

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

Case No. 3:23-cv-05069-SI

THOMAS FAN, MATTHEW KIMOTO, and  
CLINTON BROWN, on behalf of themselves  
and all others similarly situated,

Plaintiffs,

v.

NBA PROPERTIES, INC. and DAPPER LABS,  
INC.,

Defendants.

**CLASS ACTION SETTLEMENT  
AGREEMENT**

1 This Settlement Agreement (“Agreement” or “Settlement Agreement”) is entered into by  
2 and among: (i) Plaintiffs Thomas Fan, Matthew Kimoto, and Clinton Brown (“Named Plaintiffs”);  
3 (ii) each and every member of the Settlement Class (as defined herein); and (iii) Defendants NBA  
4 Properties, Inc. and Dapper Labs, Inc. (“Defendants”). The Named Plaintiffs and the Defendants  
5 are collectively referred to herein as the “Parties.” This Agreement is intended by the Parties to  
6 fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined herein),  
7 upon and subject to the terms and conditions of this Agreement, and subject to the final approval of  
8 the Court.  
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### 10 RECITALS

11 **A.** On October 3, 2023, Named Plaintiff Thomas Fan filed a putative class action in the  
12 United States District Court for the Northern District of California. The material allegations of the  
13 Complaint center on Defendants’ alleged disclosure of NBA Top Shot users’ personally  
14 identifiable information to Meta Platforms, Inc. without proper consent, in alleged violation of the  
15 Video Privacy Protection Act, 18 U.S.C. § 2710, and its California state law corollary, California  
16 Civil Code §1799.3.  
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18 **B.** The Parties have since engaged in substantial motion practice, including three fully  
19 briefed pleading motions: Dapper Labs, Inc.’s motion to dismiss itself from the action, *Fan v. NBA*  
20 *Props. Inc.*, No. 23-CV-05069-SI, 2024 WL 1297643 (N.D. Cal. Mar. 26, 2024), NBA Properties  
21 Inc.’s second motion to dismiss itself from the action, *Fan v. NBA Props. Inc.*, No. 23-CV-05069-  
22 SI, 2024 WL 3297143 (N.D. Cal. July 2, 2024), and Named Plaintiff Fan’s request to amend the  
23 complaint to add two new class representatives, No. 23-CV-05069-SI, ECF No. 87.  
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25 **C.** The Parties have also nearly completed all discovery in the case, having exchanged  
26 over twenty thousand pages of documents, received third-party evidence and completed seven  
27 party depositions. The Parties thus have sufficient information to assess the strengths and  
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1 weaknesses of their claims and defenses.

2       **D.** During the course of litigation, the Parties engaged in direct communications, and as  
3 part of their obligations under Fed. R. Civ. P. 26, discussed the prospect of resolution. With less  
4 than a month left before the fact-discovery cut-off, on May 27, 2025, the Parties, through their  
5 respective counsel, participated in extensive arms-length negotiations in efforts to settle the  
6 disputes, including a full-day mediation before former United States District Judge Wayne R.  
7 Andersen, formerly of the Northern District of Illinois.  
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9       **E.** While the parties did not settle that day, the parties made substantial progress  
10 towards resolving their disputes and continued to engage in discussions facilitated by Judge  
11 Andersen. ECF No. 105. On June 6, 2025, the Parties notified the Court that they had reached a  
12 settlement in principle. ECF No. 106. On July 14, 2025, the parties executed a Term Sheet  
13 resolving the case.  
14

15       **F.** Defendants believe that the claims asserted against them in the above-captioned  
16 action (the “Action”) have no merit and that they would have prevailed at summary judgment,  
17 and/or at trial, and that Plaintiffs would not have been able to certify a class under the requirements  
18 of Federal Rule of Civil Procedure 23. Defendants have denied and continue to deny any  
19 wrongdoing, liability, or fault, including the existence of any partnership or joint venture, and have  
20 denied and continue to deny that they committed, or attempted to commit, any wrongful act or  
21 violation of law or duty alleged in the Action. Defendants have opposed and continue to oppose  
22 certification of a litigation class in this Action. Nonetheless, taking into account the uncertainty,  
23 costs and expense, and risks inherent in any litigation, Defendants have concluded it is desirable  
24 and beneficial that the Action be fully and finally settled and terminated in the manner and upon  
25 the terms and conditions set forth in this Agreement. This Agreement is a compromise. The  
26 Agreement, any related documents, and any negotiations relating to or supporting the Agreement  
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1 shall not be construed as or deemed to be evidence, an admission, or a concession of liability, fault,  
2 or wrongdoing on the part of Defendants, or any of the Released Parties (defined below), with  
3 respect to any claim of fault or liability or wrongdoing or damage whatsoever, or with respect to  
4 the certifiability of a litigation class.  
5

6 **G.** Named Plaintiffs believe that the claims asserted in the Action against Defendants  
7 have merit and that they would have prevailed at summary judgment and/or trial. Nonetheless,  
8 Plaintiffs and Class Counsel (defined below) recognize that Defendants have raised factual and  
9 legal defenses that present a risk that Plaintiffs may not prevail. Named Plaintiffs and Class  
10 Counsel also recognize the expense and delay associated with continued prosecution of the Action  
11 against Defendants through class certification, summary judgment, trial, and any subsequent  
12 appeals. Named Plaintiffs and Class Counsel also have taken into account the uncertain outcome  
13 and risks of litigation, especially in complex class actions, as well as the difficulties inherent in  
14 such litigation. Therefore, Plaintiffs believe it is desirable that the Released Claims be fully and  
15 finally compromised, settled, and resolved with prejudice. Based on their evaluation, Plaintiffs and  
16 Class Counsel have concluded that the terms and conditions of this Agreement are fair, reasonable,  
17 and adequate to the Settlement Class, and that it is in the best interests of the Settlement Class to  
18 settle the claims raised in the Action pursuant to the terms and provisions of this Agreement.  
19

20 **NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED** by and among  
21 Named Plaintiffs, the Settlement Class, and each of them, and Defendants, by and through their  
22 undersigned counsel that, subject to final approval of the Court after a hearing or hearings as  
23 provided for in this Settlement Agreement, in consideration of the benefits flowing to the Parties  
24 and the Settlement Class from the Agreement set forth herein, that the Action and the Released  
25 Claims shall be finally and fully compromised, settled, and released, and the Action shall be  
26 dismissed with prejudice, upon and subject to the terms and conditions of this Agreement.  
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**AGREEMENT**

**1. DEFINITIONS.**

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

**1.1 “Action”** means *Fan v. NBA Properties, Inc.*, Civil Action No. 3:23-cv-5069-SI, pending in the United States District Court for the Northern District of California.

**1.2 “Approved Claim”** means a Claim Form submitted by a Settlement Class Member that is: (a) submitted timely and in accordance with the directions on the Claim Form and the provisions of the Settlement Agreement; (b) fully and truthfully completed by a Settlement Class Member with all of the information requested in the Claim Form; (c) signed by the Settlement Class Member, physically or electronically; and (d) approved by the Settlement Administrator pursuant to the provisions of this Agreement. To receive a Cash Payment, each claimant must fill out an attestation that they (1) subscribed to Defendants’ Website (nbatopshot.com) during the Class Period; and (2) had an active Facebook account during the Class Period. Further, each claimant must provide proof of their active Facebook membership during the Class Period, such as a Facebook ID number or screenshot to demonstrate they hold a Facebook account.

**1.3 “Available Settlement Fund”** means the Settlement Fund less any Settlement Administration Expenses, any Service Award to the Class Representative, any Fee Award to Class Counsel, any taxes paid on the Settlement Fund (including any interest or penalties thereon), and any other costs, fees, or expenses approved by the Court to be paid from the Settlement Fund.

**1.4 “CAFA Notice”** means the notice described in Paragraph 4.1(e) below.

1                   **1.5 “Cash Award”** means the cash compensation, payable by the Settlement  
2 Administrator from the Settlement Fund on a *pro rata* basis, that each Settlement Class  
3 Member who submits an Approved Claim shall be entitled to receive.

4                   **1.6 “Claim Form”** means the document substantially in the form attached  
5 hereto as Exhibit A, as approved by the Court. The Claim Form, to be completed by  
6 Settlement Class Members who wish to file a Claim for a payment, shall be available in  
7 electronic and paper format in the manner described below.

8                   **1.7 “Claims Deadline”** means the date by which all Claim Forms must be  
9 postmarked or received to be considered timely and shall be set as a date no later than forty-  
10 five (45) days after Notice is provided to the Settlement Class. The Claims Deadline shall  
11 be clearly set forth in the Preliminary Approval Order as well as in the Notice and Claim  
12 Form. Failure to submit a timely claim by the Claims Deadline will prevent a Settlement  
13 Class Member from receiving a Cash Award from the Settlement Fund.

14                   **1.8 “Class Counsel”** means L. Timothy Fisher and Stefan Bogdanovich of  
15 Bursor & Fisher, P.A.

16                   **1.9 “Class Representatives”** means the named Plaintiffs in this Action, Thomas  
17 Fan, Matthew Kimoto, and Clinton Brown.

18                   **1.10 “Court”** means the United States District Court for the Northern District of  
19 California, the Honorable Susan Illston presiding, or any judge who may succeed her in the  
20 Action.

21                   **1.11 “Days”** means calendar days, except that when computing any period of  
22 time prescribed or allowed by this Settlement Agreement, the day of the act, event or  
23 default from which the designated period of time begins to run shall not be included. When  
24 computing any period of time prescribed or allowed by this Settlement Agreement, the last  
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1 day of the period so computed shall be included, unless it is a Saturday, Sunday or federal  
2 or State of California legal holiday, in which event the period runs until the end of the next  
3 day which is not a Saturday, Sunday or federal or State of California legal holiday.

4 **1.12 “Defendants”** means NBA Properties, Inc. and Dapper Labs, Inc.

5 **1.13 “Defendants’ Counsel”** means Kenneth P. Herzinger, Aaron D. Charfoos,  
6 and Kelsey R. McQuilkin of Paul Hastings LLP.

7 **1.14 “Defendants’ Website”** means <https://www.nbatopshot.com/>.

8 **1.15 “Effective Date”** means the date ten (10) days after which all of the events  
9 and conditions specified in Paragraph 9.1 have been met and have occurred.

10 **1.16 “Escrow Account”** means the separate, interest-bearing escrow account to  
11 be established by the Settlement Administrator under terms acceptable to all Parties at a  
12 depository institution insured by the Federal Deposit Insurance Corporation. The  
13 Settlement Fund shall be deposited by or on behalf of Defendants into the Escrow Account  
14 in accordance with the terms of this Agreement and the money in the Escrow Account shall  
15 be invested in the following types of accounts and/or instruments and no other: (i) demand  
16 deposit accounts and/or (ii) time deposit accounts and certificates of deposit, in either case  
17 with maturities of forty-five (45) days or less. The costs of establishing and maintaining the  
18 Escrow Account shall be paid from the Settlement Fund.

19 **1.17 “Fee Award”** means the amount of attorneys’ fees, costs, and expenses  
20 awarded by the Court to Class Counsel, which will be paid out of the Settlement Fund.

21 **1.18 “Final”** means one business day following the latest of the following events:  
22 (i) the date upon which the time expires for filing or noticing any appeal of the Court’s  
23 Final Judgment approving the Settlement Agreement; (ii) if there is an appeal or appeals,  
24 other than an appeal or appeals solely with respect to the Fee Award, the date of  
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1 completion, in a manner that finally affirms and leaves in place the Final Judgment without  
2 any material modification, of all proceedings arising out of the appeal or appeals (including,  
3 but not limited to, the expiration of all deadlines for motions for reconsideration or petitions  
4 for review and/or *certiorari*, all proceedings ordered on remand, and all proceedings arising  
5 out of any subsequent appeal or appeals following decisions on remand); or (iii) the date of  
6 final dismissal of any appeal or the final dismissal of any proceeding on *certiorari*.  
7

8 **1.19 “Final Approval Hearing”** means any hearing before the Court concerning  
9 the Parties’ request for the Final Judgment to be entered by the Court approving the  
10 Settlement Agreement, the Fee Award, and the service award to the Class Representative.  
11

12 **1.20 “Final Judgment”** means (i) a final judgment and order entered by the  
13 Court in conformity with the conditions set forth in Paragraphs 7.3(a), (b), (c), (d), (e), (f),  
14 (g), and (h); or (ii) any other final judgment and order entered by the Court if none of the  
15 Parties timely elect to terminate this Settlement Agreement pursuant to Paragraph 6.1.

16 **1.21 “Notice”** means the notice of this proposed Class Action Settlement  
17 Agreement and Final Approval Hearing, which is to be sent to the Settlement Class  
18 substantially in the manner set forth in this Agreement, is consistent with the requirements  
19 of Due Process, Rule 23, and substantially in the form of Exhibits A, B, and C hereto.  
20

21 **1.22 “Notice Date”** means the date by which the dissemination of Notice as set  
22 forth in Paragraph 4.1(b) is complete, which shall be no later than twenty-eight (28) days  
23 after entry of the Preliminary Approval Order.

24 **1.23 “Objection/Exclusion Deadline”** means the date by which a written  
25 objection to this Settlement Agreement or a request for exclusion submitted by a Person  
26 within the Settlement Class must be made, which shall be designated as a date no later than  
27 sixty (60) days after the Notice Date and no sooner than fourteen (14) days after papers  
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1 supporting the Fee Award are filed with the Court and posted to the Settlement Website, or  
2 such other date as ordered by the Court.

3 **1.24 “Person”** shall mean, without limitation, any individual, corporation,  
4 partnership, limited partnership, limited liability company, association, joint stock  
5 company, estate, legal representative, trust, unincorporated association, government or any  
6 political subdivision or agency thereof, and any business or legal entity and their spouses,  
7 heirs, affiliates, parents, predecessors, successors, representatives, or assigns, subsidiaries,  
8 insurers, and their past, present and future directors, officers, shareholders, members,  
9 faculty, employees, agents, and attorneys both individually and in their capacities as  
10 directors, officers, shareholders, members, employees, agents, and attorneys. “Person” is  
11 not intended to include any governmental agencies or governmental actors, including,  
12 without limitation, any state Attorney General office.

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15 **1.25 “Plaintiffs”** means Thomas Fan, Matthew Kimoto, and Clinton Brown, and  
16 the Settlement Class Members.

17 **1.26 “Preliminary Approval”** means the Court’s certification of the Settlement  
18 Class for settlement purposes, preliminary approval of this Settlement Agreement, and  
19 approval of the form and manner of the Notice.

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21 **1.27 “Preliminary Approval Order”** means the order preliminarily approving  
22 the Settlement Agreement, certifying the Settlement Class for settlement purposes, and  
23 directing notice thereof to the Settlement Class, which will be agreed upon by the Parties  
24 and submitted to the Court in conjunction with Plaintiffs’ motion for Preliminary Approval  
25 of the Agreement.

26 **1.28 “Released Claims”** means any and all causes of action, suits, claims, liens,  
27 demands, judgments, costs, damages, obligations, attorney fees, and all other legal  
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responsibilities in any form or nature (including but not limited to, all claims relating to or arising out of state, local, or federal statute, ordinance, regulation, or claim at common law or in equity, whether past, present, or future, known or unknown, asserted or unasserted) arising out of or in any way related to any claims that were brought or could have been brought in the Action relating to the Meta Pixel on nbatopshot.com.

**1.29 “Released Parties”** means Defendants NBA Properties, Inc. and Dapper Labs, Inc., and all of their current, former, and future parents, predecessors, successors, affiliates, assigns, subsidiaries, divisions, or related corporate entities, licensees, licensors, joint ventures, partners, and all of their respective current, future, and former employees, officers, directors, shareholders, assigns, agents, trustees, administrators, executors, insurers, reinsurers, attorneys, and customers.

**1.30 “Releasing Parties”** means Named Plaintiffs, Settlement Class Members, and all of their respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, associates, affiliates, employers, employees, agents, consultants, independent contractors, insurers, reinsurers, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns and companies, firms, trusts, and corporations.

**1.31 “Service Award”** means any Court-approved award to the Class Representative, in his capacity as individual class representative, as set forth in Paragraph 8.3, and payable by the Settlement Administrator from the Settlement Fund.

**1.32 “Settlement Administration Expenses”** means the expenses incurred by the Settlement Administrator in providing Notice or CAFA Notice, processing claims,

1 responding to inquiries from members of the Settlement Class, mailing checks, and related  
2 services, paying taxes and tax expenses related to the Settlement Fund (including all  
3 federal, state or local taxes of any kind and interest or penalties thereon, as well as expenses  
4 incurred in connection with determining the amount of and paying any taxes owed and  
5 expenses related to any tax attorneys and accountants).

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7 **1.33 “Settlement Administrator”** means Epiq, or such other reputable  
8 administration company that has been selected jointly by the Parties and approved by the  
9 Court to perform the duties set forth in this Agreement, including but not limited to serving  
10 as Escrow Agent for the Settlement Fund, overseeing the distribution of Notice, as well as  
11 the processing and payment of any claims to the Settlement Class as set forth in this  
12 Agreement, handling all approved payments out of the Settlement Fund, and handling the  
13 determination, payment, and filing of forms related to all federal, state and/or local taxes of  
14 any kind (including any interest or penalties thereon) that may be owed on any income  
15 earned by the Settlement Fund.  
16

17 **1.34 “Settlement Amount”** means \$7,050,000.00.

18 **1.35 “Settlement Class”** means all individuals in the United States who had  
19 NBA Top Shot accounts and Facebook accounts from June 15, 2020 to January 30, 2025.  
20 Excluded from the Class is any entity in which Defendants have a controlling interest, and  
21 officers or directors, agents, attorneys, and employees of Defendants.  
22

23 **1.36 “Settlement Class Member”** means an individual who falls within the  
24 definition of the Settlement Class as set forth above and who has not submitted a valid  
25 request for exclusion.

26 **1.37 “Settlement Fund”** means the non-reversionary cash fund that shall be  
27 established by or on behalf of Defendants in the total amount of the Settlement Amount to  
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1 be deposited into the Escrow Account, according to the schedule set forth herein, plus all  
2 interest earned thereon. From the Settlement Fund, the Settlement Administrator shall pay  
3 all Cash Awards to Settlement Class Members, Settlement Administration Expenses, any  
4 Service Award to the Class Representative, any Fee Award to Class Counsel, any taxes paid  
5 and any other costs, fees or expenses approved by the Court to be paid from the Settlement  
6 Fund. The Settlement Fund shall be kept in the Escrow Account with permissions granted  
7 to the Settlement Administrator to access said funds until such time as the listed payments  
8 are made. The Settlement Fund includes all interest that shall accrue on the sums deposited  
9 in the Escrow Account. The Settlement Administrator shall be responsible for all tax  
10 filings with respect to any earnings on the Settlement Fund and the payment of all taxes that  
11 may be due on such earnings. The Settlement Fund represents the total extent of  
12 Defendants' monetary obligations under this Agreement. Defendants shall not be  
13 responsible for paying any interest that may accrue on the sums deposited in the Escrow  
14 Account, and shall not be responsible for any banking fees or costs associated with the  
15 sums deposited in the Escrow Account. The payment of the Settlement Amount by, or on  
16 behalf of, Defendants fully discharges the Defendants and the other Released Parties'  
17 financial obligations (if any) in connection with this Settlement Agreement, meaning that  
18 no Released Party shall have any other obligation to make any payment into the Escrow  
19 Account or to any Class Member, or any other Person, under this Agreement. In no event  
20 shall the total monetary obligation with respect to this Agreement on behalf of Defendants  
21 exceed \$7,050,000.00.

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25 **1.38 "Settlement Website"** means the dedicated website created, administered,  
26 and maintained by the Settlement Administrator, as set forth in Paragraph 4.1(d), at an  
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1 available URL (such as, for example,  
2 [www.nbatopshotvideoprivacyclassactionsettlement.com](http://www.nbatopshotvideoprivacyclassactionsettlement.com)).

3 **1.39 “Unknown Claims”** means claims that could have been raised in the  
4 Action and that any or all of the Releasing Parties do not know or suspect to exist, which, if  
5 known by him or her, might affect his or her agreement to release the Released Parties or  
6 the Released Claims or might affect his or her decision to agree, object or not to object to  
7 the settlement contemplated by this Agreement. Upon the Effective Date, the Releasing  
8 Parties shall be deemed to have, and shall have, expressly waived and relinquished, to the  
9 fullest extent permitted by law, the provisions, rights and benefits of § 1542 of the  
10 California Civil Code, to the extent applicable, and any other similar statute in any state in  
11 the United States, which provides as follows:  
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13  
14 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
15 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
16 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE  
17 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY  
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED  
PARTY.

18 Upon the Effective Date, the Releasing Parties also shall be deemed to have, and shall have,  
19 waived any and all provisions, rights, and benefits conferred by any law of any state or territory of  
20 the United States, or principle of common law, or the law of any jurisdiction outside of the United  
21 States, which is similar, comparable or equivalent to § 1542 of the California Civil Code. The  
22 Releasing Parties acknowledge that they may discover facts in addition to or different from those  
23 that they now know or believe to be true with respect to the subject matter of this release, but that it  
24 is their intention to finally and forever settle and release the Released Claims, notwithstanding any  
25 Unknown Claims they may have, as that term is defined in this Paragraph.  
26

27 **2. SETTLEMENT RELIEF.**

28 **2.1 Payments to Settlement Class Members.**

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1                   **(a)**       Within 120 days after the full form Class Action Settlement  
2 Agreement is fully executed, Dapper shall pay or cause to be paid the Settlement Amount  
3 into the Escrow Account.

4                   **(b)**       Settlement Class Members shall have until the Claims Deadline to  
5 submit an Approved Claim. Each Settlement Class Member with an Approved Claim shall  
6 be entitled to receive as a Cash Award a *pro rata* payment from the Settlement Fund.  
7 Proration of amounts due to Settlement Class Members with Approved Claims shall be  
8 determined no later than 60 days after entry of a Final Judgment.

9                   **(c)**       The Settlement Administrator shall pay from the Settlement Fund all  
10 Cash Awards to those Settlement Class Members with Approved Claims by check or  
11 electronic payment, at the Settlement Class Member's election. Payments of Cash Awards to  
12 all Settlement Class Members with Approved Claims shall be made within ninety (90) days  
13 after entry of a Final Judgment.

14                   **(d)**       To the extent that any Settlement Class Members do not claim their  
15 Cash Awards within one-hundred-eighty (180) days after Cash Awards are distributed in  
16 accordance with Paragraph 2.1(b), such Settlement Class Members shall have waived their  
17 right to a Cash Award and any unclaimed funds shall be redistributed on a *pro rata* basis  
18 (after first deducting any necessary settlement administration expenses from such unclaimed  
19 funds) to all Settlement Class Members who claimed their payments.

20                   **(e)**       To the extent a secondary distribution would be infeasible, any  
21 unclaimed funds shall, subject to Court approval, revert to the Electronic Frontier Foundation,  
22 a non-sectarian, not-for-profit organization, or another non-sectarian, not-for-profit  
23 organization(s) recommended by Class Counsel and approved by the Court.  
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(f) Subject to the provisions pertaining to the termination or cancellation of the Settlement Agreement, as set forth in Paragraph 9, no portion of the Settlement Fund shall revert back to Defendants.

**2.2 Prospective Relief.** Defendants agree to cease operation of the Meta Tracking Pixel on any pages on its Website, unless and until the Video Privacy Protection Act, 18 U.S.C. § 2710, or California Civil Code §1799.3 are amended, repealed, or otherwise invalidated unless Defendants are otherwise in compliance with those laws.

### **3. RELEASE.**

**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, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties, and each of them. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, shall, either directly, indirectly, representatively, or in any capacity, be permanently barred and enjoined from filing, commencing, prosecuting, intervening in, or participating (as a class member or otherwise) in any lawsuit, action or other proceeding in any jurisdiction (other than participating in the Settlement as provided herein) against any Released Party based on the Released Claims.

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

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

(a) *Settlement Class List.* No later than twenty-eight (28) days after the execution of this Agreement, Defendants shall produce to the Settlement Administrator, with a copy to Class Counsel, an electronic list from its records that includes the names and last known

1 email addresses, to the extent available, belonging to persons within the Settlement Class. This  
2 electronic document shall be called the “Class List”. Class Counsel shall not use the Settlement  
3 Class List or any information contained within it, for any purpose other than administering the  
4 settlement, and shall take reasonable measures to protect the information from any third-party  
5 disclosure. Class Counsel may not send any advertisements, solicitations, or communications to  
6 the Settlement Class to solicit Class members to retain Class Counsel for any other matters or  
7 disputes.  
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9           **(b)**     *Direct Notice via Email.* No later than fourteen (14) days after entry of the  
10 Preliminary Approval Order, the Settlement Administrator shall send Notice via email  
11 substantially in the form attached as Exhibit B to all Settlement Class Members for whom a valid  
12 email address is in the Class List. In the event transmission of email notice results in any  
13 “bounce-backs,” the Settlement Administrator shall, if possible, correct any issues that may have  
14 caused the “bounce-back” to occur, including running a “skip-trace” to identify any potential  
15 alternative email addresses, and make a second attempt to re-send the email notice.  
16

17           **(c)**     *Reminder Notice.* Both thirty (30) days prior to the Claims Deadline and  
18 seven (7) days prior to the Claims Deadline, the Settlement Administrator shall send Notice via  
19 email substantially in the form attached as Exhibit B (with minor, non-material modifications to  
20 indicate that it is a reminder email rather than an initial notice), along with an electronic link to the  
21 Claim Form, to all Settlement Class Members for whom a valid email address is available in the  
22 Class List.  
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24           **(d)**     *Settlement Website.* Within ten (10) days from entry of the Preliminary  
25 Approval Order, the Settlement Administrator shall post a copy of the long-form Notice,  
26 substantially in the form of Exhibit C hereto, on the Settlement Website. The Settlement Website  
27 shall also provide Class Members with copies of this Settlement Agreement, and other pertinent  
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1 documents and Court filings pertaining to the settlement (including the motion for attorneys' fees  
2 upon its filing), as well as web-based forms for Settlement Class Members to submit electronic  
3 Claim Forms, requests for exclusion from the Settlement Class, and updated postal addresses to  
4 which Cash Awards should be sent after the Final Judgment becomes Final.  
5

6 (e) *CAFA Notice.* Pursuant to 28 U.S.C. § 1715, not later than ten (10) days  
7 after the Agreement is filed with the Court, the Settlement Administrator (on behalf of Defendant)  
8 shall cause to be served upon the Attorneys General of each U.S. State and Territory in which  
9 Settlement Class members reside, the Attorney General of the United States, and other required  
10 government officials, notice of the proposed settlement as required by law, subject to Paragraph  
11 5.1 below.  
12

13 **4.2** The Notice shall advise the Settlement Class of their rights, including the right to be  
14 excluded from, comment upon, and/or object to the Settlement Agreement or any of its terms. The  
15 Notice shall specify that any objection to the Settlement Agreement, and any papers submitted in  
16 support of said objection, shall be considered by the Court at the Final Approval Hearing only if,  
17 on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice,  
18 the Person making the objection files notice of an intention to do so and at the same time (a) files  
19 copies of such papers he or she proposes to be submitted at the Final Approval Hearing with the  
20 Clerk of the Court, or alternatively, if the objection is from a Class Member represented by  
21 counsel, files any objection through the Court's CM/ECF system, and (b) sends copies of such  
22 papers by mail, hand, or overnight delivery service to Class Counsel and Defendants' Counsel.  
23

24 **4.3** Any Settlement Class Member who intends to object to this Agreement must present  
25 the objection in writing, which must be personally signed by the objector, and must include: (1)  
26 the objector's name and address; (2) an explanation of the basis upon which the objector claims to  
27 be a Settlement Class Member; (3) all grounds for the objection, including all citations to legal  
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1 authority and evidence supporting the objection; (4) the name and contact information of any and  
2 all attorneys representing, advising, or in any way assisting the objector in connection with the  
3 preparation or submission of the objection or who may profit from the pursuit of the objection (the  
4 “Objecting Attorneys”); and (5) a statement indicating whether the objector intends to appear at the  
5 Final Approval Hearing (either personally or through counsel who files an appearance with the  
6 Court in accordance with the Local Rules).

8 **4.4** If a Settlement Class Member or any of the Objecting Attorneys has/have objected  
9 to any class action settlement where the objector or the Objecting Attorneys asked for or received  
10 any payment in exchange for dismissal of the objection, or any related appeal, without any  
11 modification to the settlement, then the objection described in Paragraph 4.3 above must include a  
12 statement identifying each such case by full case caption and amount of payment received.

14 **4.5** A potential Settlement Class Member may request to be excluded from the  
15 Settlement Class by timely submitting a request for exclusion on the Settlement Website or sending  
16 a written request to the address identified in the Notice. Any such request for exclusion must be  
17 submitted on the Settlement Website or be postmarked on or before the Objection/Exclusion  
18 Deadline approved by the Court and specified in the Notice. To exercise the right to be excluded, a  
19 Person who would otherwise be a Settlement Class Member must timely submit a request for  
20 exclusion on the Settlement Website or send a written request for exclusion to the Settlement  
21 Administrator that contains his/her name and address, that he/she created an account on  
22 Defendants’ Website and simultaneously held an active Facebook account, and a statement that he  
23 or she wishes to be excluded from the Settlement Class for purposes of this Settlement Agreement.  
24 A request to be excluded that does not include all of this information, or that is sent to an address  
25 other than that designated in the Notice, or that is not postmarked within the time specified, shall  
26 be invalid, and the Person(s) serving such a request shall be a member(s) of the Settlement Class  
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1 and shall be bound as a Settlement Class Member by this Agreement, if approved. Any member of  
2 the Settlement Class who validly elects to be excluded from this Agreement shall not: (i) be bound  
3 by any orders or the Final Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii)  
4 gain any rights by virtue of this Agreement; or (iv) be entitled to object to any aspect of this  
5 Agreement. Any request for exclusion must be personally signed by each Person requesting  
6 exclusion. So-called “mass” or “class” opt-outs shall not be allowed. To be valid, a request for  
7 exclusion must be submitted on the Settlement Website by 11:59 p.m., Eastern Standard Time, on  
8 the date specified in the Notice, or be postmarked or received by the date specified in the Notice.  
9

10 **4.6** The Final Approval Hearing shall be no earlier than ninety (90) days after the  
11 Notice described in Paragraph 4.1(b) is provided.  
12

13 **4.7** Any Settlement Class Member who does not, in accordance with the terms and  
14 conditions of this Agreement, timely and validly seek exclusion from the Settlement Class, will be  
15 bound by all of the terms of this Agreement, including the terms of the Final Judgment to be  
16 entered in the Action and the Releases provided for in the Agreement, and will be barred from  
17 bringing any action against any of the Released Parties concerning the Released Claims.  
18

## 19 **5. SETTLEMENT ADMINISTRATION.**

20 **5.1** The Settlement Administrator shall, under the supervision of the Court, administer  
21 the relief provided by this Settlement Agreement by processing Claim Forms and requests for  
22 exclusion from the Settlement Class, and disbursing funds from the Settlement Fund in a rational,  
23 responsive, cost effective, and timely manner. The terms of this Agreement, upon approval by the  
24 Court, shall at all times govern the scope of the services to be provided by the Settlement  
25 Administrator to administer the settlement, and the terms of any separate contract or agreement  
26 entered into between or among the Settlement Administrator and Class Counsel, Defendants’  
27 Counsel, or the Defendants to administer the settlement shall be consistent in all material respects  
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1 with the terms of this Agreement. The Settlement Administrator shall maintain reasonably detailed  
2 records of its activities under this Agreement. The Settlement Administrator shall maintain all  
3 such records as are required by applicable law in accordance with its normal business practices and  
4 such records will be made available to Class Counsel and Defendants' Counsel upon request. The  
5 Settlement Administrator shall also provide reports and other information to the Court as the Court  
6 may require. The Settlement Administrator shall provide Class Counsel and Defendants' Counsel  
7 with regular reports at weekly intervals containing information concerning Notice, administration,  
8 and implementation of the Settlement Agreement. Should the Court request, the Parties shall  
9 submit a timely report to the Court summarizing the work performed by the Settlement  
10 Administrator, including a report of all amounts from the Settlement Fund paid to Settlement Class  
11 Members. Without limiting the foregoing, the Settlement Administrator shall:  
12

13                   **(a)**       Forward to Defendants' Counsel, with copies to Class Counsel, all  
14 original documents and other materials received in connection with the administration of the  
15 settlement, and all copies thereof, within thirty (30) days after the Claims Deadline;  
16

17                   **(b)**       Provide Class Counsel and Defendants' Counsel with drafts of all  
18 administration related documents, including but not limited to CAFA Notices, follow-up class  
19 notices or communications with Settlement Class Members, telephone scripts, website  
20 postings or language or other communications with the Settlement Class, at least five (5) days  
21 before the Settlement Administrator is required to or intends to publish or use such  
22 communications, unless Class Counsel and Defendants' Counsel agree to waive this  
23 requirement in writing on case by case basis;  
24

25                   **(c)**       Receive requests to be excluded from the Settlement Class and other  
26 requests and promptly provide to Class Counsel and Defendants' Counsel copies thereof. If  
27 the Settlement Administrator receives any exclusion forms or other requests after the deadline  
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1 for the submission of such forms and requests, the Settlement Administrator shall promptly  
2 provide copies thereof to Class Counsel and Defendants' Counsel;

3 (d) Provide weekly reports to Class Counsel and Defendants' Counsel,  
4 including without limitation, reports regarding the number of Claim Forms and requests for  
5 exclusion and/or objections received; and  
6

7 (e) Make available for inspection by Class Counsel and Defendants'  
8 Counsel the Claim Forms received by the Settlement Administrator at any time upon  
9 reasonable notice.

10 5.2 The Settlement Administrator shall be obliged to employ reasonable procedures to  
11 screen claims for abuse or fraud and deny Claim Forms where there is evidence of abuse or fraud.  
12 The Settlement Administrator will reject any claim that does not comply in any material respect  
13 with the instructions on the Claim Form or is submitted after the Claims Deadline. Each claimant  
14 who submits an invalid Claim Form to the Settlement Administrator must be given a notice of the  
15 Claim Form's deficiency and an opportunity to cure the deficiency within twenty-one (21) days of  
16 the date of the notice. The Settlement Administrator may contact any Person who has submitted a  
17 Claim Form to obtain additional information necessary to verify the Claim Form.  
18

19 5.3 Defendants' Counsel and Class Counsel shall have the right to challenge the  
20 acceptance or rejection of a Claim Form submitted by Settlement Class Members and to obtain and  
21 review supporting documentation relating to such Claim Form. The Settlement Administrator shall  
22 follow any agreed decisions of Class Counsel and Defendants' Counsel as to the validity of any  
23 disputed submitted Claim Form. To the extent Class Counsel and Defendants' Counsel are not  
24 able to agree on the disposition of a challenge, the disputed claim shall be submitted to the Court  
25 for binding determination.  
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1           **5.4.** Defendants, the Released Parties, and Defendants' Counsel shall have no  
2 responsibility for, interest in, or liability whatsoever with respect to: (i) any act, omission, or  
3 determination by Class Counsel, or the Settlement Administrator, or any of their respective  
4 designees or agents, in connection with the administration of the settlement or otherwise; (ii) the  
5 management, investment, or distribution of the Settlement Fund; (iii) the allocation of Settlement  
6 Funds to Settlement Class Members or the implementation, administration, or interpretation  
7 thereof; (iv) the determination, administration, calculation, or payment of any claims asserted  
8 against the Settlement Fund; (v) any losses suffered by, or fluctuations in value of, the Settlement  
9 Fund; or (vi) the payment or withholding of any Taxes, Tax Expenses, or costs incurred in  
10 connection with the taxation of the Settlement Fund or the filing of any federal, state, or local  
11 returns.  
12

13  
14           **5.5.** All taxes and tax expenses shall be paid out of the Settlement Fund, and shall be  
15 timely paid by the Settlement Administrator pursuant to this Agreement and without further order  
16 of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth  
17 therein) shall be consistent with this Agreement and in all events shall reflect that all taxes on the  
18 income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.  
19 The Released Parties shall have no responsibility or liability for the acts or omissions of the  
20 Settlement Administrator or its agents with respect to the payment of taxes or tax expenses.  
21

22       **6. TERMINATION OF SETTLEMENT.**

23           **6.1** Subject to Paragraphs 9.1, 9.2, and 9.3 below, Defendants or the Class  
24 Representative on behalf of the Settlement Class, shall have the right but not the obligation to  
25 terminate this Agreement by providing written notice of the election to do so ("Termination  
26 Notice") to all other Parties hereto within twenty-one (21) days of any of the following events: (i)  
27 the Court's refusal to grant Preliminary Approval of this Agreement in any material respect; (ii) the  
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1 Court's refusal to grant final approval of this Agreement in any material respect; (iii) the Court's  
2 refusal to enter the Final Judgment in this Action in any material respect; or (iv) the Final  
3 Judgment is modified or reversed in any material respect by an appellate court with jurisdiction.

4 **6.2 Confirmatory Discovery.** Defendants have represented that there are  
5 approximately 1,221,288 United States NBA Top Shot account holders from June 15, 2020 (the  
6 date Dapper launched the NBA Top Shot product) to January 30, 2025 (the date on which Dapper  
7 turned off the Meta pixel on nbatopshot.com). Simultaneous with providing the Settlement Class  
8 List to the Settlement Class Administrator, Defendants have provided a declaration from an  
9 appropriate representative with knowledge attesting to the same.  
10

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

12 **7.1** Promptly after the execution of this Settlement Agreement, Class Counsel shall file  
13 this Agreement together with the Exhibits annexed hereto with the Court and shall move the Court  
14 for: Preliminary Approval of the settlement set forth in this Agreement; certification of the  
15 Settlement Class for settlement purposes only; appointment of Class Counsel and the Class  
16 Representative; and entry of a Preliminary Approval Order, which order shall set a Final Approval  
17 Hearing date and approve the Notice and Claim Form for dissemination substantially in the form of  
18 Exhibits A, B, and C hereto. The Preliminary Approval Order shall also authorize the Parties,  
19 without further approval from the Court, to agree to and adopt such amendments, modifications  
20 and expansions of the Settlement Agreement and its implementing documents (including all  
21 exhibits to this Agreement) so long as they are consistent in all material respects with the terms of  
22 the Settlement Agreement and do not limit or impair the rights of the Settlement Class or materially  
23 expand the obligations of Defendants.  
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1           **7.2**     At the time of the submission of this Agreement to the Court as described above,  
2     Class Counsel shall request that, after Notice is given, the Court hold a Final Approval Hearing and  
3     finally approve the settlement of the Action as set forth herein.

4           **7.3**     After Notice is given, the Parties shall request and seek to obtain from the Court a  
5     Final Judgment, which will (among other things):  
6

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

10                   **(b)**    approve the Settlement Agreement and the proposed settlement as fair,  
11     reasonable, and adequate as to, and in the best interests of, the Settlement Class Members; direct  
12     the Parties and their counsel to implement and consummate the Agreement according to its terms  
13     and provisions; and declare the Agreement to be binding on, and have *res judicata* and preclusive  
14     effect in all pending and future lawsuits or other proceedings maintained by or on behalf of  
15     Plaintiffs and Releasing Parties;  
16

17                   **(c)**    find that the Notice implemented pursuant to the Agreement (1) constitutes  
18     the best practicable notice under the circumstances; (2) constitutes notice that is reasonably  
19     calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action,  
20     their right to object to or exclude themselves from the proposed settlement, and to appear at the  
21     Final Approval Hearing; (3) is reasonable and constitutes due, adequate, and sufficient notice to all  
22     persons entitled to receive notice; and (4) meets all applicable requirements of the Federal Rules of  
23     Civil Procedure, the Due Process Clause of the United States Constitution, and the rules of the  
24     Court;  
25

26                   **(d)**    find that the Class Representative and Class Counsel adequately represent  
27     the Settlement Class for purposes of entering into and implementing the Agreement;  
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1                   (e)     dismiss the Action (including all individual claims and Settlement Class  
2 Claims presented thereby) on the merits and with prejudice, without fees or costs to any party  
3 except as provided in the Settlement Agreement;

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

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

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

14                  (i)     incorporate any other provisions, as the Court deems necessary and just.

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18       **8.     CLASS COUNSEL'S ATTORNEYS' FEES AND REIMBURSEMENT OF**  
19       **EXPENSES; SERVICE AWARD.**

20               8.1     Pursuant to Fed. R. Civ. P. 23(h) and 18 U.S.C. § 2710(c)(2)(C), Defendants agree  
21 that Class Counsel shall be entitled to seek an award of reasonable attorneys' fees and costs out of  
22 the Settlement Fund in an amount to be determined by the Court as the Fee Award. With no  
23 consideration given or received, Class Counsel will limit its petition for attorneys' fees, costs, and  
24 expenses to no more than one-third of the Settlement Fund (*i.e.*, \$2,350,000.00). Payment of the  
25 Fee Award shall be made from the Settlement Fund and should the Court award less than the  
26 amount sought by Class Counsel, the difference in the amount sought and the amount ultimately  
27 awarded pursuant to this Paragraph shall remain in the Settlement Fund.  
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1           **8.2**     The Fee Award shall be payable by the Settlement Administrator within ten (10)  
2 days after entry of the Court’s Final Judgment, subject to Class Counsel executing the Undertaking  
3 Regarding Attorneys’ Fees and Costs (the “Undertaking”) attached hereto as Exhibit D, and  
4 providing all payment routing information and tax I.D. numbers for Class Counsel. Payment of the  
5 Fee Award shall be made from the Settlement Fund by wire transfer to Class Counsel in  
6 accordance with wire instructions to be provided by Class Counsel, and completion of necessary  
7 forms, including but not limited to W-9 forms. Notwithstanding the foregoing, if for any reason  
8 the Final Judgment is reversed or rendered void as a result of an appeal(s) then any Persons or  
9 firms who shall have received the funds shall be severally liable for payments made pursuant to  
10 this Paragraph and shall return such funds to the Settlement Fund. Additionally, should any parties  
11 to the Undertaking dissolve, merge, declare bankruptcy, become insolvent, or cease to exist prior to  
12 the final payment to Class Members, those parties shall execute a new undertaking guaranteeing  
13 repayment of funds within fourteen (14) days of such an occurrence.  
14

15           **8.3**     Class Counsel intends to file a motion for Court approval of a Service Award to the  
16 Class Representatives, to be paid from the Settlement Fund, in addition to any funds the Class  
17 Representative stands to otherwise receive from the settlement. With no consideration having been  
18 given or received for this limitation, Plaintiffs will seek no more than \$10,000 each as a Service  
19 Award. Should the Court award less than this amount, the difference in the amount sought and the  
20 amount ultimately awarded pursuant to this Paragraph shall remain in the Settlement Fund. Such  
21 Service Award shall be paid from the Settlement Fund (in the form of a check to the Class  
22 Representative that is sent care of Class Counsel), within five (5) business days after entry of the  
23 Final Judgment if there have been no objections to the Settlement Agreement, and, if there have  
24 been such objections, within five (5) business days after the Effective Date.  
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28     **9.     CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL,  
          CANCELLATION OR TERMINATION.**

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2           **9.1**     The Effective Date of this Settlement Agreement shall not occur unless and until  
3 each of the following events occurs and shall be the date upon which the last (in time) of the  
4 following events occurs:

- 5                   **(a)** The Parties and their counsel have executed this Agreement;
- 6                   **(b)** The Court has entered the Preliminary Approval Order;
- 7                   **(c)** The Court has entered an order finally approving the Agreement, following  
8 Notice to the Settlement Class, as provided in the Federal Rules of Civil  
9 Procedure, and has entered the Final Judgment, or a judgment consistent with  
10 this Agreement in all material respects; and
- 11                   **(d)** The Final Judgment has become Final.

12  
13           **9.2**     If some or all of the conditions specified in Paragraph 9.1 are not met, or in the  
14 event that this Agreement is not approved by the Court, or the Settlement set forth in this  
15 Agreement is terminated or fails to become effective in accordance with its terms, then this  
16 Settlement Agreement may be canceled and terminated subject to Paragraph 6.1, unless Class  
17 Counsel and Defendants' Counsel mutually agree in writing to proceed with this Agreement. If  
18 any Party is in material breach of the terms hereof, any other Party, provided that it is in substantial  
19 compliance with the terms of this Agreement, may terminate this Agreement on notice to all of the  
20 Parties and Settlement Class Members (which notice may be given by the Settlement Administrator  
21 via email to the email addresses on record for Settlement Class Members). Notwithstanding  
22 anything herein, the Parties agree that the Court's failure to approve, in whole or in part, the Fee  
23 Award to be requested by Class Counsel and/or the Service Award to be requested for the Class  
24 Representative, as set forth in Paragraph 8 above, shall not prevent the Agreement from becoming  
25 effective, nor shall it be grounds for termination.  
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1           **9.3**     If this Agreement is terminated or fails to become effective for the reasons set forth  
2     in Paragraphs 6.1 and 9.1-9.2 above, the Parties shall be restored to their respective positions in the  
3     Action as of the date of the signing of this Agreement. In such event, any Final Judgment or other  
4     order entered by the Court in accordance with the terms of this Agreement shall be treated as  
5     vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the  
6     Action as if this Agreement had never been entered into. Within five (5) business days after  
7     written notification of termination as provided in this Agreement is sent to the other Parties, the  
8     Settlement Fund (including accrued interest thereon), less any Settlement Administration costs  
9     actually incurred, paid or payable and less any taxes and tax expenses paid, due or owing, shall be  
10    refunded by the Settlement Administrator to Defendants, based upon written instructions provided  
11    by Defendants' Counsel. In the event that the Final Judgment or any material part thereof is  
12    vacated, overturned, reversed, or rendered void as a result of any timely filed appeal, or the  
13    Settlement Agreement is voided, rescinded, or otherwise terminated for any other reason, Class  
14    Counsel shall, within thirty (30) days thereof repay to Defendants, based upon written instructions  
15    provided by Defendants' Counsel, the full amount of the Fee Award, including any accrued  
16    interest, and shall cause Class Representative to repay to Defendants, based upon written  
17    instructions provided by Defendants' Counsel, the full amount of the Service Award, including any  
18    accrued interest. In the event the Fee Award, Service Award, or any part thereof is vacated,  
19    modified, reversed, or rendered void as a result of a timely filed appeal, Class Counsel shall within  
20    thirty (30) days thereof repay, or cause Class Representative to repay, to the Settlement Fund,  
21    based upon written instructions provided by the Settlement Administrator, the Fee Award and/or  
22    Service Award, in the amount vacated or modified, including any accrued interest.  
23

24     **10. MISCELLANEOUS PROVISIONS.**

25           **10.1**    The Parties: (a) acknowledge that it is their intent to consummate this Settlement  
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1 Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the  
2 extent reasonably necessary to effectuate and implement all terms and conditions of this  
3 Agreement, to exercise their reasonable best efforts to accomplish the foregoing terms and  
4 conditions of this Agreement, to secure final approval, and to defend the Final Judgment through  
5 any and all appeals. Class Counsel and Defendants' Counsel agree to cooperate with one another  
6 in seeking Court approval of the Settlement Agreement, entry of the Preliminary Approval Order,  
7 and the Final Judgment, and promptly to agree upon and execute all such other documentation as  
8 may be reasonably required to obtain final approval of the Agreement.  
9

10 **10.2** The Parties intend this Settlement Agreement to be a final and complete resolution  
11 of all disputes between them with respect to the Released Claims by Plaintiffs, the Settlement Class  
12 and each or any of them, on the one hand, against the Released Parties, and each or any of the  
13 Released Parties, on the other hand. Accordingly, the Parties and the Settlement Class Members  
14 agree not to assert in any forum that the Action was brought by Plaintiffs or defended by  
15 Defendants, or each or any of them, in bad faith or without a reasonable basis.  
16

17 **10.3** The Parties have relied upon the advice and representation of counsel, selected by  
18 them, concerning their respective legal liability for the claims hereby released. The Parties have  
19 read and understand fully the above and foregoing Agreement and have been fully advised as to the  
20 legal effect thereof by counsel of their own selection and intend to be legally bound by the same.  
21

22 **10.4** Whether or not the Effective Date occurs or the Settlement Agreement is  
23 terminated, neither this Agreement nor the settlement contained herein or any term, provision or  
24 definition therein, nor any act or communication performed or document executed in the course of  
25 negotiating, implementing or seeking approval pursuant to or in furtherance of this Agreement or  
26 the settlement:  
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1           **(a)**     is, may be deemed, or shall be used, offered or received in any civil, criminal  
2 or administrative proceeding in any court, administrative agency, arbitral proceeding or other  
3 tribunal against the Released Parties, or each or any of them, as an admission, concession or  
4 evidence of, the validity of any Released Claims, the truth of any fact alleged by the Named  
5 Plaintiffs, the appropriateness of the certification of a litigation class, the deficiency of any defense  
6 that has been or could have been asserted in the Action, the violation of any law or statute, the  
7 definition or scope of any term or provision, the reasonableness of the Settlement Amount or the  
8 Fee Award, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or  
9 any of them;  
10

11           **(b)**     is, may be deemed, or shall be used, offered or received against any  
12 Released Party, as an admission, concession or evidence of any fault, misrepresentation or  
13 omission with respect to any statement or written document approved or made by the Released  
14 Parties, or any of them;  
15

16           **(c)**     is, may be deemed, or shall be used, offered or received against the Released  
17 Parties, or each or any of them, as an admission or concession with respect to any liability,  
18 negligence, fault or wrongdoing or statutory meaning (including but not limited to the definition of  
19 Settlement Class) as against any Released Parties, or supporting the certification of a litigation  
20 class, in any civil, criminal or administrative proceeding in any court, administrative agency or  
21 other tribunal. However, the settlement, as set forth herein, this Agreement, and any acts  
22 performed and/or documents executed in furtherance of or pursuant to this Agreement and/or the  
23 settlement, as set forth herein, may be used in any proceedings as may be necessary to effectuate  
24 the provisions of this Agreement. Further, if this Settlement Agreement is approved by the Court,  
25 any Party or any of the Released Parties may file this Agreement and/or the Final Judgment in any  
26 action that may be brought against such Party or Parties in order to support a defense or  
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1 counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement,  
2 judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar  
3 defense or counterclaim;

4 (d) is, may be deemed, or shall be construed against Named Plaintiffs, the  
5 Settlement Class, the Releasing Parties, or each or any of them, or against the Released Parties, or  
6 each or any of them, as an admission or concession that the consideration to be given hereunder  
7 represents an amount equal to, less than or greater than that amount that could have or would have  
8 been recovered after trial; and  
9

10 (e) is, may be deemed, or shall be construed as or received in evidence as an  
11 admission or concession against Named Plaintiffs, the Settlement Class, the Releasing Parties, or  
12 each and any of them, or against the Released Parties, or each or any of them, that any of Plaintiffs'  
13 claims are with or without merit or that damages recoverable in the Action would have exceeded or  
14 would have been less than any particular amount.  
15

16 **10.5** The Parties and Settlement Class Members acknowledge that (a) any certification of  
17 the Settlement Class as set forth in this Agreement, including certification of the Settlement Class  
18 for settlement purposes in the context of Preliminary Approval, shall not be deemed a concession  
19 that certification of a litigation class is appropriate, or that the Settlement Class definition would be  
20 appropriate for a litigation class, nor would Defendants be precluded from challenging class  
21 certification in further proceedings in the Action or in any other action if the Settlement Agreement  
22 is not finalized or finally approved; (b) if the Settlement Agreement is not finally approved by the  
23 Court for any reason whatsoever, then any certification of the Settlement Class will be void, the  
24 Parties and the Action shall be restored to the *status quo ante*, and no doctrine of waiver, estoppel  
25 or preclusion will be asserted in any litigated certification proceedings in the Action or in any other  
26 action; and (c) no agreements made by or entered into by Defendants in connection with the  
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1 Settlement may be used by Plaintiffs, any person in the Settlement Class, or any other person to  
2 establish any of the elements of class certification in any litigated certification proceedings,  
3 whether in the Action or any other judicial proceeding.

4 **10.6.** No person or entity shall have any claim against the Class Representative, Class  
5 Counsel, the Settlement Administrator or any other agent designated by Class Counsel, or the  
6 Released Parties and/or their counsel, arising from distributions made substantially in accordance  
7 with this Agreement. The Parties and their respective counsel and all other Released Parties shall  
8 have no liability whatsoever for the investment or distribution of the Settlement Fund or the  
9 determination, administration, calculation, or payment of any claim or nonperformance of the  
10 Settlement Administrator, the payment or withholding of taxes (including interest and penalties)  
11 owed by the Settlement Fund, or any losses incurred in connection therewith.  
12

13 **10.7.** All proceedings with respect to the administration, processing and determination of  
14 Claim Forms and settlement payments and the determination of all controversies relating thereto,  
15 including disputed questions of law and fact with respect to the validity of Claim Forms and  
16 settlement payments, shall be subject to the jurisdiction of the Court.  
17

18 **10.8** The headings used herein are used for the purpose of convenience only and are not  
19 meant to have legal effect.  
20

21 **10.9** The waiver by one Party of any breach of this Agreement by any other Party shall  
22 not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

23 **10.10** All of the Exhibits annexed to this Agreement are material and integral parts thereof  
24 and are fully incorporated herein by this reference.

25 **10.11** This Agreement and its Exhibits set forth the entire agreement and understanding of  
26 the Parties and Settlement Class Members with respect to the matters set forth herein, and  
27 supersede all prior negotiations, agreements, arrangements and undertakings with respect to the  
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1 matters set forth herein. No representations, warranties or inducements have been made to any  
2 Party concerning this Settlement Agreement or the Exhibits annexed hereto other than the  
3 representations, warranties and covenants contained and memorialized in such documents. This  
4 Agreement may be amended or modified only by a written instrument signed by or on behalf of all  
5 Parties or their respective successors-in-interest.  
6

7 **10.12** Except as otherwise provided herein, each Party shall bear its own costs.

8 **10.13** Named Plaintiffs represent and warrant that they have not assigned any claim or  
9 right or interest therein as against the Released Parties to any other Person or Party and that he is  
10 fully entitled to release the same.

11 **10.14** Each counsel or other Person executing this Settlement Agreement, any of the  
12 Exhibits annexed hereto, or any related settlement documents on behalf of any Party hereto, hereby  
13 warrants and represents that such Person has the full authority to do so and has the authority to take  
14 appropriate action required or permitted to be taken pursuant to the Agreement to effectuate its  
15 terms.  
16

17 **10.15** This Agreement may be executed in one or more counterparts. Signature by digital  
18 means, facsimile, or in PDF format will constitute sufficient execution of this Agreement. All  
19 executed counterparts and each of them shall be deemed to be one and the same instrument. A  
20 complete set of original executed counterparts shall be filed with the Court if the Court so requests.  
21 This Agreement is not binding on the Parties until fully executed by each of the Parties hereto.  
22

23 **10.16** This Settlement Agreement shall be binding upon, and inure to the benefit of, the  
24 heirs, successors and assigns of the Parties, the Settlement Class and the Released Parties.

25 **10.17** The Court shall retain jurisdiction with respect to implementation and enforcement  
26 of the terms of this Agreement, and all Parties and Settlement Class Members submit to the  
27  
28

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1 jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in  
2 this Agreement.

3       **10.18** This Settlement Agreement shall be governed by and construed in accordance with  
4 the laws of the State of California.

5       **10.19** This Agreement is deemed to have been prepared by counsel for all Parties, as a  
6 result of arm's-length negotiations among the Parties. Because all Parties have contributed  
7 substantially and materially to the preparation of this Agreement, it shall not be construed more  
8 strictly against one Party than another.

9       **10.20** Where this Agreement requires notice to the Parties, such notice shall be sent to the  
10 undersigned counsel: Stefan Bogdanovich, Bursor & Fisher, P.A., 1990 North California Blvd., 9<sup>th</sup>  
11 Floor, Walnut Creek, CA, 94596, sbogdanovich@bursor.com; Kenneth P. Herzinger, Paul Hastings  
12 LLP, 101 California St., 48<sup>th</sup> Floor, San Francisco, CA, 94111,  
13 kennethherzinger@paulhastings.com.  
14  
15


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18                               SIGNATURE PAGES TO FOLLOW]  
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28

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

2 Dated: 07/28/2025

**THOMAS FAN**

3 By:   
Thomas Fan (Jul 28, 2025 14:40:29 PDT)

4 Thomas Fan, individually and as representative of the  
5 Settlement Class

6 Dated: 07/28/2025


**MATTHEW KIMOTO**

7 By:   
Matthew Kimoto (Jul 28, 2025 15:11:37 PDT)

8 Matthew Kimoto, individually and as representative  
9 of the Settlement Class

10 Dated: 07/28/2025

**CLINTON BROWN**

11 By:   
Clinton Brown (Jul 28, 2025 15:11:24 PDT)

12 Clinton Brown, individually and as representative of  
13 the Settlement Class

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

**DAPPER LABS, INC.**

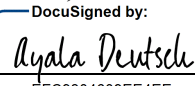
15 By: 

16 Name: \_\_\_\_\_

17 Title: \_\_\_\_\_

18 Dated: 07/29/2025

**NBA PROPERTIES, INC.**

19 By:   
DocuSigned by:  
EFC9304609EE4EE...

20 Name: Ayala Deutsch

21 Title: Deputy General Counsel

22 **IT IS SO STIPULATED BY COUNSEL:**

23 Dated: 07/28/2025

**BURSOR & FISHER, PA**

24 By: 

25 L. Timothy Fisher

26 ltfisher@bursor.com

27 Stefan Bogdanovich

28 sbogdanovich@bursor.com

BURSOR & FISHER, P.A.

1 1990 North California Blvd., 9th Floor  
2 Walnut Creek, CA 94596  
3 Tel: (925) 300-4455  
4 Fax: (925) 407-2700

*Proposed Class Counsel*

5 Dated: 7/28/25

**PAUL HASTINGS LLP**

6 By:   
7 Kenneth P. Herzinger  
8 kennethherzinger@paulhastings.com  
9 Aaron D. Charfoos  
10 aaroncharfoos@paulhastings.com  
11 PAUL HASTINGS LLP  
12 101 California St., 48<sup>th</sup> Floor  
13 San Francisco, CA, 94111  
14 Tel: (415) 856-7000

*Attorneys for Defendants*

**EXHIBIT A**

**Fan v. NBA Properties, Inc.**

United States District Court for the Northern District of California

Civil Action No. 3:23-cv-05069-SI

**Settlement Claim Form**

**If you are a Settlement Class Member and wish to receive a payment, your completed Claim Form must be postmarked on or before [REDACTED], or submitted online on or before [REDACTED].**

Please read the full notice of this settlement (available at [\[hyperlink\]](#)) carefully before filling out this Claim Form.

To be eligible to receive any benefits from the settlement obtained in this class action lawsuit, you must submit this completed Claim Form online or by mail:

**ONLINE:** Submit this Claim Form.

**MAIL:** [\[ADDRESS\]](#)

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**PART ONE: CLAIMANT INFORMATION & PAYMENT METHOD ELECTION**

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

**FIRST NAME**

**LAST NAME**

**STREET ADDRESS**

**CITY**

**STATE**

**ZIP CODE**

**EMAIL ADDRESS**

**POTENTIAL CASH PAYMENT:** You may be eligible to receive a *pro rata* cash payment, which Class Counsel estimates will be between \$36 to \$122 and will be based on the total number of valid claims which are submitted. To qualify for a cash payment you **must also** provide proof of your Facebook account and an attestation under penalty of perjury, by completing the Parts Two and Three of this Claim Form, below.

**PREFERRED PAYMENT METHOD:**

Venmo ☐ Venmo Username: \_\_\_\_\_

PayPal ☐ PayPal Email: \_\_\_\_\_

Zelle ☐ Zelle Email: \_\_\_\_\_

QUESTIONS? VISIT [\[hyperlink\]](#) OR CALL [\[NUMBER\]](#) TOLL-FREE

Check

☐

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**PART TWO: PROOF OF FACEBOOK ACCOUNT**

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**PROOF OF FACEBOOK ACCOUNT:** You may submit proof of your Facebook account by providing your Facebook Profile URL or by uploading a screenshot of your Facebook Profile [\[here\]](#).

To provide your Facebook Profile URL:

1. Open Facebook in a web browser and log in.
2. Navigate to your Facebook Profile.
3. Once on your Facebook Profile, look at the URL in your browser's address bar.
4. Write your Facebook Profile URL here: <https://facebook.com/>

To upload a screenshot of your Facebook Profile:

1. Open Facebook in a web browser and log in.
2. Navigate to your Facebook Profile.
3. Take a screenshot of your Facebook Profile.
4. Upload the screenshot [\[here\]](#).

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

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I declare under penalty of perjury under the laws of the United States of America that I held an account on the *NBA Top Shot* website using the email address and username below between June 15, 2020 through January 30, 2025, and that all of the information on this Claim Form is true and correct to the best of my knowledge. I also declare under penalty of perjury that the Facebook account identified in this form belongs to me and no one else. I understand that my Claim Form may be subject to audit, verification, and Court review.

**NBA Top Shot Email Address****NBA Top Shot Username****SIGNATURE****DATE**

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

**EXHIBIT B**



From: Settlement@nbatopshotvideoprivacyclassactionsettlement.com  
To: JonQClassMember@domain.com  
Re: Legal Notice of Class Action Settlement

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**  
*Fan v. NBA Properties, Inc.*, Case No. 3:23-cv-05069-SI  
**(United States District Court for the Northern District of California)**

**Our Records Indicate You Have An *NBA Top Shot* Account and May Be Entitled to a Payment From 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 that a settlement has been reached in a class action lawsuit claiming that Defendants, NBA Properties, Inc. and Dapper Labs, Inc., disclosed their subscribers' personally identifiable information ("PII") to Meta via the Meta Tracking Pixel on the nbatopshot.com website without proper consent in violation of the Video Privacy Protection Act (the "VPPA") and California law. Defendants deny that they violated any law, but have 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 Class Member. Class Members are all persons in the United States who, from June 15, 2020, to and through the January 30, 2025, had an active Facebook account and an NBA Top Shot account..

**What Can I Get?** If approved by the Court, Defendant will establish a Settlement Fund of \$7,050,000.00 to pay all valid claims submitted by the Settlement Class, together with notice and administration expenses, attorneys' fees and costs, and an incentive award. If you are entitled to relief, you may submit a claim to receive a *pro rata* share of the Settlement Fund, estimated at \$36-\$122 per class member. The Settlement also requires Defendants to suspend operation of the Meta Tracking Pixel on its website, unless and until the VPPA is amended, repealed, or otherwise invalidated, unless Defendants are otherwise in compliance with that law..

**How Do I Get a Payment?** You must submit a timely and complete Claim Form **no later than [claims deadline]**. You can file a claim by clicking [here.] Your payment will be sent via your choice of an electronic payment PayPal, Venmo, Zelle, or via a physical check that will be mailed to you.

**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 the Defendants 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 [www.nbatopshotvideoprivacyclassactionsettlement.com](http://www.nbatopshotvideoprivacyclassactionsettlement.com). 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 alleged disclosure of subscriber information to Facebook in this case against the Defendant will be released.

**Who Represents Me?** The Court has appointed lawyers Stefan Bogdanovich and L. Timothy Fisher 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.

**When Will the Court Consider the Proposed Settlement?** The Court will hold the Final Approval Hearing at [redacted] a.m. on [date] in Courtroom 1, 17<sup>th</sup> Floor at the San Francisco U.S. Courthouse, 450 Golden Gate Avenue, San Francisco, CA, 94102. 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 Representatives \$10,000 from the Settlement Fund for his service in helping to bring and settle this case. Defendant has agreed to pay Class Counsel reasonable attorneys' fees in an amount to be determined by the Court. Class Counsel is entitled to seek no more than one-third of the Settlement Benefit, but the Court may award less than this amount.

**How Do I Get More Information?** For more information, including the full Notice, Claim Form and Settlement Agreement go to [www.nbatopshotvideoprivacyclassactionsettlement.com](http://www.nbatopshotvideoprivacyclassactionsettlement.com), contact the settlement administrator at 1-\_\_\_\_-\_\_\_\_-\_\_\_\_ or NBA Top Shot Video Privacy Settlement Administrator, [address], or call Class Counsel at 1-646-837-7150.

**EXHIBIT C**

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA***Fan v. NBA Properties, Inc.*, Case No. 3:23-cv-05069-SI**Our Records Indicate You Have An *NBA Top Shot* Account and May Be Entitled to a Payment From 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 NBA Properties, Inc. and Dapper Labs, Inc. The class action lawsuit accuses NBA Properties, Inc. and Dapper Labs, Inc. of disclosing NBA Top Shot account holders' personally identifiable information ("PII") to Meta via the Meta Tracking Pixel on the nbatopshot.com website without proper consent in violation of the Video Privacy Protection Act (the "VPPA") and California law. Defendant denies that it violated any law, but has agreed to the settlement to avoid the uncertainties and expenses associated with continuing the case.
- You are included if you are a person in the United States who, from June 15, 2020, to and through the January 30, 2025, had an active Facebook account and a NBA Top Shot account.
- Persons included in the Settlement will be eligible to receive a *pro rata* (meaning equal) portion of the Settlement Fund, which Class Counsel anticipates to be approximately \$36-122. The Settlement also requires Defendants to suspend operation of the Meta Tracking Pixel on its website, unless and until the VPPA is amended, repealed, or otherwise invalidated, unless Defendants are otherwise in compliance with that law.
- Read this notice carefully. Your legal rights are affected whether you act, or don't act.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>SUBMIT A CLAIM FORM BY [DATE]</b>	This is the only way to receive a payment.
<b>EXCLUDE YOURSELF BY [DATE]</b>	You will receive no benefits, but you will retain any rights you currently have to sue the Defendants about the claims in this case.
<b>OBJECT BY [DATE]</b>	Write to the Court explaining why you don't like the Settlement.
<b>GO TO THE HEARING BY [DATE]</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 the Defendant about the claims in this case.

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

**BASIC INFORMATION****1. Why was this Notice issued?**

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

[WWW.NBATOPSHOTVIDEOPRIVACYCLASSACTIONSETTLEMENT.COM](http://WWW.NBATOPSHOTVIDEOPRIVACYCLASSACTIONSETTLEMENT.COM)

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 Susan Illston, of the U.S. District Court for the Northern District of California, is overseeing this case. The case is called *Fan v. NBA Properties, Inc.*, Case No. 3:23-cv-05069-SI. The persons who have sued are called the Plaintiffs. The Defendants are NBA Properties, Inc. and Dapper Labs, Inc.

## **2. What is a class action?**

In a class action, one or more people called the class representative (in this case, Thomas Fan, Matthew Kimoto, and Clinton Brown) 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?**

This lawsuit claims that Defendant violated the Video Privacy Protection Act, 18 U.S.C. § 2710, *et seq.* (“VPPA”) and California law by disclosing its NBA Top Shot account holders’ personally identifiable information (“PII”) to Meta via the Meta Tracking Pixel on the nbatopshot.com website without consent. The Defendants deny that they violated any law. The Court has not determined who is right. Rather, the Parties have agreed to settle the lawsuit to avoid the uncertainties and expenses associated with ongoing litigation.

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

The Court has not decided whether the Plaintiffs or the Defendants 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.

## **WHO’S INCLUDED IN THE SETTLEMENT?**

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

The **Settlement Class** is defined as:

All persons in the United States who, from June 15, 2020, to and through the January 30, 2025, had an active Facebook account and an NBA Top Shot account.

## **THE SETTLEMENT BENEFITS**

### **6. What does the Settlement provide?**

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

[WWW.NBATOPSHOTVIDEOPRIVACYCLASSACTIONSETTLEMENT.COM](http://WWW.NBATOPSHOTVIDEOPRIVACYCLASSACTIONSETTLEMENT.COM)

**Monetary Relief:** Defendant has created a Settlement Fund totaling \$7,050,000.00. Class Member payments, and the cost to administer the Settlement, the cost to inform people about the Settlement, attorneys' fees, and an award to the Class Representative will also come out of this fund (*see* Question 13).

**Prospective Changes:** In addition to this monetary relief, the Settlement also requires Defendants to suspend operation of the Meta Tracking Pixel on its NBA Top Shot website, unless and until the VPPA is amended, repealed, or otherwise invalidated, unless the Defendants are otherwise in compliance with that law.

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 amount of this payment will depend on how many of the Class Members file valid claims. Each Class Member who files a valid claim will receive a proportionate share of the Settlement Fund, which Class Counsel anticipates will be approximately \$36-\$122. You can contact Class Counsel at 1-646-837-7150 to inquire as to the number of claims filed.

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

The hearing to consider the fairness of the settlement is scheduled for [Final Approval Hearing Date]. If the Court approves the settlement, eligible Class Members whose claims were approved by the Settlement Administrator will receive their payment 90 days after the Settlement has been finally approved and/or any appeals process is complete. Your payment will be sent via your choice of an electronic payment PayPal, Venmo, Zelle, or via a physical check that will be mailed to you.

### **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 by clicking [here](#) [hyperlink], or by printing and mailing a paper Claim Form, copies of which are available for download [here](#) [hyperlink].

We also encourage you to submit your claim online. Not only is it easier and more secure, but it is completely free and takes only minutes!

### **REMAINING IN THE SETTLEMENT**

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

[WWW.NBATOPSHOTVIDEOPRIVACYCLASSACTIONSETTLEMENT.COM](http://WWW.NBATOPSHOTVIDEOPRIVACYCLASSACTIONSETTLEMENT.COM)

**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 Defendant for the claims this Settlement resolve. The Settlement Agreement describes the specific claims you are giving up against the Defendants. You will be “releasing” the Defendants and certain of its affiliates described in Section 1.25 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 the Defendants for the claims being resolved by this Settlement.

**THE LAWYERS REPRESENTING YOU**

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

The Court has appointed Stefan Bogdanovich and L. Timothy Fisher of Bursor & Fisher, P.A. to be the attorneys representing the Settlement Class. They are called “Class Counsel.” 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’s attorneys’ fees, costs, and expenses will be paid from the Settlement Fund in an amount determined and awarded by the Court. Class Counsel is entitled to seek no more than one-third of the \$7.05 million Settlement Benefit, but the Court may award less than this amount.

As approved by the Court, the Class Representative will be paid an Incentive Award from the Settlement Fund for helping to bring and settle the case. The Class Representative will seek no more than \$10,000 as an incentive award, but the Court may award less than this amount.

## 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 *Fan v. NBA Properties, Inc.*, Case No. 3:23-cv-05069-SI settlement. Your letter or request for exclusion must also include your name, your address, 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:

NBA Top Shot Video Privacy Settlement  
0000 Street  
City, ST 00000

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

No. Unless you exclude yourself, you give up any right to sue the Defendants 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, do not submit a Claim Form to ask for benefits.

## OBJECTING TO THE SETTLEMENT

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

If you're 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 *Fan v. NBA Properties, Inc.*, Case No. 3:23-cv-05069-SI 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, an explanation of the basis upon which you claim to be a Settlement Class Member, including information sufficient to identify your current Facebook page or a screenshot showing that you were a Facebook member during the class period, 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 Defendants' Counsel listed below.

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

[WWW.NBATOPSHOTVIDEOPRIVACYCLASSACTIONSETTLEMENT.COM](http://WWW.NBATOPSHOTVIDEOPRIVACYCLASSACTIONSETTLEMENT.COM)



Class Counsel will file with the Court and post on this website its request for attorneys' fees 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].

Court	Class Counsel	Defendant's Counsel
The Honorable Susan Illston San Francisco U.S. Courthouse 450 Golden Gate Avenue, Courtroom 1, 17th Floor, San Francisco, CA 94102	L. Timothy Fisher Stefan Bogdanovich Bursor & Fisher PA 1990 North California Blvd., 9th Floor Walnut Creek, CA 94596	Kenneth P. Herzinger Aaron D. Charfoos Paul Hastings LLP 101 California St., 48 <sup>th</sup> Floor 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, 2025 in Courtroom 1 at the San Francisco U.S. Courthouse, 450 Golden Gate Avenue, 17<sup>th</sup> Floor, San Francisco, CA 94102. 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 [[www.nbatopshotvideoprivacyclassactionsettlement.com](http://www.nbatopshotvideoprivacyclassactionsettlement.com)] or call 1-646-837-7150. 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?**

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

[WWW.NBATOPSHOTVIDEOPRIVACYCLASSACTIONSETTLEMENT.COM](http://WWW.NBATOPSHOTVIDEOPRIVACYCLASSACTIONSETTLEMENT.COM)

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 *Fan v. NBA Properties, Inc.*, Case No. 3:23-cv-05069-SI." 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 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 **[www.nbatopshotvideoprivacyclassactionsettlement.com](http://www.nbatopshotvideoprivacyclassactionsettlement.com)**. You may also write with questions to NBA Top Shot Video Privacy 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

**[WWW.NBATOPSHOTVIDEOPRIVACYCLASSACTIONSETTLEMENT.COM](http://WWW.NBATOPSHOTVIDEOPRIVACYCLASSACTIONSETTLEMENT.COM)**