgment through any and all appeals. Class Counsel and Defendant's Counsel agree to cooperate with one another in seeking Court approval of the Settlement Agreement, entry of the Preliminary Approval Order, and the Final Judgment, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Agreement.

**11.2** The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiff, the Settlement Class and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand. Accordingly, the Parties agree not to assert in any forum that the Action was brought by Plaintiff or defended by SpinX, or each or any of them, in bad faith or without a reasonable basis.

**11.3** The Parties have relied upon the advice and representation of counsel, selected by them, concerning the claims hereby released. The Parties have read and fully understand the

Settlement Agreement and have been fully advised as to the legal effect hereof by counsel of their own selection and intend to be legally bound by the same.

**11.4** Whether or not the Effective Date occurs or the Settlement Agreement is terminated, neither this Agreement nor the settlement contained herein or any term, provision or definition therein, nor any act or communication performed or document executed in the course of negotiating, implementing or seeking approval pursuant to or in furtherance of this Agreement or the settlement:

(a) is, may be deemed, or shall be used, offered or received in any civil, criminal or administrative proceeding in any court, administrative agency, arbitral proceeding or other tribunal against the Released Parties, or each or any of them, as an admission, concession or evidence of, the validity of any Released Claims, the truth of any fact alleged by the Plaintiffs, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the definition or scope of any term or provision, the reasonableness of the settlement amount or the Fee Award, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or any of them;

(b) is, may be deemed, or shall be used, offered or received against any Released Party, as an admission, concession or evidence of any fault, misrepresentation or omission with respect to any statement or written document approved or made by the Released Parties, or any of them;

(c) is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them, as an admission or concession with respect to any liability, negligence, fault or wrongdoing or statutory meaning as against any Released Parties, or supporting the certification of a litigation class, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. However, the settlement, this

Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Agreement and/or Settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Agreement. Further, if this Settlement Agreement is approved by the Court, any Party or any of the Released Parties may file this Agreement and/or the Final Judgment in any action that may be brought against such Party or Parties in order to support a defense or counterclaim 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;

(d) is, may be deemed, or shall be construed against Plaintiff, the Settlement Class, the Releasing Parties, or each or any of them, or against the Released Parties, or each or any of them, as an admission or concession that the consideration to be given hereunder represents an amount equal to, less than or greater than that amount that could have or would have been recovered after trial; and

(e) is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiff, the Settlement Class, the Releasing Parties, or each and any of them, or against the Released Parties, or each or any of them, that any of Plaintiff's claims are with or without merit or that damages recoverable in the Action would have exceeded or would have been less than any particular amount.

(f) The Parties acknowledge and agree that any Party may request that the Court appoint a Settlement Special Master. Each Party explicitly reserves the right to oppose any such request. Any fees earned or costs incurred by any such Settlement Special Master shall be paid exclusively from the Settlement Fund.

**11.5** The Parties acknowledge that (a) any certification of the Settlement Class as set forth in this Agreement, including certification of the Settlement Class for settlement purposes in

the context of Preliminary Approval, shall not be deemed a concession that certification of a litigation class is appropriate, nor that the Settlement Class definition would be appropriate for a litigation class, nor would SpinX be precluded from challenging class certification in further proceedings in the Action or in any other action if the Settlement Agreement is not finalized or finally approved; (b) if the Settlement Agreement is not finally approved by the Court for any reason whatsoever, then any certification of the Settlement Class will be void, the Parties and the Action shall be restored to the status quo ante, and no doctrine of waiver, estoppel or preclusion will be asserted in any litigated certification proceedings in the Action or in any other action; and (c) no agreements made by or entered into by SpinX in connection with the Settlement may be used by Plaintiff, any person in the Settlement Class, or any other person to establish any of the elements of class certification in any litigated certification proceedings, whether in the Action or any other judicial proceeding.

**11.6.** No person or entity shall have any claim against the Class Representative, Class Counsel, the Settlement Administrator or any other agent designated by Class Counsel, or the Released Parties and/or their counsel, arising from distributions made substantially in accordance with this Agreement. The Parties and their respective counsel, and all other Released Parties shall have no liability whatsoever for the investment or distribution of the Settlement Fund or the determination, administration, calculation, or payment of any claim or nonperformance of the Settlement Administrator, the payment or withholding of taxes (including interest and penalties) owed by the Settlement Fund, or any losses incurred in connection therewith. The Parties acknowledge and agree that no opinion concerning the tax consequences of the proposed Settlement to Settlement Class Members is given or will be given by the Parties, nor are any representations or warranties in this regard made by virtue of this Settlement Agreement. Each Settlement Class Member's tax obligations, and the determination thereof, are the sole

responsibility of the Settlement Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Settlement Class Member.

**11.7.** All proceedings with respect to the administration, processing and determination of Claims and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of Claims, shall be subject to the jurisdiction of the Court.

**11.8** The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

**11.9** The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

**11.10** All of the Exhibits to this Agreement are material and integral parts thereof and are fully incorporated herein by this reference.

**11.11** This Agreement and its Exhibits set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements and undertakings with respect to the matters set forth herein. No representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents. 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.

**11.12** Except as otherwise provided herein, each Party shall bear its own costs and attorneys' fees incurred in any way related to the Action.

**11.13** Plaintiff represents and warrants that she has not assigned any claim or right or interest therein as against the Released Parties to any other Person or Party and that she is fully entitled to release the same.

**11.14** Each counsel or other Person executing this Settlement Agreement, any of its Exhibits, or any related settlement documents on behalf of any Party hereto, hereby warrants and represents that such Person has the full authority to do so and has the authority to take appropriate action required or permitted to be taken pursuant to the Agreement to effectuate its terms.

**11.15** This Agreement may be executed in one or more counterparts. Signature by digital means, facsimile, or in PDF format will constitute sufficient execution of this Agreement. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court if the Court so requests.

**11.16** This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and the Released Parties.

**11.17** The Court shall 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 embodied in this Agreement.

**11.18** This Settlement Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

**11.19** This Agreement is deemed to have been prepared by counsel for all Parties, as a result of arm's-length negotiations among the Parties. Because all Parties have contributed

substantially and materially to the preparation of this Agreement, it shall not be construed more strictly against one Party than another.

**11.20** Where this Agreement requires notice to the Parties, such notice shall be sent by mail and by email to the undersigned counsel:

For Plaintiff: Philip L. Fraietta, Bursor & Fisher, P.A., 1330 Avenue of the Americas, New York, NY 10019. Email: pfraietta@bursor.com

For Defendant: Matan Shacham and Ajay Krishnan, Kecker, Van Nest & Peters LLP, 633 Battery Street, San Francisco, CA 94111. Email: MShacham@kecker.com, AKrishnan@kecker.com

**11.21** All time periods and dates described in this Agreement are subject to the Court's approval. These time periods and dates may be changed by the Court or by the Parties' written agreement without notice to the Settlement Class. The Parties reserve the right, subject to the Court's approval, to make any reasonable extensions of time that might be necessary to carry out any provision of this Agreement.

**11.22** SpinX shall be given an opportunity to review and provide comments to Plaintiff's preliminary approval and final approval briefs, and Plaintiff shall consider in good faith all such comments.

**[SIGNATURES BEGIN ON FOLLOWING PAGE]**



**IT IS SO AGREED TO BY THE PARTIES:**

Dated: 02/01/2024

**BROOKE KINGSTON**

By: Brooke Kingston  
Brooke Kingston (Feb 1, 2024 15:25 CST)

Brooke Kingston, individually and as representative  
of the Class

Dated: 1/10/2024

**SPINX GAMES LTD.**

By: 36615

Name: ZHANG, YU  
Title: Senior Vice President

**IT IS SO STIPULATED BY COUNSEL:**

Dated: 02/01/2024

**BURSOR & FISHER, P.A.**

By: Philip L. Fraietta

Philip L. Fraietta  
pfraietta@bursor.com  
Alec M. Leslie  
aleslie@bursor.com  
BURSOR & FISHER, P.A.  
1330 Avenue of the Americas  
New York, New York 10019  
Tel: (646) 837-7150  
Fax: (212) 989-9163

*Attorneys for Class Representative and the  
Settlement Class*

Dated: 02/01/2024

**KEKER, VAN NEST & PETERS LLP**

By: Matan Shacham

Matan Shacham  
mshacham@keker.com  
KEKER, VAN NEST & PETERS LLP  
633 Battery Street  
San Francisco, CA 94111  
Tel: (415) 391-5400  
Fax: (202) 551-0468

*Attorneys for Defendant SpinX Games Ltd.*



**SPINX GAMES SETTLEMENT CLAIM FORM**

THIS CLAIM FORM MUST BE SUBMITTED ONLINE OR POSTMARKED BY **[CLAIMS DEADLINE]**. THE CLAIM FORM MUST BE SIGNED AND MEET ALL CONDITIONS OF THE SETTLEMENT AGREEMENT.

The Settlement Administrator will review your Claim Form. If accepted, you will receive a share of the Settlement Fund. This process takes time, please be patient. If you have any questions, or would like to estimate your share of the Settlement Fund, visit: **[claims website]**.

**Instructions:** Fill out each section of this form and sign where indicated.

|   |  |                  |                     |
|---|--|------------------|---------------------|
| <u>First Name</u>   |  | <u>Last Name</u> |                     |
| <u>Street Address</u>   |  |                  |                     |
| <u>City</u>   |  | <u>State</u>     | <u>ZIP Code</u>     |
| <u>Email Address</u>  |  |                  | <u>Phone Number</u> |
| <u>Cash Frenzy, Lotsa Slots, Jackpot World (previously known as Jackpot Mania), Jackpot Crush, or Vegas Friends Player ID(s) (if known)</u>                       |  |                  |                     |
| <u>All email addresses associated with Cash Frenzy, Lotsa Slots, Jackpot World (previously known as Jackpot Mania), Jackpot Crush, or Vegas Friends accounts.</u> |  |                  |                     |

***Settlement Class Member Affirmation:*** By submitting this Claim Form you affirm under penalty of perjury that, to the best of your knowledge, the Player ID(s) and the email address(es) listed above are yours.

Signature: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

***Select Payment Method:*** Select **ONE** box for how you would like to receive payment and provide the requested information.

|                         |                       |                       |
|-------------------------|-----------------------|-----------------------|
| Check                   | Venmo®                | PayPal®               |
| <b>Mailing Address:</b> | <b>Email Address:</b> | <b>Email Address:</b> |



From: [Notice@classactionadmin.com](mailto:Notice@classactionadmin.com)  
To: JonQClassMember@domain.com  
Re: Legal Notice of Class Action Settlement

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**  
*Kingston v. SpinX Games Ltd.*, Case No. 24-CI-00062  
**(Commonwealth of Kentucky, Henderson County Circuit Court)**

**If you played Cash Frenzy, Lotsa Slots, Jackpot World (previously known as Jackpot Mania), Jackpot Crush, or Vegas Friends you may be part of a class action settlement.**

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

This notice is to inform you of the settlement of a class action lawsuit against SpinX Games Ltd. (“SpinX”), alleging claims based on the sale of virtual coins in Cash Frenzy, Lotsa Slots, Jackpot World (previously known as Jackpot Mania), Jackpot Crush, and Vegas Friends (the “Games”). SpinX denies all claims and that it violated any law, but has agreed to the settlement to avoid the uncertainties and expenses associated with continuing the case.

**Am I a Class Member?** Our records indicate you may be a Settlement Class Member. Settlement Class Members are persons who spent \$5.00 or more within a 24-hour period on games on Cash Frenzy on the dates between December 18, 2018 and February 24, 2021, Lotsa Slots on the dates between March 27, 2019 and February 4, 2021, Jackpot World (previously known as Jackpot Mania) on the dates between May 18, 2018 and March 8, 2021, Jackpot Crush on the dates between November 26, 2019 and February 24, 2021, and Vegas Friends on the dates between April 13, 2019 and March 2, 2021, while located in the Commonwealth of Kentucky.

**What Can I Get?** If approved by the Court, SpinX will establish a Settlement Fund of \$285,500 to pay all valid claims submitted by the Settlement Class, together with notice and administration expenses as well as any attorneys’ fees, costs, and incentive award to the Class Representative awarded by the Court. If you are entitled to relief, you may submit a claim to receive a share of the Settlement Fund. Your share will depend on, among other things, (1) the total dollar amount of in-game purchases you made while playing the Games, with those who spent more money receiving a higher percentage back, and (2) how many Settlement Class Members submit claims. You can find more information, and estimate your share of the Settlement Fund, at [[website](#)].

**How Do I Get a Payment?** To receive a payment, you must submit a timely and complete Claim Form by mail or online, submitted or postmarked **no later than** [[claims deadline](#)]. You can submit the claim form online at [www.URL](#), or by clicking [[here](#)]. You may also request a paper claim form and mail it to [[address](#)].

**What are My Other Options?** You may exclude yourself from the Class by sending a letter to the settlement administrator no later than [[objection/exclusion deadline](#)]. If you exclude yourself, you cannot get a settlement payment, but you keep any rights you may have to sue SpinX over the legal issues in the lawsuit. You and/or your lawyer have the right to appear before the Court and/or object to the proposed settlement. Your written objection must be filed no later than

**[objection/exclusion deadline]**. Specific instructions about how to object to, or exclude yourself from, the Settlement are available at **[website]**. If you file a claim or do nothing, and the Court approves the Settlement, you will be bound by all of the Court's orders and judgments. In addition, your claims relating to the allegations in this case against SpinX and any other Released Parties will be released.

**Who Represents Me?** The Court has appointed Philip L. Fraietta and Alec M. Leslie of Bursor & Fisher, P.A. to represent the class. These attorneys are called "Class Counsel." You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense. Plaintiff Brooke Kingston is a Settlement Class Member and the Court appointed her as "Class Representative."

**When Will the Court Consider the Proposed Settlement?** The Court will hold the Final Approval Hearing at **.m. on [date]** in **[TBD]**. At that hearing, the Court will: hear any objections concerning the fairness of the settlement; determine the fairness of the settlement; decide whether to approve Class Counsel's request for attorneys' fees and costs; and decide whether to award the Class Representative \$5,000 from the Settlement Fund for her services in helping to bring and settle this case. Class Counsel will be paid from the Settlement Fund in an amount to be determined and awarded by the Court. Class Counsel will seek no more than one third of the Settlement Fund in attorneys' fees, costs, and expenses, but the Court may award less than this amount.

**How Do I Get More Information?** For more information, including a more detailed Notice, Claim Form, a copy of the Settlement Agreement and other documents, go to **[website]**, contact the settlement administrator at **1- - -** or SpinX Settlement Administrator, **[address]**, or call Class Counsel at 1-646-837-7150.



•  
COURT AUTHORIZED NOTICE OF CLASS  
ACTION AND PROPOSED SETTLEMENT

**If you played Cash  
Frenzy, Lotsa Slots,  
Jackpot World  
(previously known as  
Jackpot Mania), Jackpot  
Crush, and/or Vegas  
Friends, you may be part  
of a class action  
settlement.**

SpinX Settlement  
Settlement Administrator  
P.O. Box 0000  
City, ST 00000-0000



Postal Service: Please do not mark barcode

XXX—«ClaimID» «MailRec»

«First1» «Last1»

«C/O»

«Addr1» «Addr2»

«City», «St» «Zip» «Country»

By Order of the Court Dated: [date]



A settlement has been reached in a class action lawsuit against SpinX Games Ltd. (“SpinX”), alleging claims under Kentucky state law based on the sale of virtual coins in Cash Frenzy, Lotsa Slots, Jackpot World (previously known as Jackpot Mania), Jackpot Crush, and Vegas Friends (collectively, the “Games”). SpinX denies all claims and that it violated the law, but has agreed to the settlement to avoid the uncertainties and expenses associated with continuing the case.

**Am I a Class Member?** Our records indicate you may be a Settlement Class Member. Settlement Class Members are persons who spent \$5.00 or more within a 24-hour period on games on Cash Frenzy on the dates between December 18, 2018 and February 24, 2021, Lotsa Slots on the dates between March 27, 2019 and February 4, 2021, Jackpot World (previously known as Jackpot Mania) on the dates between May 18, 2018 and March 8, 2021, Jackpot Crush on the dates between November 26, 2019 and February 24, 2021, and Vegas Friends on the dates between April 13, 2019 and March 2, 2021, while located in the Commonwealth of Kentucky.

**What Can I Get?** If approved by the Court, SpinX will establish a Settlement Fund of \$285,500 to pay all valid claims submitted by the Settlement Class, together with notice and administration expenses as well as any attorneys’ fees, costs, and incentive award to the Class Representative awarded by the Court. If you are entitled to relief, you may submit a claim to receive a share of the Settlement Fund. Your share will depend on, among other things, (1) the total dollar amount of in-game purchases you made while playing the Games, with those who spent more money receiving a higher percentage back, and (2) how many Settlement Class Members submit claims. You can find more information, and estimate your share of the Settlement Fund, at [website].

**How Do I Get a Payment?** To receive a payment, you must submit a timely and complete Claim Form by mail or online, submitted or postmarked no later than [claims deadline]. You can submit the claim form online at [www.URL], or by clicking [here]. You may also request a paper claim form and mail it to [address].

**What are My Other Options?** You may exclude yourself from the Class by sending a letter to the settlement administrator no later than [objection/exclusion deadline]. If you exclude yourself, you cannot get a settlement payment, but you keep any rights you may have to sue SpinX over the legal issues in the lawsuit. You and/or your lawyer have the right to appear before the Court and/or object to the proposed settlement. Your written objection must be filed no later than [objection/exclusion deadline]. Specific instructions about how to object to, or exclude yourself from, the Settlement are available at [website]. If you file a claim or do nothing, and the Court approves the Settlement, you will be bound by all of the Court’s orders and judgments. In addition, your claims relating to the allegations in this case against SpinX and any other Released Parties will be released.

**Who Represents Me?** The Court has appointed Philip L. Fraietta and Alec M. Leslie of Bursor & Fisher, P.A. to represent the class. These attorneys are called “Class Counsel.” You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense. Plaintiff Brook Kingston is a Settlement Class Member and the Court appointed her as “Class Representative.”

**When Will the Court Consider the Proposed Settlement?** The Court will hold the Final Approval Hearing at [time], [date] in [TBD]. At that hearing, the Court will: hear any objections concerning the fairness of the settlement; determine the fairness of the settlement; decide whether to approve Class Counsel’s request for attorneys’ fees and costs; and decide whether to award the Class Representative \$5,000 from the Settlement Fund for her services in helping to bring and settle this case. Class Counsel will be paid from the Settlement Fund in an amount to be determined and awarded by the Court. Class Counsel will seek no more than 33% of the Settlement Fund in attorneys’ fees, costs, and expenses, but the Court may award less than this amount.

**How Do I Get More Information?** For more information, including a more detailed Notice, Claim Form, a copy of the Settlement Agreement and other documents, go to [website], contact the settlement administrator at 1- - - or SpinX Settlement Administrator, [address], or call Class Counsel at 1-646-837-7150.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SpinX Settlement Administrator  
c/o [Settlement Administrator]  
PO Box 0000  
City, ST 00000-0000

XXX



**HENDERSON COUNTY CIRCUIT COURT**  
*Kingston v. SpinX Games Ltd.*, Case No. 24-CI-00062

**If you played Cash Frenzy, Lotsa Slots, Jackpot World (previously known as Jackpot Mania), Jackpot Crush, or Vegas Friends you may be part of a class action settlement.**

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

- A Settlement has been reached in a class action lawsuit against SpinX Games, Ltd. (“SpinX”), alleging claims based on the sale of virtual coins in Cash Frenzy, Lotsa Slots, Jackpot World (previously known as Jackpot Mania), Jackpot Crush, or Vegas Friends (the “Games”). SpinX denies all claims and that it violated any law, but has agreed to the settlement to avoid the uncertainties and expenses associated with continuing the case.
- You are a Settlement Class Member if you spent \$5.00 or more within a 24-hour period on Cash Frenzy on the dates between December 18, 2018 and February 24, 2021, Lotsa Slots on the dates between March 27, 2019 and February 4, 2021, Jackpot World (previously known as Jackpot Mania) on the dates between May 18, 2018 and March 8, 2021, Jackpot Crush on the dates between November 26, 2019 and February 24, 2021, and Vegas Friends on the dates between April 13, 2019 and March 2, 2021, while located in the Commonwealth of Kentucky.
- Those who file timely and properly completed claims will be eligible to receive a share of the Settlement Fund. Your share will be depend on, among other things, (1) the total dollar amount of in-game purchases you made while playing the Games, with those who spent more money receiving a higher percentage back, and (2) how many Settlement Class Members submit claims.
- Read this notice carefully. Your legal rights are affected whether you act, or don’t act.

| YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT |   |
|--|---|
| <b>SUBMIT A CLAIM FORM</b>                       | This is the only way to receive a payment.  |
| <b>EXCLUDE YOURSELF</b>                          | You will receive no benefits, but you will retain any rights you currently have to sue SpinX about the claims in this case. |
| <b>OBJECT</b>                                    | Write to the Court explaining why you don’t like the Settlement.  |
| <b>GO TO THE HEARING</b>                         | Ask to speak in Court about your opinion of the Settlement.   |
| <b>DO NOTHING</b>                                | You won’t get a share of the Settlement benefits and will give up your rights to sue SpinX about the claims in this case.   |

These rights and options—**and the deadlines to exercise them**—are explained in this Notice.

**QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [WEBSITE]**

## BASIC INFORMATION

### 1. Why was this Notice issued?

A Court authorized this notice because you have a right to know about a proposed Settlement of this class action lawsuit and about all of your options, before the Court decides whether to give final approval to the Settlement. This Notice explains the lawsuit, the Settlement, and your legal rights.

The Honorable Karen L. Wilson, of the Henderson County Circuit Court, Commonwealth of Kentucky, is overseeing this case. The case is called *Kingston v. SpinX Games Ltd.*, Case No. 24-CI-00062. The person who sued is called the Plaintiff. The Defendant is SpinX Games Ltd.

### 2. What is a class action?

In a class action, one or more people called class representatives (in this case, Brooke Kingston) sue on behalf of a group or a “class” of people who have similar claims. In a class action, the court resolves the issues for all class members, except for those who exclude themselves from the Class.

### 3. What is this lawsuit about?

The lawsuit claims that Defendant violated Kentucky’s gambling laws through the sale of virtual coins in the Games Slots. SpinX denies all claims and that it violated any law.

### 4. Why is there a Settlement?

The Court has not decided whether the Plaintiff or SpinX should win this case. Instead, both sides agreed to a Settlement. That way, they avoid the uncertainties and expenses associated with ongoing litigation, and Class Members will get compensation sooner rather than, if at all, after the completion of a trial.

More information about the Settlement and the lawsuit are available in the “Court Documents” section of the settlement website, or by accessing the Court docket in this case, for a fee, through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.wawd.uscourts.gov>, or by visiting the office of the Henderson County Circuit Court Clerk, 5 N. Main St. Henderson, KY 42420, between 8:00 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays.

## WHO’S INCLUDED IN THE SETTLEMENT?

### 5. How do I know if I am in the Settlement Class?

QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [WEBSITE]

The Court decided that everyone who fits the following description is a member of the **Settlement Class**:

All individuals who, in Kentucky (as reasonably determined by billing address information, IP address information, or other information furnished by SPINX), spent \$5.00 or more within a 24-hour period on Cash Frenzy on the dates between December 18, 2018 and February 24, 2021, Lotsa Slots on the dates between March 27, 2019 and February 4, 2021, Jackpot World (previously known as Jackpot Mania) on the dates between May 18, 2018 and March 8, 2021, Jackpot Crush on the dates between November 26, 2019 and February 24, 2021, and Vegas Friends on the dates between April 13, 2019 and March 2, 2021.

## THE SETTLEMENT BENEFITS

### 6. What does the Settlement provide?

***Monetary Relief:*** If approved by the Court, SpinX will establish a Settlement Fund totaling \$285,500. Settlement Class Member payments, as well as the cost to administer the Settlement, the cost to inform people about the Settlement, any attorneys' fees and costs awarded by the Court, and any incentive award to the Class Representative approved by the Court will also come out of this fund (*see* Question 13).

***Prospective Relief:*** SpinX has also agreed to take or maintain measures designed to address video game behavior disorders, including providing self-service resources to players, providing for voluntary self-exclusion, and implementing in-game mechanics to ensure that players who run out of sufficient virtual coins will be able to continue to play the games without waiting an unreasonable amount of time.

A detailed description of the settlement benefits can be found in the Settlement Agreement. [\[insert hyperlink\]](#)

### 7. How much will my payment be?

If you are member of the Settlement Class you may submit a Claim Form to receive a portion of the Settlement Fund. The exact amount of your payment can't be determined at this time, but you can get an estimate by visiting the settlement website. The amount of your payment will depend on, among other things, (1) the total dollar amount of in-game purchases you made while playing the Games, with those who spent more money receiving a higher percentage back, and (2) how many Settlement Class Members submit claims. If you would like more information about how Settlement Payments are determined, visit [\[website\]](#).

### 8. When will I get my payment?

QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [\[WEBSITE\]](#)

You should receive a check or electronic payment from the Settlement Administrator within 90 days after the Settlement has been finally approved and/or any appeals process is complete. The hearing to consider the final approval of the Settlement is scheduled for [Fairness Hearing Date]. If you elect to receive your payment via check, please keep in mind that checks will expire and become void 180 days after they are issued. If appropriate, funds remaining from the initial round of uncashed checks, or electronic payments that cannot be processed, may be used for a second distribution to Settlement Class Members and/or may be donated to the Civil Rule 23 Account maintained by the Kentucky IOLTA Fund Board of Trustees.

## **HOW TO GET BENEFITS**

### **9. How do I get a payment?**

If you are a Class Member and you want to get a payment, you must complete and submit a Claim Form by [Claims Deadline]. Claim Forms can be found and submitted online or you may have received a Claim Form in the mail (and which you can then submit by mail). To submit a Claim Form on-line or to request a paper copy, go to [WEBSITE] or call toll free, 1-800-000-0000.

We encourage you to submit your claim electronically. Not only is it easy and secure, but it is completely free and takes only minutes.

## **REMAINING IN THE SETTLEMENT**

### **10. What am I giving up if I stay in the Class?**

If the Settlement becomes final, you will give up your right to sue SpinX and other Released Parties for the claims being resolved by this Settlement. The specific claims you are giving up against SpinX are described in the Settlement Agreement. You will be “releasing” SpinX and certain of its affiliates, employees and representatives as described in Section 1.28 of the Settlement Agreement. Unless you exclude yourself (see Question 14), you are “releasing” the claims, regardless of whether you submit a claim or not. The Settlement Agreement is available through the “court documents” link on the website.

The Settlement Agreement describes the released claims with specific descriptions, so read it carefully. If you have any questions you can talk to the lawyers listed in Question 12 for free or you can, of course, talk to your own lawyer if you have questions about what this means.

### **11. What happens if I do nothing at all?**

If you do nothing, you won’t get any benefits from this Settlement. But, unless you exclude yourself, you won’t be able to start a lawsuit or be part of any other lawsuit against SPINX for the claims being resolved by this Settlement.

**QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [WEBSITE]**

## THE LAWYERS REPRESENTING YOU

### 12. Do I have a lawyer in the case?

The Court has appointed two lawyers at the firm Bursor & Fisher, P.A. to be the attorneys representing the Settlement Class. Those lawyers – Philip L. Fraietta and Alec M. Leslie – are called “Class Counsel.” They are experienced in handling similar class action cases. More information about these lawyers, their law firm, and their experience is available at [www.bursor.com](http://www.bursor.com). They believe, after conducting an extensive investigation, that the Settlement Agreement is fair, reasonable, and in the best interests of the Settlement Class. You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense.

### 13. How will the lawyers be paid?

Class Counsel attorneys’ fees, costs, and expenses will be paid from the Settlement Fund in an amount to be determined and awarded by the Court. The fee petition will seek no more than one third of the Settlement Fund in attorneys’ fees, costs, and expenses. The Court may award less than this amount.

Subject to approval by the Court, the Class Representative may be paid an Incentive Award from the Settlement Fund for helping to bring and settle the case. The Class Representative will ask for \$5,000 as an incentive award.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

### 14. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must mail or otherwise deliver a letter (or request for exclusion) stating that you want to be excluded from the “*Kingston v. SpinX Games Ltd.*, Case No. 24-CI-00062 settlement.” Your letter or request for exclusion must also include your name, all Player ID(s), your address, and any email address(es) associated with your Cash Frenzy, Lotsa Slots, Jackpot World (previously known as Jackpot Mania), Jackpot Crush, or Vegas Friends account, your signature, the name and number of this case, and a statement that you wish to be excluded. You must mail or deliver your exclusion request no later than **[objection/exclusion deadline]** to:

**SPINX Games Settlement**  
**0000 Street**  
**City, ST 00000**

### 15. If I don’t exclude myself, can I sue the Defendant for the same thing later?

**QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [WEBSITE]**

No. Unless you exclude yourself, you give up any right to sue SpinX for the claims being resolved by this Settlement.

**16. If I exclude myself, can I get anything from this Settlement?**

No. If you exclude yourself, you should not submit a Claim Form to ask for benefits because you won't receive any.

**OBJECTING TO THE SETTLEMENT**

**17. How do I object to the Settlement?**

If you are a Class Member, you can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must file with the Court a letter or brief stating that you object to the Settlement in *Kingston v. SpinX Games Ltd.*, Case No. 24-CI-00062 and identify all your reasons for your objections (including citations and supporting evidence) and attach any materials you rely on for your objections. Your letter or brief must also include your name, all Player ID(s), your address, the basis upon which the objector claims to be a Settlement Class Member, including any email address(es) associated with your Cash Frenzy, Lotsa Slots, Jackpot World (previously known as Jackpot Mania), Jackpot Crush, or Vegas Friends account, the name and contact information of any and all attorneys representing, advising, or in any way assisting you in connection with your objection, and your signature. If you, or an attorney assisting you with your objection, have ever objected to any class action settlement where you or the objecting attorney has asked for or received payment in exchange for dismissal of the objection (or any related appeal) without modification to the settlement, you must include a statement in your objection identifying each such case by full case caption. You must also mail or deliver a copy of your letter or brief to Class Counsel and Defendant's Counsel listed below.

Class Counsel will file with the Court and post on this website its request for attorneys' fees, costs, and expenses by **[two weeks prior to objection deadline]**.

If you want to appear and speak at the Final Approval Hearing to object to the Settlement, with or without a lawyer (explained below in answer to Question Number 21), you must say so in your letter or brief. File the objection with the Court and mail a copy to these two different places postmarked no later than **[objection deadline]**.

| <b>Court</b>  | <b>Class Counsel</b>                                       | <b>Defendant's Counsel</b>                        |
|---------------|--|---|
| <b>INSERT</b> | Philip L. Fraietta<br>Alec M. Leslie<br>Bursor & Fisher PA | Matan Shacham<br>Kecker, Van Nest & Peters<br>LLP |

**QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [WEBSITE]**



|  |   |   |
|--|---|---|
|  | 1330 Avenue of the Americas<br>New York, NY 10019 | 633 Battery Street<br>San Francisco, CA 94111 |
|--|---|---|

### **18. What's the difference between objecting and excluding myself from the Settlement?**

Objecting simply means telling the Court that you don't like something about the Settlement. You can object only if you stay in the Class. Excluding yourself from the Class is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

## **THE COURT'S FINAL APPROVAL HEARING**

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

The Court will hold the Final Approval Hearing at [time] on **Month 00, 2023** in [TBD]. The purpose of the hearing will be for the Court to determine whether to approve the Settlement as fair, reasonable, adequate, and in the best interests of the Class; to consider the Class Counsel's request for attorneys' fees and expenses; and to consider the request for an incentive award to the Class Representative. At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the Settlement.

The hearing may be postponed to a different date or time without notice, so it is a good idea to check [website] or call **1-800-000-0000**. If, however, you timely objected to the Settlement and advised the Court that you intend to appear and speak at the Final Approval Hearing, you will receive notice of any change in the date of such Final Approval Hearing.

### **20. Do I have to come to the hearing?**

No. Class Counsel will answer any questions the Court may have. But, you are welcome to come at your own expense. If you send an objection or comment, you don't have to come to Court to talk about it. As long as you filed and mailed your written objection on time, the Court will consider it. You may also pay another lawyer to attend, but it's not required.

### **21. May I speak at the hearing?**

Yes. You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must include in your letter or brief objecting to the settlement a statement saying that it is your "Notice of Intent to Appear in *Kingston v. SpinX Games Ltd.*, Case No. 24-CI-00062." It must include your name, address, telephone number and signature as well as the name and address of your lawyer, if one is appearing for you. Your **QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [WEBSITE]**

objection and notice of intent to appear must be filed with the Court and postmarked no later than **[objection deadline]**, and be sent to the addresses listed in Question 17.

## GETTING MORE INFORMATION

### **22. Where do I get more information?**

This Notice summarizes the Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement at **[website]**. You may also write with questions to **SpinX Games Settlement, P.O. Box 0000, City, ST 00000**. You can call the Settlement Administrator at **1-800-000-0000** or Class Counsel at 1-646-837-7150, if you have any questions. Before doing so, however, please read this full Notice carefully. You may also find additional information elsewhere on the case website.

**QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [WEBSITE]**



## **PLAN OF ALLOCATION**

Each Settlement Payment will be comprised of (1) a Base Payment Amount, (2) *plus* a Supplemental Payment Amount, (3) *minus* the Settlement Class Member's share of any Fee Award, incentive awards to the Class Representatives, and Settlement Administration Expenses.

### **1. Base Payment Amounts.**

Base Payment Amounts will be calculated by applying an escalating marginal recovery formula to the Settlement Class Member's Relevant Spending Amount through and including the date of the execution of the Settlement Agreement.

Settlement Class Members who submit a valid claim will be subject to an escalating marginal recovery formula based on the percentages described in Figure 1 below.

**Figure 1**

| Relevant Spend (\$) | Marginal Rate (%) |
|---------------------|-------------------|
| 0.1-1,000           | 10                |
| 1,000.01-10,000     | 17.5              |
| 10,000.01-100,000   | 30                |
| 100,000.01+         | 60                |

By way of example, an individual with a Relevant Spending Amount of \$40,000 will be entitled to a Base Payment Amount of \$7,472.50, calculated as: ((10% of their first \$1,000 in spending [\$100]) + (17.5% of their next \$9,000 in spending ([\$1,575])) + (30% of their next \$30,000 in spending [\$9,000])) \* (70%)). Settlement Class Members will have the ability to opt to receive an electronic payment via Venmo or PayPal, provided, however, that the default payment method will be check.

### **2. Proration.**

In the event the sum of all Base Payment Amounts for Settlement Class members who submit a valid claim exceed the total amounts available for distribution in the Settlement Fund,

each individual's Base Payment Amount will be reduced proportionately. Proration of amounts due to Settlement Class Members from the Settlement Fund will be determined 30 days after the deadline for Settlement Class Members to file claims. *Pro rata* payments to Settlement Class Members shall be made within 60 days of the deadline for Settlement Class Members to file claims.

**3. Supplemental Payment Amounts.**

In the event there are available amounts remaining in the Settlement Fund after calculation of all Base Payment Amounts for Settlement Class members who have submitted a valid claim, Supplemental Payment Amounts will be calculated on a *pro rata* basis. Upon the close of the claims period, the sum of all unallocated amounts in the Settlement Fund (minus any amounts necessary to cover costs and fees) will be considered the Supplemental Payment Fund. The Supplemental Payment Fund will be apportioned *pro rata* to each Settlement Class Member who submitted a valid claim, based on the participating Settlement Class Member's Base Payment Amount. All payment amounts are subject to the deductions described in Section (3).

Regardless of Settlement Class Member participation rates, the sum of Base Payment Amounts and Supplemental Payment Amounts will equal the amounts available for distribution from the Settlement Fund.

**3. Fee Award, Incentive Awards, and Settlement Administration Expenses.**

Settlement Payment Amounts will be a Settlement Class Member's Base Payment Amount plus any Supplemental Payment Amount, minus that Settlement Class Member's share of any Fee Award, Incentive Awards and Settlement Administration Expenses, anticipated not to exceed one-third (cumulatively) of the Settlement Fund.

**EXHIBIT F**

**COMMONWEALTH OF KENTUCKY  
HENDERSON COUNTY CIRCUIT COURT**

BROOKE KINGSTON, individually and on behalf of  
all others similarly situated,

Plaintiff,

v.

SPINX GAMES LTD.,

Defendant.

Case No. 24-CI-00062

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

Plaintiff Brooke Kingston and Defendant SpinX Games Ltd. ("Defendant") (collectively, "the Parties"), by and through and including their undersigned counsel, stipulate and agree as follows:

WHEREAS, Class Counsel's law firm Bursor & Fisher P.A. (the "Firm") desires to give an undertaking (the "Undertaking") for repayment of their 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, the undersigned, as agent for the Firm, hereby submits the Firm 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 Agreement.

By receiving any payments pursuant to the Settlement Agreement, the Firm and its shareholders, members, and/or partners submit to the jurisdiction of the Henderson County Circuit Court, Commonwealth of Kentucky, for the enforcement of and any and all disputes

relating to or arising out of the reimbursement obligation set forth herein and the Settlement Agreement.

In the event that the Final Judgment or any part of it is vacated, overturned, reversed, or rendered void as a result of an appeal, or the Settlement Agreement is voided, rescinded, or otherwise terminated for any other reason, the Firm shall, within thirty (30) days repay to Defendant, based upon written instructions provided by Defendant's 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 attorney 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 thirty (30) days repay to Defendant, based upon written instructions provided by Defendant's Counsel, the attorneys' fees and costs paid to the Firm and/or Representative Plaintiff 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 Defendant any of attorneys' fees and costs that are owed to it pursuant to this Undertaking, the Court shall, upon application of Defendant, and notice to the Firm, summarily issue orders, including but not limited to judgments and attachment orders against the Firm, and may make appropriate findings for sanctions for contempt of court.

The undersigned stipulates, warrants, and represents that he has 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: 02/01/2024

BURSOR & FISHER, P.A.



By: Philip L. Fraietta on behalf of Bursor & Fisher, P.A.  
Attorneys for Plaintiff Brooke Kingston

DATED: 2/1/2024

KEKER, VAN NEST & PETERS LLP



By: Matan Shacham on behalf of Keker, Van Nest & Peters  
LLP  
Attorneys for Defendant SpinX Games Ltd.



## **I. DEFINITIONS**

1. “**Applications**” means Cash Frenzy, Lotsa Slots, DAFU, Jackpot World, Jackpot Fever, Jackpot Crush, Jackpot Mania, Cash Bash, and/or Vegas Friends.
2. “**Platform ID**” means the unique identifier assigned by [Platform Provider] to a person who has a [Platform Provider] account and/or login.

## **II. GENERAL INFORMATION**

1. This subpoena is purposefully narrow in scope to avoid the production of duplicative data from [Platform] and the defendants in this matter, SpinX Games Limited, Grande Games Limited, and Beijing Bole Technology Co., Ltd. [Platform] is requested to produce only the specific information below, and no additional information.
2. Please produce all documents in their native data format. In the event that either request is more readily available and easier to use, search, manage, and produce in a non-native form, please promptly notify Plaintiff’s counsel of the need and arrange for a mutually agreeable format.

## **III. REQUESTS FOR PRODUCTION**

### **REQUEST FOR PRODUCTION NO. 1**

Please provide the corresponding name, postal address, and email address for the Platform IDs provided on the attached Exhibit A.

### **REQUEST FOR PRODUCTION NO. 2**

For Player IDs that made a purchase in the Applications with a Kentucky IP address please identify the name, postal address, and email address for each Platform ID.