

SETTLEMENT AGREEMENT

TABLE OF CONTENTS

	<u>Page</u>
I. BACKGROUND.....	1
II. DEFINITIONS	3
III. SETTLEMENT CLASS CERTIFICATION.....	6
IV. SETTLEMENT OF LITIGATION AND ALL CLAIMS AGAINST RELEASEES	6
V. SETTLEMENT FUND	6
VI. PROSPECTIVE RELIEF	9
VII. RELEASE.....	9
VIII. CERTIFICATION OF THE SETTLEMENT CLASS AND RELATED MOTIONS	10
IX. NOTICE TO PROPOSED CLASS MEMBERS.....	11
X. OPT-OUTS	11
XI. OBJECTIONS.....	12
XII. FINAL APPROVAL HEARING	13
XIII. FINAL APPROVAL ORDER.....	13
XIV. BAR ORDER.....	14
XV. TERMINATION OF THE AGREEMENT	14
XVI. ATTORNEYS' FEES AND INCENTIVE AWARDS	15
XVII. REPRESENTATIONS.....	16
XVIII. MISCELLANEOUS	17

SETTLEMENT AGREEMENT

This settlement agreement (“Agreement or “Settlement Agreement”) is entered into by and between Kiip, Inc. (“Kiip”) and Christine Farag and Jessica Vasil (“Plaintiffs”), both individually and on behalf of the Settlement Class.

I. BACKGROUND

WHEREAS, on October 21, 2016, Plaintiffs Christine Farag and Jessica Vasil filed a putative class action lawsuit against Kiip in the United States District Court for the Northern District of Illinois (the “Federal Action”).

WHEREAS, in the Federal Action, Plaintiffs alleged that Kiip’s advertising platform and software were unlawfully causing the collection, transmission, and/or interception of their personal information without their permission in violation of the Illinois Eavesdropping Statute, 720 ILCS 5/14-1 *et seq.*, among other things.

WHEREAS, over the course of the proceedings in the Federal Action, the Parties engaged in lengthy motion practice, including a Rule 12(b)(6) motion to dismiss filed by Kiip. The court presiding over the Federal Action granted Kiip’s motion to dismiss in part, dismissing most of Plaintiffs’ claims. Plaintiffs filed an amended complaint, reasserting claims. The Parties also exchanged written discovery requests, and Plaintiff propounded third-party discovery.

WHEREAS, after the ruling on Kiip’s motion to dismiss, and while the Parties were beginning to conduct discovery, the Parties decided to explore the possibility of settlement. The Parties engaged in arms’ length settlement negotiations, including a full-day mediation before retired United States Magistrate Judge Morton Denlow of JAMS Chicago, an experienced mediator.

WHEREAS, following the mediation with Judge Denlow (ret.), the Parties reached an agreement in principle to resolve Plaintiffs’ claims on a class basis.

WHEREAS, following such negotiations, the Parties now seek to enter into this Settlement Agreement. Plaintiffs and Class Counsel have conducted an investigation into the facts and the law underlying their claims and have concluded that a settlement according to the terms set forth below is fair, reasonable, and adequate, and beneficial to and in the best interests of Plaintiffs and the Settlement Class in light of (1) the existence of complex and contested issues of law and fact, (2) the risks inherent in litigation, (3) the likelihood that future proceedings will be unduly protracted and expensive if the proceeding is not settled by voluntary agreement, (4) the magnitude of the benefits derived from the contemplated settlement in light of both the maximum potential and likely range of recovery to be obtained through further litigation and the expense thereof, as well as the potential of no recovery whatsoever, and (5) the Plaintiffs’ determination that the settlement is fair, reasonable, adequate, and will substantially benefit the Settlement Class Members.

WHEREAS, due to Plaintiffs' concerns regarding jurisdictional issues in the Federal Action, Plaintiffs voluntarily dismissed the Federal Action and refiled their lawsuit in Illinois state court in order to effectuate the Settlement.

WHEREAS, on February 8, 2019, in order to effectuate the Parties' settlement, Plaintiffs refiled their lawsuit against Kiip in the Chancery Division of the Circuit Court of Cook County, Illinois, in an action styled *Farag et al. v. Kiip, Inc.*, Case No. 2019-CH-01695 (Ill. Cir. Ct. Cook Cnty.) (the "State Court Action").

WHEREAS, Plaintiffs did not file a motion for class certification in the Federal Action, and by agreement of the Parties, have yet to do so in the State Court Action.

WHEREAS, the Parties shall use their best efforts to effectuate this Agreement, including, but not limited to, cooperating in promptly seeking court approval of this Agreement, certification of the Settlement Class, and release of the Released Claims.

WHEREAS, in consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the undersigned that the Litigation be settled and compromised, and that the Releasors release the Releasees of the Released Claims, without costs as to Releasees, Plaintiffs, Class Counsel, or the Settlement Class, except as explicitly provided for in this Agreement, subject to the approval of the Court, on the following terms and conditions.

II. DEFINITIONS

The following terms, as used in this Agreement, have the following meanings:

1. "Administrative Expenses" shall mean expenses associated with the Settlement Administrator, including but not limited to costs in providing notice, communicating with Settlement Class Members, and disbursing payments to the proposed Settlement Class Members.
2. "Admiral" shall mean Admiral Insurance Company.
3. "Approved Claims" shall mean complete and timely claims, submitted by Settlement Class Members, that have been approved for payment by the Settlement Administrator.
4. "Class," "Settlement Class," "Class Member," or "Settlement Class Member" shall mean each member of the settlement class, as defined in Section III of this Agreement, who does not timely elect to be excluded from the Settlement Class, and includes, but is not limited to, Plaintiffs.
5. "Class Counsel" shall refer to Myles McGuire, Paul T. Geske, Timothy P. Kingsbury of MCGUIRE LAW, P.C.

6. “Class Period” shall mean the period from and including January 1, 2010 up to and including the date of the order granting preliminary approval of the Settlement Agreement.
7. “Class Release” shall have the meaning set forth in Section VII of this Agreement.
8. “Class Relief” means those benefits awarded to Settlement Class Members by the Settlement Agreement, including without limitation the right to submit a Claim Form.
9. “Counsel” means both Class Counsel and Kiip’s Counsel, as defined in paragraphs 5 and 13.
10. “Court” shall mean the judge appointed to preside over this matter in the Circuit Court of Cook County, Illinois.
11. “Effective Date” shall mean the date when the Settlement Agreement becomes Final.
 - a. “Final” means the Final Approval Order has been entered on the docket, and (a) the time to appeal from such order has expired and no appeal has been timely filed; (b) if such an appeal has been filed, it has been finally resolved and has resulted in an affirmance of the Final Approval Order; or (c) the Court following the resolution of the appeal enters a further order or orders approving settlement on the material terms set forth herein, and either no further appeal is taken from such order(s) or any such appeal has been finally resolved and has resulted in affirmance of such order(s).
 - b. “Final Approval Order” shall mean an order entered by the Court that:
 - i. Certifies the Settlement Class pursuant to 735 ILCS 5/2-801;
 - ii. Finds that the Settlement Agreement is fair, reasonable, and adequate, was entered into in good faith and without collusion, and approves and directs consummation of this Agreement;
 - iii. Dismisses Plaintiffs’ claims pending before it with prejudice and without costs, except as explicitly provided for in this Agreement;
 - iv. Approves the Release provided in Section VII and orders that, as of the Effective Date, the Released Claims will be released as to Releasees; and
 - v. Finds that, pursuant to 735 ILCS 5/2-1301, there is no just reason for delay of entry of final judgment with respect to the foregoing.

12. “Execution Date” shall mean the date on which this Agreement is fully executed by all parties.
13. “Kiip” shall refer to Kiip, Inc., its past and present parents, predecessors, successors, affiliates, holding companies, subsidiaries, partners, employees, agents, attorneys, assigns, board members, contractors, and insurers.
14. “Kiip’s Counsel” shall refer to Joseph C. Gratz of DURIE TANGRI LLP.
15. “Litigation” shall mean both the Federal Action and State Court Action.
16. “Opt-Out” shall mean a written request for exclusion from a Settlement Class as provided in Section X of this Settlement Agreement.
17. “Parties” shall mean Plaintiffs, Kiip Inc., and the proposed Settlement Class.
18. “Plaintiffs” or “Class Representatives” shall mean the named class representatives, Christine Farag and Jessica Vasil.
19. “Preliminary Approval Order” shall mean an order preliminarily approving the Settlement Agreement.
20. “Claim Form” shall mean the form that Settlement Class Members may submit to obtain compensation under this Settlement.
21. “Released Claims” shall mean any and all claims against Releasees whatsoever arising out of, related to, or connected with interception, collection, or receipt of personal data that occurred in connection with software apps integrated with Kiip’s advertising platform during the Class Period.
22. “Releasees” shall refer, jointly and severally, and individually and collectively, to Kiip, ASICS Digital Inc., their past and present parents, predecessors, successors, affiliates, holding companies, subsidiaries, employees, agents, managers, directors, owners, attorneys, board members, assigns, partners, contractors, joint venturers, customers, insurers or third-party agents with which it has or had contracts or their affiliates.
23. “Releasers” shall refer, jointly and severally, and individually and collectively, to Plaintiffs, the Settlement Class Members, and to each of their predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing, and anyone claiming by, through, or on behalf of them.
24. “Incentive Award” shall have the meaning ascribed to it as set forth in Section XVI of this Agreement.

25. “Settlement Administrator” means Epiq Systems, Inc., the entity mutually selected and supervised by the Parties to administer the settlement.

III. SETTLEMENT CLASS CERTIFICATION

26. Subject to Court approval, the following Settlement Class shall be certified:

All individuals who used a software app integrated with the Kiip advertising platform during the Class Period.

27. Excluded from the Settlement Class are Kiip; any entity that is a subsidiary of or is controlled by Kiip; anyone employed by Class Counsel; any judge to whom the case is assigned, his or her spouse, and members of the judge’s staff; and any persons who opt out pursuant to Section X hereof.
28. If for any reason the settlement is not granted preliminary and final approval, Kiip’s agreement to certification of the Settlement Class shall not be used for any purpose, including in any request for class certification in the Litigation or any other proceeding.

IV. SETTLEMENT OF LITIGATION AND ALL CLAIMS AGAINST RELEASEES

29. Final approval of this Settlement Agreement will settle and resolve with finality, on behalf of the Plaintiffs and the Settlement Class, the Litigation and the Released Claims and any other claims that have been brought, could have been brought, or could be brought now or at any time in the future against Releasees by the Plaintiffs, Settlement Class Members, and their predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing, in the Litigation or in any other proceeding arising out of, in any manner related to, or connected in any way with the Released Claims.

V. SETTLEMENT FUND

30. Establishment of Settlement Fund

- a. Within thirty (30) days of Preliminary Approval of the Settlement Agreement Admiral shall deposit \$125,000.00 in the Settlement Fund for Administration Expenses. The Settlement Fund account shall be opened and maintained by Epiq.
- b. If Administrative Expenses to be paid before the Effective Date exceed the funds in the Settlement Fund, Admiral shall deposit such additional funds as are necessary to pay Administrative Expenses.
- c. If the Settlement Agreement is not finally approved, the Administration Expenses in the Settlement Fund belong to Admiral, less any

Administrative Expenses paid to date. Plaintiffs shall have no financial responsibility for any Administrative Expenses paid out of the Settlement Fund in the event that the Settlement Agreement is not finally approved.

- d. Within thirty (30) days of the Effective Date, Admiral shall deposit funds in the Settlement Fund in an amount such that the total amount disbursed by Admiral for the Settlement Fund, inclusive of all Administrative Expenses, totals one million dollars (\$1,000,000.00). The Settlement Fund will be used to satisfy Approved Claims for Settlement Class Members in exchange for a mutual release and covenants set forth in this Agreement, including, without limitation, a full, fair and complete release of all Releasees from Released Claims, and dismissal of the Litigation with prejudice. No portion of the Settlement Fund shall revert or escheat, except as may be ordered by the Court.
 - e. The Settlement Fund shall be used to pay (i) Settlement Class Members' benefits; (ii) Incentive awards to the Plaintiffs; (iii) attorneys' fees, costs, and expenses of Class Counsel, as provided for in Section XVI hereof; and (iv) Administrative Expenses to be paid after the Effective Date.
 - f. Any award of attorneys' fees, administrative costs, or any other fees, costs, or benefits otherwise awarded in connection with the Settlement Agreement shall be payable solely out of the Settlement Fund.
 - g. Neither Kiip nor its insurer shall have any obligation to make further payments into the Settlement Fund, and shall have no financial responsibility or obligation relating to the settlement beyond the Settlement Fund.
 - h. Settlement benefits shall be allocated to the Settlement Class Members via a claims process set forth in paragraphs 32 and 33.
31. The Court may require changes to the method of allocation to Settlement Class Members without invalidating this Settlement Agreement, provided that the other material terms of the Settlement Agreement are not altered, including but not limited to the scope of the Release as set forth in paragraphs 35-40, the Class Period as set forth in paragraph 6, and the provisions regarding the Settlement Fund as set forth in Paragraph 30.
32. A Settlement Class Member who timely submits a valid Claim Form shall share in the Settlement Fund *pro rata* (less Administrative Expenses, attorneys' fees and expenses, and Incentive awards to Plaintiff Class Representatives). Each Settlement Class Member who submits a valid Claim Form shall receive an individual payment from the Settlement Fund in the same amount as each other Settlement Class Member who submits a valid Claim Form. If the foregoing payment obligations do

not exhaust the Settlement Fund, the remainder of the Settlement Fund shall be paid to cy pres recipient(s) designated by the Parties and approved by the Court. All Settlement Class Members who do not submit a valid Claim Form will not receive an individual payment from the Settlement Fund and instead will be limited to receiving the prospective relief set forth in Section VI herein.

33. Submission and Evaluation of Claims

- a. All claims must be submitted by a Claim Form. The Claim Form will require the Settlement Class Member to provide his or her full name, mailing address, and contact telephone number. Each claimant must also provide their email address, the name of the application that is associated with the allegedly unlawful transmission of their information to Kiip, and the model of the device on which he or she downloaded such application.
- b. The Claim Form must be submitted on or before the Claim Form deadline, which shall be ninety (90) days after the Preliminary Approval Order, or other date set by the Court (“Claim Form Deadline”). The Claim Form shall be substantially in the form attached hereto as Exhibit 1.
- c. Completed Claim Forms shall be submitted directly to the Settlement Administrator for processing, assessment, and payment. The Claim Form may be mailed or electronically transmitted.
- d. Any Claim Form that lacks the requisite information will be deemed to be incomplete and ineligible for payment.
- e. A Settlement Class Member is not entitled to settlement benefits if he/she submits a Claim Form after the Claim Form Deadline; if the Claim Form is incomplete after completion of the procedure set forth in paragraph 33(d); or if the Claim Form contains false information.
- f. The Settlement Administrator shall have sole and final authority for determining if Settlement Class Members’ Claim Forms are complete and timely, in which case they will be accepted as Approved Claims. However, no Claim Form shall be approved by the Settlement Administrator which fails to identify use of a software app that, based on the investigation of Plaintiffs’ counsel, was subject to allegedly unlawful information transmission. The Settlement Administrator may thereafter reject or accept any Claim Form submitted.
- g. Within fourteen (14) days of completion of its review of the Claim Forms, the Settlement Administrator will submit to the Parties a report listing all Approved Claims.

- h. The funds provided to the Settlement Administrator will be maintained by an escrow agent as a Court-approved Qualified Settlement Fund pursuant to Section 1.468B-1 et seq. of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended, and shall be deposited in an interest-bearing account.
- i. Prompt payment shall be made by the Settlement Administrator on Approved Claims after the Effective Date of the settlement. Checks will be mailed to Settlement Class Members with Approved Claims. The Settlement Administrator shall use the addresses provided by the Settlement Class Members on the Claim Forms.
- j. The Settlement Administrator shall notify the Parties that all Approved Claims have been paid within 10 days of the last such payment.
- k. In the event that checks sent to Settlement Class Members are not cashed within one (1) year of their mailing date, whether because the checks were not received or otherwise, those checks will become null and void. The amount of the uncashed checks after the expiration date, less any funds necessary for settlement administration, will be paid through cy pres to one or more recipients selected by the Parties and approved by the Court. The Court may revise this cy pres provision as necessary without terminating or otherwise impacting this settlement, provided the Court's revision does not increase the amount that Kiip or its insurer would otherwise pay under this Settlement Agreement.

VI. PROSPECTIVE RELIEF

- 34. Without admitting any liability or that it is required by law to do so, Kiip agrees to implement and/or continue the following practices: including notices in its SDK documentation indicating
 - a. that SDK calls are to be made only at times when users have provided permission and would expect information to be transmitted to Kiip;
 - b. that SDK users should continue to disclose to consumers that information will be transmitted to third parties such as Kiip.

VII. RELEASE

- 35. In addition to the effect of any final judgment entered in accordance with this Agreement, upon final approval of this Agreement, and for other valuable consideration as described herein, Releasees shall be completely released, acquitted, and forever discharged from any and all Released Claims ("Class Release").

36. As of the Effective Date, and with the approval of the Court, all Releasors hereby fully, finally, and forever release, waive, discharge, surrender, forego, give up, abandon, and cancel any and all Released Claims against Releasees. As of the Effective Date, all Releasors will be forever barred and enjoined from prosecuting any action against the Releasees asserting any and/or all Released Claims.
37. Each Releasor waives California Civil Code Section 1542 and similar provisions in other states. Each Releasor hereby certifies that he, she, or it is aware of and has read and reviewed the following provision of California Civil Code Section 1542 (“Section 1542”):

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.
38. The provisions of the Class Release shall apply according to their terms, regardless of the provisions of Section 1542 or any equivalent, similar, or comparable present or future law or principle of law of any jurisdiction.
39. Each Releasor waives any and all defenses, rights, and benefits that may be derived from the provisions of applicable law in any jurisdiction that, absent such waiver, may limit the extent or effect of the release contained in this Agreement.
40. The Parties and each member of the proposed Settlement Class agree that the amounts to be paid under this Settlement Agreement to each Settlement Class Member represent the satisfaction of that Settlement Class Member’s claims for the Released Claims. No portion of such settlement represents the payment of punitive or exemplary damages. Nonetheless, in consideration for the satisfaction of each Settlement Class Member’s claim for compensatory damages, claims for punitive or exemplary damages shall be released.

VIII. CERTIFICATION OF THE SETTLEMENT CLASS AND RELATED MOTIONS

41. Plaintiffs shall submit to the Court a motion (the “Motion”): (a) for certification of the Settlement Class; and (b) for preliminary approval of the Agreement, and authorization to disseminate notice of class certification, the Settlement Agreement, and the final judgment contemplated by this Settlement Agreement to all potential Settlement Class Members. The Motion shall include: (i) the definition of the Settlement Class for settlement purposes as set forth in Section III of this Agreement; (ii) a proposed form of, method for, and date of dissemination of notice; (iii) a proposed form of preliminary approval, (iv) a proposed Claim Form; and (v) a date for the final approval hearing. The text of the items referred to in clauses (i) through (v) above shall be agreed upon by the Parties before submission of the

Motion. The Motion shall be accompanied by a proposed order for preliminary approval of the settlement substantially in the form attached hereto as Exhibit 4.

IX. NOTICE TO PROPOSED SETTLEMENT CLASS MEMBERS

42. Notice to the Settlement Class Members shall be supervised and certified by a third-party Settlement Administrator approved by all parties.
43. Within thirty (30) days of Preliminary Approval of the Settlement Agreement, the Settlement Administrator shall establish the Settlement Website and effectuate notice to the Settlement Class Members as described in this Section IX.
44. **Direct Notice**
 - a. Kiip, with the assistance of the Settlement Administrator as appropriate, shall create a list of email addresses belonging to potential Settlement Class Members, based on readily available information already within Kiip's possession.
 - b. To the extent practicable and mutually acceptable, the Settlement Administrator shall provide direct email notice to potential Settlement Class Members whose identities are reasonably ascertainable. Direct email notice shall consist of the form attached hereto as Exhibit 2 (the "Short Form Notice") or be substantially in the form of the Short Form Notice.
45. **Online Publication Notice**
 - a. Settlement Class Members shall be notified of the Settlement via online publication notice, including the establishment of a Settlement Website. The Settlement Website shall be established by the Settlement Administrator and shall contain information about the Settlement, including electronic copies of this Agreement as well as the Exhibits, including a long form notice of the Settlement substantially in the form attached hereto as Exhibit 3 (the "Long Form Notice"). The URL of the Settlement Website shall be www.[site name].com or such other URL as Class Counsel and Kiip may subsequently agree on in writing.
 - b. Separately, the Settlement Administrator shall disseminate notice of the Settlement via online "banner" advertisements, in a form and featuring language to be mutually agreed upon by the Parties.

X. OPT-OUTS

46. **Opt-Out Period**

- a. Settlement Class Members will have up to and including Ninety (90) days following the Preliminary Approval Order to opt out of the settlement in accordance with this Section (the “Opt-Out Period”). If the settlement is finally approved by the Court, all Settlement Class Members who have not opted out by the end of the Opt-Out Period will be bound by the Settlement and the Class Release, and the relief provided by the Settlement will be their sole and exclusive remedy for the Released Claims, including without limitation the claims alleged by the Settlement Class.

47. Opt-Out Process

- a. Any potential Settlement Class Member who wishes to be excluded from the settlement must provide a request for exclusion to the Settlement Administrator, known as an “Opt-Out.”
- b. In order to be valid, the Opt-Out must be mailed to the Settlement Administrator and state the following in writing: (a) the Settlement Class Member’s name, mailing address, email, telephone number, and the name of the smartphone application that he or she used and believes is associated with the transmission of their information to Kiip; and (b) that the Settlement Class Member wishes to be excluded from the Settlement Class. An Opt-Out must be signed by the Settlement Class Member and must be mailed to the address provided in the Long Form Notice. The Opt-Out request must be postmarked within the Opt-Out Period and received within five (5) business days after the Opt-Out Period.
- c. Within ten (10) business days after the Opt-Out Period, the Settlement Administrator shall provide Counsel a written list reflecting all timely and valid Opt-Outs from the Settlement Class.
- d. A list reflecting all timely and valid Opt-Outs shall also be filed with the Court at the time of the motion for final approval of the settlement.

XI. OBJECTIONS

48. Settlement Class Members may object to this Agreement up to and including the date ordered by the Court in the Preliminary Approval Order.
49. The Parties will request that the Court order that any Settlement Class Member who has any objection to certification of the Settlement Class, to approval of this Settlement Agreement or any of its terms, or to the approval process, must send his or her objection to the Settlement Administrator, Class Counsel, and Kiip’s Counsel providing:
 - a. the case name and case number(s) of the Litigation;

- b. the objector's full name, current address, email and phone number;
 - c. the name of the smartphone application that he or she used and believes is associated with the transmission of his or her information to Kiip;
 - d. the reasons why the objector objects to the Settlement along with any supporting materials;
 - e. information about other objections the objector or his or her lawyer(s) have made in other class action cases in the last four (4) years; and
 - f. the objector's signature.
50. The Parties will request that the Court set the Objection Deadline 30 days before the Final Approval Hearing. The Parties will request that the Court order that failure to comply timely and fully with these procedures shall result in the invalidity and rejection of an objection. The Parties will request that the Court order that no Settlement Class Member shall be entitled to be heard at the Final Approval Hearing (whether individually or through the objector's counsel), or to object to certification of the Settlement Class or to the Settlement Agreement, and no written objections or briefs submitted by any Settlement Class Member shall be received or considered by the Court at the Final Approval Hearing, unless written notice of the Settlement Class Member's objection and any brief in support of the objection have been served upon all Counsel not later than 30 days before the date of the Final Approval Hearing
51. In the event the Parties determine that an objection is frivolous or otherwise without merit, the Parties may request that the Court, within its discretion, award appropriate costs and fees to the Parties opposing such objection(s).
52. The Parties will request that the Court order that Settlement Class Members who fail to file and serve timely written objections in accordance with this Section shall be deemed to have waived any objections and shall be foreclosed from making any objection to the certification of the Settlement Class or to the Settlement Agreement.

XII. FINAL APPROVAL HEARING

53. The Parties will jointly request that the Court hold a Final Approval Hearing.
54. At the Final Approval Hearing, the Parties will request the Court to consider whether the Settlement Class should be certified for settlement, and, if so, (1) to consider any properly filed objections to the Settlement Agreement, (2) to determine whether the Settlement Agreement is fair, reasonable, and adequate, was entered into in good faith and without collusion, and should be approved, and (3) to provide findings in connection therewith, and (4) to enter the Final Approval

Order, including final approval of the Settlement Class and the Settlement Agreement and an award of Attorneys' Fees and expenses.

XIII. FINAL APPROVAL ORDER

55. Plaintiffs and Kiip shall jointly seek entry of a Final Approval Order, the text of which Plaintiffs and Kiip shall agree upon. The dismissal order, motions or stipulation to implement this Section shall, among other things, seek or provide for a dismissal with prejudice and waiving any rights of appeal.
56. The Parties shall jointly submit to the Court a proposed order, substantially in the form attached hereto as Exhibit 5 that, without limitation:
 - a. Approves finally this Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members and directing its consummation according to its terms;
 - b. Dismisses, with prejudice, all claims of the Settlement Class against Kiip in the Litigation, without costs and fees except as explicitly provided for in this Agreement; and
 - c. Reserves continuing and exclusive jurisdiction over the settlement and this Agreement, including but not limited to the Litigation, the Settlement Class, the Settlement Class Members, Kiip and the settlement for the purposes of administering, consummating, supervising, construing and enforcing the Settlement Agreement and the Settlement Fund.
57. Class Counsel shall use their best efforts to assist Kiip in obtaining dismissal with prejudice of the Litigation and take all steps necessary and appropriate to otherwise effectuate all aspects of this Agreement.

XIV. BAR ORDER

58. As part of the Final Approval Order, the Court shall issue a bar order and permanent injunction against any and all pending or future claims by Settlement Class Members against Releasees raising or arising out of a Released Claim.
59. The bar order and permanent injunction shall enjoin and forever bar any and all Settlement Class Members from commencing and/or maintaining any action, legal or otherwise, against Releasees raising or arising out of a Released Claim.
60. This provision is not intended to prevent or impede the enforcement of claims or entitlement to benefits under this Settlement Agreement.

XV. TERMINATION OF THE AGREEMENT

61. The settlement is conditioned upon preliminary and final approval of the Parties' written Settlement Agreement, and all terms and conditions thereof without material change, amendments, or modifications by the Court (except to the extent such changes, amendments or modifications are agreed to in writing between the Parties). All Exhibits attached hereto are incorporated into this Settlement Agreement. Accordingly, this Settlement Agreement shall be terminated and cancelled, at the option of any Party, upon any of the following events:
 - a. This Settlement Agreement is changed in any material respect to which the Parties have not agreed in writing;
 - b. The Court declines to enter the Preliminary Approval Order;
 - c. The Final Approval Order approving the Settlement and certifying the Settlement Class for the Class Period as provided in this Agreement is not entered by the Court or is reversed by a higher court; or
 - d. Another party to this Settlement Agreement materially breaches the Settlement Agreement and such breach materially frustrates the purposes of this Agreement.
62. In the event the Settlement Agreement is not approved or does not become final, or is terminated consistent with this Settlement Agreement, the Parties, pleadings, and proceedings will return to the *status quo ante* as if no settlement approval had been sought, and the Parties will negotiate in good faith to establish a new schedule for the Litigation.

XVI. ATTORNEY'S FEES AND INCENTIVE AWARDS

63. Class Counsel shall petition the Court for an award of attorneys' fees not to exceed 40% of the Settlement Fund plus costs and expenses.
64. Kiip agrees not to oppose an application for attorney's fees by Class Counsel in an amount not more than 40% of the Settlement Fund plus their reasonable costs and expenses.
65. In no event will Kiip's or Admiral's liability for attorney's fees, expenses, and costs exceed their funding obligations set out in this Agreement. Kiip shall have no financial responsibility for this Settlement Agreement outside of the Settlement Fund. Kiip shall have no further obligation for attorney's fees and costs to any counsel representing or working on behalf of either one or more individual Settlement Class Members or the Settlement Class. Kiip will have no responsibility, obligation or liability for allocation of fees and costs among Class Counsel.
66. Prior to or at the same time as Plaintiffs seek final approval of the Settlement Agreement, Class Counsel may petition the Court for Incentive Awards for Plaintiff

Class Representatives in an amount not to exceed Five Thousand Dollars (\$5,000.00) each, and Kiip agrees that it will not oppose such a request. The Incentive Awards shall be paid solely from the Settlement Fund.

67. The administrator shall cause Plaintiffs' incentive award and attorney's fees payments to be paid by wire transfer to accounts designated by Plaintiff's counsel seven (7) business days following the Effective Date.

XVII. REPRESENTATIONS

68. The Parties agree that the Settlement Agreement provides fair, equitable and just compensation, and a fair, equitable, and just process for determining eligibility for compensation for any given Settlement Class Member related to the Released Claims.
69. The Parties represent that they have obtained the requisite authority to enter this Settlement Agreement in a manner that binds each party to its terms.
70. The Parties shall use their best efforts to conclude the settlement and obtain the Final Approval Order, including affirmatively supporting the settlement in the event of an appeal.
71. Should the Parties be required to submit any information or documentation to the Court to obtain preliminary approval, such information shall be, to the fullest extent permitted, for review by the Court in camera only, to the extent that Plaintiffs and/or Kiip request that information to remain confidential and the Court grants any such request.
72. The Parties specifically acknowledge, agree and admit that this Settlement Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders or other documents shall be considered a compromise within the meaning of Ill. R. Evid. 408 and Fed. R. Evid. 408, and any other equivalent or similar rule of evidence of any state, and shall not (1) constitute, be construed as, be offered as, or received into evidence as an admission of the validity of any claim or defense, or the truth of any fact alleged or other allegation in the Litigation or in any other pending or subsequently filed action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of any Party, or (2) be used to establish a waiver of any defense or right, or to establish or contest jurisdiction or venue.
73. The Parties also agree that this Settlement Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders or other documents entered in furtherance of this Settlement Agreement, and any acts in the performance of this Settlement Agreement are not intended to establish grounds for certification of any class involving any Settlement Class Member other than for certification of the Settlement Class for settlement purposes.

74. The provisions of this Settlement Agreement, and any orders, pleadings or other documents entered in furtherance of this Settlement Agreement, may be offered or received in evidence solely (1) to enforce the terms and provisions hereof or thereof, (2) as may be specifically authorized by a court of competent jurisdiction after an adversary hearing upon application of a Party hereto, (3) in order to establish payment, or an affirmative defense of preclusion or bar in a subsequent case, (4) in connection with any motion to enjoin, stay or dismiss any other action, or (5) to obtain Court approval of the Settlement Agreement.
75. No Party may release any information relating to the Litigation that is not already publicly available. Parties (including their attorneys or agents) may, however, respond to media inquiries regarding the terms of the Settlement Agreement. If preliminary Court approval for the settlement is denied, the Parties and their attorneys and agents shall not make any negative or disparaging comments to the media or other third parties regarding the proposed settlement. However, if the settlement agreement is not preliminarily or finally approved, this provision shall not prohibit the parties from commenting about the litigation to any third parties. Nothing in this provision shall be interpreted to limit representations that the Parties or their attorneys may make to the Court to assist it in its evaluation of the proposed Settlement; nor shall this provision prohibit Class Counsel from having attorney-client communications directly with Settlement Class Members, including postings of the Settlement on Class Counsel's law firms' websites; nor shall this provision prohibit the Parties and their counsel from expressing favorable opinions regarding the settlement. If a party is required by a valid, enforceable subpoena or government information request to disclose information about the settlement, such party shall provide reasonable prior notice (to the extent permitted by applicable law) to the other party to allow the other party to seek to prevent such disclosure. A party may also provide necessary and accurate information about the settlement to its shareholders and other persons or entities as required by securities laws or other applicable laws or regulations.
76. This agreement shall be deemed executed as of the date that the last party signatory signs the agreement. This agreement shall fully supersede any previous agreement entered into by the parties.

XVIII. MISCELLANEOUS

77. No party shall be deemed the drafter of this Agreement or any provision thereof. No presumption shall be deemed to exist in favor of or against any party as a result of the preparation or negotiation of this Agreement.
78. This Agreement may not be modified or amended unless such modification or amendment is in writing executed by the Parties, except as specifically permitted by this Agreement. An electronic signature will be considered an original signature for purposes of execution of this Agreement.

79. Where this Agreement requires any party to provide notice or any other communication or document to any other party, such notice, communication, or document shall be provided by email or letter by overnight delivery to their counsel in the Litigation.
80. Nothing express or implied in this Agreement is intended or shall be construed to confer upon or give any person or entity other than the Parties, Releasees, and Settlement Class Members any right or remedy under or by reason of this Agreement. Each of the Releasees is an intended third-party beneficiary of this Agreement with respect to the Released Claims and shall have the right and power to enforce the release of the Released Claims in his, her or its favor against all Releasors.
81. This Agreement may be executed in multiple counterparts, all of which taken together shall constitute one and the same Settlement Agreement.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement by their duly authorized representatives on the dates stated below.

For Plaintiffs and the Proposed Settlement Class:

By: _____

Print Name: Jessica Vasil

Date: _____

By: _____

Print Name: Christine Farag

Date: _____

By: _____

Myles McGuire
Paul T. Geske
Timothy P. Kingsbury
MCGUIRE LAW, P.C.
55. W. Wacker Drive, 9th Floor
Chicago, IL 60601
Counsel for Plaintiffs

Date: _____

For Kiip, Inc.

By: _____

Print Name: _____

Date: _____

EXHIBIT 1

EXHIBIT 2

EXHIBIT 2

If you used a software application integrated with Kiip, Inc.'s advertising platform, you may be entitled to a cash payment from a class action settlement.

*A court authorized this notice to inform you about your rights. This is not a solicitation from a lawyer.
Para una notificación en Español, visitar www.website.com*

A settlement has been reached in a class action lawsuit involving claims that Kiip, Inc. (“Kiip”) violated the law by using its advertising platform to collect, intercept, or transmit consumers’ personal information through a software application without first getting permission from those consumers. *Farag et al. v. Kiip, Inc.*, Case No. 2019 CH 01695 (Ill. Cir. Ct. Cook Cnty.). The proposed settlement is not an admission of wrongdoing by Kiip. Kiip strenuously denies any wrongdoing and the court has not decided who is right or wrong. Rather, the parties have reached a compromise to end the lawsuit and avoid the uncertainties and costs associated with further litigation.

Am I a Member of the Settlement Class?

You’re a member of the settlement class if, between January 1, 2010 and **[DATE OF PRELIMINARY APPROVAL]**, 2019, you used a software application integrated with Kiip’s advertising platform. If you are a member of this class, you may file a claim to request a share of the settlement funds.

What Can I Get From the Proposed Settlement?

The proposed settlement provides for a fund totaling \$1,000,000, which will be used to make payments to the class members with valid claims after first making deductions for notice and administration costs, incentive awards to the class representatives, and attorneys’ fees for class counsel. If the court finally approves the settlement, each settlement class member who timely submits a valid claim form will be eligible to receive an equal payment from the Settlement Fund. The exact amount of each settlement class member’s payment is unknown at this time; the final amount of each payment will depend on the number of claims submitted and the amount available in the settlement fund after the deductions.

What are my Options?

To make a claim for a cash payment, you must submit a completed claim form online at www.website.com by **Month/Day, 2019**. Alternatively, you can exclude yourself from the settlement by **Month DD, 2019** if you do not want to be bound by it, but you will not be able to receive a payment from the fund. If you file a claim or otherwise choose not to exclude yourself, you will release any claims you may have against Kiip, as more fully described in the Settlement Agreement, available at the settlement website. You may also object to the settlement by **Month DD, 2019**. The detailed notice available on the website explains how to file a claim, exclude yourself, or object.

When will the Settlement be Approved?

The Court will hold a Hearing on **Month/DD, 2019** to consider whether to approve the settlement and a request by class counsel for attorneys’ fees of up to 40% of the Settlement Fund, plus their costs for their work in the case. The court will also consider incentive award payments in an amount up to \$5,000 to the class representatives. You can appear at the hearing, but you do not have to. You can also hire your own attorney, at your own expense, to appear or speak for you at the hearing. For more information, call or visit the website below.

For more information and for a claim form, visit www.website.com or call 1-999-999-9999.

EXHIBIT 3

EXHIBIT 3

LEGAL NOTICE BY ORDER OF COURT

Farag et al. v. Kiip, Inc., Case No. 2019-CH-01695 (Ill. Cir. Ct. Cook Cnty.)

If you used a software application integrated with Kiip, Inc.'s advertising platform, you may be entitled to a cash payment from a class action settlement.

The Circuit Court of Cook County, Illinois authorized this Notice to inform you about your rights. This is not a solicitation from a lawyer.

This Notice provides important information about a proposed Settlement in a class action lawsuit against Kiip, Inc. ("Kiip"). The lawsuit involves claims that certain software integrated with Kiip's advertising platform resulted in the unauthorized collection, interception, or transmission of consumers' personal information. **Please read this notice carefully. It summarizes your rights and options under the Settlement. You can access and read the full Settlement Agreement at [www.\[Website\].com](http://www.[Website].com).**

If, since January 1, 2010, you used a software application integrated with Kiip's advertising platform, and if you fit the description of the Settlement Class (as defined below), then you have the following options under the Settlement:

- You can file a claim to receive a payment from the Settlement Fund. Under the Settlement, you may be eligible for a cash payment.
- You can exclude yourself from the Settlement. If you pursue this option, you will not receive any of the Settlement benefits described above, but you retain the right to bring your own lawsuit. Your request to exclude yourself must be submitted no later than [date]. You must follow the process described in part 8 below. If the Settlement is approved and you do not exclude yourself, you will be bound by the Settlement and will release certain claims described below.
- You can object to the Settlement. The deadline for objecting to the Settlement is [date]. All objections must be mailed to the Settlement Administrator at [address]. See part 7 below for details.

NOTE: PLEASE DO NOT CALL OR WRITE THE COURT, THE COURT CLERK'S OFFICE, KIIP, OR KIIP'S COUNSEL. THEY WILL NOT BE ABLE TO ASSIST YOU. If you have questions, or you'd like more information please call [number] or visit [www.\[website\].com](http://www.[website].com)

BASIC INFORMATION

In a putative class action lawsuit known as *Farag et al. v. Kiip, Inc.*, No. 2019 CH 01695 (Ill. Cir. Ct. Cook Cnty.), the Plaintiffs allege that Kiip violated the law by using its advertising platform to collect, intercept, or transmit consumers' personal information through a software application without first getting permission from those consumers. Kiip denies that it did anything wrong, and the Court has not decided who is right. Rather, the parties have reached a compromise to end the lawsuit and avoid the uncertainties and costs associated with further litigation.

A settlement of the lawsuit ("Settlement") has been negotiated which, if approved by the Court, provides the Settlement Class Members with benefits from the Settlement, including the ability to receive a cash payment.

By entering into the Settlement, Kiip has not admitted the truth or validity of any of the claims against it. Your rights and options under the Settlement—and the deadlines to exercise them—are explained below.

YOUR LEGAL RIGHTS AND OPTIONS

SUBMIT A CLAIM FORM	This is the only way to receive a payment from the Settlement. Settlement Class Members who submit a valid Claim Form by the deadline of [date] will be eligible to receive a payment as described below.
DO NOTHING	If you do nothing, you will not receive any payment from the Settlement, but <i>you will still give up your rights to sue Kiip</i> as described below.
EXCLUDE YOURSELF FROM THE SETTLEMENT	If you exclude yourself, you will not receive anything from the Settlement, but you can still sue Kiip on your own and at your own expense. The deadline for excluding yourself is [date].
OBJECT	You may file an objection if you wish to object to the Settlement. The deadline to object to the Settlement is [date].
GO TO A HEARING	You may ask to speak in Court about the fairness of the Settlement. The Court has set a hearing for [date] at [time], subject to change.

These rights and options—and the deadlines to exercise them—are explained in this notice. The Court in charge of this case still has to decide whether to approve the Settlement. If approved, benefits will be distributed to those who qualify. Please be patient.

WHAT THIS NOTICE CONTAINS

1. Who's part of the Settlement?	4
2. What is this litigation about?	4
3. Who represents me?	4
4. What benefits can I receive from the Settlement?.....	4
5. Do I have to pay the lawyers representing me?.....	5
6. What am I agreeing to by remaining in the Settlement Class in this case?.....	5
7. What if I don't agree with the Settlement?	5
8. How do I exclude myself from the Settlement Class?.....	6
9. What is the difference between objecting and asking to be excluded?	7
10. What if I do nothing at all?	7
11. What will be decided at the Final Approval Hearing?	7
12. Is this the entire Settlement Agreement?	8
13. Where can I get more information?	8

1. Who's part of the Settlement?

If you received notice of the Settlement by email, then you may be a member of the Settlement Class. But even if you did not receive a notice, you may still be a member of the Settlement Class if you fall within the Settlement Class definition. The "Settlement Class" is defined as:

All individuals who used a software app integrated with the Kiip advertising platform between January 1, 2010 and [preliminary approval].

Excluded from the Settlement Class are Kiip; any entity that is a subsidiary of or is controlled by Kiip; anyone employed by Class Counsel; any judge to whom the case is assigned, his or her spouse, and members of the judge's staff.

The Circuit Court of Cook County, Illinois (Honorable Celia G. Gamrath) has conditionally certified, for settlement purposes only, the Settlement Class.

If you are not sure whether you are in the Settlement Class, or have any other questions about the Settlement, visit the Settlement Website at [www.\[insert\].com](http://www.[insert].com) or call toll free number at [number].

2. What is this litigation about?

Defendant Kiip is a mobile marketing company that displays advertisements on mobile devices through mobile applications, or "apps," installed on individuals' smartphones, including iPhones and Android devices. Plaintiffs brought a class action lawsuit against Kiip alleging that Kiip violated the law by secretly obtaining mobile users' personal information without their permission and at times when they weren't using their mobile devices. Plaintiffs have alleged that Kiip's advertising platform, together with a certain mobile app, illegally collected, intercepted, and/or transmitted consumers' personal data without their knowledge or consent. This is just a summary of the allegations. The complaint in the lawsuit is posted at [www.\[insert\].com](http://www.[insert].com) and contains all of the allegations.

Kiip denies Plaintiffs' allegations and denies that it has violated the law. However, in order to avoid the expense, inconvenience, and distraction of continued litigation, Kiip has agreed to the settlement described in this Notice.

3. Who represents me?

In a class action, one or more people called "class representatives" sue on behalf of other people who have similar claims. In this case, Christine Farag and Jessica Vasil sued Kiip and sought to represent other consumers who similarly had claims against Kiip. The Court has appointed them for settlement purposes to be Settlement Class Representatives for all Settlement Class Members in this case.

The Court also appointed the law firm McGuire Law, P.C. as Class Counsel to represent the Settlement Class Members. If you want to be represented by your own lawyer, you may hire one at your own expense.

4. What benefits can I receive from the Settlement?

The Settlement provides for creation of a Settlement Fund totaling \$1,000,000, which will be used to make payments to the class members after first making deductions for notice and administration costs, incentive awards to the class representatives, and attorneys' fees for class counsel. If the court finally approves the settlement, each Settlement Class Member who timely submits a valid claim form will be eligible to receive an equal payment from the Settlement Fund. The exact amount of each Settlement Class Member's payment is unknown at this time; the final amount of each payment will depend on the number of claims submitted and the amount available in the settlement fund after the deductions.

Kiip has also agreed to implement business practices to ensure that mobile users' personal information isn't collected or transmitted without their permission.

5. Do I have to pay the lawyers representing me?

No. Class Counsel will ask the Court for an award of attorneys' fees and expenses for investigating the facts, litigating the case, and negotiating the settlement. This award is subject to court approval and can be up to 40% of the Settlement Fund, or \$400,000. To date, Class Counsel have not received any payment for their services in litigating the case on behalf of the Class Representatives and the Settlement Class, nor have Class Counsel been reimbursed for their costs and expenses directly relating to their representation of the Settlement Class. Class Counsel's contact information is as follows:

Myles McGuire
Paul T. Geske
Timothy P. Kingsbury
MCGUIRE LAW, P.C.
55 West Wacker Drive, Suite 900
Chicago, Illinois 60601
mmcguire@mcgpc.com
pgeske@mcgpc.com
tkingsbury@mcgpc.com
Tel: (312) 893-7002

Class Counsel will also request that an Incentive Award of \$5,000 be awarded to each of the Class Representatives in recognition of their service to the Settlement Class. The amount of any fee or service award will be determined by the Court.

6. What am I agreeing to by remaining in the Settlement Class in this case?

Unless you exclude yourself, you will be part of the Settlement Class, and you will be bound by the release of claims in the Settlement. This means that if the Settlement is approved, you cannot sue, continue to sue, or be part of any lawsuit against Kiip arising out of, related to, or connected with interception, collection, or receipt of personal data that occurred in connection with software apps integrated with Kiip's advertising platform during the Class Period. The released claims include all claims that were or could have been asserted in the Litigation, regardless of whether those claims are known or unknown, filed or unfiled, asserted or as yet unasserted, existing or contingent.

7. What if I don't agree with the Settlement?

If you are a member of the Settlement Class, you may object to the Settlement or any part of the Settlement that you think the Court should reject; if so, the Court will consider your views. To object, you must send your objection in writing to the Settlement Administrator, Class Counsel, and Kiip's Counsel providing:

- a) The case name and case number of this Litigation (*Farag et al. v. Kiip, Inc.*, No. 2019 CH 01695 (Ill. Cir. Ct. Cook Cnty.)).
- b) Your full name, current address, email address and phone number;
- c) The name of the software applications you used that you believe integrated Kiip's advertising platform;
- d) The reasons why you object to the Settlement along with any supporting materials;
- e) Information about other objections you or your lawyer(s) have made in other class action cases in the last four (4) years; and
- f) Your signature.

Your objection must be postmarked no later than [date]. Objections must be mailed to:

Epiq Systems, Inc.

[Address]

Plaintiff's Counsel

Myles McGuire
MCGUIRE LAW, P.C.
55 W. Wacker Drive, 9th Fl.
Chicago, IL 60601

Kiip Counsel

Joseph C. Gratz
DURIE TANGRI LLP
217 Leidesdorff Street
San Francisco, California 94111

8. How do I exclude myself from the Settlement Class?

If you want to exclude yourself from the Settlement Class, sometimes referred to as "opting-out," you will not be eligible to receive any benefits as a result of this Settlement. However, you will keep the right to sue or continue to sue Kiip on your own and at your own expense concerning any of the claims that will be released as part of this Settlement.

To exclude yourself from the Settlement Class, you must send a letter to the Settlement Administrator providing:

- a) The case name and case number of this Litigation (*Farag et al. v. Kiip, Inc.*, No. 2019 CH 01695 (Ill. Cir. Ct. Cook Cnty.)).
- b) Your full name, current address, email address, and phone number;
- c) The name of the software applications you used that you believe integrated Kiip's advertising platform;
- d) A statement that you wish to exclude yourself from the Settlement Class; and
- e) Your signature.

If you wish to exclude yourself, you must submit the above information to the following address so that it is postmarked no later than [date].

Settlement Administrator: Epiq Systems, Inc.

REQUESTS FOR EXCLUSION FROM THE CLASS THAT ARE NOT POSTMARKED ON OR BEFORE [date] WILL NOT BE HONORED.

You cannot exclude yourself from the Settlement Class by telephone, email or on the Settlement Website. You cannot exclude yourself by mailing a request to any other location or after the deadline above. Your exclusion notice must be signed by you.

9. What is the difference between objecting and asking to be excluded?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object to the Settlement because it no longer affects you.

10. What if I do nothing at all?

You will remain a member of the Settlement Class and release your claims against Kiip. However, you **must file a Claim Form to receive a benefit in this Settlement.** See Part 4 above.

11. When will the court finally rule on the Settlement?

The Court will hold a Final Approval Hearing to decide whether to approve the Settlement and any requests for fees, expenses, and incentive awards. The Final Approval Hearing is currently set for [date] at [time] in the Chancery Division of the Circuit Court of Cook County, Illinois, Courtroom 2508 of the Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois 60602. The hearing may be moved to a different date or time without additional notice, so you should check [www.\[insert\].com](http://www.[insert].com) and the Court's docket for updates.

At the Final Approval Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider the request by Class Counsel for attorneys' fees and expenses and for the Class Representatives' incentive awards. If there are any objections, the Court will consider them at the Final Approval Hearing. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long that decision may take.

You may attend the hearing, at your own expense, but you do not have to do so.

You may ask the Court for permission to speak at the hearing. To do so, you must send a letter saying that you intend to appear and wish to be heard. Your notice of intention to appear must include the following:

- a) The case name and case number of this Litigation (*Farag et al. v. Kiip, Inc.*, No. 2019 CH 01695 (Ill. Cir. Ct. Cook Cnty.)).
- b) Your full name, current address, email address, and phone number;
- c) The name of the software applications you used that you believe integrated Kiip's advertising platform;
- d) A statement that this is your "Notice of Intention to Appear" at the Final Approval Hearing in this case;
- e) Copies of any papers, exhibits, or other evidence or information that you will present to the Court;
- f) The reasons you want to be heard; and
- g) Your signature.

You must send copies of your notice of intent to appear, postmarked by [date], to:

Clerk of the Circuit Court of Cook County
Chancery Division
50 W. Washington Street, #802
Chicago, IL 60602

Plaintiff's Counsel

Myles McGuire
MCGUIRE LAW, P.C.
55 W. Wacker Drive, 9th Fl.
Chicago, IL 60601

Kiip Counsel

Joseph C. Gratz
DURIE TANGRI LLP
217 Leidesdorff Street
San Francisco, California 94111

You cannot speak at the hearing if you exclude yourself from the Settlement.

12. Does this Notice contain the entire Settlement Agreement?

No. This is only a summary of the Settlement. If the Settlement is approved and you do not exclude yourself from the Settlement Class, you will be bound by the release contained in the Settlement Agreement, and not just by the terms of this Notice. Capitalized terms in this Notice are defined in the Settlement Agreement. You can view the full Settlement Agreement online at [www.\[insert\].com](http://www.[insert].com), or you can write to the address below for more information.

13. Where can I get more information?

For more information, visit [www.\[insert\].com](http://www.[insert].com) or call the Settlement Administrator at [Number](tel:[number]).

NOTE: PLEASE DO NOT CALL OR WRITE THE COURT, THE COURT CLERK'S OFFICE, KIIP, OR KIIP'S COUNSEL. THEY WILL NOT BE ABLE TO ASSIST YOU.

EXHIBIT 4

**CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

CHRISTINE FARAG and JESSICA VASIL,)
individually and on behalf of a class of similarly)
situated individuals,)

Plaintiffs,)

v.)

KIIP, INC., a Delaware corporation,)

Defendant.)

Case No. 19-CH-01695

Hon. Celia G. Gamrath

[PROPOSED] PRELIMINARY APPROVAL ORDER

This matter having come before the Court for hearing on Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement (the “Motion”), the Court having considered and reviewed in detail Plaintiffs’ Motion and memorandum in support of the Motion, the Parties’ Class Action Settlement Agreement (“Settlement Agreement”), and all other papers that have been filed with the Court related to the Settlement Agreement, including all exhibits and attachments to the Motion and the Settlement Agreement, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED:

1. Capitalized terms used in this Order that are not otherwise defined herein have the same meanings assigned to them in the Parties’ Settlement Agreement.

2. Subject to further consideration by the Court at the time of the Final Approval Hearing, the Court preliminarily approves the Settlement as fair, reasonable, and adequate to the Settlement Classes, as falling within the range of possible final approval, and as meriting submission to the Settlement Class for their consideration. The Parties are represented by experienced counsel, and there is good cause to find that the Settlement Agreement, which was

reached following a mediation with the assistance of the Hon. Morton Denlow (Ret.) of JAMS Chicago, was negotiated at arms-length between the Parties.

3. Pursuant to Section 2-801 of the Illinois Code of Civil Procedure, and for the purpose of settlement only, the Court hereby certifies the Settlement Class defined as:

All individuals in the United States who used a mobile software app integrated with Kiip's advertising platform between January 1, 2010 and the date of entry of this Order.

Excluded from the Settlement Class are all persons who elect to exclude themselves from the Settlement Class, the Court and staff to whom this case is assigned, Kiip, any entity that is a subsidiary of or is controlled by Kiip, anyone employed by Class Counsel, and any member of the Court's or staff's immediate family.

4. For settlement purposes only, the Court preliminarily finds that the Parties' Settlement Agreement and the proposed Settlement Class satisfy all of the prerequisites for the maintenance of a class action listed Section 2-801 of the Illinois Code of Civil Procedure, including numerosity, commonality and predominance, adequacy of representation, and appropriateness of class treatment as a method for fair and efficient adjudication of this controversy. 735 ILCS 5/2-801.

5. Plaintiffs Christine Farag and Jessica Vasil are appointed as Class Representatives of the Settlement Class.

6. The following counsel are appointed as Class Counsel for the Settlement Class:

Myles McGuire
Paul T. Geske
Timothy Kingsbury
MCGUIRE LAW, P.C.
55 W. Wacker Drive, 9th Fl.
Chicago, IL 60601

7. The Court preliminarily finds that the Plaintiffs and Class Counsel have and will fairly and adequately represent and protect the interests of the absent members of the Settlement Class in accordance with 735 ILCS 5/2-801(3).

8. The Court approves, in form and content, the notice plan set forth in the Settlement Agreement, including the Short Form Notice, the Long Form Notice, and the Publication Notice attached to the Settlement Agreement, and finds that they meet the requirements of Section 2-803 of the Illinois Code of Civil Procedure and satisfy Due Process.

9. The Court further finds that the planned notice set forth in the Settlement Agreement meets the requirements of Section 2-803 of the Illinois Code of Civil Procedure, constitutes the best notice practicable under the circumstances, and fully satisfies the requirements of Due Process and any other applicable law, such that the Settlement Agreement and Final Approval Order will be binding on all Settlement Class Members. In addition, the Court finds that no notice other than that specifically identified in the Settlement Agreement is necessary in this action. The Parties, by agreement, may revise the Class Notice and Claim Form in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting for publication.

10. Epiq Systems Class Action and Claims Solutions is hereby appointed Settlement Administrator to supervise and administer the notice process, as well as to oversee the claims submission process and administration of the Settlement, as more fully set forth in the Settlement Agreement. Pursuant to Section IX of the Settlement Agreement, Defendant shall provide the Settlement Administrator with a list of contact information for potential Settlement Class Members who are to receive Direct Notice. The Settlement Administrator shall proceed with the distribution of Class Notice, including Direct Notice and Publication Notice, as set forth in the Settlement

Agreement.

11. Settlement Class Members who wish to receive benefits under the Settlement Agreement must timely submit a valid and completed Claim Form in accordance with the instructions provided in the Class Notice on or before _____, 2019. The Court hereby approves as to form and content the Claim Form attached to the Settlement Agreement as Exhibit 1.

12. All Claim Forms must be electronically submitted to the Settlement Administrator via the Settlement Website no later than _____, 2019. Any Settlement Class Member who does not timely submit a Claim Form deemed to be valid in accordance with the Settlement Agreement shall not be entitled to receive any portion of the Settlement Fund.

13. Any person who would otherwise be a Settlement Class Member may request to be excluded from the Settlement Class. In order to exercise the right to be excluded, a person within the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing his or her name and address, email address, the name and number of this case, the name of the smartphone application that he or she believes is associated with the collection, interception, or receipt of his or her information by Defendant, a signature, and a statement that he or she wishes to be excluded from the Settlement Class. Any request for exclusion submitted via first class mail must be personally signed by the person requesting exclusion. Such exclusion requests must be received by the Settlement Administrator at the address specified in the Class Notice in written form, by first class mail, postage prepaid, and postmarked no later than _____, 2019.

14. No person within the Settlement Class, or any person acting on behalf of, in concert with, or in participation with that person within the Settlement Class, may request exclusion from the Settlement Class of any other person within the Settlement Class.

15. Settlement Class Members shall be bound by all determinations and orders pertaining to the Settlement, including the release of all claims to the extent set forth in the Settlement Agreement, whether favorable or unfavorable, unless such persons request exclusion from the Settlement Class in a timely and proper manner, as provided herein and in the Settlement Agreement. Settlement Class Members who do not timely and validly request exclusion shall be so bound even if they have previously initiated or subsequently initiate litigation or other proceedings against the Defendant or the Releasees relating to the claims released under the terms of the Settlement Agreement.

16. Any person in the Settlement Class who elects to be excluded shall not: (i) be bound the Final Approval Order; (ii) be entitled to relief under the Settlement Agreement; (iii) gain any rights by virtue of the Settlement Agreement; or (iv) be entitled to object to any aspect of the Settlement Agreement.

17. Class Counsel may file any motion seeking an award of attorneys' fees not to exceed forty percent (40%) of the Settlement Fund, or four hundred thousand dollars (\$400,000,00), plus their reasonable costs and expenses, as well as Incentive Awards of five thousand dollars (\$5,000) for the Class Representatives, no later than _____, 2019.

18. Any Settlement Class Member who has not requested exclusion from the Settlement Class and who wishes to object to any aspect of the Settlement Agreement, including to the payment of Incentive Awards for the Class Representatives or to the amount of the attorneys' fees, costs, and expenses that Class Counsel intends to seek, may do so, either personally or through an attorney, by filing a written objection with the Court, together with the supporting documentation set forth below in paragraph 19 of this Order, and serving such objection upon Class Counsel, Defendant's Counsel, and the Settlement Administrator no later than _____,

2019. Addresses for Class Counsel, Defendant’s Counsel, and the Settlement Administrator are as follows:

Class Counsel

Myles McGuire
Paul T. Geske
Timothy P. Kingsbury
MCGUIRE LAW, P.C.
55 W. Wacker Drive, 9th Floor
Chicago, IL 60601

Defendant’s Counsel

Joseph C. Gratz
DURIE TANGRI LLP
217 Leidesdorff Street
San Francisco, California 94111

Settlement Administrator

Epiq Systems Class Action and Claims Solutions
[ADDRESS]_____

19. Any Settlement Class Member who has not requested exclusion and who intends to object to the Settlement must state, in writing, all objections and the basis for any such objection(s), and must also state in writing: (i) his or her full name, address, email address, and telephone number; (ii) the case name and number of this Litigation; (iii) the name of the smartphone application that he or she believes is associated with the collection, interception, or receipt of his or her information by Defendant; (iv) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (v) the identification of any other objections he or she has filed, or has had filed on his or her behalf, in any other class action cases in the last four years; and (vi) the objector’s signature. Objections not filed and served in accordance with this Order shall not be received or considered by the Court. Any Settlement Class Member who fails to timely file and serve a written objection in accordance with this Order shall be deemed to have waived, and shall be forever foreclosed from raising, any objection to the Settlement, to the fairness, reasonableness, or adequacy of the Settlement, to the payment of attorneys’ fees, costs, and expenses, to the payment of any Incentive Awards, and to the Final

Approval Order and the right to appeal the same.

20. A Settlement Class Member who has not requested exclusion from the Settlement Class and who has properly submitted a written objection in compliance with this Order may appear at the Final Approval Hearing in person or through counsel to show cause why the proposed Settlement should not be approved as fair, reasonable, and adequate. Attendance at the hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement and/or Class Counsel's Fee and Expense Application and/or the request for Incentive Awards to the Class Representatives are required to indicate in their written objection their intention to appear at the Final Approval Hearing on their own behalf or through counsel. For any Settlement Class Member who files a timely written objection and who indicates his or her intention to appear at the Final Approval Hearing on their own behalf or through counsel, such Settlement Class Member must also include in his or her written objection the identity of any witnesses he or she may call to testify, and all exhibits he or she intends to introduce into evidence at the Final Approval Hearing, which shall be attached.

21. No Settlement Class Member shall be entitled to be heard, and no objection shall be considered, unless the requirements set forth in this Order and in the Settlement Agreement are fully satisfied. Any Settlement Class Member who does not make his or her objection to the Settlement in the manner provided herein, or who does not also timely provide copies to the designated counsel of record for the Parties at the addresses set forth herein, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise, and shall be bound by the Settlement Agreement, the releases contained therein, and all aspects of the Final Approval Order.

22. All papers in support of final approval of the proposed Settlement shall be filed no

later than fourteen (14) days before the Final Approval Hearing.

23. Pending final determination of the fairness, reasonableness, and adequacy of the proposed Settlement, no Settlement Class Member may prosecute, initiate, commence, or continue any lawsuit (individual or class action) with respect to the Released Claims against any of the Releasees.

24. The Final Approval Hearing shall be held before the Court on _____, 2019 in Courtroom 2508 of the Circuit Court of Cook County, Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois 60602 (or at such other time or location as the Court may without further notice direct) for the following purposes:

- a) to finally determine whether the applicable prerequisites for settlement class action treatment under 735 ILCS 5/2-801 have been met;
- b) to finally determine whether the Settlement is fair, reasonable and adequate, and should be approved by the Court;
- c) to determine whether the judgment as provided under the Settlement Agreement should be entered, including an order prohibiting Settlement Class Members from further pursuing claims released in the Settlement Agreement;
- d) to consider the application for an award of attorneys' fees, costs and expenses of Class Counsel;
- e) to consider the application for Incentive Awards to the Class Representatives;
- f) to consider the distribution of the Settlement Fund pursuant to the Settlement Agreement; and
- g) to rule upon such other matters as the Court may deem appropriate.

25. The Final Approval Hearing may be postponed, adjourned, transferred, or continued by order of the Court without further notice to the Settlement Class. At or following the Final Approval Hearing, the Court may enter a judgment approving the Settlement Agreement and a Final Approval Order in accordance with the Settlement Agreement that adjudicates the rights of all Settlement Class Members.

26. Settlement Class Members do not need to appear at the Final Approval Hearing or take any other action to indicate their approval.

27. All discovery and other proceedings in the Litigation as between Plaintiffs and Defendant are stayed and suspended until further order of the Court except such actions as may be necessary to implement the Settlement Agreement and this Order.

28. For clarity, the deadlines set forth above and in the Settlement Agreement are as follows:

- Notice to be issued by:** _____, 2019
- Notice to be completed by:** _____, 2019
- Fee and Expense Application:** _____, 2019
- Objection Deadline:** _____, 2019
- Exclusion Request Deadline:** _____, 2019
- Final Approval Submissions:** _____, 2019
- Final Approval Hearing:** _____, 2019
- Claims Deadline:** _____, 2019

IT IS SO ORDERED.

ENTERED: _____

Hon. Celia G. Gamrath

EXHIBIT 5

**CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

CHRISTINE FARAG and JESSICA VASIL,)
individually and on behalf of a class of similarly)
situated individuals,)

Plaintiffs,)

v.)

KIIP, INC., a Delaware corporation,)

Defendant.)

Case No. 19-CH-01695

Hon. Celia G. Gamrath

[PROPOSED] FINAL ORDER AND JUDGMENT

This matter having come before the Court for hearing on Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement and Unopposed Motion for Approval of Attorneys' Fees, Expenses, and Incentive Awards, due and adequate notice having been given to all Parties and the Settlement Class Members, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED:

1. All capitalized terms used in this Final Order and Judgment shall have the meanings ascribed to them in the Parties' Settlement Agreement unless stated otherwise.

2. The Court has read and considered the papers filed in support of Plaintiffs' Motions, including the Settlement Agreement and exhibits thereto and supporting declarations.

3. This Court has jurisdiction over the subject matter of the Litigation and all claims raised therein, and has personal jurisdiction over all Parties to the Litigation, including all Settlement Class Members.

4. The Court preliminarily approved the Parties' Settlement Agreement in its Preliminary Approval Order dated _____, 2019. Pursuant to the Preliminary Approval Order and

the Parties' plan for providing notice to the Settlement Classes, the Settlement Class Members were notified of the terms of the proposed Settlement and of a Final Approval Hearing to determine, *inter alia*, whether the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate for the release and dismissal of the Released Claims against the Releasees.

5. The Court held a Final Approval Hearing on _____, 2019, at which time the Parties and all other interested persons were afforded the opportunity to be heard in support of and in opposition to the Settlement. Settlement Class members were notified of their right to appear at the hearing in support of or in opposition to the proposed Settlement.

6. Based on the papers filed with the Court and presentations made to the Court by the Parties and other interested persons at the Final Approval Hearing, the Court now grants final approval of the Settlement and finds that the Settlement Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class, taking into account the risks that both sides faced with respect to the merits of the claims alleged and remedies requested, the risks of maintaining a class action, and the expense and duration of further litigation, and therefore the Settlement is approved. The fact that the Settlement Agreement is the result of arms-length negotiations presided over by a neutral mediator fully supports this finding.

7. Pursuant to 735 ILCS 5/2-801 and 2-802, and solely for purposes of settlement, the Court finally certifies the following Settlement Class:

All individuals who used a software app integrated with the Kiip advertising platform during the Class Period.

8. For settlement purposes only, the Court confirms the appointment of Plaintiffs Christine Farag and Jessica Vasil as Class Representatives of the Settlement Class.

9. For settlement purposes only, the Court confirms the appointment of the following

counsel as Class Counsel:

Myles McGuire
Paul T. Geske
Timothy Kingsbury
McGuire Law, P.C.
55 W. Wacker Drive, 9th Floor
Chicago, IL 60601

10. With respect to the Settlement Class, this Court finds, for settlement purposes only, that: (a) the Settlement Class defined above is so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the Settlement Class, and those common questions predominate over any questions affecting only individual members; (c) the Class Representatives and Class Counsel have fairly and adequately protected, and will continue to fairly and adequately protect, the interests of the Settlement Class Members; and (d) certification of the Settlement Class is an appropriate method for the fair and efficient adjudication of this controversy.

11. The Court finds that adequate notice was given to all Settlement Class Members pursuant to the terms of the Preliminary Approval Order. The Court has further determined that the Class Notice given to the Settlement Class Members in accordance with the Preliminary Approval Order fully and accurately informed Settlement Class Members of all material elements of the Settlement, constituted the best notice practicable under the circumstances, and fully satisfied the requirements of 735 ILCS 5/2-803, applicable law, and the Due Process Clauses of the Constitution of the United States and the Illinois Constitution.

12. The Court orders the Parties to the Settlement Agreement to perform their obligations thereunder. The terms of the Settlement Agreement shall be deemed incorporated herein as if explicitly stated and shall have the full force of an order of this Court.

13. The Court enters judgment and dismisses the Litigation with prejudice, with each

Party to bear its own costs (except as otherwise provided herein and in the Settlement Agreement) as to Plaintiffs' and all Settlement Class Members' claims against Defendant. The Court adjudges that the Released Claims and all of the claims described in the Settlement Agreement are released against the Releasees.

14. The Court adjudges that Plaintiffs and all Settlement Class Members who have not opted out of the Settlement Class shall be deemed to have fully, finally, and forever released, relinquished, and discharged all Released Claims against the Releasees.

15. The Court further adjudges that, upon entry of this Order, the Settlement Agreement and the above-described release of the Released Claims will be binding on, and have preclusive effect in, all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and all other Settlement Class Members who did not validly and timely opt out of the Settlement, and their respective affiliates, assigns, heirs, executors, administrators, successors, agents, and insurers, as set forth in the Settlement Agreement. The Releasees may file the Settlement Agreement and/or this Final Order and Judgment in any action or proceeding that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

16. Plaintiff and Settlement Class Members who did not validly and timely request exclusion from the Settlement are permanently barred and enjoined from asserting, commencing, prosecuting, or continuing any of the Released Claims or any of the claims described in the Settlement Agreement against any of the Releasees.

17. The Court approves payment of attorneys' fees, costs and expenses to Class Counsel in the amount of \$_____. This amount shall be paid from the Settlement Fund in

accordance with the terms of the Settlement Agreement. The Court, having considered the materials submitted by Class Counsel in support of final approval of the Settlement and their request for attorneys' fees, costs, and expenses and in response to any timely filed objections thereto, finds the award of attorneys' fees, costs, and expenses appropriate and reasonable for the following reasons: First, the Court finds that the Settlement provides substantial benefits to the Settlement Class. Second, the Court finds the payment fair and reasonable in light of the substantial work performed by Class Counsel. Third, the Court concludes that the Settlement was negotiated at arms-length without collusion, and that the negotiation of the attorneys' fees only followed agreement on the settlement benefits for the Settlement Class Members. Finally, the Court notes that the Class Notices specifically and clearly advised the Settlement Class Members that Class Counsel would seek an award in the amount sought.

18. The Court approves payment of Incentive Awards in the amount of \$___,000 for the Class Representatives, Christine Farag and Jessica Vasil, and specifically finds such amount to be reasonable in light of the services performed by Plaintiff for the Settlement Class, including taking on the risks of litigation and helping achieve the results to be made available to the Settlement Class. This amount shall be paid from the Settlement Fund in accordance with the terms of the Settlement Agreement.

19. The Parties are directed to distribute as *cy pres* funds in an amount consistent with 735 ILCS 5/2-807. All checks issued to Settlement Class Members remaining un-cashed ninety (90) days after their issue date to the following *cy pres* recipient: _____.

20. Neither this Final Order and Judgment, the Settlement Agreement, nor the payment of any consideration in connection with the Settlement shall be construed or used as an admission or concession by or against Defendant or any of the Releasees of any fault, omission, liability, or

wrongdoing, or of the validity of any of the Released Claims. This Final Order and Judgment is not a finding as to the validity or invalidity of any claims in this Litigation or a determination of any wrongdoing by Defendant or any of the Releasees. The final approval of the Settlement Agreement does not constitute any position, opinion, or determination of this Court as to the merits of the claims or defenses of the Parties or the Settlement Class Members.

21. Any objections to the Settlement Agreement are overruled and denied in all respects. The Court finds that no reason exists for delay in entering this Final Order and Judgment. Accordingly, the Clerk is directed to enter this Final Order and Judgment.

22. The Parties, without further approval from the Court, are permitted to agree to and adopt such amendments, modifications, and expansions of the Settlement Agreement and its implementing documents (including all exhibits to the Settlement Agreement) so long as they are consistent in all material respects with the Final Order and Judgment and do not limit the rights of the Settlement Class Members.

IT IS SO ORDERED.

ENTERED: _____

Hon. Celia G. Gamrath